PHILIPPINE REPORTS

VOL. 617

SEPTEMBER 29, 2009 TO OCTOBER 2, 2009

VOLUME 617

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

SEPTEMBER 29, 2009 TO OCTOBER 2, 2009

SUPREME COURT
MANILA
2014

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2014

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.C. No. 7297. September 29, 2009]

IMELDA BIDES-ULASO, *complainant, vs.* **ATTY. EDITA NOE-LACSAMANA,** *respondent.*

SYLLABUS

1. LEGAL AND JUDICIAL ETHICS; ATTORNEYS; DISBARMENT; CASE OF DISBARMENT MAY PROCEED REGARDLESS OF LOSS OF INTEREST OF COMPLAINANT; CASE AT BAR. —The agreement between Bides and Ulaso stipulating the withdrawal of the disbarment case against the respondent did not terminate or abate the jurisdiction of the IBP and of this Court to continue the present administrative proceeding against the respondent as a member of the Philippine Bar. As explained in *Rayos-Ombac v. Rayos*, x x x *a* case of suspension or disbarment may proceed regardless of interest or lack of interest of the complainant. What matters is whether, on the basis of the facts borne out by the record, the charge of deceit and grossly immoral conduct has been duly proven. xxx. The complainant or the person who called the attention of the court to the attorney's alleged misconduct is in no sense a party, and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice. Hence, if the evidence on record warrants, the respondent may be suspended or disbarred despite the desistance of complainant or his withdrawal of the charges. x x x.

2. ID.; ID.; ID.; COURT'S INHERENT POWER TO DISCIPLINE A MEMBER OF THE BAR; NOT DIMINISHED BY LAPSE OF TIME NOR BY THE MOTIVATION FOR THE FILING OF COMPLAINT. — Neither the lapse of time from the occurrence of the cause nor the motivation for the filing of the complaint diminished the Court's inherent power to discipline a member of the Bar whenever appropriate. First of all, the ordinary statutes of limitation had no application to disbarment or suspension proceedings against members of the Bar. Indeed, such proceedings are *sui generis*. They are not akin to the trials of actions or suits in which interests and rights are enforced by the plaintiffs against the defendants, but are rather investigations into the conduct of the members of the Bar made by the Supreme Court within the context of its plenary powers expressly granted by the Constitution to regulate the practice of law. The proceedings, which the Court may even *motu proprio* initiate, have neither plaintiffs nor prosecutors. The public interest is their primary objective, the true question for determination being whether or not the respondent members of the Bar are *still* fit to be allowed to retain their memberships and to enjoy the privileges appurtenant to such memberships.

3. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; JURAT; END PART OF AN AFFIDAVIT; NOTARIAL CERTIFICATION IS ESSENTIAL. —The jurat is that end part of the affidavit in which the notary *certifies* that the instrument is sworn to before her. As such, the notarial certification is essential. Considering that notarization is not an empty, meaningless, routinary act, the faithful observance and utmost respect of the legal solemnity of the oath in the jurat are sacrosanct.

4. LEGAL ETHICS; ATTORNEYS; NOTARY PUBLIC; NOTARIZING AMENDED VERIFICATION AND AFFIDAVIT OF NON-FORUM SHOPPING IN THE ABSENCE OF AFFIANT, A CLEAR BREACH OF NOTARIAL PROTOCOL; CASE AT BAR. — We concur with the findings of Investigating Commissioner Velez that the respondent's notarizing the *amended verification and affidavit of non-forum shopping* in the absence of Bides as the affiant constituted a clear breach of the notarial protocol and was highly censurable. x x x Specifically, the notarial

certification contained in the jurat of the *amended verification and affidavit of non-forum shopping* – "SUBSCRIBED AND SWORN TO BEFORE ME, on this 18th day of June 2003, affiant IRENE BIDES, showing to me her CTC Nos. 11833475 issued on November 21, 2002, in Manila" – indicated both the necessity for the physical presence of Bides as the affiant and the fact that the signing was done *in the presence of* the respondent as the notary. The physical presence of Bides was required in order to have her as the affiant swear before the respondent that she was *that* person and in order to enable the respondent as the notary to ascertain whether Bides had voluntarily and freely executed the affidavit. Thus, the respondent, by signing as notary even before Bides herself could appear before her, failed to give due observance and respect to the solemnity.

5. ID.; ID.; ID.; ID.; NO BAD FAITH WHERE THE WORD "FOR" PRECEDED THE SIGNATURE OF AFFIANT; CASE AT BAR. — We regard the finding of deliberation and malice to be unjustified. The admitted precedence by the word *"for"* of the signature on the amended *verification and affidavit of non-forum shopping* was an indicium that the respondent did *not* intend to misrepresent the signature as that of Bides. The apparent resemblance of the signature after the word "*for"* with the respondent's signature as the notary executing the jurat rendered improbable that the respondent had intended to deceive, considering that the respondent would have instead written the name *Irene Bides* or forged the signature of Bides had she wanted to pass the signature off as that of Bides. The respondent, by notarizing the document *sans* the signature of Bides, was only anticipating that Bides would subsequently sign, because, after all, Bides had already signed the original verification and affidavit. Ostensibly, the *amended verification and affidavit of non-forum shopping* was intended to replace the original one attached to the initiatory pleading of Bides. Thus, bad faith did not motivate the respondent into notarizing the amended *verification and affidavit of non-forum shopping*.

6. ID.; ID.; ID.; ID.; ID.; GRAVER RESPONSIBILITY FOR LAWYER-NOTARY TO OBSERVE AND MAINTAIN THE RULE OF LAW. — Being a lawyer commissioned as a notary, the respondent was mandated to discharge with fidelity the sacred duties appertaining to her notarial office. Such duties being dictated by public policy and impressed with public

interest, she could not disregard the requirements and solemnities of the Notarial Law. It was emphatically her primary duty as a lawyer-notary to obey the laws of the land and to promote respect for the law and legal processes. She was expected to be in the forefront in the observance and maintenance of the rule of law. She ought to have remembered that a graver responsibility was placed upon her shoulders by virtue of her being a lawyer.

7. ID.; ID.; ID.; ID.; ID.; REPRIMAND, PROPER PENALTY IN CASE AT BAR. — In imposing the penalty upon the respondent, however, we opt to reprimand her instead of suspending her from the practice of law for three months, as the IBP recommended. This we do after we take into account, firstly, the absence of bad faith in her notarizing the unsigned document; secondly, the fact that the infraction was the first lodged against her in her long years of membership in the Bar; and thirdly, her recuperating from the debilitating stroke that had left her unable to perform any work since July 11, 2007.

APPEARANCES OF COUNSEL

Oscar C. Maglaque for complainant.

D E C I S I O N

BERSAMIN, *J.*:

The decisive question to be resolved in this administrative proceeding is whether or not the notarization of the jurat of the *amended verification and affidavit of non-forum shopping* attached to the initiatory pleading even before the plaintiff-client has affixed her own signature amounts to censurable conduct on the part of the notary-counsel.

The Integrated Bar of the Philippines (IBP) found respondent Atty. Edita Noe-Lacsamana, the notary-counsel, guilty of gross negligence and of a violation of the Notarial Law; and

recommended her suspension from the practice of law for six months.[1] She now pleads her cause before us.[2]

Antecedents

The respondent was the counsel of Irene Bides (Bides) when the latter filed a civil action in the Regional Trial Court (RTC) in Pasig City against complainant Imelda Bides-Ulaso (Ulaso), her own niece; Alan Ulaso (Ulaso's husband); Bartolome Bides (Ulaso's father and Bides' brother); the Register of Deeds of Region II, Metro Manila; and the Revenue District Office of San Juan, Metro Manila. The action was docketed as Special Civil Action (SCA) No. 2481 and raffled to Branch 167 of the RTC.

Bides amended the complaint on June 23, 2003 to demand the declaration of nullity of the *deed of sale* dated May 27, 1996 pertaining to the parcel of land situated in San Juan, Metro Manila of which Bides was the registered owner. Bides averred that Ulaso had taken her owner's certificate of title during her absence from her residence and that Ulaso had then caused the transfer of the property to herself through the fraudulent execution of the *deed of sale*.[3]

The amended complaint of Bides contained a so-called *amended verification and affidavit of non-forum shopping* dated June 18, 2003, on which was a signature preceded by the word "*for*" above the printed name "IRENE BIDES." The signature bore a positive resemblance to the respondent's signature as the notary on the jurat of the *amended verification and affidavit of non-forum shopping*.[4] Seeing the defective execution of the *amended verification and affidavit of non-forum shopping,* Ulaso and her co-defendants filed a *motion to dismiss* on July 22, 2003,[5] citing the defect as a ground, along with another.

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[1] *Rollo*, p. 307.

[2] *Id.*, pp. 317-357.

[3] *Id.*, pp. 4-12.

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

[5] *Id.*, pp. 157-161.

Through the respondent as her counsel, Bides opposed the *motion to dismiss* on August 6, 2003, claiming an inadvertent mistake committed in relation to the signature appearing above the printed name of the affiant, but offering the excuse that the defective *amended verification and affidavit of non-forum shopping* had actually been only a "*sample-draft*" intended to instruct Irene Mallari, the respondent's new secretary, on where Bides, as affiant, should sign. Bides also claimed that the respondent's signature above the printed name of the affiant had not been intended to replace the signature of Bides as the affiant; that the correct *amended verification and affidavit of non-forum shopping* to be appended to the amended complaint had been executed only on June 23, 2003 due to her (Bides) delayed arrival from her home province of Abra; and that Mallari had failed to replace the defective document with the correct *amended verification and affidavit of non-forum shopping*.[6]

The RTC denied the *motion to dismiss* and even declared Ulaso and her co-defendants in default. The RTC ultimately decided the action in favor of Bides, granting reliefs like the nullification of the *deed of sale* between Bides, as seller, and Ulaso, as buyer.[7]

On appeal, the Court of Appeals affirmed the RTC's judgment.[8]

Bides and the respondent brought other proceedings against Ulaso. On September 26, 2003, Bides sued Ulaso and others for ejectment in the Metropolitan Trial Court (MeTC) in San Juan, Metro Manila, to evict them from the premises of Bides' property subject of the RTC case.[9] She next formally charged Ulaso and two others with falsification of a public document in the Manila Prosecutor's Office for the execution of the nullified *deed of sale*, resulting in the criminal prosecution of Ulaso and

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[6] *Id.*, pp. 162-171.

[7] *Id.*, pp. 30-36.

[8] *Id.*, pp. 61-71.

[9] *Id.*, pp. 217-223.

the others before the MeTC, Branch 17, in Manila.[10] The respondent actively prosecuted the criminal charge against Ulaso after being granted by the MeTC the express authority for that purpose pursuant to the *Rules of Court*.[11] The respondent herself commenced disbarment proceedings in the IBP against Atty. Yolando Busmente, Ulaso's counsel; and proceedings for usurpation against Elizabeth de la Rosa, for appearing as Ulaso's other counsel although she had not been a member of the Philippine Bar.[12] The disbarment proceedings against Atty. Busmente were docketed as CBD Case No. 05-1462.

To counteract the aforestated moves of Bides and the respondent, Ulaso initiated this proceeding against the respondent on March 2, 2005, praying for the latter's disbarment due to her act of signing the *amended verification and affidavit of non-forum shopping* attached to the amended complaint of Bides and notarizing the document *sans* the signature of Bides and despite the non-appearance of Bides before her.[13]

On July 21, 2005, Bides and Ulaso entered into a compromise agreement to settle the criminal case for falsification, whereby Bides agreed to drop the criminal charge against Ulaso in exchange for, among others, Ulaso's withdrawal of the disbarment complaint against the respondent.[14] The MeTC, Branch 17, in Manila approved the compromise agreement.

The agreement on the dropping of the criminal case notwithstanding, the complaint for disbarment continued against the respondent. The IBP Committee on Bar Discipline designated Atty. Patrick M. Velez as Investigating Commissioner. After due hearing, Atty. Velez submitted his *report and recommendation* dated December 8, 2005,[15] in which he rendered the following resolution and findings, *viz*:

[10] *Id.*, p. 37.

[11] *Id.*, p. 38.

[12] *Id.*, pp. 257-258 and 265.

[13] *Id.*, pp. 1-2.

[14] *Id.*, pp. 365-366.

[15] *Id.*, pp. 308-316.

IV. RESOLUTION AND FINDINGS

We are not impressed with the excuses presented by the respondent. The lapse committed by the respondent is clear based on the facts and pieces of evidence submitted in this case.

The respondent admits signing the questioned verification and there is also no dispute that she notarized the same. Even if her tale is true, the fact that she notarized her own signature is inexcusable. It cannot even be pardoned as a simple act of negligence as the standards set by notarial law are stringent enough to require all notaries public to exercise caution in order to protect the integrity and veracity of documents.

We also cannot understand the fact that all the pleadings submitted to the court do not bear the corrected verification and certification. It may be easy to convince us that she is really innocent of the charges if at least one of those documents or even that one copy furnished to the other party in that case would bear at least one such corrected verification. But no, there was none at all. This certainly militates against the position that respondent lawyer took.

We have already stated earlier that lawyers may be disciplined for misconduct as a notary public, and now emphasize that the respondent can not even hide behind the mantle of good faith or throw blame to her secretary. Even as the Supreme Court stated that:

> "If the document he notarized turned out to have been falsified, without the fact being known to him at the time, he may still be admonished for not taking pains to ascertain the identity of the person who acknowledged the instrument before him." (*Cailing vs. Espinoza*, 103 Phil. 1165)

Indeed, we may even consider her being grossly negligent in allowing her secretary to commit that error. She gave her secretary blanket authority where she should have exercise sufficient prudence to protect the integrity of her documents. "The burden of preparing a complete pleading falls on counsel's shoulders, not on the messenger" (*Tan v. Court of Appeals*, 295 SCRA 765 [1998]) and not even on the secretary.

Besides, even if the story she tells us is true, it would appear that the document was pre-notarized based on the very averments made in Irene Mallari's Affidavit of Merit when she stated that:

"3. Atty. Lacsamana was scheduled for an out-of-town trip on Monday, June 23, 2003, thus she hurriedly notarized another prepared set of Amended Verification dated June 23, 2003, and repeatedly told me to file the amended complaint not later than that afternoon to this Honorable Court after replacing its old June 18, 2003-Amended Verification;"

"4. Irene Bides arrived only after lunch and after her niece cause her to sign the amended verification, I replaced the last page of the sets of the Amended Complaint without knowing that I missed its original copy and the copy I hurriedly sent to the counsel for the respondent."

Respondent was not around when the document was signed by the respondent's client. That is a violation of notarial law and deceitful conduct of the part of a lawyer, since he is notarizing a document which he did not actually witness being signed in his presence.

Even page 8 of the respondent's notarial register will not help her in this case. All that it shows is the alleged document no. 36, but what about document no. 35 which should appear in page 7 of Book no. 1? The second document was notarized on another page and it is incumbent on the respondent to show that the same was really not recorded as such. The failure of respondent to present such evidence should be treated as disputable presumption that the same would be detrimental to his interests if so presented. Thus, when the circumstances in proof tend to fix the liability on a party who has it in his power to offer evidence of all facts as they existed and rebut the inference which the circumstances in proof tend to establish, and he fails to offer such proof, the natural conclusion is that proof if produced, instead of rebutting, would support the inference against him, and the court is justified in acting upon that conclusion (Herrera, Remedial Law, VI, 1999 ed. p. 63 citing *Worcester vs. Ocampo*, 22 Phil. 42).

This commission feels that respondent is not being truthful with her defenses. The problem with using such unjustified excuses is that one lie will pile up over the other. Somewhere along the way, the story will leak out its sordid details exposing the excuse as a mere concocted tale and nothing more.

We have the impression that respondent is trying to mislead this Commission, which we cannot allow.

The issue in this case is really limited and focused on the signature and the notarization of the verification and certification against forum shopping for "Irene Bides". Does it constitute actionable misconduct? The other matters raised by the respondent have little bearing herein because it refers to other cases which she has against the complainant. But the causes of action are different so we will deign to entertain such other matters.

The practice of law is a privilege and respondent has gravely abused the same:

> "The practice of law is a privilege burdened with conditions. Adherence to rigid standards of mental fitness, maintenance of the highest degree of morality and faithful compliance with the rules of the legal profession are the conditions required for remaining member of good standing of the bar and for enjoying the privilege to practice law. Any breach by lawyer of any of these conditions makes him unworthy of the trust and confidence which courts and clients must, by necessity, repose in him or unfit to continue in the exercise of his professional privilege. His misconduct justifies disciplinary action against him or the withdrawal of his privilege to practice law." (Agpalo, Legal Ethics, 1989 Ed., 392; citation of cases omitted.)

What is far worse is that the respondent has taken a habit of making such excuses for similar mistakes she committed. This Commission notes that the respondent herein is also a complainant in a different case against Atty. Yolando Busmente docketed as CBD case no. 05-1462. In that case, again no certification against non-forum shopping was made in that case, but instead of admitting the lack thereof (as it is not absolutely required in CBD cases) she went on to create a different story that her lawyer was negligent. Unfortunately said lawyer is already dead and cannot answer her accusations. She tried to pass off another set of certification which allegedly was not included with the original documents. What is however telling is that in all the seven (7) copies submitted to the CBD and that one (1) copy furnished to the respondents in that case, no such certification appears.

This unacceptable pattern of behavior compels us to recommend stricter measures to ensure that respondent lawyer is reminded of her solemn duty and obligation to be truthful and honest.

WHEREFORE, it is hereby recommended that the respondent lawyer, Atty. Edita Noe-Lacsamana be suspended from the practice of law for a period of not less than two (2) years and that she be required to take three (3) units of MCLE required legal ethics before she may be allowed to practice law again.[16]

In its Resolution No. XVII-2006-272 dated May 26, 2006, the IBP Board of Governors approved the *report and recommendation* of the Investigating Commissioner with modification,[17] to wit:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and for notarizing a verification which she has executed, gross negligence and violation of the notarial law, Atty. Edita Noe-Lacsamana is hereby SUSPENDED from the practice of law for six (6) months.

Respondent's Motion for Reconsideration

On August 29, 2006, the respondent came to the Court to seek the overturning of the IBP resolution, contending that:

I.

THE METED 6-MONTH SUSPENSION FROM THE LAW PRACTICE OF THE RESPONDENT IS REPUGNANT TO THE FAILURE OF THE COMPLAINANT TO SHOW PROOF OF HER ALLEGED GROSS NEGLIGENCE AND VIOLATION OF THE NOTARIAL LAW, AS EVENTUALLY SELF-MANIFESTED BY THE COMPLAINANT, WHO, ABSENT KNOWLEDGE OR INVOCATION OF THE RESPONDENT, WITHDREW HER INSTANT COMPLAINT, AS EMBODIED IN THE JULY 22, 2005-DECISION OF HON. GERMANO FRANCISCO D. LEGASPI OF BRANCH 17, METROPOLITAN TRIAL COURT OF MANILA.

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[16] *Id.*, pp. 313-316.

[17] *Id.*, p. 307.

II.

THE BLEMISH CAUSED ON THE MORE THAN 26-YEARS OF UNSULLIED REPUTATION OF THE RESPONDENT AS A LAWYER IS COMPELLING HER TO ENTREAT THE HONORABLE BAR CONFIDANT TO ASSESS AND RECONSIDER THE UNJUST AND SPECULATIVE PORTRAYAL OF INVESTIGATING COMMISSIONER PATRICK M. VELEZ IN HIS DECEMBER 8, 2005-REPORT AND RECOMMENDATION TO THE IBP, THAT RESPONDENT IS GUILTY OF DISHONESTY AND/OR GROSS NEGLIGENCE, WITH AN "UNACCEPTABLE PATTERN OF BEHAVIOR", WHICH ALTHOUGH NOT SPECIFIED, IS COMPATIBLE WITH A DEROGATORY CONCLUSION THAT SHE LACKS THE REQUIRED CANDOR, INTEGRITY AND PROFESSIONAL DECORUM OF A MEMBER OF THE BAR, IN REPUGNANCE TO THE MANDATE IN *MANUBAY VS. GARCIA*, 330 SCRA 237, THAT:

> *The lawyer's guilt cannot be presumed. Allegation is never equivalent to proof and a bare charge cannot be equated with liability.*

III.

THE FALLACIES OF THE COMPLAINANT WERE MISSED, DELIBERATELY OR OTHERWISE, IN THE INVESTIGATION OF THIS ADMINISTRATIVE CASE, PARTICULARLY ON THE FACT THAT THE COMPLAINT IS CONFINED ON A REHASH OF THE QUESTIONED AMENDED VERIFICATION AND AFFIDAVIT OF NON-FORUM SHOPPING, TWO (2) YEARS AFTER ITS DISPUTE WAS SETTLED AT THE LOWER COURT AND AT THE COURT OF APPEALS, THUS, FILED OUT OF RANCOR OF THE COMPLAINANT FOR HAVING LOST ALL HER CASES AGAINST THE RESPONDENT'S *PRO BONO* CLIENT, THUS, SHE WAS UNJUSTLY DENIED OF THE RULE IN *SANTOS VS. DICHOSO*, 84 SCRA 622, THAT:

> "The success of a lawyer in his profession depends almost entirely on his reputation. Anything which will harm his good name is to be deplored. *Private persons and particularly disgruntled opponents may not, therefore, be permitted to use the courts as vehicles through which to vent their rancor on members of the bar." (underscoring supplied)*

Ruling

We affirm the findings against the respondent.

A. Preliminary Considerations

The respondent argues that this proceeding should be abated by virtue of its withdrawal by Ulaso pursuant to the compromise agreement concluded in the criminal case and approved by the trial court.

The respondent's argument is unwarranted.

The agreement between Bides and Ulaso stipulating the withdrawal of the disbarment case against the respondent did not terminate or abate the jurisdiction of the IBP and of this Court to continue the present administrative proceeding against the respondent as a member of the Philippine Bar. We explained why in *Rayos-Ombac v. Rayos*,[18] *viz*:

> The affidavit of withdrawal of the disbarment case allegedly executed by complainant does not, in any way, exonerate the respondent. A case of suspension or disbarment may proceed regardless of interest or lack of interest of the complainant. What matters is whether, on the basis of the facts borne out by the record, the charge of deceit and grossly immoral conduct has been duly proven. xxx. The complainant or the person who called the attention of the court to the attorney's alleged misconduct is in no sense a party, and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice. Hence, if the evidence on record warrants, the respondent may be suspended or disbarred despite the desistance of complainant or his withdrawal of the charges. xxx.

The respondent next contends that we should reject the disbarment complaint because it was filed only after the lapse of two years from the occurrence of the cause; and that personal vendetta impelled its filing.

The respondent's contention cannot be upheld.

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[18] A.C. No. 2884, January 28, 1998, 285 SCRA 93, 100-101.

Neither the lapse of time from the occurrence of the cause nor the motivation for the filing of the complaint diminished the Court's inherent power to discipline a member of the Bar whenever appropriate. First of all, the ordinary statutes of limitation had no application to disbarment or suspension proceedings against members of the Bar.[19] Indeed, such proceedings are *sui generis*. They are not akin to the trials of actions or suits in which interests and rights are enforced by the plaintiffs against the defendants, but are rather investigations into the conduct of the members of the Bar made by the Supreme Court within the context of its plenary powers expressly granted by the Constitution to regulate the practice of law.[20] The proceedings, which the Court may even *motu proprio* initiate, have neither plaintiffs nor prosecutors. The public interest is their primary objective, the true question for determination being whether or not the respondent members of the Bar are *still* fit to be allowed to retain their memberships and to enjoy the privileges appurtenant to such memberships.[21]

B. Basis for Disciplinary Action

Ulaso insists that the respondent's act of signing the *amended verification and affidavit of non-forum shopping* for Bides as plaintiff-affiant violated the penal law, the 1997 *Rules of Civil Procedure*, the Lawyer's Oath, the *Code of Professional Responsibility*, and the Notarial Law.

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[19] *Calo, Jr. v. Degamo*, A.C. No. 516, August 30, 1967, 20 SCRA 447.

[20] Art. VIII, Sec. 5(5), 1987 Constitution, which pertinently provides:

SECTION 5. The Supreme Court shall have the following powers:

x x x x x x x x x

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

x x x x x x x x x

[21] *In re: Almacen,* G.R. No. L-27654, February 18, 1970, 31 SCRA 562, 600.

In contrast, the respondent maintains that her signature was made not to fool the trial court, but only to illustrate to her new secretary how and where Bides should sign the form; and that the *amended verification and affidavit of non-forum shopping*, merely a "*sample-draft,*" was wrongly attached.

Investigating Commissioner Velez found that the respondent had deliberately and with malice led the trial court to believe that her signature in the *amended verification and affidavit of non-forum shopping* had been that of Bides.

We regard the finding of deliberation and malice to be unjustified. The admitted precedence by the word "*for*" of the signature on the amended *verification and affidavit of non-forum shopping* was an *indicium* that the respondent did *not* intend to misrepresent the signature as that of Bides. The apparent resemblance of the signature after the word "*for*" with the respondent's signature as the notary executing the jurat rendered improbable that the respondent had intended to deceive, considering that the respondent would have instead written the name *Irene Bides* or forged the signature of Bides had she wanted to pass the signature off as that of Bides.

The respondent, by notarizing the document *sans* the signature of Bides, was only anticipating that Bides would subsequently sign, because, after all, Bides had already signed the original verification and affidavit. Ostensibly, the *amended verification and affidavit of non-forum shopping* was intended to replace the original one attached to the initiatory pleading of Bides. Thus, bad faith did not motivate the respondent into notarizing the amended *verification and affidavit of non-forum shopping*.

The lack of bad faith notwithstanding, we nonetheless concur with the findings of Investigating Commissioner Velez that the respondent's notarizing the *amended verification and affidavit of non-forum shopping* in the absence of Bides as the affiant constituted a clear breach of the notarial protocol and was highly censurable.[22]

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[22] *National Bureau of Investigation v. Morada*, A.C. No. 321, July 31, 1961, 2 SCRA 827, 830.

The jurat is that end part of the affidavit in which the notary *certifies* that the instrument is sworn to before her. As such, the notarial certification is essential. Considering that notarization is not an empty, meaningless, routinary act,[23] the faithful observance and utmost respect of the legal solemnity of the oath in the jurat are sacrosanct.[24]

Specifically, the notarial certification contained in the jurat of the *amended verification and affidavit of non-forum shopping* – "SUBSCRIBED AND SWORN TO BEFORE ME, on this 18th day of June 2003, affiant IRENE BIDES, showing to me her CTC Nos. 11833475 issued on November 21, 2002, in Manila"[25] – indicated both the necessity for the physical presence of Bides as the affiant and the fact that the signing was done *in the presence of* the respondent as the notary. The physical presence of Bides was required in order to have her as the affiant swear before the respondent that she was *that* person and in order to enable the respondent as the notary to ascertain whether Bides had voluntarily and freely executed the affidavit.[26] Thus, the respondent, by signing as notary even before Bides herself could appear before her, failed to give due observance and respect to the solemnity.

Being a lawyer commissioned as a notary, the respondent was mandated to discharge with fidelity the sacred duties appertaining to her notarial office. Such duties being dictated by public policy and impressed with public interest, she could not disregard the requirements and solemnities of the Notarial Law.[27] It was emphatically her primary duty as a lawyer-notary

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[23] *Maligsa v. Atty. Cabanting*, A.C. No. 4539, May 14, 1997, 272 SCRA 408; *Vda. de Rosales v. Ramos,* A.C. No. 5645, July 2, 2002, 383 SCRA 498; *Joson v. Baltazar,* A.C. No. 575, February 14, 1991, 194 SCRA 114, 119.

[24] *Social Security Commission v. Corral*, A.C. No. 6249, October 14, 2004, 440 SCRA 291, 296.

[25] *Rollo*, p. 107.

[26] *Lopena v. Cabatos*, A.C. No. 3441, August 11, 2005, 466 SCRA 419, 426.

[27] *Soriano v. Basco*, A.C. No. 6648, September 21, 2005, 470 SCRA 423, 431.

to obey the laws of the land and to promote respect for the law and legal processes.[28] She was expected to be in the forefront in the observance and maintenance of the rule of law. She ought to have remembered that a graver responsibility was placed upon her shoulders by virtue of her being a lawyer.[29]

In imposing the penalty upon the respondent, however, we opt to reprimand her instead of suspending her from the practice of law for three months, as the IBP recommended. This we do after we take into account, firstly, the absence of bad faith in her notarizing the unsigned document; secondly, the fact that the infraction was the first lodged against her in her long years of membership in the Bar; and thirdly, her recuperating from the debilitating stroke that had left her unable to perform any work since July 11, 2007.[30]

ACCORDINGLY, we modify the recommendation of the Integrated Bar of the Philippines by reprimanding respondent Atty. Edita Noe-Lacsamana, with a warning that a similar infraction in the future will be dealt with more severely.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Chico-Nazario,[*] and *Leonardo-de Castro, JJ.,* concur.

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[28] Canon 1, *Code of Professional Responsibility*.

[29] *Alitagtag v. Garcia,* A.C. No. 4738, June 10, 2003, 403 SCRA 335.

[30] See respondent's *Ex-Parte Motion for Early Resolution* filed on February 23, 2009; *rollo*, pp. 370-373.

[*] Additional Member in lieu of Carpio, *J.*, per Special Order No. 698.

THIRD DIVISION

[A.M. No. RTJ-01-1650. September 29, 2009]
(Formerly OCA IPI No. 01-1195-RTJ)

MARGIE CORPUS MACIAS, *complainant, vs.* **MARIANO JOAQUIN S. MACIAS, Presiding Judge, Branch 28, Regional Trial Court, Liloy, Zamboanga del Norte,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ADMINISTRATIVE COMPLAINTS AGAINST JUDGES; QUANTUM OF PROOF REQUIRED; ONLY SUBSTANTIAL EVIDENCE. — In more recent rulings, the Court applied substantial evidence as the normative quantum of proof necessary in resolving administrative complaints against judges. In order to diffuse confusion, a clarification has to be made. First, the pronouncements in *Horrilleno* and *Alcuizar*, requiring proof beyond reasonable doubt, may be said to have been superseded by the Court's recent rulings in *Guitierrez v. Belen, Reyes v. Paderanga*, and *Naval v. Panday*. Second, members of the judiciary are not a class of their own, *sui generis*, in the field of public service as to require a higher degree of proof for the administrative cases filed against them other than, because of the nature of the responsibility judges have, they are required to live up to a higher standard of integrity, probity and morality. When we dismiss a public officer or employee from his position or office for the commission of a grave offense in connection with his office, we merely require that the complainant prove substantial evidence. When we disbar a disgraceful lawyer, we require that complainant merely prove a clear preponderance of evidence to establish liability. There appears no compelling reason to require a higher degree of proof when we deal with cases filed against judges.

2. ID.; ID.; ID.; BURDEN OF PROOF; COMPLAINANT BEARS THE *ONUS* OF ESTABLISHING THE AVERMENTS OF THE COMPLAINT. — Basic is the rule that in administrative

proceedings, complainant bears the *onus* of establishing the averments of her complaint. If complainant fails to discharge this burden, respondent cannot be held liable for the charge.

3. LEGAL ETHICS; JUDGES; IMMORALITY; PENALTY THEREFOR. — Under Sections 8 and 11 of Rule 140 of the Rules of Court, a judge found guilty of immorality can be dismissed from the service, if still in the active service, or may forfeit all or part of his retirement benefits, if already retired, and disqualified from reinstatement or appointment to any public office including government-owned or controlled corporations.

4. ID.; ID.; ID.; LACK OF SUFFICIENT EVIDENCE TO CONVINCINGLY PROVE THE SAME; CASE AT BAR. — We have already ruled that if a judge is to be disciplined for a grave offense, the evidence against him should be competent and derived from direct knowledge. This quantum of evidence, complainant failed to satisfy. The testimonies of Mutia and Zozobrado are specious and insufficient to convincingly prove that respondent committed disreputable conduct. This considered, complainant should not have refused to testify during the hearing. More than anyone else, it was complainant who had a direct interest in making sure that the evidence adduced met the necessary burden of proof, considering that the allegations in her complaint involved charges that cannot be lightly dealt with. She should have been more zealous in prosecuting her complaint.

5. ID.; ID.; UNBECOMING CONDUCT; A MARRIED JUDGE HELD LIABLE THEREFOR AFTER HAVING DINNER WITH ANOTHER WOMAN AND ENTERING A BEDROOM WITH HER; PROPER PENALTY; CASE AT BAR. — Nevertheless, we agree with the findings of the Investigating Justice that although the charges of immorality and conduct prejudicial to the best interest of the service were not satisfactorily proven by complainant, respondent cannot be completely exonerated. Mutia's testimony that he saw Judge Macias having dinner with Seranillos and entering a bedroom with her may not satisfactorily prove the charge of immorality,

> but this act certainly suggested an appearance of impropriety, Judge Macias being a married man. Such behavior undeniably constituted unbecoming conduct, a light offense punishable by a fine not less than ₱1,000.00 but not more than ₱10,000.00. x x x Judges play a vital role in the dispensation of justice. In this jurisdiction, the integrity demanded of a judge does not commence only when he dons the habiliments of a magistrate or ends when he sheds off his judicial robe. The nature of the position requires nothing less than a 24-hour daily obeisance to this mandate of integrity. Any judge who cannot live up to this exacting requirement has no business sitting on the bench.

APPEARANCES OF COUNSEL

Llego and Llego Law Office and *Women's Legal Education Advocacy & Defense Foundation, Inc.* for complainant.

Peter Y. Co, Paño Gonzales Relova & Associates and *Gancayco Balasbas & Associates* for respondent.

D E C I S I O N

NACHURA, *J.*:

This involves an administrative complaint[1] filed by complainant Margie C. Macias charging her husband, Mariano Joaquin S. Macias (Judge Macias), with immorality and conduct prejudicial to the best interest of the service. The complaint was filed on March 7, 2001, when respondent was still sitting as the presiding judge of Branch 28 of the Regional Trial Court (RTC) of Liloy, Zamboanga del Norte.

Complainant alleged that sometime in 1998, respondent engaged in an illicit liaison and immoral relationship with a certain Judilyn Seranillos (Seranillos), single and in her early 20s. The relationship continued until the time of the filing of the complaint. Complainant enumerated some of the abuses committed by respondent, to wit:

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[1] *Rollo*, Vol. I, pp. 6-12.

(a) [Respondent] has been using court personnel, namely, Emmanuel "Botiong" Tenefrancia, process server, as constant escort of his paramour in going to their appointed trysts or in escorting back said woman to the place where she is staying, and as errand boy seeing to their needs when respondent and his mistress are together;

(b) Respondent has been using another court employee in the person of Camilo Bandivas, court sheriff, as contact person to his young lover and in summoning and bringing complainant's witnesses to respondent to be harassed and threatened;

(c) Said Judilyn Seranillos, respondent's lover, has been brought many times by respondent to his court in Liloy, Zamboanga del Norte, thereby scandalizing court personnel and lawyers, who sometimes must wait for the session to start because respondent and his mistress are not yet through with each other; That the scandalous relations of respondent with his mistress is an open secret among lawyers, court personnel and litigants [in] Liloy, Zamboanga del Norte;

(d) Respondent has not been calendaring (sic) cases nor holding court sessions nor court hearings on Mondays and Fridays so that he can have an extended date with his paramour, to the great prejudice of public service;

(e) Respondent and his paramour had often met at the house of Zoosima (sic) Ojano Carangan, aunt of respondent's paramour, [in] Taway, Ipil, Zamboanga del Sur, and the people of Taway know that respondent judge, who usually arrives in his car, has been shamelessly and immorally carrying on an illicit affair with said Judilyn Seranillos. Some inquisitive people usually go out of their houses upon seeing respondent's car parked at the house of the aunt of respondent's young mistress, and these *barrio* folks often watch respondent come and go; [and]

(f) Respondent has one or two other women lovers whom he shamelessly cavorts even in the presence of court personnel.[2]

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

Complainant attached the affidavits of Shem Tabotabo,[3] Zacarias Cordova,[4] Zosima Carangan,[5] Danny Layogue and Consolacion S. Layogue,[6] her son Marictibert Corpus Macias,[7] Ruben Perater,[8] Roel Mutia,[9] and Aniceto Zozobrado.[10] However, five of them – Tabotabo,[11] Cordova,[12] Carangan,[13] Danny Layogue,[14] and Marictibert Macias[15] – later recanted their affidavits.

On August 20, 2001, this Court issued a Resolution[16] referring the complaint to Court of Appeals Associate Justice Eriberto U. Rosario, Jr. for investigation, report and recommendation. On October 29, 2001, Justice Rosario issued an Order[17] setting the initial hearing on November 27, 28 and 29, 2001 and requiring the parties to submit a list of their respective witnesses and documentary evidence. The hearing was, however, reset to January 28, 29, 30, and 31, 2002 upon motion of complainant. On January 28, 2002, the parties informed the Investigating Justice that they were exerting all efforts for a possible reconciliation. Upon motion by both parties, the hearing was again reset to March 11, 12, 13, and 14, 2002.

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[3] *Id.* at 29-31.

[4] *Id.* at 34.

[5] *Id.* at 39-42.

[6] *Id.* at 47-52.

[7] *Id.* at 53.

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

[9] *Id.* at 35-38.

[10] *Id.* at 43-46.

[11] *Id.* at 95.

[12] *Id.* at 155-156, 157-158.

[13] *Id.* at 159-160.

[14] *Id.* at 165-167.

[15] *Id.* at 220.

[16] *Id.* at 309.

[17] *Id.* at 350.

On March 11, 2002, the parties again informed the Investigating Justice of their desire to confer in a last effort to settle. The request was again granted with an order that both parties should be ready the following day if no settlement was reached. The following day, March 12, 2002, the scheduled hearing proceeded after the parties failed to reach any amicable settlement.

From a list of seven (7) witnesses, complainant manifested that only four (4) witnesses shall be presented. The first witness, Roel Mutia, testified that he was hired by complainant's son, Marquinjo Macias, to tail Judge Macias after suspecting that his father was having an illicit affair. In summary, Mutia testified that he saw Judge Macias and Seranillos enter a house in Dipolog City on the afternoon of October 17, 1999, and that both dined and spent the night there together inside one bedroom.[18] He said that he accompanied Marquinjo and complainant the next day to the said house and that he saw complainant pull Seranillos outside the house creating a commotion within the neighborhood.[19] On cross-examination, Mutia admitted that he was not sure if Seranillos did spend the night inside the said house, or whether she left that night and just returned the following morning. Counsel for respondent also pointed to Mutia that the spot where he positioned himself, while observing Judge Macias, was blocked by leaves and tall trees.[20]

The next witness for complainant was Aniceto Zozobrado. He testified that he was hired by Seranillos to drive a motorcycle which, according to her, was a gift from Judge Macias. He said that he saw Judge Macias visit Seranillos on three (3) occasions; that he ran errands for both Judge Macias and Seranillos; and that he was slapped once by Judge Macias for allegedly peeping at Seranillos.[21] On cross-examination, Zozobrado admitted that he was not really sure if the motorcycle he saw was actually

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[18] *Rollo*, Vol. 2, pp. 174-176.

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

[20] *Id.* at 177-178.

[21] *Id.* at 178-179.

owned by Seranillos, and that his statement was based merely on presumption.[22] He also admitted that he had been residing with complainant's counsel since the date he executed his affidavit against Judge Macias.[23]

The third witness, Engracio Dialo, Jr., was not allowed to testify after respondent's counsel objected because the intended testimony would cover an event that took place after the filing of the complaint, and Dialo's affidavit narrated matters that were not covered by the allegations in the complaint.[24] Complainant manifested her intention to file a motion to amend the complaint.[25] The Investigating Justice ordered the direct examination of the fourth witness, complainant Margie Macias, without prejudice to her presenting Dialo after the motion to amend the complaint shall have been resolved. Complainant, however, refused, saying that she would testify only after Dialo had testified.[26] The Investigating Justice warned complainant that her refusal to testify shall be taken as a waiver of her right to present further witnesses and evidence.[27] Despite the warning, complainant refused to proceed with her direct testimony. The Investigating Justice ordered complainant to rest her case, but she again refused.

The witness for respondent was Judge Macias himself. He denied the allegations of Mutia and Zozobrado. He said that complainant also filed a complaint for concubinage against him, but the same was dismissed by the Regional State Prosecutor for lack of sufficient evidence. He believed that complainant's accusations were brought about by her psychiatric condition characterized as severe paranoia.[28]

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[22] *Id.* at 179-180.

[23] *Id.* at 180.

[24] *Id.*

[25] *Id.*

[26] *Id.* at 181.

[27] *Id.* at 182.

[28] *Id.* at 182-183.

On April 25, 2002, the Investigating Justice submitted his Report and Recommendation[29] to this Court. He recommended the dismissal of the complaint against Judge Macias. The Investigating Justice reasoned that complainant failed to prove beyond reasonable doubt that respondent committed acts of immorality, or that his conduct was prejudicial to the best interest of the service. The Investigating Justice, however, recommended that Judge Macias be reprimanded for failing to exercise great care and circumspection in his actions.[30]

The case now comes before this Court for final resolution.

There are two basic questions that must be resolved. First, considering the finding of the Investigating Justice, we ask: is it really necessary that administrative complaints against members of the judiciary be disposed of only after adducing evidence that will prove guilt beyond reasonable doubt? And second, do the acts complained of warrant the imposition of disciplinary sanction on respondent judge?

I.

In several cases,[31] this Court has ruled that if what is imputed to a respondent judge connotes a misconduct that, if proven, would result in dismissal from the bench, then the quantum of proof necessary to support the administrative charges or to establish grounds for the removal of a judicial officer should be more than substantial.

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[29] *Id.* at 168-191.

[30] *Id.* at 190.

[31] *Alcuizar v. Carpio*, A.M. No. RTJ-07-2068, August 7, 2007, 529 SCRA 216; *Duduaco v. Laquindanum*, A.M. No. MTJ-05-1601, August 11, 2005, 466 SCRA 428; *Reyes v. Mangino*, A.M. No. MTJ-05-1575, January 31, 2005, 450 SCRA 27; *Layola v. Gabo, Jr.*, A.M. No. RTJ-00-1524, January 26, 2000, 323 SCRA 348; *Castaños v. Escaño, Jr.*, A.M. No. RTJ-93-955, December 12, 1995, 251 SCRA 174. But see *Gutierrez v. Belen*, A.M. No. RTJ-08-2118, June 26, 2008, 555 SCRA 424; *Reyes v. Paderanga*, A.M. No. RTJ-06-1973, March 14, 2008, 548 SCRA 244; *Naval v. Panday*, A.M. No. RTJ-95-1283, December 21, 1999, 321 SCRA 290.

The first case involving an administrative complaint filed against a judge in this jurisdiction was decided in 1922 in *In re Impeachment of Horrilleno*.[32] There, Justice Malcolm explained:

The procedure for the impeachment of judges of first instance has heretofore not been well defined. **The Supreme Court has not yet adopted rules of procedure**, as it is authorized to do by law. In practice, it is usual for the court to require that charges made against a judge of first instance shall be presented in due form and sworn to; thereafter, to give the respondent judge an opportunity to answer; thereafter, if the explanation of the respondent be deemed satisfactory, to file (sic) the charges without further annoyance for the judge; while if the charges establish a *prima facie* case, they are referred to the Attorney-General who acts for the court in conducting an inquiry into the conduct of the respondent judge. On the conclusion of the Attorney-General's investigation, a hearing is had before the court *en banc* and it sits in judgment to determine if sufficient cause exists involving the serious misconduct or inefficiency of the respondent judge as warrants the court in recommending his removal to the Governor-General.

Impeachment proceedings before courts have been said, **in other jurisdictions**, to be in their nature highly penal in character and to be governed by the rules of law applicable to criminal cases. The charges must, therefore, be proved beyond a reasonable doubt.[33]

With *Horrilleno*, it became necessary for every complainant to prove guilt beyond reasonable doubt despite the fact that the case will only involve an administrative, and not a criminal, complaint. The reason is explained, albeit scarcely, in *Alcuizar v. Carpio*:[34]

While substantial evidence would ordinarily suffice to support a finding of guilt, **the rule is a bit different where the proceedings involve judges charged with grave offense**. Administrative proceedings against judges are, by nature, highly penal in character and are to be governed by the rules applicable to criminal cases.[35]

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[32] 43 Phil. 212 (1922).

[33] *Id.* at 215. (Emphasis supplied, citations omitted.)

[34] *Supra* note 31.

[35] *Id.* at 225. (Emphasis supplied.)

In more recent rulings, however, the Court applied substantial evidence as the normative quantum of proof necessary in resolving administrative complaints against judges. In order to diffuse confusion, a clarification has to be made. First, the pronouncements in *Horrilleno* and *Alcuizar* may be said to have been superseded by the Court's recent rulings in *Gutierrez v. Belen*,[36] *Reyes v. Paderanga*,[37] and *Naval v. Panday*.[38]

Second, members of the judiciary are not a class of their own, *sui generis*, in the field of public service as to require a higher degree of proof for the administrative cases filed against them other than, perhaps, the fact that because of the nature of the responsibility judges have, they are required to live up to a higher standard of integrity, probity and morality.

When we dismiss a public officer or employee from his position or office for the commission of a grave offense in connection with his office, we merely require that the complainant prove substantial evidence. When we disbar a disgraceful lawyer, we require that complainant merely prove a clear preponderance of evidence to establish liability.[39] There appears no compelling reason to require a higher degree of proof when we deal with cases filed against judges.

Judges play a vital role in the dispensation of justice. In this jurisdiction, the integrity demanded of a judge does not commence only when he dons the habiliments of a magistrate or ends when he sheds off his judicial robe. The nature of the position requires nothing less than a 24-hour daily obeisance to this mandate of integrity. Any judge who cannot live up to this exacting requirement has no business sitting on the bench. Considering the proliferation of complaints of abuses and immorality committed by judges, it is only proper that the Court be ever vigilant in requiring impeccable conduct from the members of its bench.

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[36] *Supra* note 31.

[37] *Id*.

[38] *Id*.

[39] Agpalo, *Legal and Judicial Ethics*, p. 673 (2002), citing *Pimentel, Jr. v. Llorente*, 339 SCRA 154, 159-160.

II.

However, in this case, we are not convinced that complainant was able to prove, by substantial evidence, that respondent committed the acts complained of. Basic is the rule that in administrative proceedings, complainant bears the *onus* of establishing the averments of her complaint.[40] If complainant fails to discharge this burden, respondent cannot be held liable for the charge.[41]

Under Sections 8 and 11 of Rule 140 of the Rules of Court, a judge found guilty of immorality can be dismissed from the service, if still in the active service, or may forfeit all or part of his retirement benefits, if already retired, and disqualified from reinstatement or appointment to any public office including government-owned or controlled corporations.[42] We have already ruled that if a judge is to be disciplined for a grave offense, the evidence against him should be competent and derived from direct knowledge.[43] This quantum of evidence, complainant failed to satisfy.

The testimonies of Mutia and Zozobrado are specious and insufficient to convincingly prove that respondent committed

[40] *Reyes v. Paderanga, supra* note 31, at 252.

[41] *Id*.

[42] RULES OF COURT, Rule 140, Secs. 8 and 11, provide in part:

SEC. 8. *Serious charges.* – Serious charges include:

x x x x x x x x x

8. Immorality;

x x x x x x x x x

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

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

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

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

[43] *Cañada v. Suerte*, A.M. No. RTJ-04-1884, February 22, 2008, 546 SCRA 414, 423.

disreputable conduct. This considered, complainant should not have refused to testify during the hearing. More than anyone else, it was complainant who had a direct interest in making sure that the evidence adduced met the necessary burden of proof, considering that the allegations in her complaint involved charges that cannot be lightly dealt with. She should have been more zealous in prosecuting her complaint.

Nevertheless, we agree with the findings of the Investigating Justice that although the charges of immorality and conduct prejudicial to the best interest of the service were not satisfactorily proven by complainant, respondent cannot be completely exonerated.[44] Mutia's testimony that he saw Judge Macias having dinner with Seranillos and entering a bedroom with her may not satisfactorily prove the charge of immorality, but this act certainly suggested an appearance of impropriety, Judge Macias being a married man. Such behavior undeniably constituted unbecoming conduct, a light offense punishable by a fine not less than ₱1,000.00 but not more than ₱10,000.00.[45] In light of the circumstances affecting not only the reputation of Judge Macias himself but the image and reputation of the whole judiciary as well, we find it reasonable to impose upon him the maximum fine of ₱10,000.00.

WHEREFORE, premises considered, the administrative complaint for immorality and conduct prejudicial to the best interest of the service against respondent Judge Mariano Joaquin S. Macias of RTC, Branch 28, of Liloy, Zamboanga del Norte is *DISMISSED* for insufficiency of evidence. However, respondent is held administratively liable for *UNBECOMING CONDUCT* and *FINED* in the amount of ₱10,000.00 to be deducted from his retirement benefits.

SO ORDERED.

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

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[44] *Rollo,* Vol. II, p. 187.

[45] RULES OF COURT, Rule 140, Secs. 10 and 11.

FIRST DIVISION

[A.M. No. P-06-2264. September 29, 2009]
(Formerly OCA I.P.I. Nos. 05-2136-P and 05-2137-P)

ATTY. LELU P. CONTRERAS, *complainant, vs.* **TERESITA O. MONGE, Clerk IV, Regional Trial Court—Office of the Clerk of Court, Iriga City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; PUBLIC OFFICERS; SIMPLE NEGLECT OF DUTY; MERE DELAY IN PERFORMANCE OF ONE'S FUNCTIONS. — Simple neglect of duty is the failure of an employee to give attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference. It has been consistently held that mere delay in the performance of one's function is considered as simple neglect of duty. It is a less grave offense punishable by suspension without pay for one month and one day to six months.

2. ID.; ID.; JUDICIARY; EMPLOYEES OF THE JUDICIARY ACCOUNTABLE TO THE PUBLIC FOR ALL THEIR ACTIONS; CASE AT BAR. — The judicial machinery can only function if every employee performs his task with the highest degree of professionalism. Court personnel are obligated to perform their duties properly and with diligence. Any task given to an employee of the judiciary, however menial it may be, must be done in the most prompt and diligent way. Respondent's tasks of filing utility bills and notices, submission of reports on attendance by court personnel in the flag raising and retreat ceremony, preparation of the list of cases for raffle, participation in the actual raffle of cases and submission of the minutes of the raffle are no exception. x x x Above all, employees of the judiciary must be reminded that they are public servants who must, at all times, be accountable to the public for all their actions. We have repeatedly held that any conduct, act or omission that violates the norm of public accountability or that diminishes or tends to diminish the faith of the people in the judiciary will not be tolerated, condoned or countenanced. It is reprehensible that respondent always passed the buck to others when clearly her omissions were due to her own negligence.

3. ID.; ID.; ID.; ID.; PENALTY TO BE IMPOSED WHEN FOUND GUILTY OF VIOLATING TWO CIVIL SERVICE RULES; CASE AT BAR. — Respondent was previously reprimanded in A.M. No. P-05-2040. Her act of not logging in and out of the attendance logbook was, without doubt, her second violation of civil service rules. A light offense such as a violation of reasonable office rules and regulations, if violated for the second time, is punishable by suspension for one to 30 days. In view of the fact that respondent was found guilty of violating two civil service rules namely, simple neglect of duty (first offense) and violation of reasonable office rules and regulations (second offense), the penalty for the most serious offense must be imposed. This is expressly required in Section 55 of the Uniform Rules on Administrative Cases in the Civil Service: x x x Moreover, respondent had been previously warned that a repetition of the same or similar act would be dealt with more severely. Hence, respondent should be suspended for six months.

R E S O L U T I O N

CORONA, *J.*:

This administrative case originated from two complaints filed by Atty. Lelu P. Contreras[1] against respondent Teresita Monge of the Office of the Clerk of Court of the Regional Trial Court (RTC) of Iriga City.

The first complaint[2] charged respondent with neglect of duty and discourtesy.[3] Allegedly, respondent did not keep an orderly and updated file of water bills and failed to inform complainant of the notice of water disconnection. She likewise did not include two cases for raffle. Moreover, respondent allegedly did not submit a report on office attendance in the flag raising and retreat ceremony.

[1] Clerk VI and *ex-officio* sheriff of the Regional Trial Court of Iriga City.

[2] Docketed as OCA I.P.I. No. 05-2136. The complaint was filed on January 13, 2005. *Rollo*, Vol. I, pp. 1-7.

[3] *Id.* In particular, respondent allegedly committed the following acts:

The second complaint[4] charged respondent with insubordination and grave misconduct. She allegedly tampered with her bundy card, failed to log in and out in the attendance logbook, went absent without official leave and, on various occasions, left the office without authority after recording her attendance for the day, thus making it appear that she was present for work.[5]

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a) She failed to notify complainant on time of the notice of water disconnection, which was received on November 22, 2004 at 11:55 am, based on the office logbook. Complainant confronted respondent regarding this matter but respondent did not accept her shortcoming, despite the fact that her signature was clearly in the logbook. Respondent even accused complainant of taking the notice from her file;

b) Respondent failed to update the file for monthly water bills, against complainant's instruction. On March 25, 2004, complainant found out that the latest entry therein was March 2004;

c) Respondent failed to include two civil cases in a raffle. According to the clerk-in-charge, she saw both cases on the shelf beside the table of respondent while the raffle was going on, prompting her to call the latter's attention to accommodate them in the raffle;

d) On her own, respondent relinquished her established task of assisting in the raffle of cases;

e) Against complainant's verbal reminders, respondent failed to submit her reports on attendance during flag ceremonies;

f) Failure to secure complainant's signature for any transmittal of the minutes of the raffle of cases to the Office of the Court Administrator;

g) In some instances, complainant was not informed of the schedule of raffle of cases. This was before respondent did not secure complainant's signature on the notices. *Id.*, p. 22.

[4] Docketed as OCA I.P.I. No. 05-2137-P. The complaint was filed on February 7, 2005. *Id.*, Vol. II, pp. 348-353.

[5] *Id.* In particular, the charges were:

a) Respondent punched in her bundy card on January 18 and 21 but left the office and never returned. Complainant declares that she came to know of the tampering on February 4, 2005, as she was about to affix her signature therein. Complainant discovered that the entries for January 18 and 21 were covered by a liquid corrector. The entries were thereafter made to reflect that respondent was on leave application. Complainant, however, alleged that respondent's leave application for January 18 was disapproved.

b) Respondent allegedly did not record her time of arrival and departure in the attendance logbook on December 2004 and January 7, 10, 14, 18 and 21, 2005.

In an indorsement by the Office of the Court Administrator (OCA) dated March 8, 2005,[6] respondent was ordered to file her comment. In a letter dated April 6, 2005[7] to the OCA, respondent prayed for the dismissal of the complaints in view of the pendency of A.M. No. P-05-2040.[8] In a manifestation attached thereto, respondent did not refute the charges against her. Instead, she underscored the existence of ill feelings between

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c) Respondent allegedly was officially on leave until January 28, 2005. Respondent did not report for work after January 28, 2005. Complainant averred that on February 2, 2005, she issued a memorandum to respondent, directing her to explain within 72 hours from receipt why she should not be dealt with administratively for absence without official leave. Respondent received said memorandum on February 2, 2005 and simultaneously handed to the process server two sets of applications for leave covering January 29 to February 2, 2005 (sick leave) and February 3 to October 3, 2005 (study leave for the bar exam). For failure to follow the requirements for application for a study leave prescribed in Circular No. 16-2002, respondent's application for a study leave was disapproved.

d) Respondent allegedly left the office after punching in her bundy card at 7:37 in the morning of January 18, 2005. She left shortly thereafter without having gotten permission from complainant to leave the office. This incident was repeated on January 21, 2005.

e) Complainant allegedly issued various office memoranda pertaining to the aforementioned but respondent allegedly refused to receive these memoranda and openly defied them.

[6] *Id.*, Vol. I, p. 20.

[7] *Id.*, p. 21.

[8] *Contreras v. Monge*, A.M. No. P-05-2040, 24 January 2006, 479 SCRA 555, then OCA I.P.I. No. 00-952-P. In this case, complainant charged respondent with gross insubordination. Respondent allegedly went on absence without official leave for four weeks. Respondent did not report directly to complainant upon her return to the office, and even verbally assaulted complainant. Respondent denied verbally assaulting complainant and claimed that complainant committed various infractions, one of which was directing a court employee to perform tasks outside his duties. We found the charge of gross insubordination unsubstantiated but held that respondent's failure to notify complainant, as respondent's immediate superior, of her absences violative of the Civil Service Rules. She was reprimanded. Moreover, complainant was admonished because she admitted having directed a court employee to perform tasks outside his duties.

her and complainant and proceeded to enumerate incidents of hostility between them.[9]

In a memorandum dated July 7, 2005,[10] the OCA found that the allegations in both complaints, specially the allegations of dishonesty and falsification, required a full-blown inquiry. The OCA thus recommended that the complaints be referred to the Executive Judge of the RTC, Iriga City, Judge Josue F. Ernacio, for investigation, report and recommendation.[11] However, the Vice-Executive Judge of the RTC of Iriga City, Judge Milagros G. Quijano, took over because Judge Ernacio went on leave.[12]

In a report dated March 30, 2006,[13] Judge Quijano established that the filing of A.M. No. P-05-2040 resulted in a long-standing grudge between both parties. Furthermore, respondent's shortcomings were mere inadvertent omissions which she stubbornly did not acknowledge. Instead, she passed the blame to others to evade responsibility. Complainant was partly to blame for respondent's behavior because she was not circumspect in performing her duties as clerk of court.

Judge Quijano concluded that respondent was guilty of neglect of duty under the first complaint. With respect to the other complaint, respondent was guilty only of failing to log in and out of the attendance logbook, constituting a violation of office rules and regulations. The charge against respondent of going on absence without official leave was not substantiated. Judge Quijano recommended a 15-day suspension for respondent and admonition for complainant.

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[9] *Rollo*, Vol. II, pp. 375-378. Complainant was allegedly hostile to respondent because of her friendship with complainant's alleged enemy and complainant's alleged opposition to respondent's proposed austerity measures after two typhoons.

[10] *Id.*, Vol. I, pp. 22-26.

[11] *Id.*, p. 27.

[12] *Id.*, pp. 36-37.

[13] *Id.*, pp. 184-198.

Judge Quijano likewise noted that complainant was recently appointed as RTC Judge of Catanduanes.[14]

In a memorandum dated September 15, 2006, the OCA agreed with the findings of Judge Quijano. The OCA recommended that respondent be held guilty of neglect of duty in the first complaint and accordingly be suspended for one month and one day without pay. In the second complaint, the OCA recommended that respondent be found guilty of violation of reasonable office rules and regulations and accordingly reprimanded.[15]

We agree with the findings of fact but disagree with the OCA as to the recommended penalty.

Simple neglect of duty is the failure of an employee to give attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference.[16] It has been consistently held that mere delay in the performance of one's function is considered as simple neglect of duty.[17] It is a less grave offense punishable by suspension without pay for one month and one day to six months.[18]

The judicial machinery can only function if every employee performs his task with the highest degree of professionalism. Court personnel are obligated to perform their duties properly and with diligence.[19] Any task given to an employee of the judiciary, however menial it may be, must be done in the most prompt and diligent way. Respondent's tasks of filing utility bills and notices, submission of reports on attendance by court personnel in the flag raising and retreat ceremony, preparation

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[14] *Id.,* p.197.

[15] *Id.*, p. 346.

[16] *Zamudio v. Auro*, A.M. No. P-04-1793, 8 December 2008.

[17] *Philippine Retirement Authority v. Rupa*, G.R. No. 140519, 21 August 2001, 363 SCRA 480, 487.

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

[19] Section 1, Canon IV, Code of Conduct for Court Personnel.

of the list of cases for raffle, participation in the actual raffle of cases and submission of the minutes of the raffle are no exception. In *Pilipiña v. Roxas*,[20] we held:

> The Court cannot countenance neglect of duty for even simple neglect of duty lessens the people's confidence in the judiciary and ultimately in the administration of justice. By the very nature of their duties and responsibilities, public servants must faithfully adhere to, hold sacred and render inviolate the constitutional principle that a public office is a public trust; that all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency.

Above all, employees of the judiciary must be reminded that they are public servants who must, at all times, be accountable to the public for all their actions. We have repeatedly held that any conduct, act or omission that violates the norm of public accountability or that diminishes or tends to diminish the faith of the people in the judiciary will not be tolerated, condoned or countenanced.[21] It is reprehensible that respondent always passed the buck to others when clearly her omissions were due to her own negligence.

Respondent was previously reprimanded in A.M. No. P-05-2040. Her act of not logging in and out of the attendance logbook was, without doubt, her second violation of civil service rules. A light offense such as a violation of reasonable office rules and regulations, if violated for the second time, is punishable by suspension for one to 30 days.[22]

In view of the fact that respondent was found guilty of violating two civil service rules namely, simple neglect of duty (first offense) and violation of reasonable office rules and regulations (second offense), the penalty for the most serious offense must be imposed.

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[20] A.M. No. P-08-2423, 6 March 2008, 547 SCRA 676, 682.

[21] *Re: Partial Report on the Results of the Judicial Audit Conducted in the MTCC, Branch 1, Cebu City*, A.M. No. MTJ-05-1572, 30 January 2008, 543 SCRA 105, 130.

[22] Rule IV, Section 52 (C) (3) of the Uniform Rules on Administrative Cases in the Civil Service.

This is expressly required in Section 55 of the Uniform Rules on Administrative Cases in the Civil Service:

> Section 55. *Penalty for the Most Serious Offense*. — 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 as aggravating circumstances.

Moreover, respondent had been previously warned that a repetition of the same or similar act would be dealt with more severely. Hence, respondent should be suspended for six months.

Petty feuds have no place in the judiciary, specially if they involve the personal lives of court personnel. They should not be tolerated if they result in unpleasant working conditions and adversely affect the delivery of justice.

WHEREFORE, respondent Teresita O. Monge is hereby found *GUILTY* of simple neglect of duty and violation of simple office rules and regulations. She is *SUSPENDED* from office for six months effective immediately upon her receipt of this resolution. She is *STERNLY WARNED* once again that a repetition of the same or similar offense shall be dealt with even more severely.

Let a copy of this resolution be attached to the personal records of respondent in the Office of Administrative Services, Office of the Court Administrator.

SO ORDERED.

Puno, C.J. (Chairperson), Chico-Nazario,[*] *Leonardo-de Castro,* and *Bersamin, JJ.,* concur.

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[*] Per Special Order No. 698 dated September 4, 2009.

THIRD DIVISION

[G.R. No. 149588. September 29, 2009]

FRANCISCO R. LLAMAS and CARMELITA C. LLAMAS, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS, BRANCH 66 OF THE REGIONAL TRIAL COURT IN MAKATI CITY and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ANNULMENT OF JUDGMENT; CANNOT BE AVAILED OF IN CRIMINAL CASES. — In *People v. Bitanga*, the Court explained that the remedy of annulment of judgment cannot be availed of in criminal cases. x x x Here, petitioners are invoking the remedy under Rule 47 to assail a decision in a criminal case. Following *Bitanga*, this Court cannot allow such recourse, there being no basis in law or in the rules.

2. CRIMINAL LAW; REVISED PENAL CODE; CRIME OF "OTHER FORMS OF SWINDLING"; PENALTY. — Article 316(2) of the RPC, the provision which penalizes the crime charged in the information, provides that — Article 316. *Other forms of swindling*.—The penalty of *arresto mayor* in its minimum and medium periods and a fine of not less than the value of the damage caused and not more than three times such value, shall be imposed upon: x x x 2. Any person who, knowing that real property is encumbered, shall dispose of the same, although such encumbrance be not recorded.

3. REMEDIAL LAW; COURTS; JURISDICTION; THE REGIONAL TRIAL COURT, NOT THE METROPOLITAN TRIAL COURT, HAS JURISDICTION OVER THE CRIMINAL ACTION IN CASE AT BAR. — Jurisdiction being a matter of substantive law, the established rule is that the statute in force at the time of the commencement of the action determines the jurisdiction of the court. In this case, at the time of the filing of the information, the applicable law was *Batas Pambansa Bilang* 129, approved on August 14, 1981. x x x The penalty for the crime charged in this case is *arresto*

mayor in its minimum and medium periods, which has a duration of 1 month and 1 day to 4 months, **and** a fine of not less than the value of the damage caused and not more than three times such value. Here, as alleged in the information, the value of the damage caused, or the imposable fine, is ₱12,895.00. Clearly, from a reading of the information, the jurisdiction over the criminal case was with the RTC and not the Metropolitan Trial Court (MeTC). The MeTC could not have acquired jurisdiction over the criminal action because at the time of the filing of the information, its jurisdiction was limited to offenses punishable with a fine of not more than ₱4,000.00.

APPEARANCES OF COUNSEL

Francisco R. Llamas and *De Castro and Cagampang Law Offices* for petitioners.

The Solicitor General for respondents.

D E C I S I O N

NACHURA, *J.*:

In this petition captioned as "Annulment of Judgment and *Certiorari*, with Preliminary Injunction," petitioners assail, on the ground of lack of jurisdiction, the trial court's decision convicting them of "other form of swindling" penalized by Article 316, paragraph 2, of the Revised Penal Code (RPC).

The antecedent facts and proceedings that led to the filing of the instant petition are pertinently narrated as follows:

On August 16, 1984, petitioners were charged before the Regional Trial Court (RTC) of Makati with, as aforesaid, the crime of "other forms of swindling" in the Information,[1] docketed as Criminal Case No. 11787, which reads:

That on or about the 20th day of November, 1978, in the municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and

[1] *Rollo*, pp. 77-78.

confederating together and mutually helping and aiding one another, well knowing that their parcel of land known as Lot No. 11, Block No. 6 of the Subdivision Plan (LRC) Psd 67036, Cadastral Survey of Parañaque, LRC Record No. N-26926, Case No. 4869, situated at Barrio San Dionisio, Municipality of Parañaque, Metro Manila, was mortgaged to the Rural Bank of Imus, did then and there willfully, unlawfully and feloniously sell said property to one Conrado P. Avila, falsely representing the same to be free from all liens and encumbrances whatsoever, and said Conrado P. Avila bought the aforementioned property for the sum of ₱12,895.00 which was paid to the accused, to the damage and prejudice of said Conrado P. Avila in the aforementioned amount of ₱12,895.00.

Contrary to law.[2]

After trial on the merits, the RTC rendered its Decision[3] on June 30, 1994, finding petitioners guilty beyond reasonable doubt of the crime charged and sentencing them to suffer the penalty of imprisonment for two months and to pay the fine of ₱18,085.00 each.

On appeal, the Court of Appeals, in its February 19, 1999 Decision[4] in CA-G.R. CR No. 18270, affirmed the decision of the trial court. In its December 22, 1999 Resolution,[5] the appellate court further denied petitioners' motion for reconsideration.

Assailing the aforesaid issuances of the appellate court, petitioners filed before this Court, on February 11, 2000, their petition for review, docketed as G.R. No. 141208.[6] The Court, however, on March 13, 2000, denied the same for petitioners' failure to state the material dates. Since it subsequently denied

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[2] *Id.* at 77.

[3] *Id.* at 20-26.

[4] Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Buenaventura J. Guerrero and Teodoro P. Regino, concurring; *id.* at 27-33.

[5] *Id.* at 34-36.

[6] *Rollo*, pp. 7, 148.

petitioners' motion for reconsideration on June 28, 2000,[7] the judgment of conviction became final and executory.

With the consequent issuance by the trial court of the April 19, 2001 Warrant of Arrest,[8] the police arrested, on April 27, 2001, petitioner Carmelita C. Llamas for her to serve her 2-month jail term. The police, nevertheless, failed to arrest petitioner Francisco R. Llamas because he was nowhere to be found.[9]

On July 16, 2001, petitioner Francisco moved for the lifting or recall of the warrant of arrest, raising for the first time the issue that the trial court had no jurisdiction over the offense charged.[10]

There being no action taken by the trial court on the said motion, petitioners instituted, on September 13, 2001, the instant proceedings for the annulment of the trial and the appellate courts' decisions.

The Court initially dismissed on technical grounds the petition in the September 24, 2001 Resolution,[11] but reinstated the same, on motion for reconsideration, in the October 22, 2001 Resolution.[12]

After a thorough evaluation of petitioners' arguments *vis-à-vis* the applicable law and jurisprudence, the Court denies the petition.

In *People v. Bitanga*,[13] the Court explained that the remedy of annulment of judgment cannot be availed of in criminal cases, thus —

Section 1, Rule 47 of the Rules of Court, limits the scope of the remedy of annulment of judgment to the following:

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[7] *Id.* at 151.

[8] *Id.* at 76.

[9] *Id.* at 163.

[10] *Id.* at 70-74.

[11] *Id.* at 85-87.

[12] *Id.* at 101.

[13] G.R. No. 159222, June 26, 2007, 525 SCRA 623.

> Section 1. *Coverage.* — This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in ***civil actions*** of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

The remedy cannot be resorted to when the RTC judgment being questioned was rendered in a criminal case. The 2000 Revised Rules of Criminal Procedure itself does not permit such recourse, for it excluded Rule 47 from the enumeration of the provisions of the 1997 Revised Rules of Civil Procedure which have suppletory application to criminal cases. Section 18, Rule 124 thereof, provides:

> Sec. 18. *Application of certain rules in civil procedure to criminal cases.* – The provisions of ***Rules 42, 44 to 46 and 48 to 56*** relating to procedure in the Court of Appeals and in the Supreme Court in original and appealed civil cases shall be applied to criminal cases insofar as they are applicable and not inconsistent with the provisions of this Rule.

There is no basis in law or the rules, therefore, to extend the scope of Rule 47 to criminal cases. As we explained in *Macalalag v. Ombudsman*, when there is no law or rule providing for this remedy, recourse to it cannot be allowed x x x.[14]

Here, petitioners are invoking the remedy under Rule 47 to assail a decision in a criminal case. Following *Bitanga*, this Court cannot allow such recourse, there being no basis in law or in the rules.

In substance, the petition must likewise fail. The trial court which rendered the assailed decision had jurisdiction over the criminal case.

Jurisdiction being a matter of substantive law, the established rule is that the statute in force at the time of the commencement of the action determines the jurisdiction of the court.[15] In this case, at the time of the filing of the information, the applicable

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[14] *Id.* at 628. (Citations omitted.)

[15] *Escobal v. Justice Garchitorena*, 466 Phil. 625, 635 (2004); *Yu Oh*

law was *Batas Pambansa Bilang* 129,[16] approved on August 14, 1981, which pertinently provides:

Section 20. *Jurisdiction in criminal cases.* — Regional Trial Courts shall exercise exclusive original jurisdiction in all criminal cases not within the exclusive jurisdiction of any court, tribunal or body, except those now falling under the exclusive and concurrent jurisdiction of the Sandiganbayan which shall hereafter be exclusively taken cognizance of by the latter.

x x x x x x x x x

Section 32. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in criminal cases.* — Except in cases falling within the exclusive original jurisdiction of Regional Trial Courts and of the Sandiganbayan, the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:

(1) Exclusive original jurisdiction over all violations of city or municipal ordinances committed within their respective territorial jurisdiction; and

(2) Exclusive original jurisdiction over all offenses punishable with imprisonment of not exceeding four years and two months, or a fine of not more than four thousand pesos, or both such fine and imprisonment, regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value, or amount thereof: Provided, however, That in offenses involving damage to property through criminal negligence they shall have exclusive original jurisdiction where the imposable fine does not exceed twenty thousand pesos.

Article 316(2) of the RPC, the provision which penalizes the crime charged in the information, provides that —

Article 316. *Other forms of swindling*.—The penalty of *arresto mayor* in its minimum and medium periods and a fine of not less

v. Court of Appeals, 451 Phil. 380, 387 (2003); *Alarilla v. Sandiganbayan*, 393 Phil. 143, 155 (2000).

[16] The law has subsequently been amended by Republic Act No. 7691 on March 25, 1994.

than the value of the damage caused and not more than three times such value, shall be imposed upon:

x x x x x x x x x

2. Any person who, knowing that real property is encumbered, shall dispose of the same, although such encumbrance be not recorded.

The penalty for the crime charged in this case is *arresto mayor* in its minimum and medium periods, which has a duration of 1 month and 1 day to 4 months, **and** a fine of not less than the value of the damage caused and not more than three times such value. Here, as alleged in the information, the value of the damage caused, or the imposable fine, is ₱12,895.00. Clearly, from a reading of the information, the jurisdiction over the criminal case was with the RTC and not the Metropolitan Trial Court (MeTC). The MeTC could not have acquired jurisdiction over the criminal action because at the time of the filing of the information, its jurisdiction was limited to offenses punishable with a fine of not more than ₱4,000.00.[17]

WHEREFORE, premises considered, the petition is *DENIED.*

SO ORDERED.

Ynares-Santiago (Chairperson), Corona,[*] *Brion,*[**] and *Peralta, JJ.,* concur.

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[17] *Palana v. People*, G.R. No. 149995, September 28, 2007, 534 SCRA 296, 303.

[*] In lieu of Associate Justice Presbitero J. Velasco, Jr., per Raffle dated September 22, 2009.

[**] In lieu of Associate Justice Minita V. Chico-Nazario per Raffle dated March 18, 2009.

THIRD DIVISION

[G.R. No. 164435. September 29, 2009]

VICTORIA S. JARILLO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; BIGAMY; CHARGE OF BIGAMY WILL PROSPER WHERE THE FIRST MARRIAGE IS SUBSISTING AT THE TIME THE SECOND MARRIAGE IS CONTRACTED; CASE AT BAR. — [I]n *Marbella-Bobis v. Bobis*, the Court categorically stated that: x x x as ruled in *Landicho v. Relova*, he who contracts a second marriage before the judicial declaration of nullity of the first marriage assumes the risk of being prosecuted for bigamy, and in such a case **the criminal case may not be suspended on the ground of the pendency of a civil case for declaration of nullity.** x x x The reason is that, **without a judicial declaration of its nullity, the first marriage is presumed to be subsisting**. x x x The foregoing ruling had been reiterated in *Abunado v. People*, where it was held thus: "**The subsequent judicial declaration of the nullity of the first marriage was immaterial because prior to the declaration of nullity, the crime had already been consummated.** Moreover, petitioner's assertion would only delay the prosecution of bigamy cases considering that an accused could simply file a petition to declare his previous marriage void and invoke the pendency of that action as a prejudicial question in the criminal case. x x x For the very same reasons elucidated in the above-quoted cases, petitioner's conviction of the crime of bigamy must be affirmed. The subsequent judicial declaration of nullity of petitioner's two marriages to Alocillo cannot be considered a valid defense in the crime of bigamy. The moment petitioner contracted a second marriage without the previous one having been judicially declared null and void, the crime of bigamy was already consummated because at the time of the celebration of the second marriage, petitioner's marriage to Alocillo, which had not yet been declared null and void by a court of competent jurisdiction, was deemed valid and subsisting.

2. ID.; ID.; NULLITY OF SECOND MARRIAGE IS NOT *PER SE* AN ARGUMENT FOR AVOIDANCE OF CRIMINAL LIABILITY; CASE AT BAR. — Neither would a judicial declaration of the nullity of petitioner's marriage to Uy make any difference. As held in *Tenebro*, "[s]ince a marriage contracted during the subsistence of a valid marriage is automatically void, the nullity of this second marriage is not *per se* an argument for the avoidance of criminal liability for bigamy. x x x A plain reading of [Article 349 of the Revised Penal Code], therefore, would indicate that the provision penalizes *the mere act of contracting a second or subsequent marriage during the subsistence of a valid marriage*."

3. ID.; ID.; PRESCRIPTION PERIOD. — Under Article 349 of the Revised Penal Code, bigamy is punishable by *prision mayor*, which is classified under Article 25 of said Code as an afflictive penalty. Article 90 thereof provides that "[c]rimes punishable by other afflictive penalties **shall prescribe in fifteen years**," while Article 91 states that "[t]he period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents x x x."

4. ID.; ID.; ID.; TO BE COUNTED FROM DISCOVERY. — As ruled in *Sermonia v. Court of Appeals*, "the prescriptive period for the crime of bigamy should be **counted only from the day on which the said crime was discovered** by the offended party, the authorities or their [agents]," as opposed to being counted from the date of registration of the bigamous marriage.

5. REMEDIAL LAW; EVIDENCE; BIGAMY; BURDEN OF PROOF TO SHOW WHEN OFFENDED PARTY KNEW OF PREVIOUS MARRIAGE LIES ON PARTY RAISING PRESCRIPTION AS A DEFENSE; CASE AT BAR. — Petitioner asserts that Uy had known of her previous marriage as far back as 1978; hence, prescription began to run from that time. Note that the party who raises a fact as a matter of defense has the burden of proving it. The defendant or accused is obliged to produce evidence in support of its defense; otherwise, failing to establish the same, it remains self-serving. Thus, for petitioner's defense of prescription to prosper, it was incumbent upon her to adduce evidence that as early as the year 1978, Uy already obtained knowledge of her previous marriage. A close examination of the records of the case reveals that petitioner utterly failed to present sufficient evidence to

support her allegation. Petitioner's testimony that her own mother told Uy in 1978 that she (petitioner) is already married to Alocillo does not inspire belief, as it is totally unsupported by any corroborating evidence. x x x Since petitioner failed to prove with certainty that the period of prescription began to run as of 1978, her defense is, therefore, ineffectual.

6. CRIMINAL LAW; BIGAMY; PROPER PENALTY; CASE AT BAR. — The Indeterminate Sentence Law provides that the accused shall be sentenced to an indeterminate penalty, the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the Revised Penal Code, and the minimum of which shall be within the range of the penalty next lower than that prescribed by the Code for the offense, without first considering any modifying circumstance attendant to the commission of the crime. The Indeterminate Sentence Law leaves it entirely within the sound discretion of the court to determine the minimum penalty, as long as it is anywhere within the range of the penalty next lower without any reference to the periods into which it might be subdivided. The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence. Applying the foregoing rule, it is clear that the penalty imposed on petitioner is proper. Under Article 349 of the Revised Penal Code, the imposable penalty for bigamy is *prision mayor*. The penalty next lower is *prision correccional*, which ranges from 6 months and 1 day to 6 years. The minimum penalty of six years imposed by the trial court is, therefore, correct as it is still within the duration of *prision correccional*. There being no mitigating or aggravating circumstances proven in this case, the prescribed penalty of *prision mayor* should be imposed in its medium period, which is from 8 years and 1 day to 10 years. Again, the trial court correctly imposed a maximum penalty of 10 years. However, for humanitarian purposes, and considering that petitioner's marriage to Alocillo has after all been declared by final judgment to be void *ab initio* on account of the latter's psychological incapacity, by reason of which, petitioner was subjected to manipulative abuse, the Court deems it proper to reduce the penalty imposed by the lower courts. Thus, petitioner should be sentenced to suffer an indeterminate penalty of imprisonment from Two (2) years, Four (4) months and One (1) day of *prision correccional*, as minimum, to 8 years and 1 day of *prision mayor*, as maximum.

APPEARANCES OF COUNSEL

Nelson A. Clemente for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Decision[1] of the Court of Appeals (CA), dated July 21, 2003, and its Resolution[2] dated July 8, 2004, be reversed and set aside.

On May 31, 2000, petitioner was charged with Bigamy before the Regional Trial Court (RTC) of Pasay City, Branch 117 under the following Information in Criminal Case No. 00-08-11:

INFORMATION

The undersigned Assistant City Prosecutor accuses VICTORIA S. JARILLO of the crime of BIGAMY, committed as follows:

That on or about the 26th day of November 1979, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Victoria S. Jarillo, being previously united in lawful marriage with Rafael M. Alocillo, and without the said marriage having been legally dissolved, did then and there willfully, unlawfully and feloniously contract a second marriage with Emmanuel Ebora Santos Uy which marriage was only discovered on January 12, 1999.

Contrary to law.

On July 14, 2000, petitioner pleaded not guilty during arraignment and, thereafter, trial proceeded.

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[1] Penned by Associate Justice Bernardo P. Abesamis, with Associate Justices Jose L. Sabio, Jr. and Jose C. Mendoza, concurring; *rollo*, pp. 8-21.

[2] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Mariano C. del Castillo and Jose C. Mendoza, concurring; *rollo*, pp. 22-23.

The undisputed facts, as accurately summarized by the CA, are as follows.

On May 24, 1974, Victoria Jarillo and Rafael Alocillo were married in a civil wedding ceremony solemnized by Hon. Monico C. Tanyag, then Municipal Mayor of Taguig, Rizal (Exhs. A, A-1, H, H-1, H-2, O, O-1, pp. 20-21, TSN dated November 17, 2000).

On May 4, 1975, Victoria Jarillo and Rafael Alocillo again celebrated marriage in a church wedding ceremony before Rev. Angel Resultay in San Carlos City, Pangasinan (pp. 25-26, TSN dated November 17, 2000). Out of the marital union, appellant begot a daughter, Rachelle J. Alocillo on October 29, 1975 (Exhs. F, R, R-1).

Appellant Victoria Jarillo thereafter contracted a subsequent marriage with Emmanuel Ebora Santos Uy, at the City Court of Pasay City, Branch 1, before then Hon. Judge Nicanor Cruz on November 26, 1979 (Exhs. D, J, J-1, Q, Q-1, pp. 15-18, TSN dated November 22, 2000).

On April 16, 1995, appellant and Emmanuel Uy exchanged marital vows anew in a church wedding in Manila (Exh. E).

In 1999, Emmanuel Uy filed against the appellant Civil Case No. 99-93582 for annulment of marriage before the Regional Trial Court of Manila.

Thereafter, appellant Jarillo was charged with bigamy before the Regional Trial Court of Pasay City x x x.

x x x x x x x x x

Parenthetically, accused-appellant filed against Alocillo, on October 5, 2000, before the Regional Trial Court of Makati, Civil Case No. 00-1217, for *declaration of nullity of their marriage.*

On July 9, 2001, the court *a quo* promulgated the assailed decision, the dispositive portion of which states:

> WHEREFORE, upon the foregoing premises, this court hereby finds accused Victoria Soriano Jarillo **GUILTY** beyond reasonable doubt of the crime of **BIGAMY**.
>
> Accordingly, said accused is hereby sentenced to suffer an indeterminate penalty of **SIX (6) YEARS** of *prision correccional*, as minimum, to **TEN (10) YEARS** of *prision mayor,* as maximum.

> This court makes no pronouncement on the civil aspect of this case, such as the nullity of accused's bigamous marriage to Uy and its effect on their children and their property. This aspect is being determined by the Regional Trial Court of Manila in Civil Case No. 99-93582.
>
> Costs against the accused.

The motion for reconsideration was likewise denied by the same court in that assailed Order dated 2 August 2001.[3]

For her defense, petitioner insisted that (1) her 1974 and 1975 marriages to Alocillo were null and void because Alocillo was allegedly still married to a certain Loretta Tillman at the time of the celebration of their marriage; (2) her marriages to both Alocillo and Uy were null and void for lack of a valid marriage license; and (3) the action had prescribed, since Uy knew about her marriage to Alocillo as far back as 1978.

On appeal to the CA, petitioner's conviction was affirmed *in toto*. In its Decision dated July 21, 2003, the CA held that petitioner committed bigamy when she contracted marriage with Emmanuel Santos Uy because, at that time, her marriage to Rafael Alocillo had not yet been declared null and void by the court. This being so, the presumption is, her previous marriage to Alocillo was still existing at the time of her marriage to Uy. The CA also struck down, for lack of sufficient evidence, petitioner's contentions that her marriages were celebrated without a marriage license, and that Uy had notice of her previous marriage as far back as 1978.

In the meantime, the RTC of Makati City, Branch 140, rendered a Decision dated March 28, 2003, declaring petitioner's 1974 and 1975 marriages to Alocillo null and void *ab initio* on the ground of Alocillo's psychological incapacity. Said decision became final and executory on July 9, 2003. In her motion for reconsideration, petitioner invoked said declaration of nullity as a ground for the reversal of her conviction. However, in its Resolution dated July 8, 2004, the CA, citing *Tenebro v. Court*

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

of Appeals,[4] denied reconsideration and ruled that "[t]he subsequent declaration of nullity of her first marriage on the ground of psychological incapacity, while it retroacts to the date of the celebration of the marriage insofar as the vinculum between the spouses is concerned, the said marriage is not without legal consequences, among which is incurring criminal liability for bigamy."[5]

Hence, the present petition for review on *certiorari* under Rule 45 of the Rules of Court where petitioner alleges that:

V.1. THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN PROCEEDING WITH THE CASE DESPITE THE PENDENCY OF A CASE WHICH IS PREJUDICIAL TO THE OUTCOME OF THIS CASE.

V.2. THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN AFFIRMING THE CONVICTION OF PETITIONER FOR THE CRIME OF BIGAMY DESPITE THE SUPERVENING PROOF THAT THE FIRST TWO MARRIAGES OF PETITIONER TO ALOCILLO HAD BEEN DECLARED BY FINAL JUDGMENT NULL AND VOID *AB INITIO*.

V.3. THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN NOT CONSIDERING THAT THERE IS A PENDING ANNULMENT OF MARRIAGE AT THE REGIONAL TRIAL COURT BRANCH 38 BETWEEN EMMANUEL SANTOS AND VICTORIA S. JARILLO.

V.4. THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN NOT CONSIDERING THAT THE INSTANT CASE OF BIGAMY HAD ALREADY PRESCRIBED.

V.5. THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN NOT CONSIDERING THAT THE MARRIAGE OF VICTORIA JARILLO AND EMMANUEL SANTOS UY HAS NO VALID MARRIAGE LICENSE.

V.6. THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN NOT ACQUITTING THE PETITIONER BUT IMPOSED

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[4] 467 Phil. 723 (2004).

[5] CA *rollo*, p. 404.

AN ERRONEOUS PENALTY UNDER THE REVISED PENAL CODE AND THE INDETERMINATE SENTENCE LAW.

The first, second, third and fifth issues, being closely related, shall be discussed jointly. It is true that right after the presentation of the prosecution evidence, petitioner moved for suspension of the proceedings on the ground of the pendency of the petition for declaration of nullity of petitioner's marriages to Alocillo, which, petitioner claimed involved a prejudicial question. In her appeal, she also asserted that the petition for declaration of nullity of her marriage to Uy, initiated by the latter, was a ground for suspension of the proceedings. The RTC denied her motion for suspension, while the CA struck down her arguments. In *Marbella-Bobis v. Bobis*,[6] the Court categorically stated that:

x x x as ruled in *Landicho v. Relova*, he who contracts a second marriage before the judicial declaration of nullity of the first marriage assumes the risk of being prosecuted for bigamy, and in such a case **the criminal case may not be suspended on the ground of the pendency of a civil case for declaration of nullity**. x x x

x x x x x x x x x

x x x The reason is that, **without a judicial declaration of its nullity, the first marriage is presumed to be subsisting**. In the case at bar, respondent was for all legal intents and purposes regarded as a married man at the time he contracted his second marriage with petitioner. Against this legal backdrop, **any decision in the civil action for nullity would not erase the fact that respondent entered into a second marriage during the subsistence of a first marriage**. Thus, **a decision in the civil case is not essential to the determination of the criminal charge. It is, therefore, not a prejudicial question**. x x x[7]

The foregoing ruling had been reiterated in *Abunado v. People*,[8] where it was held thus:

The subsequent judicial declaration of the nullity of the first marriage was immaterial because prior to the declaration of

[6] 391 Phil. 648 (2000).

[7] *Id.* at 655-657. (Emphasis supplied.)

[8] G.R. No. 159218, March 30, 2004, 426 SCRA 562.

nullity, the crime had already been consummated. Moreover, petitioner's assertion would only delay the prosecution of bigamy cases considering that an accused could simply file a petition to declare his previous marriage void and invoke the pendency of that action as a prejudicial question in the criminal case. We cannot allow that.

The outcome of the civil case for annulment of petitioner's marriage to [private complainant] had no bearing upon the determination of petitioner's innocence or guilt in the criminal case for bigamy, because all that is required for the charge of bigamy to prosper is that the first marriage be subsisting at the time the second marriage is contracted.

Thus, under the law, a marriage, even one which is void or voidable, shall be deemed valid until declared otherwise in a judicial proceeding. In this case, even if petitioner eventually obtained a declaration that his first marriage was void *ab initio*, the point is, both the first and the second marriage were subsisting before the first marriage was annulled.[9]

For the very same reasons elucidated in the above-quoted cases, petitioner's conviction of the crime of bigamy must be affirmed. The subsequent judicial declaration of nullity of petitioner's two marriages to Alocillo cannot be considered a valid defense in the crime of bigamy. The moment petitioner contracted a second marriage without the previous one having been judicially declared null and void, the crime of bigamy was already consummated because at the time of the celebration of the second marriage, petitioner's marriage to Alocillo, which had not yet been declared null and void by a court of competent jurisdiction, was deemed valid and subsisting. Neither would a judicial declaration of the nullity of petitioner's marriage to Uy make any difference.[10] As held in *Tenebro*, "[s]ince a marriage contracted during the subsistence of a valid marriage is automatically void, the nullity of this second marriage is not *per se* an argument for the avoidance of criminal liability for bigamy. x x x A plain

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[9] *Id.* at 567-568. (Emphasis supplied.)

[10] *Abunado v. People*, *supra* note 8; *Tenebro v. Court of Appeals*, *supra* note 4, at 752.

reading of [Article 349 of the Revised Penal Code], therefore, would indicate that the provision penalizes *the mere act of contracting a second or subsequent marriage during the subsistence of a valid marriage*."[11]

Petitioner's defense of prescription is likewise doomed to fail.

Under Article 349 of the Revised Penal Code, bigamy is punishable by *prision mayor,* which is classified under Article 25 of said Code as an afflictive penalty. Article 90 thereof provides that "[c]rimes punishable by other afflictive penalties **shall prescribe in fifteen years,**" while Article 91 states that "[t]he period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents x x x."

Petitioner asserts that Uy had known of her previous marriage as far back as 1978; hence, prescription began to run from that time. Note that the party who raises a fact as a matter of defense has the burden of proving it. The defendant or accused is obliged to produce evidence in support of its defense; otherwise, failing to establish the same, it remains self-serving.[12] Thus, for petitioner's defense of prescription to prosper, it was incumbent upon her to adduce evidence that as early as the year 1978, Uy already obtained knowledge of her previous marriage.

A close examination of the records of the case reveals that petitioner utterly failed to present sufficient evidence to support her allegation. Petitioner's testimony that her own mother told Uy in 1978 that she (petitioner) is already married to Alocillo does not inspire belief, as it is totally unsupported by any corroborating evidence. The trial court correctly observed that:

> x x x She did not call to the witness stand her mother – the person who allegedly actually told Uy about her previous marriage to Alocillo. It must be obvious that without the confirmatory testimony of her

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[11] *Tenebro v. Court of Appeals, supra,* at 742.

[12] *Prudential Guarantee and Assurance, Inc. v. Trans-Asia Shipping Lines, Inc.*, G.R. No. 151890, June 20, 2006, 491 SCRA 411, 433.

mother, the attribution of the latter of any act which she allegedly did is hearsay.[13]

As ruled in *Sermonia v. Court of Appeals*,[14] "the prescriptive period for the crime of bigamy should be **counted only from the day on which the said crime was discovered** by the offended party, the authorities or their [agents]," as opposed to being counted from the date of registration of the bigamous marriage.[15] Since petitioner failed to prove with certainty that the period of prescription began to run as of 1978, her defense is, therefore, ineffectual.

Finally, petitioner avers that the RTC and the CA imposed an erroneous penalty under the Revised Penal Code. Again, petitioner is mistaken.

The Indeterminate Sentence Law provides that the accused shall be sentenced to an indeterminate penalty, the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the Revised Penal Code, and the minimum of which shall be within the range of the penalty next lower than that prescribed by the Code for the offense, without first considering any modifying circumstance attendant to the commission of the crime. The Indeterminate Sentence Law leaves it entirely within the sound discretion of the court to determine the minimum penalty, as long as it is anywhere within the range of the penalty next lower without any reference to the periods into which it might be subdivided. The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence.[16]

Applying the foregoing rule, it is clear that the penalty imposed on petitioner is proper. Under Article 349 of the Revised Penal Code, the imposable penalty for bigamy is *prision mayor*. The

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[13] Records, p. 383.

[14] G.R. No. 109454, June 14, 1994, 233 SCRA 155.

[15] *Id.* at 161.

[16] *Abunado v. People*, *supra* note 8, at 568.

penalty next lower is *prision correccional*, which ranges from 6 months and 1 day to 6 years. The minimum penalty of six years imposed by the trial court is, therefore, correct as it is still within the duration of *prision correccional*. There being no mitigating or aggravating circumstances proven in this case, the prescribed penalty of *prision mayor* should be imposed in its medium period, which is from 8 years and 1 day to 10 years. Again, the trial court correctly imposed a maximum penalty of 10 years.

However, for humanitarian purposes, and considering that petitioner's marriage to Alocillo has after all been declared by final judgment[17] to be void *ab initio* on account of the latter's psychological incapacity, by reason of which, petitioner was subjected to manipulative abuse, the Court deems it proper to reduce the penalty imposed by the lower courts. Thus, petitioner should be sentenced to suffer an indeterminate penalty of imprisonment from Two (2) years, Four (4) months and One (1) day of *prision correccional*, as minimum, to 8 years and 1 day of *prision mayor*, as maximum.

IN VIEW OF THE FOREGOING, the petition is *PARTLY GRANTED*. The Decision of the Court of Appeals dated July 21, 2003, and its Resolution dated July 8, 2004 are hereby *MODIFIED* as to the penalty imposed, but *AFFIRMED* in all other respects. Petitioner is sentenced to suffer an indeterminate penalty of imprisonment from Two (2) years, Four (4) months and One (1) day of *prision correccional*, as minimum, to Eight (8) years and One (1) day of *prision mayor*, as maximum.

SO ORDERED.

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

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[17] See Decision of the Regional Trial Court of Makati City in Civil Case No. 00-1217, CA *rollo*, pp. 343-347.

FIRST DIVISION

[G.R. No. 169889. September 29, 2009]

SPOUSES SIMON YAP AND MILAGROS GUEVARRA, *petitioners, vs.* **FIRST e-BANK CORPORATION (previously known as PDCP DEVELOPMENT BANK, INC.),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; RULES IN PROSECUTION OF CRIMINAL CASES UNDER BP. 22; CORRESPONDING CIVIL ACTION DEEMED NECESSARILY INCLUDED THEREIN PURSUANT TO SC CIRCULAR No. 57-97. — Supreme Court Circular 57-97 provides for the rules and guidelines in the filing and prosecution of criminal cases under BP 22. Pertinent portions of Circular 57-97 provide: **1. The criminal action for violation of [BP] 22 shall be deemed to necessarily include the corresponding civil action, and no reservation to file such civil action separately shall be allowed or recognized. x x x** Circular 57-97 has been institutionalized as Section 1(b), Rule 111 of the Rules of Court: x x x

2. ID.; ID.; ID.; ID.; PRIOR TO EFFECTIVITY OF SC CIRCULAR 57-97, THE ALTERNATIVE REMEDIES OF FORECLOSURE OF MORTGAGE AND COLLECTION SUIT NOT BARRED EVEN IF A SUIT FOR BP 22 HAD BEEN FILED EARLIER; CASE AT BAR. — Thus, prior to the effectivity of Circular 57-97, the alternative remedies of foreclosure of mortgage and collection suit were not barred even if a suit for BP 22 had been filed earlier, unless a judgment of conviction had already been rendered in the BP 22 case finding the accused debtor criminally liable and ordering him to pay the amount of the check(s). Sad to say, Circular 57-97 (and, it goes without saying, Section 1(b), Rule 111 of the Rules of Court) was not yet in force when PDCP sued Sammy for violation of BP 22 and when it filed a petition for extrajudicial foreclosure on the mortgaged property of petitioners on February 8, 1993 and May 3, 1993, respectively. In *Lo Bun Tiong v. Balboa*, Circular 57-97 was not applied because the collection suit

and the criminal complaints for violation of BP 22 were filed prior to the adoption of Circular 57-97. The same principles apply here.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; FAILURE TO PAY A DEBT SECURED BY A MORTGAGE OR BY A CHECK; REMEDIES; EXERCISE OF ONE OPTION WILL BAR THE EXERCISE OF THE OTHERS. — Thus, we state the rule at present. If the debtor fails (or unjustly refuses) to pay his debt when it falls due and the debt is secured by a mortgage and by a check, the creditor has three options against the debtor and the exercise of one will bar the exercise of the others. He may pursue either of the three but not all or a combination of them. First, the creditor may file a collection suit against the debtor. This will open up all the properties of the debtor to attachment and execution, even the mortgaged property itself. Second, the creditor may opt to foreclose on the mortgaged property. In case the debt is not fully satisfied, he may sue the debtor for deficiency judgment (not a collection case for the whole indebtedness), in which case, all the properties of the debtor, other than the mortgaged property, are again opened up for the satisfaction of the deficiency. Lastly, the creditor may opt to sue the debtor for violation of BP 22 if the checks securing the obligation bounce. Circular 57-97 and Section 1(b), Rule 111 of the Rules of Court both provide that the criminal action for violation of BP 22 shall be deemed to necessarily include the corresponding civil action, *i.e.*, a collection suit. No reservation to file such civil action separately shall be allowed or recognized.

APPEARANCES OF COUNSEL

Leopoldo C. Tulagan, Sr. for petitioners.

Nitura Malabanan Lagunilla Mendoza and Gaddi Law Offices for respondent.

D E C I S I O N

CORONA, *J.*:

On August 30, 1990, Sammy Yap obtained a ₱2 million loan from PDCP Development Bank, Inc.[1] (PDCP). As security,

[1] Now First e-Bank Corporation.

Sammy's parents, petitioners Simon Yap and Milagros Guevarra, executed a third-party mortgage on their land[2] and warehouse standing on it. The mortgage agreement provided that PDCP may extrajudicially foreclose the property in case Sammy failed to pay the loan.

On November 7, 1990, Sammy issued a promissory note and six postdated checks[3] in favor of PDCP as additional securities for the loan.

When Sammy defaulted on the payment of his loan, PDCP presented the six checks to the drawee bank but the said checks were dishonored.[4] This prompted PDCP to file a complaint against Sammy for six counts of violation of BP 22 (Bouncing Checks Law) on February 8, 1993.

On May 3, 1993, PDCP filed an application for extrajudicial foreclosure of mortgage on the property of petitioners which served as principal security for Sammy's loan.

On December 16, 1993, on motion of Sammy and without objection from the public prosecutor and PDCP, the BP 22 cases were provisionally dismissed.

On October 26, 1994, pursuant to the petition of PDCP for extrajudicial foreclosure, the extrajudicial sale was set on December 28, 1994. Copies of the notice of extrajudicial sale were sent by registered mail to Sammy, petitioners, the Registrar of Deeds of San Carlos City, Pangasinan, the *Sangguniang Panglungsod* of San Carlos City and the office of the *barangay* secretary of Taloy District, San Carlos City, Pangasinan.

The notice was also published in the *Sunday Punch*, a newspaper of general circulation in Pangasinan on November 27, December 4 and 11, 1994.

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[2] Covered by TCT No. 1650 situated in San Carlos City, Pangasinan.

[3] The particulars of the six postdated checks issued by Sammy to PDCP were not mentioned in the petition.

[4] The reason why the six postdated checks bounced was not stated in the petition.

On December 20, 1994, petitioners filed in the Regional Trial Court (RTC) of San Carlos City, Pangasinan a complaint for injunction (with prayer for the issuance of a temporary restraining order/preliminary injunction), damages and accounting of payments against PDCP. The complaint sought to stop the foreclosure sale on the ground that PDCP waived its right to foreclose the mortgage on their property when it filed the BP 22 cases against Sammy.

On April 2, 1997, the RTC[5] ruled in favor of petitioners. It held that PDCP had three options when Sammy defaulted in the payment of his loan: enforcement of the promissory note in a collection case, enforcement of the checks under the Negotiable Instruments Law and/or BP 22, or foreclosure of mortgage. The remedies were alternative and the choice of one excluded the others. Thus, PDCP was deemed to have waived its right to foreclose on the property of petitioners when it elected to sue Sammy for violation of BP 22.[6]

PDCP appealed to the Court of Appeals (CA). On February 8, 2005, the CA[7] reversed the RTC. It opined that PDCP was not barred from exercising its right to foreclose on the property of petitioners despite suing Sammy for violation of BP 22. The purpose of BP 22 was to punish the act of issuing a worthless check, not to force a debtor to pay his debt.[8]

Hence, this appeal[9] where petitioners argue that, when Sammy was sued for six counts of violation of BP 22, PDCP should have been deemed to have simultaneously filed for collection of the amount represented by the checks. The civil aspect of

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[5] Decision penned by Judge Bienvenido R. Estrada. *Rollo*, pp. 28-32.

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

[7] Decision penned by Associate Justice Santiago Javier Ranada (retired) and concurred in by Associate Justices Marina L. Buzon (retired) and Mario L. Guariña III. *Id.*, pp. 49-62.

[8] *Id.*, p. 56.

[9] Under Rule 45 of the Rules of Court. Petitioner Simon Yap died on November 3, 2006 due to "septic shock" as shown by his death certificate (*id.*, p. 119) and as noted by the Court in its Resolution dated June 4, 2007 (*id.*, p. 121).

the case was naturally an action for collection of Sammy's obligation to PDCP. PDCP clearly elected a remedy. PDCP should not be allowed to pursue another, like foreclosure of mortgage.

The argument is not convincing.

First, petitioners anchor their position on Supreme Court Circular 57-97, which provides for the rules and guidelines in the filing and prosecution of criminal cases under BP 22. Pertinent portions of Circular 57-97 provide:

> **1. The criminal action for violation of [BP] 22 shall be deemed to necessarily include the corresponding civil action, and no reservation to file such civil action separately shall be allowed or recognized**.
>
> 2. Upon the filing of the aforesaid joint criminal and civil actions, the offended party shall pay in full the filing fees based upon the amount of the check involved, which shall be considered as the actual damages claimed, in accordance with the filing fees in Section 7 (a) and Section 8 (a), Rule 141 of the Rules of Court, and last amended by Administrative Circular No. 11-94 effective August 1, 1994. Where the offended party seeks to enforce against the accused civil liability by way of liquidated, moral, nominal, temperate or exemplary damages, he shall pay the corresponding filing fees therefore based on the amounts thereof as alleged either in his complaint or in the information. If not so alleged but any of these damages are awarded by the court, the amount of such fees shall constitute a first lien on the judgment.
>
> 3. Where the civil action has heretofore been filed separately and trial thereof has not yet commenced, it may be consolidated with the criminal action upon application with the court trying the latter case. If the application is granted, the trial of both actions shall proceed in accordance with the pertinent procedure outlined in Section 2 (a) of Rule 111 governing the proceedings in the actions as thus consolidated. (emphasis supplied)

Circular 57-97 has been institutionalized as Section 1(b), Rule 111 of the Rules of Court:[10]

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[10] This rule was enacted to help declog court dockets which are filled with [BP] 22 cases as creditors actually use the courts as collectors. Because

Section 1. *Institution of criminal and civil actions*.—xxx

(b) The criminal action for violation of [BP] 22 shall be deemed to include the corresponding civil action. No reservation to file such civil action separately shall be allowed.

Upon filing of the aforesaid joint criminal and civil actions, the offended party shall pay in full the filing fees based on the amount of the check involved, which shall be considered as the actual damages claimed. Where the complaint or information also seeks to recover liquidated, moral, nominal, temperate or exemplary damages, the offended party shall pay additional filing fees based on the amounts alleged therein. If the amounts are not so alleged but any of these damages are subsequently awarded by the court, the filing fee based on the amount awarded shall constitute a first lien on the judgment.

Where the civil action has been filed separately and trial thereof has not yet commenced, it may be consolidated with the criminal action upon application with the court trying the latter case. If the application is granted, the trial of both actions shall proceed in accordance with Section 2 of this Rule governing consolidation of the civil and criminal actions. (emphasis supplied)

Sad to say, Circular 57-97 (and, it goes without saying, Section 1(b), Rule 111 of the Rules of Court) was not yet in force[11] when PDCP sued Sammy for violation of BP 22 and when it filed a petition for extrajudicial foreclosure on the mortgaged property of petitioners on February 8, 1993 and May 3, 1993, respectively. In *Lo Bun Tiong v. Balboa*,[12] Circular 57-97 was not applied because the collection suit and the criminal complaints

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ordinarily no filing fee is charged in cases for actual damages, the payee uses the intimidating effect of a criminal charge to collect his credit *gratis* and sometimes, upon being paid, the trial court is not even informed thereof. **The inclusion of the civil action in the criminal case is expected to significantly lower the number of cases filed before the courts for collection based on dishonored checks. It is also expected to expedite the disposition of these cases. Instead of instituting two separate cases, one for criminal and another for civil, only a single suit shall be filed and tried** (*Hyatt Industrial Manufacturing Corp. v. Asia Dynamic Electric Corp.*, G.R. No. 163597, July 29, 2005, 465 SCRA 454, 460-461). (emphasis supplied)

[11] Supreme Court Circular 57-97 took effect on September 16, 1997.

[12] G.R. No. 158177, January 28, 2008, 542 SCRA 504.

for violation of BP 22 were filed prior to the adoption of Circular 57-97. The same principle applies here.

Thus, prior to the effectivity of Circular 57-97, the alternative remedies of foreclosure of mortgage and collection suit were not barred even if a suit for BP 22 had been filed earlier, unless a judgment of conviction had already been rendered in the BP 22 case finding the accused debtor criminally liable and ordering him to pay the amount of the check(s).[13]

In this case, no judgment of conviction (which could have declared the criminal and civil liability of Sammy) was rendered because Sammy moved for the provisional dismissal of the case. Hence, PDCP could have still foreclosed on the mortgage or filed a collection suit.

Nonetheless, records show that, during the pendency of the BP 22 case, Sammy had already paid PDCP the total amount of ₱1,783,582.[14] Thus, to prevent unjust enrichment on the part of the creditor, any foreclosure by PDCP should only be for the unpaid balance.

Second, it is undisputed that the BP 22 cases were provisionally dismissed at Sammy's instance. In other words, PDCP was prevented from recovering the whole amount by Sammy himself. To bar PDCP from foreclosing on petitioners' property for the balance of the indebtedness would be to penalize PDCP for the act of Sammy. That would not only be illogical and absurd but would also violate elementary rules of justice and fair play. In sum, PDCP has not yet effectively availed of and fully exhausted its remedy.

While it can be argued that PDCP may revive the BP 22 cases anytime as their dismissal was only provisional, suffice it to state that the law gives the right of choice to PDCP, not to Sammy or to petitioners.

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[13] In such a case (that is, where there was a judgment of conviction), the imposition of civil liability through the order to pay the amount of the check shows that the civil action for collection was impliedly instituted in the BP 22 case.

[14] *Rollo*, p. 65.

Third, petitioners should be mindful that, by being third party mortgagors, they agreed that their property would stand as collateral to the loan of Sammy until the last centavo is paid to PDCP. That is a risk they willingly assumed. To release the mortgage just because they find it inconvenient would be the height of injustice against PDCP.

All told, PDCP should not be left without recourse for the unsettled loan of Sammy. Otherwise, an iniquitous situation will arise where Sammy and petitioners are unjustly enriched at the expense of PDCP. That we cannot sanction.

So as not to create any misunderstanding, however, the point should be underscored that the creditor's obvious purpose when it forecloses on mortgaged property is to obtain payment for a loan which the debtor is unable or unjustifiably refuses to pay. The rationale is the same if the creditor opts to sue the debtor for collection. Thus, it is but logical that a creditor who obtains a personal judgment against the debtor on a loan waives his right to foreclose on the mortgage securing the loan. Otherwise, the creditor becomes guilty of splitting a single cause of action[15] for the debtor's inability (or unjustified refusal) to pay his debt.[16] *Nemo debet bis vexare pro una et eadem causa*. No man shall be twice vexed for one and the same cause.

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[15] Sections 3 and 4, Rule 2 of the Rules of Court provide:

Section 3. *One suit for a single cause of action.*— A party may not institute more than one cause of action.

Section 4. *Splitting a single cause of action; effect of.*—If two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment upon the merits in any one is available as a ground for the dismissal of the others.

[16] For nonpayment of a note secured by mortgage, the creditor has a single cause of action against the debtor. This single cause of action consists in the recovery of the credit with execution of the security. In other words, the creditor in his action may make two demands, the payment of the debt and the foreclosure of his mortgage. But both demands arise from the same cause, the nonpayment of the debt, and, for that reason, they constitute a single cause of action. Though the debt and the mortgage constitute separate agreements, the latter is subsidiary to the former, and both refer to one and the same obligation. Consequently, there exists only one cause of action for a single breach of that obligation. [The creditor] then, by applying the rule above

In the light of Circular 57-97 and Section 1(b), Rule 111 of the Rules of Court, the same rule applies when the creditor sues the debtor for BP 22 and thereafter forecloses on the mortgaged property. It is true that BP 22 is a criminal remedy while foreclosure of mortgage is a civil remedy. It is also true that BP 22 was not enacted to force, much more penalize a person for his inability (or refusal to pay) his debt.[17] What BP 22 prohibits and penalizes is the issuance of bum checks because of its pernicious effects on public interest. Congress, in the exercise of police power, enacted BP 22 in order to maintain public confidence in commercial transactions.[18]

At the other end of the spectrum, however, is the fact that a creditor's principal purpose in suing the debtor for BP 22 is to be able to collect his debt. (Circular 57-97 and Section 1(b), Rule 111 of the Rules of Court have been drawn up to address this reality.) It is not so much that the debtor should be imprisoned for issuing a bad check; this is so specially because a conviction for BP 22 does not necessarily result in imprisonment.[19]

stated, cannot split up his single cause of action by filing a complaint for payment of the debt, and thereafter another complaint for foreclosure of the mortgage. If he does so, the filing of the first complaint will bar the subsequent complaint. By allowing the creditor to file two separate complaints simultaneously or successively, one to recover his credit and another to foreclose his mortgage, we will, in effect, be authorizing him plural redress for a single breach of contract at so much cost to the courts and with so much vexation and oppression to the debtor. (*Bachrach Motor Co., Inc. v. Icarangal,* 68 Phil. 287, 293-294 [1939]).

[17] Otherwise, there will be a blatant violation of Article III, Section 20 of the Constitution, which proscribes imprisonment for debt.

[18] **The gravamen of the offense punishable by BP 22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentation for payment. It is not the nonpayment of an obligation which the law punishes. The law is not intended or designed to coerce a debtor to pay his debt. The thrust of the law is to prohibit, under the pain of penal sanctions, the making of worthless checks and putting them in circulation**. Because of its deleterious effects on the public interest, the practice is proscribed by law. The law punishes the act not as offense against property, but an offense against public order. *Lozano v. Martinez,* G.R. No. 63419, 18 December 1986, 146 SCRA 323, 338. (emphasis supplied)

[19] *See* for example *Vaca v. Court of Appeals,* G.R. No. 131714, 16 November 1998, 298 SCRA 656 and *Lim v. People,* G.R. No. 130038, 18

Thus, we state the rule at present. If the debtor fails (or unjustly refuses) to pay his debt when it falls due and the debt is secured by a mortgage and by a check, the creditor has three options against the debtor and the exercise of one will bar the exercise of the others. He may pursue either of the three but not all or a combination of them.

First, the creditor may file a collection suit against the debtor. This will open up all the properties of the debtor to attachment and execution, even the mortgaged property itself. Second, the creditor may opt to foreclose on the mortgaged property. In case the debt is not fully satisfied, he may sue the debtor for deficiency judgment (not a collection case for the whole indebtedness), in which case, all the properties of the debtor, other than the mortgaged property, are again opened up for the satisfaction of the deficiency.[20] Lastly, the creditor may opt to sue the debtor for violation of BP 22 if the checks securing the obligation bounce. Circular 57-97 and Section 1(b), Rule 111 of the Rules of Court both provide that the criminal action for violation of BP 22 shall be deemed to necessarily include the corresponding civil action, *i.e.*, a collection suit. No reservation to file such civil action separately shall be allowed or recognized.

Petitioners would have been correct had it not been for the reasons stated earlier.

WHEREFORE, the petition is hereby *DENIED.*

Costs against petitioners.

SO ORDERED.

Puno, C.J. (Chairperson), Chico-Nazario,[*] *Leonardo-de Castro,* and *Bersamin, JJ.,* concur.

September 2000, 340 SCRA 497, where the Supreme Court, although affirming the conviction of the accused, imposed a fine rather than imprisonment.

[20] *Bachrach Motor Co., Inc. v. Icarangal, supra,* p. 294.

[*] Per Special Order No. 698 dated September 4, 2009.

FIRST DIVISION

[G.R. No. 171984. September 29, 2009]

BANDILA MARITIME SERVICES, INC. and/or TOKOMARU KAIUN CO., LTD., *petitioners, vs.* **ROLANDO DUBDUBAN,** *respondent.*

SYLLABUS

1. LABOR LAW AND SOCIAL LEGISLATION; LABOR CODE; THE 1996 POEA STANDARD CONTRACT OF EMPLOYMENT FOR SEAFARERS; CONDITIONS FOR CLAIMING DISABILITY BENEFITS UNDER SEC. 20 (B) THEREOF. — Petitioners insist that the CA erred in holding them liable for disability benefits. A seafarer may claim disability benefits under Section 20(B) of the 1996 POEA Standard Contract of Employment for Seafarers (Contract) only if he suffers a work-related injury or illness *during the term* of his contract. The petition is meritorious. Respondent admitted that he had been previously diagnosed with diabetes in 1994 or four years before he was engaged by petitioners as chief cook of M/V White Arrow. Clearly, he was not afflicted with the said illness only during the term of his contract but even prior to his employment. He did not even complain of any complications of the disease at any time during his employment. Hence, Section 20(B) of the Contract was inapplicable.

2. ID.; ID.; ID.; ID.; NONCOMPLIANCE WITH THE REQUIREMENT THEREUNDER FOR CLAIMANT TO SUBMIT HIMSELF FOR MEDICAL EXAMINATION BARS CLAIM FOR DISABILITY BENEFITS; CASE AT BAR. — Moreover, even assuming respondent contracted the disease during the term of his contract, he was precluded from claiming disability benefits for his failure to comply with Section 20(B)(3) of the Contract. The provision requires a claimant to submit himself to a company-designated physician three days after his arrival in the Philippines for medical examination and failure to do so bars the filing of a claim for disability benefits. Respondent did not submit himself to a company-designated physician for medical examination within three days from his arrival in the Philippines, without any lawful excuse.

Respondent's claim (assuming he had a valid one) was therefore barred.

3. ID.; ID.; ID.; ID.; SECTION 32-A OF THE CONTRACT DOES NOT INCLUDE DIABETES AS ONE OF THE COMPENSABLE OCCUPATIONAL DISEASES; CASE AT BAR. — Neither is respondent entitled to disability benefits under Section 32-A of the Contract since diabetes is not one of the compensable occupational diseases listed there. Since his claim has no basis in the Contract, there is no reason to award him disability benefits.

APPEARANCES OF COUNSEL

Carag Caballes Jamora & Somera Law Offices for petitioners.
Linsangan Linsangan & Linsangan Law Offices for respondent.

R E S O L U T I O N

CORONA, *J.*:

Respondent Rolando Dubduban was engaged by petitioner Tokomaru Kaiun Co., Ltd. and its Philippine manning agent, Bandila Maritime Services, Inc., as chief cook of M/V White Arrow for 10 months.[1] He boarded the vessel on November 3, 1998.

After the expiration of his contract, respondent returned to the Philippines on October 8, 1999. A month later, he had a medical examination at the Metropolitan Hospital in Manila where he was diagnosed with fibroid scarrings in his right upper ear

[1] Respondent was hired under the following terms and conditions:

Duration of contract	ten (10) months
Position	Chief cook
Basic monthly salary	US $530
Hours of work	44 hours per week
Overtime	US $394/month for 103 hours
	US $3.83/hour in excess of 103 hours
Vacation leave	6 days per month.

lobe and consequently was advised to undergo parotidectomy.[2] Respondent agreed. During the pre-operational procedure, he was found to be suffering from diabetes mellitus type II.

After recovering from surgery, respondent filed a complaint for disability benefits and damages[3] in the National Labor Relations Commission (NLRC). He alleged that he could no longer be employed as a seafarer because of his diabetes. Petitioners, being his last employers, were therefore liable to pay him disability benefits and reimburse him for medical expenses.

Petitioners, on the other hand, pointed out that respondent was diagnosed with diabetes after his contract expired on September 3, 1999. Thus, they were not liable for disability benefits and reimbursement of medical expenses.

In a decision dated January 3, 2001,[4] the labor arbiter[5] dismissed the complaint for lack of merit. It held that because respondent was found to be suffering from diabetes only after the expiration of his contract, petitioners were not liable for disability benefits.

Respondent appealed[6] to the NLRC disclosing that he had been previously diagnosed with diabetes in 1994. Noting that respondent did not complain of diabetic symptoms while aboard M/V White Arrow, the NLRC affirmed the decision of the labor arbiter *in toto*.[7]

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[2] Respondent underwent parotidectomy on December 8, 1999 and February 2, 2000.

[3] Docketed as NLRC OFW Case No. (M)-00-03-0449-00.

[4] *Rollo,* pp. 62-68.

[5] Godofredo V. Seneres, Jr.

[6] Docketed as NLRC NCR Case No. 027873-01, p. 6.

[7] Decision penned by Commissioner Vicente S.E. Veloso (now a member of the Court of Appeals) and concurred in by Presiding Commissioner Roy V. Señeres and Commissioner Romeo L. Go of the First Division of the NLRC. Dated October 20, 2003. *Rollo,* pp. 70-79.

Respondent moved for reconsideration but it was denied in a resolution dated December 28, 2004. *Id.,* pp. 81-82.

Aggrieved, respondent filed a petition for *certiorari*[8] in the Court of Appeals (CA) assailing the decision of the NLRC. He claimed that the NLRC committed grave abuse of discretion in affirming the decision of the labor arbiter. Respondent insisted that the diabetes was an occupational disease.

The CA noted that since respondent was obliged to taste what he prepared for the officers and crew of the vessel, the nature of his employment therefore aggravated his condition. In a decision dated October 28, 2005,[9] the CA reversed and set aside the decision of the NLRC and ordered petitioners to pay, jointly and severally, respondent's disability benefits amounting to US $20,150 or its equivalent in Philippine pesos.

Petitioners moved for reconsideration but it was denied.[10] Hence, this recourse.

Petitioners insist that the CA erred in holding them liable for disability benefits. A seafarer may claim disability benefits under Section 20(B) of the 1996 POEA Standard Contract of Employment for Seafarers (Contract) only if he suffers a work-related injury or illness *during the term* of his contract.

The petition is meritorious.

Respondent admitted that he had been previously diagnosed with diabetes in 1994 or four years before he was engaged by petitioners as chief cook of M/V White Arrow. Clearly, he was not afflicted with the said illness only during the term of his contract but even prior to his employment. He did not even complain of any complications of the disease at any time during his employment. Hence, Section 20(B) of the Contract was inapplicable.

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[8] Under Rule 65 of the Rules of Court. Docketed as CA-G.R. SP No. 89211.

[9] Penned by Presiding Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Juan M. Enriquez, Jr. and Vicente Q. Roxas (dismissed from the service) of the Fifth Division of the Court of Appeals. *Rollo*, pp. 30-36.

[10] Resolution dated March 13, 2006. *Id.*, p. 28.

Moreover, even assuming respondent contracted the disease during the term of his contract, he was precluded from claiming disability benefits for his failure to comply with Section 20(B)(3) of the Contract.[11] The provision requires a claimant to submit himself to a company-designated physician three days after his arrival in the Philippines for medical examination and failure to do so bars the filing of a claim for disability benefits.[12]

Respondent did not submit himself to a company-designated physician for medical examination within three days from his arrival in the Philippines, without any lawful excuse. Respondent's claim (assuming he had a valid one) was therefore barred.

Neither is respondent entitled to disability benefits under Section 32-A of the Contract since diabetes is not one of the compensable occupational diseases listed there. Since his claim has no basis in the Contract, there is no reason to award him disability benefits.

WHEREFORE, the petition is hereby *GRANTED*. The October 28, 2005 decision and March 13, 2006 resolution of the Court of Appeals in CA-G.R. SP No. 89211 are *REVERSED* and *SET ASIDE*. The October 20, 2003 decision and December 28, 2004 resolution of the National Labor Relations Commission in NLRC NCR Case No. 027873-01 are *REINSTATED*.

No costs.

SO ORDERED.

Puno,C.J. (Chairperson), Chico-Nazario,[*] *Leonardo-de Castro,* and *Bersamin, JJ.*, concur.

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[11] The contract applicable to respondent. This was amended by DOLE Department Order No. 4, s. 2000.

[12] *Maunlad Transport Inc. v. Manigo, Jr.*, G.R. No. 161416, 13 June 2008, 554 SCRA 446.

[*] Per Specual Order No. 698 dated September 4, 2019.

THIRD DIVISION

[G.R. No. 175172. September 29, 2009]

CRESENCIA ACHEVARA, ALFREDO ACHEVARA, and BENIGNO VALDEZ, *petitioners, vs.* **ELVIRA RAMOS, JOHN ARNEL RAMOS, and KHRISTINE CAMILLE RAMOS,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; RECKLESS IMPRUDENCE RESULTING IN HOMICIDE; NEGLIGENCE; FORESEEABILITY; FUNDAMENTAL TEST OF NEGLIGENCE. — Foreseeability is the fundamental test of negligence. To be negligent, a defendant must have acted or failed to act in such a way that an ordinary reasonable man would have realized that certain interests of certain persons were unreasonably subjected to a general but definite class of risks.

2. ID.; ID.; ID.; ID.; ID.; AN ORDINARILY PRUDENT MAN, DEFINED. — An ordinarily prudent man would know that he would be putting himself and other vehicles he would encounter on the road at risk for driving a mechanically defective vehicle. Under the circumstances, a prudent man would have had the owner-type jeep repaired or would have stopped using it until it was repaired.

3. ID.; ID.; ID.; GROSS NEGLIGENCE, DEFINED. — Gross negligence is the absence of 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.

4. CIVIL LAW; TORTS AND DAMAGES; DOCTRINE OF LAST CLEAR CHANCE, WHEN APPLICABLE. — The doctrine of last clear chance applies to a situation where the plaintiff was guilty of prior or antecedent negligence, but the defendant-who had the last fair chance to avoid the impending harm and failed to do so — is made liable for all the consequences of the accident, notwithstanding the prior negligence of the plaintiff. However, the doctrine does not apply where the party charged is required to act instantaneously, and the injury cannot

be avoided by the application of all means at hand after the peril is or should have been discovered.

5. ID.; ID.; WHEN PLAINTIFF'S OWN NEGLIGENCE WAS THE IMMEDIATE AND PROXIMATE CAUSE OF HIS INJURY, HE CANNOT RECOVER DAMAGES; CASE AT BAR. — Article 2179 of the Civil Code provides: 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. In this case, both Arnulfo Ramos and Benigno Valdez failed to exercise reasonable care and caution that an ordinarily prudent man would have taken to prevent the vehicular accident. Since the gross negligence of Arnulfo Ramos and the inexcusable negligence of Benigno Valdez were the proximate cause of the vehicular accident, respondents cannot recover damages pursuant to Article 2179 of the Civil Code.

APPEARANCES OF COUNSEL

Robert B. Tudayan for petitioners.
Jessie Emmanuel A. Vizcarra for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*[1] of the Decision dated April 25, 2006 of the Court of Appeals in CA-G.R. CV No. 67027, and its Resolution dated October 23, 2006, denying petitioners' motion for reconsideration. The Court of Appeals affirmed with modification the Decision of the Regional Trial Court (RTC) of Ilocos Sur, Branch 22, dated February 14, 2000, holding petitioners solidarily liable to respondents for damages incurred due to a vehicular accident, which resulted in the death of Arnulfo Ramos.

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

The facts are as follows:

On June 27, 1995, respondents Elvira Ramos and her two minor children, namely, John Arnel Ramos and Khristine Camille Ramos, filed with the RTC of Ilocos Sur a Complaint[2] for damages under Article 2176[3] of the Civil Code against petitioners Cresencia Achevara, Alfredo Achevara and Benigno Valdez for the death of Arnulfo Ramos, husband of Elvira Ramos and father of her two children, in a vehicular accident that happened on April 22, 1995 at the national highway along *Barangay* Tablac, Candon, Ilocos Sur. Crescencia Achevara was sued as the operator of the passenger jeep with Plate No. DKK-995, which was involved in the vehicular accident. Alfredo Achevara was impleaded as the husband of the operator and as the administrator of the conjugal partnership properties of the Spouses Achevara.

In their Complaint,[4] respondents alleged that in the morning of April 22, 1995, Benigno Valdez was driving a passenger jeep heading north on the national highway in *Barangay* Tablac, Candon, Ilocos Sur in a reckless, careless, and negligent manner. He tried to overtake a motorcycle, causing the passenger jeep to encroach on the opposite lane and bump the oncoming vehicle driven by Arnulfo Ramos. The injuries sustained by Arnulfo Ramos caused his death, notwithstanding prompt medical assistance. Respondents alleged that Crescencia Achevara failed to exercise due diligence in the selection and supervision of Benigno Valdez as driver of the passenger jeep. Respondents sought to recover actual damages for medical expenses in the sum of ₱33,513.00 and funeral expenses in the sum of ₱30,000.00, as well as moral and exemplary damages, lost earnings, attorney's fees and litigation expenses.

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[2] Docketed as Civil Case No. 1431-N.

[3] Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

[4] Records, pp. 1-5.

In their Answer,[5] petitioners denied respondents' allegation that Benigno Valdez overtook a motorcycle and bumped the vehicle driven by Arnulfo Ramos. They alleged that on April 22, 1995, Benigno Valdez was driving southward at a moderate speed when he saw an owner-type jeep coming from the south and heading north, running in a zigzag manner, and encroaching on the west lane of the road. To avoid a collision, Valdez drove the passenger jeep towards the shoulder of the road, west of his lane, but the owner-type jeep continued to move toward the western lane and bumped the left side of the passenger jeep. Petitioners alleged that it was Arnulfo Ramos who was careless and negligent in driving a motor vehicle, which he very well knew had a mechanical defect. Hence, respondents had no cause of action against petitioners.

During trial on the merits, respondents presented three witnesses: Alfredo Gamera, Dr. Emilio Joven and Elvira Ramos.

Alfredo Gamera testified that at about 10:00 a.m. of April 22, 1995, he and his wife were seated at the waiting shed along the national highway in Tablac, Candon, Ilocos Sur, waiting for a ride to the town proper of Candon. He saw a motorcycle, driven by Police Officer 3 (PO3) Baltazar de Peralta, coming from the interior part of Tablac and proceeding south toward the town proper. He also saw a southbound passenger jeep, driven by Benigno Valdez, that wanted to overtake the motorcycle of PO3 De Peralta. As it tried to overtake the motorcycle, the passenger jeep encroached on the lane of the northbound owner-type jeep driven by Arnulfo Ramos, which resulted in the collision. Gamera stated that the point of impact was on the lane of the vehicle of Arnulfo Ramos. Thereafter, the passenger jeep screeched to a halt at the fence of the Funtanilla family. The owner-type jeep was destroyed and the windshield was broken.[6]

Gamera testified that he was about 100 meters from the place where the vehicular accident occurred. The speed of the passenger

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[5] *Id.* at 11-15.

[6] TSN, March 22, 1996, pp. 2-5.

jeep was about 70 kilometers per hour, while that of the owner-type jeep was about 30 kilometers per hour.[7]

On cross-examination, it was found that Gamera went to the Police Station in Candon, Ilocos Sur to execute his sworn statement only on May 30, 1992, one month after the incident and after respondent Elvira Ramos talked to him. Moreover, at the preliminary investigation, Gamera did not mention in his sworn statement that his wife was present during the incident, which fact was admitted by respondent's counsel. Further, at that time, Gamera was working as a *jueteng* collector at the same joint where the deceased Arnulfo Ramos was also employed, and he had known Ramos for five years.[8]

Dr. Emilio Joven, a surgeon of the Lorma Medical Center, San Fernando, La Union, testified that Arnulfo Ramos was admitted at the Lorma Hospital at about 12:50 p.m. on April 22, 1995. The latter sustained external injuries, mostly on the left side of the body, which could have been caused by a vehicular accident. The CT scan result of Arnulfo Ramos showed blood clots inside the brain, scattered small hemorrhagic contusions, and swelling and blood clots on the base of the brain, which internal injuries caused his death.[9] The immediate cause of death was "acute cranio-cerebral injury."[10]

Respondent Elvira Ramos testified on the damages she incurred due to the vehicular accident, which resulted in the death of her husband. She spent ₱33,513.00 for hospitalization and ₱30,000.00 for the funeral. She prayed for the award of lost earnings, moral damages, exemplary damages, attorney's fees, appearance fees and other costs of litigation.[11]

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[7] *Id.* at 2; TSN, July 19, 1996, p. 16.

[8] TSN, July 19, 1996, pp. 2, 4-5, 8-9.

[9] TSN, August 23, 1996, pp. 4-10.

[10] Death Certificate, records, p. 140.

[11] TSN, June 7, 1996, pp. 5-8.

She also testified that the owner-type jeep was registered in the name of Matilde Tacad[12] of Sto. Domingo, Ilocos Sur.[13]

Petitioners presented six witnesses, namely, PO3 Baltazar de Peralta, Special Police Officer 2 (SPO2) Marvin Valdez, Herminigildo Pagaduan, Benigno Valdez, Emilia Achevara and Alfredo Achevara.

PO3 Baltazar de Peralta stated that he was assigned to Santiago, Ilocos Sur. He testified that at about 9:00 a.m. of April 22, 1995, he was on board his motorcycle at the waiting shed erected on the eastern side of the national highway in Tablac, Ilocos Sur. He was about to go southward, but waited a while to let a southbound passenger jeep pass by. Then he followed behind the passenger jeep.

When the passenger jeep was about 75 meters away from him on the western lane of the national highway, PO3 De Peralta spotted an owner-type jeep coming from the south on the eastern lane of the road. He observed that the owner-type jeep was running in a zigzag manner as it went over the many holes on the road. It did not slacken speed, causing the jeep's front wheels to wiggle, before it bumped the passenger jeep coming from the north. The collision occurred on the lane of the passenger jeep, about two feet away from the center line of the road, causing the owner-type jeep to turn around and return to its former position, with its right wheel removed; while the passenger jeep veered to the right lane.[14]

After the collision, PO3 De Peralta assisted the owner-type jeep's driver, who fell to the ground, and helped load him into a tricycle that would take him to the hospital. Then he went to the driver of the passenger jeep and asked him what happened. The driver remarked, "Even if you do not like to meet an accident, if that is what happened, you cannot do anything." Thereafter, PO3 De Peralta proceeded on his way southward. He reported the incident at the Police Station of Candon, Ilocos Sur.[15]

[12] Exhibit "M", records, p. 145.

[13] TSN, June 7, 1996, p. 17.

[14] TSN, June 20, 1997, pp. 2-6.

[15] *Id.* at 3-4, 9, 10, 14.

PO3 De Peralta testified that the accident happened on a straight part of the highway, but there were many holes on the eastern lane. He stated that nothing impeded his view of the incident.[16]

PO3 De Peralta also testified that he had known respondents' witness, Alfredo Gamera, who was his *barangay* mate for 20 years. He declared that he never saw Gamera at the waiting shed or at the scene of the incident on the morning of April 22, 1995.[17]

Investigator SPO2 Marvin Valdez of the Candon Police Station testified that at about 11:00 a.m. of April 22, 1995, he received a report of the vehicular accident that occurred at the national highway in Tablac, Candon, Ilocos Sur, which was three kilometers from the police station. He proceeded to the site with some companions. He saw a passenger jeep positioned diagonally on the western shoulder of the road facing southwest, while an owner-type jeep was on the right lane. The driver of the owner-type jeep was seriously injured and was brought to the hospital.[18]

SPO2 Valdez testified that the owner-type jeep's right tire was detached, and its left front portion was damaged, while the passenger jeep's left tire was detached, and its left side portion was damaged.[19]

Herminigildo Pagaduan testified that at 7:00 a.m. of April 22, 1995, he was at the house of *Barangay* Captain Victorino Gacusan of San Antonio, Candon, Ilocos Sur. Gacusan was then the overall monitor of the *jueteng* joint operation in Candon, Ilocos Sur. Pagaduan and Gacusan had earlier agreed to attend the wake of an army captain at Tamorong, Candon, Ilocos Sur that morning. While Pagaduan was waiting for *Barangay* Captain Gacusan, the latter made a phone call requesting for a vehicle to take them to Tamorong. Not long after, a yellow owner-

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[16] *Id.* at 10.

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

[18] TSN, July 28, 1997, pp. 2-3.

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

type jeep arrived, which was driven by Arnulfo Ramos, an employee of the *jueteng* joint. All of them rode the jeep with Plate No. ACG 713. *Barangay* Captain Gacusan was on the driver's seat, Pagaduan sat beside Gacusan, while Arnulfo Ramos and the others sat on the rear seat.[20]

Pagaduan further testified that the group headed west to Tamorong via Darapidap. When they reached a bridge, *Barangay* Captain Gacusan tried to increase the speed of the jeep, but it suddenly wiggled. Gacusan stopped the jeep, and they all alighted from it. Gacusan told Arnulfo Ramos to have the mechanical defect repaired at the auto shop. Hence, they did not proceed to Tamorong, but returned to the house of Gacusan by tricycle. The next day, he heard from Gacusan that the jeep they had used in their aborted trip to Tamorong met an accident.[21]

On cross-examination, Pagaduan testified that it was defense counsel Atty. Tudayan who requested him to testify, because Atty. Tudayan had heard him discuss the incident with some *jueteng* employees.[22]

Petitioner Benigno Valdez testified that on April 22, 1995, he was driving the passenger jeep of his aunt, Crescencia Achevara, on the national highway in Tablac, Candon, Ilocos Sur heading south, while the owner-type jeep of Arnulfo Ramos was heading north. Valdez stated that the owner-type jeep was wiggling and running fast in a zigzag manner, when its right front wheel got detached and the owner-type jeep bumped the left side of his passenger jeep. Valdez swerved the passenger jeep to the western edge of the road to avoid a collision, but to no avail, as it bumped a post. He passed out. When he regained consciousness, he saw the driver of the owner-type jeep being rescued.[23]

Valdez surrendered himself to the Police Station in Candon, Ilocos Sur. He informed the police that his vehicle was bumped

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[20] TSN, August 18, 1997, pp. 2-5.

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

[22] *Id.* at 11.

[23] TSN, September 5, 1997, pp. 2-6, 8; TSN, September 19, 1997, p. 20.

by the owner-type jeep driven by Arnulfo Ramos, and he showed his driver's license to the police.[24]

Valdez branded as false the testimony of respondents' witness, Alfredo Gamera, that the former tried to overtake the motorcycle of PO3 Baltazar de Peralta and encroached on the lane of the owner-type jeep driven by Arnulfo Ramos. Valdez testified that before the vehicular accident, he saw a policeman following him, but there was a tricycle between them. He denied that he was driving fast and stated that his speed at that time registered only 20 on the speedometer.[25]

Petitioner Alfredo Achevara testified that Crescencia Achevara was his wife, while Benigno Valdez was the nephew of his wife. He and his wife owned the passenger jeep with Plate No. DKK-995 that was involved in the vehicular accident. Valdez had been the driver of the vehicle since 1992, although he drove it only during daytime.[26]

Alfredo Achevara declared that before they employed Benigno Valdez to drive the passenger jeep, the former exercised the diligence of a good father of a family in selecting, training and supervising the latter.[27] They required Valdez to show them his professional driver's license, and investigated his personal background and training/experience as a driver. For his apprenticeship, they required him to drive from Metro Manila to Tagaytay City, and then back to Metro Manila for a day.

Achevara stated that he knew Benigno Valdez since 1988. As their driver since 1992, Valdez never committed any traffic violation. On April 22, 1995, he handed the key of the jeep to Valdez at about 7:30 a.m. at their *barangay* in Padaoil, Sta. Cruz, Ilocos Sur to fetch the sound system in Santiago, Ilocos Sur for their fiesta. He told Valdez to avoid an accident, bring his license and avoid being hot-tempered.[28]

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[24] TSN, September 5, 1997, pp. 6-7.

[25] TSN, September 5, 1997, pp. 9-10; TSN, September 19, 1997, p. 12.

[26] TSN, April 16, 1999, pp. 2-4.

[27] *Id.* at 2.

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

On February 14, 2000, the RTC of Narvacan, Ilocos Sur, Branch 22, rendered a Decision in Civil Case No. 1431-N in favor of respondents.

The trial court found that the testimony of respondents' witness, Alfredo Gamera, was controverted by the testimony of PO3 Baltazar de Peralta and the finding of police investigator SPO2 Marvin Valdez. Gamera testified that the vehicular accident occurred because the passenger jeep tried to overtake the motorcycle driven by PO3 Baltazar de Peralta and encroached on the lane of the owner-type jeep driven by Arnulfo Ramos. Gamera's testimony was, however, refuted by PO3 Baltazar de Peralta, who testified that the passenger jeep did not overtake his motorcycle since he was the one following behind the passenger jeep. Hence, the trial court concluded that the passenger jeep did not encroach on the lane of the owner-type jeep on the left side of the road to allegedly overtake the motorcycle.

Moreover, Gamera testified that the collision occurred on the lane of the owner-type jeep, and one of the wheels of the owner-type jeep was detached, so that it stayed immobile at the place of collision, about two meters east from the center line of the national highway. However, SPO2 Marvin Valdez, who investigated the incident, found both vehicles on the western lane of the national highway. Thus, the trial court stated that it was undeniable that the collision took place on the western lane of the national highway, which was the passenger jeep's lane.

The trial court held that, as contended by respondents, the doctrine of last clear chance was applicable to this case. It cited *Picart v. Smith*,[29] which applied the said doctrine, thus, where both parties are guilty of negligence, but the negligent act of one succeeds that of the other by an appreciable interval of time, the person who has the last fair chance to avoid the impending harm and fails to do so is chargeable with the consequences, without reference to the prior negligence of the other party.

The trial court held that the driver of the passenger jeep, Benigno Valdez, having seen the risk exhibited by the wiggling

[29] 37 Phil. 809 (1918).

of the front wheels of the owner-type jeep, causing it to run in a zigzag manner, should have parked his vehicle on the right shoulder of the road so that the mishap could have been prevented. Since he ignored to take this reasonable precaution, the omission and/or breach of this duty on his part was the constitutive legal cause of the mishap.[30]

The trial court stated that the doctrine of last clear chance, as applied to this case, implied a contributory negligence on the part of the late Arnulfo Ramos, who knew of the mechanical defect of his vehicle.

Further, the trial court held that the evidence of the Spouses Achevara failed to show that they exercised due diligence in the selection and supervision of Benigno Valdez as driver of their passenger jeep.[31]

The dispositive portion of the trial court's Decision reads:

> WHEREFORE, a decision is hereby rendered in favor of the plaintiffs and against the defendants, the latter to account for and to pay jointly and solidarily to the plaintiffs, because of the contributory negligence on the part of the late Arnulfo Ramos, the reduced amount itemized as follows to wit:
>
> 1) Thirty Thousand Pesos (₱30,000.00) — part of the total receipted expenses at the hospitals;
>
> 2) Twenty Thousand Pesos (₱20,000.00) — for funeral expenses;
>
> 3) Sixty Thousand Pesos (₱60,000.00) — for moral damages;
>
> 4) Fifty Thousand Pesos (₱50,000.00) — for exemplary damages;
>
> 5) Thirty Thousand Pesos (₱30,000.00) — for attorney's fees, and
>
> 6) Ten Thousand Pesos (₱10,000.00) — for actual and other costs of litigation.[32]

The Spouses Achevara and Benigno Valdez appealed the trial court's Decision to the Court of Appeals.

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[30] Records, pp. 69-70.

[31] *Id.* at 71.

[32] *Id.* at 72-73.

In a Decision dated April 25, 2009, the Court of Appeals affirmed with modification the Decision of the trial court, the dispositive portion of which reads:

> WHEREFORE**,** premises considered, the appeal is hereby DISMISSED and the assailed February 14, 2000 Decision of the RTC of Narvacan, Ilocos Sur, Branch 22, in Civil Case No. 1431-N, is hereby AFFIRMED with MODIFICATION, that in addition to other awards made by the trial court, defendants-appellants are hereby ordered to pay, jointly and severally, the plaintiffs-appellees the sum of ₱50,000.00 as indemnity for the death of Arnulfo Ramos and the moral damages and attorney's fees awarded by the trial court are hereby REDUCED to ₱50,000.00 and ₱10,000.00, respectively, while the awards made by the trial court for exemplary damages and "for actual and other costs of litigation" are hereby DELETED.[33]

The motion for reconsideration of the Spouses Achevara and Benigno Valdez was denied for lack of merit by the Court of Appeals in a Resolution[34] dated October 23, 2006.

Hence, the Spouses Achevara and Benigno Valdez filed this petition.

The main issue is whether or not petitioners are liable to respondents for damages incurred as a result of the vehicular accident.

Petitioners contend that the doctrine of last clear chance is not applicable to this case, because the proximate cause of the accident was the negligence of the late Arnulfo Ramos in knowingly driving the defective owner-type jeep. When the front wheel of the owner-type jeep was removed, the said jeep suddenly encroached on the western lane and bumped the left side of the passenger jeep driven by Benigno Valdez. Considering that the interval between the time the owner-type jeep encroached on the lane of Valdez to the time of impact was only a matter of seconds, Valdez no longer had the opportunity to avoid the collision. *Pantranco North Express Inc. v. Besa*[35] held that the

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[33] *Rollo,* pp. 36-37.

[34] *Id.* at 38.

[35] G.R. Nos. 79050-51, November 14, 1989, 179 SCRA 384.

doctrine of last clear chance "can never apply where the party charged is required to act instantaneously, and if the injury cannot be avoided by the application of all means at hand after the peril is or should have been discovered."

Petitioners assert that Arnulfo Ramos' negligence in driving the owner-type jeep — despite knowledge of its mechanical defect, and his failure to have it repaired first before driving, to prevent damage to life and property — did not only constitute contributory negligence. Ramos' negligence was the immediate and proximate cause of the accident, which resulted in his untimely demise. Benigno Valdez should not be made to suffer the unlawful and negligent acts of Ramos. Since forseeability is the fundamental basis of negligence, Valdez could not have foreseen that an accident might happen due to the mechanical defect in the vehicle of Ramos. It was Ramos alone who fully knew and could foresee that an accident was likely to occur if he drove his defective jeep, which indeed happened. Hence, the proximate cause of the vehicular accident was the negligence of Ramos in driving a mechanically defective vehicle.

In short, petitioners contend that Arnulfo Ramos' own negligence in knowingly driving a mechanically defective vehicle was the immediate and proximate cause of his death, and that the doctrine of last clear chance does not apply to this case.

Petitioners' arguments are meritorious.

The Court notes that respondents' version of the vehicular accident was rebutted by petitioners. The testimony of respondents' witness, Alfredo Gamera, that the vehicular accident occurred because the passenger jeep driven by Benigno Valdez tried to overtake the motorcycle driven by PO3 Baltazar de Peralta and encroached on the lane of the owner-type jeep, which resulted in the collision, was refuted by PO3 Baltazar de Peralta, who testified that the passenger jeep did not overtake his motorcycle since he was the one following behind the passenger jeep. Hence, the trial court correctly concluded that the passenger jeep did not encroach on the lane of the owner-type jeep on the left side of the road to allegedly overtake the motorcycle.

Gamera also testified that the collision took place on the lane of the owner-type jeep, and one of its wheels was detached and stayed immobile at the place of collision, about two meters east the center line of the national highway. However, SPO2 Marvin Valdez, who investigated the incident, found both vehicles on the western lane of the national highway. The owner-type jeep was diagonally positioned on the right, western lane; while the passenger jeep was on the western shoulder of the road, diagonally facing southwest. The trial court, therefore, correctly held that it was undeniable that the collision took place on the western lane of the national highway or the lane of the passenger jeep driven by Benigno Valdez. It was the owner-type jeep driven by Arnulfo Ramos that encroached on the lane of the passenger jeep.

It must be pointed out that Herminigildo Pagaduan testified that in the early morning of April 22, 1995, he and *Barangay* Captain Gacusan, along with Arnulfo Ramos, aborted their trip to Tamorong, Candon, Ilocos Sur, using the same owner-type jeep because it was wiggling. Ramos was advised to have the mechanical defect repaired. Yet, later in the morning, Ramos was driving the owner-type jeep on the national highway in Candon. Benigno Valdez testified that the owner-type jeep was wiggling and running fast in a zigzag manner when its right front wheel got detached, and the owner-type jeep suddenly bumped the passenger jeep he was driving, hitting the left side of the passenger jeep opposite his seat. Although Valdez swerved the passenger jeep to the western edge of the road, it was still hit by the owner-type jeep.

Foreseeability is the fundamental test of negligence. To be negligent, a defendant must have acted or failed to act in such a way that an ordinary reasonable man would have realized that certain interests of certain persons were unreasonably subjected to a general but definite class of risks.[36]

Seeing that the owner-type jeep was wiggling and running fast in a zigzag manner as it travelled on the opposite side of

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[36] Jarencio, *Jarencio on Torts and Damages*, p. 138.

the highway, Benigno Valdez was made aware of the danger ahead if he met the owner-type jeep on the road. Yet he failed to take precaution by immediately veering to the rightmost portion of the road or by stopping the passenger jeep at the right shoulder of the road and letting the owner-type jeep pass before proceeding southward; hence, the collision occurred. The Court of Appeals correctly held that Benigno Valdez was guilty of inexcusable negligence by neglecting to take such precaution, which a reasonable and prudent man would ordinarily have done under the circumstances and which proximately caused injury to another.

On the other hand, the Court also finds Arnulfo Ramos guilty of gross negligence for knowingly driving a defective jeep on the highway. An ordinarily prudent man would know that he would be putting himself and other vehicles he would encounter on the road at risk for driving a mechanically defective vehicle. Under the circumstances, a prudent man would have had the owner-type jeep repaired or would have stopped using it until it was repaired. Ramos was, therefore, grossly negligent in continuing to drive on the highway the mechanically defective jeep, which later encroached on the opposite lane and bumped the passenger jeep driven by Benigno Valdez. Gross negligence is the absence of care or diligence as to amount to a reckless disregard of the safety of persons or property.[37] It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[38]

The acts of negligence of Arnulfo Ramos and Benigno Valdez were contemporaneous when Ramos continued to drive a wiggling vehicle on the highway despite knowledge of its mechanical defect, while Valdez did not immediately veer to the rightmost side of the road upon seeing the wiggling vehicle of Ramos — perhaps because it still kept to its lane and Valdez did not know the extent of its mechanical defect. However, when the owner-type jeep encroached on the lane of the passenger jeep, Valdez realized the peril at hand and steered the passenger jeep toward

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[37] *National Power Corporation v. Heirs of Noble Casionan*, G.R. No. 165969, November 27, 2008.

[38] *Id.*

the western shoulder of the road to avoid a collision. It was at this point that it was perceivable that Ramos must have lost control of his vehicle, and that it was Valdez who had the last opportunity to avoid the collision by swerving the passenger jeep towards the right shoulder of the road.

The doctrine of last clear chance applies to a situation where the plaintiff was guilty of prior or antecedent negligence, but the defendant — who had the last fair chance to avoid the impending harm and failed to do so — is made liable for all the consequences of the accident, notwithstanding the prior negligence of the plaintiff.[39] However, the doctrine does not apply where the party charged is required to act instantaneously, and the injury cannot be avoided by the application of all means at hand after the peril is or should have been discovered.[40]

The doctrine of last clear chance does not apply to this case, because even if it can be said that it was Benigno Valdez who had the last chance to avoid the mishap when the owner-type jeep encroached on the western lane of the passenger jeep, Valdez no longer had the opportunity to avoid the collision. The Answer of petitioners stated that when the owner-type jeep encroached on the lane of the passenger jeep, Benigno Valdez maneuvered his vehicle towards the western shoulder of the road to avoid a collision, but the owner-type jeep driven by Ramos continued to move to the western lane and bumped the left side of the passenger jeep. Thus, petitioners assert in their Petition that considering that the time the owner-type jeep encroached on the lane of Valdez to the time of impact was only a matter of seconds, he no longer had the opportunity to avoid the collision. Although the records are bereft of evidence showing the exact distance between the two vehicles when the owner-type jeep encroached on the lane of the passenger jeep, it must have been near enough, because the passenger jeep driven by Valdez was unable to avoid the collision. Hence, the doctrine of last clear chance does not apply to this case.

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[39] *Pantranco North Express, Inc. v. Besa,* G.R. Nos. 79050-51, November 14, 1989, 179 SCRA 384.

[40] *Id., citing Ong v. Metropolitan Water District,* 104 Phil. 397 (1958).

Article 2179 of the Civil Code provides:

> 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.[41]

In this case, both Arnulfo Ramos and Benigno Valdez failed to exercise reasonable care and caution that an ordinarily prudent man would have taken to prevent the vehicular accident. Since the gross negligence of Arnulfo Ramos and the inexcusable negligence of Benigno Valdez were the proximate cause of the vehicular accident, respondents cannot recover damages pursuant to Article 2179 of the Civil Code.

WHEREFORE, the present petition is *GRANTED*. The assailed Decision of the Court of Appeals in CA-G.R. CV No. 67027, dated April 25, 2006, affirming the Decision of the Regional Trial Court of Narvacan, Ilocos Sur, Branch 22 in Civil Case No. 1431-N, dated February 14, 2000, is *REVERSED* and *SET ASIDE*. The complaint of Elvira Ramos in Civil Case No. 1431-N is *DISMISSED*.

No costs.

SO ORDERED.

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

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[41] Emphasis supplied.

THIRD DIVISION

[G.R. No. 183387. September 29, 2009]

SIMEON M. VALDEZ, *petitioner, vs.* **FINANCIERA MANILA, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PROPER REMEDY FOR DENIAL OF A MOTION FOR EXECUTION OF JUDGMENT; CASE AT BAR. — One of the issues raised by petitioner Valdez is jurisdiction. According to him, the CA had no jurisdiction over respondent Financiera's petition for *certiorari.* The proper remedy was an appeal, as the case had proceeded from a denial of a motion for execution of a judgment. x x x It is apparent that a denial of a motion for the execution of judgment is appealable under Section 1, Rule 41 of the Rules of Court. Respondent Financiera justifies the mode of appeal it resorted to by stating that the enforcement of the court *a quo*'s Orders dated February 26, 2007 and June 18, 2007, respectively, rendered nugatory the force and effect of the parties' court-approved Compromise Agreement; therefore, there was a need to file a petition for *certiorari*. However, a close reading of the petition filed by respondent Financiera with the CA clearly shows that what it sought to be nullified and set aside were the Order of the RTC dated February 26, 2007 denying respondent's motion for the enforcement of the Compromise Agreement dated December 18, 2002, and granting petitioner Valdez's motion for execution of the Decision dated May 22, 2000 as modified by the CA; and the Order of the RTC dated June 18, 2007 denying respondent's motion for reconsideration of the earlier mentioned Order. Thus, by reason of the prayer in the petition for *certiorari,* the subject of the same petition was inappropriate, if not inapplicable.

2. ID.; ID.; ID.; ID.; *CERTIORARI,* NOT PROPER SUBSTITUTE FOR A LOST APPEAL; CASE AT BAR. — [T]his Court has ruled that *certiorari* is not the proper substitute for a lost appeal. However, it admits of several exceptions x x x Considering that an appeal was still available as a remedy for the assailed Orders of the RTC, and that the case did not fall within the

exceptions, the filing of the petition for *certiorari* was an attempted substitute for an appeal, after respondent failed to avail itself of the latter remedy. Necessarily, it must be noted that the petition for *certiorari* was filed on August 28, 2007 when the questioned RTC Orders had already attained finality. The Order became final when respondent Financiera received the RTC Order of June 18, 2007 denying the former's motion for reconsideration on June 29, 2007. Instead of filing a notice of appeal within the reglementary period lasting until July 14, 2007, respondent filed a petition for *certiorari*, way beyond the reglementary period. Hence, the CA had no jurisdiction to decide the said petition for *certiorari*.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; COMPROMISE AGREEMENTS; SUBSTANCE OF A COMPROMISE AGREEMENT INFERRED FROM A CAREFUL PERUSAL OF ALL ITS STIPULATIONS IN THEIR ENTIRETY. — It is clear from the case of *Alonzo v. Sps. Jaime and Perlita San Juan*, G.R. No. 137549, February 11, 2005, 451 SCRA 45 that the substance of a compromise agreement can be inferred from a careful perusal of all the stipulations in their entirety and all the words used, as they are connected with one another.

4. ID.; ID.; ID.; ID.; NONPAYMENT OF STIPULATED CONSIDERATION MAKES THE COMPROMISE AGREEMENT UNENFORCEABLE; CASE AT BAR. — The Compromise Agreement entered into by petitioner Valdez and the other plaintiffs and respondent Financiera was for a valuable consideration paid by the latter in order for the former to drop, dismiss and withdraw their complaint; and to acknowledge that they had no more claims, demands, complaints, or causes of action of any kind whatsoever against said respondent. By dropping, dismissing and withdrawing their complaint, petitioner Valdez and the other plaintiffs agreed to the lifting, cancellation and dissolution of the Writ of Preliminary Attachment issued by the RTC dated October 13, 1998, by virtue of which they had levied on, garnished and attached certain real and personal properties of respondent Financiera. x x x The stipulations of the Compromise Agreement state in detail the properties whose attachments were sought to be lifted and canceled. Of particular importance is the assignment and conveyance of the 30 investment accounts of respondent Financiera with SPPI with a total cash value, as stated in the Compromise Agreement, of

₱3,160,000.00, because these accounts formed part of the valuable consideration paid by respondent to petitioner and the other plaintiffs. x x x The stipulation states categorically that the 30 investment accounts of respondent Financiera with SPPI had already matured. However, the cash value of the said investment accounts were never given because SPPI, not being a party to the Compromise Agreement, could not be compelled to pay respondent Financiera's unpaid obligation to petitioner Valdez. x x x Thus, the valuable consideration referred to by respondent Financiera in the Compromise Agreement has yet to be fulfilled. The very essence of the stipulation, as gleaned from the literal, as well as the implied, meaning of the words contained therein is the eventual payment of petitioner Valdez' claim. As ruled by this Court, in a compromise agreement, the literal meaning of its stipulations must control. It "must be strictly interpreted and x x x understood as including only matters specifically determined therein or which, by necessary inference from its wording, must be deemed included." Therefore, the non-maturity of the 30 investment accounts of respondent Financiera with SPPI makes the Compromise Agreement unenforceable.

APPEARANCES OF COUNSEL

Mario G. Aglipay for petitioner.
Cortina & Buted Law Offices for respondent.

D E C I S I O N

PERALTA, ***J.*:**

This is a petition for review under Rule 45 of the Rules of Court.

Petitioner Simeon M. Valdez comes to this Court seeking to nullify the Decision[1] dated March 18, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 100316 which partly affirmed the Orders dated February 26, 2007 and June 18, 2007 of the

[1] Penned by Associate Justice Estela M. Perlas-Bernabe, with Associate Justices Portia Aliño-Hormachuelos and Lucas P. Bersamin (now Associate Justice of the Supreme Court), concurring; *rollo*, pp. 30-36.

Regional Trial Court (RTC) of Quezon City, Branch 227 in Civil Case No. Q-98-35546.

The antecedent facts can be summarized as follows:

Petitioner and his wife, Lydia D. Valdez, among others,[2] filed a Complaint for a sum of money with prayer for preliminary attachment on September 18, 1998 against respondent Financiera Manila, Inc. and five of its corporate officers,[3] at Branch 227, RTC of Quezon City,[4] seeking to recover damages for failure of respondent Financiera and the corporate officers to pay petitioner's money market investments on their maturity dates. A preliminary attachment[5] was issued by the RTC against respondent Financiera which resulted into the levying of the latter's Account Nos. A-04-000324 to A-000355 with Scholarship Plan Philippines, Inc. (SPPI), including its parcels of land covered by Transfer Certificate of Title (TCT) Nos. T-36316 and T-36317 of the Register of Deeds of Tagaytay City and TCT Nos. T-235055 and T-235056 of the Register of Deeds of Manila.[6] Thereafter, the RTC rendered its Decision[7] finding respondent Financiera liable to plaintiffs in the said case for actual, moral, and exemplary damages, with attorney's fees. An appeal was then filed with the CA, which, in its Decision[8] dated November 14, 2002, affirmed the award of actual damages in the total amount of ₱4,069,439.90, with ₱3,920,313.24 going to petitioner Valdez and his spouse, ₱126,885.52, to Belen Guevara, ₱11,120.57 to Pauline R. Petelo and ₱11,120.57 to Teddy Aurelio; and remanded the case to the RTC for the determination

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[2] Belen Guevara, Pauline P. Petelo and Teddy Aurelio.

[3] Arturo A. Sena; Ricardo S. Castañeda; Hector Y. Uy; Fausto C. Tiu, Financiera's Vice-President and Treasurer; and Mariano C. Tiu, its Vice-President for Money Market Department and Branch Operation, and *ex-officio* member of its Executive Committee. (CA Decision, CA *rollo*, p. 210.)

[4] Docketed as Civil Case No. Q-98-35546.

[5] Resolution dated October 13, 1998, CA *rollo*, pp. 39-41.

[6] As mentioned in the Order dated February 26, 2007, CA *rollo*, pp. 33-36.

[7] *Id*.

[8] CA *rollo*, pp. 46-56.

of the award for moral and exemplary damages, as well as attorney's fees.

Subsequently, on December 18, 2002, Compromise Agreements were entered into among the parties in Civil Case No. Q-98-35546 before the RTC and between the Spouses Valdez and respondent Financiera in a case[9] pending before Branch 90, RTC of Quezon City. The said Compromise Agreements were approved by the courts concerned.[10] The Compromise Agreement[11] in Civil Case No. Q-98-35546 reads, among others:

1. For valuable consideration paid by defendant FINANCIERA Manila, Inc. (hereinafter called FINANCIERA, for short) to the plaintiffs, receipt of which is hereby acknowledged by the plaintiffs to their entire satisfaction, the plaintiffs have dropped, dismissed and withdrawn, as they hereby drop, dismiss and withdraw, their complaint in the above-entitled case, in favor of all the defendants, and they hereby acknowledge that they have no more claims, demands, complaint, or causes of action of any kind whatsoever against said defendants, their successors-in-interest and assigns, arising from or connected with any of the transaction or transactions that gave rise to plaintiffs' complaint, or anything else whatsoever.

2. With the dropping, dismissal and withdrawal of plaintiffs' complaint, plaintiffs have agreed, as they hereby agree to the lifting, cancellation and dissolution of the Writ of Preliminary Attachment issued by this Honorable Court dated October 13, 1998 by virtue of which plaintiffs had levied on/garnished/attached FINANCIERA's certain real and personal properties.

2.1 The notices of levy which the plaintiffs had caused to be annotated on the following real properties of FINANCIERA by virtue of said Writ shall be, as same hereby, lifted and cancelled, to wit:

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[9] Civil Case No. Q-00-40877.

[10] The Compromise Agreement in Civil Case No. Q-98-35546 was approved in the Order dated May 3, 2004 (CA *rollo*, p. 59), while the Compromise Agreement in Civil Case No. Q-00-40877 was approved in an Order dated January 16, 2003, as mentioned in CA Decision dated March 18, 2008. (CA *rollo*, p. 210.)

[11] CA *rollo*, pp. 59-62.

a) A parcel of land in Manila City, covered by TCT No. 235055 of the Register of Deeds of Manila City;

b) A parcel of land in Manila City, covered by TCT No. 235056 of the Register of Deeds of Manila City;

c) A parcel of land in Tagaytay City, covered by TCT No. T-36316 of the Register of Deeds of Tagaytay City; and

d) A parcel of land in Tagaytay City, covered by TCT No. T-36317 of the Register of Deeds of Tagaytay City.

2.2 The notices of garnishment which the plaintiffs had caused to be annotated/registered, likewise by virtue of said Writ, on the thirty (30) investment accounts of FINANCIERA with the SCHOLARSHIP PLAN PHILIPPINES, INC. (SPPI) under Account Nos. A-04-000-324 to A-04-000-330, Nos. A-04-000-332 to A-04-000-338 and Nos. A-04-000-340 to A-04-000-355, all of which had already matured with a total cash value of ₱3,160,000.00 are likewise canceled and lifted, to be disposed of by FINANCIERA in the following manner:

a) The investment under Account No. A-04-000-355 with a cash value of ₱110,000.00 is hereby assigned and conveyed to FINANCIERA in favor of the plaintiffs to form part of the above-mentioned valuable consideration paid hereunder by FINANCIERA to the plaintiffs.

b) The rest of the investment accounts with a total cash value of ₱3,050,000.00 are hereby assigned and conveyed by FINANCIERA in favor of the spouses SIMEON VALDEZ and LYDIA VALDEZ, as part of the valuable consideration to be paid to them by FINANCIERA in another civil case, entitled "*The spouses Simeon Valdez and Lydia Valdez, plaintiffs, versus Financiera Manila, Inc., defendant*", docketed as Civil Case No. Q-00-40877 of the Regional Trial Court of Quezon City, Branch 90, which civil case the said spouses have likewise agreed to amicably settle with FINANCIERA simultaneously with the execution of this Compromise Agreement.

3. Upon the execution of this Compromise Agreement, plaintiffs shall return and deliver to Financiera the originals of the following evidence of indebtedness subject matter of the complaint, consisting of Placement Advice Certificates and checks drawn on the

Metropolitan Bank and Trust Company (Metrobank) previously issued by Fianciera (sic) to the plaintiffs, x x x

x x x x x x x x x

4. This Compromise Agreement shall be a full and final settlement of all the claims and counterclaims filed by or against the parties in this case, or any of them, and specifically it shall be a full and complete satisfaction of the judgment rendered by this Honorable Court in favor of the plaintiffs as modified by the Court of Appeals in CA-G.R. CV No. 68286.

5. Plaintiffs hereby agree and bind themselves to sign, execute and deliver any and all other deeds, papers and documents, and to do and perform any and all other acts and things, that may be necessary or required to fully implement this Compromise Agreement, particularly the discharge and release of the levy/garnishment/ attachment on defendant's aforesaid investments with the Bonifacio Land Corporation and the payment to the defendant by the latter of the cash value of said investments.

Respondent Financiera delivered to the plaintiffs therein Certificates of Payments and Passbooks covering its SPPI Investments under Account Nos. A-04-000324 to A-04-000330, A-04-000332 to A-04-000346, A-04-000347 to A-04-000354 and A-04-000355. On February 11, 2003, Hon. Reynaldo B. Daway of Branch 90 issued a Writ of Execution in Civil Case No. Q-00-40877 directing the transfer of the 29 SPPI Investments mentioned in the Compromise Agreement to the Spouses Valdez. The writ was served on SPPI on February 17, 2003, the same day the Spouses Valdez presented to SPPI the above Certificates and Passbooks.[12] On May 28, 2003, the SPPI Investments under Account Nos. A-04-000324 to A-04-000330, A-04-000332 to A-04-000338, and A-04-000340 to A-04-000354 were transferred in favor of petitioner Valdez and spouse, in accordance with the writ.[13]

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[12] Contained in SPPI's Manifestation (Re: Motion for Contempt) in Civil Case No. Q-00-40877, as mentioned in CA Decision dated March 18, 2008, CA *rollo*, p. 211.

[13] As shown in the Certification dated May 28, 2003 issued by SPPI, CA *rollo*, p. 64.

A consolidation[14] of Civil Cases No. Q-98-35546 and Q-00-40877 was eventually made and assigned to the RTC of Quezon City, Branch 227. The plaintiffs in those cases filed a motion for the rescission of the Compromise Agreement in Civil Case No. Q-98-35546 on the ground that no payment was expected from respondent Financiera. The motion was denied by the court in an Order[15] dated January 12, 2005, including the subsequent motion for the issuance of a writ of execution against respondent Financiera's SPPI Investments of ₱3,160,000.00, which Order attained finality.[16]

Respondent Financiera filed an Urgent Motion for Execution[17] dated November 13, 2006 of the Compromise Agreement in Civil Case No. Q-98-35546, on the argument that, having conveyed and transferred its SPPI Investments to the plaintiffs concerned, the notices of levy annotated on TCT Nos. T-36316 and T-36317 could now be canceled. Petitioner Valdez, on the other hand, filed a motion for the execution of the Decision dated May 22, 2000 of RTC, Branch 227 as modified by the CA because he and the other plaintiffs had not received the cash value of the assigned SPPI Investments, particularly Account No. A-04-000355. The RTC of Quezon City, Branch 227 denied respondent Financiera's urgent motion and granted petitioner Valdez' motion for execution in the assailed Order dated February 26, 2007, ruling that it was the duty and obligation of Financiera to see to it that plaintiffs were fully paid their claim.[18] Consequently, the same court directed the issuance of a writ of execution for the enforcement of the final and executory decision as affirmed with modification by the CA. The writ was for the

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[14] As mentioned in petitioner's Comment dated September 21, 2007, CA *rollo*, p. 110.

[15] CA *rollo*, pp. 65-66.

[16] Per CA Resolutions dated April 11, 2005 and June 15, 2005 in CA-G.R. SP No. 89049, CA *rollo*, pp. 68-69 and 71-72, respectively, and SC Resolution dated July 27, 2005 in G.R. No. 168547, CA *rollo*, p. 73.

[17] CA *rollo*, pp. 76-82.

[18] *Id.* at 35.

payment of the sum of ₱4,069,439.90 to the plaintiffs as actual damages.[19]

Thereafter, respondent Financiera filed its Motion for Reconsideration,[20] which was eventually denied,[21] prompting it to file a petition for *certiorari*[22] with the CA on the ground that the RTC had committed grave abuse of discretion amounting to lack of or excess of jurisdiction in issuing the Orders dated February 26, 2007 and June 18, 2007.

The CA, in its Decision[23] dated March 18, 2008, ruled that the RTC gravely abused its discretion in varying the terms and conditions of the Compromise Agreement by ruling that it was the duty and obligation of respondent Financiera to see to it that plaintiffs were fully paid their claim, the same not having been expressly undertaken by petitioner under the Compromise Agreement. The dispositive portion of the Decision reads:

> WHEREFORE, the instant petition is PARTLY GRANTED. The assailed Orders dated February 26, 2007 and June 18, 2007 of Branch 227, RTC of QC in Civil Case No. Q-98-35546 are SET ASIDE, only with respect to Sps. Valdez' interest. The court *a quo* is hereby ordered to issue a writ of execution directing the Register of Deeds of Tagaytay City to lift and/or cancel the notices of levy on attachment annotated on TCT Nos. T-36316 and T-36317 with respect only to the ₱3,920,313.24 interest of the Sps. Valdez.
>
> SO ORDERED.

In a Resolution[24] dated June 6, 2009, the CA denied the motion for reconsideration[25] of petitioner Valdez; hence, the latter now resorts to the present petition and ascribes to the CA the following errors:

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[19] *Id.* at 36.

[20] *Id.* at 83-97.

[21] Order dated June 18, 2007, *id.* at 37-38.

[22] CA *rollo*, pp. 2-31.

[23] *Id.* at 209-215.

[24] *Id.* at 240.

[25] *Id.* at 219-22.

4.1 THE COURT OF APPEALS HAS NO JURISDICTION OVER THE PETITION FOR *CERTIORARI* FILED BY RESPONDENT.

4.2 THE QUESTIONED DECISION IS UTTERLY ILLOGICAL AND INCONCLUSIVE (sic) DONE IN VIOLATION OF SEC. 14, ART. VIII OF THE CONSTITUTION, AND SEC. 1, RULE 36 OF THE RULES OF COURT.

4.3 RESPONDENT'S ASSIGNMENT OF ITS SPPI INVESTMENT FAILED TO EXTINGUISH ITS OBLIGATION TO PAY PETITIONER UNDER OUR LAW AND JURISPRUDENCE.

4.4 THE COURT OF APPEALS HAS NO JURISDICTION TO LIFT THE ATTACHMENTS WHILE PETITIONER'S CLAIMS REMAIN UNPAID.

4.5 THE GROUNDS RELIED UPON BY PETITIONER FOR THE ALLOWANCE OF THIS PETITION INVOLVE PURELY QUESTIONS OF LAW.

In questioning the jurisdiction of the CA over the petition for *certiorari* filed by respondent Financiera, petitioner Valdez claims the following: (a) as jurisprudence[26] dictates, the proper remedy of the same respondent should have been to file an appeal, because it was the motion for execution of judgment that was denied; (b) the petition for *certiorari* was filed out of time, because respondent Financiera received the RTC Order of June 18, 2007 denying the latter's motion for reconsideration on June 29, 2007, but instead of filing a notice of appeal within the reglementary period lasting until July 14, 2007, respondent Financiera belatedly filed a petition for *certiorari* on August 28, 2007 when the questioned RTC Orders had already attained finality; (c) the final RTC Orders should not have been modified because, as ruled by this Court in a number of cases,[27] the said Orders are immutable and unalterable and may no longer be modified in any respect, even if the modification was meant to correct erroneous conclusions of fact and law, and whether it was made by the court

[26] Syllabus in *Socorro v. Ortiz*, G.R. No. L-23608, December 24, 1964, 12 SCRA 641; and *Shugo Noda & Co., Ltd. v. Court of Appeals*, G.R. No. 107404, March 30, 1994, 231 SCRA 620.

[27] *Jacobus Bernhard Hulst v. PR Builders, Inc.*, G.R. No. 156364, September 3, 2007, 532 SCRA 74, 95, citing *Peña v. Government Service*

that rendered it or by the highest court of the land; and (d) the subject matter of the petition for *certiorari* should not have been expanded, since the only subject matter elevated by respondent Financiera was that of SPPI Investment Account No. A-04-000-355 with a cash value of ₱110,000.00, and not the entire ₱10,195,833.33 unpaid claim under the Compromise Agreement, contrary to the pronouncement of this Court in various cases[28] that the nature of an action, as well as which court or body has jurisdiction over it, is determined based on the material allegations contained in the petition.

Petitioner Valdez claims that the decision of the CA was utterly illogical and inconclusive and done in violation of Section 14, Article VIII of the Constitution;[29] and Section 1, Rule 36 of the Rules of Court.[30] He states that respondent Financiera was cleared of all its obligations, except the debts due to his co-plaintiffs on the mere reasoning that the said co-plaintiffs were not impleaded as party-respondents in the petition for *certiorari*, and that they cannot be deprived of security for the satisfaction of their credits. Petitioner further states that, in so doing, the CA, in effect, actually upheld that respondent had not paid all the plaintiffs in Civil Case No. Q-98-35546, in which herein petitioner is one of the plaintiffs. He further argues that the questioned decision becomes more chaotic with the statement that the unpaid obligation due to his co-plaintiffs is ₱149,126.66, the sum adjudged under the summary judgment.

Insurance System (GSIS), 502 SCRA 383, 404 (2006); *Siy v. National Labor Relations Commission*, 468 SCRA 154, 161-162 (2005); *Sacdalan v. Court of Appeals*, 428 SCRA 586, 599 (2004).

[28] *Trans Middle East (Phils.) v. Sandiganbayan*, G.R. No. 172556, June 9, 2006, 490 SCRA 455. See *Guiang v. Co*, G.R. No. 146996, July 30, 2004, 435 SCRA 556, 561-562; *Intestate Estate of Alexander Ty v. Court of Appeals*, G.R. Nos. 112872 & 114672, April 19, 2001, 356 SCRA 661, 666.

[29] Sec. 14, Art. VIII of the Constitution provides: "No decision shall be rendered by any court without expressing clearly and distinctly the facts and the law on which it is based."

[30] Sec. 1, Rule 36 of the Rules of Court requires that "A judgment or final order determining the merits of the case shall be in writing, personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of court."

This statement is clearly in conflict with the compromise judgment that they are entitled only to the cash value of ₱110,000.00 of SPPI Account No. A-04-000-355. Petitioner goes on to add that the decision indeed become topsy-turvy when it declared that the attachment shall be lifted to the extent of the interest of the Spouses Valdez in the amount of ₱3,920,313.24, the original claim upheld under the summary judgment, again in conflict with the ₱3,050,000.00 under the Compromise Agreement. The questioned decision became increasingly damaging by declaring in its *fallo* that petitioner's interest was in the sum of ₱3,920,313.24. The general rule is that where there is conflict between the dispositive portion or the *fallo* and the body of the decision, the *fallo* controls. This rule rests on the theory that the *fallo* is the final order, while the opinion in the body is merely a statement ordering nothing.[31]

In arguing that respondent Financiera's assignment of its SPPI Investment failed to extinguish its obligation to pay, petitioner Valdez cites Article 1249 of the New Civil Code and *Cebu International Finance Corp. v. Court of Appeals*.[32] Furthermore, he posits that the assignment of SPPI Investments by respondent Financiera did not extinguish its obligation, because he was left with no remedy against SPPI, which was not a signatory to the Compromise Agreement, and because respondent Financiera breached its warranty that the said investments had matured with cash value when in fact they had not.

Finally, in stating that the CA has no jurisdiction to lift the attachments while the money claims remain unpaid, petitioner Valdez relied on the ruling of this Court in *Sonny Lo v. KJS Eco-Formwork System Phil., Inc*.[33]

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[31] *Mt. Carmel College v. Resuena*, G.R. No. 173076, October 10, 2007, 535 SCRA 518, 539, citing *Poliand Industrial Limited v. National Development Company*, 467 SCRA 500, 550 (2005); *Mendoza, Jr. v. San Miguel, Inc.*, 458 SCRA 664, 676-677.

[32] G.R. No. 123031, October 12, 1999, 316 SCRA 488.

[33] G.R. No. 149420, October 8, 2003, 413 SCRA 182.

Respondent Financiera, in its Comment[34] dated November 7, 2008, opposed the grounds set forth by petitioner Valdez in the instant petition by enumerating the following grounds:

I.

FINANCIERA CORRECTLY FILED A PETITION FOR *CERTIORARI* BEFORE THE COURT OF APPEALS TO ASSAIL THE ORDERS OF THE COURT *A QUO* DIRECTING THE EXECUTION OF A COURT DECISION WHICH HAD BEEN SUPPLANTED AND COMPLETELY SATISFIED BY THE PARTIES THROUGH THE EXECUTION OF A COURT-APPROVED COMPROMISE AGREEMENT.

II.

THE COURT OF APPEALS CORRECTLY RULED THAT:

A. THE COURT *A QUO* GRAVELY ABUSED ITS DISCRETION IN VARYING THE TERMS AND CONDITIONS OF THE PARTIES' COMPROMISE AGREEMENT;

B. THE PARTIES' COURT-APPROVED COMPROMISE AGREEMENT IS VALID AND MUST BE ENFORCED IN ACCORDANCE WITH THE TERMS THEREOF; AND,

C. FINANCIERA HAD PERFORMED ITS OBLIGATIONS UNDER THE COURT-APPROVED COMPROMISE AGREEMENT AND IS NOW ENTITLED TO THE LIFTING OF THE LEVY ON ATTACHMENT ON ITS REAL PROPERTIES, PARTICULARLY T.C.T. NOS. T-36316 AND T-36317.

According to respondent Financiera, it filed a petition for *certiorari* before the CA because the enforcement of the court *a quo*'s February 26, 2007 and June 18, 2007 Orders rendered nugatory the force and effect of the parties' court-approved Compromise Agreement. Respondent adds that the enforcement of the same Orders would cause irreparable injury as it was directed to pay petitioner Valdez and others the sum of ₱4,069,439.90, when it had already assigned and transferred to them its SPPI investment accounts pursuant to the parties' court-approved Compromise Agreement.

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[34] *Rollo,* pp. 182-203.

In stating that the CA did not commit grave abuse of discretion, respondent Financiera reasons that the CA was correct in ruling that it was the RTC that committed grave abuse of its discretion in varying the terms and conditions of the parties' Compromise Agreement, which was already valid and enforceable in accordance with the terms thereof, and respondent had already performed its obligations under the same agreement.

The petition is meritorious.

One of the issues raised by petitioner Valdez is jurisdiction. According to him, the CA had no jurisdiction over respondent Financiera's petition for *certiorari.* The proper remedy was an appeal, as the case had proceeded from a denial of a motion for execution of a judgment. Under Rule 41 of the Rules of Court, an appeal can be resorted to when:

SECTION 1. *Subject of Appeal.* — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

(a) An order denying a motion for new trial or reconsideration;

(b) An order denying a petition for relief or any similar motion seeking relief from judgment;

(c) An interlocutory order;

(d) An order disallowing or dismissing an appeal;

(e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;

(f) An order of execution;

(g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and

(h) An order dismissing an action without prejudice.

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

In connection therewith, this Court has ruled[35] that *certiorari* is not the proper substitute for a lost appeal. However, it admits of several exceptions, thus:

Doctrinally entrenched is the general rule that *certiorari* is not a substitute for a lost appeal. However, Justice Florenz D. Regalado lists several exceptions to this rule, *viz.*: "(1) where the appeal does not constitute a speedy and adequate remedy (*Salvadades vs. Pajarillo, et al.*, 78 Phil. 77*),* as where 33 appeals were involved from orders issued in a single proceeding which will inevitably result in a proliferation of more appeals (*PCIB vs. Escolin, et al.*, L-27860 and L-27896, Mar. 29, 1974); (2) where the orders were also issued either in excess of or without jurisdiction (*Aguilar vs. Tan,* L-23600, June 30, 1970, *Cf. Bautista, et al. vs. Sarmiento, et al.*, L-45137, Sept. 23,1985); (3) for certain special consideration, as public welfare or public policy (See *Jose vs. Zulueta, et al.*, L-16598, May 31, 1961 and the cases cited therein); (4) where in criminal actions, the court rejects rebuttal evidence for the prosecution as, in case of acquittal, there could be no remedy (*People vs. Abalos,* L-29039, Nov. 28, 1968); (5) where the order is a patent nullity (*Marcelo vs. De Guzman, et al.*, L-29077, June 29, 1982); and (6) where the decision in the *certiorari* case will avoid future litigations (*St. Peter Memorial Park, Inc. vs. Campos, et al.*, L-38280, Mar. 21, 1975)."[36] Even in a case where the remedy of appeal was lost, the Court has issued the writ of *certiorari* where the lower court patently acted in excess of or outside its jurisdiction,[37] as in the present case.

A petition for *certiorari* under Rule 65 of the Rules of Court is appropriate and allowable when the following requisites concur: (1) the writ is directed against a tribunal, board or officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse

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[35] *Argana v. Republic,* G.R. No. 147227, November 19, 2004, 443 SCRA 184.

[36] Remedial Law Compendium, Vol. 1, p. 708 (1997).

[37] *Philippine National Bank v. Florendo,* G.R. No. 62082, February 26, 1992, 206 SCRA 582, 589. See also *Heirs of Mayor Nemencio Galvez v. Court of Appeals,* G.R. No. 119193, March 29, 1996, 255 SCRA 672, 689.

of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[38]

From the above provisions of the pertinent laws, it is apparent that a denial of a motion for the execution of judgment is appealable under Section 1, Rule 41 of the Rules of Court. Respondent Financiera justifies the mode of appeal it resorted to by stating that the enforcement of the court *a quo*'s Orders dated February 26, 2007 and June 18, 2007, respectively, rendered nugatory the force and effect of the parties' court-approved Compromise Agreement; therefore, there was a need to file a petition for *certiorari*. However, a close reading of the petition filed by respondent Financiera with the CA clearly shows that what it sought to be nullified and set aside were the Order of the RTC dated February 26, 2007 denying respondent's motion for the enforcement of the Compromise Agreement dated December 18, 2002, and granting petitioner Valdez' motion for execution of the Decision dated May 22, 2000 as modified by the CA; and the Order of the RTC dated June 18, 2007 denying respondent's motion for reconsideration of the earlier mentioned Order. Thus, by reason of the prayer in the petition for *certiorari*, the subject of the same petition was inappropriate, if not inapplicable. Rule 65 of the Rules of Court reads:

> SECTION 1. *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

Considering that an appeal was still available as a remedy for the assailed Orders of the RTC, and that the case did not

[38] Rules of Court, Rule 65, Sec. 1. *Sanchez v. Court of Appeals*, 345 Phil. 155, 178-179 (1997). See *Cochingyan, Jr. v. Cloribel*, G.R. Nos. L-27070-71, April 22, 1977, 76 SCRA 361, 385.

fall within the exceptions, the filing of the petition for *certiorari* was an attempted substitute for an appeal, after respondent failed to avail itself of the latter remedy. Necessarily, it must be noted that the petition for *certiorari* was filed on August 28, 2007 when the questioned RTC Orders had already attained finality. The Order became final when respondent Financiera received the RTC Order of June 18, 2007 denying the former's motion for reconsideration on June 29, 2007. Instead of filing a notice of appeal within the reglementary period lasting until July 14, 2007, respondent filed a petition for *certiorari*, way beyond the reglementary period. Hence, the CA had no jurisdiction to decide the said petition for *certiorari*.

Having ruled on the jurisdiction of CA, this Court shall now proceed to the merits of the case.

Was the RTC correct in denying respondent Financiera's motion for the enforcement of the Compromise Agreement and in granting petitioner Valdez' motion for execution of the trial court's decision?

This Court rules in the affirmative.

In a case[39]decided by this Court, it was held that:

Compromise agreements are contracts, whereby the parties undertake reciprocal obligations to resolve their differences,[40] thus, avoiding litigation,[41] or put an end to one already commenced.[42]

It is a cardinal rule in contract interpretation that the ascertainment of the intention of the contracting parties is to be discharged by looking to the words they used to project that intention in their

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[39] *Alonzo v. Sps. Jaime and Perlita San Juan*, G.R. No. 137549, February 11, 2005, 451 SCRA 45.

[40] *Regal Films, Inc. v. Concepcion*, 414 Phil. 807, 812 (2001).

[41] *Mactan-Cebu International Airport Authority (MCIAA) v. Court of Appeals*, G.R. No. 139495, November 27, 2000, 346 SCRA 126.

[42] *Sanchez v. Court of Appeals*, G.R. No. 108947, September 29, 1997, 279 SCRA 647, cited in *San Antonio v. Court of Appeals*, 371 SCRA 536 (2001).

contract, that is, all the words, not just a particular word or two, and words in context, not words standing alone.[43]

Article 1374 of the Civil Code requires that the various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly.[44]

It is clear from the above ruling that the substance of a compromise agreement can be inferred from a careful perusal of all the stipulations in their entirety and all the words used, as they are connected with one another.

The Compromise Agreement entered into by petitioner Valdez and the other plaintiffs and respondent Financiera was for a valuable consideration paid by the latter in order for the former to drop, dismiss and withdraw their complaint; and to acknowledge that they had no more claims, demands, complaints, or causes of action of any kind whatsoever against said respondent. By dropping, dismissing and withdrawing their complaint, petitioner Valdez and the other plaintiffs agreed to the lifting, cancellation and dissolution of the Writ of Preliminary Attachment issued by the RTC dated October 13, 1998, by virtue of which they had levied on, garnished and attached certain real and personal properties of respondent Financiera. The stipulations of the Compromise Agreement read as follows:

2.1 The notices of levy which the plaintiffs had caused to be annotated on the following real properties of FINANCIERA by virtue of said Writ shall be, as same are hereby, lifted and cancelled, to wit:

a) A parcel of land in Manila City, covered by TCT No. 235055 of the Register of Deeds of Manila City;

b) A parcel of land in Manila City, covered by TCT No. 235056 of the Register of Deeds of Manila City;

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[43] *Limson v. Court of Appeals*, G.R. No. 135929, April 20, 2001, 357 SCRA 209; *China Banking Corporation v. Court of Appeals*, G.R. No. 121158, December 5, 1996, 265 SCRA 327.

[44] *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79.

c) A parcel of land in Tagaytay City, covered by TCT No. T-36316 of the Register of Deeds of Tagaytay City; and

d) A parcel of land in Tagaytay City, covered by TCT No. T-36317 of the Register of Deeds of Tagaytay City.

2.2 The notices of garnishment which the plaintiffs had caused to be annotated/registered, likewise by virtue of said Writ, on the thirty (30) investment accounts of FINANCIERA with the SCHOLARSHIP PLAN PHILIPPINES, INC. (SPPI) under Account Nos. A-04-000-324 to A-04-000-330, Nos. A-04-000-332 to A-04-000-338 and Nos. A-04-000-340 to A-04-000-355, **all of which had already matured** (emphasis ours) with a total cash value of ₱3,160,000.00 are likewise canceled and lifted, to be disposed of by FINANCIERA in the following manner:

a) The investment under Account No. A-04-000-355 with a cash value of ₱110,000.00 is hereby assigned and conveyed by FINANCIERA in favor of the plaintiffs to form part of the above-mentioned valuable consideration paid hereunder by FINANCIERA to the plaintiffs.

b) The rest of the investment, accounts with a total cash value of ₱3,050,000.00 are hereby assigned and conveyed by FINANCIERA in favor of the spouses SIMEON VALDEZ and LYDIA VALDEZ, as part of the valuable consideration to be paid to them by FINANCIERA in another civil case, entitled "*The spouses Simeon Valdez and Lydia Valdez, plaintiffs, versus Financiera Manila, Inc., defendant*", docketed as Civil Case No. Q-00-40877 of the Regional Trial Court of Quezon City, Branch 90, which civil case the said spouses have likewise agreed to amicably settle with FINANCIERA simultaneously with the execution of this Compromise Agreement.

The above stipulations state in detail the properties whose attachments were sought to be lifted and canceled. Of particular importance is the assignment and conveyance of the 30 investment accounts of respondent Financiera with SPPI with a total cash value, as stated in the Compromise Agreement, of ₱3,160,000.00, because these accounts formed part of the valuable consideration paid by respondent to petitioner and the other plaintiffs. There is no dispute that the said investment accounts with SPPI were eventually assigned by respondent Financiera. The problem lies

in whether there was full compliance with the said stipulation in the Compromise Agreement.

The stipulation states categorically that the 30 investment accounts of respondent Financiera with SPPI had already matured. However, the cash value of the said investment accounts were never given because SPPI, not being a party to the Compromise Agreement, could not be compelled to pay respondent Financiera's unpaid obligation to petitioner Valdez. The only legal effect of the non-inclusion of a party in a compromise agreement is that said party cannot be bound by the terms of the agreement.[45] Thus, the valuable consideration referred to by respondent Financiera in the Compromise Agreement has yet to be fulfilled. The very essence of the stipulation, as gleaned from the literal, as well as the implied, meaning of the words contained therein is the eventual payment of petitioner Valdez' claim. As ruled[46] by this Court, in a compromise agreement, the literal meaning of its stipulations must control.[47] It "must be strictly interpreted and x x x understood as including only matters specifically determined therein or which, by necessary inference from its wording, must be deemed included."[48] Therefore, the non-maturity of the 30 investment accounts of respondent Financiera with SPPI makes the Compromise Agreement unenforceable. In *Abinujar v. Court of Appeals*,[49] as cited in *Alonzo, et al. v. Jaime and Perlita San Juan*,[50] this Court even went further and declared that the non-fulfillment of the terms and conditions of a compromise agreement approved by the court justifies

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[45] *Domingo Realty, Inc. v. Court of Appeals*, G.R. No. 126236, January 26, 2007, 513 SCRA 40, 61.

[46] *Manila International Airport Authority (MIAA) v. ALA Industries Corp.*, 467 Phil. 229 (2004).

[47] *Inter-Asia Services Corp. (Int'l.) v. CA Special Fifteenth Division*, 331 Phil. 708, 718-719 (1996).

[48] Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. V, p. 491 (1992).

[49] G.R. No. 104133, April 18, 1995, 243 SCRA 531, 535, citing *Maceda, Jr. v. Moreman Builders Co., Inc.*, 203 SCRA 293 (1991).

[50] *Supra*.

execution thereof, and the issuance of a writ for the said purpose is the court's ministerial duty enforceable by *mandamus*. In this particular case, since the Compromise Agreement's enforceability depends on the maturity of the subject SPPI shares, the RTC could not compel SPPI to deliver the cash value of the said investment accounts, simply because the latter was not a party to the Compromise Agreement. Hence, the RTC did not commit any grave abuse of discretion amounting to lack of or excess of jurisdiction when it granted petitioner Valdez' motion for execution in its Decision dated May 22, 2000.

In short, as the stipulations in the Compromise Agreement remain unfulfilled, respondent Financiera is still obligated to pay its original indebtedness.

WHEREFORE, the Petition is *GRANTED*. The Decision dated March 18, 2008 of the Court of Appeals in CA-G.R. SP No. 100316 is hereby *NULLIFIED* and *SET ASIDE*. The Orders of the Regional Trial Court of Quezon City, Branch 227, dated February 26, 2007 and June 18, 2007, are hereby *REINSTATED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 184037. September 29, 2009]

ANTONIO LOPEZ *y* DELA CRUZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; SPECIAL OFFENSES; DANGEROUS DRUGS ACT; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS. — In illegal possession of dangerous drugs, the elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.

2. REMEDIAL LAW; EVIDENCE; VIOLATION OF DANGEROUS DRUGS ACT; CHAIN OF CUSTODY REQUIREMENT; ENSURES THAT THE DANGEROUS DRUG PRESENTED IN COURT AS EVIDENCE AGAINST THE ACCUSED IS THE SAME AS THAT SEIZED FROM HIM IN THE FIRST PLACE. — Given the factual milieu of this case, we find our ruling in *Guido Catuiran y Necudemus v. People of the Philippines* instructive: We begin with the precept that in criminal prosecutions, fundamental is the requirement that the elemental acts constituting the offense be established with moral certainty as this is the critical and only requisite to a finding of guilt. In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt. Of prime importance therefore in these cases is that the identity of the dangerous drug be likewise established beyond reasonable doubt. In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place. 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.; ID.; ID.; ID.; FAILURE TO MARK THE PROHIBITED DRUG SEIZED IN THE PRESENCE OF ACCUSED CASTS DOUBT ON THE IDENTITY OF THE *CORPUS DELICTI*; CASE AT BAR. — In this case, PO2 Atienza himself testified that he confiscated the prohibited drug and brought it to his office. He then prepared the request and only then — in the office — did he place his initials "APA" on the plastic sachet. The prosecution also failed to establish that petitioner was present when PO2 Atienza marked the said plastic sachet. These

shortcomings militate against the prosecution's case. In the similar case of *Ronald Carino and Rosana Andes v. People of the Philippines,* this Court emphasized the requirement of law that the prohibited drug seized be marked in the presence of the accused. Such flaw not only casts doubt on the identity of the *corpus delicti* but also tends to negate, if not totally discredit, the claim of regularity in the conduct of official police operation. All told, the identity of the *corpus delicti* in this case was not proven beyond reasonable doubt.

4. ID.; ID.; PRESUMPTIONS; REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; NOT APPLICABLE WHEN THE POLICE OFFICERS FAILED TO COMPLY WITH THE STANDARD PROCEDURE PRESCRIBED BY LAW; CASE AT BAR. — The courts below heavily relied on the testimony of PO2 Atienza and, in the same way, banked on the presumption of regularity. It bears stressing that this presumption only arises in the absence of contradicting details that would raise doubts on the regularity in the performance of official duties. Where, as in this case, the police officers failed to comply with the standard procedure prescribed by law, there is no occasion to apply the presumption.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Civil Procedure seeking the reversal of the Court of Appeals (CA) Decision[2] dated January 31, 2008,

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[1] *Rollo,* pp. 9-28.

[2] Particularly docketed as CA-G.R. CR. No. 30492, penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Lucas P. Bersamin (now a member of this Court) and Estela M. Perlas-Bernabe, concurring; *id.* at 68-78.

which affirmed the Decision[3] of the Regional Trial Court (RTC) of Mandaluyong City, Branch 214, dated July 21, 2006, convicting petitioner Antonio Lopez *y* dela Cruz (petitioner) of the crime of Illegal Possession of Drugs.

Petitioner was charged in an Information,[4] dated April 24, 2003, that reads:

> That on or about the 23rd day of April 2003, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) heat-sealed transparent plastic sachet containing 0.10 gram of white crystalline substance, found positive to the test for Methamphetamine Hydrochloride commonly known as "*shabu*," a dangerous drug.
>
> CONTRARY TO LAW.

The prosecution, through the testimony of arresting officer, Police Officer 2 Apolinario Atienza (PO2 Atienza), a member of Task Force *Mapalakas* of the Mandaluyong City Police Station, established that on April 23, 2003 at about 3:00 a.m., while conducting a routinary foot patrol along Pantaleon Street, *Barangay* Hulo, Mandaluyong City, PO2 Atienza saw petitioner at a distance of seven (7) meters walking in his direction; that, as the place was well-lit, he saw petitioner, walking with head bowed, looking at his hand, which held a plastic sachet containing a crystalline substance; and that he approached petitioner, held the latter's hand and asked, "*Ano yan*?" but petitioner did not answer. Thereafter, PO2 Atienza introduced himself to petitioner as a member of the Mandaluyong police, arrested him, and informed him of his constitutional rights to remain silent and to counsel. He then brought petitioner to the Mandaluyong Medical Center for a check-up. He also confiscated the plastic sachet and brought it to the police station. He prepared a request and

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[3] CA *rollo*, pp. 12-14.

[4] Records, pp. 1-2.

then placed the markings "APA" — his initials — on the plastic sachet.[5]

Chemistry Report No. D-737-03E[6] prepared by Police Senior Inspector and Forensic Chemical Officer Annalee R. Forro, whose testimony was made subject of stipulation by both parties,[7] revealed the following results:

SPECIMEN SUBMITTED:

A – One (1) heat-sealed transparent plastic sachet with markings "APA" containing 0.10 gram of white crystalline substance.

x x x x x x x x x

FINDINGS:

Qualitative examination conducted on the above-stated specimen gave **POSITIVE** result to the tests for Methamphetamine Hydrochloride, a dangerous drug.

CONCLUSION:

Specimen A contains **Methamphetamine Hydrochloride**, a dangerous drug.

The testimony of PO1 Julius B. Bacero (PO1 Bacero), companion of PO2 Atienza, was also dispensed with, as both the prosecution and the defense stipulated on the following: a) that he was a member of the Philippine National Police (PNP) assigned to the Mandaluyong City Police Force; b) that he was one of the members of the buy-bust team as backup, which operated against petitioner on April 23, 2003 along Pantaleon St., *Barangay* Hulo, Mandaluyong City; c) that as a back-up, his duty was only to secure the premises; and d) that he had no personal knowledge as to the circumstances surrounding the arrest of petitioner, as the former only saw the latter when he was already being brought by PO2 Atienza to their vehicle.[8]

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[5] TSN, February 24, 2004, pp. 2-9.

[6] Records, p. 15.

[7] *Id.* at 65.

[8] *Id.* at 179.

The testimony of Senior Police Officer 1 Jaime Masilang — who took the statement of the arresting officers, prepared and forwarded the referral letter, the arrest report, the affidavit of arrest, and the request for a drug test to the Prosecution Office, and put the markings on the evidence recovered — also became the subject of stipulation.[9]

As sole witness for the defense, petitioner testified that, on April 23, 2003 at around 2:00 to 3:00 a.m., he went to a bakery about 30 meters away from his house in *Barangay* Hulo to buy *pandesal*. Suddenly, two vehicles stopped in front of him. PO2 Atienza and his companion, PO1 Bacero, alighted from the vehicle and frisked him. When PO2 Atienza found nothing in his possession, the two police officers pushed him inside their vehicle and handcuffed him. He was then brought to the office of one Major Kalag. Petitioner insisted that he was framed and that the *shabu* was taken by PO2 Atienza from the drawer of the table of Major Kalag. Afterwards, he was detained at the Criminal Investigation Division and charged with illegal possession of *shabu*. On cross-examination, petitioner testified that, prior to his arrest, he did not know Major Kalag or PO2 Atienza, or the two had any ill motive against him.[10]

On July 21, 2006, the RTC rendered a Decision finding petitioner guilty of the crime of illegal possession of drugs. The RTC gave credit to the positive testimony of PO2 Atienza, who was able to recall the incident vividly and to identify the evidence in open court. The RTC held that the acts of PO2 Atienza enjoyed the presumption of regularity in the performance of his official duty. Thus, the RTC disposed of the case in this wise:

> WHEREFORE, the prosecution having successfully established the guilt of the accused beyond reasonable doubt[,] he is hereby sentenced to suffer the penalty of imprisonment of **TWELVE (12) YEARS AND ONE (1) DAY** and to pay a fine of **Three Hundred Thousand Pesos (₱300,000.00)**.

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[9] *Id.* at 173.

[10] TSN, March 28, 2006, pp. 3-6.

Accused is credited in full of the preventive imprisonment [he has] already served in confinement.

Let the physical evidence subject matter of this case be confiscated and forfeited in favor of the State and referred to the PDEA.

SO ORDERED.[11]

Aggrieved, petitioner appealed to the CA.[12] On January 31, 2008, the CA affirmed the decision of the RTC. The CA held that the *shabu* was not a product of an illegal search and, therefore, admissible in evidence. The CA opined that the plain-view doctrine was applicable to the seizure of the *shabu*, ratiocinating that the prohibited substance was within the plain view of PO2 Atienza who was on a routinary foot patrol, and that the police officer inadvertently came across petitioner, who was caught *in flagrante delicto*. Moreover, the CA held that petitioner was estopped from questioning the failure of the arresting officers to comply with Section 21[13] of Republic Act (R.A.) No. 9165,[14] in view of the admission by the defense of the Chemistry Report prepared by the Forensic Chemical Officer which positively identified the sachet's contents as *shabu*. Affirming the findings of the RTC, the CA likewise accorded

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

[12] *Id.* at 15.

[13] SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1)The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

[14] The Comprehensive Dangerous Drugs Act of 2002.

the police officers the benefit of the presumption of regularity in the performance of their official duties.

Subsequently, petitioner filed a Motion for Reconsideration[15] which the CA, however, denied in its Resolution[16] dated August 1, 2008.

Hence, this Petition raising the following issues:

I.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN FINDING THE PETITIONER GUILTY OF THE CRIME CHARGED DESPITE THE FACT THAT HIS ARREST WAS MADE WITHOUT A WARRANT.

II.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN FINDING THE PETITIONER GUILTY OF THE OFFENSE CHARGED DESPITE THE INADMISSIBILITY OF THE EVIDENCE FOR HAVING BEEN OBTAINED IN VIOLATION OF SECTION 21 OF REPUBLIC ACT NO. 9165.

III.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN GIVING SCANT CONSIDERATION TO THE EVIDENCE PRESENTED BY THE PETITIONER, WHICH IS MORE CREDIBLE THAN THAT OF THE PROSECUTION.[17]

Petitioner, through the Public Attorney's Office, avers that PO2 Atienza is not a member of the Drug Enforcement Unit of the PNP and has no training with respect to drug cases; thus, the latter was not in a position to immediately identify the plastic sachet as containing *shabu*. Furthermore, at the time of arrest, petitioner was merely holding a plastic sachet, an act that did not constitute a crime that would justify his warrantless arrest; that considering the time and place where the arrest took place,

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[15] CA *rollo*, pp. 89-94.

[16] *Id.* at 110-111.

[17] *Supra* note 1, at 13.

it was improbable and incredible for PO2 Atienza, at a distance of seven (7) meters, to have easily determined that the plastic sachet, so small in size, contained *shabu*. Petitioner submits that in the absence of evidence and corroborating testimony of any other witness, his alleged culpability, based on the sole testimony of PO2 Atienza, shows that there was lack of probable cause, at the outset, to arrest him. Accordingly, the search made on petitioner, as an incident to the illegal arrest, was likewise illegal.

Moreover, petitioner claims that PO2 Atienza's failure to comply with the provisions of R.A. No. 9165 casts doubt on the validity of the arrest and the admissibility of the evidence allegedly seized from him. He says that Section 21 of R.A. No. 9165 and Section 2[18] of Regulation No. 1 of the Dangerous Drugs Board, Series of 2002, were violated. In addition, the

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[18] Section 2. Seizure or confiscation of drugs or controlled chemicals or laboratory equipment.

a. The apprehending team having initial custody and control of dangerous drugs or controlled chemical or plant sources of dangerous drugs or laboratory equipment shall immediately, after the seizure and confiscation, physically inventory and photograph the same in the presence of:

(i) the person from whom such items were confiscated and/or seized or his/her representative or counsel;

(ii) a representative from the media;

(iii) a representative from the Department of Justice; and

(iv) any elected public official;

who shall be required to sign copies of the inventory report covering the drug/equipment and who shall be given a copy thereof. Provided, that the physical inventory and photograph shall be conducted at the place where the search is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of a seizure without warrant; Provided further that non-compliance with these requirement under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizure of and custody over said items.

b. The drugs or controlled chemicals or laboratory equipment shall be properly marked for identification, weighed when possible or counted, sealed, packed and labeled by the apprehending officer/team.

plastic sachet containing the *shabu* was marked inside the police headquarters and not at the scene of the crime.

Petitioner asseverates that these violations cast a serious doubt on the identity and integrity of the *shabu* allegedly confiscated from him. In the same manner, there was utter failure on the part of the prosecution to prove the crucial link in the chain of custody of the *shabu*, which constitutes the *corpus delicti* of the offense. Lastly, petitioner argues that the presumption of regularity in the performance of official duty of police officers should not by itself prevail over the presumption of innocence and the constitutionally protected rights of an individual.[19]

On the other hand, respondent People of the Philippines, through the Office of the Solicitor General (OSG), asserts that petitioner's warrantless arrest is valid pursuant to Section 5(a), Rule 113 of the Rules of Criminal Procedure, commonly referred to as the rule on *in flagrante delicto* arrests; that petitioner was validly searched because he was caught *in flagrante delicto* or in "plain view" committing an offense; and that any objection involving petitioner's arrest, which should have been made before he entered his plea, is deemed waived because petitioner had been arraigned, participated in the trial and presented his evidence. The OSG also claims that non-compliance with the requirements of Section 21 of R.A. No. 9165 is not fatal to the cause of the prosecution that would render inadmissible the plastic sachet confiscated from petitioner, pointing out that there was continuity in the handling of the prohibited drug from the time it was confiscated until it was delivered for examination. Thus, its integrity and evidentiary value had been preserved, justifying its admission and consideration by the RTC and the CA. Lastly, the OSG insists that petitioner's guilt was sufficiently proven beyond reasonable doubt as found by both the RTC and the CA, giving the police officers the benefit of the presumption of regularity in the performance of official functions and discarding petitioner's defense of frame-up.[20]

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[19] *Id*.

[20] *Rollo,* pp. 98-113.

The Petition is impressed with merit.

In illegal possession of dangerous drugs, the elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[21]

Given the factual milieu of this case, we find our ruling in *Guido Catuiran y Necudemus v. People of the Philippines*[22] instructive:

> We begin with the precept that in criminal prosecutions, fundamental is the requirement that the elemental acts constituting the offense be established with moral certainty as this is the critical and only requisite to a finding of guilt. In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt. Of prime importance therefore in these cases is that the identity of the dangerous drug be likewise established beyond reasonable doubt. In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.
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> 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

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[21] *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 451.

[22] G.R. No. 175647, May 8, 2009.

not in the chain to have possession of the same. Indeed, it is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused.

In this case, PO2 Atienza himself testified that he confiscated the prohibited drug and brought it to his office. He then prepared the request and only then — in the office — did he place his initials "APA" on the plastic sachet. The prosecution also failed to establish that petitioner was present when PO2 Atienza marked the said plastic sachet. These shortcomings militate against the prosecution's case. In the similar case of *Ronald Carino and Rosana Andes v. People of the Philippines*,[23] this Court emphasized the requirement of law that the prohibited drug seized be marked in the presence of the accused. Such flaw not only casts doubt on the identity of the *corpus delicti* but also tends to negate, if not totally discredit, the claim of regularity in the conduct of official police operation.

All told, the identity of the *corpus delicti* in this case was not proven beyond reasonable doubt. The courts below heavily relied on the testimony of PO2 Atienza and, in the same way, banked on the presumption of regularity. It bears stressing that this presumption only arises in the absence of contradicting details that would raise doubts on the regularity in the performance of official duties. Where, as in this case, the police officers failed to comply with the standard procedure prescribed by law, there is no occasion to apply the presumption.[24]

With the foregoing disquisition, we find no necessity to discuss petitioner's submission that the arrest and subsequent seizure were attended by a constitutional infirmity.

WHEREFORE, in view of the foregoing, the Decision dated January 31, 2008 of the Court of Appeals affirming the judgment of conviction by the Regional Trial Court of Mandaluyong City, Branch 214, is hereby *REVERSED* and *SET ASIDE*. Petitioner

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[23] G.R. No. 178757, March 13, 2009.

[24] *People v. Garcia*, G.R. No. 173480, February 25, 2009.

Antonio Lopez *y* dela Cruz is *ACQUITTED* based on reasonable doubt and is ordered immediately *RELEASED* from detention, unless he is confined for any other lawful cause.

The Director of the Bureau of Corrections is *DIRECTED* to *IMPLEMENT* this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 152614. September 30, 2009]

SALVADOR A. FERNANDEZ, *petitioner, vs.* **CRISTINA D. AMAGNA,** *respondent.*

SYLLABUS

1. CIVIL LAW; LEASE; MONTH-TO-MONTH BASIS; CASE AT BAR. —We agree with the findings of all the three (3) lower courts that the verbal lease agreement between petitioner and respondent was on a monthly basis. It is settled that if the rent is paid monthly, the lease is on a month-to-month basis and may be terminated at the end of each month. Article 1687 of the Civil Code is in point, x x x In the case at bar, it is undisputed that the lease was verbal, that the period for the lease had not been fixed, that the rentals were paid monthly, and that proper demand and notice by the lessor to vacate were given. x x x A lease on a month-to-month basis provides for a definite period and may be terminated at the end of any month, hence, by the failure of the lessees to pay the rents due for a particular month, the lease contract is deemed terminated as of the end of that

month. Applying this principle, the lease contract in the instant case was deemed terminated at the end of the month when the petitioner, as lessee, failed to pay the rents due.

2. ID.; ID.; ID.; GROUNDS FOR JUDICIAL EJECTMENT OF LESSEE UNDER B.P. Blg. 877; CASE AT BAR. — B.P. Blg. 877 was the rent control law in force at the time the complaint for unlawful detainer was filed. Sec. 5 thereof [provided for the grounds] for judicial ejectment of a lessee x x x Clearly, grounds for ejectment exist in this case and respondent could lawfully ask for petitioner's eviction from the premises. As already discussed, the month-to-month lease contract of the parties expired when petitioner failed to pay the rentals and the lease was not renewed by respondent. Likewise, respondent sufficiently proved that from July 1995 up to the filing of the complaint for ejectment, petitioner has failed to pay his monthly rentals for over three (3) months and even refused to settle his unpaid rentals and vacate the leased premises despite demand to do so. The subsequent payment by petitioner of his arrears by way of consignation and the acceptance by respondent of said payments will not operate to bar the eviction of petitioner. The evidence on record reveals that the ejectment case was instituted on September 23, 1996 while the petition for consignation was filed only on May 15, 1997 which means that when petitioner paid the back rentals, respondent had already filed the ejectment case. The subsequent acceptance by the lessor of rental payments does not, absent any circumstance that may dictate a contrary conclusion, legitimize the unlawful character of the possession. Hence, the respondent acted well within her right to file a complaint for unlawful detainer.

3. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ARGUMENTS NOT RAISED IN THE LOWER COURT WILL NOT BE CONSIDERED ON APPEAL; CASE AT BAR. — In the case of *Ulep v. Court of Appeals*, the Court made the following pronouncement: Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time on appeal. Basic considerations of fair play, justice and due process underlie the rule. It would be unfair to the adverse party who would have no opportunity to present evidence in contra to the new theory, which it could have done had it been aware of it at the

time of the hearing before the trial court. We cannot take an opposite stance in the present case. The issue of the validity of the alleged increase in rent was not a litigated issue in the trial courts. To allow petitioner to do so on appeal would be utterly unfair to respondent. The CA correctly opted not to resolve the issue in its decision of May 25, 2001. Moreover, petitioner did not mention the supposed valid increase in rental authorized by law, which he should have paid nor did he offer to pay or deposit the same within the period of time mandated by law. In the same vein, the issues concerning petitioner's entitlement to the benefits of Ordinance No. 8020 were raised by petitioner only in his motion for reconsideration of the CA decision, "the effect of which is as if it was never duly raised in that court at all," while the issue on the applicability of P.D. No. 1517 was only raised before this Court.

4. POLITICAL LAW; STATUTES; GIVEN RETROACTIVE EFFECT ONLY WHEN EXPRESSLY STATED SO; APPLICATION OF ORDINANCE No. 8020, NOT PROPER; CASE AT BAR. — Petitioner cannot capitalize on Ordinance No. 8020 passed by the City Council of Manila which authorized the City to acquire the lot owned by the late spouses Aurelio and Clara Restua for resale to its qualified and *bona fide* tenants/occupants under the land-for-the-landless program of the City. It should be noted that the Ordinance was approved and took effect only on March 12, 2001 or almost five (5) years after the case for ejectment was filed by respondent on September 23, 1996. Basic is the rule that no statute, decree, ordinance, rule or regulation (and even policies) shall be given retrospective effect unless explicitly stated so. We find no provision in Ordinance No. 8020 which expressly gives it retroactive effect to those tenants with pending ejectment cases against them. Rather, what the said Ordinance provides is that it "shall take effect upon its approval," which was on March 12, 2001. Further, no proof was presented which showed that the property being leased by petitioner has been acquired by the City of Manila for resale to him. Ordinance No. 8020 merely stated that the lot owned by the late spouses Restua shall be acquired by the City for resale to its qualified and *bona fide* tenants/occupants. Section 4 of the Ordinance provides that the *bona fide* tenants/occupants shall be determined under the existing rules and procedures of the Urban Settlements Office of the City of Manila. It was therefore presumptuous of petitioner to assume that he was qualified

as a *bona fide* tenant/occupant considering that his possession of the leased premises was the subject of litigation at that time. Indeed, he cannot take refuge in the Ordinance so as to forestall his eviction from the property.

5. CIVIL LAW; LEASE; "NO EVICTION RULE" UNDER SEC. 6 OF P.D. 1517 (URBAN LAND REFORM ACT); REQUIREMENTS FOR ONE TO BE ENTITLED TO ITS BENEFITS; CASE AT BAR. — Petitioner also asserts that he cannot be evicted from the premises pursuant to the so-called "no eviction rule" under Section 6 of P.D. No. 1517 x x x. To be entitled to the benefits of P.D. No. 1517, a party must provide *prima facie* evidence of the following facts: a) that the property being leased falls within an Area for Priority Development and Urban Land Reform Zone; b) that the party is a tenant on said property as defined under Section 3(f) of P.D. No. 1517; c) that the party built a house on said property; and d) that the party has been residing on the property continuously for the last ten (10) years or more, reckoned from 1968. While there is no dispute that petitioner was able to establish the third and fourth requisites, *i.e.*, that he built a house on said property and that he has been residing on the property continuously for more than ten (10) years, no convincing evidence was offered to proved the first and second requisites, *i.e.*, that the property being leased falls within an Area for Priority Development and Urban Land Reform Zone and that he is a tenant on said property as defined under Section 3(f) of said decree.

6. ID.; ID.; ID.; ID.; ID.; TENANT; DEFINED THEREUNDER; CASE AT BAR. — [P]etitioner could not be considered a tenant as defined under Section 3(f) of P.D. No. 1517, x x x. Petitioner had a month-to-month lease contract with respondent, which expired when he failed to pay the rentals. When petitioner opted to stay after the expiration of the lease contract, he had become an unlawful occupant of the place. Thus, he could not avail of the benefits of P.D. No. 1527, "because its intended beneficiaries are legitimate tenants, not usurpers or occupants by tolerance." Besides, petitioner's possession over the property is obviously under litigation, thus, his insistence that he was a "tenant" within the contemplation of P.D. No. 1517 was nothing more than a ludicrous attempt to bring himself into the scope of the decree.

7. ID.; ID.; ID.; ID.; APPLICABLE ONLY WHERE THE OWNER OF THE PROPERTY INTENDS TO SELL IT TO A THIRD PERSON; CASE AT BAR. — Another factor which militates against petitioner's claim is the fact that there is no intention on the part of respondent to sell the property. P.D. No. 1517 applies where the owner of the property intends to sell it to a third party. As alleged in her complaint, respondent merely intended to use the leased premises for herself and her siblings. Petitioner, therefore, cannot invoke P.D. No. 1517 to abatement of the complaint for ejectment.

APPEARANCES OF COUNSEL

Punzalan Law Office & Associates for petitioner.
Garcia Mejia Pajarillo for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure which seeks to set aside and annul the Decision[1] dated May 25, 2001 and the Resolution[2] dated March 14, 2002 rendered by the Court of Appeals (CA) in *CA-G.R. SP No. 46910.*

The CA decision affirmed the decision[3] of the Regional Trial Court (RTC) of Manila, Branch 16, which ordered petitioner to vacate the premises owned by respondent and to pay the unpaid rentals thereon in *Civil Case No. 97-85824.*

The facts may be succinctly stated as follows:

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[1] Penned by Associate Justice Perlita J. Tria Tirona (ret.), with Associate Justices Eloy R. Bello, Jr. (ret.) and Mercedes Gozo-Dadole (ret.), concurring; *rollo,* pp. 23-38.

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

[3] *Id*. at 80-85.

On September 23, 1996, a complaint for unlawful detainer[4] was filed by respondent Cristina Amagna against petitioner Salvador Fernandez in the Metropolitan Trial Court (MeTC) of Manila, Branch 11, docketed as *Civil Case No. 153177-CV*. In her complaint, respondent, plaintiff in the trial court, alleged that she is a co-owner and administratrix of a property located at 1901-K Int. 34, Zamora St., Pandacan, Manila. The property is covered by OCT No. 7369 in the name of siblings Aurelio Restua (married to Clara Bautista) and Trinidad Restua (married to Felipe Dalmacio), with a total area of 3,271 square meters. Respondent, being the heir of Trinidad, owns in common with her brothers and sisters, one-half of the property. A portion of the property was leased by petitioner on a month-to-month basis at the rate of ₱1,300.00. In July 1995, petitioner failed to pay the monthly rentals, prompting respondent to send a demand letter dated April 11, 1996 to pay and vacate but petitioner refused. Respondent also alleged that she and her siblings needed the leased premises as they were also renting.

In his Answer,[5] petitioner averred that he had been renting the premises for over fifty (50) years and had, in fact, already constructed substantial improvements on the lot; that he was one of several lessees of the property represented by their association known as "Barangay 843 Neighborhood Association"; that the monthly rental was only ₱420.00 and not ₱1,300.00 as claimed by respondent; that respondent had been transacting business with him through the association and respondent acknowledged payments made through the said association; that there was no agreement with respondent regarding the period for the lease; that he was surprised to receive a demand letter from respondent because he was sure that he had no arrears; and that on May 15, 1997, he filed a Petition for Consignation before the MeTC, Manila, Branch 3 and deposited his arrears in rent computed at the rate of ₱420.00 per month.

On October 13, 1997, the MeTC, Manila rendered its decision in favor of respondent, the dispositive portion of which stated:

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[4] *Id.* at 39-41.

[5] *Id*. at 43-49.

WHEREFORE, judgment is hereby rendered in favor of the plaintiff [herein respondent] and against the defendant [herein petitioner] ordering:

1. The defendant and all persons claiming rights under him to immediately vacate the premises known as 1901-K Int. 34, Zamora St., Pandacan, Manila, and surrender its peaceful possession to the plaintiff;

2. To remove and demolish the structure he built on the premises;

3. To pay the plaintiff the sum of ₱1,300.00 monthly beginning July 1995 and every month thereafter until he shall have finally and actually vacated the subject premises;

4. To pay the plaintiff the sum of ₱5,000.00 for and as attorney's fees; and

5. To pay the costs of the suit.

SO ORDERED.[6] (Words in bracket ours)

Thereafter, petitioner appealed the case to the RTC which rendered a decision on February 4, 1998 affirming the decision of the MeTC, thus:

WHEREFORE, PREMISES CONSIDERED, except with the qualification that any demolition of the structures introduced by the defendant should be made only after the procedures mandated under Rule 39, Section 10(d)[7] is observed, the MTC Manila decision is hereby AFFIRMED, with costs against defendant.[8]

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[6] *Id.* at 78.

[7] Section 10(d) of Rule 39 reads:

Sec. 10. *Execution of judgments for specific act.*

x x x x x x x x x

(d) Removal of improvements on property subject of execution. — When the property subject of the execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.

[8] *Supra* note 6 at 85.

Aggrieved with the ruling of the RTC, petitioner elevated the matter to the CA. On May 25, 2001, the CA promulgated its assailed decision dismissing petitioner's appeal and affirming the RTC decision. The CA held:

> Thus, the Court has ruled that lease agreements with no specified period, but where monthly rentals are paid monthly are considered to be on a month-to-month basis. They are for a definite period and expire at the last day of any given thirty-day period, upon proper demand, and a notice by the lessor to vacate.
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> In the case at bar, it was found by the two lower courts that the lease over the subject property was on a month-to-month basis, and there was a proper demand to vacate the premises made by the respondent-appellee on petitioner-appellant. Consequently, the verbal lease agreement entered into by the parties has been validly terminated on April 11, 1996, when respondent-appellee gave a written demand on the petitioner-appellant to pay his back rentals, and to vacate the premises.
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> x x x x x x x x x
>
> Respondent-appellee claims that from July 1995 up to the filing of the complaint, the petitioner-appellant has refused to heed the demand to settle his unpaid rentals and to vacate the leased premises. On the other hand, petitioner-appellant argues that the monthly rentals from July 1995 to January 1997 at ₱420 per month were paid in consignation case filed before Branch 3 of Metropolitan Trial Court of Manila.
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> When petitioner-appellant filed a consignation case, a fact was established that there was really an unpaid rental commencing from July 1995. A closer examination of the records reveals that the complaint for ejectment was filed on September 23, 1996, while the consignation case was commenced on May 15, 1997. Hence, when the petitioner-appellant paid the back rentals, the respondent-appellee had already filed the ejectment case. Case law is to the effect that the acceptance by the lessor of the payment by lessee of rentals in arrears does not constitute a waiver of the default of the payment of rentals as a valid cause of action for ejectment. xxx.[9]

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[9] *Id*. at 31-32.

Petitioner's subsequent motion for reconsideration was likewise denied by the CA in its Resolution dated March 14, 2002. Hence, petitioner filed the instant petition anchored on the following grounds:

A. THE HONORABLE COURT OF APPEALS ERRED IN FAILING TO CONSIDER THE ORDINANCE NO. 8020 ENACTED BY THE CITY OF MANILA ON MARCH 12, 2001 AUTHORIZING ACQUISITION OF THE SUBJECT PROPERTY, FOR RESALE TO THE BONAFIDE TENANT THEREAT, UNDER THE LAND-FOR-THE-LANDLESS PROGRAM OF THE CITY OF MANILA.

B. THE HONORABLE COURT OF APPEALS ERRED IN FAILING TO CONSIDER OR TAKE JUDICIAL NOTICE OF THE FACT THAT THE SUBJECT PROPERTY IS UNDER EXPROPRIATION BY THE CITY OF MANILA AND THEREFORE PETITIONER BY FORCE OF P.D. NO. 1517 IS A BENEFICIARY OF "NO EVICTION RULE" UNDER THE SAME.

C. THE HONORABLE COURT OF APPEALS ERRED IN FAILING TO CONSIDER THE RENT CONTROL LAW (BP BLG. 877) INSOFAR AS ALLOWABLE INCREASE OF RENTAL OF THE SUBJECT PROPERTY IS CONCERNED, *I.E.* FROM ₱480.00/PER MONTH TO ₱1,300.00/PER MONTH.

D. THE HONORABLE COURT OF APPEALS ERRED IN FAILING TO REVERSE THE ASSAILED DECISION (ANNEX "A") IN FAVOR OF THE PETITIONER.[10]

Petitioner argues that the decision rendered by the MeTC of Manila, Branch 11, must be voided on account of the approval of Ordinance No. 8020 by the City Council of Manila on March 12, 2001 which authorized the acquisition of the subject property for resale to qualified tenants under the land-for-the-landless program of the City of Manila. He also maintains that the property is within the area for Priority Development Zone pursuant to Section 6 of Presidential Decree No. 1517 (P.D. No. 1517)

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[10] *Id*. at 12.

or the Urban Land Reform Act. Petitioner claims that he is qualified under the so called "no eviction rule" considering that he has resided on the leased premises for more than ten (10) years already.

Likewise, petitioner insists that the agreed monthly rental is not ₱1,300.00 but ₱420.00 only. According to petitioner, the monthly rental had been increased from ₱420.00 to ₱1,300.00 which was a clear violation of the allowable increase under Batas Pambansa Blg. 877 (B.P. Blg. 877) or the Rent Control Law. Nevertheless, petitioner paid the said increase albeit under protest but when respondent did not accept his payments, he was forced to file a consignation case where the back rentals for the period July 1995-April 1996 had been deposited in court. These payments were withdrawn by respondent from the court, thus, respondent no longer had a cause of action against him.

In her Comment,[11] respondent asserts that Ordinance No. 8020 does not apply in this case because the said ordinance did not indicate that the subject property had been acquired by the City of Manila from the heirs of the late spouses Restua for distribution to petitioner. Moreover, the ordinance was approved only on March 12, 2001 while the ejectment case was filed on September 23, 1996. The ordinance cannot belatedly affect the outcome of the instant case. Inasmuch as expropriation proceedings have not been instituted, respondent and her siblings remain the owners of the subject property and the leased premises.

Respondent also avers in her Memorandum[12] that she was able to prove that grounds exist for the ejectment of petitioner when the latter failed to pay the rent for over three (3) months. She further asserts that her acceptance of the rents paid by petitioner by way of consignation will not legitimize petitioner's unlawful possession of the premises.

As to petitioner's claim that he is entitled to the benefits of P.D. No. 1517, respondent asseverates that under it, only

[11] *Id*. at 97-103.

[12] *Id*. at 124-136.

legitimate tenants can take advantage of its beneficent provisions. By reason of petitioner's failure to pay the rents, his possession became unlawful and he could not be considered a *bona fide* tenant of the property.

We agree with the findings of all the three (3) lower courts that the verbal lease agreement between petitioner and respondent was on a monthly basis. It is settled that if the rent is paid monthly, the lease is on a month-to-month basis and may be terminated at the end of each month. Article 1687 of the Civil Code is in point, thus:

> Art. 1687. If the period for the lease has not been fixed, it is understood to be from year to year, if the rent agreed upon is annual; from month to month, if it is monthly; from week to week, if the rent is weekly; and from day to day, if the rent is to be paid daily. However, even though a monthly rent is paid, and no period for the lease has been set, the courts may fix a longer term for the lease after the lessee has occupied the premises for over one year. If the rent is weekly, the courts may likewise determine a longer period after the lessee has been in possession for over six months. In case of daily rent, the courts may also fix a longer period after the lessee has stayed in the place for over one month.

In the case at bar, it is undisputed that the lease was verbal, that the period for the lease had not been fixed, that the rentals were paid monthly, and that proper demand and notice by the lessor to vacate were given. In the case of *Acab v. Court of Appeals*,[13] this Court held:

> …lease agreements with no specified period, but in which rentals are paid monthly, are considered to be on a month-to-month basis. They are for a definite period and expire after the last day of any given thirty-day period, upon proper demand and notice by the lessor to vacate.[14]

A lease on a month-to-month basis provides for a definite period and may be terminated at the end of any month, hence, by the failure of the lessees to pay the rents due for a particular

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[13] G.R. No. 112285, February 21, 1995, 241 SCRA 546.

[14] *Id.* at 550-551.

month, the lease contract is deemed terminated as of the end of that month.[15] Applying this principle, the lease contract in the instant case was deemed terminated at the end of the month when the petitioner, as lessee, failed to pay the rents due.

B.P. Blg. 877[16] was the rent control law in force at the time the complaint for unlawful detainer was filed. Sec. 5 thereof allows for judicial ejectment of a lessee on the following grounds:

> Section 5. *Grounds for Judicial Ejectment.* — Ejectment shall be allowed on the following grounds:
>
> (b) Arrears in payment of rent for a total of three (3) months: Provided, that in case of refusal by the lessor to accept payment of the rental agreed upon, the lessee may either deposit, by way of consignation, the amount in court, or with the city or municipal treasurer, as the case may be, or in a bank in the name of and with notice to the lessor, within one month after the refusal of the lessor to accept payment.
>
> The lessee shall thereafter deposit the rental within ten days of every current month. Failure to deposit rentals for three months shall constitute a ground for ejectment. If an ejectment case is already pending, the court upon proper motion may order the lessee or any person or persons claiming under him to immediately vacate the leased premises without prejudice to the continuation of the ejectment proceedings. At any time, the lessor may, upon authority of the court, withdraw the rentals deposited.
>
> The lessor, upon authority of the court in case of consignation and upon joint affidavit by him and the lessee to be submitted to the city or municipal treasurer and to the bank where deposit was made, shall be allowed to withdraw the deposits.
>
> x x x x x x x x x
>
> (f) Expiration of the period of the lease contract. No lessor or his successor-in-interest shall be entitled to eject the lessee upon the ground that the leased premises has been sold or mortgaged to a third person regardless of whether the lease or mortgage is registered or not.

[15] *Arquelada v. Philippine Veterans Bank,* G.R. No. 139137, March 31, 2000, 329 SCRA 536, 554-555.

[16] Approved on June 12, 1985.

Clearly, grounds for ejectment exist in this case and respondent could lawfully ask for petitioner's eviction from the premises. As already discussed, the month-to-month lease contract of the parties expired when petitioner failed to pay the rentals and the lease was not renewed by respondent. Likewise, respondent sufficiently proved that from July 1995 up to the filing of the complaint for ejectment, petitioner has failed to pay his monthly rentals for over three (3) months and even refused to settle his unpaid rentals and vacate the leased premises despite demand to do so. The subsequent payment by petitioner of his arrears by way of consignation and the acceptance by respondent of said payments will not operate to bar the eviction of petitioner. The evidence on record reveals that the ejectment case was instituted on September 23, 1996 while the petition for consignation was filed only on May 15, 1997 which means that when petitioner paid the back rentals, respondent had already filed the ejectment case. The subsequent acceptance by the lessor of rental payments does not, absent any circumstance that may dictate a contrary conclusion, legitimize the unlawful character of the possession.[17] Hence, the respondent acted well within her right to file a complaint for unlawful detainer.

As to the petitioner's contention that the monthly rental is only ₱420.00 and not ₱1,300.00, we quote with approval the ruling of the CA, thus:

> We have gone through the records and We have no reason to depart from the factual finding of the RTC that the petitioner-appellant failed to show any receipt to establish his claim that the monthly rental is only ₱420. The rule is well-settled that he who alleges a fact has the burden of proving it and a mere allegation is not evidence. The Official Receipts No. 1698 and 1759 are not competent proofs to show that the true rental is ₱420. Those receipts are for rentals paid for December 1993 and February 1994. The bone of contention here is the rental starting from July 1995. On the other hand, as shown by the records, the respondent-appellee was able to establish that the agreed rental since March 1995 is ₱1,300.[18]

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[17] *Tagbilaran Integrated Settlers Association (TISA) Incorporated v. Court of Appeals*, G.R. No. 148562, November 25, 2004, 444 SCRA 193, 199.

[18] *Rollo*, p. 33.

Petitioner having failed to prove his claim that the amount of rental starting July 1995 was just ₱420.00, the findings of the trial courts, as affirmed by the CA, stand. Likewise, petitioner's argument that the increase in the monthly rental from ₱420.00 to ₱1,300.00 contravenes the allowable increase under B.P. Blg. 877,[19] the following disquisition of the CA is relevant:

> Further, We cannot allow the petitioner-appellant to belatedly question the validity of the increase of the rental and issue of payment under protest. Jurisprudence is replete with the rule that no new issues shall be raised for the first time on appeal.[20]

In the case of *Ulep v. Court of Appeals*,[21] the Court made the following pronouncement:

> Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time on appeal. Basic considerations of fair play, justice and due process underlie the rule. It would be unfair to the adverse

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[19] Sec. 1. Monthly Rentals and Maximum Increases. – Beginning July 1, 1985 and for a duration of two and a half years thereafter ending on December 31, 1987, monthly rentals of all residential units not exceeding four hundred eighty (₱480.00) pesos shall not be increased by the lessor by more than the rates herein provided:

July 1, 1985 to December 31, 1985	10 percent
January 1, 1986 to December 31, 1986	20 percent
January 1, 1987 to December 31, 1987	20 percent

In *Arquelada v. Philippine Veterans Bank* (*supra* note 15), the Court held, "Initially, the effectivity of B.P. Blg. 877 was up to 31 December 1987 only. However, just like its predecessor, the effectivity of B.P. Blg. 877 was extended up to 31 December 1989 by Republic Act No. 664330 Subsequently, the legislature passed Republic Act No. 662831 and Republic Act No. 764432 which both extended the effectivity of B.P. Blg. 877 for another three (3) years. Finally, Republic Act No. 843733 gave another extension to the rent control period in B.P. Blg. 877 from 1 January 1998 up to 31 December 2001. Hence, presently, the controlling rental law for certain residential units is still B.P. Blg. 877."

[20] *Supra* note 18.

[21] G.R. No. 125254, October 11, 2005, 472 SCRA 241.

party who would have no opportunity to present evidence in contra to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court.[22]

We cannot take an opposite stance in the present case. The issue of the validity of the alleged increase in rent was not a litigated issue in the trial courts. To allow petitioner to do so on appeal would be utterly unfair to respondent. The CA correctly opted not to resolve the issue in its decision of May 25, 2001.

Moreover, petitioner did not mention the supposed valid increase in rental authorized by law, which he should have paid nor did he offer to pay or deposit the same within the period of time mandated by law.

In the same vein, the issues concerning petitioner's entitlement to the benefits of Ordinance No. 8020 were raised by petitioner only in his motion for reconsideration of the CA decision, "the effect of which is as if it was never duly raised in that court at all,"[23] while the issue on the applicability of P.D. No. 1517 was only raised before this Court. Nevertheless, even if we delve into the merits of petitioner's contentions on the matter, the same must be rejected.

Petitioner cannot capitalize on Ordinance No. 8020 passed by the City Council of Manila which authorized the City to acquire the lot owned by the late spouses Aurelio and Clara Restua for resale to its qualified and *bona fide* tenants/occupants under the land-for-the-landless program of the City. It should be noted that the Ordinance was approved and took effect only on March 12, 2001 or almost five (5) years after the case for ejectment was filed by respondent on September 23, 1996. Basic is the rule that no statute, decree, ordinance, rule or regulation (and even policies) shall be given retrospective effect unless explicitly stated so.[24] We find no provision in Ordinance No.

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[22] *Id*. at 257.

[23] *Manila Bay Club Corporation v. Court of Appeals*, G.R. No. 110015, July 11, 1995, 245 SCRA 715, 729.

[24] *Republic v. Sandiganbayan (Third Division)*, G.R. No. 113420, March 7, 1997, 269 SCRA 316, 332-333.

8020 which expressly gives it retroactive effect to those tenants with pending ejectment cases against them. Rather, what the said Ordinance provides is that it "shall take effect upon its approval," which was on March 12, 2001.

Further, no proof was presented which showed that the property being leased by petitioner has been acquired by the City of Manila for resale to him. Ordinance No. 8020 merely stated that the lot owned by the late spouses Restua shall be acquired by the City for resale to its qualified and *bona fide* tenants/ occupants. Section 4 of the Ordinance provides that the *bona fide* tenants/occupants shall be determined under the existing rules and procedures of the Urban Settlements Office of the City of Manila. It was therefore presumptuous of petitioner to assume that he was qualified as a *bona fide* tenant/occupant considering that his possession of the leased premises was the subject of litigation at that time. Indeed, he cannot take refuge in the Ordinance so as to forestall his eviction from the property.

Petitioner also asserts that he cannot be evicted from the premises pursuant to the so-called "no eviction rule" under Section 6 of P.D. No. 1517[25] which reads:

> *Sec. 6. Land Tenancy in Urban Land Reform Areas.* — Within the Urban Zones legitimate tenants who have resided on the land for ten years or more who have built their homes on the land and residents who have legally occupied the lands by contract, continuously for the last ten years shall not be dispossessed of the land and shall be allowed the right of first refusal to purchase the same within a reasonable time and at reasonable prices, under terms and conditions to be determined by the Urban Zone Expropriation and Land Management Committee created by Section 8 of this Decree.

To be entitled to the benefits of P.D. No. 1517, a party must provide *prima facie* evidence of the following facts: a) that the property being leased falls within an Area for Priority Development and Urban Land Reform Zone; b) that the party is a tenant on said property as defined under Section 3(f) of P.D. No. 1517; c) that

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[25] Issued on June 11, 1978.

the party built a house on said property; and d) that the party has been residing on the property continuously for the last ten (10) years or more, reckoned from 1968.[26]

While there is no dispute that petitioner was able to establish the third and fourth requisites, *i.e.*, that he built a house on said property and that he has been residing on the property continuously for more than ten (10) years, no convincing evidence was offered to prove the first and second requisites, *i.e.*, that the property being leased falls within an Area for Priority Development and Urban Land Reform Zone and that he is a tenant on said property as defined under Section 3(f) of said decree.

The case of *Heirs of Antonio Bobadilla v. Castillo*[27] declared as follows:

> As the decree (P.D. No. 1517) is not self-executing, Proclamation No. 1967 (issued on May 14, 1980) was issued identifying 244 specific sites in Metropolitan Manila as Areas for Priority Development (APD) and Urban Land Reform Zones (ULRZ). It amended Proclamation No. 1893 (issued on September 11, 1979) by expressly limiting the operation and narrowing the coverage of PD No. 1517 from the entire Metropolitan Manila to the specific areas declared as APD/ULRZ.[28]

Petitioner failed to show that Zamora Street, the place where the subject property is situated, was identified as APD/ULRZ by Proclamation No. 1967. Except for his allegation — which respondent refutes — that the property is within the area for priority development zone,[29] petitioner presented no concrete proof to substantiate said claim. The law requires in civil cases that the party who alleges a fact has the burden of proving it.[30] There being no showing that the property being leased by petitioner

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[26] *Fernando v. Lim*, G.R. No. 176282, August 22, 2008.

[27] G.R. No. 165771, June 29, 2007, 526 SCRA 107.

[28] *Id.* at 112.

[29] Memorandum for the Petitioner, *rollo*, p. 149.

[30] *Alonzo v. San Juan*, G.R. No. 137549, February 11, 2005, 451 SCRA 45, 55.

is located within any of the APD/ULRZ, the right not to be dispossessed and the right of first refusal could not have accrued in petitioner's favor.

Likewise, petitioner could not be considered a tenant as defined under Section 3(f) of P.D. No. 1517, thus:

> (f) Tenant refers to the rightful occupant of land and its structures, but does not include those whose presence on the land is merely tolerated and without the benefit of contract, those who enter the land by force or deceit, or those whose possession is under litigation.

Petitioner had a month-to-month lease contract with respondent, which expired when he failed to pay the rentals. When petitioner opted to stay after the expiration of the lease contract, he had become an unlawful occupant of the place. Thus, he could not avail of the benefits of P.D. No. 1517, "because its intended beneficiaries are legitimate tenants, not usurpers or occupants by tolerance."[31] Besides, petitioner's possession over the property is obviously under litigation, thus, his insistence that he was a "tenant" within the contemplation of P.D. No. 1517 was nothing more than a ludicrous attempt to bring himself into the scope of the decree.

Another factor which militates against petitioner's claim is the fact that there is no intention on the part of respondent to sell the property. P. D. No. 1517 applies where the owner of the property intends to sell it to a third party.[32] As alleged in her complaint, respondent merely intended to use the leased premises for herself and her siblings. Petitioner, therefore, cannot invoke P.D. No. 1517 to abatement of the complaint for ejectment.

All told, petitioner failed to show why the actions of the three courts which have passed upon the same issues should be reversed.

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[31] *Delos Santos v. Court of Appeals*, G.R. No. 127465, October 25, 2001, 368 SCRA 226, 229.

[32] *Alcantara v. Reta, Jr.*, G.R. No. 136996, December 14, 2001, 372 SCRA 364, 370.

WHEREFORE, the petition for review is hereby *DENIED.* The assailed decision of the CA in *CA-G.R. SP No. 46910* is hereby *AFFIRMED.*

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 159116. September 30, 2009]

SPS. NESTOR and FELICIDAD DADIZON, *petitioners, vs.* **HON. COURT OF APPEALS and SPS. DOMINADOR and ELSA MOCORRO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; STRICT POLICY OF COURT AGAINST MISDIRECTED OR ERRONEOUS APPEALS. — The Court has followed a *strict* policy against misdirected or erroneous appeals since February 27, 1990, when it issued the following instructions and caution in *Murillo v. Consul*: At present then, except in criminal cases where the penalty imposed is life imprisonment or *reclusion perpetua,* there is no way by which judgments of regional trial courts may be appealed to the Supreme Court except by petition for review on *certiorari* in accordance with the Rule 45 of the Rules of Court, in relation to Section 17 of the Judiciary Act of 1948 as amended. The proposition is clearly stated in the *Interim* Rules: "Appeals to the Supreme Court shall be taken by petition for *certiorari* which shall be governed by Rule 45 of the Rules of Court. On the other hand, it is not possible to take an appeal by *certiorari* to the Court of Appeals. Appeals to that Court from the Regional Trial Courts are perfected in two (2) ways, both of which are entirely distinct from an appeal

by *certiorari* to the Supreme Court. They are: a) by *ordinary appeal, or appeal by writ of error* – where judgment was rendered in a civil or criminal action by the RTC in the exercise of original jurisdiction; and b) by *petition for review* – where judgment was rendered by the RTC in the exercise of appellate jurisdiction. The petition for review must be filed with the Court of Appeals within 15 days from notice of the judgment, and as already stated, shall point out the error of fact or law that will warrant a reversal or modification of the decision or judgment sought to be reviewed. An ordinary appeal is taken by merely filing a notice of appeal within 15 days from notice of the judgment, except in special proceedings of cases where multiple appeals are allowed in which event the period of appeal is 30 days and a record on appeal is necessary. There is therefore no longer any common method of appeal in civil cases to the Supreme Court and the Court of Appeals. The present procedures for appealing to either court – and, it may be added, the process of ventilation of the appeal – are now to be made by petition for review or by notice of appeals (and, in certain instances, be record on appeal), but only by petition for review on *certiorari* under Rule 45. As was stressed by this Court as early as 1980, in *Buenbrazo v. Marave*, 101 SCRA 848, all "the members of the bench and bar" are charged with knowledge, not only that "since the enactment of Republic Act No. 8031 in 1969," the review of the decision of the Court of First Instance in a case exclusively cognizable by the inferior court x x x cannot be made in an ordinary appeal or by record on appeal," but also that *appeal by record on appeal to the Supreme Court under Rule 42 of the Rules of Court was abolished by Republic Act No. 5440 which, as already stated, took effect on September 9, 1968.* Similarly, in *Santos, Jr. v. C.A.,* 152 SCRA 378, this Court declared that "Republic Act No. 5440 had long superseded Rule 41 and Section 1, Rule 122 of the Rules of Court on direct appeals from the court of first instance to the Supreme Court in civil and criminal cases, x x x and that "direct appeals to this Court from the trial court on questions of law had to be through the filing of a petition for review on *certiorari,* wherein this Court could either give due course to the proposed appeal or deny it outright to prevent the clogging of its docket with unmeritorious and dilatory appeals." In fine, if an appeal is essayed to either court by the wrong procedure, the only course of action open is to dismiss the appeal. In other words,

if an appeal is attempted from a judgment of a Regional Trial Court by notice of appeal, that appeal can and should never go to the Supreme Court, regardless of any statement in the notice that the court of choice is the Supreme Court; and more than once has this Court admonished a Trial Judge and/or his Clerk of Court, as well as the attorney taking the appeal, for causing the records to be sent up to this Court in such a case. Again, if an appeal by notice of appeal is taken from Regional Trial Court to the Court of Appeals and in the latter Court, the appellant raises naught but issues of law, the appeal should be dismissed for lack of jurisdiction. And finally, it may be stressed once more, it is only through petitions for review on *certiorari* that the appellate jurisdiction of the Supreme Court may properly be invoked. **There is no longer any justification for allowing transfers of erroneous appeals from one court to the other, much less for tolerating continued ignorance of the law on appeals. It thus behooves every attorney seeking review and reversal of a judgment or order promulgated against his client, to determine clearly the errors he believes may be ascribed to the judgment or order, whether of fact or of law; then to ascertain which Court properly has appellate jurisdiction; and finally, to observe scrupulously the requisites for appeal prescribed by law, with keen awareness that any error or imprecision in compliance therewith may well be fatal to his client's cause.**

2. ID.; ID.; ID.; ID.; *MURILLO V. CONSUL* CODIFIED AS SECTION 2, RULE 41 OF RULES OF COURT, AMENDED AS OF JULY 1, 1997. — The dictum of *Murillo v. Consul* found its way to the *Rules of Court* as Sec. 2, Rule 41, effective July 1, 1997, under which the various modes of appeal are now specifically delineated, *viz*: Sec. 2. *Modes of appeal.*— *(*a) *Ordinary appeal.*— The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner. (b) *Petition for review.* — **The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise**

of its appellate jurisdiction shall be by petition for review in accordance with Rule 42. (c) *Appeal by certiorari*.— In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45. (n)

3. ID.; LIBERAL CONSTRUCTION; MAY BE INVOLVED ONLY IN SITUATIONS IN WHICH THERE IS SOME EXCUSABLE FORMAL DEFICIENCY OR ERROR IN PLEADING. —According to *Dee Hwa Liong Electronics Corporation v. Papiona*, the liberal construction of the rules — authorized by Sec. 6, Rule 1, *Rules of Court*, in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding — cannot be made the vehicle by which to ignore the *Rules of Court* at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution. Indeed, the policy of liberal construction mandated by the *Rules of Court* may be invoked only in situations in which there is some excusable formal deficiency or error in a pleading, but not where its application subverts the essence of the proceeding or results in the utter disregard of the *Rules of Court*. Imperative justice requires the correct observance of indispensable technicalities precisely designed to ensure its proper dispensation, for, as Justice Regalado observed in one case: The danger wrought by non-observance of the *Rules of Court* is that the violation of or failure to comply with the procedure prescribed by law prevents the proper determination of the questions raised by the parties with respect to the merits of the case and makes it necessary to decide, in the first place, such questions as relate to the form of the action. **The rules and procedure laid down for the trial court and the adjudication of cases are matters of public policy. They are matters of public order and interest which can in no wise be changed or regulated by agreements between or stipulations by parties to an action for their singular convenience.**

4. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF FACTS OF THE TRIAL COURT THEREON, ACCORDED BY THE APPELLATE COURT HIGH RESPECT. — Absent the showing of a fact or circumstance of weight and influence that was overlooked and, if considered,

could affect the outcome of the case, the factual findings and assessment on the credibility of witnesses or other evidence made by the trial court remain binding on the appellate tribunal. The legal aphorism is that the findings of facts of the trial court, its calibration of the testimonies of witnesses and its assessment of their probative weight, as well as its conclusions based on its findings, are accorded by the appellate court high respect, if not conclusive effect.

5. CIVIL LAW; LAND TITLES AND DEEDS; UNREGISTERED LAND; DEED OF SALE; NON-REGISTRATION IN THE OFFICE OF REGISTER OF DEEDS; THIRD PARTIES NOT BOUND. —The transaction affecting unregistered lands covered by an unrecorded contract, if legal, might be valid and binding on the parties themselves, but not on third parties. In the case of third parties, it was necessary for the contract to be registered. Sec. 113 of Presidential Decree No. 1529, also known as the *Property Registration Decree*, provides, *viz*: Section 113. *Recording of instruments relating to unregistered lands*. — No deed, conveyance, mortgage, lease, or other voluntary instrument affecting land not registered under the Torrens system shall be valid, except as between the parties thereto, unless such instrument shall have been recorded in the manner herein prescribed in the office of the Register of Deeds for the province or city where the land lies.

APPEARANCES OF COUNSEL

Santo Law Office for petitioners.
Clemencio C. Sabitsana, Jr. for private respondents.

D E C I S I O N

BERSAMIN, *J.*:

The mere execution of a *deed of sale* covering an unregistered parcel of land is not enough to bind third persons. A succeeding step — the registration of the sale — has to be taken. Indeed, registration is the operative act to convey or affect the unregistered land insofar as third persons are concerned.

Spouses Nestor and Felicidad Dadizon (Dadizons), the defendants in the trial court, seek the review of the resolutions dated February 26, 2003 and June 30, 2003, respectively dismissing their petition for review[1] and denying their motion for reconsideration,[2] both issued by the Court of Appeals (CA).

Antecedents

Respondent Spouses Dominador and Elsa Mocorro (Mocorros) initiated this case in the Municipal Trial Court (MTC) of Naval, Biliran against the Dadizons to recover a parcel of land with an area of 78 square meters and to cancel the latter's tax declaration. The Mocorros also sought consequential damages.

The Mocorros' right to recover was traced back to Ignacia Bernal, who had owned a large tract of 3,231 square meters that she had declared for taxation purposes in Tax Declaration No. 504. On December 30, 1946, Bernal had sold to Almeda Elaba a portion of 364 square meters of her land. Tax Declaration No. 1551 had been then issued in the name of Elaba, but covering only 224 square meters. On May 29, 1971, Elaba had sold the same 224 square meters to Brigido Caneja, Sr., resulting in the issuance of Tax Declaration No. 4301 in the name of Caneja, Sr. in 1972 over the entire 224 square meters. As alleged in this action, the land of Caneja, Sr. was described as follows:

> It is a residential lot and house, bounded on the North by P. Inocentes St.; on the East by High School Plaza; on the South by Elem. School Plaza; and on the West by Ignacia Bernal; of approximately 224 square meters in area, more or less, covered by Tax Dec. No. 4301 and assessed at P448.00 only.[3]

On June 2, 1973, Caneja, Sr. sold the land to the Mocorros. Thus, Caneja, Sr.'s Tax Declaration No. 4301 was cancelled and Tax Declaration No. 4518 was issued in the name of Dominador Mocorro.[4]

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[1] *Rollo*, pages 35-36.

[2] *Id.*, page 38.

[3] *Id.*, page 39.

[4] *Id.*, page 48.

In 1979, Tax Declaration No. 4518 was superseded by Tax Declaration No. 3478, still covering the same area of 224 square meters. It is relevant to mention that Tax Declaration No. 3478 carried an annotation of the mortgage on the land constituted by the Mocorros in favor of the Rural Bank of Naval on July 23, 1975.[5]

In 1984, as borne out in Tax Declaration No. 607, the area of 224 square meters was reduced by 78 square meters to only 146 square meters, with the western boundary being now described as Cadastral Lot No. 523, Assessor's Lot No. 049, owned by the Dadizons.[6] It is not denied that the Dadizons were issued their own tax declaration for the first time only in 1980, through Tax Declaration No. 535 in the name of Felicidad Dadizon, covering an area of 147 square meters. Tax Declaration No. 535 indicated as the eastern boundary of the property of the Mocorros, described as Cadastral Lot No. 524, Assessor's Lot No. 048. The dorsal side of Tax Declaration No. 535 of the Dadizons contained the following note:

"Note: Previous Tax Declaration was unidentified it is subject for further verification" Cad. Lot No. 523 in the name of Felicidad Dadizon is denominated "has no previous tax declaration and or assessed as "NEW" under the Tax Mapping revision."[7]

Based on the tax declarations, the area of the land of the Mocorros had always been 224 square meters until 1984, when the area was reduced to 146 square meters following the exclusion of a part thereof measuring 78 square meters to adjust the area to that declared in the name of the Dadizons in Tax Declaration No. 535.[8]

Ruling of the MTC

In determining the issue as to who between the Mocorros and the Dadizons possessed the better right to the 78-square

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[5] *Id.*, pages 48-49.

[6] *Id.*, page 49.

[7] *Id.*

[8] *Id.*

meter lot occupied by the Dadizons, the MTC rendered judgment on December 6, 1999 in favor of the Mocorros, holding thuswise:

The Court has painstakingly reviewed the evidence in this case and has arrived at the conclusion that the seventy–eight (78) square meters complained of is part of the land sold to plaintiff spouses. Plaintiffs have convincingly proved that they have a better right to the land. They have solid evidence to support their claim of ownership.

As early as June 2, 1973, they bought the land in question from Brigido Caneja, Sr., a former town mayor of Naval, Biliran. The integrity of His honor, was engrained into the document so much so that it was respected by the adjoining owners. A total land area of 224 square meters was sold by Brigido Caneja, Sr. to plaintiff spouses as reflected in a Deed of Absolute Sale.

It was only in 1975 when defendant spouses allegedly acquired a residential land adjoining that of plaintiff spouses that a boundary dispute ensued between them.

The Court finds the alleged acquisition of defendant spouses of the land in question peppered with inconsistencies. At the outset, the land was conveyed to defendant spouses by their mother Eustaquia Bernadas in a private document on March 10, 1976. Defendant spouses offered flimsy excuses why said document was not notarized. They did not know according to their joint affidavit that there was a need for it while their instrumental witness claim that defendant spouses had no more money to pay for the notarization. The Court does not subscribe to said assertion because defendant Felicidad Dadizon is a public school teacher and as such knowledgeable enough to know that it takes a notary public to make a private document a public one. And to claim that they had no more money to pay the notarization of the document is unbelievable considering that they could even pay the alleged consideration of the property in the amount of ₱2,000.00. The only logical reason why the document was not notarized according to the mind of the Court is to make it appear that the documents were executed on the dates mentioned therein.

It was unfortunate, however, that the plaintiff Dominador Mocorro was misled into fencing their residential land as to its correct boundary upon misrepresentation of one Eustaquia Bernadas, the mother of defendant Felicidad Dadizon. Plaintiff Elsa Mocorro was not around when the alleged deception was made upon co-plaintiff Dominador Mocorro by Eustaquia Bernadas.

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WHEREFORE, in view of the foregoing, the Court finds a preponderance of evidence in favor of plaintiffs and against defendants and hereby declares plaintiffs as owners of the seventy–eight (78) square meters of the lot covered by Tax Declaration No. 535 and/or TD No. 68 in the name of defendant Felicidad Dadizon.

The Court likewise orders the defendant spouses,

a. To deliver the said seventy–eight (78) square meters portion to plaintiffs and to demolish whatever structures defendants might have erected thereon;

b. To pay plaintiffs the sum of TEN THOUSAND PESOS ₱10,000.00 for attorney's fees and litigation expenses and the costs of suit.

The Court orders the Provincial Assessor of Naval, Biliran to cancel Tax Declaration No. 531 T.M. and 608 in the name of Felicidad Dadizon and any other tax declaration relative to the property in question.[9]

Ruling of the RTC

On appeal, the Regional Trial Court (RTC) in Naval, Biliran affirmed the MTC's findings through its decision of May 17, 2001,[10] to wit:

Factual findings and conclusions of the trial court are entitled to great weight and respect absent any showing of a fact or any circumstance which the court *a quo* failed to appreciate and which would change the result if it were considered.

WHEREFORE, premises considered, this Court finds that the decision of the court *a quo* as correct; hereby affirming the said decision *in toto*.

Ruling of the Court of Appeals

The Dadizons filed a notice of appeal. Initially, the CA required the Dadizons to file their *appellant's brief*. Later on, however,

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[9] *Id.*, pages 43-46.

[10] *Id.*, pages 47-50.

the Mocorros moved to dismiss the Dadizons' appeal on the ground that the mode of appeal they had adopted was erroneous.

Agreeing with the Mocorros, the CA dismissed the Dadizons' appeal through its resolution dated February 26, 2003.[11] The CA denied the Dadizons' motion for reconsideration on June 30, 2003.[12]

Hence, the Dadizons have come to this Court to assail the dismissal of their appeal and the denial of their motion for reconsideration.

Our Ruling

The petition for review on *certiorari* lacks merit.

I

The mode of appeal *vis-à-vis* the decision of the RTC adopted by the Dadizons was undoubtedly wrong. They should have filed a petition for review in accordance with Rule 42, *Rules of Court*, which was the correct mode of appeal, considering that the RTC had rendered the decision in question in the exercise of its appellate jurisdiction.

The error of the Dadizons was inexcusable and inexplicable. The Court has followed a *strict* policy against misdirected or erroneous appeals since February 27, 1990, when it issued the following instructions and caution in *Murillo v. Consul*:[13]

> At present then, except in criminal cases where the penalty imposed is life imprisonment or *reclusion perpetua*, there is no way by which judgments of regional trial courts may be appealed to the Supreme Court except by petition for review on *certiorari* in accordance with Rule 45 of the Rules of Court, in relation to Section 17 of the Judiciary Act of 1948 as amended. The proposition is clearly stated in the *Interim* Rules: "Appeals to the Supreme Court shall be taken by petition

[11] *Id.*, page 35.

[12] *Id.*, page 38.

[13] Undk. No. 9748, February 27, 1990, 183 SCRA XI, which became the basis for the guidelines set forth in Circular No. 2-90 issued by the Supreme Court on March 9, 1990.

for *certiorari* which shall be governed by Rule 45 of the Rules of Court.

On the other hand, it is not possible to take an appeal by *certiorari* to the Court of Appeals. Appeals to that Court from the Regional Trial Courts are perfected in two (2) ways, both of which are entirely distinct from an appeal by *certiorari* to the Supreme Court. They are:

> a) by *ordinary appeal*, or *appeal by writ of error* — where judgment was rendered in a civil or criminal action by the RTC in the exercise of original jurisdiction; and
>
> b) by *petition for review* — where judgment was rendered by the RTC in the exercise of appellate jurisdiction.

The petition for review must be filed with the Court of Appeals within 15 days from notice of the judgment, and as already stated, shall point out the error of fact or law that will warrant a reversal or modification of the decision or judgment sought to be reviewed. An ordinary appeal is taken by merely filing a notice of appeal within 15 days from notice of the judgment, except in special proceedings or cases where multiple appeals are allowed in which event the period of appeal is 30 days and a record on appeal is necessary.

There is therefore no longer any common method of appeal in civil cases to the Supreme Court and the Court of Appeals. The present procedures for appealing to either court – and, it may be added, the process of ventilation of the appeal – are now to be made by petition for review or by notice of appeals (and, in certain instances, by record on appeal), but only by petition for review on *certiorari* under Rule 45. As was stressed by this Court as early as 1980, in *Buenbrazo v. Marave*, 101 SCRA 848, all "the members of the bench and bar" are charged with knowledge, not only that "since the enactment of Republic Act No. 8031 in 1969," the review of the decision of the Court of First Instance in a case exclusively cognizable by the inferior court x x cannot be made in an ordinary appeal or by record on appeal," but also that *appeal by record on appeal to the Supreme Court under Rule 42 of the Rules of Court was abolished by Republic Act No. 5440 which, as already stated, took effect on September 9, 1968*. Similarly, in *Santos, Jr. v. C.A.*, 152 SCRA 378, this Court declared that "Republic Act No. 5440 had long superseded Rule 41 and Section 1, Rule 122 of the Rules of Court on direct appeals from the court of first instance to the Supreme Court in civil and

criminal cases, x x x and that "direct appeals to this Court from the trial court on questions of law had to be through the filing of a petition for review on *certiorari*, wherein this Court could either give due course to the proposed appeal or deny it outright to prevent the clogging of its docket with unmeritorious and dilatory appeals."

In fine, if an appeal is essayed to either court by the wrong procedure, the only course of action open is to dismiss the appeal. In other words, if an appeal is attempted from a judgment of a Regional Trial Court by notice of appeal, that appeal can and should never go to the Supreme Court, regardless of any statement in the notice that the court of choice is the Supreme Court; and more than once has this Court admonished a Trial Judge and/or his Clerk of Court, as well as the attorney taking the appeal, for causing the records to be sent up to this Court in such a case. Again, if an appeal by notice of appeal is taken from the Regional Trial Court to the Court of Appeals and in the latter Court, the appellant raises naught but issues of law, the appeal should be dismissed for lack of jurisdiction. And finally, it may be stressed once more, it is only through petitions for review on *certiorari* that the appellate jurisdiction of the Supreme Court may properly be invoked.

There is no longer any justification for allowing transfers of erroneous appeals from one court to the other, much less for tolerating continued ignorance of the law on appeals. It thus behooves every attorney seeking review and reversal of a judgment or order promulgated against his client, to determine clearly the errors he believes may be ascribed to the judgment or order, whether of fact or of law; then to ascertain which Court properly has appellate jurisdiction; and finally, to observe scrupulously the requisites for appeal prescribed by law, with keen awareness that any error or imprecision in compliance therewith may well be fatal to his client's cause.

The dictum of *Murillo v. Consul* found its way to the *Rules of Court* as Sec. 2, Rule 41, effective July 1, 1997, under which the various modes of appeal are now specifically delineated, *viz*:

Sec. 2. *Modes of appeal*.—

(a) *Ordinary appeal*.— The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from

and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) *Petition for review*.— **The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42**.

(c) *Appeal by certiorari*.— In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45. (n)

Consequently, the CA's dismissal of the Dadizons' appeal was proper. Sec. 2, Rule 50 of the *Rules of Court*[14] pronounces that "an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed." The dismissal was also unavoidable notwithstanding that the procedural rules might be liberally construed,[15] because the provisions of law and the rules concerning the *manner* and *period* of appeal were mandatory and jurisdictional requirements essential to enable the appellate court to take cognizance of the appeal.[16] According to *Dee Hwa Liong Electronics Corporation v. Papiona*,[17] the liberal

[14] Sec. 2. *Dismissal of improper appeal to the Court of Appeals*. — An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court. **Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed.** (n)

An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright. (3a)

[15] Sec. 6, Rule 1, *Rules of Court*, to wit:

Sec. 6. *Construction*. These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.

[16] *Gutierrez v. Court of Appeals*, No. L-25972, November 26, 1968, 26 SCRA 32, 33.

[17] G.R. No. 173127, October 17, 2007, 536 SCRA 482.

construction of the rules - authorized by Sec. 6, Rule 1, *Rules of Court*, in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding – cannot be made the vehicle by which to ignore the *Rules of Court* at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution.

Indeed, the policy of liberal construction mandated by the *Rules of Court* may be invoked only in situations in which there is some excusable formal deficiency or error in a pleading, but not where its application subverts the essence of the proceeding or results in the utter disregard of the *Rules of Court*. Imperative justice requires the correct observance of indispensable technicalities precisely designed to ensure its proper dispensation, for, as Justice Regalado observed in one case:[18]

> The danger wrought by non-observance of the *Rules of Court* is that the violation of or failure to comply with the procedure prescribed by law prevents the proper determination of the questions raised by the parties with respect to the merits of the case and makes it necessary to decide, in the first place, such questions as relate to the form of the action. **The rules and procedure laid down for the trial court and the adjudication of cases are matters of public policy. They are matters of public order and interest which can in no wise be changed or regulated by agreements between or stipulations by parties to an action for their singular convenience.**

II

Still, even had the CA treated the appeal as proper, the outcome would have favored the Mocorros.

The unison between the MTC and the RTC in arriving at their factual findings and legal conclusions in favor of the Mocorros cannot be justly ignored, but calls for our acceptance of their judgments on the facts as well as on their legal conclusions upon such facts. Their findings were supported by the records

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[18] *Republic v. Hernandez*, G.R. No. 117209, February 9, 1996, 253 SCRA 509, 529, 531-532.

and the evidence; their legal conclusions accorded with the pertinent laws and jurisprudence.

There is no question that the 78-square meter portion subject of this suit was part of the lot with an area of 224 square meters that the Mocorros had acquired from their predecessors-in-interest, starting from Ignacia Bernal. The Mocorros had possessed the land since their purchase of it on June 2, 1973 from Caneja, Sr. After their acquisition from Caneja, Sr., they had been issued Tax Declaration No. 4518, which had been their tax declaration for the property until its cancellation in 1979 and the issuance to them of Tax Declaration No. 3478. Up to then, no other persons, the Dadizons included, had challenged their ownership of the 78-square meter lot. A further proof of their ownership was the fact that they had constituted a mortgage on the entire area of 224 square meters on July 23, 1975 in favor of the Rural Bank of Naval to secure an obligation. The mortgage lien was annotated on their Tax Declaration No. 3478.

In contrast, the Dadizons declared the 78-square meter portion for the first time only in 1980 under Tax Declaration No. 535. Their declaration was suspect, however, considering that the Office of the Provincial Assessor had no previous record of any declaration in the name of the Dadizons or of their predecessors-in-interest. Thus, that office issued the certification to the effect that the preceding tax declaration of the property of Felicidad Dadizon was "unidentified" and still "subject to further verification,"[19] which could only mean that the Dadizons had filed no earlier tax declaration on their property. In fact, Cadastral Lot No. 523 in the name of Felicidad Dadizon was described as: "ha(ving) no previous tax declaration and or assessed as 'NEW' under the Tax Mapping revision."[20] Given such antecedents, the reduction of the area of the landholding of the Mocorros to adjust the area in favor of the land of the Dadizons under Tax Declaration No. 535 was questionable.

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[19] *Rollo*, p. 49.

[20] *Id.*

The conclusion of the MTC, *supra* – that the Dadizons' supposed acquisition on March 10, 1976 by means of a private document of the 78-square meter portion from Eustaquia Bernadas, Felicidad Dadizon's own mother, had been feigned "to make it appear that the documents were executed on the dates mentioned therein"; and that Dominador Mocorro had been "misled into fencing their residential land as to its correct boundary upon misrepresentation of one Eustaquia Bernadas" in the absence of Elsa Mocorro – was upheld by the RTC as the appellate court for the reason that the Dadizons had not presented any fact or circumstance that the MTC as the trial court had failed to appreciate, but if considered would change the result. The conclusion binds the Court now, for the trial court was in the best position to assess the witnesses' credibility and to appreciate their truthfulness, honesty and candor.[21] Absent the showing of a fact or circumstance of weight and influence that was overlooked and, if considered, could affect the outcome of the case, the factual findings and assessment on the credibility of witnesses or other evidence made by the trial court remain binding on the appellate tribunal.[22] The legal aphorism is that the findings of facts of the trial court, its calibration of the testimonies of witnesses and its assessment of their probative weight, as well as its conclusions based on its findings, are accorded by the appellate court high respect, if not conclusive effect.[23]

Moreover, the Dadizons traced their ownership of the 78-square meter portion to Ignacia Bernal. They tended to show that Bernal had sold 364 square meters of her land to Elaba on December 30, 1946; that, in turn, Elaba had conveyed a 7x13-meter portion (or 91 square meters) to Donato Cabalquinto on

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[21] *Perez v. People*, G.R. No. 150443, January 20, 2006, 479 SCRA 209; *People v. Tonog, Jr.*, G.R. No. 144497, June 29, 2009, 433 SCRA 139; *People v. Genita, Jr.*, G.R. No. 126171, March 11, 2004, 425 SCRA 343; *People v. Pacheco*, G.R. No. 142887, March 2, 2004, 424 SCRA 164; *People v. Abolidor*, G.R. No. 147231, February 18, 2004, 423 SCRA 260.

[22] *Bricenio v. People*, G.R. No. 157804, June 20, 2006, 491 SCRA 489.

[23] *People v. Darilay*, G.R. Nos. 139751-52, January 26, 2004, 421 SCRA 45.

February 25, 1952 and another portion measuring 6x13- meters (or 78 square meters) to Floselfina Elaba in 1953 (evidenced by a *deed of confirmation*);[24] that Floselfina had then sold the 78-square meter lot to Eustaquia Bernadas in 1954 (evidenced by the same *deed of confirmation*); that Cabalquinto and Elaba had transferred the 91-square meter lot and confirmed the sale of the 78-square meter lot (a total of 169 square meters) to Eustaquia Bernadas on May 3, 1954 (evidenced by a *deed of sale* dated May 3, 1954);[25] that Bernadas had remained in possession of the 169-square meter land from May 3, 1954 until her transfer of it to the Dadizons, who were her daughter and son-in-law, on March 10, 1976 (evidenced by an *affidavit of adjoining owners*[26] and an unnotarized *deed of absolute sale of real property*);[27] and that the Dadizons had then possessed the 169-square meter land from the time of the sale to them until the present, building their house thereon.[28]

The reliance of the Dadizons on the unnotarized and unregistered *deed of absolute sale of real property* executed by Bernadas in their favor was misplaced and unwarranted, for the non-registration of the deed meant that the sale *could not* bind third parties like the respondents. The transaction affecting unregistered lands covered by an unrecorded contract, if legal, might be valid and binding on the parties themselves, but not on third parties. In the case of third parties, it was necessary for the contract to be registered. Sec. 113 of Presidential Decree No. 1529, also known as the *Property Registration Decree*, provides, *viz*:

Section 113. *Recording of instruments relating to unregistered lands*.— No deed, conveyance, mortgage, lease, or other voluntary instrument affecting land not registered under the Torrens system shall be valid, except as between the parties thereto, unless such instrument shall have been recorded in the manner herein prescribed

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[24] *Rollo*, page 10.

[25] *Id.*

[26] *Id.*, page 86.

[27] *Id.*, page 87.

[28] *Id.*, pages 9-10.

in the office of the Register of Deeds for the province or city where the land lies.

Bernadas' execution on March 10, 1976 of the *deed of absolute sale of real property* in favor of the Dadizons, standing alone, did not suffice to bind and conclude the Mocorros. Pursuant to Sec. 113, Presidential Decree No. 1529, the recording of the sale was necessary.[29] Besides, the deed, being the unilateral act of Bernadas, did not adversely affect the Mocorros, who were not her privies. Otherwise stated, the deed was *res inter alios acta* as far as they were concerned.[30]

Neither would the *affidavit of adjoining owners* support the Dadizons' cause, considering that such affidavit, aside from its being self-serving and unilateral, had been executed only for the purpose of facilitating Felicidad Dadizon's application for the low cost housing loan from the Development Bank of the Philippines.

WHEREFORE, we affirm the resolution dated February 26, 2003 and the resolution dated June 30, 2003 issued in CA-G.R. C.V. No. 71649.

The petitioners shall pay the costs of suit.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Chico-Nazario [*] and *Leonardo-de Castro, JJ.,* concur.

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[29] *Valdevieso v. Damalerio*, G.R. No. 133303, February 17, 2005, 451 SCRA 664, 669-670.

Although *Valdevieso* involved registered property, the principle of requiring registration of the deed of sale announced therein should equally apply to a sale involving unregistered realty in light of the express provision of Sec. 113 of Presidential Decree No. 1529.

[30] Rule 130, *Rules of Court*, provides:

Sec. 28. *Admission by third party*. — The rights of a party cannot be prejudiced by an act, declaration, or omission of another, except as hereinafter provided. (25a)

[*] Additional Member in lieu of Carpio, *J.*, per Special Order No. 698.

FIRST DIVISION

[G.R. No. 159710. September 30, 2009]

CARMEN A. BLAS, *petitioner, vs.* **SPOUSES EDUARDO and SALUD GALAPON,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; HOUSING FOR EVERY FILIPINO; URBAN LAND REFORM; ZONAL IMPROVEMENT PROGRAM, CONSTRUED. — In pursuit of the urban land reform program of the Government under Presidential Decree No. 1517, Proclamation No. 1893, and National Housing Authority (NHA) Circular No. 13, the NHA conducted in 1987 the Zonal Improvement Program (ZIP) census and tagging of structures as pre-qualifying requisites for determining the potential lot beneficiaries in the Peñafrancia ZIP zone in Paco, Manila. The ZIP is designed to upgrade the legal, environmental, social and economic conditions of slum residents within Metro Manila, in line with the spirit of the constitutional provision guaranteeing housing and a decent quality of life for every Filipino. The ownership of land by the landless is the primary objective of the ZIP.

2. ID.; ID.; ID.; ID.; ID.; CODE OF POLICIES EMBODIED IN NHA CIRCULAR NO. 13 GOVERNED IMPLEMENTATION OF ZIP. — The Code of Policies embodied in NHA Circular No. 13 governed the implementation of the ZIP as to the classification and treatment of existing structures, the selection and qualification of intended beneficiaries, the disposition and award of fully developed lots in all ZIP zones within Metro Manila, and other related activities. In the award of the ZIP lot allocation, the primary bases for determining the potential program beneficiaries and structures or dwelling units in the project area were the official ZIP census and tagging conducted in 1987. It was, therefore, the primordial requisite that the intended beneficiary must be the occupant of the tagged structure at the time of the official ZIP census or at the closure thereof. Otherwise, the person was considered an absentee structure owner for being absent from his usual residence or domicile. At any rate, the Code of Policies made it clear that the issuance of a ZIP tag number to a structure did not guarantee ZIP lot

allocation to the owner of the tagged structure. Such interpretation of the Code of Policies was in harmony with the objectives and principles underlying the program to provide adequate shelter and place of abode to the legally qualified beneficiaries.

3. ID.; ID.; ID.; ID.; ID.; ID.; PERSONS AUTOMATICALLY DISQUALIFIED FROM OWNING A LOT WITHIN THE ZIP ZONES. — The declaration of policy in the Code of Policies stated that an absentee or uncensused structure owner was disqualified from owning a lot within the ZIP zones. A careful perusal of the Code of Policies shows the following persons to be automatically disqualified, namely: (1) Absentee censused household — censused household that vacates a duly tagged structure or dwelling unit and leaves the project area for a continuous period for at least six months without written notice to the NHA and the local government unit; (2) Uncensused household — household that is not registered in the official ZIP census; (3) Absentee structure owner — any individual who owns a structure or dwelling unit in a ZIP project area and who has not occupied it prior to the official closure of the Census; and (4) Uncensused structure owner — any person who owns a structure or dwelling unit not registered in the official ZIP census.

4. ID.; ID.; ID.; ID.; ID.; ID.; ID.; REQUISITES WHICH MUST CONCUR FOR ONE TO BE CONSIDERED AN ABSENTEE STRUCTURE OWNER. — The following requisites must concur for one to be considered an absentee structure owner: *one*, the person must own a structure or dwelling unit within the ZIP zone; and *two*, the person has not occupied the structure or dwelling unit prior to the official closure of the census.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; ONLY ISSUE IS THE PHYSICAL AND MATERIAL POSSESSION OF THE PROPERTY INVOLVED. — In ejectment cases, the only issue is the physical and material possession of the property involved, the resolution being independent of any claim of ownership made by any of the litigants. The question of ownership is, at best, merely provisionally decided, but only for the sole purpose of determining which party has the better right to the physical possession of the property.

APPEARANCES OF COUNSEL

Leopoldo P. Dela Rosa for petitioner.

D E C I S I O N

BERSAMIN, *J.*:

By petition for review on *certiorari*, the petitioner appeals the April 30, 2002 decision and the September 1, 2003 resolution of the Court of Appeals (CA) in C.A.-G.R. SP No. 49535, affirming the decision of the Office of the President (OP) that awarded in equal shares to the petitioner and the respondents the 50-square meter lot on which ZIP Tag Structure No. 86-313 stood.

Antecedents

In pursuit of the urban land reform program of the Government under Presidential Decree No. 1517,[1] Proclamation No. 1893,[2] and National Housing Authority (NHA) Circular No. 13,[3] the NHA conducted in 1987 the Zonal Improvement Program (ZIP) census and tagging of structures as pre-qualifying requisites for determining the potential lot beneficiaries in the Peñafrancia ZIP zone in Paco, Manila. In the census, the petitioner was determined to be an absentee structure owner of the dwelling unit tagged as Structure No. 86-313,[4] while respondent Eduardo Galapon and three others, namely Carlos Menodiado, Martin Nobleza and Buenaventura A. Zapanta, were censused to be the renters of the petitioner in the structure. The petitioner, then a 78-year old widow living in her son's dwelling unit tagged as Structure No. 86-305, had been renting Structure No. 86-313 out as a source of income.

[1] Proclaiming Urban Land Reform in the Philippines and Providing for the Implementing Machinery Thereof.

[2] Declaring the Entire Metropolitan Area as Urban Land Reform Zone.

[3] Code of Policies on Beneficiary Selection and Disposition of Homelots and Structures in Urban Bliss Level 1 Projects; CA *Rollo*, pp. 103-113.

[4] Code of Policies, Paragraph IV.

NHA Circular No. 13 disqualified any absentee or uncensused structure owner from owning a lot within a ZIP zone. Alarmed that she might be disqualified to own the 50-square meter lot located at Lot 12, Block 2, Peñafrancia ZIP zone where Structure No. 86-313 stood, the petitioner filed a petition for change of status from *absentee* structure owner to *residing* structure owner with the Awards and Arbitration Committee (AAC) of NHA.

The Ruling of the NHA

The AAC recommended the approval of the petitioner's petition for change of status.

Aggrieved, respondent Spouses Eduardo and Salud Galapon appealed the recommendation of the AAC. The NHA gave due course to the appeal and ultimately awarded the 50-square meter lot to them on January 30, 1996,[5] stating:

Records show the following:

1. During the 1987 census survey of the project, you were censused as absentee owner of the structure with Tag No. 86-313 while Eduardo Galapon, Jr., Carlos Menodiado, Martin Nobleza and Buenaventura A. Zapanta were censused as your renters.

2. Although you have not left the project prior to, during and after the 1987 census survey, you were not found to be residing at the structure with Tag No. 86-313, allegedly owned by your daughter, Fe Blas.

3. Your daughter Fe Blas, is forty (40) years old, single and physically disabled making her dependent on you for physical and financial support.

4. Despite the foregoing facts, the Awards and Arbitration Committee recommended the approval of your request for change of status and the award in your favor of 50.0 sq. m. portion, more or less of Lot 12 Block 2.

5. On September 1, 1995, the District Manager, in an answer to our query, informed our Legal Department of the following:

[5] CA *Rollo*, pp. 40-41.

4. The Civil Status of Fe Blas, 40 years old, is single.

5. Mrs (sic) Carmen Blas do not have any personal belongings nor does she maintain her own room in the contested structure. She is renting out the subject structure to renters, Carlos Menodiado, Eduardo Galapon Jr., Martin Nobleza and Buenaventura Zapanta at the time of the census to augment her income for old age and medicine."

6. The census masterlist provided by the project office indicates that you were censused as absentee owner of the structure with Tag No. 86-313 with remarks which is owned by your son, Rodrigo Blas. He is also an absentee structure owner.

   The abode date contradicts findings of the AAC that you lived with your daughter, Fe Blas in the structure with Tag No. 86-274.

7. You maintain the structure with Tag No. 83-313 not as your residence but for purely commercial purposes by renting it out.

In view of all the foregoing, your petition for change of census status from absentee structure owner to residing structure owner and the award of 50.0 sq. m. portion, more or less, of Lot 12 Blk. 2 is hereby DENIED.

The petitioner elevated for review the NHA decision to the OP, which docketed her appeal as OP Case No. 96-E-6455.

In the meantime, the petitioner filed an ejectment action against the respondents on October 18, 1996. She obtained a favorable judgment. After she was issued a writ of execution, the respondents voluntarily vacated the structure on November 17, 1996.

Ruling of the OP

On October 13, 1997, the OP found the petitioner and the respondents to be the long-standing *bona fide* qualified applicants and awarded the disputed lot and the structure to both of them in equal shares,[6] *viz*:

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[6] *Id.*, pp. 65-68.

WHEREFORE, premises considered, the appealed letter-decision of the NHA General Manager Mariano Pineda, dated January 30, 1996 is hereby SET ASIDE, and another one entered, dividing the area into two equal parts as much as possible, and allocating the same to appellant and appellees in the manner indicated in the body of this decision.

SO ORDERED.

Both parties sought reconsideration of the OP decision. The petitioner's motion was not acted upon by the OP while that of the respondents was denied for being filed out of time.

On August 13, 1998, the respondents, through their representative, Prospero M. de la Torre, wrote a letter seeking reconsideration to then Chief Presidential Legal Counsel Harriet O. Demetriou. In response, the OP issued a resolution dated October 15, 1998 denying the request.[7]

Ruling of the CA

The petitioner filed a petition for review in the CA, assailing the October 13, 1997 decision and the October 15, 1998 resolution of the OP. She prayed that the disputed lot and structure be awarded to her solely considering that the respondents had already vacated the structure even prior to the promulgation of the OP decision.

On April 30, 2002, the CA denied the petition for review for lack of merit,[8] holding:

The fact that she rented out her tagged structure proved that she did not live in that dwelling unit, hence, she remained under the law an absentee owner who was disqualified outright. If at all the Office of the President awarded her one-half of the disputed lot, it was out of pure beneficence of this Office and not because she had that right under the law.

Moreover Blas did not allege in the petition nor prove that the Office of the President committed grave abuse of discretion, fraud

[7] *Id.* p. 14.

[8] *Rollo,* pp. 35-43.

or error in law in dividing the disputed lot between her and the Galapons. While she assigned as an error on the part of the Office of the President in having the said lot divided, it was only upon the ground that the Galapons have already ceased to be renters after they were ejected by the court. This nevertheless does not constitute an error for the fact remains that the Galapons were the occupants at the time of the census, and not Blas. Administrative decisions on matters within the executive jurisdiction can only be set aside on proof of grave abuse of discretion, fraud, or error of law (*Itogon-Suyoc Mines, Inc. vs. Office of the President*, 270 SCRA 63; *Zabat vs. CA*, 338 SCRA 551). Absent these badges of executive excesses, this petition must fail.

The Office of the President in awarding the disputed lot to both in equal shares, did so because it was censused that the Galapons were renters of the Tagged Structure owned by Blas. As such the Galapons similarly were potential ZIP Beneficiaries who enjoyed the right of preemption and security of tenure as defined in the NHA Implementing guidelines. The fact that they were ejected in a case before Branch 25, Metropolitan Trial Court of Manila, did not render them automatically disqualified from being awardees of the ZIP project. Under the Implementing Guidelines (VIII. Ejectment, par. 1, p. 111, *rollo*) an ejected censused renter may only lose his status as a potential ZIP beneficiary if he does not inform the NHA or the local government unit of his address. There is nothing said and proved in the petition that spouses Galapon failed to up-date NHA of their address.[9]

The CA also denied the petitioner's motion for reconsideration on September 1, 2003.

Issues

The petitioner now seeks the review and reversal of the decision of the CA upon the following issues:

(1) Whether or not the petitioner was an absentee structure owner; and

(2) Whether or not the respondents were disqualified to be awardees of Lot 12, Block 2, Peñafrancia ZIP Project.

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[9] *Id.*, pp. 41-42.

Ruling of the Court

The petition lacks merit.

I

Petitioner Was an Absentee Structure Owner

The ZIP is designed to upgrade the legal, environmental, social and economic conditions of slum residents within Metro Manila, in line with the spirit of the constitutional provision guaranteeing housing and a decent quality of life for every Filipino. The ownership of land by the landless is the primary objective of the ZIP.[10]

The Code of Policies embodied in NHA Circular No. 13 governed the implementation of the ZIP as to the classification and treatment of existing structures, the selection and qualification of intended beneficiaries, the disposition and award of fully developed lots in all ZIP zones within Metro Manila, and other related activities.[11]

Paragraph V of the Code of Policies laid down the rules on beneficiary selection and lot allocation,[12] to wit:

V. BENEFICIARY SELECTION AND LOT ALLOCATION

1. The official Zip census and tagging shall be the primary basis for determining potential program beneficiaries and structures or dwelling units in the project area.

2. Issuance of Zip tag number in no way constitutes a guarantee for Zip lot allocation.

3. Absentee censused households and all uncensused households are automatically disqualified from lot allocation.

4. Only those household included in the ZIP census and who, in addition, qualify under the provisions of the Code of Policies, are the beneficiaries of the Zonal Improvement Program.

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[10] *Supra*, footnote no. 5, Paragraph III (1 & 4).

[11] *Id.*, Paragraph II.

[12] CA *Rollo*, p. 107.

5. A qualified censused-household is entitled to only one residential lot within the ZIP project areas of Metro Manila.

6. Documentation supporting lot allocation shall be made in the name of the qualified household head.

7. An Awards and Arbitration (AAC) shall be set up in each ZIP project area to be composed of representative each from the Authority, the local government, the barangay and the community. The AAC shall determine lot allocation amongst qualified beneficiaries, arbitrate in matters of claims and disputes, and safeguard the rights of all residents in ZIP project areas by any legal means it may consider appropriate. All decisions of the AAC shall be subject to review and approval of the General Manager of the Authority, the local Mayors, and finally the Governor of the Metropolitan Manila Commission.[13]

The declaration of policy in the Code of Policies stated that an absentee or uncensused structure owner was disqualified from owning a lot within the ZIP zones.[14]

A careful perusal of the Code of Policies shows the following persons to be automatically disqualified, namely:

(1) Absentee censused household – censused household that vacates a duly tagged structure or dwelling unit and leaves the project area for a continuous period for at least six months without written notice to the NHA and the local government unit;[15]

(2) Uncensused household – household that is not registered in the official ZIP census;[16]

(3) Absentee structure owner – any individual who owns a structure or dwelling unit in a ZIP project area and who has not occupied it prior to the official closure of the Census;[17] and

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[13] Presently, an appeal of the NHA decision is made to the Office of the President pursuant to Executive Order No. 19, dated April 2, 1960, as amended by Administrative Order No. 18, Series of 1987.

[14] *Supra*, footnote no. 5, Paragraph III (5).

[15] *Id.*, Paragraph IV (7).

[16] *Id.*, the term was defined in relation to Paragraph IV (6) CENSUSED HOUSEHOLD — A household registered in the official ZIP Census.

[17] *Id.*, Paragraph IV (9).

(4) Uncensused structure owner – any person who owns a structure or dwelling unit not registered in the official ZIP census.[18]

The CA categorically declared the petitioner as an absentee structure owner disqualified to the award of the disputed lot. On the other hand, the petitioner insists that she was not an absentee structure owner because she never abandoned nor relinquished her right over Structure No. 86-313. According to her, she occupied the disputed lot since 1938 although she was not living thereat during the time of the official ZIP census.

We agree with the CA.

The following requisites must concur for one to be considered an absentee structure owner: *one*, the person must own a structure or dwelling unit within the ZIP zone; and *two*, the person has not occupied the structure or dwelling unit prior to the official closure of the census.

The petitioner did not meet the second requisite because it was the respondents, not her, who were living in or occupying Structure No. 86-313 at the time of the official ZIP census and until they vacated the premises on November 17, 1996.

In the award of the ZIP lot allocation, the primary bases for determining the potential program beneficiaries and structures or dwelling units in the project area were the official ZIP census and tagging conducted in 1987. It was, therefore, the primordial requisite that the intended beneficiary must be the occupant of the tagged structure at the time of the official ZIP census or at the closure thereof. Otherwise, the person was considered an absentee structure owner for being absent from his usual residence or domicile. At any rate, the Code of Policies made it clear that the issuance of a ZIP tag number to a structure did not guarantee ZIP lot allocation to the owner of the tagged structure.[19] Such interpretation of the Code of Policies was in harmony with the objectives and principles underlying the program to provide

[18] *Id.*, the term was defined in relation to Paragraph IV (8) STRUCTURE OWNER — Any person or persons who own a structure or dwelling unit.

[19] *Supra*, footnote no. 5, Paragraph V (2).

adequate shelter and place of abode to the legally qualified beneficiaries. That the petitioner was the person who built Structure No. 86-313 did not necessarily mean that the lot on which the structure stood would be automatically awarded to her. Like any other beneficiary, she must first comply with the requirements imposed by the Government before being deemed entitled to the lot allocation. Unfortunately, she was not using Structure No. 86-313 as a dwelling or living quarters, but as a source of income, which only signified that she was not a homeless person whom the ZIP intended to benefit. To consider her a homelot beneficiary would be contrary to the spirit of the Code of Policies and would defeat the very object of the ZIP.

II

Respondents are not disqualified to be awardees of Lot 12, Block 2, Peñafrancia ZIP Project

The petitioner claims that the respondents were disqualified to become homelot beneficiaries because they had been evicted by virtue of the judgment rendered in the ejectment case she had filed against them; and that when they vacated Structure No. 86-313, they did not inform the NHA of their present address, an omission that violated Paragraph III of the Code of Policies, which reads:

> III. EJECTMENT
>
> 1. A censused renter or censused rent-free occupant who has been ejected should inform the Authority and the local government of his address in order that he may not lose his status as a potential ZIP beneficiary.
>
> 2. A qualified censused structure owner who succeeds in ejecting his renter or rent-free occupant or legal grounds, may be allowed to transfer to his structure or dwelling unit, with the prior written clearance of the Authority or its duly authorized representative, as certified by the local government.[20]

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[20] CA *Rollo*, p. 111.

We are not persuaded by the petitioner's claims.

It is undisputed that the respondents were the censused renters or occupants of Structure No. 86-313. Such status could not automatically be changed by their judicial ejectment at the petitioner's instance, considering that their right to become lot beneficiaries of the ZIP was consistently recognized by the AAC, the NHA, the OP and the CA. The discretion to determine who were the qualified homelot beneficiaries belonged to the AAC, subject to the review and approval of the NHA General Manager.[21] The NHA ruling on the issue was conclusive and binding in the absence of any clear showing of any grave abuse of discretion on the part of such administrative office directly tasked to execute, implement and administer the ZIP. That such ruling was even upheld by the OP and then the CA strengthened even more the presumption of correctness in its favor.

The petitioner cannot rely on the judgment rendered in the ejectment case to buttress her claim of the ownership of the structure. Neither was that judgment a valid basis for asserting a better right to the lot on which the structure stood. In ejectment cases, the only issue is the physical and material possession of the property involved, the resolution being independent of any claim of ownership made by any of the litigants. The question of ownership is, at best, merely provisionally decided, but only for the sole purpose of determining which party has the better right to the physical possession of the property.[22] Indeed, the judgment in the ejectment case could only determine who between the petitioner and the respondents had a better right to possess Structure No. 86-313. It did not, as it could not, decide that the petitioner was entitled to the award of the lot, or that the respondents could not be considered as qualified beneficiaries of the ZIP.

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[21] *Supra*, footnote no. 5, Paragraph V (7).

[22] *Keppel Bank Philippines, Inc. v. Adao*, G.R. No. 158227, October 19, 2005, 473 SCRA 372.

We further affirm the ruling of the CA to the effect that the petitioner did not substantiate her claim that the respondents had failed to inform the NHA of their present address; and that contrary to the Code of Policies, she did not allege that she now lived in her structure following her eviction of the respondents with prior written clearance from the NHA or its duly authorized representative, as verified by the City Government of Manila.

The respondents, being qualified homelot beneficiaries of Lot 12, Block 2, enjoyed the right of pre-emption *vis-à-vis* Structure No. 86-313, which was a right granted to them as the censused renters of the structure to have the first option to acquire or to purchase the structure.[23]

WHEREFORE, we deny the petition for review on *certiorari* for lack of merit.

The April 30, 2002 decision and the September 1, 2003 resolution in C.A.-G.R. SP No. 49535 are modified, awarding the 50-square meter portion of Lot 12, Block 2 of the Peñafrancia ZIP Project on which Structure No. 86-313 stood *exclusively* to the respondents.

Costs of suit to be paid by the petitioner.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Chico-Nazario,[*] and *Leonardo-de Castro, JJ.,* concur.

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[23] *Supra*, footnote no. 5, Paragraph IV (13).

EN BANC

[G.R. No. 167955. September 30, 2009]
(Formerly G.R. No. 151275)

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ARMANDO PADILLA *y* NICOLAS,** *appellant.*

SYLLABUS

1.REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; QUALIFIED RAPE; QUALIFYING CIRCUMSTANCES NEED NOT BE PRECEDED BY THE WORDS "QUALIFYING" OR "QUALIFIED BY" IN THE INFORMATION TO PROPERLY QUALIFY AN OFFENSE; CASE AT BAR. — It is clear from the Information that AAA was alleged to be a minor who was aged eleven (11) at the time of the commission of the crime and that the accused is her father. Contrary to the prosecution's asseveration, it does not matter that the private complainant's relationship with the accused was denominated as an "aggravating circumstance" and not as a "special qualifying circumstance." The Court has repeatedly held, even after the amendments to the Rules of Criminal Procedure took effect, that qualifying circumstances need not be preceded by descriptive words such as "qualifying" or "qualified by" to properly qualify an offense. The Court has repeatedly qualified cases of rape where the twin circumstances of minority and relationship have been specifically alleged in the Information even without the use of the descriptive words "qualifying" or "qualified by." In the instant case, the fact that AAA's relationship with appellant was described as "aggravating" instead of "qualifying" does not take the Information out of the purview of Article 335 of the Revised Penal Code (RPC), as amended by Section 11 of Republic Act No. 7659 (RA 7659), which was the prevailing law at the time of the commission of the offense. Article 335 does not use the words "qualifying" or "aggravating" in enumerating the circumstances that qualify rape so as to make it a heinous crime punishable by death. It merely refers to the enumerated circumstances as "attendant circumstances." The specific allegation of the attendant circumstances in the Information, coupled with the designation of the offense and a statement

of the acts constituting the offense as required in Sections 8 and 9 of Rule 110, are sufficient to warn appellant that the crime charged is qualified rape punishable by death.

2. ID.; EVIDENCE; QUALIFIED RAPE; RELATIONSHIP OF ACCUSED TO VICTIM; ADMISSION IN OPEN COURT OF RELATIONSHIP, SUFFICIENT; CASE AT BAR. — As to AAA's relationship with appellant, the Court agrees that the prosecution was able to prove it beyond reasonable doubt. The Information alleged that appellant is the Father of AAA. Appellant, in turn, admitted during trial that AAA is the daughter. Under prevailing jurisprudence, admission in open court of relationship has been held to be sufficient and, hence, conclusive to prove relationship with the victim.

3. ID.; ID.; ID.; MINORITY OF VICTIM; THERE MUST BE INDEPENDENT EVIDENCE PROVING THE AGE OF THE VICTIM OTHER THAN TESTIMONIES OF PROSECUTION WITNESSES, COUPLED WITH APPELLANT'S ABSENCE OF DENIAL; CASE AT BAR. — However, with respect to AAA's minority, the settled rule is that there must be independent evidence proving the age of the victim, other than the testimonies of the prosecution witnesses and the absence of denial by appellant. The victim's original or duly certified birth certificate, baptismal certificate or school records would suffice as competent evidence of her age. In the instant case, aside from the testimonies of prosecution witnesses, coupled with appellant's absence of denial, no independent substantial evidence was presented to prove the age of AAA. Neither was it shown by the prosecution that the said documents had been lost, destroyed, unavailable or were otherwise totally absent.

4. ID.; EVIDENCE; RAPE CASES; THREE WELL-ENTRENCHED PRINCIPLES TO GUIDE COURTS IN DETERMINATION OF INNOCENCE OR GUILT OF THE ACCUSED. — It is settled that to determine the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and

cannot be allowed to draw strength from the weakness of the evidence for the defense.

5. ID.; ID.; CREDIBILITY OF WITNESSES; TRIAL COURT'S CONCLUSIONS THEREON GENERALLY ACCORDED GREAT WEIGHT AND RESPECT. — Accordingly, in resolving rape cases, primordial consideration is given to the credibility of the victim's testimony. The settled rule is that the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, unless there appear in the record certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court stood in a much better position to decide the question of credibility. Findings of the trial court on such matters are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted. No such facts or circumstances exist in the present case.

6. ID.; ID.; ID.; A RAPE VICTIM'S TESTIMONY IS ENTITLED TO GREATER WEIGHT WHEN SHE ACCUSES A CLOSE RELATIVE OF HAVING RAPED HER, AS IN THE CASE OF A DAUGHTER AGAINST HER FATHER; CASE AT BAR. — The Court finds it incredible for private complainant to trump up a charge of rape against appellant on the simple reason that she has a grudge against the latter or that she was influenced by her aunt who harbors resentment against him. No woman would cry rape, allow an examination of her private parts, subject herself to humiliation, go through the rigors of public trial and taint her good name if her claim were not true. Thus, the unfounded claim of evil motive on the part of the victim would not destroy the credibility reposed upon her by the RTC and the CA because, as the Court has held, a rape victim's testimony is entitled to greater weight when she accuses a close relative of having raped her, as in the case of a daughter against her father.

7. ID.; ID.; ID.; LACK OF EVIDENCE FOR IMPROPER MOTIVE; PRESUMPTION IS THAT WITNESS HAD NO SUCH IMPROPER MOTIVE; CASE AT BAR. — Moreover,

appellant's rape of private complainant was corroborated by no less than the latter's sister who is also a daughter of appellant. The rule is that where there is no evidence that the witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full credence.

8. ID.; ID.; DENIAL; CATEGORICAL AND CONSISTENT POSITIVE IDENTIFICATION PREVAILS OVER THE DEFENSE OF DENIAL; CASE AT BAR. — Against the overwhelming evidence of the prosecution, appellant merely interposed the defense of denial. Categorical and consistent positive identification, absent any showing of ill-motive on the part of the eyewitness testifying on the matter, prevails over the defense of denial. In the present case, there is no showing of any improper motive on the part of the victim to testify falsely against the appellant or to implicate him falsely in the commission of the crime; hence, the logical conclusion is that no such improper motive exists and that the testimony is worthy of full faith and credence. Accordingly, appellant's weak defense of denial cannot prosper.

9. CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; ELEMENTS THEREOF; CASE AT BAR. — The elements of statutory rape, of which appellant was charged are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below 12 years of age. In the present case, the prosecution failed to prove the age of AAA, much less the allegation that she was under the age of twelve when she was raped. Thus, the Court cannot hold appellant liable for statutory rape.

10. ID.; ID.; ID.; ID.; APPELLANT LIABLE FOR SIMPLE RAPE ONLY WHERE PROSECUTION FAILED TO ESTABLISH VICTIM'S MINORITY BY INDEPENDENT PROOF; CASE AT BAR. — However, since the prosecution was able to establish, without any objection from the defense, that appellant had carnal knowledge of AAA with the use of force, he can be convicted of simple rape the penalty for which is *reclusion perpetua*. Appellant may not be convicted of rape in its qualified form, as to impose upon him the penalty of death, considering that, while the aggravating circumstance of relationship was proven, the prosecution failed to establish AAA's minority by independent proof.

11. ID.; ID.; ID.; ID.; ID.; PROPER PENALTY IN CASE AT BAR. — With respect to the last assigned error, the Court agrees with the CA in awarding civil indemnity as well as moral and exemplary damages to AAA. However, since the penalty is *reclusion perpetua*, the civil indemnity must be reduced from ₱75,000.00 to ₱50,000.00 in line with prevailing jurisprudence. Moreover, when a crime is committed with an aggravating circumstance, either qualifying or generic, an award of ₱30,000.00 as exemplary damages is justified under Article 2230 of the New Civil Code.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Free Legal Assistance Group (FLAG) for appellant.

D E C I S I O N

PERALTA, *J.*:

For review is the Decision[1] of the Court of Appeals (CA) dated February 23, 2005 in CA-G.R. CR-H.C. No. 00571 which affirmed, with modification, the Decision of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 15, in Criminal Case No. 166-M-96,[2] finding appellant Armando Padilla *y* Nicolas guilty beyond reasonable doubt of the crime of Statutory Rape and sentencing him to suffer the penalty of Death. The CA found appellant guilty of Qualified Rape and likewise imposed on him the penalty of Death. It reduced the awards for civil indemnity from ₱100,000.00 to ₱75,000.00 and exemplary damages from ₱50,000.00 to ₱25,000.00. In addition, the CA awarded moral damages in the amount of ₱50,000.00.

Consistent with the Court's decision in *People v. Cabalquinto*,[3] the real name of the rape victim in this case is withheld and,

[1] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Roberto A. Barrios and Vicente S.E. Veloso, concurring; *rollo*, pp. 3-19.

[2] Records, pp. 252-265.

[3] G.R. No. 167693, September 19, 2006, 502 SCRA 419.

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, are not disclosed in this decision.

The facts of the case, as established by the prosecution, are as follows:

Around 9 o'clock in the evening of February 22, 1994, AAA was inside their house located at Marilao, Bulacan.[4] With her were her father, herein appellant, her two older brothers and her sister BBB.[5] She was then staying in one of the rooms because she was suffering from asthma and was taking medicine through the help of her sister, BBB.[6] On the other hand, her brothers were already asleep in another room.[7] After AAA took her medicine, appellant told BBB to sleep outside the room where AAA was staying.[8] When BBB went outside, appellant turned off the light and proceeded to their kitchen.[9] Thereafter, appellant returned to the room where AAA was staying.[10] He then took off AAA's clothes and also removed his.[11] He went on top of AAA and tried to insert his penis into her vagina.[12] AAA resisted but appellant held her hands and boxed her left thigh twice.[13] She was then rendered weak enabling appellant to successfully insert his organ inside her vagina.[14] AAA felt

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[4] TSN, November 20, 1996, p. 16.

[5] *Id.;* TSN, December 11, 1996, p. 4.

[6] TSN, November 20, 1996, p. 16

[7] TSN, December 11, 1996, p. 5.

[8] TSN, November 20, 1996, p. 17.

[9] *Id.*

[10] *Id.*

[11] *Id.;* TSN, December 9, 1996, p. 24.

[12] TSN, November 20, 1996, p. 18.

[13] TSN, December 9, 1996, p. 24.

[14] *Id.* at 25; TSN, November 20, 1996, p. 18.

pain, after which her vagina bled.[15] While appellant's penis was inside her vagina, he made push and pull movements.[16] She pleaded with appellant to stop but to no avail.[17] It was in the course of her struggle against appellant's advances that she called on her sister for help.[18] Thereafter, she felt something come out of his penis.[19] Appellant withdrew his penis from her vagina but remained on top of her and even began touching her breast.[20] It was during that compromising position that BBB entered the room and saw them.[21] Appellant immediately gathered his clothes and went to the comfort room.[22] Thereafter, AAA cried while BBB handed her clothes to her.[23] They then slept beside each other.[24]

AAA did not complain nor tell her brothers about her ordeal because she was afraid as she was threatened by appellant that he will hurt them and burn their house if she relates the incident to them.[25] It was only in October 1995 that she was able to tell her aunt about her experience in the hands of appellant.[26] Subsequently, her aunt accompanied her to the office of the National Bureau of Investigation (NBI) where they filed a complaint against appellant.[27]

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[15] *Id.* at 19.

[16] TSN, December 9, 1996, p. 26.

[17] *Id.* at 30.

[18] *Id.* at 33.

[19] *Id.* at 26.

[20] *Id.* at 35.

[21] *Id.* at 36; TSN, November 20, 1996, pp. 20-21.

[22] *Id.* at 22; TSN December 9, 1996, p. 36.

[23] *Id.* at 38.

[24] TSN, November 20, 1996, p. 26.

[25] *Id.* at 27; TSN, December 11, 1996, p. 12.

[26] TSN, November 20, 1996, p. 29.

[27] *Id.* at 30.

On February 1, 1996, an Information[28] was filed against appellant charging him before the RTC of Malolos, Bulacan with the crime of statutory rape, the accusatory portion of which reads:

> That on or about the 22nd day of February, 1994 in the Municipality of Marilao, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously, with lewd designs have carnal knowledge of said AAA, a minor who is 11 years old, against her will.
>
> All contrary to law with an aggravating circumstance that the accused is the legitimate father of AAA.[29]

On arraignment, appellant pleaded not guilty.[30] Pre-trial conference followed.[31] Thereafter, trial ensued.

On November 5, 2001, the RTC rendered its Decision,[32] the dispositive portion of which is as follows:

> WHEREFORE, the Court finds the accused Armando Padilla *y* Nicolas GUILTY beyond reasonable doubt of the crime of Statutory Rape described and penalized under Article 335 of the Revised Penal Code and Republic Act 7659 otherwise referred to as the Death Penalty Law, and hereby sentences him the capital penalty of DEATH.
>
> The accused is likewise ordered to indemnify the offended party AAA damages in the amount of ₱100,000.00 and to pay exemplary damages in the amount of ₱50,000.00 to deter other sex perverts from sexually assaulting hapless and innocent girls especially their kin.
>
> In passing, Justice Vicente Abad Santos once remarked – there should be a special place in hell for child molesters. The accused deserves a deeper pit because the child he molested was his own daughter. More than anyone else, it was he to whom the child

[28] Records, p. 1.

[29] *Id*.

[30] *Id.* at 12.

[31] *Id.* at 14.

[32] *Id*. at 252-265.

would have looked up for the protection of her chastity. He cynically betrayed that faith with his unnatural lechery.

SO ORDERED.[33]

In an Order[34] dated November 6, 2001, the RTC directed the transmittal of the entire records of the case to this Court and likewise ordered the commitment of the accused to the National Penitentiary in Muntinlupa.

Pursuant to the Court's pronouncement in *People v. Mateo*,[35] which modified the provisions of the Rules of Court insofar as they provide for direct appeals from the RTC to this Court in cases where the penalty imposed by the trial court is death, *reclusion perpetua* or life imprisonment, the case was referred to the CA for appropriate action and disposition.[36]

After a review of the case, the CA affirmed, with modification, the decision of the RTC convicting the appellant. The dispositive portion of the CA Decision reads, thus:

WHEREFORE, premises considered, the appealed judgment dated November 5, 2001 of the Regional Trial Court of Malolos, Bulacan, Branch 15 in Criminal Case No. 166-M-96 finding Armando Padilla *y* Nicolas guilty of Qualified Rape and sentencing him to suffer the supreme penalty of DEATH is hereby AFFIRMED with the MODIFICATION that he is ordered to pay the victim the amount of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages.

In accordance with A.M. No. 00-5-03-SC which took effect on October 15, 2004, amending Section 13, Rule 124 of the Revised Rules of Criminal Procedure, let the entire records of this case be elevated to the Supreme Court for review.

Costs against the accused-appellant.

SO ORDERED.[37]

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[33] *Id.* at 264-265.

[34] *Id.* at 267.

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

[36] CA *rollo*, p. 186.

[37] *Id.* at 203-204.

The case was then elevated to this Court for review.

In a Resolution[38] dated July 19, 2005, the parties were required to simultaneously submit their respective supplemental briefs if they so desire. However, both parties manifested that they are not filing their supplemental briefs as their positions in the present case had been thoroughly expounded in their respective appeal briefs which were forwarded to the CA. Thereafter, the case was deemed submitted for deliberation.

Appellant assigned the following assignment of errors in his Brief:

APPLYING THE *PRUNA* GUIDELINES, THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE DEATH PENALTY ON ACCUSED-APPELLANT CONSIDERING THE PROSECUTION'S FAILURE TO SUFFICIENTLY PROVE THE MINORITY OF THE COMPLAINANT AND HER RELATIONSHIP WITH THE ACCUSED.

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE PROSECUTION HAD PROVEN BEYOND REASONABLE DOUBT ACCUSED-APPELLANT'S GUILT FOR QUALIFIED RAPE.

THE TRIAL COURT GRAVELY ERRED IN AWARDING DAMAGES TO THE PRIVATE COMPLAINANT.[39]

As to the first assigned error, appellant avers that the death penalty may not be imposed because the qualifying circumstances of minority and relationship were not properly alleged and proved by the prosecution.

The Court agrees in part.

The first issue is whether or not the qualifying circumstances of minority and relationship were properly alleged by the prosecution.

It is clear from the Information that AAA was alleged to be a minor who was aged eleven (11) at the time of the commission of the crime and that the accused is her father. Contrary to the

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[38] *Rollo,* p. 20.

[39] CA *rollo,* p. 76.

prosecution's asseveration, it does not matter that the private complainant's relationship with the accused was denominated as an "aggravating circumstance" and not as a "special qualifying circumstance."

The Court has repeatedly held, even after the amendments to the Rules of Criminal Procedure took effect,[40] that qualifying circumstances need not be preceded by descriptive words such as "qualifying" or "qualified by" to properly qualify an offense.[41] The Court has repeatedly qualified cases of rape where the twin circumstances of minority and relationship have been specifically alleged in the Information even without the use of the descriptive words "qualifying" or "qualified by."[42] In the instant case, the fact that AAA's relationship with appellant was described as "aggravating" instead of "qualifying" does not take the Information out of the purview of Article 335 of the Revised Penal Code (RPC), as amended by Section 11 of Republic Act No. 7659 (RA 7659),[43] which was the prevailing law at the time of the commission of the offense. Article 335 does not use the words "qualifying" or "aggravating" in enumerating the circumstances that qualify rape so as to make it a heinous crime punishable by death. It merely refers to the enumerated circumstances as "attendant circumstances." The specific allegation of the attendant circumstances in the Information, coupled with the designation of the offense and a statement of the acts constituting the offense as required in Sections 8[44]

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[40] The amendments to the Rules of Criminal Procedure took effect on December 1, 2000.

[41] *People v. Aquino*, G.R. Nos. 144340-42, August 6, 2002, 386 SCRA 391, 395.

[42] *Id*.

[43] R.A. 7659 took effect on December 31, 1993.

[44] Sec. 8. *Designation of the offense*. — Whenever possible, a complaint or information should state the designation given to the offense by the stature, besides the statement of the acts or omissions constituting the same, and if there is no such designation, reference should be made to the section or subsection of the statute punishing it.

and 9[45] of Rule 110, are sufficient to warn appellant that the crime charged is qualified rape punishable by death.

In the present case, the attendant circumstances of minority and relationship were specifically alleged in the Information. These allegations are sufficient to qualify the offense of rape.

The next question to be resolved is whether the prosecution was able to prove appellant's relationship with AAA as well as the latter's minority.

As to AAA's relationship with appellant, the Court agrees that the prosecution was able to prove it beyond reasonable doubt. The Information alleged that appellant is the father of AAA. Appellant, in turn, admitted during trial that AAA is her daughter.[46] Under prevailing jurisprudence, admission in open court of relationship has been held to be sufficient and, hence, conclusive to prove relationship with the victim.[47]

However, with respect to AAA's minority, the settled rule is that there must be independent evidence proving the age of the victim, other than the testimonies of the prosecution witnesses and the absence of denial by appellant.[48] The victim's original or duly certified birth certificate, baptismal certificate or school records would suffice as competent evidence of her age.[49] In

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[45] Sec. 9. *Cause of accusation.* — The acts or omissions complained of as constituting the offense must be stated in ordinary and concise language without repetition, not necessarily in the terms of the statute defining the offense, but in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment.

[46] TSN, March 6, 2001, p. 5.

[47] *People v. Biyoc,* G.R. No. 167670, September 7, 2007, 532 SCRA 528, 537; *People v. Macabata,* G.R. Nos. 150493-95, October 23, 2003, 414 SCRA 260, 270.

[48] *People v. Codilan,* G.R. No. 177144, July 23, 2008, 559 SCRA 623, 635; *People v. Dela Cruz,* G.R. No. 177572, February 26, 2008, 546 SCRA 703, 725; *People v. Alvarado,* G.R. No. 145730, March 19, 2002, 379 SCRA 475, 488.

[49] *People v. Dela Cruz, supra* note 48.

the instant case, aside from the testimonies of prosecution witnesses, coupled with appellant's absence of denial, no independent substantial evidence was presented to prove the age of AAA. Neither was it shown by the prosecution that the said documents had been lost, destroyed, unavailable or were otherwise totally absent.

Anent appellant's failure to object to the testimony of AAA, regarding her age, the Court has held that the failure of the accused to object to the testimonial evidence regarding the rape victim's age shall not be taken against him.[50] Even the appellant's implied admission of the victim's age, in the absence of any supporting independent evidence, may not be considered sufficient to prove her age. In *People v. Biong*,[51] the appellant testified as to the exact date when her daughter, the complainant, was born. However, the Court held that appellant's testimony falls short of the quantum of proof required to establish her age. As the qualifying circumstance of minority alters the nature of the crime of rape and increases the penalty thereof, it must be proved with equal certainty and clearness as the crime itself.[52] In the present case, the Court agrees with appellant that the prosecution failed to discharge this burden.

Coming to the second assigned error, appellant questions the credibility of the victim, AAA, arguing that his constitutional right to be presumed innocent should take precedence over the unfounded claim of AAA that he raped her.

It is settled that to determine the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3)

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[50] *Id.* at 726, citing *People v. Pruna*, 390 SCRA 577, 604 (2002).

[51] G.R. Nos. 144445-47, April 30, 2003, 402 SCRA 366, 379.

[52] *People v. Dela Cruz*, *supra* note 48, at 726.

the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[53]

Accordingly, in resolving rape cases, primordial consideration is given to the credibility of the victim's testimony.[54] The settled rule is that the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, unless there appear in the record certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case.[55]

Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court stood in a much better position to decide the question of credibility.[56] Findings of the trial court on such matters are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.[57] No such facts or circumstances exist in the present case.

In this case, both the RTC and the CA are in agreement that AAA's account of her ordeal in the hands of her father was categorical and straightforward.

Appellant contends that AAA had a grudge against him and, aside from that, she was influenced and even instigated by her aunt, Elena Manahan, to file the complaint against appellant because of the bitterness that Elena feels towards him. According to the appellant, this bitterness was brought about by a misunderstanding between him and Elena involving money

[53] *People v. Pangilinan,* G.R. No. 171020, March 14, 2007, 518 SCRA 358, 373.

[54] *People v. Noveras,* G.R. No. 171349, April 27, 2007, 522 SCRA 777, 787.

[55] *Id*.

[56] *People v. Balonzo,* G.R. No. 176153, September 21, 2007, 533 SCRA 760, 768.

[57] *People v. Hermocilla,* G.R. No. 175830, July 10, 2007, 527 SCRA 296, 303.

entrusted to the latter by his wife which was supposed to be used for the construction of apartments.[58] However, appellant's claim deserves scant consideration. The Court finds it incredible for private complainant to trump up a charge of rape against appellant on the simple reason that she has a grudge against the latter or that she was influenced by her aunt who harbors resentment against him. No woman would cry rape, allow an examination of her private parts, subject herself to humiliation, go through the rigors of public trial and taint her good name if her claim were not true.[59]

Thus, the unfounded claim of evil motive on the part of the victim would not destroy the credibility reposed upon her by the RTC and the CA because, as the Court has held, a rape victim's testimony is entitled to greater weight when she accuses a close relative of having raped her, as in the case of a daughter against her father.[60]

Moreover, appellant's rape of private complainant was corroborated by no less than the latter's sister who is also a daughter of appellant. The rule is that where there is no evidence that the witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full credence.[61]

In addition, AAA's subsequent acts of disclosing and complaining about her molestation to her aunt and the authorities and taking immediate steps to subject herself to medical examination represent conduct consistent with her straightforward, logical and probable testimony that she was in fact raped by appellant. They represent strong and compelling factors that enhance complainant's credibility as a witness.

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[58] TSN, February 26, 2002, p. 33.

[59] *People of the Philippines v. Felix Ortoa y Obia*, G.R. No. 174484, February 23, 2009.

[60] *People of the Philippines v. Daganio,* 425 Phil. 186, 195 (2002).

[61] *People of the Philippines v. Invencion,* 446 Phil. 775, 787 (2003).

Against the overwhelming evidence of the prosecution, appellant merely interposed the defense of denial. Categorical and consistent positive identification, absent any showing of ill-motive on the part of the eyewitness testifying on the matter, prevails over the defense of denial.[62] In the present case, there is no showing of any improper motive on the part of the victim to testify falsely against the appellant or to implicate him falsely in the commission of the crime; hence, the logical conclusion is that no such improper motive exists and that the testimony is worthy of full faith and credence. Accordingly, appellant's weak defense of denial cannot prosper.

The prevailing law at the time the crime was committed in 1994 was still Article 335 of the RPC as amended by Section 11 of RA 7659, the first paragraph of which provides as follows:

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*.

x x x x x x x x x

Paragraph 7(1) of the same Article further provides that:

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, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

x x x x x x x x x

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[62] *People of the Philippines v. Quezada*, 425 Phil. 877, 891 (2002).

The elements of statutory rape, of which appellant was charged are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below 12 years of age.[63]

In the present case, the prosecution failed to prove the age of AAA, much less the allegation that she was under the age of twelve when she was raped. Thus, the Court cannot hold appellant liable for statutory rape. However, since the prosecution was able to establish, without any objection from the defense, that appellant had carnal knowledge of AAA with the use of force, he can be convicted of simple rape the penalty for which is *reclusion perpetua*. Appellant may not be convicted of rape in its qualified form, as to impose upon him the penalty of death, considering that, while the aggravating circumstance of relationship was proven, the prosecution failed to establish AAA's minority by independent proof.

With respect to the last assigned error, the Court agrees with the CA in awarding civil indemnity as well as moral and exemplary damages to AAA. However, since the penalty is *reclusion perpetua*, the civil indemnity must be reduced from ₱75,000.00 to ₱50,000.00 in line with prevailing jurisprudence.[64] Moreover, when a crime is committed with an aggravating circumstance, either qualifying or generic, an award of ₱30,000.00 as exemplary damages is justified under Article 2230 of the New Civil Code.[65]

WHEREFORE, the assailed Decision of the Court of Appeals dated February 23, 2005 in CA-G.R. CR-H.C. No. 00571 is *AFFIRMED* with *MODIFICATION*. Appellant Armando Padilla is found *GUILTY* beyond reasonable doubt of the Crime of Simple Rape under Article 335 of the Revised Penal Code, as amended, and is sentenced to suffer the penalty of *reclusion*

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[63] *People of the Philippines v. Elister Basmayor y Grascilla*, G.R. No. 182791, February 10, 2009.

[64] *People of the Philippines v. Remeias Begino y Grajo*, G.R. No. 181246, March 20, 2009; *People of the Philippines v. Elmer Baldo y Santian*, G.R. No. 175238, February 24, 2009.

[65] *People of the Philippines v. Rogelio Marcos*, G.R. No. 185380, June 18, 2009.

perpetua, and ordered to pay the private complainant AAA the reduced amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and the increased amount of ₱30,000.00 as exemplary damages. *Costs de oficio.*

SO ORDERED.

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

Quisumbing and *Carpio, JJ.*, on official leave.

FIRST DIVISION

[G.R. No. 175528. September 30, 2009]

PO3 BENITO SOMBILON, JR., *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; ACTS OF LASCIVIOUSNESS; ELEMENTS. — The crime of acts of lasciviousness as punished under Article 336 of the Revised Penal Code provides: ART. 336. Acts of lasciviousness.— Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional*. For an accused to be convicted of acts of lasciviousness under the foregoing provision, the prosecution is burdened to prove the confluence of the following essential elements: (1) that the offender commits any act of lasciviousness or lewdness; and (2) that it is done under any of the following circumstances: (a) by using force or intimidation; (b) when the offended woman is deprived of reason

or otherwise unconscious; or (c) when the offended party is under twelve (12) years of age.

2. ID.; ID.; ID.; ID.; *AMPLOYO V. PEOPLE* EXPOUNDED ON THE DEFINITION OF "LEWD." — In the case of *Amployo v. People*, the Court expounded on the definition of the term lewd, thus: The term "lewd" is commonly defined as something indecent or obscene; it is characterized by or intended to excite crude sexual desire. That an accused is entertaining a lewd or unchaste design is necessarily a mental process the existence of which can be inferred by overt acts carrying out such intention, *i.e.*, by conduct that can only be interpreted as lewd or lascivious. The presence or absence of lewd designs is inferred from the nature of the acts themselves and the environmental circumstances. What is or what is not lewd conduct, by its very nature, cannot be pigeonholed into a precise definition.

3. ID.; ID.; ID.; ID.; ID.; LASCIVIOUS CONDUCT INTENDED TO GRATIFY SEXUAL DESIRES, PRESENT IN CASE AT BAR. — Undoubtedly, petitioner committed acts which fall within the above described lascivious conduct. It cannot be viewed as mere unjust vexation as petitioner would have the Court do. The intention of petitioner was intended neither to merely annoy or irritate the victim not to force her to confess the theft. He could have easily achieved that when he electrocuted the latter. Petitioner intended to gratify his sexual desires. As found by the RTC and affirmed by the CA, petitioner's acts of kissing the victim, fondling her breasts and touching her private parts constitute lascivious conduct intended to quench his salacious desire. Petitioner's lewd intent was betrayed when he asked AAA, *"Dalaga ka na ba?"* as a preclude to his lustful advances on the victim, and thereafter conveyed to her that *"I am single too."*

4. ID.; ID.; ID.; ID.; IT IS NOT NECESSARY THAT INTIMIDATION BE IRRESISTIBLE; CASE AT BAR. — In *People v. Victor*, the Court held that in cases of acts of lasciviousness, it is not necessary that intimidation be irresistible. It being sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party. Here, the victim was locked inside a windowless room together with her aggressor who poked a gun at her forehead. Even a grown man would be paralyzed with fear if threatened at gunpoint,

what more the hapless victim who was only 15 years old when she was subjected to such atrocity.

5. REMEDIAL LAW; EVIDENCE; ACTS OF LASCIVIOUSNESS; PHYSICAL IMPOSSIBILITY TO BE AT THE CRIME SCENE; LUST IS NO RESPECTER OF EITHER PLACE OR TIME; CASE AT BAR. — Petitioner's assertion that the *locus criminis i.e.*, the police station makes it unlikely for him to commit the crime of acts of lasciviousness is specious. The presence of other policemen on duty and of the victim's mother outside the room where the incident took place does not render commission of the offense impossible. It has been shown that there was a room in the precinct which, except for two doors which could be locked, was totally enclosed. During the commission of the acts of lasciviousness, petitioner and AAA were the only persons inside the room. Lust, as we have often held, is no respecter of either place or time.

6. ID.; CRIMINAL PROCEDURE; SECTIONS 8 AND 9 OF RULE 110 THEREOF; AGGRAVATING AND QUALIFYING CIRCUMSTANCES MUST BE SPECIFICALLY ALLEGED IN THE COMPLAINT OR INFORMATION; CASE AT BAR. — [Pursuant to] Sections 8 and 9 of Rule 110 of the Revised Rules of Criminal Procedure, which took effect on December 1, 2000, x x x. It is now a requirement that the aggravating as well as the qualifying circumstances be expressly and specifically alleged in the complaint or information. Otherwise, they cannot be considered by the trial court in its judgment, even, if they are subsequently proved during trial. A reading of the Information shows that there was no allegation of any aggravating circumstance.

7. ID.; ID.; ID.; ID.; PROCEDURAL RULES MAY BE APPLIED RETROACTIVELY WHERE THE ACCUSED MAY BENEFIT; CASE AT BAR. — In *People v. Buayaban*, the crime was committed and the Information was filed in 1990. Still, the Court gave the 2000 Rules of Criminal Procedure retroactive application since it benefited the accused and disregarded the generic aggravating circumstance of band because it was not alleged in the Information. x x x Here, the crime was committed in 1998, the generic aggravating circumstance of taking advantage of public position was not alleged in the information. As such, it cannot be appreciated

as an aggravating circumstance. Consequently, the penalty imposed must be modified.

8. ID.; ID.; ID.; ID.; ID.; EXEMPLARY DAMAGES MAY BE AWARDED AS AN EXCEPTION THERETO SO AS NOT TO ADVERSELY AFFECT VESTED RIGHTS; CASE AT BAR. — As to the damages awarded, Article 2230 of the Civil Code 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. Since the generic aggravating circumstance of taking advantage of public position was not alleged in the Information against petitioner it cannot be appreciated in the imposition of the penalty. But as regards the award of exemplary damages, in the case of *People v. Catubig*, the Court declined retroactive application of the 2000 Rules of Criminal Procedure, to wit: The retroactive application of procedural rules, nevertheless, cannot adversely affect the rights of the private offended party that have become vested prior to the effectivity of said rules. Thus, in the case at bar, although relationship has not been alleged in the information, the offense having been committed, however, prior to the effectivity of the new rules, the civil liability already incurred by appellant remains unaffected thereby.

9. CRIMINAL LAW; REVISED PENAL CODE; PENALTIES; PROPER PENALTY IN CASE AT BAR. — Section 1 of the Indeterminate Sentence Law (ISL) states that *(i)n 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 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*. Under Article 366 of the Revised Penal Code, the penalty for acts of lasciviousness is *prision correccional*. Since no aggravating or mitigating circumstance attended the commission of the offense in this case, the penalty should be applied in its medium period, the duration of which is two (2) years, four (4) months and one (1) day to four (4) years and two months, as maximum. The minimum shall be within the range of the penalty next lower in degree which is *arresto mayor*, with the duration of one (1) month and one (1) day to

six (6) months. Applying the ISL, the proper penalty would be imprisonment of six (6) months of *arresto mayor* as minimum to four (4) years and two (2) months of *prision correccional* as maximum.

APPEARANCES OF COUNSEL

Leopoldo L. Cagatin for petitioner.
The Solicitor General for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This resolves the petition for review which seeks to annul and set aside the following rulings of the Court of Appeals (CA) in *C.A. C.R. No. 27729*: a) the Decision[1] dated July 28, 2005 which affirmed with modification the decision[2] dated May 13, 2003 of the Regional Trial Court of Davao City (RTC), convicting petitioner of acts of lasciviousness; and b) the Resolution[3] dated September 22, 2006 denying petitioner's Motion for Reconsideration of the aforesaid Decision.

The facts found during trial, as succinctly stated by the CA, are as follows:

The facts found during the trial reveal that on or about August 15, 1998, AAA, a fifteen (15)-year old minor, was investigated by Appellant at the Calinan Police Station, Davao City in connection with a complaint for Theft filed by a certain Aileen Dagoc.

AAA alleged that Appellant, in conducting the investigation, took her inside a room and locked it. She testified that the room had no window but had a cot, a table, and a clothesline where some clothes were hanged. She claimed that Appellant pointed a gun at her, with

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[1] Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Arturo G. Tayag and Rodrigo F. Lim, Jr., concurring; *rollo*, pp. 18-31.

[2] *Id.* at 49-57.

[3] *Id.* at 47.

the end of the barrel touching her forehead and pushed her with it, causing her head to violently bang against the wall, and asked her: "Did you steal the necklace?" She answered that she did not. Appellant then took an electric wire from a drawer and inserted its male plug to a socket. She was ordered to place her two hands on top of the table where her fingers were electrocuted with the end of the wire. She was again asked the same question, which she kept answering in the negative. Subsequently, she was asked: "*Dalaga ka na ba?*" (Are you a woman now?), and was told: "I am single too." Simultaneously, she was touched all over her body including her breasts, her belly, and her private parts. She was also kissed on her cheek. She struggled to resist the sexual advances but Appellant prevailed. She claimed that they were inside the room for more than one (1) hour.

Thereafter, they went out of the room where Appellant announced to PO3 Danilo Mendez and Aileen Dagoc that she had already admitted having stolen the necklace. Pale, AAA was trembling and crying; her hair disheveled, her dress wet. She also had bruises on her forehead.

The police officers allowed AAA and her mother to go home on the condition that they would pay the value of the necklace. Because of AAA's condition, AAA's mother brought her daughter to the *Medical Clinic of St. Luke* where AAA was examined by Dr. Manuel Garcia, Sr.[4] Dr. Garcia gave AAA a tranquilizer to calm down the latter who was trembling and incoherent.[5] At first, AAA could not answer the doctor when she was asked what happened to her. Later, upon regaining her composure, she revealed that she was electrocuted and sexually molested by petitioner.[6] The Medical Certificate[7] issued by Dr. Garcia disclosed the following injuries:

1. Slight contusion over occiput region.
2. Slight contusion over center area of forehead.
3. Multiple slight contusions of fingers of bilateral hands.

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[4] TSN, May 22, 2000, p. 11.

[5] TSN, July 5, 2000, p. 8.

[6] TSN, November 13, 2000, p. 7.

[7] Record, p. 15.

4. Multiple slight contusions of bilateral breast areas.
5. Slight body tremors.
Diagnosis: Slight Physical Injuries

In an Information[8] dated August 23, 1999, petitioner was charged with the crime of Acts of Lasciviousness committed as follows:

> The undersigned accuses the above-named accused of the crime of Acts of Lasciviousness, under Art. 336, in relation to Art. 344 of the Revised Penal Code, upon the instance of the complainant AAA, who is 15 years old, whose affidavit is hereto attached to form part of this Information. The crime is committed as follows:
>
> That on or about August 14, 1998, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, motivated by lewd design, willfully, unlawfully, and feloniously upon the person of AAA, by then and there embracing, mashing the breast, and touching the private part, against her will.
>
> CONTRARY TO LAW.

Upon arraignment, petitioner pleaded "*not guilty*." Trial ensued thereafter.

On May 13, 2003, after trial on the merits, the RTC rendered a decision finding petitioner guilty of acts of lasciviousness with the aggravating circumstance of petitioner's taking advantage of his public position and sentenced him to six (6) months of *arresto mayor*, as minimum, to five (5) years, four (4) months and twenty-one (21) days of *prision correccional*, as maximum. The dispositive portion of the Decision reads:

> For the foregoing judgment is hereby rendered, finding accused P03 Benito Sombilon, GUILTY beyond reasonable doubt of the crime of Acts of Lasciviousness, under Article 366 of the Revised Penal Code, and is hereby sentenced to suffer imprisonment under the Indeterminate Sentence Law from Six (6) months of *Arresto Mayor*, as minimum to Five (5) years, Four (4) months and Twenty-one (21) days of *Prision Correccional*, as maximum and directed to pay private complainant AAA the following:

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[8] *Id.* at 1.

a.) by way of moral Damages, the amount of Ten Thousand Pesos (Php10,000.00); and

b.) by way of Exemplary Damages, the amount of Ten Thousand Pesos (Php10,000.00).[9]

From the above decision, petitioner interposed an appeal to the CA, which was docketed as CA-G.R. CV No. 40419.

On July 28, 2005, the CA rendered the herein challenged Decision affirming with modification the RTC's judgment of conviction. Appreciating the aggravating circumstance of taking advantage of public position which was adequately established during the trial, the CA increased the maximum penalty imposed against petitioner to its maximum period of six years of *prision correccional*. The dispositive portion of the Decision reads:

WHEREFORE, the Decision of the Regional Trial Court, Br. 8, Davao City in Criminal Case No. 43, 810-99 is hereby **AFFIRMED** with **MODIFICATION**. Appellant PO3 Benito Sombilon, as found guilty beyond reasonable doubt of the crime of **acts of lasciviousness**, defined and penalized under Article 336 of the Revised Penal Code, is hereby sentenced to suffer the indeterminate penalty of 6 months of *arresto mayor* as minimum, to 6 years of *prision correccional*, as maximum. Appellant is likewise ordered to pay the victim, AAA, the amount of Php10,000.00 as moral damages and another Php10,000.00 as exemplary damages.

With costs.

SO ORDERED.[10]

Thus, petitioner filed the instant petition, with the following allegations:

I

THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT THAT THE ACCUSED IS GUILTY OF THE CRIME CHARGED BEYOND REASONABLE DOUBT;

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[9] *Supra* note 2 at 56-57.

[10] *Supra* note 1 at 30-31.

II

ASSUMING BUT NOT ADMITTING, THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE APPRECIATION OF THE AGGRAVATING CIRCUMSTANCE OF TAKING ADVANTAGE OF HIS PUBLIC POSITION FOR FAILURE TO ALLEGE IN THE INFORMATION;

III

THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE AWARD OF DAMAGES.[11]

Petitioner contends that the CA erred in affirming his conviction for acts of lasciviousness. Even as he admits having *merely touched* the victim, petitioner argues that the act of touching did not constitute lewdness. At most, he could only be convicted of unjust vexation. Petitioner likewise asserts that while the victim was being touched, the latter tried to cover her body with her arms. Lastly petitioner posits that the police station does not favor the perpetration of the crime of acts of lasciviousness.

Petitioner's contention deserves scant consideration.

The crime of acts of lasciviousness as punished under Article 336 of the Revised Penal Code provides:

> ART. 336. Acts of lasciviousness. — Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional*.

For an accused to be convicted of acts of lasciviousness under the foregoing provision, the prosecution is burdened to prove the confluence of the following essential elements: (1) that the offender commits any act of lasciviousness or lewdness; and (2) that it is done under any of the following circumstances: (a) by using force or intimidation; (b) when the offended woman

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[11] *Rollo*, p. 7.

is deprived of reason or otherwise unconscious; or (c) when the offended party is under twelve (12) years of age.[12]

In the case of *Amployo v. People*,[13] the Court expounded on the definition of the term lewd, thus:

> The term "lewd" is commonly defined as something indecent or obscene; it is characterized by or intended to excite crude sexual desire. That an accused is entertaining a lewd or unchaste design is necessarily a mental process the existence of which can be inferred by overt acts carrying out such intention, *i.e.*, by conduct that can only be interpreted as lewd or lascivious. The presence or absence of lewd designs is inferred from the nature of the acts themselves and the environmental circumstances. What is or what is not lewd conduct, by its very nature, cannot be pigeonholed into a precise definition. As early as *U.S. v. Gomez* we had already lamented that –
>
> > It would be somewhat difficult to lay down any rule specifically establishing just what conduct makes one amenable to the provisions of Article 439 of the Penal Code. What constitutes lewd or lascivious conduct must be determined from the circumstances of each case. It may be quite easy to determine in a particular case that certain acts are lewd and lascivious, and it may be extremely difficult in another case to say just where the line of demarcation lies between such conduct and the amorous advances of an ardent lover.

Undoubtedly, petitioner committed acts which fall within the above described lascivious conduct. It cannot be viewed as mere unjust vexation as petitioner would have the Court do. The intention of petitioner was intended neither to merely annoy or irritate the victim nor to force her to confess the theft. He could have easily achieved that when he electrocuted the latter. Petitioner intended to gratify his sexual desires.

As found by the RTC and affirmed by the CA, petitioner's acts of kissing the victim, fondling her breasts and touching her private parts constitute lascivious conduct intended to quench

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[12] *People v. Victor*, G.R. No. 127904, December 5, 2002, 393 SCRA 472, 485.

[13] G.R. No. 157718, April 26, 2005, 457 SCRA 282, 292.

his salacious desire. Petitioner's lewd intent was betrayed when he asked AAA, "*Dalaga ka na ba?*" as a prelude to his lustful advances on the victim, and thereafter conveyed to her that "*I am single too*." We quote with approval the CA's ratiocination:

> Undeniably, appellant committed lewd acts against AAA. "Lewd" is defined as obscene, lustful, indecent, and lecherous. It signifies that form of immorality which has relation to moral impurity; or that which is carried on a wanton manner. The evidence shows that appellant committed lewd acts against AAA when he touched her "all over her body" which includes mashing her breasts, touching her private parts, and kissing her on the cheek. These acts were clearly done with lewd designs as appellant even previously asked AAA, as if it was a prelude for things to come, "*Dalaga ka na ba?*" and thereafter conveyed to her that "he is single too."[14]

The fact that the victim tried to cover her body with her arms does not negate petitioner's lascivious conduct. Petitioner succeeded in fondling the victim's breasts intense enough to cause multiple slight contusions of bilateral breast areas.

As aptly observed by the CA, petitioner employed force and intimidation against AAA:

> Moreover, appellant employed force and intimidation when he committed these acts on AAA. In fact, as found by the trial court, appellant pointed a gun at the forehead of AAA as evidenced by the bruises on her forehead. Further, the medical Certificate shows that AAA suffered slight physical injuries which include "multiple slight contusion of bilateral breast areas" which supports AAA's claim.[15]

In *People v. Victor*,[16] the Court held that in cases of acts of lasciviousness, it is not necessary that intimidation be irresistible. It being sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party. Here, the victim was locked inside a windowless room

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[14] *Supra* note 1 at 27.

[15] *Id.* at 28.

[16] *Supra* note 12.

together with her aggressor who poked a gun at her forehead. Even a grown man would be paralyzed with fear if threatened at gunpoint, what more the hapless victim who was only 15 years old when she was subjected to such atrocity.

Petitioner's assertion that the *locus criminis i.e.*, the police station makes it unlikely for him to commit the crime of acts of lasciviousness is specious. The presence of other policemen on duty and of the victim's mother outside the room where the incident took place does not render commission of the offense impossible. It has been shown that there was a room in the precinct which, except for two doors which could be locked, was totally enclosed.[17] During the commission of the acts of lasciviousness, petitioner and AAA were the only persons inside the room. Lust, as we have often held, is no respecter of either place or time.[18]

As to the appreciation of the aggravating circumstance of taking advantage of public position, petitioner points out that said circumstance was not alleged in the information. The Solicitor General shares the same view.

Sections 8 and 9 of Rule 110 of the Revised Rules of Criminal Procedure, which took effect on December 1, 2000, provide:

> Sec. 8. Designation of the offense. — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.
>
> Sec. 9. Cause of the accusations. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

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[17] Record, p. 114; TSN, July 19, 2000, pp. 6, 15-16.

[18] *People v. Candaza*, G.R. No. 170474, June 16, 2006, 491 SCRA 282, 298.

Clearly, it is now a requirement that the aggravating as well as the qualifying circumstances be expressly and specifically alleged in the complaint or information. Otherwise, they cannot be considered by the trial court in its judgment, even, if they are subsequently proved during trial.[19] A reading of the Information shows that there was no allegation of any aggravating circumstance.

In *People v. Buayaban*,[20] the crime was committed and the Information was filed in 1990. Still, the Court gave the 2000 Rules of Criminal Procedure retroactive application since it benefited the accused and disregarded the generic aggravating circumstance of band because it was not alleged in the Information. The Court explained, *viz*:

> Section 8 simply provides that the information or complaint must state the designation of the offense given by the statute and specify its qualifying and generic aggravating circumstances. With regard to Section 9, we held in *People vs. Nerio Suela* that the use of the word "must" in said Section 9 indicates that the requirement is mandatory and therefore, the failure to comply with Sec. 9, Rule 110, means that generic aggravating circumstances, although proven at the trial, cannot be appreciated against the accused if such circumstances are not stated in the information.
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> In this case, we cannot properly appreciate the ordinary aggravating circumstance of band in the commission of the crime since there was no allegation in the information that "more than three armed malefactors acted together in the commission of the crime.

Here, the crime was committed in 1998, the generic aggravating circumstance of taking advantage of public position was not alleged in the information. As such, it cannot be appreciated as an aggravating circumstance. Consequently, the penalty imposed must be modified.

Section 1 of the Indeterminate Sentence Law[21] (ISL) states that *(i)n imposing a prison sentence for an offense punished*

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[19] *People v. Casitas, Jr.*, 445 Phil. 407, 427 (2003).

[20] G.R. No. 112459, March 28, 2003, 400 SCRA 48, 65.

[21] Act No. 4103, as amended.

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 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. Under Article 366 of the Revised Penal Code, the penalty for acts of lasciviousness is *prision correccional*. Since no aggravating or mitigating circumstance attended the commission of the offense in this case, the penalty should be applied in its medium period, the duration of which is two (2) years, four (4) months and one (1) day to four (4) years and two (2) months, as maximum. The minimum shall be within the range of the penalty next lower in degree which is *arresto mayor*, with the duration of one (1) month and one (1) day to six (6) months.

Applying the ISL, the proper penalty would be imprisonment of six (6) months of *arresto mayor* as minimum to four (4) years and two (2) months of *prision correccional* as maximum.[22]

As to the damages awarded, Article 2230 of the Civil Code 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. Since the generic aggravating circumstance of taking advantage of public position was not alleged in the Information against petitioner it cannot be appreciated in the imposition of the penalty. But as regards the award of exemplary damages, in the case of *People v. Catubig*,[23] the Court declined retroactive application of the 2000 Rules of Criminal Procedure, to wit:

> The retroactive application of procedural rules, nevertheless, cannot adversely affect the rights of the private offended party that have become vested prior to the effectivity of said rules. Thus, in the case at bar, although relationship has not been alleged in the

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[22] *People v. Castillo*, G.R. No. 131200, February 15, 2002, 377 SCRA 99, 115.

[23] G.R. No. 137842, August 23, 2001, 363 SCRA 621,636.

information, the offense having been committed, however, prior to the effectivity of the new rules, the civil liability already incurred by appellant remains unaffected thereby.

Thus, in accordance with the foregoing pronouncement, the Court affirms the CA's award of exemplary damages to the victim in the amount of ₱10,000.00.

With regard to the awarded moral damages in the amount of ₱10,000.00, the same should be increased to ₱30,000.00. In *People v. Solmoro*[24] we declared that upon a finding of guilt of the accused for acts of lasciviousness, the amount of ₱30,000.00 as moral damages may be further awarded to the victim in the same way that moral damages are awarded to victims of rape even without need of proof because it is assumed that they suffered moral injury. Considering the immeasurable pain and anguish that the victim had to suffer in the hands of the petitioner; the trauma that she had to endure even after the incident; and the sexual perversity of petitioner, who is a police officer, the award of moral damages in the amount of ₱30,000.00 is proper.

WHEREFORE, the petition is hereby denied and the Decision dated July 28, 2005 of the Court of Appeals finding petitioner PO3 Benito Sombilon *GUILTY* of the crime of acts of lasciviousness under Article 336 of the Revised Penal Code is *AFFIRMED* with *Modification* that he is sentenced to suffer an indeterminate penalty of imprisonment of six (6) months of *arresto mayor* as minimum to four (4) years and two (2) months of *prision correccional* as maximum, and to pay the victim the amount of ₱30,000 as moral damages and ₱10,000.00 as exemplary damages.

SO ORDERED.

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

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[24] G.R. Nos. 139187-94 (140427-34), November 27, 2002, 393 SCRA 100, 111-112.

THIRD DIVISION

[A.C. No. 6166. October 2, 2009]

MARIA EARL BEVERLY C. CENIZA, *complainant, vs.* **ATTY. VIVIAN G. RUBIA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; DISBARMENT OF ATTORNEYS; REQUIRES CLEAR PREPONDERANT EVIDENCE. —** Complainant seeks the disbarment of respondent from the practice of law for gross misconduct, ignorance of the law and for falsification of public document. In disbarment proceedings, the burden of proof rests upon the complainant, and for the court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof. Considering the serious consequence of the disbarment or suspension of a member of the Bar, this Court has consistently held that clear preponderant evidence is necessary to justify the imposition of the administrative penalty.

2. **LEGAL ETHICS; LAWYER'S OATH AND CODE OF PROFESSIONAL RESPONSIBILITY; LAWYER'S DUTY TO RENDER LEGAL SERVICES TO CLIENT WITH COMPETENCE AND DILIGENCE. —** We find nothing illegal or reprehensible in respondent's act of charging an acceptance fee of ₱32,000.00, which amount appears to be reasonable under the circumstances. The impropriety lies in the fact that she suggested that complainant borrow money from Domingo Natavio for the payment thereof. This act impresses upon the Court that respondent would do nothing to the cause of complainant's mother-in-law unless payment of the acceptance fee is made. Her duty to render legal services to her client with competence and diligence should not depend on the payment of acceptance fee, which was in this case promised to be paid upon the arrival of complainant's mother-in-law in June 2002, or barely a month after respondent accepted the case. Respondent's transgression is compounded further when she severed the lawyer-client relationship due to overwhelming workload demanded by her new employer Nakayama Group of

Companies, which constrained her to return the money received as well as the records of the case, thereby leaving her client with no representation. Standing alone, heavy workload is not sufficient reason for the withdrawal of her services. Moreover, respondent failed to maintain an open line of communication with her client regarding the status of their complaint. Clearly, respondent violated the Lawyer's Oath which imposes upon every member of the bar the duty to delay no man for money or malice, Rules 18.03 and 18.04 of Canon 18, and Canon 22 of the *Code of Professional Responsibility*, thus: CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE. x x x Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable. Rule 18.04 – A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for informaiton. CANON 22 – A LAWYER SHALL WITHDRAW HIS SERVICES ONLY FOR GOOD CAUSE AND UPON NOTICE APPROPRIATE IN THE CIRCUMSTANCES. When a lawyer accepts to handle a case, whether for a fee or *gratis et amore*, he undertakes to give his utmost attention, skill and competence to it, regardless of its significance. Thus, his client, whether rich or poor, has the right to expect that he will discharge his duties diligently and exert his best efforts, learning and ability to prosecute or defend his (client's) cause with reasonable dispatch. Failure to fulfill his duties will subject him to grave administrative liability as a member of the Bar. For the overriding need to maintain the faith and confidence of the people in the legal profession demands that an erring lawyer should be sanctioned.

APPEARANCES OF COUNSEL

Torreon De Vera-Torreon Law Firm for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

In a verified complaint[1] dated July 25, 2003 filed with the Office of the Bar Confidant, Maria Earl Beverly C. Ceniza

[1] *Rollo*, pp. 3-5.

charged Atty. Vivian G. Rubia with grave misconduct, gross ignorance of the law and falsification of public documents.

The facts of the case are as follows:

On May 3, 2002, complainant sought the legal services of the respondent in regard to the share of her mother-in-law in the estate of her husband Carlos Ceniza. As she had no money to pay for attorney's fees since her mother-in-law would arrive from the United States only in June 2002, respondent made her sign a promissory note for ₱32,000.00, which amount was lent by Domingo Natavio. After her mother-in-law arrived and paid the loan, respondent furnished them a copy of the complaint for partition and recovery of ownership/possession representing legitime but with no docket number on it. They kept on following up the progress of the complaint. However, three months lapsed before respondent informed them that it was already filed in court. It was then that they received a copy of the complaint with "Civil Case No. 4198" and a rubber stamped "RECEIVED" thereon. However, when complainant verified the status of the case with the Clerk of Court of the Regional Trial Court of Davao del Sur, she was informed that no case with said title and docket number was filed.[2]

Further, complainant alleged that respondent was guilty of gross ignorance of the law for intending to file the complaint in Davao del Sur when the properties to be recovered were located in Koronadal, South Cotabato and Malungon, Sarangani Province, in violation of the rule on venue that real actions shall be filed in the place where the property is situated. Complainant also alleged that respondent forged the signature of her husband, Carlito C. Ceniza, in the Affidavit of Loss attached to a petition for the issuance of a new owner's duplicate certificate of title filed with the Regional Trial Court (RTC) of Digos City, Branch 20, in Misc. Case No. 114-2202.[3]

In her comment, respondent assailed the personality of the complainant to institute the administrative complaint for disbarment

[2] *Id*. p. 4.

[3] *Id*. p. 5.

as she was not a party to the action for partition and recovery of ownership/possession. As such, her allegations in the administrative complaint were all hearsay, self-serving and unsubstantiated. Further, the charge of forgery of the Affidavit of Loss was belied by the March 3, 2003 decision of the trial court, wherein Carlito C. Ceniza affirmed his statements in the said affidavit when he was called to testify.[4]

On February 2, 2004, the Court resolved to refer the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

On April 29, 2004, respondent filed a Supplemental Comment explaining the rubber stamped "RECEIVED" on the complaint. According to her, when her staff Jan Kirt Lester Soledad was at the RTC Office of the Clerk of Court, she called him through cellular phone and directed him to stop the filing of the complaint as the same lacked certain attachments. However, one copy thereof was already stamped "RECEIVED" by the receiving court personnel, who also assigned a docket number. She kept the copies of the complaint, including the one with the stamp, to be filed later when the attachments are complete.

Meanwhile, on November 7, 2005, respondent filed a Manifestation with Urgent Motion praying that the administrative complaint be likewise dismissed in view of the dismissal of the criminal case due to complainant's apparent lack of interest to prosecute.

On January 19, 2007, the IBP Investigating Commissioner recommended that respondent be found guilty of falsification of public document and be meted the penalty of suspension from the practice of law for a period of three years. The report reads in part, as follows:

> A proceeding for suspension or disbarment is not in any sense a civil action, where the complainant is a plaintiff and the respondent lawyer is a defendant. It involved no private interest. The complainant or person who called the attention of the court to the attorney's misconduct is in no sense a party and has generally no interest in

[4] *Id*. pp. 18-23.

its outcome except as all good citizens may have in the proper administration of justice. It affords no redress for private grievance. (*Tejan v. Cusi*, 57 SCRA 154)

Prescinding from the aforequoted ruling, it is therefore irrelevant and immaterial if herein complainant is not a party to the subject civil complaint prepared by the respondent. A case of suspension or disbarment may proceed regardless of interest or lack of interest of the complainant. What matters is whether on the basis of the facts borne out by the record, the charge has been proven.

On the payment of the acceptance fee in the amount of ₱32,000.00, respondent's contention that she acted as guarantor of Carlos Ceniza, complainant's husband, when he borrowed money from a money lender, Domingo Natavio, the amount representing the acceptance, does not inspire belief. The promissory note dated May 3, 2002, appended as Annex "A" of the complaint-affidavit eloquently shows that consistent with the complainant's allegation, she was made to borrow said amount to be paid as respondent's acceptance fee. It bears stress that the date of the promissory note is the same date when respondent's services were engaged leading to the preparation of the subject civil complaint. Complainant's allegation is further enhanced by the fact that such promissory note was even notarized by the respondent.

On the alleged filing of the subject civil complaint, it is undisputed that the same was not filed before the Office of the Clerk of Court, RTC Davao Del Sur, as evidenced by a Certification from the said office appended as Annex "A" of complainant's Manifestation dated October 14, 2005. Thus, the claim of complainant that respondent falsified or caused it to falsify the stamp marked received dated May 10, 2002 including the case number "4198", finds factual and legal bases.

It bears stress that a copy of the subject civil complaint was obtained by complainant from the respondent herself who tried to impress upon the former that contrary to her suspicion, the subject civil complaint was already filed in court. However, inquiry made by the complainant shows otherwise.

Respondent's contention that after one copy of the complaint was already stamped by court personnel in preparation for receiving the same and entering in the court's docket, she caused it to be withdrawn after realizing that the same lacked certain attachments, is bereft of merit.

In the first place, respondent miserably failed to mention these lacking attachments that allegedly caused the withdrawal of the complaint. Secondly, and assuming *arguendo* that the withdrawal was due to lacking attachments, how come the same was not filed in the next office day complete with attachments. And lastly, the Certification of the Clerk of Court clearly states that Civil Case No. 4188 is not the case of *Mercedes Callejo vda. de Ceniza, et al. vs. Charlotte Ceniza, et al.*

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The fact that the City Prosecutor's Office of Digos, upon motion for reconsideration of the respondent, dismissed a similar complaint filed by herein complainant will not in anyway affect the above captioned administrative complaint.

The pendency of a criminal action against the respondent, from the facts of which the disciplinary proceeding is predicated, does not pose prejudicial question to the resolution of the issues in the disbarment case. (*Calo vs. Degano*, 20 SCRA 447) His conviction is not necessary to hold the lawyer administratively liable because the two proceedings and their objectives are different and it is not sound public policy to await the final resolution of a criminal case before the court act on a complaint against a lawyer as it may emasculate the disciplinary power of the court. (In re Brillantes, 76 SCRA 1) Nor is his acquittal, by this fact alone, a bar to an administrative complaint against him. (*Piatt vs. Abordo*, 58 Phil. 350).

The other allegations in the complaint about ignorance of the law are found to be without basis.

RECOMMENDATION

WHEREFORE, it is most respectfully recommended that herein respondent Atty. Vivian C. Rubia, be found guilty of the charge of falsification of public document and be meted the penalty of suspension from the practice of law for a period of three (3) years.

On May 31, 2007, the Board of Governors of the IBP issued a Resolution adopting the Investigating Commissioner's recommendation with modification, as follows:

RESOLUTION NO. XVII-2007-237
Adm. Case No. 6166
Maria Earl Beverly C. Ceniza vs.
Atty. Vivian G. Rubia

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, **with modification**, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's falsification of public document, Atty. Vivian G. Rubia is hereby **DISBARRED**.

However, in its December 11, 2008 Resolution, the Board of Governors reconsidered its May 31, 2007 Resolution by reducing the recommended penalty of disbarment to five years suspension from the practice of law, thus:

RESOLUTION NO. XVIII-2008-715
Adm. Case No. 6166
Maria Earl Beverly C. Ceniza vs.
Atty. Vivian G. Rubia

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED the Recommendation of the Board of Governors First Division of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, the Motion for Reconsideration is hereby **DENIED with modification**, that Resolution (sic) RESOLUTION NO. XVII-2007-237 of the Board of Governors dated 31 May 2007 recommending the Disbarment of Atty. Vivian G. Rubia is reduced to Five (5) years Suspension from the practice of law.

On April 20, 2009, the IBP forwarded the instant case to this Court as provided under Rule 139-B, Section 12(b) of the Rules of Court.

Complainant seeks the disbarment of respondent from the practice of law for gross misconduct, ignorance of the law and for falsification of public document. In disbarment proceedings, the burden of proof rests upon the complainant, and for the

court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof. Considering the serious consequence of the disbarment or suspension of a member of the Bar, this Court has consistently held that clear preponderant evidence is necessary to justify the imposition of the administrative penalty.[5]

The sole issue in this case is whether or not there is preponderant evidence to warrant the imposition of administrative sanction against the respondent.

In accusing respondent of falsification of public document, complainant alleged that respondent misrepresented to her that the complaint was already filed in court, when in fact, upon verification with the RTC Clerk of Court, it was not. Such misrepresentation is shown by the copy of the complaint with a stamped "RECEIVED" and docket number thereon. Apart from said allegations, complainant has not proferred any proof tending to show that respondent deliberately falsified a public document.

A perusal of the records shows that complainant's evidence consists solely of her Affidavit-Complaint and the annexes attached therewith. She did not appear in all the mandatory conferences set by the investigating commissioner in order to give respondent the chance to test the veracity of her assertions. It is one thing to allege gross misconduct, ignorance of the law or falsification of public document and another to demonstrate by evidence the specific acts constituting the same.

Indeed, complainant has no way of knowing the surrounding circumstances behind the filing of the complaint by respondent's staff because she was not present when the same was filed with the trial court. Complainant failed to disprove by preponderant evidence respondent's claim that the case was not filed but was in fact withdrawn after it was stamped with "RECEIVED" and assigned with a docket number. We find this explanation satisfactory and plausible considering that the stamp did not

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[5] *Berbano v. Barcelona*, 457 Phil. 331, 341 (2003).

bear the signature of the receiving court personnel, which is normally done when pleadings are received by the court.

Further, the certification of the RTC Clerk of Court that the complaint was not filed and that "CIVIL CASE NO. 4198" pertained to another case, did not diminish the truthfulness of respondent's claim, but even tended to bolster it. Necessarily, as the complaint was not filed, docket number "4198" indicated in the copy of the complaint was assigned to another case thereafter filed in court.

Thus, for lack of preponderant evidence, the investigating commissioner's ruling that respondent was guilty of falsification of public document, as adopted by the IBP Board of Governors, has no factual basis to stand on.

However, we find that respondent committed some acts for which she should be disciplined or administratively sanctioned.

We find nothing illegal or reprehensible in respondent's act of charging an acceptance fee of ₱32,000.00, which amount appears to be reasonable under the circumstances. The impropriety lies in the fact that she suggested that complainant borrow money from Domingo Natavio for the payment thereof. This act impresses upon the Court that respondent would do nothing to the cause of complainant's mother-in-law unless payment of the acceptance fee is made. Her duty to render legal services to her client with competence and diligence should not depend on the payment of acceptance fee, which was in this case promised to be paid upon the arrival of complainant's mother-in-law in June 2002, or barely a month after respondent accepted the case.

Respondent's transgression is compounded further when she severed the lawyer-client relationship due to overwhelming workload demanded by her new employer Nakayama Group of Companies, which constrained her to return the money received as well as the records of the case, thereby leaving her client with no representation. Standing alone, heavy workload is not sufficient reason for the withdrawal of her services.

Moreover, respondent failed to maintain an open line of communication with her client regarding the status of their complaint.

Clearly, respondent violated the Lawyer's Oath which imposes upon every member of the bar the duty to delay no man for money or malice, Rules 18.03 and 18.04 of Canon 18, and Canon 22 of the *Code of Professional Responsibility*, thus:

> CANON 18 — A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.
>
> x x x x x x x x x
>
> Rule 18.03 — A lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable.
>
> Rule 18.04 - A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.
>
> CANON 22 — A LAWYER SHALL WITHDRAW HIS SERVICES ONLY FOR GOOD CAUSE AND UPON NOTICE APPROPRIATE IN THE CIRCUMSTANCES.

When a lawyer accepts to handle a case, whether for a fee or *gratis et amore*, he undertakes to give his utmost attention, skill and competence to it, regardless of its significance. Thus, his client, whether rich or poor, has the right to expect that he will discharge his duties diligently and exert his best efforts, learning and ability to prosecute or defend his (client's) cause with reasonable dispatch. Failure to fulfill his duties will subject him to grave administrative liability as a member of the Bar. For the overriding need to maintain the faith and confidence of the people in the legal profession demands that an erring lawyer should be sanctioned.[6]

WHEREFORE, in view of the foregoing, respondent Atty. Vivian G. Rubia is found *GUILTY* of violation of Rule 18.03 and Canon 22 of the Code of Professional Responsibility. Accordingly, she is *SUSPENDED* from the practice of law for

[6] *De Guzman v. Basa*, A.C. No. 5554, June 29, 2004, 433 SCRA 1, 3.

six (6) months effective immediately, with a warning that similar infractions in the future will be dealt with more severely.

Let all courts, through the Office of the Court Administrator, as well as the Integrated Bar of the Philippines and the Office of the Bar Confidant, be notified of this Decision, and be it duly recorded in the personal file of respondent Atty. Vivian G. Rubia.

SO ORDERED.

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

FIRST DIVISION

[A.C. No. 8242. October 2, 2009]

REBECCA J. PALM, *complainant, vs.* **ATTY. FELIPE ILEDAN, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; CONFIDENTIALITY OF LAWYER-CLIENT RELATIONSHIP; INFORMATION ABOUT THE NECESSITY TO AMEND CORPORATE BY-LAWS, NOT CONSIDERED A CONFIDENTIAL MATTER. — Canon 21 of the Code of Professional Responsibility provides: Canon 21. A lawyer shall preserve the **confidence and secrets** of his client even after the attorney-client relationship is terminated. We agree with the IBP that in the course of complainant's consultations, respondent obtained the information about the need to amend the corporate by-laws to allow board members outside the Philippines to participate in board meetings through teleconferencing. Respondent himself admitted this in his Answer. However, what transpired on 10 January 2004 was

not a board meeting but a stockholders' meeting. Respondent attended the meeting as proxy for Harrison. The physical presence of a stockholder is not necessary in a stockholders' meeting because a member may vote by proxy unless otherwise provided in the articles of incorporation or by-laws. Hence, there was no need for Steven and Deanna Palm to participate through teleconferencing as they could just have sent their proxies to the meeting. In addition, although the information about the necessity to amend the corporate by-laws may have been given to respondent, it could not be considered a confidential information. The amendment, repeal or adoption of new by-laws may be effected by "the board of directors or trustees, by a majority vote thereof, and the owners of at least a majority of the outstanding capital stock, or at least a majority of members of a non-stock corporation." It means the stockholders are aware of the proposed amendments to the by-laws. While the power may be delegated to the board of directors or trustees, there is nothing in the records to show that a delegation was made in the present case. Further, whenever any amendment or adoption of new by-laws is made, copies of the amendments or the new by-laws are filed with the Securities and Exchange Commission (SEC) and attached to the original articles of incorporation and by-laws. **The documents are public records and could not be considered confidential.** It is settled that the mere relation of attorney and client does not raise a presumption of confidentiality. The client must intend the communication to be confidential. **Since the proposed amendments must be approved by at least a majority of the stockholders, and copies of the amended by-laws must be filed with the SEC, the information could not have been intended to be confidential.** Thus, the disclosure made by respondent during the stockholders' meeting could not be considered a violation of his client's secrets and confidence within the contemplation of Canon 21 of the Code of Professional Responsibility.

2. ID.; ID.; ON LAWYER REPRESENTING CONFLICTING INTEREST; NOT APPRECIATED IN CASE AT BAR. – Rule 15.03, Canon 15 of the Code of Professional Responsibility provides: Rule 15.03 — A lawyer shall not represent conflicting interest except by written consent of all concerned given after a full disclosure of the facts. In *Quiambao v. Bamba*, the Court enumerated various tests to determine conflict of interests. One test of inconsistency of interests is whether

the lawyer will be asked to use against his former client any confidential information acquired through their connection or previous employment. The Court has ruled that what a lawyer owes his former client is to maintain inviolate the client's confidence or to refrain from doing anything which will injuriously affect him in any matter in which he previously represented him. We find no conflict of interest when respondent represented Soledad in a case filed by Comtech. The case where respondent represents Soledad is an Estafa case filed by Comtech against its former officer. **There was nothing in the records that would show that respondent used against Comtech any confidential information acquired while he was still Comtech's retained counsel.** Further, respondent made the representation after the termination of his retainer agreement with Comtech. A lawyer's immutable duty to a former client does not cover transactions that occurred beyond the lawyer's employment with the client. The intent of the law is to impose upon the lawyer the duty to protect the client's interests only on matters that he previously handled for the former client and not for matters that arose after the lawyer-client relationship has terminated.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for complainant.
Egmedio J. Castillon, Jr. for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

The case before the Court is a disbarment proceeding filed by Rebecca J. Palm (complainant) against Atty. Felipe Iledan, Jr. (respondent) for revealing information obtained in the course of an attorney-client relationship and for representing an interest which conflicted with that of his former client, Comtech Worldwide Solutions Philippines, Inc. (Comtech).

The Antecedent Facts

Complainant is the President of Comtech, a corporation engaged in the business of computer software development. From February 2003 to November 2003, respondent served as Comtech's retained corporate counsel for the amount of ₱6,000 per month as retainer fee. From September to October 2003, complainant personally met with respondent to review corporate matters, including potential amendments to the corporate by-laws. In a meeting held on 1 October 2003, respondent suggested that Comtech amend its corporate by-laws to allow participation during board meetings, through teleconference, of members of the Board of Directors who were outside the Philippines.

Prior to the completion of the amendments of the corporate by-laws, complainant became uncomfortable with the close relationship between respondent and Elda Soledad (Soledad), a former officer and director of Comtech, who resigned and who was suspected of releasing unauthorized disbursements of corporate funds. Thus, Comtech decided to terminate its retainer agreement with respondent effective November 2003.

In a stockholders' meeting held on 10 January 2004, respondent attended as proxy for Gary Harrison (Harrison). Steven C. Palm (Steven) and Deanna L. Palm, members of the Board of Directors, were present through teleconference. When the meeting was called to order, respondent objected to the meeting for lack of quorum. Respondent asserted that Steven and Deanna Palm could not participate in the meeting because the corporate by-laws had not yet been amended to allow teleconferencing.

On 24 March 2004, Comtech's new counsel sent a demand letter to Soledad to return or account for the amount of ₱90,466.10 representing her unauthorized disbursements when she was the Corporate Treasurer of Comtech. On 22 April 2004, Comtech received Soledad's reply, signed by respondent. In July 2004, due to Soledad's failure to comply with Comtech's written demands, Comtech filed a complaint for Estafa against Soledad before the Makati Prosecutor's Office. In the proceedings before the City Prosecution Office of Makati, respondent appeared as Soledad's counsel.

On 26 January 2005, complainant filed a Complaint[1] for disbarment against respondent before the Integrated Bar of the Philippines (IBP).

In his Answer,[2] respondent alleged that in January 2002, Soledad consulted him on process and procedure in acquiring property. In April 2002, Soledad again consulted him about the legal requirements of putting up a domestic corporation. In February 2003, Soledad engaged his services as consultant for Comtech. Respondent alleged that from February to October 2003, neither Soledad nor Palm consulted him on confidential or privileged matter concerning the operations of the corporation. Respondent further alleged that he had no access to any record of Comtech.

Respondent admitted that during the months of September and October 2003, complainant met with him regarding the procedure in amending the corporate by-laws to allow board members outside the Philippines to participate in board meetings.

Respondent further alleged that Harrison, then Comtech President, appointed him as proxy during the 10 January 2004 meeting. Respondent alleged that Harrison instructed him to observe the conduct of the meeting. Respondent admitted that he objected to the participation of Steven and Deanna Palm because the corporate by-laws had not yet been properly amended to allow the participation of board members by teleconferencing.

Respondent alleged that there was no conflict of interest when he represented Soledad in the case for Estafa filed by Comtech. He alleged that Soledad was already a client before he became a consultant for Comtech. He alleged that the criminal case was not related to or connected with the limited procedural queries he handled with Comtech.

The IBP's Report and Recommendation

In a Report and Recommendation dated 28 March 2006,[3] the IBP Commission on Bar Discipline (IBP-CBD) found

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

[2] *Id.* at 36-41.

[3] BP Records, Vol. III, pp. 3-10. Penned by Commissioner Acerey C. Pacheco.

respondent guilty of violation of Canon 21 of the Code of Professional Responsibility and of representing interest in conflict with that of Comtech as his former client.

The IBP-CBD ruled that there was no doubt that respondent was Comtech's retained counsel from February 2003 to November 2003. The IBP-CBD found that in the course of the meetings for the intended amendments of Comtech's corporate by-laws, respondent obtained knowledge about the intended amendment to allow members of the Board of Directors who were outside the Philippines to participate in board meetings through teleconferencing. The IBP-CBD noted that respondent knew that the corporate by-laws have not yet been amended to allow the teleconferencing. Hence, when respondent, as representative of Harrison, objected to the participation of Steven and Deanna Palm through teleconferencing on the ground that the corporate by-laws did not allow the participation, he made use of a privileged information he obtained while he was Comtech's retained counsel.

The IBP-CBD likewise found that in representing Soledad in a case filed by Comtech, respondent represented an interest in conflict with that of a former client. The IBP-CBD ruled that the fact that respondent represented Soledad after the termination of his professional relationship with Comtech was not an excuse.

The IBP-CBD recommended that respondent be suspended from the practice of law for one year, thus:

> WHEREFORE, premises considered, it is most respectfully recommended that herein respondent be found guilty of the charges preferred against him and be suspended from the practice of law for one (1) year.[4]

In Resolution No. XVII-2006-583[5] passed on 15 December 2006, the IBP Board of Governors adopted and approved the recommendation of the Investigating Commissioner with modification by suspending respondent from the practice of law for two years.

[4] *Id.* at 10.

[5] *Id.* at 1.

Respondent filed a motion for reconsideration.[6]

In an undated Recommendation, the IBP Board of Governors First Division found that respondent's motion for reconsideration did not raise any new issue and was just a rehash of his previous arguments. However, the IBP Board of Governors First Division recommended that respondent be suspended from the practice of law for only one year.

In Resolution No. XVIII-2008-703 passed on 11 December 2008, the IBP Board of Governors adopted and approved the recommendation of the IBP Board of Governors First Division. The IBP Board of Governors denied respondent's motion for reconsideration but reduced his suspension from two years to one year.

The IBP Board of Governors forwarded the present case to this Court as provided under Section 12(b), Rule 139-B[7] of the Rules of Court.

The Ruling of this Court

We cannot sustain the findings and recommendation of the IBP.

Violation of the Confidentiality of Lawyer-Client Relationship

Canon 21 of the Code of Professional Responsibility provides:

> Canon 21. A lawyer shall preserve the **confidence and secrets** of his client even after the attorney-client relationship is terminated. (Emphasis supplied)

We agree with the IBP that in the course of complainant's consultations, respondent obtained the information about the

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[6] *Id.* at 11-13.

[7] Sec. 12(b). If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

need to amend the corporate by-laws to allow board members outside the Philippines to participate in board meetings through teleconferencing. Respondent himself admitted this in his Answer.

However, what transpired on 10 January 2004 was not a board meeting but a stockholders' meeting. Respondent attended the meeting as proxy for Harrison. The physical presence of a stockholder is not necessary in a stockholders' meeting because a member may vote by proxy unless otherwise provided in the articles of incorporation or by-laws.[8] Hence, there was no need for Steven and Deanna Palm to participate through teleconferencing as they could just have sent their proxies to the meeting.

In addition, although the information about the necessity to amend the corporate by-laws may have been given to respondent, it could not be considered a confidential information. The amendment, repeal or adoption of new by-laws may be effected by "the board of directors or trustees, by a majority vote thereof, and the owners of at least a majority of the outstanding capital stock, or at least a majority of members of a non-stock corporation."[9] It means the stockholders are aware of the proposed amendments to the by-laws. While the power may be delegated to the board of directors or trustees, there is nothing in the records to show that a delegation was made in the present case. Further, whenever any amendment or adoption of new by-laws is made, copies of the amendments or the new by-laws are filed with the Securities and Exchange Commission (SEC) and attached to the original articles of incorporation and by-laws.[10] **The documents are public records and could not be considered confidential.**

It is settled that the mere relation of attorney and client does not raise a presumption of confidentiality.[11] The client must

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[8] Section 89, Corporation Code.

[9] Section 48, Corporation Code.

[10] *Id*.

[11] *Mercado v. Atty. Vitriolo*, 498 Phil. 49 (2005).

intend the communication to be confidential.[12] **Since the proposed amendments must be approved by at least a majority of the stockholders, and copies of the amended by-laws must be filed with the SEC, the information could not have been intended to be confidential.** Thus, the disclosure made by respondent during the stockholders' meeting could not be considered a violation of his client's secrets and confidence within the contemplation of Canon 21 of the Code of Professional Responsibility.

Representing Interest in Conflict With the Interest of a Former Client

The IBP found respondent guilty of representing an interest in conflict with that of a former client, in violation of Rule 15.03, Canon 15 of the Code of Professional Responsibility which provides:

> Rule 15.03 — A lawyer shall not represent conflicting interest except by written consent of all concerned given after a full disclosure of the facts.

We do not agree with the IBP.

In *Quiambao v. Bamba*,[13] the Court enumerated various tests to determine conflict of interests. One test of inconsistency of interests is whether the lawyer will be asked to use against his former client any confidential information acquired through their connection or previous employment.[14] The Court has ruled that what a lawyer owes his former client is to maintain inviolate the client's confidence or to refrain from doing anything which will injuriously affect him in any matter in which he previously represented him.[15]

We find no conflict of interest when respondent represented Soledad in a case filed by Comtech. The case where respondent

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[12] *Id*.

[13] A.C. No. 6708, 25 August 2005, 468 SCRA 1.

[14] *Id*.

[15] *Pormento, Sr. v. Atty. Pontevedra*, 494 Phil. 164 (2005).

represents Soledad is an Estafa case filed by Comtech against its former officer. **There was nothing in the records that would show that respondent used against Comtech any confidential information acquired while he was still Comtech's retained counsel**. Further, respondent made the representation after the termination of his retainer agreement with Comtech. A lawyer's immutable duty to a former client does not cover transactions that occurred beyond the lawyer's employment with the client.[16] The intent of the law is to impose upon the lawyer the duty to protect the client's interests only on matters that he previously handled for the former client and not for matters that arose after the lawyer-client relationship has terminated.[17]

WHEREFORE, we *DISMISS* the complaint against Atty. Felipe Iledan, Jr. for lack of merit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 152006. October 2, 2009]

MONTANO PICO and ROSITA PICO, *petitioners, vs.* **CATALINA ADALIM-SALCEDO and URBANO SALCEDO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW, PROPER; QUESTION OF LAW

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

[17] *Id*.

DISTINGUISHED FROM THE QUESTION OF FACT. — In a petition for review on *certiorari,* we are limited to reviewing errors of law absent any showing that the findings of fact of the appellate court are not supported by the records. 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. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances, as well as their relation to each other and to the whole, and the probability of the situation.

2. ID.; ID.; ID.; FACTUAL FINDINGS OF TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED. — We have consistently declared that factual findings of the trial court, when adopted and confirmed by the CA, are binding and conclusive on this Court and will generally not be reviewed on appeal as this Court is not a trier of facts. It is not its function to analyze or weigh evidence all over again, subject to certain exceptions, none of which is present in this case.

3. CIVIL LAW; LAND TITLES; REGISTERED TITLE CANNOT BE DEFEATED BY POSSESSION. — A title, once registered, cannot be defeated, even by adverse, open and notorious possession. The title, once registered, is notice to the world. All persons must take notice. No one can plead ignorance of the registration. Hence, while the Picos' may have been in open, notorious, and continuous possession of the second lot from the time it was purchased in 1977 until the present time, such possession no matter how long could not ripen into ownership as the second lot is part of registered land.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Antonia C. Buenaflor for respondents.

D E C I S I O N

BRION, *J.*:

In their Petition for Review on *Certiorari*,[1] petitioners Montano Pico and Rosita Pico (collectively *Picos*) assail the Court of Appeals (*CA*) decision[2] in CA-G.R. CV No. 50278, affirming the decision of the Regional Trial Court (*RTC*), Branch 27, Tandag, Surigao del Sur. The RTC decision, in turn, declared respondent spouses Catalina Salcedo (*Catalina*) and Urbano Salcedo (collectively *Salcedos*) as the owners of the entire Lot No. 1188 Cad. 392-D, covered by Original Certificate of Title (*OCT*) No. 5930, and ordered the Picos to vacate the portion of Lot No. 1188 that they are occupying.

BACKGROUND FACTS

The present petition originated from an action for recovery of possession and quieting of title filed by the Salcedos against the Picos with the RTC of Tandag, Surigao del Sur on December 3, 1986.

In the complaint, the Salcedos claimed that Catalina bought coconut lands situated in *Barangay* Bioto, Municipality of Tandag, Surigao del Sur, with a total area of 17,153 square meters, from the Vallescas family. After Catalina acquired these lands, Virginia Pico, the daughter of Pionono Vallescas, one of the former owners, and her husband Jose Pico asked if they could remain as tenants on a 1,215-square meter portion of the property (*first lot*), with a promise to plant coconuts in lieu of paying rent. Catalina agreed to this arrangement, and Jose and Virginia Pico, together with their son Montano Pico (*Montano*), stayed on the first lot.

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[1] Under Rule 45. Dated March 10, 2002; *rollo*, pp. 10-22.

[2] Penned by Associate Justice Demetrio Demetria (dismissed), with the concurrence of Associate Justices Eubulo G. Verzola (deceased) and Jose L. Sabio, Jr.; dated January 25, 2000; *id.*, pp. 28-33.

The Salcedos narrated that while the Picos were occupying the first lot, the Bureau of Lands conducted a survey on the property. Since the Salcedos were in Bohol at the time of the survey, Montano succeeded in making it appear that his father Jose Pico was the owner of the first lot so that the survey reflected Jose Pico's name as owner. As a result, the first lot was denominated as Lot No. 1192 Cad-392-D in the name of Jose Pico and only 15,961 square meters of the original 17,153 square meters was registered under OCT No. 5930 in Catalina's name.

In their second cause of action, the Salcedos alleged that the Picos also laid claim to a 1,247-square meter portion of the land covered by OCT No. 5930 (*second lot*), which the Picos maintained they bought from a certain Vicente Diaz. Thus, the Salcedos prayed that the RTC render a decision declaring them the rightful owners of both properties.

In their Answer, the Picos denied that Jose Pico was a tenant of Catalina, insisting that Jose had always owned the first lot. While admitting that Catalina bought lands from Pionono Vallescas, Virginia Pico's father, the Picos alleged that the purchased property did not include the first lot since Jose and Virginia Pico were already in possession of this property and, upon the deaths of Jose and Virginia Pico, Montano became the legal owner of the property as their compulsory heir.

The Picos also denied Catalina's claim that she was absent at the time the property was surveyed, asserting that the cadastral survey conducted on the property was done with the knowledge of all the adjoining owners, including the Salcedos.

As to the second lot, the Picos insisted that they legally bought the land from Vicente Diaz, the lawful owner, on March 7, 1977; Vicente Diaz, in turn, purchased the second lot from Teodorico Plaza on September 4, 1954. The Picos alleged that they are currently in possession of the second lot to further support their claim of ownership.

On October 14, 1991, the heirs of Catalina filed an Amended Complaint, informing the RTC that Catalina had died and her husband and children, as her only compulsory heirs, were taking her place in the case.

After both parties presented their evidence, the RTC issued a decision[3] on April 3, 1995, with a dispositive portion that reads:

> WHEREFORE, judgment is rendered:
>
> 1. Declaring the [Salcedos] as the owners *pro indiviso* of the entire lot no. 1188 Cad. 392-D covered by the Original Certificate of Title No. 5930 in the name of Catalina Adalim and, as such, entitled to recover the possession of any portion thereof occupied or possessed by the [Picos] or anyone acting for and in behalf;
>
> 2. Ordering the [Picos] to vacate and turn over peacefully to the [Salcedos] the possession of their occupied portion of Lot No. 1188 Cad. 392-D [second lot];
>
> 3. Declaring the [Picos] and their co-heirs, if any, as the owners of *pro indiviso* of Lot No. 1192 Cad. 392-D [first lot] covered by Original Certificate of Title No. P-24679 in the name of the Heirs of Jose Pico;
>
> 4. The respective claims for damages of the plaintiffs and the defendants are dismissed.
>
> NO COSTS.
>
> SO ORDERED.

Both parties appealed this decision with the CA.

On January 25, 2000, the CA rendered its own decision, dismissing both appeals for lack of merit.[4] The CA found that both parties were estopped from questioning the regularity of the survey. As the CA pointed out, "only after a long lapse of time after each of the parties was issued their respective

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[3] *Id.*, pp. 60-66.

[4] *Supra* note 2.

certificates of titles covering the disputed lots did they contest and claim ownership against each other."[5]

The Picos moved for a reconsideration of the decision, which the CA subsequently denied in its Resolution dated January 22, 2002.

Hence, this petition.

THE PETITION

As only the Picos assail the CA decision, the sole question we are asked to resolve is — who owns the portion of land registered in Catalina's name, but is currently in the Picos' possession?

In their petition, the Picos insist that they were able to prove that they legally acquired the second lot by preponderance of evidence given that they presented the following: (a) the Deed of Sale which proved that Vicente Diaz had sold the second lot to the Picos; (b) Vicente Diaz' "*Declaracion Jurada*," where Vicente Diaz swore to the fact that he had lawfully acquired the second lot from Teodorico Plaza sometime in 1954; (c) Teodorico Plaza's attestation that he bought the second lot in 1932 when he was still single; and (d) the testimony of Pociano Ajos, who testified that he knew about the sale of the second lot between Vicente Diaz and the Picos.

While Torrens titles are imprescriptible, the Picos argue that where the registration was procured by fraud, the lawful owner has the right to pursue all legal and equitable remedies against the person who committed the fraud, pursuant to Section 55 of Act No. 496 (*The Land Registration Act*).[6] Since the Salcedos fraudulently included the second lot in the registration of Catalina's

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[5] *Rollo*, pp. 30-31.

[6] Section 55.

x x x x x x x x x

That 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: xxx

Certificate of Title, the Picos conclude that they can still question the registration.

On the other hand, the Salcedos claim that the Picos merely filed the present petition for delay, arguing that the petition presents no new matter for the Court's consideration. The Salcedos also point out that the issues raised by the Picos are factual questions, which the Court cannot review on appeal by *certiorari*.

THE COURT'S RULING

W**e deny the petition for lack of merit.**

The petition raises mere questions of fact.

In a petition for review on *certiorari*, we are limited to reviewing errors of law absent any showing that the findings of fact of the appellate court are not supported by the records.[7]

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. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances, as well as their relation to each other and to the whole, and the probability of the situation.[8]

In asking us to declare them as the lawful owners of the second lot, the Picos are in effect praying that we overturn the factual findings made by the RTC, which findings have already been affirmed by the CA. In other words, we are asked to

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[7] *Bernaldez v. Francia*, G.R. No. 143929, February 28, 2003, 398 SCRA 488.

[8] *Bukidnon Doctors' Hospital v. Metrobank*, G.R. No. 161882, July 8, 2005, 463 SCRA 222, citing *Republic v. Sandiganbayan*, 375 SCRA 145 (2002).

substitute our own judgment for those of the trial court and the appellate court by conducting another evaluation of the evidence.

We have consistently declared that factual findings of the trial court, when adopted and confirmed by the CA, are binding and conclusive on this Court and will generally not be reviewed on appeal[9] as this Court is not a trier of facts.[10] It is not its function to analyze or weigh evidence all over again, subject to certain exceptions,[11] none of which is present in this case. As we said in *Zaragoza vs. Nobleza*:[12]

> Whether the body of proofs presented by a party, weighed and analyzed in relation to contrary evidence submitted by an adverse party, may be said to be strong, clear and convincing, whether certain documents presented by one side should be accorded full faith and credit in the face of protests as to their spurious character by the other side, whether inconsistencies in the body of proofs of a party are of such gravity as to justify refusing to give said proofs weight

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[9] *Lazaro v. Court of Appeals*, 423 Phil. 554 (2001); *Garrido v. Court of Appeals*, 421 Phil. 872 (2001); *Santos v. Spouses Reyes*, 420 Phil. 313 (2001); *Yu Bun Guan v. Ong*, 419 Phil. 845 (2001); *Fernandez v. Fernandez*, 416 Phil. 322 (2001); *Nagkakaisang Kapisanan Kapitbahayan sa Commonwealth Avenue v. Court of Appeals*, 414 Phil. 146 (2001).

[10] *First Metro Investment Corp. v. Este del Sol Mountain Reserve, Inc.*, 420 Phil. 902 (2001).

[11] The exceptions are: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, will justify a different conclusion.

[12] G.R. No. 144560, May 13, 2004, 428 SCRA 410.

– all these are issues of fact which may not be passed upon in a petition for review on *certiorari* under Rule 45 of the Rules of Court.

Property covered by Torrens title cannot be acquired by possession

Even if we were to review the facts of the case, we would still find no reason to grant the petition.

As found by the RTC, the survey of the lots was conducted from December 16, 1965 to June 16, 1967. Thereafter, OCT No. 5930, covering 15,961 square meters of coconut lands, was issued in Catalina's name and subsequently transcribed in the Registration Book for the Province of Surigao del Sur on January 13, 1969. In contrast, the Picos purchased the second lot from Vicente Diaz on March 7, 1977, or more than 8 years after the land had already been registered in Catalina's name.

A title, once registered, cannot be defeated, even by adverse, open and notorious possession.[13] The title, once registered, is notice to the world. All persons must take notice. No one can plead ignorance of the registration.[14]

Hence, while the Picos' may have been in open, notorious, and continuous possession of the second lot from the time it was purchased in 1977 until the present time, such possession no matter how long could not ripen into ownership as the second lot is part of registered land.

Even the Picos admit the indefeasible nature of Torrens titles; however, they argue that since the second lot was fraudulently included in the survey and registration of Catalina's land, they

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[13] *Omandam v. Court of Appeals*, G.R. No. 128750, January 18, 2001, 349 SCRA 483; *Cervantes v. Court of Appeals*, G.R. No. 118982, February 19, 2001, 352 SCRA 47; *Ong v. Court of Appeals*, G.R. No. 142056, April 19, 2001, 356 SCRA 768; *Heirs of Leopoldo Vencilao, Sr. v. Court of Appeals*, Phil. 815 (1998).

[14] *Legarda v. Saleeby*, 31 Phil. 590 (1915); *St. Peter Memorial Park, Inc. v. Cleofas*, G.R. No. L-47385, July 30, 1979, 92 SCRA 389; *J.M. Tuason & Co. v. CA*, G.R. No. L-23480, September 11, 1979, 93 SCRA 146.

may still question the title, pursuant to Section 55 of the Land Registration Act.

We note that the Picos have not shown any evidence to support their claim of fraudulent registration. Also telling is the Picos' inaction to correct this alleged fraudulent registration. As we observed earlier, OCT No. 5930 was issued in Catalina's name and transcribed in the Registration Book for the Province of Surigao del Sur on January 13, 1969. Since then, the Picos have not filed any action to correct the alleged fraudulent inclusion of their property in the land registered in Catalina's name. In fact, the present case arose from the complaint filed by the Salcedos, not the Picos, to quiet their title over the second lot.

We therefore see no reason to overturn the factual findings of the RTC, as affirmed by the CA.

WHEREFORE, we *DENY* the petition and *AFFIRM* the decision of the Court of Appeals in CA-G.R. CV No. 50278 dated January 25, 2000.

Costs against the petitioners.

SO ORDERED.

Ynares-Santiago,[*] *Carpio Morales (Acting Chairperson),*[**] *Del Castillo,* and *Abad, JJ.*, concur.

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[*] Designated additional Member of the Second Division per Special Order No. 691 dated September 4, 2009.

[**] Designated Acting Chairperson of the Second Division per Special Order No. 690 dated September 4, 2009.

THIRD DIVISION

[G.R. No. 153653. October 2, 2009]

SAN MIGUEL BUKID HOMEOWNERS ASSOCIATION, INC., herein represented by its PRESIDENT, MR. EVELIO BARATA, *petitioner, vs.* **THE CITY OF MANDALUYONG, represented by the HON. MAYOR BENJAMIN ABALOS, JR. and A.F. CALMA GENERAL CONSTRUCTION, represented by its President, ARMENGO F. CALMA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; RESORTED TO WHEN THERE IS NO APPEAL, NOR ANY PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW. — Section 1, Rule 65 of the Rules of Court states that *certiorari* may be resorted to when there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law. Thus, in *Abedes v. Court of Appeals*, the Court held that: x x x for a petition for *certiorari* or prohibition to be granted, it must set out and demonstrate, plainly and distinctly, all the facts essential to establish a right to a writ. The **petitioner must allege in his petition and has the burden of establishing facts to show that any other existing remedy is not speedy or adequate and that** (a) the writ is directed against a tribunal, board or officer exercising judicial or quasi-judicial functions; (b) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to excess or lack of jurisdiction; and, (c) **there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. These matters must be threshed out and shown by petitioner.**

2. ID.; ID.; ID.; NOT PROPER FOR ASSAILING FINAL ORDER OF DISMISSAL WHICH IS SUBJECT TO APPEAL; CASE AT BAR. — The Resolutions of the CA which petitioner seeks to nullify are orders of dismissal. In *Magestrado v. People*, the Court explained that an order of dismissal is a final order which is a proper subject of an appeal, not *certiorari*. This

was reiterated in *Pasiona v. Court of Appeals*, where it was emphasized that if what is being assailed is a decision, final order or resolution of the CA, then appeal to this Court is *via a verified petition for review on certiorari* under Rule 45 of the Rules of Court. In cases where an appeal was available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion. The existence and availability of the right of appeal are antithetical to the availability of the special civil action for *certiorari*, although where it is shown that the appeal would be inadequate, slow, insufficient, and will not promptly relieve a party from the injurious effects of the order complained of, or where appeal is inadequate and ineffectual, the extraordinary writ of *certiorari* may be granted. Clearly, since the present case involves a final order of dismissal issued by the CA, the proper course of action would have been to file a petition for review on *certiorari* under Rule 45. Although there are exceptions to the general rule, petitioner utterly failed to allege and prove that the extraordinary remedy of the writ of *certiorari* should be granted, because an appeal, although available, would be inadequate, insufficient and not speedy enough to address the urgency of the matter. There is nothing in the petition to show that this case qualifies as an exception to the general rule. The circumstances prevailing in this case reveal that whatever grievance petitioner may be suffering from the dismissal of its petition with the CA could be properly addressed through a petition for review on *certiorari*.

3. ID.; CIVIL PROCEDURE; FORUM SHOPPING; ONLY A DULY AUTHORIZED OFFICER OF A PARTY CORPORATION CAN SIGN CERTIFICATION AGAINST FORUM SHOPPING; OFFICER IN CASE AT BAR AUTHORIZED TO SIGN FOR COMPLAINT BUT NOT FOR PETITION FOR *CERTIORARI*. — In *Fuentebella v. Castro*, the Court categorically stated that "if the real party-in-interest is a corporate body, **an officer of the corporation can sign the certification against forum shopping so long as he has been duly authorized by a resolution of its board of directors.**" In this case, the Certificate of Board Resolution attached to the petition for *certiorari* filed with the CA **only authorized its President, Evelio Barata, to initiate, sign, file and prosecute the Complaint for specific performance.** *Certiorari*, as a special civil action, is an original action invoking the original jurisdiction of a court to annul or modify the

proceedings of a tribunal, board or officer exercising judicial or quasi-judicial functions. It is an original and independent action that is not part of the trial or the proceedings on the complaint filed before the trial court. The petition for *certiorari* before the CA is, therefore, a separate and distinct action from the action for specific performance instituted before the RTC, as the writ of *certiorari* being prayed for is directed against the judicial or quasi-judicial body, not against the private parties in the original action for specific performance.

4. ID.; ID.; ID.; ID.; ID.; BELATED AUTHORITY OF A CORPORATION OFFICER TO SIGN CERTIFICATION AGAINST FORUM SHOPPING WILL NOT CURE THE DEFECT TO ENTITLE THE PARTY CORPORATION FOR RECONSIDERATION. — The submission of a Secretary's Certificate with the Motion for Reconsideration is also insufficient to cure the initial defect. Said Certificate stated that petitioner's Board of Trustees approved a Resolution at a meeting held on April 7, 2002, confirming and ratifying the authority of Mr. Barata to sign all necessary papers for the petition for *certiorari*. Note that the petition was filed on March 26, 2002, or before the date of said Resolution. There is no certification as to when petitioner's Board of Trustees originally granted Mr. Barata authority to show that as of the date of the filing of the petition for *certiorari*, Mr. Barata had been authorized to perform such acts. Moreover, as ruled in *Tible and Tible Company, Inc. v. Royal Savings and Loan Association*, to wit: In *Athena Computers, Inc. v. Reyes*, the Court stressed that "***certiorari*, being an extraordinary remedy, the party who seeks to avail of the same must strictly observe the rules laid down by the law.**" x x x. subsequent compliance does not *ipso facto* entitle a party to a reconsideration of the dismissal order. As the Court aptly observed in *Batoy v. Regional Trial Court, Br. 50, Loay, Bohol*: x x x the requirement under Administrative Circular No. 04-94 for a certificate of non-forum shopping is mandatory. The **subsequent compliance with said requirement does not excuse a party's failure to comply therewith in the first instance.** In those cases where this Court excused the non-compliance with the requirement of the submission of a certificate of non-forum shopping, it found **special circumstances or compelling reasons** which made the strict

application of said Circular clearly unjustified or inequitable.
x x x

APPEARANCES OF COUNSEL

Office of Legal Aid for petitioner.
City Legal Department for City of Mandaluyong.
Wilfred D. Tafalla for Armiengol F. Calma.

D E C I S I O N

PERALTA, *J.*:

This resolves the petition for *certiorari* under Rule 65 of the Rules of Court, seeking nullification of the Resolutions of the Court of Appeals (CA) dated April 16, 2002[1] and May 14, 2002,[2] in CA-G.R. SP No. 69827, dismissing the petition for *certiorari* filed by herein petitioner.

The undisputed facts are as follows.

Petitioner San Miguel Bukid Homeowners Association, Inc. (formerly known as Bukid Neighborhood Landless Association), an association of urban poor dwellers of San Miguel Bukid Compound, Plainview, Mandaluyong City, filed with the Regional Trial Court (RTC) of Mandaluyong City a Complaint[3] for specific performance and damages against respondents City of Mandaluyong (City) and A.F. Calma General Construction (Calma). It is alleged therein that pursuant to the City's Land for the Landless Program, petitioner and the City entered into a Memorandum of Agreement (MOA), whereby the City purchased lots and then transferred the same to petitioner with a first real estate mortgage in favor of the City. Subsequently, the City and Calma entered into a Contract Agreement for the latter to construct row houses and medium-rise buildings on

[1] Penned by Associate Justice Romeo A. Brawner, with Associate Justices Jose L. Sabio, Jr. and Sergio L. Pestaño, concurring; *rollo,* p. 70.

[2] Penned by Associate Justice Romeo A. Brawner, with Associate Justices Sergio L. Pestaño and Danilo B. Pine, concurring; *id.* at 79-80.

[3] CA *rollo,* pp. 27-31.

the aforementioned lots within 540 calendar days for the benefit of petitioner's members. In June 1995, Calma began construction, but in June 1996, work on the project was stopped. The period of 540 days elapsed sometime in November 1996, but the houses and buildings were not yet completed. Petitioner's letters sent to the Mayor of the City requesting an update on the project remained unanswered. Hence, petitioner filed the complaint praying that the City and Calma be ordered to perform their respective undertakings and obligations under the Contract Agreement and to pay petitioner attorney's fees, exemplary damages and litigation expenses.

The City filed an Answer[4] within the extended period granted by the trial court. The City's main defense was that the MOA had already been abrogated due to petitioner's failure to secure a loan from the Home Mortgage and Finance Corporation, and that petitioner had no standing or personality to institute the action, as it was not a party to the Contract Agreement.

Calma did not file an Answer.

On September 12, 2000, petitioner filed a Motion to Declare Defendant in Default. It pointed out that the lawyer who signed the City's Answer was a private counsel, not the Office of the City Legal Officer which, according to petitioner, was the only office authorized under Section 248 of the Local Government Code to represent the local government unit in all civil actions. Thus, petitioner prayed that the City be declared in default on the ground that the City's Answer was a mere scrap of paper and should not be admitted in court for being an unsigned pleading, the same not having been signed and filed by a duly authorized representative of the City.

In its Order[5] dated June 4, 2001, the RTC denied petitioner's motion, ruling that a party should only be declared in default in cases showing clear obstinate refusal or inordinate neglect in complying with the Orders of the court. Petitioner's motion

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[4] *Id.* at 40-44.

[5] *Id.* at 45-46.

for reconsideration of said order was also denied per Order[6] dated January 7, 2002.

The matter was elevated by petitioner to the CA *via* a petition for *certiorari*. However, in the assailed Resolution[7] dated April 16, 2002, the CA dismissed the petition outright because the person who signed the Verification/Certification of Non-Forum Shopping thereof did not appear to be authorized by petitioner. Petitioner filed a motion for reconsideration but the same was denied in the second assailed Resolution[8] dated May 14, 2002.

Hence, petitioner came to this Court seeking the issuance of a writ of *certiorari* against the CA, on the following grounds:

I. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT HELD THAT THE REPRESENTATIVE OF THE PETITIONER WHO SIGNED THE VERIFICATION/CERTIFICATION OF NON-FORUM SHOPPING "DID NOT APPEAR TO BE DULY AUTHORIZED TO DO SO," WHEN IN FACT THE SAID REPRESENTATIVE WAS DULY AUTHORIZED BY THE PETITIONER CORPORATION'S BOARD OF DIRECTORS.

II. THE HONORABLE COURT OF APPEALS ERRED IN APPLYING THE RULING IN *BA SAVINGS BANK VS. SIA* (336 SCRA 484) AGAINST THE PETITIONER AND DISMISSED THE PETITION FOR *CERTIORARI*.

III. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN DENYING THE MOTION FOR RECONSIDERATION WHEN IT HELD THAT THE LACK OF CERTIFICATION AGAINST FORUM SHOPPING IS GENERALLY NOT CURABLE BY THE SUBMISSION THEREOF AFTER THE FILING OF THE PETITION, WHEN IN TRUTH, WHAT WAS SUBMITTED BY PETITIONER WITH THE MOTION FOR RECONSIDERATION WAS NOT A CERTIFICATION AGAINST FORUM SHOPPING BUT A SECRETARY'S CERTIFICATE OF A BOARD RESOLUTION CONFIRMING AND RATIFYING THE AUTHORITY OF THE REPRESENTATIVE TO ACT AS SUCH.[9]

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[6] *Id*. at 54.

[7] *Supra* note 1.

[8] *Supra* note 2.

[9] *Rollo*, pp. 31-32.

The petition is doomed to fail.

Section 1, Rule 65 of the Rules of Court states that *certiorari* may be resorted to when there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law. Thus, in *Abedes v. Court of Appeals*,[10] the Court held that:

> x x x for a petition for *certiorari* or prohibition to be granted, it must set out and demonstrate, plainly and distinctly, all the facts essential to establish a right to a writ. The **petitioner must allege in his petition and has the burden of establishing facts to show that any other existing remedy is not speedy or adequate and that** (a) the writ is directed against a tribunal, board or officer exercising judicial or quasi-judicial functions; (b) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to excess or lack of jurisdiction; and, (c) **there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. These matters must be threshed out and shown by petitioner**.[11]

The Resolutions of the CA which petitioner seeks to nullify are orders of dismissal. In *Magestrado v. People*,[12] the Court explained that an order of dismissal is a final order which is a proper subject of an appeal, not *certiorari*. This was reiterated in *Pasiona v. Court of Appeals*,[13] where it was emphasized that if what is being assailed is a decision, final order or resolution of the CA, then appeal to this Court is *via a verified petition for review on certiorari* under Rule 45 of the Rules of Court. In cases where an appeal was available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion.[14] The existence and availability of the right of appeal are antithetical to the availability of the special civil action for *certiorari*, although where it is shown that the appeal would be inadequate, slow, insufficient, and will not promptly relieve a party from the injurious

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[10] G.R. No. 174373, October 15, 2007, 536 SCRA 268.

[11] *Id.* at 284. (Emphasis supplied.)

[12] G.R. No. 148072, July 10, 2007, 527 SCRA 125, 133-134.

[13] G.R. No. 165471, July 21, 2008, 559 SCRA 137.

[14] *Id.* at 151.

effects of the order complained of, or where appeal is inadequate and ineffectual, the extraordinary writ of *certiorari* may be granted.[15]

Clearly, since the present case involves a final order of dismissal issued by the CA, the proper course of action would have been to file a petition for review on *certiorari* under Rule 45. Although there are exceptions to the general rule, petitioner utterly failed to allege and prove that the extraordinary remedy of the writ of *certiorari* should be granted, because an appeal, although available, would be inadequate, insufficient and not speedy enough to address the urgency of the matter. There is nothing in the petition to show that this case qualifies as an exception to the general rule. The circumstances prevailing in this case reveal that whatever grievance petitioner may be suffering from the dismissal of its petition with the CA could be properly addressed through a petition for review on *certiorari*.

On the ground alone that petitioner resorted to an improper remedy, the present petition is already dismissible and undeserving of the Court's attention. However, even on the merits, the petition must be struck down.

In *Fuentebella v. Castro*,[16] the Court categorically stated that "if the real party-in-interest is a corporate body, **an officer of the corporation can sign the certification against forum shopping so long as he has been duly authorized by a resolution of its board of directors**."[17] In this case, the Certificate of Board Resolution attached to the petition for *certiorari* filed with the CA reads as follows:

> x x x in a meeting of the Board of Directors of the SAN MIGUEL BUKID HOMEOWNERS ASSOCIATION, held on 7 November 1999, the following resolution was unanimously adopted by the General Assembly of the Association:
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> RESOLVED, that the ASSOCIATION re-file its Complaint for Specific Performance with Damages against the CITY

[15] *Magestrado v. People, supra* note 12, at 136.

[16] G.R. No. 150865, June 30, 2006, 494 SCRA 183.

[17] *Id.* at 191. (Emphasis ours.)

GOVERNMENT OF MANDALUYONG and A.F. CALMA GENERAL CONSTRUCTION CORPORATION in order to enforce their obligations under the CONTRACT AGREEMENT for a housing project in favor of the ASSOCIATION;

RESOLVED, further, that MR. EVELIO D. BARATA, President of the ASSOCIATION, be **authorized to initiate, sign, file and prosecute the COMPLAINT**.[18]

Evidently, petitioner only authorized its President, Evelio Barata, to initiate, sign, file and prosecute the Complaint for specific performance.

Certiorari, as a special civil action, is an original action invoking the original jurisdiction of a court to annul or modify the proceedings of a tribunal, board or officer exercising judicial or quasi-judicial functions.[19] It is an original and independent action that is not part of the trial or the proceedings on the complaint filed before the trial court.[20] The petition for *certiorari* before the CA is, therefore, a separate and distinct action from the action for specific performance instituted before the RTC, as the writ of *certiorari* being prayed for is directed against the judicial or quasi-judicial body, not against the private parties in the original action for specific performance. Such being the case, the November 7, 1999 Resolution of the Board of Directors of petitioner association is not and cannot be considered as an authorization for its President, Evelio Barata, to initiate, sign, file and prosecute another case for the special civil action of *certiorari*. The CA was, thus, correct in dismissing the petition for lack of authority of Evelio Barata to sign the Certification of Non-Forum Shopping in representation of petitioner.

The submission of a Secretary's Certificate with the Motion for Reconsideration is also insufficient to cure the initial defect. Said Certificate stated that petitioner's Board of Trustees approved

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[18] CA *rollo*, p. 26. (Emphasis and underscoring ours.)

[19] Rules of Court, Rule 65, Sec. 1, and Rule 56-A.

[20] *Tible and Tible Company, Inc. v. Royal Savings and Loan Association*, G.R. No. 155806, April 8, 2008, 550 SCRA 562, 574, citing *Madrigal Transport, Inc. v. Lapanday Holding Corporation*, 436 SCRA 123 (2004).

a Resolution at a meeting held on April 7, 2002, confirming and ratifying the authority of Mr. Barata to sign all necessary papers for the petition for *certiorari*. Note that the petition was filed on March 26, 2002, or before the date of said Resolution. There is no certification as to when petitioner's Board of Trustees originally granted Mr. Barata authority to show that as of the date of the filing of the petition for *certiorari*, Mr. Barata had been authorized to perform such acts. Moreover, as ruled in *Tible and Tible Company, Inc. v. Royal Savings and Loan Association*,[21] to wit:

> In *Athena Computers, Inc. v. Reyes*, the Court stressed that "***certiorari,* being an extraordinary remedy, the party who seeks to avail of the same must strictly observe the rules laid down by the law**." x x x.
>
> x x x x x x x x x x x x
>
> x x x subsequent compliance does not *ipso facto* entitle a party to a reconsideration of the dismissal order. As the Court aptly observed in *Batoy v. Regional Trial Court, Br. 50, Loay, Bohol*:
>
> > x x x the requirement under Administrative Circular No. 04-94 for a certificate of non-forum shopping is mandatory. The **subsequent compliance with said requirement does not excuse a party's failure to comply therewith in the first instance**. In those cases where this Court excused the non-compliance with the requirement of the submission of a certificate of non-forum shopping, it found **special circumstances** or **compelling reasons** which made the strict application of said Circular clearly unjustified or inequitable. x x x[22] (Emphasis supplied)

As in the present case, such special circumstances or compelling reasons are absent.

IN VIEW OF THE FOREGOING, the petition is *DISMISSED* for lack of merit. The Resolutions of the Court of Appeals in CA-G.R. SP No. 69827, dated April 16, 2002 and May 14, 2002, are *AFFIRMED*.

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[21] *Id*.

[22] *Id.* at 577-579.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 153923. October 2, 2009]

SPOUSES TOMAS F. GOMEZ and ADELAIDA S. GOMEZ, substituted by children TOMAS S. GOMEZ, II and GINA GOMEZ-LUKBAN, *petitioners, vs.* **GREGORIO CORREA and PHILIPPINE REALTY CORP.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; DOCTRINE OF FINALITY OF JUDGMENT; DISCUSSED. — It is settled that when a final judgment is executory, it becomes immutable and unalterable. The 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. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time. The only recognized exceptions are the correction of clerical errors or the making of so-called *nunc pro tunc* entries in which case there is no prejudice to any party, and where the judgment is void.

2. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; AWARD NOT JUSTIFIED BY MERE DECISION IN FAVOR OF WINNING PARTY. — An adverse decision does not *ipso facto*

justify an award of attorney's fees in favor of the winning party. Public policy dictates that no premium should be placed on the right to litigate. The records reveal none of the circumstances enumerated in Article 2208 of the Civil Code to warrant the award of attorney's fees. That a plaintiff is compelled to litigate and incur expenses to protect and enforce a claim does not justify the award of attorney's fees.

APPEARANCES OF COUNSEL

Sumulong Law Offices for petitioners.

Brillantes Navarro Jumamil Arcilla Escolin & Martinez Law Offices for Philippine Realty Corporation.

Nicasio V. Templanza for Gregoria Correa.

D E C I S I O N

CARPIO MORALES,[*] *J.*:

Tomas S. Gomez II and Gina Gomez-Lukban, in substitution of their deceased parents Tomas F. Gomez and Adelaida S. Gomez (Spouses Gomez), assail via the present petition for review on *certiorari* the Court of Appeals Decision of August 20, 2001, *Amended* Decision of February 22, 2002, and Resolution of June 13, 2002 in CA-G.R. CV 45728.

The factual antecedents of the case follow:

By Contract to Sell No. 988-N of March 6, 1951, Benedicta Mangahas (Benedicta) acquired from respondent Philippine Realty Corporation (PRC) on installment basis a 650-square meter residential lot at Grace Park Subdivision in Caloocan City, covered by Transfer Certificate of Title No. C-19456 (the property).

With PRC's approval, Benedicta conveyed to Magdalena Madrid (Magdalena), by Deed of Transfer of December 11, 1952, one-half of her rights and interests over the property. By Supplemental Agreement of even date, Benedicta and

[*] Per Special Order No. 690 in lieu of the sabbatical leave of Senior Associate Justice Leonardo A. Quisumbing.

Magdalena agreed that should one party be obliged to pay the share of the other due to default of the latter, the former would acquire the right to purchase all the rights of the latter at the same price.

Magdalena, in turn, transferred her rights and interests to the property to Adelaida Gomez (Adelaida) by Deed of Assignment of March 11, 1953 which shows that Benedicta signed as co-buyer and agreed that she and Adelaida would "*assume jointly and severally* all the obligations which shall accrue and will accrue in favor of the Philippine Realty Corporation under said Contract to Sell No. 988-N."[1]

Benedicta later sold her remaining rights and interests to the property to respondent Gregorio Correa (Correa) by "Deed of Absolute Sale of House and Right to the Lot" of October 7, 1954.

After notifying Adelaida's husband Tomas Gomez (Gomez) about the sale to her of Benedicta's rights and interests to the property, Correa also informed the PRC of the sale, by letter of June 22, 1955, with a request that all notices for payment of installments due be addressed to him and Gomez.

It appears that as of 1956, the Spouses Gomez had advanced the following payments to the PRC representing the payment due the entire property including the ½ share of Benedicta, predecessor-in-interest of Correa: ₱500, ₱1,628.69, and ₱492.00.

Adelaida later filed on June 1, 1956[2] a complaint before the Court of First Instance (CFI) of Pasig, docketed as **Civil Case No. 4120,** against Benedicta and Correa to rescind the deed of sale executed by Benedicta in favor of Correa and to compel Benedicta to sell to her the one-half share. The complaint was later amended to implead Adelaida's husband Tomas as party plaintiff.

It is gathered[3] that the CFI of Pasig rendered judgment dismissing the Spouses Gomez's complaint to rescind the sale

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[1] *Rollo*, p. 113. Exhibit "C", quoted in the Decision of March 29, 1977 in CA-G.R. No. 36924-R.

[2] Records, Vol. I, p. 15.

[3] *Id.* at 16.

to Correa of Benedicta's share, but ordering Correa to pay the Spouses Gomez ₱1,600.20 representing reimbursement to them of their payment of ½ share of the property of Benedicta which she sold to Correa, and dismissing Correa's claim for damages including attorney's fees. Thus it ordered:

1. Plaintiff's complaint against defendant Benedicta Mangahas, is DISMISSED;
2. Defendant, Gregoria Correa, is ordered to pay plaintiffs the sum of ONE THOUSAND SIX HUNDRED PESOS and TWENTY CENTAVOS (**₱1,600.20**);
3. All claims for damages including attorney's fees of the parties are denied; and
4. There is no pronouncement as to costs. (Emphasis and underscoring supplied)

On the Spouses Gomez's appeal, the Court of Appeals, by Decision of March 29, 1977, affirmed with modification the trial court's decision, holding and disposing as follows:

> While the lower court **correctly held** that the appellee Correa should reimburse the appellants of the amount of ₱1,600.20 which they paid for the one-half share of [Benedicta] in the lot in question, it failed to award the corresponding interest thereon. Clearly, the appellants are entitled to such interest from the time the payment was made. The trial court is therefore directed to determine the corresponding interest accruing on the amounts of ₱500.00 (Exhibit F), ₱1,628.69 (Exhibit G) and ₱492.00 (Exhibit H) paid by the appellants on August 5, 1955, May 2 and May 15, 1956, respectively.
>
> WHEREFORE, with the modification indicated above, the judgment appealed from is hereby affirmed in all other respects. No costs.
>
> SO ORDERED.[4]

On appeal by the Spouses Gomez from the appellate court's Decision, this Court, by Resolution of February 22, 1978 issued in G.R. No. L-46381, denied the same, which Resolution was entered in the Entry of Judgment on April 13, 1978.[5]

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[4] *Id.* at 19-20.

[5] *Id.* at 21. Entry of Judgment which states that by Resolution of February 22,

Correa later offered to pay the amount of ₱1,060.20 and the legal interest due thereon, but the Spouses Gomez declined the offer since it contravened the tenor of the final and executory February 22, 1978 Resolution of this Court.

On January 5, 1984 or more than five years from the finality on April 13, 1978 of this Court's February 22, 1978 Resolution, Correa filed before the Regional Trial Court of Pasig, Branch 151 (to which CFI Pasig Civil Case No. 4120 appears to have been eventually lodged) a Motion to Determine Interest Due,[6] placing in issue the interest due on the judgment award. The trial court, by Order of April 16, 1984, "refuse[d] to perform an inutile act," it holding that this Court's February 22, 1978 Resolution could no longer be executed and enforced by mere motion after the lapse of five years from the date of its entry (on April 13, 1978), citing Section 6, Rule 39 of the Rules of Court.

Correa thus instituted a Complaint of June 11, 1984 for specific performance, partition and damages against the Spouses Gomez and PRC, docketed as **Civil Case No. C-11387,** before the Regional Trial Court (RTC) of Caloocan City. *This is now the subject of the Court's present decision*.

Correa contended that the appellate court's March 29, 1977 Decision, appeal from which this Court denied by Resolution of February 22, 1978, directed the payment of "₱1,060.20" [*sic*] but the Spouses Gomez refused to accept his offer of payment and subdivide the property.

By Decision of March 7, 1994, Branch 127 of the Caloocan RTC found for Correa, disposing as follows:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff, as follows:
>
> (a) Philippine Realty Corporation is hereby ordered to deliver to herein plaintiff the pertinent deed of sale on the ½ portion

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1978, this Court denied the petition for review on *certiorari* of Adelaida Gomez, *et al.* for lack of merit.

[6] *Id.* at 31-34.

of the covered [*sic*] by Transfer Certificate of Title No. C-19456, upon adjudication of the subdivided parts thereof, pursuant to the approved plan and technical descriptions thereof by the Land Registration Commission.

(b) The partition of the parcel of land, covered by Transfer Certificate of Title No. C-19456 between plaintiff and defendant in accordance with the subdivision plan and technical descriptions, duly approved by the Land Registration Commission: the plaintiff and defendant spouses to decide between themselves which portion shall belong to the other.

(c) This Court hereby orders the fixing of the interest due on the amount of **₱1,060.20** [*sic*] at 12% from 1956 up to January, 1979.

(d) Defendant spouses are hereby ordered to pay to plaintiff the sum of ₱600.00 plus interest thereon, representing ½ portion of the amount of the costs of surveying and subdivision of subject property;

(e) The Court likewise orders defendant spouses to pay plaintiff the amount of ₱100,000.00 representing back rentals, moral damages and exemplary damages to plaintiff; plus the amount of ₱10,000.00 as attorney's fees plus the costs of suit.

IT IS ORDERED.[7] (Underscoring supplied)

The Spouses Gomez appealed to the appellate court which rendered the first assailed Decision of August 20, 2001 the dispositive portion of which reads:

WHEREFORE, in view of the foregoing and pursuant to applicable law and jurisprudence on the matter and evidence on hand, judgment **is hereby rendered AFFIRMING** the decision of the trial court *with modification* in the following manner:

"Plaintiff is ordered to pay the defendants-appellants the amount of:

(1) **₱1,060.20** plus interest of 6% per annum computed from May 10, 1957 to April 12, 1978 and 12% per annum from April 13, 1978 (the date CA-G.R. No. 36924-R became final and executory) until fully paid;

[7] Records, Vol. II, pp. 581-582.

(2) ₱500.00 with interest at 6% per annum from August 5, 1955 to April 12, 1978 and increased to 12% per annum from April 13, 1978 until fully paid;

(3) ₱1,628.69 plus 6% percent per annum from May 2, 1956 to April 12, 1978 and increased to 12% per annum from April 13, 1978 until fully paid;

(4) ₱492.00 plus interest of 6% per annum from May 15, 1956 until April 12, 1978 and increased to 12% per annum from April 13, 1978 until fully paid;

(5) ₱10,000.00 as attorney's fees; and

(6) Costs of suit."

AFFIRMED in all other aspects. Costs against defendants-appellants.

SO ORDERED.[8] (Emphasis in the original; italics and underscoring supplied)

Correa filed a Motion for Reconsideration while the Spouses Gomez filed a Motion for Correction of the judgment award from "₱1,060.20" to ₱1,600.20, *cum* Opposition to the Motion for Reconsideration.

By the second assailed *Amended* Decision, the appellate court denied the Spouses Gomez' motion and granted Correa's motion by modifying its original Decision such that Spouses Gomez should be the ones to pay the attorney's fees.[9] Reconsideration of the *Amended* Decision having been denied by Resolution of June 13, 2002, the Spouses Gomez filed the present petition, the resolution of which boils down to the issue of *whether the appellate court gravely erred in affirming the modification by the RTC Caloocan of the final and executory judgment amount, to be reimbursed to petitioners from ₱1,600.20 to ₱1,060.20, and in faulting them for attorney's fees*.

The petition is meritorious.

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[8] Penned by Justice Jose L. Sabio, Jr. with the concurrence of Justices Cancio C. Garcia and Hilarion L. Aquino.

[9] *Rollo,* pp. 81-82.

It is settled that when a final judgment is executory, it becomes immutable and unalterable. The 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. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time.[10]

The only recognized exceptions are the correction of clerical errors or the making of so-called *nunc pro tunc* entries in which case there is no prejudice to any party, and where the judgment is void.[11] None of these has been shown to be present to justify the "modification" of the judgment. Parenthetically, the modification was made not by the same court (CFI of Pasig) that rendered the judgment.

It bears emphatic reiteration that the amount claimed by the Spouses Gomez had been determined **with finality** in the prior proceeding in Civil Case No. 4120 before the CFI of Pasig. Oddly, Correa had even admitted having "exerted earnest efforts to pay and settle his obligation of ₱1,600.20 and the accruing interest thereon but the plaintiffs are demanding interest over and above the legal rate provided for by law, and consequently, up to the present time, the issue on the correct interest to be paid by the herein defendant to the plaintiffs is still an unsettled matter[.]"[12]

The appellate court thus erred in affirming the RTC Caloocan's directive, on the basis of Correa's misrepresentation, ordering the fixing of interest due "on the amount of ₱1,060.20."

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[10] *Mayon Estate Corporation v. Altura*, G.R. No. 134462, October 18, 2004, 440 SCRA 377, 386.

[11] *Id.* citing *Manning International Corp. v. NLRC*, G.R. No. 83018, March 13, 1991, 195 SCRA 155.

[12] Records, Vol. I, p. 32.

On its award of attorney's fees in favor of Correa, the appellate court explained the basis thereof as follows:

> Anent the issue of attorney's fees and costs of suit (5th assigned error), the trial court correctly assessed the defendants [spouses Gomez] to pay attorney's fees and costs of suit as this case could have been avoided if defendants-spouses have agreed to have the land subject of this case subdivided and partitioned between the parties. Plaintiff had no choice but to file the instant complaint because of defendant's [*sic*] obstinate refusal to partition/subdivide the property or to give conformity to the deed of sale.[13] (Underscoring supplied)

An adverse decision does not *ipso facto* justify an award of attorney's fees in favor of the winning party. Public policy dictates that no premium should be placed on the right to litigate.[14] The records reveal none of the circumstances enumerated in Article 2208 of the Civil Code[15] to warrant the award of attorney's

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[13] *Rollo*, p. 62.

[14] *Francisco v. Co*, G.R. No. 151339, January 31, 2006, 481 SCRA 241, 257.

[15] In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

fees. That a plaintiff is compelled to litigate and incur expenses to protect and enforce a claim does not justify the award of attorney's fees.[16]

The RTC Caloocan's decision merely proffered that the Spouses Gomez' refusal to subdivide the property amounted to bad faith. The burden of proving bad faith, however, has not been discharged by Correa. That the Spouses Gomez may have refused to agree to a partition or subdivision of the property is not difficult to comprehend, given Correa's failure to settle the correct judgment award inclusive of interest.

WHEREFORE, the petition is *GRANTED*. The assailed issuances of the Court of Appeals in CA-G.R. CV 45728 are *MODIFIED*. The appellate court's Decision of August 20, 2001 is modified such that the correct amount to be reimbursed by respondent Gregorio Correa to petitioners Spouses Gomez is, as correctly decreed by the CFI of Pasig in Civil Case No. 4120, ₱1,600.20, and that the award of attorney's fees to respondent Correa is deleted. In all other respects, the challenged issuances are *AFFIRMED*.

SO ORDERED.

Ynares-Santiago,[***] *Peralta,*[***] *Del Castillo,* and *Abad, JJ.,* concur.

In all cases, the attorney's fees and expenses of litigation should be reasonable.

[16] *China Airlines, Ltd. v. Court of Appeals*, G.R. No. 129988, July 14, 2003, 406 SCRA 113, 134.

[***] Additional member per Special Order No. 691.

[***] Additional member per Special Order No. 711.

EN BANC

[G.R. No. 154117. October 2, 2009]

ERNESTO FRANCISCO, JR., *petitioner*, *vs.* **OMBUDSMAN ANIANO A. DESIERTO, JOSEPH EJERCITO ESTRADA, MARIANO Z. VELARDE, FRANKLIN M. VELARDE, ROBERT C. NACIANCENO, REY DIVINO S. DAVAL-SANTOS, SOLEDAD S. MEDINA-CUE, PATRICK B. GATAN, LUIS V. MEDINA-CUE, SILVESTRE A. DE LEON, RAMON V. DUMAUAL, RUBEN A. DE OCAMPO, MARIANO A. BENEDICTO II, GREGORIO R. VIGILAR, LUIS JUAN L. VIRATA, CESAR E. A. VIRATA, MANUEL B. ZAMORA, JR., RONALDO B. ZAMORA, FRISCO F. SAN JUAN and ARSENIO B. YULO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 43 NOT APPLICABLE TO CASES INVOLVING CRIMINAL OR NON-ADMINISTRATIVE CHARGES FILED BEFORE THE OFFICE OF THE OMBUDSMAN. — Section 1 of Rule 45 of the 1997 Rules of Civil Procedure provides: Section 1. *Filing of petition with Supreme Court*. – A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth. Private respondents Velarde aver that the "courts" referred to in the provision quoted above are "the courts that compose the integrated judicial system and do not include quasi-judicial bodies or agencies such as the Office of the Ombudsman." They claim that the proper mode of appeal in questioning the final judgment, order, or resolution of quasi-judicial bodies or agencies is provided under **Rule 43 of the 1997 Rules of Civil Procedure.** x x x Although we agree with private respondents Velarde that a petition for review on *certiorari* under Rule 45 is not the proper remedy for parties seeking relief from final judgments, orders,

or resolutions of quasi-judicial bodies or agencies like the Office of the Ombudsman, as has been repeatedly held by this Court, we find that the remedy of appeal under Rule 43 posited by private respondents Velarde is not proper either. This Court subsequently held that under the ruling in *Fabian*, "all appeals from decisions of the Ombudsman in ***administrative disciplinary cases*** may be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure." Said remedy, therefore, is not applicable to cases involving criminal or non-administrative charges filed before the Office of the Ombudsman, which is the situation in the case before us now.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY FOR CASES INVOLVING GRAVE ABUSE OF DISCRETION. — As we further stated in *Tirol v. Del Rosario*: [An] aggrieved party is not without recourse where the finding of the Ombudsman as to the existence of probable cause is tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. An aggrieved party may file a petition for *certiorari* under **Rule 65** of the 1997 Rules of Civil Procedure x x x. [D]ue to the nature of this case and the allegations involving grave abuse of discretion committed by the Office of the Ombudsman, it should have been filed under **Rule 65**, and not Rule 45, of the 1997 Rules of Civil Procedure. x x x . It is settled that this Court is not a trier of facts and its jurisdiction is limited to errors of law. As we held in *Tirol v. Commission on Audit*, "There is a question of law in any given case when the doubt or difference arises as to what the law is on a certain state of facts. A question of fact arises when the doubt or difference arises as to the truth or falsehood of alleged facts." Moreover, in *Medina v. City Sheriff, Manila*, we have stated: For this petition to be granted, it must be shown that the respondent appellate court committed grave abuse of discretion equivalent to lack of jurisdiction and not mere errors of judgment, for *certiorari* is not a remedy for errors of judgment, which are correctible by appeal.

3. ID.; ID.; ID.; ID.; NOT APPRECIATED ON MATTERS INVOLVING THE INVESTIGATORY AND PROSECUTORY POWERS OF THE OFFICE OF THE OMBUDSMAN AS REMEDY OF *CERTIORARI* IS MEANT TO CORRECT ERRORS OF JURISDICTION, NOT ERRORS OF JUDGMENT. — We find no cogent reason to

weigh all over again the evidence in this case and to reverse the findings of the public respondent x x x. This is because, as we held in *Tirol v. COA:* [This] Court ordinarily does not interfere with the discretion of the Ombudsman to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts. This rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise the functions of the courts will be grievously hampered by immeasurable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in as much the same way that the courts would be extremely swamped if they would be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant. x x x. In the recent case *Lazatin v. Ombudsman*, this Court held that the question of whether "the Ombudsman correctly ruled that there was enough evidence to support a finding of probable cause pertains to a mere error of judgment." The Court further held: It must be stressed that *certiorari* is a remedy meant to correct only errors of jurisdiction, not errors of judgment. This has been emphasized in *First Corporation v. Former Sixth Division of the Court of Appeals, to wit*: It is a fundamental aphorism in law that a review of facts and evidence is not the province of the extraordinary remedy of *certiorari*, which is *extra ordinem* — beyond the ambit of appeal. In *certiorari* proceedings, judicial review does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof. It does not include an inquiry as to the correctness of the evaluation of evidence. Any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by *certiorari*. *An error of judgment* is one which the court may commit in the exercise of its jurisdiction. *An error of jurisdiction* is one where the act complained of was issued by the court without or in excess of jurisdiction, or with grave abuse of discretion, which is tantamount to lack 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 of the trial court in its appreciation

of the evidence of the parties, or its conclusions anchored on the said findings and its conclusions of law. It is not for this Court to re-examine conflicting evidence, re-evaluate the credibility of the witnesses or substitute the findings of fact of the court *a quo*.

4. ID.; ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, NOT APPRECIATED IN CASE AT BAR. — Even if the issues involved here are factual, petitioner invokes the power of the Court to reverse the decision of the Ombudsman by alleging that the latter acted with grave abuse of discretion amounting to lack or excess of jurisdiction. However, as in *Morong Water District v. Office of the Deputy Ombudsman*, we find that: [The] Order and the Resolution of the Ombudsman are based on substantial evidence. In dismissing the complaint of petitioner, we cannot say that the Ombudsman committed grave abuse of discretion so as to call for the exercise of our supervisory powers over him. This court is not a trier of facts. As long as there is substantial evidence in support of the Ombudsman's decision, that … decision will not be overturned. As regards petitioner's insistence that the Office of the Ombudsman should have conducted a fact-finding investigation and issued *subpoena duces tecum* as requested, we find that the Ombudsman's action not to issue the same was not made in grave abuse of discretion. x x x. Grave abuse of discretion has been defined as "such capricious and whimsical exercise of judgment tantamount to lack of jurisdiction." The abuse of discretion must be "so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility." We do not find this situation to be present in the instant case so as to merit a reversal of the questioned Resolution and Order issued by respondent Office of the Ombudsman.

APPEARANCES OF COUNSEL

Sobreviñas Diaz Hayudini and Bodegon for Frisco F. San Juan.

Puno and Puno for Ruben A. De Ocampo.

Castillo Zamora and Poblador Law Offices for R. Zamora, *et al.*

Law Firm of Chan Robles and Associates Mariano Z. Velarde and Franklin Velarde.

Restituto T. Alfonso for Roberto C. Nacianceno, *et al*.

R E S O L U T I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is a petition for review on *certiorari* filed under **Rule 45** of the 1997 Rules of Civil Procedure to review and set aside the Resolution[1] issued by the Office of the Ombudsman dated November 16, 2001 *dismissing*, for lack of evidence, the case filed by petitioner Ernesto B. Francisco, Jr. (hereinafter, petitioner); and the Order,[2] likewise issued by said Office, dated June 24, 2002 *denying*, for lack of merit, petitioner's Motion for Reconsideration.

I. STATEMENT OF FACTS.

On 16 April 2001, petitioner filed a Complaint-Affidavit docketed as OMB-0-01-0577 with the Office of the Ombudsman, alleging that the following respondents, by their individual acts and/or by conspiring and confederating with one another, have committed the offenses/acts enumerated hereunder:

a) For violation of Republic Act No. 7080, otherwise known as an Act Defining and Penalizing the Crime of Plunder, specifically Section 2, in relation to Section 1, sub-paragraph d(1), (3) and (6), as amended, by Republic Act No. 7659[:]

1. Joseph Ejercito Estrada – former President of the Republic of the Philippines
2. Mariano "Bro. Mike" Z. Velarde
3. Franklin M. Velarde
4. Gregorio R. Vigilar – former Secretary of

[1] *Rollo*, pp. 184-216.

[2] *Id.* at 220.

[Department of Public Works and Highways (DPWH)] and Chairman, [Toll Regulatory Board (TRB)]

5. Mariano E. Benedicto II – Executive Director, TRB
6. Ramon V. Dumaual – former Officer-in-Charge, TRB
7. Frisco San Juan – former Chairman, [Public Estates Authority (PEA)]
8. John Does and Jane Does

b) For violation of Section 3(a) of [Republic Act No. 3019:]

1. Joseph Ejercito Estrada
2. Gregorio R. Vigilar
3. Mariano E. Benedicto
4. Ramon V. Dumaual
5. Frisco San Juan
6. John Does and Jane Does

c) For violation of Section 3(e) of R.A. No. 3019:

1. Joseph Ejercito Estrada
2. Mariano "Brother Mike" Z. Velarde
3. Franklin M. Velarde
4. Gregorio R. Vigilar
5. Mariano E. Benedicto II
6. Ramon V. Dumaual
7. Ruben de Ocampo
8. Frisco San Juan
9. Arsenio B. Yulo – former Chairman and [General] Manager, PEA
10. Robert Nacianceno – former [Metro Manila Development Authority (MMDA)] Manager and Chairman, Parañaque City Appraisal Committee (PCAC)
11. Patrick B. Gatan – DPWH Representative, PCAC Member
12. Luis V. Medina-Cue – Pasay City Assessor, PCAC Member
13. Soledad V. Medina-Cue – Parañaque City Assessor, PCAC Member

14. Rey DivinoDaval-Santos – OIC Parañaque CityEngineer'sOffice, PCAC Member
15. Silvestre de Leon – Parañaque City Treasurer, PCAC Member
16. Ronaldo B. Zamora – former Executive Secretary
17. Luis J. L. Virata
18. Manuel B. Zamora, Jr.
19. Cesar E.A. Virata
20. John Does and Jane Does

d) For violation of Section 3(g) of R.A. 3019;

1. Joseph Ejercito Estrada
2. Mariano "Brother Mike" Z. Velarde
3. Franklin M. Velarde
4. Gregorio R. Vigilar
5. Mariano E. Benedicto, II
6. Ramon V. Dumaual
7. Ruben de Ocampo
8. Frisco San Juan
9. Ronaldo B. Zamora
10. Luis J. L. Virata
11. Manuel B. Zamora, Jr.
12. Cesar E.A. Virata
13. John Does and Jane Does

e) For violation of Section 3(h) of R.A. 3019;

1. Ronaldo B. Zamora

f) For violation of Section 3(j) of R.A. 3019;

1. Joseph Ejercito Estrada
2. Mariano "Brother Mike" Z. Velarde
3. Franklin M. Velarde
4. Gregorio R. Vigilar
5. Mariano E. Benedicto, II
6. Frisco San Juan
7. Ronaldo B. Zamora
8. Luis J. L. Virata
9. Manuel B. Zamora, Jr.
10. Cesar E.A. Virata
11. John Does and Jane Does

[g] For violation of Section 7(a) and (d) of R.A. 6713;

1. Ronaldo B. Zamora[3]

On May 31, 1990, during the administration of President Corazon Aquino, the Republic of the Philippines, through the Toll Regulatory Board (TRB),[4] granted the Public Estates Authority (PEA) a Toll Operation Certificate to construct, rehabilitate, maintain and operate a toll expressway, namely, (a) Seaside Drive at Parañaque to C-6 at Bacoor, Cavite; and (b) Expressway Extension to Noveleta/Kawit.

On February 3, 1994, during the administration of President Fidel Ramos, Renong Berhad, Majlis Amanah Rakyat (MARA), and the PEA entered into a Memorandum of Understanding to jointly undertake the implementation of the tollway project.[5]

On December 27, 1994, also during the administration of President Ramos, Renong Berhad, MARA and the PEA entered into a Joint Venture Agreement to develop and operate as a toll road the R-1 Expressway Extension. The entire project became known as the "MCTE Project."[6]

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[3] Complaint-Affidavit in OMB-0-01-0577, *rollo*, pp. 490-494.

[4] Under Presidential Decree No. 1112, dated March 31, 1977, the Toll Regulatory Board was created, with powers and functions that include:

Subject to the approval of the President of the Philippines, to enter into contracts in behalf of the Republic of the Philippines with persons, natural or judicial, for the construction, operation and maintenance of toll and facilities such as but not limited to national highways, roads, bridges, and public thoroughfares. Said contract shall be open to citizens of the Philippines and/or to corporation or association qualified under the Constitution and authorized by law to engage in toll operations.

[5] The PEA entered into a Joint Venture Agreement (JVA) with two Malaysian companies, following an exchange of state visits between President Ramos and the Malaysian Prime Minister, Dr. Mahathir Mohammad. The two Malaysian companies were: **Mara**, a corporate agency of the Malaysian government; and **Renong**, a publicly listed company incorporated in Malaysia.

[6] *Rollo*, p. 452.

On August 17, 1995, Renong Berhad, MARA, PEA and United Engineers (Malaysia) Berhad entered into a Novation Agreement whereby Renong Berhad assigned to United Engineers (Malaysia) Berhad (UEM) its rights, liabilities and obligations under the Joint Venture Agreement.[7]

On July 26, 1996, the Republic of the Philippines, acting through the TRB, PEA and UEM-MARA Philippines Corporation (UMPC) entered into a Toll Operations Agreement (TOA)[8] for the design, construction, operation and maintenance of the MCTE project, which covered the Manila-Cavite Toll Expressway, the R-1 Expressway, the C-5 Link Expressway, and the R-1 Expressway Extension. President Fidel Ramos approved the TOA on the same day, July 26, 1996. Under the terms of the TOA:

1. UEM-MARA shall design and construct the expressways covered by the TOA;
2. TRB shall ensure the availability and assume responsibility for the acquisition of the lands required for the right of way including the costs for procuring the area for the right of way;
3. PEA shall operate and maintain the expressways; and
4. PEA shall advance the funds necessary for the acquisition of the Right of Way subject to reimbursement by the Republic of the Philippines.[9]

On August 9, 1997, the TRB approved the original alignment for the C-5 link. On the basis of this alignment, the TRB issued notices to the owners of all properties affected, some of which either belonged to AMVEL Land Corporation (AMVEL) or were part of joint venture agreements between AMVEL and the property owners. Private respondent Mariano Z. Velarde

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[7] Renong was replaced by United Engineers Malaysia (UEM), a public company incorporated in Malaysia.

[8] *Rollo*, pp. 463-468.

[9] *Id.* at 1750.

is the Chairman of AMVEL while private respondent Franklin M. Velarde is the Executive Vice President.

Among those property owners to whom TRB sent notices were the following:

a. Mariano Z. Velarde;
b. Asuncion de Jugo;
c. Cornelia Medina;
d. Rosario Medina; and
e. Silvestre Medina.[10]

Under the Memorandum of Agreement[11] (MOA) between PEA and the Republic of the Philippines through the TRB and the DPWH, the obligations of PEA and TRB/DPWH with respect to the acquisition of the right-of-way were set forth. Under the MOA, the parties agreed that PEA shall have the following obligations:

1. To pay the purchase price of the lots to be expropriated for right of way as determined and requested by TRB/DPWH, x x x
2. To pay the expenses incurred in the relocation or eviction of squatters for the right-of-way requirements, subject to TRB/DPWH's repayment x x x;
3. The total amount tobe disbursed in the acquisition of right-of-way and the additional expenses incurred in the relocation and eviction of squatters shall not exceed the amount borrowed under the loan agreement.[12]

On the other hand, TRB shall have the following obligations:

1. To identify and locate the lots to be acquired for the right-of-way;
2. To negotiate with individual owners of the lands their purchase price in accordance with Executive Order No. 329 dated July 11, 1988, Executive Order No. 368 dated

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[10] *Id.* at 850.

[11] *Id.* at 474-478.

[12] *Id.* at 1751-52.

August 24, 1989 and Executive Order No. 369 dated September 14, 1989;

3. To cause the removal and/or relocation of the squatters that may hinder the construction of the expressway;
4. To prepare the necessary documents between the TRB/DPWH and the lot owners and owners of improvements;
5. To cause the cancellation of the Certificate of Title in the name of individual lot owners; [and]
6. To certify to the PEA that the lots for payment are free from all encumbrances and liens in accordance with the TOA.

It was pursuant to this MOA that the TRB identified and negotiated with the owners of the properties affected by the construction of the Tollway Project C-5 Link Expressway. Among the properties affected by the Tollway Project were properties owned or held by AMVEL Land Development Corporation (AMVEL), namely:

Land No.	Landowner	TCT No.	Affected Area (sq m)
Lot 1-A	Corazon & Cornelia Medina	33989	1,520
Lot 1-B	AMVEL Land Development Corp. (AMVEL)	33989	6,583
Lot 2-A	AMVEL	33988	6,062
Lot B-3-1	ADV Realty Corp.	122510	2,153
Lot 1	AMVEL	33550	6,643
Lot 2-B	AMVEL	31446	3,908
Lot 2-C-1	AMVEL	31460	3,813
Lot 2-D-1	Ma. Asuncion de Jugo	113793	753
Lot 2-F-1	Rona Agustines	113796	2,973
Lot 1	Julieta Evangelista, *et al.*	122378	5,229
Lot 3-A	E. Tirona, *et al.*	133990	16,543
Lot 2-B	AMVEL	31988	16,313
Lot 4-A	Tirona, *et al.*	133991	7,075
		Total	79,568

Pursuant to the MOA, the TRB requested the Parañaque City Appraisal Committee (PCAC) of the Metropolitan Manila Development Authority (MMDA) to appraise the affected properties. This Appraisal Committee was created by virtue of Executive Order No. 329 dated July 11, 1988 as amended by Executive Order No. 369 dated August 24, 1989 specifically for the purpose of determining the fair valuation of properties to be purchased or acquired for development and infrastructure projects for public use.[13]

On April 21, 1998, PCAC issued Resolution Nos. 98-5,[14] 98-6[15] and 98-7[16] appraising properties along Dr. A. Santos Avenue as follows:

1. All lots abutting Dr. A. Santos Avenue at TWENTY FIVE THOUSAND PESOS **(₱25,000.00)** per sq. m.;
2. All lots interior of Dr. A. Santos Avenue particularly along Palasan and Calang-Calangan, Bgy. San Dionisio at TWENTY THOUSAND PESOS **(₱20,000.00)** per sq. m.;
3. All untitled lots abutting Dr. A. Santos Avenue at SEVENTEEN THOUSAND FIVE HUNDRED PESOS **(₱17,500.00)** per sq. m.; and
4. All untitled lots interior of Dr. A. Santos Avenue along Palasan and Calang-Calangan at FOURTEEN THOUSAND PESOS **(₱14,000.00)** per sq. m.[17]

On May 6, 1998, the PCAC transmitted copies of Resolution Nos. 98-5, 98-6, 98-7 to the TRB.[18]

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[13] *Id.* at 1752.

[14] *Id.* at 249.

[15] *Id.* at 251.

[16] *Id.* at 252.

[17] *Id.* at 249-252.

[18] *Id.* at 1406.

On May 7, 1998, the TRB, through its Resolution No. 98-26, approved the acquisition of properties affected by the C-5 Link in accordance with the PCAC appraisals.[19]

On May 8, 1998, the TRB, through Ramon V. Dumaual, made Payment Instructions[20] to PEA to pay AMVEL's property at **₱20,000.00 per sq. m.** pursuant to the PCAC Recommendation.

On April 28, 1998, PEA received a copy of the Memorandum from then President Fidel Ramos, dated April 27, 1998, regarding the "Request of Bro. Mike Velarde Re: DPWH Road Right of Way Payments/Settlement on C-5 (PEA-Renong Berhad)." The Memorandum contained the handwritten marginal note of then President Fidel V. Ramos directing the DPWH to "Fast-Track the remaining issues NLT April 30, 1998 re the C5-Coastal Road Project in order to alleviate heavy traffic congestion in the area." At that time, one of the remaining issues was the payment of the purchase price of AMVEL lands for the right of way, which was then fixed at ₱20,000.00 per sq. m.[21]

To determine further the fair market value of the affected lands, the matter was referred to three independent appraisers, namely: Asian Appraisal, Inc.; Royal Asia Appraisal Corporation, and Cuervo Appraisal, Inc.

On October 6, 1998, Asian Appraisal, Inc. submitted its Appraisal Report[22] on the affected lands. It determined the fair market value at ₱422,622,000.00 for 130,848 sq. m., or **₱3,229.87 per sq. m**.

In its letters dated October 19 and 20, 1998, AMVEL questioned the valuation and sought a reconsideration of said appraisal. In reply thereto, the TRB, in its letter dated October 20, 1998, informed AMVEL that it would commission another private appraisal company to determine the true market value of the properties in the area.

[19] *Id.* at 1198.

[20] *Id.* at 1176.

[21] *Id.* at 1754.

[22] *Id.* at 1078.

On December 28, 1998, Royal Asia Appraisal Corporation submitted its Appraisal Report[23] on the affected lands. It determined the fair market value at ₱4,395,179,000.00 for 319,398 sq. m., or **₱13,760.82 per sq. m**.

In a letter[24] dated November 8, 1998, AMVEL also questioned the valuation of Royal Asia and claimed that it was "not realistically indicative of the prevailing market value of the properties." To break the impasse, AMVEL proposed that a third appraisal be conducted to which then Secretary of the DPWH, respondent Gregorio Vigilar, agreed. For this purpose, Cuervo Appraisers, Inc. was engaged to conduct a third appraisal.

On December 9, 1998, AMVEL complained of the "long-delayed payment" for its lands while "other landowners adjoining [their] property also affected by the C-5 road right-of-way have already been paid at a price of ₱25,000.00 per sq. m."[25]

In his reply dated December 29, 1998, respondent Vigilar took exception to the claim of AMVEL that there was "long-delayed payment," considering that several appraisals of the affected properties were made. In the same letter, he proposed that the average of the three (3) private appraisals be used as a final valuation.

On January 11, 1999, Cuervo Appraisers, Inc. submitted its Fair Market Value Appraisal[26] of the affected lands. It determined the fair market value at ₱4,531,752,000 for 251,764 sq. m., or **₱18,000 per sq. m**.

Further negotiations ensued between the parties.Finally, a consensus was reached to fix the price by averaging the four appraisals done by MMDA, Royal Asia, Asian Appraisal, and Cuervo.

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[23] *Id.* at 1104.

[24] *Id.* at 290-295.

[25] *Id.* at 1190.

[26] *Id.* at 1095.

[27] *Id.* at 1197.

On January 15, 1999, the TRB, through its Resolution No. 99-02,[27] approved the purchase price of **₱1,221,799,804.00** for the acquisition of a total area of 79,598 sq. m. The average price per sq. m., as approved by the TRB, was **₱15,350.00**.

On February 17, 1999, respondent Joseph E. Estrada, then President of the Republic of the Philippines, issued Administrative Order No. 50 entitled "Prescribing the Guidelines for the Acquisition of Certain Parcels of Private Land for Public Use including the Right of Way, Easement of Several Public Infrastructure Projects."

On March 30, 1999, respondent Estrada issued two (2) Memoranda to respondent Benedicto, the Executive Director of TRB. The first Memorandum[28] states:

"You are hereby directed to proceed with right of way acquisition of properties covered by the TRB Resolution #99-02 dated January 15, 1999, subject to existing laws, rules and regulations."

The second Memorandum[29] states:

"The contracts for acquisition of the right of way at the C-5 Link of the Manila-Cavite Toll Expressway, stated in Resolution No. 99-02 of the Toll Regulatory Board, is hereby approved, subject to compliance with existing laws, rules and regulations.

"Further, you are directed to submit to this office a certification, stating that the said contracts are above board, that due diligence has been complied with, that these contracts are free from all defects and that the terms of the contract are the most advantageous to the government."

On March 30, 1999, TRB transmitted to PEA the Deeds of Absolute Sale executed by TRB and AMVEL as well as the other parties represented by AMVEL. TRB advised PEA that it shall immediately inform PEA of the approval by the President, and that, in the meantime, PEA should take note of the Deed of Sale and prepare for the eventual payment of the properties in accordance with the TOA and the MOA.[30]

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[28] *Id.* at 224.

[29] *Id.* at 226.

[30] *Id.* at 1200.

On April 5, 1999, the TRB, in compliance with the Memorandum of the President dated March 30, 1999 and pursuant to its express obligations under the MOA to certify to PEA that the lots to be acquired were free from all liens and encumbrances, issued its Compliance and Certification[31] stating that the Deed of Sale between the Republic of the Philippines and AMVEL Land Development Corp., dated March 30, 1999 "was above-board; that due diligence had been complied with in the negotiation and execution thereof; that to the best of our knowledge, the same are free from defects and that the terms thereof are not disadvantageous to the Government."

Based on such Compliance and Certification issued by the TRB, PEA paid fifty percent (50%) of the purchase price to AMVEL.[32]

On April 8, 1999, respondent Benedicto sent a memorandum[33] to the TRB informing it that:

a. The parties executed three (3) deeds of sale on [March 30, 1999];

b. The amounts for the right of way acquisition were those stated in the TRB's Resolution No. 99-02;

c. Total amount payable of ₱1,221,766,640 actually lower by 33,244 from the Board approved amount of ₱1,221,799,884.[34]

On April 29, 1999, or after nearly a year of negotiations for the purchase of the properties subject of the Right of Way and upon receipt of the required documentation, PEA released the balance of the purchase price for the AMVEL properties.[35]

II. PETITIONER'S ALLEGATIONS

Petitioner, in his complaint-affidavit[36] filed before the Office of the Ombudsman, alleges irregularities in the above-mentioned

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[31] *Id.* at 227.

[32] *Ibid.*

[33] *Id.* at 227.

[34] *Id.* at 207-210.

[35] *Id.* at 1753-1760.

[36] *Id.* at 490.

transactions. In particular, petitioner contends that the government acquisition of the AMVEL lands took place in just two and a half working days, considering that it was Holy Tuesday on March 30, 1999, the date that respondent Estrada issued the Memorandum to TRB and PEA to proceed with the acquisition of lands for the right-of-way of the C-5 Link of the MCTE Project, and PEA immediately released on April 5, 1999 fifty percent (50%) of the total purchase price. He points out that Holy Wednesday was a half-working day, and what followed was a long holiday, commencing on Holy Thursday and ending on Easter Sunday.[37] Petitioner alleges that it was due to the personal intervention of respondent Estrada and his close association with respondent Mariano Velarde that AMVEL was able to close this deal. In his 183-page petition, he alleges:

65. Respondent Mike Velarde received a ~~P~~685,892,495.00 windfall from the government for a property which he acquired for almost nothing! His only capital was his closeness to respondent Estrada and the tremendous amount of influence he wielded in the latter's administration. Of course, all of these he owes to his mostly impoverished flock who voted for respondent Estrada after "Brother Mike" endorsed him as "*tiyak yon.*"[38]

Petitioner claims that the nine (9) parcels of land sold by AMVEL to the government, subject of his complaint, were outrageously overpriced. He alleges that the Transfer Certificates of Title covering said parcels of land and their corresponding areas, declared market values, assessed values and selling prices are as follows:[39]

Transfer Certificate of Title	Area (sq. meters)	Declared Market Value (Pesos)	Assessed Value (Pesos)	Selling Price (Pesos)
140389	2,153	1,507,100	301,420	33,059,315
140388	6,643	4,650,100	930,020	102,003,265
131446	3,908	1,914,920	382,980	60,007,340

[37] *Id.* at 494-499.

[38] *Id.* at 64.

[39] *Id.* at 499.

140402	3,813	1,868,370	373,670	58,548,615
140396	9,427	6,598,900	1,319,780	144,751,585
140397	44,669	31,268,300	6,253,660	685,892,495
140404	753	368,970	73,790	11,562,315
140405	2,973	1,456,770	291,350	45,650,415
140408	5,299	2,562,210	512,440	81,366,145
Total	79,638	52,195,640	10,439,110	1,222,841,490

Petitioner likewise claims that based on the 1999 tax declarations, AMVEL sold parcels of land, which were "undeveloped agricultural lands and salt-making beds (salinar) but which had been reclassified as 'residential,' to the government at a price which was more than 2,300% percent of their total declared market value and 11,700% percent of their total assessed value."[40]

Petitioner asserts that the purchase price for right-of-way acquisition "should be the equivalent of the zonal value plus ten (10%) percent thereof," based on Administrative Order No. 50,[41] which respondent Estrada issued on February 17, 1999 and was made effective immediately. Since the zonal value of the subject parcels of land was set the year before at Four

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[40] *Id.* at 500.

[41] Administrative Order No. 50 provides:

SECTION 1. Conditions to be complied with during the Negotiated Sale. — All government agencies and instrumentalities which are engaged in public infrastructure projects, including but not limited to the Department of Public Works and Highways, National Power Corporation, and the Department of Transportation and Communication, shall first negotiate with the owner for the acquisition of parcels of private land intended for public use including the right-of-way easement of such projects by offering in writing a purchase price of an amount equivalent to ten per cent (10%) higher than the zonal value of the said property. During the negotiation, the landowner shall be given fifteen (15) days within which to accept the amount offered by the concerned government agency as payment for the land.

SECTION 2. Expropriation Proceedings. — After the abovementioned period and no acceptance is made by the landowner, the concerned agency, in coordination with the Solicitor General, shall initiate expropriation proceedings in the proper court, depositing ten per cent (10%) of the offered amount.

Thousand Five Hundred Pesos (₱4,500.00) per sq. m. by the Department of Finance,[42] the purchase price should have been Four Thousand Nine Hundred Fifty Pesos (₱4,950.00) only, for a total purchase price of Three Hundred Ninety-Four Million Two Hundred Eight Thousand and One Hundred Pesos only (₱394,208,100.00). He claims that the price that the government paid (₱15,355.00 per sq. m.) was 310% of the zonal value.[43]

Petitioner argues that "[by] not following the guidelines set by Administrative Order No. 50, the government was defrauded of the staggering amount of [₱828,633,390.00]" and burdened with the payment of interest. The government was made to pay in full when the guidelines set by said Administrative Order provided that, should the landowner refuse to accept the purchase price, the government would be mandated to initiate expropriation proceedings and deposit only ten (10%) percent of the offered amount.[44]

Petitioner notes that even respondent Estrada chose not to follow the guidelines prescribed by Administrative Order No. 50 by "directing TRB to proceed with the acquisition and approving [AMVEL's] Deeds of Sale." He alleges that there was no legal impediment to its application because the Deeds of Sale for the AMVEL acquisitions were executed long after the effectivity date of Administrative Order No. 50.[45]

Petitioner questions the findings of the government appraisal body, MMDA-PCAC, that the subject parcels of land "have already been developed," and that these were classified as commercial lands. He relies on "a document found among the records of the Legal Office of the Presidential Management Staff"[46] that states that the lands were "formerly salt-making beds (SALINAR) which are not suitable for residential or

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[42] *Id.* at 247.

[43] *Id.* at 505.

[44] *Id.* at 504.

[45] *Id.* at 505.

[46] *Id.* at 253-260.

commercial purposes;" that "AMVEL merely covered these salt factories with trash and other low-grade filling materials"; that the properties "did not even have access to the highway ... [until] AMVEL built a bridge from said properties to Dr. A. Santos Avenue … when it was already negotiating with the government"; and that AMVEL knew beforehand about the proposed highway when it acquired the properties at a purchase price of Two Thousand Pesos (₱2,000.00) per sq. m., properties that were later sold to the government at Fifteen Thousand Three Hundred Fifty-Five Pesos (₱15,355.00) per sq. m.[47]

The rest of petitioner's allegations were summarized by respondent Office of the Ombudsman in the questioned Resolution,[48] which summary we find to be succinct and hereby quote in part below:

> The complainant points out that much earlier, in March 1996, the heirs of a certain Andres Buenaventura filed an action for annulment of title and reconveyance against the Tirona-Medina families before the RTC-Paranaque, docketed as Civil Case No. 96-0141. The Buenaventura heirs claimed that they were rightful owners of the parcel of land covered by TCT No. 14729. The Buenaventura heirs caused the annotation of a Notice of *Lis Pendens* on TCT No. 14729. This notice of *Lis Pendens* was carried over to the subdivided lots covered by TCT Nos. 133988, 133990 and 133991.
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> On 06 November 1998, AMVEL submitted to the TRB what it claimed to be a Decision dated 29 October 1998 of the Court of Appeals First Division in CA-G.R. No. 54402, which supposedly affirmed the Decision of the RTC-Paranaque dismissing the case filed by the Buenaventura heirs. The purported Court of Appeals Decision was signed by Associate Justices Oswaldo Agcaoili, Fidel Purisima and Corona Ibay-Somera.
>
> The complainant alleges that the supposed 28 October 1998 Decision was falsified and non-existent. In fact, the records of the Court of Appeals show that, on 22 February 1999, "its Docket was instructed to (a)wait result of the investigation of NBI as per instructions of J. Valdez." However, based on the same records,

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[47] *Id.* at 508-509.

[48] *Supra* note 1 at 193-197.

nothing was heard or mentioned again about the result of the said NBI investigation.

Notwithstanding the attempt to defraud the government with the submission of the falsified and non-existent Court of Appeals Decision, TRB did not charge AMVEL and, instead, proceeded with the execution of the Deeds of Sale on 30 March 1999.

The complainant further alleges that the original projected cost of the right-of-way for the MCTE Project at the time the Toll Operation Agreement between the government and the foreign investor, Renong Berhad, was being deliberated in late 1995, was ₱900 million only. However, by the time the Toll Operation Agreement was approved by the Office of the President on 26 July 1996, the cost of the right-of-way acquisition had already risen to ₱1.7 billion.

The Toll Operation Agreement dated 26 July 1996 itself, in paragraph 5.04 thereof, likewise provides that "the Grantee (PEA) shall advance the funds necessary for the acquisition of the Right–of–Way except land to be reclaimed subject to a limit of [₱1.7 million] and such funds shall be reimbursed by the Grantor to the Grantee."

As late as October 1998, UEM-MARA Philippines Corporation ("UMPC"), the local subsidiary of UEM Berhad and a signatory to the Toll Operation Agreement, in a report to the Board of Investments entitled "Manila Cavite Toll Expressway Project-Project Description October 1998," reported in its Summary of Project Costs that the total right-of-way cost is only ₱1.7 billion. This is broken down as follows: C-5 Link Expressway, ₱1.356 billion; and R-1 Extension Expressway, ₱344 million. UMPC further reported that "TRB on the other hand will be responsible for the acquisition of the right-of-way which will be financed by PEA in accordance to the terms and conditions of NEDA as stipulated in the TOA."

Also, under the aforesaid NEDA Board Resolution No. 2, the Malaysian government agency, Majilis Amanah Rakyat ("MARA") and Renong Berhad's construction affiliate, United Engineers Berhad (UEB), were supposed to advance ₱900 million of the ₱1.7 billion cost of right-of-way acquisition to be guaranteed by the national government. Further, MARA and UEB would secure foreign currency denominated loans for the ₱900 million that they were willing to advance.

It appears that the project proponents did not even comply with the aforesaid condition for NEDA's approval of the project. The

Malaysian firms were no longer made to advance the sum of ₱900 million.

Instead, on 5 December 1997, a Loan Agreement was executed among PEA, as borrower, the Republic of the Philippines, as guarantor, and a syndicate of local and foreign banks, namely, Solidbank Corporation, Far East Bank and Trust Company (now part of the Bank of the Philippine Islands), Asianbank Corporation, Chinatrust (Phils.) Commercial Bank Corporation, Australia and New Zealand Banking Group Limited, Standard Chartered Bank, The Bank of Nova Scotia (Manila Offshore Branch), The Development [Bank] of Singapore Ltd., and Bank of America (hereinafter collectively referred to as the "lender banks").

The Lead Arranger for the loan was Exchange Capital Corporation, which is majority-owned by respondents Luis J. L. Virata and Manuel B. Zamora, Jr. [The] Co-Lead Arrangers were FEB Investments, Inc. and SolidBank.

As earlier mentioned, TRB sent notices of acquisition to the landowners of the parcels of land that would be affected by the C-5 Link sometime in 1997. Thereafter, the TRB Officer-in-Charge requested the Paranaque City Appraisal Committee to appraise the said parcels of land. Thus, the City Appraisal Committee came out with Resolution No. 98-5 dated 21 April 1998 with bloated appraisals of said properties.

Complainant asseverates that in what appears to be an attempt to "legitimize" the bloated appraisal made by the Parañaque City Appraisal Committee on 21 April 1998, on 7 May 1998, TRB and PEA entered into a Memorandum of Agreement which, among others, explicitly provides that TRB shall "identify and locate the lots of land sought to be acquired for the right-of-way" and "negotiate with the individual owners of the land the purchase price in accordance with Executive Order No. 329 dated July 11, 1998, Executive Order No. 368 dated August 24, 1989 and Executive Order No. 269 dated September 4, 1989." These Executive Orders were even made part of the Memorandum of Agreement.

The complainant points out that seven (7) months after respondent Mike Velarde got his ₱1,222,841,490.00, on 23 November 1999, respondent Estrada, together with respondents Ronaldo B. Zamora, then Executive Secretary, Gregorio R. Vigilar, then Public Works and Highways Secretary, and Frisco San Juan, then PEA Chairman,

gave his imprimatur and approval to the proposal of a four (4) month-old, ₱15 million company, the Coastal Road Corporation ("CRC"), to take over UMPC and the ₱7.73 billion MCTE Project (including the 800-hectare reclamation project along Manila Bay going towards Cavite). This is now the subject of a separate case before the Ombudsman entitled "*Ernesto B. Francisco, Jr. vs. Joseph Ejercito Estrada, et al.*," docketed as OMB Case No. 0-00-1758.

Complainant Francisco further points out that the beneficial owners of CRC are respondents Luis J. L. Virata and Manuel B. Zamora, Jr. Respondent Luis J. L. Virata is also CRC's President and Chief Executive Officer, while respondent Cesar E.A. Virata is CRC's Chairman of the Board and is also a beneficial owner of CRC to the extent of ten (10%) [percent] of its equity.

Also, on 23 November 1999, respondent Estrada, in the presence of respondents Ronaldo B. Zamora, Gregorio R. Vigilar and Frisco San Juan, gave his imprimatur and approval to CRC's proposal to de-prioritize the construction of the C-5 Link Expressway, on the one hand, and to prioritize the R-1 Expressway Extension, on the other. This was done despite the lack of the requisite evaluation and approval of the TRB Board and the fact that CRC does not have the requisite financial and technical capability and track record to take over the MCTE Project. Worse, the de-prioritization of the C-5 Link despite the P1.85 billion already spent for right-of-way acquisitions caused the government tremendous losses in terms of the interest on the dollar-denominated loan used to fund the said acquisitions.

Respondents LUIS J. L. VIRATA and MANUEL B. ZAMORA, JR. had another reason for pushing the prioritization of the R-1 Expressway Extension. Respondents wanted to expedite the development of the Caylabne Bay Resort in Ternate, Cavite. In the words of respondent Luis J. L. Virata, the Caylabne Bay Resort will be developed into a "top-quality resort . . . with a whole bunch of a Mediterranean-looking buildings" and with "a first-class resort operation." In an interview with Mr. Philip Cu-Unjieng, which appeared in the 7 February 1999 issue of the Philippine Star, respondent Virata himself had categorically admitted how critical is the R-1 Expressway Extension to the development of the Caylabne Bay Resort.

The real problem is that under UMPC's project timetable, the construction schedule of the C-5 Link Expressway was set from March

1997 to September 1999, while that of the R-1 Extension was set almost near the same period, from October 1997 to September 1999. Thus, the idea is for both expressways to be constructed and finished almost at the same time. However, by October 1998, both were already delayed by eighteen (18) months and fourteen (14) months, respectively. Instead of correcting the problem, the government allowed respondent Luis J. L. Virata and Manuel B. Zamora, J. to take over the project despite their lack of financial and technical capability to do so. They even tried to borrow from public funds from the Development Bank of the Philippines to finance their acquisition of UEM Berhad's share in UMPC.

Respondents Mariano Z. Velarde, Franklin M. Velarde, Luis Juan L. Virata, Cesar E.A. Virata, Manuel Zamora, Jr., Ronaldo Zamora, Mariano E. Benedicto II, Frisco F. San Juan, Ruben A. de Ocampo, and Ramon V. Dumaual filed individual Counter-Affidavits; while respondents Robert C. Nacianceno, Reydivino Bernabe Daval-Santos, Soledad Samonte Medina-Cue, Patrick Beltran Gatan, Luis Vicente Medina-Cue, and Silvestre San Agustin de Leon, all members of PCAC, filed a Joint Counter-Affidavit. Respondents Joseph Estrada and Arsenio Yulo were ordered to file their counter-affidavits, but they did not file any.

Based on its findings of fact, the Office of the Ombudsman resolved to dismiss the case for lack of evidence.[49]

Petitioner filed a Motion for Reconsideration[50] on January 14, 2002, alleging that serious errors of law and/or irregularities had been committed prejudicial to his interest, as follows:

1. The Ombudsman did not conduct fact-finding in the instant case and pursue investigation requested by the complainant.

2. The Ombudsman did not issue the *subpoena duces tecum* requested by the complainant as would afford the complainant the chance to file a reply-affidavit.

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[49] *Id.* at 216.

[50] *Id.* at 971.

3. The inhibition of Desierto came too late since he had already prejudged the case.

4. The Ombudsman did not act on the motion for the inhibition of Overall Deputy Ombudsman Margarito P. Gervacio, Jr. At any rate, Gervacio, out of *delicadeza* or sense of decency, should have voluntarily inhibited himself.

5. The Overall Deputy Ombudsman does not have authority to approve the dismissal of the instant case.

6. The Ombudsman took at their face value the arguments of, and interpretation of the law by, the respondents, on the one hand, and totally disregarded the evidence of complainant, on the other.

7. In their haste to dismiss the instant case, Desierto and Gervacio did not consider additional evidence submitted by the complainant.[51]

Respondent Office of the Ombudsman denied petitioner's Motion for Reconsideration in an Order[52] dated June 24, 2002.

III. ASSIGNMENT OF ERRORS

Petitioner raises the following assignment of errors against the questioned Resolution and Order issued by the Office of the Ombudsman:

I

The respondent Ombudsman committed a serious error of law in ruling that "the transaction/negotiation for the purchase of affected lands was consummated as early as May 1998" and that "Administrative Order No. 50 finds no application to the already perfected contract between TRB and AMVEL.

II

The respondent Ombudsman committed a serious error of law and grave abuse of discretion amounting to excess or lack of jurisdiction, in concluding, without basis in fact, "that respondents complied with the prescribed procedure in determining a fair

[51] *Id.* at 974-981.

[52] *Supra* note 2 at 223.

and reasonable valuation of the properties in question" and in not finding that respondents committed plunder and/or graft.

III

The respondent Ombudsman committed a serious error of law and grave abuse of discretion amounting to lack or excess of jurisdiction in not finding that respondents committed plunder and/or graft when they changed the original alignment of the Sucat Interchange which increased the affected land area of Amvel from 63,629 sq. mtrs. to 80,256 sq. mtrs. or a difference of 16,897 sq. mtrs. which was sold to the government for about ₱259,115,495.00.

IV

The respondent Ombudsman committed a serious error of law and grave abuse of discretion amounting to lack or excess of jurisdiction in not finding that respondents committed plunder and/or graft when respondent Mike Velarde made a billion-peso killing from the transaction.

V

The respondent Ombudsman committed a serious error of law and grave abuse of discretion amounting to lack or excess of jurisdiction in not finding that respondents committed graft when they proceeded with the transaction despite the fact that 44,699 sq. mtrs. of land sold to the government did not have a clean title at the time of sale.

VI

The respondent Ombudsman committed a serious error of law and grave abuse of discretion amounting to lack or excess of jurisdiction in not finding that respondents committed plunder and graft when they bloated the cost of the road-right-of-way and depleted the proceeds of the US$68.6 Million loan for right-of-way acquisition.

VII

The respondent Ombudsman committed a serious error of law and grave abuse of discretion amounting to lack or excess of jurisdiction in not finding that respondents committed graft

when they de-prioritized the R-1 Expressway Extension over that of the C-5 Link Expressway.

VIII

The respondent Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction when he deliberately did not conduct fact-finding to gather more evidence in the case below despite repeated requests by the complainant.

IX

The respondent Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction when he deliberately failed to act on motions to issue *subpoena duces tecum* and *ad testificandum* to further strengthen the case.

X

The Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction when he failed to act on the motion for the inhibition of Overall Deputy Ombudsman Margarito P. Gervacio, Jr. Likewise, Overall Deputy Ombudsman Gervacio committed grave abuse of discretion amounting to lack of jurisdiction when he failed to voluntarily inhibit himself out of *delicadeza* or a sense of decency.

IV. THEORY OF RESPONDENTS

A. COMMENT OF RESPONDENTS ROBERT C. NACIANCENO, REYDIVINO B. DAVAL-SANTOS, SILVESTRE S.A. DE LEON, PATRICK B. GATAN, SOLEDAD S. MEDINA-CUE, AND LUIS V. MEDINA-CUE

The case docketed as OMB-0-01-0577 is "primarily an action to hold them accountable for violation of Section 3 (e) of R.A. 3019, the Anti-Graft and Corrupt Practices Act, on account of their approval, in 1998, of PCAC Resolution No. 9805 ... as the same resolution had been allegedly used to justify the alleged over-pricing and related graft and corrupt practices of other respondents in connection with the acquisition of lands by the national government, in 1999, for the right of way of the C-5 Link of the Manila-Cavite Toll Expressway Project."

Respondents were "charged in their respective [capacities] as the Chairman and members of the [PCAC] created under [Executive] Order No. 329, as amended by Executive Order No. 369, primarily for the determination of the reasonable compensation to be paid to properties that will be affected by public works and projects in Parañaque City."[53]

Section 3(e) of Rep. Act No. 3019, under which respondents are charged, provides:

> (*e*) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions. (Underscoring supplied by respondents.)

Respondents claim that they are neither alleged nor shown to be, as they in fact are not, "officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions."[54]

Respondents assert that PCAC Resolution No. 98-5 is recommendatory in nature, and that the adoption of the recommendations was within the prerogative and discretion of the implementing officers, most of all Fidel V. Ramos, then the President of the Republic at the time of issuance of said resolution.

Respondents note that the alleged acts of plunder and graft and corrupt practices attributed to the other respondents have been shown to have transpired during the incumbency of respondent Joseph E. Estrada as President of the Republic, and *after* the issuance of said PCAC Resolution No. 98-5.[55]

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[53] *Id.* at 1019.

[54] *Id.* at 1020.

[55] *Id.*

Respondents further argue as follows:

[PCAC] had undertaken diligently and carefully the study and evaluation of the properties that will be affected by the C-5 Link Expressway in Barangay San Dionisio, Parañaque City, taking cognizance of the sale of comparable property, the applicable BIR Zonal Value, the opinion solicited from the residents of the properties near the subject parcels of land, the condition or status of the parcels of land, the presence of other buildings and structure near the vicinity of the properties, and the consequential damages to the owners of the affected properties. And, **contrary to the allegation of petitioner, the BIR Zonal Value (6th Revision) which took effect on February 2, 1998 provides for ₱20,000.00 per sq. m. value for commercial land along Dr. A. Santos Avenue; and ₱30,000.00 per sq. m. value for Commercial land along Ninoy Aquino Avenue;** furthermore, while the allegations of the complainant that the zonal value of the residential regular (RR) lands in Dr. A. Santos Avenue, San Dionisio, Parañaque City, was fixed by the Department of Finance at ₱4,500.00 per sq. m. just a year before the AMVEL sale, the same department has fixed the zonal value of commercial land along Dr. A. Santos Avenue, Brgy. San Dionisio, Parañaque City at ₱20,000.00 and along Ninoy Aquino Avenue at ₱30,000.00 per sq. m. Parañaque City Ordinance No. 97-08, prescribes the land use plan and the zoning of the Municipality of Parañaque, [and] provides that the lands along Dr. A. Santos Avenue is classified as **within C-3 high intensity commercial zone**.[56] (Emphasis added)

[The] valuation of the subject properties is justified, and shown to be consonant and consistent with existing accepted appraisal practice and procedures in the appraisal of properties, considering that:

a) The appraisal of the properties was based on such factors as location, accessibility, selling prices of comparable properties, opinion of people living within the vicinity of the subject properties, the amenities present like water, electricity, transportation and communication with the vicinity of the property and the status or condition of the parcels of land. The Committee has noted that the parcels of land have been developed to mean a great change in its former condition as salt beds or *Salinas* and the complainant has acknowledged this truth in his complaint when he stated that the former salt beds are filled up or covered by filling materials;

[56] *Id.* at 1025.

b) During the ocular inspection conducted by the technical committee tasked to inspect the subject properties, these parcels of land were already filled and developed.

c) Ordinance No. 98-08, which prescribed the land use plan and zoning of the Municipality of Parañaque, provides that Barangay San Dionisio where subject properties are located, is within C-3 high intensity commercial zone.[57]

B. COMMENT OF PRIVATE RESPONDENTS MARIANO Z. VELARDE AND FRANKLIN M. VELARDE

Private respondents Velarde allege that the transactions involving the purchase of the subject nine (9) parcels of land were perfected before Administrative Order No. 50 came into effect. The sale was perfected on May 8, 1998, almost a year before the issuance of Administrative Order No. 50, when the TRB sent a letter to the PEA instructing the latter to prepare the checks representing payments for the subject properties.[58]

Private respondents Velarde aver that Amvel never questioned the amount of the purchase price, gave its imprimatur to the purchase price set by TRB, and the last thing to be done was the actual receipt of the checks in payment thereof by Amvel. Unfortunately, however, Amvel was not paid. Instead, TRB conducted a series of appraisals of the subject property.

As of December 9, 1998, Amvel wrote to the DPWH Secretary, asking that it be paid the purchase price set by the PCAC as directed by TRB.[59] In a letter dated January 20, 1999, TRB informed Amvel that it was willing to purchase the latter's properties at a price arrived at by adopting a formula close to averaging all four (4) appraisals obtained from the PCAC, as well as the three (3) private appraisal companies.[60] Thereafter, TRB issued Resolution No. 99-02 on January 15, 1999 approving

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[57] *Id.* at 1026.

[58] *Id.* at 1176.

[59] *Id.* at 1190.

[60] *Id.* at 1197.

the purchase of the subject properties in the aggregate amount of ₱1,221,799,804.00.[61]

On April 22, 1999, Amvel was able to receive full payment of the agreed purchase price, but the amount received was ₱1,221,766,640.00.[62]

Private respondents argue that the subject properties were not overpriced. The properties were zoned and classified as commercial areas, not agricultural or residential. Massive development and improvement works were immediately carried out and introduced after these properties were acquired by Amvel through purchase or joint venture agreements.[63]

Private respondents cited several factors why a higher appraisal value than the one eventually used should be adopted, and these are:

a. The PCAC, as early as April 21, 1998 (way before the election of respondent Estrada to the presidency in the May 10, 1998 elections), had already fixed the price of the properties on the site, along with those found in the area: between ₱20,000.00 and ₱25,000.00 per sq. m.

b. In 1997, the site was appraised at ₱18,000.00 per sq. m., and a portion of the same with an area of 49,316 sq. m. covered by TCT No. 133550 was given a development loan accommodation by Metrobank in the amount of ₱550,000,000.00.

c. The current Bureau of Internal Revenue (BIR) zonal valuation appraised the vicinity at ₱25,000.00 per sq. m.

Private respondents claim that the other properties affected by the C-5 Link Project adjacent to and near the vicinity of the site were acquired and paid for by the government at ₱25,000.00 per sq. m. in accordance with the MMDA appraisal.[64] For the

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[61] *Id.* at 1199.

[62] *Id.* at 1140.

[63] *Id.* at 1205.

[64] *Id.* at 1143.

subject properties, the government was able to save ₱4,645.00 per sq. m.[65]

The private appraisal companies were engaged by TRB and not Amvel. The final purchase price was imposed upon Amvel by the government, and respondents Velarde had no hand in fixing the said amount. Private respondents Velarde merely acted within the bounds of their duties and powers as officers of Amvel. It was only natural that they would negotiate for an amount most advantageous to the said company. The fact that the purchase price of the subject properties considerably plummeted would certainly negate the allegation that respondent Mariano Z. Velarde exerted influence on respondent Estrada or any other public officer for that matter.

Furthermore, private respondents aver that, except for a small portion, Amvel acquired the properties at prices ranging from not less than ₱7,500.00 per sq. m. to as high as ₱9,000.00 per sq. m. Petitioner thus failed to take into consideration the significant incidental expenses for the acquisition, consolidation, improvement and development of the subject properties.

Private respondents claim that the re-alignment of the C-5 Link Project has actually resulted in the significant reduction and decrease of the affected areas, that is, from the original 12 hectares to 7.9 hectares. Hence, petitioner completely erred in claiming that the realignment had actually resulted in a greater profit to Amvel. The subject property, measuring 79,568 sq. m., was just 34.28% of the total area of the site, which was 232,078 sq. m.

To provide a background of the transactions leading to the purchase by the government of the subject properties, private respondents gave its version of the antecedent facts, as follows:

a. As early as June 1994, a company by the name of "ADV Realty" had set its sights in developing [a] large expanse of undeveloped parcels of raw lands around the Ninoy Aquino International Airport (NAIA) and in Barangay San Dionisio, Parañaque City into a commercial and business park by

[65] *Id.* at 1144.

entering into various joint venture agreements with several landowners, particularly the Medina-Tirona family.[66]

b. A large amphitheater would also be constructed to serve as a multi-purpose complex that would principally serve as the venue for the weekly prayer meetings and healing sessions of the members of the El Shaddai Movement of which herein respondent Mariano Z. Velarde is the Servant Leader.

c. In order to consolidate the whole area, joint ventures were likewise forged with the other landowners of the adjacent properties who were all prominent families of Parañaque City (*e.g.*, Medina-Evangelista, Balinghasay and Santos). More importantly, for those properties that were not available for joint venture, ADV Realty acquired them by purchase.

d. In 1996, development efforts were immediately poured and instituted into the properties in accordance with the master plan and the business development concepts for the area. In 1997, ADV Realty was able to consolidate a 23-hectare property and pre-development operations thereon were in full blast. ADV Realty's name was then changed into Amvel Land Development Corporation.

e. However, Amvel was notified by the government, through the TRB, in the last quarter of 1997 that the site will be affected by the C-5 Link Project. Ex-president Fidel V. Ramos was still the incumbent president at that time.

f. Upon examining the proposed alignment of the aforesaid project, Amvel was surprised to find out that it would cut across right at the center of the site. This would render the whole property unattractive to prospective investors as the C-5 Link Project would block all possible ingress to and egress from the property, making accessibility a major concern.

g. This would entail a re-evaluation and a radical change in the master plan of the commercial and business park. Once the C-5 Link Project would be constructed, the remaining property of Amvel would be divided into two (2) portions. Both portions would be enclosed by the proposed C-5 Link Project and the rivers found on the north and west side of the property.

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[66] *Id.* at 1147-1149.

h. Even other property owners in the area, most notably the SM Holdings Property and ADELFA Property, Inc., also raised objections to the C-5 link Project as the original plan of the said Project posed serious threat to their respective developmental plans for their properties.

i. As a result, Amvel, along with SM Holdings Property and ADELFA Property, Inc., negotiated for the re-alignment of the C-5 Link Project.

j. As a consequence thereof, Amvel was constrained to construct another bridge as a passageway for the portion located at the southern side of the property. To accomplish such a task, Amvel was forced to purchase the property where the bridge would be constructed.

k. The final re-alignment plan that was jointly prepared by Amvel, SM Prime Holdings and ADELFA Properties, Inc. and duly approved by the TRB, had actually and in reality resulted in the substantial reduction of the portion of the site that would be affected by the C-5 Link Project. From the original area of TWELVE (12) hectares, it was reduced to only 7.9 hectares.

l. Had Amvel really intended to capitalize on the business opportunity brought about by the C-5 Link Project, as wrongfully alleged by petitioner, it could have proposed a re-alignment plan that would consume a larger portion of the site.

Private respondents argue that the subject properties were not bought by Amvel for the purpose of selling them to the government, in the light of the proposed construction of the C-5 Link Project. After Amvel and TRB finally agreed on the terms of the sale, all the portions of the site that were caught along the path of the C-5 Link Project were sold to the government.[67] These properties are described in the following table:

TCT No.	Original Size(sq m)	Previous owner	Date of JVA/ Purchase	Size sold to gov't.
140397 140396	122,694 10,099	Emmanuel Tirona, Ma. Aurora T. Mercado, Rosario T.	(JVA with A D V R e a l t y)	44,669 9,427

[67] *Id.* at 1152-1155.

		Medina and Corazon T. Medina	November 16, 1994	
140388	49,316	Josefina, Adelaida, Jose and Teofilo, all surnamed Balinghasay	Purchased by ADV realty on January 23 1998.	6,643
140389	15,721	Balinghasays	Purchased, by ADV Realty on January 21, 1997	2,153
140402	3,813	Arcadio C. Santos	Purchased by ADV realty on September 12, 1997	3,813
131446	3,908	Victor B. Santos	Purchased by ADV Realty in 1997	3,908
140404 140405	2 parcels 19,543 sq m	Ma. Asuncion Jugo, Jose Ramon L. Santos and Rona S. Agustines	JVA with ADV Realty on May 27, 1997	753 2,973
140408	62,448	Leonor Crisostomo, Julieta, Amelia, Elizabeth, Angela Katrina and Kristina Isabela, all surnamed Medina	Land Development Agreement with ADV Realty on December 19, 1996	5,229

The properties acquired by the government that were previously owned by (1) Emmanuel Tirona, Ma. Aurora T. Mercado, Rosario T. Medina and Corazon T. Medina; (2) Ma. Asuncion Jugo, Jose Ramon L. Santos and Rona S. Agustines; and (3) Leonor Crisostomo, Julieta, Amelia, Elizabeth, Angela Katrina and Kristina Isabela, all surnamed Medina, were all part and parcel of larger tracts of land that were subject of several joint venture agreements. The remaining portions were developed in accordance with the undertaking of Amvel under said agreements.

In a Memorandum of Agreement[68] dated February 2, 2000 entered into by Emmanuel Tirona, Ma. Aurora T. Mercado, Rosario T. Medina and Corazon T. Medina, and Amvel, the latter paid the former the amount of ₱320,000,000.00 as their share of the purchase price paid by the government in acquiring the portion of the property subject of the Development Joint Venture Agreement (with a Lease Clause) entered into by the same parties.

Private concrete roads were already constructed within the vicinity and modern drainage systems were already installed therein. More than one (1) million cubic meters of soil were deposited on the site to raise its elevation above the highest flood level recorded in the area, appropriately compacted with the use of heavy equipment as required in a business/commercial land use.

If Amvel had an advance information that the C-5 Link Project would traverse a portion of the site way back in 1996, then it should have only focused its sight and poured its resources on the 79,568 sq. m. of land affected by the said Project by simply purchasing only to the extent of the same. Because of the intrusion of the C-5 Link Project into its property, Amvel had to re-evaluate and change the master plan to conform to the significant changes in the shape and configuration of the site, which was destructively broken into two parts by the C-5 Link Project. That the C-5 Link Project greatly reduced the viability and marketability of the intended commercial and business park is beyond cavil, as the construction of the C-5 Link Project would leave Amvel with a property enclosed or bounded by a highway and rivers without any access, thereby forcing it to incur major additional costs and expenses to build the necessary bridges and access roads to connect the remaining portions to the Ninoy Aquino Avenue.

Amvel, as a consequence of the Project, likewise incurred delays in introducing the needed developments it undertook to infuse into the property, subject of the Land Development

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[68] *Id.* at 1301.

Agreement it entered into with the Medina family. The amount of ₱10,000,000.00 was paid by Amvel to the Medina family as penalty for the aforementioned delay.[69]

Respondents Velarde allege that they had no participation whatsoever in the preparation of the fabricated CA Decision[70] dated October 29, 1998 in *Buenaventura-Santiago, et al. v. Sps. Medina, et al.*, docketed as CA G.R. No. CV 54402. Amvel received a copy of said decision on November 25, 1998. After receiving the same, Amvel immediately furnished a copy to the TRB and the Register of Deeds of Parañaque City, to have the same annotated on the Transfer Certificates of Title covering the parcels of land subject of the aforesaid case. When Amvel tried to secure a certified true copy of the said decision from the CA, as required by the Register of Deeds and the TRB, it discovered that the case was still pending for resolution and no such decision had been promulgated. Amvel sent a letter dated February 8, 1999 to the Register of Deeds of Parañaque City to explain what happened and request that the annotations already made on the titles be immediately canceled.[71] On the same date, Amvel sent a letter to the TRB informing the latter of its discovery that the alleged decision was spurious.[72] Amvel requested that the CA conduct a full-blown investigation regarding the matter.

C. COMMENT OF RESPONDENT DUMAUAL[73]

Respondent Dumaual was Officer-in-Charge of the TRB from November 28, 1997 to September 8, 1998.

In his statement of the facts, he pointed out that the alignment of the C-5 Link Expressway project was revised on April 1998 because, during the discussion with AMVEL on the acquisition of right-of-way ("ROW") for the revised alignment, it was found

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[69] *Id.* at 1310.

[70] *Id.* at 356-360.

[71] *Id.* at 1318.

[72] *Id.* at 1319.

[73] *Id.* at 1355.

that an area between the south slip road and the main C-5 Link would not be acquired for ROW, which in effect would have produced a pocket with limited use.[74]

On September 16, 1998, a Memorandum was sent by respondent to the Board suggesting that "the south slip road be located nearer to the main C-5 Link to maximize use of real estate." As of that date, TRB was still unable to formalize the transaction with AMVEL and to pay the latter. Respondent Dumaual, despite due diligence, was unable to determine the veracity of the relevant titles submitted for payment. He wrote to the TRB about the problems with the titles and recommended that said properties be expropriated. He was relieved as OIC of TRB on September 8, 1998 and had no more personal knowledge regarding the other allegations of petitioner.[75]

D. COMMENT OF PRIVATE RESPONDENT VIGILAR

Private respondent Vigilar raises the following grounds for the dismissal of the petition:

1. The petition is not the proper remedy. Petitioner cannot invoke Rule 45 to question the subject resolution and order of the Ombudsman.
2. The petition fails to raise any question of law.
3. In any case, the Office of the Ombudsman acted correctly, on the basis of evidence presented, in dismissing the complaint considering that –
    a. Private respondent Vigilar, being the ex-officio chairman of the TRB during the relevant period, was in no position to be legally responsible for the TRB's acquisition of AMVEL's properties.
    b. The transaction between the TRB and AMVEL concerning the right-of-way for the C-5 Link was perfected before the promulgation of Administrative Order No. 50.

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[74] *Id.* at 850.

[75] *Id.* at 852.

c. The transaction between the TRB and AMVEL concerning the right-of-way for the C-5 Link is valid, regular, and complies faithfully with Executive Order No. 132, the law governing at the time the contract of sale was perfected. The said purchase was not grossly and manifestly disadvantageous to the government.

d. The evidence does not support a finding of probable cause for the crime of plunder against private respondent Vigilar.

e. The evidence does not support a finding of probable cause for violation of Section 3 (A), (E), (G) and (J) of Republic Act 3019 against private respondent Vigilar.

f. The petition, like petitioner's complaint before the Ombudsman, is built on malicious half-truths, hearsay and even fabricated evidence.

Private respondent Vigilar avers that he only exercised administrative supervision over the TRB under the provisions of Sec. 38, Ch. 7, Book IV of the Revised Administrative Code of 1987; and that he acted in good faith, relying on the recommendation of the technical officers of the TRB, and cites *Arias v. Sandiganbayan*[76] to support this averment.

He asserts that as early as May 7, 1998, the TRB had already approved the properties to be affected by the C-5 Link based on the PCAC recommendation of ₱20,000 per sq. m., and such approval was made in accordance with Executive Order No. 132, the law then prevailing. Unfortunately, the TRB had limited funds, so, hoping for a lower price, it started negotiations with the property owners, including AMVEL. The TRB and AMVEL agreed subsequently that the price should be adjusted by hiring independent appraisers and getting the average of the values to be determined by these independent appraisers and the values stated in the PCAC resolutions. Later, on January 15, 1999, in keeping with that agreement, the TRB approved the new, substantially reduced purchase price of ₱15,350.00 per sq. m. More than a month later, on February 17, 1999, Administrative

[76] G.R. No. 81563, December 19, 1989, 180 SCRA 309, 316.

Order No. 50 was promulgated setting new standards for the determination of the fair and reasonable value of private lands that would be expropriated for government infrastructure projects. This Administrative Order was intended to supplant Executive Order No. 132.

Private respondent alleges that it is a basic fact that a "contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price" (Article 1475 [1], Civil Code). Therefore, at the time TRB and AMVEL agreed as to the process for determining the purchase price, the contract of sale was already perfected.

The requisites for a valid price in a contract of sale are: (1) it must be real; (2) it must be in money or its equivalent; and (3) it must be certain or ascertainable at the time of the perfection of the contract (Articles 1471, 1458, 1468, 1469 and 1473, Civil Code).[77] Under Article 1469, price is considered certain if "it be so with reference to another thing certain, or that the determination thereof be left to the judgment of a specified person or persons." Said article further provides: "Even before the fixing of the price by the designated third party, a contract of sale is deemed to be perfected and existing."

Private respondent Vigilar avers that from the time AMVEL agreed sometime in the middle of 1998 that the price would be the average of the values stated in the independent appraisers' reports and the PCAC resolutions, the government could no longer re-negotiate for a lower price. Thus, even before the TRB approved the price at ₱15,350.00 per sq.m. on January 15, 1999, the price had already become certain. It was immaterial that the Deeds of Sale were signed later. The execution of these Deeds of Sale was a mere formality; it was meant to document a contract that had been perfected earlier.[78]

Private respondent claims that applying Administrative Order No. 50 retroactively to the contract between the TRB and AMVEL violates Article 4 of the Civil Code, which provides

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[77] *Id.* at 1375.

[78] *Id.* at 1375.

that "[l]aws shall have no retroactive effect, unless the contrary is provided." Administrative Order No. 50 does not state that it is exempt from this rule; it does not provide for retroactive effect.

Petitioner has not shown that private respondent Vigilar, as Secretary of the DPWH and concurrent TRB chairman, amassed any ill-gotten wealth to warrant a charge of plunder. Petitioner does not allege that private respondent Vigilar received any money or derived any benefit, of any kind, from the right-of-way acquisition of the affected lands.

Regarding the allegation that he violated Sec. 3 (a) of R.A. No. 3019, private respondent points out that it is not clear whether he was accused of being the public official who persuaded, induced, or influenced another public officer to perform an act in violation of rules and regulations; or the one who was so persuaded, induced, or influenced. Petitioner likewise failed to prove that the elements of violation of Section 3 (a), (e), (g) and (j) of Rep. Act No. 3019 have been committed by private respondent Vigilar. Thus, petitioner's case against him is inadequate.

Private respondent argues that petitioner likewise failed to prove conspiracy. He states that a conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[79] He cites the "well-settled rule" that "conspiracy must be proven as clearly as the commission of the offense itself."[80]

Petitioner alleges that respondents Estrada, Ronaldo Zamora, and Vigilar gave their *imprimatur* to the takeover by the Coastal Road Corporation of the UMPC, as well as the de-prioritization of the construction of the C-5 Link when, on November 23, 1999, they were present in a "photo-op" that took place in Malacañang. Private respondent avers that the "photo-op" was staged by Cavite government officials to show their constituents

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[79] Art. 8, par. 2, Revised Penal Code.

[80] *People v. Quilaton*, G.R. No. 131835, February 3, 2000, 324 SCRA 670.

that the MCTE Project was being fast-tracked. Respondents merely graced the occasion in response to requests made by these local officials. They could not be taken to court simply because of this; otherwise, it would be "guilt by photograph," which was contrary to plain and common sense.[81]

Private respondent points out petitioner's reliance on a certain "executive summary"[82] to support the latter's allegation that the subject transaction was grossly anomalous. This document, according to private respondent, has absolutely no evidentiary value, as its origin is unknown, and it is unsigned. As regards petitioner's submission of a Special Report dated August 16, 2000 from the *Philippine Daily Inquirer* as evidence, private respondent points out that newspaper and magazine articles are "hearsay twice removed and have no evidentiary value whatsoever." Private respondent Vigilar cites in support of this contention the decision laid down by this Court in *People v. Woolcock, et al.*[83]

E. COMMENT OF RESPONDENT OFFICE OF THE OMBUDSMAN

Public respondent raises the following grounds for the denial of the instant petition:

1. The assailed resolution and order of the public respondent are not appealable under Rule 45 of the Rules of Court.

2. Petitioner has not adduced sufficient evidence to show that the transactions involving the purchase of the AMVEL lands under Executive Order No. 132, Series of 1937 are unlawful or irregular.

3. Whether under Administrative Order No. 50, Series of 1999 or Executive Order No. 132, Series of 1937, respondents substantially complied with the prescribed procedure in determining a fair and reasonable valuation of the properties in question while exercising the power of eminent domain.

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[81] *Rollo*, pp. 1387-1388.

[82] *Id.* at 253-260.

[83] G.R. No. 110658, May 22, 1995, 244 SCRA 235.

4. There is no law or particular rule that prohibits the re-alignment of the C-5 Link Project**.**

5. There is nothing unlawful or irregular in getting a reasonable return on investment; neither is there evidence of bloating of prices.

6. Petitioner's assertion that TCT No. 140397 (formerly TCT No. [S-14729] 876474) comprising fifty-six (56%) percent of the total area sold by AMVEL to the government was not a clean title is rendered moot and academic by the Court of Appeals' Decision dated 21 April 1999 and the Memorandum of Agreement executed by and between the contending parties.

7. The public respondent cannot act on complaints based on mere speculations and conjectures.

8. Matters that are left to the exercise of wisdom and discretion of the Office of the Ombudsman are not appealable under Rule 45 of the 1997 Rules of Civil Procedure, and absent any jurisdictional infirmity, the Ombudsman's determination of probable cause, or the lack of it, deserves great respect and finality.

According to public respondent, the law on sales contemplates the consummation of the sales transaction at the moment there is a meeting of minds of the parties thereto, upon the thing which is the object of the contract and upon the price.[84] In the case at bar, the meeting of the minds for the purchase of AMVEL properties occurred on May 8, 1998, the date TRB instructed PEA to pay the checks for the properties expropriated through the mode of voluntary sales. Public respondent alleges:

Significantly, the purchase transactions over the subject properties are negotiated ones. On 9 August 1997, notices of acquisition were sent by TRB to the affected landowners. In view of the acceptance by AMVEL of the amount offered by the government during the negotiation process, no expropriation proceeding was initiated in court. Upon appraisal by the [PCAC], the parties successfully arrived into an agreement as to the value or purchase price of the affected properties on or before 08 May 1998, as evidenced by a letter sent by respondent Ramon V. Dumaual, Officer-in-Charge, Toll Regulatory Board, to

[84] Art. 1475, Civil Code.

the Public Estates Authority, instructing the latter to prepare the checks representing payments for the subject properties. It is therefore clear that the governing law at that given time was still Executive Order No. 132, Series of 1937, and not Administrative Order No. 50, which took effect on 17 February 1999.[85]

Public respondent Ombudsman contends that in claiming that the subject properties were overpriced, petitioner failed to consider that the transactions were entered into by the State in the exercise of the power of eminent domain, which necessarily involves a derogation of a fundamental or private right of the people. Public respondent asserts that "[the] appraisal or assessment of the property subject of the taking is not based solely on the market value or zonal valuation made thereof by the Bureau of Internal Revenue (BIR)."[86]

Administrative Order No. 50, which petitioner believes should have been followed, provides the following standards for the assessment of the value of the land:

SECTION 3. *Standards for the Assessment of the Value of the Land Subject of Expropriation Proceeding.* x x x

(a) The classification and use for which the property is suited;

(b) The developmental costs for improving the land;

(c) The value declared by the owners;

(d) The current selling price of similar lands in the vicinity;

(e) The reasonable disturbance compensation for the removal and/or demolition of certain improvements on the land and for the value of improvements thereon;

(f) The size, shape or location, tax declaration and zonal valuation of the land;

(g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and

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[85] *Id.* at 1577.

[86] *Id.* at 1578.

(h) Such facts and events so as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.

Executive Order No. 132 issued on December 27, 1937, on the other hand, laid down the following procedure:

(i) The Director of the Bureau of Public Works, City or District Engineer or other officials concerned shall make the necessary negotiations with [the] owner of the property needed for public use with a view to having it donated, or sold to the government at not to exceed the assessed valuation prior to the investigation and survey of the project.

(j) If the negotiation fails, the officials concerned shall forthwith and by formal notification submit the matter to an Appraisal Committee which is hereby created and which shall be composed of the Provincial Treasurer, as Chairman, and the District Engineer and the District Auditor, as members, of the province where the land is located. If the property is situated in a chartered city the Appraisal Committee shall be composed of the City Treasurer, as Chairman and the City Engineer and City Auditor, as members thereof. x x x

Public respondent contends that there was sufficient compliance with the guidelines and prescribed procedure set forth in both issuances. The referral to PCAC for the determination of the fair market value of the properties was in order. PCAC's appraisal of ₱20,000.00 per sq. m. was a result of several factors: assessing the location accessibility; selling prices of comparable properties; the amenities present like water, electricity, transportation and communication within the vicinity; and the status or condition of the parcels of land. TRB's act of subjecting the properties to another round of appraisal by independent appraisal companies was but a manifestation that it was protecting the government's interests by ensuring that it would not be put to a disadvantageous position by the appraisal recommended by PCAC. The result of the appraisals conducted by the three independent appraisal companies led TRB to come up with an average appraisal in the amount of ₱15,355.00 per

sq. m. in purchasing AMVEL's properties. The amount was below the original recommendation of PCAC to purchase AMVEL's properties at ₱20,000.00 per sq. m. The determination of this just compensation price was fair and reasonable.

The Zonal Valuation (6th Revision) that took effect on February 2, 1997 fixed the amount of ₱4,500.00 per sq. m. as valuation of the residential regular (RR) lands situated on Dr. A. Santos Avenue, San Dionisio, Parañaque City. Commercial land along the same place was fixed at ₱20,000.00 per sq. m. and along Ninoy Aquino International Airport at ₱30,000.00 per sq. m. The affected AMVEL properties were classified by Ordinance No. 97-08 as within the C-3 high-intensity commercial zone.

Public respondent claims that the Appraisal Committees created under E.O. 132 are endowed with special technical knowledge, skills, expertise and training on the subject of appraisal; that the discretion given to the authorities on this matter is of such wide latitude that the Court will not interfere therewith, unless it is apparent that it is being used as a shield to a fraudulent transaction; and that government agencies or bodies dealing with basically technical matters deserve to be disentangled from undue interference from the courts, and so from the Ombudsman as well (*Concerned Officials of the Metropolitan Waterworks and Sewerage System [MWSS] v. Vasquez*,[87] citing *Felipe Ysmael, Jr. & Co., Inc. v. Deputy Executive Secretary*[88]).[89]

Public respondent further contends:

> [The] final re-alignment plan duly approved by the TRB resulted in the substantial reduction of the area traversed by the C-5 Link Project from the original area of twelve (12) hectares to only 7.9 hectares, and only after averaging the appraisals of government and private appraisers. This factual circumstance indicated prudence on the part of private respondent PEA and TRB officials in effecting

[87] G.R. No. 109113, January 25, 1995, 240 SCRA 502.

[88] G.R. No. 79538, October 18, 1990, 190 SCRA 673.

[89] *Id.* at 1581-1582.

the power of eminent domain, as they gave due regard to the rights of the landowners thereof. Again, the reduction in the expropriated private lands upon consideration of the rights of the landowners may not be criminally actionable absent any showing of irregularity *aliunde*.

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There are well-observed rules in the field of real estate. Judicial notice may be taken of a cardinal rule, which is likewise of common knowledge, that the value of real property appreciates over time and at a rate which depends on the extent of development of the area where the land is situated. Thus, the price sold at any given time does not mean that the same price would be utilized for a subsequent sale thereof, especially where the property has undergone development or has been converted into land for commercial purposes. [Even] petitioner concedes that AMVEL developed the lands which were sold to the government. Thus, it was but reasonable for the price of the lands to have appreciated. Besides, private respondents Velarde and/or AMVEL being engaged in real estate business, it is only natural for them to ensure that profits are obtained on top of their investments, or even speculate, for that matter. As declared by this Honorable Court in the case of *Tatad vs. Garcia, Jr.*, "in all cases where a party enters into a contract with the government, he does so, not out [of] charity and not to lose money, but to gain pecuniarily."[90]

x x x x x x x x x

In relation to petitioner's allegation that the bloated cost of right-of-way (ROW) project depleted the proceeds of the US $68.6 Million loan for the right of way acquisition, the public respondent finds the said allegation vague and without factual basis. **The amount of loan proceeds was not a factor that should be considered in appraising the value of the subject properties**.[91] (Emphasis ours)

F. COMMENT OF RESPONDENTS RONALDO B. ZAMORA, MANUEL B. ZAMORA, JR., CESAR E.A. VIRATA, AND LUIS L. VIRATA

1. Petition should be dismissed as Petitioner is guilty of forum-shopping

[90] *Id.* at 1582-1584.

[91] *Id.* at 1586.

Private respondents allege that petitioner admits that he previously filed a complaint[92] with respondent Office of the Ombudsman against respondents Ronaldo B. Zamora, Manuel B. Zamora, Jr., and Luis J. L. Virata (OMB Case No. 0-00-1758); however, he did not attach a copy of said complaint to his petition filed before this Court. Said complaint was dismissed by the Ombudsman. Petitioner's Motion for Reconsideration in said case was still pending as of the time of the filing of the Comment. Private respondents conclude that petitioner had filed multiple suits involving the very same issues against respondents, and he merely rehashed the very same charges and allegations in the second complaint. This, according to private respondents, was forum shopping, defined by this Court in *Gatmaytan v. Court of Appeals*,[93] as "the institution of two (2) or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition."

Both complaints filed by petitioner are grounded on the same causes and allegations surrounding the purported illegality of the "transfer" of the Coastal Road Project to the Coastal Road Corporation. Respondents contend further:

> [Petitioner] simultaneously and successively availed himself of several judicial remedies by filing two (2) separate complaints against herein respondents, all substantially founded on the same essential facts and circumstances, and all raising substantially the same issues. Petitioner obviously did this to increase his chances of obtaining a favorable decision if not in one case or one court or tribunal, then in another.[94]

2. Petition does not raise any question of law.

Private respondents submit that a question of law "exists when there is a doubt or controversy as to what the law is on a certain state of facts, and there is a question of fact when the doubt or difference arises as to the truth or falsehood of facts." They further submit that "[one] test is whether

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[92] *Id.* at 1628-1672.

[93] G.R. No. 123332, February 3, 1997, 267 SCRA 487.

[94] *Id.* at 1601-1602.

the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case it is a question of law; otherwise it will be a question of fact. The question must not involve the examination of the probative value of the evidence presented."[95]

3. Petition, on its face, does not raise any credible factual issue in respect to the dismissal of the complaint against respondents.

Petitioner failed to controvert the findings of fact and law made by the Ombudsman in his assailed Resolution. Furthermore, the Ombudsman, in its *Resolution* dated July 16, 2001 in OMB Case No. 00-00-1758, comprehensively passed upon the very same allegations of petitioner in OMB Case No. 0-001-00577.

Petitioner's allegations in his complaint are contradictory. On the one hand, he claims that the de-prioritization of the C-5 Link Expressway and the prioritization of the R-1 Expressway Extension would benefit Caylabne Bay Resort. On the other hand, complainant himself alleges that the de-prioritization of the C-5 Link Expressway will result in a minimal increase in vehicle volume along the R-1 Expressway. Clearly then, no appreciable benefit would result if Coastal Road Corporation indeed pushed for the de-prioritization of the C-5 Link Expressway because the alleged benefit to Caylabne Bay Resort would be negated by the revenue loss due to minimal increase in the vehicular volume along the entire expressway.[96]

4. The petition, like petitioner's complaint before the Ombudsman, is anchored on hearsay evidence twice removed.

Private respondents allege that in building a case against them regarding the purported de-prioritization of the C-5 Link

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[95] Regalado, F.B., *Remedial Law Compendium*, 1988 Revised Edition, Volume 1, p. 340.

[96] *Rollo*, p. 1618.

Expressway, petitioner quotes extensively from the February 7, 1999 article from the *Philippine Star* newspaper. They contend that "[it] is elementary that newspaper and magazine articles are hearsay twice removed and have no evidentiary value whatsoever.[97]

G. COMMENT OF PRIVATE RESPONDENT RUBEN A. DE OCAMPO[98]

Private respondent Ruben de Ocampo (de Ocampo) argues that the dismissal by the public respondent of the complaint in the proceedings *a quo* should be sustained *in toto* because:

1. Petitioner fails to raise distinct and pure questions of law in the instant petition which omission is fatal to his appeal by *certiorari* pursuant to Rule 45 of the 1997 Rules of Civil Procedure.

2. The petitioner has no legal standing to institute the charges with the Office of the Ombudsman for alleged violations of Sec. 2 in relation to Sec. 1 sub-paragraph d(1), (3) and (6) of R.A. 7080, and Sec. 3 sub-paragraph (e) and (g) of R.A. 3019.

3. The facts as alleged in the complaint-affidavit and herein petition for review do not constitute the commission of any offense on the part of respondent De Ocampo and no evidence whatsoever was presented against respondent De Ocampo to support the allegations in petitioner's complaint-affidavit.

De Ocampo avers that he held the position of Public Utility Regulation Officer II at the Toll Regulatory Board, a position rated at Salary Grade-15, and one that was neither managerial nor supervisorial in nature. As such, he neither had recommendatory nor decision-making powers or functions as regards the TRB.

De Ocampo contends that petitioner lacks the required personal knowledge of facts constitutive of the charges in the latter's Complaint before the Office of the Ombudsman.

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[97] *Id.* at 1620.

[98] *Id.* at 1708.

Petitioner failed to allege the means by which he supposedly came to be acquainted with the material facts stated in his Complaint. According to him:

> It is patent and undeniable that Petitioner was never privy to the contracts and communications alleged in his Complaint and in this Petition for Review. Nowhere in the records does it appear that Petitioner ever participated in any of the transactions referred to. Petitioner's conclusions are merely hearsay and should therefore be disregarded. x x x [99]

De Ocampo cites Section 20 of Rep. Act No. 6770, "The Ombudsman Act of 1989," which states:

> SECTION 20. *Exceptions*. — The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:
>
> (1) The complainant has an adequate remedy in another judicial or quasi-judicial body;
>
> (2) The complaint pertains to a matter outside the jurisdiction of the Office of the Ombudsman;
>
> (3) The complaint is trivial, frivolous, vexatious or made in bad faith;
>
> (4) The complainant has no sufficient personal interest in the subject matter of the grievance; or
>
> (5) The complaint was filed after one (1) year from the occurrence of the act or omission complained of.

In this case, de Ocampo alleges that petitioner failed to show any interest in or show proof of personal knowledge of the transactions as investigated by the Office of the Ombudsman, and has neither alleged nor proven that his rights have been violated or that he has been put at a disadvantage by the consummation of the assailed transactions through any act or omission of de Ocampo.[100]

Furthermore, private respondent contends:

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[99] *Id.* at 1730.

[100] *Id.* at 1731-1732.

[The] acts complained of by Petitioner occurred more than one (1) year prior to the institution of the original Complaint before the Office of the Ombudsman on 16 April 2001. The last assailed transaction, more specifically, the act of then President Estrada in granting his imprimatur and approval to CRC's proposal to deprioritize the construction of the C-5 Link Expressway and to prioritize the R-1 Expressway Extension, was consummated on 23 November 1999 or at least one (1) year and four (4) months prior to the filing of the Complaint. The above-quoted Sec. 20 par. 5 of R.A. 6770 clearly states that "The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission of if it believes that … **The complaint was filed after one year from the occurrence of the act or omission complained of.**" Considering the length of time which elapsed between the act complained of and the filing of the Complaint, the Office of the Ombudsman should not have even considered the charges put … forth by Petitioner. In any event, the Complaint was correctly and cogently dismissed by the Ombudsman for utter lack of merit. x x x[101]

H. COMMENT OF PRIVATE RESPONDENT FRISCO F. SAN JUAN

Private respondent Frisco F. San Juan (San Juan) raises the following arguments in his Comment:

I. The petition must be dismissed outright as it does not raise pure questions of law or cite any special and important reasons for its allowance under Rule 45 of the Revised Rules of Court.

II. In any case, respondent Ombudsman did not commit any reversible error or grave abuse of discretion in dismissing petitioner's complaint *a quo*, in that:

   a. Petitioner completely failed to establish the existence of any of the elements of plunder in order for the complaint to prosper as against respondent San Juan or any of his co-respondents.

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[101] *Id.*

b. Nor was petitioner able to establish any violation by respondent San Juan of the Anti-Graft and Corrupt Practices Act. On the contrary, the acquisition of the AMVEL Properties for the government's tollway project was neither disadvantageous to the government nor did it give any unwarranted benefits, advantages or preference to any party.

c. Petitioner failed to otherwise specify any act or behavior on the part of Respondent San Juan which constitutes a breach of the Code of Conduct and Ethical Behavior for public officials and employees.

d. Petitioner's other imputations and insinuations of anomalies in respect of the subject expressway construction are equally baseless and purely speculative accusations of wrongdoing on respondent's part.

e. Given the patently baseless and utterly deficient complaint for "plunder", "graft", *etc*., the additional "fact-finding" proceedings which petitioner sought to have in the case would have added nothing to petitioner's cause against respondents.[102]

San Juan, the Chairman of the PEA from July 1998 to February 2001, submits that a petition for review on *certiorari*, under the mode of appeal provided by Rule 45 of the 1997 Rules of Civil Procedure, is required to raise "only questions of law" which shall be distinctly set forth in the petition, the Honorable Court not being a trier of facts. Thus, in *certiorari* proceedings under Rule 45, the findings of fact below as well as the conclusions on the credibility of witnesses are generally not disturbed, the question before the court being limited to questions of law.[103]

According to San Juan, Rule 45 likewise provides that for the petitions to be filed under it to be allowed, there must be special and important reasons therefor, as when the court *a quo* has decided a question of substance not heretofore determined by the Honorable Court, or has decided it in any way probably

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[102] *Rollo*, pp. 1760-1761.

[103] *Universal Motors v. Court of Appeals*, G.R. No. L-47432, January 27, 1992, 205 SCRA 448.

not in accord with law or with the applicable decisions thereof; or when the court *a quo* has so far departed from the accepted and usual course of proceedings, or so far sanctioned such departure by a lower court as to call for the exercise of the power of supervision of this Court.

San Juan contends that at the heart of all the purported "serious errors of law" raised by petitioner are essentially factual questions, which petitioner would have the Honorable Court resolve. Thus, San Juan avers that petitioner asks that this Honorable Court determine:

· if based on the appraisals of the properties involved, the right-of-way acquisitions were "overpriced";

· if the purchase of the subject properties "had been consummated on 7 May 1998" ;

· if there was "compliance with the procedure for the valuation of the properties involved";

· if respondents "amassed wealth" from the subject transaction as to be liable for plunder;

· if President Estrada "intervened" in the purchase of the right-of-way and the payment thereof;

· if the titles transferred to the Republic were clean;

· and so on.

San Juan concludes from the above that all these questions require an appreciation of the evidence and an examination of the probative value of the proofs presented to determine the truth or falsity of the factual claims of the parties below; these are thus factual questions.

As regards petitioner's allegations of plunder, San Juan notes that "nowhere in the complaint was it alleged that respondent San Juan or any of his co-respondents received any part of the purchase price for the lands purchased by the Government from AMVEL from the right–of–way."[104] The initiative of the TRB

[104] *Rollo,* p. 1765.

not only in renegotiating the purchase price and in causing the re-appraisal of the properties by three (3) appraisers but also in successfully reducing the purchase price cannot be the product of, and is in fact inconsistent with, respondents' supposed "connivance" or "collusion" with AMVEL.

San Juan further alleges that the negotiation, perfection and execution of the Deed of Sale of the lands in question between TRB and Amvel were all done without the participation or involvement of PEA, as it was never involved in the renegotiation efforts. This is consistent with the terms of the TOA and the MOA, where the "responsibility for acquiring the lands," "the negotiation with its individual owners" and "the preparation of the necessary documents" including the "cancellation of the titles in the name of the individual lot owners" and the "transfer thereof in the name of the government" were all vested in TRB without the intervention of PEA.

San Juan alleges that the following steps were taken to ensure the regularity of the questioned transaction:

1. Prior to the full payment of the purchase price to the sellers, TRB ensured that the Deeds of Sale were executed by authorized signatories, with the required Board resolutions and Special Powers of Attorney and duly notarized.

2. TRB likewise made certain that the real estate taxes covering the remaining quarters of the year and the documentary stamp taxes due on the transactions equivalent to 1.5% of the purchase price were shouldered and paid for by AMVEL with the corresponding tax clearance duly issued by the Bureau of Internal Revenue; and that all titles to the properties were clean and transferred in the name of the Republic of the Philippines before the balance of the purchase price was fully paid.

3. Other than paying the purchase price for the properties, the Government did not pay any expenses for notarization, taxes and transfer fees, registration and processing of the transfer of titles to the Republic of the Philippines and clearing the properties of occupants and their relocation.

San Juan concludes that contrary to petitioner's claims, AMVEL never received a "windfall from the government for which it acquired for almost nothing." In truth, apart from receiving a purchase price reduced to the extent of ₱370 million, AMVEL was required to pay, as it did, expenses normally shouldered by a seller – all these on top of what petitioner himself recognized as developments undertaken by AMVEL on the properties prior to their acquisition by the government.[105]

San Juan contends that tax declarations, which petitioner presented as evidence of the alleged overpriced purchase price of the properties, are neither proof of the true market value of properties nor conclusive evidence of their value, but only enable the assessor to identify the same for their assessment levels.[106]

Furthermore, San Juan alleges that the acquisition cost of a property cannot be the sole basis for determining its fair value; the current value of similar properties and their actual or potential uses must be considered together with other factors.[107]

Regarding petitioner's insistence that Administrative Order (A.O.) No. 50 should have been applied, San Juan's averments are summarized below:

1. A.O. No. 50 would have no application to the contract between TRB and AMVEL which had been priorly perfected on May 7, 1998.

2. The Zonal valuation (6th Division) which took effect on February 2, 1997, fixing the amount of ₱4,500/sq. m. as valuation of the affected properties, refers to residential regular (RR) lands situated in Dr. A. Santos Avenue, San Dionisio, Paranaque City. The commercial lands along same place was fixed at ₱20,000.00/ sq. m. and along Ninoy Aquino International Airport at ₱30,000/00 per sq. m. The affected AMVEL properties were classified by Ordinance No. 97-08 as within the C-3 high intensity commercial zone.

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[105] *Id.* at 1767-1769.

[106] *Patalinhug v. CA*, G.R. No. 104786, January 27, 1994, 229 SCRA 554.

[107] *Sesbreño v. Central Board of Assessment Appeals*, G.R. No. 106588, March 24, 1997, 270 SCRA 360.

3. A.O. No. 50 does not in any way prohibit the conduct of a negotiated sale which is more expeditious and less expensive for the Government than engaging in a protracted expropriation proceedings over the properties with the owners thereof. The purported costs in terms of time, resources and money will not necessarily result in savings for the Government.

4. Even in expropriation proceedings, just compensation for the properties must be determined. And by "just compensation" is meant "a fair and full equivalent for the loss sustained, which is the measure of the indemnity x x x the market value of the land taken x x x being the sum of money which a person desirous, but not compelled to buy, and an owner, willing, but not compelled to sell, would agree on as a price to be given and received for such property." Thus, to determine just compensation, the parties must add to the market value, the consequential damages. (*Tuason v. LTA*, 31 SCRA 413) In the present case, the final valuation agreed upon by the TRB and AMVEL, upon consideration of the market value as determined by four (4) independent appraisers, constitutes such just compensation that is not only fair to the seller but to the Government as well.

5. The Honorable Court itself had occasion to observe that protracted expropriation proceedings do not only mean delay and difficulty for the Government, it also results in the citizen losing faith in the Government and in its readiness to pay for what it appropriates. x x x

   In this case, the properties affected by the right-of-way involve numerous owners. Thus, in pursuing a negotiated sale instead of opting for expropriation proceedings and arriving at a mutually acceptable acquisition price in consideration for the transfer of clean and unencumbered titles to the Republic, the Government did not suffer any losses, contrary to petitioner's claims.[108]

San Juan claims that neither the TRB nor PEA could have aborted the purchase of the AMVEL properties based on the alleged falsification of the Court of Appeals Decision dated October 29, 1998. These properties were essential for the Tollway Project –

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[108] *Rollo*, pp. 1773-1775.

a fact which petitioner himself concedes is a reasonable, necessary and urgent public work. Thus, the TRB, more so PEA, could not have simply re-arranged the project plans and decided not to acquire the AMVEL properties. In fact, it is absurd to even suggest that PEA could override the decision to build a cheaper and faster expressway traversing the AMVEL properties. Not only did the AMVEL properties have the most advantageous access to the NAIA, their development was the easiest to implement, because they had already been cleared of squatters and other occupants.[109]

As for San Juan's purported "approval" of the take-over of the Tollway Project by the Coastal Road Corporation (CRC), San Juan states that there is simply no basis for this claim, for the following reasons:

a. At the end of 1999, the Malaysian counterpart could no longer fund the project due to currency regulations. After CRC offered to take over the interest of Renong-Berhad, PEA in fact required it so show proof of its financial and technical capability. When respondent San Juan's term as PEA chairman ended, CRC had not yet submitted the PEA requirements. Consequently, respondent San Juan could not have given my approval to de-prioritize the C-5 project and to prioritize the R-1 Expressway extension as allegedly proposed by CRC. Other than his bare allegations, petitioner has not presented any proof to show that respondent San Juan and the other respondents have turned-over the project to CRC and acceded to its proposal to de-prioritize C-5 project and to prioritize the R-1 Expressway Extensions.

b. x x x [The] Ombudsman had already dismissed a related complaint by the same petitioner when he similarly questioned the transfer and takeover of the Project to CRC. Thus, in a Resolution dated 16 July 2001, the Ombudsman dismissed the complaint for plunder and violation of RA 3019 filed by the herein petitioner against Joseph Estrada and other respondents for the transfer and take-over of the MCTE Project to CRC.[110]

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[109] *Id.* at 1783-1784.

[110] *Id.* at 1784-1785.

San Juan also claims that in asserting that the acquisition price arrived at for the questioned transaction exceeded the limit of ₱1.7 billion for the right-of-way purchase, petitioner ignores that the landowners of the affected properties are entitled to just compensation for the taking of their properties. San Juan contends that such just compensation is not based on the budget of the government for the project, but is "the fair and full equivalent for the loss sustained, which is the measure of the indemnity x x x the market value of the land taken x x x being the sum of money which a person desirous, but not compelled to buy, and an owner, wiling, but not compelled to sell, would agree on as a price to be given and received for such property." San Juan further contends that petitioner has not otherwise shown how the entire MCTE Project could be achieved within the said limit of ₱1.7 billion.[111]

V. ISSUES

The following issues were raised in the petition as well as in respondents' respective Comments:

A. Whether or not the petition should be dismissed for using the wrong mode of appeal and for raising questions of fact

B. Whether or not public respondent Office of the Ombudsman committed serious errors of law as well as grave abuse of discretion amounting to excess or lack of jurisdiction in issuing the questioned Resolution and Order

VI. DISCUSSION

A. Whether or not petition should be dismissed for using the wrong mode of appeal and for raising questions of fact

Respondents Office of the Ombudsman, Mariano Z. Velarde, Franklin M. Velarde, Gregorio R. Vigilar, Ronaldo B. Zamora, Manuel B. Zamora Jr., Cesar E.A. Virata, Luis L. Virata, and

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[111] *Id.* at 1786.

Frisco F. San Juan contend that a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure before this Honorable Court is not the proper mode of appeal in questioning any final order or resolution of the Office of the Ombudsman; thus, the instant petition should be outrightly dismissed *motu proprio*.

Section 1 of Rule 45 of the 1997 Rules of Civil Procedure provides:

> Section 1. *Filing of petition with Supreme Court.* – A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

Private respondents Velarde aver that the "courts" referred to in the provision quoted above are "the courts that compose the integrated judicial system and do not include quasi-judicial bodies or agencies such as the Office of the Ombudsman."[112] They claim that the proper mode of appeal in questioning the final judgment, order, or resolution of quasi-judicial bodies or agencies is provided under **Rule 43 of the 1997 Rules of Civil Procedure**. Section 1 of said Rule states:

> 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 its 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. 6557, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission,

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[112] *Id.* at 1130-1131.

Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law."

To support their contention that Rule 43 applies to this case, private respondents rely on the Court's ruling in *Fabian v. Desierto*,[113] which provides:

> Under the present Rule 45, appeals may be brought through a petition for review on *certiorari* but only from judgments and final orders of the courts enumerated in Section 1 thereof. **Appeals from judgments and final orders of quasi-judicial agencies are now required to be brought to the Court of Appeals on a verified petition for review, under the requirements and conditions in Rule 43 which was precisely formulated and adopted to provide for a uniform rule of appellate procedure for quasi-judicial agencies.**
>
> It is suggested, however, that the provisions of Rule 43 should apply only to "ordinary" quasi-judicial agencies, but not to the Office of the Ombudsman which is a "high constitutional body." We see no reason for this distinction for, if hierarchical rank should be a criterion, that proposition thereby disregards the fact that Rule 43 even includes the Office of the President and the Civil Service Commission, although the latter is even an independent constitutional commission, unlike the Office of the Ombudsman which is a constitutionally-mandated but statutorily-created body. (Emphasis ours.)

Public respondent Ombudsman likewise argues that petitioner has taken the wrong mode of appeal, citing the rule as laid down by this Court in *Tirol v. del Rosario*,[114] which states:

> Section 27 of R.A. No. 6770 provides that orders, directives and decisions of the Ombudsman in administrative cases are appealable to the Supreme Court via Rule 45 of the Rules of Court. However, in *Fabian v. Desierto*, we declared that Section 27 is unconstitutional since it expanded the Supreme Court's jurisdiction, without its advice and consent, in violation of Article VI, Section 30 of the Constitution. Hence, all appeals from decisions of the Ombudsman in administrative disciplinary cases may be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure.

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[113] G.R. No. 129742, September 16, 1998, 295 SCRA 470, 486-487.

[114] G.R. No. 135913, November 4, 1999, 317 SCRA 779, 785.

True, the law is silent on the remedy of an aggrieved party in case the Ombudsman found sufficient cause to indict him in criminal or non-administrative cases. We cannot supply such deficiency if none has been provided in the law. We have held that the right to appeal is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law. Hence, there must be a law expressly granting such privilege. The Ombudsman Act specifically deals with the remedy of an aggrieved party from orders, directives and decisions of the Ombudsman in administrative disciplinary cases. As we ruled in Fabian, the aggrieved party is given the right to appeal to the Court of Appeals. **Such right of appeal is not granted to parties aggrieved by orders and decisions of the Ombudsman in criminal cases, like finding probable cause to indict accused persons.**

Public respondent avers that no information has been filed with either the *Sandiganbayan* or the Regional Trial Court; and not only did petitioner resort to the wrong mode of appeal, he also raised factual issues in his petition, which are not proper grounds for appeal under the rule. Public respondent further avers that an error in the choice or mode of appeal is one of the grounds for the dismissal of the appeal under Section 5, Rule 56 of the 1997 Rules of Civil Procedure.[115] This, aggravated by improper grounds raised on appeal, has rendered the instant petition dismissible.

Although we agree with private respondents Velarde that a petition for review on *certiorari* under Rule 45 is not the proper remedy for parties seeking relief from final judgments, orders, or resolutions of quasi-judicial bodies or agencies like the Office of the Ombudsman, as has been repeatedly held by this Court,[116]

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[115] Sec. 5. *Grounds for dismissal of appeal.*— The appeal may be dismissed *motu proprio* or on motion of the respondent on the following grounds:

x x x x x x x x x

(f) Error in the choice or mode of appeal;

x x x x x x x x x .

[116] *Fabian v. Desierto, supra* note 113; *Namuhe v. Ombudsman*, G.R. No. 124965, October 29, 1998, 298 SCRA 298; *Tirol, Jr. v. Del Rosario, supra* note 114; *Tirol, Jr. v. Commission on Audit*, G.R. No. 133954, August 3, 2000, 337 SCRA 198.

we find that the remedy of appeal under Rule 43 posited by private respondents Velarde is not proper either. This Court subsequently held that under the ruling in *Fabian*, "all appeals from decisions of the Ombudsman in ***administrative disciplinary cases*** may be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure."[117] Said remedy, therefore, is not applicable to cases involving criminal or non-administrative charges filed before the Office of the Ombudsman, which is the situation in the case before us now. As we further stated in *Tirol v. Del Rosario*:

> [An] aggrieved party is not without recourse where the finding of the Ombudsman as to the existence of probable cause is tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. An aggrieved party may file a petition for *certiorari* under **Rule 65** of the 1997 Rules of Civil Procedure.

In *Fabian v. Desierto*,[118] the case was dismissed and remanded to the Court of Appeals. This case being criminal and not administrative in nature, however, the conclusion in *Fabian* is not applicable.

Thus, due to the nature of this case and the allegations involving grave abuse of discretion committed by the Office of the Ombudsman, it should have been filed under **Rule 65**, and not Rule 45, of the 1997 Rules of Civil Procedure.

This Court had already provided this remedy in *Nava v. Commission on Audit*,[119] wherein we held:

> **The remedy availed of by petitioner is erroneous. Instead of a petition for *certiorari* under Rule 65 of the Rules of Court, petitioner filed with this Court the present petition for review on *certiorari* under Rule 45 of the Rules of Court pursuant to the provisions of Section 27 of Republic Act No. 6770.**

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[117] *Tirol, Jr. v. Del Rosario, supra* note 114, at 46. Emphasis ours.

[118] *Supra* note 113.

[119] G.R. No. 136470, October 16, 2001, 367 SCRA 263, 269-270.

Rule 45 of the Rules of Court provides that only judgments or final orders or resolutions of the Court of Appeals, Sandiganbayan, the Regional Trial Court and other courts, whenever authorized by law, may be the subject of an appeal by *certiorari* to this Court. It does not include resolutions of the Ombudsman on preliminary investigations in criminal cases. Petitioner's reliance on Section 27 of R.A. No. 6770 is misplaced. Section 27 is involved only whenever an appeal by *certiorari* under Rule 45 is taken from a decision in an administrative disciplinary action. It cannot be taken into account where an original action for *certiorari* under Rule 65 is resorted to as a remedy for judicial review, such as from an incident in a criminal action. In other words, the right to appeal is not granted to parties aggrieved by orders and decisions of the Ombudsman in criminal cases, like the case at bar. Such right is granted only from orders or decisions of the Ombudsman in administrative cases.

An aggrieved party is not left without any recourse. Where the findings of the Ombudsman as to the existence of probable cause is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, the aggrieved party may file a petition for *certiorari* under Rule 65 of the Rules of Court. (Emphasis ours.)

Again, in *Flores v. Office of Ombudsman,*[120] we ruled as follows:

x x x The instant petition was captioned as a petition for review by *certiorari* under Rule 45 of the Rules of Court. However, the arguments raised refer to alleged grave abuse of discretion committed by the Office of the Ombudsman. **In determining the nature of an action, it is not the caption, but the averments in the petition and the character of the relief sought, that are controlling. Accordingly, we are compelled to consider the instant petition as one under Rule 65 of the Rules of Court.**

This case involves a significant amount of money that was already released by the government to a private institution, AMVEL, as purchase price for the road right-of-way in a major infrastructure project that was undertaken by the former and that naturally affected the general public. Therefore, even if this case was erroneously filed as shown above, and may be

[120] G.R. No. 136769, September 17, 2002, 389 SCRA 127, 132.

dismissed outright under the rules, the Court deems it appropriate to brush aside technicalities of procedure, as this involves matters of transcendental importance to the public;[121] and to consider the petition as one for *certiorari* filed under Rule 65 of the Rules of Court.[122]

Respondents argue further that the petition should be instantly dismissed for failing to raise purely questions of law. As may be gleaned from petitioner's assignment of errors, this Court is being asked to determine the following, which involve questions of fact:

1. Whether or not Administrative Order No. 50, s. 1999 is applicable to the sale of the subject properties in this case;
2. Whether or not private respondents complied with the prescribed procedure in determining a fair and reasonable valuation of the subject properties;
3. Whether or not respondents bloated the purchase price;
4. Whether or not respondents changed the original alignment of the Sucat Interchange, which resulted in an increase in the size of the AMVEL property sold to the government;
5. Whether or not respondent Mariano Z. Velarde "made a killing" in the sale of the subject properties;
6. Whether or not a portion of the subject properties did not have a clean title at the time they were sold to the government;
7. Whether or not the cost of the right-of-way was bloated, which led to the depletion of the proceeds of the US$68.6 Million loan for the right-of-way acquisition; and

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[121] *Tirol v. COA, supra* note 116, at 208.

[122] See *Santiago Santiago v. COMELEC*, G.R. No. 127325, March 19, 1997, 270 SCRA 106, 134-135 citing *Kilosbayan, Inc. v. Guingona, Jr.*, G.R. No. 113375, May 5, 1994, 232 SCRA 110, 134.

8. Whether or not respondents de-prioritized the R-1 Expressway Extension over the C-5 Link Expressway.

It is settled that this Court is not a trier of facts[123] and its jurisdiction is limited to errors of law. As we held in *Tirol v. Commission on Audit*, "There is a question of law in any given case when the doubt or difference arises as to what the law is on a certain state of facts. A question of fact arises when the doubt or difference arises as to the truth or falsehood of alleged facts."[124]

Moreover, in *Medina v. City Sheriff, Manila*,[125] we have stated:

For this petition to be granted, it must be shown that the respondent appellate court committed grave abuse of discretion equivalent to lack of jurisdiction and not mere errors of judgment, for *certiorari* is not a remedy for errors of judgment, which are correctible by appeal.

B. Whether or not public respondent Office of the Ombudsman committed serious errors of law as well as grave abuse of discretion amounting to excess or lack of jurisdiction in issuing the questioned Resolution and Order

In the case now before us, petitioner wants this Court to review the evidence that was already thoroughly studied by public respondent Ombudsman and passed upon in the questioned Resolution.[126] Thus, public respondent found that:

The uncontroverted facts clearly show that Administrative Order No. 50 was issued on February 17, 1999, while the transaction/ negotiation for the purchase of affected lands was consummated as early as May 1998. As correctly pointed out by respondents, the

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[123] *Sps. Uy v. Court of Appeals*, G.R. No. 109197, June 21, 2001, 359 SCRA 262, 268-269 citing *Abalos v. CA*, G.R. No. 106029, October 19, 1999, 317 SCRA 14; and *Valmonte v. CA*, G.R. No. L-41621, February 18, 1999, 303 SCRA 278.

[124] *Tirol v. COA, supra* note 116, at 207.

[125] G.R. No. 113235, July 24, 1997, 276 SCRA 133, 138.

[126] *Supra* note 1.

governing law is Executive Order No. 132, (E.O. No. 132) issued on December 27, 1937, which laid down the following procedure:

> a) The Director of the Bureau of Public Works, City or District Engineer or other officials concerned shall make the necessary negotiations with owner of the property needed for public use with a view to having it donated, or sold to the government at not to exceed the assessed valuation prior to the investigation and survey of the project.
>
> b) If the negotiation fails, the officials concerned shall forthwith and by formal notification submit the matter to an Appraisal Committee which is hereby created and which shall be composed of the Provincial Treasurer, as Chairman, and the District Engineer and the District Auditor, as members, of the province where the land is located. If the property is situated in a chartered city the Appraisal Committee shall composed (*sic*) of the City Treasurer, as Chairman and the City Engineer and City Auditor, as members. x x x

A perusal of the guidelines as well as the documentary evidence on the transaction reveals that respondents complied with the prescribed procedure in determining a fair and reasonable valuation of the properties in question. The referral for the determination of the fair market value of the properties to [the] Paranaque City Appraisal Committee which recommended the payment of ₱20,000.00 per sq. m. thereof was in order. The appraisal was a result of several [factors] ranging from assessing the location accessibility, selling prices of comparable properties, the amenities present like water, electricity, transportation and communication within the vicinity and the status or condition of the parcels of land. TRB's act of subjecting the properties to another round of appraisal, this time, by three independent appraisal companies is a manifestation that TRB had made sure that the Government would not be put in a disadvantageous position in view of a very high appraisal recommended by PCAC. Clearly, the result of the appraisals conducted by the three (3) independent appraiser companies led TRB to come up with an average appraisal in the amount of ₱15,355.00 per square [meter] in purchasing AMVEL's property. The amount is far below the original recommendation of PCAC to purchase AMVEL's property at ₱20,000.00 per sq. m.

Complainant merely relied on … Administrative Order No. 50 issued by respondent Estrada and on the fact that the valuation must be based

on zonal valuation fixed by BIR at ₱4,000.00 per sq. m. a year prior to the sale.

As earlier stated, Administrative Order No. 50 finds no application to the already perfected contract between TRB and AMVEL. On the Zonal Valuation (6th Revision) that took effect on February 2, 1997 whereby it fixed the amount of ₱4,500.00 per sq. m. as valuation of the affected properties however refers to residential regular (RR) lands situated in Dr. A. Santos Avenue, San Dionisio, Paranaque City. The commercial lands along same place was fixed at ₱20,000.00 per sq. m. and along Ninoy Aquino International Airport at ₱30,000.00 per sq. m. The affected AMVEL properties were classified by Ordinance No. 97-08, pages 32, 33, 34 as within the C-3 high intensity commercial zone. The properties in question being within commercial zone, PCAC properly recommended valuation of ₱20,000.00 is justified (*sic*). We agree with the PCAC that the appraisal of a property is not limited only to the zonal valuation by the BIR. As correctly pointed out by respondents Nacianceno, Daval-Santos, Medina-Cue and de Leon, the appraisal of properties are also based on location, accessibility, selling prices of comparable properties, the amenities present like water, electricity, transportation and communication, *etc*. In fact, in Administrative Order No. 50, zonal valuation is only one of the many factors being considered in the payment of just compensation.

Complainant also anchored his complaint on two (2) Memoranda dated March 30, 1999, from then President Estrada x x x.

x x x x x x x x x

We find no circumstance to consider the two (2) Memoranda anomalous or irregular. The approval of the Deeds of Sale between TRB and AMVEL by respondent Estrada was in pursuance to the provisions of P.D. 1112.

It may not be amiss to state that the transaction between TRB and AMVEL was consummated as early as May 1998 during the administration of former President Fidel V. Ramos. The payment of the purchase price was only delayed as the TRB conducted a re-appraisal of the property until the new administration of respondent Estrada in June 1998. It was only in January 1999 that TRB, then having come out with a new price per sq. m. after averaging the appraisal of the three (3) independent appraisers and of PCAC, approved the purchase price of ₱1,221,799,806.00 for the acquisition of AMVEL's property totaling 79,598 per sq. m. at ₱15,350.00. This delay in the determination

of the consideration did not affect the already perfected contract as the consideration thereof was already determined or determinable. The events negate complainant's claim that the transaction was concluded in just 2 ½ working days. The insinuation that respondent Estrada favored AMVEL in approving the purchase of subject properties . . . has no basis. If indeed AMVEL persuaded respondent Estrada to act on its favor, then AMVEL could have pushed for the acquisition of the properties not at ₱15,350.00 but at ₱20,000.00 per sq. m. Besides, the valuation of ₱15,355.00 per sq. m. paid to AMVEL is much lower than the advertised price of the properties adjacent to AMVEL pegged at least ₱19,000.00to ₱55,000.00 per sq. m. x x x Further, [with] respondents Velarde and/or AMVEL, being engaged in business, it is natural that they engage in profit scheme (*sic*) which in this case appears justified.

While there was a complete payment in favor of AMVEL of the purchase price of ₱1,221,766,640.00 within one (1) month from the time respondent Estrada approved the transaction, we find the same not anomalous. The several [Deeds] of Sale executed by the parties, TRB and AMVEL, stipulate that fifty (50%) percent of the purchase price shall be paid upon execution of the contract. The other fifty (50%) percent upon issuance by the Register of Deeds of the corresponding Transfer Certificate of Title covering the properties in the name of the Republic of the Philippines.

In the crime of Plunder, the following elements must exist:

2. A public officer acquires wealth by himself or in connivance with another person;

3. The acquisition of the wealth was obtained through the means described in Section 1 (d).

In the instant case, the alleged ill-gotten wealth consisting of the overpriced purchase price of the properties affected by C-5 Link, was allegedly obtained by respondents by taking undue advantage of their official position, authority, relationship, connection or influence to unjustly enrich themselves at the expense of the Filipino People.

We find no evidence to support complainant's claim of the existence of ill-gotten wealth. The purchase price of ₱1,221,799,804 paid to AMVEL could not be considered as ill-gotten wealth as said amount is a consideration of a legally entered Deeds (*sic*) of Sale. There is

no evidence that public respondents benefited/profited or had taken shares with private respondents in the transaction.

Complainant contends that public and private [respondents'] acts constitute also violation of Section 3(a), (e), (g), (h) and (j) of Republic Act 3019, as amended.

We find no evidence to support said allegation.

In reference to Section 3(a), there is no sufficient evidence showing that respondents, especially respondent Estrada, induced or influenced anybody to perform an act in violation of rules and regulation (*sic*). Neither was there proof of a violation of any rules or regulations promulgated by competent authority. Administrative Order No. 50 cannot be considered as the rule violated since it finds no applications (*sic*) on the questioned transaction.

Insofar as Section 3(e) is concerned, there was no showing that the government suffered undue injury when the AMVEL properties were purchased at ₱15,355.00 per sq. m. As earlier pointed out, complainant relied on the valuation of ₱4,500.00 per sq. m. fixed by the BIR when the said valuation applies to regular residential land and not to commercial lots fixed at least ₱20,000.00 per sq. m. The ₱15,355.00 per square meter [price] is relatively low compared to that recommended by PCAC and contained at BIR Zonal Valuation which was ₱20,000.00 per sq. m.

Referring to Section 3(g), there was no basis to conclude that the contract was grossly disadvantageous to the government. On the contrary, the government was able to save money when it decided to purchase the questioned properties at ₱15,355.00 per sq. m. and not at ₱20,000.00.

Section 3(j) has no application in the instant case as it pertains to the granting of a license, permit or benefit. Assuming as it does, it established a record that the affected properties were purchased from persons or [entities] who were legally authorized to sell or own the same in accordance with the applicable laws, rules and regulations.

We find no evidence that the elements of Section 3(h) exist. The provision requires that there must be an actual intervention in the transaction for financial or pecuniary interest by public respondent. While there was an intervention by public respondents the same were

in pursuance to the exercise official duties. Neither public respondents have direct or indirect financial or pecuniary interest with AMVEL.

Considering that the crimes imputed against the respondents were not shown to exist, conspiracy could not likewise be appreciated. It is a well settled ruled that conspiracy must be proven as clearly as the commission of the offense itself.

WHEREFORE, premises considered, this case is hereby DISMISSED for lack of evidence.

SO RESOLVED.[127]

Upon Motion for Reconsideration of petitioner, respondent Office of the Ombudsman issued an Order,[128] the pertinent portions of which are quoted below:

There is no truth to the allegation that the Ombudsman deliberately failed to order the conduct of fact-finding investigation. To conduct a fact-finding investigation is a question addressed to the sound discretion of the Ombudsman and not therefore as a matter of right. When the instant complaint was filed complainant attached voluminous documents which when evaluated was sufficient in form and substance to conduct preliminary investigation. To that matter, there is no need to conduct fact-finding activities as the compliant already reached the formal stage of investigation to determine whether or not probable cause exists to charge respondents. In the same manner, the request for subpoena *duces tecum* cannot be demanded as a matter of policy for every [case] filed before this Office. From the very beginning it is the duty of the complainant to present complete and ample evidence to support his allegation and not to rely on the coercive processes of this Office lest to be accused of being a tool for every complainant's crusade and be labeled as engaged in fishing evidence.

[Complainant] questions the inhibition of the Honorable Ombudsman. We view however the same inhibition a prudent exercise of impartiality. Prudence dictates that the Honorable Ombudsman himself should inhibit to clear any suspicion that he would engage in any retaliatory [act] against the complainant in view of the impeachment

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[127] *Supra* note 1 at 210-216.

[128] *Supra* note 2 at 221-223.

case filed by the latter. Far from the accusation that the Honorable Ombudsman prejudged the case as well as the members of the Panel, we submit that the resolution was arrived [at] after a painstaking appreciation of the available evidence of the complainant and respondents.

As a consequence of the inhibition of the Honorable Ombudsman, the Overall Deputy Ombudsman, Hon. Margarito P. Gervacio, Jr. had to perform the duties of the Ombudsman and assumed and took charge of the disposition of the case. This finds support under Section 8 of R.A. 6770, otherwise known as "Ombudsman Act of 1989". On the contrary, complainant failed to cite the particular provision of law allegedly violated when the Overall Deputy Ombudsman approved the dismissal of the case. In the same manner we find the insinuations of the complainant against the Overall Deputy Ombudsman baseless much more sufficient to affect or disturb whatever findings we have in our resolution.

Complainant alleges that his evidence were totally disregarded. He forgot however, that respondents have evidence too. Notwithstanding with the voluminous documents complainant submitted, this Office has to weigh the evidentiary value and credibility of the evidence as well as the arguments of both parties. It so happened that in the appreciation thereof, we gave credence to the evidence of the other parties. That judgment cannot be put as an issue that would warrant the reversal of our decision.

In general, the Motion for Reconsideration failed to advance new arguments that would warrant the reversal of the questioned Resolution. There was no new evidence submitted by the complainant to warrant a second look of our resolution. The supposed documents he attached in the Motion were already passed upon and examined by this Office. Lastly, complainant miserably failed to point out specifically the findings or conclusion of the resolution which was contrary to law.

WHEREFORE, premises considered, the Motion for Reconsideration of the complainant is hereby DENIED for lack of merit.

SO ORDERED.

We find no cogent reason to weigh all over again the evidence in this case and to reverse the findings of the public respondent quoted above. This is because, as we held in *Tirol v. COA*:

[This] Court ordinarily does not interfere with the discretion of the Ombudsman to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts. This rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise the functions of the courts will be grievously hampered by immeasurable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in as much the same way that the courts would be extremely swamped if they would be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.[129]

More recently, we had occasion to pass upon a similar case, the core issue of which was whether the Ombudsman committed grave abuse of discretion in dismissing petitioners' complaint against the respondents. In that case, we ruled in the negative and, accordingly, dismissed the petition.[130] Thus, we held:

We cannot overemphasize the fact that the Ombudsman is a constitutional officer duty bound to "investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient." The *raison d 'etre* for its creation and endowment of broad investigative authority is to insulate it from the long tentacles of officialdom that are able to penetrate judges' and fiscals' offices, and others involved in the prosecution of erring public officials, and through the execution of official pressure and influence, quash, delay, or dismiss investigations into malfeasances and misfeasances committed by public officers.

In *Presidential Commission on Good Government (PCGG) v. Desierto,* we dwelt on the powers, functions and duties of the Ombudsman, to wit:

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[129] *Tirol v. COA, supra* note 116, at 208.

[130] *ABS-CBN Broadcasting Corp. v. Office of the Ombudsman*, G.R. No. 133347, October 15, 2008.

> The prosecution of offenses committed by public officers is vested primarily in the Office of the Ombudsman. It bears emphasis that the Office has been given a wide latitude of investigatory and prosecutory powers under the Constitution and Republic Act No. 6770 (The Ombudsman Act of 1989). This discretion is all but free from legislative, executive or judicial intervention to ensure that the Office is insulated from any outside pressure and improper influence.
>
> Indeed, the Ombudsman is empowered to determine whether there exist reasonable grounds to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts. The Ombudsman may thus conduct an investigation if the complaint filed is found to be in the proper form and substance. Conversely, the Ombudsman may also dismiss the complaint should it be found insufficient in form or substance.
>
> Unless there are good and compelling reasons to do so, the Court will refrain from interfering with the exercise of the Ombudsman's powers, and respect the initiative and independence inherent in the latter who, beholden to no one, acts as the champion of the people and the preserver of the integrity of public service.

The pragmatic basis for the general rule was explained in *Ocampo v. Ombudsman*:

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

From the foregoing, it is crystal clear that we do not interfere with the Ombudsman's exercise of his investigatory and prosecutory powers vested by the Constitution. In short, we do not review the Ombudsman's exercise of discretion in prosecuting or dismissing a complaint except when the exercise thereof is tainted with grave abuse of discretion.[131]

In the recent case *Lazatin v. Ombudsman*,[132] this Court held that the question of whether "the Ombudsman correctly ruled that there was enough evidence to support a finding of probable cause pertains to a mere error of judgment." The Court further held:

It must be stressed that *certiorari* is a remedy meant to correct only errors of jurisdiction, not errors of judgment. This has been emphasized in *First Corporation v. Former Sixth Division of the Court of Appeals, to wit*:

> It is a fundamental aphorism in law that a review of facts and evidence is not the province of the extraordinary remedy of *certiorari*, which is *extra ordinem* — beyond the ambit of appeal. In *certiorari* proceedings, judicial review does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof. It does not include an inquiry as to the correctness of the evaluation of evidence. Any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by *certiorari*. *An error of judgment* is one which the court may commit in the exercise of its jurisdiction. *An error of jurisdiction* is one where the act complained of was issued by the court without or in excess of jurisdiction, or with grave abuse of discretion, which is tantamount to lack 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 of the trial court in its appreciation of the evidence of the parties, or its conclusions anchored on the said findings and its conclusions of law. It is not for this Court to re-examine conflicting evidence, re-evaluate the

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[131] *Id.*, citing *PCGG v. Desierto*, G.R. No. 139675, July 21, 2006, 496 SCRA 112 and *Ocampo v. Ombudsman*, G.R. Nos. 103446-47, August 30, 1993, 225 SCRA 726.

[132] G.R. No. 147097, June 5, 2009.

credibility of the witnesses or substitute the findings of fact of the court *a quo*.[133]

Even if the issues involved here are factual, petitioner invokes the power of the Court to reverse the decision of the Ombudsman by alleging that the latter acted with grave abuse of discretion amounting to lack or excess of jurisdiction. However, as in *Morong Water District v. Office of the Deputy Ombudsman*,[134] we find that:

> [The] Order and the Resolution of the Ombudsman are based on substantial evidence. In dismissing the complaint of petitioner, we cannot say that the Ombudsman committed grave abuse of discretion so as to call for the exercise of our supervisory powers over him. This court is not a trier of facts. As long as there is substantial evidence in support of the Ombudsman's decision, that … decision will not be overturned.

As regards petitioner's insistence that the Office of the Ombudsman should have conducted a fact-finding investigation and issued *subpoena duces tecum* as requested, we find that the Ombudsman's action not to issue the same was not made in grave abuse of discretion.[135] We have previously ruled regarding this matter in this wise:

> If the Ombudsman may dismiss a complaint outright for lack of merit, it necessarily follows that it is also within his discretion to determine whether the evidence before him is sufficient to establish probable cause. Thus, **petitioners may not compel the Ombudsman to order the production of certain documents, if in the Ombudsman's judgment such documents are not necessary in order to establish the guilt, or innocence, of the accused.**
>
> It has been the consistent policy of the Supreme Court not to interfere with the Ombudsman's exercise of his investigatory powers. x x x
>
> [It] is beyond the ambit of this Court to review the exercise of discretion of the Ombudsman in prosecuting or dismissing a complaint

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[133] Citing *First Corporation v. Former Sixth Division of the Court of Appeals*, G.R. No. 171989, July 4, 2007, 526 SCRA 564, 578.

[134] G.R. No. 116754, March 17, 2000, 328 SCRA 363, 373.

[135] See *Mamburao, Inc. v. Office of the Ombudsman*, G.R. Nos. 139141-42, November 15, 2000, 344 SCRA 805, 817.

filed before it. Such initiative and independence are inherent in the Ombudsman who, beholden to no one, acts as the champion of the people and preserver of the integrity of the public service.

The rationale underlying the Court's policy of non-interference was laid down in *Ocampo v. Ombudsman* and reiterated in the more recent case of *Venus v. Desierto*, to wit:

The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they would be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.[136]

Grave abuse of discretion has been defined as "such capricious and whimsical exercise of judgment tantamount to lack of jurisdiction." The abuse of discretion must be "so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility."[137] We do not find this situation to be present in the instant case so as to merit a reversal of the questioned Resolution and Order issued by respondent Office of the Ombudsman.

WHEREFORE, premises considered, the petition is hereby *DISMISSED*. The assailed Resolution and Order of the Ombudsman in OMB-0-01-0577 are *AFFIRMED*.

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[136] *Id.* at 819, citing *Venus v. Desierto*, 298 SCRA 196 (1998); *Velasco v. Casaclang*, 294 SCRA 394 (1998), citing *Republic v. Sandiganbayan*, 200 SCRA 667 (1991) and *Zaldivar v. Sandiganbayan*, 160 SCRA 843 (1988); *Knecht v. Desierto*, 291 SCRA 292 (1998), citing *Lastimosa v. Ombudsman*, 243 SCRA 497 (1995); *Ocampo v. Ombudsman*, 225 SCRA 725 (1993).

[137] *Supra* note 130.

SO ORDERED.

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

Carpio, J., in the result.

*Quisumbing, J.,*on official leave.

Brion, J., on leave.

SECOND DIVISION

[G.R. No. 155716. October 2, 2009]

ROCKVILLE EXCEL INTERNATIONAL EXIM CORPORATION, *petitioner, vs.* **SPOUSES OLIGARIO CULLA and BERNARDITA MIRANDA,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; *DACION EN PAGO*; ELEMENTS. — *Dacion en pago* is the delivery and transmission of ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of an existing obligation. **It is a special mode of payment where the debtor offers another thing to the creditor who accepts it as equivalent to the payment of an outstanding debt.** For *dacion en pago* to exist, the following elements must concur: (a) existence of a money obligation; (b) the alienation to the creditor of a property by the debtor with the consent of the former; and (c) satisfaction of the money obligation of the debtor.

2. ID.; ID.; NATURE OF THE CONTRACT DETERMINED BY THE INTENTION OF THE PARTIES; ELUCIDATED. — On several occasions, we have decreed that in determining the

nature of a contract, courts are not bound by the title or name given by the parties. The decisive factor in evaluating an agreement is the intention of the parties, as shown, not necessarily by the terminology used in the contract but, by their conduct, words, actions and deeds *prior to*, *during* and *immediately after* executing the agreement. Thus, to ascertain the intention of the parties, their contemporaneous and subsequent acts should be considered. Once the intention of the parties is duly ascertained, that intent is deemed as integral to the contract as its originally expressed unequivocal terms.

3. ID.; SPECIAL CONTRACTS; EQUITABLE MORTGAGE; DEFINED. — An equitable mortgage has been defined "as one which although lacking in some formality, or form or words, or other requisites demanded by a statute, nevertheless reveals the intention of the parties to charge real property as security for a debt, there being no impossibility nor anything contrary to law in this intent."

4. ID.; ID.; ID.; CIRCUMSTANCES WHEN A CONTRACT OF SALE PRESUMED TO BE AN EQUITABLE MORTGAGE. — A contract of sale is presumed to be an equitable mortgage when any of the following circumstances, enumerated in Article 1602 of the Civil Code, is present: Art. 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases: (1) When the price of a sale with right to repurchase is unusually inadequate; (2) **When the vendor remains in possession as lessee or otherwise;** (3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed; (4) **When the purchaser retains for himself a part of the purchase price;** (5) When the vendor binds himself to pay the taxes on the thing sold; (6) **In any othe case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.** In any of the foregoing cases, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws. The provisions of Article 1602 shall also apply to a contract purporting to be an absolute sale. For the presumption of an equitable mortgage to arise under Article 1602, two (2) requisites must concur: (a) that the parties entered into a contract

denominated as a contract of sale; and, (b) that their intention was to secure an existing debt by way of a mortgage. Any of the circumstances laid out in Article 1602, not the concurrence nor an overwhelming number of the enumerated circumstances, is sufficient to support the conclusion that a contract of sale is in fact an equitable mortgage. In several cases, we have not hesitated to declare a purported contract of sale to be an equitable mortgage based solely on one of the enumerated circumstances under Article 1602. This approach follows the rule that when doubt exists on the nature of the parties' transaction, the law favors the least transmission of property rights.

5. ID.; ID.; ID.; ID.; WHERE THE VENDOR REMAINS IN PHYSICAL POSSESSION OF THE LAND. — That a contract where the vendor remains in physical possession of the land, as lessee or otherwise, is an equitable mortgage is well-settled. The reason for this rule lies in the legal reality that in a contract of sale, the legal title to the property is immediately transferred to the vendee; retention by the vendor of the possession of the property is inconsistent with the vendee's acquisition of ownership under a true sale. It discloses, in the alleged vendee, a lack of interest in the property that belies the truthfulness of the sale.

APPEARANCES OF COUNSEL

Abello Concepcion Regala and Cruz for petitioner.
Amorado Moraleja and Associates for respondents.

D E C I S I O N

BRION, *J.*:

Whether a Deed of Absolute Sale is really an absolute sale of real property or an equitable mortgage is the main issue now before us. Petitioner Rockville Excel International Exim Corporation (*Rockville*) prays in this petition[1] that we reverse the October 9, 2002 decision[2] of the Court of Appeals (*CA*) in

[1] For review on *certiorari* under Rule 45. Dated November 27, 2002; *rollo*, pp. 11-65.

[2] Penned by Associate Justice Elvi John Asuncion and concurred in by Associate Justices Portia Alino-Hormachuelos and Juan Q. Enriquez, Jr.; *id.*, pp. 69-74.

CA G.R. SP No. 66070, denying its appeal and affirming the decision of the Regional Trial Court (*RTC*), Batangas City, Branch 2 in Civil Case No. 4789, which dismissed their complaint for specific performance against the respondents Spouses Oligario (*Oligario*) and Bernardita Culla.

BACKGROUND FACTS

The spouses Oligario and Bernardita (*Sps. Culla*) are the registered owners of a parcel of land covered by Transfer Certificate of Title (*TCT*) No. 5416. They mortgaged this property to PS Bank to secure a loan of ₱1,400,000.00.

Sometime in 1993, the Office of the Clerk of Court and the *Ex-Officio* Sheriff issued a Sheriff's Notice of Sale for the extrajudicial foreclosure of the property. To prevent the foreclosure, Oligario approached Rockville – represented by its president and chairman, Diana Young – for financial assistance. Rockville accommodated Oligario's request and extended him a loan of ₱1,400,000.00. This amount was increased by ₱600,000.00 for the cash advances Oligario requested, for a total loan amount of ₱2,000,000.00.

According to Rockville, when Oligario failed to pay the ₱2,000,000.00 loan after repeated demands and promises to pay, the Sps. Culla agreed to pay their indebtedness by selling to Rockville another property the spouses owned in Brgy. Calicanto, Batangas City (*property*). The property has an area of approximately 7,074 square meters and is covered by TCT No. T-19538. Since a survey of the surrounding properties revealed that the property is worth more than the Sps. Culla's ₱2,000,000.00 loan, the parties agreed to fix the purchase price at ₱3,500,000.00.

As narrated by Rockville, it accepted the offer for a *dacion en pago;* on June 25, 1994, Rockville and Oligario executed a Deed of Absolute Sale over the property. While the property was a conjugal property of the Sps. Culla, only Oligario signed the Deed of Absolute Sale. Rockville asserted that, by agreement with the Sps. Culla, Rockville would pay the additional ₱1,500,000.00 after Bernardita affixes her signature to the Deed of Absolute Sale.

Rockville claimed that it had always been ready and willing to comply with its obligation to deliver the ₱1,500,000.00. In fact, Rockville initially deposited this whole amount with May Bank of Malaysia, with notice to Oligario, which amount was subsequently transferred to Rockville's law firm. However, when Bernardita continued to refuse to sign the Deed of Absolute Sale, Rockville caused the annotation of an adverse claim on TCT No. T-19538 in order to protect its interest in the property. Furthermore, Rockville tried to transfer the title of the property in its name but the Registry of Deeds refused to carry out the transfer, given the absence of Bernardita's signature in the Deed of Absolute Sale.

On February 4, 1997, Rockville filed a complaint for Specific Performance and Damages before the Regional Trial Court (*RTC*) of Batangas City, Branch 2 against the Sps. Culla, praying that the lower court order Bernardita to sign the Deed of Absolute Sale or, in the alternative, to authorize the sale even without Bernardita's signature.

In their Answer, the Sps. Culla alleged that the purported Deed of Absolute Sale failed to reflect their true intentions, as the deed was meant only to guarantee the debt to Diana Young, not to Rockville. Contrary to Rockville's contention, the agreement was that the ₱1,500,000.00 had to be paid before Bernardita would sign the Deed of Absolute Sale. When neither Rockville nor Diana Young paid the ₱1,500,000.00, the Sps. Culla volunteered to repay the ₱2,000,000.00 and opted to rescind the sale.

On October 26, 1999, the RTC decided the case in the respondents' favor,[3] dismissing Rockville's complaint after finding that the transaction between the parties was in reality an equitable mortgage, not an absolute sale. The dispositive portion of the RTC decision states:

> WHEREFORE, in view of all the foregoing, the complaint filed by the plaintiff, Rockville Excel International Exim Corporation against defendants Oligario Culla and Bernardita Miranda is hereby DISMISSED. The Absolute Deed of Sale executed between the said

[3] *Id.*, pp. 108-127.

plaintiff and defendants on June 25, 1994 is hereby declared as an equitable mortgage and, defendants are hereby entitled to redeem the mortgaged property upon full payment of their mortgaged debt to the plaintiff in the total amount of two million pesos (₱2,000,000.00) with legal rate of interest from June 25, 1994, the time the loan matured, until it is fully satisfied. With costs against the plaintiff.

SO ORDERED.

THE CA DECISION

Rockville appealed to the CA. In the assailed October 9, 2002 decision, the CA concluded that the purported contract of sale between Rockville and the Sps. Culla was in reality an equitable mortgage based on the following factual circumstances: (a) the glaring inadequacy in the consideration for the sale and the actual market value of the property; (b) the fact that the Sps. Culla remained in possession of the property even after the execution of the Deed of Absolute Sale; (c) the fact that Rockville never paid the Sps. Culla the agreed ₱1,500,000.00 balance in the purchase price; and (d) Rockville's continuous grant of extensions to the Sps. Culla to pay their loan despite the execution of the deed of sale.

THE PETITION

The present petition – filed after the CA denied Rockville's motion for reconsideration – asks us to resolve whether the parties' agreement is an absolute sale or an equitable mortgage of real property.

Rockville submits that the CA erred in finding that the contract of sale with the Sps. Culla was an equitable mortgage, insisting that the transaction was a *dacion en pago*. Rockville points out that the Sps. Culla themselves admitted that they agreed to sell the property as payment for the ₱2,000,000.00 loan and for the additional payment of ₱1,500,000.00 Rockville was to pay. Rockville further argues that even without Bernardita's signature on the Deed of Absolute Sale, the document is still binding as Oligario represented the spouses in the transaction. Since Bernardita benefited from the transaction, with the ₱1,400,000.00

of the purchase price having been used to redeem the mortgaged conjugal property, Rockville posits that Bernardita impliedly and effectively ratified the sale.

The Sps. Culla, on the other hand, maintain the contrary view and insist that the RTC and the CA were correct in holding that the sale was in fact an equitable mortgage.

THE COURT'S RULING

We find the petitioner's arguments to be legally flawed, and therefore deny the petition for lack of merit.

No dacion en pago

Dacion en pago is the delivery and transmission of ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of an existing obligation. **It is a special mode of payment where the debtor offers another thing to the creditor who accepts it as equivalent to the payment of an outstanding debt**.[4] For *dacion en pago* to exist, the following elements must concur: (a) existence of a money obligation; (b) the alienation to the creditor of a property by the debtor with the consent of the former; and (c) satisfaction of the money obligation of the debtor.[5]

Rockville mainly contends that the Sps. Culla sold their property to pay their due and demandable ₱2,000,000.00 debt; the transaction is therefore a *dacion en pago*. It also repeatedly emphasized that Bernardita admitted in her testimony that she would have signed the Deed of Absolute Sale if Rockville had paid the ₱1,500,000.00.

Rockville's arguments would have been telling and convincing were it not for the undisputed fact that even after the execution of the Deed of Absolute Sale, Rockville still granted Oligario time to repay his ₱2,000,000.00 indebtedness. In fact, as Diana Young admitted in her testimony, Rockville gave Oligario the

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[4] *Vda. de Jaime, et al. v. CA*, G.R. No. 128669, October 4, 2002, 390 SCRA 380.

[5] Pineda, *Obligations and Contracts* (2000 ed.), p. 212.

chance to pay off the loan on the same day that the deed was executed. As Diana Young stated:

> Q. Why, he was asking for the extension of ₱2 million pesos that he barrowed (sic) from you to be paid by him?
>
> A. He asked me for the extension of time to pay.
>
> Q. **After the execution of the deed of sale (Exhibit "C")?**
>
> A. On the very day. Yes, after the lapse of the six (6) months to pay back the property.
>
> Q. So what appears was a document of sale Exhibit "C" was executed signed by the defendant, Oligario Culla, signed by you and then notarized by a Notary Public.
>
> A. Yes, sir.
>
> Q. **On same occasion he asked from you that he be given an extension of six (6) months within which to pay the loan of P2 million pesos**?
>
> A. Yes, sir.[6]

If the parties had truly intended a *dacion en pago* transaction to extinguish the Sps. Culla's ₱2,000,000.00 loan and Oligario had sold the property in payment for this debt, it made no sense for him to continue to ask for extensions of the time to pay the loan. More importantly, Rockville would not have granted the requested extensions to Oligario if payment through a *dacion en pago* had taken place. That Rockville granted the extensions simply belied its contention that they had intended a *dacion en pago*.

On several occasions, we have decreed that in determining the nature of a contract, courts are not bound by the title or name given by the parties. The decisive factor in evaluating an agreement is the intention of the parties, as shown, not necessarily by the terminology used in the contract but, by their conduct, words, actions and deeds *prior to, during* and *immediately after* executing the agreement.[7] Thus, to ascertain the intention

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[6] TSN, November 4, 1997, pp. 46-47.

[7] *Aguirre v. Court of Appeals*, G.R. No. 131520, January 28, 2000, 323 SCRA 771, citing *Zamora v. Court of Appeals*, G.R. No. 102557, 260 SCRA 10 (1996).

of the parties, their contemporaneous and subsequent acts should be considered. Once the intention of the parties is duly ascertained, that intent is deemed as integral to the contract as its originally expressed unequivocal terms.[8]

Thus, we agree with the factual findings of the RTC and the CA that no agreement of sale was perfected between Rockville and the Sps. Culla. On the contrary, what they denominated as a Deed of Absolute Sale was in fact an equitable mortgage.

Definition of equitable mortgage

An equitable mortgage has been defined "as one which although lacking in some formality, or form or words, or other requisites demanded by a statute, nevertheless reveals the intention of the parties to charge real property as security for a debt, there being no impossibility nor anything contrary to law in this intent."[9]

A contract of sale is presumed to be an equitable mortgage when any of the following circumstances, enumerated in Article 1602 of the Civil Code, is present:

Art. 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases:

(1) When the price of a sale with right to repurchase is unusually inadequate;

(2) **When the vendor remains in possession as lessee or otherwise**;

(3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;

(4) **When the purchaser retains for himself a part of the purchase price**;

[8] *Sps. Romulo v. Sps. Layug*, G.R. No. 151217, September 8, 2006, 501 SCRA 262, citing *Lorenzo Shipping Corp. v. BJ Marthel International, Inc.*, G.R. No. 145483, November 19, 2004, 443 SCRA 163.

[9] *Go v. Bacaron*, G.R. No. 159048, October 11, 2005, 472 SCRA 339, citing Villanueva, Ceasar L., *Philippine Law on Sales* (1998 ed.), p. 271 (citing *Matanguihan v. Court of Appeals*, 341 Phil. 379 [1997]).

(5) When the vendor binds himself to pay the taxes on the thing sold;

(6) **In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.**

In any of the foregoing cases, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws. [Emphasis supplied.]

The provisions of Article 1602 shall also apply to a contract purporting to be an absolute sale.[10]

For the presumption of an equitable mortgage to arise under Article 1602, two (2) requisites must concur: (a) that the parties entered into a contract denominated as a contract of sale; and, (b) that their intention was to secure an existing debt by way of a mortgage. Any of the circumstances laid out in Article 1602, not the concurrence nor an overwhelming number of the enumerated circumstances, is sufficient to support the conclusion that a contract of sale is in fact an equitable mortgage.[11] In several cases, we have not hesitated to declare a purported contract of sale to be an equitable mortgage based solely on one of the enumerated circumstances under Article 1602.[12] This approach follows the rule that when doubt exists on the nature of the parties' transaction, the law favors the least transmission of property rights.[13]

Indicators of equitable mortgage

In the present case, three attendant circumstances indicate that the purported sale was in fact an equitable mortgage. *First*,

[10] Article 1604 of the Civil Code.

[11] *Lorbes v. Court of Appeals*, G.R. No. 139884, February 15, 2001, 351 SCRA 716.

[12] See *Lustan v. Court of Appeals*, 334 Phil. 609 (1997); *Ramirez v. Court of Appeals*, 356 Phil. 1 (1998); *Martinez v. Court of Appeals*, G.R. No. 123547, May 21, 2001, 358 SCRA 38.

[13] *Oronce v. Court of Appeals*, G.R. No. 125766, October 15, 1998, 298 SCRA 133.

the Sps. Culla retained possession of the property. *Second*, Rockville kept a part of the purchase price. *Third*, as previously discussed, Rockville continued to give the Sps. Culla extensions on the period to repay their loan even after the parties allegedly agreed to a *dacion en pago*. These circumstances, coupled with the clear and unequivocal testimonies of Oligario and Bernardita that the purpose of the Deed of Absolute Sale was merely to guarantee their loan, clearly reveal the parties' true intention to execute an equitable mortgage and not a contract of sale.

That a contract where the vendor remains in physical possession of the land, as lessee or otherwise, is an equitable mortgage is well-settled.[14] The reason for this rule lies in the legal reality that in a contract of sale, the legal title to the property is immediately transferred to the vendee; retention by the vendor of the possession of the property is inconsistent with the vendee's acquisition of ownership under a true sale.[15] It discloses, in the alleged vendee, a lack of interest in the property that belies the truthfulness of the sale.[16]

According to Rockville, it took possession of the property, albeit constructively and not through actual occupation. Rockville contends, too, that its possession of the title to the property and its subsequent attempt to register the property in its name are clear indicators of its intent to enforce the contract of sale.

We cannot agree with these positions. In the first place, the Sps. Culla retained actual possession of the property and this was never disputed. Rockville itself admits this in its petition, but claims in justification that since the property is contiguous to the site of the Sps. Culla's family home, it would have been impossible for Rockville to obtain actual possession of the property. Regardless of where the property is located, however,

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[14] *Bernice Legaspi v. Spouses Rita and Francisco Ong*, G.R. No. 141311, May 26, 2005, 459 SCRA 122.

[15] Tolentino, A.M., *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. V, 1992 ed., p. 159, citing *Labasan v. Lacuesta*, G.R. No. L-25931, October 30, 1978, 86 SCRA 16; *Bundalian v. Court of Appeals*, G.R. No. 55739, June 22, 1984, 129 SCRA 645.

[16] Padilla, A., *Civil Law, Civil Code Annotated*, Vol. V, 1987 ed., p. 454.

if the transaction had really been a sale as Rockville claimed, it should have asserted its rights for the immediate delivery and possession of the lot instead of allowing the Sps. Culla to freely stay in the premises. Its failure to do so suggests that Rockville did not truly intend to enforce the contract of sale.

Moreover, we observe that while Rockville did take steps to register the property in its name, it did so more than two years after the Deed of Absolute Sale was executed, and only after Oligario's continued failure to pay the ₱2,000,000.00 loan.

In addition, Rockville admitted that it never paid the ₱1,500,000.00 balance to the Sps. Culla. As found by the RTC, while Rockville claims that it deposited this amount with May Bank of Malaysia and notified Oligario of the deposit, no evidence was presented to support this claim. Besides, even if this contention had been true, the deposit in a foreign bank was neither a valid tender of payment nor an effective consignation.

Lastly, the numerous extensions granted by Rockville to Oligario to pay his debt after the execution of the Deed of Sale convince us that the parties never intended to enter into a contract of sale; instead, the intent was merely to secure the payment of Oligario's loan.

All told, we see no reason to depart from the findings and conclusions of both the trial court and the Court of Appeals.

WHEREFORE, premises considered, we *DENY* the petition for lack of merit; the assailed Decision dated October 9, 2002 in CA G.R. SP No. 66070 is thus *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

Ynares-Santiago,[*] *Carpio Morales (Acting Chairperson),*[**] *Del Castillo,* and *Abad, JJ.,* concur.

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[*] Designated additional Member of the Second Division per Special Order No. 691 dated September 4, 2009.

[**] Designated Acting Chairperson of the Second Division per Special Order No. 690 dated September 4, 2009.

EN BANC

[G.R. No. 158734. October 2, 2009]

ROBERTO ALBAÑA, KATHERINE BELO, GENEROSO DERRAMAS, VICENTE DURAN, RICARDO ARAQUE, MERLINDA DEGALA, GABRIEL ARANAS, ERNESTO BITOON and JUVIC DESLATE, *petitioners, vs.* **PIO JUDE S. BELO, RODOLFO DEOCAMPO and LORENCITO DIAZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; "LAW OF THE CASE" DOCTRINE. — It is a basic legal principle that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.

2. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS; POWERS; PRELIMINARY INVESTIGATION OF ELECTION OFFENSES; FINDING OF PROBABLE CAUSE THEREIN, RESPECTED. — In *Baytan v. Commission on Elections*, we held: It is also well-settled that the finding of probable cause in the prosecution of election offenses rests in the COMELEC's sound discretion. The COMELEC exercises the constitutional authority to investigate and, where appropriate, prosecute cases for violation of election laws, including acts or omissions constituting election frauds, offenses and malpractices. Generally, the Court will not interfere with such finding of the COMELEC absent a clear showing of grave abuse of discretion. This principle emanates from the COMELEC's exclusive power to conduct preliminary investigation of all election offenses punishable under the election laws and to prosecute the same, except as may otherwise be provided by law.

3. ID.; ID.; ID.; ID.; DETERMINATION OF PROBABLE CAUSE; ELUCIDATED. — A preliminary investigation, as the term connotes, is essentially the means to discover who may be charged with a crime, its function being merely to determine probable cause. All that is required in the preliminary investigation is the determination of probable cause to justify the holding of petitioners for trial. By definition, probable cause is – x x x a reasonable ground of presumption that a matter is, or may be, well founded x x x such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe or entertain an honest or strong suspicion that a thing is so. The term does not mean 'actual or positive cause' nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.

4. ID.; ID.; ID.; ID.; ID.; RECEPTION OF EVIDENCE ONLY FOR THE PROBABILITY OF GUILT, DETERMINED IN A SUMMARY MANNER. — Petitioners' claims of denial of due process, fabrication, hearsay evidence and revenge, as motive for the complaint against them, are matters of defense best ventilated in the trial proper rather than at the preliminary investigation. The established rule is that a preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence. It is for the presentation of only such evidence as may engender a well-grounded belief that an offense has been committed, and the accused is probably guilty thereof. There is sufficient evidence to establish that the acts committed by petitioners constituted an election offense, and that there is probable cause to hold them for trial. To repeat, probable cause merely implies probability of guilt and should be determined in a summary manner. Preliminary investigation is not a part of a trial and it is only in a trial where an accused can demand the full exercise of his rights, such as

the right to confront and cross-examine his accusers to establish his innocence.

5. ID.; CONSTITUTION; JUDICIAL DEPARTMENT; REQUIREMENT THAT ALL DECISIONS RENDERED EXPLICITLY EXPRESS THE FACTS AND LAW OF THE CASE; PURPOSE AND SUFFICIENCY OF THE RULE. — The purpose of Article VIII, Section 14 of the Constitution is to inform the person reading the decision, especially the parties, of how it was reached by the court after a consideration of the pertinent facts and an examination of the applicable laws. The losing party is entitled to know why he lost, so he may appeal to a higher court, if permitted, if he believes that the decision should be reversed. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is especially prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal. Thus, a decision is adequate if a party desiring to appeal therefrom can assign errors to it.

APPEARANCES OF COUNSEL

Wellington B. Lachica and Angel H. Gatmaitan for petitioners.
Emmanuel Q. Fernando for Pio Jude S. Belo.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

The instant petition for review on *certiorari* which was filed under Rule 45 of the Rules of Court in relation to Rule 37[1] of the Commission on Elections (COMELEC) Rules of Procedure

[1] Review of the Decisions of the Commission

Sec. 1. *Petition for Certiorari; and Time to File.* – Unless otherwise provided by law, or by any specific provisions in these Rules, any decision, order or ruling of the Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty (30) days from its promulgation.

seeks to set aside and annul the Resolution[2] dated February 28, 2003 of the COMELEC *En Banc* in Election Offence (EO) Case No. 01-111, as well as the Resolution[3] dated June 3, 2003 denying petitioners' motion for reconsideration.

The above-mentioned COMELEC resolution found probable cause against petitioners for election offense, specifically for violation of Section 261(a) and (e) of the Omnibus Election Code[4] in relation to Sections 28 and 68 of Republic Act No. 6646,[5] respectively. The said resolution directed the filing of the necessary Information before a competent court. It also found basis to disqualify petitioners and ordered the assignment of the disqualification case to a COMELEC division.

At the outset, it must be stated that the instant case is related to *Albaña v. Commission on Elections*[6] decided by this Court on July 23, 2004. The case involved exactly the same set of facts and issues as in this case, except that what was challenged therein was the October 21, 2003 Resolution of the COMELEC, which annulled the proclamation of petitioners as the duly elected municipal officials of Panitan, Capiz during the May 14, 2001 elections. In the said case, this Court nullified and set aside the October 21, 2003 COMELEC Resolution and consequently, the proclamation of respondents as the elected Mayor, Vice-Mayor and Member of the *Sangguniang Bayan* (SB) was likewise nullified and set aside.

The facts of the case, as found in *Albaña v. Commission on Elections*, are as follows:

During the May 14, 2001 elections, the petitioners and private respondents ran for the positions of Mayor, Vice-Mayor and Members of the *Sangguniang Bayan* in the Municipality of Panitan, Capiz.

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[2] *Rollo*, pp. 24-47.

[3] *Id.* at 57-60.

[4] Batas Pambansa Blg. 881.

[5] Otherwise known as "The Electoral Reforms Law of 1987."

[6] G.R. No. 163302, July 23, 2004, 435 SCRA 98.

On May 18, 2001, the petitioners were duly elected and proclaimed winners to the following positions:

(a) Roberto Albaña – Mayor
(b) Katherine Belo – Vice-Mayor
(c) Generoso Derramas – Member of the Sang[g]uniang Bayan (SB)
(d) Vicente Duran – Member of the SB
(e) Ricardo Araque – Member of the SB
(f) Lilia Aranas – Member of the SB
(g) Merlinda Degala – Member of the SB
(h) Gabriel Aranas – Member of the SB
(i) Ernesto Bito-on – Member of the SB
(j) Juvic Deslate – Member of the SB[7]

On June 23, 2001, the private respondents filed a complaint against the petitioners with the COMELEC Law Department, alleging that the latter committed acts of terrorism punishable by Section 261(e) of the Omnibus Election Code, and engaged in vote-buying, punishable under Section 261(a) of the Omnibus Election Code. The private respondents prayed that the petitioners be charged of the said crimes and disqualified from holding office under Section 68 of the said Code, and Section 6 of Republic Act No. 6646. The case was docketed as Election Offense Case No. 01-111.

The Law Department of the COMELEC found a *prima facie* case and issued a Resolution on January 15, 2002, recommending the filing of an Information against the petitioners for violation of Sections 261(e) and (a) of the Omnibus Election Code, in relation to Section 28 of Republic Act No. 6646. It, likewise, recommended the disqualification of all the petitioners from further holding office, and the reconvening of the Municipal Board of Canvassers (MBC) in order to proclaim the qualified candidates who obtained the highest number of votes.

Acting on the said resolution, the COMELEC *En Banc* issued, on February 28, 2003, a Resolution directing its Law Department to file the appropriate Information against the petitioners for violation of Section 261(e) of the Omnibus Election Code and directing the Clerk of the Commission to docket the electoral aspect of the complaint as a disqualification case. The dispositive portion reads:

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[7] *Rollo*, p. 131.

IN VIEW OF THE FOREGOING, We DIRECT the LAW DEPARTMENT to FILE THE NECESSARY INFORMATION against ROBERTO ALBAÑA, KATHERINE BELO, GENEROSO DERRAMAS, VICENTE DURAN, RICARDO ARAQUE, LILIA ARANAS, MERLINDA DEGALA, GABRIEL ARANAS, ERNESTO BITO-ON and JUVIC DESLATE before a court of competent jurisdiction.

The Clerk of the Commission is likewise directed to docket the electoral aspect of the complaint as a disqualification case and immediately assign the same to a division which shall resolve the case on the basis of the recommendation of the Law Department.

The petitioners filed a motion for reconsideration thereon, alleging that the COMELEC did not make any findings of fact in its resolution, and that there was even no disquisition as to the merits of the affidavits of their witnesses and the evidence presented by them. The petitioners also alleged that the COMELEC erred in ordering the docketing of the electoral aspect of the complaint, in light of Section 2 of COMELEC Resolution No. 2050.

On June 3, 2003, the COMELEC issued a Resolution denying the said motion for lack of merit and for having been filed out of time. The Clerk of the Commission docketed the disqualification case against the petitioners as SPA No. 03-006.

One October 21, 2003, the COMELEC First Division rendered the assailed resolution in SPA No. 03-006 annulling the petitioners' proclamation on the ground that they violated Section 261(a) and (e) of the Omnibus Election Code, and directing the election officer of Panitan to constitute a new municipal board of canvassers, thus:

x x x x x x x x x

The petitioner's motion for reconsideration and supplement to the motion for reconsideration were denied by the COMELEC *En Banc* in the Resolution of May 5, 2004, declaring that the disqualification case was the result of the findings of the Commission *En Banc*. It also held that as an aftermath of petitioners' violation of Section 261(e) in relation to Section 68 of the Omnibus Election Code, they are considered disqualified candidates and, therefore, the votes they received are deemed stray votes. Commissioners Mehol K. Sadain and Florentino A. Tuason, Jr. filed separate dissenting opinions.

x x x x x x x x x

WHEREFORE, the petition is GRANTED. The COMELEC Resolutions dated October 21, 2003 and May 5, 2004 are hereby NULLIFIED AND SET ASIDE. As a necessary consequence, the proclamation of the private respondents on June 10, 2004 by the Municipal Board of Canvassers as the elected Mayor, Vice-Mayor and Members of the *Sangguniang Bayan* of the Municipality of Panitan, Capiz, respectively, is, likewise, NULLIFIED AND SET ASIDE. No costs.

SO ORDERED.

The herein petition assails the earlier Resolutions dated February 28, 2003 and June 3, 2003 of the COMELEC *En Banc* directing the filing of appropriate information against the herein petitioners and the docketing of the disqualification case against them. Petitioners filed the instant petition anchored on the following grounds:

I

THE COMELEC *En Banc* ERRED IN FINDING PROBABLE CAUSE TO PROSECUTE THE PETITIONERS FOR ELECTION OFFENSES WHERE THE AFFIDAVITS SUBMITTED ARE OF DUBIOUS CREDIBILITY, NOT OF THE PERSONAL KNOWLEDGE OF THE AFFIANTS, AND ARE NOT RELATED TO THE MAY 2001 ELECTIONS ITSELF.

II

THE COMELEC *En Banc* ERRED IN FINDING PROBABLE CAUSE AGAINST THE PETITIONERS FOR ELECTION OFFENSES WHEN THE EVIDENCE ON RECORD IS INDUBIATBLY INSUFFICIENT TO ESTABLISH THE DISPUTABLE PRESUMPTION UNDER THE ELECTION LAW.

III

THE COMELEC *En Banc* ERRED IN FINDING THAT THE PROCEEDINGS BELOW SUPPORT A COMPLAINT FOR DISQUALIFICATION WHEN IT IS NOT AN ISSUE THEREIN IN VIOLATION OF THE CONSTITUTIONAL RIGHTS OF THE PETITIONERS TO PROPER NOTICE AND DUE PROCESS.

IV

THE COMELEC *En Banc* ERRED IN ISSUING A RESOLUTION THAT DOES NOT CONFORM TO THE CONSTITUTIONAL REQUIREMENTS OF A RESOLUTION OR DECISION WHICH IS VOID THAT VIOLATES THE CONSTITUTIONAL RIGHTS OF THE PETITIONERS TO DUE PROCESS WHO WILL BE PREJUDICED BY SUACH (SIC) A VOID RESOLUTION.

V

THE COMELEC *En Banc* ERRED IN HOLDING THAT THE APPLICABLE PERIOD WITHIN WHICH TO FILE MOTION FOR RECONSIDERATION IS FIVE (5) DAYS INSTEAD OF FIFTEEN (15) AGAINST A VOID RESOLUTION DATED FEBRUARY 28, 2003.[8]

Petitioners claim that there is no sufficient evidence to show that there is probable cause against them for the commission of election offenses under Section 261(a) and (e) of the Omnibus Election Code. The incidents of terrorism and vote-buying indicated in the affidavits of respondents and their witnesses were not election-related and were merely isolated incidents that were distorted in order to conform to a complaint for an election offense. Petitioners claim that the affidavits were hearsay and speculative, and that the allegations were just figments of imagination of the affiants.

Petitioners also contend that their constitutional rights to notice and due process were violated when the COMELEC passed upon the issue of disqualification and recommended that disqualification proceedings be filed against them despite the fact that the issue was never raised during the proceedings. According to petitioners, their right to due process was further transgressed when the assailed COMELEC resolution failed to state clearly the factual and legal bases for finding that there was probable cause to prosecute them for election offenses. The resolution merely alleged that a reign of terror was waged by the followers of petitioners during the election period without elucidating the reasons for such conclusion.

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[8] *Rollo*, pp. 10-11.

Lastly, petitioners aver that their motion for reconsideration of the February 28, 2003 resolution was timely filed in accordance with the COMELEC Rules of Procedure.

On the other hand, respondents maintain that the finding of the existence of probable cause was supported by substantial evidence, the quantum of proof required in administrative proceedings. The affidavits distinctly established that the fear instilled by the private army of petitioners prevented respondents' followers from taking part in the campaign and the election itself. It was also clearly shown in the affidavits that petitioners distributed bags of goodies to residents of nearly all the *barangays* of Panitan, Capiz and offered money in exchange for their votes.

Likewise, respondents assert that petitioners' claim of denial of due process is without basis, because the issue of disqualification was raised in the COMELEC proceedings as it was prayed for in the complaint filed with the Law Department. Respondents asseverate that the assailed resolution clearly set forth the factual and legal bases for the COMELEC's finding of probable cause. They also insist that petitioners' motion for reconsideration was filed out of time, and that the instant petition for review was intended to delay the filing of criminal charges and disqualification proceedings against them.

The Office of the Solicitor-General (OSG) also filed its Comment[9] on behalf of the COMELEC. It contends that the COMELEC correctly found the existence of probable cause to prosecute petitioners for election offenses. The circumstances of the case and the affidavits were sufficient to establish that terrorism and vote-buying marred the 2001 elections in Panitan, Capiz. The COMELEC also correctly passed upon the issue of disqualification, as it was prayed for by respondents in their complaint filed with the Law Department.

Parenthetically, private respondent Pio Jude Belo in his Memorandum[10] belatedly raises for the first time the argument

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[9] *Id.* at 83-96.

[10] *Id.* at 197-206.

that petitioner availed himself of the wrong remedy in filing a petition for review on *certiorari* under Rule 45 of the Rules of Court. Fair play, justice and due process dictate that this Court cannot now, for the first time on memorandum, pass upon this question. The parties have been warned in the Court's Resolution dated January 23, 2007 that *no new issues may be raised by a party in his/its Memorandum.*[11]

As stated at the onset, the Court, in *Albaña v. Commission on Elections, G.R. No. 163302*,[12] nullified the proclamation of respondents as the elected Mayor, Vice-Mayor and Member of the *Sangguniang Bayan*, respectively. It appears that pursuant to the directive of the COMELEC in the herein assailed resolution dated February 28, 2003, the Clerk of the Commission docketed the disqualification case against petitioners as *SPA No. 03-006* and raffled the same to the First Division. On October 21, 2003, the COMELEC First Division rendered its resolution in *SPA No. 03-006* annulling the petitioners' proclamation on the ground that they violated Section 261(a) and (e) of the Omnibus Election Code and directing the election officer of Panitan to constitute a new municipal board of canvassers. On June 10, 2004, the municipal board of canvassers proclaimed respondents as the winners in the May 14, 2001 elections with Pio Jude Belo as Mayor, Rodolfo Deocampo as Vice-Mayor and Lorencito Diaz as a Member of the *Sanggunian Bayan*. Petitioners thus filed a petition with this Court. In a decision promulgated on July 23, 2004, the Court, in the aforecited case *Albaña v. Commission on Elections, G.R. No.163302*,[13] granted the said petition. We held in that case penned by Retired Associate Justice Romeo J. Callejo, Sr.:

> [T]he petitioners aver that since they were proclaimed the duly-elected municipal officials of Panitan, Capiz, on May 18, 2001, the COMELEC should have dismissed the complaint for their disqualification which the private respondents filed only on June

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

[12] *Supra* note 6.

[13] *Ibid.*

23, 2001, more than a month after such proclamation. They aver that such dismissal was mandated by Section 2 of COMELEC Resolution No. 2050, adopted on November 3, 1988, which reads:

> 2. **Any complaint for disqualification based on Section 68 of the Omnibus Election Code in relation to Section 6 of Republic Act No. 6646 filed after the election against a candidate who has already been proclaimed as winner shall be dismissed as a disqualification case.** However, the complainant shall be referred for preliminary investigation to the Law Department of the commission.
>
> Where a similar complaint is filed after election but before proclamation of the respondent candidate, the complaint shall, nevertheless, be dismissed as a disqualification case. However, the complaint shall be referred for preliminary investigation to the Law Department. If, before proclamation, the Law department makes a *prima facie* finding of guilt and the corresponding information has been filed with the appropriate trial court, the complainant may file a petition for suspension of the proclamation of the respondent with the court before which the criminal case is pending and the said court may order the suspension of the proclamation if the evidence of guilt is strong. (Emphasis supplied)
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> x x x x x x x x x

We rule for the petitioners.

Section 2 of COMELEC Resolution No. 2050 is as clear as day: the COMELEC is mandated to dismiss a complaint for the disqualification of a candidate who has been charged with an election offense but who has already been proclaimed as winner by the Municipal Board of Canvassers. COMELEC Resolution No. 2050 specifically mandates a definite policy and procedure for disqualification cases, hence, should be applied and given effect. In *Bagatsing v. Commission on Elections*,[14] this Court ruled that a complaint for disqualification filed after the election against a candidate before or after his proclamation as winner shall be dismissed by the COMELEC, xxx.

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[14] G.R. No. 134047, December 15, 1999, 320 SCRA 817.

It bears stressing that Resolution No. 2050 was approved precisely because of the variance in opinions of the members of the respondent COMELEC on matters of procedure in dealing with and evaluating cases for disqualification filed under Section 68 of the Omnibus Election Code in relation to Section 6 of Rep. Act No. 6646.

Under the said resolution, if a complaint is filed with the COMELEC against a candidate who has already been proclaimed winner, charging an election offense under Section 261 of the Omnibus Election Code, as amended by Rep. Act Nos. 6646 and 8436,[15] and praying for the disqualification of the said candidate, the COMELEC shall determine the existence of probable cause for the filing of an Information against the candidate for the election offense charged. However, if the COMELEC finds no probable cause, it is mandated to dismiss the complaint for the disqualification of the candidate.

If the COMELEC finds that there is probable cause, it shall order its Law Department to file the appropriate Information with the Regional Trial Court (RTC) which has territorial jurisdiction over the offense, but shall, nonetheless, order the dismissal of the complaint for disqualification, without prejudice to the outcome of the criminal case. If the trial court finds the accused guilty beyond reasonable doubt of the offense charged, it shall order his disqualification pursuant to Section 264 of the Omnibus Election Code, as amended by Section 46 of Rep. Act No. 8189[16] which reads:

> SEC. 46. Penalties. – Any person found guilty of any election offense under this Act shall be punished with imprisonment of not less than one (1) year but not more than six (6) years and shall not be subject to probation. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. xxx. (Emphasis supplied)

In this case, the petitioners were proclaimed winners on May 18, 2001, the private respondents filed their complaint for violation of Section 261 (a) and (e) of the Omnibus Election Code and for the

[15] Entitled, "An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, Providing Funds Therefor and for Other Purposes."

[16] Otherwise known as "The Voter's Registration Act of 1996."

disqualification of the petitioners only on June 23, 2001. The COMELEC found probable cause against the respondents for the offense charged and directed its Law Department to file the appropriate Information against the petitioners. Patently then, the COMELEC committed a grave abuse of its discretion amounting to excess of lack of jurisdiction in issuing its assailed resolutions disqualifying the petitioners from the positions they were respectively elected, in defiance of Resolution No. 2050.[17]

The foregoing ruling lays to rest the issue concerning the propriety of the COMELEC's recommendation and directive in its February 28, 2003 resolution for the filing of disqualification proceedings against petitioners. It is a basic legal principle that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.[18] We, thus, agree with petitioners that the COMELEC erred in ordering the docketing of the electoral aspect of the complaint as a disqualification case.

This Court, in *Albaña v. Commission on Elections, G.R. No.163302,* ruled only on the electoral aspect of the disqualification made by COMELEC. We shall now discuss the criminal aspect of the case and resolve the issue of whether the COMELEC correctly found the existence of probable cause to justify the filing of a criminal Information against the petitioners for violation of Section 261 (a) and (e) of the Omnibus Election Code.[19]

In *Baytan v. Commission on Elections*,[20] we held:

It is also well-settled that the finding of probable cause in the prosecution of election offenses rests in the COMELEC's sound

[17] *Supra* note 15 at 105-108.

[18] *Cucueco v. Court of Appeals*, G.R. No. 139278, October 25, 2004, 441 SCRA 290, 301.

[19] In *Albaña v. Commission on Elections*, it was mentioned that a criminal case for violation of Section 261(a) and (e) of the Omnibus Election Code is pending in the Regional Trial Court of Capiz, 435 SCRA 98, 108-109.

[20] G.R. No. 153945, February 4, 2003, 396 SCRA 703.

discretion. The COMELEC exercises the constitutional authority to investigate and, where appropriate, prosecute cases for violation of election laws, including acts or omissions constituting election frauds, offenses and malpractices. Generally, the Court will not interfere with such finding of the COMELEC absent a clear showing of grave abuse of discretion. This principle emanates from the COMELEC's exclusive power to conduct preliminary investigation of all election offenses punishable under the election laws and to prosecute the same, except as may otherwise be provided by law.[21]

A preliminary investigation, as the term connotes, is essentially the means to discover who may be charged with a crime, its function being merely to determine probable cause. All that is required in the preliminary investigation is the determination of probable cause to justify the holding of petitioners for trial. By definition, probable cause is –

> x x x a reasonable ground of presumption that a matter is, or may be, well founded x x x such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe or entertain an honest or strong suspicion that a thing is so. The term does not mean 'actual or positive cause' nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.[22]

In the present case, the determination by the COMELEC of the existence of probable cause was based on the affidavits of respondents and their witnesses. In their sworn statements, they categorically declared that the May 14, 2001 elections in Panitan, Capiz were tainted with widespread vote-buying, intimidation and terrorism committed before, during and after the voting. The alleged prohibited acts committed by petitioners and their supporters such as the distribution of bags of goodies to residents of different *barangays* and offering of money to

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[21] *Id.* at 711.

[22] *Allado v. Diokno*, G.R. No. 113630, May 5, 1994, 232 SCRA 192, 200.

some voters in exchange for their votes, preventing respondent's supporters from voting by blocking the road leading to the election precincts and by harassing them, and the carrying of firearms by petitioner Belo himself and the members of the Civilian Volunteer Organization (CVO) were supported by evidence on record that sufficiently established probable cause – that certain irregularities marred the elections in Panitan, Capiz.[23] Petitioners' alleged acts of terrorism and of giving money to influence and induce the voters and to further their chances of victory are clear grounds for election offense under Section 261 of the Omnibus Election Code. Indeed, questions of vote-buying, terrorism and similar acts should be resolved in a full-blown hearing before a regular court.[24] Accordingly, the COMELEC was correct in finding that there was probable cause and in recommending the filing of the necessary criminal Information against the petitioners.

Moreover, petitioners' claims of denial of due process, fabrication, hearsay evidence and revenge, as motive for the complaint against them, are matters of defense best ventilated in the trial proper rather than at the preliminary investigation. The established rule is that a preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence. It is for the presentation of only such evidence as may engender a well-grounded belief that an offense has been committed, and the accused is probably guilty thereof.[25] There is sufficient evidence to establish that the acts committed by petitioners constituted an election offense, and that there is probable cause to hold them for trial.

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[23] *Rollo*, pp. 27-41.

[24] Sec. 268, Omnibus Election Code. *Jurisdiction of Courts*. The regional trial court shall have the exclusive jurisdiction to try and decide any criminal action or proceeding for violation of this Code, except those relating to the offense of failure to register or failure to vote, which shall be under the jurisdiction of the metropolitan or municipal trial courts. From the decision of the courts, appeal will lie as in other criminal cases.

[25] *Cruz, Jr. v. People*, G.R. No. 110436, June 27, 1994, 233 SCRA 439, 458.

To repeat, probable cause merely implies probability of guilt and should be determined in a summary manner. Preliminary investigation is not a part of a trial and it is only in a trial where an accused can demand the full exercise of his rights, such as the right to confront and cross-examine his accusers to establish his innocence.[26]

Petitioners also argue that the February 28, 2003 resolution of the COMELEC violates Article VIII, Section 14 of the Constitution, which states that "no decision shall be rendered by any court without expressing clearly and distinctly the facts and the law on which it is based." The COMELEC allegedly made generalizations without detailing the basis for its findings.

The assailed resolution substantially complied with the constitutional mandate of Article VIII, Section 14 of the Constitution. The resolution detailed the evidence presented by the parties. Thereafter, it weighed the respective pieces of evidence submitted by the prosecution and the defense and chose the one that deserved credence. It contained findings of facts as well as an application of case law. The resolution states, thus:

> We affirm the recommendation of the Law Department. As succinctly stated in the Resolution, (t)here is no reason…for all the witnesses to have concocted their claim nor was there any evidence to show that they were improperly motivated to falsify the truth especially on the charge of vote-buying wherein the names of the respondents Mayor Robert Albaña and Vice Mayor Katherine Belo were directly implicated as distributing goods in exchange for their votes last May 11, 2001 right in the house of Mayor Albaña in Maluboglubog, Panitan, Capiz. The reign of terror during the campaign period up to election day was waged by armed followers of Mayor Albaña to harass and threaten the sympathizers of complainant Jude Belo. Exhibit J details how the armed Civilian Volunteer Organization (CVO) and Barangay Health Workers (BHW) were effectively used by respondents to enhance their chances of winning.

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[26] *Tuliao v. Ramos*, A.M. No. MTJ-95-1065, January 20, 1998, 284 SCRA 378, 386-387.

The presumption is that if witnesses are not so actuated by any improper motive, their testimonies are entitled to full faith and credence.[27]

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The instant complaint involves an election offense case with a prayer for disqualification. The Law Department thus conducted an investigation both as regards the criminal and electoral aspect of the case. Respondents were fully apprised that the investigation would determine whether or not there is basis for the disqualification because they were furnished a copy of the complaint.[28]

The purpose of Article VIII, Section 14 of the Constitution is to inform the person reading the decision, especially the parties, of how it was reached by the court after a consideration of the pertinent facts and an examination of the applicable laws. The losing party is entitled to know why he lost, so he may appeal to a higher court, if permitted, if he believes that the decision should be reversed. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is especially prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal. Thus, a decision is adequate if a party desiring to appeal therefrom can assign errors to it.[29]

The petitioners in this case cannot feign denial of due process and pretend that they were unable to understand the basis for the COMELEC's recommendation as, in fact, they were able to assign specific errors to the COMELEC's resolution and discuss them. In fine, the COMELEC's resolution substantially complies with the mandate of Article VIII, Section 14 of the Constitution.

Finally, petitioners' contention that their motion for reconsideration should not have been denied by the COMELEC

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[27] *Rollo*, pp. 43-44.

[28] *Id.* at 46.

[29] *People v. Orbita*, G.R. No. 136591, July 11, 2002, 384 SCRA 393, 403.

in its resolution dated June 3, 2003 because it was timely filed deserves scant consideration. The denial of their motion for reconsideration was not based on technicality alone but more on the lack of merit of their arguments which were the same arguments already passed upon by the COMELEC in its resolution of February 28, 2003.

WHEREFORE, the petition is *PARTIALLY GRANTED.* The assailed COMELEC Resolution of February 28, 2003 is *MODIFIED* as follows:

1. The order to docket the electoral aspect of the complaint as a disqualification case is hereby *ANNULLED* and *SET ASIDE*, pursuant to the decision in *Albaña v. Commission on Elections;* and

2. The order to file the criminal Information against the petitioners before the regular court is hereby *AFFIRMED.*

SO ORDERED.

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

Quisumbing, J., on official leave.

Brion, J.,on sick leave.

EN BANC

[G.R. No. 158885. October 2, 2009]

FORT BONIFACIO DEVELOPMENT CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE, REGIONAL DIRECTOR, REVENUE REGION NO. 8, and CHIEF, ASSESSMENT DIVISION, REVENUE REGION NO. 8, BIR,** *respondents.*

[G.R. No. 170680. October 2, 2009]

FORT BONIFACIO DEVELOPMENT CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE, REVENUE DISTRICT OFFICER, REVENUE DISTRICT NO. 44, TAGUIG and PATEROS, BUREAU OF INTERNAL REVENUE,** *respondents.*

SYLLABUS

1. STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; THAT PROVISIONS OF A LAW MUST BE READ IN RELATION TO THE WHOLE LAW. — A law must not be read in truncated parts; its provisions must be read in relation to the whole law. It is the cardinal rule in statutory construction that a statute's clauses and phrases must not be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with other parts of the statute and kept subservient to the general intent of the whole enactment. In construing a statute, courts have to take the thought conveyed by the statute as a whole; construe the constituent parts together; ascertain the legislative intent from the whole act; consider each and every provision thereof in the light of the general purpose of the statute; and endeavor to make every part effective, harmonious and sensible.

2. TAXATION; NATIONAL INTERNAL REVENUE CODE; THE TERM "GOODS *OR* PROPERTIES," DEFINED. — The

statutory definition of the term "goods **or** properties" leaves no room for doubt. It states: Sec. 100. Value-added tax on sale of goods or properties. — (a) Rate and base of tax. — xxx . (1) The term 'goods or properties' shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include: (A) Real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business; xxx. The amendatory provision of Section 105 of the NIRC, as introduced by RA 7716, states: Sec. 105. Transitional Input tax Credits. — A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory as prescribed by regulations, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to 8% of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax. The term "*goods **or** properties*" by the unambiguous terms of Section 100 includes "*real properties held primarily for sale to costumers or held for lease in the ordinary course of business.*" Having been defined in Section 100 of the NIRC, the term "*goods*" as used in Section 105 of the same code could not have a different meaning. This has been explained in the Decision dated April 2, 2009, thus: Under Section 105, the beginning inventory of "goods" forms part of the valuation of the transitional input tax credit. Goods, as commonly understood in the business sense, refers to the product which the VAT-registered person offers for sale to the public. With respect to real estate dealers, it is the real properties themselves which constitute their "goods." Such real properties are the operating assets of the real estate dealer. Section 4.100-1 of RR No. 7-95 itself includes in its enumeration of "goods or properties" such "real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business." Said definition was taken from the very statutory language of Section 100 of the Old NIRC. By limiting the definition of goods to "improvements" in Section 4.105-1, the BIR not only contravened the definition of "goods" as provided in the Old NIRC, but also the definition which the same revenue regulation itself has provided.

3. ID.; ID.; ID.; RESTRICTION ON THE DEFINITION OF "GOODS" UNDER SECTION 4.105-1 OF REVENUE

REGULATION (RR) 7-95; NOT VALID. — Section 4.105-1 of RR 7-95 restricted the definition of "*goods*", *viz*: However, in the case of real estate dealers, *the basis of the presumptive input tax shall be the improvements*, such as buildings, roads, drainage systems, and other similar structures, constructed on or after the effectivity of EO 273 (January 1, 1988). As mandated by Article 7 of the Civil Code, an administrative rule or regulation cannot contravene the law on which it is based. RR 7-95 is inconsistent with Section 105 insofar as the definition of the term "*goods*" is concerned. This is a legislative act beyond the authority of the CIR and the Secretary of Finance. The rules and regulations that administrative agencies promulgate, which are the product of a delegated legislative power to create new and additional legal provisions that have the effect of law, should be within the scope of the statutory authority granted by the legislature to the objects and purposes of the law, and should not be in contradiction to, but in conformity with, the standards prescribed by law. To be valid, an administrative rule or regulation must conform, not contradict, the provisions of the enabling law. An implementing rule or regulation cannot modify, expand, or subtract from the law it is intended to implement. Any rule that is not consistent with the statute itself is null and void. While administrative agencies, such as the Bureau of Internal Revenue, may issue regulations to implement statutes, they are without authority to limit the scope of the statute to less than what it provides, or extend or expand the statute beyond its terms, or in any way modify explicit provisions of the law. Indeed, a quasi-judicial body or an administrative agency for that matter cannot amend an act of Congress. Hence, in case of a discrepancy between the basic law and an interpretative or administrative ruling, the basic law prevails.

4. ID.; ID.; ID.; ID.; EFFECTIVELY REPEALED BY RR 6-97 WHICH IS IN CONSONANCE WITH SECTION 100 OF THE NIRC, INSOFAR AS THE DEFINITION OF REAL PROPERTIES AS GOODS IS CONCERNED. — On January 1, 1997, RR 6-97 was issued by the Commissioner of Internal Revenue. RR 6-97 was basically a reiteration of the same Section 4.105-1 of RR 7-95, except that the RR 6-97 **deleted** the following paragraph: *However, in the case of real estate dealers, the basis of the presumptive input tax shall be the improvements, such as buildings, roads, drainage systems, and other similar structures, constructed on or after the*

effectivity of E.O. 273 (January 1, 1988). It is clear, therefore, that under RR 6-97, the allowable transitional input tax credit is not limited to improvements on real properties. The particular provision of RR 7-95 has effectively been repealed by RR 6-97 which is now in consonance with Section 100 of the NIRC, insofar as the definition of real properties as goods is concerned. The failure to add a specific repealing clause would not necessarily indicate that there was no intent to repeal RR 7-95. The fact that the aforequoted paragraph was deleted created an irreconcilable inconsistency and repugnancy between the provisions of RR 6-97 and RR 7-95.

5. STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; THE COURTS MUST NOT READ INTO LAW WHAT IS NOT THERE; RE. SECTION 105 OF THE OLD NIRC, ON TRANSITIONAL INPUT TAX. — The language of Section 105 is explicit. It precludes reading into the law that the transitional input tax credit is limited to the amount of VAT previously paid. When the aforesaid section speaks of "*eight percent (8%) of the value of such inventory*" followed by the clause "*or the actual value-added tax paid on such goods, materials and supplies,*" the implication is clear that under the first clause, "eight percent (8%) of the value of such inventory", the law does not contemplate the payment of any prior tax on such inventory. This is distinguished from the second clause, "the actual value-added tax paid on the goods, materials and supplies" where actual payment of VAT on the goods, materials and supplies is assumed. Had the intention of the law been to limit the amount to the actual VAT paid, there would have been no need to explicitly allow a claim based on 8% of the value of such inventory. The contention that the 8% transitional input tax credit in Section 105 presumes that a previous tax was paid, whether or not it was actually paid, requires a transaction where a tax has been imposed by law, is utterly without basis in law. xxx To give Section 105 a restrictive construction that transitional input tax credit applies only when taxes were previously paid on the properties in the beginning inventory and there is a law imposing the tax which is presumed to have been paid, is to impose conditions or requisites to the application of the transitional tax input credit which are not found in the law. The courts must not read into the law what is not there. To do so will violate the principle of separation of powers which prohibits this Court from engaging in judicial legislation.

CARPIO, *J., dissenting opinion:*

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; TRANSITIONAL INPUT TAX CREDIT; ELUCIDATED. — The transitional input tax credit was placed in the tax law to pave the smooth transition from the non-VAT to the VAT system. This input VAT works by deducting previously paid taxes from the output VAT liability in subsequent transactions involving the same product. The term "transitional" was placed to distinguish this from an ordinary input tax.

2. ID.; ID.; SECTION 105 ON THE 8% TRANSITIONAL INPUT TAX CREDIT PRESUMES THAT A PREVIOUS TAX HAS BEEN IMPOSED AND PAID; PETITIONER BUYER HERE OF GLOBAL CITY LAND FROM THE GOVERNMENT UNDER TAX FREE TRANSACTION, NOT ENTITLED TO ANY INPUT TAX CREDIT. — In 1995, when petitioner bought the Global City land from the national government, the sale was under a tax-free transaction and without any VAT component. Being tax-exempt, the national government did not pass on any previous input business tax, whether in the form of sales tax or VAT, to petitioner as part of the purchase price. **The 8% transitional input tax credit in Section 105 presumes that a previous tax was paid, whether or not it was actually paid.** Such presumption assumes the existence of a law imposing the tax presumed to have been paid. This can be inferred from the provision that a taxpayer is "allowed input tax on his beginning inventory xxx equivalent to 8% xxx, or the actual value-added tax paid xxx, whichever is higher." **The transitional input tax requires a transaction where a tax has been imposed by law. Otherwise, the presumption that the tax has been paid will have no basis.** Without any VAT or other input business tax imposed by law on real properties at the time of the sale in the present case, the 8% transitional input tax cannot be presumed to have been paid. Also, even before real estate dealers became subject to VAT under RA 7716, improvements on the land were already subject to VAT. However, since the land itself was not subject to VAT or to any input tax prior to RA 7716, the land then could not be considered part of the beginning inventory under Section 105. Thus, the 8% transitional input tax should apply only to improvements on land and not on the land itself. To repeat, at the time of the

sale by the government of the Global City land in 1995, there was no VAT on the sale of land. In addition, the government, as seller, was not subject to VAT. Even if the sale transaction happens today with the VAT on real properties already in existence, and petitioner subsequently resells the land, petitioner will still not be entitled to any input tax credit. This is because the sale by the national government of government-owned land is not subject to VAT. Petitioner cannot now claim any input tax credit if it buys the same land today, and resells the same the following day. **Thus, if a real estate dealer like petitioner cannot claim an input tax today on its purchase of government land, when VAT on real properties is already in effect, then all the more petitioner cannot claim any input tax for its 1995 purchase of government land when the E-VAT law was still inexistent and petitioner had not yet been subjected to VAT.**

APPEARANCES OF COUNSEL

Estelito P. Mendoza and Lorenzo G. Timbol for petitioner.
The Solicitor General for respondents.

R E S O L U T I O N

LEONARDO-DE CASTRO, *J.*:

Before us is respondents' Motion for Reconsideration of our Decision dated April 2, 2009 which granted the consolidated petitions of petitioner Fort Bonifacio Development Corporation, the dispositive portion of which reads:

WHEREFORE, the petitions are GRANTED. The assailed decisions of the Court of Tax Appeals and the Court of Appeals are REVERSED and SET ASIDE. Respondents are hereby (1) restrained from collecting from petitioner the amount of ₱28,413,783.00 representing the transitional input tax credit due it for the fourth quarter of 1996; and (2) directed to refund to petitioner the amount of ₱347,741,695.74 paid as output VAT for the third quarter of 1997 in light of the persisting transitional input tax credit available to petitioner for the said quarter, or to issue a tax credit corresponding to such amount. No pronouncement as to costs.

The Motion for Reconsideration raises the following arguments:

I

SECTION 100 OF THE OLD NATIONAL INTERNAL REVENUE CODE (OLD NIRC), AS AMENDED BY REPUBLIC ACT (R.A.) NO. 7716, COULD NOT HAVE SUPPLIED THE DISTINCTION BETWEEN THE TREATMENT OF REAL PROPERTIES OR REAL ESTATE DEALERS ON THE ONE HAND, AND THE TREATMENT OF TRANSACTIONS INVOLVING OTHER COMMERCIAL GOODS ON THE OTHER HAND, AS SAID DISTINCTION IS FOUND IN SECTION 105 AND, SUBSEQUENTLY, REVENUE REGULATIONS NO. 7-95 WHICH DEFINES THE INPUT TAX CREDITABLE TO A REAL ESTATE DEALER WHO BECOMES SUBJECT TO VAT FOR THE FIRST TIME.

II

SECTION 4.105.1 AND PARAGRAPH (A) (III) OF THE TRANSITORY PROVISIONS OF REVENUE REGULATIONS NO. 7-95 VALIDLY LIMIT THE 8% TRANSITIONAL INPUT TAX TO THE IMPROVEMENTS ON REAL PROPERTIES.

III

REVENUE REGULATIONS NO. 6-97 DID NOT REPEAL REVENUE REGULATIONS NO. 7-95.

The instant motion for reconsideration lacks merit.

The first VAT law, found in Executive Order (EO) No. 273 [1987], took effect on January 1, 1988. It amended several provisions of the National Internal Revenue Code of 1986 (Old NIRC). EO 273 likewise accommodated the potential burdens of the shift to the VAT system by allowing newly VAT-registered persons to avail of a transitional input tax credit as provided for in Section 105 of the Old NIRC. Section 105 as amended by EO 273 reads:

Sec. 105. Transitional Input Tax Credits. — A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory as prescribed by regulations, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to 8% of the value of such inventory or the actual value-added tax paid on such

goods, materials and supplies, whichever is higher, which shall be creditable against the output tax.

RA 7716 took effect on January 1, 1996. It amended Section 100 of the Old NIRC by imposing for the first time value-added-tax on sale of real properties. The amendment reads:

> Sec. 100. Value-added-tax on sale of goods or properties. — (a) Rate and base of tax. — There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods, or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.
>
> (1) The term 'goods or properties' shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include:
>
> (A) Real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business; xxx

The provisions of Section 105 of the NIRC, on the transitional input tax credit, remain intact despite the enactment of RA 7716. Section 105 however was amended with the passage of the new National Internal Revenue Code of 1997 (New NIRC), also officially known as Republic Act (RA) 8424. The provisions on the transitional input tax credit are now embodied in Section 111(A) of the New NIRC, which reads:

> Section 111. *Transitional/Presumptive Input Tax Credits.* –
>
> (A) *Transitional Input Tax Credits.* — A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory *according to rules and regulations prescribed by the Secretary of finance, upon recommendation of the Commissioner*, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent for 8% of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax. [Emphasis ours.]

The Commissioner of Internal Revenue (CIR) disallowed Fort Bonifacio Development Corporation's (FBDC) presumptive input tax credit arising from the land inventory on the basis of Revenue Regulation 7-95 (RR 7-95) and Revenue Memorandum Circular 3-96 (RMC 3-96). Specifically, Section 4.105-1 of RR 7-95 provides:

> Sec. 4.105-1. Transitional input tax on beginning inventories. – Taxpayers who became VAT-registered persons upon effectivity of RA No. 7716 who have exceeded the minimum turnover of ₱500,000.00 or who voluntarily register even if their turnover does not exceed ₱500,000.00 shall be entitled to a presumptive input tax on the inventory on hand as of December 31, 1995 on the following: (a) goods purchased for resale in their present condition; (b) materials purchased for further processing, but which have not yet undergone processing; (c) goods which have been manufactured by the taxpayer; (d) goods in process and supplies, all of which are for sale or for use in the course of the taxpayer's trade or business as a VAT-registered person.
>
> However, in the case of real estate dealers, the basis of the presumptive input tax shall be the improvements, such as buildings, roads, drainage systems, and other similar structures, constructed on or after the effectivity of EO 273 (January 1, 1988).
>
> The transitional input tax shall be 8% of the value of the inventory or actual VAT paid, whichever is higher, which amount may be allowed as tax credit against the output tax of the VAT-registered person.

In the April 2, 2009 Decision sought to be reconsidered, the Court struck down Section 4.105-1 of RR 7-95 for being in conflict with the law. It held that the CIR had no power to limit the meaning and coverage of the term "*goods*" in Section 105 of the Old NIRC sans statutory authority or basis and justification to make such limitation. This it did when it restricted the application of Section 105 in the case of real estate dealers only to improvements on the real property belonging to their beginning inventory.

A law must not be read in truncated parts; its provisions must be read in relation to the whole law. It is the cardinal

rule in statutory construction that a statute's clauses and phrases must not be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with other parts of the statute and kept subservient to the general intent of the whole enactment.[1]

In construing a statute, courts have to take the thought conveyed by the statute as a whole; construe the constituent parts together; ascertain the legislative intent from the whole act; consider each and every provision thereof in the light of the general purpose of the statute; and endeavor to make every part effective, harmonious and sensible.[2]

The statutory definition of the term "goods **or** properties" leaves no room for doubt. It states:

Sec. 100. Value-added tax on sale of goods or properties. – (a) Rate and base of tax. – xxx.

(1) The term 'goods or properties' shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include:

(A) Real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business; xxx.

The amendatory provision of Section 105 of the NIRC, as introduced by RA 7716, states:

Sec. 105. Transitional Input tax Credits. – A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory as prescribed by regulations, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to 8% of the

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[1] *The Civil Service Commission v. Joson*, G.R. No. 154674, May 27, 2004, 429 SCRA 773,786.

[2] *Republic v. Reyes*, No. L-22550, May 19, 1966, 17 SCRA 170,173.

value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax.

The term "*goods* ***or*** *properties*" by the unambiguous terms of Section 100 includes "*real properties held primarily for sale to costumers or held for lease in the ordinary course of business.*" Having been defined in Section 100 of the NIRC, the term "*goods*" as used in Section 105 of the same code could not have a different meaning. This has been explained in the Decision dated April 2, 2009, thus:

> Under Section 105, the beginning inventory of "goods" forms part of the valuation of the transitional input tax credit. Goods, as commonly understood in the business sense, refers to the product which the VAT-registered person offers for sale to the public. With respect to real estate dealers, it is the real properties themselves which constitute their "goods." Such real properties are the operating assets of the real estate dealer.
>
> Section 4.100-1 of RR No. 7-95 itself includes in its enumeration of "goods or properties" such "real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business." Said definition was taken from the very statutory language of Section 100 of the Old NIRC. By limiting the definition of goods to "improvements" in Section 4.105-1, the BIR not only contravened the definition of "goods" as provided in the Old NIRC, but also the definition which the same revenue regulation itself has provided.

Section 4.105-1 of RR 7-95 restricted the definition of "*goods*", *viz*:

> However, in the case of real estate dealers, *the basis of the presumptive input tax shall be the improvements*, such as buildings, roads, drainage systems, and other similar structures, constructed on or after the effectivity of EO 273 (January 1, 1988).

As mandated by Article 7 of the Civil Code,[3] an administrative rule or regulation cannot contravene the law on which it is based. RR 7-95 is inconsistent with Section 105 insofar as the definition

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[3] Art. 7. xxx

of the term "*goods*" is concerned. This is a legislative act beyond the authority of the CIR and the Secretary of Finance. The rules and regulations that administrative agencies promulgate, which are the product of a delegated legislative power to create new and additional legal provisions that have the effect of law, should be within the scope of the statutory authority granted by the legislature to the objects and purposes of the law, and should not be in contradiction to, but in conformity with, the standards prescribed by law.

To be valid, an administrative rule or regulation must conform, not contradict, the provisions of the enabling law. An implementing rule or regulation cannot modify, expand, or subtract from the law it is intended to implement. Any rule that is not consistent with the statute itself is null and void.[4]

While administrative agencies, such as the Bureau of Internal Revenue, may issue regulations to implement statutes, they are without authority to limit the scope of the statute to less than what it provides, or extend or expand the statute beyond its terms, or in any way modify explicit provisions of the law. Indeed, a quasi-judicial body or an administrative agency for that matter cannot amend an act of Congress. Hence, in case of a discrepancy between the basic law and an interpretative or administrative ruling, the basic law prevails.[5]

To recapitulate, RR 7-95, insofar as it restricts the definition of "*goods*" as basis of transitional input tax credit under Section 105 is a nullity.

On January 1, 1997, RR 6-97 was issued by the Commissioner of Internal Revenue. RR 6-97 was basically a reiteration of the same Section 4.105-1 of RR 7-95, except that the RR 6-97 **deleted** the following paragraph:

Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the constitution.

[4] *Francel Realty Corporation v. Sycip*, G.R. No. 154684, September 8, 2005, 469 SCRA 424, 436.

[5] *Sunga v. Commission on Elections*, G.R. No. 125629, March 25, 1998, 288 SCRA 78, 87.

However, in the case of real estate dealers, the basis of the presumptive input tax shall be the improvements, such as buildings, roads, drainage systems, and other similar structures, constructed on or after the effectivity of E.O. 273 (January 1, 1988).

It is clear, therefore, that under RR 6-97, the allowable transitional input tax credit is not limited to improvements on real properties. The particular provision of RR 7-95 has effectively been repealed by RR 6-97 which is now in consonance with Section 100 of the NIRC, insofar as the definition of real properties as goods is concerned. The failure to add a specific repealing clause would not necessarily indicate that there was no intent to repeal RR 7-95. The fact that the aforequoted paragraph was deleted created an irreconcilable inconsistency and repugnancy between the provisions of RR 6-97 and RR 7-95.

We now address the points raised in the dissenting opinion of the Honorable Justice Antonio T. Carpio.

At the outset, it must be stressed that FBDC sought the refund of the total amount of ₱347,741,695.74 which it had itself paid in cash to the BIR. It is argued that the transitional input tax credit applies only when taxes were previously paid on the properties in the beginning inventory and that there should be a law imposing the tax presumed to have been paid. The thesis is anchored on the argument that without any VAT or other input business tax imposed by law on the real properties at the time of the sale, the 8% transitional input tax cannot be presumed to have been paid.

The language of Section 105 is explicit. It precludes reading into the law that the transitional input tax credit is limited to the amount of VAT previously paid. When the aforesaid section speaks of "*eight percent (8%) of the value of such inventory*" followed by the clause "*or the actual value-added tax paid on such goods, materials and supplies,*" the implication is clear that under the first clause, "eight percent (8%) of the value of such inventory," the law does not contemplate the payment of any prior tax on such inventory. This is distinguished from the second clause, "the actual value-added tax paid on the goods, materials and supplies" where actual payment of VAT on the

goods, materials and supplies is assumed. Had the intention of the law been to limit the amount to the actual VAT paid, there would have been no need to explicitly allow a claim based on 8% of the value of such inventory.

The contention that the 8% transitional input tax credit in Section 105 presumes that a previous tax was paid, whether or not it was actually paid, requires a transaction where a tax has been imposed by law, is utterly without basis in law. The rationale behind the provisions of Section 105 was aptly elucidated in the Decision sought to be reconsidered, thus:

> It is apparent that the transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisition of their beginning inventory of goods, materials and supplies. During that period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer. At the very beginning, the VAT-registered taxpayer is obliged to remit a significant portion of the income it derived from its sales as output VAT. The transitional input tax credit mitigates this initial diminution of the taxpayer's income by affording the opportunity to offset the losses incurred through the remittance of the output VAT at a stage when the person is yet unable to credit input VAT payments.

As pointed out in Our Decision of April 2, 2009, to give Section 105 a restrictive construction that transitional input tax credit applies only when taxes were previously paid on the properties in the beginning inventory and there is a law imposing the tax which is presumed to have been paid, is to impose conditions or requisites to the application of the transitional tax input credit which are not found in the law. The courts must not read into the law what is not there. To do so will violate the principle of separation of powers which prohibits this Court from engaging in judicial legislation.[6]

WHEREFORE, premises considered, the Motion for Reconsideration is *DENIED WITH FINALITY* for lack of merit.

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[6] *Alagad (Partido ng Maralitang-Lungsod) v. Commission on Elections*, G.R. No. 136795, October 6, 2000, 342 SCRA 244, 291.

SO ORDERED.

Ynares-Santiago, Corona, Chico-Nazario, Velasco, Jr., Nachura, Peralta, Bersamin, Del Castillo, and *Abad, JJ.,* concur.

Carpio, J., see dissenting opinion.

Carpio Morales, J., maintains her vote for the denial of the petitions.

Puno, C.J., no part.

Quisumbing, J., on official leave.

*Brion, J.,*on sick leave.

DISSENTING OPINION

CARPIO, *J.*:

I vote to grant the motion for reconsideration filed by the Commissioner of Internal Revenue.

The decision dated 2 April 2009 grants to petitioner tax credit or refund of **₱347,741,695.74** when petitioner never in fact paid a single centavo of tax to the Bureau of Internal Revenue. A tax credit or tax refund requires that a previous tax was paid by the taxpayer. There can be no tax credit or refund if no prior tax was paid. In this case, the decision dated 2 April 2009 grants to petitioner **hundreds of millions** in tax credit or refund without the taxpayer ever having paid any previous tax to the government. Who will bear this burden of tax credit or refund? It is all taxpayers in this country except, of course, petitioner. What makes petitioner so privileged?

The Constitution mandates that "the rule of taxation shall be uniform and equitable."[1] There is certainly neither uniformity nor equity if this Court grants petitioner a ₱347,741,695.74 tax credit or refund when all other taxpayers seeking a tax credit or refund must first show prior payment of a tax, or at least the

[1] Section 28, Article VI, Constitution.

existence of a law imposing the tax for which a credit or refund is sought.

The transitional input tax credit was placed in the tax law to pave the smooth transition from the non-VAT to the VAT system. This input VAT works by deducting previously paid taxes from the output VAT liability in subsequent transactions involving the same product. The term "transitional" was placed to distinguish this from an ordinary input tax.

In 1995, when petitioner bought the Global City land from the national government, the sale was under a tax-free transaction and without any VAT component. Being tax-exempt, the national government did not pass on any previous input business tax, whether in the form of sales tax or VAT, to petitioner as part of the purchase price.

The 8% transitional input tax credit in Section 105 presumes that a previous tax was paid, whether or not it was actually paid. Such presumption assumes the existence of a law imposing the tax presumed to have been paid. This can be inferred from the provision that a taxpayer is "allowed input tax on his beginning inventory xxx equivalent to 8% xxx, or the actual value-added tax paid xxx, whichever is higher." **The transitional input tax requires a transaction where a tax has been imposed by law. Otherwise, the presumption that the tax has been paid will have no basis.** Without any VAT or other input business tax imposed by law on real properties at the time of the sale in the present case, the 8% transitional input tax cannot be presumed to have been paid.

Also, even before real estate dealers became subject to VAT under RA 7716, improvements on the land were already subject to VAT. However, since the land itself was not subject to VAT or to any input tax prior to RA 7716, the land then could not be considered part of the beginning inventory under Section 105. Thus, the 8% transitional input tax should apply only to improvements on land and not on the land itself.

To repeat, at the time of the sale by the government of the Global City land in 1995, there was no VAT on the sale of

land. In addition, the government, as seller, was not subject to VAT. Even if the sale transaction happens today with the VAT on real properties already in existence, and petitioner subsequently resells the land, petitioner will still not be entitled to any input tax credit. This is because the sale by the national government of government-owned land is not subject to VAT.[2] Petitioner cannot now claim any input tax credit if it buys the same land today, and resells the same the following day.

Thus, if a real estate dealer like petitioner cannot claim an input tax today on its purchase of government land, when VAT on real properties is already in effect, then all the more petitioner cannot claim any input tax for its 1995 purchase of government land when the E-VAT law was still inexistent and petitioner had not yet been subjected to VAT.

Accordingly, I vote to **GRANT** the Motion for Reconsideration.

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[2] Under Section 105 of the present NIRC, the person liable for the payment of value-added tax is "any person who, in the course of trade or business, sells goods or properties." In Section 22 of the same statute, the term "person" is defined as an individual, a trust, estate, or corporation. The national government does not fall under any of the enumerated entities. It is neither an individual or a corporation which comes under the purview of the law.

Neither can it be said that the national government, in selling the Global City land, is engaged in "trade or business." The phrase "in the course of trade or business" as defined in Section 105, means the regular conduct or pursuit of a commercial or an economic activity. In this case, the objective of RA 9227 is to use the proceeds from the sale of portions of Fort Bonifacio to finance military-related activities and provide housing loan assistance. Accordingly, the national government, as the seller with these policies in mind, does not fall under the definition "engaged in the regular conduct or pursuit of an economic activity."

Thus, not being expressly included in the tax law as one liable for value-added tax, the national government is exempt therefrom.

THIRD DIVISION

[G.R. No. 160409. October 2, 2009]

LANDCENTER CONSTRUCTION AND DEVELOPMENT CORPORATION, *petitioner, vs.* **V.C. PONCE, CO., INC. and VICENTE C. PONCE,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; DISMISSAL UPON MOTION OF PLAINTIFF; WITHDRAWAL OF CASE IN RTC WHICH WAS THEN SUBJECT OF PETITION FOR *CERTIORARI* BEFORE THE CA AND NOW BEFORE THE COURT, NOT PROPER. — We do not agree with Landcenter's claim that the withdrawal of its complaint in **Civil Case No. 97-0532** was in accordance with Section 2 of Rule 17 of the 1997 Revised Rules of Civil Procedure which pertinently provides: **SEC. 2.** *Dismissal upon motion of plaintiff.* – Except as provided in the preceding section, a complaint shall not be dismissed at the plaintiff's instance save upon approval of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion for dismissal, the dismissal shall be limited to the complaint. The dismissal shall be without prejudice to the right of the defendant to prosecute his counterclaim in a separate action unless within fifteen (15) days from notice of the motion he manifests his preference to have his counterclaim resolved in the same action. Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice. A class suit shall not be dismissed or compromised without the approval of the court. It bears stressing that the withdrawal of the complaint in the RTC by Landcenter concerns no less than **Civil Case No. 97-0532,** which was then the very subject of the petition for *certiorari* filed before the CA and now, before this Court. Landcenter assumed that when it withdraw its complaint, respondents were divested of the ground upon which they would base their petition for *certiorari* filed before the CA. To allow this mistaken assumption would result in prejudice to the respondents which Section 2 of Rule 17 seeks to avert.

APPEARANCES OF COUNSEL

Polido and Anchuvas Law Offices, Eliseo M. Cruz, Marcelo C. Amiana, and *Dan Reynald R. Magat* for petitioner.

Danilo L. Patron & Associates, Tolentino-Bonilla Tolentino and Associates Law Offices and *Francisco E. Antonio* for respondents.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition[1] for Review on *Certiorari* under Rule 45 of the Rules of Civil Procedure, seeking the reversal of the Court of Appeals (CA) Decision,[2] dated May 6, 2003, which annulled and set aside the Order[3] of the Regional Trial Court (RTC) of Parañaque City, Branch 260, dated June 9, 2000.

The Facts

This case involves a dispute over the ownership of the Fourth Estate Subdivision, Area I, situated in *Barrio* Kaybiga, Parañaque City, with an area of 107,047 square meters and originally titled in the name of respondent V.C. Ponce Co., Inc. (V.C. Ponce) under Transfer Certificate of Title (TCT) No. 97084[4] (subject property).

On November 2, 1962, a subdivision plan[5] (LRD Psd-23194) was prepared by V.C. Ponce for the purpose of converting the subject property into a subdivision. Pursuant to the subdivision plan, the subject property was subdivided into 239 smaller lots.

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[1] *Rollo,* pp. 11-45.

[2] Particularly docketed as CA G.R. SP No. 59700, penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices B.A. Adefuin-de la Cruz and Hakim S. Abdulwahid, concurring; *id.* at 117-130.

[3] *Rollo,* p. 100.

[4] CA *rollo,* pp. 286-288.

[5] *Id.* at 50.

Accordingly, TCT No. 97084 was partially canceled and, in lieu thereof, TCT Nos. 110001 to 110239 were issued.

Sometime in January 1974, respondent Vicente C. Ponce (Vicente) mortgaged the properties covered by TCT Nos. 175575, 175758, 129847, and 207492 to 207544, including TCT No. 97084, with the Philippine Commercial International Bank (PCI Bank) in the amount of ₱1,327,000.00. PCI Bank was not informed that the subject property covered by the mortgage had been previously subdivided into 239 smaller lots. Respondents failed to pay their mortgage indebtedness, resulting in the foreclosure of the mortgage and the subsequent sale of the property at auction, with PCI Bank as the highest bidder.

Respondents filed a complaint against PCI Bank for the annulment of the extra-judicial foreclosure sale conducted on January 22, 1975, docketed as Civil Case No. 24608. The Court of First Instance (CFI) of Rizal rendered a Decision[6] on September 1, 1978, dismissing the complaint and upholding the right of PCI Bank over the subject property. On appeal to the CA,[7] and subsequently to this Court,[8] the CFI's decision was affirmed with finality on August 13, 1987.[9]

Respondents filed another complaint against PCI Bank with the RTC of Pasig City, Branch 164, docketed as Civil Case No. 33017, for reconveyance of 54 lots, and for refund of the amount representing overpayment and unused letters of credit. While the case was pending resolution, respondents caused the annotation of a notice of *lis pendens* over the 54 lots. Meanwhile, TCT No. 97084 was detached from the Register of Deeds (RD) of Pasig and transferred to Makati. On June 25, 1976, the RD of Makati canceled TCT No. 97084 and issued TCT No. S-30409[10] in the name of PCI Bank.

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[6] *Rollo*, p. 52.

[7] *Id.* at 53-60.

[8] *Id.* at 61.

[9] *Id.* at 64.

[10] CA *rollo*, pp. 67-70.

Meanwhile, on April 27, 1987, PCI Bank sold the subject property to petitioner Landcenter Construction and Development Corporation (Landcenter), including other properties embraced under TCT Nos. S-30410 to S-30463, S-30464, and S-30465, in the amount of ₱1,200,000.00.[11] The sale was registered with the RD of Parañaque. Thereafter, TCT No. S-30409 was canceled and, in its place, TCT No. 123917[12] was issued in the name of Landcenter.

On October 20, 1987, the RTC rendered a decision in favor of respondents and against PCI Bank, granting the former's prayer for return/reconveyance of the 54 lots, and refund of overpayment and unused letters of credit.

By way of amicable settlement in Civil Case No. 33017, respondents, Landcenter and PCI Bank entered into a compromise agreement concerning the 54 lots. Instead of the 54 lots, however, Landcenter was to sign and reconvey to respondents merely 24 lots worth ₱2,700,161.47, representing full and final compromise settlement of the RTC's judgment of reconveyance. In return, respondents obligated themselves to cancel the *lis pendens* annotated on the titles other than the 24 lots reconveyed. The transaction was set forth in a Deed of Assignment dated December 27, 1988 and signed by the parties.

On March 13, 1989, Vicente produced an allegedly fake deed of assignment signed by Manuel Ponce (Manuel), as president of Landcenter, showing that the latter signed, transferred and conveyed to respondents two road lots and the subject property embraced in TCT No. S-30409, containing an area of 107,047 square meters.

Thus, on November 11, 1997, Landcenter filed a Complaint[13] with the RTC of Parañaque City, Branch 260, docketed as **Civil Case No. 97-0532,** against respondents and the RD of Parañaque for the Annulment of the Deed of Assignment,

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[11] *Rollo,* pp. 66-67.

[12] CA *rollo,* pp. 143-144.

[13] *Id.* at 40-49.

Cancellation of Transfer Certificates of Title, and Damages. The complaint assailed the validity of the deed of assignment because Manuel's signature was forged, and there was no reason why Landcenter would assign, transfer and convey in favor of respondents the subject property. The complaint averred that the deed was not valid, as no resolution was passed by the Landcenter's Board of Directors authorizing Manuel to assign, transfer and convey the subject property in favor of respondents. Moreover, Landcenter claimed that it was ridiculous for Landcenter to assign the subject property when respondents previously agreed to receive only 24 lots as a result of the amicable settlement effected on December 27, 1987.

During the pendency of the case, respondents filed a motion to enjoin Landcenter from disposing of the subject property. On June 29, 1999, the RTC directed the RD to release TCT No. 123917, which was issued in lieu of TCT No. S-30409, to Landcenter's representative allegedly forming part of the property bought from PCI Bank.

On September 16, 1999, Landcenter filed an Urgent Motion[14] to require respondents to remove the sales ad boards erected on the subject property on the ground of the pendency of the case, at the same time invoking the Housing Land Use and Regulatory Board order directing respondents to cease and desist from selling the lots of the Fourth Estate Subdivision.

The RTC's Ruling

On September 21, 1999, the RTC issued an Order[15] in favor of Landcenter, which fully reads:

> Plaintiff's motion dated September 16, 1999 appearing to be well taken, the same is hereby GRANTED.
>
> Defendants are ordered to remove their sales ad boards and the structures from the grounds of [the] 4th Estate Subdivision within five (5) days from receipt hereof, otherwise, Plaintiff may remove the same at defendant's expense.

[14] *Rollo*, pp. 88-89.

[15] *Id.* at p. 90.

The Registry of Deeds of Parañaque City is directed to cancel defendants[’] TCT No. 110001 to 110239 of the Registry of Deeds of Rizal.

SO ORDERED.

On October 1, 1999, respondents filed a motion for reconsideration of the order. On November 17, 1999, respondents filed another motion, praying for the dismissal of the complaint on the ground of lack of jurisdiction and asserting that the complaint was not only for annulment of deed of sale but also for the cancellation of title which is a real action. Respondents claimed that the docket fees paid by Landcenter should have been based on the assessed value of the property or its estimated value.

On May 8, 2000, the RTC issued another Order[16] granting the motion for reconsideration but denying the motion to dismiss. The pertinent portion of the Order reads as follows:

WHEREFORE, the court hereby resolves as follows:

x x x x x x x x x

The Motion to Dismiss filed by Defendants and Intervenor Jackley Philippines[,] Inc. is hereby DENIED. The docket fees as assessed by the Clerk of Court has been paid and if ever there is a need to increase the docket and filing fees it has not been supported by the defendants. The case at bar is for the Annulment of Deed of Assignment which is not an action *in rem* but an action *in personam*.

The Motion for Reconsideration of the court’s order dated September 21, 1999 is hereby GRANTED. It appearing that both parties are claiming to have Transfer Certificates of Title over the subject properties and sale by either of the parties could cause multiplicity of suits, both parties are enjoined from selling the subject properties until further order from this court.

Since this court has been assigned as a Family Court and these cases have not gone through pre-trial let the same be raffled and transferred to another court.

SO ORDERED.

[16] CA *rollo*, pp. 207-209.

Insofar as the said order denied their motion to dismiss, respondents filed a motion for reconsideration. Landcenter, on the other hand, filed a motion for reconsideration of the same order insofar as it reconsidered its previous order directing the RD of Parañaque to cancel TCT Nos. 110001 to 110239 in the name of respondents.

Finally, on June 9, 2000, the RTC issued two separate Orders. The first Order[17] granted Landcenter's motion for reconsideration of the RTC Order dated May 8, 2000; upheld the right of Landcenter to the subject property; and, in effect, affirmed its previous order canceling TCT Nos. 110001 to 110239 in the name of respondents. A portion of the Order reads:

> There is no question that previously, the land known as [the] 4th Estate consisting of 107,047 square meters was owned by V.C. Ponce Co., Inc. and was covered by TCT No. 97084 of the Register of Deeds of Rizal. Said property was subdivided into 239 lots. On January 18, 1963, the land was mortgaged to PCI Bank which was not aware that the property was previously subdivided. Because of nonpayment of the obligation, the property was sold by PCI Bank to Plaintiff Landcenter on April 27, 1987. The sale was registered with the Register of Deeds who issued TCT No. 123917.
>
> It appears that there is no question that the land in question is owned by plaintiff.
>
> WHEREFORE, the Motion for Reconsideration filed by plaintiff is hereby GRANTED.
>
> SO ORDERED.

Correlatively, the RTC's second Order[18] denied respondents' motion for reconsideration of its Order dated May 8, 2000.

Aggrieved, respondents filed a Petition[19] for *Certiorari* under Rule 65 of the 1997 Rules of Civil Procedure before the CA against the three (3) Orders separately issued by the RTC on September 21, 1999, May 8, 2000 and June 9, 2000.

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[17] *Supra* note 3.

[18] *Rollo*, p. 101.

[19] CA *rollo*, pp. 2-39.

Subsequently, on October 30, 2001, Landcenter filed a Motion to Dismiss[20] the aforementioned petition for *certiorari* in view of the withdrawal of its complaint before the RTC of Parañaque City in **Civil Case No. 97-0532**. The motion to withdraw was approved by the RTC in its Order[21] dated March 26, 2001. The respondents' counterclaims were also dismissed, thus, terminating the case before the RTC. With such dismissal, Landcenter opined that respondents' petition for *certiorari* should be dismissed for being moot and academic since **Civil Case No. 97-0532** which was the basis of said petition for *certiorari* had been terminated.

On November 29, 2001, respondents filed their Manifestation[22] before the CA, contending that while the RTC ordered the termination of **Civil Case No. 97-0532**, the RTC failed to resolve certain issues brought about by the Order being assailed by respondents in their petition for *certiorari*. Respondents posited that in the absence of a declaration by the RTC that the orders assailed in the petition for *certiorari* were vacated, then the said petition could not be withdrawn without prejudicing respondents' rights.

The CA's Ruling

On May 6, 2003, the CA held that Landcenter's withdrawal of its complaint before the RTC resulted in the restoration of the rights of the contending parties prior to the filing of the said complaint. The CA also held that respondents' rights were clearly impaired by the issuance of the order of withdrawal. Thus, the CA disposed of the case in this wise:

WHEREFORE, in view of all the foregoing, the instant petition is *PARTIALLY GRANTED*. The order of the trial court dated June 9, 2000 insofar as it directed the Register of Deeds of Parañaque City to cancel Transfer of Certificate of Title Nos. 110001 to 110239 is hereby *ANNULLED* and *SET ASIDE*. The Register of Deeds of Parañaque City is ordered to cancel TCT No. 30409 in the name of

[20] *Rollo*, pp. 109-113.

[21] CA *rollo*, p. 593.

[22] *Id.* at 648-656.

PCI Bank. The other issues raised by the petitioners are dismissed for being moot and academic.

SO ORDERED.[23]

Landcenter filed its Motion for Reconsideration[24] which was, however, denied by the CA in its Resolution[25] dated October 14, 2003.

Hence, this Petition, raising the following issues:

1. Whether or not the petition for *certiorari* under Rule 65 of the Rules of Court filed by the respondents with the Court of Appeals on July 10, 2000 under CA-G.R. SP No. 59700 can prosper in their favor[;]
2. Whether or not the trial court's judge (Judge Helen Bautista Ricafort) acted without or in excess of her jurisdiction, or with the grave abuse of discretion amounting to lack or excess of jurisdiction when she issued the [three] [3] challenged orders dated September 21, 1999; May 8, 2000; and June 9, 2000 which the respondents made the subject of their petition for *certiorari* under CA-G.R. SP No. 59700[;]
3. Whether or not the withdrawal of the complaint by the petitioner from the trial court in Civil Case No. 97-0532 damaged or prejudiced the rights of the respondents[; and]
4. Whether or not the Court of Appeals in "PARTIALLY GRANTING" the respondents[']' petition for *certiorari* under CA-G.R. SP No. 59700 committed a reversible error[.][26]

Our Ruling

The instant Petition is bereft of merit.

We do not agree with Landcenter's claim that the withdrawal of its complaint in **Civil Case No. 97-0532** was in accordance

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[23] *Rollo*, pp. 129-130.

[24] *Id.* at 132-139.

[25] *Id.* at 153.

[26] *Id.* at 383.

with Section 2 of Rule 17 of the 1997 Revised Rules of Civil Procedure which pertinently provides:

> **SEC. 2.** *Dismissal upon motion of plaintiff.* — Except as provided in the preceding section, a complaint shall not be dismissed at the plaintiff's instance save upon approval of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion for dismissal, the dismissal shall be limited to the complaint. The dismissal shall be without prejudice to the right of the defendant to prosecute his counterclaim in a separate action unless within fifteen (15) days from notice of the motion he manifests his preference to have his counterclaim resolved in the same action. Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice. A class suit shall not be dismissed or compromised without the approval of the court.

It bears stressing that the withdrawal of the complaint in the RTC by Landcenter concerns no less than **Civil Case No. 97-0532**, which was then the very subject of the petition for *certiorari* filed before the CA and now, before this Court. Landcenter assumed that when it withdrew its complaint, respondents were divested of the ground upon which they would base their petition for *certiorari* filed before the CA. To allow this mistaken assumption would result in prejudice to the respondents which Section 2 of Rule 17 seeks to avert.

Verily, *Servicewide Specialists, Inc. v. CA*,[27] invoked by Landcenter, albeit erroneously quoted, is instructive:

> A dismissal or discontinuance of an action operates to annul orders, rulings or judgments previously made in the case. It also annuls all proceedings had in connection therewith and renders all pleadings ineffective. A dismissal or nonsuit leaves the situation as though no suit had ever been brought. Further proceedings in the action are arrested and what has been done therein is also annulled, so that the action is as if it had never been. It carries down with it previous proceedings and orders in the action, and all

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[27] 327 Phil. 431 (1996).

[28] *Id.* at 444. (Citations omitted.)

pleadings of both parties, and all issues with respect to the plaintiff's claim.[28]

By analogy, in *Rodriguez, Jr. v. Aguilar, Sr.*,[29] we held that upon the withdrawal by respondent therein of his Motion for Reconsideration, it was as if no motion had been filed. In the same manner that the withdrawal of an appeal has the effect of rendering the appealed decision final and executory, the withdrawal of the Motion for Reconsideration in that case had the effect of rendering the dismissal order therein final and executory. Further, in *Olympia International, Inc. v. Court of Appeals*,[30] we held, to wit:

> It is equally important to note that the right to file a new action in this case has long prescribed, for while the commencement of a civil action stops the running of the statute of prescription or limitations, **its dismissal or voluntary abandonment by the plaintiff leaves the parties in exactly the same position as though no action had been commenced at all**. The commencement of an action, by reason of its dismissal or abandonment, takes no time out of the period of prescription.[31]

This is precisely what the assailed Decision of the CA is all about. We are therefore in full accord with the CA, which aptly and judiciously held:

> A reading of the court *a quo's* March 26, 2001 order reveals that while the case has been terminated, nothing was said of the orders it previously issued, such as the cancellation of TCT Nos. 110001 to 110239. In fact, a new title has already been issued in respondent Landcenter's name. Petitioners' rights have clearly been prejudiced by the issuance of the court's assailed orders. And unless the instant petition is resolved, the trial court's orders shall continue to have force and effect.
>
> Given this factual milieu, it behooves this Court to discuss the effects of a withdrawn complaint on orders issued by the court even before the plaintiff could file a motion to withdraw its complaint.

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[29] G.R. No. 159482, August 30, 2005, 468 SCRA 373, 384385.

[30] G.R. No. L-43236, December 20, 1989, 180 SCRA 353.

[31] *Id.* at 363. (Emphasis supplied.)

Without going into the *raison d' etre* why the plaintiff, respondent company herein, withdrew its complaint with the court [*a*] *quo*, its effect, nevertheless, is the restoration of the rights of the contending parties prior to the filing of the complaint. Quite simply, the withdrawal of the complaint results in placing them to their original position, as if no complaint was filed at all. This should be so, otherwise, a plaintiff can peremptorily withdraw his complaint after securing an order favorable to him. Particularly so in the case at bar where pending determination of the merits of the case, the trial court issued an order directing the cancellation of titles in the petitioners' names. The defendants' rights are clearly impaired by the issuance of the said order. In fact, while the petitioners were able to secure a favorable decision in Civil Case No. 32823 from the Pasig City RTC, Branch 164 on February 6, 2001, declaring that TCT No. 30409 in the name of PCI Bank is void and should be cancelled, the decision can not be enforced in view of the Parañaque RTC order.

Thus, for the purpose of restoring the rights of the parties prior to the filing of Civil Case No. 97-0532, which was withdrawn on motion of the plaintiff and approved by the court, the orders of the trial court dated September 21, 1999, May 8, 2000 and June 9, 2000 are considered vacated.[32]

All told, we find no reversible error to disturb, much less, to reverse the assailed CA Decision.

WHEREFORE, the instant Petition is *DENIED* and the assailed Court of Appeals Decision is *AFFIRMED.* No costs.

SO ORDERED.

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

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[32] *Rollo,* pp. 128-129.

SECOND DIVISION

[G.R. No. 161952. October 2, 2009]

ARNEL SAGANA, *petitioner, vs.* **RICHARD A. FRANCISCO,** *respondent.* *

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUBSTITUTED SERVICE; REQUISITES. – Section 8 of Rule 14 of the old Revised Rules of Court, the rules of procedure then in force at the time summons was served, provided: Section 8. *Substituted service.* – If the defendant cannot be served within a reasonable time as provided in the preceding section [personal service on defendant], service may be affected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof. Jurisprudence has long established that for substituted service of summons to be valid, the following must be demonstrated: (a) that personal service of summons within a reasonable time was impossible; (b) that efforts were exerted to locate the party; and (c) that the summons was served upon a person of sufficient age and discretion residing at the party's residence or upon a competent person in charge of the party's office or regular place of business. It is likewise required that the pertinent facts proving these circumstances be stated in the proof of service or in the officer's return.

2. ID.; ID.; ID.; LIBERAL APPLICATION OF THE RULE, WARRANTED IN CASE AT BAR. — We do not intend this ruling to overturn jurisprudence to the effect that statutory requirements of substituted service must be followed strictly, faithfully, and fully, and that any substituted service other than that authorized by the Rules is considered ineffective. However, an overly strict application of the Rules is not warranted in

* The Court of Appeals and the Presiding Judge of the Regional Trial Court, Branch 99, Quezon City as co-respondents are deleted from the title pursuant to Section 4, Rule 45 of the Rules of Court.

this case, as it would clearly frustrate the spirit of the law as well as do injustice to the parties, who have been waiting for almost 15 years for a resolution of this case. We are not heedless of the widespread and flagrant practice whereby defendants actively attempt to frustrate the proper service of summons by refusing to give their names, rebuffing requests to sign for or receive documents, or eluding officers of the court. Of course it is to be expected that defendants try to avoid service of summons, prompting this Court to declare that, "the sheriff must be resourceful, persevering, canny, and diligent in serving the process on the defendant." However, sheriffs are not expected to be sleuths, and cannot be faulted where the defendants themselves engage in deception to thwart the orderly administration of justice. The purpose of summons is two-fold: to acquire jurisdiction over the person of the defendant and to notify the defendant that an action has been commenced so that he may be given an opportunity to be heard on the claim against him. Under the circumstances of this case, we find that respondent was duly apprised of the action against him and had every opportunity to answer the charges made by the petitioner. However, since respondent refused to disclose his true address, it was impossible to personally serve summons upon him. Considering that respondent could not have received summons because of his own pretenses, and has failed to provide an explanation of his purported "new" residence, he must now bear the consequences.

APPEARANCES OF COUNSEL

Samson Montesa Samson and Associates for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

It is, at times, difficult to reconcile the letter of the law with its spirit. Thus, it is not altogether surprising that two competing values are usually discernable in every controversy – the principle of *dura lex sed lex* versus the notion that technicalities should yield to broader interests of justice. In our rules of procedure,

for instance, judges often struggle to find a balance between due process considerations and a liberal construction to secure a just disposition of every action. In such cases, where a measure of discretion is permitted, courts must tread carefully, with due consideration of the factual milieu and legal principles involved. In so doing, we take steps — sometimes tentative, sometimes bold — to apply prior experience and precedent towards an eventual just resolution. It is these principles that animate our decision in the instant case.

Assailed in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court is the 13 August 2003 Decision[2] of the Court of Appeals in CA-G.R. CV No. 66412 which reversed and set aside the 20 September 1999 Decision[3] of the Regional Trial Court of Quezon City, Branch 99 in Civil Case No. Q-94-22445 and held that there was no valid service of summons to respondent Richard A. Francisco.

On 13 December 1994, petitioner Arnel Sagana filed a Complaint[4] for Damages before the Regional Trial Court of Quezon City docketed as Civil Case No. Q-94-22445 and raffled to Branch 99. Petitioner alleged that on 20 November 1992, respondent Richard A. Francisco, with intent to kill and without justifiable reason, shot him with a gun hitting him on the right thigh. As a result, petitioner incurred medical expenses and suffered wounded feelings, and was compelled to engage the services of a lawyer, due to respondent's refusal to pay said expenses. Petitioner thus demanded payment of ₱300,000.00 as actual damages, ₱150,000.00 as moral damages, ₱50,000.00, exemplary damages, and ₱50,000.00 as attorney's fees.

On 31 January 1995, process server Manuel S. Panlasigui attempted to serve summons at respondent's address at No. 36

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[1] *Rollo*, pp. 10-22.

[2] *Id.* at 23-35; penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Eubolo G. Verzola and Regalado E. Maambong.

[3] Records, pp. 113-116; penned by Judge Ma. Theresa Dela Torre-Yadao.

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

Sampaguita St., Baesa, Quezon City but was unsuccessful. In his Server's Return,[5] Panlasigui stated that he tried to personally serve the summons to respondent at his given address at No. 36 Sampaguita St., Baesa, Quezon City. However, the occupant of that house, who refused to give his identity, told him that respondent is unknown at said address. Panlasigui also declared that diligent efforts were exerted to serve the summons but these proved to be futile.[6] Subsequently, the trial court attempted to serve summons to respondent's office through registered mail on 9 February 1995. However, despite three notices, respondent failed to pick up the summons.

On 30 June 1995, the trial court dismissed the case on account of petitioner's lack of interest to prosecute.[7] It noted that since the filing of the Server's Return on 8 February 1995, petitioner did not take any action thus indicating lack of interest to prosecute the case.

Petitioner filed a Motion for Reconsideration[8] stating that after the Server's Return was filed, he exerted efforts to locate the respondent, and it was confirmed that respondent indeed lived at No. 36 Sampaguita St., Baesa, Quezon City. On 4 August 1995, the trial court granted petitioner's motion for reconsideration, conditioned upon the service of summons on the respondent within 10 days from receipt of the Order.[9]

Thus, on 25 August 1995, Process Server Jarvis Iconar again tried to serve the summons at the address of the respondent but no avail. According to Iconar's handwritten notation on the summons,[10] he was informed by Michael Francisco, respondent's brother, that respondent no longer lived at said address. However, he left a copy of the summons to Michael Francisco.[11]

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[5] *Id.* at 7.

[6] *Ibid.*

[7] *Id.* at 8.

[8] *Id.* at 9-10.

[9] *Id.* at 13; penned by Judge Felix M. De Guzman.

[10] *Id.* at 14.

[11] *Ibid.*

On 10 November 1995, petitioner filed a Motion to Declare Defendant in Default,[12] alleging that despite service of summons, respondent still failed to file an Answer. On 16 February 1996, the trial court issued an Order[13] finding that the summons was validly served to respondent through his brother, Michael. It thus declared respondent in default and allowed petitioner to present his evidence *ex parte*. Nonetheless, copies of all pleadings and court documents were furnished to respondent at No. 36 Sampaguita St.

In the meantime, on 1 March 1996, Michael Francisco, through his counsel, Atty. Bernardo Q. Cuaresma, filed a Manifestation and Motion[14] denying that he received the summons or that he was authorized to receive summons on behalf of his brother, respondent Richard Francisco. He alleged that the substituted service did not comply with Section 8, Rule 14 of the Rules of Court, since summons was not served at defendant's residence or left with any person who was authorized to receive it on behalf of the defendant. Michael Francisco also prayed that his name be stricken off the records as having received a copy of the summons.

In the Affidavit of Merit[15] submitted together with the Manifestation and Motion, Michael Francisco asserted that he was 19 years of age; that his brother, herein respondent Richard Francisco, had left their residence in March 1993; and that respondent would just write his family without informing them of his address, or would just call by phone.

Thereafter, petitioner and movant Michael Francisco submitted their respective Opposition, Reply, and Rejoinder. In his Rejoinder, petitioner attached a copy of an Affidavit[16] prepared by respondent Richard A. Francisco dated 23 December 1992, where he declared

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

[13] *Id.* at 22.

[14] *Id.* at 23-24.

[15] *Id.* at 26.

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

himself a resident of No. 36 Sampaguita St. Interestingly, the lawyer who notarized the affidavit for the respondent, Atty. Bernardo Q. Cuaresma, was the same lawyer who represented respondent's brother before the trial court.

On 4 October 1996, the trial court issued an Order[17] denying Michael Francisco's Manifestation and Motion for lack of merit, holding thus:

> It should be considered that earlier, plaintiff had already sent numerous pleadings to defendant at his last known address. As also pointed out by [petitioner] in his Opposition, movant has not adduced evidence, except his affidavit of merit, to impugn the service of summons thru him. Movant herein also admits that defendant communicates with him through telephone. Movant, therefore, being a person of sufficient age and discretion, would be able, more likely than not, to inform defendant of the fact that summons was sent to him by the court.[18]

Having failed to file an answer or any responsive pleading, respondent was declared in default and petitioner was allowed to present evidence *ex parte*. On 20 September 1999, the trial court rendered its Decision,[19] the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff and hereby orders defendant to pay plaintiff the amount of THIRTY FIVE THOUSAND PESOS (PhP35,000.00) as and for actual damages, the amount of FIFTEEN THOUSAND PESOS (PhP15,000.00) as and for moral damages, the amount of TEN THOUSAND PESOS (PhP10,000.00) for exemplary damages and the amount of TWENTY THOUSAND PESOS (PhP20,000.00) as attorney's fees.
>
> No further costs.
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> SO ORDERED.[20]

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[17] *Id.* at 45-46; penned by Judge Felix M. De Guzman.

[18] *Id.* at 45.

[19] *Id.* at 113-116; penned by Judge Ma. Theresa Dela Torre-Yadao.

[20] *Id.* at 116.

On 23 November 1999, respondent Richard A. Francisco filed a Notice of Appeal, claiming that he received a copy of the trial court's Decision on 9 November 1999; that the same was contrary to the law, facts, and evidence, and praying that his appeal be given due course.[21]

On 5 June 2000, the Court of Appeals directed the parties to file their respective briefs, a copy of which was sent to respondent by registered mail at No. 36 Sampaguita St., Baesa, Quezon City.[22] In his Appellant's brief, respondent argued that:

I

THE COURT *A QUO* ERRED IN ASSUMING JURISDICTION OVER THE PERSON OF THE DEFENDANT-APPELLANT DESPITE THE IRREGULARITY OF THE SUBSTITUTED SERVICE OF SUMMONS BY THE COURT PROCESS SERVER.

II

THE COURT *A QUO* ERRED IN AWARDING ACTUAL DAMAGES IN THE AMOUNT OF THIRTY FIVE-THOUSAND (SIC) PESOS (₱35,000.00) TO THE PLAINTIFF-APPELLEE ALTHOUGH ONLY SEVENTEEN THOUSAND PESOS (₱17,000.00) WAS DULY SUPPORTED BY RECEIPTS.

III

THE COURT *A QUO* LIKEWISE ERRED IN AWARDING UNREASONABLE MORAL DAMAGES IN THE AMOUNT OF FIFTEEN THOUSAND PESOS (₱15,000.00); EXEMPLARY DAMAGES IN THE AMOUNT OF TEN THOUSAND PESOS (₱10,000.00); AND ATTORNEY'S FEES IN THE AMOUNT OF TWENTY THOUSAND PESOS (₱20,000.00) DESPITE THE FACT THAT THERE IS NO FACTUAL AND SUBSTANTIVE BASIS FOR ALL THESE.[23]

On 15 August 2002, the Court of Appeals issued a Resolution[24] ordering the parties to personally appear for the conduct of

[21] *Id.* at 119.

[22] CA *rollo*, p. 10.

[23] *Id.* at 15-32.

[24] *Id.* at 75.

preliminary conference to consider amicably settling the appeal, pursuant to Sec. 1(a), Rule 7 of the Revised Internal Rules of the Court of Appeals and the Court's Resolution A.M. No. 02-2-17-SC dated 16 April 2002 regarding the Pilot Testing of Mediation in the Court of Appeals. Respondent was furnished[25] a copy of this Resolution at his address at No. 36 Sampaguita Street, Baesa, Quezon City. Per Delivery Receipt of the Court of Appeals, the same was personally received by respondent on 23 August 2002.[26]

On 3 September 2002, respondent attended the preliminary conference; however the parties failed to reach an amicable settlement.[27] Thus, on 13 August 2003, the Court of Appeals rendered the herein assailed Decision granting the appeal and setting aside the Decision of the trial court. The appellate court held that the service of summons was irregular and such irregularity nullified the proceedings before the trial court. Since it did not acquire jurisdiction over the person of the respondent, the trial court's decision was void.

In brief, the Court of Appeals found that there was no valid service of summons for the following reasons:

1. Except for the notation made by the process server on the summons, no proof of service by way of a Process Server's Return was prepared;

2. The process server failed to state the specific facts and circumstances that would justify valid substituted service of summons, to wit: (a) the impossibility of service of summons within a reasonable time, (b) the efforts exerted to locate the respondent, and (c) it was served on a person of sufficient age and discretion residing therein.

3. Petitioner failed to prove that, at t he time summons was served, respondent actually lived in No. 36 Sampaguita St.

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[25] *Id.* at 71.

[26] *Id.*, dorsal page.

[27] *Id.* at 45.

Petitioner filed a Motion for Reconsideration[28] where he alleged that respondent did, in fact, reside at No. 36 Sampaguita St. To prove this assertion, petitioner submitted the original copy of the envelope containing respondent's Notice of Appeal, which indicated respondent's return address to be No. 36 Sampaguita St.[29] Nonetheless, on 29 January 2004, the Court of Appeals denied the Motion for Reconsideration.

Hence, petitioner filed this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, raising the sole issue of whether there was valid service of summons upon the respondent.

The petition is meritorious. Under the circumstances obtaining in this case, we find there was proper substituted service of summons upon the respondent.

Section 8 of Rule 14 of the old Revised Rules of Court, the rules of procedure then in force at the time summons was served, provided:

> Section 8. *Substituted service*. – If the defendant cannot be served within a reasonable time as provided in the preceding section [personal service on defendant], service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

Jurisprudence has long established that for substituted service of summons to be valid, the following must be demonstrated: (a) that personal service of summons within a reasonable time was impossible; (b) that efforts were exerted to locate the party; and (c) that the summons was served upon a person of sufficient age and discretion residing at the party's residence or upon a competent person in charge of the party's office or regular place of business.[30] It is likewise required that the pertinent facts

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[28] *Id.* at 60-69.

[29] *Id.* at 68; Annex "A" of the Motion for Reconsideration.

[30] *Umandap v. Sabio, Jr.*, G.R. No. 140244, August 29, 2000, 339 SCRA 243, 249.

proving these circumstances be stated in the proof of service or in the officer's return.[31]

In this case, personal service of summons was twice attempted by the trial court, although unsuccessfully. In the first attempt, the resident of the house refused to receive the summons; worse, he would not even give his name. In the second attempt, respondent's own brother refused to sign for receipt of the summons, and then later claimed that he never received a copy, despite his participation in the proceedings. The trial court also thrice attempted to contact the respondent through his place of work, but to no avail. These diligent efforts to locate the respondent were noted in the first sheriff's return, the process server's notation, as well as the records of the case.

Clearly, personal service of summons was made impossible by the acts of the respondent in refusing to reveal his whereabouts, and by the act of his brother in claiming that respondent no longer lived at No. 36 Sampaguita St., yet failing to disclose his brother's location. We also note that it was the trial court which directed that the second service of summons be made within seven days; thus, the reasonable time was prescribed by the trial court itself.

Undeniably, no Sheriff's Return was prepared by process server Jarvis Iconar; the only record of the second service of summons was Mr. Iconar's handwritten notation in the summons itself. However, the information required by law and prevailing jurisprudence, that is, that personal service was impossible because of the claim that respondent no longer lived at the stated address, that efforts were exerted to locate the respondent through the multiple attempts to serve summons, and that summons was served upon a person of sufficient age and discretion, were already in the records of the trial court.

Moreover, we find the claim that respondent moved out of their residence in March 1993 without informing his brother or parents his whereabouts, despite regular calls and letters, simply

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[31] *Jose v. Boyon*, G.R. No. 147369, October 23, 2003, 414 SCRA 216, 222.

incredulous. What makes this version of events even more implausible is respondent's admission that he received a copy of the trial court's Decision of 20 September 1999 that was sent to No. 36 Sampaguita Street. Respondent even filed a Notice of Appeal coincidentally indicating that his address was No. 36 Sampaguita St., Baesa, Quezon City. He also received a copy of the appellate court's order for preliminary conference that was sent to said address. These were never denied by respondent, despite being given every opportunity to do so.

Respondent also wishes us to believe that it was pure chance that he and his brother were assisted by the same lawyer, Atty. Bernardo Q. Cuaresma, and yet it never occurred to respondent's own brother or lawyer to inform him about the receipt of summons. All these militate against respondent's self-serving declaration that he did not reside at No. 36 Sampaguita St. Indeed, there was no proof presented as to when respondent left and then returned to his original home, if he actually did leave his home.

In view of the foregoing, we find that substituted service of summons was validly made upon respondent through his brother.

We do not intend this ruling to overturn jurisprudence to the effect that statutory requirements of substituted service must be followed strictly, faithfully, and fully, and that any substituted service other than that authorized by the Rules is considered ineffective.[32] However, an overly strict application of the Rules is not warranted in this case, as it would clearly frustrate the spirit of the law as well as do injustice to the parties, who have been waiting for almost 15 years for a resolution of this case. We are not heedless of the widespread and flagrant practice whereby defendants actively attempt to frustrate the proper service of summons by refusing to give their names, rebuffing requests to sign for or receive documents, or eluding officers of the court. Of course it is to be expected that defendants try to avoid service of summons, prompting this Court to declare that, "the sheriff must be resourceful, persevering, canny, and

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[32] *Pioneer International, Ltd. v. Guadiz, Jr.*, G.R. No. 156848, October 11, 2007, 535 SCRA 584, 601.

diligent in serving the process on the defendant."[33] However, sheriffs are not expected to be sleuths, and cannot be faulted where the defendants themselves engage in deception to thwart the orderly administration of justice.

The purpose of summons is two-fold: to acquire jurisdiction over the person of the defendant and to notify the defendant that an action has been commenced so that he may be given an opportunity to be heard on the claim against him. Under the circumstances of this case, we find that respondent was duly apprised of the action against him and had every opportunity to answer the charges made by the petitioner. However, since respondent refused to disclose his true address, it was impossible to personally serve summons upon him. Considering that respondent could not have received summons because of his own pretenses, and has failed to provide an explanation of his purported "new" residence, he must now bear the consequences.[34]

WHEREFORE, the Petition for Review on *Certiorari* is *GRANTED*. The 13 August 2003 Decision of the Court of Appeals in CA-G.R. CV No. 66412 and its 29 January 2004 Resolution are *REVERSED* and *SET ASIDE*. The Decision of the Regional Trial Court of Quezon City, Branch 99, dated 20 September 1999 in Civil Case No. Q-94-22445 holding that there was valid service of summons, and ordering respondent to pay petitioner the amounts of ₱35,000.00 as actual damages, ₱15,000.00 as moral damages, ₱10,000.00 as exemplary damages, and ₱20,000.00 as attorney's fees, is *REINSTATED* and *AFFIRMED*.

SO ORDERED.

Carpio Morales (Acting Chairperson), Ynares-Santiago,[**] *Brion,* and *Abad, JJ.,* concur.

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[33] *Manotoc v. Court of Appeals*, G.R. No. 130974, August 16, 2006, 499 SCRA 21, 35.

[34] *Robinson v. Miralles*, G.R. No. 163584, December 12, 2006, 510 SCRA 678, 684.

[**] Adiitional member per Special Order No. 691 dated September 4, 2990, in lieu of Justice leonardo A. Quisumbing who is on official leave.

THIRD DIVISION

[G.R. No. 163033. October 2, 2009]

SAN MIGUEL CORPORATION, *petitioner, vs.* **EDUARDO L. TEODOSIO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; REGULAR EMPLOYEES; CLASSIFICATION. — This Court finds the respondent to be a regular employee. Article 280 of the Labor Code, as amended, provides: **ART. 280. REGULAR AND CASUAL EMPLOYMENT.** — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season. An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided*, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists. Thus, there are two kinds of regular employees, namely: (1) those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; and (2) those who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed. Simply stated, regular employees are classified into (1) regular employees — by nature of work and (2) regular employees — by years of service. The former refers to those employees who perform a particular activity which is necessary or desirable in the usual business or trade of the employer, regardless of their length of service;

while the latter refers to those employees who have been performing the job, regardless of the nature thereof, for at least a year. If the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability, of that activity to the business.

2. ID.; ID.; ID.; CASUAL EMPLOYEE CONSIDERED REGULAR EMPLOYEE WHERE AT LEAST ONE YEAR OF SERVICE HAD BEEN RENDERED; ELUCIDATED; CASE AT BAR. — Based on the circumstances surrounding respondent's employment by SMC, this Court is convinced that he has attained the status of a regular employee long before he executed the employment contract with a fixed period. Although respondent was initially hired by SMC as a casual employee, respondent has attained the status of a regular employee. Respondent was initially hired by SMC on September 5, 1991 until March 1992. He was rehired for the same position in April 1992 which lasted for five to six months. After three weeks, he was again rehired as a forklift operator and he continued to work as such until August 1993. Thus, at the time he signed the Employment with a Fixed Period contract, respondent had already been in the employ of SMC for at least twenty-three (23) months. The Labor Code provides that a casual employee can be considered as a regular employee if said casual employee has rendered at least one year of service regardless of the fact that such service may be continuous or broken. Section 3, Rule V, Book II of the Implementing Rules and Regulations of the Labor Code clearly defines the term *"at least one year of service"* to mean service within 12 months, *whether continuous or broken*, reckoned from the date the employee started working, including authorized absences and paid regular holidays, unless the working days in the establishment, as a matter of practice or policy, or as provided in the employment contract, is less than 12 months, in which case said period shall be considered one year. If the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability, of that activity to the business of the employer.

3. ID.; ID.; FIXED-TERM EMPLOYMENT CONTRACTS; VALIDITY THEREOF NOT APPRECIATED IN CASE AT BAR. — While this Court recognizes the validity of fixed-term employment contracts, it has consistently held that this is the exception rather than the general rule. Verily, a fixed-term contract is valid only under certain circumstances. In the oft-cited case of *Brent School, Inc. v. Zamora*, this Court made it clear that a contract of employment stipulating a fixed term, even if clear as regards the existence of a period, is invalid if it can be shown that the same was executed with the intention of circumventing an employee's right to security of tenure, and should thus be ignored. Moreover, in that same case, this Court issued a stern admonition that where from the circumstances, it is apparent that the period was imposed to preclude the acquisition of tenurial security by the employee, then it should be struck down as being contrary to law, morals, good customs, public order and public policy. Since respondent was already a regular employee months before the execution of the Employment with a Fixed Period contract, its execution was merely a ploy on SMC's part to deprive respondent of his tenurial security. Hence, no valid fixed-term contract was executed. The employment status of a person is defined and prescribed by law and not by what the parties say it should be. Equally important to consider is that a contract of employment is impressed with public interest such that labor contracts must yield to the common good. Provisions of applicable statutes are deemed written into the contract, and the parties are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply contracting with each other.

4. ID.; ID.; REGULAR EMPLOYEE; COULD ONLY BE DISMISSED ON JUST OR AUTHORIZED CAUSES; NOT APPRECIATED IN CASE AT BAR. — Having gained the status of a regular employee, respondent is entitled to security of tenure and could only be dismissed on just or authorized causes and after he has been accorded due process. SMC insists that the termination of respondent's employment was in accordance with the Employment with a Fixed Period contract; and that respondent was given opportunities to become a regular employee when he was transferred to the bottling section of the plant. However, considering that respondent was already a regular employee of SMC at that time, the reason advanced

by SMC for his termination would not constitute a just or authorized cause.

5. ID.; ID.; ILLEGAL DISMISSAL; NOT NECESSARILY RELIEVED BY WAIVERS OR QUITCLAIMS. — SMC cannot take refuge in the Receipt and Release document signed by the respondent. Generally, deeds of release, waivers, or quitclaims cannot bar employees from demanding benefits to which they are legally entitled or from contesting the legality of their dismissal, since quitclaims are looked upon with disfavor and are frowned upon as contrary to public policy. Where, however, the person making the waiver has done so voluntarily, with a full understanding thereof, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking. The burden of proving that the quitclaim or waiver was voluntarily entered into rests on the employer.

6. ID.; ID.; ID.; ILLEGALLY DISMISSED EMPLOYEE ENTITLED TO REINSTATEMENT AND BACK WAGES. — As aptly concluded by the CA, herein respondent, having been unjustly dismissed from work, is entitled to reinstatement without loss of seniority rights and other privileges and to full back wages, inclusive of allowances, and to other benefits or their monetary equivalents computed from the time compensation was withheld up to the time of actual reinstatement.

7. ID.; ID.; ID.; ID.; RULE WHERE REINSTATEMENT NO LONGER POSSIBLE. — Although the instant case calls for the reinstatement of the respondent to his former position as forklift operator or any equivalent position, the fact that his former position was already given to another regular employee; the length of time that this case has been pending; and the likely possibility that the protracted litigation may have seriously marred the relationship of the parties beyond reconciliation, may well have rendered reinstatement impossible. Accordingly, petitioner shall be awarded separation pay in lieu of reinstatement, if the latter is no longer possible.

8. ID.; ID.; ID.; MORAL AND EXEMPLARY DAMAGES, NOT PROPER IN CASE AT BAR. — Moral damages are recoverable where the dismissal of the employee was attended by bad faith or fraud or constituted an act oppressive to labor, or was done

in a manner contrary to morals, good customs or public policy. On the other hand, exemplary damages are proper when the dismissal was effected in a wanton, oppressive or malevolent manner, and public policy requires that these acts must be suppressed and discouraged. In the present case, respondent failed to sufficiently establish that his dismissal was done in bad faith; was contrary to morals, good customs or public policy; and was arbitrary and oppressive to labor, thus entitling him to the award of moral and exemplary damages.

9. ID.; ID.; ID.; ATTORNEY'S FEES; PROPER IN CASE AT BAR. — As to the award of attorney's fees, by reason of his illegal dismissal, respondent was forced to litigate and incur expenses to protect his rights and interest. Moreover, in labor cases, although an express finding of fact and law is still necessary to prove the merit of the award of attorney's fees, there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. There need only be a showing that the lawful wages were not paid accordingly. Thus, it is but just and proper that the same should be awarded to respondent.

10. REMEDIAL LAW; APPEALS; ON DISCREPANCY BETWEEN THE *RATIO DECIDENDI* AND THE *FALLO* OF A DECISION. — This Court notes that there is an apparent discrepancy between the *ratio decidendi* and the *fallo* of the CA's decision. In its *ratio* the CA concluded that respondent became a regular employee of SMC in September 1992. However, in the dispositive portion thereof the CA may have overlooked the date as it stated therein that respondent "attained the status of a regular employee by operation of law on September, 1996." This part of the *fallo* should be rectified to reflect the true intent and meaning of the decision. Findings of the court are to be considered in the interpretation of the dispositive portion of the judgment. Verily, to grasp and delve into the true intent and meaning of a decision, no specific portion thereof should be resorted to – the decision must be considered in its entirety. The Court may resort to the pleadings of the parties, its findings of fact and conclusions of law as expressed in the body of the decision to clarify any ambiguities caused by any inadvertent omission or mistake in the dispositive portion thereof. This assures swift delivery of justice and avoids any protracted litigation anchored only on trivial matters as a result of any inadvertent omissions or mistakes in the *fallo*.

Thus, to conform to the *ratio*, the date in the *fallo* when respondent became a regular employee should be modified from September 1996 to September 1992.

APPEARANCES OF COUNSEL

Office of the General Counsel (SMC) for petitioner.
Ortiz Sedonio and Associates for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*, under Rule 45 of the Rules of Court, seeking to annul and set aside the Decision[1] dated October 30, 2003, rendered by the Court of Appeals (CA) in CA-G.R. SP No. 60334 and its Resolution[2] dated February 24, 2004 denying petitioner's motion for reconsideration.

The factual and procedural antecedents are as follows:

On September 5, 1991, respondent Eduardo Teodosio was hired by San Miguel Corporation (SMC) as a casual forklift operator in its Bacolod City Brewery.[3] As a forklift operator, respondent was tasked with loading and unloading pallet[4] of beer cases within the brewery premises. Respondent continuously worked from September 5, 1991 until March 1992, after which he was "asked to rest" for a while. A month after, or sometime in April 1992, respondent was rehired for the same position, and after serving for about five to six months, he was again

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[1] Penned by Associate Justice Regalado E. Maambong, with Associate Justices Buenaventura J. Guerrero and Andres B. Reyes, Jr. concurring, *rollo*, pp. 68-80.

[2] *Id.* at 82-84.

[3] *Id.* at 21.

[4] A portable platform of wood, metal, or other material designed for handling by a forklift truck or crane and used for storage or movement of materials and packages in warehouses, factories, or transport vehicles; *Webster's Third New International Dictionary, 1993.*

"asked to rest." After three weeks, he was again rehired as a forklift operator. He continued to work as such until August 1993.[5]

Sometime in August 1993, respondent was made to sign an "Employment with a Fixed Period"[6] contract by SMC, wherein it was stipulated, among other things, that respondent's employment would be "from August 7, 1993 to August 30, 1995, or upon cessation of the instability/fluctuation of the market demand, whichever comes first." Thereafter, respondent worked at the plant without interruption as a forklift operator.

On March 20, 1995, respondent was transferred to the plant's bottling section as a case piler. In a letter[7] dated April 10, 1995, respondent formally informed SMC of his opposition to his transfer to the bottling section. He asserted that he would be more effective as a forklift operator because he had been employed as such for more than three years already. Respondent also requested that he be transferred to his former position as a forklift operator. However, SMC did not answer his letter.

In an undated letter,[8] respondent informed SMC that he was applying for the vacant position of bottling crew as he was interested in becoming a regular employee of SMC.

On June 1, 1995, SMC notified the respondent that his employment shall be terminated on July 1, 1995 in compliance with the Employment with a Fixed Period contract.[9] SMC explained that this was due to the reorganization and streamlining of its operations.

In a letter[10] dated July 3, 1995, respondent expressed his dismay for his dismissal. He informed SMC that despite the

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[5] *Rollo*, p. 226.

[6] *Id.* at 172-175.

[7] *Id.* at 192.

[8] *Id.* at 193.

[9] *Id.* at 194.

[10] *Id.* at 195.

fact that he would be compelled to receive his separation pay and would be forced to sign a waiver to that effect, this does not mean that he would be waiving his right to question his dismissal and to claim employment benefits as provided in the Collective Bargaining Agreement (CBA) and company policies.

Thereafter, respondent signed a Receipt and Release[11] document in favor of SMC and accepted his separation pay, thereby releasing all his claims against SMC.

On July 4, 1995, respondent filed a Complaint[12] against SMC before the National Labor Relations Commission (NLRC), Regional Arbitration Branch No. VI, Bacolod City, for illegal dismissal and underpayment of wages and other benefits.

After the filing of the parties' respective pleadings, the Labor Arbiter rendered a Decision[13] dismissing the complaint for lack of merit. The Labor Arbiter concluded that the contract of employment with a fix period signed by respondent was a legitimate exercise of management prerogative. There was thus nothing illegal about respondent's transfer to the bottling section and the assignment of a regular employee to his former position. Considering that respondent failed to qualify in the bottling section and there was no longer any available position for him, his termination in accordance with the employment contract was valid. Moreover, the Labor Arbiter opined that since the respondent was not a union member and not a regular employee of SMC, he was not entitled to the benefits granted by the existing CBA.[14]

Aggrieved, respondent sought recourse before the NLRC, Fourth Division, Cebu City. On November 26, 1999, the NLRC rendered a Decision[15] dismissing the appeal and affirming the decision of the Labor Arbiter. The NLRC anchored its decision on the fact that respondent signed a "Receipt and Release"

[11] *Id.* at 181.

[12] *Id.* at 139.

[13] *Id.* at 225-246.

[14] *Id.* at 70-71.

[15] *Id.* at 262-267.

upon receiving his separation pay from SMC. It upheld the validity of the said Receipt and Release document, finding the same to have been voluntarily executed by the respondent and the consideration therefor appears to be reasonable under the circumstances.[16] The respondent filed a motion for reconsideration, but it was denied in a Resolution[17] dated May 26, 2000.

Respondent then filed before the CA a petition for *certiorari*, docketed as CA-G.R. SP No. 60334, seeking to annul and set aside the said Decision and Resolution of the NLRC.[18]

On October 30, 2003, the CA rendered a Decision[19] granting the petition, the decretal portion of which reads:

> WHEREFORE, the instant petition is **GRANTED.** The Decision dated November 29, 1999 and Resolution dated May 26, 2000 of the National Labor Relations Commission, Fourth Division, Cebu City and Decision dated April 24, 1998 of the Labor Arbiter are **REVERSED** and **SET ASIDE.** Judgment is rendered ordering:
>
> 1. The reinstatement of petitioner Eduardo Teodosio to his position as forklift operator without loss of seniority rights.
>
> 2. The private respondent San Miguel Corporation to pay the full backwages of the petitioner from the day of his illegal dismissal until actual reinstatement. Said backwages shall be computed on the basis of the basic salary, allowances and other benefits granted to regular employees under the Collective Bargaining Agreement existing at the time. Public respondent NLRC is hereby directed to make the computation of said full backwages and inform soonest all parties as well as this Court, accordingly, within thirty days after receipt of this decision.
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> 3. The private respondent San Miguel Corporation to pay the deficiency amount of salary, allowances and benefits that petitioner should have received as a regular employee from

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[16] *Id.* at 71.

[17] *Id.* at 273-274.

[18] *Id.* at 85-99.

[19] *Id.* at 68-80.

the time he attained the status of regular employee by operation of law on September, 1996 to the time he was illegally dismissed. Public respondent NLRC is likewise directed to make the necessary computation and inform all parties and this Court within thirty (30) days after receipt of this decision.

4. The private respondent San Miguel Corporation to pay petitioner the amount of FIFTY THOUSAND PESOS (₱50,000.00) as moral damages, TEN THOUSAND PESOS (₱10,000.00) as exemplary damages and ten percent (10%) of the total amount awarded to petitioner by this Court as attorney's fees. Costs against private respondent San Miguel Corporation.

SO ORDERED.[20]

In granting the petition, the CA ratiocinated that the Employment with a Fixed Period contract was just a scheme of SMC to circumvent respondent's security of tenure. The CA concluded that even before the respondent signed the employment contract, he already attained the status of a regular employee. Consequently, respondent's transfer to the bottling section and his subsequent dismissal were evidently tainted with bad faith. Moreover, the appellate court declared invalid the Receipt and Release document signed by the respondent, since the law proscribes any agreement whereby a worker agrees to receive less compensation than what he is entitled to recover. It added that a deed of release or quitclaim cannot bar an employee from demanding benefits to which he is legally entitled.

SMC filed a motion for reconsideration, but it was denied in the Resolution[21] dated February 24, 2004.

Hence, this petition assigning the following errors:

FIRST GROUND

THE HON. COURT OF APPEALS COMMITTED SERIOUS ERRORS WHEN IT DID NOT UPHOLD THE VALIDITY OF THE CONTRACT

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

[21] *Id.* at 82-84.

OF EMPLOYMENT WITH A FIXED PERIOD (hereinafter referred to as "EWFP", for brevity) BETWEEN SMC AND RESPONDENT TEODOSIO.

SECOND GROUND

THE HON. COURT OF APPEALS SERIOUSLY ERRED IN DECLARING THAT RESPONDENT HAD ALREADY ATTAINED STATUS OF A REGULAR EMPLOYEE EVEN BEFORE [THE] PARTIES ENTERED INTO THE EWFP CONTRACT.

THIRD GROUND

THE HON. COURT OF APPEALS SERIOUSLY ERRED IN ITS CONCLUSION THAT RESPONDENT'S TRANSFER TO THE BOTTLING SECTION AND SUBSEQUENT DISMISSAL WAS TAINTED WITH BAD FAITH SINCE HAVING ACQUIRED THE STATUS OF A REGULAR EMPLOYEE AS EARLY AS 1992, RESPONDENT HAD A VESTED RIGHT TO HIS POSITION AS FOKLIFT (sic) OPERATOR WHICH COULD NOT BE ARBITRARILY TAKEN FROM HIM AND GIVEN TO ACCOMMODATE ANOTHER REGULAR EMPLOYEE, MR. VAFLOR.

FOURTH GROUND

THE HON. COURT OF APPEALS SERIOUSLY ERRED WHEN IT DECLARED THAT FROM SEPTEMBER 1992 OR ONE (1) YEAR AFTER RESPONDENT WAS HIRED AND ATTAINED REGULAR STATUS BY OPERATION OF LAW, HE WAS ENTITLED TO RECEIVE THE SAME BASIC SALARY AND BENEFITS GRANTED BY THE COLLECTIVE BARGAINING AGRE[E]MENT TO RESPONDENT'S CO-WORKERS/FORKLIFT OPERATORS WHO WERE REGULAR EMPLOYEES.

FIFTH GROUND

THE HON. COURT OF APPEALS SERIOUSLY ERRED WHEN IT DID NOT UPHOLD THE VALIDITY OF THE "RECEIPT AND RELEASE" SIGNED BY RESPONDENT.

SIXTH GROUND

THE HON. COURT OF APPEALS SERIOUSLY ERRED WHEN IT CONCLUDED THAT SMC INTENTIONALLY EVADED ITS LEGAL OBLIGATION OF GRANTING THE BENEFITS AND PRIVILEGES TO WHICH ITS LOYAL EMPLOYEE OF FIVE YEARS IS CLEARLY ENTITLED TO AND SUCH ACT BEING OPPRESSIVE TO LABOR AND CONTRARY TO THE AVOWED PUBLIC POLICY OF PROTECTING LABOR RIGHTS ENTITLED THE GRANT TO RESPONDENT OF MORAL DAMAGES IN THE AMOUNT OF FIFTY THOUSAND PESOS (₱50,000.00) AND EXEMPLARY DAMAGES OF TEN THOUSAND PESOS (₱10,000.00) AS WELL AS ATTORNEY'S FEES IN THE AMOUNT OF TEN PERCENT (10%) OF THE TOTAL AWARD FOR EXPENSES INCURRED BY RESPONDENT TO PROTECT HIS RIGHTS AND INTERESTS.

SEVENTH GROUND

THE HON. COURT OF APPEALS SERIOUSLY ERRED WHEN IT GRANTED THE PETITION ON *CERTIORARI* FILED BY RESPONDENT AND REVERSED AND SET ASIDE THE DECISION DATED NOVEMBER 26, 1999 (not November 29, 1999 as erroneously stated) AND RESOLUTION DATED MAY 26, 2000 OF THE NLRC, FOURTH DIVISION, CEBU CITY, AND DECISION DATED APRIL 24, 1998 OF THE LABOR ARBITER, AND CONSEQUENTLY ORDERED THE FOLLOWING:

1) THE REINSTATEMENT OF PETITIONER EDUARDO TEODOSIO TO HIS POSITION AS FORKLIFT OPERATOR WITHOUT LOSSS [sic] OF SENIORITY RIGHTS;

2) THE PRIVATE RESPONDENT SAN MIGUEL CORPORATION TO PAY THE FULL BACKWAGES OF THE PETITIONERS FROM THE DAY OF HIS ILLEGAL DISMISSAL UNTIL ACTUAL REINSTATEMENT. SAID BACKWAGES SHALL BE COMPUTED ON THE BASIS OF THE BASIC SALARY, ALLOWANCES AND OTHER BENEFITS GRANTED TO REGULAR EMPLOYEES UNDER THE COLLECTIVE BARGAINING AGREEMENT EXISTING AT THE TIME;

3) THE PRIVATE RESPONDENT SAN MIGUEL CORPORATION TO PAY THE DEFICIENCY AMOUNT OF SALARY, ALLOWANCES AND BENEFITS THAT PETITIONER SHOULD HAVE RECEIVED AS A REGULAR

EMPLOYEE FROM THE TIME HE ATTAINED THE STATUS OF REGULAR EMPLOYEE BY OPERATION OF LAW ON SEPTEMBER, 1996 TO THE TIME HE WAS ILLEGALLY DISMISSED. x x x.;

4) THE PRIVATE RESPONDENT SAN MIGUEL CORPORATION TO PAY PETITIONER THE AMOUNT OF FIFTY THOUSAND PESOS (₱50,000.00) AS MORAL DAMAGES, TEN THOUSAND PESOS (₱10,000.00) AS EXEMPLARY DAMAGES AND TEN PERCENT (10%) OF THE TOTAL AMOUNT AWARDED TO PETITIONER BY THIS COURT AS ATTORNEY'S FEES. COSTS AGAINST PRIVATE RESPONDENT SAN MIGUEL CORPORATION.[22]

Simply stated, the issues before us are the following: 1) whether the respondent was a regular employee of SMC; 2) whether the respondent was illegally dismissed; and 3) whether the respondent is entitled to his monetary claims and damages.

SMC argues that it did not have the slightest intention to circumvent respondent's right to security of tenure. When SMC employed respondent, it was in response to the business environment and operating needs prevailing at that time. It was made in good faith and in the exercise of business judgment. The option of SMC to fully mechanize its operations and to regularize the second shift of employees in the bottling section if favorable conditions prevail were known to the respondent when he voluntarily entered into the employment with a fixed period contract.

SMC adds that before the employment contract expired, respondent was given the opportunity to continue working and was transferred to the second shift operations of the bottling section. When it decided to regularize the second shift operations and accept 23 workers for regular positions, respondent was given the equal opportunity to apply. However, despite being already in the bottling section, respondent failed to perform. After an objective evaluation of the total performance of all the workers with employment contract, respondent failed to qualify

[22] *Id.* at 437-439.

for a regular position. Respondent should not, therefore, blame SMC for his failure to qualify for a regular position.

SMC also contends that respondent's employment contract was in accordance with Article 280 of the Labor Code. Respondent's employment has been pre-determined, in that the duration of the work was contingent upon the cessation of fluctuating or unstable market demand for beer products, coupled with the automation of brewery operations.

As regards respondent's claim for underpayment of salary and other benefits in accordance with the provisions of the existing CBA, SMC submits that respondent was not entitled to them. SMC maintains that being a contractual employee, by express provision of the CBA, he was excluded therefrom as he was not included in the appropriate bargaining unit defined in the CBA. Respondent was neither a union member nor one who paid any membership or agency fee to the union. Thus, he was not entitled to any benefits provided in the CBA to its union members.

Moreover, SMC insists that respondent was bound by the Receipt and Release contract that he executed. The terms and conditions of the document were clear and respondent understood and knew fully well the consequences thereof when he signed it. SMC adds that respondent wanted to squeeze more money from it despite the fact that it had already doubled respondent's separation pay.

SMC avers that although a waiver or quitclaim executed by a terminated employee upon receipt of his separation pay is not necessarily a bar to question the legality of his termination, still such conclusion does not apply to the instant case. SMC posits that respondent was not taken advantage of, since he did not receive a ludicrously low and unconscionable amount as separation pay. In fact, respondent was given separation pay in excess of what was stipulated in the employment contract.

Finally, SMC argues that respondent's dismissal from the company was based on legal and valid grounds, *i.e.*, the termination of his employment contract.

For his part, respondent posits that he is already a regular employee of SMC considering that he has been working as a forklift operator for several years before he signed the employment contract. Respondent insists that his position as a forklift operator has never been redundant. In fact, he was replaced by another employee of SMC, who transferred from another plant. Also, the automation of some of SMC's operation does not affect his work as a forklift operator, because forklifts would still be utilized in lifting the pile of cases whether they were arranged manually or by palletizer machine. Respondent contends that his transfer to the bottling section was merely a ploy of SMC to legitimize the designation of another SMC employee to his former position as forklift operator.

Respondent maintains that the execution of the Receipt and Release agreement did not bar him from questioning the legality of his dismissal. He submits that the said agreement was unilaterally prepared by SMC and that prior to its execution, he was already dismissed by SMC. He adds that after receiving his separation pay, he immediately filed the complaint against SMC, thus, affirming his desire to assail the legality of his dismissal.

Respondent maintains that his dismissal was illegal. Hence, he is entitled to reinstatement to his former position as forklift operator, moral and exemplary damages, and payment of attorney's fees.

The petition is bereft of merit.

This Court finds the respondent to be a regular employee. Article 280 of the Labor Code, as amended, provides:

ART. 280. REGULAR AND CASUAL EMPLOYMENT. — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be

performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided*, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

Thus, there are two kinds of regular employees, namely: (1) those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; and (2) those who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed.[23] Simply stated, regular employees are classified into (1) regular employees - by nature of work and (2) regular employees - by years of service. The former refers to those employees who perform a particular activity which is necessary or desirable in the usual business or trade of the employer, regardless of their length of service; while the latter refers to those employees who have been performing the job, regardless of the nature thereof, for at least a year.[24] If the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability, of that activity to the business.[25]

Based on the circumstances surrounding respondent's employment by SMC, this Court is convinced that he has attained the status of a regular employee long before he executed the employment contract with a fixed period. Although respondent was initially hired by SMC as a casual employee, respondent

[23] *Goma v. Pamplona Plantation, Incorporated*, G.R. No. 160905, July 4, 2008, 557 SCRA 124, 133.

[24] *Rowell Industrial Corporation v. Court of Appeals*, G.R. No. 167714, March 7, 2007, 517 SCRA 691, 700.

[25] *Goma v. Pamplona Plantation, Incorporated*, *supra* note 23, at 134.

has attained the status of a regular employee. Respondent was initially hired by SMC on September 5, 1991 until March 1992. He was rehired for the same position in April 1992 which lasted for five to six months. After three weeks, he was again rehired as a forklift operator and he continued to work as such until August 1993. Thus, at the time he signed the Employment with a Fixed Period contract, respondent had already been in the employ of SMC for at least twenty-three (23) months.

The Labor Code provides that a casual employee can be considered as a regular employee if said casual employee has rendered at least one year of service regardless of the fact that such service may be continuous or broken. Section 3, Rule V, Book II of the Implementing Rules and Regulations of the Labor Code clearly defines the term *"at least one year of service"* to mean service within 12 months, *whether continuous or broken*, reckoned from the date the employee started working, including authorized absences and paid regular holidays, unless the working days in the establishment, as a matter of practice or policy, or as provided in the employment contract, is less than 12 months, in which case said period shall be considered one year. If the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability, of that activity to the business of the employer.[26]

Moreover, the nature of respondent's work is necessary in the business in which SMC is engaged. SMC is primarily engaged in the manufacture and marketing of beer products, for which purpose, it specifically maintains a brewery in Bacolod City.[27] Respondent, on the other hand, was engaged as a forklift operator tasked to lift and transfer pallets and pile them from the bottling section to the piling area. SMC admitted that it hired respondent as a forklift operator since the third quarter of 1991 when, in the absence of fully automated palletizers, manual transfers of

[26] *Pier 8 Arrastre and Stevedoring Services, Inc. v. Boclot*, G.R. No. 173849, September 28, 2007, 534 SCRA 431, 446-447.

[27] *Rollo*, p. 19.

beer cases and empties would be extensive within the brewery and its premises.

SMC would have wanted this Court to believe that circumstances have transpired to force it to implement full automation of its brewery and new marketing and distribution systems in its sales offices resulting in the reduction of personnel and termination of employees with a fixed period contract. However, even after the installation of the automated palletizers, SMC did not leave the position of forklift operator vacant. SMC even transferred one of its regular employees to the Bacolod City Brewery to replace respondent who was in turn transferred to the bottling section of the plant. This demonstrates the continuing necessity and indispensability of hiring a forklift operator to the business of SMC.

Undoubtedly, respondent is a regular employee of SMC. Consequently, the employment contract with a fixed period which SMC had respondent execute was meant only to circumvent respondent's right to security of tenure and is, therefore, invalid.

While this Court recognizes the validity of fixed-term employment contracts, it has consistently held that this is the exception rather than the general rule. Verily, a fixed-term contract is valid only under certain circumstances.[28] In the oft-cited case of *Brent School, Inc. v. Zamora*,[29] this Court made it clear that a contract of employment stipulating a fixed term, even if clear as regards the existence of a period, is invalid if it can be shown that the same was executed with the intention of circumventing an employee's right to security of tenure, and should thus be ignored. Moreover, in that same case, this Court issued a stern admonition that where from the circumstances, it is apparent that the period was imposed to preclude the acquisition of tenurial security by the employee, then it should

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[28] *Brent School, Inc. v. Zamora*, G.R. No. L-48494, February 5, 1990, 181 SCRA 702.

[29] *Id.* at 714-715.

be struck down as being contrary to law, morals, good customs, public order and public policy.[30]

Since respondent was already a regular employee months before the execution of the Employment with a Fixed Period contract, its execution was merely a ploy on SMC's part to deprive respondent of his tenurial security. Hence, no valid fixed-term contract was executed. The employment status of a person is defined and prescribed by law and not by what the parties say it should be. Equally important to consider is that a contract of employment is impressed with public interest such that labor contracts must yield to the common good. Provisions of applicable statutes are deemed written into the contract, and the parties are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply contracting with each other.[31]

Having gained the status of a regular employee, respondent is entitled to security of tenure and could only be dismissed on just or authorized causes and after he has been accorded due process.[32]

SMC insists that the termination of respondent's employment was in accordance with the Employment with a Fixed Period contract; and that respondent was given opportunities to become a regular employee when he was transferred to the bottling section of the plant. However, considering that respondent was already a regular employee of SMC at that time, the reason advanced by SMC for his termination would not constitute a just or authorized cause.[33]

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[30] *Cherry J. Price, Stephanie G. Domingo and Lolita Arbilera v. Innodata Phils. Inc./Innodata Corporation, Leo Rabang and Jane Navarrete*, G.R. No. 178505, September 30, 2008, citing *Brent School, Inc. v. Zamora, supra* note 28, at 714-715.

[31] *Id.*

[32] *DOLE Philippines v. Esteva*, G.R. No. 161115, November 30, 2006, 509 SCRA 332, 381.

[33] Art. 282. *Termination by employer.* — An employer may terminate an employment for any of the following causes:

Also, SMC cannot take refuge in the Receipt and Release document signed by the respondent. Generally, deeds of release, waivers, or quitclaims cannot bar employees from demanding benefits to which they are legally entitled or from contesting the legality of their dismissal, since quitclaims are looked upon with disfavor and are frowned upon as contrary to public policy. Where, however, the person making the waiver has done so voluntarily, with a full understanding thereof, and the consideration for the quitclaim is credible and reasonable, the transaction must

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(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

Art. 283. *Closure of establishment and reduction of personnel.* — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this title, by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of the establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

Art. 284. *Disease as ground for termination.* — An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: *Provided,* That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

be recognized as a valid and binding undertaking.[34] The burden of proving that the quitclaim or waiver was voluntarily entered into rests on the employer.[35]

SMC failed to discharge this burden. This is buttressed by the fact that before the respondent signed the document, he already informed SMC in the letter dated July 3, 1995, that even if he would be compelled to receive his separation pay and be forced to sign a waiver to that effect, he was not waiving his right to question his dismissal and to claim employment benefits. This clearly proves that respondent did not freely and voluntarily consent to the execution of the document.

As aptly concluded by the CA, herein respondent, having been unjustly dismissed from work, is entitled to reinstatement without loss of seniority rights and other privileges and to full back wages, inclusive of allowances, and to other benefits or their monetary equivalents computed from the time compensation was withheld up to the time of actual reinstatement.[36]

Anent the awards for damages awarded by the CA, this Court finds that respondent is not entitled to moral and exemplary damages. Moral damages are recoverable where the dismissal of the employee was attended by bad faith or fraud or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy.[37] On the other hand, exemplary damages are proper when the dismissal was effected in a wanton, oppressive or malevolent manner, and public policy requires that these acts must be suppressed and discouraged.[38] In the present case,

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[34] *Universal Staffing Services, Inc. v. NLRC*, G.R. No. 177576, July 21, 2008, 559 SCRA 221, 232.

[35] *EMCO Plywood Corporation v. Abelgas*, G.R. No. 148532, April 14, 2004,427 SCRA 496, 514.

[36] Labor Code, Art. 279.

[37] *De Guzman v. National Labor Relations Commission,* G.R. No. 167701, December 12, 2007, 540 SCRA 21, 37; *Aguilar v. Burger Machine Holdings Corporation*, G.R. No. 172062, October 30, 2006, 506 SCRA 266, 278.

[38] *NFD International Manning Agents, etc. v. NLRC,* G.R. No. 165389, October 17, 2008.

respondent failed to sufficiently establish that his dismissal was done in bad faith; was contrary to morals, good customs or public policy; and was arbitrary and oppressive to labor, thus entitling him to the award of moral and exemplary damages.

As to the award of attorney's fees, by reason of his illegal dismissal, respondent was forced to litigate and incur expenses to protect his rights and interest.[39] Moreover, in labor cases, although an express finding of fact and law is still necessary to prove the merit of the award of attorney's fees, there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. There need only be a showing that the lawful wages were not paid accordingly.[40] Thus, it is but just and proper that the same should be awarded to respondent.

At this juncture, this Court notes that there is an apparent discrepancy between the *ratio decidendi* and the *fallo* of the CA's decision. In its *ratio* the CA concluded that respondent became a regular employee of SMC in September 1992.[41] However, in the dispositive portion thereof the CA may have overlooked the date as it stated therein that respondent "attained the status of a regular employee by operation of law on September, *1996*."[42] This part of the *fallo* should be rectified to reflect the true intent and meaning of the decision.

Findings of the court are to be considered in the interpretation of the dispositive portion of the judgment.[43] Verily, to grasp and delve into the true intent and meaning of a decision, no specific portion thereof should be resorted to – the decision must be considered in its entirety. The Court may resort to the

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[39] *PCL Shipping Philippines, Inc. v. National Labor Relations Commission*, G.R. No. 153031, December 14, 2006, 511 SCRA 44, 65.

[40] *Reyes v. Court of Appeals*, G.R. No. 154448, August 15, 2003, 409 SCRA 267, 283.

[41] *Rollo*, p. 76.

[42] *Id.* at 79.

[43] *Ong Ching Kian Chung v. China National Cereals Oil and Foodstuffs Import and Export Corp.*, 388 Phil. 1064, 1077 (2000).

pleadings of the parties, its findings of fact and conclusions of law as expressed in the body of the decision to clarify any ambiguities caused by any inadvertent omission or mistake in the dispositive portion thereof.[44] This assures swift delivery of justice and avoids any protracted litigation anchored only on trivial matters as a result of any inadvertent omissions or mistakes in the *fallo*. Thus, to conform to the *ratio*, the date in the *fallo* when respondent became a regular employee should be modified from September 1996 to September 1992.

Furthermore, although the instant case calls for the reinstatement of the respondent to his former position as forklift operator or any equivalent position, the fact that his former position was already given to another regular employee; the length of time that this case has been pending; and the likely possibility that the protracted litigation may have seriously marred the relationship of the parties beyond reconciliation, may well have rendered reinstatement impossible. Accordingly, petitioner shall be awarded separation pay in lieu of reinstatement, if the latter is no longer possible.[45]

WHEREFORE, premises considered, the petition is *DENIED*. The Decision and Resolution of the Court of Appeals, dated October 30, 2003 and February 24, 2004, respectively, in CA-G.R. SP No. 60334 are *AFFIRMED with the following MODIFICATIONS:*

1. Respondent Eduardo L. Teodosio became a regular employee in September 1992.
2. Respondent is awarded separation pay in lieu of reinstatement.
3. The awards of moral and exemplary damages are *DELETED*.

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[44] *Insular Life Assurance Company, Ltd. v. Toyota Bel-Air, Inc.*, G.R. No. 137884, March 28, 2008, 550 SCRA 70, 86.

[45] *Mendoza v. NLRC*, 369 Phil. 1113, 1131 (1999); *Caliguia v. NLRC*, 332 Phil. 128, 142 (1996).

In all other aspects, the Decision stands.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 165332. October 2, 2009]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **YANG CHI HAO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER ONLY ON ERRORS OF JURISDICTION, NOT ERRORS OF JUDGMENT. — As early as 1913, we held in *Herrera v. Barretto* that: The office of the writ of *certiorari* has been reduced to the correction of defects of *jurisdiction* solely and cannot legally be used for any other purpose. It is truly an extraordinary remedy and, in this jurisdiction, its use is restricted to truly extraordinary cases – cases in which the action of the inferior court is wholly void; where any further steps in the case would result in a waste of time and money and would produce no result whatever; where the parties, or their privies, would be utterly deceived; where a final judgment or decree would be nought but a snare and a delusion, deciding nothing, protecting nobody, a judicial pretension, a recorded falsehood, a standing menace. It is only to avoid such results as these that a writ of *certiorari* is issuable; and even here an appeal will lie if the aggrieved party prefers to prosecute it. We reitereate these well-established principles: that only errors of jurisdiction, not errors of judgment, may be entertained in a petition for *certiorari*; that *certiorari* will not lie where an appeal may be taken or is lost through petitioner's own doing; and that questions of fact are not decided by this Court.

2. ID.; ID.; *CERTIORARI*; GRAVE ABUSE OF DISCRETION. — By grave abuse of discretion is meant such capricious and whimsical exercise of judgment which is equivalent to an excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. It also bears stressing that the true function of the writ of *certiorari* is to keep an inferior court within the bounds of its jurisdiction, or to relieve parties from the arbitrary acts of courts.

3. ID.; CIVIL PROCEDURE; APPEALS; PROPER REMEDY FOR ERROR OF JUDGMENT. — We found no whimsicality or patent abuse of discretion as would amount to "an evasion of positive duty or virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law." Shorn of embellishment, the OSG simply argues that the trial court erred in granting the petition for naturalization because it failed to consider material evidence that would warrant the denial of said petition.If, indeed, there was error, this is simply an error of judgment in appreciation of facts and the law. Besides, the trial court has the discretion to reverse itself upon the filing of a motion for reconsideration. Indeed, Section 3, Rule 37 of the Rules of Court is explicit in that a trial court may amend its judgment or order "if it finds that the judgment or final order is contrary to the evidence or law."If a mistake was committed by the trial court, it was in the exercise of its jurisdiction. Thus, the error is one of judgment, not of jurisdiction; consequently, petitioner's remedy is appeal, not *certiorari*.

4. POLITICAL LAW; NATURALIZATION LAW; REMEDY TO ASSAIL A DECISION GRANTING FILIPINO CITIZENSHIP IS APPEAL. – A basic requisite of the special civil action of *certiorari*, which is governed by Rule 65 of the Rules of Court, is that there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. Where appeal is available, *certiorari* generally does not lie. *Certiorari* cannot be used as a substitute for a lost or lapsed remedy of appeal. In this case, an appeal was not only available, but also mandated by Sections 11 and 12 of Commonwealth Act No. 473 (1939),

or the Revised Naturalization Law, as amended.Notably, in *Keswani v. Republic*, we declared that the remedy from a decision by the trial court admitting an individual as a Filipino citizen is through an appeal to the Court of Appeals. Moreover, a decision granting a petition for naturalization becomes executory only two years after its promulgation. On this matter, Section 1 of Republic Act No. 530 (1950) provides: Section 1. The provisions of existing laws notwithstanding, no petition for Philippine citizenship shall be heard by the courts until after six months from the publication of the application required by law, nor shall any decision granting the application become executory until after two years from its promulgation and after the court, on proper hearing, with the attendance of the Solicitor General or his representative, is satisfied, and so finds, that during the intervening time the applicant has (1) not left the Philippines, (2) has dedicated himself continuously to a lawful calling or profession, (3) has not been convicted of any offense or violation of Government promulgated rules, (4) or committed any act prejudicial to the interest of the nation or contrary to any Government announced policies. As such, petitioner is not without a remedy to assail the grant of citizenship. In addition, it may also move to have the naturalization certificate cancelled in the proper proceedings, if it can be shown that the certificate was obtained fraudulently.

5. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTIONS OF FACT, NOT PROPER. — Questions of fact are not proper in a Petition brought under Rule 45 of the Rules of Court. Time and time again, we have stated that the Supreme Court is not a trier of facts, and this Court will decline to sift through the evidence submitted by the parties, particularly here, where such evidence was not presented before the trial court. It would be ludicrous indeed if we were to determine, in the first instance, where respondent actually resides, his true income, or his current mental state. Such issues are best threshed out before the trial court; we have neither the inclination or interest to resolve these factual matters here.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Benito Ching for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

As early as 1913, we held in *Herrera v. Barretto*[1] that:

> The office of the writ of *certiorari* has been reduced to the correction of defects of *jurisdiction* solely and cannot legally be used for any other purpose. It is truly an extraordinary remedy and, in this jurisdiction, its use is restricted to truly extraordinary cases — cases in which the action of the inferior court is wholly void; where any further steps in the case would result in a waste of time and money and would produce no result whatever; where the parties, or their privies, would be utterly deceived; where a final judgment or decree would be nought but a snare and a delusion, deciding nothing, protecting nobody, a judicial pretension, a recorded falsehood, a standing menace. It is only to avoid such results as these that a writ of *certiorari* is issuable; and even here an appeal will lie if the aggrieved party prefers to prosecute it.

We reiterate these well-established principles: that only errors of jurisdiction, not errors of judgment, may be entertained in a petition for *certiorari*; that *certiorari* will not lie where an appeal may be taken or is lost through petitioner's own doing; and that questions of fact are not decided by this Court.

Assailed in this Petition for Review on *Certiorari* is the Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 83787, dated 11 August 2004 dismissing outright petitioner's Petition for *Certiorari* for being the wrong legal remedy to impugn the final order of the Regional Trial Court of Manila, Branch 24. Also assailed is the CA Resolution[3] dated 20 September 2004 denying the motion for reconsideration.

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[1] 25 Phil. 245, 271 (1913).

[2] *Rollo*, pp. 10-11; penned by Associate Justice Renato C. Dacudao and concurred in by Associate Justices Lucas P. Bersamin (now a Member of this Court) and Celia C. Librea-Leagogo.

[3] *Id.* at 18.

On 6 August 2002, Yang Chi Hao, private respondent herein, filed a Petition for Naturalization[4] before the Regional Trial Court of Manila, Branch 24, which was docketed as Case No. 02104240. The Republic of the Philippines, through the Office of the Solicitor General (OSG), opposed the petition, cross-examined private respondent and his witnesses, but did not present any of its own evidence.

On 4 September 2003, the trial court issued a Decision[5] denying the Petition for Naturalization. Private respondent filed a Motion for Reconsideration which the trial court granted in its Order[6] dated 25 November 2003. The dispositive portion of the Order reads:

> Accordingly, in view of all the foregoing, the motion for reconsideration is hereby granted.
>
> The decision of the Court dated September 4, 2003 is hereby set aside.
>
> Petitioner is hereby admitted as citizen of the Republic of the Philippines subject to the provisions of Republic Act No. 530. After the period of two (2) years and upon compliance with all the legal requirements the appropriate Certification of Naturalization shall be issued, to be registered in the Civil Registry.
>
> SO ORDERED.[7]

Thereafter, the OSG filed a Motion for Reconsideration which was denied by the trial court in an Order[8] dated 24 February 2004.

Instead of filing an ordinary appeal before the Court of Appeals, the OSG filed a Petition for *Certiorari* under Rule 65 of the

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[4] Annex "D", *id* at. 50-58.

[5] *Id.* at 60-65; penned by Judge Antonio M. Eugenio, Jr.

[6] Annex "F", *id.* at 66-68.

[7] *Id.* at 67.

[8] *Id.* at 70-72.

Rules of Court, claiming that by reversing its original decision, the trial court acted with grave abuse of discretion amounting to lack of jurisdiction. In the herein assailed Resolution of 11 August 2004, the appellate court dismissed the petition, declaring that:

> This petition for *certiorari* faces outright dismissal.
>
> x x x x x x x x x

The present recourse is an incorrect, improper, or a wrong legal remedy for the simple reason that the order in question is a final order which disposed of the case. Hence, the proper recourse therefrom is an ordinary appeal to be filed within fifteen (15)[9] days from March 8, 2004, when the OSG received notice of the denial of its motion for reconsideration. In other words, the OSG had until March 23, 2004 to interpose an appeal therefrom. There is no showing why an appeal was not taken. Indeed, there is even an allegation that "there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law other than the instant petition," which is patently false and misleading. For, to repeat, the OSG had the obvious remedy of appeal open to it, but failed to take it for some unknown reason of its own.

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[9] Should be 30 days pursuant to Sec. 12 of Commonwealth Act No. 43 (1939) or the Revised Naturalization Law, as amended *vis–a–vis* Section 39 of B.P. Blg. 129 which reads:

> Sec. 39. *Appeals*. – The period for appeal from final orders, resolutions, awards, judgments, or decisions of any court in all cases shall be fifteen (15) days counted from the notice of the final order, resolution, award, judgment, or decision appealed from: *Provided, however,* That in *habeas corpus* cases, the period for appeal shall be forty-eight (48) hours from the notice of the judgment appealed from.
>
> No record on appeal shall be required to take an appeal. In lieu thereof, the entire original record shall be transmitted with all the pages prominently numbered consecutively, together with an index of the contents thereof.
>
> This section shall not apply in appeals in special proceedings and in other cases wherein multiple appeals are allowed under applicable provisions of the Rules of Court.

In view of such failure, the instant petition for *certiorari* cannot be given due course, as it is settled law, that *certiorari* is not a substitute for a lost appeal.[10]

The OSG filed a Motion for Reconsideration but it was denied by the Court of Appeals in its Resolution dated 20 September 2004.[11]

Hence, this Petition for Review on *Certiorari*. The OSG claims that there was no need to file a regular appeal before the Court of Appeals because: (1) the Rules of Court apply only in a suppletory manner in naturalization cases; (2) there was no final decision to appeal, since a judgment in a naturalization case only becomes final two years after the promulgation of the decision, when the Certificate of Naturalization is issued; (3) the trial court never acquired jurisdiction over the petition because the National Bureau of Investigation (NBI) reported that respondent did not reside at the address he provided in the petition; and (4) the Order of the trial court granting the petition for naturalization was issued with grave abuse of discretion amounting to lack of jurisdiction, there being no compliance by private respondent with the legal requirements for naturalization, namely, good moral conduct, possession of lucrative income, and absence of mental alienation or incurable contagious disease.[12]

In his Comment,[13] private respondent claims that the Court of Appeals correctly dismissed the petition for being the wrong mode of remedy. He also argues that as held by the trial court, he satisfactorily complied with the requirements of good moral conduct based on the testimonies of witnesses and clearances issued by the NBI and police, prosecutor, and courts of Parañaque City. He insists that the trial court correctly

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[10] *Id.* at 10.

[11] *Id.* at 44.

[12] *Id.* 21-38.

[13] *Id.* at 123-126.

found him free of any medical impediment based on the medical certificate issued by the Ann Francis Maternity and Medical Clinic. As regards the income requirement, respondent explains that his income from 2000 to 2002 was only ₱60,000.00 per year because during that period, he was still a student. Upon graduation, however, he worked full-time as Marketing Manager of Food Mart, Inc. with a monthly income of ₱60,000.00, evidence of which had been presented before and assessed by the trial court. Private respondent disputes the findings of the NBI that he was not known to his neighbors at No. 743 Gandara Street, Room 402 Evershine Bldg., Binondo, Manila.He claims that the NBI conducted the background investigation on 26 January 2004 or long after his petition for naturalization was granted by the trial court on 25 November 2003.He alleges that after the trial court rendered its decision, he transferred to his parents' residence in Parañaque City. A new tenant moved in to his former residence who obviously was not acquainted to him.Finally, private respondent insists that it is not proper for the OSG to present evidence long after the RTC decision had become final.

The OSG filed its Reply on 5 May 2005, insisting that its recourse to the remedy of *certiorari* was proper considering that the trial court, in reconsidering and reversing its own decision sans the submission of any new evidence, acted with grave abuse of discretion amounting to lack of jurisdiction. The OSG also argues that the NBI report, even if belatedly submitted, clearly showed that respondent did not live in his stated address, thus ousting the trial court of its jurisdiction.[14]

The petition lacks merit.

The trial court did not abuse its discretion when it reconsidered its earlier decision and granted private respondent's petition for naturalization.

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[14] *Id.* at 132-135.

By grave abuse of discretion is meant such capricious and whimsical exercise of judgment which is equivalent to an excess or lack of jurisdiction.The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[15] It also bears stressing that the true function of the writ of *certiorari* is to keep an inferior court within the bounds of its jurisdiction, or to relieve parties from the arbitrary acts of courts.[16]

Viewed against these standards, we find the trial court's reversal of its decision after the filing of a Motion for Reconsideration not tainted with grave abuse of discretion. The reasons for granting the Petition for Naturalization were enunciated in the Order dated 25 November 2003, as well as in the Order[17] dated 24 February 2004, where the trial court held thus:

> In opposing the motion, petitioner alleged that his documentary and testimonial evidence undisputably and overwhelmingly satisfied the requirement for good conduct; that his annual income from year 2000 to year 2002 was ₱60,000.00 because during that period he was still studying and worked as a part-time employee only, but after graduation in October, 2002, and working full time as marketing manager of Food Mart, his income rose to ₱60,000.00 a month, including his commission; and that the medical certificate he presented proved that after a thorough medical check up he was found to be "essentially normal".
>
> Considering the allegations in the opposition, the court gave the Office of the Solicitor General an opportunity to file its reply. However, as of this writing, no reply was forthcoming. Hence, this Order.

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[15] *Estrada v. Desierto*, G.R. No. 156160, December 9, 2004, 445 SCRA 655, 668; *First Women's Credit Corporation and Katayama v. Perez,* G.R. No. 169026, June 15, 2006, 490 SCRA 774, 777-778.

[16] *Espinoza v. Provincial Adjudicator of the Provincial Agrarian Reform Adjudication Office of Pampanga,* G.R. No. 147525, February 26, 2007, 516 SCRA 635, 639-640.

[17] CA *rollo,* pp. 25-27.

The Court is not convinced.

Petitioner was able to successfully overcome all the grounds raised in the Motion for Reconsideration.Indeed, it is doubtful if the University of Sto. Tomas, a reputable catholic school, would allow petitioner to be enrolled in its high school and graduate from its college if his conduct is questionable or if he has any mental alienation and incurable contagious disease. Besides, what better proof of good conduct can petitioner show other than the clearances issued by our courts, the National Bureau of Investigation and the police, the government agencies tasked to issue clearances. And unless proof is shown that the medical examiner of Ann Francis Maternity & Medical Clinic falsified the results of petitioner's medical check up, its issuance is considered regular.

Petitioner was likewise able to explain that for the years 2000 to 2002, his income was only ₱60,000.00 annually because at that time he was still studying and worked only as a part-time employee but after graduating in October, 2002, when he worked already as full-time marketing manager of Food Mart, his income rose to ₱60,000.00 a month, including his commissions.[18]

We found no whimsicality or patent abuse of discretion as would amount to "an evasion of positive duty or virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law."

Shorn of embellishment, the OSG simply argues that the trial court erred in granting the petition for naturalization because it failed to consider material evidence that would warrant the denial of said petition. If, indeed, there was error, this is simply an error of judgment in appreciation of facts and the law. Besides, the trial court has the discretion to reverse itself upon the filing of a motion for reconsideration. Indeed, Section 3, Rule 37 of the Rules of Court is explicit in that a trial court may amend its judgment or order "if it finds that the judgment or final order is contrary to the evidence or law." If a mistake was committed by the trial court, it was in the exercise of its jurisdiction. Thus,

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[18] *Ibid.*

the error is one of judgment, not of jurisdiction; consequently, petitioner's remedy is appeal, not *certiorari*.

Petitioner had readily available remedies.

A basic requisite of the special civil action of *certiorari*, which is governed by Rule 65 of the Rules of Court, is that there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. Where appeal is available, *certiorari* generally does not lie. *Certiorari* cannot be used as a substitute for a lost or lapsed remedy of appeal.[19]

In this case, an appeal was not only available, but also mandated by Sections 11[20] and 12[21] of Commonwealth Act No. 473 (1939), or the Revised Naturalization Law, as amended. Notably, in *Keswani v. Republic*,[22] we declared that the remedy from a decision by the trial court admitting an individual as a Filipino citizen is through an appeal to the Court of Appeals.[23]

Moreover, a decision granting a petition for naturalization becomes executory only two years after its promulgation. On this matter, Section 1 of Republic Act No. 530 (1950)[24] provides:

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[19] *Tolentino v. People*, G.R. No. 170396, August 31, 2006, 500 SCRA 721, 724.

[20] Section 11 provides that "[T]he final sentence may, at the instance of either of the parties, be appealed to the Supreme Court."

[21] Section 12 reads in part: If, after the lapse of thirty days from and after the date on which the parties were notified x x x, no appeal has been filed, or if, upon appeal, the decision has been confirmed by the Supreme Court x x x.

[22] G.R. No. 153986, June 8, 2007, 524 SCRA 145.

[23] See Section 9 of *Batas Pambansa Blg.* 129 or the Judiciary Reorganization Act of 1980 which provides for the exclusive appellate jurisdiction of the Court of Appeals over all final judgments, resolutions, orders or awards of the Regional Trial Courts.

[24] An Act Making Additional Provisions for Naturalization.

Section 1. The provisions of existing laws notwithstanding, no petition for Philippine citizenship shall be heard by the courts until after six months from the publication of the application required by law, nor shall any decision granting the application become executory until after two years from its promulgation and after the court, on proper hearing, with the attendance of the Solicitor General or his representative, is satisfied, and so finds, that during the intervening time the applicant has (1) not left the Philippines, (2) has dedicated himself continuously to a lawful calling or profession, (3) has not been convicted of any offense or violation of Government promulgated rules, (4) or committed any act prejudicial to the interest of the nation or contrary to any Government announced policies.

As such, petitioner is not without a remedy to assail the grant of citizenship. In addition, it may also move to have the naturalization certificate cancelled in the proper proceedings, if it can be shown that the certificate was obtained fraudulently.[25]

The Supreme Court will not try questions of fact.

Questions of fact are not proper in a Petition brought under Rule 45 of the Rules of Court. Time and time again, we have stated that the Supreme Court is not a trier of facts,[26] and this Court will decline to sift through the evidence submitted by the parties, particularly here, where such evidence was not presented before the trial court. It would be ludicrous indeed if we were to determine, in the first instance, where respondent actually resides, his true income, or his current mental state. Such issues are best threshed out before the trial court; we have neither the inclination or interest to resolve these factual matters here.

We end with an admonition. It appears that the OSG requested the NBI to conduct a confidential investigation in connection with private respondent's petition for naturalization as early as

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[25] Commonwealth Act No. 473 (1939), Sec. 18.

[26] *Andrada v. National Labor Relations Commission*, G.R. No. 173231, December 28, 2007, 541 SCRA 538.

30 January 2003. However, the NBI only prepared the report on 26 January 2004, and referred it to the OSG only on 10 March 2004. Questions regarding the responsible party and cause of such protracted delay – be it inadvertence or negligence – need not be belaboured here. Suffice it to state that it was highly irregular for the OSG to present new evidence before the courts only during *certiorari* proceedings, thereby denying the private respondent his right to contest the NBI's prejudical findings. The OSG is thus cautioned to avoid such actuations in the future, particularly where the Rules of Court expressly provide for the appropriate venue for the presentation of allegedly newly discovered evidence.

WHEREFORE, the Petition for Review on *Certiorari* is *DENIED*. The Resolution of the Court of Appeals dated 11 August 2004 in CA-G.R. SP No. 83787 dismissing outright the Petition for *Certiorari*, and its Resolution dated 20 September 2004 denying the Motion for Reconsideration, are *AFFIRMED*.

SO ORDERED.

Ynares-Santiago,[*] *Carpio Morales (Acting Chairperson), Brion,* and *Abad, JJ.,* concur.

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[*] Additional member per Special Order No. 691 dated September 4, 2009, in lieu of Justice Leonardo A. Quisumbing, who is on official leave.

THIRD DIVISION

[G.R. No. 165544. October 2, 2009]

ROMEO SAMONTE, *petitioner, vs.* **S.F. NAGUIAT, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; RELIEF FROM JUDGMENTS; REQUIREMENTS; ELUCIDATED. — Sections 1 and 3 of Rule 38 of the Rules of Court provide the requirements for a petition for relief from judgment, thus: SEC. 1. Petition for relief from judgment, *order, or other proceedings.* – When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside. SEC. 3. *Time for filing of petition; contents and verification*.— A petition for in either of the preceding sections of this rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, order, or other proceeding to be set aside, and not more than six (6) months after such judgment or order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be. Relief from judgment under Rule 38 of the Rules of Court is a remedy provided by law to any person against whom a decision or order is entered into through fraud, accident, mistake or excusable negligence. The relief provided for is of equitable character, allowed only in exceptional cases as where there is no other available or adequate remedy. When a party has another remedy available to him, which may either be a motion for new trial or appeal from an adverse decision of the lower court, and he was not prevented by fraud, accident, mistake or excusable negligence from filing such motion or taking the appeal, he cannot avail himself of the relief provided in Rule 38. The rule is that relief will not be granted to a party who seeks avoidance from the effects of

the judgment when the loss of the remedy at law was due to his own negligence or a mistaken mode of procedure, otherwise the petition for relief will be tantamount to reviving the right of appeal which has already been lost either because of inexcusable negligence or due to a mistake in the mode of procedure by counsel.

2. ID.; ID.; ID.; NOT PROPER WHERE ANOTHER REMEDY IS AVAILABLE TO A PARTY WHO WAS NOT PREVENTED BY MISTAKE, ETC. FROM AVAILING SUCH REMEDY; MISTAKE; ELUCIDATED. — The mistake contemplated by Rule 38 of the Rules of Court pertains generally to mistake of fact, not of law, which relates to the case. The word "mistake" which grants relief from judgment, does not apply and was never intended to apply to a judicial error which the court might have committed in the trial. Such error may be corrected by means of an appeal.

3. ID.; ID.; ID.; NOT PROPER FOR LOST REMEDY OF APPEAL. — Petitioner's claim that Section 1, Rule 38 of the Rules of Court does not require that petitioner should state the reason why he did not avail of the remedy of appeal deserves scant consideration. His failure to avail of the remedy of appeal within the reglementary period despite receipt of the RTC decision rendered the same final and executory. He cannot be allowed to assail the RTC decision which had become final in a petition for relief from judgment when there was no allegations of fraud, accident, mistake, or excusable negligence which prevented him from interposing an appeal. Such appeal could have corrected what he believed to be an erroneous judicial decision. To reiterate, petition for relief is an equitable remedy that is allowed only in exceptional cases where there is no other available or adequate remedy which is not present in petitioner's case. Thus, petitioner's resort to a petition for relief under Rule 38 was not proper and the CA correctly ruled that the RTC did not commit grave abuse of discretion in denying the petition for relief from judgment.

4. ID.; ID.; ID.; REQUIREMENT OF VERIFICATION, NOT PRESENT. — Section 3, Rule 38 of the Rules of Court requires that the petition must be accompanied with affidavits of merits showing the fraud, accident, mistake, or excusable negligence relied upon by petitioner and the facts constituting the petitioner's good and substantial cause of action or defense

as the case may be. While a petition for relief without a separate affidavit of merit is sufficient where facts constituting petitioner's substantial cause of action or defense, as the case may be, are alleged in a verified petition since the oath elevates the petition to the same category as a separate affidavit, the petition for relief filed by petitioner was not even verified. Thus, the CA did not err in no longer considering the merits of the case.

5. LEGAL ETHICS; LAWYER-CLIENT RELATIONSHIP; CLIENT BOUND BY HIS COUNSEL'S ACT. — There is no rule more settled than that a client is bound by his counsel's conduct, negligence and mistake in handling the case. To allow a party to disown his counsel's conduct would render proceedings indefinite, tentative, and subject to reopening by the mere subterfuge of replacing counsel. Petitioner failed to show that his counsel's negligence was so gross and palpable as to call for the exercise of this Court's equity jurisdiction. While it is true that rules of procedure are not cast in stone, it is equally true that strict compliance with the Rules is indispensable for the prevention of needless delays and for the orderly and expeditious dispatch of judicial business.

APPEARANCES OF COUNSEL

Rodolfo U. Jimenez for petitioner.

Law Firm of De La Rama De La Rama De La Rama & Associates for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* filed by Romeo Samonte which seeks to set aside the Decision[1] dated March 26, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 70213, dismissing his petition for *certiorari* of the Order[2]

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[1] Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Jose L. Sabio, Jr. and Hakim S. Abdulwahid, concurring; *rollo*, pp. 34-39.

[2] CA *rollo*, pp. 16-18.

dated December 21, 2001 of the Regional Trial Court (RTC), Malolos, Bulacan, in Civil Case No. 585-M-2000, denying his petition for relief from judgment. Also assailed is the CA Resolution[3] dated September 28, 2004, denying petitioner's motion for reconsideration.

The antecedent facts, as narrated by the Court of Appeals, are as follows:

> Petitioner Romeo Samonte is the President and General Manager of S.B. Commercial Traders, Inc. (SB Traders, for brevity), a corporation engaged in the business of retailing motor oils and lubricants. It (sic) purchases Mobil products on credit basis from one of Mobil Oil Philippines' authorized dealers in Bulacan, herein private respondent S.F. Naguiat, Inc., with an express agreement to pay within a period of 60 days from date of delivery.
>
> On September 4, 2000, the private respondent filed a complaint for collection of sum of money against SB Traders and the petitioner with Branch 9 of the Regional Trial Court (RTC) of Malolos, Bulacan. The private respondent alleged that SB Traders incurred an obligation to pay the total sum of ₱1,105,143.27 arising from the sale of Mobil Oil products. It further averred that SB Traders was merely an alter ego of the petitioner and that it was operating for his sole benefit. Therefore, the petitioner and SB Traders must be held solidarily liable for the subject amount.
>
> The petitioner filed an answer denying all the material averments of the complaint, As special and affirmative defenses, he claimed that he was not acting in his personal capacity and was merely acting for and in behalf of SB Traders; that SB Traders never denied its obligation to pay for the purchases it made with the private respondent but was merely requesting for more time to settle its accounts; and that to effect payment for the subject amount, it had already issued postdated checks of ₱25,000.00 per month covering the period from June to December 1999 to the private respondent.
>
> Despite due notice, the petitioner and his counsel failed to appear at the scheduled pre-trial conference on April 20, 2001. Hence, trial ensued where the public respondent allowed the *ex parte* presentation of the private respondent's evidence before the Branch Clerk of Court.

[3] *Rollo,* p. 40.

On May 25, 2001, the public respondent rendered judgment in favor of the private respondent, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering defendants S.B. Commercial Traders, Inc. and Romeo G. Samonte to pay, jointly and severally, unto plaintiff S.F. Naguiat, Incorporated the following amounts: ₱1,105,143.27 as prayed for in the complaint representing the value of the oil products reflected in the Invoices marked as Exhibits 'B' to 'O' and 'O-1'-and 'P', with interest thereon at the rate of 18% per annum from the filing of the complaint on September 4, 2000 until the same shall have been paid in full; ₱10,000.00 as exemplary damages; and 20% of the entire amount due and demandable from the defendants as and for attorney's fees, plus the costs of the suit.

SO ORDERED.

The petitioner failed to appeal the said decision. Thereafter, on motion by the private respondent, the public respondent ordered the issuance of a writ of execution on July 30, 2001.

On August 22, 2001, the petitioner filed a petition for relief from judgment on the ground that the public respondent made serious and prejudicial mistakes in appreciating the evidence presented. He argued that a corporation had a personality separate and distinct from that of its officers and therefore, he cannot be held solidarily liable for obligations contracted by corporation. The petition was opposed by the private respondent.

On December 21, 2001, the public respondent issued the first assailed order denying the petitioner's petition for relief from judgment for lack of merit. The petitioner moved for reconsideration of the said order but the same was denied in the second assailed order dated February 12, 2002 on the grounds that the motion failed to comply with the mandatory requirements of Sections 4 and 5 of Rule 15 of the 1997 Rules of Civil procedure and that it failed to raise an issue which would warrant a modification or reversal of the order dated December 21, 2001.[4]

Petitioner filed with the CA a petition for *certiorari* with prayer for the issuance of a temporary restraining order and/or

[4] *Id.* at 34-36.

writ of preliminary injunction reiterating the grounds stated in his petition for relief from judgment filed with the RTC. Respondent filed its Comment. The parties subsequently filed their respective memoranda.

On March 26, 2004, the CA issued its assailed Decision dismissing the petition.

In so ruling, the CA found that the records showed that petitioner failed to file a motion for reconsideration or an appeal from the RTC Decision dated May 25, 2001 causing the said decision to become final and executory; that when petitioner filed the petition for relief from judgment, petitioner did not offer any reason for his failure to appeal; there was no assertion that the RTC decision was entered against him through fraud, accident, mistake or excusable negligence. The CA noted that the petition was not accompanied by an affidavit of merit showing the fraud, accident, mistake or excusable negligence relied upon and the facts constituting petitioner's good and substantial defense as required by law. It also agreed with the RTC's observation that petitioner did not assail the proceedings conducted below, but merely questioned the validity of the dispositive portion of the RTC decision, thus, the petition for relief from judgment was fatally flawed and should have been dismissed outright.

The CA added that notwithstanding such defect, the RTC proceeded with hearing the petition perhaps as an act of grace giving petitioner one last chance to protect his interest and present evidence in support of his arguments, but petitioner opted to dispense with the presentation of evidence in support of the said petition; that petitioner could not claim that he was denied his day in court or claim that the RTC committed grave abuse of discretion. The CA then said that once a judgment becomes final, executory and unappealable, the prevailing party shall not be deprived of the fruits of victory by some subterfuge devised by the losing party.

Petitioner's motion for reconsideration was denied in a Resolution dated September 28, 2004.

Petitioner is now before the Court raising the following grounds:

The Honorable Court committed an irreversible error in dismissing herein Petitioner's Petition for *Certiorari* and subsequently thereafter, in denying his Motion for Reconsideration thereto for lack of merit.

The Honorable Court gravely erred in strictly applying the rules of procedure at the expense of substantial justice.

The Honorable Court committed an irreversible error in not ruling on the merits of the case.[5]

The petition has no merit.

The Court of Appeals did not err in ruling that no grave abuse of discretion was committed by the RTC in dismissing the petition for relief from judgment filed by petitioner therewith.

Sections 1 and 3 of Rule 38 of the Rules of Court provide the requirements for a petition for relief from judgment, thus:

SEC. 1. Petition for relief from judgment, *order, or other proceedings.* – When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside.

SEC. 3. *Time for filing of petition; contents and verification.*— A petition for in either of the preceding sections of this rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, order, or other proceeding to be set aside, and not more than six (6) months after such judgment or order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be.

Relief from judgment under Rule 38 of the Rules of Court is a remedy provided by law to any person against whom a decision or order is entered into through fraud, accident, mistake or excusable negligence. The relief provided for is of equitable character, allowed only in exceptional cases as where there is

[5] *Rollo*, p. 15.

no other available or adequate remedy.[6] When a party has another remedy available to him, which may either be a motion for new trial or appeal from an adverse decision of the lower court, and he was not prevented by fraud, accident, mistake or excusable negligence from filing such motion or taking the appeal, he cannot avail himself of the relief provided in Rule 38. The rule is that relief will not be granted to a party who seeks avoidance from the effects of the judgment when the loss of the remedy at law was due to his own negligence or a mistaken mode of procedure, otherwise the petition for relief will be tantamount to reviving the right of appeal which has already been lost either because of inexcusable negligence or due to a mistake in the mode of procedure by counsel.[7]

In his Petition for Relief from Judgment filed before the RTC, petitioner alleged that the petition was filed on the ground that the RTC made serious and prejudicial mistakes in appreciating the evidence presented. He then proceeded to discuss the errors of judgment committed by the RTC in rendering its decision.

The mistake contemplated by Rule 38 of the Rules of Court pertains generally to mistake of fact, not of law, which relates to the case.[8] The word "mistake" which grants relief from judgment, does not apply and was never intended to apply to a judicial error which the court might have committed in the trial.[9] Such error may be corrected by means of an appeal.

The arguments raised by petitioner in his petition for relief from judgment, *i.e.*, he cannot be held civilly liable for obligations he, as corporate president thereof, has incurred in behalf of the corporation which is vested with a personality separate and distinct from its officers and stockholders; and that he cannot be held jointly and solidarily liable for the obligations, are proper

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[6] *Ibabao v. Intermediate Appellate Court*, G.R. No. 74848, May 20, 1987, 150 SCRA 76, 86.

[7] *Id.*

[8] *Agan v. Heirs of Sps. Andres Nueva and Diosdada Nueva*, G.R. No. 155018, December 11, 2003, 418 SCRA 421, 426.

[9] *Id.*, citing *Guevarra v. Tuason & Co.*, 1 Phil. 27 (1901).

issues which petitioner could have raised in a motion for reconsideration which he did not. The RTC, in its Order denying the petition for relief, ruled:

> Going by the tenor of the aforequoted Rule, it is the sense of this Court that the petition under consideration cannot prosper, given the grounds therefor which should have been raised, more appropriately, in a simple motion for reconsideration. It must be noted that the petitioner does not assail the proceedings conducted by this Court which culminated in the rendition of the judgment and issuance of the writ of execution rather; he questions only the validity of the dispositive portion of the decision, an issue which, as already adverted to, should have been ventilated via a motion for reconsideration.[10]

In fact, the alleged errors committed by the RTC could also be corrected by means of an appeal from the RTC decision. Petitioner did not also file an appeal causing the RTC decision to become final and executory and the subsequent issuance of a writ of execution. Notably, petitioner never made any allegation in his petition for relief from judgment that the RTC decision was entered against him through fraud, accident, mistake, or excusable negligence. The petition for relief did not also show any reason for petitioner's failure to file an appeal after the receipt of the RTC decision which the CA correctly observed in its assailed decision.

Petitioner's claim that Section 1, Rule 38 of the Rules of Court does not require that petitioner should state the reason why he did not avail of the remedy of appeal deserves scant consideration. His failure to avail of the remedy of appeal within the reglementary period despite receipt of the RTC decision rendered the same final and executory. He cannot be allowed to assail the RTC decision which had become final in a petition for relief from judgment when there was no allegations of fraud, accident, mistake, or excusable negligence which prevented him from interposing an appeal. Such appeal could have corrected what he believed to be an erroneous judicial decision. To reiterate,

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[10] CA *rollo*, p. 17.

petition for relief is an equitable remedy that is allowed only in exceptional cases where there is no other available or adequate remedy[11] which is not present in petitioner's case. Thus, petitioner's resort to a petition for relief under Rule 38 was not proper and the CA correctly ruled that the RTC did not commit grave abuse of discretion in denying the petition for relief from judgment.

Petitioner argues that the CA erred in finding that an affidavit of merit is an essential requirement in filing a petition for relief from judgment and that without said affidavit the same would be denied.

The Court does not agree.

Section 3, Rule 38 of the Rules of Court requires that the petition must be accompanied with affidavits of merits showing the fraud, accident, mistake, or excusable negligence relied upon by petitioner and the facts constituting the petitioner's good and substantial cause of action or defense as the case maybe. While a petition for relief without a separate affidavit of merit is sufficient where facts constituting petitioner's substantial cause of action or defense, as the case may be, are alleged in a verified petition since the oath elevates the petition to the same category as a separate affidavit,[12] the petition for relief filed by petitioner was not even verified. Thus, the CA did not err in no longer considering the merits of the case.

Petitioner now contends that the CA should have considered that it was petitioner's former counsel who has the implied authority to determine what procedural steps to take which in his judgment will best serve the interest of his client; that petitioner, being not knowledgeable of the laws, ought not to be blamed by the incompetence, ignorance and inexperience of his counsel; and that rules of procedure should give way for a liberal

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[11] *Insular Life Savings and Trust Company v. Runes, Jr.*, G.R. No. 152530, August 12, 2004, 436 SCRA 317, 325, citing *Mercury Drug Corp. v. Court of Appeals*, 335 SCRA 567 (2000).

[12] *Mago v. Court of Appeals*, 363 Phil. 225 (1999).

construction if the same will hinder, impede or sacrifice the demands of substantial justice.

There is no rule more settled than that a client is bound by his counsel's conduct, negligence and mistake in handling the case.[13] To allow a party to disown his counsel's conduct would render proceedings indefinite, tentative, and subject to reopening by the mere subterfuge of replacing counsel.[14] Petitioner failed to show that his counsel's negligence was so gross and palpable as to call for the exercise of this Court's equity jurisdiction. While it is true that rules of procedure are not cast in stone, it is equally true that strict compliance with the Rules is indispensable for the prevention of needless delays and for the orderly and expeditious dispatch of judicial business.[15]

In *Saint Louis University v. Cordero*,[16] the Court said:

> Thus, while regretful that the petitioners may have had meritorious defenses against the trial court's 17 December 1998 Order, we must likewise weigh such defenses against the need to halt an abuse of the flexibility of procedural rules. Additionally, it should be pointed out that in petitions for relief from judgment, orders, or other proceedings; relief from denial of appeals; or annulment of judgments, final orders and resolutions, where meritorious defenses must be adduced, they must accompany the grounds cited therein, whether it is fraud, accident, mistake, excusable negligence, extrinsic fraud or lack of jurisdiction. Where, as here, there is neither excusable nor gross negligence amounting to a denial of due process, meritorious defenses cannot alone be considered.

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[13] *Heirs of the Late Cruz Barredo v. Asis*, G.R. No. 153306, August 27, 2004, 437 SCRA 196, 200, citing *Alabanzas v. Intermediate Appellate Court*, G.R. No. 74697, November 29, 1991, 204 SCRA 304.

[14] *Gomez v. Montalban*, G.R. No. 174414, March 14, 2008, 548 SCRA 693, 708.

[15] *Lynx Industries Contractor, Inc. v. Tala*, G.R. No. 164333, August 24, 2007, 531 SCRA 169, 177.

[16] G.R. No. 144118, July 21, 2004, 434 SCRA 575.

It has long been recognized that strict compliance with the Rules of Court is indispensable for the prevention of needless delays and for the orderly and expeditious dispatch of judicial business. For the Court to allow the reopening or remand of the case after such a display of indifference to the requirements of the Rules of Court would put a strain on the orderly administration of justice.[17]

WHEREFORE, the petition is *DENIED.* The Decision dated March 26, 2004 and the Resolution dated September 28, 2004 of the Court of Appeals in CA-G.R. SP No. 70213 are *AFFIRMED.*

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 166508. October 2, 2009]

NATIONAL HOME MORTGAGE FINANCE CORPORATION, *petitioner, vs.* **MARIO ABAYARI, MAY ALMINE, MA. VICTORIA ALPAJARO, FLORANTE AMORES, ANGELINA ANCHETA, ANGELINE ODIEM-ARANETA, CECILIA PACIBLE, MIRIAM BAJADO, EDUARDO BALAURO, EVANGELINA BALIAO, LUISA BANUA, RIZALINA BENLAYO, MARJORIE BINAG, CRESENCIA BISNAR, CARMELITA BREBONERIA, JOSELYN BUNYI, EMILIO CABAMONGAN, JR., PAZ DIVINA**

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[17] *Id.* at 586-586.

CABANERO, RAUL CABANILLA, LEONILA WYNDA CADA, CELSTINA CASAO, ELIZABETH CASAS, ARNULFO CATALAN, FRANCIS DE LA CHICA, JAIME CORTES, JAIME DE LA CRUZ, JHONNY CUSTODIO, MA. BELINDA DAPULA, REMEDIOS DEBUQUE, REBECCA DECARA, JOCELYN DIEGO, JAIME DUQUE, LUCIA ENRIQUEZ, MA. LUCIA ESPEROS, HELEN EVANGELISTA, CELSO FERNANDEZ, EDILBERTO SAN GABRIEL, REYNALDO SAN GABRIEL, EDMUNDO GARAIS, JENNILYN GOZADO, EVELYN GUEVARRA, MA. MAGDALENA HIDONA, VICTORINO INDEFONSO, JR., GRACE CECILLE JAVIER, MARIETA JOSE, MA. CECILIA KAPAW-AN, EVANGELINE LABAY, SENORA LUCUNSAY, MILAGROSO ALLAN LAMBAN, VIOLETA DE LEON, CHARITO LONTAYAO, REMEDIOS LOYOLA, NORA MALALUAN, ALBERTO MALIFICIADO, DENNIS MANZANO, MA. CONCEPCION MARQUEZ, REYNALDO MASILANG, MAGDALENA MENDOZA, MELCHOR NANUD, MILAGROS NEPOMUCENO, ROSEMARIE NEPOMUCENO, APOLO NISPEROS, ANNALIZA NOBRERA, EVANGELINE NUESCA, YUMINA PABLO, GLORIA PANGANIBAN, ROGELIO PAQUIZ, ROLANDO PAREDES, NORA PEDROSO, MARIA HILNA DELA PEÑA, VICTORIA PEÑARADA, MELVIN PERALTA, DOROTHY PEREZ, FREDERICK MICHAEL PORTACION, ROMMEL RABACA, RODERICK REALUBIT, GWENDOLYN REMORIN, ANTONIO DE LOS REYES, NERISSA REYES, NENITA ROBRIGADO, ALLAN ROMERO, MA. ROSARIO ROMULO, LUIS DEL ROSARIO, CRISTINA ROSAS, DEXTER SALAZAR, MAGDALENA SALOMON, OLIVIA SALOMON, ELENITA SANCHEZ, ANGELINA SANTELICES, ANABELLE SANTOS, SHARLENE SANTOS, JAIME

SINGH DELMASINGUN, EVELYN SO, MILAGROS SOLMIRANO, CHRISTINE TALUSIK, CYRIL ROMUADO TEJA, EFREN TESORERO, PENNYLANE TIONGSON, CYPRIANO TOMINES, RONILO UMALI, MA. LOURSES VALDUAZA, MA. ANTONIA VALENZUELA, EDWIN VANGUARDIA, CARLO VEGA, ANNAMOR VELASCO, ESTEFANIA VILLANUEVA, and CANDELARIA YODICO, *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; ELUCIDATED. — A writ of *mandamus* is a command issuing from a court of law of competent jurisdiction, in the name of the state or sovereign, directed to an inferior court, tribunal, or board, or to some corporation or person, requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed, or from operation of law. It is employed to compel the performance, when refused, of a ministerial duty which, as opposed to a discretionary one, is that which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his or its own judgment upon the propriety or impropriety of the act done.

2. ID.; ID.; ID.; FAVORABLE JUDGMENT RENDERED IN A SPECIAL CIVIL ACTION FOR *MANDAMUS* IS IN THE NATURE OF A SPECIAL JUDGMENT GOVERNED BY THE RULE ON EXECUTION OF SPECIAL JUDGMENT. — A favorable judgment rendered in a special civil action for *mandamus* is in the nature of a special judgment. As such, it requires the performance of any other act than the payment of money or the sale or delivery of real or personal property the execution of which is governed by Section 11, Rule 39 of the Rules of Court which states: SECTION 11. *Execution of Special Judgment.*— When the judgment requires the performance of any act other than those mentioned in the two preceding sections, a certified copy of the judgment shall be attached to

the writ of execution and shall be served by the officer upon the party against whom the same is rendered, or upon any other person required thereby, or by law, to obey the same, and such party or person may be punished for contempt if he disobeys such judgment.

3. ID.; ID.; ID.; MAY NOT BE EXECUTED BY GARNISHMENT; CASE AT BAR. — While the April 17, 2001 Decision of the trial court ordered petitioner to pay the benefits claimed by respondents, it by no means ordered the payment of a specific sum of money and instead merely directed petitioner to extend to respondents the benefits under R.A. No. 6758 and its implementing rules. Being a special judgment, the decision may not be executed in the same way as a judgment for money handed down in an ordinary civil case governed by Section 9, Rule 39 of the Rules of Court which sanctions garnishment of debts and credits to satisfy a monetary award. Garnishment is proper only when the judgment to be enforced is one for payment of a sum of money. It cannot be employed to implement a special judgment such as that rendered in a special civil action for *mandamus*. On this score, not only did the trial court exceed the scope of its judgment when it awarded the benefits claimed by respondents. It also committed a blatant error when it issued the February 16, 2004 Order directing the garnishment of petitioner's funds with the Land Bank of the Philippines equivalent to ₱4,806,530.00, even though the said amount was not specified in the decision it sought to implement.

4. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); CLAIM FOR MONEY JUDGMENT AWARDED AGAINST A GOVERNMENT CORPORATION MUST BE FILED WITH THE COA; CASE AT BAR. — Assuming for the sake of argument that execution by garnishment could proceed in this case against the funds of petitioner, it must bear stress that the latter is a government-owned or controlled corporation with a charter of its own. Its juridical personality is separate and distinct from the government and it can sue and be sued in its name. As such, while indeed it cannot evade the effects of the execution of an adverse judgment and may not ordinarily place its funds beyond an order of garnishment issued in ordinary cases, it is imperative in order for execution to ensue that a claim for the payment of

the judgment award be first filed with the Commission on Audit (COA). Under Commonwealth Act No. 327, as amended by P.D. No. 1445, the COA, as one of the three independent constitutional commissions, is specifically vested with the power, authority and duty to examine, audit and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property owned or held in trust by the government, or any of its subdivisions, agencies or instrumentalities, including government-owned and controlled corporations. To ensure the effective discharge of its functions, it is vested with ample powers, subject to constitutional limitations, to define the scope of its audit and examination and establish the techniques and methods required therefor, to promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures or uses of government funds and properties. Section 1, Rule II of the COA Rules of Procedure materially provides: Section 1. *General Jurisdiction.* — x x x Specifically, such jurisdiction shall extend over but not limited to the following: x x x Money claims due from or owing to any government agency x x x. Clearly, the matter of allowing or disallowing a money claim against petitioner is within the primary power of the COA to decide. This no doubt includes money claims arising from the implementation of R.A. No. 6758. Respondents' claim against petitioner, although it has already been validated by the trial court's final decision, likewise belongs to that class of claims; hence, it must first be filed with the COA before execution could proceed. And from the decision therein, the aggrieved party is afforded a remedy by elevating the matter to this Court via a petition for *certiorari* in accordance with Section 1 Rule XI, of the COA Rules of Procedure. It states: Section 1. ***Petition for Certiorari.*** — Any decision, order or resolution of the Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty (30) days from receipt of a copy thereof in the manner provided by law, the Rules of Court and these Rules. When the decision, order or resolution adversely affects the interest of any government agency, the appeal may be taken by the proper head of the agency.

APPEARANCES OF COUNSEL

The Government Corporate Counsel for petitioner.
Danilo P. Cariaga for respondents.

D E C I S I O N

PERALTA, *J.*:

In this petition for review[1] under Rule 45 of the Rules of Court, the National Home Mortgage Finance Corporation assails the August 20, 2004 Decision[2] of the Court of Appeals in CA-G.R. SP No. 82637, which dismissed its petition for *certiorari* from the October 14, 2003[3] and December 15, 2003[4] Orders issued by the Regional Trial Court (RTC) of Makati City, Branch 138.[5] The said Orders, in turn, respectively granted the issuance of a writ of execution and denied petitioner's motion for reconsideration in Civil Case No. 99-1209 – a case for *mandamus*.

The antecedents follow.

Petitioner, the National Home Mortgage Finance Corporation (NHMFC), is a government-owned and controlled corporation created under the authority of Presidential Decree No. 1267 for the primary purpose of developing and providing a secondary market for home mortgages granted by public and/or private home-financing institutions.[6] In its employ were

[1] *Rollo,* pp. 9-36.

[2] The decision was rendered by the Special Seventeenth Division and was penned by Associate Justice Andres B. Reyes, with Associate Justices Japar B. Dimaampao and Monina Arevalo-Zeñarosa (now retired) concurring; *rollo,* pp. 40-47.

[3] Records, Vol. I, p. 441.

[4] *Id.* at 451.

[5] Presided by Judge Sixto Marella, Jr. (now Court of Appeals Associate Justice).

[6] Presidential Decree No. 1267, which carried the title "Creating a National Home Mortgage Finance Corporation, Defining Its Powers and Functions, and for Other Purposes," was signed on December 22, 1977.

respondents,[7] mostly rank-and-file employees, who all profess as having been hired after June 30, 1989.[8]

On July 1, 1989, Republic Act No. 6758, otherwise known as *The Compensation and Position Classification Act of 1989*, was enacted and was subsequently approved on August 21, 1989. Section 12 thereof directed that all allowances – namely representation and transportation allowance, clothing and laundry allowance, subsistence allowance, hazard pay and other allowances as may be determined by the budget department – enjoyed by covered employees should be deemed included in the standardized salary rates prescribed therein, and that the other additional compensation being received by incumbents

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[7] Namely, Mario Abayari, May Almine, Ma. Victoria Alpajaro, Florante Amores, Angelina Ancheta, Angeline Odiem-Araneta, Cecilia Apacible, Miriam Bajado, Eduardo Balauro, Evangelina Baliao, Luisa Banua, Rizalina, Benlayo, Marjorie Binag, Cresencia Bisnar, Carmelita Breboneria, Joselyn Bunyi, Emilio Cabmongan, Jr., Paz Divina Cabanero, Raul Cabanilla, Leonila Wynda Cada,Celestina Casao, Elizabeth Casas, Arnulfo Catalan, Francis dela Chica, Jaime Cortes, Jaime dela Cruz, Johnny Custodio, Ma. Belinda Dapula, Remedios Debuque, Rebecca Decara, Jocelyn Diego, Jaime Duque, Lucia Enriquez, Ma. Lucia Esperos, Helen Evangelista, Celso Fernandez, Edilberto San Gabriel, Reynaldo San Gabriel, Edmundo Garais, Jennilyn Gozado, Evelyn Guevarra, Ma. Magdalena Hidona, Victorino Indefonso, Jr., Grace Cecille Javier, Marieta Jose, Ma. Cecilia Kapaw-an, Evangeline Labay, Senora Lacunsay, Milagroso Allan Lamban, Violeta De Leon, Charito Lontayo, Remedios Loyola, Nora Malaluan, Alberto Malificiado, Dennis Manzano, Ma. Concepcion Marquez, Reynaldo Masilang, Magdalena Mendoza, Melchor Nanud, Milagros Nepomuceno, Rosemarie Nepomuceno, Apolo Nisperos, Annaliza Nobrera, Evangeline Nuesca, Yumina Pablo, Gloria Panganiban, Rogelio Paquiz, Rolando Paredes, Nora Pedroso, Maria Hilna Dela Pena, Victoria Penarada, Melvin Peralta, Dorothy Perez, Frederick Michael Portacion, Rommel Rabaca, Roderick Realubit, Gwendolyn Remorin, Antonio Delos Reyes, Nerrisa Reyes, Nenita Robrigado, Allan Romero, Ma. Rosario Romulo, Luis Del Rosario, Cristina Rosas, Dexter Salazar, Magdalena Salomon, Olivia Salomon, Elenita Sanchez, Angelita Santelices, Anabelle Santos, Aurea Santos, Nelia Santos, Sharlene Santos, Jaime Singh Delmasingun, Evelyn So, Jeanne Socorro, Milagros Solmirano, Christine Talusik, Cyril Romuado Teja, Efren Tesorero, Pennylane Tiongson, Cipriano Tomines, Ronilo Umali, Ma. Lourdes Valdueza, Ma. Antonia Valenzuela, Edwin Vanguardia, Carlo Vega, Annamor Velasco, Estefania Villanueva, Candelaria Yodico

[8] Records, Vol. I, p. 5.

only as of July 1, 1989 not integrated into the standardized salary rates should continue to be authorized. To implement the law, the Department of Budget and Management (DBM) issued Corporate Compensation Circular No. 10.[9] Section 5.5[10] thereof excluded certain allowances and benefits from integration into the standardized basic salary but continued their grant to those who were incumbents as of June 30, 1989 and who were actually receiving the benefits as of said date. These are the allowances involved in this case.

Respondents filed a petition for *mandamus* with the RTC of Makati City, Branch 138[11] to compel petitioner to pay them meal, rice, medical, dental, optical and children's allowances, as well as longevity pay, which allegedly were already being enjoyed by other NHMFC employees as early as July 1, 1989.

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[9] It carries the title "Rules and Regulations for the Implementation of the Revised Compensation and Position Classification System Prescribed under R.A. No. 6758 For Government-Owned and/or Controlled Corporations (GOCCs) and Financial Institutions (GFIs)." For lack of the requisite publication, the Circular was declared ineffective in the case of *De Jesus v. Commission on Audit*, 355 Phil. 584 (1998), but it was subsequently re-issued on February 15, 1999 and published on March 1, 1999. See *Magno v. Commission on Audit*, G.R. No. 149941, August 28, 2007, 531 SCRA 339.

[10] Section 5.5. The following allowances/fringe benefits authorized to GOCCs/GFIs pursuant to the aforementioned issuances are not likewise to be integrated into the basic salary and allowed to be continued only for incumbents of positions as of June 30, 1989 who are authorized and actually receiving said allowances/benefits as of said date at the same terms and conditions prescribed in said issuances:

5.5.1. Rice Subsidy;

5.5.2. Sugar Subsidy;

5.5.3. Death Benefits other than those granted by the GSIS;

5.5.4. Medical/dental/optical allowances/benefits;

5.5.5. Children's Allowance;

5.5.6. Special Duty Pay/Allowance;

5.5.7. Meal Subsidy;

5.5.8. Longevity Pay; and

5.5.9. Teller's Allowance.

[11] *Supra* note 5.

In its April 27, 2001 Decision, the trial court ruled favorably and ordered petitioner to pay respondents the allowances prayed for, retroactive to the respective dates of appointment.[12] The dispositive portion of the Decision reads:

> WHEREFORE, judgment is hereby rendered in favor of the petitioners and respondent is ordered to pay petitioners their meal allowance, rice allowance, medical allowance, longevity pay and children's allowance retroactive to the dates of their respective appointments up to the present or for the time that they were employed by the respondent.
>
> SO ORDERED.[13]

In arriving at the conclusion that respondents were entitled to the prayed-for benefits, the trial court explained, thus,

> The use of the word "only" before the words July 1, 1989 in Section 12 of Republic Act No. 6758 appears to be the source of the dispute.
>
> Section 12 is clear that other additional compensation being received by incumbents only as of July 1, 1989 that are not integrated into the standardized salary rates shall continue to be authorized. The law is prospective in effect and it does not say that such additional compensation shall not continue to be authorized for employees appointed after June 30, 1989. The use of the word "only" before the words "as of July 1, 1989" qualifies the additional compensation which can be continued. The foregoing applies to all employees whether permanent or casual.
>
> DBM Circular No. 10, the Implementing Rules and Regulations particularly Section 5.5 thereof…use the word "only" for incumbents as of June 30, 1989 and by implication the same shall not apply to employees appointed after June 30, 1989. This is in effect another qualification limiting the grant of benefits to those who are incumbents as of June 30, 1989, a condition not imposed by Section 12 of Republic Act No. 6758 for which reason it has to be strike (sic) down.[14]

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[12] Records, Vol. I, p. 207.

[13] *Id.*

[14] *Id.* at 206-207.

Petitioner timely filed an appeal with the Court of Appeals.[15] In its November 21, 2001 Decision, the appellate court affirmed the trial court's ruling.[16] No appeal was taken from the decision and upon its finality,[17] respondents moved for execution.[18]

However, the motion for execution was withdrawn when on May 12, 2002, petitioner and respondents executed a Compromise Agreement in which petitioner bound itself to comply with the decision rendered in the case, except that the payment of the allowances adjudicated in favor of respondents would be made in four installments instead. It was, likewise stipulated therein that the parties waive all claims against each other. The trial court did not take any positive action on the compromise except to note the same since the parties did not intend to novate the April 27, 2001 Decision.[19] On that basis, petitioner had started paying respondents the arrears in benefits.

Conflict arose when the DBM sent a letter[20] dated July 15, 2003 to NHMFC President Angelico Salud disallowing the payment of certain allowances, including those awarded by the trial court to respondents. A reading of the letter reveals that the disallowance was made in accordance with the 2002 NHMFC Corporate Operating Budget previously issued by the DBM.

To abide by the DBM's directive, petitioner then issued a memorandum stating that effective August 2003, the grant of benefits to its covered employees, including those awarded to respondents, would be curtailed pursuant to the DBM letter.[21] This eventuality compelled respondents to file for the second

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[15] The appeal was docketed as CA-G.R. SP No. 66303.

[16] See the Decision in CA G.R. SP No. 66303, CA *rollo*, p. 37.

[17] Records, Vol. I, p. 392.

[18] *Id.* at 395-398.

[19] See Order dated May 20, 2002, records, Col. I, p. 391.

[20] The letter was signed by then DBM secretary Emilia Boncodin, CA *rollo*, pp. 40-42.

[21] Records, Vol. II, p. 157.

time a motion for a writ of execution of the trial court's April 27, 2001 decision.[22]

In its October 14, 2003 Order,[23] the trial court found merit in respondents' motion; hence, it directed the execution of the judgment. Petitioner moved for reconsideration[24] but it was denied.[25] On February 16, 2004, the trial court issued a Writ of Execution/Garnishment with a directive to the sheriff to tender to respondents the amount of their collective claim equivalent to ₱4,806,530.00 to be satisfied out of petitioners goods and chattels and if the same be not sufficient, out of its existing real property.[26] Respondents then sought the garnishment of its funds under the custody of the Land Bank of the Philippines.[27]

Bent on preventing execution, petitioner filed a petition for *certiorari* with the Court of Appeals, docketed as CA-G.R. SP No. 82637.[28] In it, petitioner ascribed grave abuse of discretion to the trial court in ordering the execution of the judgment. It pointed out that the trial court disregarded the fact that the DBM's issuance amounted to a supervening event, or an occurrence that changed the situation of the parties that would make the continued payment of allowances to respondents impossible and illegal, and disregarded the DBM's exclusive authority to allow or disallow the payment of the benefits in question.[29] It likewise faulted the trial court in ordering the garnishment of its funds despite the settled rule that government funds may not be garnished in the absence of an appropriation made by law.[30]

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[22] Records, Vol. I, pp. 395-398.

[23] *Id.* at 441.

[24] *Id.* at 442-444.

[25] *Id.* at 451.

[26] Records, p. 157.

[27] While petitioner claims that respondents had sought the garnishment of its funds, the supposed notice of garnishment does not appear in the records.

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

[29] *Id.* at 7-13.

[30] *Id.* at 135.

The Court of Appeals, however, found no grave abuse of discretion on the part of the trial court; hence, in its August 20, 2004 Decision, it dismissed the petition for lack of merit.[31]

In its present recourse, petitioner, on the one hand, insists that it is difficult not to consider the issuance of the DBM in this case as a supervening event that would make the execution of the trial court's decision inequitable and/or impossible, since the determination of entitlement to benefits and allowances among government employees is within the agency's exclusive authority. It argues that, hence, both the trial court and the Court of Appeals were in error to order the execution of the decision as the same totally disregards the rule that issuances of administrative agencies are valid and enforceable.[32] Again, it asserts that the garnishment of its funds was not in order as there was no existing appropriation therefor.[33]

Respondents, on the other hand, argue in the main that inasmuch as the core issue of whether they were entitled to the schedule of benefits under Section 12 of R.A. No. 6758 had already been settled by both the trial court in Civil Case No. 99-1209 and the Court of Appeals in CA-G.R. SP No. 66303, the DBM letter should not be allowed to interfere with the decision and render the same ineffective. Since the said decision had already attained finality, they posit that execution appeared to be the only just and equitable measure under the premises[34] and that garnishment lies against petitioner's funds inasmuch as it has a personality separate and distinct from the government.[35]

There is partial merit in the petition.

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[31] *Id.* at 147. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the Petition for *Certiorari* is hereby DISMISSED for lack of merit.

SO ORDERED.

[32] *Rollo*, pp. 20-21.

[33] *Id.* at 257.

[34] *Id.* at 193, 195-197.

[35] *Id.* at 194-195.

To begin with, a writ of *mandamus* is a command issuing from a court of law of competent jurisdiction, in the name of the state or sovereign, directed to an inferior court, tribunal, or board, or to some corporation or person, requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed, or from operation of law.[36] It is employed to compel the performance, when refused, of a ministerial duty[37] which, as opposed to a discretionary one, is that which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his or its own judgment upon the propriety or impropriety of the act done.[38]

A favorable judgment rendered in a special civil action for *mandamus* is in the nature of a special judgment. As such, it requires the performance of any other act than the payment of money or the sale or delivery of real or personal property the execution of which is governed by Section 11, Rule 39 of the Rules of Court[39] which states:

> SECTION 11. *Execution of Special Judgment.*—When the judgment requires the performance of any act other than those mentioned in the two preceding sections, a certified copy of the judgment shall be attached to the writ of execution and shall be served by the officer upon the party against whom the same is rendered, or upon any other person required thereby, or by law, to obey the same, and such party or person may be punished for contempt if he disobeys such judgment.

While the April 17, 2001 Decision of the trial court ordered petitioner to pay the benefits claimed by respondents, it by no

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[36] 34 Am Jur. *Mandamus,* $2.

[37] *Angchangco, Jr. v. Ombudsman,* G.R. No. 122728, February 13, 1997, 268 SCRA 301, 306.

[38] *Kapisanan ng mga Manggagawa sa Manila Railroad Company Credit Union, Inc. v. Manila Railroad Company,* G.R. No. L-25316, February 28, 1979, 88 SCRA 616, 621.

[39] FERIA NOCHE, *Civil Procedure Annotated,* Vol. 2, 2001 ed. pp. 56, 501.

means ordered the payment of a specific sum of money and instead merely directed petitioner to extend to respondents the benefits under R.A. No. 6758 and its implementing rules. Being a special judgment, the decision may not be executed in the same way as a judgment for money handed down in an ordinary civil case governed by Section 9, Rule 39 of the Rules of Court which sanctions garnishment of debts and credits to satisfy a monetary award. Garnishment is proper only when the judgment to be enforced is one for payment of a sum of money. It cannot be employed to implement a special judgment such as that rendered in a special civil action for *mandamus*.[40]

On this score, not only did the trial court exceed the scope of its judgment when it awarded the benefits claimed by respondents. It also committed a blatant error when it issued the February 16, 2004 Order directing the garnishment of petitioner's funds with the Land Bank of the Philippines equivalent to ₱4,806,530.00, even though the said amount was not specified in the decision it sought to implement.

Be that as it may, assuming for the sake of argument that execution by garnishment could proceed in this case against the funds of petitioner, it must bear stress that the latter is a government-owned or controlled corporation with a charter of its own. Its juridical personality is separate and distinct from the government and it can sue and be sued in its name.[41] As such, while indeed it cannot evade the effects of the execution

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[40] *National Electrification Administration v. Morales*, G.R. No. 154200, July 24, 2007, 528 SCRA 79, 88-89.

[41] Section 5 of Presidential Decree No. 1267, dated December 21, 1977, provides:

Section 5. *Powers of the Corporation.* — The corporation shall have the following powers and functions:

x x x x x x x x x

(f) To adopt, alter and use a corporate seal; **to sue and be sued;** and generally, to exercise all the powers of a corporation under the Corporation Law which are not inconsistent herewith x x x.

of an adverse judgment and may not ordinarily place its funds beyond an order of garnishment issued in ordinary cases,[42] it is imperative in order for execution to ensue that a claim for the payment of the judgment award be first filed with the Commission on Audit (COA).[43]

Under Commonwealth Act No. 327,[44] as amended by P.D. No. 1445,[45] the COA, as one of the three independent constitutional commissions, is specifically vested with the power, authority and duty to examine, audit and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property owned or held in trust by the government, or any of its subdivisions, agencies or instrumentalities, including government-owned and controlled corporations.[46] To ensure the effective discharge of its functions, it is vested with ample powers, subject to constitutional limitations, to define the scope of its audit and examination and establish the techniques and methods required therefor, to promulgate accounting and auditing rules and regulations, including those

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[42] See *National Electrification Administration v. Morales, supra* note 40, 89-90, citing *National Housing Authority v. Heirs of Guivelondo,* 452 Phil. 481, 495 (2003); *Rizal Commercial Banking Corporation v. De Castro,* G.R. No. L-34548, November 29, 1988, 168 SCRA 49, 59; *Philippine Rock Industries, Inc. v. Board of Liquidators,* G.R. No. 84992, December 15, 1989, 180 SCRA 171, 174-175; *Philippine National Railways v. Court of Appeals*, G.R. No. 55347, October 4, 1985, 139 SCRA 87, 91 and *Philippine National Bank v. Pabalan,* G.R. No. L-33112, June 15, 1978, 83 SCRA 595, 601-602.

[43] *National Electrification Administration v. Morales, supra* note 40, at 90, citing *Parreno v. Commission on Audit,* G.R. No. 162224, June 7, 2007, 523 SCRA 390 (2007).

[44] Entitled "An Act Fixing the Time within which the Auditor General Shall render His Decisions and Prescribing the Manner of Appeal Therefrom."

[45] Section 26 of Presidential Decree No. 1445 (Ordaining and Instituting a Government Auditing Code of the Philippines). Signed on June 11, 1978.

[46] *National Electrification Administration v. Morales, supra* note 40, *National Irrigation Administration v. Enciso,* G.R. No. 142571, May 6, 2006; *Commissioner of Internal Revenue v. Commission on Audit,* G.R. No. 101976, January 29, 1993, 218 SCRA 203, 211-212.

for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures or uses of government funds and properties.[47] Section 1,[48] Rule II of the COA Rules of Procedure materially provides:

> Section 1. *General Jurisdiction.*—The Commission on Audit shall have the power, authority and duty to examine, audit and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to the Government, or any of its subdivisions, agencies or instrumentalities, including government owned and controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under the Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity directly or indirectly, from or through the government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary or appropriate to correct the deficiencies. It shall keep the general accounts of the Government, and for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.
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> x x x x x x x x x
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> **Specifically, such jurisdiction shall extend over but not limited to the following: x x x Money claims due from or owing to any government agency** x x x.[49]

Clearly, the matter of allowing or disallowing a money claim against petitioner is within the primary power of the COA to decide. This no doubt includes money claims arising from the

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[47] *National Irrigation Administration v. Enciso, supra, Commissioner of Internal Revenue v. Commission on Audit, supra* note 46.

[48] This provision is also found in Section 2(1), Article IX(D) of the 1987 Constitution.

[49] Emphasis ours.

implementation of R.A. No. 6758.[50] Respondents' claim against petitioner, although it has already been validated by the trial court's final decision, likewise belongs to that class of claims; hence, it must first be filed with the COA before execution could proceed. And from the decision therein, the aggrieved party is afforded a remedy by elevating the matter to this Court via a petition for *certiorari*[51] in accordance with Section 1 Rule XI, of the COA Rules of Procedure. It states:

> Section 1. ***Petition for Certiorari.*** — Any decision, order or resolution of the Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty (30) days from receipt of a copy thereof in the manner provided by law, the Rules of Court and these Rules.
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> When the decision, order or resolution adversely affects the interest of any government agency, the appeal may be taken by the proper head of the agency.

At this juncture, it is unmistakable that the recourse of respondents in CA-G.R. SP No. 82637 as well as in the petition before us is at best premature. Thus, the Court cannot possibly rule on the merits of the petition lest we would only be preempting the action of the COA on the matter. Suffice it to say that the propriety or regularity of respondents' claim under the judgment of the trial court may properly be addressed by the COA in an appropriate action. And even if we endeavor to take great lengths in deciding the merits of the case and determine the propriety of the DBM's issuance, its sufficiency to prevent the execution of the final judgment rendered in this case, and the entitlement or non-entitlement of each one of the respondents to the benefits

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[50] See *National Electrification Administration v. Morales, supra* note 40.

[51] *Public Estates Authority v. Commission on Audit,* G.R. No. 156537, January 24, 2007, 512 SCRA 428; *Philippine National Bank v. Palma,* G.R. No. 157279, August 9, 2005, 466 SCRA 307; *Philippine Ports Authority v. Commission on Audit,* G.R. No. 100773, October 16, 1992, 214 SCRA 653, 660; *Manila International Airport Authority v. Commission on Audit,* G.R. No. 104217, December 4, 1994, 238 SCRA 714.

under R.A. No. 6758, the same would nevertheless be a futile exercise. This, because after having pored over the records of the case, we found nothing sufficient to support respondents' uniform claim that they were incumbents as of July 1, 1989 – the date provided in Section 12 of R.A. 6758 – except perhaps their bare contention that they were all hired after June 30, 1989.

With this disquisition, we find no compelling reason to unnecessarily lengthen the discussion by undeservingly proceeding further with the other issues propounded by the parties.

WHEREFORE, the petition is *GRANTED IN PART*. The August 26, 2004 Decision of the Court of the Appelas in CA – G.R. SP No. 82637 is *REVERSED* and *SET ASIDE*. The regional trial Court of makati City, Branch 138 is *DIRECTED* to execute the April 17, 2001 Decision in Civil Case No. 99-1209 in accordance with this decision.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 170525. October 2, 2009]

BARON REPUBLIC THEATRICAL, MAJOR CINEMA, WILSON PASCUAL and RODRIGO SALAZAR, *petitioners, vs.* **NORMITA P. PERALTA and EDILBERTO H. AGUILAR,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; ABANDONMENT; ELEMENTS; BURDEN OF PROOF; CASE AT BAR. — It is a basic principle that in illegal dismissal cases, the burden of proof rests upon the employer to show that the dismissal of the employee is for a just cause and failure to do so would necessarily mean that the dismissal is not justified. In addition, in claims of abandonment by an employee, the settled rule is that the employer bears the burden of showing a deliberate and unjustified refusal by the employee to resume his employment without any intention of returning. Moreover, in evaluating a charge of abandonment, the jurisprudential rule is that abandonment is a matter of intention that cannot be lightly presumed from equivocal acts. To constitute abandonment, two elements must concur: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intent, manifested through overt acts, to sever the employer-employee relationship. In the present case, petitioner Pascual consistently denies that Aguilar was terminated from his employment and that, instead, he abandoned his work and never returned after his request for salary increase was rejected. However, denial, in this case, does not suffice; it should be coupled with evidence to support it. In the instant case, the Court finds no error in the ruling of the CA that petitioners failed to adduce evidence to prove abandonment and rebut Aguilar's claim of dismissal.

2. ID.; ID.; ID.; ID.; NEGATED BY THE FILING OF ILLEGAL DISMISSAL CASE WITH PRAYER FOR REINSTATEMENT THE DAY FOLLOWING EMPLOYEE'S TERMINATION. — In fact, Aguilar's filing of a complaint for illegal dismissal

the day following his termination, as well as his subsequent prayer for reinstatement in his Position Paper, are indications which strongly speak against the petitioners' charge of abandonment. An employee who loses no time in protesting his layoff cannot by any reasoning be said to have abandoned his work for it is illogical for an employee to abandon his employment and, thereafter, file a complaint for illegal dismissal and pray for reinstatement. In a long line of cases, this Court has held that abandonment is negated where the immediate filing of a complaint for illegal dismissal was coupled with a prayer for reinstatement and that the filing of the complaint for illegal dismissal is proof enough of the desire to return to work. The prayer for reinstatement, as in this case, speaks against any intent to sever the employer-employee relationship.

3. ID.; ID.; ID.; ATTORNEY'S FEES; PROPRIETY THEREOF. — It is settled that in actions for recovery of wages or when the employee is illegally dismissed in bad faith or where an employee was forced to litigate and incur expenses to protect his rights and interests by reason of the unjustified acts of his employer, he is entitled to an award of attorney's fees. This award is justifiable under Article 111 of the Labor Code, Section 8, Rule VIII, Book III of its Implementing Rules; and paragraph 7, Article 2208 of the Civil Code. Moreover, in cases for recovery of wages, the award of attorney's fees is proper and there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. There need only be a showing that the lawful wages were not paid accordingly.

APPEARANCES OF COUNSEL

Rondain & Mendiola for petitioners.

Law Firm of Gonzales Batiller David Leabres Reyes & Associates for respondents.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court which seeks the reversal of the

Decision[1] of the Court of Appeals (CA) dated March 31, 2005 in CA-G.R. SP No. 57483 and its Resolution[2] dated October 25, 2005, denying petitioners' Motion for Partial Reconsideration.[3] The CA Decision in question set aside the April 16, 1999 Decision of the National Labor Relations Commission (NLRC) in NLRC NCR CA NO. 014340-98[4] and reinstated with modification the Decision of the Labor Arbiter dated August 15, 1997 in NLRC NCR CASE NO. 00-05-04048-94.[5]

The factual and procedural antecedents, as narrated by the CA, are as follows:

> Petitioner [herein respondent], Normita P. Peralta ("PERALTA") was hired by BARON REPUBLIC THEATRICAL ("BARON") sometime in 1983 as a ticket seller and was later on promoted as General Manager. As General Manager she received a salary of Four Thousand Pesos (₱4,000.00) a month.
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> On March 14, 1993, she was informed by the owner and operator of BARON, respondent [herein petitioner] Rodrigo Salazar ("SALAZAR") that her employment was already terminated effective that day. She was not given any reason why her services were being terminated. Thereafter, she filed a case for illegal dismissal with claim for reinstatement, payment of backwages, unpaid salary, 13th month pay, service incentive leave, damages and attorney's fees against her employer, BARON/SALAZAR.
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> As to petitioner [herein respondent] Edilberto H. Aguilar ("AGUILAR"), he was hired as electrician/air-conditioner operator at MAJOR CINEMA ("MAJOR") sometime in January of 1983. AGUILAR received a salary of NINETY-SEVEN PESOS (₱97.00) per day and his salary was not increased even after the statutory minimum salary was increased.

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[1] Penned by Associate Justice Regalado E. Maambong, with Associate Justices Martin S. Villarama, Jr. and Lucenito N. Tagle, concurring; *rollo*, pp. 24-38.

[2] *Id.* at 39-40.

[3] CA *rollo*, p. 368.

[4] *Id.* at 20.

[5] *Id.* at 38.

In May 1994, he was informed by the owner-operator of MAJOR, [herein petitioner] Wilson Pascual ("PASCUAL"), that his employment was terminated effective that day. No explanation was given to AGUILAR why his service was being terminated. Hence, he filed a complaint against his employers, PASCUAL/MAJOR for illegal dismissal, payment of wage differentials as a result of underpayment, overtime pay, holiday and rest day/pay and service incentive leave pay.[6]

On August 15, 1997, the Labor Arbiter handling the case rendered a Decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered:

1. Ordering respondent Rodrigo D. Salazar to pay complainant NORMITA P. PERALTA, the following amounts:

13th month pay.	₱12,000.00
Service incentive leave pay	1,999.95
One month pay in lieu of notice	4,000.00
Separation pay (₱2,000.00 x 4 years - November 21, 1988 to March 14, 1993) . .	8,000.00
5% attorney's fees	1,300.00
TOTAL AWARD	₱27,299.95

2. Declaring the dismissal of complainant EDILBERTO H. AGUILAR by respondent WILSON PASCUAL to be illegal and ordering the latter to reinstate the former to his former position without loss of seniority rights and other privileges and pay him the following amount:

Backwages until reinstatement, computed as of August 15, 1997	₱149,158.50
13th month pay (₱140,158.50 over 12) . . .	11,679.90
Salary differentials (underpayment)	2,740.40
13th month pay for the underpayment	228.40
5 day per year SILP for 3 years	1,860.00
5% attorney's fees	7,833.75
TOTAL AWARD FOR AGUILAR	₱164,501.25

All other claims are DISMISSED for insufficiency of evidence and/or lack of merit.

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[6] *Id.* at 323-324.

SO ORDERED.[7]

The Labor Arbiter ruled that Peralta's dismissal was not illegal as the establishment where she was working closed due to business losses and closure of business or establishment is one of the authorized causes recognized by law in dismissing an employee. On the other hand, the Labor Arbiter held that Aguilar's dismissal was illegal for failure of Pascual to present evidence that the former's dismissal was for a just cause.

On appeal, the NLRC modified the Decision of the Labor Arbiter. The decretal portion of the NLRC Decision reads as follows:

WHEREFORE, premises considered, the Decision of the Labor Arbiter is hereby modified and a new one entered:

1. Ordering respondent Rodrigo D. Salazar to pay complainant NORMITA P. PERALTA, the following amounts:

One month pay in lieu of notice	₱ 4,000.00
Separation pay (₱2,000.00 x 4 yrs. Nov. 21, 1998 to March 14, 1993)	8,000.00
TOTAL AWARD	₱12,000.00

2. Declaring that complainant EDILBERTO H. AGUILAR has voluntarily terminated his employment with respondent WILSON PASCUAL but ordering the latter to pay the former:

Salary differentials (underpayment)	₱ 2,740.40
13th month pay for the underpayment	228.40
TOTAL AWARD FOR AGUILAR	₱ 2,968.80

SO ORDERED.[8]

In its Decision, the NLRC reversed the Labor Arbiter's ruling that Aguilar was illegally dismissed. Instead, it gave credence

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

[8] *Id.* at 110.

to Pascual's representation that it was Aguilar who refused to return or report for work and was guilty of abandonment. The NLRC held that it is against logic for Pascual to terminate Aguilar on the spot without any substitute because his services are essential to Pascual's business. The NLRC ruled that, aside from his self-serving statements, Aguilar failed to show proof that he was indeed terminated.

Herein respondents filed a Motion for Reconsideration,[9] but the NLRC denied it in its Resolution[10] dated September 28, 1999.

Respondents then filed a petition for *certiorari* with the CA assailing the abovementioned Decision and Resolution of the NLRC.[11]

On March 31, 2005, the CA rendered its Decision, disposing as follows:

> WHEREFORE, except as to the order deleting the award of Service Incentive Leave pay to PERALTA and AGUILAR, the decision of the NLRC dated April 16, 1999 is hereby **SET ASIDE** and the Decision of Labor Arbiter Ernesto S. Dinopol dated August 15, 1996 is **REINSTATED with the MODIFICATION** that the award of service incentive leave pay in favor of PERALTA and AGUILAR is **DELETED** and should the order reinstating AGUILAR be not feasible, MAJOR CINEMA and/or PASCUAL is hereby **ORDERED** to pay separation pay at the rate of one month for every year of service, with a fraction of at least six (6) months of service considered as one (1) year.
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> SO ORDERED.[12]

The CA held that as to Peralta, Salazar failed to discharge his burden of proving that he paid the former her 13th month pay. In the same manner, the appellate court ruled that Pascual failed to prove that Aguilar was guilty of abandonment. Moreover, the CA reinstated the award of attorney's fees holding that

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[9] *Id.* at 112.

[10] *Id.* at 121.

[11] *Id.* at 2.

[12] *Id.* at 334-335.

Peralta and Aguilar were both forced to litigate in order to protect their rights and interests. On the other hand, the CA affirmed the ruling of the NLRC which deleted the award of service incentive leave pay to Peralta and Aguilar.

Aggrieved, herein petitioners filed a Motion for Partial Reconsideration,[13] but it was denied by the CA in its Resolution[14] dated October 25, 2005.

Hence, this petition for review raising the following issues as grounds:

I

WHETHER OR NOT THE EMPLOYER HAS THE BURDEN OF PROVING THAT THE EMPLOYEE WAS DISMISSED FOR A JUST CAUSE ABSENT ANY SHOWING OF AN OVERT OR POSITIVE ACT PROVING THAT THE EMPLOYER HAD DISMISSED THE EMPLOYEE

II

WHETHER OR NOT THE COURT OF APPEALS ERRED IN REINSTATING THE AWARD OF ATTORNEY'S FEES IN FAVOR OF PERALTA AND AGUILAR IN THE ABSENCE OF BAD FAITH ON THE PART OF THE PETITIONERS[15]

As to the first issue, petitioners contend that the CA erred in ruling that Pascual has the burden of proving that the dismissal of Aguilar was for a just cause; that the CA proceeded on the wrong premise that Aguilar was in fact dismissed from his employment; that petitioners' burden of proving the validity of Aguilar's dismissal comes only after the latter is able to prove that his alleged dismissal from employment was made through some overt or positive act on the part of petitioner Pascual indicating such dismissal; that Aguilar, in fact, refused to work and abandoned his job.

The Court is not persuaded.

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[13] *Id.* at 368.

[14] *Id.* at 416.

[15] *Rollo*, p. 17.

It is a basic principle that in illegal dismissal cases, the burden of proof rests upon the employer to show that the dismissal of the employee is for a just cause and failure to do so would necessarily mean that the dismissal is not justified.[16] In addition, in claims of abandonment by an employee, the settled rule is that the employer bears the burden of showing a deliberate and unjustified refusal by the employee to resume his employment without any intention of returning.[17] Moreover, in evaluating a charge of abandonment, the jurisprudential rule is that abandonment is a matter of intention that cannot be lightly presumed from equivocal acts.[18] To constitute abandonment, two elements must concur: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intent, manifested through overt acts, to sever the employer-employee relationship.[19]

In the present case, petitioner Pascual consistently denies that Aguilar was terminated from his employment and that, instead, he abandoned his work and never returned after his request for salary increase was rejected. However, denial, in this case, does not suffice; it should be coupled with evidence to support it.[20] In the instant case, the Court finds no error in the ruling of the CA that petitioners failed to adduce evidence to prove abandonment and rebut Aguilar's claim of dismissal.

Contrary to petitioners' asseveration that Aguilar is guilty of abandoning his job, the Court finds no error in the finding of the Labor Arbiter, as affirmed by the CA, that there was no clear intention on Aguilar's part to sever the employer-employee relationship. Considering that "intention" is a mental state,

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[16] *Harbor View Restaurant v. Reynaldo Labro*, G.R. No. 168273, April 30, 2009.

[17] *Pentagon Steel Corporation v. Court of Appeals, et al.*, G.R. No. 174141, June 26, 2009.

[18] *Id*.

[19] *Id*.

[20] *Padilla Machine Shop v. Javilgas*, G.R. No. 175960, February 19, 2008, 546 SCRA 351, 360.

petitioners must show that respondent Aguilar's overt acts point unerringly to his intent not to work anymore. In this regard, petitioners failed.

In fact, Aguilar's filing of a complaint for illegal dismissal the day following his termination, as well as his subsequent prayer for reinstatement in his Position Paper,[21] are indications which strongly speak against the petitioners' charge of abandonment. An employee who loses no time in protesting his layoff cannot by any reasoning be said to have abandoned his work for it is illogical for an employee to abandon his employment and, thereafter, file a complaint for illegal dismissal and pray for reinstatement.[22]

In a long line of cases, this Court has held that abandonment is negated where the immediate filing of a complaint for illegal dismissal was coupled with a prayer for reinstatement and that the filing of the complaint for illegal dismissal is proof enough of the desire to return to work.[23] The prayer for reinstatement, as in this case, speaks against any intent to sever the employer-employee relationship.[24]

In addition, the Court takes note of the fact established by respondents that Aguilar has been in-charge of the air-conditioning system of Major Cinema since 1983, or a total of more than 11 years. No evidence was shown that he had any record of infraction of company rules. Hence, the Court finds it difficult to accept petitioner Pascual's allegation that Aguilar simply walked away with the intent to abandon his job when his request for increase

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[21] CA *rollo*, pp. 73-74.

[22] *Aliten v. U-Need Lumber & Hardware*, G.R. No. 168931, September 12, 2006, 501 SCRA 577, 589; *New Ever Marketing, Inc. v. Court of Appeals*, G.R. No. 140555, July 14, 2005, 463 SCRA 284, 296.

[23] *South Davao Development Co., Inc., et al. v. Sergio L. Gamo, et al.*, G.R. No. 171814, May 8, 2009; *Megaforce Security and Allied Services, Inc. v. Lactao*, G.R. No. 160940, July 21, 2008, 559 SCRA 110, 118; *Mame v. Court of Appeals*, G.R. No. 167953, April 4, 2007, 520 SCRA 552, 563; *Remington Industrial Sales Corporation v. Castaneda*, G.R. Nos. 169295-96, November 20, 2006, 507 SCRA 391, 413.

[24] *Pentagon Steel Corporation v. Court of Appeals, supra* note 17.

of wage was not granted. The Court agrees with the Labor Arbiter that abandonment after Aguilar's long years of service and the consequent surrender of benefits earned from years of hard work are highly unlikely.

Furthermore, the Court agrees with respondents when they argued in their petition filed with the CA that if an employee's aim is to secure the benefits due him from his employer, abandonment would surely be an illogical and impractical recourse, especially for simple laborers such as respondent Aguilar. Considering the difficult times in which our country is in it is illogical and even suicidal for an employee like Aguilar to abandon his work, knowing fully well of the widespread unemployment and underemployment problems as well as the difficulty of looking for a means of livelihood, simply because his employer rejected his demand for salary increase. Under the given facts, no basis in reason exists for the petitioners' theory that Aguilar abandoned his job.

With respect to the second issue, petitioners argue that attorney's fees are due only in cases where the plaintiff or complainant is compelled to litigate and that there must be a finding to this effect. Petitioners also assert that the totality of evidence does not support the claims of herein respondents that they were compelled to litigate.

The Court does not agree.

It is settled that in actions for recovery of wages or when the employee is illegally dismissed in bad faith or where an employee was forced to litigate and incur expenses to protect his rights and interests by reason of the unjustified acts of his employer, he is entitled to an award of attorney's fees.[25] This award is justifiable under Article 111 of the Labor Code,[26] Section 8,

[25] *M+W Zander Philippines, Inc, et al. v. Trinidad M. Enriquez*, G.R. No. 169173, June 5, 2009; *Placewell International Services Corporation v. Camote*, G.R. No. 169973, June 26, 2006, 492 SCRA 761, 770.

[26] ART. 111. *Attorney's fees*. — (a) In cases of unlawful withholding of wages the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered; (b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings

Rule VIII, Book III of its Implementing Rules;[27] and paragraph 7, Article 2208 of the Civil Code.[28]

Moreover, in cases for recovery of wages, the award of attorney's fees is proper and there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages.[29] There need only be a showing that the lawful wages were not paid accordingly.[30]

As to Peralta, it was established that she was denied her 13th month pay. Moreover, both the Labor Arbiter and the NLRC are in agreement that she was unceremoniously dismissed from her employment when her employer, Salazar, failed to serve her a written notice of her dismissal from employment at least 30 days prior to the supposed date of her termination. This is a clear evidence of bad faith on the part of Salazar. Hence, this circumstance, coupled with the denial of her benefits, prompted her to seek representation for the enforcement of her rights and the protection of her interests against the unjustified acts of her employer. Thus, the CA committed no grave abuse of discretion in sustaining the award of attorney's fees to Peralta.

With respect to Aguilar, it is clear that he was illegally terminated from his employment and that his wages and other benefits were withheld from him without any valid and legal

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for the recovery of the wages, attorney's fees which exceed ten percent of the amount of wages recovered.

[27] SEC. 8. *Attorney's fees*. — Attorney's fees in any judicial or administrative proceedings for the recovery of wages shall not exceed 10% of the amount awarded. The fees may be deducted from the total amount due the winning party.

[28] ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:"

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(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;"

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[29] *Norkis Trading Co., Inc. v. Genilo*, G.R. No. 159730, February 11, 2008, 544 SCRA 279, 296.

[30] *Id.*

basis. As a consequence, he is compelled to file an action for illegal dismissal and for the recovery of his lawful wages and other benefits and, in the process, incurred expenses. On these bases, the Court also finds that the CA did not commit grave abuse of discretion in upholding the grant of attorney's fees to Aguilar.

WHEREFORE, the instant petition is *DENIED*. The Decision of the Court of Appeals, dated March 31, 2005, and its Resolution of October 25, 2005 in CA-G.R. SP No. 57483, are *AFFIRMED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 171088. October 2, 2009]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LEONARD L. BERNARDINO *alias* ONAT,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF TRIAL COURT, RESPECTED. — We have consistently held, on the issue of credibility, that we give the highest respect to the trial court's evaluation of the testimonies of witnesses; the trial court is in a better position than this Court to assess the credibility of witnesses since it has direct access to and observes the demeanor of these witnesses and their manner of testifying. Thus, the appellate courts will generally not disturb the findings of the

trial court unless the latter has plainly overlooked facts of substance and value that, if considered, would affect the results of the case. We find no compelling reason to deviate from this general rule in passing upon **the prosecution's version of events.**

2. ID.; ID.; ID.; DENIAL AND FRAME-UP; WEAK DEFENSE. — The defenses of denial and frame-up are weak defenses that are viewed by the Court with disfavor because "they can easily be feigned and fabricated." In *People v. Uy*, the Court explicitly expounded on this view, as follows: We are not unaware that in some instances law enforcers resort to the practice of planting evidence to extract information or even to harass civilians. However, like alibi, frame-up is a defense that has been invariably viewed by the Court with disfavor as it can easily be concocted [and] hence commonly used as a standard line of defense in most prosecutions arising from violations of the Dangerous Drugs Act. We realize the disastrous consequences on the enforcement of law and order, not to mention the well being of society, if the courts x x x accept in every instance this form of defense which can be so easily fabricated. x x x The present case is no exception to what we have said above, as the accused-appellant failed to adduce clear and convincing evidence against the positive, consistent and categorical prosecution evidence pointing to his guilt of the crimes charged.

3. ID.; ID.; ID.; NOT AFFECTED BY MINOR INCONSISTENCIES. — The discrepancies the accused-appellant points out, x x x all refer to events which occurred *prior to the buy-bust operation*. They are extraneous matters with no direct bearing on the evidence establishing the elements of the crimes charged. The inconsistencies, if any, refer to minor matters that enhance, rather than destroy, the veracity of the witnesses' testimonies; they serve to remove any suspicion that these testimonies were contrived or rehearsed. More importantly, these discrepancies did not contest the categorical and consistent testimonies of SPO2 Cadiz and SPO4 Guillermo and the other prosecution evidence on the elements of the crimes charged.

4. CRIMINAL LAW; DANGEROUS DRUGS ACT; BUY-BUST OPERATION; VALIDITY THEREOF NOT AFFECTED BY LACK OF PRIOR SURVEILLANCE OR TEST-BUY. —We reject the accused-appellant's argument that the lack of prior surveillance or test-buys affected the integrity of the buy-bust operation. Although test-buys for dangerous drugs provide assurance of the reliability of an informer's tip, they are not conditions *sine qua non;* their absence does not affect the validity of a buy-bust operation and of the credibility of police officers participating on the basis of an informer's tip. SPO4 Guillermo and SPO2 Cadiz duly justified both the lack of prior surveillance and of an existing file on the accused-appellant, when they stood by the trustworthiness and reliability of their asset whom they tried and tested in previous operations; their familiarity with the female asset led the police to dispense with the need for a prior surveillance or for test-buys.

5. ID.; ID.; ID.; SALE OF *SHABU* IN A BUSY STREET BETWEEN STRANGERS, NOT UNUSUAL. — We reject the accused-appellant's argument on the alleged impossibility of the sale of *shabu* in a busy street between two strangers who used two vehicles that were side by side each other. x x x We agree with the CA's observation that there was nothing unusual in drug transactions between strangers. Previous cases relating to dangerous drug violations, in fact, support this observation. A case in point would be our ruling in *People v. Chua* where we said: xxx the law does not prescribe as an element of the crime that the vendor and vendee be familiar with each other. What matters in a drug related case is not the existing familiarity between the seller and the buyer, but their agreement and the acts constituting the same and delivery of the prohibited drugs... x x x … [D]rug pushers do not confine their trade to known customers; complete strangers are accommodated provided they have the money to pay. Moreover, why a dealer would trust a buyer, which is to say the motive behind a drug deal, is not an essential element of drug-related offense.

6. ID.; ID.; ILLEGAL SALE OF *SHABU*; ELEMENTS. — In a successful prosecution for illegal sale of *shabu*, the concurrence

of the following elements must be present: (a) the identity of the buyer and the seller, the object, and consideration; and (b) the delivery of the thing sold and the payment therefor. What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti* or the very drugs the accused sold.

7. ID.; ID.; ID.; ID.; IDENTITY OF THE DRUGS ALLEGEDLY SOLD; *SHABU* PRESENTED IN COURT NOT SPECIFICALLY IDENTIFIED AS AMONG THE *SHABU* ACTUALLY SOLD AT THE BUY-BUST. — Case law teaches that a common issue in drug cases involving buy-busts is the identity of the drugs allegedly sold: are these the very same drugs presented in court? Case law also teaches that this issue is commonly resolved by a scrutiny of the chain of custody of the recovered drugs. In this case, while each and every link in the chain of custody of the *shabu* recovered from the accused-appellant was established through the testimonial evidence of SPO2 Cadiz and forensic chemist Babor showing the movements of the *shabu* from the time of seizure, its marking at the police station, and its submission for laboratory examination until its presentation in court, we find that the prosecution failed to specifically identify the *shabu* that was actually sold at the buy-bust as among the *shabu* that were presented in court.

8. ID.; ID.; ILLEGAL POSSESSION OF *SHABU*; ELEMENTS. — In a prosecution for illegal possession of *shabu*, the following elements must be satisfactorily established: (a) the accused is found in possession of a regulated drug; (b) the person is not authorized by law or by duly constituted authorities; and (c) the accused has knowledge that the said drug is a regulated drug.

9. ID.; ID.; ID.; ACTUAL POSSESSION WITHOUT AUTHORITY; MANIFESTED IN CASE AT BAR. — Actual possession exists when the drug is in the immediate physical possession or control of the accused. In this case, the drugs were found inside his clothing. No evidence was ever adduced showing that the accused-appellant had authority to possess these regulated drugs. The surrounding circumstances indicate the accused-appellant's

knowledge of the drugs in his possession. Knowledge, being an internal act, may be presumed from the failure of the accused to explain why the drug was in a place over which the accused exercised dominion and control. In this case, such explanation was glaringly lacking. The only explanation offered – police frame-up – is, as discussed, a discredited one. Hence, knowing possession of the *shabu* by the accused-appellant is presumed under the circumstances.

10. ID.; ID.; ID.; PROPER PENALTY IN CASE AT BAR. — Section 16, Article III of R.A. No. 6425 as amended by Section 16 of R.A. No. 7659, in relation to Section 20 of R.A. No. 7659, imposes the penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos against any person caught in possession of 200 grams of *shabu* or more. This penalty finds full application in the present case since the accused-appellant was found in illegal possession of 211.23 grams of *shabu*. In the absence of any aggravating or mitigating circumstances, the CA correctly imposed the penalty of *reclusion perpetua* conformably with Article 63 of the Revised Penal Code. The fine of ₱1 Million Pesos imposed is also in accordance with the law.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Rodolfo D. Mapile for accused-appellant.

D E C I S I O N

BRION, *J.*:

This is an appeal from the decision of the Court of Appeals (*CA*)[1] finding Leonard L. Bernardino (*accused-appellant*) guilty beyond reasonable doubt of the illegal sale and illegal possession

[1] Dated September 30, 2005; *rollo*, pp. 3-17, penned by Associate Justice Rosmari D. Carandang with Associate Justice Andres B. Reyes, Jr. and Associate Justice Monina Arevalo-Zeñarosa, concurring in CA-G.R. CR HC No. 00240.

of *shabu*, penalized under Sections 15 and 16, Article III of Republic Act No. 6425 (*R.A. No. 6425*), as amended[2] (The Dangerous Drugs Act of 1972). The CA decision fully affirmed the judgments of conviction on the two charges rendered by the Regional Trial Court (*RTC*), Branch 56, Angeles City.[3]

In Criminal Case No. 96-530, the accused-appellant was accused of illegal possession of *shabu* under Section 16, Article III of R.A. No. 6425 under an Information that states:

> That on or about the 29th day of September, 1996, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession and under his control *SHABU* (Methamphetamine Hydrochloride) weighing approximately 215 grams, which (sic) is a regulated drug, without any authority whatsoever.
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> ALL CONTRARY TO THE LAW.[4]

In Criminal Case No. 96-533, the accused-appellant, together with one Nestor C. Nemis, was charged with the illegal sale of *shabu*, penalized under Section 15, Article III of R.A. No. 6425, as follows:

> That on or about the 29th day of September, 1996, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually aiding and abetting one another, did then and there willfully, unlawfully and feloniously sell and/or deliver one transparent plastic sachet of *SHABU* (methamphetamine Hydrochloride weighing approximately 5 grams to poseur-buyer without any authority whatsoever.
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> ALL CONTRARY TO THE LAW.

The accused-appellant alone stood trial as his co-accused Nestor C. Nemis, after entering a plea of not guilty, jumped

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[2] R.A. No. 7659.

[3] Dated August 18, 1999; *records*, pp. 247-262; penned by Judge Lourdes F. Gatbalite in Criminal Case Nos. 96-530 and 533.

[4] *Id.*, p. 1.

bail. The accused-appellant pleaded not guilty to both charges.[5] The two criminal cases were subsequently consolidated and jointly tried.

THE ANTECEDENTS

At the trial, the prosecution and the defense presented conflicting versions of the antecedent events. The prosecution's evidence, documentary[6] and testimonial,[7] showed that the accused-appellant was arrested in a buy-bust operation by the police. The defense's evidence, through documentary evidence[8] and the testimonies of the accused-appellant and Salvador Bernardino (*Salvador*), showed that the accused-appellant was the victim of a police frame-up.

The Prosecution's Version

SPO2 Daniel C. Cadiz[9] (*SPO2 Cadiz*), one of the prosecution witnesses, is an investigator and intelligence operative of the Regional Operations Group based at Camp Olivas, San Fernando,

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[5] Orders dated January 14, 1997; *id.*, pp. 59-60.

[6] Consisting of: (1) Money bills in the amounts of ₱3,000.00 and ₱2,400.00 (Exhibits A to A-20); (2) Initial Laboratory Examination Report (Exhibits B and B-1); (3) Chemistry Report No. D-604-96 (Exhibits C to C-2); (4) Joint Affidavit of Arrest (Exhibits D to D-3); (5) the *shabu* seized from the accused-appellant with the corresponding markings (Exhibits E to E-2, G-G-3 and H to H-4); (6) the tooter and aluminum foil with corresponding markings (Exhibits F to F-8); (7) Sketch prepared by SPO2 Cadiz (Exhibits I and I-1); (8) Pictures depicting Nestor Nemis (Exhibits J to J-2); (9) Request for Laboratory Examination dated September 30, 1996 (Exhibit K); and (10) Formal Offer of Evidence; Exhibits, pp. 1-6.

[7] They are: (1) SPO2 Danilo C. Cadiz; (2) SPO4 Daniel M. Guillermo; and (3) Forensic Chemist Daisy Babor.

[8] Among others: 1) Photograph of the house (Exhibit 1 with submarkings); (2) Sketch prepared by SPO2 Cadiz (Exhibit 2 with submarkings); (3) Complaint lodged before the Office of the Ombudsman (Exhibit 3); (4) Order of the RTC appearing on page 19 of the *expediente* (Exhibit 4); (5) Motion for the Release of the Bond of the panel used in picking up the aircon unit and photographs thereof (Exhibit 5 with submarkings); and (6) Judicial Affidavit of Atty. Rodolfo D. Mapile (Exhibit 6) .

[9] Direct Examination; TSN, May 6, 1997, pp. 2-12 and TSN, June 3, 1997, pp. 2-5.

Pampanga (*Camp Olivas*). He testified that while he was at his office at around 3:00 p.m. of September 29, 1996, he received information from a female asset about a drug deal involving ₱3,000.00 worth of *shabu* (equivalent to five [5] grams)[10] that the asset arranged with a certain Onat.

SPO2 Cadiz immediately relayed the information to Chief Inspector Igmedio Cruz, Jr. who organized a buy-bust team. SPO2 Cadiz testified that the subject of the buy-bust operation would be a man riding a green Isuzu pick-up and that he (SPO2 Cadiz) was designated to act as the *poseur* buyer. After a briefing, he and the rest of the buy-bust team,[11] together with two (2) civilian assets, proceeded to Don Bonifacio St., Don Bonifacio Subdivision, Angeles City on board three vehicles. They arrived at the designated place at 5:30 p.m. and strategically positioned their vehicles in front of House No. 43-25 Don Bonifacio St., the place where the sale of *shabu* was to take place. SPO2 Cadiz was with the female asset inside a vehicle they parked by the roadside; SPO2 Cadiz was at the backseat of the vehicle while the civilian asset was at the driver's seat. At about 9:00 p.m., a green Isuzu pick-up showed up and stopped alongside and very near the vehicle of SPO2 Cadiz and the female asset. SPO2 Cadiz hid himself at the vehicle's backseat area from where he heard the conversation between the female asset and the man in the pick-up. When SPO2 Cadiz heard the female asset say "*Sige*. Thank you" – the pre-arranged signal to signify that an exchange of money and drugs had already taken place – he got off the vehicle and arrested the driver of the pick-up who was then holding the ₱3,000.00 marked money. The driver identified himself. At that point, the rest of the buy-bust team converged on the pick-up; he saw that the accused-appellant was accompanied in the pick-up by another man later identified as Nestor Nemis. Like the accused-appellant, Nestor Nemis himself was arrested by the other members of the buy-bust

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[10] TSN, June 3, 1997, p. 9.

[11] They are: SPO4 Daniel M. Guillermo, SPO1 Ronnie F. Sagum, SPO1 Antonio Bonaobra, and SPO1 Patrick Palisoc.

team. Both the accused-appellant and Nestor Nemis were subjected to a body search and the vehicle itself was searched.

In addition to the suspected *shabu* sold at the buy-bust and the ₱3,000.00 marked money recovered from the accused-appellant, SPO2 Cadiz' body search of the accused-appellant yielded the following items: (a) a white plastic bag containing other two plastic bag search containing a suspected methamphetamine hydrochloride known (*shabu*) weighing approximately 200 grams contained in a white big size plastic bag labeled Uniwide Sales; (b) three plastic bags each containing a quantity of suspected *shabu* with an approximate weight of fifteen grams; and (c) money in the amount of ₱2,400.00.

The search of the glove compartment of the pick-up yielded a partly burned aluminum foil with residue, a small quantity of suspected *shabu,* and three improvised tooters.

The arresting team forthwith took the accused-appellant and Nestor Nemis to Camp Olivas while SPO2 Cadiz personally took the confiscated items to the Philippine National Police Crime Laboratory for examination.

SPO2 Cadiz identified in court the marked money (marked with the initials "D.G.") and the confiscated *shabu* through the markings which he made in red ink (his own intitials "DCC") on the **Uniwide Sales plastic bag** (Exhibit "E" with submarkings).[12] Likewise, he identified the **tooter and aluminum foil** (Exhibit "F" with submarkings) as the items seized from the accused-appellant, which he marked in black ink with his initials, "DCC";[13] he marked the plastic bag containing the tooter and aluminum foil with his signature and name.[14] SPO2 Cadiz also testified that he marked the **three (3) small transparent plastic sachets** (Exhibits "G" to "G-3") and the **plastic bag (Exhibit "H") taken from the accused-appellant** with his name written in red ink and initials in black ink.[15] He testified that he

[12] TSN, May 6, 1997, p. 10; and TSN, July 21, 1997, p. 4.

[13] TSN, July 21, 1997, pp. 5-6.

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

[15] *Id.,* pp. 6-8.

made these markings immediately after the buy-bust operation when he arrived at the Regional Special Operation Office at around 9:30 p.m.[16] He personally took the confiscated items to the crime laboratory the next day at around 10:00 a.m. SPO2 Cadiz explained that they bring the evidence to the crime laboratory office as soon as possible. The administration office of the crime laboratory received the items he turned over.[17] The recipient recorded the turnover, duly affixing her signature and the time of receipt.[18] SPO2 Cadiz was then told to return that same day to receive the initial examination report.[19]

SPO4 Daniel M. Guillermo (*SPO4 Guillermo*)[20] is a member of the Regional Special Operation Group of Camp Olivas and heads the Pampanga Intelligence Team charged with the task of gathering information against criminal elements. He acted as team leader of the buy-bust operation conducted against the accused-appellant on September 29, 1996. SPO4 Guillermo testified that he was given ₱3,000.00 as buy-bust money by his superiors; he marked these with "x" and his initials, and thereafter gave the sum to SPO2 Cadiz, the designated *poseur* buyer.

He further testified that at around 5:30 p.m. of September 29, 1996, he and the buy-bust team were on board three (3) vehicles on Don Bonifacio St., Don Bonifacio Subdivision, Angeles City. In the course of their operation, they retrieved *shabu* weighing around 215 grams and other drug paraphernalia from the accused-appellant. He instructed SPO2 Cadiz to secure all the evidence consisting of the three (3) pieces of marked money, the *shabu*, the improvised tooter with partly burned aluminum foil with residue, and three (3) plastic bags. After the arrest, they took the accused-appellant and Nestor Nemis to Camp

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[16] *Id.*, pp. 9-10.

[17] *Id.*, pp. 10-11.

[18] *Ibid.*

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

[20] Direct Examination; TSN, July 8, 1997, pp. 2-18.

Olivas while the confiscated items were turned over to the forensic chemist for examination.

Daisy Babor[21] (*Babor*) is a forensic chemist at the PNP Crime Laboratory, Camp Olivas, San Fernando, Pampanga. On September 30, 1996, she received specimens submitted by SPO2 Cadiz for examination. She testified that she received these specimens from the laboratory's receiving clerk, Sonia Samonte, who immediately endorsed these to her after receipt from SPO2 Cadiz.[22] The specimens submitted for examination were: (a) one (1) white big size plastic bag labeled Uniwide Sales containing two (2) medium size transparent plastic bag each with white crystalline substance having a total weight of 198.324 grams; (b) a medium size transparent plastic bag containing one (1) small size heat sealed transparent plastic bag with white crystalline substance weighing 1.669 grams; (c) one (1) medium size transparent plastic bag containing three (3) small size heat-sealed transparent plastic packs each with white crystalline substance having a total weight of 11.237 grams; and (d) one transparent plastic bag containing suspected drug abused paraphernalia seeds, one (1) small piece of partly burned aluminum foil, and three (3) improvised tooters each with suspected *shabu* residue.[23]

Babor further testified that she immediately conducted an examination of the submitted specimens; the tests she conducted yielded positive results for *shabu*.[24] The results of her examination are contained in the Initial Report dated September 30, 1996 (Exhibit "B") and Chemistry Report D-604-96 dated October 1, 1996 (Exhibit "C") which Babor herself prepared. After the tests, she kept the specimens in the laboratory's evidence room that only Babor and her chief had access to. She testified that she took out these specimens from the evidence room when she brought them to court for presentation on June 23, 1997.[25]

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[21] TSN, January 22, 1998, pp. 2-15.

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

[23] *Ibid.*

[24] *Id.*, p. 6.

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

At her direct examination, Babor confirmed the specimens she examined and identified them as the same specimens SPO2 Cadiz turned over for examination.[26]

The Version of the Defense

The accused-appellant[27] raised the **defenses of denial and frame-up**. He claimed that he and Nestor Nemis were used as sacrificial lambs in exchange for the freedom of one Aling Rosie who is reputed to be the queen of *shabu* in Angeles City, Pampanga.[28] He related that in the afternoon of September 29, 1996, he and Nestor Nemis were on their way to Angeles City, Pampanga on board an Isuzu pick-up owned by Salvador. The purpose of their trip was to pick up a split-type aircon unit that the accused-appellant bought from Aling Rosie. They arrived at Aling Rosie's house at around 7:30 p.m.; Aling Rosie was not there and they were told by the occupant of the house to wait. Aling Rosie arrived about an hour and a half later; she immediately told them that she had to change clothes before they could proceed to do business. While waiting for Aling Rosie, they heard a commotion and about seven persons, who turned out to be police officers, entered the house and asked them to lie face down on the floor. Thereafter, the accused-appellant saw Aling Rosie crying while talking to the police officers. They were arrested right then and there and were taken to Camp Olivas. During the ride, the accused-appellant heard the policeman driving their vehicle say – *[p]are ayos nahuli rin natin ang Reyna ng Angeles*. Upon their arrival at Camp Olivas, the accused-appellant learned that he had been pointed to as the party who brought the *shabu*. The accused-appellant claimed that he was maltreated and forced to admit to the crime.

Because of his arrest and maltreatment, the accused-appellant filed an administrative complaint before the Ombudsman against the police officers who arrested him. The accused-appellant further claimed that unidentified persons approached him who

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

[27] Direct Examination, TSN, June 4, 1998, pp. 2- 15.

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

offered to drop the criminal charges if he would drop his charges before the Ombudsman.

The defense also presented Salvador,[29] the accused-appellant's uncle and owner of the Isuzu pick-up the police confiscated when the accused-appellant was arrested. Salvador testified that the accused-appellant borrowed the pick-up to get an air conditioning unit.

On August 18, 1999, the RTC convicted the accused-appellant of the crimes charged; his co-accused Nestor C. Nemis was acquitted for lack of evidence. The dispositive portion of the decision reads:

> WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered as follows:
>
> 1. In Crim. Case No. 96-530, the Court finds the accused Leonardo L. Bernardino @ Onat guilty beyond reasonable doubt of the crime of Violation of Section 16, Article III of Republic Act 6425, as amended and said accused is hereby sentenced to suffer the penalty of Life Imprisonment and to pay a fine of ₱ 20,000.00 and to pay the costs.
>
> x x x x x x x x x
>
> 2. In Crim. Case No. 96-533, finding the accused Leonard L. Bernardino @ Onat guilty beyond reasonable doubt of the crime of Violation of Section 15, Article III of Republic Act 6425, as amended, said accused is hereby sentenced to suffer the penalty of Two (2)years, Four (4) months and one (1) day of *prision correccional*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum and to pay one-half (1/2) of the costs.
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> x x x x x x x x x
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> For lack of evidence to hold accused Nestor A. Nemis criminally liable for the crime charged, said accused is hereby acquitted with cost *de oficio*.
>
> SO ORDERED.[30]

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[29] TSN, September 24, 1998, pp. 2-11.

[30] Records, pp. 261-262.

Pursuant to *People v. Mateo*,[31] we transferred the case, initially appealed to us, to the CA. On September 30, 2005, the CA affirmed the accused-appellant's conviction. The CA, however, modified the penalty in Criminal Case No. 96-530 and sentenced the accused-appellant to suffer the penalty of *reclusion perpetua* for illegal possession of *shabu* and to pay a corresponding fine of ₱1 Million. The CA affirmed the RTC's ruling in Criminal Case No. 96-533.[32]

THE ISSUE

The sole issue raised in this appeal is one of credibility – whether the lower courts committed a reversible error in giving greater weight to the testimonies of the police officers whose acts, according to the accused-appellant, were unfairly presumed to be regular. The accused-appellant also contends that the lower courts erred in disbelieving his version of the events and in disregarding his complaint before the Ombudsman against the police officers for the frame-up they contrived.

For our consideration is the question: is the prosecution's evidence sufficient to sustain the accused-appellant's conviction for the crimes charged?

THE COURT'S RULING

Although the only issue raised in this appeal relates to the credibility of the prosecution witnesses, we are driven to reexamine and modify the decisions of the RTC and CA after going over the records of this case, the transcript of stenographic notes, and the exhibits before us. We undertake this in-depth review pursuant to our authority, in appeals of criminal cases, to open up the whole case for review. We find, after this review, that both courts failed to consider the crucial fact that the accused-appellant was charged with and was convicted of two (2) crimes that, although commonly relating to dangerous drugs, are nevertheless separate and distinct from one another, particularly in terms of their elements and requisites.

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

[32] *Rollo*, p. 17.

Credibility of the Prosecution Witnesses

The records show that in finding the accused-appellant liable for the crimes charged, both the RTC and CA believed the testimonies of SPO2 Cadiz, SPO4 Guillermo and forensic chemist Babor showing that the accused-appellant was arrested in a legitimate entrapment operation where he was caught in the act of selling ₱3,000.00 worth of *shabu* (about 5 grams), and where he was also found in the possession of 211.23 grams of *shabu* and drug paraphernalia.

In believing the prosecution's version of events, the RTC pointed to the lack of evidence showing any ulterior motive or ill-will on the part of these prosecution witnesses that would impel them to falsely testify against the accused-appellant.[33] Likewise, the RTC found their testimonies credible, trustworthy and reliable under the presumption that these police officers have regularly performed their official duties.[34] On appeal, the CA disregarded the attacks on the prosecution witnesses' credibility and ruled that the inconsistencies and discrepancies the accused-appellant pointed out refer to trivial and inconsequential matters that *do not pertain to the act constitutive of the offense charge*.[35] The CA also ruled that drug transaction conducted in the middle of the road is not unusual, and took note that the sale of prohibited drugs to complete strangers, openly and in public places, has become a common occurrence.[36]

Our own independent assessment of the records gives us no reason to disturb the findings on the manner of, and grounds leading to, the accused-appellant's arrest. We find the testimonies of SPO2 Cadiz and SPO4 Guillermo to be consistent with one another; they sufficiently and clearly show how the accused-appellant committed the crimes charged. We likewise find no sufficient evidence establishing any improper motive on their part to falsely impute the charges against the accused-appellant.

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[33] CA *Rollo*, p. 28.

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

[35] *Rollo*, p. 11.

[36] *Id.*, p. 14.

On the contrary, the accusation by the accused-appellant that he and Nemis were used as sacrificial lambs to allow the real drug offender to escape is unsupported by any evidence other than his self-serving testimony. We also doubt the veracity of this claim considering that the prosecution witnesses and the accused-appellant did not know each other prior to the buy-bust operation.[37] We do not find it likely that a person of sound disposition would willingly falsely testify against a stranger and suffer the inconvenience and the rigors of a criminal trial and the risk of exposing himself to possible criminal prosecution for giving false testimony.

Both SPO4 Guillermo and SPO2 Cadiz were fully aware of the serious consequences of the drug charges against the accused-appellant, yet they consistently identified the accused-appellant as the person they arrested for illegal sale and illegal possession of *shabu* in a buy-bust operation.[38] They stood firm in their testimonies notwithstanding the administrative complaint filed against them by the accused-appellant before the Ombudsman for maltreatment, illegal detention and frame-up. Incidentally, the records show that the Ombudsman dismissed the administrative complaint against them.[39]

Aside from the lack of improper motive, the prosecution's version of events is corroborated by the prosecution's documentary and real evidence.

First, the marked money that was given to the accused-appellant during the buy-bust sale was presented during the trial as evidence. This marked money — consisting of three (3) pieces of ₱1,000.00 — bore the mark "x" with the letters "D.G." identified by SPO4 Guillermo as the markings he made in what was used as marked money in the buy-bust operation.[40] SPO4

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[37] TSN, May 6, 1997, p. 7; TSN, July 8, 1997, p. 6; and TSN, July 23, 1998, p. 14.

[38] TSN, May 6, 1997, p. 7; TSN, July 8, 1997, p. 12; and TSN, August 11, 1997, p. 17.

[39] TSN, July 23, 1998, pp. 14-15.

[40] TSN, July 8, 1997, p. 14.

Guillermo testified that the letters "D.G." stood for his initials.[41] He testified, too, that this marked money was recovered from the accused-appellant immediately after the buy-bust took place.[42] SPO2 Cadiz testified that after the buy-bust, he recovered the marked money from the accused-appellant who was holding it in his left hand.[43]

Second, SPO2 Cadiz testified that their pre-operation briefing duly informed them that the subject of the buy-bust operation would be a *man riding the green Isuzu pick-up*.[44] Both SPO2 Cadiz and SPO4 Guillermo testified that the accused-appellant arrived at the designated area driving a green Isuzu pick-up and from there sold *shabu* to their female asset. The accused-appellant duly admitted driving a vehicle of the same make, model and color at the time of his arrest on September 29, 1996 at the designated area of the buy-bust operation.

Lastly, a *Confiscation Receipt*,[45] made part of the records, was signed by the accused-appellant where he acknowledged that the following items were confiscated from him by the police at 9:00 p.m. of September 29, 1996, namely:

(a) one (1) plastic bag labeled Uniwide Sales containing another two (2) transparent plastic bags with suspected *shabu* with the approximate weight of 201.04 grams;

(b) one (1) transparent plastic sachet containing suspected *shabu* weighing about 5 grams in weight;

(c) three (3) transparent plastic sachet with suspected *shabu* weighing about 15 grams;

(d) ₱3,000.00 marked money;

(e) ₱2,400.00;

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41 *Ibid*.

42 TSN, July 8, 1997, p. 13.

43 TSN, May 6, 1997, p. 6.

44 *Id.*, p. 4.

45 Dated September 29, 1996; *records*, p. 5.

(f) three (3) pieces of improvised tooter; and

(g) I[z]usu pick-up.

We have consistently held, on the issue of credibility, that we give the highest respect to the trial court's evaluation of the testimonies of witnesses; the trial court is in a better position than this Court to assess the credibility of witnesses since it has direct access to and observes the demeanor of these witnesses and their manner of testifying.[46] Thus, the appellate courts will generally not disturb the findings of the trial court unless the latter has plainly overlooked facts of substance and value that, if considered, would affect the results of the case.[47] We find no compelling reason to deviate from this general rule in passing upon **the prosecution's version of events.** In fact, and as we indicated above, our own reading of the evidence on record shows that it amply supports the RTC and CA factual findings.

The Defenses of Denial and Frame-up

Against the hard pieces of the prosecution evidence pointing to the accused-appellant's guilt, the latter could only raise the defenses of denial and frame-up and cite the discrepancies and the incredibility of the testimonies of SPO2 Cadiz and SPO4 Guillermo. He claimed that these infirmities cast doubt on the testimonies' evidentiary value and, conversely, strengthen his own version of events.

The defenses of denial and frame-up are weak defenses that are viewed by the Court with disfavor because "they can easily be feigned and fabricated."[48] In *People v. Uy*,[49] the Court explicitly expounded on this view, as follows:

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[46] *People v. Bohol*, G.R. No. 171729, July 28, 2008, 560 SCRA 232.

[47] *People v. Flores*, G.R. No. 123599, December 13, 1999, 320 SCRA 560.

[48] *People v. Ganenas*, G.R. No. 141400, September 6, 2001, 364 SCRA 582.

[49] G.R. No. 129019, August 16, 2000, 338 SCRA 232, cited in *People v. Ganenas, supra*.

We are not unaware that in some instances law enforcers resort to the practice of planting evidence to extract information or even to harass civilians. However, like alibi, frame-up is a defense that has been invariably viewed by the Court with disfavor as it can easily be concocted [and] hence commonly used as a standard line of defense in most prosecutions arising from violations of the Dangerous Drugs Act. We realize the disastrous consequences on the enforcement of law and order, not to mention the well being of society, if the courts x x x accept in every instance this form of defense which can be so easily fabricated. x x x

The present case is no exception to what we have said above, as the accused-appellant failed to adduce clear and convincing evidence against the positive, consistent and categorical prosecution evidence pointing to his guilt of the crimes charged.

In this respect, the discrepancies the accused-appellant points out, namely: whether both witnesses spoke to the female asset prior to the buy-bust operation; whether the female asset knew the full name of the accused-appellant; and whether the police kept a dossier on the accused-appellant, all refer to events which occurred *prior to the buy-bust operation*. They are extraneous matters with no direct bearing on the evidence establishing the elements of the crimes charged. The inconsistencies, if any, refer to minor matters that enhance, rather than destroy, the veracity of the witnesses' testimonies; they serve to remove any suspicion that these testimonies were contrived or rehearsed.[50] More importantly, these discrepancies did not contest the categorical and consistent testimonies of SPO2 Cadiz and SPO4 Guillermo and the other prosecution evidence on the elements of the crimes charged.

Additionally, we reject the accused-appellant's argument that the lack of prior surveillance or test-buys affected the integrity of the buy-bust operation. Although test-buys for dangerous drugs provide assurance of the reliability of an informer's tip, they are not conditions *sine qua non;* their absence does not affect the validity of a buy-bust operation and of the credibility

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[50] *Ambait v. Court of Appeals*, G.R. No. 164909, April 30, 2008, 553 SCRA 295.

of police officers participating on the basis of an informer's tip. SPO4 Guillermo and SPO2 Cadiz duly justified both the lack of prior surveillance and of an existing file on the accused-appellant, when they stood by the trustworthiness and reliability of their asset whom they tried and tested in previous operations;[51] their familiarity with the female asset led the police to dispense with the need for a prior surveillance or for test-buys.

We also reject the accused-appellant's argument on the alleged impossibility of the sale of *shabu* in a busy street between two strangers who used two vehicles that were side by side each other. In the first place, the records show that the transaction happened inside a subdivision and not in a busy street. Even granting that the place of the buy-bust was a busy street (which fact was not established), the sale took place at night (at 9:00 p.m.) and was a five-minute transaction that was too brief to attract the attention of passersby.[52] The records also show that the position of the vehicles allowed other cars to pass and that the accused-appellant and the female asset were one-arm length away from each other and could easily make the exchange.[53]

The records further show that the drug transaction was not conducted between two strangers. The accused-appellant did not dispute knowing the female asset and admitted that he had previously gone to the female asset's place.

At any rate, we agree with the CA's observation that there was nothing unusual in drug transactions between strangers. Previous cases relating to dangerous drug violations, in fact, support this observation. A case in point would be our ruling in *People v. Chua*[54] where we said:

> xxx the law does not prescribe as an element of the crime that the vendor and vendee be familiar with each other. What matters in a drug related case is not the existing familiarity between the seller

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[51] TSN, August 11, 1997, pp. 13-14; and TSN, June 3, 1997, pp. 9-10.

[52] TSN, June 3, 1997, p. 18.

[53] *Id.*, pp. 18-20.

[54] G.R. No. 133789, August 23, 2001, 363 SCRA 562.

and the buyer, but their agreement and the acts constituting the same and delivery of the prohibited drugs...

x x x x x x x x x

… [D]rug pushers do not confine their trade to known customers; complete strangers are accommodated provided they have the money to pay. Moreover, why a dealer would trust a buyer, which is to say the motive behind a drug deal, is not an essential element of drug-related offense.

A Partial Modification of the Conclusion in the RTC and CA decisions is justified under the circumstances

We mentioned earlier that certain conclusions in convicting the accused-appellant were not supported by the lower courts' factual findings. We refer specifically to the lower courts' failure to consider that the accused-appellant was charged with and convicted of two district crimes that the prosecution had to prove separately in terms of their respective elements.

Criminal Case No. 96-533 for selling *shabu*

In a successful prosecution for illegal sale of *shabu*, the concurrence of the following elements must be present: (a) the identity of the buyer and the seller, the object, and consideration; and (b) the delivery of the thing sold and the payment therefor.[55] What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti* or the very drugs the accused sold.[56]

Case law teaches that a common issue in drug cases involving buy-busts is the identity of the drugs allegedly sold: are these the very same drugs presented in court? Case law also teaches that this issue is commonly resolved by a scrutiny of the chain of custody of the recovered drugs. In this case, while each and every link in the chain of custody of the *shabu* recovered from the accused-appellant was established through the testimonial evidence of SPO2 Cadiz and forensic chemist Babor showing

[55] *People v. Uy*, G.R. No. 128046, March 7, 2000, 327 SCRA 335.

[56] *People v. Garcia, supra*.

the movements of the *shabu* from the time of seizure, its marking at the police station, and its submission for laboratory examination until its presentation in court, we find that the prosecution failed to specifically identify the *shabu* that was actually sold at the buy-bust as among the *shabu* that were presented in court.

As shown by the evidence, the prosecution theorized that the accused-appellant was arrested by virtue of a legitimate entrapment operation where he was caught red-handed selling ₱3,000.00 worth of *shabu* or about five (5) grams of *shabu*. In proving the sale, SPO2 Cadiz testified:

Q This motor vehicle that arrived, what type of motor vehicle is this?

A When it was nearing to our position, the female asset told me that the subject motor vehicle was approaching and I hid myself at the back and then the motor vehicle halted very near our car and made some sort of conversation or pleasantries.

Q Who are these?

A The man and our asset. When I heard the utterance, the statement mentioned by our asset "*Sige*, [t]hank you," that is the prearranged signal to mean that the marked money of ₱ 3,000.00 previously given to the asset was already handed over to this man who was later identified as Leonardo Bernardino and that the stuff was already in the possession of our asset.

Q Upon hearing this signal which you said, what did you do after that?

A I immediately got off the vehicle with a draw handgun and arrested the driver who was already holding the ₱ 3,000.00 marked money on his left hand.[57]

He further testified:

Pros. Santos (to the witness)

Q Mr. Witness, in the last hearing of this case when you were called to testify on direct-examination, you mentioned that you will be able to identify the *shabu* that you confiscated

[57] TSN, May 6, 1997, p. 6.

in the possession of Leonard Bernardino, and also the other stuff which you confiscated from Leonard Bernardino and Nemis at the compartment of the vehicle, is that correct?

A Yes, sir.

Q Could you tell us why would you be able to identify those?

A I place my marking, sir, my name and initials, sit.

Q In all those specimens?

A Yes, sir.

Q Showing to you some specimen already identified in the last hearing by SPO[4] Daniel Guillermo as Exhibits E-E-1 to E-2, Exhibits F, F-1, F-2 and F-3, Exhibits G, G-1, G-2 to G-3, could you go over these exhibits and inform the Court if these are the same *shabu* which you confiscated in the possession of the accused in these cases and point to the marking that you made which you testified a while ago that you put on these?

A Yes, sir, these are the same items.[58]

x x x

PROS. SANTOS: (to the Witness)

Q You also identified this plastic bag which you said you confiscated from the accused, could you point to us if it is the same *shabu* you confiscated, will you point to us the marking?

A My marking SPO2 Cadiz, sir, with my initials above the name in red ink.

PROS. SANTOS:

May we request, your Honor, that it be marked in evidence as Exhibit H and the markings made by the witness on the same be marked as Exhibit H-1.[59]

This testimony, however, failed to disclose and identify the *shabu* sold as distinguished from those found in the accused-appellant's possession. SPO2 Cadiz identified on the witness

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[58] TSN, July 21, 1997, pp. 2-3.

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

stand Exhibits E, F and G (with their corresponding submarkings) and Exhibit H as the items confiscated from the accused-appellant.[60] However, in contrast with the prosecution's declarations in the Formal Offer of Evidence,[61] Exhibit H was **not categorically** identified by SPO2 Cadiz as the *shabu* bought and sold at the buy-bust. Unlike the *shabu* in Exhibits E and G that SPO2 Cadiz clearly identified as the *shabu* taken from the accused-appellant's possession, SPO2 Cadiz' testimony with respect to the *shabu* marked as Exhibit H merely identified it as the plastic bag that *was confiscated from the accused*.[62]

This testimony should be read in relation with his earlier testimony that he only saw the accused-appellant holding the ₱3,000.00 marked money at the time of his arrest, not the *shabu* that was sold. Also, SPO2 Cadiz previously testified that he only arrested the accused-appellant after the pre-arranged signal was given by the confidential informant; he only heard and did not actually see the sale. He failed to state that he seized the actual *shabu* sold and to identify the person from whom the *shabu* sold was recovered. We cannot overlook this evidentiary gap as it involves the identification of the *shabu* allegedly sold, as distinguished from the *shabu* found in the accused-appellant's possession.

The lack of segregation between these pieces of evidence for the two different crimes charged is also very evident from an examination of the markings in the plastic sachets of *shabu* seized from the accused-appellant and the identification of the examined specimens in the Initial Laboratory Report and Chemistry Report No. D-604-96. Nowhere is the *shabu* sold specifically singled out as the specimen for the crime of illegal sale of *shabu*. Thus, while forensic chemist Babor duly identified and gave the results of the examinations she made, her testimony merely

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[60] *Id.*, pp. 3-4 and 8.

[61] Exhibits, p. 4. The Formal Offer of Evidence shows that Exhibit H was offered *to prove the existence of shabu* the was (sic) subject of the buy-bust conducted by the NARCOM Officials against the accused-appellant and Nestor Nemis on September 29, 1996 subject of Criminal Case No. 96-533.

[62] *Supra* note 61, p. 8.

referred to the specimens submitted by SPO2 Cadiz[63] and could not have separately referred to the *shabu* illegally possessed and that illegally sold. From this perspective, no clear specific link exists between the examined specimen and the *shabu* allegedly sold at the buy-bust except by inference – an exercise that cannot be done in the absence of specific testimony identifying the *shabu* sold. This evidentiary situation effectively translates to the absence of proof of *corpus delicti*, and cannot but lead us to conclude that no valid conviction for the crime of illegal sale of *shabu* can result.

Criminal Case No. 96-530 for illegal possession of *shabu*

In a prosecution for illegal possession of *shabu*, the following elements must be satisfactorily established: (a) the accused is found in possession of a regulated drug; (b) the person is not authorized by law or by duly constituted authorities; and (c) the accused has knowledge that the said drug is a regulated drug.[64] We find that all the elements of this crime were duly proven.

The records show that the accused-appellant was found in actual possession of 211.23 grams of *shabu* after a warrantless search in an arrest *in flagrante delicto.* As testified to by SPO2 Cadiz, the plastic sachets of *shabu* were found in the accused-appellant's possession in the following manner:

> Q When you subjected Onat to body search, what happened then?
>
> Witness
>
> A I discovered a white plastic bag containing other two plastic bags each containing a suspected methamphetamine hydrochloride known as *shabu* weighing approximately 200 grams contained in a white big size plastic bag labelled Uniwide Sales from his camouflage pant[s] left lower portion pocket.
>
> x x x x x x x x x

[63] TSN, January 22, 1998, p. 4.

[64] *People v. Nuñez*, G.R. No. 177148, June 30, 2009.

Q When you discovered another *shabu* on the body of Bernardino, what did you do then?

A I found another three plastic bags each containing a quantity of suspected *shabu* with an approximate weight of fifteen grams from his camouflage pant[s] left side pocket x x x

Q What about your other companions, what were they doing there?

A SPO4 Guillermo after searching the person of Nestor Nemis, he opened the glo[v]e compartment and found a partly burned aluminum foil with residue, a small quantity of suspected *shabu* and three improvised tooter in the front compartment of the Isuzu Pick-up.[65]

x x x x x x x x x

Q You also identified this plastic bag which you said you confiscated from the accused, could you point to us if it is the same *shabu* you confiscated, will you point to us the marking?

A My marking SPO2 Cadiz, sir, with my initials above the name in red ink.

PROS. SANTOS:

May we request, your Honor, that it be marked in evidence as Exhibit H and the markings made by the witness on the same be marked as Exhibit H-1.[66]

Actual possession exists when the drug is in the immediate physical possession or control of the accused. In this case, the drugs were found inside his clothing.[67] No evidence was ever adduced showing that the accused-appellant had authority to possess these regulated drugs.

Lastly, the surrounding circumstances indicate the accused-appellant's knowledge of the drugs in his possession. Knowledge, being an internal act, may be presumed from the failure of the accused to explain why the drug was in a place over which the

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[65] TSN, May 6, 1997, p. 8.

[66] TSN, July 21, 1997, p. 8.

[67] *People v. Tira*, G.R. No. 139615, May 28, 2004, 430 SCRA 134.

accused exercised dominion and control.[68] In this case, such explanation was glaringly lacking. The only explanation offered – police frame-up – is, as discussed, a discredited one. Hence, knowing possession of the *shabu* by the accused-appellant is presumed under the circumstances.

In sum, we find no reversible error committed by the RTC and CA in convicting the accused-appellant of illegal possession of drugs. Section 16, Article III of R.A. No. 6425 as amended by Section 16 of R.A. No. 7659, in relation to Section 20 of R.A. No. 7659, imposes the penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos against any person caught in possession of 200 grams of *shabu* or more.[69] This penalty finds full application in the present case since the accused-appellant was found in illegal possession of 211.23 grams of *shabu.* In the absence of any aggravating or mitigating circumstances, the CA correctly imposed the penalty of *reclusion perpetua* conformably with Article 63 of the Revised Penal Code. The fine of ₱1 Million Pesos imposed is also in accordance with the law.

WHEREFORE, premises considered, the decision dated September 30, 2005 in CA-G.R. CR HC No. 00240 is *AFFIRMED with MODIFICATION* as follows:

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[68] *Id.*, p.152.

[69] **SEC. 16**. *Possession or Use of Regulated Drugs*. — The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who shall possess or use any regulated drug without the corresponding license or prescription, subject to the provisions of Section 20 hereof. x x x

SEC. 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments of the Crime. - The penalties for offenses under Sections 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved are in any of the following quantities:

x x x *x x x* *x x x*

3. 200 grams or more of shabu or methylamphetamine hydrochloride;

x x x *x x x* *x x x*

Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from prision correccional to reclusion perpetua depending upon the quantity.

1. In Criminal Case No. 96-530, accused-appellant Leonard L. Bernardino *alias* Onat is found *GUILTY* beyond reasonable doubt of the crime of illegal possession of *shabu* in violation of Section 16, Article III of R.A. No. 6425, as amended. He is sentenced to suffer the penalty of *reclusion perpetua* and to pay fine in the amount of One Million Pesos (₱1,000,000.00).

2. In Criminal Case No. 96-533, the accused-appellant is hereby *ACQUITTED* for illegal sale of *shabu* penalized under Section 15, Article III of R.A. No. 6425 on the ground of reasonable doubt.

SO ORDERED.

Ynares-Santiago,[*] *Carpio Morales (Acting Chairperson),*[**] *Del Castillo,* and *Abad, JJ.,* concur.

THIRD DIVISION

[G.R. No. 172013. October 2, 2009]

PATRICIA HALAGUEÑA, MA. ANGELITA L. PULIDO, MA. TERESITA P. SANTIAGO, MARIANNE V. KATINDIG, BERNADETTE A. CABALQUINTO, LORNA B. TUGAS, MARY CHRISTINE A. VILLARETE, CYNTHIA A. STEHMEIER, ROSE ANNA G. VICTA, NOEMI R. CRESENCIO, and other flight attendants of PHILIPPINE AIRLINES, *petitioners, vs.* **PHILIPPINE AIRLINES INCORPORATED,** *respondent.*

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[*] Designated additional Member of the Second Division per Special Order No. 691 dated September 4, 2009.

[**] Designated Acting Chairperson of the Second Division per Special Order No. 690 dated September 4, 2009.

SYLLABUS

1.REMEDIAL LAW; JURISDICTION; DETERMINATION THEREOF. — Jurisdiction of the court is determined on the basis of the material allegations of the complaint and the character of the relief prayed for irrespective of whether plaintiff is entitled to such relief.

2. ID.; ID.; REGIONAL TRIAL COURTS; PROPER TRIBUNAL FOR PETITION IN CASE AT BAR ASKING ANNULMENT OF A COLLECTIVE BARGAINING AGREEMENT (CBA) PROVISION ALLEGEDLY DISCRIMINATING FEMALE FLIGHT ATTENDANTS; DISCUSSION. — In the case at bar, the allegations in the petition for declaratory relief plainly show that petitioners' cause of action is the annulment of Section 144, Part A of the PAL-FASAP CBA. x x x From the petitioners' allegations and relief prayed for in its petition, it is clear that the issue raised is whether Section 144, Part A of the PAL-FASAP CBA is unlawful and unconstitutional. Here, the petitioners' primary relief in Civil Case No. 04-886 is the annulment of Section 144, Part A of the PAL-FASAP CBA, which allegedly discriminates against them for being female flight attendants. The subject of litigation is incapable of pecuniary estimation, exclusively cognizable by the RTC, pursuant to Section 19 (1) of Batas Pambansa Blg. 129, as amended. Being an ordinary civil action, the same is beyond the jurisdiction of labor tribunals. The said issue cannot be resolved solely by applying the Labor Code. Rather, it requires the application of the Constitution, labor statutes, law on contracts and the Convention on the Elimination of All Forms of Discrimination Against Women, and the power to apply and interpret the constitution and CEDAW is within the jurisdiction of trial courts, a court of general jurisdiction. In *Georg Grotjahn GMBH & Co. v. Isnani*, this Court held that not every dispute between an employer and employee involves matters that only labor arbiters and the NLRC can resolve in the exercise of their adjudicatory or quasi-judicial powers. The jurisdiction of labor arbiters and the NLRC under Article 217 of the Labor Code is limited to disputes arising from an employer-employee relationship which *can only be resolved by reference to the Labor Code, other labor statutes, or their collective bargaining agreement*.

3. ID.; ID.; LABOR TRIBUNALS; NO JURISDICTION WHERE EMPLOYER-EMPLOYEE RELATIONSHIP IS MERELY INCIDENTAL AND THE PRINCIPAL RELIEF SOUGHT IS TO BE RESOLVED BY REFERENCE TO THE GENERAL CIVIL LAW. — Not every controversy or money claim by an employee against the employer or vice-versa is within the exclusive jurisdiction of the labor arbiter. Actions between employees and employer where the employer-employee relationship is merely incidental and the cause of action precedes from a different source of obligation is within the exclusive jurisdiction of the regular court. Here, the employer-employee relationship between the parties is merely incidental and the cause of action ultimately arose from different sources of obligation, *i.e.*, the Constitution and CEDAW. Thus, where the principal relief sought is to be resolved not by reference to the Labor Code or other labor relations statute or a collective bargaining agreement but by the general civil law, the jurisdiction over the dispute belongs to the regular courts of justice and not to the labor arbiter and the NLRC. In such situations, resolution of the dispute requires expertise, not in labor management relations nor in wage structures and other terms and conditions of employment, but rather in the application of the general civil law. Clearly, such claims fall outside the area of competence or expertise ordinarily ascribed to labor arbiters and the NLRC and the rationale for granting jurisdiction over such claims to these agencies disappears.

4. ID.; ID.; REGULAR COURTS; JURISDICTION OVER QUESTIONS ON CONSTITUTIONALITY OF CONTRACTS, AFFIRMED. — In *Gonzales v. Climax Mining Ltd.*, this Court affirmed the jurisdiction of courts over questions on constitutionality of contracts, as the same involves the exercise of judicial power. The Court said: Whether the case involves void or voidable contracts is still a judicial question. It may, in some instances, involve questions of fact especially with regard to the determination of the circumstances of the execution of the contracts. But the resolution of the validity or voidness of the contracts remains a legal or judicial question as it requires the exercise of judicial function. It requires the ascertainment of what laws are applicable to the dispute, the interpretation and application of those laws, and the rendering of a judgment based thereon. Clearly, the dispute is not a mining conflict. It is essentially judicial. The complaint was not merely

for the determination of rights under the mining contracts since the very validity of those contracts is put in issue. In *Saura v. Saura, Jr.*, this Court emphasized the primacy of the regular court's judicial power enshrined in the Constitution that is true that the trend is towards vesting administrative bodies like the SEC with the power to adjudicate matters coming under their particular specialization, to insure a more knowledgeable solution of the problems submitted to them. This would also relieve the regular courts of a substantial number of cases that would otherwise swell their already clogged dockets. ***But as expedient as this policy may be, it should not deprive the courts of justice of their power to decide ordinary cases in accordance with the general laws that do not require any particular expertise or training to interpret and apply. Otherwise, the creeping take-over by the administrative agencies of the judicial power vested in the courts would render the judiciary virtually impotent in the discharge of the duties assigned to it by the Constitution.***

5. LABOR AND SOCIAL LEGISLATION; GRIEVANCE MACHINERY AND VOLUNTARY ARBITRATION; NOT THE PROPER PANELS TO SETTLE THE ISSUE IN CASE AT BAR. — Although the CBA provides for a procedure for the adjustment of grievances, such referral to the grievance machinery and thereafter to voluntary arbitration would be inappropriate to the petitioners, because the union and the management have unanimously agreed to the terms of the CBA and their interest is unified. In *Pantranco North Express, Inc. v. NLRC*, this Court held that: x x x Hence, only disputes involving the union and the company shall be referred to the grievance machinery or voluntary arbitrators. In the instant case, both the union and the company are united or have come to an agreement regarding the dismissal of private respondents. No grievance between them exists which could be brought to a grievance machinery. The problem or dispute in the present case is between the union and the company on the one hand and some union and non-union members who were dismissed, on the other hand. The dispute has to be settled before an impartial body. The grievance machinery with members designated by the union and the company cannot be expected to be impartial against the dismissed employees. Due process demands that the dismissed workers' grievances be ventilated before an impartial body. x x x . Applying the same rationale

to the case at bar, it cannot be said that the "dispute" is between the union and petitioner company because both have previously agreed upon the provision on "compulsory retirement" as embodied in the CBA. Also, it was only private respondent on his own who questioned the compulsory retirement. x x x. In the same vein, the dispute in the case at bar is not between FASAP and respondent PAL, who have both previously agreed upon the provision on the compulsory retirement of female flight attendants as embodied in the CBA. The dispute is between respondent PAL and several female flight attendants who questioned the provision on compulsory retirement of female flight attendants. Thus, applying the principle in the aforementioned case cited, referral to the grievance machinery and voluntary arbitration would not serve the interest of the petitioners.

6. ID.; LABOR CONTRACTS; SUBJECT TO THE SUPREMACY OF THE LAW AS THEY ARE IMPRESSED WITH PUBLIC INTEREST; ELUCIDATED. — Although it is a rule that a contract freely entered between the parties should be respected, since a contract is the law between the parties, said rule is not absolute. In *Pakistan International Airlines Corporation v. Ople*, this Court held that: The principle of party autonomy in contracts is not, however, an absolute principle. The rule in Article 1306, of our Civil Code is that the contracting parties may establish such stipulations as they may deem convenient, "provided they are not contrary to law, morals, good customs, public order or public policy." Thus, counter-balancing the principle of autonomy of contracting parties is the equally general rule that provisions of applicable law, especially provisions relating to matters affected with public policy, are deemed written into the contract. Put a little differently, the governing principle is that parties may not contract away applicable provisions of law especially peremptory provisions dealing with matters heavily impressed with public interest. The law relating to labor and employment is clearly such an area and parties are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply contracting with each other. Moreover, the relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. x x x The supremacy of the law over contracts is explained by the fact that labor contracts are

not ordinary contracts; these are imbued with public interest and therefore are subject to the police power of the state. It should not be taken to mean that retirement provisions agreed upon in the CBA are absolutely beyond the ambit of judicial review and nullification. A CBA, as a labor contract, is not merely contractual in nature but impressed with public interest. If the retirement provisions in the CBA run contrary to law, public morals, or public policy, such provisions may very well be voided.

7. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ARE PROPER; CASE AT BAR. — The rule is settled that pure questions of fact may not be the proper subject of an appeal by *certiorari* under Rule 45 of the Revised Rules of Court. This mode of appeal is generally limited only to questions of law which must be distinctly set forth in the petition. The Supreme Court is not a trier of facts. The question as to whether said Section 114, Part A of the PAL-FASAP CBA is discriminatory or not is a question of fact. This would require the presentation and reception of evidence by the parties in order for the trial court to ascertain the facts of the case and whether said provision violates the Constitution, statutes and treaties. A full-blown trial is necessary, which jurisdiction to hear the same is properly lodged with the RTC. Therefore, a remand of this case to the RTC for the proper determination of the merits of the petition for declaratory relief is just and proper.

APPEARANCES OF COUNSEL

Kapunan Lotilla Flores Garcia & Castillo for petitioners.
Office of the General Counsel (PAL, Inc.) for respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[1] and the Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP. No. 86813.

Petitioners were employed as female flight attendants of respondent Philippine Airlines (PAL) on different dates prior to November 22, 1996. They are members of the Flight Attendants and Stewards Association of the Philippines (FASAP), a labor organization certified as the sole and exclusive bargaining representative of the flight attendants, flight stewards and pursers of respondent.

On July 11, 2001, respondent and FASAP entered into a Collective Bargaining Agreement[3] incorporating the terms and conditions of their agreement for the years 2000 to 2005, hereinafter referred to as PAL-FASAP CBA.

Section 144, Part A of the PAL-FASAP CBA, provides that:

A. For the Cabin Attendants hired before 22 November 1996:

x x x x x x x x x

3. Compulsory Retirement

Subject to the grooming standards provisions of this Agreement,compulsory retirement shall be fifty-five (55) for females and sixty (60) for males. x x x.

In a letter dated July 22, 2003,[4] petitioners and several female cabin crews manifested that the aforementioned CBA provision

[1] Penned by Associate Justice Salvador J. Valdez, Jr., with Associate Justice Mariano C. Del Castillo and Associate Justice Magdangal M. De Leon., concurring; *rollo*, pp. 52-71.

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

[3] *Rollo*, pp. 146-193.

[4] *Id.* at 507-509.

on compulsory retirement is discriminatory, and demanded for an equal treatment with their male counterparts. This demand was reiterated in a letter[5] by petitioners' counsel addressed to respondent demanding the removal of gender discrimination provisions in the coming re-negotiations of the PAL-FASAP CBA.

On July 12, 2004, Robert D. Anduiza, President of FASAP submitted their 2004-2005 CBA proposals[6] and manifested their willingness to commence the collective bargaining negotiations between the management and the association, at the soonest possible time.

On July 29, 2004, petitioners filed a Special Civil Action for Declaratory Relief with Prayer for the Issuance of Temporary Restraining Order and Writ of Preliminary Injunction[7] with the Regional Trial Court (RTC) of Makati City, Branch 147, docketed as Civil Case No. 04-886, against respondent for the invalidity of Section 144, Part A of the PAL-FASAP CBA. The RTC set a hearing on petitioners' application for a TRO and, thereafter, required the parties to submit their respective memoranda.

On August 9, 2004, the RTC issued an Order[8] upholding its jurisdiction over the present case. The RTC reasoned that:

> In the instant case, the thrust of the Petition is Sec. 144 of the subject CBA which is allegedly discriminatory as it discriminates against female flight attendants, in violation of the Constitution, the Labor Code, and the CEDAW. The allegations in the Petition do not make out a labor dispute arising from employer-employee relationship as none is shown to exist. This case is not directed specifically against respondent arising from any act of the latter, nor does it involve a claim against the respondent. Rather, this case seeks a declaration of the nullity of the questioned provision of the CBA, which is within the Court's competence, with the allegations in the Petition constituting the bases for such relief sought.

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[5] *Id.* at 510-512.

[6] *Rollo,* pp. 513-528.

[7] *Id.* at 124-135.

[8] *Rollo,* pp. 204-205.

The RTC issued a TRO on August 10, 2004,[9] enjoining the respondent for implementing Section 144, Part A of the PAL-FASAP CBA.

The respondent filed an omnibus motion[10] seeking reconsideration of the order overruling its objection to the jurisdiction of the RTC the lifting of the TRO. It further prayed that the (1) petitioners' application for the issuance of a writ of preliminary injunction be denied; and (2) the petition be dismissed or the proceedings in this case be suspended.

On September 27, 2004, the RTC issued an Order[11] directing the issuance of a writ of preliminary injunction enjoining the respondent or any of its agents and representatives from further implementing Sec. 144, Part A of the PAL-FASAP CBA pending the resolution of the case.

Aggrieved, respondent, on October 8, 2004, filed a Petition for *Certiorari* and Prohibition with Prayer for a Temporary Restraining Order and Writ of Preliminary Injunction[12] with the Court of Appeals (CA) praying that the order of the RTC, which denied its objection to its jurisdiction, be annuled and set aside for having been issued without and/or with grave abuse of discretion amounting to lack of jurisdiction.

The CA rendered a Decision, dated August 31, 2005, granting the respondent's petition, and ruled that:

WHEREFORE, the respondent court is by us declared to have NO JURISDICTION OVER THE CASE BELOW and, consequently, all the proceedings, orders and processes it has so far issued therein are ANNULED and SET ASIDE. Respondent court is ordered to DISMISS its Civil Case No. 04-886.

SO ORDERED.

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[9] *Id.* at 206.

[10] *Id.* at 207-241.

[11] *Id.* at 302-304.

[12] *Rollo,* pp. 305-348.

Petitioner filed a motion for reconsideration,[13] which was denied by the CA in its Resolution dated March 7, 2006.

Hence, the instant petition assigning the following error:

THE COURT OF APPEALS' CONCLUSION THAT THE SUBJECT MATTER IS A LABOR DISPUTE OR GRIEVANCE IS CONTRARY TO LAW AND JURISPRUDENCE.

The main issue in this case is whether the RTC has jurisdiction over the petitioners' action challenging the legality or constitutionality of the provisions on the compulsory retirement age contained in the CBA between respondent PAL and FASAP.

Petitioners submit that the RTC has jurisdiction in all civil actions in which the subject of the litigation is incapable of pecuniary estimation and in all cases not within the exclusive jurisdiction of any court, tribunal, person or body exercising judicial or quasi-judicial functions. The RTC has the power to adjudicate all controversies except those expressly witheld from the plenary powers of the court. Accordingly, it has the power to decide issues of constitutionality or legality of the provisions of Section 144, Part A of the PAL-FASAP CBA. As the issue involved is constitutional in character, the labor arbiter or the National Labor Relations Commission (NLRC) has no jurisdiction over the case and, thus, the petitioners pray that judgment be rendered on the merits declaring Section 144, Part A of the PAL-FASAP CBA null and void.

Respondent, on the other hand, alleges that the labor tribunals have jurisdiction over the present case, as the controversy partakes of a labor dispute. The dispute concerns the terms and conditions of petitioners' employment in PAL, specifically their retirement age. The RTC has no jurisdiction over the subject matter of petitioners' petition for declaratory relief because the Voluntary Arbitrator or panel of Voluntary Arbitrators have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the CBA. Regular courts have no power to set and fix the terms and

[13] *Id.* at 425-450.

conditions of employment. Finally, respondent alleged that petitioners' prayer before this Court to resolve their petition for declaratory relief on the merits is procedurally improper and baseless.

The petition is meritorious.

Jurisdiction of the court is determined on the basis of the material allegations of the complaint and the character of the relief prayed for irrespective of whether plaintiff is entitled to such relief.[14]

In the case at bar, the allegations in the petition for declaratory relief plainly show that petitioners' cause of action is the annulment of Section 144, Part A of the PAL-FASAP CBA. The pertinent portion of the petition recites:

CAUSE OF ACTION

24. Petitioners have the constitutional right to fundamental equality with men under Section 14, Article II, 1987 of the Constitution and, within the specific context of this case, with the male cabin attendants of Philippine Airlines.

26. Petitioners have the statutory right to equal work and employment opportunities with men under Article 3, Presidential Decree No. 442, The Labor Code and, within the specific context of this case, with the male cabin attendants of Philippine Airlines.

27. It is unlawful, even criminal, for an employer to discriminate against women employees with respect to terms and conditions of employment solely on account of their sex under Article 135 of the Labor Code as amended by Republic Act No. 6725 or the Act Strengthening Prohibition on Discrimination Against Women.

28. This discrimination against Petitioners is likewise against the Convention on the Elimination of All Forms of Discrimination Against Women (hereafter, "CEDAW"), a multilateral convention that the Philippines ratified in 1981. The Government and its agents, including our courts, not only must condemn all forms of discrimination against women, but must also implement measures towards its elimination.

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[14] *Polomolok Water District v. Polomolok General Consumers Association, Inc.*, G.R. No. 162124, October 18, 2007, 536 SCRA 647, 651.

29. This case is a matter of public interest not only because of Philippine Airlines' violation of the Constitution and existing laws, but also because it highlights the fact that twenty-three years after the Philippine Senate ratified the CEDAW, discrimination against women continues.

31. Section 114, Part A of the PAL-FASAP 2000-20005 CBA on compulsory retirement from service is invidiously discriminatory against and manifestly prejudicial to Petitioners because, they are compelled to retire at a lower age (fifty-five (55) relative to their male counterparts (sixty (60).

33. There is no reasonable, much less lawful, basis for Philippine Airlines to distinguish, differentiate or classify cabin attendants on the basis of sex and thereby arbitrarily set a lower compulsory retirement age of 55 for Petitioners for the sole reason that they are women.

37. For being patently unconstitutional and unlawful, Section 114, Part A of the PAL-FASAP 2000-2005 CBA must be declared invalid and stricken down to the extent that it discriminates against petitioner.

38. Accordingly, consistent with the constitutional and statutory guarantee of equality between men and women, Petitioners should be adjudged and declared entitled, like their male counterparts, to work until they are sixty (60) years old.

PRAYER

WHEREFORE, it is most respectfully prayed that the Honorable Court:

c. after trial on the merits:

(I) declare Section 114, Part A of the PAL-FASAP 2000-2005 CBA INVALID, NULL and VOID to the extent that it discriminates against Petitioners; x x x

From the petitioners' allegations and relief prayed for in its petition, it is clear that the issue raised is whether Section 144, Part A of the PAL-FASAP CBA is unlawful and unconstitutional. Here, the petitioners' primary relief in Civil Case No. 04-886 is the annulment of Section 144, Part A of the PAL-FASAP CBA, which allegedly discriminates against them for being female flight attendants. The subject of litigation is incapable of pecuniary

estimation, exclusively cognizable by the RTC, pursuant to Section 19 (1) of Batas Pambansa Blg. 129, as amended.[15] Being an ordinary civil action, the same is beyond the jurisdiction of labor tribunals.

The said issue cannot be resolved solely by applying the Labor Code. Rather, it requires the application of the Constitution, labor statutes, law on contracts and the Convention on the Elimination of All Forms of Discrimination Against Women,[16] and the power to apply and interpret the constitution and CEDAW is within the jurisdiction of trial courts, a court of general jurisdiction. In *Georg Grotjahn GMBH & Co. v. Isnani*,[17] this Court held that not every dispute between an employer and employee involves matters that only labor arbiters and the NLRC can resolve in the exercise of their adjudicatory or quasi-judicial powers. The jurisdiction of labor arbiters and the NLRC under Article 217 of the Labor Code is limited to disputes arising from an employer-employee relationship which *can only be resolved by reference to the Labor Code, other labor statutes, or their collective bargaining agreement.*

Not every controversy or money claim by an employee against the employer or vice-versa is within the exclusive jurisdiction of the labor arbiter. Actions between employees and employer where the employer-employee relationship is merely incidental and the cause of action precedes from a different source of obligation is within the exclusive jurisdiction of the regular court.[18]

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[15] Regional Trial Courts shall exercise exclusive original jurisdiction in all civil actions in which the subject of the litigation is incapable of pecuniary estimation.

[16] Otherwise known as "Bill of Rights for Women" was adopted in December 1979 by the UN General Assembly, it is regarded as the most comprehensive international treaty governing the rights of women. The Philippines became a signatory thereto a year after its adoption by the UN and in 1981, the country ratified it.

[17] G.R. No. 109272, August 10, 1994, 235 SCRA 217, 221. (Emphasis supplied.)

[18] *Eviota v. Court of Appeals,* G.R. No. 152121, July 29, 2003, 407 SCRA 394, 402.

Here, the employer-employee relationship between the parties is merely incidental and the cause of action ultimately arose from different sources of obligation, *i.e.*, the Constitution and CEDAW.

Thus, where the principal relief sought is to be resolved not by reference to the Labor Code or other labor relations statute or a collective bargaining agreement but by the general civil law, the jurisdiction over the dispute belongs to the regular courts of justice and not to the labor arbiter and the NLRC. In such situations, resolution of the dispute requires expertise, not in labor management relations nor in wage structures and other terms and conditions of employment, but rather in the application of the general civil law. Clearly, such claims fall outside the area of competence or expertise ordinarily ascribed to labor arbiters and the NLRC and the rationale for granting jurisdiction over such claims to these agencies disappears.[19]

If We divest the regular courts of jurisdiction over the case, then which tribunal or forum shall determine the constitutionality or legality of the assailed CBA provision?

This Court holds that the grievance machinery and voluntary arbitrators do not have the power to determine and settle the issues at hand. They have no jurisdiction and competence to decide constitutional issues relative to the questioned compulsory retirement age. Their exercise of jurisdiction is futile, as it is like vesting power to someone who cannot wield it.

In *Gonzales v. Climax Mining Ltd.*,[20] this Court affirmed the jurisdiction of courts over questions on constitutionality of contracts, as the same involves the exercise of judicial power. The Court said:

> Whether the case involves void or voidable contracts is still a judicial question. It may, in some instances, involve questions of fact especially with regard to the determination of the circumstances

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[19] *San Miguel Corporation v. NLRC*, No. 80774, May 31, 1988, 161 SCRA 719, 730.

[20] 492 Phil. 682, 695. (2005).

of the execution of the contracts. But the resolution of the validity or voidness of the contracts remains a legal or judicial question as it requires the exercise of judicial function. It requires the ascertainment of what laws are applicable to the dispute, the interpretation and application of those laws, and the rendering of a judgment based thereon. Clearly, the dispute is not a mining conflict. It is essentially judicial. The complaint was not merely for the determination of rights under the mining contracts since the very validity of those contracts is put in issue.

In *Saura v. Saura, Jr.*,[21] this Court emphasized the primacy of the regular court's judicial power enshrined in the Constitution that is true that the trend is towards vesting administrative bodies like the SEC with the power to adjudicate matters coming under their particular specialization, to insure a more knowledgeable solution of the problems submitted to them. This would also relieve the regular courts of a substantial number of cases that would otherwise swell their already clogged dockets. ***But as expedient as this policy may be, it should not deprive the courts of justice of their power to decide ordinary cases in accordance with the general laws that do not require any particular expertise or training to interpret and apply. Otherwise, the creeping take-over by the administrative agencies of the judicial power vested in the courts would render the judiciary virtually impotent in the discharge of the duties assigned to it by the Constitution***.

To be sure, in *Rivera v. Espiritu*,[22] after Philippine Airlines (PAL) and PAL Employees Association (PALEA) entered into an agreement, which includes the provision to suspend the PAL-PALEA CBA for 10 years, several employees questioned its validity via a petition for *certiorari* directly to the Supreme Court. They said that the suspension was unconstitutional and contrary to public policy. Petitioners submit that the suspension was inordinately long, way beyond the maximum statutory life of 5 years for a CBA provided for in Article 253-A of the

[21] G.R. No. 136159, September 1, 1999, 313 SCRA 465, 474. (emphasis supplied.)

[22] G.R. No. 135547, January 23, 2002, 374 SCRA 351.

Labor Code. By agreeing to a 10-year suspension, PALEA, in effect, abdicated the workers' constitutional right to bargain for another CBA at the mandated time.

In that case, this Court denied the petition for *certiorari*, ruling that there is available to petitioners a plain, speedy, and adequate remedy in the ordinary course of law. The Court said that while the petition was denominated as one for *certiorari* and prohibition, its object was actually the nullification of the PAL-PALEA agreement. As such, petitioners' proper remedy is an ordinary civil action for annulment of contract, an action which properly falls under the jurisdiction of the regional trial courts.

The change in the terms and conditions of employment, should Section 144 of the CBA be held invalid, is but a necessary and unavoidable consequence of the principal relief sought, *i.e.*, nullification of the alleged discriminatory provision in the CBA. Thus, it does not necessarily follow that a resolution of controversy that would bring about a change in the terms and conditions of employment is a labor dispute, cognizable by labor tribunals. It is unfair to preclude petitioners from invoking the trial court's jurisdiction merely because it may eventually result into a change of the terms and conditions of employment. Along that line, the trial court is not asked to set and fix the terms and conditions of employment, but is called upon to determine whether CBA is consistent with the laws.

Although the CBA provides for a procedure for the adjustment of grievances, such referral to the grievance machinery and thereafter to voluntary arbitration would be inappropriate to the petitioners, because the union and the management have unanimously agreed to the terms of the CBA and their interest is unified.

In *Pantranco North Express, Inc. v. NLRC,*[23] this Court held that:

x x x Hence, only disputes involving the union and the company shall be referred to the grievance machinery or voluntary arbitrators.

[23] G.R. No. 95940, July 24, 1996, 259 SCRA 161, 168, citing *Sanyo Philippines Workers Union - PSSLU v. Cañizares*, G.R. No. 101619, July 8, 1992, 211 SCRA 361.

In the instant case, both the union and the company are united or have come to an agreement regarding the dismissal of private respondents. No grievance between them exists which could be brought to a grievance machinery. The problem or dispute in the present case is between the union and the company on the one hand and some union and non-union members who were dismissed, on the other hand. The dispute has to be settled before an impartial body. The grievance machinery with members designated by the union and the company cannot be expected to be impartial against the dismissed employees. Due process demands that the dismissed workers' grievances be ventilated before an impartial body. x x x.

Applying the same rationale to the case at bar, it cannot be said that the "dispute" is between the union and petitioner company because both have previously agreed upon the provision on "compulsory retirement" as embodied in the CBA. Also, it was only private respondent on his own who questioned the compulsory retirement. x x x.

In the same vein, the dispute in the case at bar is not between FASAP and respondent PAL, who have both previously agreed upon the provision on the compulsory retirement of female flight attendants as embodied in the CBA. The dispute is between respondent PAL and several female flight attendants who questioned the provision on compulsory retirement of female flight attendants. Thus, applying the principle in the aforementioned case cited, referral to the grievance machinery and voluntary arbitration would not serve the interest of the petitioners.

Besides, a referral of the case to the grievance machinery and to the voluntary arbitrator under the CBA would be futile because respondent already implemented Section 114, Part A of PAL-FASAP CBA when several of its female flight attendants reached the compulsory retirement age of 55.

Further, FASAP, in a letter dated July 12, 2004, addressed to PAL, submitted its association's bargaining proposal for the remaining period of 2004-2005 of the PAL-FASAP CBA, which includes the renegotiation of the subject Section 144. However,

FASAP's attempt to change the questioned provision was shallow and superficial, to say the least, because it exerted no further efforts to pursue its proposal. When petitioners in their individual capacities questioned the legality of the compulsory retirement in the CBA before the trial court, there was no showing that FASAP, as their representative, endeavored to adjust, settle or negotiate with PAL for the removal of the difference in compulsory age retirement between its female and male flight attendants, particularly those employed before November 22, 1996. Without FASAP's active participation on behalf of its female flight attendants, the utilization of the grievance machinery or voluntary arbitration would be pointless.

The trial court in this case is not asked to interpret Section 144, Part A of the PAL-FASAP CBA. Interpretation, as defined in Black's Law Dictionary, is the art of or process of discovering and ascertaining the meaning of a statute, will, contract, or other written document.[24] The provision regarding the compulsory retirement of flight attendants is not ambiguous and does not require interpretation. Neither is there any question regarding the implementation of the subject CBA provision, because the manner of implementing the same is clear in itself. The only controversy lies in its intrinsic validity.

Although it is a rule that a contract freely entered between the parties should be respected, since a contract is the law between the parties, said rule is not absolute.

In *Pakistan International Airlines Corporation v. Ople*,[25] this Court held that:

> The principle of party autonomy in contracts is not, however, an absolute principle. The rule in Article 1306, of our Civil Code is that the contracting parties may establish such stipulations as they may deem convenient, "provided they are not contrary to law, morals, good customs, public order or public policy." Thus, counter-balancing the principle of autonomy of contracting parties is the equally general rule that provisions of applicable law, especially provisions relating

[24] Fifth Edition, p. 734.

[25] G.R.No. 61594, September 28, 1990, 190 SCRA 90, 99.

to matters affected with public policy, are deemed written into the contract. Put a little differently, the governing principle is that parties may not contract away applicable provisions of law especially peremptory provisions dealing with matters heavily impressed with public interest. The law relating to labor and employment is clearly such an area and parties are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply contracting with each other.

Moreover, the relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good.x x x[26] The supremacy of the law over contracts is explained by the fact that labor contracts are not ordinary contracts; these are imbued with public interest and therefore are subject to the police power of the state.[27] It should not be taken to mean that retirement provisions agreed upon in the CBA are absolutely beyond the ambit of judicial review and nullification. A CBA, as a labor contract, is not merely contractual in nature but impressed with public interest. If the retirement provisions in the CBA run contrary to law, public morals, or public policy, such provisions may very well be voided.[28]

Finally, the issue in the petition for *certiorari* brought before the CA by the respondent was the alleged exercise of grave abuse of discretion of the RTC in taking cognizance of the case for declaratory relief. When the CA annuled and set aside the RTC's order, petitioners sought relief before this Court through the instant petition for review under Rule 45. A perusal of the petition before Us, petitioners pray for the declaration of the alleged discriminatory provision in the CBA against its female flight attendants.

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[26] New Civil Code, Art. 1700.

[27] *Villa v. National Labor Relations Commission*, G.R. No. 117043, January 14, 1998, 284 SCRA 105, 127,128.

[28] *Cainta Catholic School v. Cainta Catholic School Employees Union (CCSEU)*, G.R. No. 151021, May 4, 2006, 489 SCRA 468, 485.

This Court is not persuaded. The rule is settled that pure questions of fact may not be the proper subject of an appeal by *certiorari* under Rule 45 of the Revised Rules of Court. This mode of appeal is generally limited only to questions of law which must be distinctly set forth in the petition. The Supreme Court is not a trier of facts.[29]

The question as to whether said Section 114, Part A of the PAL-FASAP CBA is discriminatory or not is a question of fact. This would require the presentation and reception of evidence by the parties in order for the trial court to ascertain the facts of the case and whether said provision violates the Constitution, statutes and treaties. A full-blown trial is necessary, which jurisdiction to hear the same is properly lodged with the RTC. Therefore, a remand of this case to the RTC for the proper determination of the merits of the petition for declaratory relief is just and proper.

WHEREFORE, the petition is *PARTLY GRANTED*. The Decision and Resolution of the Court of Appeals, dated August 31, 2005 and March 7, 2006, respectively, in CA-G.R. SP. No. 86813 are *REVERSED* and *SET ASIDE*. The Regional Trial Court of Makati City, Branch 147 is *DIRECTED* to continue the proceedings in Civil Case No. 04-886 with deliberate dispatch.

SO ORDERED.

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

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[29] *Far East Bank & Trust Co. v. CA*, 326 Phil. 15, 18 (1996).

THIRD DIVISION

[G.R. No. 172359. October 2, 2009]

CHINA BANKING CORPORATION, *petitioner, vs.* **THE COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); SEC. 180 ON DOCUMENTARY STAMP TAX; DOCUMENTS SUBJECT THERETO; CERTIFICATES OF DEPOSIT DRAWING INTEREST; INCLUDES SPECIAL SAVINGS DEPOSITS (SSD). — Section 180 of the 1997 National Internal Revenue Code, as amended, provides: Sec. 180. ***Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposit bearing interest and others not payable on sight or demand.*** — On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines; bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities or **certificates of deposits drawing interest,** or orders for the payment of any sum of money otherwise than at the sight or on demand, or on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (₱0.30) on each Two hundred pesos, or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note: provided, that only one documentary stamp tax shall be imposed on either loan agreement, or promissory note issued to secure such loan, whichever will yield a higher tax: provided, however, that loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (₱250,000) executed by an individual for his purchase on installment for

his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of the documentary stamp tax provided under this section. The CTA *en banc* dissected Section 180 and enumerated the following documents which are subject to documentary stamp tax, to wit: 1. Loan Agreements; 2. Bills of Exchange; 3. Drafts; 4. Instruments and Securities issued by the Government or any of its instrumentalities; **5. Certificates of Deposit Drawing Interest;** 6. Order for the payment of money otherwise that at sight or on demand; 7. Promissory Notes, whether negotiable or non-negotiable. From said enumeration, the CTA *en banc* held that petitioner's Special Savings Deposit (SSDs) fall under the category of "certificates of deposit drawing interest."

2. **ID.; ID.; ID.; ID.; ID.; CERTIFICATE OF DEPOSIT, DEFINED. —** In *Far East Bank and Trust Company v. Querimit*, the Court defined a certificate of deposit as "a written acknowledgment by a bank or banker of the receipt of a sum of money on deposit which the bank or banker promises to pay to the depositor, to the order of the depositor, or to some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created." A certificate of deposit is also defined as "a receipt issued by a bank for an interest-bearing time deposit coming due at a specified future date."

3. **ID.; ID.; ID.; ID.; ID.; INCLUDES PASSBOOK REPRESENTING INTEREST-EARNING DEPOSIT ACCOUNT ISSUED BY A BANK. —** In *International Exchange Bank v. Commissioner of Internal Revenue*, this Court held that a passbook representing an interest-earning deposit account issued by a bank qualifies as a certificate of deposit drawing interest. A document to be deemed a certificate of deposit requires no specific form as long as there is some written memorandum that the bank accepted a deposit of a sum of money from a depositor. What is important and controlling is the nature or meaning conveyed by the passbook and not the particular label or nomenclature attached to it, inasmuch as substance, not form, is paramount.

4. ID.; ID.; ID.; ID.; ID.; NOT NEGATED BY THE AMENDMENT UNDER R.A. NO. 9243. — Petitioner cites Republic Act (R.A.) No. 9243 (approved on February 17, 2004), whereby Section 180 of the 1997 NIRC was amended, to *wit:* x x x Petitioner asserts that the amendment of Section 180 of the National Internal Revenue Code of 1997 only shows ostensibly that the old Section 180 was not applicable to special savings deposit, which by then cannot be slapped with the imposition of documentary stamp tax. Simply put, at the time material to this case, when R.A. No. 9243 was yet to be enacted, petitioner contends there was no law that clearly subjected its special savings deposits to documentary stamp tax. This Court does not agree. In *International*, the Court held that the further amendment was intended to eliminate the scheme used by banks of issuing passbooks to "cloak" its time deposits as regular savings deposits. More importantly, the Court held that the amendment to include "*other evidences of deposits that are drawing interest significantly higher than the regular savings deposit*" was merely intended to eliminate the ambiguity as reflected in the exchanges between Mr. Miguel Andaya of the Bankers Association of the Philippines and Senator Ralph Recto, Senate Chairman of the Committee on Ways and Means, during the deliberations on Senate Bill No. 2518 which eventually became R.A. No. 9243. Contrary therefore to petitioner's position, *International* is categorical in that the said amendment did not signify that time deposits evidenced by a passbook were exempt from documentary stamp tax under Section 180 of the 1997 NIRC, but that it merely served to eliminate the ambiguity in the law.

APPEARANCES OF COUNSEL

Lim Vigilia Alcala Dumlao & Orencia for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to set aside the January 3, 2006 Decision[2] and March 20, 2006 Resolution[3] of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 66 (C.T.A. Case No. 6400).

The facts of the case.

Petitioner China Banking Corporation, a universal banking corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, was engaged in the transaction of accepting special savings deposits (SSD), otherwise known as "Savings Plus Deposit.[4]

On September 23, 1999, petitioner received a Pre-Assessment Notice[5] (PAN) issued by respondent Commission on Internal Revenue, assessing it for deficiency documentary stamp tax on its Reverse Repurchase Agreements (RRA) and SSDs for the taxable years 1994 and 1995 in the total amount of Php 27,451,844.09 including increments thereon.

On October 6, 1999, petitioner sent a letter[6] to respondent whereby it manifested its formal disagreement to the PAN.

Subsequently, petitioner received a Final Assessment Notice (FAN) dated October 8, 1999, which reiterated petitioner's liability for deficiency documentary stamp tax on its RRAs and SSDs

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[1] *Rollo*, pp. 36-62.

[2] Penned by Associate Justice Juanito C. Castaneda, Jr., with Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Erlinda P. Uy and Olga Palanca-Enriquez, concurring; Caesar A. Casanova, concurring and dissenting; *id.* at 7-23.

[3] *Rollo*, pp. 86-87.

[4] *Id.* at 40.

[5] *Id.* at 134; with Annexes, *id.* at 135-140.

[6] *Id.* at 141.

for the taxable years 1994 and 1995. The same was detailed as follows, to wit:

For the year 1994		
A. Reverse Repurchase Agreements		P 424,000,000.00
B. Special Savings Accounts		2,142,305,326.67
Total		2,566,305,326.67
Rate of Tax		0.15%
Total Tax due thereon		3,849,457.98
Add:		
25% Surcharge	962,364.50	
Compromise Penalty	25,000.00	987,364.50
Total Deficiency DST-Industry Issue		**₱4,836,822.48**[7]

For the year 1995		
A. Reverse Repurchase Agreements		₱9,773,000,000.00
B. Special Savings Accounts		2,275,011,526.88
Total		12,048,011,526.88
Rate of Tax		0.15%
Total Tax due thereon		P 18,072,017.29
Add:		
25% Surcharge	4,518,004.32	
Compromise Penalty	25,000.00	4,543,004.32
Total Deficiency DST-Industry Issue		**₱ 22,615,021.61**[8]

[7] *Id.* at 143.

[8] *Id.* at 145.

On November 24, 1999, petitioner filed a formal protest[9] questioning the legality and basis of both the PAN and the FAN. In said protest, petitioner contested the basis of the assessment of deficiency documentary stamp tax on its SSDs in the following manner, to wit:

x x x x x x x x x

B. On the Special Savings Account:

With respect to the Savings Plus Deposit transactions, the latter is also not subject to documentary stamp tax because by the very nature of the transaction which is just a variation of the regular savings account, the same is not taxable under the aforequoted Section 180. Let us consider some salient features of the product that differentiates it from a Time Deposit Account:

1. The terms and conditions of the Savings Plus Deposit are provided for in the traditional passbook form as distinguished from a Time Deposit Account which is evidenced by a certificate of deposit.

2. In a time deposit, there is no partial withdrawal. The term is preterminated and the certificate of deposit is cancelled and surrendered and the entire amount is paid to the depositor. In the case of Savings Plus Deposit, however, there is partial withdrawal, which is posted in the passbook. The amount withdrawn is paid to the depositor and the passbook is returned to the depositor. In other words, the Savings Plus Deposit, contrary to the basis for assessment, represents a continuing fund which is open to deposits and withdrawals anytime, and therefore, falls under the category of certificates of deposit at sight or on demand which is exempt from documentary stamp tax.

3. When fifty percent (50%) of the term of a Time Deposit had lapsed, interest to be paid is fifty percent (50%) of the agreed rate. When less than fifty percent (50%) of the term had lapsed, interest to be paid is twenty-five percent (25%) of the agreed rate. In the case of a Savings Plus Deposit, however, amount withdrawn earns only the regular fixed savings rate of three percent (3%).

4. The features of the product in no way resemble that of a promissory note or a certificate of indebtedness, and

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[9] *Id.* at 147-150.

5. The intention, not any occasional error in the implementation of the product, should be the basis of taxation. A correctible error in the implementation does not convert a non-taxable product into a taxable one.

In view of all the foregoing reasons and considerations, we hereby request that subject assessment notice be recalled and/or reconsidered, the same not being due and demandable from China Bank, under the premises.[10]

On December 20, 1999, petitioner received a Preliminary Agreement Notice[11]dated December 17, 1999, assessing petitioner's deficiency documentary stamp taxes on its RRAs and SSDs covering the taxable years 1996 and 1997. Like in the first assessment, petitioner sent a letter[12] manifesting its disagreement thereto.

On December 29, 1999, a formal letter of demand[13] was received by petitioner whereby respondent demanded the total amount of ₱13,781,350.00, representing deficiency documentary stamp tax on petitioner's RRAs and SSDs for the taxable years 1996 and 1997.

On January 26, 2000, petitioner sent a letter[14] to respondent reiterating its position that the RRAs and SSDs were not subject to documentary stamp tax.

On February 18, 2000, respondent sent a notice[15] to petitioner setting an informal hearing with regard to the protest made by the latter on the assessment of deficiency documentary stamp tax on its RRAs and SSDs. On April 7, 2000, petitioner submitted its final position paper.[16]

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[10] *Id.* at 149-150.

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

[12] *Id.* at 153.

[13] *Id.* at 154-155.

[14] *Id.* at 160-163.

[15] *Id.* at 164.

[16] *Id.* at 165-171.

On January 11, 2002, respondent rendered a Decision[17] resolving to cancel and withdraw the assessments for deficiency documentary stamp tax on petitioner's RRAs covering the taxable years 1994, 1995 and 1996. However, said decision affirmed the assessments for alleged deficiency documentary stamp tax on petitioner's RRAs for the year 1997 as well as on its SSDs covering the taxable years 1994 to 1997. The dispositive portion of said decision is hereunder quoted, to wit:

IN VIEW WHEREOF, this Office do hereby resolved the following:

1.The protest of herein protestant bank on the deficiency stamp taxes on RRPs covering the years 1994, 1995 and 1996 under the following Assessment Notices, to wit:

Assessment Notice No.	Amount	Year
ST-DST-94-0054-99	₱ 820,000.00	1994
ST-DST-95-0055-99	₱ 18,349,375.00	1995
ST-DST-96-0374-99	₱ 1,976,250.00	1996

are hereby withdrawn and cancelled and the same are considered closed and terminated.

2.The protest of herein protestant bank on the deficiency stamp tax on RRPs for 1997 under Assessment Notice No. ST-DST-97-0372-99 demanding payment of ₱3,523,600.00 is hereby affirmed and reiterated.

3.The protest of herein protestant bank on the deficiency stamp taxes on SSA covering the taxable years 1994, 1995, 1996 and 1997 under the following Assessment Notices, to wit:

Assessment Notice No.	Amount	Year
ST-DST-94-0054-99	₱4,041,822.48	1994
ST-DST-95-0055-99	4,290,646.61	1995
ST-DST-96-0371-99	1,633,750.00	1996
ST-DST-97-0373-99	2,595,400.00	1997

are hereby affirmed in all respects.

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[17] *Id.* at 172-183.

Consequently, the protestant bank is hereby ordered to pay the above- stated amounts plus interest that may have accrued thereon until actual payment to the Collection Service, BIR National Office, Diliman, Quezon City, within thirty (30) days from receipt hereof, otherwise, the collection thereof shall be effected through the summary remedies provided by law.

This constitutes the final decision of this Office on the matter.[18]

On February 22, 2002, petitioner appealed to the Court of Tax Appeals (CTA) *via* a Petition for Review,[19] the same was docketed as C.T.A. Case No. 6400.

On October 14, 2004, the CTA rendered a Decision[20] partially granting the petition, the dispositive portion of which reads:

IN VIEW OF THE FOREGOING, the subject Petition for Review is hereby PARTIALLY GRANTED. Assessment Notice No. ST-DST-97-0372-99 for deficiency documentary stamp taxes on petitioner's Reverse Repurchase Agreement Transactions in the amount of ₱3,523,600.00 covering the taxable year 1997 is hereby CANCELLED AND WITHDRAWN. However, Assessment Notice Nos. ST-DST-94-0054-99, ST-DST-95-0055-99, ST-DST-96-0371-99, and ST-DST-96-0373-99 for deficiency documentary stamp taxes on petitioner's Special Savings Deposit Accounts for the taxable years 1994, 1995, 1996 and 1997, respectively, are UPHELD but in the following modified amounts:

x x x x x x x x x

Accordingly, petitioner is ORDERED TO PAY the above recomputed documentary stamp tax liabilities of ₱4,016,822.48, ₱4,265,646.61, ₱1,218,750.00 and ₱1,890,000.00 or in the total amount of ₱11,391,219.09, plus 20% delinquency interest from February 24, 2002 until full payment thereof pursuant to Section 249 (c) of the 1997 Tax Code.

SO ORDERED.[21]

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[18] *Id.* at 182-183.

[19] *Id.* at 184-193.

[20] *Id.* at 204-222.

[21] *Id.* at 220-221.

On November 9, 2004, petitioner filed a Motion for Partial Reconsideration,[22] specifically assailing the portion of the CTA Decision affirming the assessment of deficiency documentary stamp tax on its SSDs.

On February 2, 2005, the CTA issued a Resolution[23]denying petitioner's motion for partial reconsideration.

Aggrieved with the Decision and Resolution of the CTA, petitioner then filed a petition for review[24] before the CTA *en banc*.

On January 3, 2006, the CTA *en banc* rendered a Decision[25] denying said petition, the dispositive portion of which reads:

> WHEREFORE, the instant petition is hereby DENIED DUE COURSE, and accordingly, DISMISSED for the above-stated reasons. The assailed Decision and Resolution are hereby AFFIRMED.[26]

The CTA *en banc* ruled that a deposit account which have the same features as a time deposit account, *i.e.*, a fixed term in order to earn a higher interest rate, is subject to the Documentary Stamp Tax imposed in Section 180[27] of the 1997

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[22] *Id.* at 223-230.

[23] *Id.* at 238-241.

[24] *Id.* at 242-256.

[25] *Id.* at 65-81.

[26] *Id.* at 80.

[27] Sec. 180. ***Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposit bearing interest and others not payable on sight or demand***. — On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines; bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities or **certificates of deposits drawing interest**, or orders for the payment of any sum of money otherwise than at the sight or on demand, or on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (₱0.30) on each Two hundred pesos, or fractional part thereof, of the face value of any

National Internal Revenue Code.[28] Specifically, the CTA *en banc* held that the SSDs are "certificates of deposit drawing interest" as contemplated under Section 180.

Petitioner then filed a Motion for Partial Reconsideration,[29] which was, however, denied by the CTA *en banc* in a Resolution[30] dated March 20, 2006.

Hence, herein petition, with petitioner raising the following errors, to wit:

I

IN RENDERING THE QUESTIONED DECISION AND RESOLUTION (ANNEXES "A" AND "B"), THE HONORABLE COURT OF TAX APPEALS *EN BANC*, IN CLEAR DISREGARD OF THE BASIC RULES ON STATUTORY CONSTRUCTION, ERRONEOUSLY AND CAPRICIOUSLY INTERPRETED THE BANKING-INDUSTRYWIDE INNOVATIVE PRODUCT CALLED "SPECIAL SAVINGS DEPOSIT" AS A CERTIFICATE OF TIME DEPOSIT SUBJECT TO DOCUMENTARY STAMP TAX UNDER SECTION 180 OF THE THEN GOVERNING NATIONAL INTERNAL REVENUE CODE.

II

THE HONORABLE COURT OF TAX APPEALS *EN BANC* GRAVELY ERRED IN NOT CONSIDERING THAT ITS ERRONEOUS INTERPRETATION OF THE "SPECIAL SAVINGS DEPOSIT" WAS ONLY RATIONALIZED AND EXPLICITLY PROVIDED FOR UNDER REPUBLIC ACT NO. 9243, OTHERWISE KNOWN AS "AN

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such agreement, bill of exchange, draft, certificate of deposit, or note: *Provided*, that only one documentary stamp tax shall be imposed on either loan agreement, or promissory note issued to secure such loan, whichever will yield a higher tax: *Provided*, however, that loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (₱250,000) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of the documentary stamp tax provided under this Section.

[28] *Rollo*, p. 75.

[29] *Id.* at 92-101.

[30] *Id.* at 86-87.

ACT RATIONALIZING THE PROVISIONS ON THE DOCUMENTARY STAMP TAX OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSE" WHICH WAS ENACTED INTO LAW ON FEBRUARY 7, 2004.[31]

The petition is not meritorious.

The issue of whether or not Special Savings Deposits are subject to documentary stamp tax is not novel as the same has been the subject of this Court's ruling in *International Exchange Bank v. Commissioner of Internal Revenue*[32] *(International)* and *Philippine Banking Corporation v. Commissioner of Internal Revenue*[33]*(PBC).*

Section 180 of the 1997 National Internal Revenue Code, as amended, provides:

Sec. 180. ***Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposit bearing interest and others not payable on sight or demand***. — On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines; bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities or **certificates of deposits drawing interest**, or orders for the payment of any sum of money otherwise than at the sight or on demand, or on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (₱0.30) on each Two hundred pesos, or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note: provided, that only one documentary stamp tax shall be imposed on either loan agreement, or promissory note issued to secure such loan, whichever will yield a higher tax: provided, however, that loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (₱250,000) executed by an individual for his purchase

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[31] *Id.* at 45-46.

[32] G.R. No. 171266, April 4, 2007, 520 SCRA 688.

[33] G.R. No. 170574, January 30, 2009.

on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of the documentary stamp tax provided under this section.

The CTA *en banc* dissected Section 180 and enumerated the following documents which are subject to documentary stamp tax, to wit:

1. Loan Agreements;
2. Bills of Exchange;
3. Drafts;
4. Instruments and Securities issued by the Government or any of its instrumentalities;
5. **Certificates of Deposit Drawing Interest;**
6. Order for the payment of money otherwise that at sight or on demand;
7. Promissory Notes, whether negotiable or non-negotiable.[34]

From said enumeration, the CTA *en banc* held that petitioner's SSDs fall under the category of "certificates of deposit drawing interest."

In *Far East Bank and Trust Company v. Querimit*,[35] the Court defined a certificate of deposit as "a written acknowledgment by a bank or banker of the receipt of a sum of money on deposit which the bank or banker promises to pay to the depositor, to the order of the depositor, or to some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created." A certificate of deposit is also defined as "a receipt issued by a bank for an interest-bearing time deposit coming due at a specified future date."

In its Decision, the CTA *en banc* held that certificates of time deposit are subject to documentary stamp tax and that the same are but a type of a certificate of deposit drawing interest.[36] Hence, whether or not SSDs are subject to documentary stamp

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[34] *Rollo*, p. 76.

[35] 424 Phil.721, 730 (2002).

[36] *Rollo*, p. 77.

tax is dependent on the nature and specific features thereof. It is thus conceded that if the SSDs are more akin to a time deposit account then the same would be subject to documentary stamp tax. However, if the SSDs are more akin to a regular savings deposit account then the same would not be subject to documentary stamp tax.

Petitioner argues that its SSDs have the same distinctive features of a regular savings deposit account. Particularly, petitioner asserts that its SSDs are not "certificates of deposits drawing interest" as held by the CTA *en banc*. Petitioner thus explains:

> Firstly, the law, as it may in pertinence, be scrutinized, specifically mentioned "certificates of deposits drawing interest" as subject to the documentary stamp tax. In the special savings deposit of petitioner, what is issued to a depositor is a passbook just like in regular savings deposit. The reason for this is that, as appreciated by the Honorable Court *a quo* itself — the amount deposited in the special savings deposit is withdrawable any time. Partial or full withdrawal may be done by the depositor from this deposit. Not only this, the depositor may likewise deposit any amount he pleases anytime he wants. Hence, the fund in a special savings deposit is a continuing fund, just like regular savings account. The passbook then would be suitable and proper record of all the transactions made and to be made on the special savings deposit.
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> Certificates of deposit, on the other hand, are issued to evidence a time deposit placement. Time deposits, to a tee, are certificates of indebtedness issued by a bank for fixed amounts which earn interest at fixed rates and payable at a fixed future date. These features do not attend foursquare on the special savings deposit. In the latter, just like in ordinary savings deposit, there is a minimum amount of deposit required, but it is never fixed or stipulated upon; the interest is assured at savings deposit rate but if the balance required is maintained for a certain period, the depositor is entitled to a prevailing market rate; and, special savings deposit has no maturity date and is a continuing concern. With the withdrawability of the amount deposited herein at any time, as the depositor may please, special savings deposit just like an ordinary savings account includes itself under the category of deposit payable at sight or on demand, read

as "orders for the payment of any sum of money [otherwise] at sight or on demand" which is exempt from documentary stamp tax.[37]

This Court does not agree. Contrary to the claim of petitioner, the SSDs are in fact "certificates of deposits drawing interest" subject to documentary stamp tax as provided for in Section 180 of the 1997 NIRC.

In *PBC*, this Court distinguished a regular savings account, a time deposit account and the Special/Super Savings Deposit Account (SSDA) in the following manner, to wit:

	Savings Account	Time Deposit	SSDA
Interest rate	Regular savings interest	Higher interest rate	Higher interest rate
Period	None	Fixed Term	Fixed Term
Evidenced by:	Passbook	Certificate of Time Deposit	Passbook
Pre-termination	None	With penalty	With penalty
Holding Period	None	Yes	Yes
Withdrawal	Allowed	Withdrawal amounts to pre-termination	Allowed provided the minimum amount to earn the higher interest rate is maintained, otherwise, the regular savings interest rate will apply.

[37] *Id.* at 51-52.

Based on the foregoing comparison, the Court in *PBC* ruled that a "Special/Super Savings Deposit Account" has all the distinct features of a certificate of deposit, to wit:

> Based on the definition and comparison, it is clear that a certificate of deposit drawing interest as used in Section 180 of the 1977 NIRC refers to a time deposit account. As the Bureau of Internal Revenue (BIR) explained in Revenue Memorandum Circular No. 16-2003, the distinct features of a certificate of deposit from a technical point of view are as follows:
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> a. Minimum deposit requirement;
> b. Stated maturity period;
> c. Interest rate is higher than the ordinary savings account;
> d. Not payable on sight or demand, but upon maturity or in case of pre-termination, prior notice is required; and
> e. Early withdrawal penalty in the form of partial loss or total loss of interest in case of pre-termination.
>
> The SSDA is for depositors who maintain savings deposits with substantial average daily balance and which earn higher interest rates. The holding period of an SSDA floats at the option of the depositor at 30, 60, 90, 120 days or more and for maintaining a longer holding period, the depositor earns higher interest rates. There is no pre-termination of accounts in an SSDA because the account is simply reverted to an ordinary savings status in case of early or partial withdrawal or if the required holding period is not met. Based on the foregoing, the SSDA has all of the distinct features of a certificate of deposit.

In *International*, this Court held that a "Savings Account-Fixed Savings Deposit" is likewise subject to documentary stamp tax, to wit:

> The FSD, like a time deposit, provides for a higher interest rate when the deposit is not withdrawn within the required fixed period; otherwise, it earns interest pertaining to a regular savings deposit. Having a fixed term and the reduction of interest rates in case of pre-termination are essential features of a time deposit. Thus, explains the CTA *En Banc*:
>
> > It is well-settled that certificates of time deposit are subject to the DST and that a certificate of time deposit is but a type

of a certificate of deposit drawing interest. Thus, in resolving the issue before Us, it is necessary to determine whether petitioner's Savings Account-Fixed Savings Deposit (SA-FSD) has the same nature and characteristics as a time deposit. In this regard, the findings of fact stated in the assailed Decision [of the CTA Division] are as follows:

"In this case, a depositor of a savings deposit-FSD is required to keep the money with the bank for at least thirty (30) days in order to yield a higher interest rate. Otherwise, the deposit earns interest pertaining only to a regular savings deposit.

"*The same feature is present in a time deposit. A depositor is allowed to withdraw his time deposit even before its maturity subject to bank charges on its pre[-]termination and the depositor loses his entitlement to earn the interest rate corresponding to the time deposit.* Instead, he earns interest pertaining only to a regular savings deposit. Thus, petitioner's argument that the savings deposit-FSD is withdrawable anytime as opposed to a time deposit which has a maturity date, is not tenable. In both cases, the deposit may be withdrawn anytime but the depositor gets to earn a lower rate of interest. *The only difference lies on the evidence of deposit*, a savings deposit-FSD is evidenced by a passbook, while a time deposit is evidenced by a certificate of time deposit."

In order for a depositor to earn the agreed higher interest rate in a SA-FSD, the amount of deposit must be maintained for a fixed period. Such being the case, *We agree with the finding that the SA-FSD is a deposit account with a fixed term. Withdrawal before the expiration of said fixed term results in the reduction of the interest rate. Having a fixed term and reduction of interest rate in case of pre-termination are essentially the features of a time deposit*. Hence, this Court concurs with the conclusion reached in the assailed Decision that petitioner's SA-FSD and time deposit are substantially the same. . . . (Italics in the original; underscoring supplied)

The findings and conclusions reached by the CTA which, by the very nature of its function, is dedicated exclusively to the consideration of tax problems and has necessarily developed an expertise on the subject, and unless there has been an abuse or

improvident exercise of authority, and none has been shown in the present case, deserves respect.[38]

In herein petition, petitioner's version of the special savings deposit is called the "Savings Plus Deposit Accounts." Said accounts have the following features as can be gathered from the petition:

1. Amount deposited is withdrawable anytime[39]
2. The same is evidenced by a passbook[40]
3. The rate of interest offered is the prevailing market rate, provided the depositor would maintain his minimum balance in thirty (30) days at the minimum, and should he withdraw before the period, his deposit would earn the regular savings deposit rate.[41]

Based on the foregoing, the conclusion is certain in that petitioner's SSDs are "certificates of deposits drawing interest" as contemplated in Section 180 of the 1997 National Internal Revenue Code. Petitioner's "Savings Plus Deposit" is essentially the same as the "Savings Account-Fixed Savings Deposit" in *International*, as well as the "Special/Super Savings Account" in *PBC* wherein this Court ruled that said accounts are subject to documentary stamp tax.

Petitioner, however, insists that its SSDs are evidenced by a passbook and thus it claims that the same should bolster its position that said accounts are more akin to a regular savings deposit account.

This Court does not agree. In *International*, this Court held that a passbook representing an interest-earning deposit account issued by a bank qualifies as a certificate of deposit drawing interest.[42]A document to be deemed a certificate of deposit requires no specific form as long as there is some written memorandum

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[38] *Supra* note 32, at 698-700.

[39] *Rollo*, p. 48.

[40] *Id*.

[41] *Id*. at 49.

[42] *Supra* note 32, at 697.

that the bank accepted a deposit of a sum of money from a depositor. What is important and controlling is the nature or meaning conveyed by the passbook and not the particular label or nomenclature attached to it, inasmuch as substance, not form, is paramount.[43]

Anent the second error raised, the same deserves scant consideration. Petitioner cites Republic Act (R.A.) No. 9243[44] (approved on February 17, 2004), whereby Section 180 of the 1997 NIRC was amended, to *wit:*

SEC. 5. Section 180 of the National Internal Revenue Code of 1997, as amended, is hereby renumbered as Section 179 and further amended to read as follows:

> SEC. 179. Stamp Tax on All Debt Instruments. – On every original issue of debt instruments, there shall be collected a documentary stamp tax of One peso (₱1.00) on each Two hundred pesos (₱200), or fractional part thereof, of the issue price of any such debt instruments: *Provided,* That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: *Provided, further,* That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.

For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due bills, bonds, loan agreements, including those signed abroad wherein the object of contract is located or used in the Philippines, instruments and securities issued by the government of any of its instrumentalities, deposit substitute debt instruments, certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific

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[43] *Id.*

[44] AN ACT RATIONALIZING THE PROVISIONS OF THE DOCUMENTARY STAMP TAX OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

maturity date, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation." (Underscoring supplied)

Petitioner asserts that the amendment of Section 180 of the National Internal Revenue Code of 1997 only shows ostensibly that the old Section 180 was not applicable to special savings deposit, which by then cannot be slapped with the imposition of documentary stamp tax.[45] Simply put, at the time material to this case, when R.A. No. 9243 was yet to be enacted, petitioner contends there was no law that clearly subjected its special savings deposits to documentary stamp tax.[46]

This Court does not agree. In *International*, the Court held that the further amendment was intended to eliminate the scheme used by banks of issuing passbooks to "cloak" its time deposits as regular savings deposits.[47] More importantly, the Court held that the amendment to include "*other evidences of deposits that are drawing interest significantly higher than the regular savings deposit*" was merely intended to eliminate the ambiguity[48] as reflected in the exchanges[49] between Mr. Miguel Andaya of

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[45] *Rollo*, p. 56.

[46] *Id.*

[47] *Supra* note 32, at 701.

[48] *Id.*

[49] MR. MIGUEL ANDAYA (Bankers Association of the Philippines). Just to clarify. Savings deposit at the present time is not subject to DST.

THE CHAIRMAN. That's right.

MR. ANDAYA. Time deposit is subject. I agree with you in principle that if we are going to encourage deposits, whether savings or time…

THE CHAIRMAN. Uh-huh.

MR. ANDAYA. . .it's questionable whether we should tax it with DST at all, even the question of imposing final withholding tax has been raised as an issue.

THE CHAIRMAN. If I had it my way, I'll cut it by half.

MR. ANDAYA. Yeah, but I guess concerning the constraint of government revenue, even the industry itself right now is not pushing in that direction, but in

the Bankers Association of the Philippines and Senator Ralph Recto, Senate Chairman of the Committee on Ways and Means, during the deliberations on Senate Bill No. 2518 which eventually became R.A. No. 9243. Contrary therefore to petitioner's position, *International* is categorical in that the said amendment did not signify that time deposits evidenced by a passbook were exempt from documentary stamp tax under Section 180 of the 1997 NIRC,[50] but that it merely served to eliminate the ambiguity in the law.

WHEREFORE, the petition is *DENIED*. The January 3, 2006 Decision and March 20, 2006 Resolution of the Court of Tax Appeals *En Banc* in C.T.A. EB No. 66 (C.T.A. Case No. 6400) are hereby *AFFIRMED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Velasco, Jr., and *Leonardo-de Castro,*[*] *JJ.,* concur.

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the long term, when most of us in this room are gone, we hope that DST will disappear from the face of this earth, 'no.

Now, I think the move of the DOF to expand the coverage of or to add that phrase, "Other evidence of indebtedness," it just removed ambiguity. When we testified earlier in the House on this very same bull, we did not interpose any objections if only for the sake of avoiding further ambiguity in the implementation of DST on deposits. Because of what has happened so far is, we don't know whether the examiner is gonna come in and say, "This savings deposit is not savings but it's time deposit." So, I think what DOF has done is to eliminate any confusion. They said that a deposit that has a maturity. . .

THE CHAIRMAN. Uh-huh.

MR. ANDAYA. . . . which is time, in effect, regardless of what form it takes should be subject to DST.

THE CHAIRMAN. Would that include savings deposit now?

MR. ANDAYA. So that if we cloaked a deposit as savings deposit but it has got a fixed maturity . . .

THE CHAIRMAN. Uh-huh.

MR. ANDAYA. . . that would fall under the purview. (Underscoring supplied; Transcript of Stenographic Notes, Deliberations of the Senate Committee on Ways and Means, August 14, 2002. pp. 2-3.)

[50] *International Exchange Bank v. CIR, supra* note 32, at 701.

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per Raffle dated September 28, 2009.

EN BANC

[G.R. No. 172986. October 2, 2009]

ARNULFO A. AGUILAR, *petitioner, vs.* **COURT OF APPEALS, CIVIL SERVICE COMMISSION and COMMISSION ON ELECTIONS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ERROR IN IMPLEADING A PARTY DOES NOT MEAN AUTOMATIC DISMISSAL OF APPEAL; RULE LIBERALLY APPLIED IN THE INTEREST OF JUSTICE. — We agree with the OSG that the petition erroneously impleads the CA. The correct procedure, as required by Section 4, Rule 45 of the 1997 Rules of Court, is not to implead the lower court that rendered the assailed decision. However, inappropriately impleading the lower court as respondent in the petition for review on *certiorari* does not automatically mean the dismissal of the appeal; the rule merely *authorizes* the dismissal of the petition, as its violation is a mere formal defect, and even as such is not uncommon. In those cases we merely called the petitioners' attention to the defect and proceeded to resolve the cases on their merits. We find no reason why we should not afford the same liberal treatment to the present case. While, unquestionably, we have the discretion to dismiss the appeal for being defective, sound judicial policy dictates that cases are better disposed on the merits rather than on technicality, particularly when the latter approach may result in injustice. This is in accordance with Section 6, Rule 1 of the Rules of Court which encourages a reading of the procedural requirements in a manner that will help secure and not defeat the ends of justice.

2. ID.; ID.; MOTION FOR RECONSIDERATION; PERIOD FOR FILING; ONE DAY LATE IN CASE AT BAR RESULTS IN THE FINALITY OF JUDGMENT SOUGHT TO BE RECONSIDERED. — The petitioner was one day late when he filed his motion for reconsideration on September 25, 2001. x x x The motion was not filed on time, resulting in the finality

of the judgment sought to be reconsidered. Jurisprudence teaches us that the perfection of an appeal within the statutory or reglementary period is not only mandatory, but also jurisdictional. This rule is founded upon the principle that the right to appeal is not part of due process of law but is a mere statutory privilege to be exercised only in the manner and in accordance with the provisions of the law. Failure to interpose a timely appeal (or a motion for reconsideration) renders the appealed decision, order or award final and executory and this deprives the appellate body of any jurisdiction to alter the final judgment, more so, to entertain the appeal.

3. ID.; ID.; APPEALS; SUBSEQUENT DEVELOPMENTS DELVED UPON EVEN IF NOT PUT IN ISSUE (AS THEY AFFECT CIVIL SERVICE COMMISSION (CSC) JURISDICTION TO ENTERTAIN APPEAL). — Even if we liberally treat the petitioner's one-day tardiness in the filing of his motion for reconsideration, the COMELEC decision nevertheless lapsed into finality for reasons subsequent to the motion for reconsideration. Although the parties did not put these subsequent developments in issue, we are not prevented from delving into these developments, since they affect the jurisdiction of the CSC to entertain the appeal.

4. POLITICAL LAW; ADMINISTRATIVE LAW; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (URACCS); REMEDIES OF PARTY ADVERSELY AFFECTED BY DECISION OF DISCIPLINING AUTHORITY; FILING OF MOTION FOR RECONSIDERATION; LIMITATION; FILING OF APPEALS; FAILURE TO COMPLY WITH THE RULES IN CASE AT BAR. — Rule III of CSC Resolution No. 991936, otherwise known as the Uniform Rules on Administrative Cases in the Civil Service (*URACCS*), provides the following remedies to a party adversely affected by the decision of the disciplining authority: Section 38. *Filing of Motion for Reconsideration.* – The party adversely affected by the decision may file a motion for reconsideration with the disciplining authority who rendered the same within fifteen (15) days from receipt thereof. x x x Section 41. *Limitation.* – **Only one motion for reconsideration shall**

be entertained. x x x Section 43. *Filing of Appeals*. – Decisions of heads of departments, agencies, provinces, cities, municipalities and other instrumentalities imposing a penalty exceeding thirty (30) days suspension or fine in an amount exceeding thirty days salary, may be appealed to the Commission Proper within a period of fifteen (15) days from receipt thereof. x x x In the present case, the petitioner, instead of filing a proper appeal with the CSC, filed a **second motion for reconsideration** with the COMELEC on November 26, 1999 after the denial of his first motion for reconsideration in COMELEC Resolution No. 99-1805 dated October 11, 1999. The petitioner also subsequently filed an **Urgent Motion for Reinvestigation.** When the petitioner filed his Notice of Appeal with the CSC on April 28, 2000, more than six (6) months had lapsed, and the CSC should have forthwith denied his Notice of Appeal for non-compliance with Rule III of the URACCS. The petitioner's Notice of Appeal on April 28, 2000, having been filed beyond the fifteen-day reglementary period, did not toll COMELEC Resolution No. 99-1067 from becoming final and executory.

5. REMEDIAL LAW; PRINCIPLE OF CONCLUSIVENESS OF PRIOR ADJUDICATIONS; APPLICABLE TO FINAL AND EXECUTORY DECISION OF THE COMELEC. — The settled and firmly established rule is that a decision that has acquired finality becomes immutable and unalterable. This quality of immutability precludes the modification of the judgment, even if the modification is meant to correct erroneous conclusions of fact and law. And this postulate holds true whether the modification is made by the court that rendered it or by the highest court in the land. The orderly administration of justice requires that, at the risk of occasional errors, the judgments/resolutions of a court must reach a point of finality set by the law. The noble purpose is to write *finis* to disputes once and for all. This is a fundamental principle in our justice system, without which no end to litigations will take place. Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication. Any act that violates such principle must immediately be struck

down. Indeed, the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of courts, but extends as well to those of all other tribunals exercising adjudicatory powers. Being an immutable decision, COMELEC Resolution No. 99-1067 may no longer be modified, altered or changed. CSC Resolution No. 011396 which modified a final and executory judgment is a void judgment. As such, it is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It is attended by none of the consequences of a valid adjudication.

APPEARANCES OF COUNSEL

Sibayan & Associates Law Office for petitioner.
The Solicitor General for respondents.

D E C I S I O N

BRION, *J.*:

The present petition provides an occasion to revisit the doctrine that perfection of an appeal within the reglementary period is not only mandatory but also jurisdictional; failure to perfect the appeal renders the challenged decision final and executory, and deprives the appellate court or tribunal of the jurisdiction to entertain the appeal and to alter the final decision.

THE CASE

Before us is the petition for review on *certiorari*[1] filed by petitioner Arnulfo A. Aguilar (*petitioner*) to reverse and set aside the decision[2] dated September 23, 2004 and resolution[3]

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[1] Filed under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Aurora Santiago-Lagman, with Associate Justice Portia Aliño-Hormachuelos and Associate Justice Rebecca de Guia-Salvador; *rollo*, pp. 61-66.

[3] *Rollo*, pp. 58-59.

dated June 1, 2006 of the Special Former Eighth Division of the Court of Appeals (*CA*) in CA-G.R. SP No. 68853 entitled *"Arnulfo A. Aguilar v. Civil Service Commission and Commission on Elections."*

FACTUAL BACKGROUND

The facts of the case, as gathered from the records, are briefly summarized below.

During the 1998 National and Local Elections, the petitioner, an Election Officer (*EO*) IV of the Commission on Elections (*COMELEC*)-Navotas, was designated as Acting EO and Chairman of the Municipal Board of Canvassers (*MBC*) of San Pedro, Laguna. His duties included the canvassing of election returns, the preparation of the certificates of canvass of votes, and the proclamation of the winning candidates.

At 6 o'clock in the evening of May 11, 1998, the MBC convened in the Session Hall of the *Sangguniang Bayan*, San Pedro, Laguna, to receive and tabulate the election returns and certificates of canvass. At about 1:30 a.m. of May 15, 1998, the MBC resolved to suspend its proceedings and to continue at 3:30 p.m. that same day. The petitioner failed to report back to his post when the MBC resumed the canvassing. The MBC eventually proclaimed the winners without the petitioner's participation due to his absence.

On June 2, 1998, Geronima F. Abellera (*Abellera*) filed a letter-complaint[4] against the petitioner. Abellera questioned the validity of the proclamation of the winning candidates, since the certificates of canvass and proclamation did not bear the signature of the petitioner as MBC Chairman.

On June 11, 1998, then COMELEC Executive Director Resurreccion Z. Borra directed[5] the petitioner to explain in writing his alleged abandonment of position as Chairman of the MBC.

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[4] *Id.,* pp. 148-150.

[5] *Id.,* p. 151.

On June 16, 1998, the petitioner responded to the directive through a memorandum.[6] He explained that he did not abandon his post, but he was absent due to illness and that he duly requested relief from duty from the COMELEC Regional Director. The COMELEC *en banc* referred the case to its Law Department for appropriate action.[7]

On February 4, 1999, the petitioner was formally charged with Ignorance of the Law, Grave Misconduct, Neglect of Duty, Abandonment and Conduct Unbecoming a Public Officer Prejudicial to the Interest of Public Service for his failure to report back to his post as Chairman of the MBC.[8] He was also preventively suspended for sixty (60) days pending investigation of the case.

In his formal answer dated March 12, 1999, the petitioner explained that his failure to return to his post was due to illness, physical exhaustion, and death threat from the militant group "Alex Boncayao Brigade" (*ABB*). The petitioner also waived his right to a formal investigation.

Despite the petitioner's waiver, the COMELEC conducted a formal investigation.

THE COMELEC RULING

The COMELEC, through Resolution No. 99-1067 dated May 31, 1999, found the petitioner guilty of Abandonment, Neglect of Duty and Conduct Unbecoming a Public Officer, and imposed on him the penalty of suspension from the service for six (6) months.[9]

The petitioner received a copy of Resolution No. 99-1067 on August 26, 1999.[10] On August 30, 1999, the petitioner moved, through a Memorandum, for the reconsideration of the COMELEC

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[6] *Id.*, pp. 152-153.

[7] *Id.*, p. 154.

[8] *Id.*, pp. 157-159.

[9] *Id.*, pp. 164-165.

[10] *Id.*, pp. 168-171.

resolution and the lifting of his suspension,[11] but the COMELEC denied the motion in Resolution No. 99-1805 dated October 11, 1999.[12]

Instead of filing an appeal with the Civil Service Commission (*CSC*), the petitioner sought, on November 26, 1999, the reconsideration of his suspension through another Memorandum, but the COMELEC denied the motion in Resolution No. 00-0215 dated January 27, 2000.[13] The petitioner then filed an Urgent Motion for Reinvestigation, but the COMELEC likewise denied this motion under Resolution No. 00-0399 dated February 17, 2000.[14]

On April 28, 2000, the petitioner filed his Notice of Appeal together with his Appeal Memorandum with the CSC. The petitioner alleged that there was no substantial evidence to hold him liable for the offenses charged against him, and that there was failure to comply with the requirements of due process.

THE CSC RULING

On August 17, 2001, the CSC issued Resolution No. 011396 dismissing the petitioner's appeal.[15] The CSC found that the petitioner failed to provide evidentiary support for the reasons he gave for his failure to return to his post. The CSC noted that he failed to submit the required medical certificate showing that he was sick at that time, nor did he communicate with other members of the MBC when it resumed the canvassing in the afternoon of May 15, 1998 until the completion of the canvass on May 16, 1998. It also noted that the alleged ABB death threat did not exist, since the ABB letter simply warned the petitioner not to commit any irregularity that would impair the results of the election. The CSC found no merit in the claimed denial of due process, since the right to the assistance of counsel

[11] *Ibid.*

[12] *Id.,* p. 172.

[13] *Id.,* p. 175.

[14] *Id.,* pp. 176-177.

[15] *Id.,* pp. 72-78.

is not an indispensable requirement of due process, except during custodial investigation and during the trial of the accused.

The CSC, however, modified COMELEC Resolution No. 99-1067 by finding the petitioner guilty of Gross Neglect of Duty and Conduct Grossly Prejudicial to the Best Interest of the Service and imposing on him the penalty of dismissal from the service. The CSC observed that the petitioner's act of leaving his post as Election Officer and Chairman of the MBC was a serious breach that endangered the public welfare, at the same time that it prejudiced the public service; it affected the efficient canvassing of votes and put into question the legality of the winners' proclamation.

The petitioner moved for a reconsideration of CSC Resolution No. 011396, but the CSC denied the motion in Resolution No. 20015[16] dated January 3, 2002.

The petitioner then elevated his case to the CA through a petition for review under Rule 43 of the Rules of Court. He prayed that all the resolutions of the CSC and the COMELEC be set aside, and the penalty of dismissal imposed upon him be lifted for lack of factual and legal basis.

THE CA RULING

On September 23, 2004, the CA rendered a decision dismissing the petition on the ground that CSC Resolution No. 011396 had become final and executory without any timely motion for reconsideration having been filed, and could therefore no longer be modified, altered or reversed. The appellate court found that the petitioner's motion for reconsideration with the CSC was filed only on October 1, 2001, more than 15 days from September 7, 2001, when the petitioner received a copy of CSC Resolution No. 011396.

The petitioner moved but failed to secure reconsideration of the CA decision; hence, he came to us through the present petition.

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[16] *Id.,* pp. 68-71.

THE PETITION and THE PARTIES' POSITIONS

The petitioner prays for judicial leniency because at stake is not only his employment with the COMELEC but also his means of livelihood. He contends that he filed his motion for reconsideration on September 25, 2001 as indicated by the date stamped on the motion, not October 1, 2001 as declared by the CA. He further argues that when he filed his motion for reconsideration on September 25, 2001 it was only one day late since the fifteen-day period from September 7, 2001, the day he received CSC Resolution No. 011396, fell on September 22, 2001, a Saturday, and he had until September 24, 2001, a Monday, to file his motion.

The petitioner maintains that he is not guilty of abandonment or neglect of duty because his inability to report back for the scheduled resumption of canvass was justified by sickness and death threats from the ABB. In addition, he claims that his request for temporary relief from duty was granted by Atty. Milagros Somera, COMELEC Regional Director for Region IV.

The respondents CSC and COMELEC, through the Office of the Solicitor General (*OSG*), counter-argue that the petition is defective in form and should be dismissed outright, since it improperly impleads the CA as party respondent in violation of Section 4 of Rule 45 of the Rules of Court. The OSG defends the decision of the CA to dismiss the petition by pointing out that the petitioner filed his motion for reconsideration of CSC Resolution No. 011396 beyond the fifteen-day reglementary period.

The OSG further submits that the CSC correctly found the petitioner guilty of Gross Neglect of Duty and Conduct Grossly Prejudicial to the Best Interest of the Service, and correctly imposed the penalty of dismissal from the service. It insists that the petitioner's failure to perform his assigned duties and legal obligations prejudiced the public service because it hampered the smooth canvassing of votes and impaired the integrity of the results of the canvassing.

OUR RULING

We find the petition meritorious.

We deal first with the issue of form raised by the respondents.

Formal defects in petitions are given liberal treatment to dispose of cases on the merits rather than on a technicality

We agree with the OSG that the petition erroneously impleads the CA. The correct procedure, as required by Section 4, Rule 45 of the 1997 Rules of Court, is not to implead the lower court that rendered the assailed decision.[17] However, inappropriately impleading the lower court as respondent in the petition for review on *certiorari* does not automatically mean the dismissal of the appeal; the rule merely *authorizes* the dismissal of the petition, as its violation is a mere formal defect,[18] and even as such is not uncommon.[19] In those cases we merely called the petitioners' attention to the defect and proceeded to resolve the cases on their merits.

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[17] SEC. 4. *Contents of petition.* – The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner; and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, **without impleading the lower courts or judges thereof either as petitioners or respondents**; x x x (Emphasis supplied)

[18] SEC. 5. *Dismissal or denial of petition.* – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, deposit for costs, proof of service of the petition, and the **contents of** and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof. x x x (Emphasis supplied)

[19] *Bejoc v. Cabreros*, G.R. No. 145849, July 22, 2005, 464 SCRA 78, 80; *Miguel v. JCT Group, Inc.*, G.R. No. 157752, March 16, 2005, 453 SCRA 529, 531; *Villamor v. National Power Corporation*, G.R. No. 146735, October 25, 2004, 441 SCRA 329, 330; *Payongayong v. Court of Appeals*, G.R. No. 144576, May 28, 2004, 430 SCRA 210, 212; *Hanil Development Co., Ltd. v. Court of Appeals*, G.R. Nos. 113176 & 113342, July 30, 2001, 362 SCRA 1, 5; *Philippine Global Communications, Inc. v. Relova*, No. 60548, November 10, 1986, 145 SCRA 385, 387.

We find no reason why we should not afford the same liberal treatment to the present case. While, unquestionably, we have the discretion to dismiss the appeal for being defective, sound judicial policy dictates that cases are better disposed on the merits rather than on technicality, particularly when the latter approach may result in injustice.[20] This is in accordance with Section 6, Rule 1 of the Rules of Court[21] which encourages a reading of the procedural requirements in a manner that will help secure and not defeat the ends of justice.[22]

We now proceed to the main issue, which simply is, ***did the CA err in dismissing the petitioner's petition for review before it for the late filing of the petitioner's motion for reconsideration with the CSC?***

We answer in the affirmative.

Finality of Judgment Due to the Failure to Seasonably File a Motion for Reconsideration

The CA erred in finding that the petitioner's motion for reconsideration with the CSC was filed only on October 1, 2001, or nine (9) days beyond September 22, 2001 deadline. Our own examination of the records shows that the date of filing with the CSC was September 25, 2001, as indicated by date stamped on the motion.[23] Since September 22, 2001 fell on a Saturday, the petitioner actually had until September 24, 2001, a Monday, to file the motion for reconsideration, pursuant to

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[20] *Gutierrez v. Cabrera*, G.R. No. 154064, February 28, 2005, 452 SCRA 521, 529; *Asia Traders Insurance Corporation v. Court of Appeals*, G.R. No. 152537, February 16, 2004, 423 SCRA 114, 118; *Armed Forces of the Philippines Mutual Benefits Association, Inc. v. Court of Appeals*, G.R. No. 126745, July 26, 1999, 311 SCRA 143, 157.

[21] SEC. 6. *Construction.* – These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.

[22] *Gutierrez v. Cabrera*, *supra* note 20, at 529-530; *Paras v. Baldado*, G.R. No. 140713, March 8, 2001, 354 SCRA 141, 145.

[23] *Rollo*, p. 178.

Section 1, Rule 22 of the Rules of Court.[24] Thus, the petitioner was one day late when he filed his motion for reconsideration on September 25, 2001.

On this point, the CA conclusion is correct although it erroneously recognized October 1, 2001 as the date of filing of the motion. Whether with our count or with the CA's, the same result is achieved; the motion was not filed on time, resulting in the finality of the judgment sought to be reconsidered.

Other Reasons for Finality; the Doctrine of Finality of Judgments

Even if we liberally treat the petitioner's one-day tardiness in the filing of his motion for reconsideration, the COMELEC decision nevertheless lapsed into finality for reasons subsequent to the motion for reconsideration. Although the parties did not put these subsequent developments in issue, we are not prevented from delving into these developments, since they affect the jurisdiction of the CSC to entertain the appeal.[25]

Jurisprudence teaches us that the perfection of an appeal within the statutory or reglementary period is not only mandatory, but also jurisdictional.[26] This rule is founded upon the principle that the right to appeal is not part of due process of law but is a mere statutory privilege to be exercised only in the manner

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[24] Section 1 of Rule 22 of the 1997 Rules of Court provides:

SECTION 1. *How to compute time.* – x x x If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

[25] Section 8, Rule 51 of the 1997 Rules of Court states:

SEC. 8. *Questions that may be decided*.— No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.

[26] *Yaneza v. Court of Appeals,* G.R. No. 149322, November 28, 2008; *Petilla v. Court of Appeals*, G.R. No. 150792, March 3, 2004, 424 SCRA 254, 261.

and in accordance with the provisions of the law.[27] Failure to interpose a timely appeal (or a motion for reconsideration) renders the appealed decision, order or award final and executory and this deprives the appellate body of any jurisdiction to alter the final judgment,[28] more so, to entertain the appeal.[29]

Rule III of CSC Resolution No. 991936,[30] otherwise known as the Uniform Rules on Administrative Cases in the Civil Service (*URACCS*), provides the following remedies to a party adversely affected by the decision of the disciplining authority:

> Section 38. *Filing of Motion for Reconsideration.* – The party adversely affected by the decision may file a motion for reconsideration with the disciplining authority who rendered the same within fifteen (15) days from receipt thereof.
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> x x x x x x x x x
>
> Section 41. *Limitation*. – **Only one motion for reconsideration shall be entertained**.
>
> x x x x x x x x x
>
> Section 43. *Filing of Appeals*. – Decisions of heads of departments, agencies, provinces, cities, municipalities and other instrumentalities imposing a penalty exceeding thirty (30) days suspension or fine in an amount exceeding thirty days salary, may be appealed to the Commission Proper within a period of fifteen (15) days from receipt thereof. x x x (Emphasis supplied)

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[27] *David v. Cordova,* G.R. No. 152992, July 28, 2005, 464 SCRA 384, 395; *Delgado v. Court of Appeals*, G.R. No. 137881, December 21, 2004, 447 SCRA 402, 413; *Fukuzumi v. Sanritsu Great International Corporation,* G.R. No. 140630, August 12, 2004, 436 SCRA 228, 234; *Zaragoza v. Nobleza,* G.R. No. 144560, May 13, 2004, 428 SCRA 410, 419.

[28] *San Miguel Corporation v. National Labor Relations Commission,* G.R. No. 101021, April 6, 1993, 221 SCRA 48, 51; *Paramount Vinyl Corp. v. NLRC,* G.R. No. 81200, October 17, 1990, 190 SCRA 525.

[29] Effective September 26, 1999.

[30] *Salvacion v. Sandiganbayan,* G.R. No. 175006, November 27, 2008; *Philippine Commercial International Bank v. Court of Appeals*, 452 Phil. 542, 551 (2003).

In the present case, the petitioner, instead of filing a proper appeal with the CSC, filed a **second motion for reconsideration** with the COMELEC on November 26, 1999 after the denial of his first motion for reconsideration in COMELEC Resolution No. 99-1805 dated October 11, 1999. The petitioner also subsequently filed an **Urgent Motion for Reinvestigation**. When the petitioner filed his Notice of Appeal with the CSC on April 28, 2000, more than six (6) months had lapsed, and the CSC should have forthwith denied his Notice of Appeal for non-compliance with Rule III of the URACCS. The petitioner's Notice of Appeal on April 28, 2000, having been filed beyond the fifteen-day reglementary period, did not toll COMELEC Resolution No. 99-1067 from becoming final and executory.

The settled and firmly established rule is that a decision that has acquired finality becomes immutable and unalterable. This quality of immutability precludes the modification of the judgment, even if the modification is meant to correct erroneous conclusions of fact and law. And this postulate holds true whether the modification is made by the court that rendered it or by the highest court in the land.[31] The orderly administration of justice requires that, at the risk of occasional errors, the judgments/ resolutions of a court must reach a point of finality set by the law. The noble purpose is to write *finis* to disputes once and for all. This is a fundamental principle in our justice system, without which no end to litigations will take place. Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication. Any act that violates such principle must immediately be struck down.[32] Indeed, the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of courts, but extends

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[31] *Collantes v. Court of Appeals*, G.R. No. 169604, March 6, 2007, 517 SCRA 561, 562; *Ramos v. Ramos*, 447 Phil. 114, 119 (2003).

[32] *Temic Semiconductors, Inc. Employees Union (TSIEU)-FFW, et al. v. Federation of Free Workers (FFW)*, G.R. No. 160993, May 20, 2008, 554 SCRA 122, 134; *Peña v. Government Service Insurance System (GSIS)*, G.R. No. 159520, September 19, 2006, 502 SCRA 383, 404; *Fortich v. Corona*, G.R. No. 131457, April 24, 1998, 289 SCRA 624, 651.

as well to those of all other tribunals exercising adjudicatory powers.[33]

Being an immutable decision, COMELEC Resolution No. 99-1067 may no longer be modified, altered or changed. CSC Resolution No. 011396 which modified a final and executory judgment is a void judgment. As such, it is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It is attended by none of the consequences of a valid adjudication.[34] Thus, CSC Resolution No. 011396 finding the petitioner guilty of Gross Neglect of Duty and Conduct Grossly Prejudicial to the Best Interest of the Service, and the consequent penalty of dismissal from the service is rendered ineffectual. The petitioner is entitled to full backwages from the time he has duly served his six-month suspension under COMELEC Resolution No. 99-1067 until his actual reinstatement.

WHEREFORE, premises considered, we hereby *REVERSE* and *SET ASIDE* the Decision of the Court of Appeals in CA-G.R. SP No. 68853 dated September 23, 2004. CSC Resolution No. 011396 dated August 17, 2001, having been issued in violation of the rule on immutability of decisions, is *ANNULLED* and *SET ASIDE*. Petitioner Arnulfo F. Aguilar is hereby *REINSTATED* to his former position as Election Officer IV after having duly served his six-month suspension under COMELEC Resolution No. 99-1067 dated May 31, 1999. He is entitled to backwages from the time he completed service of his suspension until his actual reinstatement.

SO ORDERED.

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

Quisumbing, J., on sabbatical leave.

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[33] *Peña v. Government Service Insurance System (GSIS), supra* note 32; *San Luis v. Court of Appeals*, G.R. No. 80160, June 26, 1989, 174 SCRA 258, 271.

[34] *Roces v. House of Representatives Electoral Tribunal,* G.R. No. 167499, September 15, 2005, 469 SCRA 681; *Nazareno v. Court of Appeals,* G.R. No. 111610, February 27, 2002, 378 SCRA 28, 35.

SECOND DIVISION

[G.R. No. 174477. October 2, 2009]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RENATO BRACIA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT; ACCORDED RESPECT IF NOT CONCLUSIVE EFFECT. — An established rule in appellate review is that the trial court's factual findings, including its assessment of the credibility of the witnesses and the probative weight of their testimonies, as well as the conclusions drawn from the factual findings, are accorded respect, if not conclusive effect. These factual findings and conclusions assume greater weight if they are affirmed by the CA. Despite the RTC and the CA's unanimity on the findings of fact, we nevertheless carefully scrutinized the records of this case, as the penalty of *reclusion perpetua* demands no less than this kind of scrutiny.

2. ID.; EVIDENCE; BURDEN OF PROOF; WHEN THE ACCUSED ADMITS THE KILLING AND BY WAY OF JUSTIFICATION PLEADS SELF-DEFENSE, THE BURDEN OF EVIDENCE SHIFTS. — As a rule, the prosecution bears the burden of establishing the guilt of the accused beyond reasonable doubt. However, when the accused admits the killing and by way of justification pleads self-defense, the burden of evidence shifts; the accused must then show by clear and convincing evidence that he indeed acted in self-defense. For that purpose, he must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence.

3. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS. — Article 11(1) of the Revised Penal Code spells out the elements that the accused must establish by clear and convincing evidence to successfully plead self-defense. The Article provides: Art. 11. *Justifying Circumstances*. – The following do not incur any criminal liability: 1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur: *First*.

Unlawful aggression; *Second*. Reasonable necessity of the means to prevent or repel it; *Third*. Lack of sufficient provocation on the part of the person defending himself. x x x There is unlawful aggression when the peril to one's life, limb or right is either actual or imminent. There must be actual physical force or actual use of a weapon. It is a statutory and doctrinal requirement that, for the justifying circumstance of self-defense, unlawful aggression as a condition *sine qua non* must be present. There can be no self-defense, complete or incomplete, unless the victim commits an unlawful aggression against the person defending himself.

4. ID.; ID.; ID.; ID.; NOT PRESENT IN CASE AT BAR. — Even if we assume that the victim was indeed the unlawful aggressor, the appellant's plea of self-defense would still fail for **lack of rational equivalence between the means of attack and the means of defense that would characterize the defense as reasonable.** The fact that Restituto suffered 21 external wounds and 5 internal wounds on various parts of his body belies the appellant's claim that he was simply warding off the victim's attack by a wooden pole and used his "*guinunting*" as a means commensurate to the thrusts he avoided. x x x In addition, the presence of these multiple *stab* and *hack* wounds shows that two weapons were used in assaulting the victim, belying another claim the appellant made – that he was alone (wielding only a *guinunting*) when he fought Restituto. The number and severity of these wounds in fact confirm Edgar's testimony that two persons – the appellant and Bercasio – attacked and assaulted Restituto, and likewise validate Dr. Beltran's statement that more than one person could have inflicted the wounds. In *People v. Carriaga*, we held that self-defense is negated where the nature of the victim's injuries undeniably shows that he was attacked by several assailants armed with weapons of various kinds that were not wielded by the accused alone. Self-defense, like alibi, is an inherently weak defense for it is easy to fabricate. Self-defense must be proven by sufficient, satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it. This type and nature of evidence simply do not obtain in this particular case. Therefore, the appellant's plea of self-defense must fail.

5. ID.; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; ELEMENTS. — Article 248 of the Revised Penal Code defines the crime of murder as follows: Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances: 1. With treachery, taking advantage of superior strength x x x 5. With evident premeditation; x x x In convicting the appellant of murder, the courts *a quo* appreciated treachery. There is treachery when the offender commits any of the crimes against persons, employing means, method or forms which tend directly and especially to ensure its execution, without risk to the offender, arising from the defense that the offended party might make. This definition sets out what must be shown by evidence to conclude that treachery existed, namely: (1) the employment of such means of execution as would give the person attacked no opportunity for self-defense or retaliation; and (2) the deliberate and conscious adoption of the means of execution. **The essence of this qualifying circumstance is the suddenness, surprise and the lack of expectation that the attack would take place, thus depriving the victim of any real opportunity for self-defense while ensuring the commission of the crime without risk to the aggressor.**

6. ID.; AGGRAVATING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; WHEN PRESENT. — Abuse of superior strength is present whenever there is inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor and selected or taken advantage of by him in the commission of the crime. To take advantage of superior strength means to use purposely excessive force that is out of proportion to the means of defense available to the person attacked.

7. ID.; ID.; EVIDENT PREMEDITATION; ELEMENTS. — While evident premeditation was also alleged in the Information, the courts *a quo* were correct in not appreciating this circumstance. For evident premeditation to be appreciated, the following elements must be established: (1) the time when the accused determined to commit the crime; (2) an overt act manifestly indicating that the accused has clung to his determination; and (3) sufficient lapse of time between decision and execution to

allow the accused to reflect upon the consequences of his act. Significantly, the prosecution did not even attempt to prove the presence of these elements.

8. ID.; MURDER; PROPER PENALTY. — The crime of murder qualified by treachery is penalized under Article 248 of the Revised Penal Code (as amended by Republic Act No. 7659) with *reclusion perpetua* to death.The other qualifying circumstance of abuse of superior strength is deemed absorbed in treachery. While evident premeditation and nocturnity were alleged in the Information, these circumstances were not adequately proven. Hence, in the absence of mitigating and aggravating circumstances in the commission of the felony, the court *a quo* correctly sentenced the appellant to *reclusion perpetua*, conformably with Article 63(2) of the Revised Penal Code.

9. ID.; ID.; CIVIL LIABILITY; GRANT OF CIVIL INDEMNITY; WHEN PROPER. — The grant of civil indemnity for the crime of murder requires no proof other than the fact of death as a result of the crime and proof of the appellant's responsibility therefor. While the RTC and the CA commonly awarded ₱50,000.00 as death indemnity to the murder victim's heirs, prevailing jurisprudence dictates an award of ₱75,000.00. Hence, we modify the award of civil indemnity to this extent to be paid by the appellant to the victim's heirs. The RTC awarded the amount of ₱42,300.00 to the victim's heirs as actual damages. It appears that out of the said amount, only ₱29,320.00 were duly supported by receipts. To be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable to the injured party. The heirs of the victim are likewise entitled to exemplary damages, since the qualifying circumstances of treachery and abuse of superior strength were firmly established. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of ₱25,000.00 as exemplary damages is justified.

10. ID.; ID.; ID.; DAMAGES; AS A RULE, DOCUMENTARY EVIDENCE MUST BE PRESENTED TO SUBSTANTIATE A CLAIM FOR LOSS OF EARNING CAPACITY; EXCEPTION. — We affirm the award of ₱1,020,000.00 as indemnity for loss of earning capacity to the victim's heirs. As a rule, documentary

evidence should be presented to substantiate a claim for loss of earning capacity. By way of exception, damages may be awarded despite the absence of documentary evidence provided that there is testimony that the victim was either (1) self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work, no documentary evidence is available; or (2) employed as a daily wage worker earning less than the minimum wage under current labor laws. Given Salvacion's testimony that her husband was a ***farmer*** who earns ₱5,000.00 monthly for administering his parents' land, we hold that his heirs are entitled to an award representing the loss of the victim's earning capacity computed under the following formula: Net Earning Capacity = 2/3 *x* (80 less the age of the victim at the time of death) *x* (Gross Annual Income less the Reasonable and Necessary Living Expenses) The records show that the victim's annual gross income was ₱60,000.00 per annum computed from his monthly rate of ₱5,000.00. His reasonable and necessary living expenses are estimated at 50% of this gross income, leaving a balance of ₱30,000.00. His life expectancy, on the other hand, is assumed to be 2/3 of the age 80 less 29, his age at the time of death. Applying the formula yields the net earning capacity of ₱1,020,000.00.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BRION, *J.*:

This is an appeal from the May 30, 2006 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 00906. The CA affirmed the May 8, 1997 Decision[2] of the Regional Trial

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[1] Penned by Associate Justice Elvi John S. Asuncion (separated from the service), and concurred in by Associate Justice Noel G. Tijam and Associate Justice Mariflor P. Punzalan-Castillo; *rollo*, pp. 3-10.

[2] Penned by Judge Mamerto M. Buban, Jr.

Court (*RTC*), Branch 18, Albay, finding appellant Renato Bracia (*appellant*) guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua*.

ANTECEDENT FACTS

The prosecution charged the appellant and Jessie Boy Bercasio (*Bercasio*) before the RTC with the crime of murder under an Information that states:

> That on or about the 30th day of October 1994 at more or less 4 o'clock in the early morning, at *Barangay* Cabasan, Municipality of Bacacay, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with bolos, with intent to kill, conspiring, confederating and helping one another, motivated with hate and ill-feeling, with evident premeditation, treachery, abuse of superior strength and nocturnity, did then and there willfully, unlawfully and feloniously assault, attack, hack and stab RESTITUTO BARCEBAL, JR. who was on his way home, thereby inflicting several mortal hack and stab wounds: stab wound, 8.5 x 4.5 cm. penetrating, back, (R) - 8.5 cm. from superior iliac crest; stab wound, 4.5 cm. x 2 cm., umbilical area, penetrating, 5 cm. above the umbilicus; hacked wound, 11 cm. long cutting the pinna of right ear, from the area of external auditory canal, extending to the face, with fracture of zygomatic bone, right; and eighteen (18) other hacked, incised and stab wounds at the back and front side of the body of the latter, which caused his death, to the damage and prejudice of his heirs.
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> ACTS CONTRARY TO LAW.[3]

The appellant and Bercasio pleaded not guilty to the charge upon arraignment.[4] The prosecution presented the following witnesses in the trial on the merits that followed: Edgar Constantino (*Edgar*); Dr. Merlie Gomez Beltran (*Dr. Beltran*); Fr. Rally Gonzales (*Fr. Gonzales*); Salvacion Burce *vda. De* Barcebal (*Salvacion*); SPO4 Antonio Bermundo (*SPO4 Bermundo*); SPO4 Marciano Berdin (*SPO4 Berdin*); and Eddie Belen (*Eddie*). The appellant, Hipolito Panong (*Hipolito*), Maura Bracia

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[3] CA *rollo*, p. 6.

[4] Records, p. 64.

(*Maura*), and Erwin Besmonte (*Erwin*) took the witness stand for the defense.

Edgar testified that in the early morning of October 30, 1994, Fr. Gonzales asked him and Restituto Barcebal, Jr. (*Restituto*) to accompany him (Fr. Gonzales) to the convent in Cabasan.[5] This convent was an annex of the Cabasan Church.[6] At that time, the three (3) of them were in the house of Restituto located in Calambog, Cabasan, Bacacay, Albay.[7] They left Restituto's house at around 3:00 a.m.[8] While they were walking towards the convent, Fr. Gonzales asked Restituto the name of the person behind them. Restituto answered that it was "*Renato*."[9]

They arrived at the convent at around 4:00 a.m.[10] Not long after Edgar and Fr. Gonzales entered the convent,[11] Edgar heard Restituto shouting, "*Please help me*."[12] Edgar went out and saw the appellant and Bercasio hacking Restituto with bolos. Edgar was more or less 10 meters from them. He maintained that he recognized the appellant and Bercasio because the moon was bright.[13] Edgar then hid behind the altar.[14] He saw Restituto run towards the other side of the road[15] — about 20 meters from the site of the first hacking incident,[16] but the appellant and Bercasio went after him; they continued hacking Restituto

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5 TSN, December 8, 1995, p. 5.

6 *Id.*, p. 4.

7 *Id.*, p. 6.

8 *Id.*, p. 8.

9 *Id.*, p. 9.

10 *Id.*, p. 7.

11 *Id.*, pp. 34 and 36.

12 *Id.*, p. 13.

13 *Id.*, pp. 14-15.

14 *Id.*, p. 18.

15 *Id.*, p. 20.

16 *Id.*, p. 21.

when they caught up with him.[17] When Restituto fell down, the appellant uttered, "*Restituto Barcebal, rimati ka na, gadan ka na*" (Restituto Barcebal, you're finished, you're dead). Thereafter, the appellant and Bercasio ran to different directions. Edgar immediately went inside Fr. Gonzales' room because he was afraid.[18]

On cross examination, Edgar testified that Restituto was a resident of *Barangay* Calambog; and that the appellant's house was located beside a road leading to Restituto's house.[19] He explained that he entered the convent two minutes after he arrived, and then went inside Fr. Gonzales' room to sleep.[20] He was unable to sleep and heard Fr. Gonzales snoring after 30 minutes.[21] After a while, he heard Restituto shout for help.[22]

Dr. Beltran, the Rural Health Physician of Bacacay, Albay, declared on the witness stand that she conducted an autopsy on the remains of the victim on October 31, 1994, and made the following findings:

FINDINGS:

1. General Survey: The whole body is in curved position with flexion of both upper and lower extremities.
2. Hacked wound, 11 cm. long, cutting the pinna of right ear, from the area of external auditory canal, extending to the face, with fracture of zygomatic bone, right.
3. Stab wound, 3 cm. long, superficial, from eyebrow to superior orbital area, left.
4. Stab wound, 8.5 x 4.5 cm. penetrating, back (R) - 8.5 cm from superior iliac crest.

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[17] *Id.*, pp. 19-20.

[18] *Id.*, pp. 21-23.

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

[20] *Id.*, pp. 36-37.

[21] *Id.*, p. 38.

[22] *Id.*, pp. 39-40.

5. Hacked wound with incomplete avulation of skin, 13 cm. long x 7 cm proximal third, arm, left, posterior area.
6. Hacked wound, 6.5 cm x 5 cm. proximal third, antero-lateral area, arm, left.
7. Hacked wound, 13 cm long, proximal third, posterior area, arm, left
8. Stab wound, 3.5 cm x 2 cm, 1.2 cm in depth, posterior axillary line, (4.5 cm below the axilla, left)
9. Hacked wound with fracture of metacarpal bone, hypothenar area, hand, right
10. Hacked wound,6cm x 2 cm, lateral area, distal third, forearm, left
11. Amputation, middle third, third digit, right hand.
12. Incomplete amputation, second digit, right hand.
13. Hacked wound, with fracture of wristbone, left hand.
14. Incised wound, 6 cm., palm, left
15. Incised wound, 2 cm. superficial, dorsal area, wrist left.
16. Hacked wound, 8 cm x 2.5 cm. antero lateral area, 11 cm above the knee, left thigh.
17. Hacked wound, 7 cm. x 2.5 cm., antero-lateral area, 8 cm above the knee left thigh.
18. Incised wound, base of thumb, left.
19. Incised wound, 2 cm x 0.5 cm. lateral area, middle third, forearm right.
20. Stab wound, 4.5 cm. x 2 cm. umbilical area, penetrating 5 cm above the umbilicus.
21. Stab wound, 2 cm x 1 cm, superficial, epigastrium, left.
22. Incised wound, 4 cm superficial, middle third, thigh, left.

INTERNAL FINDINGS:

1. Stab wound, 4.5 cm. large intestines with involvement of the mesentery and mesenteric vessels.

2. Stab wound, 4.5 cm. head of pancreas.

3. Stab wound, vena cava.

4. Hemoperitoneum – more than 1 liter

5. Presence of fecal material outside of the intestines

FINAL DIAGNOSIS:

Hypovolemia

Stab wound, abdomen

Multiple Hacked wound.[23]

According to Dr. Beltran, the victim suffered 21 external injuries and 5 internal injuries.[24] She opined that due to the number of injuries, the wounds could have been inflicted by more than one (1) person.[25]

Fr. Gonzales narrated that he said mass in San Pablo, Albay at 3:00 p.m. on October 29, 1994. He proceeded to *Sitio* Calambog at around 10:00 p.m., and slept at the house of Restituto.[26] At around 3:00 a.m. of October 30, 1994, he asked Restituto and Edgar to accompany him to the convent in Cabasan, Bacacay. Upon reaching the convent, Restituto asked that he be allowed to go home because he would take his family to the "*poblacion*" to celebrate his father's death anniversary.[27]

At around 6:00 a.m. of the next day, Fr. Gonzales' brother woke him up and told him that Restituto had been killed. He saw Restituto's body and observed that it was covered with blood and bore a lot of stab wounds. He took pictures of the body and reported the incident to the police. He later gave these pictures to the Chief of Police of Bacacay.[28]

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[23] Records, pp. 4-5.

[24] TSN, January 19, 1996, pp. 5-6.

[25] *Id.*, p. 21.

[26] TSN, January 26, 1996, pp. 5-7.

[27] *Id.*, pp. 8-9.

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

Fr. Gonzales recalled that while he, Restituto, and Edgar were walking towards the convent in Calambog, he saw two people following them. When he asked Restituto who these people were, Restituto answered, "*Renato Bracia*."[29]

Fr. Gonzales also narrated that on October 19, 1994, while he, his brothers and sisters, and Restituto were walking in Cabasan, the appellant suddenly shouted at them, "*Maski sampolong Granada an ipasabog sakuya dai aco natatatkot*" (Even if ten grenades are thrown at me, I'm not afraid). The appellant further uttered, "*Jun, kaya kong inumon an dugo mo*." Fr. Gonzales advised Restituto to ignore the appellant.[30]

On cross examination, Fr. Gonzales stated that he reported the killing to the police on October 30, 1994; thereafter, he was investigated by the police.[31] He recalled that soon after arriving at the convent, Restituto asked for permission to go home. He entered his room at the convent at about 3:20 a.m. and soon fell asleep. Edgar was also in his room at that time. He was informed that Restituto had been killed when he woke up at 6:00 a.m.[32]

Salvacion, the widow of Restituto, narrated that on October 30, 1994, Edgar informed her that her husband had been killed; she immediately went to Cabasan and saw her husband's lifeless body covered with blood.[33] She confirmed that Restituto's brothers and sister shouldered the funeral expenses which amounted to ₱28,000.00.[34] She admitted not knowing how much was spent for the wake because somebody took care of it. She added that she spent ₱200.00 for every mass during the wake; ₱6,000.00 for the cemetery lot and tomb; ₱2,000.00 for transportation during the funeral procession; and ₱5,000.00 for the last prayer

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[29] *Id.*, pp. 10-11.

[30] *Id.*, pp. 12-14.

[31] *Id.*, pp. 15-16.

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

[33] TSN, February 9, 1996, pp. 11-12.

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

or "*katapusan*."[35] Salvacion further testified that her husband was 29 years old when he died; and that he worked as a farmer and earned ₱5,000.00 a month as administrator of his parents' land.[36]

On cross examination, Salvacion recalled that Fr. Gonzales and Restituto arrived at her house at around 7:30 p.m. on October 29, 1994. They came from San Pablo where Fr. Gonzales celebrated mass; Restituto acted as acolyte. Fr. Gonzales and Restituto left at 3:00 a.m. of October 30, 1994 to go to the church in Cabasan.[37]

SPO4 Bermundo testified that at around 8:00 a.m. of October 30, 1994, he and SPO2 Jaime Barcebal (*SPO2 Barcebal*) were instructed by the chief of police to investigate a hacking incident in Cabasan. They immediately conducted an investigation when they arrived at the Cabasan Parish Church at 10:00 a.m. They interviewed Fr. Gonzales and then conducted an ocular inspection of the crime scene.[38] They noticed that there were blood stains on the bamboo fence near the appellant's house, as well as footprints and blood stains on the road leading to his house. They proceeded to the Cagraray Emergency Hospital where they saw the victim's body.[39]

Thereafter, they went to the appellant's house and asked for his whereabouts from his grandmother. The latter told them that the appellant was out gathering firewood. They were skeptical because it was not customary to gather firewood on Sundays, and thus waited for the appellant's arrival. They finally saw the appellant at around 1:00 p.m. and invited him to the Bacacay Police Station.[40] They added that on October 31, 1994, Edgar went to the police station and identified the appellant.[41]

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35 *Id.*, pp. 18-23.

36 *Id.*, p. 23.

37 *Id.*, pp. 27-30.

38 TSN, February 22, 1996, pp. 4-6.

39 *Id.*, pp. 7-8.

40 *Id.*, pp. 10-12.

41 *Id.*, p. 13.

On cross examination, SPO4 Bermundo stated that they talked to Fr. Gonzales and to other people at the convent when he and SPO2 Barcebal arrived there. They toured the vicinity, and then returned to the convent at around 11:00 a.m.[42] He maintained that he investigated Edgar at the police station on October 31, 1994.[43] He explained that the scene of the hacking was 30 meters from the house of the appellant, and that the blood stains began on the road leading towards the appellant's house.[44]

SPO4 Berdin, the Property Evidence Custodian and Chief Administrative Officer of the Bacacay Police Station, identified the bolo ("*guinunting*") and knife presented in court as the same bolo and knife given to him by SPO4 Alfredo Base.[45]

Hipolito, a *barangay tanod* of Cabasan, declared on the witness stand that the appellant went to his hut at around 7:00 a.m. of October 30, 1994, and told him that he (appellant) had killed somebody. Hipolito advised the appellant to wait for the arrival of the police authorities. Meanwhile, the appellant requested permission to gather firewood for his grandmother. Hipolito agreed because he knew the appellant would not flee.[46]

On cross examination, Hipolito maintained that the appellant was alone when he went to his hut. He admitted knowing Bercasio but did not see him with the appellant on October 30, 1994. The appellant proceeded to the "centro of Cabasan" when the police did not arrive.[47]

Maura, the appellant's grandmother, testified that the appellant slept in her house in Cabasan, Bacacay, Albay on October 30, 1994. At around 3:00 a.m. on October 30, 1994, she woke the

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[42] *Id.*, pp. 24-25.

[43] *Id.*, pp. 27-28.

[44] *Id.*, pp. 36-38.

[45] TSN, March 1, 1996, pp. 8-10.

[46] TSN, March 15, 1996, pp. 11-14.

[47] *Id.*, pp. 15-17.

appellant after two (2) stones were thrown at her house. The appellant stood up and got a bolo; she ordered the appellant not to go out because it was still dark. The appellant replied that he would just see who was throwing stones at the house. The appellant went out and returned in the morning.[48] On his return, the appellant did not relate any unusual incident and instead told her that he would gather firewood. He returned at 11:00 a.m. The police came afterwards.[49]

On cross examination, Maura confirmed that she suffered from flu on October 29, 1994.[50] She went to sleep at around 10:00 p.m. of October 29, 1994 in a room adjacent to the appellant's room. According to her, she slept "very lightly" and would have noticed if the appellant went out of his room. At around 3:00 a.m. of October 30, 1994, she was awakened when stones were thrown at her house.[51] The appellant went out and returned at 6:00 a.m.; the appellant then told her that he came from Visita, a *sitio* in Cabasan. The appellant told her that he would gather firewood.[52] According to Maura, she knew that the appellant was involved in the killing of Restituto because he was arrested by the police.[53]

The appellant testified that he did not intend to kill his victim.[54] He narrated that in the early morning of October 30, 1994, he was sleeping in his grandmother's house when his grandmother woke him up and asked him to verify the identity of the person throwing stones at the house. He stood up, got a "*guinunting*," and went out to frighten the person throwing stones.[55] Outside, he saw Restituto standing on their yard. Restituto struck him

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[48] TSN, April 19, 1996, p. 4.

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

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

[51] *Id.*, pp. 10-12.

[52] *Id.*, pp. 13-14.

[53] *Id.*, pp. 14-15.

[54] TSN, May 10, 1996, p. 4.

[55] *Id.*, pp. 4-6.

with a wooden pole, but he parried the blow. Restituto struck him again and this time hit him. The appellant fled, but Restituto chased him. When the appellant felt that Restituto was at the point of catching up with him, he faced him; they were then approaching the appellant's house.[56] Restituto swung the wooden pole at him; the appellant countered by swinging his bolo. The appellant hit Restituto who fell to the ground, but he did not know which part of Restituto's body he hit. At this point, the appellant left for home and was not sure whether Restituto was still alive. From his house, he proceeded to the house of the *barangay* captain to surrender.[57] However, he returned home when the *barangay* captain did not open his door. When daylight came, he went again to the *barangay* captain's house, but did not proceed anymore because many people were around, including Restituto's brother. The appellant returned to his grandmother's house and told her that he would gather firewood. He also told his grandmother of his intention to surrender to *barangay tanod* Polito Panong (*barangay tanod* Panong).[58]

The appellant proceeded to the house of *barangay tanod* Panong and saw him about to bathe. He told *barangay tanod* Panong of his intention to surrender and was advised that it would be better to surrender to the police. The appellant requested permission from *barangay tanod* Panong to gather firewood for his grandmother before surrendering to the police. He returned to his grandmother's house after gathering firewood and saw three policemen – SPO4 Bermundo, Jimmy Barcelona and Polito Barcoma – there. These policemen handcuffed him and brought him to *kagawad* Belen.[59]

The appellant further stated that the bolo he used in gathering firewood was different from the one that he used in fighting Restituto. The police brought the bolo he used in cutting firewood to the police headquarters; he surrendered the bolo he used in

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[56] *Id.*, pp. 6-7.

[57] *Id.*, pp. 7-9.

[58] *Id.*, pp. 10-11.

[59] *Id.*, pp. 11-14.

fighting Restituto to the chief of police the day after his detention. He added that the knife recovered by the police was owned by Restituto; he grabbed it from him during their fight.[60]

According to the appellant, he fell down during the fight and it was at this point that Restituto tried to stab him. He hit back causing Restituto to lose his grip on his knife. He reiterated that he had no intention of killing Restituto during the fight.[61] He also denied that he followed Restituto, Edgar and Fr. Gonzales on their way to the convent in the early morning of October 30, 1994, and claimed that he was sleeping in his house at that time.[62] The appellant also stated that Fr. Gonzales suspected him of stealing his chicken.[63] He denied that he and Bercasio hacked Restituto to death.[64]

On cross examination, the appellant maintained that he slept at around 8:00 p.m. on October 29, 1994,[65] and he did not go to the dance held that night.[66] He confirmed that his grandmother woke him up at 2:00 a.m. of October 30, 1994.[67] According to him, he threw the bolo he used in killing Restituto in a grassy place near a banana trunk because he was confused and frightened.[68] He wanted to surrender to *barangay tanod* Panong as he did not want to go near the *centro* because many people were there.[69]

He recalled that when his grandmother woke him up to check on the identity of the person throwing stones, he went outside

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[60] *Id.*, pp. 15-16.

[61] *Id.*, p. 17.

[62] *Id.*, pp. 17-18.

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

[64] *Id.*, pp. 20-21.

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

[66] *Id.*, p. 23.

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

[68] *Id.*, pp. 30-31.

[69] *Id.*, pp. 31-32.

and saw Restituto standing on the yard and holding a wooden pole;[70] he was not then within Restituto's striking stance. Restituto went near him and struck him. He raised his right arm holding a *guinunting* to parry the blow; Restituto's pole hit the edge of the roof and thus he was not hit. Restituto struck him again and hit him in the chest as he was moving backwards. Immediately after, he ran away.[71]

Eddie, testifying as a rebuttal witness for the prosecution, narrated that at around 9:00 p.m. of October 29, 1994, he, together with the appellant, Erwin, Jerry Batalla, Andy Panong and Sandy Belen went to a dance at Bonga, Bacacay. Eddie saw Bercasio there at 10:00 p.m. They went home at around 1:00 a.m. on October 30, 1994 when it began to rain, and arrived in Cabasan at 2:00 a.m.[72]

On cross examination, Eddie explained that he and his companions met at a bridge near the house of *barangay tanod* Panong and then proceeded to Bonga to attend a *barangay*-sponsored dance.[73] They went home as the rain became heavy at around 1:00 a.m.[74] He admitted that he is engaged to the sister of Fr. Gonzales.[75]

Erwin, on sur-rebuttal, testified that indeed, he, Jerry Batalla, Sandy Belen and Eddie Boy Belen went to a dance at Barrio Bonga, Cabasan. The appellant was not with them.[76] On the prosecution's further questioning, he declared that he believed that the appellant killed Restituto.[77]

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70 *Id.*, p. 33.

71 *Id.*, pp. 35-36.

72 TSN, May 31, 1996, pp. 4-6.

73 *Id.*, pp. 7-8.

74 *Id.*, p. 10.

75 *Id.*, p. 12.

76 TSN, June 14, 1996, pp. 3-4.

77 *Id.*, p. 5.

The RTC convicted the appellant of the crime of murder in its decision of May 8, 1997 as follows:

> WHEREFORE, from the totality of the evidence presented before us, the Court finds accused, Renato Bracia, guilty beyond reasonable doubt of the crime of Murder and hereby sentences him to suffer the penalty of *Reclusion Perpetua*; to indemnify the heirs of Restituto Barcebal, Jr. the amount of ₱50,000.00 for his death; to pay the heirs of the deceased the amount of ₱42,300.00 in actual damages; ₱100,000.00 for the unearned income of the deceased; and, to pay the costs.
>
> With respect to accused, Eddie Boy Bercasio, who died after his escape from his detention at the Albay Provincial Jail, the case against him is hereby DISMISSED.
>
> SO ORDERED.[78]

The appellant directly appealed his conviction to this Court in view of the penalty of *reclusion perpetua* that the RTC imposed. We referred the case to the CA for intermediate review pursuant to our ruling in *People v. Mateo*.[79]

The CA, in its May 30, 2006 decision,[80] affirmed the RTC decision with the modification that the award for loss of earning capacity be increased from ₱100,000.00 to ₱1,020,000.00.

In his brief,[81] the appellant argues that the RTC erred –

1. **in convicting him of the crime of murder;**
2. **in giving credence to the incredible and inconsistent testimony of Edgar;**
3. **in not considering the justifying circumstance of self-defense; and**

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[78] CA *rollo*, pp. 32-33.

[79] Per our Resolution dated September 6, 2004, *rollo*, p. 2.

[80] *Id.*, pp. 3-10.

[81] CA *rollo*, pp. 83-98.

4. in ruling that conspiracy, evident premeditation and treachery attended the killing of Restituto.

THE COURT'S RULING

We deny the appeal, but modify the awarded indemnities.

Sufficiency of Prosecution Evidence

An established rule in appellate review is that the trial court's factual findings, including its assessment of the credibility of the witnesses and the probative weight of their testimonies, as well as the conclusions drawn from the factual findings, are accorded respect, if not conclusive effect. These factual findings and conclusions assume greater weight if they are affirmed by the CA. Despite the RTC and the CA's unanimity on the findings of fact, we nevertheless carefully scrutinized the records of this case, as the penalty of *reclusion perpetua* demands no less than this kind of scrutiny.[82]

A distinguishing feature of the present case is the presence of an eyewitness – Edgar – who provided positive identification of the appellant in his December 8, 1995 testimony. To directly quote from the records:

x x x x x x x x x

Q: All right, while you were talking with Father Gonzales in the early morning at 4 o'clock of October 30, 1994, will you tell us whether there was an unusual incident that happened, if any?

A: Yes, sir.

Q: Will you tell this court what was that unusual incident?

A: When I heard Restituto Barcebal shout, "Please help me."

Q: Where did you hear that voice of Restituto Barcebal shouting asking for help?

A: Inside the convent.

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[82] See *People v. Ballesteros*, G.R. No. 172696, August 11, 2008, citing *People v. Garalde*, 521 SCRA 327, 340 (2007).

x x x x x x x x x x x x

Q: So what did you do after you heard that shout of Restituto Barcebal?

A: I went outside of the convent.

Q: Then what happened next?

A: **When I went outside the convent, that was the time I saw Renato Bracia and Jessie Boy Bercasio hacking.**

Q: **Who was being hacked by these two (2) accused, Renato Bracia and Jessie Boy Bercasio?**

A: **Restituto Barcebal.**

Q: How far were you from this hacking incident?

A: More or less ten (10) meters.

x x x x x x x x x x x x

Q: **Now, look around inside this courtroom if any of these two (2), Renato Bracia and Jessie Boy Bercasio are present inside this courtroom?**

A: **There is one here.**

Q: **Who is present inside this courtroom today?**

A: **Renato Bracia.**

Q: Will you kindly stand and point to him where is this Renato Bracia?

(**Witness is pointing to the man in a dark green t-shirt answering to the name of Renato Bracia.**)

x x x x x x x x x x x x

Q: What happened to Restituto Barcebal on that occasion of the hacking incident?

A: Restituto Barcebal ran away.

Q: Where did Restituto Barcebal go when he ran away?

A: To the other side of the road.

Q: How about you? What did you do?

A: I hid behind the altar.

Q: What else did you do?

A: **I again saw Restituto Barcebal being hacked by Jessie Boy Bercasio and Renato Bracia.**

x x x x x x x x x

Q: How were you able to see the second hacking incident when you said you were already hiding behind the altar?

A: The church had no walls.

Q: Then what happened after the second hacking incident?

A: Restituto Barcebal, Jr. fell down.

x x x[83] [Emphasis ours]

Time and again, we have ruled that the credibility of witnesses is a matter best left to the determination of the trial court which observed the witnesses firsthand and which noted their demeanor, conduct, and attitude. The trial court's assessment of the credibility of witnesses is binding upon this Court, except when the lower court overlooked facts and circumstances of weight and influence that can alter the result.[84]

We carefully scrutinized the records of this case, and found no reason to disbelieve Edgar's straightforward narration of the events surrounding Restituto's death. Nor did we see anything on record indicating any improper motive that would lead Edgar to testify as he did. In fact, in his testimony of December 8, 1995, he categorically stated that he knew the appellant prior to the hacking incident, as they were both residents of *Barangay* Cabasan. He also testified that he was just 10 meters from the place where Restituto was first hacked; and that the moon was bright during the incident. Under these circumstances, we have no doubt regarding his positive identification of the appellant as the assailant.

The Appellant's Plea of Self-Defense

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[83] TSN, December 8, 1999, pp. 4-21.

[84] See *People v. Nueva*, G.R. No.173248, November 3, 2008.

The appellant sought to exculpate himself by claiming that the hacking was an act of self-defense. He maintained that he did not intend to kill Restituto, and that he merely defended himself when the victim struck him with a wooden pole.

The appellant's arguments fail to convince us.

As a rule, the prosecution bears the burden of establishing the guilt of the accused beyond reasonable doubt. However, when the accused admits the killing and by way of justification pleads self-defense, the burden of evidence shifts; the accused must then show by clear and convincing evidence that he indeed acted in self-defense. For that purpose, he must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence.[85]

Article 11(1) of the Revised Penal Code spells out the elements that the accused must establish by clear and convincing evidence to successfully plead self-defense. The Article provides:

Art. 11. *Justifying Circumstances*. – The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

x x x x x x x x x

There is unlawful aggression when the peril to one's life, limb or right is either actual or imminent. There must be actual physical force or actual use of a weapon. It is a statutory and doctrinal requirement that, for the justifying circumstance of self-defense, unlawful aggression as a condition *sine qua non*

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[85] See *People v. Santillana*, G.R. No. 127815, June 9, 1999, 308 SCRA 104.

must be present. There can be no self-defense, complete or incomplete, unless the victim commits an unlawful aggression against the person defending himself.[86]

In the present case, we find that the appellant failed to prove that he had to defend himself against an unlawful aggression. Aside from his own claim (which we find under the circumstances to be unreliable and self-serving), the appellant did not present any other evidence to corroborate his claim that there was an actual or imminent peril to his life or limb, *i.e.*, that Restituto struck him with a wooden pole when he (appellant) went outside his grandmother's house to check on the identity of the person throwing stones at their house. The appellant also failed to present any evidence to show that the victim hit him on the chest. On the other hand, the number of wounds the victim suffered, 26 in all (a number of which were located in vital parts of the body), belies the appellant's claim that he acted in self- defense. The location and severity of these wounds also negate the claim of self-defense; these circumstances point to a determined effort to kill, and not simply to defend.

Even if we assume that the victim was indeed the unlawful aggressor, the appellant's plea of self-defense would still fail for **lack of rational equivalence between the means of attack and the means of defense that would characterize the defense as reasonable.** The fact that Restituto suffered 21 external wounds and 5 internal wounds on various parts of his body belies the appellant's claim that he was simply warding off the victim's attack by a wooden pole and used his "*guinunting*" as a means commensurate to the thrusts he avoided. We stress that among the injuries the victim suffered were: a **stab wound**, 8.5 x 4.5 cm., **penetrating the back**; **amputation**, middle third, third digit, right hand; **stab wound**, 4.5 cm. x 2 cm., **umbilical area, penetrating, 5 cm. above the umbilicus**; **stab wound**, 4.5 cm. **large intestine** with involvement of the mesentery and mesenteric levels; and **stab wound**, 4.5 cm. **head of pancreas**. The depth of these wounds shows the force the appellant exerted,

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[86] See *People v. Ansowas*, G.R. No. 140647, December 18, 2002, 394 SCRA 227.

while the locations indicate that the thrusts were all meant to kill, not merely to disable the victim.

In addition, the presence of these multiple *stab* and *hack* wounds shows that two weapons were used in assaulting the victim, belying another claim the appellant made – that he was alone (wielding only a *guinunting*) when he fought Restituto. The number and severity of these wounds in fact confirm Edgar's testimony that two persons – the appellant and Bercasio – attacked and assaulted Restituto, and likewise validate Dr. Beltran's statement that more than one person could have inflicted the wounds. In *People v. Carriaga*,[87] we held that self-defense is negated where the nature of the victim's injuries undeniably shows that he was attacked by several assailants armed with weapons of various kinds that were not wielded by the accused alone.

Self-defense, like alibi, is an inherently weak defense for it is easy to fabricate. Self-defense must be proven by sufficient, satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it. This type and nature of evidence simply do not obtain in this particular case.[88] Therefore, the appellant's plea of self-defense must fail.

The Crime Committed

Article 248 of the Revised Penal Code defines the crime of murder as follows:

> Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:
>
> 1. With treachery, taking advantage of superior strength x x x
>
> x x x x x x x x x
>
> 5.With evident premeditation; x x x

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[87] G.R. No. 135029, September 12, 2003, 411 SCRA 40.

[88] See *People v. Asuela*, G.R. Nos. 140393-94, February 4, 2002, 376 SCRA 51.

In convicting the appellant of murder, the courts *a quo* appreciated treachery. There is treachery when the offender commits any of the crimes against persons, employing means, method or forms which tend directly and especially to ensure its execution, without risk to the offender, arising from the defense that the offended party might make. This definition sets out what must be shown by evidence to conclude that treachery existed, namely: (1) the employment of such means of execution as would give the person attacked no opportunity for self-defense or retaliation; and (2) the deliberate and conscious adoption of the means of execution.[89] **The essence of this qualifying circumstance is the suddenness, surprise and the lack of expectation that the attack would take place, thus depriving the victim of any real opportunity for self-defense while ensuring the commission of the crime without risk to the aggressor**.[90]

The evidence in this case shows that the appellant and another person (later identified as Bercasio) followed Restituto, Edgar, and Fr. Gonzales as they were walking towards the convent situated in Cabasan. The victim himself in fact recognized the appellant, as the former uttered "*Renato Bracia*" when asked by Fr. Gonzales if he recognized the person following them. When they arrived at the convent, Edgar went inside the convent, while Restituto asked for permission to return home. While the unsuspecting Restituto was on his way home, the appellant and Bercasio attacked and assaulted him with a bolo and knife, respectively. Restituto initially succeeded in running away, but the appellant and Bercasio caught up with him and continued to hack him until he fell down and died. The manner and mode of attack by the appellant and Bercasio, to our mind, bespeak of treachery; they deprived the victim of any real chance to defend himself, thereby ensuring the commission of the crime without risk to themselves.

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[89] See *People v. Garcia*, G.R. No. 174479, June 17, 2008, 554 SCRA 616.

[90] See *People v. Felipe*, G.R. No. 142205, December 11, 2003, 418 SCRA 146.

In *People v. Vallespin*,[91] we explained:

> The essence of treachery is the sudden and unexpected attack by the aggressor on the unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor and without the slightest provocation on the part of the victim. It can exist even if the attack is frontal, if it is sudden and unexpected, giving the victim no opportunity to defend himself against such attack. **In essence, it means that the offended party was not given an opportunity to make a defense.**

Abuse of Superior Strength and Evident Premeditation

The Information alleges that the crime was attended by abuse of superior strength.

We agree.

Abuse of superior strength is present whenever there is inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor and selected or taken advantage of by him in the commission of the crime. To take advantage of superior strength means to use purposely excessive force that is out of proportion to the means of defense available to the person attacked.[92]

In the present case, the evidence shows that Restituto was *unarmed* when he was attacked by the appellant and Bercasio *who were both armed with deadly weapons*. The appellant and Bercasio took turns in hacking the victim; the victim was able to momentarily free himself from the assault and run, but his assailants eventually caught up with him. The appellant and Bercasio continued hacking him until he fell down and died. Clearly, Restituto was overwhelmed by the combined efforts of his two (2) assailants who did not only enjoy superiority in number, but also of weapons. Under these circumstances, we have no doubt that there was gross inequality of forces between

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[91] G.R. No. 132030, October 18, 2002, 391 SCRA 213.

[92] See *People v. Barcelon, Jr.*, G.R. No. 144308, September 24, 2002, 389 SCRA 556.

the victim and his two assailants and that the victim was overwhelmed by forces he could not match.

While evident premeditation was also alleged in the Information, the courts *a quo* were correct in not appreciating this circumstance. For evident premeditation to be appreciated, the following elements must be established: (1) the time when the accused determined to commit the crime; (2) an overt act manifestly indicating that the accused has clung to his determination; and (3) sufficient lapse of time between decision and execution to allow the accused to reflect upon the consequences of his act. Significantly, the prosecution did not even attempt to prove the presence of these elements.

The Proper Penalty

The crime of murder qualified by treachery is penalized under Article 248 of the Revised Penal Code (as amended by Republic Act No. 7659) with *reclusion perpetua* to death. The other qualifying circumstance of abuse of superior strength is deemed absorbed in treachery.

While evident premeditation and nocturnity were alleged in the Information, these circumstances were not adequately proven. Hence, in the absence of mitigating and aggravating circumstances in the commission of the felony, the court *a quo* correctly sentenced the appellant to *reclusion perpetua*, conformably with Article 63(2) of the Revised Penal Code.

Civil Liability

The grant of civil indemnity for the crime of murder requires no proof other than the fact of death as a result of the crime and proof of the appellant's responsibility therefor. While the RTC and the CA commonly awarded ₱50,000.00 as death indemnity to the murder victim's heirs, prevailing jurisprudence dictates an award of ₱75,000.00.[93] Hence, we modify the award of civil indemnity to this extent to be paid by the appellant to the victim's heirs.

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[93] *People v. De Guzman*, G.R. No. 173477, February 4, 2009.

The RTC awarded the amount of ₱42,300.00 to the victim's heirs as actual damages. It appears that out of the said amount, only ₱29,320.00 were duly supported by receipts. To be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable to the injured party.[94]

The heirs of the victim are likewise entitled to exemplary damages, since the qualifying circumstances of treachery and abuse of superior strength were firmly established. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of ₱25,000.00 as exemplary damages is justified.[95]

We affirm the award of ₱1,020,000.00 as indemnity for loss of earning capacity to the victim's heirs. As a rule, documentary evidence should be presented to substantiate a claim for loss of earning capacity. By way of exception, damages may be awarded despite the absence of documentary evidence provided that there is testimony that the victim was either (1) self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work, no documentary evidence is available; or (2) employed as a daily wage worker earning less than the minimum wage under current labor laws.[96] Given Salvacion's testimony that her husband was a ***farmer*** who earns ₱5,000.00 monthly for administering his parents' land,[97] we hold that his heirs are entitled to an award representing the loss of the victim's earning capacity computed under the following formula:

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[94] *People v. Delos Santos*, G.R. No. 135919, May 9, 2003, 403 SCRA 153.

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

[96] See *People v. Algarme*, G.R. No. 175978, February 12, 2009; *Licyayo v. People*, G.R. No. 169425, March 4, 2008, 547 SCRA 598.

[97] These statements remain unchallenged and uncontroverted by the defense.

Net Earning Capacity = 2/3 *x* (80 less the age of the victim at the time of death) *x* (Gross Annual Income less the Reasonable and Necessary Living Expenses)

The records show that the victim's annual gross income was ₱60,000.00 per annum computed from his monthly rate of ₱5,000.00. His reasonable and necessary living expenses are estimated at 50% of this gross income, leaving a balance of ₱30,000.00. His life expectancy, on the other hand, is assumed to be 2/3 of the age 80 less 29, his age at the time of death. Applying the formula yields the net earning capacity of ₱1,020,000.00.

We likewise affirm the award of ₱50,000.00 as moral damages pursuant to current jurisprudence.[98]

WHEREFORE, in light of all the foregoing, we hereby *AFFIRM* the May 30, 2006 Decision of the CA in CA-G.R. CR-HC No. 00906 with the following *MODIFICATIONS:*

(1) civil indemnity is *INCREASED* to ₱75,000.00;

(2) actual damages is *REDUCED* to ₱29,320.00; and

(3) the appellant is *ORDERED* to pay the heirs of the victim ₱25,000.00 as exemplary damages.

Costs against appellant Renato Bracia.

SO ORDERED.

Ynares-Santiago,[*] *Carpio Morales (Acting Chairperson),*[**] *Del Castillo,* and *Abad, JJ.,* concur.

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[98] See *People v. Cawaling*, G.R. No. 157147, April 17, 2009.

[*] Designated additional Member of the Second Division per Special Order No. 691 dated September 4, 2009.

[**] Designated Acting Chairperson of the Second Division per Special Order No. 690 dated September 4, 2009.

SECOND DIVISION

[G.R. No. 175317. October 2, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CRISTINO CAÑADA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; WHEN COMMITTED; ELEMENTS. — The Revised Penal Code, as amended by Republic Act No. 8353, defines and penalizes Rape under Article 266-A, paragraph 1, as follows: ART. 266-A. *Rape; When and How Committed*. — Rape is committed — 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: a) Through **force, threat or intimidation;** b) When the offended party is deprived of reason or otherwise unconscious; c) By means of fraudulent machination or grave abuse of authority; and d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. x x x Thus, for the charge of rape to prosper, the prosecution must prove that (1) **the offender had carnal knowledge of a woman**, and (2) **he accomplished the act through force, threat or intimidation**, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented.

2. ID.; ID.; ID.; ID.; FORCE, THREAT OR INTIMIDATION NEED NOT BE IRRESISTIBLE BUT ENOUGH TO BRING ABOUT THE DESIRED RESULT. — As an element of rape, force, threat or intimidation need not be irresistible, but just enough to bring about the desired result. Further, it should be viewed from the perception and judgment of the victim at the time of the commission of the crime. What is vital is that the force or intimidation be of such degree as to cow the unprotected and vulnerable victim into submission. Force is sufficient if it produces fear in the victim, such as when the latter is threatened with death. In the present case, AAA categorically stated that the appellant pushed her, poked a scythe at her neck, and threatened to kill her if she made a noise. Undoubtedly, fear and helplessness gripped AAA. To our mind, the appellant's overt acts were sufficient to subdue and overpower the victim's resistance.

3. ID.; ID.; LUST IS NOT RESPECTER OF TIME AND PLACE. — Time and again, the Court has ruled that lust is no respecter of time and place. Rape, in fact, can be committed even in places where people congregate, in parks along the roadsides, in school premises, in a house where there are other occupants, in the same room where other members of the family are also sleeping, and even in places which to many would appear unlikely and high risk venues for its commission. Besides, there is no rule that rape can be committed only in seclusion.

4. ID.; ID.; DELAY IN REPORTING AN INCIDENT OF RAPE IS NOT NECESSARILY AN INDICATION THAT THE CHARGE IS FABRICATED. — The initial reluctance of rape victims to publicly reveal the sexual assault they suffered is neither unknown nor uncommon. Understandably, a young girl will expectedly be hesitant or disinclined to come out in public and relate a painful and horrible experience of sexual violation. Due to this recognition, we have repeatedly ruled that delay in reporting an incident of rape is not necessarily an indication that the charge is fabricated, particularly when the delay can be attributed to fear instilled by threats from one who exercises ascendancy over the victim.

5. ID.; ID.; IMPOSABLE PENALTY. — The Information specifically alleged the use of a deadly weapon – a scythe – in the commission of the rape. The prosecution duly proved this allegation. Under Article 266-B quoted above, the use of a deadly weapon qualifies the rape so that the imposable penalty is *reclusion perpetua* to death. Since *reclusion perpetua* and death are two indivisible penalties, Article 63 of the Revised Penal Code applies; when there are neither mitigating nor aggravating circumstances in the commission of the deed, as in this case, the lesser penalty shall be applied. The courts *a quo* were therefore correct in imposing the penalty of *reclusion perpetua* on the appellant. It bears noting that under Article 266-B, paragraph 1, the death penalty shall be imposed if the crime of rape is committed when the victim is under 18 years old and the offender is a "parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third degree, or the common law spouse of the parent of the victim." Minority and relationship constitute special qualifying circumstances which, when alleged in the Information and proved during trial, warrant the imposition of the death penalty on the malefactor. AAA's

Certificate of Live Birth clearly shows that she was born on January 29, 1984 and, therefore, was below 18 years old when the rape was committed on November 28, 1998. However, AAA's relationship with the appellant was not alleged in the Information; neither was it sufficiently proven during trial.

6. ID.; ID.; CIVIL LIABILITY; AWARD OF CIVIL INDEMNITY AND DAMAGES; WHEN PROPER. — The award of civil indemnity to the rape victim is mandatory upon the finding that rape took place. Moral damages, on the other hand, are awarded to rape victims without need of proof other than the fact of rape under the assumption that the victim suffered moral injuries from the experience she underwent. Thus, this Court affirms the awards of ₱50,000.00 each as civil indemnity and moral damages, based on prevailing jurisprudence. In addition, we also award exemplary damages in the amount of ₱30,000.00. The award of exemplary damages is justified under Article 2229 of the Civil Code to set a public example and serve as deterrent against elders who abuse and corrupt the youth.

7. REMEDIAL LAW; EVIDENCE; TESTIMONY; WHEN POSITIVE IDENTIFICATION OF THE ACCUSED SHOULD PREVAIL OVER THE ALIBI AND DENIAL. — We have consistently held that positive identification of the accused, when categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying, should prevail over the alibi and denial of the appellant whose testimony is not substantiated by clear and convincing evidence. Such denial and alibi are negative and self-serving evidence undeserving of any weight in law.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Asbi N. Edding for accused-appellant.

D E C I S I O N

BRION, *J.*:

We review in this appeal the May 22, 2006 decision[1] of the Court of Appeals (*CA*) in CA G.R. CR-HC No. 00145, affirming *in toto* the May 2, 2001 decision of the Regional Trial Court (*RTC*), Branch 2, Isabela, Basilan. The RTC decision found appellant Cristino Cañada (*appellant*) guilty beyond reasonable doubt of the crime of rape, and sentenced him to suffer the penalty of *reclusion perpetua*.

ANTECEDENT FACTS

The prosecution charged the appellant before the RTC with the crime of rape under an Information[2] that reads:

That on or about the 28th day of November, 1998, and within the jurisdiction of this Honorable Court, *viz*., at Km.19, *Barangay* Matarling, Municipality of Lantawan, Province of Basilan, Philippines, the above-named accused, armed with a scythe, entered the toilet where one [*AAA*],[3] a minor of 15 years old, was answering the call of nature, and by means of force and intimidation, willfully, unlawfully and feloniously grabbed her left wrist tightly and ordered her to keep quiet, removed her short pants and panty, pushed her down to the floor, mounted on top of her and tried to insert his penis into her vagina, thus penetrating the *labia majora* of her female organ, causing 2 cm. abrasion inferior aspect of (R) *labia majora* and 0.2

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[1] Penned by Associate Justice Ramon B. Garcia and concurred in by Associate Justice Teresita Dy-Liacco Flores and Associate Justice Rodrigo F. Lim, Jr.; *rollo*, pp. 5-19.

[2] CA *rollo*, p. 9.

[3] The Court shall withhold the real name of the victim-survivor and shall use fictitious initials instead to represent her. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. (*People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 425-426, citing Sec. 40, Rule on Violence Against Women and their Children; Sec. 63, Rule XI, Rules and Regulations Implementing Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and their Children Act of 2004.")

cm. laceration (L) inferior aspect of posterior fourchette, against her will.

Contrary to law.

The appellant pleaded not guilty to the charge.[4] The prosecution presented the following witnesses in the trial on the merits that followed: AAA; BBB; SPO2 Samuel Omoso (*SPO2 Omoso*); and Dr. Jesus Raniel Mon (*Dr. Mon*). The appellant and Guadalupe Cañada (*Guadalupe*) took the witness stand for the defense.

AAA testified that she is 15 years old and the eldest daughter of her mother (BBB) from her first marriage. She resides in a house located at Campo Daan, Lantawan, Isabela, Basilan together with her six (6) siblings, BBB, and the appellant. The appellant is the second husband of BBB.[5] At around 6:00 a.m. of November 28, 1998, she went to the comfort room – about 10 meters from their house – to answer the call of nature. After relieving herself, the appellant went inside the comfort room, pushed her, pointed a scythe at her neck, and threatened to kill her if she made a noise. The appellant then removed her short pants and panty, and then had sexual intercourse with her.[6] After satisfying his lust, the appellant ordered AAA to go out of the toilet.[7]

AAA recalled that while the appellant was raping her, BBB called her name. AAA did not respond because the appellant had a scythe to her neck. After raping her, the appellant threatened to kill her and BBB if she reported the incident to anyone. The appellant then allowed her to leave the comfort room.[8] AAA told BBB about the incident only on December 4, 1998, because she was afraid that the appellant might kill her and BBB.[9] On

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[4] Records, pp. 25-26.

[5] TSN, July 1, 1999, pp. 3-5.

[6] *Id.*, pp. 5-7.

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

[8] *Id.*, pp. 8-9.

[9] *Id.*, p. 10.

the same day, BBB brought her to Dr. Mon for a medical examination. AAA further narrated that she did not anymore attend her classes after the rape.[10]

On cross examination, AAA stated that the house of the appellant's mother is located 20 meters from their (her and BBB's) house. The toilet where the rape happened was made of *sawali*; it had no door and bowl.[11] She narrated that when the appellant entered the toilet, he immediately grabbed her left wrist and pushed her with his left hand, which caused her to fall on the floor. The appellant then pointed a scythe to her neck, and threatened to kill her.[12] The appellant then spread her legs, lowered her shorts and panty, and then inserted his penis into her vagina.[13] She felt pain when blood came out of her vagina. Afterwards, the appellant told her not to reveal the incident to anyone, and then ordered her out of the toilet.[14] BBB was still calling her when she went out of the toilet; BBB was then near the window of their house. BBB noticed her crying when she went inside the house, but did not tell her that the appellant had raped her because she was afraid that the appellant would kill them. She only told BBB during the school camping on December 4, 1998 that the appellant had raped her.[15] BBB brought her to a doctor for a medical examination. Afterwards, they went to the police to report the incident.[16]

On re-direct examination, AAA testified that the appellant always carries a scythe because he is a tuba-gatherer.[17] On re-cross, AAA confirmed that the appellant is her stepfather;[18]

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[10] *Id.*, pp. 11-12.

[11] TSN, August 4, 1999, pp. 4-6.

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

[13] *Id.*, pp. 13-14.

[14] *Id.*, pp. 14-15.

[15] *Id.*, pp. 16-18.

[16] *Id.*, pp. 19-20.

[17] *Id.*, pp. 21-22.

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

and that after the incident, the appellant constantly warned her not to tell the incident to anybody.[19]

BBB declared on the witness stand that AAA is her daughter, and the appellant is her second husband.[20] At around 6:00 a.m. of November 28, 1998, the appellant went out of their house to gather tuba. AAA, meanwhile, asked permission to go to the toilet which is located a few meters outside their house.[21] AAA went out of the comfort room after 30 minutes; she was crying. BBB asked AAA why she was crying, but AAA refused to answer.[22] During the Girl Scouts camping on December 4, 1998, AAA told her that she had been raped by the appellant. BBB brought AAA to the Basilan Provincial Hospital where she was examined by Dr. Mon.[23]

On cross examination, BBB recalled that she saw the appellant block the way of her daughter while the latter was on her way to the comfort room. She suspected that the appellant might do something to AAA,[24] so she called her name. AAA did not answer.[25] She then saw the appellant push her daughter towards the wall of the comfort room.[26] She did not see what happened next, as she felt nervous and returned inside the house to drink water. Thereafter, AAA went inside their house crying. BBB inquired what the appellant did to her, but AAA refused to talk.[27] At around 9:00 a.m. of the next day, BBB confronted the appellant, but he denied abusing AAA.[28]

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19 *Id.*, p. 25.

20 *Id.*, pp. 27-28.

21 *Id.*, p. 29.

22 *Id.*, pp. 32-33.

23 *Id.*, pp. 33-35.

24 *Id.*, pp. 39-40, 50.

25 *Id.*, p. 42.

26 *Id.*, pp. 43 and 52.

27 *Id.*, p. 44.

28 *Id.*, p. 45.

SPO2 Omoso, the police investigator of the Lantawan Police Station, testified that AAA and BBB came to the police station on December 4, 1998 to report that AAA had been raped by the appellant. He identified himself as the one who investigated the complaint filed by AAA against the appellant.[29]

Dr. Mon, the Medico-Legal Officer of the Basilan Provincial Hospital, testified that he conducted a medical examination of AAA on December 4, 1998,[30] and made the following findings:

MEDICO-LEGAL REPORT

x x x x x x x x x

PHYSICAL FINDINGS:

- 2 cm. abrasion inferior aspect of (R) *labia majora*

- 0.2 cm. laceration (L) inferior aspect of posterior fourchette[31]

Dr. Mon stated that these lacerations and abrasions could have been caused by a hard object like a penis.[32]

The defense presented a different version of the events.

The appellant declared on the witness stand that he is the husband of BBB, but forgot the year they were married. They reside in *Barangay* Matarling, Lantawan together with the children of BBB from her previous marriage.[33] They have no neighbors except his mother, whose house is more or less 10 meters from their house.[34] He works as a copra processor at the coconut plantation of Tony Macario (*Tony*) located about three (3) kilometers from their house.[35]

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[29] TSN, August 31, 1999, pp. 2-5.

[30] TSN, November 3, 1999, pp. 3-4.

[31] Records, p. 9.

[32] TSN, November 3, 1999, pp. 5-6.

[33] TSN, October 3, 200, pp. 3-5.

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

[35] *Id.*, pp. 10-11.

He testified that at around 6:00 a.m. of November 28, 1998, he was on his way to work when his stomach ached. He ran to the comfort room outside their house to defecate, but somebody was inside.[36] He knocked and immediately went inside and saw AAA there, raising her pants. The appellant was in a hurry to relieve himself, so he pushed AAA with his left hand and told her to go out of the toilet.[37] The appellant went to work after defecating.[38]

On cross examination, the appellant recalled that he and BBB got married in 1987.[39] He has been working in the plantation of Tony for three years; and always brings his "*kinabasi*" to work.[40] According to him, his upset stomach started on the evening of November 27, 1998; he suspected that it was caused by the young coconut he ate.[41] He further added that AAA, who calls him "*papa*," showed high respect for him as her stepfather.[42]

Guadalupe confirmed that she is the appellant's mother, while AAA is the appellant's stepdaughter. She stated that her house is 15 meters away from the house of BBB.[43] She woke up early on November 28, 1998 to tend to her chickens and pigs. At around 6:00 a.m., she saw the appellant running towards the toilet while holding his stomach. The appellant told her that he had a stomachache when she inquired what was wrong.[44] The appellant at that time was carrying a bolo.[45] After defecating,

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36 *Id.*, pp. 14, 17-18.

37 *Id.*, p. 19.

38 *Id.*, p. 20.

39 *Id.*, p. 25.

40 *Id.*, pp. 31-33.

41 *Id.*, p. 37.

42 *Id.*, p. 46.

43 TSN, January 29, 2001, pp. 4-6.

44 *Id.*, pp. 7-8.

45 *Id.*, p. 9.

the appellant passed by her house; she offered him a cup of coffee. The appellant obliged, and then left for work after drinking coffee.[46] Guadalupe recalled that she saw AAA leaving the toilet before the appellant entered it.[47]

On cross examination, Guadalupe narrated that she learned that the appellant was being accused of rape when he (appellant) was already detained in jail.[48] She maintained that the appellant did not rape AAA.[49]

The RTC convicted the appellant of rape in its decision of May 2, 2001 under the following terms:

> WHEREFORE, in light of the foregoing, the court finding accused Cristino Cañada guilty as principal beyond reasonable doubt of the crime of Rape, defined and penalized under Article 266-A in relation to Article 266-B paragraph 2, of R.A. 8353, otherwise known as "The Anti-Rape Law" hereby sentences him to suffer the penalty of *RECLUSION PERPETUA*, with the accessory penalties of the law.
>
> And, in line with recent jurisprudence, accused is likewise condemned to indemnify the victim in the amount of ₱30,000.00 as civil indemnity and ₱50,000.00 as moral damages.
>
> SO ORDERED.[50]

The records of this case were originally transmitted to this Court on appeal. Pursuant to our ruling in *People v. Mateo,*[51] we endorsed the case and the records to the CA for appropriate action and disposition.

The CA, in its decision[52] dated May 22, 2006, affirmed the RTC decision *in toto*. The CA gave credence to AAA's testimony which it found credible. It ruled that it was not impossible for

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46 *Id.,* p. 10.

47 *Id.,* p. 11.

48 *Id.,* p. 16.

49 *Id.,* p. 24.

50 CA *rollo,* p. 28.

51 G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 656.

52 *Rollo,* pp. 5-19.

the appellant to have raped AAA in a small and dirty comfort room because lust is no respecter of time and place. It further held that AAA's six-day delay in reporting the rape did not affect her credibility, since it was shown that the appellant threatened to kill her (AAA) and BBB if she disclosed the incident to anyone.

In his brief,[53] the appellant argued that the RTC erred in convicting him of the crime charged despite the prosecution's failure to prove his guilt beyond reasonable doubt. He maintains that the trial court failed to fully consider all the relevant facts and circumstances of the case.

THE COURT'S RULING

We resolve to ***deny*** the appeal for lack of merit, but we modify the awarded indemnities.

Sufficiency of Prosecution Evidence

The Revised Penal Code, as amended by Republic Act No. 8353,[54] defines and penalizes Rape under Article 266-A, paragraph 1, as follows:

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

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

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

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

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

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

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[53] CA *rollo*, pp. 64-80.

[54] The Anti-Rape Law of 1997.

x x x x x x x x x

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

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

PROSECUTOR SALUSTIANO LEGASPI:

Q: Do you know Cristino Cañada?

[AAA]:

A: Yes, sir.

Q: Why?

A: Because **he was the one who raped me.**

x x x x x x x x x

Q: You said a while ago that at six o'clock on November 28, 1998 you were in the comfort room about 10 meters away from the house. What was your purpose in going there to the comfort room?

A: I was to answer the call of nature.

x x x x x x x x x

Q: After you were through excreting your bowel, was there an unusual incident, if any, that happened?

A: He went inside the toilet and pushed me.

Q: You said that he went inside the comfort room and pushed you. To whom are you referring?

A: **Cristino Cañada.**

Q: What happened to you when he pushed you?

A: **He pushed me and then poked me with a scythe (witness is crying), and removed my short pants and panty and succeeded in having sexual intercourse with me.**

Q: You said that the accused not only pushed you but poked a scythe, commonly called "sanggot". To what part of your body did he poke the scythe?

A: At my neck.

Q: You said that at the time he pushed, what part of your body did he push you? [*sic*]

A: Towards my back.

Q: And, according to you, he poked this scythe to your neck. Which came ahead the pushing or the poking of the scythe at your neck?

A: **He poked me first with a scythe and then he raped me.**

Q: How did he manage to rape you?

A: **He removed my pants and then my panty and then poked me with a scythe and then raped me.**

Q: **He was able to succeed in raping you?**

A: **Yes, sir.**

Q: In what position did he consummate the rape?

A: He was lying.

Q: While he was raping you as you said while poking a scythe at your neck, what did you do?

A: I wanted to stand but cannot do so because I was afraid because I was poked with a scythe.

Q: When the accused entered inside the comfort room and poked the scythe on your neck, did you have any conversation with him?

A: Yes, sir, that if I am going to shout, he will kill me.

x x x x x x x x x

ATTY. ALVIN MANZANARIS:

Q: So you just let him do what he wanted to do, is that correct?

[AAA]:

A: Yes, sir, because I was afraid because I was poked with a scythe.

Q: So when he was removing your short pants he was trying to molest you, he was trying to poke the scythe at you all the time, is that correct?

A: Yes, sir.

x x x x x x x x x

Q: **Did he try to insert his penis in your genital?**

A: **Yes, sir.**

Q: **Was he able to insert your [*sic*] penis?**

A: **Yes.**

Q: And how deep was the penetration?

A: I did not anymore see how deep the penetration was because I was afraid.

x x x x x x x x x

Q: **You said he was able to insert his penis into your vagina. Did you feel any pain?**

A: **Yes, I felt pain.**

Q: **And did blood come out of your vagina?**

A: **Yes, sir.**

x x x[55] [*Emphasis ours*]

AAA's testimony strikes us to be clear, convincing and credible. It was furthermore corroborated by the medico-legal report and testimony of Dr. Mon. We note that at the initial phases of AAA's testimony, she broke down on the witness stand when the prosecution started to ask questions dealing directly with the incident. This, to our mind, is an eloquent and moving indicium of the truth of her allegations. We additionally do not see from the records any indication that AAA's testimony should be seen in a suspicious light. In fact, AAA testified that the appellant

[55] TSN, July 1, 1999, pp. 3-7; TSN, August 4, 1999, pp. 13-15.

was good to her and treated her like a daughter. We have held, time and again, that testimonies of rape victims who are young and immature, as in this case, deserve full credence considering that no young woman, especially one of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter testify about her ordeal in a public trial, if she had not been motivated by the desire to obtain justice for the wrong committed against her.[56]

The prosecution positively established the elements of rape required under Article 266-A. *First*, the appellant succeeded in having carnal knowledge with the victim. AAA was steadfast in her assertion that the appellant **raped** her; that the appellant succeeded in **inserting his penis into her private part**, as a result of which "***she felt pain***." She further stated that **blood came out of her vagina**. As earlier stated, AAA's testimony was corroborated by the medical findings of the examining physician. In *People v. Oden*,[57] we held:

> In rape cases, the lone testimony of the victim, if credible and free from fatal and material inconsistencies and contradictions, can be the basis for the prosecution and conviction of an accused. The rule can no less be true than when a rape victim testifies against her own father; unquestionably, there would be reason to give it greater weight than usual. In any event, matters affecting credibility are best left to the trial court with its peculiar opportunity to observe the deportment of a witness on the stand as against the reliance by an appellate court on the mute pages of the records of the case. The spontaneity with which the victim has detailed the incidents of rape, the tears she has shed at the stand while recounting her experience, and her consistency almost throughout her account dispel any insinuation of a rehearsed testimony. The eloquent testimony of the victim, coupled with the medical findings attesting to her non-virgin state, should be enough to confirm the truth of her charges.

Second, the appellant employed threat, force and intimidation to satisfy his lust. As an element of rape, force, threat or

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[56] *People v. Perez*, G.R. No. 182924, December 24, 2008, 575 SCRA 653.

[57] G.R. Nos. 155511-22, April 14, 2004, 427 SCRA 634.

intimidation need not be irresistible, but just enough to bring about the desired result. Further, it should be viewed from the perception and judgment of the victim at the time of the commission of the crime. What is vital is that the force or intimidation be of such degree as to cow the unprotected and vulnerable victim into submission. Force is sufficient if it produces fear in the victim, such as when the latter is threatened with death.[58] In the present case, AAA categorically stated that the appellant pushed her, poked a scythe at her neck, and threatened to kill her if she made a noise. Undoubtedly, fear and helplessness gripped AAA. To our mind, the appellant's overt acts were sufficient to subdue and overpower the victim's resistance.

The Appellant's Defenses

In his defense, the appellant denied raping the victim, and insisted that he merely pushed AAA and ordered her to go out of the toilet.

The appellant's defense of denial must crumble in light of AAA's positive and specific testimony. We have consistently held that positive identification of the accused, when categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying, should prevail over the alibi and denial of the appellant whose testimony is not substantiated by clear and convincing evidence. Such denial and alibi are negative and self-serving evidence undeserving of any weight in law.[59]

Against the victim's positive declaration, all that the appellant has to offer is his self-serving claim that he did not rape the victim; that he merely pushed AAA and told her to go out of the comfort room. He presented Guadalupe to corroborate this claim. However, Guadalupe's testimony was not consistent with his story on material points; she even contradicted the appellant's claim that AAA was already inside the toilet when he (the appellant) entered. According to Guadalupe, AAA was already

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

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

a few meters from the toilet and on her way home when the appellant entered the toilet. We thus give little weight to the appellant's denial. To be believed, denial must be supported by strong evidence of non-culpability; otherwise it is self-serving and unworthy of belief.

We also reject the appellant's claim that it was improbable for him to have raped AAA in a "small and obnoxious" comfort room situated merely 10 meters from their house.

The fact that the appellant chose to perpetrate his lustful act in a confined, cramped and filthy place that was also near the house of BBB, is not unbelievable. Time and again, the Court has ruled that lust is no respecter of time and place. Rape, in fact, can be committed even in places where people congregate, in parks along the roadsides, in school premises, in a house where there are other occupants, in the same room where other members of the family are also sleeping, and even in places which to many would appear unlikely and high risk venues for its commission. Besides, there is no rule that rape can be committed only in seclusion.[60] Thus, we explained in *People v. Watimar*:[61]

> [F]or rape to be committed, it is not necessary for the place to be ideal, or the weather to be fine, for rapists bear no respect for locale and time when they carry out their evil deed. Rape may be committed even when the rapist and the victim are not alone, or while the rapist's spouse was asleep, or in a small room where other family members also slept, as in the instant case. The presence of people nearby does not deter rapists from committing their odious act. x x x
>
> The court has time and again held that 'the evil in man has no conscience. The beast in him bears no respect for time and place, driving him to commit rape anywhere – even in places where people congregate such as parks, along the road side, within school premises, and inside a house where there are other occupants. Rape does not necessarily have to be committed in an isolated place and can in fact be committed in places which to many would appear to be unlikely

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[60] See *People v. Malones*, G.R. Nos. 124388-90, March 11, 2004, 425 SCRA 318.

[61] G.R. Nos. 121651-52, August 16, 2000, 338 SCRA 173.

and high-risk venues for sexual advances. Indeed, no one would think that rape would happen in a public place like the comfort room of a movie house and in broad daylight.

The appellant further argues that the 6-day delay by AAA in reporting the rape to BBB impaired her credibility.

The initial reluctance of rape victims to publicly reveal the sexual assault they suffered is neither unknown nor uncommon. Understandably, a young girl will expectedly be hesitant or disinclined to come out in public and relate a painful and horrible experience of sexual violation.[62] Due to this recognition, we have repeatedly ruled that delay in reporting an incident of rape is not necessarily an indication that the charge is fabricated,[63] particularly when the delay can be attributed to fear instilled by threats from one who exercises ascendancy over the victim.

In *People v. Coloma*,[64] we considered an eight-year delay in reporting the long history of rape by the victim's father as understandable and insufficient to render the complaint of a 13-year old daughter incredible. *People v. Santos*[65] is likewise a noteworthy case on the present issue as we categorically ruled that a four-year delay in reporting a rape did not necessarily taint a victim's testimony when the reason for the delay was satisfactorily explained. In *People v. Dimaano*,[66] we held that strong apprehensions brought about by fear, stress, or anxiety can leave the offended party doubtful, distrustful and unsure of the proper steps to take in responding to the sexual assault she suffered.

In the present case, the records reveal that AAA had been constantly warned by the appellant that he would kill her and

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[62] See *People v. Sinoro*, G.R. Nos. 138650-58, April 22, 2003, 401 SCRA 371.

[63] See *People v. Velasquez*, G.R. Nos. 132635 and 143872-75, February 21, 2001, 352 SCRA 455.

[64] G.R. No. 95755, May 18, 1993, 222 SCRA 255.

[65] G.R. Nos. 135454-56, November 13, 2001, 368 SCRA 535.

[66] G.R. No. 168168, September 14, 2005, 469 SCRA 647.

BBB if she reported the incident to anybody. The threat was duly reinforced and made very real by the scythe poked at her neck at the time she was ravished. It was furthermore made by her stepfather who exercised ascendancy over her. Under these circumstances, we hold that a delay of six days in reporting the rape is justified.

The Proper Penalty

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

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

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

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

x x x x x x x x x

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

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.

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.

x x x x x x x x x

The Information specifically alleged the use of a deadly weapon – a scythe – in the commission of the rape. The prosecution duly proved this allegation. Under Article 266-B quoted above,

the use of a deadly weapon qualifies the rape so that the imposable penalty is *reclusion perpetua* to death. Since *reclusion perpetua* and death are two indivisible penalties, Article 63 of the Revised Penal Code applies; when there are neither mitigating nor aggravating circumstances in the commission of the deed, as in this case, the lesser penalty shall be applied.[67] The courts *a quo* were therefore correct in imposing the penalty of *reclusion perpetua* on the appellant.

It bears noting that under Article 266-B, paragraph 1, the death penalty shall be imposed if the crime of rape is committed when the victim is under 18 years old and the offender is a "parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third degree, or the common law spouse of the parent of the victim." Minority and relationship constitute special qualifying circumstances which, when alleged in the Information and proved during trial, warrant the imposition of the death penalty on the malefactor.

AAA's Certificate of Live Birth clearly shows that she was born on January 29, 1984 and, therefore, was below 18 years old when the rape was committed on November 28, 1998. However, AAA's relationship with the appellant was not alleged in the Information; neither was it sufficiently proven during trial. In *People v. Alcoreza*[68] where we met the same situation present in this case, we said:

> . . .Although the prosecution established that Mary Joy was the daughter of Melita, it failed to offer the marriage contract of the appellant and Melita which would establish that Mary Joy is the stepdaughter of the appellant. The testimony of Melita and even the admission of the appellant regarding their marriage do not meet the required standard of proof. The Court cannot rely on the disputable presumption that when a man and a woman live together as husband

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[67] See *People v. Orilla*, G.R. Nos. 148939-40, February 13, 2004, 422 SCRA 620.

[68] G.R. Nos. 135452-53, October 5, 2001, 366 SCRA 655; see also *People v. Aguilar*, G.R. No. 177749, December 17, 2007, 540 SCRA 509; *People v. Santos*, G.R. No. 145305, June 26, 2003, 405 SCRA 87.

and wife, they are presumed to be married. Relationship as a qualifying circumstance in rape must not only be alleged clearly. It must also be proved beyond reasonable doubt, just as the crime itself. Neither can it be argued that without the marriage contract, a common-law relationship between the appellant and Melita was still proved and this should qualify the crime at bar. To be sure, what the Information alleged is that the appellant is the stepfather of Mary Joy. It made no mention of a common-law relationship between the appellant and Melita. Hence, to convict appellant with qualified rape on the basis of the common-law relationship is to violate his right to be properly informed of the accusation against him.

Thus, we cannot impose the death penalty on the appellant.

Proper Indemnity

The award of civil indemnity to the rape victim is mandatory upon the finding that rape took place. Moral damages, on the other hand, are awarded to rape victims without need of proof other than the fact of rape under the assumption that the victim suffered moral injuries from the experience she underwent. Thus, this Court affirms the awards of ₱50,000.00 each as civil indemnity and moral damages, based on prevailing jurisprudence.[69]

In addition, we also award exemplary damages in the amount of ₱30,000.00.[70] The award of exemplary damages is justified under Article 2229 of the Civil Code to set a public example and serve as deterrent against elders who abuse and corrupt the youth.[71]

WHEREFORE, premises considered, we hereby *AFFIRM* the May 22, 2006 decision of the Court of Appeals in CA G.R. CR-HC No. 00145 with the *MODIFICATION* that the appellant is ordered to pay the victim the amount of ₱30,000.00 as exemplary damages.

Costs against appellant Cristino Cañada.

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[69] See *People v. Jumawid*, G.R. No. 184756, June 5, 2009; *People v. Baldo*, G.R. No. 175238, February 24, 2009.

[70] See *People v. Jumawid*, *supra*; see also *People v. Anguac*, G.R. No. 176744, June 5, 2009.

[71] See *People v. Canares*, G.R. No. 174065, February 18, 2009.

SO ORDERED.

Ynares-Santiago,[*] *Carpio Morales (Acting Chairperson),*[**] *Del Castillo,* and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 175644. October 2, 2009]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **JOSE MARIE M. RUFINO, NILO M. RESURRECCION, ARNEL M. ATANACIO and SUZETTE G. MATEO,** *respondents.*

[G.R. No. 175702. October 2, 2009]

DEPARTMENT OF AGRARIAN REFORM, represented by OIC-SECRETARY NASSER C. PANGANDAMAN, *petitioner, vs.* **JOSE MARIE M. RUFINO, NILO M. RESURRECCION, ARNEL M. ATANACIO and SUZETTE G. MATEO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 6657 (RA 6657), COMPREHENSIVE AGRARIAN REFORM LAW; SECTION 17 OF RA 6657 AND THE PERTINENT DEPARTMENT OF AGRARIAN REFORM ADMINISTRATIVE ORDER MUST BE ADHERED TO BY THE REGIONAL

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[*] Designated additional Member of the Second Division per Special Order No. 691 dated September 4, 2009.

[**] Designated Acting Chairperson of the Second Division per Special Order No. 690 dated September 4, 2009.

TRIAL COURT IN FIXING THE VALUATION OF LANDS SUBJECTED TO AGRARIAN REFORM; SUSTAINED. — While the determination of just compensation is essentially a judicial function which is vested in the RTC acting as a Special Agrarian Court, the Court, in *LBP v. Banal*, *LBP v. Celada*, and *LBP v. Lim*, nonetheless disregarded the RTC's determination thereof when, as in the present case, the judge did not fully consider the factors specifically identified by law and implementing rules. In *LBP v. Banal,* the Court ruled that the factors laid down in Section 17 of RA 6657 and the formula stated in DAR AO 6-92, as amended, must be adhered to by the RTC in fixing the valuation of lands subjected to agrarian reform: In determining just compensation, the RTC is required to consider several factors enumerated in Section 17 of R.A. 6657, as amended, thus: x x x These factors have been translated into a basic formula in [DAO 6-92], as amended by [DAO 11-94], issued pursuant to the DAR's rule-making, power to carry out the object and purposes of R.A. 6657, as amended. x x x While the determination of just compensation involves the exercise of judicial discretion, however, such discretion must be discharged within the bounds of the law. Here, the RTC wantonly disregarded R.A. 6657, as amended, and its implementing rules and regulations. ([DAO 6-92], as amended by [DAO 11-94]). x x x WHEREFORE, . . . The trial judge is directed to observe strictly the procedures specified above in determining the proper valuation of the subject property. And in *LBP v. Celada*, the Court was emphatic that the RTC is not at liberty to disregard the DAR valuation formula which filled in the details of Section 17 of RA 6657, it being elementary that rules and regulations issued by administrative bodies to interpret the law they are entrusted to enforce have the force of law. Resolving in the negative the issue of whether the RTC can resort to any other means of determining just compensation, aside from Section 17 of RA 6657 and DAR AO 6-92, as amended, this Court, in *LBP v. Lim*, held that Section 17 of RA 6657 and DAR AO 6-92, as amended, are mandatory and not mere guides that the RTC may disregard. The pertinent provisions of Item II of DAR AO 6-92, as amended by DAR AO 11-94, read: A. There shall be one basic formula for the valuation of lands covered by [Voluntary Offer to Sell] or [Compulsory Acquisition] regardless of the date of offer or coverage of the claim:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)
Where: LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration

The above formula shall be used if all the three factors are present, relevant, and applicable.

A.1. When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV = (CNI x 0.9) + (MV x 0.1)

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A.5 For purposes of this Administrative Order, the date of receipt of claimfolder by LBP from DAR shall mean the date when the claimfolder is determined by the LBP to be complete with all the required documents and valuation inputs duly verified and validated, and is ready for final computation/ processing.

A.6 The basic formula in the grossing-up of valuation inputs such as . . . Market Value per Tax Declaration (MV) shall be:

Grossed-up Valuation Input	=	Valuation input x Regional Consumer Price Index(RCPI) Adjustment Factor

The RCPI Adjustment Factor shall refer to the ratio of RCPI for the month issued by the National Statistics Office as of the date when the claimfolder (CF) was received by LBP from DAR for processing or, in its absence, the most recent available RCPI for the month issued prior to the date of receipt of CF from DAR and the RCPI for the month as of the date/effectivity/registration of the valuation input. Expressed in equation form:

RCPI for the Month as of the Date of Receipt of Claimfolder by LBP from DAR or the Most recent RCPI for the Month

Issued Prior to the Date of Receipt of CF

RCPI Adjustment Factor = ——————————————————
RCPI **for the Month Issued as of the Date/Effectivity /Registration of the Valuation Input**

B. Capitalized Net Income (CNI) — This shall refer to the difference between the gross sales (AGP x SP) and total cost of operations (CO) capitalized at 12%.

Expressed in equation form:

$$CNI = \frac{(AGP \times SP) - CO}{.12}$$

Where: CNI = Capitalized Net Income

AGP = Latest available 12-month's **gross production imediately preceding the date of offer in case of VOS or date of notice of coverage in case of CA.**

SP = The average of the latest available 12-month's **selling prices prior to the date of receipt of the claimfolder by LBP for processing,** such prices to be secured from the Department of Agriculture (DA) and other appropriate regulatory bodies or, in their absence, from the Bureau of Agricultural Statistics. If possible, SP data shall be gathered from the *barangay* or municipality where the property is located. In the absence thereof, SP may be secured within the province or region.

CO = Cost of Operations
Whenever the cost of operations could not be obtained or verified, an assumed net income rate (NIR) of 20% shall be used. Landholdings planted to coconut which are productive at the time of offer/coverage shall continue to use the 70% NIR. DAR and LBP shall continue to conduct joint

industry studies to establish the applicable NIR for each crop covered under CARP.

.12 = Capitalization Rate

xxx xxx xxx

D. In the computation of Market Value per Tax Declaration (MV), the most recent Tax Declaration (TD) and Schedule of Unit Market Value (SMV) issued prior to receipt of claimfolder by LBP shall be considered. The Unit Market Value (UMV) shall be grossed up from the date of its effectivity up to the date of receipt of claimfolder by LBP from DAR for processing, in accordance with item II.A.A.6.

In thus computing Capitalized Net Income (CNI), the Average Gross Production (AGP) of the latest available 12 months immediately preceding the *date of offer* in case of ***voluntary offer to sell*** or *date of notice of coverage* in case of ***compulsory acquisition***, and the average Selling Price (SP) of the latest available 12 months prior to the *date of receipt of the claimfolder by LBP* for processing, should be used.

2. ID.; ID.; ID.; ID.; REMAND OF THE CASE TO THE TRIAL COURT FOR DETERMINATION OF THE VALUATION OF THE PROPERTY, REQUIRED; RATIONALE.— While the Court is minded to write *finis* to this protracted litigation by itself computing the just compensation due respondents, the evidence on record is not sufficient for the purpose. The Court is thus constrained to remand the case for determination of the valuation of the property by the trial court, which is mandated to consider the factors provided under Section 17 of RA 6657, as amended, and as translated into the formula prescribed in DAR AO 6-92, as amended by DAR AO 11-94. The trial court may, *motu proprio* or at the instance of any of the parties, again appoint one or more commissioners to ascertain facts relevant to the dispute and file a written report thereof. The amount determined by the trial court would then be the basis of interest income on the cash and bond deposits due respondents from the time of the taking of the property up to the time of actual payment of just compensation.

APPEARANCES OF COUNSEL

LBP Legal Department for Land Bank of the Philippines.
Oco and Oco Law Offices for respondents.
Delfin B. Samson for Department of Agrarian Reform.

D E C I S I O N

CARPIO MORALES,[*] *J.*:

Challenged in these consolidated Petitions for Review is the December 15, 2005 Decision of the Court of Appeals[1] in CA-G.R. CV No. 69640 affirming with modification that of Branch 52 of the Regional Trial Court (RTC) of Sorsogon in Civil Case No. 98-6438 setting the valuation of respondents' 138.4018-hectare land taken under the Comprehensive Agrarian Reform Program (CARP) at ₱29,926,000, exclusive of the value of secondary crops thereon.

Respondents Jose Marie M. Rufino (Rufino), Nilo M. Resurreccion (Resureccion), Arnel M. Atanacio (Atanacio), and Suzette G. Mateo (Suzette) are the registered owners in equal share of a parcel of agricultural land situated in Barangay San Benon, Irosin, Sorsogon, with an area of 239.7113 hectares covered by Transfer Certificate of Title (TCT) No. T-22934.[2]

By respondents' claim, in 1989, they voluntarily offered the aforesaid property to the government for CARP coverage at ₱120,000 per hectare. Acting thereon, petitioner Department of Agrarian Reform (DAR) issued a Notice of Land Valuation

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[*] Per Special Order No. 690 in lieu of the sabbatical leave of Senior Associate Justice Leonardo A. Quisumbing.

[1] Penned by Associate Justice Rebecca De Guia-Salvador, with the concurrence of then Associate Justice of the Court of Appeals, now a retired member of this Court, Ruben T. Reyes and Associate Justice Aurora Santiago-Lagman; CA *rollo*, pp. 204-218.

[2] Records, pp. 5-9.

and Acquisition dated October 21, 1996 declaring that out of the total area indicated in the title, 138.4018 hectares was subject to immediate acquisition at a valuation of ₱8,736,270.40 based on the assessment of petitioner Land Bank of the Philippines (LBP).

Respondents having found the valuation unacceptable, the matter was referred by the provincial agrarian reform officer of Sorsogon to the DAR Adjudication Board (DARAB) for the conduct of summary administrative proceedings to determine just compensation.[3]

By Decision of November 21, 1997,[4] the DARAB sustained LBP's valuation upon respondents' failure to present any evidence to warrant an increase thereof.

Meanwhile, upon the DAR's application, accompanied with LBP's certification of deposit of payment, the Register of Deeds of Sorsogon partially cancelled TCT No. T-22934 corresponding to the 138.4018-hectare covered area (hereafter the property) and issued TCT No. T-47571 in the name of the Republic of the Philippines (the Republic). The Republic thereupon subdivided the property into 85 lots for distribution to qualified farmer-beneficiaries under Republic Act No. 6657 (RA 6657) or the Comprehensive Agrarian Reform Law of 1988.[5]

On February 23, 1998, respondents lodged with Branch 52 of the Sorsogon RTC (acting as a Special Agrarian Court) a complaint for determination of just compensation against Ernesto Garilao, in his capacity as then DAR Secretary, and LBP. Respondents contended that LBP's valuation was not the full and fair equivalent of the property at the time of its taking, the same having been offered in 1989 at ₱120,000 per hectare.[6]

LBP countered that the property was acquired by the DAR for CARP coverage in 1993 by compulsory acquisition and not

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

[4] *Id.* at 16-18.

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

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

by respondents' voluntary offer to sell; and that it determined the valuation thereof in accordance with RA 6657 and pertinent DAR regulations.[7]

The DAR Secretary argued that LBP's valuation was properly based on DAR issuances.[8]

The trial court appointed the parties' respective nominated commissioners to appraise the property.

Commissioner Jesus S. Empleo, LBP's nominee, appraised the property based on, among other things, the applicable DAR issuances, average gross production, and prevailing selling prices of the crops planted thereon which included coconut, abaca, coffee, and rice. He arrived at a valuation of ₱13,449,579.08.[9]

Commissioner Amando Chua of Cuervo Appraisers, Inc., respondents' nominee, used the *market data approach* which relies primarily on sales and listings of comparable lots in the neighborhood. Excluding the secondary crops planted thereon, he valued the property at ₱29,925,725.[10]

At the witness stand, Eugenio Mateo, Sr. (Mateo), attorney-in-fact of respondents Rufino, Resurreccion, and Atanacio, declared that Commissioner Chua erroneously considered the secondary crops as merely enhancing the demand for the property without them significantly increasing its value; and that the coffee intercropping on the property which yielded an estimated profit of ₱3,000,000, spread over a 12-year period, should be considered in the determination of just compensation.[11]

By Decision of July 4, 2000,[12] the trial court found the *market data approach* to be more realistic and consistent with law and jurisprudence on the full and fair equivalent of the property.

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[7] *Id.* at 26-29.

[8] *Id.* at 33-34.

[9] TSN of March 15, 2000, pp. 3-27.

[10] Folder of Exhibits, Exhibit "D," pp. 11-24.

[11] TSN of August 12, 1999, pp. 13-23.

[12] Records, pp. 108-116.

Applying the average rate of ₱216,226 per hectare, it arrived at a valuation of the 138.4018-hectare property at ₱29,926,000, to which it added ₱8,000,000 representing 50% of the value of trees, plants, and other improvements thereon, bringing the total to ₱37,926,000. It disposed thus:

> WHEREFORE, premises considered, judgment is hereby rendered to wit:
>
> a) Fixing the Just Compensation of the entire 138.4018 hectares for acquisition covered by TCT No. T-22934 in the total amount of THIRTY SEVEN MILLION NINE HUNDRED TWENTY-SIX THOUSAND (Php37,926,000.00) Pesos Philippine Currency, less the amount previously deposited in trust with the Land Bank which was already received by the plaintiffs.
>
> b) The Land Bank of the Philippines is hereby ordered to pay the landowners-plaintiffs the afore-cited amount less the amount previously paid to them in the manner provided by law.
>
> c) Without pronouncement as to costs.

LBP filed a Motion for Reconsideration, while the DAR filed a Notice of Appeal. By Order dated August 21, 2000, the trial court denied the motion of LBP,[13] prompting it to also file a Notice of Appeal.[14]

By consolidated Decision of December 15, 2005,[15] the Court of Appeals sustained the trial court's valuation of ₱29,926,000 as just compensation.

The appellate court found that, among other things, it would be specious to rely on the DAR's computation in ostensible compliance with its own issuances; that Commissioner Empleo failed to consider available sales data of comparable properties in the locality; and that the value of secondary crops should be excluded as the same is inconclusive in view of conflicting evidence.

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[13] *Id.* at 132-134.

[14] *Id.* at 140.

[15] *Supra* note 1.

Petitioners and respondents filed their respective Motions for Reconsideration which were denied by the appellate court by Resolution of November 28, 2006.[16] Hence, petitioners LBP and DAR separately sought recourse to this Court through the present Petitions for Review, which were consolidated in the interest of uniformity of rulings on related cases.

In G.R. No. 175644, LBP maintains that its valuation of the property at ₱13,449,579.08 was based on the factors mentioned in RA 6657 and formula prescribed by the DAR; that its determination should be given weight as it has the expertise to do the same; and that the taking of private property for agrarian reform is not a traditional exercise of the power of eminent domain as it also involves the exercise of police power, hence, part of the loss is not compensable.[17]

In G.R. No. 175702, the DAR avers that the valuation sustained by the appellate court was determined in contravention of the criteria set by RA 6657 and relevant jurisprudence.[18]

Respondents, for their part, posit in their consolidated Comment[19] that factual findings of the trial court, when affirmed by the appellate court, are conclusive; and that the just compensation due them should be equivalent to the market value of the property.

In determining the just compensation due owners of lands taken for CARP coverage, the RTC, acting as a Special Agrarian Court, should take into account the factors enumerated in Section 17 of RA 6657, as amended, to wit:

> Sec. 17. Determination of Just Compensation. — In determining just compensation, the **cost of acquisition of the land**, the **current value of like properties**, its **nature**, **actual use and income**, the **sworn valuation by the owner**, the **tax declarations**, and the **assessment made by government assessors** shall be considered. The social and

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[16] CA *rollo,* pp. 274-276.

[17] *Rollo* (G.R. No. 175644), pp. 26-40.

[18] *Rollo* (G.R. No. 175702), pp. 19-21.

[19] *Id.* at 73-93.

economic **benefits contributed by the farmers and the farmworkers and by the Government** to the property as well as the **non-payment of taxes or loans** secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation. (Emphasis supplied)

The DAR, being the government agency primarily charged with the implementation of the CARP, issued Administrative Order No. 6, Series of 1992 (DAR AO 6-92), as amended by DAR Administrative Order No. 11, Series of 1994 (DAR AO 11-94), translating the factors mentioned in Section 17 of RA 6657 into a basic formula, presented as follows:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)
Where: LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration

The above formula shall be used if all the three factors are present, relevant, and applicable.

A.1. When the CS factor is not present and CNI and MV are applicable, the formula shall be:
LV = (CNI x 0.9) + (MV x 0.1)

A.2. When the CNI factor is not present, and CS and MV are applicable, the formula shall be:
LV = (CS x 0.9) + (MV x 0.1)

A.3. When both the CS and CNI are not present and only MV is applicable, the formula shall be:
LV = MV x 2

The threshold issue then is whether the appellate court correctly upheld the valuation by the trial court of the property on the basis of the *market data approach*, in disregard of the formula prescribed by DAR AO 6-92, as amended.

The petitions are partly meritorious.

While the determination of just compensation is essentially a judicial function which is vested in the RTC acting as a Special

Agrarian Court, the Court, in *LBP v. Banal*,[20] *LBP v. Celada*,[21] and *LBP v. Lim*,[22] nonetheless disregarded the RTC's determination thereof when, as in the present case, the judge did not fully consider the factors specifically identified by law and implementing rules.

In *LBP v. Banal*,[23] the Court ruled that the factors laid down in Section 17 of RA 6657 and the formula stated in DAR AO 6-92, as amended, must be adhered to by the RTC in fixing the valuation of lands subjected to agrarian reform:

> In determining just compensation, the RTC is required to consider several factors enumerated in Section 17 of R.A. 6657, as amended, thus:
>
> xxx x x x xxx
>
> These factors have been translated into a basic formula in [DAO 6-92], as amended by [DAO 11-94], issued pursuant to the DAR's rule-making power to carry out the object and purposes of R.A. 6657, as amended.
>
> xxx x x x xxx
>
> While the determination of just compensation involves the exercise of judicial discretion, however, such discretion must be discharged within the bounds of the law. Here, the RTC wantonly disregarded R.A. 6657, as amended, and its implementing rules and regulations. ([DAO 6-92], as amended by [DAO 11-94]).
>
> xxx x x x xxx
>
> WHEREFORE, . . . The trial judge is directed to observe strictly the procedures specified above in determining the proper valuation of the subject property. (Underscoring supplied)

And in *LBP v. Celada*,[24] the Court was emphatic that the RTC is not at liberty to disregard the DAR valuation formula which

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[20] G.R. No. 143276, July 20, 2004, 434 SCRA 543.

[21] G.R. No. 164876, January 23, 2006, 479 SCRA 495.

[22] G.R. No. 171941, August 2, 2007, 529 SCRA 129.

[23] *Supra* note 20 at 549-554.

[24] *Supra* note 21 at 507.

filled in the details of Section 17 of RA 6657, it being elementary that rules and regulations issued by administrative bodies to interpret the law they are entrusted to enforce have the force of law.

In fixing the just compensation in the present case, the trial court, adopting the *market data approach* on which Commissioner Chua relied,[25] merely put premium on the location of the property and the crops planted thereon which are not among the factors enumerated in Section 17 of RA 6657. And the trial court did not apply the formula provided in DAR AO 6-92, as amended. This is a clear departure from the settled doctrine regarding the mandatory nature of Section 17 of RA 6657 and the DAR issuances implementing it.

Not only did Commissioner Chua not consider Section 17 of RA 6657 and DAR AO 6-92, as amended, in his appraisal of the property. His conclusion that the *market data approach* conformed with statutory and regulatory requirements is bereft of basis.

Resolving in the negative the issue of whether the RTC can resort to any other means of determining just compensation, aside from Section 17 of RA 6657 and DAR AO 6-92, as amended, this Court, in *LBP v. Lim*,[26] held that Section 17 of RA 6657 and DAR AO 6-92, as amended, are mandatory and not mere guides that the RTC may disregard.

Petitioners maintain that the correct valuation of the property is ₱13,449,579.08 as computed by Commissioner Empleo.

The pertinent provisions of Item II of DAR AO 6-92, as amended by DAR AO 11-94, read:

A. There shall be one basic formula for the valuation of lands covered by [Voluntary Offer to Sell] or [Compulsory Acquisition] regardless of the date of offer or coverage of the claim:

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[25] Records, pp. 111-115.

[26] *Supra* note 22 at 134-136.

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)
Where: LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration

The above formula shall be used if all the three factors are present, relevant and applicable.

A.1. *When the CS factor is not present and CNI and MV are applicable, the formula shall be:*

LV = (CNI x 0.9) + (MV x 0.1)

x x x x x x x x x

A.5 For purposes of this Administrative Order, the date of receipt of claimfolder by LBP from DAR shall mean the date when the claimfolder is determined by the LBP to be complete with all the required documents and valuation inputs duly verified and validated, and is ready for final computation/processing.

A.6 The basic formula in the grossing-up of valuation inputs such as . . . Market Value per Tax Declaration (MV) shall be:

Grossed-up Valuation Input	= Valuation input x Regional Consumer Price Index (RCPI) Adjustment Factor

The RCPI Adjustment Factor shall refer to the ratio of RCPI for the month issued by the National Statistics Office as of the date when the claimfolder (CF) was received by LBP from DAR for processing or, in its absence, the most recent available RCPI for the month issued prior to the date of receipt of CF from DAR and the RCPI for the month as of the date/effectivity/registration of the valuation input. Expressed in equation form:

RCPI **for the Month as of the Date of Receipt of Claimfolder by LBP from DAR** or the Most recent RCPI **for the Month Issued Prior to the Date of**

$$\text{RCPI Adjustment Factor} = \frac{\textbf{Receipt of CF}}{\text{RCPI } \textbf{for the Month Issued as of the Date/Effectivity/Registration of the Valuation Input}}$$

B. Capitalized Net Income (CNI) — This shall refer to the difference between the gross sales (AGP x SP) and total cost of operations (CO) capitalized at 12%.

Expressed in equation form:

$$\text{CNI} = \frac{(\text{AGP} \times \text{SP}) - \text{CO}}{.12}$$

Where: CNI = Capitalized Net Income

AGP = Latest available 12-month's **gross production immediately preceding** the **date of offer in case of VOS** or **date of notice of coverage in case of CA**.

SP = The average of the latest available 12-month's **selling prices prior to the date of receipt of the claimfolder by LBP for processing**, such prices to be secured from the Department of Agriculture (DA) and othera ppropriate regulatory bodies or, in their absence, from the Bureau of Agricultural Statistics. If possible, SP data shall be gathered from the *barangay* or municipality where the property is located. In the absence thereof, SP may be secured within the province or region.

CO = Cost of Operations

Whenever the cost of operations could not be obtained or verified, an assumed net income rate (NIR) of 20% shall be used. Landholdings planted to coconut which are productive at the time of offer/coverage shall continue to use the 70% NIR. DAR and LBP shall continue to conduct joint industry studies to establish the applicable NIR for each crop covered under CARP.

.12 = Capitalization Rate

x x x x x x x x x

D. In the computation of Market Value per Tax Declaration (MV), the most recent Tax Declaration (TD) and Schedule of Unit Market Value (SMV) issued prior to receipt of claimfolder by LBP shall be considered. The Unit Market Value (UMV) shall be grossed up from the date of its effectivity up to the date of receipt of claimfolder by LBP from DAR for processing, in accordance with item II.A.A.6. (Emphasis and italics supplied)

In thus computing Capitalized Net Income (CNI), the Average Gross Production (AGP) of the latest available 12 months immediately preceding the *date of offer* in case of ***voluntary offer to sell*** or *date of notice of coverage* in case of ***compulsory acquisition***, and the average Selling Price (SP) of the latest available 12 months prior to the *date of receipt of the claimfolder by LBP* for processing, should be used.

While these dates-bases of computation are not clearly indicated in the records (as the mode of acquisition is in fact disputed), the *date of offer* (assuming the acquisition was by voluntary offer to sell) would have to be sometime in 1989, the alleged time of *voluntary* offer to sell; whereas the *date of notice of coverage* (assuming the acquisition was compulsory) would be sometime prior to October 21, 1996, which is the date of the Notice of Land Valuation and Acquisition, because under DAR Administrative Order No. 9, series of 1990,[27] as amended by DAR Administrative Order No. 1, series of 1993, the *notice of coverage* precedes the Notice of Land Valuation and Acquisition.

And the claimfolder would have been received by LBP in or before 1997, the year the property was distributed to agrarian reform beneficiaries,[28] because land distribution is the last step in the procedure prescribed by the above-said DAR administrative orders. Hence, the data for the AGP should pertain to a period

[27] Revised Rules Governing the Acquisition of Agricultural Lands Subject of Voluntary Offer to Sell and Compulsory Acquisition Pursuant to R.A. No. 6657.

[28] TSN of August 12, 1999, p. 18.

in 1989 (in case of voluntary offer to sell) or *prior to October, 1996 (in case of compulsory acquisition),* while the data for the SP should pertain to *1997 or earlier.*

Commissioner Empleo, however, instead used available data within the 12-month period prior to his ocular inspection in October 1998 for the AGP,[29] and the average selling price for the period January 1998 to December 1998 for the SP,[30] contrary to DAR AO 6-92, as amended.

Furthermore, the Regional Consumer Price Index (RCPI) Adjustment Factor, which is used in computing the market value of the property, is the ratio of the RCPI for the month when the claimfolder was received by LBP, to the RCPI for the month of the registration of the most recent Tax Declaration and Schedule of Unit Market Value[31] issued prior to receipt of claimfolder by LBP. Consistent with the previous discussion, *the applicable RCPIs should therefore be dated 1997 or earlier.*

Again, Commissioner Empleo instead used RCPI data for January 1999 in computing the RCPI Adjustment Factor,[32] contrary to DAR AO 6-92, as amended.

Parenthetically, Commissioner Empleo testified[33] that his computations were based on DAR Administrative Order No. 5, series of 1998.[34] This Administrative Order took effect only on May 11, 1998, however, hence, the applicable valuation rules in this case remain to be those prescribed by DAR AO 6-92, as amended by DAR AO 11-94.

But even if the 1998 valuation rules were applied, the data for the AGP would still pertain to a period *prior to October*

[29] Records, p. 69; TSN of March 15, 2000, p. 5.

[30] TSN of March 15, 2000, p. 17.

[31] The Tax Declaration and Schedule of Unit Market Value being the relevant valuation inputs with respect to market value.

[32] Records, p. 66.

[33] TSN of March 15, 2000, p. 8.

[34] Which superseded DAR A.O. No. 6-92, as amended by DAR A.O. No. 11-94.

1996, the revised reference date being the date of the field investigation which precedes the Notice of Land Valuation and Acquisition; while the data for the SP and the RCPIs would still pertain to *1997 or earlier*, there being no substantial revisions in their reference dates.

Finally, as reflected earlier, Commissioner Empleo did not consider in his computation the secondary crops planted on the property (coffee, pili, cashew, *etc*.), contrary to DAR AO 6-92, as amended, which provides that the "[t]otal income shall be computed from the combination of crops actually produced on the covered land whether seasonal or permanent."[35]

IN FINE, the valuation asserted by petitioners does not lie.

While the Court is minded to write *finis* to this protracted litigation by itself computing the just compensation due respondents, the evidence on record is not sufficient for the purpose. The Court is thus constrained to remand the case for determination of the valuation of the property by the trial court, which is mandated to consider the factors provided under Section 17 of RA 6657, as amended, and as translated into the formula prescribed in DAR AO 6-92, as amended by DAR AO 11-94.

The trial court may, *motu proprio* or at the instance of any of the parties, again appoint one or more commissioners to ascertain facts relevant to the dispute and file a written report thereof. The amount determined by the trial court would then be the basis of interest income on the cash and bond deposits due respondents from the time of the taking of the property up to the time of actual payment of just compensation.[36]

WHEREFORE, the challenged Decision of the Court of Appeals is *REVERSED* and *SET ASIDE*. Civil Case No. 98-6438 is *REMANDED* to Branch 52 of the Sorsogon RTC which is directed to determine with dispatch the just compensation due respondents strictly in accordance with the procedures specified above.

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[35] Item II B.5.

[36] *Vide LBP v. Lim, supra* note 22 at 142.

SO ORDERED.

Ynares-Santiago,[**] *Peralta,*[***] *Del Castillo,* and *Abad, JJ.,* concur.

THIRD DIVISION

[G.R. No. 175855. October 2, 2009]

CELEBES JAPAN FOODS CORPORATION, represented by KANEMITSU YAMAOKA and CESAR ROMERO, *petitioner, vs.* **SUSAN YERMO, ORSON MAMALIS, BAI ANNIE ALANO, MICHIE ALFANTA, GINALYN PANILAGAO, ANNALIE AYAG, JOCELYN AGTON, JOSE JURIE SURIGAO, GILDA SERRANO, JOY REMARGA, ERICK TAC-AN and JENNE CARLOS,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; DISMISSAL FOR JUST CAUSE AND DISMISSAL DUE TO RETRENCHMENT; DISTINGUISHED. — The *Agabon* ruling was qualified in *Jaka* which declared the dismissal of the employees valid as it was due to an authorized cause under Article 283 of the Labor Code, *i.e.*, retrenchment, as it was proven that Jaka was suffering from serious business losses at the time it terminated respondents' employment. However, Jaka failed to comply with the notice requirement under the same rule. We then distinguished the case from *Agabon* stating: The difference between *Agabon* and the instant case is that in the former, the

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[**] Additional member per Special Order No. 691.

[***] Additional member per Special Order No, 711.

dismissal was based on a just cause under Article 282 of the Labor Code while in the present case, respondents were dismissed due to retrenchment, which is one of the authorized causes under Article 283 of the same Code. At this point, we note that there are divergent implications of dismissal for just cause under Article 282, on one hand, and a dismissal for authorized cause under Article 283, on the other. **A dismissal for just cause under Article 282** implies that the employee concerned has committed, or is guilty of, some violation against the employer, *i.e.* the employee has committed some serious misconduct, is guilty of some fraud against the employer, or, as in *Agabon*, he has neglected his duties. Thus, it can be said that the employee himself initiated the dismissal process. On another breath, **a dismissal for an authorized cause under Article 283** does not necessarily imply delinquency or culpability on the part of the employee. Instead, the dismissal process is initiated by the employer's exercise of his management prerogative, *i.e.*, when the employer opts to install labor-saving devices, when he decides to cease business operations or when, as in this case, he undertakes to implement a retrenchment program. x x x Accordingly, it is wise to hold that: (1) if the dismissal is based on a just cause under Article 282 but the employer failed to comply with the notice requirement, the sanction to be imposed upon him should be *tempered* because the dismissal process was, in effect, initiated by an act imputable to the employee; and (2) if the dismissal is based on an authorized cause under Article 283 but the employer failed to comply with the notice requirement, the sanction should be *stiffer* because the dismissal process was initiated by the employer's exercise of his management prerogative. In *Agabon*, the nominal damages awarded to the employees for a dismissal based on a just cause without the notice requirement was ₱30,000.00; while in *Jaka*, where the dismissal of the employees was based on an authorized cause under Article 283, but without the required notice under the same rule, we fixed the amount at ₱50,000.00.

2. CIVIL LAW; DAMAGES; NOMINAL DAMAGES, DEFINED; WHEN AWARD THEREOF PROPER. — Nominal damages are adjudicated in order that a right of the plaintiff that 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. Considering the

circumstances in this case, we find no error committed by the CA in fixing the award of nominal damages in the amount of ₱50,000.00 for each respondent as indemnity for the violation of the latter's statutory rights. Petitioner's reliance on *Viernes v. National Labor Relations Commission* to support its claim for the reduction of the award of nominal damages is misplaced. The factual circumstances are different. *Viernes* is an illegal dismissal case, since there was no authorized cause for the dismissal of the employees; and the employer was ordered to pay backwages inclusive of allowances and other benefits, computed from the time the compensation was withheld up to the actual reinstatement. In addition, since the dismissal was done without due process, the nominal damages awarded was only ₱2,590.00 equivalent to one-month salary of the employee. In this case, the dismissal was valid, as it was due to an authorized cause, but without the observance of procedural due process, and the only award given was nominal damages.

APPEARANCES OF COUNSEL

Matunog and Associates for petitioner.
Batacan Montejo and Vicencio Law Firm for respondents.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for review on *certiorari* are the Decision[1] dated June 27, 2005 and the Resolution[2] dated September 22, 2006 of the Court of Appeals, Mindanao Station, Cagayan de Oro City, in CA-G.R. SP No. 73093.

Petitioner Celebes Japan Foods Corporation is engaged in the business of buying, processing and exporting of tuna fish, with buying station and plant located at the Davao Fish Port

[1] Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Arturo G. Tayag and Rodrigo F. Lim, Jr., concurring; *rollo*, pp. 22-37.

[2] Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Teresita Dy-Liacco Flores and Mario V. Lopez, concurring; *id.* at 83-84.

Complex, Daliao, Toril, Davao City. Kanemitsu Yamaoka, Cesar Romero and Kenji Fuji were the Chairman, Office Manager and Plant Supervisor, respectively, of petitioner Celebes. Petitioner contracted with Penta Manpower and Allied Resources to provide manpower services for the former's business, with the latter recruiting people to work for the former, people who included respondents Susan Yermo, Orson Mamalis, Bai Annie Alano, Michie Alfanta, Ginalyn Panilagao, Annalie Ayag, Jocelyn Agton, Jose Jurie Surigao, Gilda Serrano, Joy Remarca, Erick Tac-An, and Jenne Carlos. Respondents performed jobs such as slicer, laboratory crew packers, recorders/encoders, loiners, vinyl bag openers/receivers or storage persons, and who were necessary and desirable to the main business of petitioner.

On November 7, 2000, respondents were refused entrance by the guards manning the gate of the Davao Fish Port Complex, as they were already terminated from work effective November 1, 2000 based on a memorandum[3] dated November 7, 2000 issued by Romero, petitioner's office manager. The memorandum was posted in the guardhouse.

On November 16, 2000, respondents filed with the Labor Arbiter (LA), Davao City, a Complaint for illegal dismissal with money claims for holiday pay, service incentive, leave pay, allowances, unpaid salaries, damages and attorney's fees against petitioner and Penta Manpower, alleging that they were dismissed without just and valid cause and due process. Petitioner was served a summons and a complaint.

On December 11, 2000, a mandatory conference was ordered but the amicable settlement failed. The LA then ordered all the parties to file their respective position papers. Respondents and Penta Manpower filed their position papers, while petitioner did not file any despite receipt of notice.

On July 2, 2001, the LA rendered a decision[4] in favor of respondents, the dispositive portion of which reads:

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[3] CA *rollo*, p. 53.

[4] Penned by Labor Arbiter Newton R. Sancho, *id.* at 60-67.

WHEREFORE, judgment is hereby rendered:

1. Declaring the dismissal of complainants as illegal; and

2. Ordering respondents Celebes Japan Foods Corp., Kenji Fuji, Kanemitsu Yamaoka and Cesar B. Romero to pay to complainants the award above set forth in the total amount of ₱838,642.90 only.

SO ORDERED.[5]

The LA found that there was an employer-employee relationship between respondents and petitioner; that respondents' works were necessary to petitioner's business of processing tuna fish; that as regular employees, respondents were entitled to security of tenure; that Penta Manpower was a labor-only contractor, since it did not have substantial capital or investment in the form of tools, equipment and machineries, which were necessary for the performance of the required services; and that it was petitioner that actually managed, supervised and controlled respondents' employment. The LA found respondents' dismissal to be illegal, *i.e.*, without cause and due process, and proceeded to compute respondents' money claims.

Petitioner filed an appeal with the National Labor Relations Commission (NLRC), Cagayan de Oro City, on the ground that the former was deprived of its right to due process, and that the LA rendered its decision contrary to law and applicable jurisprudence.

On April 16, 2002, the NLRC rendered its Resolution,[6] the dispositive portion of which reads:

WHEREFORE, the judgment appealed from is VACATED and SET ASIDE in favor of REMANDING the entire records to the arbitration branch of origin. The Labor Arbiter below is hereby directed to accord respondent Celebes Japan Foods Corporation and the other respondents their right to due process by allowing them to submit their position paper, copy furnished the complainants and other

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[5] *Id.* at 67.

[6] Penned by Presiding Commissioner Salic B. Dumarpa, with Commissioners Oscar Abella and Leon G. Gonzaga, Jr., concurring; CA *rollo*, pp. 19-26.

respondent (PENTA), and after all the parties are heard, for the Labor Arbiter to render its decision accordingly.

SO ORDERED.[7]

Respondents filed their motion for reconsideration, which the NLRC denied in a Resolution[8] dated June 18, 2002.

Aggrieved, respondents filed a petition for *certiorari* with the CA, alleging that the NLRC gravely abused its discretion in finding that petitioner was denied due process and in remanding the case to the LA for further reception of evidence.

On June 27, 2005, the CA, Mindanao Station, Cagayan de Oro City, issued its assailed Decision, the dispositive portion of which reads:

> IN THE LIGHT OF ALL THE FOREGOING, the petition is GRANTED in part. This Court hereby DECLARES the legality of the dismissal but ORDERS Celebes Japan Foods Corporation to PAY each petitioner herein ₱50,000.00 as NOMINAL DAMAGES for violation of statutory due process. Further, this Court FINDS no cogent reason to remand the case to the Labor Arbiter.[9]

The CA found that petitioner was not denied due process, since the latter was duly informed that it was a party to the illegal dismissal case filed by respondents, as shown by its receipt of the summons, together with the complaint, as well as the LA Orders directing the submission of position papers and informing the parties that the case was considered submitted for decision; that petitioner was given ample opportunities to defend its interest, but it chose not to participate, which constrained the LA to resolve the case based on available evidence; and that it was only after an adverse decision by the LA that petitioner came out and claimed denial of due process. The CA further found that the NLRC erred in remanding the case to the LA for further proceeding, since the NLRC was in a position to resolve the dispute based on the records before it.

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[7] CA *rollo*, pp. 19-26.

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

[9] *Rollo*, p. 36.

The CA then proceeded to decide the case by agreeing with the LA's finding that respondents were petitioner's employees and not of Penta Manpower, as the latter was merely engaged in labor-only contracting. However, the CA found that respondents' dismissal was for an authorized cause, as petitioner asserted that the absence or termination of their work was caused by a cessation of its operation as a consequence of prolonged lack of adequate supply for high-quality fresh tuna. Although respondents were dismissed for an authorized cause, the CA found that petitioner did not comply with the statutory requirement of due process; thus, it ordered petitioner to pay each of the respondents nominal damages in the amount of ₱50,000.00.

Petitioner filed a motion for reconsideration, praying for the reduction of the nominal damages awarded from ₱50,000.00 to ₱5,000.00 for each respondent, claiming that the financial condition of the employer must be considered in fixing the amount of nominal damages. It then submitted an audited financial statement for the period ending December 31, 2004, comparative financial statements from the years 2000 to 2004, and its annual income tax returns for the same period, which all showed that the company incurred capital deficits.

The CA denied the motion for reconsideration in a Resolution dated September 22, 2006.

Petitioner is before us raising a lone assignment of error, thus:

WHETHER OR NOT THE COURT OF APPEALS GROSSLY ERRED AND/OR GRAVELY ABUSED ITS DISCRETION IN MISAPPLYING THE DOCTRINES IN *AGABON v. NLRC, JAKA v. PACOT* AND *VIERNES v. NLRC* BY REFUSING TO MODIFY AND/OR REDUCE THE AWARD OF NOMINAL DAMAGES FROM ₱50,000.00 TO ₱5,000.00 PER EMPLOYEE TERMINATED AND IN THE ABSENCE OF ANY SPECIFIC FACTUAL FINDING THAT THIS IS A CASE OF "DISMISS NOW, PAY LATER" TERMINATION.[10]

The petition has no merit.

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

The CA ruled that respondents, who were petitioner's employees, were terminated from work due to an authorized cause; and this finding was never assailed by them, thus, already attained finality. In fact, respondents in their Comment filed before us, accept such finding by stating that there is no question that they have been severed from their employment due to an authorized cause. The CA also found that procedural due process was not observed in the termination of respondents, since the latter was not served by petitioner the required notice as provided under Article 283 of the Labor Code; *i.e.*, a written notice must be served on the worker and the Department of Labor and Employment at least one month before the intended date of termination. This finding was not disputed at all by petitioner. Thus, it is settled that respondents were terminated due to an authorized cause without petitioner complying with procedural due process.

Where an employee was terminated for cause, but the employer failed to comply with the notice requirement, the employee is entitled to the payment of nominal damages pursuant to our ruling in *Agabon v. National Labor Relations Commission*[11] and *Jaka Food Processing Corporation v. Pacot.*[12]

In *Agabon*, we found the dismissal of the employees therein to be valid and for a just cause, since abandonment was duly established. However, we held the employer liable, because procedural due process was not observed. We ordered the employer to pay, in lieu of backwages, indemnity in the form of nominal damages, and we said:

> The violation of the petitioners' right to statutory due process by the private respondent warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances. x x x We believe this form of damages would serve to deter employers from future violations of the statutory due process rights of employees. At the very least, it provides a vindication or

[11] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

[12] G.R. No. 151378, March 28, 2005, 454 SCRA 119.

recognition of this fundamental right granted to the latter under the Labor Code and its Implementing Rules.[13]

The *Agabon* ruling was qualified in *Jaka* which declared the dismissal of the employees valid as it was due to an authorized cause under Article 283 of the Labor Code, *i.e.*, retrenchment, as it was proven that Jaka was suffering from serious business losses at the time it terminated respondents' employment. However, Jaka failed to comply with the notice requirement under the same rule. We then distinguished the case from *Agabon* stating:

> The difference between *Agabon* and the instant case is that in the former, the dismissal was based on a just cause under Article 282 of the Labor Code while in the present case, respondents were dismissed due to retrenchment, which is one of the authorized causes under Article 283 of the same Code.
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> At this point, we note that there are divergent implications of dismissal for just cause under Article 282, on one hand, and a dismissal for authorized cause under Article 283, on the other.
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> **A dismissal for just cause under Article 282** implies that the employee concerned has committed, or is guilty of, some violation against the employer, *i.e.*, the employee has committed some serious misconduct, is guilty of some fraud against the employer, or, as in *Agabon*, he has neglected his duties. Thus, it can be said that the employee himself initiated the dismissal process.
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> On another breath, **a dismissal for an authorized cause under Article 283** does not necessarily imply delinquency or culpability on the part of the employee. Instead, the dismissal process is initiated by the employer's exercise of his management prerogative, *i.e.*, when the employer opts to install labor-saving devices, when he decides to cease business operations or when, as in this case, he undertakes to implement a retrenchment program.
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> x x x x x x x x x
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> Accordingly, it is wise to hold that: (1) if the dismissal is based on a just cause under Article 282 but the employer failed to comply with the notice requirement, the sanction to be imposed upon him

[13] *Agabon v. National Labor Relations Commission*, *supra* note 11, at 617.

should be *tempered* because the dismissal process was, in effect, initiated by an act imputable to the employee; and (2) if the dismissal is based on an authorized cause under Article 283 but the employer failed to comply with the notice requirement, the sanction should be *stiffer* because the dismissal process was initiated by the employer's exercise of his management prerogative.[14]

In *Agabon*, the nominal damages awarded to the employees for a dismissal based on a just cause without the notice requirement was ₱30,000.00; while in *Jaka*, where the dismissal of the employees was based on an authorized cause under Article 283, but without the required notice under the same rule, we fixed the amount at ₱50,000.00.

Petitioner claims that in the above-mentioned cases, the relevant circumstances surrounding the case, particularly the financial condition of the employer, were taken into consideration in fixing the amount of nominal damages; that the amount of ₱50,000.00 for nominal damages awarded to the 12 employees in this case is not reasonable, since petitioner has been having a capital deficit of ₱43,629,974.46 for the last three years, with a stockholders' equity of only ₱2,750,000.00 or a capital impairment equivalent to more than 15 times its stockholders' equity. This impairment differs from that of *Jaka*, since the latter has a ₱200 million equity and only a 47% impairment of capital, with six employees terminated.

Petitioner's argument fails to persuade.

Jaka has presented its audited financial statement to show that it was in such serious financial distress as to justify the retrenchment of the employees concerned. As its retrenchment program was undertaken in 1997, its deficit had ballooned to 123.61% of the stockholders' equity; thus, a capital deficiency or impairment of equity ensued; in 1998, the deficit grew to ₱355,794,897.00 or 177% of the stockholder's equity. The deficit was shown to prove the ground for the employees' dismissal, but it was not the sole basis of the court in fixing the

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[14] *Jaka Food Processing Corporation v. Pacot*, *supra* note 12, at 124-126.

nominal damages in the amount of ₱50,000.00 for each employee for Jaka's failure to comply with the notice requirement. In the same manner, while petitioner in this case incurred a capital impairment which was much higher than its stockholders' equity, the same should not be the only basis for determining the amount of nominal damages that should be awarded. The gravity of the due-process violation should be taken into special consideration;[15] and, just like in Jaka, the sanction should be stiffer, because the dismissal process was initiated by the employer's exercise of its management prerogative.

Significantly, there was no *bona fide* attempt on the part of petitioner to comply with the notice requirements under Article 283 of the Labor Code. Records show that on November 7, 2000, respondents were refused entrance by the guards manning the gate of the Davao Fish Port Complex, based on a memorandum of even date issued by Romero, petitioner's Office Manager, stating that respondents had been terminated effective November 1, 2000. Respondents learned of the existence of such memorandum, which was posted only in the guardhouse on the day they were refused entrance to the gate. There was indeed no notice at all to respondents. Notably, there was not even any reason stated in the memorandum why they were being terminated. We cannot overemphasize the importance of the requirement of the notice of termination, for we have ruled in a number of cases that non-compliance therewith is tantamount to deprivation of the employee's right to due process.[16]

Nominal damages are adjudicated in order that a right of the plaintiff that 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.[17]

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[15] *Agabon v. National Labor Relations Commission, supra* note 71, at 616.

[16] *Bughaw v. Treasure Island Industrial Corporation*, G.R. No. 173151, March 28, 2008, 550 SCRA 307, 322, citing *Phil. Carpet Employees Association (PHILCEA) v. Sto. Tomas*, 483 SCRA 128, 140-141 (2006); *Ariola v. Philex Mining Corporation*, 466 SCRA 152, 171 (2005).

[17] Civil Code, Art. 2221.

Considering the circumstances in this case, we find no error committed by the CA in fixing the award of nominal damages in the amount of ₱50,000.00 for each respondent as indemnity for the violation of the latter's statutory rights.

Petitioner's reliance on *Viernes v. National Labor Relations Commission*[18] to support its claim for the reduction of the award of nominal damages is misplaced. The factual circumstances are different. *Viernes* is an illegal dismissal case, since there was no authorized cause for the dismissal of the employees; and the employer was ordered to pay backwages inclusive of allowances and other benefits, computed from the time the compensation was withheld up to the actual reinstatement. In addition, since the dismissal was done without due process, the nominal damages awarded was only ₱2,590.00 equivalent to one-month salary of the employee. In this case, the dismissal was valid, as it was due to an authorized cause, but without the observance of procedural due process, and the only award given was nominal damages.

WHEREFORE, the petition is *DENIED*. The Decision dated June 27, 2005 and the Resolution dated September 22, 2006 of the Court of Appeals, Mindanao Station, Cagayan de Oro City, in CA-G.R. SP No. 73093 are *AFFIRMED*.

SO ORDERED.

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

[18] G.R. No. 108405, April 4, 2003, 400 SCRA 557.

SECOND DIVISION

[G.R. No. 176070. October 2, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ANTON MADEO,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; THE CONVICTION OF AN ACCUSED OF RAPE BASED ON THE MENTAL RETARDATION OF THE VICTIM MUST BE ANCHORED ON PROOF BEYOND REASONABLE DOUBT OF HER MENTAL RETARDATION. — The basic postulate in criminal prosecution anchored on the constitution is that the prosecution is burdened to prove the guilt of the accused for the crime charged beyond cavil of doubt. The prosecution is burdened to prove conclusively and indubitably not only that appellant had carnal knowledge of AAA but also that she was a mental retardate. The conviction of an accused of rape based on the mental retardation of AAA must be anchored on proof beyond reasonable doubt of her mental retardation. We examined closely the testimony of AAA and we find the same to be coherent and categorical. In assessing her level of intelligence and capacity to comprehend, the trial court propounded several questions which were all satisfactorily answered by AAA.

2. ID.; ID.; ID.; ABSENT IN CASE AT BAR. — Based on the testimony of AAA, we are convinced that she is not a mental retardate. In addition, we find that although it was specifically alleged in the Information that appellant knew of AAA's "mental disability, emotional disorder and/or physical handicap," still, no proof was presented that appellant indeed knew AAA's alleged mental deficiency.

3. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; INHERENTLY THE TWO WEAKEST DEFENSES; RATIONALE. — Both the trial court and the Court of Appeals correctly disregarded appellant's denial and alibi. These two defenses are inherently the weakest as they are negative defenses. Mere denials of involvement in a crime cannot take precedence over the positive testimony of the offended party. For alibi to prosper, it is not enough for the defendant to prove that he was somewhere else when the crime was committed;

he must likewise demonstrate that it is physically impossible for him to be at the scene of the crime at the time.

4. ID.; ID.; ID.; CANNOT OVERCOME THE AFFIRMATIVE TESTIMONY OF THE VICTIM. — In the instant case, AAA positively identified appellant as the author of the crime. It should be noted that affirmative testimony, like that of the victim's, is stronger than appellant's bare denial, which is a negative assertion. As regards appellant's alibi, we find that he failed to prove that it was physically impossible for him to be at the scene of the crime at the time it was committed. In view of the foregoing, we find that appellant was correctly found guilty of the crime of simple rape; *i.e.*, by having carnal knowledge of a woman committed through the use of force, threats or intimidation. Under Article 266-B of the Revised Penal Code, the penalty therefor is *reclusion perpetua*.

5. CRIMINAL LAW; RAPE; CIVIL LIABILITY; AWARD OF CIVIL INDEMNITY AND MORAL DAMAGES; WHEN PROPER. — Anent the award of damages, we find that the award of ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages is proper and in line with prevailing jurisprudence. Civil indemnity is mandatory upon a finding of the fact of rape. As to moral damages, the same is automatically granted without need of further proof, it being assumed that a rape victim has actually suffered moral damages entitling her to such award. However, the award of exemplary damages must be deleted. Article 2230 of the Civil Code provides that "in criminal offenses, exemplary damages as a part of civil liability may be imposed when the crime was committed with one or more aggravating circumstances." There being no aggravating circumstance in the instant case, the award of exemplary damages therefore has no basis. In *People v. Marcos*, we held that the award of exemplary damages is in order when the crime was committed with an aggravating circumstance pursuant to Article 2230 of the Civil Code.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

Rape is nothing more or less than a conscious process of intimidation by which a man keeps a woman in a state of fear and humiliation. Thus, it is not even impossible for a victim of rape not to make an outcry against an unarmed assailant.[1] Physical resistance is immaterial in a rape case when the victim is sufficiently intimidated by her assailant and she submits against her will because of fear for her personal safety.[2]

Assailed before us is the 16 October 2006 Decision[3] of the Court of Appeals in CA-G.R. CR-H.C. No. 01551 which affirmed the Decision[4] of the Regional Trial Court of Urdaneta City, Branch 46 in Criminal Case No. U-10600 finding appellant Anton Madeo guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the victim the sum of ₱50,000.00 as moral damages and ₱20,000.00 as exemplary damages, with modification that appellant is further ordered to pay the sum of ₱50,000.00 as civil indemnity.

On 4 April 2000, an Amended Information was filed charging appellant Anton Madeo with the crime of Rape committed as follows:

That on or about December 7, 1999, in the afternoon, at Labit West, Urdaneta City and within the jurisdiction of this Honorable Court, the above-named accused, knowing fully well of the mental disability, emotional disorder and/or physical handicap of the offended party, "AAA" [5] at the time of the commission of the rape, and by

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[1] *People v. Silvano*, G.R. No. 127356, June 29, 1999, 309 SCRA 362, 384.

[2] *People v. Domingo*, G.R. Nos. 153295-99, June 30, 2008, 556 SCRA 788, 803.

[3] *Rollo*, pp. 3-17; penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Associate Justices Edgardo P. Cruz and Enrico A. Lanzanas.

[4] Records, pp. 111-118; penned by Judge Modesto C. Juanson.

[5] The names and personal circumstances of the victim, as well as those of their immediate family or household members, or any other information

means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with said "AAA," against her will and without her consent, to her damage and prejudice.

Contrary to Art. 266-A, par. 1(a), Revised Penal Code, as amended by Rep. Acts 7659 and 8353.[6]

During arraignment, appellant entered a plea of "not guilty."[7] Trial on the merits thereafter ensued.

The prosecution presented Dr. Noel U. Obedoza who testified that he examined AAA on 5 January 2000. According to Dr. Obedoza, the victim was conscious and coherent during the interview.[8] However, the physical examination results indicated that she had a ruptured hymen and healed hymenal lacerations[9] about three weeks old.[10] On the other hand, Dr. Bernadette M. Quitoriano testified that she conducted psychological and mental examinations on the person of AAA whom she found to have a mental age of a 5 ½ year old.[11]

AAA's mother also testified that on 5 January 2000, she noticed that her daughter was pale and trembling; that when asked if she has any problem, AAA answered "none";[12] that when further asked if somebody touched her private parts, AAA cried and told her that appellant touched her private parts and warned her not to tell anyone or he would kill her family;[13] that she and her husband immediately brought AAA to a hospital for examination and to the NBI to report the crime.[14]

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tending to establish or compromise their identities, shall not be disclosed pursuant to *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 425-426.

6 Records, p. 40.

7 *Id.* at 45.

8 TSN, May 8, 2000, p. 5.

9 *Id.*

10 *Id.* at 8.

11 TSN, May 9, 2000, p. 6.

12 TSN, May 16, 2000, p. 7.

13 *Id.* at pp. 8-9.

14 *Id.* at 11-15.

Complaining witness, AAA, also took the witness stand. She testified that on 7 December 1999 at about 3 o'clock in the afternoon, she was on her way to her grandmother's house when her classmate, Jovelyn Fortuna (Jovelyn), invited her to the house of her uncle, herein appellant Madeo;[15] that soon thereafter Jovelyn left AAA alone with appellant[16] who summoned AAA to his room; that when she did not comply, appellant forcibly pulled her inside the room,[17] undressed her and thereafter touched her private parts;[18] that appellant likewise undressed, ordered AAA to lie down, went on top of her and proceeded to have carnal knowledge of her;[19] that she felt pain in her private parts;[20] that thereafter, appellant warned AAA not to reveal to anyone what happened or he would kill her and her family; that after the sexual assault, appellant put on his pants; that AAA also put on her shorts and was told to go home;[21] that after some time she narrated the incident to her mother who brought her to the hospital for medical examination and to the NBI to report the incident.[22]

The defense presented Jovelyn as its first witness. She testified that she was staying at her grandmother's house at Labit West, Urdaneta City, Pangasinan;[23] that her uncle, appellant herein, also stays in the said house;[24] that on 7 December 1999 she was sick[25] and did not see her uncle or AAA.[26]

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[15] TSN, May 23, 2000, pp. 5-6.

[16] *Id.* at 7.

[17] *Id.*

[18] *Id.* at 8.

[19] *Id.* at 9.

[20] *Id.*

[21] *Id.* at 9-10.

[22] *Id.* at 11-14.

[23] TSN, June 7, 2000, pp. 4-5.

[24] *Id.* at 6.

[25] *Id.* at 5.

[26] *Id.* at 6.

Melanie Andrada also testified for the defense. She claimed that Jovelyn is her niece while appellant is her cousin;[27] that on 7 December 1999, she visited Jovelyn who was sick;[28] and that during her visit, she did not see AAA or appellant.[29]

The defense also presented Olimpia Yesa who testified that on 7 December 1999, from 3 to 7 p.m., she was at the house of Epifania Madeo, appellant's mother, as she was treating Jovelyn who was sick.[30]

To establish the whereabouts of appellant, the defense presented Virgilio Jacob who testified that on 7 December 1999, he and appellant were working in a mobile rice mill owned by Roger Madolid at Labit West, Urdaneta City.[31]

Finally, the defense presented appellant who denied the charges against him. He claimed that on 7 December 1999, he was working at the rolling rice mill together with Berting Jacob, Etong, Rommel, Roger Madolid who owned the rice mill and another person whose name he forgot;[32] that from 6 o'clock in the morning up to 6 o'clock in the afternoon, they traveled to several *barangays* in Urdaneta City to mill rice; and that he did not see the victim on said date.[33] On cross-examination, appellant averred that he did not have any quarrel with the victim and that he could not understand why the latter would file the charges against him.[34]

On rebuttal, the prosecution presented Roger Madolid who denied hiring Virgilio Jacob and appellant as workers in his rolling rice mill. He testified that on 7 December 1999, his

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[27] TSN, June 20, 2000, pp. 2-3.

[28] *Id.* at 4.

[29] *Id.* at 6.

[30] TSN, June 21, 2000, pp. 5-6.

[31] TSN, June 27, 2000, p. 3.

[32] TSN, June 28, 2000, p. 6.

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

[34] *Id.* at 12-13.

rolling rice mill was under repair at the Andrada Repair Shop in Nancamaliran, Urdaneta City.[35]

On 24 August 2000, the Regional Trial Court of Urdaneta City, Branch 46, rendered its Decision, the dispositive portion of which reads:

> WHEREFORE, JUDGMENT is hereby rendered, CONVICTING ANTON MADEO beyond reasonable doubt of the crime of SIMPLE RAPE and the Court sentences him to suffer the penalty of *Reclusion Perpetua*; Anton Madeo is hereby ordered to indemnify "AAA" the sum of ₱50,000.00 as moral damages and ₱20,000.00 as exemplary damages.
>
> The Branch Clerk of Court of this Court is hereby ordered to prepare the *mitimus* immediately.
>
> The Jail Warden, Bureau of Jail Management and Penology (BJMP) Urdaneta District Jail, Urdaneta City, is hereby ordered to deliver the living person of Anton Madeo to the National Bilibid Prisons, Muntinlupa City, immediately upon receipt of this Decision.
>
> SO ORDERED.[36]

The trial court held that although Dr. Quitoriano testified that AAA has a mental age of 5 ½ years old, the latter is only simple-minded as she was able to finish grade school and has a mental age of more than seven years old. The court below found the testimony of the victim credible and straightforward and corroborated by the medical findings. Likewise, the age of the healed hymenal lacerations coincided with the date of the commission of the crime. On the other hand, the court below disregarded appellant's alibi for being self-serving.

Appellant filed an appeal before the Court of Appeals. In his Brief,[37] he alleged that the trial court erred in finding that he employed force and intimidation in consummating the rape.[38]

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[35] TSN, July 11, 2000, p. 3.

[36] Records, p. 118.

[37] CA *rollo*, pp. 39-54.

[38] *Id.* at 49.

He also argued that the victim's actuations did not show the kind of resistance expected of a woman defending her virtue. In particular, appellant asserted that AAA voluntarily accepted the invitation to enter appellant's room; that she did not make any outcry or sought the help of the neighbors despite the lack of danger to her life; that she was not rendered unconscious during the intercourse; that she only used her hands but not her feet in warding off appellant's advances; and that the medical report did not indicate that AAA suffered any physical injury.[39]

Appellant likewise argued that the trial court erred in finding that the victim was mentally deficient.[40] He alleged that when AAA was presented on the witness stand, she was 22 years old and was in 2nd year high school.[41] Finally, appellant alleged that the victim may have been coerced by her mother to testify falsely against him in order to have the sole management of the land which she jointly tills with the appellant.[42]

In the Appellee's Brief,[43] the Office of the Solicitor General countered that appellant's argument of consensual congress should be dismissed because it was clearly established that appellant employed force, threats and intimidation. It was also shown that AAA was deceived to join Jovelyn inside the house of appellant; that the victim's failure to shout could not yield the inference that no rape was committed; and that the mental retardation of AAA was proven beyond reasonable doubt.

On 16 October 2006, the Court of Appeals rendered its Decision affirming with modification the Decision of the Regional Trial Court, the dispositive portion of which reads:

WHEREFORE, premises considered, the instant appeal is hereby **DISMISSED**, and the Decision appealed from rendered by the Regional Trial Court of Urdaneta City, Branch 46, dated August 24,

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

[40] *Id.* at 51.

[41] *Id.* at 52.

[42] *Id.* at 115.

[43] *Id.* at 65-80.

2000, in Criminal Case No. U-10600 is hereby **AFFIRMED with the MODIFICATION** that accused-appellant is hereby **ORDERED** to pay private complainant an additional Fifty Thousand Pesos (₱50,000.00) as and by way of civil indemnity.

SO ORDERED.[44]

The appellate court noted that the issues raised by appellant deal with the victim's credibility and appreciation of facts, both of which lie in the province of the trial court. At any rate, the Court of Appeals found that the trial court did not overlook or mis-appreciate any material fact that warrants a reversal of its findings.[45]

The appellate court likewise found that the victim testified in a spontaneous and straightforward manner; that there was nothing in her testimony that detracts from her claim that she was indeed raped; that her failure to make an outcry did not mean that she was not raped; that the fact that she did not shout could be attributed to the warning she received from the appellant; that it is not true that the victim did not resist the advances of the appellant; and that AAA's failure to offer tenacious resistance does not make her submission to the criminal acts of the appellant voluntary.[46]

Anent the award of damages, the Court of Appeals held that AAA is entitled to an additional amount of ₱50,000.00 by way of indemnity *ex delicto*.[47]

On 7 March 2007, the Court resolved to notify the parties to file, if they so desire, their respective supplemental briefs.[48] Both parties manifested that they were no longer submitting their supplemental briefs since they have already extensively discussed their arguments in their respective briefs.[49]

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[44] *Rollo,* p. 16.

[45] *Id.* at 11-12.

[46] *Id.* at 12-14.

[47] *Id.* at 16.

[48] *Id.* at 18.

[49] *Id.* at 19-20 & 22-23.

Article 266-A of the Revised Penal Code provides:

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 is present;

x x x x x x x x x.

Thus, in the instant case, the prosecution must prove beyond reasonable doubt that appellant had carnal knowledge of AAA through the use of force, threats or intimidation.

We have carefully examined the records of the case and we find that both the trial court and the Court of Appeals correctly held that appellant is guilty of the crime of simple rape. The testimony of the victim clearly established that appellant had sexual intercourse with her without her consent and against her will by employing force, threats and intimidation. Her narration of her harrowing experience is enlightening, thus:

Q On December 7, 1999 at 3:00 0'clock in the afternoon, do you remember where you were?

A Yes, sir.

Q Where were you?

A I was walking going to the house of my grandmother, sir.

Q Were you able to reach the house of your grandmother on that date and time?

A No, sir.

Q Why were you not able to reach the house of your

grandmother?

A That was the time when Anton Madeo raped me, sir.

Q Will you kindly tell this Honorable Court how this incident happened and started?

A I was walking going to the house of my grandmother, Jovelyn called me, sir.

Q What is the family name of this Jovelyn?

A I only know her to be Jovelyn, sir.

COURT Is he a man or a woman?

A A woman, sir.

ATTY. BONGOLAN Do you know if this Jovelyn who called you has any relationship with Anton Madeo?

A Yes, sir.

Q How are they related?

A Jovelyn is the niece of Anton Madeo, sir.

Q Where was Jovelyn when she called you?

A She was in the yard of Madeo, sir.

COURT So, you were walking and called by Jovelyn in the yard of Madeo?

A Yes, sir.

ATTY. BONGOLAN What did she say when she called you?

A Jovelyn told me, "come AAA I have something to tell you".

COURT Is that your nickname AAA?

A Yes, sir.

ATTY BOLONGAN What did you do?

A I responded to the call of Jovelyn, sir.

Q What happened when you got near Jovelyn?

A We greeted each other, sir.

Q What else?

A She invited me to get inside the house, sir.

Q Do you know where Anton Madeo was at the time?

A Yes, sir.

Q Where was he?

A Inside their house, sir.

Q Did you go inside the house as invited by Jovelyn?

A Yes, sir.

Q When you got inside the house did you notice any other person aside from the three of you?

A No more, sir.

COURT

By the way, the place where you were walking is it a pathway, barrio road or municipal road?

A It is a road, sir.

Q The place where Jovelyn was at the time, was it divided by a wall or barb wire or nothing was placed in between the road?

A None, sir.

Q When you were already inside the house of Anton Madeo and Jovelyn, what did Jovelyn do?

A She went out laughing, sir.

Q After she left what happened?

A (No answer yet, a question was raised by the Court).

COURT Did you find out why she was laughing?

A Yes, sir.

Q What was the reason why she went out laughing?

A Because she told, "come AAA inside the house".

Q Do you know the reason why she went out x x x and why she went out laughing?

A Because Anton Madeo pulled me inside his room, sir.

Q Did you comply?

A No, sir, I did not?

Q What is your understanding when Jovelyn went out laughing?

A She was laughing, sir.

Q Is it because you were left alone with Anton Madeo and she went out laughing?

A Yes, sir.

ATTY BOLONGAN Before Anton Madeo pulled you to his room, what did he do then?

A He warned me and he said: "if you shout I will kill you".

COURT Where did he pull you?

A In his room, sir.

Q Otherwise what?

A He will kill me, sir.

ATTY BOLONGAN After he pulled you to his room and warned if you will scream or shout what did he do next if any?

A He suddenly undressed me, sir.

Q Will you tell us how he undressed you?

A He held my two hands and then he undressed me, sir.

Q What part of your dress was removed first?

A My shorts, sir.

Q While he was removing your shorts what did you do if you did anything?

A I was pushing him but he was heavy I cannot push him away, sir.

Q After that what did he do if any?

A And then he removed my panty, sir.

Q What did he do to you when your panty was being removed?

A He touched my vagina, sir.

COURT The touching of your vagina, is it actual touching or inserting his penis or some other way?

A After touching my vagina he undressed himself, sir.

ATTY. BOLONGAN After undressing himself what did he do next if any?

A I was made to lie down and then he went on top of me, sir.

Q When he went on top of you what did you do?

A I was struggling but I cannot push him because he was heavy, sir.

Q When he was on top of you and you were trying to free yourself struggling what happened next?

A He forced his organ to insert in my vagina, sir.

COURT When you said, "he forced his organ in my vagina" what do you mean by his organ?

A His penis, sir.

COURT She is not a retarded.

ATTY BOLONGAN That is according to the findings of the Doctor, Your Honor.

Q When he forcibly inserted his penis into your private parts what did you feel?

A My vagina is painful, sir.

Q How long was he on top of you after inserting his penis in your vagina?

A A little bit long, sir.

Q Can you estimate how long he was on top of you?

COURT If I were you I will not ask that question that is dangerous.

ATTY BOLONGAN I will withdraw the question, Your Honor.

ATTY BOLONGAN After that what happened?

A He said, "if you will not give what I want, I will kill you together with your father and mother".

Q I am asking what he did if any after he was already on top of you and after he inserted his penis into your organ?

A The penis was inserted in my vagina, sir.

Q After that what did he do?

A After that he warned me and he said, "if you shout I will kill you and your parents".

Q Did he finally get off from you?

A Yes, sir.

Q What did he do after he got off from you?

A He put on his pants, sir.

Q How about you?

A I also put on my shorts and stood up, sir.

Q When you stood up, did you notice something in your person?

A Yes, sir.

Q What was that?

A My vagina was bleeding, sir.

Q Before that incident were you already touched by a man?

A None except him, sir.

Q Did he tell you anything as you put on your dress?

A Yes, sir.

Q What did he tell you?

A I was sent home, sir.

Q Did he not tell you anything more?

A If you report I will kill you and your father and mother.

Q But inspite of that threat did you report this matter to anyone?

A Yes, sir.

Q To whom did you report?

A My mother, sir.

Q What did your mother do when you reported to her?

A My mother reported the same to my father, sir.

Q What did your parents do if they did anything?

A I was examined at the Center, sir.

Q You are referring to the Rural Health Unit of Urdaneta City?

A Yes, sir.

Q Were you brought to any hospital for further examination?

A Yes, sir.

Q Where were you brought, what hospital?

A At the Center, sir.

Q Aside from the Center where were you brought?

A Emergency hospital, sir.

Q Are you referring to Don Amadeo Perez Memorial General Hospital?

A Yes, sir.

Q Who was with you when you were brought there?

A My mother, sir.

Q What happened first in the hospital?

A We were asked questions, sir.

Q When you said "we" who were your companions?

A My mother, sir.

Q Do you know who interviewed you at the hospital?

A I forgot the name, sir.

Q After you were interviewed what happened next?

A I was submitted for examination to determine pregnancy test, sir.

Q Do you remember having been examined by a Doctor?

A Yes, sir.

Q Do you know the Doctor who examined you in the hospital?

A I forgot the name, sir.

Q After you were examined in the hospital do you know if this matter was brought to the authorities?

A Yes, sir.

Q Where, what Police station or authorities?

A At the NBI, sir.

Q Where is that office of the NBI where you were brought?

A Urdaneta City, sir.

Q What happened at the NBI Office?

A We were asked questions, sir.[50]

We find no merit in appellant's contention that the victim's actuations did not show the kind of resistance expected of a woman defending her virtue. Time and again, we have held that "the behavior and reaction of every person cannot be predicted with accuracy. It is a time-honored precept 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 or frightful experience. Not every rape victim can be expected to act conformably to the usual expectations of everyone. Some may shout; some may faint; and some may be shocked into insensibility; while other may openly welcome the intrusion."[51]

Besides, AAA's failure to cry for help during the incident in question, did not make her testimony improbable inasmuch as it is not uncommon for a woman to be easily intimidated into silence and conceal for sometime the violation of her honor, even by the mildest threat to her life.[52] In her testimony, AAA explained that she did not shout because she was intimidated

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[50] TSN, May 23, 2000, pp. 4-13.

[51] *People v. Silvano, supra* note 1, at 392.

[52] See *People v. Orande*, G.R. Nos. 141724-27, November 12, 2003, 415 SCRA 699, 707.

by the appellant, who repeatedly warned that she and her family would be killed if she would refuse to give in to his demands, thus:

Q Why did you not tell your mother immediately on that date, December 7, 1999, when you arrived home from the place where you were allegedly raped?

A I did not report immediately because I was afraid because Anton threatened me.[53]

x x x x x x x x x

Q Since you did not like to be alone with Madeo, why did you allow Jovelyn to leave without you?

A She just left.

Q Why did you not follow her since you were alone in a house with another man?

A Because Madeo threatened me if I shout he will kill my father and mother.

Q That is correct when Jovelyn left, but before Jovelyn left, why did you not follow her immediately?

A I was scared that is why I was not able to follow.

x x x x x x x x x

Q Since you were already scared and afraid, why did you not leave the house when Jovelyn was still there?

A I was threatened, sir.[54]

x x x x x x x x x

Q On questions of this Honorable Court, you testified that your mouth was not covered, you were conscious all through out that process did you shout or scream for help?

A No, sir.

Q Why not?

A Because I was threatened.[55]

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[53] TSN, May 24, 2000, p. 2.

[54] *Id.* at pp. 8-9.

[55] *Id.* at pp.15-16.

Our ruling in *People v. Silvano*[56] is instructive, to wit:

> For his defense, appellant claims among others, that the victim offered only a token resistance when the alleged sexual acts were being done. Be that as it may, the failure to shout or offer tenacious resistance cannot be construed as a voluntary submission to appellant's desires. It is enough if the prosecution had proven that force or intimidation concurred in the commission of the crime, as in this case. The law does not impose upon a rape victim the burden of proving resistance. Moreover, physical resistance need not be established in rape when intimidation is exercised upon the victim and she submits herself against her will to the rapist's lust because of fear for her life or personal safety. The force, violence, or intimidation in rape is a relative term, depending not only on the age, size, and strength of the parties but also on their relationship with each other.

The imputation that AAA was coerced by her mother to file the charges against appellant in order to have exclusive rights to the land they presently jointly cultivate, is unbelievable. It is outrageous even to suggest that a mother would subject her daughter to a public trial, ridicule and embarrassment and to all the rigors that go with it, just for the purpose of increasing one's harvest. Besides, this imputation is totally lacking in any factual basis. From AAA's and her mother's testimony, we could only discern an honest and sincere desire "to solely seek justice and obtain redress for the unforgivable and wicked acts committed upon her."

Anent AAA's state of mind, we find that we cannot subscribe to the findings that AAA's mental age is that of a 5 ½ years old, or even a seven year-old. The basic postulate in criminal prosecution anchored on the constitution is that the prosecution is burdened to prove the guilt of the accused for the crime charged beyond cavil of doubt. The prosecution is burdened to prove conclusively and indubitably not only that appellant had carnal knowledge of AAA but also that she was a mental retardate.[57]

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[56] *Supra* note 1, at 383-384.

[57] *People v. Dalandas*, G.R. No. 140209, December 27, 2002, 394 SCRA 433, 438.

The conviction of an accused of rape based on the mental retardation of AAA must be anchored on proof beyond reasonable doubt of her mental retardation.[58] We examined closely the testimony of AAA and we find the same to be coherent and categorical. In assessing her level of intelligence and capacity to comprehend, the trial court propounded several questions which were all satisfactorily answered by AAA, thus:

Q Do you recognize the people around the bench, do you know them?

A Not yet, sir.

Q You don't know their names, can you tell us their occupation or calling are they Doctors, Police or what?

A Lawyers, sir.

Q Who are your parents?

A BBB and CCC, sir.

Q What does your father do for a living?

A He is a farmer, sir.

Q About your mother?

A Housekeeper, sir

Q Do you wear bra?

A No, sir.

Q Do you understand bra?

A Yes, sir.

Q You don't have any bra?

A I have, sir.

Q Do you have panty?

A Yes, sir.

Q Do you go to school?

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[58] *Id.* at 441.

A Yes, sir.

Q What grade?

A Second year high school, sir.

Q What school?

A Catablan, sir.

Q What municipality is Catablan?

A Urdaneta, sir.

Q What are your subjects in second year high school?

A English, Pilipino, Hekasi, sir.

Q What is your favorite subject aside from recess?

A Pilipino, sir.

Q Do you know who is your teacher in Pilipino?

A Mercedita, sir.

Q You comb your hair personally or with the assistance of your mother?

A Me, sir.

Q Do you take a bath alone?

A Yes, sir.

Q Without the assistance of your mother?

A Yes, sir.

Q Do you dress up alone?

A Yes, sir.

Q Do you put your bra alone?

A Yes, sir.

Q Do you put your panty alone?

A Yes, sir.

Q About your shoes?

A Yes, sir.

Q Do you use shampoo in your hair?

A Yes, sir.

Q Do you use soap?

A Yes, sir.

Q What kind of soap?

A Safeguard, sir.[59]

Based on the testimony of AAA, we are convinced that she is not a mental retardate.[60]

In addition, we find that although it was specifically alleged in the Information that appellant knew of AAA's "mental disability, emotional disorder and/or physical handicap," still, no proof was presented that appellant indeed knew AAA's alleged mental deficiency. In *People v. Limio*,[61] we held that:

> By itself, the fact that the offended party in a rape case is a mental retardate does not call for an imposition of the death penalty, unless knowledge by the offender of such mental disability is specifically alleged and adequately proved by the prosecution.
>
> For the Anti-Rape Law of 1997, now embodied in Article 266-B of the Revised Penal Code (RPC), expressly provides that the death penalty shall also be imposed if the crime of rape is committed with the qualifying circumstance of "(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." Said knowledge, in our view, qualifies rape as a heinous offense. Absent said circumstance, which must be proved by the prosecution beyond reasonable doubt, the conviction of appellant for qualified rape under Art. 266-B (10), RPC, could not be sustained, although the offender may be held liable for simple rape and sentenced to *reclusion perpetua*.

Both the trial court and the Court of Appeals correctly disregarded appellant's denial and alibi. These two defenses

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[59] TSN, May 9, 2000, pp. 13-15.

[60] See *People v. Dalandas*, *supra* note 57, at 442.

[61] G.R. Nos. 148804-06, May 27, 2004, 429 SCRA 597, 602.

are inherently the weakest as they are negative defenses. Mere denials of involvement in a crime cannot take precedence over the positive testimony of the offended party. For alibi to prosper, it is not enough for the defendant to prove that he was somewhere else when the crime was committed; he must likewise demonstrate that it is physically impossible for him to be at the scene of the crime at the time.[62]

In the instant case, AAA positively identified appellant as the author of the crime. It should be noted that affirmative testimony, like that of the victim's, is stronger than appellant's bare denial, which is a negative assertion. As regards appellant's alibi, we find that he failed to prove that it was physically impossible for him to be at the scene of the crime at the time it was committed.

In view of the foregoing, we find that appellant was correctly found guilty of the crime of simple rape; *i.e.*, by having carnal knowledge of a woman committed through the use of force, threats or intimidation. Under Article 266-B of the Revised Penal Code, the penalty therefor is *reclusion perpetua*.

Anent the award of damages, we find that the award of ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages is proper and in line with prevailing jurisprudence.[63] Civil indemnity is mandatory upon a finding of the fact of rape. As to moral damages, the same is automatically granted without need of further proof, it being assumed that a rape victim has actually suffered moral damages entitling her to such award. However, the award of exemplary damages must be deleted. Article 2230 of the Civil Code provides that "in criminal offenses, exemplary damages as a part of civil liability may be imposed when the crime was committed with one or more aggravating circumstances." There being no aggravating circumstance in the instant case, the award of exemplary damages therefore has no basis. In *People vs.*

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[62] *People v. Bon*, G.R. No. 166401, October 30, 2006, 168 SCRA 185-186.

[63] See *People v. Arcosiba*, G.R. No. 181081, September 4, 2009; *People v. Ganoy*, G.R. No. 174370, July 23, 2009.

Marcos[64] we held that the award, of exemplary damages is is order when the crime was committed with an aggravating circumstance pursuant to Article 2230 of the Civil Code.

WHEREFORE, the 16 October 2006 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01551 finding appellant Anton Madeo guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the victim the sum of ₱50,000.00 as moral damages, and ₱50,000.00 as civil indemnity, is *AFFIRMED with MODIFICATION* that the award of ₱20,000.00 as exemplary damages is *DELETED.*

SO ORDERED.

Ynares-Santiago,[*] *Carpio Morales (Chairperson), Peralta,* [**] and *Abad, JJ.,* concur.

SPECIAL THIRD DIVISION

[G.R. No. 176566. October 2, 2009]

ELISEO EDUARTE *y* COSCOLLA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; INDETERMINATE SENTENCE LAW; MINIMUM AND MAXIMUM PENALTY; DETERMINED. — Under Section 1 of the Indeterminate Sentence Law, the

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[64] G.R. No. 185380, June 18, 2009.

[*] Additional member per Special Order No. 691 dated September 4, 2009.

[**] In lieu of Justice Arturo D. Brion who is on sick leave, per Special Order No. 711 dated September 28, 2009.

Court may impose a minimum term which shall be within the range of the penalty next lower prescribed by the Revised Penal Code. In determining the minimum penalty, the law confers upon the courts in fixing the penalties the widest discretion that the courts have ever had. The determination of the minimum term is left entirely within the discretion of the court to fix it anywhere within the range of the penalty next lower without reference to the periods into which it may be subdivided. In the exercise of Our discretion, and considering the circumstances (*i.e.*, gainfully employed for the past 15 years in a reputable company and involvement in civic activities) that have arisen after the commission of the felony, we lower the minimum of the indeterminate sentence to four (4) months and one (1) day of *arresto mayor*. We now go to the maximum term of the indeterminate sentence. As mentioned in Section 1 of the Indeterminate Sentence Law, the maximum term shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code. In the instant case, the maximum term has a range of *prision correccional* in its maximum period to *prision mayor* in its medium period, or four (4) years, two (2) months and one (1) day to ten (10) years. The maximum term of the indeterminate penalty is broken down as follows: Minimum: 4 years, 2 months and 1 day to 6 years, 1 month and 10 days Medium: 6 years, 1 month and 11 days to 8 years and 20 days Maximum: 8 years and 21 days to 10 years. In our decision, we affirmed the maximum term of eight (8) years imposed by the Court of Appeals, which is in the medium period (6 years, 1 month and 11 days to 8 years and 20 days) of the maximum term, considering that we did not find any modifying circumstance.

2. ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; WHEN PRESENT. — In the case before us, accused-appellant was arrested by the police without resistance. Even before accused-appellant was arrested, he suggested to private complainant that they go to the police station. In addition, when private complainant and her friend left accused-appellant to seek the assistance of the police, accused-appellant, despite having the opportunity to flee, did not leave. The confluence

of these circumstances justifies the appreciation of a mitigating circumstance of similar nature and analogous to that of number 7 of Article 13 (voluntary surrender) in favor of accused-appellant. If accused-appellant really wanted to abscond, he could have readily done so. This, he did not do. We therefore pronounce that accused-appellant is entitled to a mitigating circumstance under number 10 of Article 13 of the Revised Penal Code.

CARPIO MORALES,* ***J.,*** *concurring and dissenting opinion:*

CRIMINAL LAW; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; NON-FLIGHT OF THE ACCUSED–APPELLANT IS NOT ANALOGOUS TO VOLUNTARY SURRENDER; RATIONALE; CASE AT BAR. — Accused-appellant's suggestion to go to the police station was apparently meant to "clear his name" against the private complainant's accusation (*Vide*: People v. Abella, 393 Phil. 513, 538 [2000]) and not to acknowledge his guilt. In the same vein, accused-appellant's "non-flight" is not analogous to voluntary surrender. His supposed actuation of staying put is consistent with the bravado he had initially displayed when he casually walked inside a food chain store as if nothing happened and thereafter flaunted a police badge and introduced himself as a policeman to the private complainant and her friend.

APPEARANCES OF COUNSEL

Carolina C. Griño-Aquino for petitioner.
The Solicitor General for respondent.

* Associate Justice Conchita C. Carpio Morales was designated to sit as additional member replacing Associate Justice Presbitero J. Velasco, Jr., per Raffle dated 29 June 2009.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

For Resolution is accused-appellant's Motion for Reconsideration, Compassion and Reduction of Penalty dated 26 May 2009.

On 16 April 2009, this Court affirmed *in toto* the decision of the Court of Appeals dated 12 August 2004 convicting accused-appellant of the crime of Robbery. The dispositive portion of Our decision reads:

> WHEREFORE, IN VIEW OF THE FOREGOING, the instant petition is DENIED. The Decision dated 12 August 2004 of the Court of Appeals in CA-G.R. CR No. 26716 affirming the conviction of Eliseo Eduarte *y* Coscolla for the crime of Robbery and sentencing him to suffer the prison term ranging from 4 years and 2 months of *prision correccional* as minimum to 8 years [of] *prision mayor* as maximum, is hereby affirmed *in toto*. He is ordered to pay private complainant Catherine Navarra the amount of ₱8,875.00 by way of restitution.[1]

In this instant motion, accused-appellant, being aware that it is no longer practicable to change the Court's verdict guilty against him or to shake the Court's faith in the credibility of his accuser, instead pleads, out of compassion for him and his family, that we reduce the maximum period of his sentence from eight years to six years in order that he may apply for probation and continue to work as a messenger at Unilever Philippines, where he has been employed since 1994 or for more than 15 years.

Accused-appellant discloses that he is the sole breadwinner of his family. If he is imprisoned, there will be no one to support his wife and two children. If his wife, who is a plain housewife, works as a domestic helper or nanny for other people's children, no one will be left at home to care for their children.

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[1] *Rollo,* p. 149.

Accused-appellant stresses that, except for this case, he has no previous criminal record. He appends several Certifications,[2] in addition to those he already attached during trial, issued by his immediate superiors at Unilever Philippines, the parish priest in his parish and the *Barangay* Chairperson of his *barangay* at Cristobal Street, Paco Manila, to attest that he is a person of good moral character with a good reputation in his community.

Accused-appellant further emphasizes that since the imposable penalty on him under the Indeterminate Sentence Law ranges from a minimum of *arresto mayor* maximum (4 months and 1 day to 4 years and 2 months) to a maximum of *prision mayor* medium (6 years and 1 day to 8 years), his prayer for the reduction of his maximum penalty to six (6) years, so that he may be eligible for probation, is not too much to ask considering that only one (1) day separates 6 years from the minimum of the maximum penalty (6 years and 1 day to 8 years) imposable by law for the offense charged.

Counsel for accused-appellant believes that the ends of justice and the best interests of the public and that of accused-appellant and his family will be served by allowing accused-appellant to avail himself of the benefits of probation. Counsel for accused-appellant, who personally knows the latter, asserts that accused-appellant is not a vagrant or a good-for-nothing bum in need of correctional treatment that can be provided by putting him in a penal institution. In fact, he has, for the past fifteen years, been steadily and gainfully employed in a reputable corporation where his immediate superiors have vouched for his good character and conduct.

The penalty for simple robbery, the felony committed by accused-appellant, is provided for in Article 294 of the Revised Penal Code. Said article reads:

ART. 294. Robbery with violence against or intimidation of persons – Penalties. – Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

x x x x x x x x x

[2] Annexes "A" to "D."

5. The penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period in other cases.

The penalty prescribed under Article 294(5) is *prision correccional* in its maximum period to *prision mayor* in its medium period, that is, four (4) years, two (2) months and one (1) day to ten (10) years. Applying the Indeterminate Sentence Law,[3] the penalty imposable should be an indeterminate penalty whose minimum term should be within the range of the penalty next lower in degree, which is *arresto mayor* in its maximum period to *prision correccional* in its medium period, or four (4) months and one (1) day to four (4) years and two (2) months, and whose maximum term should be the proper period of *prision correccional* in its maximum period to *prision mayor* in its medium period, or four (4) years, two (2) months and one (1) day to ten (10) years, taking into account the proven modifying circumstance.

In our decision dated 16 April 2009, we inadvertently declared that the medium period of the maximum term of the indeterminate sentence is *prision mayor* in its minimum period which has a range of 6 years and 1 day to 8 years. This has to be rectified. The medium period of the maximum term is six (6) years, one (1) month and eleven (11) days to eight (8) years and twenty (20) days.

After taking a second hard look at the records and transcripts of stenographic notes (TSN), as well as the state of affairs of accused-appellant's life, we opt to modify the penalty imposed on him.

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[3] 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 under the rules of the said Code, and the minimum of 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 the minimum shall not be less than the minimum term prescribed by the same.

We first determine the minimum term of the indeterminate sentence to be imposed on accused-appellant. The minimum term is *arresto mayor* in its maximum period to *prision correccional* in its medium period, or four (4) months and one (1) day to four (4) years and two (2) months. Under Section 1 of the Indeterminate Sentence Law, the Court may impose a minimum term which shall be within the range of the penalty next lower prescribed by the Revised Penal Code. In determining the minimum penalty, the law confers upon the courts in fixing the penalties the widest discretion that the courts have ever had. The determination of the minimum term is left entirely within the discretion of the court to fix it anywhere within the range of the penalty next lower without reference to the periods into which it may be subdivided.[4] In the exercise of Our discretion, and considering the circumstances (*i.e.*, gainfully employed for the past 15 years in a reputable company and involvement in civic activities) that have arisen after the commission of the felony, we lower the minimum of the indeterminate sentence to four (4) months and one (1) day of *arresto mayor*.

We now go to the maximum term of the indeterminate sentence. As mentioned in Section 1 of the Indeterminate Sentence Law, the maximum term shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code. In the instant case, the maximum term has a range of *prision correccional* in its maximum period to *prision mayor* in its medium period, or four (4) years, two (2) months and one (1) day to ten (10) years. The maximum term of the indeterminate penalty is broken down as follows:

Minimum: 4 years, 2 months and 1 day to 6 years, 1 month and 10 days

Medium: 6 years, 1 month and 11 days to 8 years and 20 days

Maximum: 8 years and 21 days to 10 years

In our decision, we affirmed the maximum term of eight (8) years imposed by the Court of Appeals, which is in the medium

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[4] *People v. Ducosin*, 59 Phil. 109, 116 (1933).

period (6 years, 1 month and 11 days to 8 years and 20 days) of the maximum term, considering that we did not find any modifying circumstance.

In the case before us, accused-appellant was arrested by the police without resistance. Even before accused-appellant was arrested, he suggested to private to private complainant that they go to the police station.[5] In addition, when private complainant and her friend left accused-appellant to seek the assistance of the police, accused-appellant, despite the opportunity to flee, did not leave.[6] The confluence of these circumstances of similar nature and analogous to that of number 7 of Article 13 (voluntaty surrender) in favor of accused-appellant. If accused-appellant really wanted to abscond, he could have readily done so. This he did not do. We therefore pronounce that accused-appellant is entitled to a mitigating circumstance under number 10 of Article 13 of the Revised Penal Code.

With the attendance of one mitigating circumstance, the maximum term of the indeterminate sentence must be imposed in its minimum period (4 years, 2 months and 1 day to 6 years, 1 month and 10 days).

We, therefore, modify the penalty imposed on accused-appellant to four (4) months and one (1) day of *arresto mayor*, as minimum, to six (6) years of *prision correctional*, as maximum.

WHEREFORE, Motion for Reconsideration, Compassion Reduction of Penalty is *GRANTED* and our Decision promulgated on 16 April 2009 is hereby *MODIFIED* by reducing the indeterminate sentence imposed on accused-appellant to four (4) months and one (1) day of *arresto mayor*, as minimum, to six (6) years of *prision correccional*, as maximum.

SO ORDERED.

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

Carpio Morales, J., see concurring and dissenting opinion.

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[5] TSN, 3 February 1997, pp. 7 & 10.

[6] TSN, 2 August 1995, pp. 12-13, 16 November 2001, p. 5.

CONCURRING AND DISSENTING OPINION

CARPIO MORALES, *J.*:

I concur with the Resolution but it is with respect to the appreciation of supposed analogous mitigating circumstances therein that I register my dissent. The circumstances mentioned therein are, to me, not analogous to voluntary surrender.

The Resolution declares that yielding to arrest without any attempt to resist is analogous to voluntary surrender. *People v. Rabuya* (182 Phil. 490, 504) dictates otherwise, however.

Even if accused-appellant suggested to the private complainant that they go to the police station, this is not akin to voluntary surrender. For, material in the appreciation of accused-appellant's claim in this regard is the testimony that he introduced himself as a police station commander, to deter or scare the private complainant from pointing to him as the robber. Further, accused-appellant's suggestion to go to the police station was apparently meant to "clear his name" against the private complainant's accusation (*Vide*: *People v. Abella*, 393 Phil. 513, 538 [2000]) and not to acknowledge his guilt.

In the same vein, accused-appellant's "non-flight" is not analogous to voluntary surrender. His supposed actuation of staying put is consistent with the bravado he had initially displayed when he casually walked inside a food chain store as if nothing happened and thereafter flaunted a police badge and introduced himself as a policeman to the private complainant and her friend.

SECOND DIVISION

[G.R. No. 176933. October 2, 2009]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **LUIS PLAZA Y BUCALON,** *respondent.*

SYLLABUS

REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; DISCRETIONARY POWER OF THE TRIAL COURT TO GRANT BAIL; SUSTAINED; CASE AT BAR. — Section 13, Article III of the Constitution provides that "All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law." Section 4 of Rule 114 of the Revised Rules of Court, as amended, thus provides that all persons in custody shall, before conviction by a regional trial court of an offense not punishable by death, *reclusion perpetua* or life imprisonment, be admitted to bail as a matter of right. The exercise by the trial court of its discretionary power to grant bail to an accused charged with a capital offense thus depends on whether the evidence of guilt is strong. Stressing this point, this Court held: . . . [W]hen bail is discretionary, a hearing, whether summary or otherwise in the discretion of the court, should first be conducted to determine the existence of strong evidence or lack of it, against the accused to enable the judge to make an intelligent assessment of the evidence presented by the parties. A summary hearing is defined as "such brief and speedy method of receiving and considering the evidence of guilt as is practicable and consistent with the purpose of hearing which is **merely to determine the weight of evidence for the purposes of bail**." On such hearing, the court does not sit to try the merits or to enter into any nice inquiry as to the weight that ought to be allowed to the evidence for or against the accused, nor will it speculate on the outcome of the trial or on what further evidence may be therein offered and admitted. The course of inquiry may be left to the discretion of the court which may confine itself to receiving such evidence as has reference to substantial matters, avoiding unnecessary examination and cross examination." The People's recourse to Section 5, Rule 114 of the Revised Rules of Criminal Procedure to support its contention that respondent should be denied bail is unavailing, for said Section clearly speaks of an application for bail filed by the accused after a judgment of conviction has already been handed down by the trial court.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Dollfuss R. Go. & Associates Law Office for respondent.

D E C I S I O N

CARPIO MORALES,* *J.*:

Raising only questions of law, the People's petition for review on *certiorari* assails the January 31, 2007 Decision[1] of the Court of Appeals which affirmed the November 12, 2002 Order of the Regional Trial Court (RTC) of Surigao City, Br. 29 in Criminal Case No. 5144 (the case) fixing bail for the temporary liberty of Luis Bucalon Plaza *alias Loloy Plaza* (respondent) who was indicted for Murder.

The case was originally raffled to Branch 30 of the Surigao RTC presided by Judge Floripinas Buyser (Judge Buyser).

After the prosecution rested its case, respondent, with leave of court, filed a Demurrer to Evidence.[2] The Demurrer was denied by Judge Buyser by Order[3] of March 14, 2002, the pertinent portion of which reads:

x x x x x x x x x

The evidence thus presented by the prosecution is sufficient to prove the guilt of the accused beyond reasonable doubt, but only for the crime of **homicide** and not for murder, as charged. This is because the qualifying circumstance of **treachery** alleged in the information **cannot be appreciated** in this case.

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* Per Special Order No. 690 in lieu of the sabbatical leave of Senior Associate Justice Leonardo A. Quisumbing.

[1] Penned by (CA Mindanao Station) Associate Justice Teresita Dy-Liacco Flores, with the concurrence of Associate Justices Rodrigo F. Lim, Jr. and Michael P. Elbinias; CA *rollo*, pp. 188-197.

[2] *Id.* at 121-134.

[3] *Id.* at 162-174.

x x x (Emphasis and underscoring supplied)

The defense thereupon presented evidence[4] in the course of which respondent filed a Motion to Fix Amount of Bail Bond,[5] contending that in view of Judge Buyser's ruling that the prosecution evidence is sufficient to prove only Homicide, he could be released on bail. He thus prayed that the bail bond for his temporary liberty be fixed at ₱40,000.00 which he claimed was the usual bond for Homicide in the RTC of Surigao City and Surigao del Norte.

In its Opposition to Motion to Fix Amount of Bail Bond,[6] the prosecution contended, in the main, that the case being for Murder, it is non-bailable as the imposable penalty is *reclusion temporal* to death; that it is the public prosecutor who has exclusive jurisdiction to determine what crime the accused should be charged with; that the accused should have filed a motion/application to bail and not just a motion to fix the amount of the bail bond; that the accused had already waived his right to apply for bail at that stage of the proceedings; that Judge Buyser's March 14, 2002 Order, being a mere opinion and not a ruling or a dispositive part thereof, produced no legal effect inasmuch as it had no jurisdiction to rule on a matter outside the Demurrer; and that under the Rules, the prosecution could still prove the existence of treachery on rebuttal after the defense has rested its case.

During the hearing of the Motion to Fix Amount of Bail Bond, Senior State Prosecutor Rogelio Bagabuyo questioned Judge Buyser's impartiality, prompting the judge to inhibit himself and to order the case transferred to Branch 29 of the RTC for further proceedings.

Branch 29 Presiding Judge Jose Manuel Tan (Judge Tan) heard the Motion to Fix Amount of Bail Bond.

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[4] The defense commenced presentation of its evidence on May 15, 2002 and rested on August 12, 2003, *id.* at 178 and 248, respectively.

[5] *Id.* at 186-189.

[6] *Id.* at 192-208.

By Order[7] of November 12, 2002, Judge Tan, concurring with the finding of Judge Buyser that since the prosecution evidence proved only Homicide which is punishable by *reclusion temporal* and, therefore, bailable, ruled that respondent could no longer be denied bail. He accordingly granted respondent's Motion and fixed the amount of his bond at ₱40,000.

Petitioner's motion for reconsideration *cum* prayer for inhibition of Judge Tan was denied for lack of merit.[8]

Respondent was subsequently released[9] after he posted a ₱40,000 bond.

Roberto Murcia (Roberto), the victim's brother, impleading the People as co-petitioner, assailed the trial court's orders via petition for *certiorari*[10] with the Court of Appeals.

Roberto faulted Judge Tan for granting bail without an application for bail having been filed by respondent and without conducting the mandatory hearing to determine whether or not the prosecution's evidence is strong.

The Office of the Solicitor General (OSG) adopted Roberto's argument that the grant of bail to respondent without any separate hearing is contrary to prevailing jurisprudence.

By Decision of January 31, 2007, the appellate court, observing that the allegations in respondent's Motion to Fix Amount of Bail Bond constituted an application for bail, dismissed Roberto's petition and affirmed Judge Tan's orders.[11]

In its present petition, the People contends that

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[7] *Id.* at 211-216.

[8] *Vide* Order dated February 10, 2003; *id.* at 244-246.

[9] *Id.* at 247.

[10] Rule 65, REVISED RULES OF COURT in CA-G.R. SP No. 79794 entitled *Roberto Murcia and People of the Philippines v. Luis Plaza y Bucalon alias Loloy Plaza and Judge Jose Manuel R. Tan*; CA *Rollo*, pp. 2-20.

[11] *Vide* note 1 at 197.

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE CONTRARY TO LAW AND SETTLED JURISPRUDENCE WHEN IT RULED THAT THE HEARING CONDUCTED SATISFIES THE REQUIREMENT OF DUE PROCESS AND THAT RESPONDENT IS ENTITLED TO BAIL[12] (Underscoring supplied)

Section 13, Article III of the Constitution provides that "All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law."

Section 4 of Rule 114 of the Revised Rules of Court, as amended, thus provides that all persons in custody shall, before conviction by a regional trial court of an offense not punishable by death, *reclusion perpetua* or life imprisonment, be admitted to bail as a matter of right.

The exercise by the trial court of its discretionary power to grant bail to an accused charged with a capital offense thus depends on whether the evidence of guilt is strong. Stressing this point, this Court held:

> . . . [W]hen bail is discretionary, a hearing, whether summary or otherwise in the discretion of the court, should first be conducted to determine the existence of strong evidence or lack of it, against the accused to enable the judge to make an intelligent assessment of the evidence presented by the parties. A summary hearing is defined as "such brief and speedy method of receiving and considering the evidence of guilt as is practicable and consistent with the purpose of hearing which is **merely to determine the weight of evidence for the purposes of bail.**" On such hearing, the court does not sit to try the merits or to enter into any nice inquiry as to the weight that ought to be allowed to the evidence for or against the accused, nor will it speculate on the outcome of the trial or on what further evidence may be therein offered and admitted. The course of inquiry may be left to the discretion of the court which may confine itself to receiving such evidence as has reference to substantial matters,

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[12] *Rollo*, p. 17.

avoiding unnecessary examination and cross examination."[13] (Emphasis and underscoring supplied)

Since Judge Tan concurred with the assessment by Judge Buyser of the prosecution evidence when he denied the Demurrer and the latter's statement that the evidence was sufficient to convict respondent of Homicide, holding a summary hearing merely to determine whether respondent was entitled to bail would have been unnecessary as the evidence in chief was already presented by the prosecution.

The People's recourse to Section 5,[14] Rule 114 of the Revised Rules of Criminal Procedure to support its contention that respondent should be denied bail is unavailing, for said Section clearly speaks of an application for bail filed by the accused after a judgment of conviction has already been handed down by the trial court.

WHEREFORE, the petition is *DENIED.*

SO ORDERED.

Ynares-Santiago,[***] *Peralta,*[***] *Del Castillo,* and *Abad, JJ.,* concur.

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[13] *People v. Ako, Jr., supra* note 23, citing *Basco v. Rapatalo,* 269 SCRA 220, 233 (1997).

[14] Sec. 5. Bail, when discretionary. – Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, admission to bail is discretionary. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.

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[***] Additional member per Special Order No. 691.

[***] Additional member per Special Order No. 711.

THIRD DIVISION

[G.R. No. 177113. October 2, 2009]

STA. LUCIA REALTY & DEVELOPMENT, INC., *petitioner, vs.* **SPOUSES FRANCISCO & EMELIA [*] BUENAVENTURA, as represented by RICARDO SEGISMUNDO,** *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; RIGHTS AND OBLIGATIONS ARISING FROM CONTRACTS ARE GENERALLY TRANSMISSIBLE; EXCEPTION. — Article 1311 of the New Civil Code states that, "contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law." In this case, the rights and obligations between petitioner and Alfonso are transmissible. There was no mention of a contractual stipulation or provision of law that makes the rights and obligations under the original sales contract for Lot 3, Block 4, Phase II intransmissible. Hence, Alfonso can transfer her ownership over the said lot to respondents and petitioner is bound to honor its corresponding obligations to the transferee or new lot owner in its subdivision project.

2. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; PARTIES; INDISPENSABLE PARTY; DEFINED. — Having transferred all rights and obligations over Lot 3, Block 4, Phase II to respondents, Alfonso could no longer be considered as an indispensable party. 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. Contrary to petitioner's claim, Alfonso no longer has an interest on the subject matter or the present controversy, having already sold her rights and interests on Lot 3, Block 4, Phase II to herein respondents.

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[*] Sometimes referred to as Emilia.

3. ID.; ID.; ID.; ID.; ID.; FAILURE TO IMPLEAD THE ACTUAL OCCUPANTS OF THE SUBJECT LOT RENDERS PRAYER FOR SPECIFIC PERFORMANCE IMPOSSIBLE; REMEDY. — Although respondents prayed for specific performance to place them in possession of Lot 3, Block 4, Phase II, the actual occupants therein were not impleaded. As correctly pointed out by the HLURB Arbiter, the situation created an impossibility to grant the prayer of respondents despite their ownership of the subject property and the finding that petitioner was the cause of the inadvertent switching of lots. We agree with the ruling of the HLURB Arbiter that it will be more equitable and practicable to rescind the obligation of petitioner to deliver possession of Lot 3, Block 4, Phase II to respondents; and in exchange, pay the value of the lot by way of reimbursement in accordance with the price modification stated by the HLURB Board of Commissioners. Moreover, this ruling comes within the purview of respondents' final prayer for "other reliefs, just or equitable under the premises" and they are evidently in accord with such outcome as they did not appeal the case or insist on claiming back their lot.

4. ID.; ID.; ID.; JUDGMENT; INTEREST RATE APPLICABLE IN CASE OF BREACH OF OBLIGATION; EXPLAINED. — However, we find that the applicable interest rate for the amount to be reimbursed to respondents is 6% per annum, reckoned from the time of the filing of the complaint, because the case at bar involves a breach of obligation and not a loan or forbearance of money. In *Eastern Shipping Lines Inc. v. Court of Appeals*, we explained that: 1. When the obligation is breached, and it consists in the payment of a 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 or until the

demand can be established with reasonable certainty. Accordingly, where the demand can be 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 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. Moreover, pursuant to the above rules, in case the judgment remains unsatisfied after it becomes final and executory, the interest rate shall be 12% per annum from the finality of the judgment until the amount awarded is fully paid.

APPEARANCES OF COUNSEL

John Alex A. Villena and Edinburgh P. Tumuran and Amely G. Agmata for petitioner.

Redentor S. Roque and *Marc R. M. Navarro* for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

Assailed is the December 21, 2006 Decision[1] of the Court of Appeals in CA-G.R. SP No. 81732, affirming the July 18, 2003 Decision[2] of the Office of the President in O.P. Case No.

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[1] *Rollo*, pp. 8-15, penned by Associate Justice Roberto A. Barrios and concurred in by Associate Justices Mario L. Guariña, III and Lucenito N. Tagle.

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

20-A-8937. Also assailed is the March 21, 2007 Resolution[3] denying the Motion for Reconsideration.[4]

The facts are as follows:

On January 16, 1996, respondent-spouses Francisco Segismundo and Emilia Buenaventura, represented by Ricardo Segismundo, filed before the Housing and Land Use Regulatory Board (HLRUB) a Complaint against petitioner Sta. Lucia Realty & Development, Inc. for Specific Performance, Damages and Attorney's Fees.[5] Respondents alleged that they bought a lot known as Lot 3, Block 4, Phase II at Greenwood Executive Village, Cainta, Rizal from Loida Gonzales Alfonso (Alfonso) on August 16, 1989; that the said lot is part of a subdivision project owned and being developed by petitioner; that in the course of the construction of their house, respondents discovered that their lot had been subdivided and occupied by Marilou Panlaque (Panlaque) and Ma. Veronica Banez (Banez); and that like respondents, the two occupants were also issued a construction permit by petitioner. Respondents thus demanded from petitioner the rightful possession of their lot; but to no avail.

In its Answer,[6] petitioner averred that respondents had no cause of action against it because it has no transaction record regarding Lot 3, Block 4, Phase II; that the said lot actually belonged to ACL Development Corporation, its joint-venture partner; that it was RCD Realty Corporation which caused the subdivision of the lot and constructed separate residential buildings thereon; that RCD Realty Corporation's lot was actually Lot 3, Block 4, Phase II-A; and that respondents, in bad faith and in a retaliatory manner, erected their own house on Lot 4 which belonged to a different owner. Petitioner suggested that to remedy the situation, respondents, RCD Realty Corporation, and the real owner of Lot 4, should agree to a three-way exchange

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[3] *Id.* at 17.

[4] *Id.* at 71-74.

[5] CA *rollo,* pp. 94-98.

[6] *Rollo,* pp. 41-44.

of their respective properties as it has been verified that the areas of their lots are the same.

On September 1, 1997, petitioner filed a third-party complaint against ACL Development Corporation and RCD Realty Corporation. Petitioner prayed that in the event that it be adjudged liable for any of the claims of respondents, ACL Development Corporation and RCD Realty Corporation should be held jointly and severally liable for said claims or an amount equivalent thereto.

ACL Development Corporation alleged that petitioner was responsible for the issuance of all construction permits on the subdivision project; hence, it was the one that caused the confusion among all parties. On the other hand, RCD Realty Corporation alleged that it was a builder in good faith; that it constructed the residential building on Lot 3, Block 4, Phase II upon issuance of a construction permit by petitioner.

On June 16, 1998, the HLURB's Arbiter[7] for the National Capital Region (NCR) Field Office issued a Decision the dispositive portion of which states:

> Wherefore, premises considered, judgment is hereby rendered as follows:
>
> 1. Directing respondent Sta. Lucia Realty and Development Corporation, Inc. to cause to be vacated complainant's lot denominated as Lot No. 3, Block No. 4, Phase II, Greenwood Executive Village, Cainta, Rizal;
>
> 2. In the alternative, the aforesaid respondent is ordered to reimburse the complainant the current market value of the subdivision lot which shall in no case be less than ₱4,500.00 per square meter, the prevailing price in the area;
>
> 3. Directing the same respondent to pay complainant the following amount:
>
> a. ₱100,000.00 as and by way of moral damages;
> b. ₱50,000.00 as and by way of exemplary damages;

[7] Atty. Emmanuel Y. Pontejos.

c. P50,000.00 as and by way of attorney's fees;

4. While the third party complaint is dismissed for lack of merit.

SO ORDERED.[8]

The HLURB Arbiter found that while RCD Realty Corporation constructed a residential building on the wrong lot, such construction was allowed by petitioner as evidenced by the permit it issued. As the owner-developer of the subdivision project, petitioner knew the location of all lots therein and was tasked to properly enforce the restrictions it caused to be annotated on their corresponding certificates of title. The HLURB Arbiter thus concluded that it was petitioner's neglect that ultimately led to the instant dispute.

On June 24, 1999, the HLURB Board of Commissioners affirmed the Decision of the HLURB Arbiter with modification that the market value of the subject lot, stated in paragraph 2 of the dispositive portion, be reduced from ₱4,500.00 to ₱3,200.00 per square meter, plus 12% interest per annum from the time of the filing of the complaint.

On July 18, 2003, the Office of the President issued a Decision[9] affirming the June 24, 1999 Decision of the HLURB Board of Commissioners. Subsequently, it issued a Resolution[10] dated November 28, 2003 denying petitioner's Motion for Reconsideration.[11]

On December 21, 2006, the Court of Appeals affirmed the Decision of the Office of the President. The appellate court found that it was petitioner who caused the confusion in the identity of the lots by its issuance of a construction permit to RCD Realty Corporation; that petitioner was remiss and negligent in complying with its obligations towards its buyers, their heirs,

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[8] *Rollo*, pp. 52-53.

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

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

[11] Records, pp. 195-198.

assignees, and/or successors-in-interest when it failed to deliver the property described in respondents' title.

On March 21, 2007, the Court of Appeals denied petitioner's Motion for Reconsideration. Hence, this Petition for Review on *Certiorari*, raising the following issues:

THE HONORABLE COURT OF APPEALS x x x COMMITTED SERIOUS REVERSIBLE ERROR IN AFFIRMING THAT PETITIONER STA. LUCIA IS LIABLE IN A COMPLAINT FOR SPECIFIC PERFORMANCE.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS REVERSIBLE ERROR IN SUSTAINING THE AWARD OF REFUND WITH INTEREST, MORAL AND EXEMPLARY DAMAGES AS WELL AS ATTORNEY'S FEES TO RESPONDENTS-SPOUSES BUENAVENTURA.[12]

Petitioner alleges that it has no privity of contract with respondents as it did not directly sell the subject property to them; that it was RCD Realty Corporation which erroneously erected structures on Lot 3, Block 4, Phase II; that respondents are in bad faith for constructing their residential house on Lot 4, Block 4, Phase II despite knowledge that it belongs to another person; that respondents' seller, Alfonso, should have been impleaded as an indispensable party to the instant case; that respondents should also have impleaded the present occupants of Lot 3, Block 4, Phase II as additional indispensable parties; and that the award of damages is without basis in fact and in law.

The petition is without merit.

Petitioner originally sold the subject lot to Alfonso, and the latter subsequently sold the same to herein respondents. As assignees or successors-in-interest of Alfonso to Lot 3, Block 4, Phase II in petitioner's subdivision project, respondents succeed to what rights the former had; and what is valid and binding against Alfonso is also valid and binding as against them. In effect, respondents stepped into the shoes of Alfonso and such transfer of rights also vests upon them the power to claim

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[12] *Rollo*, pp. 26 and 28.

ownership and the authority to demand to build a residential house on the lot to the same extent as Alfonso could have enforced them against petitioner.

Article 1311 of the New Civil Code states that, "contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law." In this case, the rights and obligations between petitioner and Alfonso are transmissible. There was no mention of a contractual stipulation or provision of law that makes the rights and obligations under the original sales contract for Lot 3, Block 4, Phase II intransmissible. Hence, Alfonso can transfer her ownership over the said lot to respondents and petitioner is bound to honor its corresponding obligations to the transferee or new lot owner in its subdivision project.

Having transferred all rights and obligations over Lot 3, Block 4, Phase II to respondents, Alfonso could no longer be considered as an indispensable party. 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.[13] Contrary to petitioner's claim, Alfonso no longer has an interest on the subject matter or the present controversy, having already sold her rights and interests on Lot 3, Block 4, Phase II to herein respondents.

We agree with the appellate court's finding that petitioner was remiss and negligent in the performance of its obligations towards its buyers, their heirs, assignees, and/or successors-in-interest; and that it was petitioner's negligence which caused the confusion on the identity of the lot, which likewise resulted to the erroneous construction done by RCD Realty Corporation. Petitioner cannot pass the blame to RCD Realty Corporation because it is undisputed that it issued a construction permit for Lot 3, Block 4, Phase II – the property of respondents.

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[13] *Moldes v. Villanueva*, G.R. No. 161955, August 31, 2005, 468 SCRA 697, 707.

In its letter to petitioner, RCD Realty Corporation explained that it constructed a house on Lot 3, Block 4, Phase II based on the following:

a. Construction Permit and Certificate of Relocation issued by petitioner's engineering department;

b. The agent who sold the property pointed the lot in Phase II and not in Phase II-A.

RCD Realty Corporation further stated that it had no reason to doubt its claim over the lot in Phase II, especially since petitioner never warned them of any inadvertent switching of lots.

For its gross negligence which resulted to the erroneous construction on Lot 3, Block 4, Phase II and caused respondents undue damage and prejudice, petitioner is rightfully adjudged by the HLURB Arbiter liable for ₱100,000.00 moral damages, ₱50,0000.00 exemplary damages, and ₱50,000.00 attorney's fees.

Although respondents prayed for specific performance to place them in possession of Lot 3, Block 4, Phase II, the actual occupants therein were not impleaded. As correctly pointed out by the HLURB Arbiter, the situation created an impossibility to grant the prayer of respondents despite their ownership of the subject property and the finding that petitioner was the cause of the inadvertent switching of lots.

We agree with the ruling of the HLURB Arbiter that it will be more equitable and practicable to rescind[14] the obligation of petitioner to deliver possession of Lot 3, Block 4, Phase II to respondents; and in exchange, pay the value of the lot by way of reimbursement in accordance with the price modification

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[14] CIVIL CODE, Art. 1191.

The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

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stated by the HLURB Board of Commissioners. Moreover, this ruling comes within the purview of respondents' final prayer for "other reliefs, just or equitable under the premises" and they are evidently in accord with such outcome as they did not appeal the case or insist on claiming back their lot.

However, we find that the applicable interest rate for the amount to be reimbursed to respondents is 6% per annum, reckoned from the time of the filing of the complaint, because the case at bar involves a breach of obligation and not a loan or forbearance of money. In *Eastern Shipping Lines Inc. v. Court of Appeals*,[15] we explained that:

> 1. When the obligation is breached, and it consists in the payment of a 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 or until the demand can be established with reasonable certainty. Accordingly, where the demand can be 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 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

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[15] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[16]

Moreover, pursuant to the above rules, in case the judgment remains unsatisfied after it becomes final and executory, the interest rate shall be 12% per annum from the finality of the judgment until the amount awarded is fully paid.

As regards respondents' alleged construction of a house on Lot 4, Block 4, Phase II, the records of the case are bereft of evidence for this Court to make a judgment on the matter. Nevertheless, our ruling in the present case will not affect in any way whatever action petitioner and/or the owner of the said lot would file against respondents.

WHEREFORE, the Petition for Review on *Certiorari* is *PARTIALLY GRANTED*. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 81732, affirming the July 18, 2003 Decision of the Office of the President in O.P. Case No. 20-A-8937, and the Resolution denying the motion for reconsideration are *AFFIRMED with MODIFICATION* that the applicable interest rate for the amount to be reimbursed to respondents is 6% per annum, computed from the time of the filing of respondents' complaint, and 12% per annum from the finality of the judgment until the amount awarded is fully paid.

SO ORDERED.

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

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[16] *Id.* at 95-97.

SPECIAL THIRD DIVISION

[G.R. No. 178083. October 2, 2009]

FLIGHT ATTENDANTS AND STEWARDS ASSOCIATION OF THE PHILIPPINES (FASAP), *petitioner, vs.* **PHILIPPINE AIRLINES, INC., PATRIA CHIONG and COURT OF APPEALS,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYERS; RETRENCHMENT SCHEME; WHEN VALID; REQUIREMENTS. – Again, it must be emphasized that in order for a retrenchment scheme to be valid, **all** of the following elements under Article 283 of the Labor Code must concur or be present, to wit:(1) That retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer; (2) That the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment; (3) That the employer pays the retrenched employees separation pay equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher; (4) That the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and, (5)That the employer uses fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers. In the absence of one element, the retrenchment scheme becomes an irregular exercise of management prerogative.The employer's obligation to exhaust all other means to avoid further losses without retrenching its employees is a component of the first element as enumerated above. To impart operational meaning

to the constitutional policy of providing full protection to labor, the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means have been tried and found wanting.

2. ID.; ID.; ID.; ID.; WHEN RETRENCHMENT WAS NOT IN ACCORDANCE WITH THE PROCEDURE REQUIRED BY LAW, EMPLOYEES RETRENCHED ARE ENTITLED TO RELIEFS PROVIDED BY LAW; EXEMPLIFIED. — As held in the Decision sought to be reconsidered, PAL failed to observe the procedure and requirements for a valid retrenchment. Assuming that PAL was indeed suffering financial losses, the requisite proof therefor was not presented before the NLRC which was the proper forum. More importantly, the manner of the retrenchment was not in accordance with the procedure required by law. Hence, the retrenchment of the flight attendants amounted to illegal dismissal. Consequently, the flight attendants affected are entitled to the reliefs provided by law, which include backwages and reinstatement or separation pay, as the case may be. PAL begs the compassion of this Court and alleges that the monetary award it stands to pay to the affected flight attendants totals a whopping ₱2.3 billion, the payment of which will certainly paralyze its operations and even lead to its untimely demise. However, a careful review of the records of the case, as well as the respective allegations of the parties, shows that several of the crew members do not need to be paid full backwages or separation pay. A substantial fraction of the 1,400 flight attendants have already been either recalled, reinstated or relieved from the service. Still, some of them have reached the age of compulsory retirement or even died. Likewise, a significant portion of these retrenched flight attendants have already received separation pay and signed quitclaim. All of these factors, to the mind of the Court, will greatly reduce the quoted amount of the money judgment that PAL will have to pay.

3. ID.; ID.; ID.; ATTORNEY'S FEES; AWARD THEREOF IS PROPER WHEN THERE IS A SHOWING THAT LAWFUL WAGES WERE NOT PAID ACCORDINGLY; EXPLAINED. — The award of attorney's fees is proper where there is a showing that the lawful wages were not paid accordingly. xxx [T]here are two commonly accepted concepts of attorney's fees, the so-called ordinary and extraordinary. In its ordinary concept,

an attorney's fee is the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter. The basis of this compensation is the fact of his employment by and his agreement with the client. In its extraordinary concept, attorney's fees are deemed indemnity for damages ordered by the court to be paid by the losing party in a litigation. The instances where these may be awarded are those enumerated in Article 2208 of the Civil Code, specifically par. 7 thereof which pertains to actions for recovery of wages, and is payable not to the lawyer but to the client, unless they have agreed that the award shall pertain to the lawyer as additional compensation or as part thereof. The extraordinary concept of attorney's fees is the one contemplated in Article 111 of the Labor Code, which provides: Art. 111. *Attorney's fees.* – (a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered x x x **The afore-quoted Article 111 is an exception to the declared policy of strict construction in the awarding of attorney's fees. Although an express finding of facts and law is still necessary to prove the merit of the award, there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. There need only be a showing that the lawful wages were not paid accordingly, as in this case.** In carrying out and interpreting the Labor Code's provisions and its implementing regulations, the employee's welfare should be the primordial and paramount consideration. This kind of interpretation gives meaning and substance to the liberal and compassionate spirit of the law as provided in Article 4 of the Labor Code which states that "[a]ll doubts in the implementation and interpretation of the provisions of [the Labor] Code including its implementing rules and regulations, shall be resolved in favor of labor", and Article 1702 of the Civil Code which provides that "[i]n case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer."

4. ID.; ID.; ID.; ID.; THE SUPREME COURT REDUCED THE AMOUNT OF THE ATTORNEY'S FEES WHICH WAS RULED TO BE INIQUITOUS AND UNCONSCIONABLE AFTER THE COURT FOUND THAT THE LAWYER DID NOT ENCOUNTER DIFFICULTY IN REPRESENTING HIS CLIENT; PRESENT IN CASE AT BAR. — In the case of *Concept Placement Resources,*

Inc. v. Funk, this Court reduced the amount of attorney's fees which it ruled to be iniquitous and unconscionable after finding that the lawyer did not encounter difficulty in representing his client. It was held: We observe, however, that respondent did not encounter difficulty in representing petitioner. The complaint against it was dismissed with prejudice. All that respondent did was to prepare the answer with counterclaim and possibly petitioner's position paper. Considering respondent's limited legal services and the case involved is not complicated, the award of ₱50,000.00 as attorney's fees is a bit excessive. In *First Metro Investment Corporation vs. Este del Sol Mountain Reserve, Inc.*, we ruled that courts are empowered to reduce the amount of attorney's fees if the same is iniquitous or unconscionable. Under the circumstances obtaining in this case, we consider the amount of ₱20,000.00 reasonable. In the case at bar, we find that the flight attendants were represented by respondent union which, in turn, engaged the services of its own counsel. The flight attendants had a common cause of action. While the work performed by respondent's counsel was by no means simple, seeing as it spanned the whole litigation from the Labor Arbiter stage all the way to this Court, nevertheless, the issues involved in this case are simple, and the legal strategies, theories and arguments advanced were common for all the affected crew members. Hence, it may not be reasonable to award said counsel an amount equivalent to 10% of all monetary awards to be received by each individual flight attendant. Based on the length of time that this case has been litigated, however, we find that the amount of ₱2,000,000.00 is reasonable as attorney's fees. This amount should include all expenses of litigation that were incurred by respondent union.

APPEARANCES OF COUNSEL

Soo Gutierrez Leogardo and Lee for petitioner.

Sycip Salazar Hernandez & Gatmaitan and Estelito P. Mendoza and Ma. Claudette A. De La Cerna for respondents.

R E S O L U T I O N

YNARES-SANTIAGO, *J.*:

For resolution is respondent Philippine Airlines, Inc.'s (PAL) *Motion for Reconsideration*[1] of our Decision of July 22, 2008, the dispositive portion of which provides:

> WHEREFORE, the instant petition is GRANTED. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 87956 dated August 23, 2006, which affirmed the Decision of the NLRC setting aside the Labor Arbiter's findings of illegal retrenchment and its Resolution of May 29, 2007 denying the motion for reconsideration, are REVERSED and SET ASIDE and a new one is rendered:
>
> 1. FINDING respondent Philippine Airlines, Inc. GUILTY of illegal dismissal;
>
> 2. ORDERING Philippine Airlines, Inc. to reinstate the cabin crew personnel who were covered by the retrenchment and demotion scheme of June 15, 1998 made effective on July 15, 1998, without loss of seniority rights and other privileges, and to pay them full backwages, inclusive of allowances and other monetary benefits computed from the time of their separation up to the time of their actual reinstatement, provided that with respect to those who had received their respective separation pay, the amounts of payments shall be deducted from their backwages. Where reinstatement is no longer feasible because the positions previously held no longer exist, respondent Corporation shall pay backwages plus, in lieu of reinstatement, separation pay equal to one (1) month pay for every year of service;
>
> 3. ORDERING Philippine Airlines, Inc. to pay attorney's fees equivalent to ten percent (10%) of the total monetary award.
>
> Costs against respondent PAL.
>
> SO ORDERED.

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[1] *Rollo*, pp. 1549-1719.

In its Motion for Reconsideration, PAL maintains that it was suffering from financial distress which justified the retrenchment of more than 1,400 of its flight attendants. This, it argued, was an established fact. Furthermore, FASAP never assailed the economic basis for the retrenchment, but only the allegedly discriminatory and baseless manner by which it was carried out.

PAL asserts that it has presented proof of its claimed losses by attaching its petition for suspension of payments, as well as the June 23, 1998 Order of the Securities and Exchange Commission (SEC) approving the said petition for suspension of payments, in its *Motion to Dismiss and/or Consolidation of Case* filed with the Labor Arbiter in NLRC-NCR Case No. 06-05100-98, or the labor case subject of the herein petition. Also attached to the petition for suspension of payments were its audited financial statements for its fiscal year ending March 1998, and interim financial statements as of the end of the month prior to the filing of its petition for suspension of payments, as well as:

a) A summary of its debts and other liabilities;

b) A summary of its assets and properties;

c) List of its equity security shareholders showing the name of the security holder and the kind of interest registered in the name of each holder;

d) A schedule which contains a full and true statement of all of its debts and liabilities, together with a list of all those to whom said debts and liabilities are due;

e) An inventory which contains an accurate description of all the real and personal property, estate and effects of PAL, together with a statement of the value of each item of said property, estate and effects, their respective location and a statement of the encumbrances thereon.

In the instant *Motion for Reconsideration*, PAL attached a copy of its audited financial statements for fiscal years 1996, 1997 and 1998. It justifies the submission before the Court of Appeals of its 2002-2004, and not the 1996-1998, audited financial

statements, to show that as of the time of their submission with the Court of Appeals, PAL was still under rehabilitation, and not for the purpose of establishing its financial problems during the retrenchment period.

PAL asserts further that the Court should have accorded the SEC's findings as regards its financial condition respect and finality, considering that said findings were based on the financial statements and other documents submitted to it, which PAL now submits, albeit belatedly, *via* the instant *Motion for Reconsideration*. It cites the case of *Clarion Printing House, Inc. v. National Labor Relations Commission*,[2] where the Court declared that the appointment of a receiver or management committee by the SEC presupposes a finding that, *inter alia*, a company possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due and there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties or paralyzation of business operations. On the other hand, it claims that in *Rivera v. Espiritu*,[3] the Court made a finding that as a result of the pilots' three-week strike that began on June 5, 1998, PAL's financial situation went from bad to worse and it was faced with bankruptcy, requiring it to seek rehabilitation and downsize its labor force by more than one-third; and that said pilots' strike was immediately followed by another four-day employee-wide strike on July 22, 1998, which involved 1,899 union[4] members.

PAL likewise cites previous decisions of the Court which declared a suspension of claims against it in light of pending rehabilitation proceedings and the issuance of a stay order in the enforcement of all claims, whether for money or otherwise, which is effective from the date of its issuance until the dismissal of the petition or the termination of the rehabilitation proceedings.[5]

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[2] G.R. No. 148372, June 27, 2005, 461 SCRA 272.

[3] G.R. No. 135547, January 23, 2002, 374 SCRA 351.

[4] Philippine Airlines Employees Association (PALEA).

[5] Among others, *Philippine Airlines v. Kurangking*, G.R. No. 146698, September 24, 2002, 389 SCRA 588, cited in the main Decision of July 22, 2008.

Moreover, it claims that the infusion of $200 million in PAL in June 1999 is proof of the airline's financial distress, and was a condition *sine qua non* if PAL's Amended and Restated Rehabilitation Plan were to be approved by the SEC, and if the absolute closure of PAL were to be averted.

PAL underscores that its situation in 1998 was unique, as it had to contend with –

> the very distinct possibility that its losses would eventually result in default on its payments to creditors for its aircraft leases. If that happened, creditors could have immediately seized all its leased planes and that would have spelled PAL's demise. The petition for rehabilitation and suspension of payments was precisely intended to avoid PAL's collapse and eventual liquidation.[6]

Exercising its management prerogative and sound business judgment, it decided to cut its fleet of aircraft in order to minimize its operating losses and rescue itself from "total downfall;" which meant that a corresponding company-wide reduction in manpower necessarily had to be made. As a result, 5,000 PAL employees (including the herein 1,400 cabin attendants) were retrenched.

Further, PAL argues that aside from the confluence of simultaneous unfortunate events that occurred during the time, like successive strikes, peso depreciation and the Asian currency crisis, there was a serious drop in passenger traffic which necessitated the closure of PAL's entire European, Australian, and Middle East operations and numerous Asian stations, as well as some of its domestic stations. Consequently, its 27 international routes were reduced to only 7, and its 37 domestic routes to just 17.

PAL claims that it did not act with undue haste in effecting the mass retrenchment of cabin attendants since, as early as February 17, 1998, consultations were being held in connection with the proposed retrenchment, and that twice-weekly meetings between the union and the airline were being held since February 12, 1998. It claims that it took PAL four months before the retrenchment scheme was finally implemented.

[6] *Rollo*, p. 1569.

With regard to the implementation of Plan 22 instead of the original Plan 14, PAL asserts that, in so doing, it should not be found guilty of bad faith. It sets out the chronology of events that led it to implement Plan 22 instead of Plan 14, thus:

The initial plan was, indeed, to reduce PAL's fleet from 54 planes to 14. With a smaller fleet, PAL necessarily had to reduce manpower accordingly, and this was the basis for the retrenchment. The retrenchment was done on the basis of the conditions and circumstances existing at that time. However, a series of events ensued –

PAL was placed under corporate rehabilitation by the SEC on June 23, 1998.

Later, on July 22, 1998, the rank-and-file employees belonging to PALEA staged a strike.

Then, on August 28, 1998, President Joseph Ejercito Estrada issued Administrative Order No. 16 creating Inter-Agency Task Force to aid PAL and its employees in solving the problem.

On September 4, 1998, PAL submitted an offer to the Task Force of a plan to transfer shares of stocks to its employees with a request to suspend existing Collective Bargaining Agreements, which was later rejected by the employees.

On September 23, 1998, PAL ceased operations.

Then, President Estrada intervened again through the request of PAL employees. PALEA made an offer, which was rejected by PAL. Finally, PALEA made an offer again which was successfully ratified by the employees on October 2, 1998 and accepted by PAL.

Subsequently, PAL partially resumed domestic operations on October 7, 1998 believing that the mutually beneficial terms of the suspension agreement could possibly redeem PAL. Later, it partially resumed its operations internationally (Los Angeles and San Francisco, United States).

True enough, with some degree of relief as a result of the suspension of payment and rehabilitation proceedings in the SEC and the suspension of the CBA, PAL began to see slow but steady improvements. Also, airline industry experts who were commissioned by PAL to assist in drafting its Amended and Restated Rehabilitation

Plan came to a conclusion that PAL had to increase its fleet of planes to improve its financial and operational viability. This advice was adopted by PAL in its Amended and Restated Rehabilitation Plan, which was eventually approved by the SEC.

With these supervening events, PAL decided to implement Plan 22 upon reevaluation and optimistic future projection for its operations. The decision to abandon Plan 14 was not done with precipitate haste. The Honorable Court should appreciate that the chain of unfolding events after the retrenchment encouraged PAL, in the exercise of its sound business discretion, to implement Plan 22. This was not a capricious decision. In fact, the SEC approved PAL's Amended and Restated Rehabilitation Plan, which includes, among others, PAL's Fleet Plan composed of 22 planes.

Neither does it show that PAL was uncertain of its financial condition when it retrenched based on Plan 14. PAL would not have even petitioned the SEC for its rehabilitation were it not certain of its dire financial state. The decision to later abandon Plan 14 was a business judgment that PAL made in good faith upon the advice of foreign airline industry experts and in light of the supervening circumstances explained above.

In this regard, this Honorable Court has once held that –

> "Questions of policy or of management are left solely to the honest decision of the board as the business manager of the corporation, and the court is without authority to substitute its judgment for that of the board, and as long as it acts in good faith and in the exercise of honest judgment in the interest of the corporation, its orders are not reviewable by the courts."

On the basis of Plan 22, PAL decided to recall/rehire some of the retrenched employees.

With due respect, this Honorable Court is mistaken in its ruling that PAL acted in bad faith simply because it later on decided to recall or rehire the employees it initially retrenched. The decision to recall/rehire was a logical consequence of PAL's decision to increase its fleet from 14 to 22 planes, which as discussed earlier, was a business judgment exercised in good faith by PAL after a series of significant events.

PAL did not even have any legal obligation to rehire the employees who have already been paid their separation pay and who have executed valid quitclaims. PAL, instead of being accused of bad faith for rehiring these employees, should in fact be commended. That the retrenched employees were given priority in hiring is certainly not bad faith. Noteworthy is the fact that PAL never hired **NEW** employees until November 2000 or more than 2 years after the 1998 retrenchment.

It is respectfully submitted that the legality of the retrenchment could not be made to depend on the fact that PAL recalled/rehired some of the employees after five months without taking into account the supervening events. At the exact time of retrenchment, PAL was not in a position to know with certainty that it could actually recover from the precarious financial problem it was facing and, if so, when.

The only thing PAL knew at that exact point in time was that it was in its most critical condition – when its liabilities amounted to about Php 85,109,075,351.00, while its assets amounted to only about Php 90,642,330,919.00 aggravated by many other circumstances as explained earlier. At the time of the retrenchment in June 1998, PAL was at the brink of total collapse and it could not have known that in five months, there will be supervening events that will impel it to reassess its initial decisions.

x x x x x x x x x

In the present case, PAL beseeches this Honorable Court to take a second look at the peculiar facts and circumstances that clearly show that the recall/rehire was done in good faith. These facts and circumstances make the case of PAL totally different from the other cases decided by this Honorable Court where it found bad faith on the part of the employer for immediately rehiring or hiring employees after retrenchment.

x x x x x x x x x

But even then, PAL still endeavored to recall or rehire the maximum number of FASAP members that it could. Thus, out of the 1,423 FASAP members who were retrenched, 496 were eventually recalled or reinstated (those who did not receive separation pay and opted to resume their employment with PAL with no loss of seniority).

On the other hand, 321 FASAP members were rehired (those who received separation pay and voluntarily rejoined PAL as new

employees). In this regard, PAL would like to take exception to the Honorable Court's observation that these employees were taken in as new hires without due regard to their long years of service. The FASAP members who were rehired as new employees were those who already received their separation pay because of the retrenchment but voluntarily accepted PAL's offer for them to be rehired when Plan 22 was implemented. It cannot be said that they were prejudiced by the rehire process, as they already "cashed in" on their tenure when they accepted the separation pay. That they later on accepted PAL's offer to rehire them as new employees was purely voluntary on their part.

Meanwhile, around 591 FASAP members opted not to return anymore after receiving their full separation pay. Thus, including those who voluntarily opted not to resume their employment with PAL, only about 591 can be considered to have remained unrecalled or unrehired.

It is significant to mention that FASAP directly and actively participated in the recall process, and even suggested the names of its members for prospective recall.

Likewise, in the recall process, PAL followed the provisions of the CBA and as a result, some of the recalled employees were assigned to lower positions (or "demoted" as noted by this Honorable Court). However, this was only because there were not enough positions for all of them to be restored to their previous posts. Evidently, with lesser planes flying international routes, not all international flight attendants would be restored to international flight posts. Some of them would be downgraded to domestic flights. This was the natural and logical effect of the fleet downsizing that PAL adopted. This could not be a badge of bad faith, as this Honorable Court seems to believe.

x x x x x x x x x

Likewise, no bad faith should be inferred from PAL's closure in September 1998. That decision was by no means easy being the national flag carrier and the oldest airline in Asia (having operated for 57 years at the time). The closure could not have been a mere retaliation for rejecting the offer of PAL, as it would have aggravated matters further and rendered rehabilitation impossible.

Hence, PAL's decision to resume operations when the employees acceded to its request to suspend the CBA should be seen in this

context. This was not a coercive posture. PAL resumed operations only because the suspension of the CBA, among others, gave it hope that it could recover.

Furthermore, any issue on the legality of the suspension of the CBA had already been put to rest by no less than this Honorable Court in the case of *Rivera vs. Espiritu* where it held that –

> "The assailed PAL-PALEA agreement was the result of voluntary collective bargaining negotiations undertaken in the light of the severe financial situation faced by the employer, with the peculiar and unique intention of not merely promoting industrial peace at PAL, but preventing the latter's closure."[7] (Emphasis supplied)

PAL explains that the 140 probationary cabin attendants who were fired and subsequently rehired were part of an earlier retrenchment process in February and March 1998, a component of PAL's "less drastic cost cutting measures" then being implemented. Eventually, these rehired probationary cabin attendants were included in the subject retrenchment of more than 1,400. Thus, it claims that it was inaccurate for the Court to have held that these 140 probationary cabin attendants were retained while those with permanent status were fired.

Finally, PAL begs the Court to reconsider its finding that the retrenchment scheme in question did not pass the test of fairness and reasonableness with respect to the criteria used in selecting those whose services should be retained or terminated. That it merely used the criteria stipulated in its CBA with FASAP where efficiency rating and inverse seniority are the basic considerations as carried over from the parties' previous CBAs could allegedly be seen from the manner the retrenchment plan was carried out. The rating variables contained in the Performance Evaluation Form of each and every cabin crew personnel's Grooming and Appearance Handbook are fair and reasonable since they are inherent requirements ("necessarily intertwined," as PAL would put it) for employment as flight attendant or steward. More significantly, it claims that the criteria used in the implementation

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[7] *Id.* at 1571-1576.

of the retrenchment scheme in question was based on the ratified PAL-FASAP 1996-2000 CBA, which should be considered as the law between the parties.

PAL believes that the Court may have misconstrued the significance of the term "other reasons" which the NLRC utilized in its summary of FASAP members and causes for their retrenchment,[8] arguing that the use of the phrase does not necessarily mean that the employees were retrenched for obscure reasons that are not acceptable under the law; it simply points to the NLRC's economy of language in lumping together various reasons for retrenchment, such as excess sick leaves, previous admonitions, suspensions, passenger complaints, poor performance, tardiness, *etc.* It claims that it used seniority in conjunction with a combination of these grounds in arriving at a conclusion of whether to retain or retrench.

PAL defends as well its use of a single year (1997) as basis for assessing the cabin attendants' fitness for retention or retrenchment, stressing that its CBA with FASAP requires – as basis for reduction in personnel – only **one** efficiency rating, which should be construed as that obtained by each cabin attendant for a **single** year, in accordance with Section 112 of the CBA which provides:

> In the event of redundancy, phase-out of equipment or reduction of operations, the following rules in the reduction of personnel shall apply:
>
> A. Reduction in the number of Pursers:
>
> 1. In the event of a reduction of purser OCARs, pursers who have not attained **an** efficiency rating of 85% shall be downgraded to international Cabin Attendant in the reverse order of seniority.
>
> 2. If the reduction of purser OCARs would involve more than the number of pursers who have not attained **an** efficiency rating of 85%, then pursers who have attained

[8] *Id.* at 686.

an efficiency rating of 85% shall be downgraded to international Cabin Attendant in the inverse order of seniority.

B. In reducing the number of international Cabin Attendants dueto reduction in international Cabin Attendant OCARs, the same process in paragraph A shall be observed. InternationalCabinAttendants shall be downgraded to domestic.

C. In the event of reduction of domestic OCARs thereby necessitating the retrenchment of personnel, the same process shall be observed.

In no case, however, shall a regular Cabin Attendant be separated from the service in the event of retrenchment until all probationary or contractual Cabin Attendant in the entire Cabin Attendants Corps, in that order, shall have been retrenched. (Emphasis and underscoring supplied)

PAL asserts that since efficiency ratings for each cabin or flight attendant are computed on an annual basis, it should therefore mean that when Section 112 referred to "**an"** efficiency rating of 85%, then it should logically and practically follow that only one year's worth of performance should be used as criteria for the retrenchment of cabin attendants – that is, the most recent efficiency rating obtained by each of them. For purposes of the present case, it would necessarily be that for the year 1997, or the year immediately prior to the retrenchment, and no other.

Finally, regarding the quitclaims executed, PAL maintains that since the retrenchment scheme it implemented was essentially valid, then it should follow that the quitclaims are regular as well, and more so given the absence of mistake, duress, fraud or misrepresentation.

In its *Comment*[9] to PAL's *Motion for Reconsideration*, FASAP asserts that the issue is not centered on PAL's financial condition but whether the retrenchment of the 1,400 cabin personnel was warranted. It alleges that:

[9] *Id.* at 1726-1770.

The issue is whether or not the nature and extent of the financial circumstances and the methods used to resolve fiscal difficulties warranted the illegal and unceremonious dismissal of around 1,400 flight attendants, stewards, and cabin crew. It was the termination without considering the legal factors for retrenchment. Because of the difficulties that the entire nation was going through, the ostensible name given was retrenchment. But it was really an illegal dismissal and arbitrary termination. x x x

The casualties of illegal action, the ones sacrificed in the early stages of the situation and not as a last resort, are not the employer and its officers or owner. As the Honorable Court pointed out, the questioned action struck at the very heart of the workers' employment, the lifeblood upon which the worker and his family owe their survival. No proof has been adduced in ten long years of litigation that retrenchment was only a measure of last resort, (that) other less drastic means were considered and tried and found inadequate.

x x x x x x x x x

The Court has treated the instant case for what it truly is – an illegal retrenchment, one that was prematurely done and whimsically carried out. x x x

This is about a "bad faith" retrenchment – one which neither complied with the legal prerequisites therefor nor observed the provisions of the PAL-FASAP CBA thereon; one which was not employed as a last resort and which did not have any fair and reasonable criteria to serve as basis for selecting who would be retrenched; one which was capriciously and whimsically implemented; one which was illegally made.[10]

FASAP declares that although it recognized PAL's financial difficulties in 1997 and 1998, it never conceded the same to be valid reason upon which to base the questioned retrenchment, citing that in proceedings below, the reasonable necessity of the retrenchment and its effectiveness in preventing losses to PAL had been squarely raised. FASAP maintains that prior negotiations with PAL (on the possible implementation of cost-cutting measures, employee rotation plans, triple and quadruple room sharing arrangements, allocation of vacation leaves without

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[10] *Id.* at 1727-1729.

pay, *etc*.) is proof of that recognition, but that ultimately, it was incumbent upon PAL to have shown that it undertook a retrenchment scheme that was in proportion to and commensurate with the financial distress it was experiencing at the time.

Essentially, FASAP merely echoed our pronouncements, focusing upon our dissertation on each of the elements required in order to justify retrenchment, most of which were found lacking in PAL's retrenchment program or scheme. Specifically, FASAP points to the lack of prior resort to cost-cutting measures, the rehiring of probationary employees, prior assurances by PAL that retrenchment was no longer necessary, and lack of fair and reasonable criteria in selecting the employees to retrench.

Specifically, mention is made that there is nothing in its then existing CBA with PAL which mandates that a single year – 1997 – should be used as the gauge or measure for determining the flight attendants' performance for purposes of retrenchment. Asserting that PAL's justification of its use of a single year was a "very strained interpretation" of the provisions in the CBA, FASAP insists that seniority, loyalty and past efficiency are requirements of law and jurisprudence which may not be summarily disregarded in choosing whom to retrench, demote or retain, a proposition it claims to find support in Article III, Section 7(A) of its CBA which provides:

> The Association (FASAP) hereby acknowledges that the management of the Company (PAL) and the direction of its employees; x x x; and the lay-off and re-employment of employees in connection with increases or decreases in the work force are the exclusive rights and functions of management provided only that the Company act in accordance with applicable laws and the provisions of this Agreement.[11] (Words in parentheses supplied)

FASAP goes on further to suggest that the basic criterion for effecting the retrenchment scheme should have been seniority, as enunciated in *Maya Farms Employees Organization v. National Labor Relations Commission*.[12] In said case, the

[11] *Id.* at 1752.

[12] 239 SCRA 508 (1994).

employer was constrained to streamline its manpower base owing to losses and setbacks in operations. Management sent notices of termination (due to redundancy) to 66 of its employees. In the labor case that ensued, the union pointed to a violation of a specific provision in its CBA which declared, thus:

> Sec. 2. LIFO RULE. In all cases of lay-off or retrenchment resulting in termination of employment in the line of work, the Last-In-First-Out (LIFO) Rule must always be strictly observed.

Ultimately, we held therein that the employer did not violate the LIFO rule in the CBA. We explained therein that –

> It is not disputed that the LIFO rule applies to termination of employment in the line of work. Verily, what is contemplated in the LIFO rule is that when there are two or more employees occupying the same position in the company affected by the retrenchment program, the last one employed will necessarily be the first to go.
>
> Moreover, the reason why there was no violation of the LIFO rule was amply explained by public respondent in this wise:
>
> > . . . The LIFO rule under the CBA is explicit. It is ordained that in cases of retrenchment resulting in termination of employment in line of work, the employee who was employed on the latest date must be the first one to go. The provision speaks of termination in the line of work. This contemplates a situation where employees occupying the same position in the company are to be affected by the retrenchment program. Since there ought to be a reduction in the number of personnel in such positions, the length of service of each employee is the determining factor, such that the employee who has a longer period of employment will be retained.
> >
> > In the case under consideration, specifically with respect to Maya Farms, several positions were affected by the special involuntary redundancy program. These are packers, egg sorters/stockers, drivers. In the case of packers, prior to the involuntary redundancy program, twenty-one employees occupied the position of packers. Out of this number, only 5 were retained. In this group of employees, the earliest date of employment was October 27, 1969, and the latest packer was

employed in 1989. The most senior employees occupying the position of packers who were retained are as follows:

Santos, Laura C.	Oct. 27, 1969
Estrada, Mercedes	Aug. 20, 1970
Hortaleza, Lita	June 11, 1971
Jimenez, Lolita	April 25, 1972
Aquino, Teresita	June 25, 1975

All the other packers employed after June 2, 1975 (sic) were separated from the service.

The same is true with respect to egg sorters. The egg sorters employed on or before April 26, 1972 were retained. All those employed after said date were separated.

With respect to the position of drivers, there were eight drivers prior to the involuntary redundancy program. Thereafter only 3 positions were retained. Accordingly, the three drivers who were most senior in terms of period of employment, were retained.

They are: Ceferino D. Narag, Efren Macaraig and Pablito Macaraig.

The case of Roberta Cabrera and Lydia C. Bandong, Asst. Superintendent for packing and Asst. Superintendent for meat processing respectively was presented by the union as an instance where the LIFO rule was not observed by management. The union pointed out that Lydia Bandong who was retained by management was employed on a much later date than Roberta Cabrera, and both are Assistant Superintendent. We cannot sustain the union's argument. It is indeed true that Roberta Cabrera was employed earlier (January 28, 1961) and (sic) Lydia Bandong (July 9, 1966). However, it is maintained that in meat processing department there were 3 Asst. Superintendents assigned as head of the 3 sections thereat. The reason advanced by the company in retaining Bandong was that as Asst. Superintendent for meat processing she could "already take care of the operations of the other sections." The nature of work of each assistant superintendent as well as experience were taken into account by management. Such criteria was not shown to be whimsical nor carpricious (sic).[13]

[13] *Id.* at 515-517.

Finally, FASAP claims that PAL did not provide reasons for retrenching the more than 1,400 flight attendants; that it was only when it filed its Supplemental Memorandum before the Labor Arbiter in March 2000 that the airline submitted in evidence the ICCD Masterank and Seniority 1997 Ratings, which allegedly took into account the subjective factors such as appearance and good grooming, which supposedly require the written conformity of its members if they were to be considered at all, in accordance with Section 124, Article XXVI of the CBA.

By way of reply to FASAP's Comment, PAL insists that its decision to downsize the flight fleet was the principal reason why it had to put into effect a corresponding downsizing of cabin crew personnel; that the reduction in fleet size was an integral part of its SEC-approved rehabilitation plan; that the reduction in the number of its aircraft by 75% – from 54 to just 14 – likewise necessitated a corresponding 75% reduction in its total cabin crew personnel; and that its subsequent decision to increase its remaining fleet from 14 aircraft to 22 was a "business judgment exercised in good faith after a series of significant events and upon the advice of airline industry experts who were assisting it in its rehabilitation efforts."[14] This increase from 14 to 22 aircraft was then included in its Amended and Restated Rehabilitation Plan, which was subsequently approved by the SEC. Because of this, it then had to increase its manpower; it recalled or rehired the services of the employees it had previously terminated.

PAL begs the Court to recognize this downsizing of aircraft as a valid exercise of its management prerogative to close its business operations, and not merely to reduce personnel. In other words, PAL would have the Court believe that its retrenchment program is not *merely* a reduction of personnel for the purpose of cutting on costs of operations, but as a closure of its business, a cessation of business operations to prevent further financial drain.[15] PAL argues that cost-cutting measures

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[14] *Id.* at 1788.

[15] Citing *Alabang Country Club, Inc. v. NLRC*, G.R. No. 157611, August 9, 2005, 466 SCRA 329.

could not have sufficed to nurse the airline back to financial health; it had to resort to partial closure of its business. Thus:

18. Moreover, how can PAL possibly implement the cost-cutting measures allegedly suggested by FASAP with 75% of its fleet already gone? The situation would be different if PAL retained its 54-plane fleet, and PAL's only concern was to save on salaries and wages. In such a situation, PAL is indeed obliged to resort to "less drastic cost-cutting measures" before it can validly proceed with retrenchment. But this is not the case here. PAL's financial condition could not have improved by merely adopting cost-cutting measures such as work rotation and forced leaves. In fact, retrenchment alone could not have saved PAL from financial ruin. PAL had to resort to the drastic action of partially closing its business operations by downsizing its fleet of aircrafts. This naturally resulted in the reduction of PAL's personnel.

19. Assuming *arguendo* that the jurisprudence relied upon by FASAP apply, the proven facts in this case show that retrenchment was not the only option for PAL. The problem with FASAP is that it is taking a myopic view of what truly happened. It stubbornly claims that the reduction of employees is a simple case of retrenchment program that was implemented in the first instance. But it is clear from the record that when PAL suffered serious business losses, retrenchment was not the only option, obviously because the objective was to cut down on operating expenses as a whole, and not merely in terms of salaries and wages, which is the only purpose of a retrenchment.

20. What PAL did was to reduce its fleet of 54 planes to only 14 planes. It was only after PAL reduced its fleet of aircrafts that it had to terminate the employment of its employees who were already in excess of the workforce required under the reduced fleet set-up. In other words, retrenchment was merely a necessary and natural consequence of PAL's earlier decision to downsize its fleet of aircrafts. There is thus simply no basis to say that PAL implemented retrenchment in the first instance.

x x x x x x x x x

22. Neither is there basis to FASAP's claim that PAL made the assurance that there will be no more need for retrenchment. How could have PAL given such assurance in light of its huge business losses, bordering on bankruptcy? The truth is, no such assurance

was ever given by PAL. This is clear in the minutes of all of the meetings with FASAP where the only issue discussed was how to proceed with the retrenchment. These meetings were held in February to April 1998, or two to three months before the decision to reduce operations was made by PAL due to various serious supervening events – the strike staged by the Airline Pilots Association of the Philippines (ALPAP) and by the Philippine Airlines Employees Association (PALEA).[16]

On the use of efficiency ratings obtained for the year 1997 as singular basis for determining the fitness of cabin crew personnel to continue working with it, PAL explains that –

> 24. There is nothing unreasonable in using the year 1997 as basis for arriving at the efficiency ratings. FASAP's insinuations that it ignored the employees' alleged exceptional performance ratings and exemplary attendance records in the past are simply baseless, misleading and erroneous.
>
> 24.1. First, while an employee may rack up hundreds of awards and commendations and hundreds of hours of leave credits, it does not necessarily follow that the same employee, although admittedly of exceptional caliber, cannot be terminated if just or authorized cause subsequently exists. For instance, if there is redundancy, an employee holding a superfluous position may be terminated regardless of numerous awards and leave credits he may have earned. In this case, it cannot be denied that PAL's reduction, or partial closure, of its business operations, *i.e.*, downsizing its flight fleet from 54 to 14 aircrafts, in order to prevent business losses and avoid total closure of its business, is one of the recognized authorized causes expressly provided under Article 283 of the Labor Code.
>
> PAL could, therefore, retrench employees regardless of the number of commendations, awards and accumulated leave credits the latter obtained in the course of employment provided, of course, that the retrenchment is valid and legal. In this case, the Labor Arbiter, the NLRC and the Court of Appeals unanimously found that the retrenchment is intrinsically valid and legal based on the same set of evidence. In fact, the Labor Arbiter categorically ruled:

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[16] *Rollo*, pp. 1793-1794.

…there is no question that the rules imposed by law and jurisprudence to sustain retrenchment **have been amply satisfied by PAL**. The only issue at hand is whether or not the retrenchment can be upheld for complying with rules set forth in the collective bargaining agreement.

24.2. Second, in implementing retrenchment, the law does not require an employer to look back into far reaches of time to check every good deed performed by every employee. This would not only be highly impractical, but manifestly absurd as well. In evaluating job efficiency, it is enough for an employer to fix a determinate time frame within which to base its evaluation. It can be six months, one year, two years, three years or ten years. It can in fact be any period of time, subject to management's sound discretion.

But to be fair and reasonable, the application of the period must be uniform and consistent. It cannot be one year for employee A, two years for employee B and three years for employee C. In this case, PAL selected a period of one year (the year 1997), which was uniformly and consistently applied to all, without exception.

The year 1997 was chosen by PAL as it was the most logical period being the year immediately preceding the retrenchment. All relevant records for the year 1997, such as attendance and performance evaluation, were complete and accurate. Certainly, the year 1997 was not selected for the purpose of discriminating against any employee, but with the sole objective of retaining the more efficient among the employees.

x x x x x x x x x

26. FASAP then insists that the basic criterion to effect lay-off or retrenchment is seniority. FASAP cites Article VII, Section 23 of the PAL-FASAP 1995-2000 CBA:

The term "seniority" whenever used in this Agreement shall be deemed to mean a measure of a regular Cabin Attendant's claim in relation to other regular Cabin Attendants holding similar positions, to preferential consideration whenever the Company exercises its right to promote to a higher paying position or lay-off of any Cabin Attendant.

27. FASAP obviously misread and misinterpreted Section 23 of the PAL-FASAP 1995-2000 CBA. The provision does not even mandate seniority to be a criterion whenever PAL implements a reduction or retrenchment, much less does it say that seniority is the one and only criterion to be applied. Section 23 simply defines seniority and states that seniority may be given "preferential consideration" whenever PAL exercises its right to promote to a higher paying position or lay-off of cabin attendants. PAL did just that in complying with Section 112 of the PAL-FASAP CBA 1995-2000 when seniority was applied whenever all other factors were found to be equal. PAL clearly followed Section 23 of the PAL-FASAP CBA in giving seniority preferential consideration. This is also reflected in the tabulation made by the NLRC in its Decision.[17]

PAL argues that in its past two CBAs with FASAP prior to the one under controversy, the same provisions and criteria for appearance, grooming, efficiency and performance were used, without objections having been advanced by FASAP.

During oral arguments, PAL advanced an altogether new line of reasoning that has, until now, never been advanced as the primary argument in defense of its retrenchment scheme: **that the principal and true reason why PAL had to implement the mass lay-off of cabin personnel was not the downsizing of aircraft fleet size, but the June 5, 1998 pilots' strike**, where approximately six hundred (600) of its pilots apparently abandoned their planes and simultaneously refused to fly. Thus, counsel for PAL manifested to the Court that –

ATTY. MENDOZA

As a consequence, if your Honor please, but **what really brought about, shall we say, "the really perilous situation of closure was that on June 5, 1998, the pilots went on strike**, ninety (90%) percent of the pilots went on strike, approximately six hundred (600)." These pilots' strike was so devastating because the pilots, if your Honors please, even left their place where they were at the time, somewhere in Bangkok, somewhere in Taipei and they just left the planes. Without any pilots no plane can fly, your Honor, that is the stark reality of the situation, and **without airplanes flying, there**

[17] *Id.* at 1796-1798.

would be no place for employment of cabin attendants.[18] (Emphasis supplied)

As a result of this pilots' strike, PAL claims to have suffered daily revenue losses equivalent to ₱100 million and ₱50 million of lost fixed costs, which came at a time when PAL had "no more money."[19] Owing to this pilots' strike, PAL was brought to the brink of disaster and emergency that it needed to align the number of cabin attendants with the number of airplanes that were flying.[20] After the pilots went on strike, PAL was left with only 68 pilots who chose to remain, but with 2,039 cabin attendants. Faced with this disproportionate ratio of pilots to cabin attendants, PAL immediately decided to terminate the services of more than 1,400 cabin attendants via the retrenchment scheme in question. At the same time, the reduction in fleet – which until that time remained a mere proposal – had to be immediately implemented, and cost-cutting measures were simply out of the question. Thus:

ATTY. MENDOZA

While meetings between PAL and FASAP may have occurred prior to June 1998 to discuss measures in which to possibly avoid retrenchment with its planned reduction of fleet, PAL's financial circumstances drastically changed in June 1998 that necessitated immediate and corresponding measures. **Harsh reality was that, there simply was no time. FASAP-suggested less drastic measures of work rotation, forced vacation leaves, hotel sharing *etc.* were no longer feasible. Indeed, reduction by about 5,000 employees, including 1,423 cabin crew, was the less drastic measure**. The alternative, harsher obviously, was closure and liquidation.[21] (Emphasis supplied)

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[18] Transcript of Stenographic Notes, March 18, 2009 Oral Arguments, pp. 10-11. (Emphasis supplied)

[19] *Id.* at 11.

[20] *Id.* at 12.

[21] *Rollo*, p. 1925; Memorandum for PAL submitted after oral arguments. (Emphasis supplied)

All throughout, it has been impressed upon us that PAL's decision to downsize its fleet size is the principal reason why it had to put into effect a corresponding downsizing of cabin crew personnel. However, on oral arguments before us, PAL now makes a total turnaround and attributes the retrenchment to the June 5, 1998 pilots' strike. Repeatedly, counsel for PAL blamed the pilots' strike as the main culprit, thus:

ATTY. MENDOZA

As a consequence, if your Honor please, but **what really brought about, shall we say, "the really perilous situation of closure was that on June 5, 1998, the pilots went on strike**, ninety (90%) percent of the pilots went on strike, approximately six hundred (600)." These pilots' strike was so devastating x x x. Without any pilots no plane can fly, your Honor, that is the stark reality of the situation, and **without airplanes flying, there would be no place for employment of cabin attendants**.

x x x x x x x x x

ATTY. MENDOZA

Well, according to the Court, Your Honor, the Court principally invalidated this because, according to the Court it was fraudulent. And it was fraudulent because PAL misrepresented that it was losing, but in fact it was not as the Court found. So, in other words, if Your Honor please, as I have explained, there was no misrepresentation because the members of FASAP could not have but known that there were less planes that were flying. And they could not have but known that the number of cabin attendants cannot have exceed that which were required by the number of planes that were flying. So that was basically the reason for the redundancy and so it can never be said that this was redundant. But as I have said, if Your Honor please, if the Court reconsiders its finding that there was illegal dismissal there would really be no relevance to this quitclaim because, in any event, the separation pay has been received by some, except for those who declined it.

So therefore, if Your Honor please, if I may conclude since my time is practically up. First, there can hardly be any question, in fact, it is considered by FASAP and found by the National Labor Relations Commission, the Labor Arbiter, and the Court of Appeals that circumstances existed that did not only warrant the reduction

of personnel including the members of FASAP and the cabin attendants but that these were compelled by circumstances. If the cabin attendants were not retrenched you would have a situation where cabin attendants would be there but were not needed but would earn compensation.

Second, if Your Honor please, as to the second issue, "cost-cutting measures" – they were contemplated. But when the pilots struck, an emergency situation arose and so there needed to be an immediate response to that situation and the only one of the components of that response is this retrenchment.

Incidentally, if Your Honor please, a basic core of the rehabilitation of PAL was for the creditors to agree. PAL is a different business than other businesses, Your Honor. An airline cannot stand still and the creditors' demands are not met immediately, PAL would simply lose its airplanes. And so far as Point No. 3 is concerned, if Your Honor please, PAL did the best it could under the circumstances. And as to number 3, as I said, if Your Honor please, PAL acted in accordance with criteria in the Collective Bargaining Agreement which it followed meticulously and religiously.

Whereas for the fourth, if Your Honor please, there was no fraud in the execution of the quitclaim but I must emphasize once again that PAL's case does not really rest on the quitclaims. PAL's case rests on the response that we made on the first three (3) questions.

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ATTY. MENDOZA

Yes. As I explained, Your Honor, when the 1997 economic crisis took place and PAL saw that it was going to create a problem, PAL started studying measures already. But before it could implement any of these measures, even conclude the study the pilots struck, **when the pilots struck the situations changed entirely. It put PAL in complete peril of total closure because no planes could fly, so that changed the picture, there was no more time to engage in cost-cutting measures**. What needed to be done, if Your Honor please, is to do what was necessary to survive at that point? The first thing to do to survive was to fly as many planes as possible in order to earn some revenue. But you could only fly as many planes as there were pilots, and that was the reason for the initial flights.

x x x x x x x x x

ASSOCIATE JUSTICE NACHURA

During these conferences, did FASAP not suggest any other cost-cutting measures in order to determine the immediate implementation of a retrenchment program?

ATTY. MENDOZA

Well, there was an endorsed initial conversation; there were suggestions if there is to be reduction of personnel, rotations, and so on and so forth, Your Honor. So, **by the time the pilots struck you have to retrench quickly** x x x.

ASSOCIATE JUSTICE NACHURA

Because related to this is a statement in our Decision that the retrenchment was illegal because it was not actually the last resort that PAL could have; it was not the last resort that PAL could have attended, well used. That means, there were other options that would probably have opened to PAL which would not be as detrimental to FASAP as retrenchment.

ATTY. MENDOZA

If Your Honor please, **may I put it this way? It was not just the last; it was the only resort, Your Honor, because of these circumstances**. **There was no other option**, but to operate flights and spend only as necessary. If you have more cabin attendants than we required for those planes which were flying you are spending needlessly actually, Your Honor, and that is certainly not conducive to bring about a recovery of Philippine Airlines.

x x x x x x x x x

ASSOCIATE JUSTICE DE CASTRO

You mentioned that…before that, that there is a need for rehabilitation because the PAL was in dire financial condition at that time, and it was…

ATTY. MENDOZA

Your Honor please, the rehabilitation came after the pilots' strike. Actually, before the pilots' strike the effort of PAL is to find the way to address the Asian economic crisis. It's just like, if Your Honor please, a factory which is to be more efficient in order to be able to compete, let us say, with the imported goods, so you downsize or you may try to be more efficient **but the situation PAL confronted**

after the pilots' strike was entirely different. It was a case of survival already, Your Honor, because it meant closure and PAL was able to operate some planes only because of what they called management pilots. There were certain pilots who were occupying supervisory positions but who were employed still by PAL. They were the ones who actually flew the plane because the members of the pilots' union simply stopped working.[22] (Emphasis supplied)

On the other hand, FASAP argued and reiterated its original contentions, *inter alia*, that during negotiations for the implementation of cost-cutting measures, it was assured by PAL that since there were negotiations with possible investors who were being eyed as business partners, retrenchment was no longer necessary;[23] that although it admitted PAL's financial difficulties, it did not concede that these losses justified the urgency, necessity and extent of the questioned retrenchment scheme;[24] that the ICCD Masterank Listing was an afterthought, the same having been presented only on March 13, 2000, and was never shown to the retrenched employees during the period of retrenchment;[25] that the criteria for retrenchment did not conform to the CBA;[26] and that no cost-cutting measures were implemented.[27]

PAL has all this time tried to convince the Court that its decision to downsize its flight fleet was the principal reason why it undertook a corresponding downsizing of cabin crew personnel. This time, however, it significantly changed stance and blamed the June 5, 1998 pilots' strike as the real culprit which drove it to undertake the massive retrenchment under scrutiny. This time, PAL characterizes the retrenchment scheme and the downsizing of aircraft as mere necessary reactions to or unfortunate consequences of the pilots' strike, which it claims

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[22] Transcript of Stenographic Notes, March 18, 2009 Oral Arguments, pp. 10-11, 27-30, 62-66, 68-69. (Emphasis supplied)

[23] *Id.* at 96.

[24] *Id.* at 98.

[25] *Id.* at 99.

[26] *Id.* at 100.

[27] *Id.* at 109-112.

likewise necessitated a disregard of all previous negotiations for the implementation of cost-cutting measures that could have rendered the retrenchment scheme unnecessary, and which cost-cutting measures it no longer found necessary to undertake.

We find this argument untenable. The strike was a temporary occurrence that did not necessitate the immediate and sweeping retrenchment of 1,400 cabin or flight attendants. By PAL's own account, some of the striking pilots went back to work in July 1998, or less than one month after the strike began. Moreover, PAL admitted that it remedied the situation by employing "management pilots."[28] It could have hired new pilots as well. Certainly, it could have implemented the cost-cutting measures being discussed as a temporary measure to obviate the adverse effects of the pilots' strike. There was no reason to drastically implement a *permanent* retrenchment scheme in response to a *temporary* strike, which could have ended at any time, or remedied promptly, if management acted with alacrity. Juxtaposed with its failure to implement the required cost-cutting measures, the retrenchment scheme was a knee-jerk solution to a temporary problem that beset PAL at the time.

Besides, we cannot simply allow PAL to conveniently blame the striking pilots for causing the massive retrenchment of cabin personnel. Using them as scapegoats to validate a comprehensive retrenchment scheme of cabin personnel without observing the requirements set by law is both unfair and underhanded. PAL must still prove that it implemented cost-cutting measures to obviate retrenchment, which under the law should be the **last** resort. By PAL's own admission, however, the cabin personnel retrenchment scheme was one of the **first** remedies it resorted to, **even before** it could complete the proposed downsizing of its aircraft fleet. It admittedly dropped all plans of implementing cost-cutting measures as soon as the pilots went on strike, and right away it sent notices of termination to its cabin personnel.[29] This knee-jerk reaction would explain why it had to eventually

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[28] *Id.* at 69.

[29] The pilots' strike was held on June 5, 1998; the retrenchment process

recall and rehire some of the cabin attendants almost immediately after it retrenched them, because the retrenchment simply was not commensurate with the downsizing of aircraft fleet size. This outcome only proves to show that the decision to retrench came even before a final determination of how many aircraft were needed to be retained or discarded, or even before the rehabilitation plan could be approved.[30]

Again, it must be emphasized that in order for a retrenchment scheme to be valid, **all** of the following elements under Article 283 of the Labor Code must concur or be present, to wit:

(1) That retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer;

(2) That the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment;

(3) That the employer pays the retrenched employees separation pay equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher;

(4) That the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and,

(5) That the employer uses fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers.

In the absence of one element, the retrenchment scheme becomes an irregular exercise of management prerogative. The employer's obligation to exhaust all other means to avoid further losses without retrenching its employees is a component of the

(giving out of notices of retrenchment to the employees) was initiated on June 15, 1998, or just ten (10) days from the start of the pilots' strike.

[30] The rehabilitation plan was approved by the Securities and Exchange Commission (SEC) only on June 23, 1998.

first element as enumerated above. To impart operational meaning to the constitutional policy of providing full protection to labor, the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means have been tried and found wanting.[31]

In the instant case, PAL admitted that since the pilots' strike allegedly created a situation of extreme urgency, it no longer implemented cost-cutting measures and proceeded directly to retrench. This being so, it clearly did not abide by all the requirements under Article 283 of the Labor Code. At the time it was implemented, the retrenchment scheme under scrutiny was not triggered directly by any financial difficulty PAL was experiencing at the time, nor borne of an actual implementation of its proposed downsizing of aircraft. It was brought about by – and resorted to as an immediate reaction to – a pilots' strike which, in strict point of law and as herein earlier discussed, may not be considered as a valid reason to retrench, nor may it be used to excuse PAL for its non-observance of the requirements of the law on retrenchment under the Labor Code.

On the basis of the foregoing disquisition, we find no further need to discuss the other arguments advanced by the parties in their pleadings and during the oral arguments.

Therefore, this Court finds no reason to disturb its finding that the retrenchment of the flight attendants was illegally executed. As held in the Decision sought to be reconsidered, PAL failed to observe the procedure and requirements for a valid retrenchment. Assuming that PAL was indeed suffering financial losses, the requisite proof therefor was not presented before the NLRC which was the proper forum. More importantly, the manner of the retrenchment was not in accordance with the procedure required by law.Hence, the retrenchment of the flight attendants amounted to illegal dismissal. Consequently, the flight attendants affected are entitled to the reliefs provided by law, which include backwages and reinstatement or separation pay, as the case may be.

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[31] *Lopez Sugar Corporation v. Federation of Free Workers*, 189 SCRA 179, 188 (1990).

PAL begs the compassion of this Court and alleges that the monetary award it stands to pay to the affected flight attendants totals a whopping ₱2.3 billion, the payment of which will certainly paralyze its operations and even lead to its untimely demise. However, a careful review of the records of the case, as well as the respective allegations of the parties, shows that several of the crew members do not need to be paid full backwages or separation pay. A substantial fraction of the 1,400 flight attendants have already been either recalled, reinstated or relieved from the service. Still, some of them have reached the age of compulsory retirement or even died.Likewise, a significant portion of these retrenched flight attendants have already received separation pay and signed quitclaim. All of these factors, to the mind of the Court, will greatly reduce the quoted amount of the money judgment that PAL will have to pay.

After finality of this case, the records will have to be remanded to the Labor Arbiter who decided the case at the first instance. There, the actual amount of PAL's liability to each and every flight attendant will be computed. Both parties will have a chance to submit further proof and argument in support of their respective proposed computations.For the guidance of the Labor Arbiter as well as the parties, this Court lays down the following yardsticks in the computation of the final amount of liability, in order to avoid any protracted and heated debates which can again lead to further delays in the final resolution of this case and the full realization by the retrenched flight attendants of the amounts necessary to compensate and indemnify them for the wrongful retrenchment.

1. Flight attendants who have been re-employed without loss of seniority rights shall be paid backwages but only up to the time of their actual reinstatement.

2. Flight attendants who have been re-employed as new hires shall be restored their seniority and other preferential rights. However, their backwages shall be computed only up to the date of actual re-hiring.

3. Flight attendants who have reached their compulsory age of retirement shall receive backwages up to the date of their retirement only. The same is true as regards the heirs of those who have passed away.

4. Flight attendants who have not been re-employed by PAL, including those who executed quitclaims and received separation pay or financial assistance, shall be reinstated without loss of seniority rights and paid full backwages. However, the amounts they already received should be deducted from whatever amounts are finally adjudged to them individually.

Four members of the Division voted to include a fifth (5th) criterion, namely that flight attendants who had obtained substantially equivalent or even more lucrative employment elsewhere in 1998 or thereafter are deemed to have severed their employment with PAL. They shall be entitled to full backwages from the date of their retrenchment only up to the date they found employment elsewhere.

On a final note, this Court finds that the award of attorney's fees equivalent to 10% of the total monetary award should be tempered, considering the number of flight attendants who stand to receive monetary awards and the totality of all amounts due to them. To be sure, attorney's fees in labor cases are awarded specifically in actions for recovery of wages or where an employee was forced to litigate and thus incurred expenses to protect his rights and interests. In such cases, a maximum of 10% of the total monetary award is justifiable under Article 111 of the Labor Code, Section 8, Rule VIII, Book III of its Implementing Rules and paragraph 7, Article 2208 of the Civil Code.[32] The award of attorney's fees is proper where there is a showing that the lawful wages were not paid accordingly.[33]

x x x [T]here are two commonly accepted concepts of attorney's fees, the so-called ordinary and extraordinary. In its ordinary concept,

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[32] *San Miguel Corporation v. Del Rosario*, G.R. Nos. 168194 & 168603, December 13, 2005, 477 SCRA 604, 619.

[33] *Id*.

an attorney's fee is the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter. The basis of this compensation is the fact of his employment by and his agreement with the client. In its extraordinary concept, attorney's fees are deemed indemnity for damages ordered by the court to be paid by the losing party in a litigation. The instances where these may be awarded are those enumerated in Article 2208 of the Civil Code, specifically par. 7 thereof which pertains to actions for recovery of wages, and is payable not to the lawyer but to the client, unless they have agreed that the award shall pertain to the lawyer as additional compensation or as part thereof. The extraordinary concept of attorney's fees is the one contemplated in Article 111 of the Labor Code, which provides:

> 111. *Attorney's fees.* – (a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered x x x

The afore-quoted Article 111 is an exception to the declared policy of strict construction in the awarding of attorney's fees. Although an express finding of facts and law is still necessary to prove the merit of the award, there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. There need only be a showing that the lawful wages were not paid accordingly, as in this case.

In carrying out and interpreting the Labor Code's provisions and its implementing regulations, the employee's welfare should be the primordial and paramount consideration. This kind of interpretation gives meaning and substance to the liberal and compassionate spirit of the law as provided in Article 4 of the Labor Code which states that "[a]ll doubts in the implementation and interpretation of the provisions of [the Labor] Code including its implementing rules and regulations, shall be resolved in favor of labor", and Article 1702 of the Civil Code which provides that "[i]n case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer." (Emphasis supplied)[34]

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[34] *PCL Shipping Philippines, Inc. v. NLRC*, G.R. No. 153031, December 14,

In the case of *Concept Placement Resources, Inc. v. Funk*,[35] this Court reduced the amount of attorney's fees which it ruled to be iniquitous and unconscionable after finding that the lawyer did not encounter difficulty in representing his client. It was held:

> We observe, however, that respondent did not encounter difficulty in representing petitioner. The complaint against it was dismissed with prejudice. All that respondent did was to prepare the answer with counterclaim and possibly petitioner's position paper. Considering respondent's limited legal services and the case involved is not complicated, the award of ₱50,000.00 as attorney's fees is a bit excessive. In *First Metro Investment Corporation vs. Este del Sol Mountain Reserve, Inc.*, we ruled that courts are empowered to reduce the amount of attorney's fees if the same is iniquitous or unconscionable. Under the circumstances obtaining in this case, we consider the amount of ₱20,000.00 reasonable.[36]

In the case at bar, we find that the flight attendants were represented by respondent union which, in turn, engaged the services of its own counsel. The flight attendants had a common cause of action. While the work performed by respondent's counsel was by no means simple, seeing as it spanned the whole litigation from the Labor Arbiter stage all the way to this Court, nevertheless, the issues involved in this case are simple, and the legal strategies, theories and arguments advanced were common for all the affected crew members. Hence, it may not be reasonable to award said counsel an amount equivalent to 10% of all monetary awards to be received by each individual flight attendant. Based on the length of time that this case has been litigated, however, we find that the amount of P2,000,000.00 is reasonable as attorney's fees. This amount should include all expenses of litigation that were incurred by respondent union.

2006, 511 SCRA 44, 64-65, citing *Reyes v. Court of Appeals*, 456 Phil. 520, 539-540.

[35] G.R. No. 137680, February 6, 2004, 422 SCRA 317.

[36] *Id.* at 322-323.

WHEREFORE, for lack of merit, the Motion for Reconsideration is hereby *DENIED with FINALITY*. The assailed Decision dated July 22, 2008 is *AFFIRMED with MODIFICATION* in that the award of attorney's fees and expenses of litigation is reduced to P2,000,000.00. The case is hereby *REMANDED* to the Labor Arbiter solely for the purpose of computing the exact amount of the award pursuant to the guidelines herein stated.

No further pleadings will be entertained.

SO ORDERED.

Chico-Nazario, Nachura, Peralta and *Bersamin,* * *JJ.,* concur.

THIRD DIVISION

[G.R. No. 179507. October 2, 2009]

EATS-CETERA FOOD SERVICES OUTLET and/or SERAFIN RAMIREZ, *petitioners, vs.* **MYRNA B. LETRAN and MARY GRACE ESPADERO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; WHEN PROPER. — Article 282 of the Labor Code includes serious misconduct, fraud and willful breach of trust among the just causes for termination. But prior to termination on such grounds, the employer must satisfy both substantive and procedural due process. Not only must the employee be afforded a reasonable opportunity to be heard and to submit any evidence

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* Designated member vice Justice Teresita J. Leonardo-De Castro per raffle dated September 28, 2009.

he may have in support of his defense, but the dismissal must be for a just or authorized cause as provided by law.

2. ID.; ID.; ID.; PROCEDURAL REQUIREMENTS. — The procedural requirements are set forth in Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code, to wit: SEC. 2. **Security of Tenure.** x x x. (d) In all cases of termination of employment, the following standards of due process shall be substantially observed: For termination of employment based on just causes as defined in Article 282 of the Labor Code: (i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side. (ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him. (iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

3. ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE AS A GROUND; CONSTRUED. — A position of trust and confidence has been defined as one where a person is entrusted with confidence on delicate matters, or with the custody, handling, or care and protection of the employer's property and/or funds. One such position is that of a cashier. A cashier is a highly sensitive position which requires absolute trust and honesty on the part of the employee. It is for this reason that the Court has sustained the dismissal of cashiers who have been found to have breached the trust and confidence of their employers. In one case, the Court upheld the validity of the dismissal of a school cashier despite her 19 years of service after evidence showed that there was a discrepancy in the amount she was entrusted to deposit with a bank. In *Metro Drug Corporation v. National Labor Relations Commission*, we explained: Loss of confidence as a ground for dismissal does not entail proof beyond reasonable doubt of the employee's misconduct. It is enough that there be "some basis" for such loss of confidence or that "the employer has reasonable grounds to believe, if not to entertain the moral conviction[,] **that the employee concerned is responsible for the misconduct and that the nature of his participation therein rendered him**

absolutely unworthy of the trust and confidence demanded by his position. The rule, therefore, is that if there is sufficient evidence to show that the employee occupying a position of trust and confidence is guilty of a breach of trust, or that his employer has ample reason to distrust him, the labor tribunal cannot justly deny the employer the authority to dismiss such employee.

4. ID.; ID.; ID.; SERIOUS MISCONDUCT AS A GROUND; EXEMPLIFIED. — Misconduct has been defined as improper or wrong conduct; the transgression of some established or definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. The misconduct, to be serious, must be of such a grave character and not merely trivial or unimportant. To constitute just cause for termination, it must be in connection with the employee's work. With the degree of trust expected of Espadero, such infraction can hardly be classified as one that is trivial or unimportant. Her failure to promptly report the incident reflects a cavalier regard for the responsibility required of her in the discharge of the duties of her position.

APPEARANCES OF COUNSEL

Wilfred F. Neis for petitioners.
Reynaldo L. Libanan for respondents.

D E C I S I O N

NACHURA, *J.*:

Before us is a petition for review on *certiorari* assailing the December 13, 2006 Decision[1] of the Court of Appeals (CA), as well as its August 30, 2007 Resolution,[2] denying the motion for partial reconsideration filed by petitioners in CA-G.R. SP No. 92551. The appellate court, in its assailed decision and resolution,

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[1] Penned by Associate Justice Monina Arevalo-Zenarosa, with Associate Justices Martin S. Villarama, Jr. and Lucas P. Bersamin (now a member of this Court), concurring; *rollo*, pp. 52-66.

[2] *Id.* at 67-69.

affirmed the July 18, 2005 Resolution[3] of the National Labor Relations Commission (NLRC) with respect to Myrna B. Letran's complaint but modified it with respect to Mary Grace Espadero's (Espadero) complaint declaring petitioners liable for her illegal dismissal. Petitioners are now assailing the CA's decision only with respect to its ruling on Espadero's case.

The factual antecedents follow.

Espadero had been employed by Eats-cetera Food Services Outlet since June 30, 2001 as cashier. On November 20, 2002, when she reported for duty, Espadero discovered that her time card was already punched in. After asking around, she found out that a certain Joselito Cahayagan was the one who punched in her time card. Espadero, however, failed to report the incident to her supervisor, Clarissa Reduca (Reduca). This prompted Reduca to report the incident to the personnel manager, Greta dela Hostria. Espadero contended that she was dismissed outright without being given ample opportunity to explain her side. She claimed that on November 21, 2002, petitioners called her and asked her to make a letter of admission as a condition for her reemployment. Espadero, thus, wrote:

Dear Sir/Madam,

Ako po ay humihingi ng paumanhin sa aking nagawang pagkakamali. Hindi ko po alam na pina in po ng aking kasama sa trabaho ang aking time card. Di ko agad nasabi sa supervisor. Nagpapasalamat din po ako kay Januarylyn Paq (some text missing) at Nida Tendenilla sa kanilang ginawa dahil dito maituwid po ang aking pagkakamali. Sana po ako ay inyong maunawaan.

Gumagalang,

Mary Grace Espadero[4]

After writing the letter, Espadero was told to wait for an assignment. The following day, on November 22, 2002, the

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[3] *Rollo*, pp. 128-143.

[4] *Id.* at 56.

company issued a Memorandum[5] terminating her for violation of Rule 24 of the company rules and regulations.[6] Because of this, Espadero decided to file a complaint for illegal dismissal before the NLRC.

Petitioners, however, maintained that the company rules and regulations, as well as the corresponding penalties in case of violation thereof, were made known to Espadero before and upon her actual employment as cashier. They also argued that contrary to her claim, petitioners gave Espadero ample opportunity to explain her side. To prove their contention, petitioners presented the affidavit of supervisor Reduca stating thus:

> On November 20, 2002, someone else punched in the respective time cards of the said Mary Grace Espadero and Fritzie Eviota, but the said employees deliberately failed to inform her (sic) about it, [which is] a gross violation of Rule # 24 of the company's Rules and Regulations. The matter was immediately reported to our Personnel Manager, Ms. GRETA V. DELA HOSTRIA. She then issued separate memorandum each for Mary Grace Espadero and Fritzie Eviota "to explain in writing, within 72 hours, why no disciplinary action should be taken["] against them.
>
> She personally handed over to Mary Grace Espadero and Fritzie Eviota their individual memoranda for their acknowledgement, but they requested a little time more before returning the duly acknowledged cop[ies] as, allegedly, they would be going over the same first. While they were able to submit their respective written explanations anent the aforesaid incident, they never returned the duly acknowledged cop[ies] of my (sic) memoranda to me.[7]

Petitioners also claimed that they conducted an impartial investigation of the incident and found substantial evidence that Espadero was in cahoots with a co-worker in punching in her

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[5] CA *rollo*, p. 46.

[6] Rule 24 of the company rules and regulations provides:

> Punching, signing of time cards for other employees, or requesting another employee to punch in or sign his time card records, which is punishable by DISMISSAL. (*Rollo*, p. 98.)

[7] CA *rollo*, p. 88. (Emphasis removed.)

time card.[8] For this reason, petitioners decided to terminate her.

On January 31, 2005, Labor Arbiter Luis D. Flores rendered a Decision[9] declaring petitioners liable for illegally terminating Espadero. The Labor Arbiter faulted petitioners for their failure to prove that Espadero deliberately caused another person to punch in her time card on her behalf, and said that no hearing or investigation was conducted to prove that Espadero was in cahoots with somebody in the alleged dishonest act prior to her dismissal.[10] Petitioners were ordered to reinstate Espadero and to pay her full backwages from the date of dismissal up to actual reinstatement.

Upon appeal, the NLRC reversed the Labor Arbiter's findings. It ratiocinated that Espadero was duly afforded her right to due process as can be gleaned from Reduca's affidavit, the contents of which were never denied nor rebutted by Espadero.[11]

Aggrieved, respondents filed a petition for *certiorari* before the CA. On December 13, 2006, the CA rendered a ruling affirming the Labor Arbiter's pronouncement that Espadero was not afforded due process. The appellate court also observed that the punishment of dismissal was too harsh and unjustified.[12]

Petitioners now come before this Court *via* this Rule 45 petition. It is their contention that Espadero's infraction constitutes serious misconduct, considering that Espadero's job requires a higher degree of honesty.

There are essentially two issues to be resolved: first, whether Espadero was afforded her right to due process prior to being dismissed from her job; and second, whether Espadero's infraction was serious enough to warrant the penalty of dismissal.

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[8] *Rollo*, p. 86.

[9] *Id.* at 95-104.

[10] *Id.* at 101-102.

[11] *Id.* at 138-140.

[12] *Id.* at 62.

The petition is impressed with merit.

Article 282 of the Labor Code includes serious misconduct, fraud and willful breach of trust among the just causes for termination.[13] But prior to termination on such grounds, the employer must satisfy both substantive and procedural due process. Not only must the employee be afforded a reasonable opportunity to be heard and to submit any evidence he may have in support of his defense, but the dismissal must be for a just or authorized cause as provided by law.[14]

The procedural requirements are set forth in Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code, to wit:

SEC. 2. **Security of Tenure**. x x x.

x x x x x x x x x

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes as defined in Article 282 of the Labor Code:

(i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.

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[13] Article 282 of the Labor Code provides in full:

ART. 282. *TERMINATION BY EMPLOYER*

An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

[14] *Gonzales v. National Labor Relations Commission*, G.R. No. 131653, March 26, 2001, 355 SCRA 195, 204.

(ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

(iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

Reduca's affidavit avers that Espadero was notified by the personnel manager and was asked to explain her side within 72 hours. As there was no duplicate copy, the only copy of the notice to explain remained with Espadero. While it may be highly suspicious for a personnel manager not to keep a copy of such an important document, Reduca's averment that the only copy of the notice to explain was handed to Espadero herself was never denied nor controverted by the latter. Wittingly or not, the averment is deemed to have been admitted by Espadero. This being so, petitioners may be said to have sufficiently complied with the first notice requirement, *i.e.*, that the employee must first be given a notice to explain her side.

Petitioners likewise complied with the second notice requirement. On November 22, 2002, Greta dela Hostria, as personnel manager, issued a Memorandum stating with clarity the reason for Espadero's dismissal. It reads:

MEMORANDUM

TO	:	Mary Grace Espadero – CB Manila
FROM	:	Personnel Department
RE	:	As stated
DATE	:	November 22, 2002

We received your explanation regarding [you] not reporting to your immediate supervisor that somebody have (sic) punched in your Time Card last November 20, 2002. After a thorough investigation of the incident, we found that you violated Rule # 24 which states:

"*Punching/Signing of timecards for other employees or requesting another employee to punch/sign his Time Card Record, which is punishable by DISMISSAL.*"

Because of this we regret that we are terminating your services effective November 22, 2002 as provided by [the] company[']s] Rules and Regulations.

(Sgd.) GRETA V. DELA HOSTRIA
Personnel Manager

NOTED:
(Sgd.) SERAFIN T. RAMIREZ
Vice-President[15]

Substantively, we also sustain petitioners' reasoning that Espadero's position as a cashier is one that requires a high degree of trust and confidence, and that her infraction reasonably taints such trust and confidence reposed upon her by her employer.

A position of trust and confidence has been defined as one where a person is entrusted with confidence on delicate matters, or with the custody, handling, or care and protection of the employer's property[16] and/or funds.[17] One such position is that of a cashier. A cashier is a highly sensitive position which requires absolute trust and honesty on the part of the employee.[18] It is for this reason that the Court has sustained the dismissal of cashiers who have been found to have breached the trust and confidence of their employers. In one case, the Court upheld the validity of the dismissal of a school cashier despite her 19 years of service after evidence showed that there was a discrepancy in the amount she was entrusted to deposit with a bank.[19]

In *Metro Drug Corporation v. National Labor Relations Commission*,[20] we explained:

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[15] *Supra* note 5.

[16] *Panday v. National Labor Relations Commission*, G.R. No. 67664, May 20, 1992, 209 SCRA 122, 125.

[17] *Gonzales v. National Labor Relations Commission*, *supra* note 14, at 208.

[18] *Garcia v. NLRC*, 327 Phil. 648, 651 (1996).

[19] *Id.* at 650.

[20] 227 Phil. 121 (1986).

Loss of confidence as a ground for dismissal does not entail proof beyond reasonable doubt of the employee's misconduct. It is enough that there be "some basis" for such loss of confidence or that "the employer has reasonable grounds to believe, if not to entertain the moral conviction[,] **that the employee concerned is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of the trust and confidence demanded by his position**.[21]

The rule, therefore, is that if there is sufficient evidence to show that the employee occupying a position of trust and confidence is guilty of a breach of trust, or that his employer has ample reason to distrust him, the labor tribunal cannot justly deny the employer the authority to dismiss such employee.[22]

In the instant case, petitioners cannot be faulted for losing their trust in Espadero. As an employee occupying a job which requires utmost fidelity to her employers, she failed to report to her immediate supervisor the tampering of her time card. Whether her failure was deliberate or due to sheer negligence, and whether Espadero was or was not in cahoots with a co-worker, the fact remains that the tampering was not promptly reported and could, very likely, not have been known by petitioners, or, at least, could have been discovered at a much later period, if it had not been reported by Espadero's supervisor to the personnel manager. Petitioners, therefore, cannot be blamed for losing their trust in Espadero.

Moreover, the peculiar nature of Espadero's position aggravates her misconduct. Misconduct has been defined as improper or wrong conduct; the transgression of some established or definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. The misconduct, to be serious, must be of such a grave character and not merely trivial or unimportant. To constitute just cause for termination, it must be in connection with the

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[21] *Id.* at 126, citing *Dole Philippines, Inc. v. National Labor Relations Commiss*ion, 123 SCRA 673. (Emphasis supplied.)

[22] *Id.* at 127.

employee's work.[23] With the degree of trust expected of Espadero, such infraction can hardly be classified as one that is trivial or unimportant. Her failure to promptly report the incident reflects a cavalier regard for the responsibility required of her in the discharge of the duties of her position.

WHEREFORE, premises considered, the petition is *GRANTED*. The December 13, 2006 Decision of the Court of Appeals, as well as its August 30, 2007 Resolution with respect to Mary Grace Espadero's case, is *REVERSED* and *SET ASIDE*. Accordingly, the National Labor Relations Commission's Resolution dated July 18, 2005 is *REINSTATED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 179714. October 2, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RODOLFO LOPEZ,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; STATUTORY RAPE; DEFINED. — Statutory rape is defined in and penalized by Article 335 of the Revised Penal Code, as amended by RA 8353, which was in effect at the time of the commission of the crime in this particular case: Article 266-A. *Rape: When And How Committed*. — Rape is committed: 1) By a man who shall have carnal knowledge of

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[23] *Philippine Long Distance Company v. The Late Romeo F. Bolso,* G.R. No. 159701, August 17, 2007, 530 SCRA 550, 560.

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

2. ID.; ID.; ELEMENTS. — It must be remembered that under the law and prevailing jurisprudence, the gravamen of the offense of statutory rape as provided under Article 335 of the Revised Penal Code is the carnal knowledge of a woman below twelve years old. The only elements of statutory rape are: (1) that the offender had carnal knowledge of a woman; and (2) that such woman is under twelve (12) years of age. It is not necessary to prove that the victim was intimidated or that force was used against her, because in statutory rape the law presumes that the victim, on account of her tender age, does not and cannot have a will of her own.

3. ID.; ID.; PENALTY. — The CA, however, correctly reduced the penalty to *Reclusion Perpetua* pursuant to RA 9346. While RA 9346 prohibited the imposition of the death penalty and the penalty is reduced to *reclusion perpetua*, the appellant is, however, no longer eligible for parole.

4. ID.; ID.; CIVIL LIABILITY; AWARD OF CIVIL INDEMNITY AND DAMAGES; SUSTAINED. — On pecuniary liability, this Court ruled in *People of the Philippines v. Sarcia* that: The principal consideration for the award of damages, under the ruling in *People v. Salome* and *People v. Quiachon* is the **penalty provided by law or imposable for the offense because of its heinousness, not** the public penalty **actually** imposed on the offender. Regarding the civil indemnity and moral damages, *People v. Salome* explained the basis for increasing the amount of said civil damages as follows: The Court, likewise, affirms the civil indemnity awarded by the Court of Appeals to Sally in accordance with the ruling in *People v. Sambrano* which states: As to damages, we have held that **if the rape is perpetrated with any of the attending qualifying circumstances that require the imposition of the death penalty**, the civil indemnity for the victim shall be Php75,000.00 . . . Also, in rape cases, moral damages are warded without the need of proof other than the fact of rape because it is assumed that the victim has suffered moral injuries entitling her to such an award. However, the trial court's award of

Php50,000.00 as moral damages should also be increased to Php75,000.00 pursuant to current jurisprudence on qualified rape." It should be noted that 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 Php75,000.00. *People v. Quiachon* also ratiocinates as follows: With respect to the award of damages, the appellate court, following prevailing jurisprudence, correctly awarded the following amounts; Php75,000.00 as civil indemnity **which is awarded if the crime is qualified by circumstances warranting the imposition of the death penalty;** Php75,000.00 as moral damages because the victim is assumed to have suffered moral injuries, hence, entitling her to an award of moral damages even without proof thereof, x x x. **Even if** the penalty of death is not to be imposed on the appellant because of the prohibition in R. A. No. 9346, **the civil indemnity of Php75,000.00 is still proper** because, 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 offense.* The Court declared that the award of ₱75,000.00 shows **"not only a reaction to the apathetic societal perception of the penal law and the financial fluctuations over time but also the expression of the displeasure of the court of the incidence of heinous crimes against chastity."** The litmus test therefore, in the determination of the civil indemnity is the heinous character of the crime committed, which would have warranted the imposition of the death penalty, regardless of whether the penalty actually is reduced to *reclusion perpetua*. In view of the above-quoted decision, this Court modifies the amount of damages awarded by the trial court. The civil indemnity of ₱75,000.00 awarded by the trial court shall remain the same, while the moral damages shall be increased to ₱75,000.00 corresponding to the penalty of death without need of proof. The award of exemplary damages in the amount of ₱50,000.00 is decreased to ₱30,000.00 pursuant to prevailing jurisprudence.

5. REMEDIAL LAW; EVIDENCE; TESTIMONY OF RAPE VICTIM; EVALUATION BY THE TRIAL COURT IS ACCORDED HIGHEST RESPECT ON APPEAL; RATIONALE.

— This Court has repeatedly held that the evaluation of the testimony of the witnesses by the trial court is accorded the highest respect on appeal, because the court below had the opportunity to observe the witnesses on the stand and detect if they were telling the truth. This assessment is binding upon the appellate court in the absence of a clear showing that it was reached arbitrarily, or that the trial court plainly overlooked certain facts of substance or value that, if considered, might affect the result of the case. Since the trial judge had the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the complaining witness while testifying, it was fully competent and in the best position to assess whether the witness was telling the truth. This Court has also ruled that testimonies of victims of tender age are credible, more so if they are without any motive to falsely testify against their offender. Their revelations that they were raped, coupled with their willingness to undergo public trial where they could be compelled to describe the details of the assault on their dignity by their own father, cannot be easily dismissed as concoctions. It would be the height of moral and psychological depravity if they were to fabricate sordid tales of sexual defloration — which could put him behind bars for the rest of his life — if they were not true.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

Rape is particularly odious, one which figuratively scrapes the bottom of the barrel of moral depravity, when committed against a minor.[1] This present case is no less reviling and vilifying, for yet another life of an innocent child is forever shattered.

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[1] *People v. Jalosjos*, 421 Phil. 43, 54 (2001), citing *People v. Sangil*, 276 SCRA 532 (1997).

This is an appeal from the Decision[2] dated January 26, 2007 of the Court of Appeals (CA) in CA-G.R. C.R.-H.C. No. 00650, affirming the Decision[3] dated October 13, 2004 of the Regional Trial Court (RTC) of Labo, Camarines Norte, Branch 64, in Criminal Case No. 98-0296, finding appellant Rodolfo Lopez guilty beyond reasonable doubt of the crime of Statutory Rape, as defined in and penalized by Article 335 of the Revised Penal Code, as amended by Republic Act (RA) 8353.

The facts, as culled from the records, are the following:

On June 11, 1998, around 5 o'clock in the afternoon, AAA[4] left her house to collect credit, leaving behind her daughter BBB, who was then four years old[5] and appellant Rodolfo Lopez, an employee of her husband.[6] The following day, or on June

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[2] Penned by Associate Justice Regalado E. Maambong, with Associate Justices Roberto A. Barrios and Celia C. Librea-Lealogo, concurring; CA *rollo,* pp. 105-122.

[3] Penned by Presiding/Executive Judge Franco T. Falcon; records, pp. 208-219.

[4] This is pursuant to the ruling of this Court in *People of the Philippines v. Cabalquinto* (G.R. No. 167693, 19 September 2006, 502 SCRA 419), wherein this Court resolved to withhold the real names of the victims-survivors and to use fictitious initials instead to represent them in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of theirimmediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA," "BBB," "CCC," and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX."

The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of Republic Act No. 7610, otherwise known as Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act; Sec. 44 of Republic Act No. 9262, otherwise known as Anti-Violence Against Women and Their Children Act of 2004; and Sec. 40 of A.M. No. 04-10-11-SC, known as Rule on Violence Against Women and Their Children effective November 15, 2004.

[5] Per her Birth Certificate, (Exhibit "B").

[6] TSN, December 14, 1998, pp. 4-5.

12, 1998, AAA brought her daughter BBB to a *manghihilot* because the latter had a fever and complained of stomachache.[7] Thereafter, BBB requested her mother to wash her vagina. While AAA was washing her daughter's vagina, she noticed that the latter's private organ was swollen and had a small quantity of blood, to which she assumed that her daughter might have accidentally bumped into an object.[8] The next morning, or on June 13, 1998, although still down with a fever, BBB persistently asked her mother to give her a bath. BBB let her daughter sit on a basin and noticed that the latter's vagina was still reddish or swollen, which prompted her to ask the daughter what happened. BBB pointed at appellant Lopez, who was there at that time, and said, "*It was Kuya Aswang*," referring to the same appellant.[9] AAA then asked her daughter if appellant Lopez inserted his penis in her vagina. BBB replied in the affirmative. Later on, BBB narrated that appellant Lopez removed her underwear and placed himself on top of her and proceeded to insert his penis in her vagina.[10] When AAA's husband arrived home, she narrated what happened and afterwards, they proceeded to the police station where they were advised to have their daughter medically examined.[11]

BBB, on June 15, 1998, was brought to the provincial hospital where a genital examination was conducted on her by Dr. Marcelito B. Abas, findings of which are the following: superficial hymenal laceration at nine o'clock position, which could have been caused by an erected penis and with no signs of physical injuries.[12]

Subsequently, an Information dated July 17, 1998 was filed against appellant Lopez for the crime of Statutory Rape as defined in and penalized by Article 335 of the Revised Penal Code, as amended by RA 8353. The Information reads as follows:

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

[8] *Id.* at 8.

[9] *Id.* at 10-12.

[10] TSN, February 9, 2000, pp. 3-5.

[11] TSN, December 14, 1998, pp. 13-14.

[12] TSN, February 3, 1999.

That on or about 5:00 o'clock in the afternoon of June 11, 1998 at Barangay XXX, XXX, Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and motivated by bestial lust and by means of force and intimidation, did then and there, wilfully, unlawfully and feloniously had carnal knowledge of one BBB, a four (4)-year-old girl, against her will to her damage and prejudice.

CONTRARY TO LAW.

Upon arraignment on August 31, 1998, appellant Lopez, assisted by counsel *de oficio*, pleaded *Not Guilty*. After the pre-trial, which was held on October 14, 1998, trial on the merits ensued.

The prosecution presented the testimonies of AAA, BBB and Dr. Marcelito B. Abas, who testified as to the facts earlier narrated. The testimonies of Carlos Ibasco, the principal of Rizal High School, Camarines Norte, who assisted during the police investigation, and Rosemarie Loremia, the assigned stenographer during the preliminary investigation, were also presented.

On the other hand, the defense presented the sole testimony of appellant Lopez, who denied raping BBB and further stated that on the day that the alleged incident happened, he saw the six-year-old brother of BBB inside the room where the latter slept. He claimed that the said brother inserted his finger in the vagina of his sister.[13] He added that after the parents of BBB arrived home at around 5 o'clock in the afternoon of the same date, he left the place and went to XXX, XXX, Camarines Norte to construct a well.[14]

Thereafter, the trial court found appellant guilty beyond reasonable doubt of the crime charged, the dispositive portion of which reads:

WHEREFORE, premises considered, accused RODOLFO LOPEZ is hereby sentenced to suffer the supreme penalty of DEATH. He is also ordered to pay the victim, BBB, civil indemnity in the amount

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[13] TSN, April 17, 2001, pp. 5-10.

[14] *Id.* at 10-11.

of Seventy- Five Thousand Pesos (₱75,000.00), moral damages in the amount of Fifty Thousand Pesos (₱50,000.00) and exemplary damages in the amount of Fifty Thousand Pesos (₱50,000.00).

SO ORDERED.

The case was appealed to this Court due to the imposition of the death penalty. However, on September 21, 2004, in conformity with the decision promulgated on July 7, 2004 in G.R. Nos. 147678-87, entitled *The People of the Philippines v. Efren Mateo y Garcia*, modifying the pertinent provisions of the Revised Rules of Criminal Procedure, more particularly Sections 3 and 10 of Rule 125 and any other rule insofar as they provide for direct appeals from the RTCs to this Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment, as well as the resolution of this Court *en banc* dated September 19, 1995, in "Internal Rules of the Supreme Court" in cases similarly involving the death penalty, pursuant to the Court's power to promulgate rules of procedure in all courts under Section 5, Article VII of the Constitution, and allowing an intermediate review by the CA before such cases are elevated to this Court, this Court transferred the case to the CA for appropriate action and disposition.

On January 26, 2007, the CA affirmed with modification, the decision of the trial court, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the appealed decision dated 13 October 2004 of the Regional Trial Court, Branch 64, Labo, Camarines Norte, finding accused-appellant RODOLFO LOPEZ, GUILTY beyond reasonable doubt of the crime of STATUTORY RAPE, is hereby AFFIRMED. However, pursuant to RA 9346, (An Act Prohibiting the Imposition of Death Penalty in the Philippines), the penalty of DEATH imposed by the lower court is reduced to *reclusion perpetua*.

Costs de oficio.

SO ORDERED.

Hence, this appeal.

Appellant Lopez filed a Manifestation[15] dated January 30, 2008 stating that he will no longer file a Supplemental Brief and will be adopting the arguments contained in his Appellant's Brief.[16] Likewise, appellee also filed a Manifestation and Motion[17] stating that it will adopt its Brief[18] previously filed on September 15, 2005.

According to appellant Lopez, the sole error committed by the trial court was:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOT ON THE BASIS OF THE STRENGTH OF THE PROSECUTION'S EVIDENCE, BUT RATHER ON THE WEAKNESS OF THE DEFENSE'S EVIDENCE.

To support the above argument, appellant claims that, instead of scrutinizing with utmost care and diligence the testimonies of the prosecution witnesses, the trial court assailed the testimony of the appellant and looked at the same with disfavor. He further stated that a great portion of the appealed decision dwelt on the rationalization of the trial court in discrediting the evidence of the defense and not much was said why it gave credence to the testimonies of the prosecution witnesses.

The appellee countered the above argument of appellant by asserting that the prosecution was able to establish the guilt of the same appellant beyond reasonable doubt. It also added that the trial court did not rely on the weakness of the defense evidence, but rather on the strength of the prosecution in coming up with a verdict of conviction.

The appeal is unmeritorious.

Statutory rape is defined in and penalized by Article 335 of the Revised Penal Code, as amended by RA 8353, which was in effect at the time of the commission of the crime in this particular case:

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[15] *Rollo*, pp. 23-24.

[16] CA *rollo*, pp. 40-48.

[17] *Rollo*, pp. 26-27.

[18] CA *rollo*, pp. 70-96.

Article 266-A. *Rape: When And How Committed*. — Rape is committed:

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

x x x x x x x x x

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

Appellant focuses his argument on the manner in which the decision of the RTC was written. According to him, a fastidious reading of the appealed decision by an impartial and prudent mind will easily have the impression that his conviction was based not on the strength of the prosecution's evidence but rather on the weakness of the defense. A careful reading of the assailed decision, however, shows the contrary.

Although the assailed decision discussed thoroughly the weakness of the evidence of the defense, it was also clear in its appreciation of the evidence presented by the prosecution and in finding that the appellant was guilty beyond reasonable doubt of the crime charged. Thus, as ruled by the RTC:

The testimony of the victim herself was direct and straightforward after she was warned that if she tells a lie, God will punish her. When asked if Rodolfo Lopez was inside the courtroom, her reply was "Yes, ma'am" and since there was no other man in the courtroom, his lawyer admitted that while the victim pointed to Rodolfo Lopez and when the Prosecutor asked her:

Pros. Velarde: What did your *"kuya"* do to you?
A: He raped me, ma'am.

Q: When you say you were raped, the penis of *"Kuya"* was placed in your vagina?
A: Yes, ma'am.

Q: Where is your *pipi* (vagina)?

Interpreter: The victim pointed to her sexual organ.[19]

[19] CA *rollo*, p. 58.

Even during the cross-examination and clarificatory questions from the court, the victim was consistent in her testimony, thus:

Atty. Dizon
Q: Do you still recall when did Rodolfo Lopez place his penis in your vagina?

Witness
A: No, sir.

Q: Where did the accused place his -
Where in your house, in particular, did the accused place his penis inside your vagina?
A: In our house, sir.

Q: How did the accused place his penis inside your vagina?
A: He removed my panty, sir.

Q: After the accused removed your panty, it was his finger that was inserted in your vagina, is that correct?

A: No, sir.

Q: What was placed by the accused in your vagina after he removed your panty?
A: His penis, sir.

Q: When you say, the accused placed his penis in your vagina, you are telling us that the accused just placed his penis just on top of your vagina?
A: Yes, sir.

x x x x x x x x x

Court

Q: Where is here your "*Kuya*"?

Interpreter: The witness pointed to the accused.

Court

Q: What was placed inside your vagina?
A: His penis, sir.

Q: Is it not that he just placed his penis on top of your vagina?
A: It was inserted in my vagina, sir.[20]

[20] TSN, February 9, 2000, pp. 4-5.

This Court has repeatedly held that the evaluation of the testimony of the witnesses by the trial court is accorded the highest respect on appeal, because the court below had the opportunity to observe the witnesses on the stand and detect if they were telling the truth. This assessment is binding upon the appellate court in the absence of a clear showing that it was reached arbitrarily, or that the trial court plainly overlooked certain facts of substance or value that, if considered, might affect the result of the case.[21]

Since the trial judge had the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the complaining witness while testifying, it was fully competent and in the best position to assess whether the witness was telling the truth.[22] This Court has also ruled that testimonies of victims of tender age are credible, more so if they are without any motive to falsely testify against their offender. Their revelations that they were raped, coupled with their willingness to undergo public trial where they could be compelled to describe the details of the assault on their dignity by their own father, cannot be easily dismissed as concoctions. It would be the height of moral and psychological depravity if they were to fabricate sordid tales of sexual defloration " which could put him behind bars for the rest of his life " if they were not true.[23]

It must be remembered that under the law and prevailing jurisprudence, the gravamen of the offense of statutory rape as provided under Article 335 of the Revised Penal Code is the carnal knowledge of a woman below twelve years old.[24] The

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[21] *People v. Ruales*, 457 Phil. 160, 169 (2003), citing *People v. Moralde*, 443 Phil. 369 (2003).

[22] *People v. Somodio*, 427 Phil. 363, 377 (2002), citing *People v. Padilla*, 301 SCRA 265, 270-71 (1999).

[23] *People v. Abellera*, G.R. No. 166617, July 3, 2007, 526 SCRA 329, citing *People v. Buada*, 439 Phil. 857 (2002); *People v. Caliso*, 439 Phil. 492 (2002); *People v. Fucio*, G.R. Nos. 151186-95, February 13, 2004, 422 SCRA 677; and *People v. Olivar*, 458 Phil. 375 (2003).

[24] *People v. Alegado*, G.R. Nos. 93030-31, August 21, 1991, 201 SCRA 37, 47.

only elements of statutory rape are: (1) that the offender had carnal knowledge of a woman; and (2) that such woman is under twelve (12) years of age. It is not necessary to prove that the victim was intimidated or that force was used against her, because in statutory rape the law presumes that the victim, on account of her tender age, does not and cannot have a will of her own.[25]

The first element of the crime of statutory rape was duly proven by the prosecution with the testimony of the victim, coupled with the medical findings that the victim indeed showed signs of having been raped. When the consistent and forthright testimony of a rape victim is consistent with medical findings, there is sufficient basis to warrant a conclusion that the essential requisites of carnal knowledge have been established.[26] Anent the second element, with the presentation of the victim's Certificate of Live Birth[27] categorically showing that she was born on April 14, 1994, the prosecution was able to prove that the former has just been living for four years, one month and twenty-eight days when the unfortunate incident happened. It is settled that in cases of statutory rape, the age of the victim may be proved by the presentation of her birth certificate.[28]

For his defense, appellant Lopez merely denied committing the crime and even pointed an accusatory finger to the six-year-old brother of the victim, whom the former allegedly saw *fingering* the same victim. However, it is a time-honored principle that the positive and categorical assertions of a witness generally prevail over bare denials. Affirmative testimony from a credible witness is stronger and more trustworthy than a bare self-serving testimony.[29]

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[25] *Id.* at 48.

[26] *People of the Philippines v. Elister Basmayor y Grascilla,* G.R. No. 182791, February 10, 2009, citing *People v. Limio*, 429 SCRA 611 (2004).

[27] Exhibit B; records, p. 5.

[28] *People v. Jalosjos*, *supra* note 1, at 84.

[29] *People v. Ruales*, *supra* note 20, at 173, citing *People v. Besmonte*, 557 Phil. 555 (2003).

Hence, considering the above discussion, it is more than apparent that the trial court did not err in finding appellant Lopez guilty beyond reasonable doubt of the crime of Statutory Rape.

The unconscionable taker of a child's innocence must now suffer the well-deserved consequence of his ungodly deed.

The trial court imposed the penalty of Death, applying the provisions of Article 266-B of RA 8353, which provides that:

> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
>
> x x x x x x x x x
>
> 2) When the victim is a child below seven years old.

The CA, however, correctly reduced the penalty to *Reclusion Perpetua* pursuant to RA 9346.[30] While RA 9346 prohibited the imposition of the death penalty and the penalty is reduced to *reclusion perpetua*, the appellant is, however, no longer eligible for parole.[31]

On pecuniary liability, this Court ruled in *People of the Philippines v. Sarcia*[32] that:

> The principal consideration for the award of damages, under the ruling in *People v. Salome*[33] and *People v. Quiachon*[34] is the **penalty provided by law or imposable for the offense because of its heinousness, not** the public penalty **actually** imposed on the offender.
>
> Regarding the civil indemnity and moral damages, *People v. Salome* explained the basis for increasing the amount of said civil damages as follows:

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[30] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[31] *People of the Philippines v. Lilio U. Acha*s, G.R. No. 185712, August 4, 2009.

[32] G.R. No. 169641, September 10, 2009.

[33] G.R. No. 169077, August 31, 2006, 500 SCRA 659.

[34] G.R. No. 170236, August 31, 2006, 500 SCRA 704.

The Court, likewise, affirms the civil indemnity awarded by the Court of Appeals to Sally in accordance with the ruling in *People v. Sambrano* which states:

As to damages, we have held that **if the rape is perpetrated with any of the attending qualifying circumstances that require the imposition of the death penalty**, the civil indemnity for the victim shall be Php75,000.00 . . . Also, in rape cases, moral damages are warded without the need of proof other than the fact of rape because it is assumed that the victim has suffered moral injuries entitling her to such an award. However, the trial court's award of Php50,000.00 as moral damages should also be increased to Php75,000.00 pursuant to current jurisprudence on qualified rape."

It should be noted that 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 Php75,000.00.

People v. Quiachon also ratiocinates as follows:

With respect to the award of damages, the appellate court, following prevailing jurisprudence, correctly awarded the following amounts; Php75,000.00 as civil indemnity **which is awarded if the crime is qualified by circumstances warranting the imposition of the death penalty**; Php75,000.00 as moral damages because the victim is assumed to have suffered moral injuries, hence, entitling her to an award of moral damages even without proof thereof, x x x.

Even if the penalty of death is not to be imposed on the appellant because of the prohibition in R.A. No. 9346, **the civil indemnity of Php75,000.00 is still proper** because, 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 offense.** The Court declared that the award of ₱75,000.00 shows **"not only a reaction to the apathetic societal perception of the penal law and the financial fluctuations over time but also the expression of the displeasure of the court of the incidence of heinous crimes against chastity."**

The litmus test therefore, in the determination of the civil indemnity is the heinous character of the crime committed, which would have warranted the imposition of the death penalty, regardless of whether the penalty actually is reduced to *reclusion perpetua*.

In view of the above-quoted decision, this Court modifies the amount of damages awarded by the trial court. The civil indemnity of ₱75,000.00 awarded by the trial court shall remain the same, while the moral damages shall be increased to ₱75,000.00 corresponding to the penalty of death without need of proof. The award of exemplary damages in the amount of ₱50,000.00 is decreased to ₱30,000.00 pursuant to prevailing jurisprudence.[35]

WHEREFORE, the appealed Decision dated January 26, 2007 of the Court of Appeals in CA-G.R. C.R.-H.C. No. 00650, affirming with modification the Decision dated October 13, 2004 of the Regional Trial Court of Labo, Camarines Norte, Branch 64, in Criminal Case No. 98-0296, finding appellant Rodolfo Lopez, guilty beyond reasonable doubt of the crime of Statutory Rape, as defined in and penalized by Article 335 of the Revised Penal Code, as amended by RA 8353, imposing the penalty of *reclusion perpetua*, is hereby *AFFIRMED* with the *MODIFICATION* that appellant is not eligible for parole and that he is ordered to pay *₱75,000.00* as moral damages and *₱30,000.00* as exemplary damages, in addition to the amount of *₱75,000.00* awarded by the trial court as civil indemnity.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Velasco, Jr., and *Bersamin,*[*] *JJ.,* concur.

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[35] *People of the Philippines v. Lilio U. Achas, supra* note 30, citing *People of the Philippines v. Danilo Sia y Binghay*, G.R. No. 174059, February 27, 2009.

[*] Additional member in lieu of Associate Justice Arturo D. Brion (designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Raffle dated May 27, 2009), per Special Order No. 712 dated September 28, 2009.

SECOND DIVISION

[G.R. No. 179748. October 2, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **FEBLONELYBIRTH T. RUBIO and JOAN T. AMARO,** *appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT TO CONVICT THE ACCUSED. — Under the Rules on Evidence, circumstantial evidence is sufficient for conviction if: (a) There is more than one circumstance; (b) The facts from which the inferences are derived are proven; and (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

2. ID.; ID.; ID.; FOUR NECESSARY GUIDELINES FOR ITS TEST. — To assay its probative value, circumstantial evidence must be tested against four necessary guidelines: x x x (a) It should be acted upon with caution; (b) All the essential facts must be consistent with the hypothesis of guilt; (c) The facts must exclude every other theory but that of guilt of the accused; and, (d) **The facts must establish with certainty the guilt of the accused as to convince beyond reasonable doubt that he was the perpetrator of the offense.** The peculiarity of circumstantial evidence is that the series of events pointing to the commission of a felony is appreciated *not singly but collectively*. **The guilt of the accused cannot be deduced from scrutinizing just one (1) particular piece of evidence. It is more like a puzzle which when put together reveals a convincing picture pointing to the conclusion that the accused is the author of the crime.**

3. ID.; ID.; ID.; WHEN NOT SUFFICIENT TO PRODUCE CONVICTION; CASE AT BAR. — While the Court takes judicial notice of the natural reticence of witnesses to get involved in the solution of crimes due to risks to their lives and limbs, Teves had not alleged the presence of any such or similar risks. Still, even if the Court were to credit the

identification of appellants as the ones seen running away from the crime scene at 6:00 in the morning of July 21, 1999, this is the *only circumstance* that was established during the trial. Such circumstance certainly does not meet the first requisite for circumstantial evidence to be sufficient to convict. Further still, even if appellants were seen carrying bloodied hunting knives, there is no showing that they matched the instruments, if it was more than one, used in stabbing AAA *vis-à-vis* the size of the wounds in her body. x x x A judgment of conviction must rest on nothing less than moral certainty, moral certainty in an unprejudiced mind that it was the accused who committed the crime, failing which the accused must be exonerated. The prosecution failed to discharge its burden of establishing the guilt of appellants, however. This leaves it unnecessary to still pass on appellant's defense.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO MORALES, *J.*[*]:

Appellants Feblonelybirth Rubio (Rubio) and Joan Amaro (Amaro) challenge the August 17, 2006 Decision[1] of the Court of Appeals which affirmed the April 12, 2002 Decision[2] of Branch 45 of the Regional Trial Court of Bais City finding them guilty of **rape with homicide**.

The Amended Information[3] of October 25, 1999 indicting appellants reads:

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[*] Per Special Order No. 690 in lieu of the sabbatical leave of Senior Associate Justice Leonardo A. Quisumbing.

[1] Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Pampio A. Abarintos and Priscilla Baltazar-Padilla concurring.

[2] Penned by Judge Ismael O. Baldado.

[3] Records, pp. 83-85.

That on or about 6:00 o'clock [*sic*] in the morning of July 21, 1999 at [xxx], Bais City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, and, by means of violence and intimidation, did then and there willfully, unlawfully and feloniously take turn in having carnal knowledge with a girl named [AAA[4]], a minor, sixteen (16) years of age, against her will and, that on the occasion of the said rape and for the purpose of silencing her, the herein accused [,] in pursuance of their conspiracy and using bladed weapons which they were then armed and provided, did then and there willfully, unlawfully and feloniously, and with evident premeditation and taking advantage of their superior number and strenght [*sic*] and with intent to kill, attack, assault and stab the victim thereby inflicting upon her the following injuries[,] to wit:

Head -hematoma left infra-orbital area.
-incised wound #1- 2 cms in length at the left side of the nose.
-Hematoma mid-upper lip.

Neck -stab wound #1 – supra clavicular area ® side.
- 1 cm in length, o.5 (sic) cm in width, 0.5 cm in depth.
- Stab wound #2 – above the clavicular notch.
-2 cms in length, 0.7 cm in width, 2 cms. in depth.
-Stab wound #3 – located 6 cms above the (L) nipple lateral side.
-3 cms in length, 3 cms in depth, 1 cm in width.

Upper Extremity- incised wound #2 located ant. Part of ® axilla.
- 3 cms in length 2 cm in depth, 1 cm in width.

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[4] The real name of the victim is withheld per Republic Act (R.A.) No. 7610 and R.A. No. 9262. *Vide*: *People v. Cabalquinto*, G.R. No. 167693, 502 SCRA 419 (2006).

-Incised wound #5 located at the dorsal side of ® wrist.
-2 cms in length, 0.2 cms in width, 0.4 cms in depth.

Chest -incised wound #3 located at the mid anterior chest.
-10.2 cms in length, 1 cm in depth, 2 cms in width.

Abdomen -incised wound # 4 located along the medial line of the abdomen.
-22 cms in length, 10.5 cms in width (widest)
-part of the colon & small intestine coming out of the wound.

Genitalia -nulliparous female, (+) hymenal laceration at 6 o'[clock] & 9 o'clock positions.
-aspirated about 2 cc of cloudy white, nucoid fluid from the vaginal canal, said fluid is *positive for sperm* cells upon microscopic examination (see attached laboratory result).

Impression -Hypovolimic shock secondary to multiple stab wounds,
-*Positive for sexual penetration.*

and as a direct result of all of which the said victim [AAA] died, to the damage and prejudice of the heirs of the said victim.

An act contrary to law. (Emphasis and underscoring in the original; italics supplied)

From the testimonial evidence for the prosecution consisting of the testimonies of seven witnesses, namely, Magdalena Olpos, Pepe Olpos, BBB, the father of AAA (the victim), Dr. Beverly Renacia, SPO4 Ramon Sibala, Perfecto Teves and Lugen Conde, the following version is culled:

At 6:00 a.m. of July 21, 1999, while Magdalena Olpos (Magdalena) was harvesting peanuts at the upper portion of the

land where her house stands, she heard someone repeatedly shout "*Ama, tabang*!" (Father, help!). She thus ran towards her son Pepe Olpos (Pepe), who was at that time plowing a rice field, and asked him to determine where the shouts emanated.[5]

Both mother and son at once repaired to where they sensed the shouts came from. On their way, they saw their neighbor, appellant Rubio, "walking very fast towards the sugarcane plantation," and another neighbor, appellant Amaro, "running towards the upper portion of the cliff [going] to [his] house."[6] Pepe likewise saw appellants carrying bloodied hunting knives.[7]

Perfecto Teves (Teves), who was startled by shouts of AAA's aunt CCC that her niece was already dead,[8] repaired to the crime scene in the course of which he saw appellants running toward Amaro's house.

On reaching what turned out to be the crime scene, Magdalena and Pepe saw the body of AAA bearing multiple stab wounds, her legs spread apart and her panties pulled down to knee level.[9]

Magdalena thereafter repaired to her house and related the incident to her daughter whom she instructed to report to a neighbor.[10] Her son Pepe for his part related the incident to a neighbor, Rustico Culi, who in turn echoed it to the *barangay* captain.[11]

BBB, father of the victim, on being informed by his neighbors Rustico Culi and Loreto Culi at around 8:00 a.m. of the day of the incident that his daughter was raped and killed,[12] went to the crime scene where he saw Magdalena and Pepe.[13]

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[5] Transcript of Stenographic Notes (TSN), March 20, 2000, p. 4.

[6] *Id.* at 6.

[7] TSN, February 4, 2000, pp. 5-6.

[8] TSN, April 28, 2000, pp. 4-5.

[9] TSN, March 20, 2000, p. 7.

[10] *Id.* at 13-14.

[11] *Id.* at 18.

[12] TSN, January 10, 2000, p.6.

[13] *Id.* at 5b, 8-9.

Later in the afternoon, Magdalena went back to the crime scene and, finding SPO4 Ramon Sibala and other police officers there, she informed them what she had earlier witnessed, furnishing them the names of appellants.[14] Albeit appellant Amaro was also there, Magdalena did not point him out to the police out of fear of Amaro's uncles whom she described as "notorious characters."[15]

The day after the incident or on July 22, 1999, BBB talked to Magdalena who related to him that she saw appellant Rubio running away from the place where AAA's body was found. [16]

Dr. Beverly Renacia (Dr. Renacia), who conducted a post-mortem examination of AAA's body, came up with the findings incorporated in the earlier-quoted body of the Information.[17] She concluded that the victim was sexually abused as shown by the hymenal lacerations at 6 o'clock and 9 o'clock positions as well as the presence of cloudy white fluid from the vaginal canal[18] which was, after analysis by medical technologist Lugen Conde (Conde) of the City Health Office,[19] confirmed to be spermatozoa. Conde averred, however, that he did not know whether the spermatozoa came from one and the same person.[20]

SPO4 Ramon Sibala (SPO4 Sibala), who arrived at the crime scene at 2:00 p.m. of the date of the incident together with two other police officers and Dr. Renacia, talked to Pepe from whom he could not elicit any response as he observed him to be "hesitant to say something."[21]

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[14] *Id.* at 17.

[15] *Ibid.*

[16] *Id.* at 9, 12.

[17] TSN, February 17, 2000, p. 5; records, pp. 178-179.

[18] *Id.* at 6, 11-12.

[19] TSN, July 13, 2000, pp. 6-7.

[20] *Id.* at 10.

[21] TSN, April 28, 2000, p. 5.

Five days after the incident or on July 26, 1999, Pepe and Magdalena went to the office of SPO4 Sibala to give their respective statements implicating appellants.

Appellants, denying the charge, interposed alibi.

Rubio gave the following tale:

At 6 a.m. of July 21, 1999, he went to the house of the parents of his cousin-co-accused-appellant Amaro from whom he successfully sought permission to allow Jomar Amaro (Jomar), Amaro's younger brother, to help him gather *cassava* root crops in barangay Alangilan. Before proceeding to Alangilan with Jomar, he passed by the house of his aunt Marites Papasin from whom they borrowed a carabao which carried them to Alangilan. They arrived at Alangilan at 11:00 a.m.[22] He and Jomar could not return home in the afternoon because it was then raining and the flood rendered the river they had to pass through impassable. They thus spent the night in Alangilan and went home the next morning.[23]

For his part, Amaro claimed as follows:

His brother Jomar and co-appellant Rubio passed by his house at 6:30 a.m. of the day of the incident to inform him that Jomar had been allowed to go with him to gather cassava.[24] As he was waiting for the drizzle to subside, he saw two of his neighbors running. When he asked them what the commotion was about, they told him that AAA had been killed. He thereupon followed his neighbors to the crime scene and there saw the body of AAA. He waited for the police to arrive, and when they did arrive at 2:00 p.m.,[25] they conducted an investigation. He was not interrogated, however. More than two weeks later, he learned that he was being implicated in the crime.[26]

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[22] TSN, November 7, 2000, pp. 6-7.

[23] *Id.* at 19.

[24] TSN, January 29, 2001, pp. 7-8.

[25] TSN, April 20, 2000, p. 3.

[26] TSN, January 25, 2000, p. 7.

Jomar corroborated Rubio's testimony, adding that Rubio had a *bolo* with him when they went to gather *cassava.*[27]

Cristuta Cabugnason likewise corroborated the testimonies of her nephews Amaro and Jomar.[28] As for carabao owner Marites Papasin, she declared that after Rubio and Jomar had left, she heard people shouting and was soon informed by Teves that AAA had been killed. She thus went to the crime scene with Amaro.[29]

Finding for the prosecution, the trial court convicted appellants by Decision of April 12, 2002, the dispositive portion of which reads

> WHEREFORE, premises considered, this court finds both accused, **FEBLONELYBIRTH RUBIO *Y* TALARIOM and JOAN AMARO *Y* TALARIOM**, **guilty** beyond reasonable doubt as principals for the crime of **RAPE WITH HOMICIDE**, and pursuant to the provisions of Article 266-A in relation to Article 266-B of the Revised Penal Code (as amended by Republic Act No. 8353), are hereby sentenced to suffer the **penalty of DEATH** with all its accessories (sic) penalties under Article 40 of the same Code, and **ordered to pay the heirs of the victim** the following: **₱150,000.00** for actual and moral damages; and **₱100,000.00** civil indemnity for the victim's death, **without subsidiary imprisonment in case of insolvency,** and to pay costs.
>
> Pursuant to Section 10, Rule 122 of the Revised Rules of Criminal Procedure, let the whole records of this case be forwarded to the Honorable Supreme Court for automatic review and judgment.
>
> SO ORDERED.[30] (Emphasis in the original)

On appellants' appeal before this Court, it referred the same to the Court of Appeals for disposition[31] pursuant to *People v. Mateo.*[32]

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[27] *Id.* at 11.

[28] TSN, April 17, 2001, pp. 5-17.

[29] TSN, June 27, 2001, pp. 6-7.

[30] Records, pp.249-271.

[31] Per Resolution dated August 24, 2004.

[32] 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

By Decision of August 17, 2006, the appellate court dismissed the appeal and affirmed with modification the trial court's decision by reducing the penalty to *reclusion perpetua* in view of the passage, in the meantime, of Republic Act No. 9346,[33] without eligibility for parole. It likewise modified the monetary awards by additionally awarding ₱100,000 as civil indemnity. Thus the appellate court disposed:

WHEREFORE, premises considered, judgment is hereby rendered **DISMISSING** instant appeal and the assailed Decision of Regional Trial Court (RTC), 7th Judicial Region, Branch 45, Bais City, in CRIM. CASE NO. F-99-141-B is **AFFIRMED**. The supreme penalty of death provided for under 266-A in relation to the 4th paragraph of 266-B of the Revised Penal Code as amended by RA No. 8353 is reduced to *reclusion perpetua* by virtue of RA No. 9346 and that, accused-appellants are not eligible to parole.

The monetary award is **MODIFIED** in that, in addition to the ₱100,000.00 as civil indemnification, the appellants are ordered to pay ₱50,000.00 as moral damages and ₱25,000.00 as temperate damages.

Consistent with the ruling of the Supreme Court in the case of *Pp. vs. Mateo* let the entire records of the case be forwarded to the Supreme Court for final disposition of the case.

SO ORDERED.[34]

In convicting appellants, both the trial and the appellate courts found that circumstantial evidence sufficed to hold appellants liable.

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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.

[33] AN ACT PROHIBITING THE IMPOSITION OF THE DEATH PENALTY IN THE PHILIPPINES, WHICH TOOK EFFECT ON JUNE 29, 2006.

[34] CA *rollo*, p. 20.

Hence, the present appeal, appellants positing that the evidence for the prosecution failed to prove with moral certainty that they were the perpetrators of the crime charged.[35]

Under the Rules on Evidence, circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstance;

(b) The facts from which the inferences are derived are proven; and

(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[36]

To assay its probative value, circumstantial evidence must be tested against four necessary guidelines:[37]

x x x (a) It should be acted upon with caution; (b) All the essential facts must be consistent with the hypothesis of guilt; (c) The facts must exclude every other theory but that of guilt of the accused; and, (d) **The facts must establish with certainty the guilt of the accused as to convince beyond reasonable doubt that he was the perpetrator of the offense.** The peculiarity of circumstantial evidence is that the series of events pointing to the commission of a felony is appreciated *not singly but collectively*. **The guilt of the accused cannot be deduced from scrutinizing just one (1) particular piece of evidence. It is more like a puzzle which when put together reveals a convincing picture pointing to the conclusion that the accused is the author of the crime.** (Italics in the original; emphasis and underscoring supplied)[38]

Far from being a completed puzzle, the circumstantial evidence adduced in this case only serves to inculpate doubt in an unprejudiced mind as to the real identities of the perpetrators of the crime.

Central to the present case's uncertainty are the glaring inconsistencies in the testimonies and oddities in the reactions

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[35] *Rollo*, p. 72.

[36] Section 4, Rule 133 of the REVISED RULES ON EVIDENCE.

[37] *People v. Monje*, 438 Phil. 716, (2002).

[38] *Id.* at 732-733.

of the prosecution witnesses that cannot be conveniently overlooked nor easily dismissed as products of faulty memory for they bear on credibility of testimony, which is all the more material in the determination of the existence of circumstantial evidence.

Consider the following:

On cross-examination, Pepe, after identifying his sworn statement taken on July 26, 1999 or five days after the incident wherein he stated that he immediately repaired home to inform his *mother* about what he saw, and that it was his mother who informed the barangay captain of the incident, declared:[39]

Q You stated a while ago that it was a person by the name of Rustico Culi that you first inform [sic] about what you saw when you came from your house, is that correct?

A Yes.

Q Let me refresh you of what you have declared [b]efore the police authorities on July 26, 1999 [p]articularly par. 11.

Q When you saw the dead body of [AAA] already naked with stab wounds in her body, what did you do?

A-I immediately went home and told the incident of [sic] **my mother about what I saw and the latter also told the *barangay* captain about the incident.**

Can you still remember that what you have declared in this affidavit was correct, is that correct?

A **Yes.**

Q And did I get you right that you have stated a while ago that the person whom you first informed about what you saw on July 21, 1999 was Rustico Culi?

A Yes.

Q In other words, **you are lying** to the court when you said that it was Rustico Culi and now your mother whom you informed?

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[39] TSN, February 10, 2000, pp. 4-5.

A. It was Rustico Culi who informed the *barangay* captain.

Atty. Lajot:

> I would like to request, your Honor, that the answer was unresponsive to the question. That is all, your Honor. (Emphasis and underscoring supplied)

Magdalena, also on cross-examination,[40] identified the sworn statement[41] she executed also five days after the incident or on July 26, 1999 wherein she pointed to only Rubio *alias* Gamay as the one she saw hurriedly leaving the area "where the shout for help came from," *viz:*

x x x x x x x x x

Nga samtang nag angat kami nga nag una kanako si Pepe, akong nakita si ***Feb Lonely Bird*** *[sic]* ***Rubio*** *alias Gamay nga among silingan nga nag pas-pas ug lakaw palugsong diin nag sul-ob siya ug usa ka itom nga jacket gikan sa kahagonoyan diin naga gikan ang singgit ug pakitabang ug kalit lang nga nawala si Gamay;*[42]

x x x. (Emphasis and underscoring supplied).

At the witness stand, SPO4 Sibala, to whom Magdalena claimed to have informed the names of appellants as the suspects, mentioned only Pepe as the one he queried about the incident. No mention was made about Magdalena furnishing the names of appellants as suspects during the interrogation.

Magdalena's failure to then and there inform the police at the crime scene that Amaro, who was then present, was one of

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[40] *Id.* at 17-18.

[41] Records, p. 34.

[42] The attached translation of the affidavit reads: "That while we were climbing up wherein Pepe was ahead of me, I saw FebLonelyBird [sic] Rubio *alias* Gamay who is our neighbor who was descending hurriedly wherein he was wearing a black jacket and he came from the cogonal area where the shout for help came from and Gamay got lost all of a sudden." (Underscoring supplied)

the two she and her son Pepe saw running cautions this Court against readily according her credibility.

As for Teves, despite his opportunity to report to the police what he claimed to have seen, he only later related the same to the relatives of the victim.[43] Why he did not immediately name appellants to the police investigators as the persons he claimed to have seen running from the direction of the crime scene, no explanation was given. Rubio's statement that Teves may have been impelled by improper motive in implicating him and Amaro thus assumes importance, *viz:*

> Q When that period that you were neighbors of these three (3) [Pepe, Magdalena and Teves] do you remember having any misunderstanding with these three the court mentioned up to July 1999 [sic]?
>
> A There was a misunderstanding between . . . Teves and the mother of [appellant] Joan Amaro.
>
> Q Would you know the misunderstanding about [*sic*] between . . . Teves and the mother of Joan Amaro?
>
> A Yes.
>
> Q What is this about?
>
> A It was regarding the sugarcane cutter which we took from [his] house of which he got angry.
>
> Q **Has that misunderstanding been settled?**
>
> A **No**. (Emphasis and underscoring supplied)[44]

While the Court takes judicial notice of the natural reticence of witnesses to get involved in the solution of crimes due to risks to their lives and limbs, Teves had not alleged the presence of any such or similar risks.

Still, even if the Court were to credit the identification of appellants as the ones seen running away from the crime scene at 6:00 in the morning of July 21, 1999, this is the *only*

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[43] TSN, April 28, 2000, p. 15.

[44] TSN, November 7, 2000, p. 17.

circumstance that was established during the trial. Such circumstance certainly does not meet the first requisite for circumstantial evidence to be sufficient to convict.

Further still, even if appellants were seen carrying bloodied hunting knives, there is no showing that they matched the instruments, if it was more than one, used in stabbing AAA *vis-à-vis* the size of the wounds in her body.

Back to Pepe, he reported for the first time on July 26, 1999 what he witnessed on July 21, 1999 via his statement before the police station, without proffering any reason for such belated reporting. Thus, he testified:

Q In other words, you saw some policemen who arrived there and you said you came back?

A Yes.

Q **You did not volunteer yourself for <u>having been [*sic*] seen the two persons running away from the scene</u> you did not inform the policemen?**

A **<u>No, I did not.</u>**

Q And you <u>did not participate</u> [in] the inquiry conducted by the policemen?

A No.

x x x x x x x x x

Q Now, <u>the following day</u> do you know if there were policemen who went back to the place and investigated the incident?

A Yes.

Q: **You <u>did not volunteer</u> to reveal to said policemen of what you saw?**

A **<u>No,</u> I did not.**

Q **<u>Not even to the father of [AAA]? You did not reveal to the father of [AAA]</u> . . . of what you saw on July 21, 1999?**

A **No.** (Emphasis and underscoring supplied)

A judgment of conviction must rest on nothing less than moral certainty, moral certainty in an unprejudiced mind that it was the accused who committed the crime, failing which the accused must be exonerated.[45] The prosecution failed to discharge its burden of establishing the guilt of appellants, however. This leaves it unnecessary to still pass on appellant's defense.

WHEREFORE, the challenged Decision of the Court of Appeals is *REVERSED* and *SET ASIDE*. Appellants, FEBLONELYBIRTH T. RUBIO and JOAN T. AMARO, are, for failure of the prosecution to prove their guilt beyond reasonable doubt, *ACQUITTED* of rape with homicide.

The Director of the Bureau of Corrections is *DIRECTED* to cause the immediate release of appellant, unless he is being lawfully detained for another cause; and to inform the Court of the date of their release, or the reasons for their continued confinement, within ten (10) days from notice.

SO ORDERED.

Ynares-Santiago,[**] *Peralta,*[***] *Del Castillo,* and *Abad, JJ.,* concur.

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[45] *Abdulla v. People*, G.R. No. 150129, 455 SCRA 78, 91 (2005) citing *People v. Ortillas*, G.R. No. 137666, 428 SCRA 659 (2004).

[**] Additional member per Special Order No. 691.

[***] Additional member per Special Order No. 711.

SECOND DIVISION

[G.R. No. 179756. October 2, 2009]

RIZAL COMMERCIAL BANKING CORPORATION, *petitioner, vs.* **ROYAL CARGO CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; *RES JUDICATA*; ELEMENTS. — The elements of *res judicata* are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action.

2. ID.; ID.; ID.; ID.; TWO CONCEPTS THEREOF, DISTINGUISHED. — *Res judicata* has two concepts: (1) bar by prior judgment as enunciated in Rule 39, Section 47 (b) of the Rules of Civil Procedure; and (2) conclusiveness of judgment in Rule 39, Section 47 (c). There is **bar by prior judgment** when, as between the first case where the judgment was rendered, and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. Where there is identity of parties and subject matter in the first and second cases, but *no identity of causes of action*, there is **conclusiveness of judgment**. The first judgment is conclusive only as to those matters **actually** and **directly controverted** and **determined**, not as to matters merely *involved* therein.

3. ID.; ID.; AN ORDER DENYING A MOTION TO DISMISS IS AN INTERLOCUTORY ORDER AND CANNOT GIVE RISE TO *RES JUDICATA*. — An order denying a motion to dismiss is merely *interlocutory* and cannot give rise to *res judicata*, hence, it is subject to amendments until the rendition of the final judgment.

4. CIVIL LAW; MORTGAGE; RIGHT OF REDEMPTION UNDER THE CHATTEL MORTGAGE LAW, EXPLAINED. — Section 13 of the *Chattel Mortgage Law* allows the would-be redemptioner thereunder to redeem the mortgaged property only ***before*** its sale. Consider the following pronouncement in *Paray*: [T]here is no law in our statute books which vests the **right** of redemption over *personal* property. Act No. 1508, or the Chattel Mortgage Law, ostensibly could have served as the vehicle for any legislative intent to bestow a **right** of redemption over **personal** property, since that law governs the extrajudicial sale of mortgaged personal property, but the statute is definitely silent on the point. And Section 39 of the 1997 Rules of Civil Procedure, extensively relied upon by the Court of Appeals, starkly utters that the right of redemption applies to ***real*** properties, not personal properties, sold on execution. Unmistakably, the redemption cited in Section 13 partakes of an ***equity*** of redemption, which is the right of the mortgagor to redeem the mortgaged property after his default in the performance of the conditions of the mortgage but *before* the sale of the property to clear it from the encumbrance of the mortgage. It is not the same as ***right*** of redemption which is the right of the mortgagor to redeem the mortgaged property after registration of the foreclosure sale, and even *after* confirmation of the sale. x x x Since the registration of a chattel mortgage is an effective and binding notice to other creditors of its existence and creates a real right or lien that follows the property wherever it may be, the right of respondent, as an attaching creditor or as purchaser, had it purchased the mortgaged chattel at the auction sale, is subordinate to the lien of the mortgagee who has in his favor a valid chattel mortgage.

5. ID.; DAMAGES; NOT PROPER IN THE ABSENCE OF CONSTRUCTIVE FRAUD. — Contrary then to the appellate court's ruling, petitioner is not liable for constructive fraud for proceeding with the auction sale. Nor for subsequently selling the chattel. For foreclosure suits may be initiated even during insolvency proceedings, as long as leave must first be obtained from the insolvency court as what petitioner did. The appellate court's award of exemplary damages and attorney's fees for respondent, given petitioner's good faith, is thus not warranted.

6. ID.; ID.; ATTORNEY'S FEES; WHEN AWARD THEREOF PROPER. — As for petitioner's prayer for attorney's fees in its Compulsory Counterclaim, the same is in order, the dismissal of respondent's Complaint notwithstanding. *Perkin Elmer Singapore v. Dakila Trading,* citing *Pinga v. Heirs of German Santiago,* enlightens: It bears to emphasize that petitioner's counterclaim against respondent is for damages and attorney's fees arising from the unfounded suit. While respondent's Complaint against petitioner is already dismissed, petitioner may have very well incurred damages and litigation expenses such as attorney's fees since it was forced to engage legal representation in the Philippines to protect its rights and to assert lack of jurisdiction of the courts over its person by virtue of the improper service of summons upon it. Hence, the cause of action of petitioner's counterclaim is not eliminated by the mere dismissal of respondent's complaint. To the Court, the amount of ₱250,000 prayed for by petitioner in its Counterclaim is just and equitable, given the nature and extent of legal services employed in controverting respondent's unfounded claim.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako and *Lapuz-Ureta Ramos Arches Miranda and Atienza Law Offices* for petitioner.
Marilyn P. Cacho & Associates for respondent.

D E C I S I O N

CARPIO MORALES,[*] *J.*:

Terrymanila, Inc.[1] (Terrymanila) filed a petition for voluntary insolvency with the Regional Trial Court (RTC) of Bataan on February 13, 1991.[2] One of its creditors was Rizal Commercial Banking Corporation (petitioner) with which it had an obligation

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[*] Per Special Order No. 690 in lieu of the sabbatical leave of Senior Associate Justice Leonardo A. Quisumbing.

[1] At times referred to as Terry Manila, Inc. in the *rollo* and records.

[2] Records, Vol. I, pp. 2-3.

of ₱3 Million that was secured by a *chattel* mortgage executed on February 16, 1989. The chattel mortgage was duly recorded in the notarial register of Amado Castano, a notary public for and in the Province of Bataan.[3]

Royal Cargo Corporation (respondent), another creditor of Terrymanila, filed an action before the RTC of Manila for collection of sum of money and preliminarily attached "some" of Terrymanila's personal properties on March 5, 1991 to secure the satisfaction of a judgment award of ₱296,662.16, exclusive of interests and attorney's fees.[4]

On April 12, 1991, the Bataan RTC declared Terrymanila insolvent.

On June 11, 1991,[5] the Manila RTC, by Decision of even date, rendered judgment in the collection case in favor of respondent.

In the meantime, petitioner sought in the insolvency proceedings at the Bataan RTC permission to extrajudicially foreclose the chattel mortgage which was granted by Order of February 3, 1992.[6] It appears that respondent, together with its employees' union, moved to have this Order reconsidered but the motion was denied by Order of March 20, 1992 Order.[7]

The provincial sheriff of Bataan thereupon scheduled on June 16, 1992 the public auction sale of the mortgaged personal properties at the Municipal Building of Mariveles, Bataan. At the auction sale, petitioner, the sole bidder of the properties, purchased them for ₱1.5 Million. Eventually, petitioner sold the properties to Domingo Bondoc and Victoriano See.[8]

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[3] *Id.* at 294.

[4] *Id.* at 287.

[5] Folder of Exhibits, pp. 7-9.

[6] Records, Vol. I, p. 304.

[7] Folder of Exhibits, p. 48.

[8] *Id.* at 272.

Respondent later filed on July 30, 1992 a petition before the RTC of Manila, docketed as Civil Case No. 92-62106, against the Provincial Sheriff of the RTC Bataan and petitioner, for annulment of the auction sale (annulment of sale case). Apart from questioning the inclusion in the auction sale[9] of some of the properties which it had attached, respondent questioned the failure to duly notify it of the sale at least 10 days before the sale, citing Section 14 of Act No. 1508 or the *Chattel Mortgage Law* which reads:

> Sec. 14. The mortgagee, his executor, administrator or assign, may, after thirty days, from the time of condition broken, cause the mortgaged property, or any part thereof, to be sold at public auction by a public officer at a public place in the municipality where the mortgagor resides, or where the property is situated, provided at least ten days notice of the time, place, and purpose of such sale has been posted at two or more public places in such municipality, and **the mortgagee, his executor, administrator or assignee shall notify the mortgagor or person holding under him and the persons holding subsequent mortgages of the time and place of sale, either by notice in writing directed to him or left at his abode, if within the municipality, or sent by mail if he does not reside in such municipality, at least ten days previous to the date.** (Emphasis and underscoring supplied),

it claiming that its counsel received a notice only on the day of the sale.[10]

Petitioner, alleging that the annulment of sale case filed by respondent stated no cause of action, filed on December 3, 1992 a Motion to Dismiss[11] which was, however, denied by Branch 16 of the Manila RTC.[12]

Petitioner appealed the denial of the Motion to Dismiss via *certiorari* to the Court of Appeals, docketed as **CA-G.R. SP No. 31125**. The appellate court dismissed the petition, by

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[9] *Id.* at 275, 292-305.

[10] Records, Vol. I, pp. 2-3.

[11] *Id.* at 13-20.

[12] *Id.* at 39-41.

Decision of February 21, 1994, it holding that respondent's petition for annulment "*prima facie* states a sufficient cause of action and that the [trial court] in denying [herein petitioner RCBC's] motion to dismiss, had acted advisedly and well within its powers and authority."[13]

Petitioner thereupon filed before the Manila RTC its Answer *Ex Abundante Cautelam*[14] in the annulment of sale case in which it lodged a Compulsory Counterclaim by seeking ₱1 Million for moral damages, ₱500,000 for exemplary damages, and ₱250,000 for attorney's fees. It thereafter elevated the case to this Court via petition for review on *certiorari*, docketed as **G.R. 115662**. This Court by minute Resolution of November 7, 1994,[15] denied the petition for failure to show that a reversible error was committed by the appellate court.[16]

Trial on the merits of the annulment of sale case thereupon ensued. By Decision[17] of October 15, 1997, Branch 16 of the Manila RTC rendered judgment in favor of respondent, disposing as follows:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered:

1. ORDERING . . . RCBC to pay plaintiff [heein (sic) respondent Royal Cargo] the amount of ₱296,662.16 and ₱8,000.00 as reasonable attorney's fees.

2. No pronouncement as to costs.

3. DISMISSING the petition as to respondents Provincial Sheriff of Balanga, Bataan RTC;

SO ORDERED.

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[13] *Id.* at 137-146; CA G.R. SP No. 31125.

[14] Records, pp. 87-96.

[15] Entitled *RCBC v. Court of Appeals, et al.*

[16] *Rollo*, p. 202.

[17] Records, Vol. II, pp. 752-759.

Both parties appealed to the Court of Appeals which, by Decision[18] of April 17, 2007, denied herein petitioner's appeal and partly granted herein respondent's by increasing to ₱50,000 the attorney's fees awarded to it and additionally awarding it exemplary damages and imposing interest on the principal amount payable to it. Thus it disposed:

> WHEREFORE, the foregoing considered, the appeal instituted by appellant RCBC is hereby DENIED for lack of merit while the appeal of appellant Royal Cargo is PARTLY GRANTED in that the amount of **attorney's fees awarded by the RTC is increased to P50,000.00**.
>
> **In addition**, RCBC is ordered to **pay Royal Cargo the amount of P100,000.00 as exemplary damages**. The principal amount of P296,662.18 [*sic*] to be paid by RCBC to Royal Cargo shall likewise earn **12% interest per annum** from the time the petition was filed in the court *a quo* until fully paid. The rest of the decision is AFFIRMED.
>
> SO ORDERED. (Emphasis and underscoring supplied)

In partly granting respondent's appeal from the Decision of Br. 16 of RTC Manila, the appellate court ratiocinated that respondent had a right to be "timely informed" of the foreclosure sale.

> RCBC's citations [*sic*] of numerous rulings on the matter more than supports the fact that as mortgagee, it had preferential right over the chattels subject of the foreclosure sale. This however is not at issue in this case. What is being contested is the ***right*** of Royal Cargo to be **timely informed** of the foreclosure sale as it too had interests over the mortgagee Terrymanila, Inc.'s assets. We note that this matter had **already been passed** upon by this Court on February 21, 1994 in CA-G.R. SP No. 31125 as well as by the Supreme Court on November 7, 1994 in G.R. No. [1]15662. RCBC, by arguing about its preferential right as mortgagee in the instant appeal merely reiterates what had **already been considered and ruled upon** in earlier proceedings.

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[18] *Rollo*, pp. 59-76; Penned by Associate Justice Josefina Guevara-Salonga with Associate Justices Vicente Q. Roxas and Ramon R. Garcia, concurring.

x x x x x x x x x

Moreover, Section 14 of the Chattel Mortgage Law pertaining to the procedure in the foreclosure of chattel mortgages provides, to wit:

x x x x x x x x x

The above-quoted provision clearly requires that the mortgagee should **notify in writing** the mortgagor or **person holding under him** of the time and place of the sale by personal delivery of the notice. Thus, RCBC's failure to comply with this requirement warranted a ruling against it by the RTC. (Italics in the original; emphasis partly in the original; underscoring supplied)

Its motion for reconsideration having been denied by the appellate court,[19] petitioner lodged the present petition for review which raises the following issues:

I

WHETHER OR NOT RESPONDENT SHOULD HAVE BEEN GIVEN A TEN(10)-DAY PRIOR NOTICE OF THE JUNE 16, 1992 FORECLOSURE SALE

II

WHETHER OR NOT THE TRIAL COURT AND THE COURT OF APPEALS GRAVELY ERRED IN DECLARING PETITIONER GUILTY OF CONSTRUCTIVE FRAUD IN FAILING TO PROVIDE RESPONDENT A TEN (10)-DAY PRIOR NOTICE OF THE FORECLOSURE SALE.

III

WHETHER OR NOT THE PETITIONER WAS CORRECTLY HELD LIABLE TO PAY RESPONDENT P296,662.[16] PLUS INTEREST THEREON, EXEMPLARY DAMAGES AND ATTORNEY'S FEES.

IV

WHETHER OR NOT PETITIONER IS ENTITLED TO AN AWARD OF ATTORNEY'S FEES.[20] (Underscoring supplied)

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

[20] *Id.* at 21.

Petitioner faults the appellate court in applying *res judicata* by holding that respondent's entitlement to notice of the auction sale had already been settled in its Decision in CA G.R. SP No. 31125 and in this Court's Decision in G.R. No. 115662. For, so it contends, the decisions in these cases dealt on *interlocutory* issues, *viz*: the issue of whether respondent's petition for annulment of the sale stated a cause of action, and the issue of whether petitioner's motion to dismiss was properly denied.[21]

Arguing against respondent's position that it was entitled to notice of the auction sale, petitioner cites the *Chattel Mortgage Law* which enumerates who are entitled to be notified under Section 14 thereof. It posits that "[h]ad the law intended to include in said Section an attaching creditor or a judgment creditor [like herein respondent], it could have so specifically stated therein, since in the preceding section, Section 13, it already mentioned that a subsequent attaching creditor may redeem."[22]

Petitioner goes on to fault the appellate court in echoing its ruling in CA-G.R. SP No. 31125 that Sections 13[23] and 14 of the *Chattel Mortgage Law* should be read in tandem since the right given to the attaching creditor under Section 13 "would not serve its purpose if we were to exclude the subsequent attaching creditor from those who under Section 14 need to be notified of the foreclosure sale ten days before it is held."[24]

Petitioner likewise posits that Section 13 permits a subsequent attaching creditor to "redeem" the mortgage only before the

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[21] *Id.* at 31-33.

[22] *Id.* at 33-34.

[23] Section 13 of the Chattel Mortgage Law reads: When the condition of a chattel mortgage is broken, a mortgagor or person holding a subsequent mortgage, or a subsequent attaching creditor may redeem the same by paying or delivering to the mortgagee the amount due on such mortgage and the reasonable costs and expenses incurred by such breach of condition **before** the sale thereof. An attaching creditor who redeems shall be subrogated to the rights of the mortgagee and entitled to foreclose the mortgage in the same manner that the mortgagee could foreclose it by the terms of this Act. (Emphasis and underscoring supplied)

[24] *Rollo*, p. 34.

holding of the auction sale, drawing attention to *Paray v. Rodriguez*[25] which instructs that no right of redemption exists over *personal* property as the *Chattel Mortgage Law* is silent thereon.[26]

Even assuming *arguendo*, petitioner contends, that there exists an obligation to furnish respondent a notice of the auction sale 10 days prior thereto, "respondent's judgment award of ₱296,662.16 with interest thereon at the legal rate from the date of filing of the [c]omplaint and ₱10,000.00 as reasonable attorney's fees is very much less than the ₱1.5 [m]illion bid of petitioner…"[27]

As for the issue of constructive fraud-basis of the award of damages to respondent, petitioner maintains that both the trial and appellate courts erred in concluding that it (petitioner) was the one which sent the notice of sheriff's sale to, which was received on the day of the sale by, the counsel for respondent for, so it contends, it had absolutely no participation in the preparation and sending of such notice.[28]

In its Comment,[29] respondent reiterates that the respective decisions of the appellate court and this Court in CA G.R. SP No. 31125 and G.R. No. 115662 are *conclusive* between the parties, hence, "the right of [respondent] to a [ten-day] notice has a binding effect and must be adopted in any other controversy between the same parties in which the very same question is raised."[30]

And respondent maintains that the obligation to notify the mortgagor or person holding under him and the persons holding subsequent mortgages falls upon petitioner as the mortgagee.

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[25] G.R. No. 132287, January 24, 2006, 479 SCRA 571.

[26] *Rollo*, p. 35.

[27] *Id.* at 48.

[28] *Id.* at 45.

[29] *Id.* at 222-233.

[30] *Id.* at 229-230.

The petition is MERITORIOUS.

The respective decisions of the appellate court in CA G.R. SP No. 31125 and this Court in G.R. No. 115662 did not conclusively settle the issue on the need to give a 10-day notice to respondent of the holding of the public auction sale of the chattels.

The elements of *res judicata* are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action.[31]

Res judicata has two concepts: (1) bar by prior judgment as enunciated in Rule 39, Section 47 (b) of the Rules of Civil Procedure; and (2) conclusiveness of judgment in Rule 39, Section 47 (c).[32]

There is **bar by prior judgment** when, as between the first case where the judgment was rendered, and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. Where there is identity of parties and subject matter in the first and second cases, but *no identity of causes of action*, there is **conclusiveness of judgment.**[33] The first judgment is conclusive only as to those matters *actually* and *directly controverted* and *determined*, not as to matters merely *involved* therein.

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[31] *Republic v. Court of Appeals*, G.R. No. 103412, February 3, 2000, 324 SCRA 560, 565 citing *Casil v. Court of Appeals*, G.R. No. 121534, January 28, 1998, 285 SCRA 264, 276.

[32] SEC. 47. x x x.

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

[33] *Padillo v. Court of Appeals*, G.R. No. 119707, November 29, 2001, 371 SCRA 27, 39-40 citing *Islamic Directorate of the Phils. v. Court of Appeals*, G.R. No. 117897, May 14, 1997, 272 SCRA 454, 466.

The Court of Appeals, in CA G.R. SP No. 31125, resolved only the *interlocutory* issue of whether the trial court's Order of April 12, 1993 denying petitioner's motion to dismiss respondent's petition for annulment was attended by grave abuse of discretion. The appellate court did not rule on the *merits* of the petition as to establish a controlling legal rule which has to be subsequently followed by the parties in the same case. It merely held that respondent's petition in the trial court stated a sufficient cause of action. Its determination of respondent's entitlement to notice of the public auction sale was at best *prima facie*. Thus, the appellate court held:

> In view of the above, We are of the considered view that the private respondent's petition in the court *a quo* ***prima facie*** **states a sufficient cause of action** and that the public respondent in denying the petitioner's motion to dismiss, had acted advisedly and well within its powers and authority. **We, therefore, find no cause to annul the challenged *order* issued by the respondent court in Civil Case No. 92-62106.** (Underscoring in the original; emphasis and italics supplied)[34]

An order denying a motion to dismiss is merely *interlocutory* and cannot give rise to *res judicata*, hence, it is subject to amendments until the rendition of the final judgment.[35]

On respondent's contention that petitioner, as mortgagee, had the duty to notify it of the public auction sale, the Court finds the same immaterial to the case.

Section 13 of the *Chattel Mortgage Law* allows the would-be redemptioner thereunder to redeem the mortgaged property only ***before*** its sale. Consider the following pronouncement in *Paray*:[36]

> [T]here is no law in our statute books which vests the **right** of redemption over *personal* property. Act No. 1508, or the Chattel

[34] Records I, pp. 145-146.

[35] *Macahilig v. Heirs of Grace Magalit*, G.R. No. 141423, 398 Phil. 802, 818 (2000) citing *Manila Electric Company v. Artiaga*, 50 Phil. 144, 147 (1927).

[36] *Supra* note 24.

Mortgage Law, ostensibly could have served as the vehicle for any legislative intent to bestow a **right** of redemption over personal property, since that law governs the extrajudicial sale of mortgaged **personal** property, but the statute is definitely silent on the point. And Section 39 of the 1997 Rules of Civil Procedure, extensively relied upon by the Court of Appeals, starkly utters that the right of redemption applies to ***real*** properties, not personal properties, sold on execution. (Emphasis, italics and underscoring supplied)

Unmistakably, the redemption cited in Section 13 partakes of an ***equity*** of redemption, which is the right of the mortgagor to redeem the mortgaged property after his default in the performance of the conditions of the mortgage but *before* the sale of the property[37] to clear it from the encumbrance of the mortgage.[38] It is not the same as ***right*** of redemption which is the right of the mortgagor to redeem the mortgaged property after registration of the foreclosure sale,[39] and even *after* confirmation of the sale.[40]

While respondent had attached some of Terrymanila's assets to secure the satisfaction of a ₱296,662.16 judgment rendered in another case, what it effectively attached was Terrymanila's *equity* of redemption. That respondent's claim is much lower than the ₱1.5 million actual bid of petitioner at the auction sale does not defeat respondent's *equity* of redemption. *Top Rate International Services, Inc. v. IAC*[41] enlightens:

It is, therefore, error on the part of the petitioner to say that since private respondents' lien is only a total of ₱343,227.40, they cannot be entitled to the equity of redemption because the exercise of such right would require the payment of an amount which cannot be less than ₱40,000,000.00.

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[37] *Top Rate International Services, Inc. v. IAC*, G.R. No. 67496, July 7, 1986, 226 Phil. 387, 394 citing Moran, *COMMENTS ON THE RULES OF COURT*, Vol. 3, pp. 283-284, 1980 Ed.; and *Quimson v. PNB*, 36 SCRA 26.

[38] 55 AM JUR 2d, Mortgages, §866.

[39] *Limpin v. Intermediate Appellate Court*, G.R. No. 70987, September 29, 1988, 166 SCRA 87, 93.

[40] *Ibid.*

[41] *Supra*.

When herein private respondents prayed for the attachment of the properties to secure their respective claims against Consolidated Mines, Inc., the properties had already been mortgaged to the consortium of twelve banks to secure an obligation of US$62,062,720.66. Thus, like subsequent mortgagees, the respondents' liens on such properties became inferior to that of banks, which claims in the event of foreclosure proceedings, must first be satisfied. **The appellate court, therefore, was correct in holding that in reality, what was attached by the respondents was merely *Consolidated Mines' . . . equity of redemption*.** x x x

x x x x x x x x x

We, therefore, hold that the appellate court did not commit any error in ruling that there was no over-levy on the disputed properties. What was **actually attached** by respondents was Consolidated Mines' **right or equity of redemption,** an incorporeal and intangible right, the value of which can neither be quantified nor equated with the actual value of the properties upon which it may be exercised.[42] (Emphasis, italics and underscoring supplied)

Having thus attached Terrymanila's *equity* of redemption, respondent had to be informed of the date of sale of the mortgaged assets for it to exercise such equity of redemption over some of those foreclosed properties, as provided for in Section 13.

Recall, however, that respondent filed a motion to reconsider the February 3, 1992 Order of the RTC Bataan-insolvency court which granted leave to petitioner to foreclose the chattel mortgage, which motion was denied. Notably, respondent failed to allege this incident in his annulment of sale case before the RTC of Manila.

Thus, even prior to receiving, through counsel, a mailed notice of the auction sale on the date of the auction sale itself on June 16, 1992, respondent was already put on notice of the impending foreclosure sale of the mortgaged chattels. It could thus have expediently exercised its equity of redemption, at the earliest when it received the insolvency court's Order of March 20, 1992 denying its Motion for Reconsideration of the February 3, 1992 Order.

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[42] *Id.* at 394-395.

Despite its window of opportunity to exercise its equity of redemption, however, respondent chose to be technically shrewd about its chances, preferring instead to seek annulment of the auction sale, which was the result of the foreclosure of the mortgage, permission to conduct which it had early on opposed before the insolvency court. Its negligence or omission to exercise its equity of redemption within a reasonable time, or even on the day of the auction sale, warrants a presumption that it had either abandoned it or opted not to assert it.[43] Equitable considerations thus sway against it.

It is also not lost on the Court that as early as April 12, 1991, Terrymanila had been judicially declared insolvent. Respondent's recourse was thus to demand the satisfaction of its judgment award before the insolvency court as its judgment award is a preferred credit under Article 2244[44] of the Civil Code. To now allow respondent have its way in annulling the auction sale and at the same time let it proceed with its claims before the insolvency court would neither rhyme with reason nor with justice.

Parenthetically, respondent has not shown that it was prejudiced by the auction sale since the insolvency court already determined that even if the mortgaged properties were foreclosed, there were still sufficient, unencumbered assets of Terrymanila to cover the obligations owing to other creditors, including that of respondent's.[45]

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[43] *Spouses Alfredo v. Spouses Borras*, G.R. No. 144225, June 17, 2003, 452 Phil. 178, 206-207.

[44] Art. 2244. With reference to other property, real and personal of the debtor, the following claims or credits shall be preferred in the order named:

x x x x x x x x x

(14) Credits which, without special privilege, appear in (a) a public instrument; or (b) in a final judgment, if they have been the subject of litigation. These credits shall have preference among themselves in the order of priority of the dates of the instruments and of the judgments, respectively. (Underscoring supplied)

[45] *Vide: De Amuzategui v. Macleod*, G.R. No. L-10629, December 24, 1915, 33 Phil. 80. In this case, the Court held that "it is clear that, with the declaration of insolvency, courts in insolvency obtain full and complete jurisdiction

In any event, even if respondent would have participated in the auction sale and matched petitioner's bid, the superiority of petitioner's lien over the mortgaged assets would preclude respondent from recovering the chattels.

It has long been settled by this Court that "**the right of those who acquire said properties should not and can not be superior to that of the creditor who has in his favor an instrument of mortgage executed with the formalities of the law, in good faith, and without the least indication of fraud**. x x x. In purchasing it, with full knowledge that such circumstances existed, it should be presumed that he did so, very much willing to respect the lien existing thereon, since he should not have expected that with the purchase, he would acquire a better right than that which the vendor then had. (Emphasis and underscoring supplied)[46]

It bears noting that the chattel mortgage in favor of petitioner was registered more than two years before the issuance of a writ of attachment over some of Terrymanila's chattels in favor of respondent. This is significant in determining who between petitioner and respondent should be given preference over the

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over all property of the insolvent and of all claims by and against him, with full authority to suspend, on the application of the debtor, a creditor, or the assignee, any action or proceeding then pending in any court, to await the determination of the court of insolvency on the question of the bankrupt's discharge. The assignee in the case at bar asked that the action be dismissed on the ground that the court in insolvency having complete jurisdiction over the affairs of an insolvent debtor, and particularly the distribution of his estate for the payment of his debts, an action begun in another court which tends in any material way to interfere with the exercise of that jurisdiction is prohibited either expressly or impliedly by the Insolvency Law and cannot, therefore, be maintained when appropriate objection by the proper parties is interposed. It is evident that if the various courts of the Islands may by action or other proceeding intervene in the affairs of an insolvent debtor and with the administration of the court in insolvency, great confusion would result and the termination of the insolvency proceeding might be delayed unduly. We believe it to be the policy of the Insolvency Law to place the insolvent debtor and all his assets and liabilities completely within the jurisdiction and control of the court in insolvency and not to permit the intervention of any other court in the bankrupt's concerns or in the administration of his estate."

[46] *Cabral v. Evangelista*, G.R. No. L-26860, July 30, 1969, 139 Phil. 300, 306-307.

subject properties. Since the registration of a chattel mortgage is an effective and binding notice to other creditors of its existence and creates a real right or lien that follows the property wherever it may be,[47] the right of respondent, as an attaching creditor or as purchaser, had it purchased the mortgaged chattel at the auction sale, is subordinate to the lien of the mortgagee who has in his favor a valid chattel mortgage.[48]

Contrary then to the appellate court's ruling, petitioner is not liable for constructive fraud for proceeding with the auction sale. Nor for subsequently selling the chattel. For foreclosure suits may be initiated even during insolvency proceedings, as long as leave must first be obtained from the insolvency court[49] as what petitioner did.

The appellate court's award of exemplary damages and attorney's fees for respondent, given petitioner's good faith, is thus not warranted.

As for petitioner's prayer for attorney's fees in its Compulsory Counterclaim, the same is in order, the dismissal of respondent's Complaint notwithstanding.[50] *Perkin Elmer Singapore v. Dakila Trading*,[51] citing *Pinga v. Heirs of German Santiago*,[52] enlightens:

> It bears to emphasize that petitioner's counterclaim against respondent is for damages and attorney's fees arising from the unfounded suit. While respondent's Complaint against petitioner is already dismissed, petitioner may have very well incurred damages and litigation expenses

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[47] *Allied Banking Corp. v. Salas*, G.R. No. L-49081, December 13, 1988, 168 SCRA 414, 420.

[48] *Northern Motors Inc. v. Judge Coquia*, G.R. No. L-40018, August 29, 1975, 160 Phil. 1091, 1098.

[49] 1 J. VITUG, *COMMERCIAL LAWS AND JURISPRUDENCE* 549 (2006).

[50] Article 2208 (2) of the Civil Code.

[51] G.R. No. 172242, August 14, 2007, 530 SCRA 170.

[52] G.R. No. 170354, June 30, 2006, 494 SCRA 393.

such as attorney's fees since it was forced to engage legal representation in the Philippines to protect its rights and to assert lack of jurisdiction of the courts over its person by virtue of the improper service of summons upon it. Hence, the cause of action of petitioner's counterclaim is not eliminated by the mere dismissal of respondent's complaint.[53] (Underscoring supplied)

To the Court, the amount of ₱250,000 prayed for by petitioner in its Counterclaim is just and equitable, given the nature and extent of legal services employed in controverting respondent's unfounded claim.

WHEREFORE, the petition for review is *GRANTED*. The challenged Decision and Resolution of the Court of Appeals are *REVERSED* and *SET ASIDE.* Civil Case No. 92-62106 lodged before the Regional Trial Court of Manila, Branch 16, is *DISMISSED* for lack of merit.

Respondent, Royal Cargo Corporation, is *ORDERED* to pay petitioner, Rizal Commercial Banking Corporation, ₱250,000 as and for attorney's fees.

No costs.

SO ORDERED.

Ynares-Santiago,[**] *Peralta,*[***] *Del Castillo,* and *Abad, JJ.*, concur.

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[53] *Perkin Elmer Singapore v. Dakila Trading, supra* note 51 at 201-202.

[**] Per Special Order No. 706 and additional member per Special Order No. 691.

[***] Additional member per Special Order No. 711.

EN BANC

[G.R. No. 181528. October 2, 2009]

HECTOR T. HIPE, *petitioner, vs.* **COMMISSION ON ELECTIONS and MA. CRISTINA L. VICENCIO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF IS UPON THE PARTY AVERRING THE NEGATIVE FACTS; APPLICATION IN CASE AT BAR. — When a plaintiff's case depends upon the establishment of a negative fact, and the means of proving the fact are equally within the control of each party, then the burden of proof is upon the party averring the negative fact. In the case at bar, petitioner Hipe asserted the negative fact, that is, that no copy of the written ruling of the MBOC was sent to him or his counsel. Thus, petitioner Hipe has the burden of proof to show that he was not furnished with a copy of the written ruling of the MBOC, which he was able to successfully prove in the instant case. Be that as it may, it then becomes incumbent upon respondent Vicencio to prove otherwise. This is because the burden of evidence is shifted if the party upon whom it is lodged was able to adduce preponderant evidence to prove its claim. Significantly, other than Madronio's statement in his Certification that hard or printed copies of the ruling of the MBOC were furnished to Atty. Desales on May 19, 2007, no other evidence was adduced by respondent Vicencio to support her claim. If indeed such written ruling exists and was indeed furnished to petitioner Hipe or his alleged counsel, it would have been very easy for respondent Vicencio to produce a copy of the written ruling with the signature of petitioner Hipe or his counsel, which she failed to do in the instant case.

2. ID.; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE BODY WILL NOT BE DISTURBED BY THE SUPREME COURT EXCEPT WHEN THERE IS ABSOLUTELY NO SUBSTANTIAL EVIDENCE TO SUPPORT SUCH FINDINGS. — The rule that factual findings of administrative

bodies will not be disturbed by courts of justice except when there is absolutely no evidence or no substantial evidence in support of such findings should be applied with greater force when it concerns the COMELEC, as the framers of the Constitution intended to place the COMELEC—created and explicitly made independent by the Constitution itself—on a level higher than statutory administrative organs. The factual finding of the COMELEC is, therefore, binding on the Court.

3. POLITICAL LAW; COMMISSION ON ELECTIONS; POSSESSES THE DISCRETION TO LIBERALLY CONSTRUE ITS RULES; SUSTAINED. — The COMELEC has the discretion to construe its rules liberally and, at the same time, suspend the rules or any of their portions in the interest of justice. As aptly stated by Commissioner Rene V. Sarmiento in his Dissenting Opinion: It is well settled that election laws should be reasonably and liberally construed to achieve their purpose – to effectuate and safeguard the will of the electorate in the choice of their representatives. The courts frown upon any interpretation that would hinder in any way not only the free and intelligent casting of votes in any election but also the correct ascertainment of the results thereof. Disputes in the outcome of elections involve public interest. Technicalities and procedural barriers should not be allowed to stand if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. Laws governing such disputes must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technicalities. Hence, it is submitted that there is a need to suspend the procedural rules and resolve the merits of the case to promote justice and safeguard the will of the electorate of Catubig, Northern Samar. Accordingly, the COMELEC should have not dismissed the appeal filed by petitioner Hipe on the ground of belated filing.

4. ID.; ID.; ID.; TECHNICALITIES AND PROCEDURAL BARRIERS SHOULD NOT BE ALLOWED TO STAND IN THE WAY IF THEY CONSTITUTE AN OBSTACLE IN THE DETERMINATION OF ELECTORATE'S TRUE WILL IN THE CHOICE OF ITS ELECTIVE OFFICIALS. — In *Marabur v. COMELEC*, we held that while respondent failed to submit his written objections, respondent's submission of

his formal offer of evidence, including the evidence itself, within the prescribed period constituted substantial compliance with the requirement that objections be reduced into writing. Notably, the relaxation of the rules becomes all the more necessary in the instant case, considering that respondent Vicencio has even filed his written objections within the prescribed period; and soon thereafter, the documentary evidence in support of the written objections. Technicalities and procedural barriers should not be allowed to stand in the way if they constitute an obstacle to the determination of the electorate's true will in the choice of its elective officials. It should be borne in mind that the object of the canvass is to determine the result of the elections based on the official election returns. In order that the result of the canvass would reflect the true expression of the people's will in the choice of their elective officials, the canvass must be based on true, genuine, correct—nay, untampered—election returns. It is in these proceedings that the COMELEC exercises its supervisory and administrative power in the enforcement of laws relative to the conduct of elections, by seeing to it that the canvass is based on the election returns as actually certified by the members of the board of inspectors. Taking into consideration the findings of the COMELEC *En Banc* that there was ample evidence to support the exclusion of the seven election returns in question based on the grounds raised by respondent Vicencio, this should suffice in upholding the latter's proclamation, absent a finding of grave abuse of discretion on the part of the COMELEC *En Banc*, in order not to frustrate the electorate's will.

APPEARANCES OF COUNSEL

George Erwin M. Garcia for petitioner.

The Solicitor General for public respondent.

Adviento Law Office and *Brillantes Navarro Jumamil Arcilla Escolin Martinez & Vivero* for private respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Before us is a Petition for *Certiorari* and Prohibition under Rule 64, in relation to Rule 65, of the Rules of Court seeking to nullify and enjoin the implementation of the January 30, 2008 Resolution[1] issued by the Commission on Elections (COMELEC) *En Banc*, which affirmed the July 11, 2007 Resolution[2] issued by its Second Division.

The Facts

Petitioner Hector T. Hipe and respondent Ma. Cristina L. Vicencio were candidates for the mayoralty post in Catubig, Northern Samar in the May 14, 2007 elections. During the canvass proceedings of the Municipal Board of Canvassers of Catubig, Northern Samar (MBOC), Vicencio petitioned for the exclusion of seven election returns of Precinct Nos. 0037B, 0052A, 0053A, 0058A, 0080A, 0081A and 0082A on the grounds that they were prepared under duress, threats, intimidation or coercion; and that the election was marred by massive vote buying, widespread coercion, terrorism, threats, and intimidation, preventing voters from voting, so that the said returns did not reflect the will of the electorate.[3] In support of the said petition for exclusion, Vicencio presented affidavits of some of the members of the Board of Election Inspectors, a sample ballot and an ISO Assessment.[4]

On May 19, 2007, the MBOC ruled in favor of Vicencio and excluded the seven election returns adverted to. On the same day, petitioner Hipe filed a notice of appeal. Thereafter, on May 29, 2007, petitioner Hipe filed his Verified Appeal with

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[1] *Rollo*, pp. 36-47.

[2] *Id.* at 48-55.

[3] COMELEC records, pp. 16-36.

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

the COMELEC, docketed as SPC No. 07-206 entitled "In the Matter of the Petitions to Exclude Election Returns, *Hector T. Hipe vs. Ma. Cristina L. Vicencio*," arguing that the written petition to exclude the election returns was filed out of time, and that the grounds used to exclude the questioned returns were not proper for a pre-proclamation controversy, were not supported by credible evidence, and were beyond the jurisdiction of the MBOC.[5]

In a July 11, 2007 Resolution,[6] the Second Division of COMELEC dismissed the appeal for being filed out of time. As stated in the dispositive portion of the said Resolution:

> WHEREFORE, premises considered, the instant Verified Appeal is hereby dismissed for being filed out of time.
>
> SO ORDERED.[7]

Subsequently, on July 17, 2007, petitioner Hipe filed a Motion for Reconsideration.[8] On even date, respondent Vicencio was proclaimed as the mayor.[9] On January 30, 2008, the COMELEC *En Banc* resolved to deny petitioner Hipe's Motion for Reconsideration.[10]

In the challenged Resolution,[11] the COMELEC *En Banc* held that the ruling of the MBOC had already attained finality considering that the filing of the Verified Appeal with the COMELEC was five days late. It stated that the filing of the Verified Appeal should have been made within the inextendible period of five days from the filing of the written and verified notice of appeal with the MBOC, with which petitioner Hipe failed to comply. Further, the COMELEC *En Banc* held that it

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5 *Id.* at 1-11.

6 *Rollo*, pp. 48-55.

7 *Id.* at 51.

8 *Id.* at 160-169.

9 *Id.* at 42-43.

10 *Id.* at 46-47.

11 *Id.* at 36-47.

was already deprived of proper jurisdiction to entertain the instant case since the case should no longer be considered as a pre-proclamation controversy, but should rather be ventilated in an election protest. In addition, the COMELEC *En Banc* stated that the ruling of the MBOC was amply supported by the affidavits of the Members of the Board of Election Inspectors, and that the MBOC retained sufficient discretion to avail itself of all available means to ascertain the results of the elections through witnesses, as well as through an examination of the election returns themselves.

The dispositive portion of the January 30, 2008 Resolution reads:

> WHEREFORE, premises considered, the Commission (*En Banc*) RESOLVED as it hereby RESOLVES, to deny the instant Motion for Reconsideration filed by Appellant-Movant Hector Hipe. The questioned Resolution dated July 11, 2007, issued by the Second Division of the Commission on Elections for the exclusion of seven (7) election returns in favor of the appellee, Maria Cristina L. Vicencio, therefore, stands and remains valid.
>
> SO ORDERED.[12]

Aggrieved, Hipe filed this petition.

The Issue

Whether or not the COMELEC *En Banc* acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its challenged Resolution dated January 30, 2008, which affirmed the Resolution dated July 11, 2007 issued by its Second Division dismissing petitioner Hipe's appeal for being filed out of time.

Our Ruling

The petition is partly meritorious.

Appeal Should Be Given Due Course

In its *En Banc* Resolution, the COMELEC held that the ruling of the MBOC had already become final and executory; and

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[12] *Id.* at 11-12.

thus, its Second Division had not acquired appellate jurisdiction to act on Hipe's verified appeal. In support of its ruling, the COMELEC *En Banc* relied on the Certification issued by Renato I. Madronio, Acting Election Officer II, Catubig, Northern Samar, attesting that hard or printed copies of the MBOC's ruling to exclude the seven contested election returns were received by Atty. V.B. Desales, counsel for the KAMPI-Liberal Party Coalition, at 10:37 p.m. on May 19, 2007 at the provincial Election Supervisor's Office.[13] On this basis, the COMELEC *En Banc* opined that when petitioner Hipe filed the Verified Appeal on May 29, 2009, said filing was already five days late and should no longer be entertained.

We disagree. Indeed, there is a disputable presumption that official duty has been regularly performed;[14] and that, corollary thereto, it is presumed that in its disposition of the contested election returns, the MBOC has regularly performed its official duty of issuing a written ruling on the prescribed form, authenticated by the signatures of its members as required under Section 20(d) of Republic Act No. 7166.[15] In fact, the alleged issuance and service upon the supposed counsel of petitioner Hipe of the written ruling of MBOC was even supported by the aforementioned Certification of the Chairperson of the MBOC.

The records would, however, reveal that Atty. Venerando B. Desales, the counsel who was supposedly furnished the alleged written ruling of the MBOC, has denied under oath that he ever received a copy of the alleged written ruling.[16] He even categorically denied in his Affidavit that he was the counsel of petitioner Hipe.[17]

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[13] *Id.* at 38.

[14] *See* RULES OF COURT, Rule 131, Sec. 3(m).

[15] An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes.

[16] COMELEC records, p. 146.

[17] *Id*.

Notably, nothing in the Status of Canvass Report[18] or in the Minutes of the Proceedings of the MBOC on May 19, 2007[19] showed that a written ruling on the petition for exclusion has been rendered by the MBOC or received by petitioner Hipe.

On the contrary, a perusal of the Minutes of the Proceedings of the MBOC on May 19, 2007 would reveal that Election Officer Madronio even notified the counsels of petitioner Hipe that, as of that time, the Municipal COMELEC Office still did not have the prescribed form of the ruling, and that they would still have to get the prescribed forms in Catarman.[20] This militates against Madronio's statement in his Certification that hard or printed copies of the ruling of the MBOC were furnished to Atty. Desales on that same day.

When a plaintiff's case depends upon the establishment of a negative fact, and the means of proving the fact are equally within the control of each party, then the burden of proof is upon the party averring the negative fact.[21]

In the case at bar, petitioner Hipe asserted the negative fact, that is, that no copy of the written ruling of the MBOC was sent to him or his counsel. Thus, petitioner Hipe has the burden of proof to show that he was not furnished with a copy of the written ruling of the MBOC, which he was able to successfully prove in the instant case. Be that as it may, it then becomes incumbent upon respondent Vicencio to prove otherwise. This is because the burden of evidence is shifted if the party upon whom it is lodged was able to adduce preponderant evidence to prove its claim.[22]

Significantly, other than Madronio's statement in his Certification that hard or printed copies of the ruling of the

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[18] *Id.* at 147.

[19] *Id.* at 113-121.

[20] *Id.* at 119.

[21] *Spouses Cheng v. Spouses Dailisan*, G.R. No. 182485, July 3, 2009.

[22] *Bank of the Philippine Islands v. Royeca*, G.R. No. 176664, July 21, 2008, 559 SCRA 207; citing *Asian Transmission Corporation v. Canlubang Sugar Estates*, G.R. No. 142383, August 29, 2003, 410 SCRA 202.

MBOC were furnished to Atty. Desales on May 19, 2007, no other evidence was adduced by respondent Vicencio to support her claim. If indeed such written ruling exists and was indeed furnished to petitioner Hipe or his alleged counsel, it would have been very easy for respondent Vicencio to produce a copy of the written ruling with the signature of petitioner Hipe or his counsel, which she failed to do in the instant case.

Furthermore, the COMELEC has the discretion to construe its rules liberally and, at the same time, suspend the rules or any of their portions in the interest of justice.[23] As aptly stated by Commissioner Rene V. Sarmiento in his Dissenting Opinion:[24]

> It is well settled that election laws should be reasonably and liberally construed to achieve their purpose – to effectuate and safeguard the will of the electorate in the choice of their representatives. The courts frown upon any interpretation that would hinder in any way not only the free and intelligent casting of votes in any election but also the correct ascertainment of the results thereof.
>
> Disputes in the outcome of elections involve public interest. Technicalities and procedural barriers should not be allowed to stand if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. Laws governing such disputes must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technicalities. Hence, it is submitted that there is a need to suspend the procedural rules and resolve the merits of the case to promote justice and safeguard the will of the electorate of Catubig, Northern Samar.

Accordingly, the COMELEC should have not dismissed the appeal filed by petitioner Hipe on the ground of belated filing.

The Exclusion of the Seven Election Returns Was Amply Supported by Evidence

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[23] *Abainza v. Arellano*, G.R. No. 181644, December 8, 2008, 573 SCRA 332, 340; citing *Suliguin v. COMELEC*, G.R. No. 166046, March 23, 2006, 485 SCRA 227.

[24] *Rollo*, pp. 60-63.

Nevertheless, even if we entertain petitioner Hipe's appeal from the decision of the MBOC on the questioned election returns, the Court still rules in favor of respondent Vicencio.

Petitioner Hipe claims that no proof was presented nor was there any showing that the seven election returns in question were defective.[25] Such contention is not persuasive.

The COMELEC, after a judicious evaluation of the documents on record, upheld the findings of the MBOC to exclude the subject election returns on the basis of the affidavits of the members of the Board of Election Inspectors. What exactly these documents and evidence are upon which the COMELEC based its resolution, and how they have been appreciated in respect of their sufficiency, are beyond this Court's scrutiny.[26] The rule that factual findings of administrative bodies will not be disturbed by courts of justice except when there is absolutely no evidence or no substantial evidence in support of such findings should be applied with greater force when it concerns the COMELEC, as the framers of the Constitution intended to place the COMELEC—created and explicitly made independent by the Constitution itself—on a level higher than statutory administrative organs.[27] The factual finding of the COMELEC is, therefore, binding on the Court. As found by the COMELEC *En Banc*:

> Besides, we do not agree that the exclusion of the seven (7) election returns in question were not supported by any iota of evidence. This is amply supported by the affidavits of the Members of the Board of Election Inspectors; they were all made in clear and unequivocal language by public officers who are presumed to have performed such duties in the ordinary and regular execution thereof. A careful re-examination of the evidence on record reveals that there

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[25] *Id.* at 23.

[26] *Dagloc v. COMELEC*, G.R. Nos. 154442-47, December 10, 2003, 417 SCRA 574, 594; citing *Sison v. COMELEC*, G.R. No. 134096, March 3, 1999, 304 SCRA 170, 179.

[27] *Dagloc*, *id.*; citing *Mastura v. COMELEC (Second Division)*, G.R. No. 124521, January 29, 1998, 285 SCRA 493, 499.

is sufficient justification to uphold the MBOC ruling to exclude the subject election returns. The MBOC retains sufficient discretion to avail itself of all available means to ascertain the results of the elections through witnesses as well as examination of the election returns themselves. Where there is no abuse of discretion the MBOC is presumed to have acted within its powers and its decision should be treated with some amount of respect.[28]

This is especially true in the instant case considering that, as noted by the COMELEC *En Banc* in its questioned Resolution, one of the witnesses petitioner Hipe previously presented later on recanted her testimony and admitted that she had made her previous statement as to the regularity of the conduct of the May 14, 2007 elections only out of fear due to threats upon her person.[29] As correctly observed by the COMELEC *En Banc*:

> We also note that even one of the witnesses presented by the appellant, Melanie Robion, Chairman of the BEI for precinct No. 0037B, later on recanted her testimony. This spells doom to the appellant's cause as it even impacts on the veracity and truthfulness of the other affidavits that the appellant submitted. We are reminded of the legal principle that a falsity in one is a falsity in all, "*Falsus in Onum, Falsus in Omnibus*" and would now be more inclined to believe the assertions made by the appellee instead of those presented by the appellant, who has now been unmasked to have been less than truthful at one time or another.[30]

Considering the foregoing discussion, there is ample evidence to support the findings of the COMELEC that the seven election returns in question should be excluded. The contention of petitioner Hipe that said election returns were excluded from the canvass merely on the basis of pure procedural technicalities is, therefore, unfounded.

Respondent Vicencio Substantially Complied with the Requirement that Objections Be Made in Writing

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[28] *Rollo,* p. 45.

[29] COMELEC records, p. 79.

[30] *Rollo,* p. 45.

Petitioner Hipe contends that the written petition to exclude the election returns was filed beyond the prescribed time or almost 24 hours after the oral petition to exclude was manifested by the counsels of respondent Vicencio; hence, the latter's objections were raised out of time.[31]

This contention is without merit.

While the records reveal that respondent Vicencio manifested her oral objections on May 15, 2007 at around 7:00 p.m.,[32] filed the written objections on May 16, 2007 at 6:40 p.m., and submitted the documentary evidence in support of the protest at 2:45 p.m. only on the following day, the Court nevertheless considers the foregoing acts of Vicencio as substantial compliance with the requirement that objections be reduced into writing.

In *Marabur v. COMELEC*,[33] we held that while respondent failed to submit his written objections, respondent's submission of his formal offer of evidence, including the evidence itself, within the prescribed period constituted substantial compliance with the requirement that objections be reduced into writing.

Notably, the relaxation of the rules becomes all the more necessary in the instant case, considering that respondent Vicencio has even filed his written objections within the prescribed period; and soon thereafter, the documentary evidence in support of the written objections.

Technicalities and procedural barriers should not be allowed to stand in the way if they constitute an obstacle to the determination of the electorate's true will in the choice of its elective officials.[34]

It should be borne in mind that the object of the canvass is to determine the result of the elections based on the official

[31] *Id.* at 19-20.

[32] COMELEC records, pp. 109-110.

[33] G.R. No. 169513, February 26, 2007, 516 SCRA 696.

[34] *Marabur v. COMELEC*, G.R. No. 169513, February 26, 2007, 516 SCRA 696.

election returns. In order that the result of the canvass would reflect the true expression of the people's will in the choice of their elective officials, the canvass must be based on true, genuine, correct—nay, untampered—election returns.[35] It is in these proceedings that the COMELEC exercises its supervisory and administrative power in the enforcement of laws relative to the conduct of elections, by seeing to it that the canvass is based on the election returns as actually certified by the members of the board of inspectors.[36]

Taking into consideration the findings of the COMELEC *En Banc* that there was ample evidence to support the exclusion of the seven election returns in question based on the grounds raised by respondent Vicencio, this should suffice in upholding the latter's proclamation, absent a finding of grave abuse of discretion on the part of the COMELEC *En Banc*, in order not to frustrate the electorate's will.

WHEREFORE, the petition is *PARTLY GRANTED*. The January 30, 2008 COMELEC *En Banc* Resolution and the July 11, 2007 COMELEC Second Division Resolution are hereby *SET ASIDE* insofar as they dismissed petitioner Hipe's appeal. The January 30, 2008 COMELEC *En Banc* Resolution is, however, *AFFIRMED* insofar as it declared the seven election returns of Precinct Nos. 0037B, 0052A, 0053A, 0058A, 0080A, 0081A and 0082A to be valid.

SO ORDERED.

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

Quisumbing and *Carpio, JJ.,* on official leave.

*Brion, J.,*on leave.

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[35] *Cauton v. COMELEC*, No. L-25467, April 27, 1967, 19 SCRA 911.

[36] *Id*.

EN BANC

[G.R. No. 181559. October 2, 2009]

LEAH M. NAZARENO, CARLO M. CUAL, ROGELIO B. CLAMONTE, FLORECITA M. LLOSA, ROGELIO S. VILLARUBIA, RICARDO M. GONZALES, JR., ROSSEL MARIE G. GUTIERREZ, NICANOR F. VILLAROSA, JR., MARIE SUE F. CUAL, MIRAMICHI MAJELLA B. MARIOT, ALMA F. RAMIREZ, ANTOLIN D. ZAMAR, JR., MARIO S. ALILING, TEODULO SALVORO, JR., PHILIP JANSON ALTAMARINO, ANTONIETTA PADURA, ADOLFO R. CORNELIA, IAN RYAN PATULA, WILLIAM TANOY, VICTOR ARBAS, JEANITH CUAL, BRAULIO SAYSON, DAWN M. VILLAROSA, AGUSTIN A. RENDOQUE, ENRIQUETA TUMONGHA, LIONEL P. BANOGON, ROSALITO VERGANTINOS, MARIO T. CUAL, JR., ELAINE MAY TUMONGHA, NORMAN F. VILLAROSA, RICARDO C. PATULA, RACHEL BANAGUA, RODOLFO A. CALUGCUGAN, PERGENTINO CUAL, BERNARD J. OZOA, ROGER JOHN AROMIN, CHERYL E. NOCETE, MARIVIC SANCHEZ, CRISPIN DURAN, REBECO LINGCONG, ANNA LEE ESTRABELA, MELCHOR B. MAQUILING, RAUL MOLAS, OSCAR KINIKITO, DARWIN B. CONEJOS, ROMEL CUAL, ROQUETA AMOR, DIOSDADO LAJATO, PAUL PINO, LITO PINERO, RODULFO ZOSA, JR. and JORGE ARBOLADO, *petitioners, vs.* **CITY OF DUMAGUETE, represented by CITY MAYOR AGUSTIN PERDICES, DOMINADOR DUMALAG, JR., ERLINDA TUMONGHA, JOSEPHINE MAE FLORES AND ARACELI CAMPOS,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CIVIL SERVICE COMMISSION (CSC);

POWERS AND FUNCTIONS; THE CSC HAS THE AUTHORITY TO ESTABLISH RULES TO PROMOTE EFFICIENCY IN THE CIVIL SERVICE; SUSTAINED. — The Commission, as the central personnel agency of the government, has statutory authority to establish rules and regulations to promote efficiency and professionalism in the civil service. Presidential Decree No. 807, or the Civil Service Decree of the Philippines, provides for the powers of the Commission, including the power to issue rules and regulations and to review appointments: Section 9: *Powers and functions of the Commission.* – The Commission shall administer the Civil Service and shall have the following powers and functions: x x x (b) **Prescribe, amend, and enforce suitable rules and regulations for carrying into effect the provisions of this Decree** x x x (c) **Promulgate policies, standards, and guidelines for the Civil Service and adopt plans and programs to promote economical, efficient, and effective personnel administration in the government;** x x x (h) Approve all appointments, whether original or promotional, to positions in the civil service, except those of presidential appointees, members of the armed forces of the Philippines, police forces, firemen, and jailguards, and disapprove those where the appointees do not possess the appropriate eligibility or required qualifications; Executive Order No. 292, or the Administrative Code of 1987, also provides: Section 12: *Powers and Functions.* – The Commission shall have the following powers and functions: x x x (2) **prescribe, amend, and enforce rules and regulations** for carrying into effect the provisions of the Civil Service Law and other pertinent laws; (3) **promulgate policies, standards, and guidelines** for the Civil Service and adopt plans and programs to **promote economical, efficient, and effective personnel administration in the government**; (4) take appropriate action on all appointments and other personnel matters in the Civil Service including extension of Service beyond retirement age; (5) inspect and audit the personnel actions and programs of the departments, agencies, bureaus, offices, local government units, and other instrumentalities of the government, including government owned and controlled corporations. Clearly, the above-cited statutory provisions authorize the Commission to "prescribe, amend, and enforce" rules to cover the civil service. The legislative standards to be observed and respected in the exercise of such delegated authority are set out in the statutes, to wit: to promote "economical, efficient, and effective personnel administration."

2. ID.; ID.; ID.; PROHIBITION ON APPOINTMENTS BEFORE AND AFTER THE ELECTIONS; RATIONALE. — It is not difficult to see the reasons behind the prohibition on appointments before and after the elections. Appointments are banned prior to the elections to ensure that partisan loyalties will not be a factor in the appointment process, and to prevent incumbents from gaining any undue advantage during the elections. To this end, appointments within a certain period of time are proscribed by the Omnibus Election Code and related issuances. After the elections, appointments by defeated candidates are prohibited, except under the circumstances mentioned in CSC Resolution No. 010988, to avoid animosities between outgoing and incoming officials, to allow the incoming administration a free hand in implementing its policies, and to ensure that appointments and promotions are not used as a tool for political patronage or as a reward for services rendered to the outgoing local officials.

3. ID.; ID.; ID.; ID.; EXCEPTION; REQUIREMENT. — Indeed, not all appointments issued after the elections by defeated officials are invalid. CSC Resolution No. 010988 does not purport to nullify all "mass appointments." However, it must be shown that the appointments have undergone the regular screening process, that the appointee is qualified, that there is a need to fill up the vacancy immediately, and that the appointments are not in bulk. In *Nazareno v. Dumaguete*, we explained: CSC Resolution No. 010988 does not totally proscribe the local chief executive from making any appointments immediately before and after elections. The same Resolution provides that the validity of an appointment issued immediately before and after elections by an outgoing local chief executive is to be **determined on the basis of the nature, character, and merit of the individual appointment and the particular circumstances surrounding the same.** Corollarily, we held in *Sales*, that: x x x [e]ach appointment must be judged on the basis of the nature, character, and merits of the individual appointment and the circumstances surrounding the same. It is only when the appointments were made *en masse* by the outgoing administration and shown to have been made through hurried maneuvers and under circumstances departing from good faith, morality, and propriety that this Court has struck down "midnight" appointments. x x x In this regard, CSC Memorandum Circular No. 40, otherwise known as the Revised Rules on Appointments and Other Personnel Actions, provides:

Section 1 – Appointments submitted to the CSC office concerned should meet the requirements listed hereunder. Non-compliance with such requirements shall be grounds for disapproval of said appointments: x x x (h) Personnel Selection Board (PSB) Evaluation/Screening. Appointees should be screened and evaluated by the PSB, if applicable. As proof thereof, a certification signed by the Chairman of the Board at the back of the appointment or alternatively, a copy of the proceedings/ minutes of the Board's deliberation shall be submitted together with the appointment. The issuance of the appointment shall not be earlier than the date of the final screening/deliberation of the PSB.

4. ID.; ID.; ID.; POWER TO RECALL APPOINTMENT, INCLUDED. — Section 20, Rule VI of the Omnibus Rules Implementing Book V of Executive Order No. 292 provides that notwithstanding the initial approval of an appointment, the same may be recalled for "[v]iolation of other existing Civil Service laws, rules and regulations." The CSC is empowered to take appropriate action on all appointments and other personnel actions and that such power "includes the authority to recall an appointment initially approved in disregard of applicable provisions of Civil Service law and regulations."

5. REMEDIAL LAW; CIVIL PROCEDURE; FORUM-SHOPPING, DEFINED. — The essence of forum-shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. Forum-shopping has been defined as the act of a party against whom an adverse judgment has been rendered in one forum, seeking and possibly getting a favorable opinion in another forum, other than by appeal or the special civil action of *certiorari*, or the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.

APPEARANCES OF COUNSEL

Manuel R. Arbon for petitioners.
Lluvert M. Mercado & Neil Ray M. Lagahit for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

The integrity and reliability of our civil service is, perhaps, never more sorely tested than in the impassioned demagoguery of elections. Amidst the struggle of personalities, ideologies, and platforms, the vigor and resilience of a professional civil service can only be preserved where our laws ensure that partisanship plays no part in the appointing process. Consequently, we affirm the validity of a regulation issued by the Civil Service Commission (CSC or the Commission) intended to ensure that appointments and promotions in the civil service are made solely on the basis of qualifications, instead of political loyalties or patronage.

This Petition for Review on *Certiorari* filed under Rule 45 of the Rules of Court seeks to reverse the Decision[1] of the Court of Appeals dated August 28, 2007 and its Resolution[2] dated January 11, 2008 in CA-G.R. CEB-SP No. 00665. The case stemmed from CSC Field Office's invalidation of petitioners' appointments as employees of the City of Dumaguete, which was affirmed by the CSC Regional Office, by the Commission *en banc* and by the Court of Appeals.

LEGAL AND FACTUAL BACKGROUNDS

Accreditation of Dumaguete City by the Civil Service Commission

On October 25, 1999, pursuant to the Commission's Accreditation Program, the CSC issued Resolution No. 992411,[3] which granted the City Government of Dumaguete the authority

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[1] *Rollo*, pp. 40-55; penned by Associate Justice Pampio A. Abarintos, and concurred in by Associate Justices Priscilla Baltazar-Padilla and Stephen C. Cruz.

[2] *Id.* at 57-59.

[3] *Id.* at 212-214.

to take final action on all its appointments, subject to, *inter alia,* the following conditions:

1. That the exercise of said authority shall be subject to Civil Service Law, rules and regulations and within the limits and restrictions of the implementing guidelines of the CSC Accreditation Program as amended (MC No. 27, s. 1994);

x x x x x x x x x

5. That appointments issued under this authority shall be subject to monthly monitoring by the [Civil Service Field Office] CSFO concerned;

x x x x x x x x x

9. That appointments found in the course of monthly monitoring to have been issued and acted upon in violation of pertinent rules, standards, and regulations shall immediately be invalidated by the Civil Service Regional Office (CSRO), upon recommendation by the CSFO.

Appointments made by outgoing Mayor Remollo

Then Dumaguete City Mayor Felipe Antonio B. Remollo sought re-election in the May 14, 2001 elections, but lost to respondent Mayor Agustin R. Perdices. Thereafter, on June 5, 7, and 11, 2001, outgoing Mayor Remollo promoted 15 city hall employees, and regularized another 74 city hall employees, including the herein 52 petitioners.

On July 2, 2001, Mayor Perdices publicly announced at the flag raising ceremony at the Dumaguete City Hall grounds that he would not honor the appointments made by former Mayor Remollo. On the same day, he instructed the City Administrator, respondent Dominador Dumalag, Jr., to direct respondent City Assistant Treasurer Erlinda C. Tumongha (now deceased), to refrain from making any cash disbursements for payments of petitioners' salary differentials based on their new positions.

The Petition for Mandamus before the Regional Trial Court of Dumaguete City

Thus, on August 1, 2001, petitioners filed a *Petition for Mandamus with Injunction and Damages with Prayer for a Temporary Restraining Order* against the City of Dumaguete, represented by respondent City Mayor Perdices and city officers Dumalag, Tumongha, Josephine Mae Flores, and Araceli Campos. The petition was docketed as Civil Case No. 13013, and raffled to Branch 41 of the Regional Trial Court of Dumaguete City. Petitioners sought the issuance of a writ of preliminary injunction to enjoin respondents from taking any action or issuing any orders nullifying their appointments.

In a Decision[4] dated March 27, 2007, the Regional Trial Court dismissed the petition; petitioners' Motion for Reconsideration was also denied in an Order[5] dated April 26, 2007. The issues involved in Civil Case No. 13013 have twice been elevated to and eventually resolved by the Court in G.R. Nos. 177795[6] and 168484.[7]

Revocation of Appointments by the Civil Service Commission Field Office

Relative to this main case, on August 1, 2001, the CSC Field Office in Dumaguete City, through Director II Fabio R. Abucejo, revoked and invalidated the appointments of the petitioners (the August 1, 2001 Order) based of the following findings:

1. There were a total of 15 promotional appointments and 74

[4] See *Nazareno v. City of Dumaguete*, G.R. No. 177795, June 19, 2009.

[5] *Id.*

[6] *Id.* In this case, we affirmed the Decision dated March 27, 2007 and Order dated April 26, 2007 of the Regional Trial Court. We ruled that petitioners were not entitled to the issuance of a writ of *mandamus* ordering respondents to pay petitioners' salaries, salary adjustments, and other emoluments, from September 28, 2001 until final resolution of the case since there was no ministerial duty compellable by a writ of *mandamus*. We also ruled that petitioners were not, as yet, entitled to an award for damages resulting from the invalidation of their appointments.

[7] *Nazareno v. City of Dumaguete*, July 12, 2007, 527 SCRA 508. Involved in this case is a Petition for Review on *Certiorari* of the Decision of the

original appointments issued as reflected in the submitted [Report of Personnel Actions] ROPA for the month of June 2001.

2. There was only one (1) en banc meeting of the City Personnel Selection Board (PSB) held on 5 June 2001 to consider the number of appointments thus issued and there was no other call for a PSB meeting certified to by the City [Human Resource Management Officer] HRMO.

3. There were no minutes available to show the deliberations of the PSB of the 89 appointments listed in the ROPA as certified by the City HRMO.

4. There were no PSB statements certifying that there was actual screening and evaluation done on all candidates for each position.

5. The appointing officer of the 89 appointments was an outgoing local official who lost during the 14 May 2001 elections for City Mayor of Dumaguete City.

6. The 89 appointments were all issued after the elections and when the new city mayor was about to assume office.[8]

Director Abucejo invalidated the appointments as the same were done in violation of CSC Resolution No. 010988 dated June 4, 2001, the pertinent portions of which provide:

WHEREAS, the May 14, 2001 national and local elections have just concluded and the Commission anticipates controversies that would arise involving appointments issued by outgoing local chief executives immediately before or after the elections;

Court of Appeals dated January 30, 2004 in CA-G.R. SP No. 70254, and its Resolution dated May 6, 2005. The assailed Decision affirmed with modification the Orders issued by the Regional Trial Court of Dumaguete City, Branch 41, dated September 26, 2001 and January 17, 2001, in Civil Case No. 13013. We held that both the "appointing authority" and the appointee may question the disapproval of an appointment. In this case, the appointing authority who had the right to assail the invalidation of the appointment is the mayor occupying the position at the time of the institution of the appeal and not the former mayor who made the assailed appointment. Aggrieved parties, including the Civil Service Commission and the appointee, also have the right to file motions for reconsideration or to appeal.

[8] *Rollo*, pp. 146-147.

WHEREAS, the Commission observed the tendency of some outgoing local chief executives to issue appointments even after the elections, especially when their successors have already been proclaimed.

WHEREAS, the practice of some outgoing local chief executives causes animosities between the outgoing and incoming officials and the people who are immediately affected and are made to suffer the consequences thereof are the ordinary civil servants, and eventually, to a large extent, their constituents themselves;

WHEREAS, one of the reasons behind the prohibition in issuing appointments or hiring new employees during the prohibited period as provided for in CSC Memorandum Circular No. 7, Series of 2001, is to prevent the occurrence of the foregoing, among others;[9]

WHEREAS, local elective officials whose terms of office are about to expire, are deemed as "caretaker" administrators who are duty bound to prepare for the smooth and orderly transfer of power and authority to the incoming local chief executives;

WHEREAS, under Section 15, Article VII of the Constitution, the President or Acting President is prohibited from making appointments two (2) months immediately before the next presidential elections and up to theend of his term, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety;

WHEREAS, while there is no equivalent provision in the Local Government Code of 1991 (Republic Act 7160) or in the Civil Service Law (Book V of Executive Order No. 292) of the abovestated prohibition, the rationale against the prohibition on the issuance of "midnight appointments" by the President is applicable to appointments extended by outgoing local chief executives immediately before and/or after the elections;

x x x x x x x x x

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[9] Memorandum Circular No. 7, Series of 2001, prescribes specific guidelines relating to the transfer, detail, and issuance of appointments to civil personnel during elections, namely: (1) a prohibition on the transfer or detail of personnel within the period from January 2, 2001 until June 13, 2001; and (2) a prohibition of new appointments, promotions, or increases in salary from March 30, 2001 to May 14, 2001.

NOW THEREFORE, the Commission, pursuant to its constitutional mandate as the control personnel agency of the government, hereby issues and adopts the following guidelines:

x x x x x x x x x

3. All appointments, whether original, transfer, reemployment, reappointment, promotion or demotion, except in cases of renewal and reinstatement, regardless of status, which are issued AFTER the elections, regardless of their dates of effectivity and/or date of receipt by the Commission, including its Regional or Field Offices, of said appointments or the Report of Personnel Actions (ROPA) as the case may be, shall be disapproved unless the following requisites concur relative to their issuance:

a) The appointment has gone through the regular screening by the Personnel Selection Board (PSB) before the prohibited period on the issuance of appointments as shown by the PSB report or minutes of its meeting;

b) That the appointee is qualified;

c) There is a need to fill up the vacancy immediately in order not to prejudice public service and/or endanger public safety;

d) That the appointment is not one of those mass appointments issued after the elections.

4. The term "mass appointments" refers to those issued in bulk or in large number after the elections by an outgoing local chief executive and there is no apparent need for their immediate issuance.

On September 4, 2001, petitioners filed a Motion for Reconsideration of the August 1, 2001 Order before the CSC Region VII Office in Cebu. The motion was, however, denied on the ground that it should have been filed before the office of Director Abucejo in Dumaguete City. Thereafter, on October 31, 2001, petitioners asked the CSC Region VII Office in Cebu to treat their previous Motion for Reconsideration as their appeal.

On February 14, 2002, the CSC Region VII Office affirmed the August 1, 2001 Order. Subsequently, an Appeal to the Commission *en banc* was filed through registered mail by 52 of the original 89 appointees, the petitioners herein, namely:

Name	Former Position	New Position	Date of Appointment
1. Leah M. Nazareno	Legal Researcher	Asst. Dept. Head I	7-Jun-01
2. Carlo M. Cual	Legislative Staff Officer I	Legislative Staff Officer III	5-Jun-01
3. Rogelio B. Clamonte	Public Services	Supply Officer IV	5-Jun-01
4. Florecita Llosa	Supply Officer I	Records Officer II	11-Jun-01
5. Rogelio S. Villarubia	AgriculturistII	Agriculturist III	5-Jun-01
6. Rossel Marie G. Gutierrez	Casual/Plantilla	Supervising Environmental Management Specialist	5-Jun-01
7. Nicanor F. Villarosa, Jr.	Casual/Plantilla	Dentist II	5-Jun-01
8. Marie Sue Cual	Casual/Plantilla	Social Welfare Officer I	7-Jun-01
9. Miramichi Majella B. Mariot	Casual/Plantilla	Records Officer II	7-Jun-01
10. Alma F. Ramirez	Casual/Plantilla	Clerk IV	7-Jun-01
11. Antolin D. Zamar, Jr.	Casual/Plantilla	Metro Aide II	11-Jun-01
12. Mario S. Aliling	Casual/Plantilla	Driver II	5-Jun-01
13. Teodulo Salvoro, Jr.	Casual/Plantilla	Metro Aide II	5-Jun-01
14. Philip Janson Altamarino	Casual/Plantilla	Clerk I	5-Jun-01
15. Antonieta Padura	Casual/Plantilla	Metro Aide II	11-Jun-01
16. Adolfo Cornelia	Casual/Plantilla	Metro Aide II	11-Jun-01
17. Ian Ryan Patula	Casual/Plantilla	Metro Aide II	7-Jun-01
18. William Tanoy	Casual/Plantilla	Metro Aide II	5-Jun-01
19. Victor Arbas	Casual/Plantilla	Public Services Foreman	7-Jun-01
20. Jeanith Cual	Casual/Plantilla	Utility Worker II	5-Jun-01
21. Braulio Sayson	Casual/Plantilla	Mechanical Plant Supervisor	7-Jun-01
22. Dawn Villarosa	Casual/Plantilla	Clerk I	7-Jun-01
23. Agustin Rendoque	Casual/Plantilla	Utility Worker I	7-Jun-01
24. Enriqueta Tumongha	Casual/Plantilla	Utility Worker II	5-Jun-01
25. Lionel Banogon	Casual/Plantilla	Clerk II	5-Jun-01
26. Rosalito Vergantinos	Casual/Plantilla	Pest Control Worker II	5-Jun-01
27. Mario Cual, Jr.	Casual/Plantilla	Utility Foreman	7-Jun-01
28. Elaine Tumongha	Casual/Plantilla	Registration Officer I	11-Jun-01
29. Norman Villarosa	Casual/Plantilla	Utility Worker I	5-Jun-01
30. Ricardo C. Patula	Casual/Plantilla	Revenue Collection Clerk I	5-Jun-01
31. Rachel Banagua	Casual/Plantilla	Utility Worker I	5-Jun-01
32. Rodolfo Calugcugan	Job Order	Driver I	7-Jun-01
33. Pergentino Cual	Job Order	Metro Aide II	11-Jun-01
34. Bernard Ozoa	Job Order	Utility Worker I	7-Jun-01
35. Roger A. Aromin	Job Order	Utility Worker I	7-Jun-01
36. Cheryl Nocete	Job Order	Utility Worker I	11-Jun-01
37. Marivic Sanchez	Job Order	Utility Worker I	11-Jun-01

38. Crispin Duran	Job Order	Utility Worker I	11-Jun-01
39. Rebeco Lingcong	Job Order	Metro Aide II	5-Jun-01
40. Anna Lee Estrabela	Job Order	Cash Clerk III	5-Jun-01
41. Melchor Maquiling	Job Order	Engineer I	7-Jun-01
42. Raul Molas	Job Order	Construction and Maintenance Foreman	7-Jun-01
43. Oscar Kinikito	Job Order	Electrician II	7-Jun-01
44. Darwin Conejos	Job Order	Engineering Aide	7-Jun-01
45. Romel Cual	Job Order	Metro Aide II	11-Jun-01
46. Roqueta Amor	Job Order	Dental Aide	5-Jun-01
47. Diosdado Lajato	Job Order	Pest Control Worker II	5-Jun-01
48. Paul Pino	Job Order	Utility Worker II	5-Jun-01
49. Lito Piñero	Job Order	Metro Aide II	11-Jun-01
50. Rodulfo Zosa, Jr.	Job Order	Metro Aide II	11-Jun-01
51. Jorge Arbolado	Job Order	Traffic Aide I	5-Jun-01
52. Ricardo M. Gonzales, Jr.	OIC-General Services Officer	Asst. Dept. Head I	5-Jun-01

Ruling of the CSC en banc and the Court of Appeals

On August 23, 2004, the CSC *en banc* issued Resolution No. 040932 denying petitioners' appeal, and affirming the invalidation of their appointments on the ground that these were mass appointments made by an outgoing local chief executive.[10] The Commission explained:

> The rationale behind the prohibition in CSC Resolution No. 01-0988 is not hard to comprehend. The prohibition is designed to discourage losing candidates from extending appointments to their protégés or from giving their constituents "promised" positions (CSC Resolution No. 97-0317 dated January 17, 1997, Re: Roldan B. Casinillo). Moreover, the same is intended to prevent the outgoing local chief executive from hurriedly issuing appointments which would subvert the policies of the incoming leadership. Thus, any means that would directly or indirectly circumvent the purposes for which said Resolution was promulgated should not be allowed,

[10] *Rollo*, pp. 148-157; penned by Commissioner Waldemar Valmores, and concurred in by Chairman Karina Constantino-David and Commissioner Cesar D. Buenaflor.

particularly when the appointments were issued by the appointing authority who lost in said election.

Petitioners filed a Motion for Reconsideration which was denied by the Commission on April 11, 2005, through CSC Resolution No. 050473.

Petitioners then filed a petition for review before the Court of Appeals, which was docketed as CA-G.R. CEB-SP No. 00665. On August 28, 2007, the Court of Appeals denied the appeal and affirmed CSC Resolution No. 040932 dated August 23, 2004 and CSC Resolution No. 050473 dated April 11, 2005, ratiocinating that:

> The spirit behind CSC Resolution No. 010988 is evident from its preamble. It was issued to thwart the nefarious practice by outgoing local chief executives in making appointments before, during, and/or after the regular local elections for ulterior partisan motives. Said practice being analogous to "midnight appointments" by the President or Acting President, the CSC then promulgated Resolution No. 010988, to suppress the mischief and evils attributed to "mass appointments" made by local chief executives.

Petitioners' Motion for Reconsideration was denied by the Court of Appeals in a Resolution dated January 11, 2008.

THE PARTIES' ARGUMENTS

Before us, petitioners maintain that CSC Resolution No. 010988 is invalid because the Commission is without authority to issue regulations prohibiting mass appointments at the local government level. Petitioners cite *De Rama v. Court of Appeals*[11] which held that Section 15, Article VII of the Constitution is only applicable to the President or Acting President. They claim that outgoing or defeated local appointing authorities are authorized to make appointments of qualified individuals until their last day in office, and that not all mass appointments are invalid. Finally, petitioners claim that because Dumaguete City had been granted authority to take "final action" on all appointments, the

[11] G.R. No. 131136, February 28, 2001, 353 SCRA 94, 102.

Commission did not have any authority to disapprove the appointments made by outgoing Mayor Remollo.

In their Comment dated May 15, 2008,[12] respondents argue that petitioners' appointments violated civil service rules and regulations other than CSC Resolution No. 010988. Respondents also assert that the Commission is authorized to invalidate the petitioners' appointments, because the CSC accreditation program carried with it the caveat that "said exercise of authority shall be subject to Civil Service law, rules and regulations." Finally, respondents claim that petitioners were guilty of forum shopping because the issues in this case and in G.R. No. 177795 are the same.

OUR RULING

We find that the Civil Service Commission has the authority to issue CSC Resolution No. 010988 and that the invalidation of petitioners' appointments was warranted. Consequently, we affirm the Decision of the Court of Appeals dated August 28, 2007 and its Resolution dated January 11, 2008 in CA-G.R. CEB-SP No. 00665.

The CSC has the authority to establish rules to promote efficiency in the civil service

The Commission, as the central personnel agency of the government,[13] has statutory authority to establish rules and regulations to promote efficiency and professionalism in the

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[12] *Rollo*, pp. 124-173.

[13] Article IX(B), Section 3 of the Constitution provides:

SECTION 3. The Civil Service Commission, as the central personnel agency of the Government, shall establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. It shall strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability. It shall submit to the President and the Congress an annual report on its personnel programs.

civil service. Presidential Decree No. 807,[14] or the Civil Service Decree of the Philippines, provides for the powers of the Commission, including the power to issue rules and regulations and to review appointments:

Section 9: *Powers and functions of the Commission.* – The Commission shall administer the Civil Service and shall have the following powers and functions:

x x x x x x x x x

(b) **Prescribe, amend, and enforce suitable rules and regulations for carrying into effect the provisions of this Decree** x x x

(c) **Promulgate policies, standards, and guidelines for the Civil Service and adopt plans and programs to promote economical, efficient, and effective personnel administration in the government**;

x x x x x x x x x

(h) Approve all appointments, whether original or promotional, to positions in the civil service, except those of presidential appointees, members of the armed forces of the Philippines, police forces, firemen, and jailguards, and disapprove those where the appointees do not possess the appropriate eligibility or required qualifications; (Emphasis supplied)

Executive Order No. 292, or the Administrative Code of 1987, also provides:

Section 12: *Powers and Functions.* – The Commission shall have the following powers and functions:

x x x x x x x x x

(2) **prescribe, amend, and enforce rules and regulations** for carrying into effect the provisions of the Civil Service Law and other pertinent laws;

(3) **promulgate policies, standards, and guidelines** for the Civil Service and adopt plans and programs to **promote economical,**

[14] Providing For The Organization Of The Civil Service Commission In Accordance With Provisions Of The Constitution, Prescribing Its Powers And Functions And For Other Purposes (October 6, 1975).

efficient, and effective personnel administration in the government;

(4) take appropriate action on all appointments and other personnel matters in the Civil Service including extension of Service beyond retirement age;

(5) inspect and audit the personnel actions and programs of the departments, agencies, bureaus, offices, local government units, and other instrumentalities of the government, including government owned and controlled corporations. (emphasis supplied)

Clearly, the above-cited statutory provisions authorize the Commission to "prescribe, amend, and enforce" rules to cover the civil service. The legislative standards to be observed and respected in the exercise of such delegated authority are set out in the statutes, to wit: to promote "economical, efficient, and effective personnel administration."

The Reasons behind CSC Resolution No. 010988

We also find that there was substantial reason behind the issuance of CSC Resolution No. 010988. It is true that there is no constitutional prohibition against the issuance of "mass appointments" by defeated local government officials prior to the expiration of their terms. Clearly, this is not the same as a "midnight appointment," proscribed by the Constitution, which refers to those appointments made within two months immediately prior to the next presidential election.[15] As we ruled in *De Rama v. Court of Appeals*:[16]

The records reveal that when the petitioner brought the matter of recalling the appointments of the fourteen (14) private respondents

[15] Article VII, Section 15 of the 1987 Philippine Constitution provides:

Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety.

[16] *Supra* note 11.

before the CSC, the only reason he cited to justify his action was that these were *midnight appointments* that are forbidden under Article VII, Section 15 of the Constitution. However, the CSC ruled, and correctly so, that the said prohibition applies only to presidential appointments. In truth and in fact, there is no law that prohibits local elective officials from making appointments during the last days of his or her tenure.

However, even while affirming *De Rama*, we explained in *Quirog v. Aumentado*,[17] that:

> We, however, hasten to add that the aforementioned ruling does not mean that the *raison d' etre* behind the prohibition against midnight appointments may not be applied to those made by chief executives of local government units, as here. **Indeed, the prohibition is precisely designed to discourage, nay, even preclude, losing candidates from issuing appointments merely for partisan purposes thereby depriving the incoming administration of the opportunity to make the corresponding appointments in line with its new policies.** (Emphasis supplied)

Quirog also involved the disapproval of an appointment for non-compliance with CSC Resolution No. 010988. However, we found that Quirog's appointment was made on June 1, 2001, or three days prior to the issuance of CSC Resolution No. 010988. As such, we ruled that the retroactive application of the law was not warranted.

In *Sales v. Carreon, Jr.*,[18] we had occasion to discuss the reasons behind the prohibition by the Commission of mass appointments after the elections.*Sales* involved the issuance of 83 appointments made by then Dapitan City Mayor Joseph Cedrick O. Ruiz in his last month of office (on June 1, 18, and 27, 2001), which the newly elected Mayor, Rodolfo H. Carreon, subsequently revoked, on the ground that these violated CSC Resolution No. 010988 in relation to CSC Memorandum Circular No. 7, Series of 2001, imposing a ban on issuing appointments in the civil service during the election period. In *Sales,* we declared:

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[17] G.R. No. 163443, November 11, 2008.

[18] G.R. No. 160791, February 13, 2007, 515 SCRA 597, 601.

This case is a typical example of the practice of outgoing local chief executives to issue "midnight" appointments, especially after their successors have been proclaimed. It does not only cause animosities between the outgoing and the incoming officials, but also affects efficiency in local governance. Those appointed tend to devote their time and energy in defending their appointments instead of attending to their functions.[19]

It is not difficult to see the reasons behind the prohibition on appointments before and after the elections. Appointments are banned prior to the elections to ensure that partisan loyalties will not be a factor in the appointment process, and to prevent incumbents from gaining any undue advantage during the elections. To this end, appointments within a certain period of time are proscribed by the Omnibus Election Code and related

[19] In Sales, we found that there had not been proper publication of the vacancies, and there was no first level representative to the Personnel Selection Board, as required by existing laws and regulations.

[20] Section 261 of the Omnibus Election Code of the Philippines provides:

"x x x – The following shall be guilty of an election offense:

x x x x x x x x x

(g) Appointment of new employees, creation of new position, promotion, or giving salary increases. – During the period of forty five (45) days before regular election and thirty days before a special election (1) any head, official or appointing officer of a government office, agency or instrumentality, whether national or local, including government-owned or controlled corporations, who appoints or hires any new employee, whether provisional, temporary or casual, or creates and fills any new position, except upon prior authority of the Commission. The Commission shall not grant the authority sought unless, it is satisfied that the position to be filled is essential to the proper functioning of the office or agency concerned, and that the position shall not be filled in a manner that may influence the election.

As an exception to the foregoing provisions, a new employee may be appointed in case of urgent need; Provided, however, That notice of the appointment shall be given to the Commission within three days from the date of the appointment. Any appointment or hiring in violation of this provision shall be null and void.

COMELEC Resolution No. 3401, entitled Enforcement Of The Prohibition Against Appointment Or Hiring Of New Employees; Creation Or Filling Up Of New Positions, Giving Salary Increases; Transferring/Detailing Civil Service Employees; And Suspension Of Elective Local Officials In Connection With The May 14, 2001 Elections (15 December 2000), also prohibited appointments prior to the elections:

issuances.[20] After the elections, appointments by defeated candidates are prohibited, except under the circumstances mentioned in CSC Resolution No. 010988, to avoid animosities between outgoing and incoming officials, to allow the incoming administration a free hand in implementing its policies, and to ensure that appointments and promotions are not used as a tool for political patronage or as a reward for services rendered to the outgoing local officials.

Not all Mass Appointments are Prohibited

Indeed, not all appointments issued after the elections by defeated officials are invalid. CSC Resolution No. 010988 does not purport to nullify all "mass appointments." However, it must be shown that the appointments have undergone the regular screening process, that the appointee is qualified, that there is a need to fill up the vacancy immediately, and that the appointments are not in bulk. In *Nazareno v. Dumaguete*,[21] we explained:

> CSC Resolution No. 010988 does not totally proscribe the local chief executive from making any appointments immediately before and after elections. The same Resolution provides that the validity of an appointment issued immediately before and after elections by an outgoing local chief executive is to be **determined on the basis of the nature, character, and merit of the individual appointment and the particular circumstances surrounding the same.**

Corollarily, we held in *Sales*,[22] that:

SECTION 1. Prohibited Acts. –

x x x x x x x x x

(b) Beginning March 30, 2001 until May 14, 2001, no head, official or appointing officer of any national or local government office, agency or instrumentally, including government owned or controlled corporation shall: (1) appoint or hire any new employee, whether permanent, provisional, temporary or casual; or (2) create and fill any new positions, except upon prior authority of the Commission.

[21] *Supra* note 4.

[22] *Supra* note 18, at 603-604.

x x x [e]ach appointment must be judged on the basis of the nature, character, and merits of the individual appointment and the circumstances surrounding the same. It is only when the appointments were made *en masse* by the outgoing administration and shown to have been made through hurried maneuvers and under circumstances departing from good faith, morality, and propriety that this Court has struck down "midnight" appointments.

In the instant case, Mayor Remollo issued the 89 original and promotional appointments on three separate dates, but within a ten-day period, in the same month that he left office.[23] Further, the Commission's audit found violations of CSC rules and regulations that justified the disapproval of the appointments. In this regard, CSC Memorandum Circular No. 40, otherwise known as the Revised Rules on Appointments and Other Personnel Actions, provides:

Section 1 – Appointments submitted to the CSC office concerned should meet the requirements listed hereunder. Non-compliance with such requirements shall be grounds for disapproval of said appointments:

x x x x x x x x x

(h) Personnel Selection Board (PSB) Evaluation/Screening. Appointees should be screened and evaluated by the PSB, if applicable. As proof thereof, a certification signed by the Chairman of the Board at the back of the appointment or alternatively, a copy of the proceedings/minutes of the Board's deliberation shall be submitted together with the appointment. The issuance of the appointment shall not be earlier than the date of the final screening/deliberation of the PSB.

Here, there was only one *en banc* meeting of the city PSB to consider the appointments, without any evidence that there were any deliberations on the qualifications of the petitioners, or any indication that there was an urgent need for the immediate issuance of such appointments. The absence of evidence showing careful consideration of the merits of each appointment, and

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[23] The assumption date of the winning mayoralty candidate Mayor Perdices was on June 30, 2001.

the timing and the number of appointments, militate against petitioners' cause. On the contrary, the prevailing circumstances in this case indicate that the appointments were hurriedly issued by the outgoing administration.

The Accreditation of Dumaguete City did not remove the CSC's authority to review appointments

We find that the authority granted by CSC Resolution No. 992411 to the City Government of Dumaguete to "take final action" on all its appointments did not deprive the Commission of its authority and duty to review appointments. Indeed, Resolution No. 992411 states that such exercise of authority shall be "subject to civil service law, rules and regulations" and that appointments in violation of pertinent rules "shall immediately be invalidated."

Moreover, Section 20, Rule VI of the Omnibus Rules Implementing Book V of Executive Order No. 292 provides that notwithstanding the initial approval of an appointment, the same may be recalled for "[v]iolation of other existing Civil Service laws, rules and regulations." The CSC is empowered to take appropriate action on all appointments and other personnel actions and that such power "includes the authority to recall an appointment initially approved in disregard of applicable provisions of Civil Service law and regulations."[24]

Petitioners have not engaged in forum shopping

The essence of forum-shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment.[25] Forum-shopping has been defined as the

[24] *Sales*, *supra* note 18; *Mathay v. Civil Service Commission*, G.R. No. 130214, August 9, 1999, 312 SCRA 91,102; *Debulgado v. Civil Service Commission*, G.R. No. 111471, September 26, 1994, 237 SCRA 184, 200.

[25] *Mondragon Leisure and Resorts Corporation v. United Coconut Planters Bank*, G.R. No. 154187, April 14, 2004, 427 SCRA 585, 590.

act of a party against whom an adverse judgment has been rendered in one forum, seeking and possibly getting a favorable opinion in another forum, other than by appeal or the special civil action of *certiorari*, or the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.[26]

Although the factual antecedents of the cases brought before this Court are the same, they involve different issues. The petition for *Mandamus* with Injunction and Damages, docketed as Civil Case No. 13013, and raised before this Court as G.R. No. 177795, challenged respondents' refusal to recognize petitioners' appointments and to pay petitioners' salaries, salary adjustments, and other emoluments. The petition only entailed the applications for the issuance of a writ of *mandamus* and for the award of damages. The present case docketed as G.R. No. 181559, on the other hand, involves the merits of petitioners' appeal from the invalidation and revocation of their appointments by the CSC-Field Office, which was affirmed by the CSC-Regional Office, CSC *en banc*, and the Court of Appeals.

In any event, this issue had already been settled in our Decision of June 19, 2009 in G.R. No. 177795, which found petitioners not guilty of forum shopping, to wit:

> True, that the [Petition in G.R. No. 177795] and the one in G.R. No. 181559 are interrelated, but they are not necessarily the same for this Court to adjudge that the filing of both by petitioners constitutes forum shopping. In G.R. No. 181559, the Court will resolve whether or not the petitioners' appointments are valid. [In G.R. No. 177795], petitioners are claiming a right to the salaries, salary adjustments and other emoluments during the pendency of the administrative cases, regardless of how the CSC decided the validity of their appointments.

WHEREFORE, the petition is *DENIED* for lack of merit. The Court of Appeals' Decision in CA-G.R. CEB-SP No. 00665

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[26] *Transfield Philippines, Inc. v. Luzon Hydro Corporation*, G.R. No. 146717, May 19, 2006, 490 SCRA 14, 18; *Roxas v. Court of Appeals*, G.R. No. 139337, August 15, 2001, 363 SCRA 207, 217.

dated August 28, 2007 affirming CSC Resolution No. 040932 dated August 23, 2004 and CSC Resolution No. 050473 dated April 11, 2005, and its Resolution dated January 11, 2008 denying the Motion for Reconsideration are *AFFIRMED.*

SO ORDERED.

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

Quisumbing, J., on official leave.

Brion, J., on sick leave.

THIRD DIVISION

[G.R. Nos. 181562-63. October 2, 2009]

SPOUSES CIRIACO and ARMINDA ORTEGA, *petitioners, vs.* **CITY OF CEBU,** *respondent.*

[G.R. Nos. 181583-84. October 2, 2009]

CITY OF CEBU, *petitioner, vs.* **SPOUSES CIRIACO and ARMINDA ORTEGA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; TWO STAGES OF THE PROCEEDINGS; ENUMERATION. — Plainly, from the aforequoted provision, expropriation proceedings speak of two (2) stages, *i.e.*: 1.Determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit.

This ends with an order, if not of dismissal of the action, of condemnation [or order of expropriation] declaring that the plaintiff has the lawful right to take the property sought to be condemned, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the filing of the complaint; and 2. Determination by the court of the just compensation for the property sought to be taken.

2. ID.; ID.; ID.; DETERMINATION OF JUST COMPENSATION AS A JUDICIAL PREROGATIVE; SUSTAINED. — It is well-settled in jurisprudence that the determination of just compensation is a judicial prerogative. In *Export Processing Zone Authority v. Dulay*, we declared: The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation. We, therefore, hold that P.D. No. 1533, which eliminates the court's discretion to appoint commissioners pursuant to Rule 67 of the Rules of Court, is unconstitutional and void. To hold otherwise would be to undermine the very purpose why this Court exists in the first place. Likewise, in the recent cases of *National Power Corporation v. dela Cruz* and *Forfom Development Corporation v. Philippine National Railways*, we emphasized the primacy of judicial prerogative in the ascertainment of just compensation as aided by the appointed commissioners, to wit: Though the ascertainment of just compensation is a judicial prerogative, the appointment of commissioners to ascertain just compensation for the property sought to be taken is a mandatory requirement in expropriation cases. While it is true that the findings of commissioners may be disregarded and the trial court may substitute its own estimate of the value, it may only do so for valid reasons; that is, where the commissioners have applied illegal principles to the evidence

submitted to them, where they have disregarded a clear preponderance of evidence, or where the amount allowed is either grossly inadequate or excessive. Thus, "trial with the aid of the commissioners is a substantial right that may not be done away with capriciously or for no reason at all."

3. ID.; ID.; JUDGMENT; WRIT OF EXECUTION OR GARNISHMENT; GOVERNMENT FUNDS AND PROPERTIES MAY NOT BE SUBJECT THEREOF; RATIONALE. — It is a settled rule that government funds and properties may not be seized under writs of execution or garnishment to satisfy judgments, based on obvious consideration of public policy. Disbursements of public funds must be covered by the corresponding appropriation as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law. In *Municipality of Makati v. Court of Appeals*, x x x where the Municipality of Makati enacted an ordinance appropriating certain sum of money as payment for the land the municipality expropriated, chargeable to Account No. S/A 265-537154-3 deposited in PNB Buendia Branch, the Supreme Court held that the trial court has no authority to garnish the Municipality's ***other bank account*** (Account No. S/A 263-530850-7) in order to cover the deficiency in Account No. S/A 265-537154-3, even if both accounts are in the same branch of the PNB. In said case, the Supreme Court held: Absent any showing that the municipal council of Makati has passed an ordinance appropriating from its public funds an amount corresponding to the balance due under the RTC decision dated June 4, 1987, less the sum of ₱99,743.94 deposited in Account No. S/A 265-537154-3, no levy under execution may be validly effected on the public funds of petitioner deposited in Account No. S/A 263-530850-7. The foregoing rules find application in the case at bar. While the Sangguniang Panglungsod of petitioner enacted Ordinance No. 1519 appropriating the sum of ₱3,284,400.00 for payment of just compensation for the expropriated land, such ordinance cannot be considered as a source of authority for the [RTC] to garnish [Cebu City's] bank

> account with Philippine Postal Bank, which was already appropriated for another purpose. [Cebu City's] account with Philippine Postal Bank was not specifically opened for the payment of just compensation nor was it specifically appropriated by Ordinance No. 1519 for such purpose. Said account, therefore, is exempt from garnishment. Since the [RTC] has no authority to garnish [Cebu City's] other bank accounts in order to satisfy its judgment, consequently, it has no authority to order the release of [Cebu City's] other deposits with Philippine Postal Bank x x x. Even assuming that Cebu City Ordinance No. 1519 actually appropriated the amount of ₱3,284,400.00 for payment of just compensation — thus, within the reach of a writ of garnishment issued by the trial court — there remains the inescapable fact that the Philippine Postal Bank account referred to in the ordinance does not actually exist, as certified to by the Bank. Accordingly, no writ of garnishment may be validly issued against such non-existent account with Philippine Postal Bank. This circumstance translates to a situation where there is no valid appropriation ordinance.

APPEARANCES OF COUNSEL

*Reales Law Offic*e for Sps. Ciriaco and Arminda Ortega.
Office of the City Attorney for Cebu City.

D E C I S I O N

NACHURA, *J.*:

These are consolidated petitions for review on *certiorari* filed by petitioners Ciriaco and Arminda Ortega (Spouses Ortega) in G.R. Nos. 181562-63 and petitioner City of Cebu (Cebu City) in G.R. Nos. 181583-84 assailing the Decision of the Court of Appeals (CA) in the similarly consolidated petitions docketed as CA-G.R. SP No. 80187 and CA-G.R. SP No. 00147, respectively.[1]

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[1] Penned by Associate Justice Stephen C. Cruz, with Associate Justices Isaias P. Dicdican and Antonio L. Villamor, concurring; *rollo* (G.R. Nos. 181583-84), pp. 36-60.

The facts, summarized by the CA, follow:

Spouses Ciriaco and Arminda Ortega x x x are the registered owners of a parcel of land known as Lot No. 310-B, situated in Hipodromo, Cebu City, with an area of 5,712 square meters and covered by Transfer Certificate of Title No. 113311, issued by the Register of Deeds of the City of Cebu.

One-half of the above described land is occupied by squatters. On September 24, 1990, [the Spouses Ortega] filed an ejectment case against the squatters before the Municipal Trial Court in Cities (MTCC) of Cebu City, which rendered decision in favor of [the spouses Ortega]. The case eventually reached the Supreme Court, which affirmed the decision of the MTCC. The decision of the MTCC became final and executory, and a writ of execution was issued on February 1, 1994.

On May 23, 1994, the Sangguniang Panglungsod of [Cebu City] enacted City Ordinance No. 1519, giving authority to the City Mayor to expropriate one-half (1/2) portion (2,856 square meters) of [the spouses Ortega's] land (which is occupied by the squatters), and appropriating for that purpose the amount of ₱3,284,400.00 or at the price of ONE THOUSAND ONE HUNDRED FIFTY PESOS (₱1,150.00) per square meter. The amount will be charged against Account No. 8-93-310, Continuing Appropriation, Account No. 101-8918-334, repurchase of lots for various projects. The value of the land was determined by the Cebu City Appraisal Committee in Resolution No. 19, Series of 1994, dated April 15, 1994.

Pursuant to said ordinance, [Cebu City] filed a Complaint for Eminent Domain [before the Regional Trial Court (RTC), Branch 23, Cebu City] against [the spouses Ortega], docketed as Civil Case No. CEB-16577.

On March 13, 1998, the [RTC] issued an order declaring that [Cebu City] "has the lawful right to take the property subject of the instant case, for public use or purpose described in the complaint upon payment of just compensation."

Based on the recommendation of the appointed Commissioners (one of whom was the City Assessor of [Cebu City], the [RTC] issued another Order dated May 21, 1999, fixing the value of the land subject to expropriation at ELEVEN THOUSAND PESOS (₱11,000.00) per square meter and ordering [Cebu City] to pay [Spouses Ortega] the sum of THIRTY ONE MILLION AND FOUR HUNDRED SIXTEEN

THOUSAND PESOS (₱31,416,000.00) as just compensation for the expropriated portion of Lot No. 310-B.

The Decision of the [RTC] became final and executory because of [Cebu City's] failure to perfect an appeal on time, and a Writ of Execution was issued on September 17, 1999 to enforce the court's judgment. Upon motion of [the Spouses Ortega], the [RTC] issued an Order dated March 11, 2002, quoted as follows:

> "Reading of the aforestated resolution shows that the City Council of Cebu approved Ordinance No. 1519 appropriating the sum of ₱3,284,400.00 for payment of the subject lot chargeable to Account No. 101-8918-334.
>
> "In view thereof, the above-mentioned sum is now subject for execution or garnishment for the same is no longer exempt from execution."

[Cebu City] filed an Omnibus Motion to Stay Execution, Modification of Judgment and Withdrawal of the Case, contending that the price set by the [RTC] as just compensation to be paid to [the Spouses Ortega] is way beyond the reach of its intended beneficiaries for its socialized housing program. The motion was denied by the [RTC]. [Cebu City's] Motion for Reconsideration was likewise denied.

By virtue of the Order of the [RTC], dated July 2, 2003, x x x Sheriff Benigno B. Reas[,] Jr. served a Notice of Garnishment to Philippine Postal Bank, P. del Rosario and Junquera Branch Cebu City, garnishing [Cebu City's] bank deposit therein.

Hence, [Cebu City] filed the instant Petition for *Certiorari* before [the CA] (CA-G.R. SP NO. 80187).

During the pendency of x x x CA-G.R. SP NO. 80187, [Cebu City] filed before the [RTC] a Motion to Dissolve, Quash or Recall the Writ of Garnishment, contending that Account No. 101-8918-334 mentioned in Ordinance No. 1519 is not actually an existing bank account and that the garnishment of [Cebu City's] bank account with Philippine Postal Bank was illegal, because government funds and properties may not be seized under writ of execution or garnishment to satisfy such judgment, on obvious reason of public policy. The [RTC] issued an Order dated March 8, 2004, denying said motion. [Cebu City's] Motion for Reconsideration was also denied.

[The Spouses Ortega] filed an *Ex-Parte* Motion to Direct the New Manager of Philippine Postal Bank to Release to the Sheriff the Garnished Amount, which was granted by the [RTC]. [Cebu City] filed a Motion for Reconsideration, but the same was denied.

Hence, [Cebu City] filed another Petition for *Certiorari* (CA-G.R. SP NO. 00147) [with the Court of Appeals].[2]

Ruling on the petitions for *certiorari*, the CA disposed of the cases, to wit:

WHEREFORE, all the foregoing premises considered, the instant Petitions for *Certiorari* are hereby PARTIALLY GRANTED. The assailed Orders of the [RTC] [Assailed Orders dated March 11, 2002 and July 2, 2003, respectively, in CA-G.R SP NO. 80187] are hereby ANNULLED AND SET ASIDE insofar as they denied [Cebu City's] Motion to Stay Execution, but they are hereby AFFIRMED insofar as they denied [Cebu City's] Motion to Modify Judgment and Withdraw from the Expropriation Proceedings. Furthermore, the assailed Orders of the [RTC dated March 8, 2004 in CA-G.R. SP NO. 00147] are hereby ANNULLED AND SET ASIDE. Let the Decision of the [RTC] be executed in a manner prescribed by applicable law and jurisprudence.

SO ORDERED.[3]

Hence, these consolidated appeals by petitioners Cebu City and the Spouses Ortega positing the following issues:

1. Whether the CA erred in affirming the RTC's denial of Cebu City's Omnibus Motion to Modify Judgment and to be Allowed to Withdraw from the Expropriation Proceedings.

2. Whether the deposit of Cebu City with the Philippine Postal Bank, appropriated for a different purpose by its Sangguniang Panglungsod, can be subject to garnishment as payment for the expropriated lot covered by City Ordinance No. 1519.

We deny both petitions.

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[2] *Id.* at 37-39.

[3] *Id.* at 58-59.

On the first issue, the CA did not err in affirming the RTC's Order that the expropriation case had long been final and executory. Consequently, both the Order of expropriation and the Order fixing just compensation by the RTC can no longer be modified. In short, Cebu City cannot withdraw from the expropriation proceedings.

Section 4, Rule 67 of the Rules of Court on Expropriation provides:

> **SEC. 4.** *Order of expropriation*. – If the objections to and the defenses against the right of the plaintiff to expropriate the property are overruled, or when no party appears to defend as required by this Rule, the court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first.
>
> A final order sustaining the right to expropriate the property may be appealed by any party aggrieved thereby. Such appeal, however, shall not prevent the court from determining the just compensation to be paid.
>
> After the rendition of such an order, the plaintiff shall not be permitted to dismiss or discontinue the proceeding except on such terms as the court deems just and equitable.

Plainly, from the aforequoted provision, expropriation proceedings speak of two (2) stages, *i.e.*:

> 1. Determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. This ends with an order, if not of dismissal of the action, of condemnation [or order of expropriation] declaring that the plaintiff has the lawful right to take the property sought to be condemned, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the filing of the complaint; and

2. Determination by the court of the just compensation for the property sought to be taken.[4]

We held in the recent case of *Republic v. Phil-Ville Development and Housing Corporation*[5] that:

> [A]n order of expropriation denotes the end of the first stage of expropriation. Its end then paves the way for the second stage—the determination of just compensation, and, ultimately, payment. **An order of expropriation puts an end to any ambiguity regarding the right of the petitioner to condemn the respondents' properties.** Because an order of expropriation merely determines the authority to exercise the power of eminent domain and the propriety of such exercise, its issuance does not hinge on the payment of just compensation. **After all, there would be no point in determining just compensation if, in the first place, the plaintiff's right to expropriate the property was not first clearly established**.[6]

Conversely, as is evident from the foregoing, an order by the trial court fixing just compensation does not affect a prior order of expropriation. As applied to the case at bar, Cebu City can no longer ask for modification of the judgment, much less, withdraw its complaint, after it failed to appeal even the first stage of the expropriation proceedings.

Cebu City is adamant, however, that it should be allowed to withdraw its complaint as the just compensation fixed by the RTC is too high, and the intended expropriation of the Spouses Ortegas' property is dependent on whether Cebu City would have sufficient funds to pay for the same.

We cannot subscribe to Cebu City's ridiculous contention.

It is well-settled in jurisprudence that the determination of just compensation is a judicial prerogative.[7] In *Export Processing*

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[4] *National Power Corporation v. Jocson*, G.R. Nos. 94193-99, February 25, 1992, 206 SCRA 520.

[5] G.R. No. 172243, June 26, 2007, 525 SCRA 776, 783.

[6] *Id.* at 783. (Emphasis supplied.)

[7] *Export Processing Zone Authority v. Dulay*, G.R. No. 59603, April 29, 1987, 149 SCRA 305, 316.

Zone Authority v. Dulay,[8] we declared:

> The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.
>
> We, therefore, hold that P.D. No. 1533, which eliminates the court's discretion to appoint commissioners pursuant to Rule 67 of the Rules of Court, is unconstitutional and void. To hold otherwise would be to undermine the very purpose why this Court exists in the first place.

Likewise, in the recent cases of *National Power Corporation v. dela Cruz*[9] and *Forfom Development Corporation v. Philippine National Railways*,[10] we emphasized the primacy of judicial prerogative in the ascertainment of just compensation as aided by the appointed commissioners, to wit:

> Though the ascertainment of just compensation is a judicial prerogative, the appointment of commissioners to ascertain just compensation for the property sought to be taken is a mandatory requirement in expropriation cases. While it is true that the findings of commissioners may be disregarded and the trial court may substitute its own estimate of the value, it may only do so for valid reasons; that is, where the commissioners have applied illegal principles to the evidence submitted to them, where they have disregarded a clear preponderance of evidence, or where the amount allowed is either grossly inadequate or excessive. Thus, "trial with the aid of the commissioners is a substantial right that may not be done away with capriciously or for no reason at all."

As regards the second issue raised by the Spouses Ortega, we quote with favor the CA's disquisition thereon, to wit:

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[8] *Id.*

[9] G.R. No. 156093, February 2, 2007, 514 SCRA 56, 69.

[10] G.R. No. 124795, December 10, 2008.

While the claim of [the Spouses Ortega] against [Cebu City] is valid, the [RTC] cannot, by itself, order the City Council of [Cebu City] to enact an appropriation ordinance in order to satisfy its judgment.

The proper remedy of [the Spouses Ortega] is to file a *mandamus* case against [Cebu City] in order to compel its Sangguniang Panglungsod to enact an appropriation ordinance for the satisfaction of [the Spouses Ortega's] claim. This remedy is provided in the case of *Municipality of Makati v. Court of Appeals*, which provides:

> Nevertheless, this is not to say that private respondent and PSB are left with no legal recourse. Where a municipality fails or refuses, without justifiable reason[s], to effect payment of a final money judgment rendered against it, the claimant may avail of the remedy of *mandamus* in order to compel the enactment and approval of the necessary appropriation ordinance, and the corresponding disbursement of municipal funds therefor. x x x.
>
> x x x x x x x x x

The Sangguniang Panglungsod of [Cebu City] enacted Ordinance No. 1519, appropriating the sum of ₱3,284,400.00 for payment of just compensation for the expropriated land, chargeable to Account No. 101-8918-334.

Pursuant to such ordinance, the [RTC] issued an order dated March 11, 2002, which was the basis for the issuance of the Writ of Garnishment, garnishing [Cebu City's] bank account with Philippine Postal Bank.

However, Philippine Postal Bank issued a Certification dated February 7, 2005, certifying that Account No. 8-93-310 (Continuing Account) and Account No. 101-8918-334 intended for purchase of lot for various projects are not bank account numbers with Philippine Postal Bank.

It is a settled rule that government funds and properties may not be seized under writs of execution or garnishment to satisfy judgments, based on obvious consideration of public policy. Disbursements of public funds must be covered by the corresponding appropriation as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the

diversion of public funds from their legitimate and specific objects, as appropriated by law.

In *Municipality of Makati v. Court of Appeals*, x x x where the Municipality of Makati enacted an ordinance appropriating certain sum of money as payment for the land the municipality expropriated, chargeable to Account No. S/A 265-537154-3 deposited in PNB Buendia Branch, the Supreme Court held that the trial court has no authority to garnish the Municipality's ***other bank account*** (Account No. S/A 263-530850-7) in order to cover the deficiency in Account No. S/A 265-537154-3, even if both accounts are in the same branch of the PNB. In said case, the Supreme Court held:

> Absent any showing that the municipal council of Makati has passed an ordinance appropriating from its public funds an amount corresponding to the balance due under the RTC decision dated June 4, 1987, less the sum of ₱99,743.94 deposited in Account No. S/A 265-537154-3, no levy under execution may be validly effected on the public funds of petitioner deposited in Account No. S/A 263-530850-7.

The foregoing rules find application in the case at bar. While the Sangguniang Panglungsod of petitioner enacted Ordinance No. 1519 appropriating the sum of ₱3,284,400.00 for payment of just compensation for the expropriated land, such ordinance cannot be considered as a source of authority for the [RTC] to garnish [Cebu City's] bank account with Philippine Postal Bank, which was already appropriated for another purpose. [Cebu City's] account with Philippine Postal Bank was not specifically opened for the payment of just compensation nor was it specifically appropriated by Ordinance No. 1519 for such purpose. Said account, therefore, is exempt from garnishment.

Since the [RTC] has no authority to garnish [Cebu City's] other bank accounts in order to satisfy its judgment, consequently, it has no authority to order the release of [Cebu City's] other deposits with Philippine Postal Bank x x x.[11]

Even assuming that Cebu City Ordinance No. 1519 actually appropriated the amount of ₱3,284,400.00 for payment of just compensation — thus, within the reach of a writ of garnishment

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[11] *Rollo*, G.R. Nos. 181583-84, pp. 54-57. (Citations omitted.)

issued by the trial court[12] — there remains the inescapable fact that the Philippine Postal Bank account referred to in the ordinance does not actually exist, as certified to by the Bank. Accordingly, no writ of garnishment may be validly issued against such non-existent account with Philippine Postal Bank. This circumstance translates to a situation where there is no valid appropriation ordinance.

WHEREFORE, the petitions in G.R. Nos. 181562-63 and 181583-84 are hereby *DENIED*. The Decision of the Court of Appeals in CA-G.R. SP Nos. 80187 and 00147 is *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 181625. October 2, 2009]

JEROME FLORES, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; THE RULE OF *RES GESTAE*; ELEMENTS. — We are not persuaded. *The rule of res gestae applies when the declarant himself did not testify*, provided that the testimony of the witness who heard the declarant complies with the following requisites: (1) that the principal act, the

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[12] *City of Caloocan v. Allarde*, G.R. No. 107271, September 10, 2003, 410 SCRA 432.

res gestae, be a startling occurrence; (2) the statements were made before the declarant had the time to contrive or devise a falsehood; and (3) that the statements must concern the occurrence in question and its immediate attending circumstances.

2. ID.; ID.; ID.; POSITIVE IDENTIFICATION OF THE ACCUSED PREVAILS OVER THE POLICE BLOTTER; SUSTAINED. — That petitioner was not identified in the police blotter entry is of no moment. In several cases, we have held that positive identification prevails over police blotter entries. In *People v. Dacibar and Dicon*, we ruled that "the fact that the first blotter report made by the victim's wife refers to the assailants as "unidentified persons" does not detract from the veracity of her positive identification of appellants as the perpetrators of the crime in a later report, and in the course of trial. In the first place, we have held that entries in the police blotter should not be given undue significance or probative value, as they do not constitute conclusive proof." In *People v. Gutierrez*, we held that "(T)he accused Castillo's argument that he was not ably identified to have been one of the assailants as even the police blotter entry regarding the incident failed to mention him deserves scant consideration. We have ruled that police blotter entries should not always be given due significance or probative value for they do not constitute conclusive proof of the identities of suspected assailants." In *People v. Cabrera, Jr.*, we stated that "entr[ies] in the police blotter about the suspects being 'unidentified' will not help the cause of the accused. It does not mean that Shirley Aguilus failed to identify the accused when she reported to the police. x x x. Besides, even granting in *arguendo* that Shirley failed to identify the accused to the police when she reported the incident, her failure to do so will not impair her credibility." Moreover, we have previously held that discrepancies between an open court testimony and a police blotter entry do not affect the credibility of the witness.

3. ID.; ID.; ALIBI IS AN INHERENTLY WEAK DEFENSE. — It is settled that an alibi is an inherently weak defense, easy to fabricate and highly unreliable. For said defense to prosper, the accused must not only prove that he was at some other place at the time the crime was committed but that it was, likewise, physically impossible for him to be at the *locus*

criminis at the time of the alleged crime. The prosecution showed that it was not physically impossible for petitioner to be at the *locus criminis* since, by his own admission, the subject Petron gasoline station is only one kilometer away from Carolina Store, where he allegedly was in the evening of February 19, 2001.

APPEARANCES OF COUNSEL

Catacutan Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

Assailed is the January 16, 2008 Decision[1] of the Court of Appeals in CA-G.R. CR No. 00327 which affirmed the September 14, 2005 Joint Decision[2] of the Regional Trial Court of Antique, Branch 64 finding Jerome Flores, Mike Tuason, and Bobette Nicolas guilty of frustrated homicide.

In August 2001, petitioner Jerome Flores (Flores), together with Mike Tuason (Tuason), Bobette Nicolas (Nicolas), and Jerose Absalon (Absalon), were charged with two counts of frustrated homicide docketed as Criminal Case Nos. 0489 and 0515. In Criminal Case No. 0515, Tuason was convicted while Flores and Nicolas were acquitted for insufficiency of evidence. In Criminal Case No. 0489, Tuason, Flores, and Nicolas were convicted. Absalon remained at large.

The Information in Criminal Case No. 0489[3] reads as follows:

The undersigned Assistant Provincial Prosecutor accuses Jerome Flores, Mike Tuason, *Alias* Bobit Nicolas and Jerose Absalon of

[1] *Rollo*, pp. 24-38; penned by Associate Justice Antonio L. Villamor, and concurred in by Associate Justices Stephen C. Cruz and Amy C. Lazaro-Javier.

[2] CA *rollo*, pp. 17-60; penned by Presiding Judge Rafael O. Penuela.

[3] Records, Criminal Case. No. 0489, pp. 23-24.

the crime of Frustrated Murder, committed as follows:

That on or about the 19th day of February, 2001, in the Municipality of Tibiao, Province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with an unlicensed firearm, conspiring, confederating and mutually helping one another and with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and shoot with said unlicensed firearm one Ronald B. Lim, thereby inflicting upon the latter the following wound, to wit:

"Gunshot wound 4th ICS left parasternal area (Intrance) exit at right shoulder with pulmonary contusion and hemothorax."

thus performing all the acts of execution which would have produced the crime of murder as a consequence, but which, nevertheless did not produce it by reason of causes independent of the will of the said accused, that is by the timely medical attendance rendered to the said Ronald B. Lim which prevented his death.

With the qualifying circumstance of treachery.

Contrary to the provisions of Article 248 of the Revised Penal Code in relation to Article 6 of the same code.

while the Information in Criminal Case No. 0515[4] states:

The undersigned Assistant Provincial Prosecutor accuses Jerome Flores, Mike Tuason, *Alias* Bobit Nicolas and Jerose Absalon of the crime of Frustrated Murder, committed as follows:

That on or about the 19th day of February, 2001, in the Municipality of Tibiao, Province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused being then armed with an unlicensed firearm, with intent to kill, did then and there, willfully, unlawfully and feloniously, attack, assault and shoot one William Sareno, thereby inflicting upon the latter the following wound, to wit:

"GSW Right hip, Open Fracture Right Femoral Head"

thus performing all the acts of execution which would have produced the crime of murder as a consequence, but which, nevertheless did not produce it by reason of causes independent of the will of the

[4] Records, Criminal Case No. 0515, pp. 23-24.

said accused, that is by the timely medical attendance rendered to the said William Sareno which prevented his death.

With the qualifying circumstance of treachery.

Contrary to the provisions of Article 248 of the Revised Penal Code in relation to Article 6 of the same code.

Flores, Tuason, and Nicolas pleaded not guilty to both charges.

According to the prosecution, at around 8:30 in the evening of February 19, 2001, Ronald B. Lim (Lim), who was inside his office at the Petron gasoline station which also served as his house, heard a noise coming from outside. He then woke up his helper, William Sareño (Sareño), and requested the latter to accompany him outside to check the stocks and to inspect the premises. When they reached the left side of the gasoline station, they were alarmed to see four persons emerging from the nearby clump of banana plants. Due to proximity, as well as the light coming from six fluorescent lamps lighting the gasoline station, they were able to identify these persons as Flores, Tuason, Nicolas, and Absalon. Lim and Sareño are familiar with all the accused as Flores is the first cousin of Lim's wife, while Tuason, Nicolas, and Absalon are all residents of Tibiao.

Upon seeing the four accused who were holding short firearms, Sareño attempted to run away, but Tuason fired at him. Sareño was hit in his right hip, but he managed to escape. Lim, who could not run, being a polio victim, was shot by Flores in the left chest. Lim fell face down and pretended to be dead. The four accused surrounded him, and he heard Nicolas utter, "Be sure that he is dead." Nicolas kicked him, but he continued to play dead. While in that position, he saw Tuason take the ₱7,000 income of the gasoline station from his pocket, as well as his necklace. The four accused then fled.

Lim testified that before the February 19, 2001 incident, there was already strained relations between him and petitioner's Flores' family. According to Lim, aside from himself, two other persons applied for the franchise of a Petron gasoline station in Tibiao, and one of them was the father of petitioner.

When the franchise was granted to Lim, the Flores family wanted to join Lim in his business, but Lim turned down the proposal.

The defense alleged that petitioner had nothing to do with the incident. Petitioner testified that at about 5:00 in the afternoon of February 19, 2001, he was at Carolina Store drinking beer with friends as it was the eve of the town fiesta. Such meeting was pre-arranged. Their group stayed inside the store for it was raining, and at no instance did any of them leave. They stayed at the store until 11:00 in the evening. At about 8:30 in the evening, they heard two firearm explosions, but they just continued drinking. The storekeeper of Carolina Store, Nelly Espartero, corroborated Flores' alibi.

Petitioner also denied the alleged strained relations between his father and Lim. In fact, he claims that he and his family even purchase gasoline from Lim's gasoline station.

On September 14, 2005, the trial court rendered its Joint Decision convicting Tuason in Criminal Case No. 0515 for frustrated homicide, and convicting Tuason, Flores, and Nicolas in Criminal Case No. 0489 also for frustrated homicide. The dispositive portion of the Joint Decision reads:

In View Thereof, this court renders the following judgment:

In Criminal Case No. 0515, this court finds the accused Mike Tuazon guilty beyond reasonable doubt for Frustrated Homicide and in the absence of any aggravating and mitigating circumstances, he is hereby sentenced to an indeterminate imprisonment of 4 years and 2 months of *prision correctional* (sic) as minimum to 8 years, 8 months and 1 day of *prision mayor* as maximum.

For failure of the prosecution to prove the guilt of the accused Jerome Flores and Bobette Nicolas, they are acquitted.

Accused Mike Tuazon is directed to indemnify William Sareño in the amount of ₱30,000.00 as civil indemnity.

In Criminal Case No. 0489, this court finds the accused Jerome Flores, Mike Tuazon and Bobette Nicolas guilty beyond reasonable doubt for Frustrated Homicide in conspiracy with each other and in the absence of any aggravating and mitigating circumstances, they are each sentenced to an indeterminate imprisonment of 4 years

and 2 months of *prision correctional* (sic) as minimum to 8 years, 8 months and 1 day of *prision mayor* as maximum.

All accused are ordered to pay, jointly and severally Ronald Lim the amount of ₱30,000.00 as civil indemnity and ₱72,397.05 for hospital and medical expenses.

The bailbonds posted by the accused Mike Tuazon and Jerome Flores are cancelled and they are committed together with accused Bobette Nicolas to the National Penitentiary, Muntinlupa City.

The case against Jerose Absalon is sent to the archive and issue an *Alias* Warrant for his Arrest.[5]

The case was brought to the Court of Appeals. On January 16, 2008, the appellate court rendered its Decision affirming *in toto* the trial court, to wit:

WHEREFORE, premises considered, the appealed Decision dated September 14, 2005 of the Regional Trial Court (RTC), 6th Judicial Region, Branch 64, in Bugasong, Antique in criminal case nos. 0489 and 0515, is AFFIRMED *IN TOTO*.

SO ORDERED.[6]

Hence, the instant petition for review raising the following issues:[7]

I.

THE APPELLATE COURT ERRED WHEN IT MISAPPREHENDED THE ARGUMENT OF THE ACCUSED THAT THE REPORT OF SARENO TO THE POLICE OFFICERS OF TIBIAO P.N.P. SHOULD BE CONSIDERED AS *RES GESTAE* AND INTERPRETED IT THAT IT REFERS TO THE TESTIMONY OF SPO2 MAGABILIN.

II.

THE APPELLATE COURT ERRED IN NOT APPLYING THE JURISPRUDENTIAL RULE THAT WHEN AN ISSUE ADMITS OF TWO INTERPRETATIONS, ONE INCULPATORY AND THE OTHER EXCULPATORY, THE LATTER SHOULD BE PREFERRED IN

[5] CA *rollo*, pp. 59-60.

[6] *Rollo*, p. 37.

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

DEFERENCE TO THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE.

III.

THE COURT *A QUO* ERRED WHEN IT FAILED TO FOLLOW THE TIME HONORED PRINCIPLE THAT THE STATEMENTS/ TESTIMONIES OF THE POLICE OFFICERS CARRY WITH IT THE PRESUMPTION OF REGULARITY OF PERFORMANCE OF OFFICIAL DUTIES.

The petition lacks merit.

Petitioner heavily relies on the police blotter entry dated February 19, 2001 of the Tibiao Police Station, which reads:

> 192055H February 2001 – On this date and time one WILLIAM SAREÑO *y* Miguel, 16 yrs old, student and a resident of Sitio Durog Brgy Importante, Tibiao, Antique, arrived (sic) this station on board a tricycle with gunshot wound on his right hip and alleged that OOA 192045H February 2001 at the gasoline station along national highway Poblacion, Tibiao, Antique, there was a noise heard by them while they were inside the said gasoline station, thus prompting them to verify outside, when verified they saw a man crawling and hiding himself so Ronald Lim fired a warning shot to identify the said person however the said person shot William Sareño hitting him on his right hip breast. Both victims were brought by Tibiao Ambulane (sic) to the hospital for treatment.

Said police blotter entry was verified by SPO2 Vinancio Magabilin (SPO2 Magabilin), who testified that he was the one who made the February 19, 2001 police blotter entry; that it was William Sareño who reported such incident to him; and that he recorded the incident exactly as narrated to him by Sareño.

Petitioner avers that as reported in the police blotter, Sareño did not know the identity of their assailants.[8] Sareño reported that there was only one assailant who was unidentified, and that when they went out to investigate, he and Lim saw only

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[8] *Id.* at 11.

one person who was crawling and trying to hide behind the banana plants. Lim then fired a warning shot but said intruder shot Sareño and Lim.

Petitioner argues that said report made by Sareño to SPO2 Magabilin is in the nature of *res gestae* and should be given substantial weight, to wit:

> The report made to him by Sareno is in the nature of *res gestae* because his declarations were made immediately after a startling occurrence or traumatic event and he had no opportunity to fabricate, or make up his story. The report of William Sareño to the PNP of Tibiao as regards the shooting incident in the evening of February 19, 2001 immediately after the incident happened satisfy all the elements of *res gestae* that is, "the statement is spontaneous; (b) it is immediately before, during or after a startling occurrence." In the report there was only one assailant and he is unidentified.[9]

We are not persuaded. *The rule of res gestae applies when the declarant himself did not testify*, provided that the testimony of the witness who heard the declarant complies with the following requisites: (1) that the principal act, the *res gestae*, be a startling occurrence; (2) the statements were made before the declarant had the time to contrive or devise a falsehood; and (3) that the statements must concern the occurrence in question and its immediate attending circumstances.[10]

In the instant case, the declarant, Sareño, testified and was cross-examined in court. Hence, there is no need to apply the rule on *res gestae*.

Sareño categorically testified that he saw four persons emerging from the clump of banana plants; that two of them were armed with short firearms; that he was shot by Tuason; that while in the act of escaping, he heard another shot fired; and that, because of familiarity, proximity and the light coming from the fluorescent lamps lighting the gasoline station, he was able to identify the

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[9] *Id.* at 11-12.

[10] *People v. Cabrera, Jr.*, G.R. No. 138266, April 30, 2003, 402 SCRA 299, 307-308; *People v. Oposculo, Jr.*, G.R. No. 124572, November 20, 2000, 345 SCRA 167, 176.

assailants as Tuason, Flores, Nicolas, and Absalon.[11] Sareño testified as follows:

Q: Now, in the course of your inspection of the premises of the Gasoline Station as you said awhile ago, was there an unusual incident that happened Mr. Witness?

A: Yes.

Q: What happened, please tell us.

A: The four (4) of them suddenly came out from the Banana plants.

Q: Four (4) what?

A: Four (4) persons.

x x x x x x x x x

Q: So what happened next once you saw four (4) persons came out of the clump of banana plants?

A: From these four (4) persons I saw two (2) of them holding short firearms.

x x x x x x x x x

Q: You said that you were shot at by this certain Mr. Mike Tuazon while on the act of running, that is what you said?

A: Yes, when I was about to run he shot me.

x x x x x x x x x

Q: And you were able to run Mr. Witness despite the fact that you were shot at by Mr. Tuazon?

A: Yes, I was able to run because I did not feel the pain yet.

Q: While running what have you heard if anything Mr. Witness?

A: I heard another explosion but I did not mind it instead I continued on running.

x x x x x x x x x

Q: Alright, where that second explosion that you heard come from?

[11] TSN, July 30, 2003, pp. 5-11.

A: It came from the place where I was shot upon. It also came from the place where I was shot upon.

x x x x x x x x x

Q: Now, were you able to identify these four persons Mr. Witness?

A: Yes.

Q: Now, you identified them by faces?

A: Yes, I recognized them because of the light coming from the fluorescent lamp and they are also from that place.

Q: Of course it was already night time because it was already 9:00 o'clock in the evening, am I correct?

A: Yes.

Q: How were you able to identify faces of the four (4) persons considering that it was already nighttime Mr. Witness?

A: It was bright light coming from the fluorescent lamp and they are also from the town proper.

That petitioner was not identified in the police blotter entry is of no moment. In several cases, we have held that positive identification prevails over police blotter entries.

In *People v. Dacibar and Dicon*, we ruled that "the fact that the first blotter report made by the victim's wife refers to the assailants as "unidentified persons" does not detract from the veracity of her positive identification of appellants as the perpetrators of the crime in a later report, and in the course of trial. In the first place, we have held that entries in the police blotter should not be given undue significance or probative value, as they do not constitute conclusive proof."[12]

In *People v. Gutierrez*, we held that "(T)he accused Castillo's argument that he was not ably identified to have been one of the assailants as even the police blotter entry regarding the incident failed to mention him deserves scant consideration. We have ruled that police blotter entries should not always be

[12] G.R. No. 111286, February 17, 2000, 325 SCRA 725, 736.

given due significance or probative value for they do not constitute conclusive proof of the identities of suspected assailants."[13]

In *People v. Cabrera, Jr.*, we stated that "entr[ies] in the police blotter about the suspects being 'unidentified' will not help the cause of the accused. It does not mean that Shirley Aguilus failed to identify the accused when she reported to the police. x x x. Besides, even granting in *arguendo* that Shirley failed to identify the accused to the police when she reported the incident, her failure to do so will not impair her credibility."[14]

Moreover, we have previously held that discrepancies between an open court testimony and a police blotter entry do not affect the credibility of the witness.

> x x x We thus have on record Honorata's **positive identification** of accused-appellant as her assailant. Coupled with the oft-quoted doctrine that **entries in police blotters, though regularly done in the course of the performance of official duty, are not conclusive proof of the truth stated in such entries since they are usually incomplete and inaccurate** (*People vs. Padlan*, 290 SCRA 388 [1998]), we hold that **any discrepancy in the police blotter entry and the open court testimony of Honorata does not affect her credibility.**
>
> It must also be remembered that the entry in the police blotter was made at 6:30 on (sic) the morning of February 12, 1997, only a few hours after the rape and robbery. At that time, Honorata may not have yet fully recovered from the traumatic ordeal she had gone through, resulting in an inaccurate entry in the police blotter. Besides, minor lapses are to be expected when a person is recounting details of a traumatic experience too painful to recall (*People vs. Sta. Ana*, 291 SCRA 188 [1998]).[15] (Emphasis supplied)

Although Sareño's testimony did not identify who shot Lim, the latter's testimony unequivocally implicated petitioner. Lim categorically testified that he saw four persons emerging from

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[13] G.R. Nos. 137610-11, February 6, 2002, 376 SCRA 360, 373.

[14] G.R. No. 138266, April 30, 2003, 402 SCRA 299, 308.

[15] *People v. Legaspi*, G.R. Nos. 136164-65, April 20, 2001, 357 SCRA 234, 240-241.

the clump of banana plants; that two of them were armed with short firearms; that said armed persons aimed their firearms at him; that Sareño, while in the act of running away, was shot by Tuason; that Sareño was able to escape; that he remained where he was because, as a polio victim, he could not run; that Flores shot him; that he fell face down and played dead; that Nicolas kicked him to make sure that he is dead; that Tuason divested him of his money and necklace; and that, because of familiarity, proximity and the light coming from the fluorescent lamps lighting the gasoline station, he was able to identify the assailants as Tuason, Flores, Nicolas, and Absalon.[16]

Q: You said while (sic) ago that while you and your companion your helper Mr. William Sareno was on the left portion of your gasoline station you were surprised to see thereat four (4) persons coming out from nowhere. The question is this, what happened after you saw them?

A: Upon seeing the four (4) persons, Jerome Flores, Mike Tuason, Bobit Nicolas and Jerose Absalon, we were surprised, Sir.

Q: Now, you mentioned names, are you telling us now that you were able to identify those persons the first time you saw them?

A: Yes, Sir.

Q: Why were you able to identify them when it was already at around 8:30 in the evening?

A: It is because of our near distance to each other a (sic) and because of the light coming from the fluorescent lamp, Sir.

x x x x x x x x x

Q: Now, was it the first time that you saw the persons of Jerome Flores, Mike Tuazon or Joven Tuazon, Bobit Nicolas and Jerose Absalon on the night of February 19, 2001 at around 8:30 in the evening?

Defense: Leading question, Your Honor.

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[16] TSN, January 22, 2003, pp. 6-15.

Court: Answer.

A: Long ago because Jerome Flores is the first cousin of my wife, Sir.

Q: You said that Jerome Flores is the first cousin of your wife, why Mr. witness?

A: His father Honorable SB Flores and my mother-in-law, the mother of Mary Grace Flores are siblings, Sir.

Q: You mentioned of certain Mary Grace to whom are you referring to?

A: My wife, Sir.

Q: How about Mike Tuazon, how well did you know Mike Tuazon before the incident on February 19, 2001?

A: I have known him since he was a small child and they were also a native of Tibiao, Sir.

Q: How about the accused Bobit Nicolas, how well did you know the person of Bobit Nicolas prior to February 19, 2001?

A: He's also a native of Tibiao, Sir.

Q: How about Jerose Absalon?

A: The same reason, Sir.

Q: So what happened after the four (4) accused came out from nowhere within the premises of your gasoline station, Mr. witness?

A: I was startled upon seeing the four (4) of them especially that Jerome Flores and Mike Tuazon were carrying different firearms and aiming at me, Sir.

Q: And what happened after that?

A: Without saying anything, Mike Tuazon shot William Sareno who ran, Sir.

Q: Are you telling me that William Sareno was shot while running?

A: He was about to run when Mike Tuazon shot him, Sir.

x x x x x x x x x

Q: You said that while William Sareno your companion was about to run, a shot was heard Mr. witness. Now, where did the shoot came from?

A: From Mike Tuazon, Sir.

Q: Are you telling us that you saw Mike Tuazon holding a firearm?

A: Yes, Sir.

Q: Was he holding a long or short firearm Mr. Witness?

A: Short firearm, Sir.

Q: Now, after you heard the first gunshot coming from Mike Tuazon, what did you do if you did anything?

A: I remained standing while still facing them because I could not run, Sir.

Q: Did you not attempt to flee, Mr. Witness?

A: No, because I could not run, Sir.

Q: So, what happened?

A: That was the time when Jerome Flores shot me, Sir.

Q: Are you telling us now that another gunshot came from the group of the accused, Mr. witness?

A: Yes, Sir.

Q: And that gunshot came from certain Jerome Flores?

A: Yes, Sir.

Q: For about how many seconds did it come to pass when you heard the first shot and you heard the second shot which you said it came from Jerome Flore (sic), Mr. witness?

A: Less than three (3) seconds because it immediately followed, Sir.

Q: Immediately thereafter?

A: Yes, Sir.

Q: You said that the first gunshot came from Mike Tuazon and the second one came from Jerome Flores?

A: Yes, Sir.

Q: How about the accused Bobit Nicolas and Jerose Absalon, where were they then at that time when you heard the first and second shot?

A: They were just standing there waiting, Sir.

Q: You said that immediately thereafter after William Sareno was shot upon by Mike Tuazon and you were likewise shot upon by a certain Jerome Flores the accused in this case, were you hit Mr. witness?

A: Yes, Sir.

Q: Where?

A: On the left chest, Sir.

Q: What happened after you were hit on your left breast by a gunshot coming from Jerome Flores?

A: I fell down, Sir.

Q: You said you fell down, you fell down on your back or you fell down face down?

A: Face down, Sir.

Q: So, what happened after that?

A: I felt that the four (4) of them surrounded me and I heard Bobit Nicolas uttered, "Be sure that he is dead." Then he kicked me, Sir.

Q: You were kicked by Bobit Nicolas?

A: Yes, Sir.

Q: And what happened after you were kicked by Bobit Nicolas?

A: I play dead, Sir.

Q: You play dead?

A: Yes, Sir.

Q: And what else happened?

A: I felt that Mike Tuazon took the money from my pocket, Sir.

Q: And what else happened?

A: Mike Tuazon also took my necklace aside from the money from my pocket, Sir.

We find petitioner's alibi not deserving of merit. It is settled that an alibi is an inherently weak defense, easy to fabricate and highly unreliable. For said defense to prosper, the accused must not only prove that he was at some other place at the time the crime was committed but that it was, likewise, physically impossible for him to be at the *locus criminis* at the time of the alleged crime.[17]

The prosecution showed that it was not physically impossible for petitioner to be at the *locus criminis* since, by his own admission, the subject Petron gasoline station is only one kilometer away from Carolina Store, where he allegedly was in the evening of February 19, 2001.

WHEREFORE, the January 16, 2008 Decision of the Court of Appeals in CA-G.R. CR No. 00327 which affirmed the September 14, 2005 Joint Decision of the Regional Trial Court of Antique, Branch 64 finding petitioner Jerome Flores guilty of Frustrated Homicide in Criminal Case No. 0489, and sentencing him to an indeterminate imprisonment of 4 years and 2 months of *prision correccional* as minimum to 8 years, 8 months and 1 day of *prision mayor* as maximum and ordering him to pay Ronald Lim, jointly and severally with his co-accused, P30,000.00 as civil indemnity and ₱72,397.05 as actual damages is *AFFIRMED*.

SO ORDERED.

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

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[17] *People v. Mansueto*, G.R. No. 135196, July 31, 2000, 336 SCRA 715, 734.

[*] In lieu of Associate Justice Antonio Eduardo B. Nachura per raffle dated September 30, 2009.

SECOND DIVISION

[G.R. No. 181744. October 2, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROY BACUS,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; CONVICTION THEREOF MAY BE BASED SOLELY ON THE TESTIMONY OF THE VICTIM IF IT IS CREDIBLE, NATURAL, CONVINCING AND CONSISTENT WITH HUMAN NATURE AND NORMAL COURSE OF THINGS. — In view of the intrinsic nature of rape where only two persons are usually involved, extreme vigilance must be exercised in examining the testimony of the complainant, for a conviction for rape may lie based solely on her testimony if it is **credible, natural, convincing and consistent with human nature and the normal course of things.**

2. ID.; ID.; ID.; NOT PRESENT IN CASE AT BAR. — AAA claims that the rape occurred under a cargo truck. The height of the truck from the ground up to the truck's mechanical protrusions at its bottom, as depicted in the photograph, leaves the Court in the dark how the forcible sexual intercourse as described by AAA could have been consummated. This is especially true in light of AAA's claim that she was positioned near the front tires of the truck, near the truck's engine. For within such cramped, confined space, sexual intercourse, unless the actors mutually consent to it, would be impeded, if not hardly consummated. Also significantly noting is the doctor's lack of finding of external physical injury on AAA. Even if AAA's disclaimer that the ground under the truck was stone-lined at the time of the intercourse were credited, with AAA's naked state, it is difficult to comprehend why not even the slightest bruise or injury was found on her body if she indeed was forcibly abused. Further significantly noting is the opinion of the medico-legal officer, who examined AAA about 16 hours after the alleged commission of rape, that within 24 hours fresh bleeding should have taken place, but she found none; and that the healed lacerations on AAA could have been the result of sexual

intercourse that took place more than 24 hours before the examination. This latter opinion aligns with appellant's claim that he had sexual intercourse with AAA on February 2, 1999 or a day before the alleged rape on February 3, 1999. IN FINE, the Court finds that the prosecution failed to discharge its *onus* of proving with moral certainty the guilt of appellant. His 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.*:

His guilt beyond reasonable doubt of Rape having been affirmed by the Court of Appeals, Roy Bacus (appellant) comes to this Court.

The accusatory portion of the Information filed against appellant before the Regional Trial Court (RTC) of Cebu reads:

That on or about the 3rd day of February 1999 at around 11:30 o'clock in the evening, more or less, at sitio Kimba, Barangay San Roque, Municipality of Talisay, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a distant neighbor of the victim AAA, asked permission to accompany her in going home which she consented as the accused was also heading on the same path and direction and while walking together and upon reaching the makeshift shanty where factory workers used to stay he told her to wait for a while as he has to get something from the makeshift shanty which she consented to and while she was looking at the other direction, suddenly and unexpectedly, he grabbed her on her waist and the victim, stunned by his actuation, shouted for help and tried to wriggle out from his hold but he covered her mouth with his left hand while his right hand held a knife which he poked on her neck and warned her not to resist and shout otherwise he would kill her and with lewd design, with deliberate intent to

[*] Per Special Order No. 690 in lieu of the sabbatical leave of Senior Associate Justice Leonardo A. Quisumbing.

have sexual intercourse with her, ordered her to lie down under a parked truck, removed her short and underwear and managed to lie on top of her and through force, threats and intimidation with the use of a knife, did then and there willfully, unlawfully and feloniously have sexual intercourse with her against her will, to the damage and prejudice of the said victim.[1] (Underscoring supplied)

From the evidence for the prosecution, the following version is culled:

At around 11:30 p.m. of February 3, 1999, while AAA, then of 17 summers, was on her way home on board a *trisikad* after discharging her chores as "governess" to a family, she passed by a waiting shed where appellant, a childhood friend, was. On appellant's suggestion, albeit she was initially hesitant, she allowed him to accompany her home.

As they passed by a makeshift hut used by construction workers, appellant went inside the hut and called out "*Bay*," but nobody answered.

As appellant repaired back to AAA who had remained outside, he suddenly pulled AAA by the waist and covered her mouth, and at knifepoint he told her to lie under a nearby cargo truck which is used to carry hollow blocks.

Still at knifepoint, appellant removed AAA's clothes. He then laid himself on top of her and had sexual intercourse with her.

The following day or on February 4, 1999, on the advice of her employer's mother, AAA divulged what befell her to her father BBB who accompanied her to report to the police station. On even date, at 1:15 p.m., AAA was examined by a medico-legal officer, Dr. Nueva Tagaloguin, who came out with the following findings:

Hymen: (+) complete healing laceration at 5 and 8 o' clock position, (+) incomplete healing laceration at 3 o'clock position.

Orifice: admits 1 finger with ease

Vagina:

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[1] Records, pp. 1-2.

Walls: no laceration[2] (Underscoring supplied)

Appellant was thereupon arrested. Hence, the filing of the Information against him.

Admitting having had sexual intercourse with AAA, not, however, on February 3, 1999 but the day before or on February 2, 1999, appellant denied having used force on her. His version goes: He and AAA had been sweethearts since November 8, 1998 and had had sexual intercourse on three occasions, the last being on February 2, 1999. On the night of February 3, 1999, AAA, then intoxicated and high on drugs, went to his hut. As her boyfriend, he was privy to AAA's habitual drug use and he in fact repeatedly tried to dissuade her therefrom. As she was showing him a packet of *shabu*, she asked for ₱200.00 to pay off a debt, but he refused. He was set to bring her home but she refused, so he accompanied her to the waiting shed and gave her ₱50 for fare.

Raising the improbability of committing rape under the facts and circumstances described by AAA, given, among other things, the limited space under the cargo truck on the stone-lined ground, appellant offered in evidence a photograph of the cargo truck, Exhibit "1".[3]

Significantly, AAA admitted that the truck depicted in the photograph was the same truck underneath which she claimed to have been raped. She, however, denied that stones were littered under the truck at the time of the incident.

Finding appellant guilty as charged, Branch 18 of the RTC Cebu disposed:

WHEREFORE, premises considered, JUDGMENT is hereby rendered convicting accused Roy Bacus of the crime of RAPE and he is hereby imposed to suffer the penalty of *RECLUSION PERPETUA* with the inherent accessory penalties provided by law; to indemnify the victim in the sum of ₱50,000.00 as moral damages and to pay the costs.

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[2] *Id.* at 9.

[3] *Id.* at 96.

SO ORDERED.[4]

The Court of Appeals, to which this Court referred the case pursuant to *People v. Mateo*,[5] affirmed appellant's conviction in this wise:

[T]he victim never faltered in her assertions that she was ravished by accused-appellant on February 3, 1999. Her testimony, as observed by the lower court, is clear and positive. She remained steadfast in her claim that accused-appellant sexually abused her. Rape victims, especially those who are of tender age, would not normally concoct a story of defloration allow an examination of their private parts and undergo a public trial if they were not motivated solely by the desire to have their ravishers apprehended and punished. Likewise, the crying of AAA during her testimony is eloquent evidence of the credibility of the rape charge with verity born out of human nature and experience.[6] (Citations omitted; underscoring supplied)

The appellate court modified, however, the trial court's decision by additionally awarding civil indemnity. Thus it disposed:

WHEREFORE, in view of all the foregoing, the assailed Decision of the Regional Trial Court dated September 28, 2000 finding accused-appellant Roy Bacus guilty beyond reasonable doubt of Rape and imposing the penalty of *Reclusion Perpetua* is hereby **AFFIRMED with MODIFICATION**. Accordingly, accused-appellant is ordered to indemnify AAA the amount of ₱50,000.00 as civil indemnity in addition to the ₱50,000.00 as moral damages imposed upon by the lower court.

SO ORDERED.[7] (Emphasis in the original; underscoring supplied)

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[4] *Id.* at 124.

[5] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640. The case modified the pertinent provisions of the Revised Rules on Criminal Procedure, more particularly Section 3 and Section 10 of Rule 122, Section 13 of Rule 124, Section 3 of Rule 125 insofar as they provide for direct appeals from the Regional Trial Courts to the Supreme Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment and allowed intermediate review by the Court of Appeals before such cases are elevated to the Supreme Court.

[6] *Rollo*, pp. 4-30, 20.

[7] *Id.* at 30.

In the main, appellant assails the credibility of the testimony of AAA.

In view of the intrinsic nature of rape where only two persons are usually involved, extreme vigilance must be exercised in examining the testimony of the complainant,[8] for a conviction for rape may lie based solely on her testimony if it is **credible, natural, convincing and consistent with human nature and the normal course of things**.[9]

AAA claims that the rape occurred under a cargo truck. The height of the truck from the ground up to the truck's mechanical protrusions at its bottom, as depicted in the photograph, leaves the Court in the dark how the forcible sexual intercourse as described by AAA could have been consummated. This is especially true in light of AAA's claim that she was positioned near the front tires of the truck,[10] near the truck's engine. For within such cramped, confined space, sexual intercourse, unless the actors mutually consent to it, would be impeded, if not hardly consummated.

Also significantly noting is the doctor's lack of finding of external physical injury on AAA.[11] Even if AAA's disclaimer that the ground under the truck was stone-lined at the time of the intercourse were credited, with AAA's naked state, it is difficult to comprehend why not even the slightest bruise or injury was found on her body if she indeed was forcibly abused.

Further significantly noting is the opinion of the medico-legal officer, who examined AAA about 16 hours after the alleged commission of rape, that within 24 hours fresh bleeding should have taken place, but she found none; and that the healed lacerations on AAA could have been the result of sexual intercourse that took place more than 24 hours before the

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[8] *People v. Espino, Jr.*, G.R. No. 176742, June 17, 2008, 554 SCRA 682, 696.

[9] *People v. Malibiran*, G.R. No. 173471, March 17, 2009.

[10] TSN, September 2, 1999, p. 9.

[11] TSN, May 28, 1999, p. 4.

examination.[12] This latter opinion aligns with appellant's claim that he had sexual intercourse with AAA on February 2, 1999 or a day before the alleged rape on February 3, 1999.

IN FINE, the Court finds that the prosecution failed to discharge its *onus* of proving with moral certainty the guilt of appellant. His acquittal is thus in order.

WHEREFORE, the Decision of August 14, 2007 of the Court of Appeals is *REVERSED and SET ASIDE*. Appellant, Roy Bacus, is *ACQUITTED* of the crime charged on the ground of reasonable doubt.

The Director of the Bureau of Corrections is DIRECTED to cause the immediate release of appellant, unless he is being lawfully detained for another cause; and to inform the Court of the date of his release, or the reasons for his continued confinement, within ten (10) days from notice.

SO ORDERED.

Ynares-Santiago,[**] *Peralta,*[***] *Del Castillo,* and *Abad, JJ.*, concur.

EN BANC

[G.R. No. 181869. October 2, 2009]

ISMUNLATIP H. SUHURI, *petitioner, vs.* **THE HONORABLE COMMISSION ON ELECTIONS (*En Banc*), THE MUNICIPAL BOARD OF CANVASSERS**

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

[***] Additional member per Special Order No. 691.

[***] Additional member per Special Order No. 711.

OF PATIKUL, SULU and KABIR E. HAYUDINI, *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTIONS; OMNIBUS ELECTION CODE; PRE-PROCLAMATION CONTROVERSY; DEFINED. — A pre-proclamation controversy, according to Section 1, Article XX of the *Omnibus Election Code*, refers to: xxx any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of parties before the board or directly with the Commission, or any matter raised under Sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of the election returns.

2. ID.; ID.; ID.; ID.; SCOPE OF PRE-PROCLAMATION CONTROVERSY; ENUMERATION, RESTRICTIVE AND EXCLUSIVE. — Section 243 of the *Omnibus Election Code* enumerates the scope of a pre-proclamation controversy, as follows: Sec. 243. *Issue that may be raised in pre-proclamation controversy* – The following shall be proper issues that may be raised in a pre-proclamation controversy: (a) Illegal composition or proceedings of the board of canvassers; (b) The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235, and 236 of this Code; (c) The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and (d) When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates. Clearly, Section 243, *supra*, limits a pre-proclamation controversy to the questions enumerated therein. The enumeration is restrictive and exclusive. Resultantly, the petition for a pre-proclamation controversy must fail in the absence of any clear showing or proof that the election returns canvassed are incomplete or contain material defects (Section 234, *Omnibus Election Code*); or appear to have been tampered with, falsified or prepared

under duress (Section 235, *Omnibus Election Code*); or contain discrepancies in the votes credited to any candidate, the difference of which affects the result of the election (Section 236, *Omnibus Election Code*). To be noted, too, is that in a pre-proclamation controversy, the COMELEC is restricted to an examination of the election returns and is without jurisdiction to go beyond or behind the election returns and to investigate election irregularities. For as long as the election returns appear to be authentic and duly accomplished on their faces, the Board of Canvassers cannot look beyond or behind the election returns in order to verify allegations of irregularities in the casting or counting of votes.

3. ID.; ID.; WHEN JUDICIAL NOTICE IS APPLIED. — Judicial notice is properly taken of the fact that the conduct of elections in many parts of this country, particularly in areas like Patikul, Sulu, often come under circumstances less than ideal and convenient for the officials administering the elections; and of the fact that the process of elections usually involves sleepless nights, tiresome work, and constant dangers to the lives and personal safeties of the many officials who work to see to it that the elections are orderly and peaceful and their results are obtained smoothly and with the least delay. We can easily conclude that such trying circumstances often lead to unintended omissions in form similar to those Suhuri pointed out.

4. ID.; ID.; COMMISSION ON ELECTIONS (COMELEC); DOCTRINE OF STATISTICAL IMPROBABILITY; EFFECT THEREOF ON THE POWER OF THE COMELEC TO REJECT THE RESULTS REFLECTED IN THE ELECTION RETURNS; CONSTRUED. — The doctrine of statistical improbability was first pronounced in *Lagumbay v. Commission on Elections*, in which the Court upheld the power and duty of the COMELEC to reject the returns of about 50 precincts affecting the elections of Senators, because their results were "contrary to all statistical probabilities," thus: x x x *Lagumbay* expounded on the doctrine of statistical improbability and the doctrine's effect on the power of the COMELEC to reject the results reflected in the election returns when such returns showed *prima facie* that they did not reflect the true and valid reports of regular voting, thus: x x x Under *Lagumbay*, therefore, the doctrine of statistical improbability

is applied only where the unique uniformity of tally of all the votes cast in favor of all the candidates belonging to one party *and* the systematic blanking of all the candidates of all the opposing parties appear in the election return. The doctrine has no application where there is *neither* uniformity of tallies *nor* systematic blanking of the candidates of one party. Thus, the bare fact that a candidate for public office received *no* votes in one or two precincts, standing alone and without more, cannot adequately support a finding that the subject election returns are statistically improbable. Verily, a *zero* vote for a particular candidate in the election returns is but one strand in the web of circumstantial evidence that the electoral returns were prepared under duress, force and intimidation. The Court has thus warned that the doctrine of statistical improbability must be restrictively viewed, with the utmost care being taken lest in penalizing fraudulent and corrupt practices – which is truly called for – innocent voters become disenfranchised, a result that hardly commends itself. Such prudential approach makes us dismiss Suhuri's urging that some of the electoral results had been infected with the taint of statistical improbability as to warrant their exclusion from the canvass in a pre-proclamation controversy. Specifically, his petition and the records nowhere show that his party-mates received a similar number of votes (or lack of any) by which to conclude that there were a unique uniformity of tally *and* a systematic blanking of other candidates belonging to one party.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; EXPLAINED. — In a special civil action for *certiorari*, the petitioner carries the burden of proving not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent for its issuance of the impugned order. Grave abuse of discretion is present "when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law." In other words, the tribunal or administrative body must have issued the assailed decision, order or resolution in a capricious or despotic manner.

APPEARANCES OF COUNSEL

E.L.S. Santiago Law Office for petitioner.
The Solicitor General for public respondent.
Brillantes Navarro Jumamil Arcilla Escolin Martinez & Vivero Law Offices for private respondent.

D E C I S I O N

BERSAMIN, *J.*:

In this special civil action for *certiorari*, the Court again determines whether or not the exclusion of certain election returns from the canvass due to allegations of irregularities and statistical improbability made by a candidate are proper grounds for a pre-proclamation controversy by which to annul the proclamation of his rival as duly-elected.

THE CASE

The Municipal Board of Canvassers (MBC) of Patikul, Sulu had earlier ruled against petitioner Ismunlatip H. Suhuri's plea for the exclusion of 25 election returns from the canvass of votes cast for the 2007 mayoralty race in Patikul, Sulu and then proclaimed respondent Kabir E. Hayudini as the duly-elected Mayor. Appealing to the Commission on Elections (COMELEC), Suhuri insisted on the invalidity of the proclamation because of the existing pre-proclamation controversy involving the exclusion of the 25 election returns. The COMELEC, Second Division, had sustained Suhuri's appeal and nullified Hayudini's proclamation, but the COMELEC *en banc* reversed the Second Division through the assailed resolution of January 29, 2008.

Suhuri thus assails on *certiorari* the January 29, 2008 resolution of the COMELEC *en banc* that reversed the resolution of the Second Division.[1] He claims that the COMELEC *en banc* thereby gravely abused its discretion amounting to lack or excess of jurisdiction.

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[1] *Rollo*, Vol. I, pp. 33-42.

ANTECEDENTS

Suhuri ran for the position of Municipal Mayor of Patikul, Sulu during the May 14, 2007 national and local elections. He was opposed by Hayudini and a third candidate, Datu Jun Tarsum.[2] During the canvassing held on May 17, 2007 within the Sulu State College in Jolo, Sulu, Suhuri orally objected to the inclusion of the election returns from the following 25 precincts, namely: Precincts 09/10A, 11A/12A, 13A/14A, 15A/16A, 17A/18A, 19A/20A, and 21A/22A of Barangay Anuling; Precincts 47A/48A, 49A/50A, and 51A/52A of Barangay Bongkuang; Precincts 87A/88A, 89A/90A, 91A/92A, 93A/94A, 95A/96A, 97A/98A, and 99A/100A of Barangay Langhub; Precincts 101A/102A, 103A/104A, 105A/106A, 107A/108A, and 109A/110A of Barangay Latih; and Precincts 116A/117A, 118A/119A, and 120A of Barangay Maligay. The affected precincts carried a total of 4,686 votes.[3] He later filed with the MBC written petitions regarding such exclusion on May 17, 18 and 19, 2007.[4] He asserted that the 25 election returns were "(1) [o]bviously manufactured; (2) [t]ampered with or falsified; (3) [p]repared under duress; and (4) [characterized by] [s]tatistical improbability."[5]

The MBC ruled against Suhuri in the evening of May 19, 2007 by rejecting his objections to the 25 election returns.[6] Then and there, he manifested his intent to appeal *vis-à-vis* the ruling. He filed his notice of appeal shortly thereafter.[7] In the same evening, the MBC proclaimed Hayudini as the duly elected Mayor for having obtained 7,578 votes as against Suhuri's 6,803 votes based on a complete canvass of the election returns, for a margin of 775 votes in favor of Hayudini.[8]

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[2] *Id.*, pp. 4-5, 112-113.

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

[4] *Id.*, pp. 78-102.

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

[6] *Id.*, p. 75.

[7] *Id.*, p. 76.

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

On May 23, 2007, Suhuri filed a petition-appeal with the COMELEC,[9] docketed as S.P.C. No. 07-118. The petition-appeal was assigned to the Second Division.

On May 25, 2007, Suhuri likewise filed an election protest *ad cautelam* dated May 21, 2007 in the Regional Trial Court (RTC) in Patikul, Sulu to contest the results of the elections for Municipal Mayor of Patikul, Sulu.[10] On June 28, 2007, however, the RTC held the election protest in abeyance upon Suhuri's own motion due to his pending pre-proclamation controversy in S.P.C. 07-118.

In a further move, Suhuri brought a so-called *petition to declare a failure of election with urgent motion to suspend and/or annul the canvass of the election returns* dated May 18, 2007,[11] referring to the results from the 25 precincts in Barangays Anuling, Bongkaung, Langhub, Latih, and Maligay, all within Patikul, Sulu. However, the COMELEC *en banc* denied the petition for insufficiency of evidence on October 9, 2007.[12]

On June 12, 2007, the COMELEC, Second Division, gave due course to Suhuri's petition-appeal.[13]

On July 24, 2007, the COMELEC, Second Division, ruling on Suhuri's petition-appeal, excluded the 25 questioned electoral returns from the canvass for the position of Mayor of Patikul, Sulu; and voided the proclamation of Hayudini as the duly elected Mayor.[14]

In due course, Hayudini moved for the reconsideration of the July 24, 2007 ruling of the Second Division.[15]

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[9] *Id.*, pp. 66-74.

[10] *Id.*, pp. 194-202.

[11] *Id.*, pp. 112-116.

[12] *Rollo*, Vol. II, pp. 566-570.

[13] *Rollo*, Vol. I, pp. 120-122.

[14] *Id.*, pp. 45-57.

[15] *Id.*, pp. 272-294.

Initially resolving Hayudini's *motion for reconsideration*, Commissioners Florentino A. Tuason, Jr. and Nicodemo Ferrer voted in favor of the resolution of the Second Division, while Acting Chairman Resurreccion Z. Borra, Commissioner Romeo A. Brawner and Commissioner Rene V. Sarmiento dissented.[16] Due to the fact that the required majority vote necessary to reverse the resolution of the Second Division was not reached, the COMELEC *en banc* conducted a re-hearing on November 22, 2007 pursuant to Section 6, Rule 18 of the Comelec Rules of Procedure.[17] At the re-hearing, Suhuri presented 20 witnesses, who affirmed and identified their respective affidavits. For his part, Hayudini waived the cross-examination. Thereafter, the parties were required to submit their memoranda, and the appeal was then deemed submitted for resolution.[18]

On January 29, 2008, the COMELEC *en banc* promulgated its assailed resolution,[19] disposing:

> WHEREFORE, premises all considered the Commission (*En Banc*) resolved as it hereby resolves to GRANT the Motion for Reconsideration. The Resolution of the Second Division is hereby REVERSED and SET ASIDE. Consequently, the proclamation of Kabir Hayudini is hereby declared VALID.

ISSUES

In his petition, Suhuri insists that:

I. THE RESPONDENT HONORABLE COMMISSION ON ELECTIONS (*EN BANC*) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT HELD TO REVERSE AND SET ASIDE THE 24 JULY 2007 RESOLUTION OF THE HONORABLE COMMISSSION'S SECOND DIVISION BASED ON THE REPORT OF RESPONDENT MUNICIPAL BOARD OF CANVASSERS BELATEDLY FILED AFTER

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[16] *Id.*, p. 34.

[17] *Id.*, pp. 405-406.

[18] *Id.*, p. 35.

[19] *Supra*, at note 1.

RESPONDENT HAYUDINI'S MOTION FOR RECONSIDERATION, FOR THE SECOND TIME, HAS ALREADY BEEN SUBMITTED FOR DECISION; AND

II. THE RESPONDENT HONORABLE COMMISSION ON ELECTIONS (*EN BANC*) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT HELD THAT THE ISSUE PROFERRED BY PETITIONER DOES NOT INVOLVE A PRE-PROCLAMATION CONTROVERSY.

RULING OF THE COURT

We uphold the assailed resolution of the COMELEC *en banc*.

I

Suhuri's Grounds Were Not Proper for a Pre-Proclamation Controversy

Were Suhuri's grounds for nullifying Hayudini's proclamation as the duly elected Mayor proper for a pre-proclamation controversy?

A pre-proclamation controversy, according to Section 1, Article XX of the *Omnibus Election Code*, refers to:

> xxx any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of parties before the board or directly with the Commission, or any matter raised under Sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of the election returns.

Not every question bearing on or arising from the elections may constitute a ground for a pre-proclamation controversy. Section 243 of the *Omnibus Election Code* enumerates the scope of a pre-proclamation controversy, as follows:

> Sec. 243. *Issue that may be raised in pre-proclamation controversy.* – The following shall be proper issues that may be raised in a pre-proclamation controversy:
>
> (a) Illegal composition or proceedings of the board of canvassers;

(b) The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235, and 236 of this Code;

(c) The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and

(d) When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.

Clearly, Section 243, *supra*, limits a pre-proclamation controversy to the questions enumerated therein. The enumeration is restrictive and exclusive.[20] Resultantly, the petition for a pre-proclamation controversy must fail in the absence of any clear showing or proof that the election returns canvassed are incomplete or contain material defects (Section 234, *Omnibus Election Code*); or appear to have been tampered with, falsified or prepared under duress (Section 235, *Omnibus Election Code*); or contain discrepancies in the votes credited to any candidate, the difference of which affects the result of the election (Section 236, *Omnibus Election Code*).[21]

To be noted, too, is that in a pre-proclamation controversy, the COMELEC is restricted to an examination of the election returns and is without jurisdiction to go beyond or behind the election returns and to investigate election irregularities.[22] For as long as the election returns appear to be authentic and duly accomplished on their faces, the Board of Canvassers cannot look beyond or behind the election returns in order to verify allegations of irregularities in the casting or counting of votes.[23]

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[20] *Matalam v. Commission on Elections*, G.R. No. 123230, April 18, 1997, 271 SCRA 733; *Sanchez v. Commission on Elections*, G.R. No. 78461, August 12, 1987, 153 SCRA 67.

[21] *Sanchez v. Commission on Elections, supra,* at p. 68.

[22] *Matalam v. Commission on Elections*, *supra,* at p. 734.

[23] *Loong v. Comelec*, G.R. Nos. 107814-107815, May 16, 1996, 257 SCRA 1, 2-3.

Suhuri submits that the 25 challenged election returns were defective for being manufactured, tampered with or falsified, and for statistical improbability. He lists the following irregularities to buttress his submission, namely:[24]

i. The election returns for Precinct Nos. 9A/10A and 99A/100A have no signatures and thumbmarks of poll watchers**.** More importantly, the respective poll clerks in the two precincts did not affix their signatures in the election returns.

ii. For Precinct Nos. 11A/12A, 17A/18A, 89A/90A, 91A/92A, 93A/94A and 95A/96A (6 of the 25 contested election returns), petitioner got zero (0)- a statistically improbable result.

iii. For Precinct Nos. 15A/16A, there appears to be two poll watchers who affixed their signatures are the same and appear to have been made by the same and one person**;**

iv. For Precinct Nos. 13A/14A, of the 210 total registered voters, respondent Hayudini garnered a perfect 210 and petitioner got one (1) – a statistically improbable result;

v. For Precinct Nos. 21/A/22A, the names of the members of the Board of Election Inspectors **(**BEI) and the poll watchers appear to have been made by only one person;

vi. For Precinct Nos. 49A/50, the printed names of the poll watchers of the petitioner are printed thereon without their signature, consistent with their Affidavit that they were intimidated into leaving the polling place as early as when they had just presented their appointment papers to the members of the BEI;

vii. For Precinct Nos. 11A/12A, there is only one poll watcher who affixed his signature;

viii. For Precinct Nos. 51A/52A, there is the lack of signature of the third member of the BEI;

ix. For Precinct Nos. 89A/90A, the entries for the precinct no., barangay, city/municipality and province are completely blank while names, signatures and thumb marks of the BEI are complete; and

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[24] *Rollo*, Vol. II, pp. 605-606.

x. For Precinct Nos. 93A/94A, there is only one poll watcher who affixed his name and signature and with no thumb mark;[25]

Suhuri further submits that threat, violence, duress and intimidation attended the preparation of the questioned election returns. As proof, his petition-appeal has included the following affidavits,[26] to wit:

1. The affidavit of Benhar S. Mohammad, attesting that the supporters of Hayudini and his party-mate, gubernatorial candidate Abdulsakur Tan, prevented him from entering the polling place where he was supposed to vote;

2. The joint-affidavit of Angka J. Saradil, Nurhia J. Sidin and Muranda A. Tilah and Injang A. Ajidin, attesting that they were not allowed to vote after being identified as supporters of Suhuri; and that they saw other voters being also prevented from voting;

3. The affidavit of Munning Mandun, a duly appointed watcher, attesting that the persons who cast their votes were not those appearing in the voter's list; and that the *bona fide* voters listed therein were prevented from casting their votes;

4. The joint-affidavit of Sherilyn Sawadjaan, Nurmina Usman, Najir S. Bakil, Merhami S. Bakil, Mubin G. Bakil, Nur-Asiya J. Jumdail and Gabir S. Jumdail, duly appointed poll watchers, attesting that they were not allowed to enter their assigned precincts by known supporters of Hayudini;

5. The joint affidavit of Bennajar Jul, Nelson Jul, Rubin Ambutong and Wahab N. Sanuddin, attesting, among others, that they saw Maligay Barangay Chair Pula Juhul enter the precinct with an identified group of persons; that when affiant Bennajar Jul confronted Juhul regarding his unlawful presence in the precinct, Juhul boxed him, causing his nose to bleed; that the ballots that they had filled as registered voters were not dropped into the ballot box; and that they were told to go home by a member of the Board of Election Inspectors (BEI) of the precinct because the voting had supposedly ended as early as 1:30 *pm*;

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[25] Underlines are provided for emphasis only.

[26] *Rollo*, Vol. I, pp. 205-218.

6. The joint-affidavit of Jarah A. Jumdail, Kahil T. Barrahani, Almezer H. Rashid, Elias O. Villamor, Anna A. Barrahani and Najar T. Jihili, attesting that Hayudini's younger brother Mindal threatened them not to go into their precincts to vote; and that they saw the companions of Mindal accomplish the ballots in said precincts in place of the *bona fide* registered voters therein;

7. The joint affidavit of Munib A. Sabiran, Aldibar Sabiran, Nuramin J. Usman, Sarkiya Usman, and Abdulhan Bakil, duly assigned poll watchers, attesting that they were not allowed to enter their assigned precincts by known supporters of Hayudini;

8. The joint affidavit of Muharram Jul, Kagayan Sanuddin, Amil Elias, Sehon Eli, Weldizon Awwalon, Tayte Sanuddin, Juljamin Sannudin, Hali Sannudin, Pathar Juli and Abduranil Sanuddin, attesting to the illegal intervention of Maligay Chair Juhul in the casting of votes by threatening them with bodily harm, resulting in their not being able to vote;

9. The affidavit of Ermalyn J. Jamasali, a member of the BEI on duty in Precinct 17A/18A, attesting that BEI Chair Rolina Abubakar gave the unused ballots under duress to unidentified men who proceeded to fill them up and handed them to affiant Jamasali to drop in the ballot box; and

10. The affidavit of Police Inspector Francisco K. Panisan, Chief of Police of Patikul, attesting that he received several complaints to the effect that a number of registered voters in the precincts clustered within the Anuling Elementary School were not allowed to vote; and that some voters were physically prevented from getting into their respective precincts.

In fine, Suhuri's submissions and supporting affidavits show that the election returns for Precinct Nos. 51A/52A lacked one of the necessary BEI signatures; that six of the contested election returns lacked some or all of the signatures and/or thumbmarks of the poll watchers; that another six election returns might indicate a statistical improbability of results; and that only one election return had no entries in the spaces for the precinct number, *barangay*, city/municipality and province.[27]

[27] *Id.*, pp. 351-353.

Unfortunately for the petitioner, the cited irregularities and omissions could not be the bases for granting his petition for the exclusion of the 25 election returns in a pre-proclamation controversy.

Firstly, the defects cited by Suhuri were mere irregularities or formal defects that did not warrant the exclusion of the affected election returns. Indeed, the mere attendance or presence of the formal defects did not establish the commission of palpable irregularities in the election returns. As held in *Baterina v. Commission on Elections*,[28] the grounds for the exclusion of election returns from the canvassing as raised by the petitioners' therein – referring to, among others, the failure to close the entries with the signatures of the election inspectors, and the lack of signatures of the petitioners' watchers, *both involving a violation of the rules governing the preparation and delivery of election returns for canvassing* – did not necessarily affect the authenticity and genuineness of the subject election returns as to warrant their exclusion from the canvassing, being but defects in form insufficient to support the conclusion that these had been tampered with or spurious.[29]

In this regard, the Court has said that the conclusion that election returns were obviously manufactured or false and should consequently be disregarded from the canvass must be approached with extreme caution and made only upon the most convincing proof;[30] and that only when the election returns were palpably irregular might they be rejected.[31]

Secondly, the MBC corrected the defects *before* the canvass of the election returns upon finding the cause of the defects to

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[28] *Baterina v. Commission on Elections*, G.R. Nos. 95347-49, January 6, 1992, 205 SCRA 1, 3.

[29] *Id.*, p. 10.

[30] *Estrada v. Navarro*, G.R. No. L-28340, December 29, 1967, 21 SCRA 1514.

[31] *Mutuc v. Commission on Elections*, G.R. No. L-28517, February 21, 1968, 22 SCRA 662, 667.

be satisfactorily explained by the members of the Board of Election Tellers. The MBC's report bears this out, to wit:[32]

> 3. Minutes of the canvass x x x will show that there were only very few election returns that were not signed by some members of the Board of Election Tellers. The Board decided to defer the canvass on those returns and issued written directives to each of the concerned Board of Election Teller to appear before the Board of Canvassers for explanation for such omission. True enough, the summoned members of the Board of Election Tellers who failed to affix their signatures in the return appeared and gave the explanation in open session that they failed to affix their signature not because there was fraud, violence or other irregularities in the preparation thereof, but such omission was caused solely and unwittingly by the fact that they were heavily sleepy, tired, hungry and miserably exhausted in the waiting for the delivery of the election returns. Prior to this, they have been in the different polling centers spread throughout the municipality of Patikul early morning on election day for the preparation of the voting and the voting proper.
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> 4. Some testified that the counting of ballots and the preparation of election returns in their respective precinct was merely lighted by candles outside the school classrooms since the school classrooms were not enough to accommodate all the precincts for the purpose of counting and preparation of election returns. This had unwittingly contributed to the faultless and innocent omission to affix the signature.
>
> 5. In the presence of lawyers from different political parties and candidates, official watchers and before the Board of Canvassers, the members of the Board of Election Tellers affixed their signature on the previously incomplete election returns.
>
> 6. After such completion and towards the end of the canvass, not a single election return appeared to be materially defective x x x.[33]

The COMELEC *en banc* expectedly approved of the MBC's actions, absent any *other* plausible explanation for the defects

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[32] *Rollo*, Vol. I, pp. 408-409.

[33] Underlines are provided for emphasis only.

supported by substantial evidence. In the assailed resolution, the COMELEC *en banc* aptly stated, *viz*:[34]

> We meticulously re-examined the questioned election returns and they all appear to be regular and authentic. No showing of alterations and erasures could be seen on their faces. The re-examination would also show that twenty three (23) of the returns were completely signed and thumbmarked by all the members of the Board of Election Inspectors. Some were signed by at least two (2) watchers. In Precinct Nos. 47A/48A and 91A/92A, all the watchers signed the returns. Only two (2) returns, Precinct Nos. 9A/10A and 99A/100A did not contain the signatures of poll watchers, but were signed and thumbmarked by the Chairmen and Third Members. Even then, this is not a formal defect which would constitute a proper ground for exclusion. This means that the asseverations of the petitioner-appellant has no leg to lean on.[35]

We agree with the COMELEC *en banc*. The actions of the MBC were reasonable and warranted. Judicial notice is properly taken of the fact that the conduct of elections in many parts of this country, particularly in areas like Patikul, Sulu, often come under circumstances less than ideal and convenient for the officials administering the elections; and of the fact that the process of elections usually involved sleepless nights, tiresome work, and constant dangers to the lives and personal safeties of the many officials who work to see to it that the elections are orderly and peaceful and their results are obtained smoothly and with the least delay. We can easily conclude that such trying circumstances often lead to unintended omissions in form similar to those Suhuri pointed out.

Thirdly, the allegation of a statistical improbability reflected in the election returns for Precinct Nos. 11A/12A, 17A/18A, 89A/90A, 91A/92A, 93A/94A and 95A/96A (wherein Suhuri obtained zero) and for Precinct Nos. 13A/14A (wherein Hayudini garnered 210 out of the 211 total registered voters, with Suhuri being credited with one vote) lacks substance and merit.

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[34] *Supra*, at note 1, pp. 38-39.

[35] Underlines are provided for emphasis only.

The doctrine of statistical improbability was first pronounced in *Lagumbay v. Commission on Elections*,[36] in which the Court upheld the power and duty of the COMELEC to reject the returns of about 50 precincts affecting the elections of Senators, because their results were "contrary to all statistical probabilities," thus:

> It appearing therein that — contrary to all statistical probabilities — in the first set, in each precinct the number of registered voters equalled the number of ballots and the number of votes reportedly cast and tallied for each and every candidate of the Liberal Party, the party in power; whereas, all the candidates of the Nacionalista Party got exactly zero; and in the second set, — again contrary to all statistical probabilities — all the reported votes were for candidates of the Liberal Party, all of whom were credited with exactly the same number of votes in each precinct, ranging from 240 in one precinct to 650 in another precinct; whereas, all the candidates of the Nacionalista Party were given exactly zero in all said precincts.

Lagumbay expounded on the doctrine of statistical improbability and the doctrine's effect on the power of the COMELEC to reject the results reflected in the election returns when such returns showed *prima facie* that they did not reflect the true and valid reports of regular voting, thus:[37]

> We opined that the election result in said precincts as reported was utterly improbable and clearly incredible. For it is not likely, in the ordinary course of things, that all the electors of one precinct would, as one man, vote for all the eight candidates of the Liberal Party, without giving a single vote to one of the eight candidates of the Nacionalista Party. Such extraordinary coincidence was quite impossible to believe, knowing that the Nacionalista Party had and has a nationwide organization, with branches in every province, and was, in previous years, the party in power in these islands.
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> We also know from our experience in examining ballots in the three Electoral Tribunals (Presidential, Senate, and House) that a large portion of the electors do not fill all the blanks for senators in their ballots. Indeed, this observation is confirmed by the big

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[36] G.R. No. L-25444, January 31, 1966, 16 SCRA 175.

[37] *Id.*

differences in the votes received by the eight winning senators in this as well as in previous national elections; 2 almost a million votes between the first place and the eight. Furthermore, in 1965, the total number of electors who cast their votes was 6,833,369 (more or less). If every voter had written eight names on his ballot, the total number of votes cast for all the candidates would be that number multiplied by 8, namely 54,666,952. But the total number of votes tallied for the candidates for senator amounted to 49,374,942 only. The difference between the two sums represents the number of ballots that did not contain eight names for senators. In other words, some 5 million ballots did not carry eight names. Of course, this is a rough estimate, because some ballots may have omitted more names, in which case, the number of incomplete ballots would be less. But the general idea and the statistical premise is there.

The same statistical result is deducible from the 1963 election data: total number of electors who voted, 7,712,019; if each of them named eight senators, the total votes tallied should have been 61,696,152, and yet the total number tallied for all the senatorial candidates was 45,812,470 only. A greater number of incomplete ballots.

It must be noted that this is not an instance wherein one return gives to one candidate all the votes in the precinct, even as it gives exactly zero to the other. This is not a case where some senatorial candidates obtain zero exactly, while some others receive a few scattered votes. Here, all the eight candidates of one party garnered all the votes, each of them receiving exactly the same number; whereas all the eight candidates of the other party got precisely nothing.

The main point to remember is that there is no blockvoting nowadays.

What happened to the vote of the Nacionalista inspector? There was one in every precinct. Evidently, either he became a traitor to his party, or was made to sign a false return by force or other illegal means. If he signed voluntarily, but in breach of faith, the Nacionalista inspector betrayed his party; and, any voting or counting of ballots therein, was a sham and a mockery of the national suffrage.

Hence, denying *prima facie* recognition to such returns on the ground that they are manifestly fabricated or falsified, would constitute a practical approach to the Commission's mission to insure free and honest elections.

In *Mitchell vs. Stevens, supra*, the returns showed a noticeable excess of votes over the number of registered voters, and the court rejected the returns as obviously "manufactured". Why? The excess could have been due to the fact that, disregarding all pertinent data, the election officers wrote the number of votes their fancy dictated; and so the return was literally a "manufactured", "fabricated" return. Or maybe because persons other than voters, were permitted to take part and vote; or because registered voters cast more than one ballot each, or because those in charge of the tally sheet falsified their counts. Hence, as the Mitchell decision concluded, the returns were "not true returns . . . but simply manufactured evidences of an attempt to defeat the popular will." All these possibilities and/or probabilities were plain fraudulent practices, resulting in misrepresentation of the election outcome. "Manufactured" was the word used. "Fabricated" or "false" could as well have been employed.

The same *ratio decidendi* applies to the situation in the precincts herein mentioned. These returns were obviously false or fabricated — *prima facie*. Let us take for example, precinct No. 3 of Andong, Lanao del Sur. There were 648 registered voters. According to such return all the eight candidates of the Liberal Party got 648 each, and the eight Nacionalista candidates got exactly zero. We hold such return to be evidently fraudulent or false because of the inherent improbability of such a result — against statistical probabilities — specially because at least one vote should have been received by the Nacionalista candidates, *i.e.*, the vote of the Nacionalista inspector. It is, of course, "possible" that such inspector did not like his party's senatorial line-up; but it is not probable that he disliked all of such candidates, and it is not likely that he favored all the eight candidates of the Liberal Party. Therefore, most probably, he was made to sign an obviously false return, or else he betrayed his party, in which case, the election therein — if any — was no more than a barefaced fraud and a brazen contempt of the popular polls.

Of course we agree that frauds in the holding of the election should be handled — and finally settled — by the corresponding courts or electoral tribunals. That is the general rule, where testimonial or documentary evidence, is necessary; but where the fraud is so palpable from the return itself (*res ipsa loquitur* — the thing speaks for itself), there is no reason to accept it and give it *prima facie* value.

At any rate, fraud or no fraud, the verdict in these fifty precincts may ultimately be ascertained before the Senate Electoral Tribunal.

All we hold now is that the returns show "*prima facie*" that they do not reflect true and valid reports of regular voting. The contrary may be shown by candidate Climaco — in the corresponding election protest.

Under *Lagumbay*, therefore, the doctrine of statistical improbability is applied only where the unique uniformity of tally of all the votes cast in favor of all the candidates belonging to one party *and* the systematic blanking of all the candidates of all the opposing parties appear in the election return.[38] The doctrine has no application where there is *neither* uniformity of tallies *nor* systematic blanking of the candidates of one party.[39] Thus, the bare fact that a candidate for public office received *no* votes in one or two precincts, standing alone and without more, cannot adequately support a finding that the subject election returns are statistically improbable. Verily, a *zero* vote for a particular candidate in the election returns is but one strand in the web of circumstantial evidence that the electoral returns were prepared under duress, force and intimidation.[40]

The Court has thus warned that the doctrine of statistical improbability must be restrictively viewed, with the utmost care being taken lest in penalizing fraudulent and corrupt practices – which is truly called for – innocent voters become disenfranchised, a result that hardly commends itself.[41] Such prudential approach makes us dismiss Suhuri's urging that some of the electoral results had been infected with the taint of statistical improbability as to warrant their exclusion from the canvass in a pre-proclamation controversy. Specifically, his petition and the records nowhere show that his party-mates received a similar number of votes (or lack of any) by which to conclude that there were a unique uniformity of tally *and* a systematic blanking of other candidates belonging to one party.

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[38] See *Sinsuat v. Pendatun*, G.R. No. L-31501, June 30, 1970, 33 SCRA 630.

[39] *Doruelo v. Commission on Elections*, G.R. No. 67746, November 21, 1984, 133 SCRA 376, 377.

[40] *Velayo v. Commission on Elections*, G.R. No. 135613, March 9, 2000, 327 SCRA 713, 743.

[41] *Id*.

Fourthly, Suhuri contends that threat, violence, duress and intimidation were attendant in the preparation of election returns of the 25 contested precincts. He has presented the affidavits of voters and poll watchers from the 25 precincts whose election returns he questioned;[42] the affidavit of one Ermalyn J. Jamasali, a member of the BEI of one of the precincts; and the affidavit of Police Inspector Panisan, Chief of Police of Patikul, Sulu.[43]

Yet, the affidavits, because they referred to incidents that had occurred at the *various precincts* during the voting, did not substantiate Suhuri's allegation of duress, threats, coercion, and intimidation during the preparation or making of the election returns. The COMELEC *en banc* rightly noted and pointed this out in its assailed resolution, to wit:

> x x x the various affidavits presented by the petitioner do not even relate to the fact of the election returns being manufactured or prepared under duress, but to the alleged irregularities in the voting which are proper grounds in an election protest.[44]

Fifthly, BEI member Jamasali narrated in her affidavit her having personally witnessed fraud committed during the elections. Even assuming that the fraud she thereby exposed constituted an irregularity in the conduct of the elections, the incident, being isolated, did not warrant the exclusion of *all* the 25 election returns, but only of the return for the precinct where the fraud had occurred. However, the exclusion of the election returns from that precinct (*i.e.*, Precinct 17A/18A), if called for, would not alter the overall result for the mayoralty contest in Patikul, Sulu,[45] considering that said precinct had only 189 registered voters. We note that Hayudini had a winning margin of 775 votes over Suhuri.

Lastly, Police Inspector Panisan's election report,[46] *albeit* official, would not justify the exclusion of the returns from the

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42 *Rollo*, Vol. I, pp. 205-218.

43 *Id.*, pp. 27-29.

44 *Supra*, at note 1, p. 40.

45 *Rollo*, Vol. I, p. 196.

46 *Id.*, at p. 219.

precincts clustered in the Anuling Elementary School. Concededly, Panisan's report, being hearsay because he had not himself actually witnessed the incidents described in the report, was unreliable and had no value for purposes of Suhuri's petition-appeal. It would not be trite to emphasize that the results of an election should not be annulled based on hearsay evidence.

II
COMELEC *En Banc*
Did Not Gravely Abuse Its Discretion

In a special civil action for *certiorari*, the petitioner carries the burden of proving not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent for its issuance of the impugned order.[47] 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."[48] In other words, the tribunal or administrative body must have issued the assailed decision, order or resolution in a capricious or despotic manner.[49]

Suhuri did not discharge his burden as petitioner, to satisfactorily show that his grounds were proper for a pre-proclamation controversy. We cannot go to his succor, for the COMELEC cannot not look behind or beyond the 25 contested election returns in a pre-proclamation controversy. Moreover, contrary to his urging, the COMELEC *en banc* did not rely mainly on the report submitted by the MBC on December 4, 2007 in order to find against him. It is clear that the COMELEC *en banc* took note of the matters and circumstances that Suhuri

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[47] *Suliguin v. Commission on Elections*, G.R. No. 166046, March 23, 2006, 485 SCRA 219, 233.

[48] *Reyes-Tabujara v. Court of Appeals*, G.R. No. 172813, July 20, 2006, 495 SCRA 844, 857-858.

[49] *Malinias v. Commission on Elections*, 439 Phil. 319, 330.

himself had submitted to its consideration when it rendered its assailed resolution. If it did not accept his submissions, it did not abuse its discretion, because it based its assailed resolution on the established facts, the law, and the pertinent jurisprudence.

Before closing, we stress that the powers of the COMELEC are essentially executive and administrative in nature. This is the reason why the question of whether or not there were terrorism, vote-buying and other irregularities in the elections *should be* ventilated in regular election protests. The COMELEC is not the proper forum for deciding such protests.[50] Accordingly, a party seeking to raise issues, the resolution of which compels or necessitates the COMELEC's piercing the veil of election returns that appear *prima facie* to be regular on their face, has his proper remedy in a regular election contest.[51]

WHEREFORE, we affirm the resolution dated January 29, 2008 issued in S.P.C. No. 07-118 by the Commission on Elections *en banc,* reversing the resolution dated July 24, 2007 of its Second Division; and confirm the proclamation of respondent Kabir E. Hayudini as the duly elected Mayor of the Municipality of Patikul, Province of Sulu in the local elections of May 14, 2007.

The petitioner shall pay the costs of suit.

SO ORDERED.

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

*Quisumbing, J.,*on official leave.

Chico-Nazario and *Brion, JJ.,*on leave.

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[50] *Abes v. Commission on Elections*, G.R. No. L-28348, December 15, 1967, 21 SCRA 1252, 1258.

[51] *Matalam v. Commission on Elections, supra,* at note 20, p. 734.

THIRD DIVISION

[G.R. No. 181969. October 2, 2009]

ROMAGO, INC., *petitioner, vs.* **SIEMENS BUILDING TECHNOLOGIES, INC.,**[*] *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; JURISDICTION; THE ISSUE OF JURISDICTION MAY BE RAISED BY ANY OF THE PARTIES OR MAY BE RECKONED BY THE COURT AT ANY STAGE OF THE PROCEEDINGS, EVEN ON APPEAL, AND IS NOT LOST BY WAIVER OR BY ESTOPPEL; EXCEPTION; SUSTAINED. — Settled doctrine that the issue of jurisdiction may be raised by any of the parties or may be reckoned by the court at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel. However, this case falls within the exception. To repeat, ROMAGO actively participated in the proceedings before the PDRCI; even after an adverse judgment had been rendered by the Arbitrator, it did not assail the PDRCI's jurisdiction over the dispute. In fact, during the proceedings for the confirmation of the Arbitrator's award, ROMAGO's opposition zeroed in on the alleged bias and partiality of the Arbitrator in rendering the decision. Even in its petition for relief from judgment filed with the RTC, the PDRCI's alleged lack of jurisdiction was never raised as an issue. It was only in its petition for *certiorari* with the CA, and after a writ of execution had been issued, that ROMAGO raised the issue of lack of jurisdiction. In *Tijam, et al. v. Sibonghanoy, et al.* we held: [A] party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief,

[*] The present petition impleaded the Court of Appeals, Hon. Zenaida T. Galapate-Laguilles, Presiding Judge of Branch 143, Regional Trial Court of Makati City, and Beda G. Fajardo, Sole Arbitrator of the Philippine Dispute Resolution, Inc., as respondents. However, Section 4, Rule 45 of the Revised Rules of Court provides that the petition shall not implead the lower courts and the judges thereof as petitioners or respondents. Hence, the deletion of the Court of Appeals, of Hon. Galapate-Laguilles and of Beda Fajardo from the title.

repudiate or question that same jurisdiction (*Dean vs. Dean*, 136 Or. 694, 86 A.L.R. 79). x x x the question whether the court had jurisdiction either of the subject-matter of the action or of the parties was not important in such cases because the party is barred from such conduct not because the judgment or order of the Court is valid and conclusive as an adjudication, but for the reason that such a practice cannot be tolerated – obviously for reasons of public policy. Furthermore, it has also been held that after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court x x x [a]nd in *Littleton vs. Burgess*, 16 Wyo. 58, the Court said that it is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty. We had emphasized in *Figueroa v. People* and recently in *Apolonia Banayad Frianela v. Servillano Banayad, Jr.* that estoppel by laches supervenes in exceptional cases similar to the factual milieu in *Tijam v. Sibonghanoy*. It is, therefore, too late in the day for ROMAGO to repudiate the jurisdiction of PDRCI over the dispute, and consequently, of the RTC to confirm the decision.

2. ID.; ID.; PETITION FOR RELIEF FROM JUDGMENT; WHEN MAY BE AVAILED. — A petition for relief under Rule 38 of the Rules of Court is only available against a final and executory judgment. If ROMAGO indeed believed that the PDRCI had no jurisdiction over the suit in the first instance, then all the proceedings therein, including the decision, are null and void. Hence, it would not have filed a petition for relief from judgment. In so doing, ROMAGO recognized that the PDRCI had jurisdiction over the dispute. x x x Unfortunately for ROMAGO, a petition for relief from judgment, being an equitable remedy, is allowed only in exceptional cases, as when there is no other available or adequate remedy. Under Rule 38 of the 1997 Rules of Civil Procedure, it may be availed of only after a judgment, final order or other proceedings were taken against petitioner in any court through fraud, accident, mistake, or excusable negligence. Thus, a party is not entitled to relief under Rule 38, Section 2, of the Rules of Court if he was not prevented from filing his notice of appeal by fraud, accident, mistake, or excusable negligence. Such relief will not be granted to a party who seeks to be relieved from the

effects of the judgment, when the loss of the remedy at law was due to his own negligence or to a mistaken mode of procedure for that matter; otherwise, the petition for relief will be tantamount to reviving the right of appeal, which has already been lost either due to inexcusable negligence or due to a mistake of procedure by counsel.

3. ID.; ID.; ID.; NEGLIGENCE OF FORMER COUNSEL IS GENERALLY NOT ADMITTED AS JUSTIFICATION FOR OPENING A CASE. — It is settled that clients are bound by the mistakes, negligence and omission of their counsel. While, exceptionally, the client may be excused from the failure of counsel, the circumstances obtaining in the present case do not persuade this Court to take exception. Public interest demands an end to every litigation and a belated effort to reopen a case that has already attained finality will serve no purpose other than to delay the administration of justice. To reverse the CA Decision denying petitioner's petition for relief from judgment would put a premium on the negligence of petitioner's former counsel and encourage endless litigation. If the negligence of counsel is generally admitted as a justification for opening cases, there would never be an end to a suit so long as a new counsel can be employed who could allege and show that prior counsel had not been sufficiently diligent, experienced or learned. We, therefore, write *finis* to this litigation.

APPEARANCES OF COUNSEL

Mutia Trinidad Venadas and Verzosa for petitioner.
Siguion Reyna Montecillo and Ongsiako for respondent.

D E C I S I O N

NACHURA, *J.*:

Romago, Inc. (ROMAGO) appeals by *certiorari* the October 19, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 99128 and the February 26, 2008 Resolution[2] denying its reconsideration.

On June 11, 1999, petitioner ROMAGO entered into a Consortium Agreement[3] with respondent Siemens Building Technologies, Inc. (SBTI). Under the agreement, ROMAGO undertook to jointly bid with SBTI for the Mechanical and Electrical Requirements of the Insular Life Corporate Center (the project) to be constructed at the Corporate City in Alabang. SBTI would provide and supply the equipment requirements and components of the project, while ROMAGO would supply and perform all the technical service requirements of the project.

However, Insular Life Assurance Company, Ltd. (Insular Life), the project owner, was not keen on dealing with a consortium of companies. Ultimately, only ROMAGO bidded and was awarded the Sub-contract for the Building Services-Electrical Package of the project.

On December 3, 1999, ROMAGO entered into an Equipment Supply Sub-Contract Agreement (ESSA)[4] with SBTI. For the contract price of ₱100,000,000.00, SBTI undertook to deliver the needed electrical equipment for the project.

SBTI made deliveries, but ROMAGO failed to pay in full. As of March 2001, ROMAGO's unpaid billings amounted to

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Rosalinda Asuncion-Vicente and Enrico A. Lanzanas, concurring; *rollo*, pp. 113-130.

[2] Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Lucas P. Bersamin (now a member of this Court) and Enrico A. Lanzanas, concurring; *rollo*, pp. 133-135.

[3] Annex "D", *rollo*, pp. 187-189.

[4] Annex "E", *id.* at 190-199.

₱6,807,400.92. SBTI demanded payment, but the demand just fell on deaf ears, prompting SBTI to withhold further deliveries of equipment to the jobsite. Consequently, ROMAGO took over all the contractual activities of SBTI.

Later, however, SBTI resumed its deliveries under the ESSA. As of July 25, 2001, it had already delivered 99.81% of all the necessary equipment. ROMAGO, however, refused to pay for the deliveries which, by then, already amounted to ₱16,937,612.68, unless SBTI compensates ROMAGO for the total expenses it allegedly incurred in taking over SBTI's contractual obligations. Demands to pay were made but were not heeded.

Hence, on June 4, 2003, SBTI filed a Request for Arbitration[5] with the Philippine Dispute Resolution Center, Inc. (PDRCI), docketed as PDRCI Case No. 20-2003/SSP.

On July 16, 2003, ROMAGO, through its Vice-President for Operations, Ramon Lorenzo R. Arel, Sr., signed the Agreement to Submit Dispute to Arbitration.[6]

In its Answer[7] filed on May 4, 2004, ROMAGO admitted that the agreed contract price was ₱67,734,457.27, but averred that it made substantial payments. It further alleged that it had claims against SBTI, which should be deducted from the former's liability. Specifically, ROMAGO claimed the cost of installation of transformer and temporary generator sets amounting to ₱184,208.15 and ₱5,040,408.44, respectively. It added that it paid damages amounting to ₱3,627,226.37 to Insular Life and to some of its tenants when the generator sets supplied by SBTI malfunctioned on May 1, 2001. ROMAGO further claimed payments for the miscellaneous items amounting to ₱106,694.49, and for liquidated damages of ₱3,493,223.72 for SBTI's delay in the delivery of the equipment. According to ROMAGO, these items and the ₱300,000.00 cost of arbitration must be deducted from SBTI's claim, thus, leaving a balance of only ₱2,127,471.97.

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[5] Annex "G", *id.* at 202-212.

[6] Annex "H", *id.* at 238.

[7] Annex "J", *id.* at pp. 240-245.

The parties then signed the Terms of Reference (TOR)[8] and, later, the Amended Terms of Reference.[9] Signatories to the TOR and Amended TOR were SBTI's counsel, Atty. Carla E. Santamaria-Seña of Siguion Reyna Montecillo & Ongsiako; ROMAGO's counsel, Atty. Melvin L. Villa of Villa Judan & Associates; and Ramon Lorenzo R. Arel, Sr., ROMAGO's authorized representative.

After due proceedings, Arbitrator Beda Fajardo rendered a Decision on February 1, 2005,[10] disposing that:

Premises considered, this Arbitrator hereby resolves the various issues in this case as follows:

ISSUE NO. 1

[SBTI] is entitled to its claim for ₱16,937,612.68 against [ROMAGO] plus legal interest computed from the time that it made its extrajudicial demand on October 21, 2002 up to its filing of the Request for Arbitration.

ISSUE NO. 2

[SBTI] is entitled to recover attorney's fees from [ROMAGO] in the amount of ₱500,000.00.

ISSUE NO. 3

[SBTI] is entitled to recover its arbitration costs from [ROMAGO] in the sum of ₱916,300.04.

ISSUE NO. 4

[SBTI] is not liable to [ROMAGO's] counterclaim of ₱11,241,058.33.

WHEREFORE, judgment is hereby rendered in favor of Siemens Building [Technologies, Inc.] and against Romago, Inc., ordering the latter to pay the former the sum of **SIXTEEN MILLION NINE HUNDRED THIRTY-SEVEN THOUSAND SIX HUNDRED TWELVE PESOS AND SIXTY-EIGHT CENTAVOS (₱16,937,612.68)**, plus legal interest computed from the time that extrajudicial demand was made

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[8] Annex "K", *id.* at 247-251.

[9] Annex "L", *id.* at 252-257.

[10] Annex "S", *id.* at 370-395.

on October 21, 2002 up to the filing of the Request for Arbitration.

Romago, Inc. is also ordered to pay Siemens Building Technologies, [Inc.] the amount of **FIVE HUNDRED THOUSAND PESOS (₱500,000.00)** for attorney's fees and **NINE HUNDRED SIXTEEN THOUSAND THREE HUNDRED AND 04/100 (₱916,300.04)** for the costs of arbitration.

SO ORDERED.[11]

SBTI, through counsel, was served a copy of the Arbitrator's decision via personal service on February 3, 2005. ROMAGO's counsel, Atty. Villa, was also served copies of the decision through private courier 2GO on February 3, 2005,[12] received on the same day; and through registered mail on February 7, 2005,[13] received on February 28, 2005.

Meanwhile, on February 16, 2005, SBTI filed a petition for confirmation of the Arbitrator's decision[14] with the Regional Trial Court (RTC) of Makati City, docketed as Special Proclamation No. M-6039.

On March 15, 2005, the RTC issued an Order[15] directing ROMAGO to file its answer to the petition within fifteen (15) days from receipt of the Order.

On March 30, 2005, ROMAGO, through its collaborating counsel, Atty. Jose A.V. Evangelista, filed an answer,[16] praying for the denial of the petition and for the setting aside of the Arbitrator's decision. ROMAGO argued that the Arbitrator displayed partiality in hearing the arbitration case and in rendering the decision. It pointed out that the Arbitrator considered SBTI's claims as gospel truth and granted the same *in toto*, but denied ROMAGO's counterclaims despite the preponderance of evidence

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[11] *Id.* at 394-395.

[12] *Id.* at 686.

[13] *Id.* at 685.

[14] Annex "T", *id.* at 399-410.

[15] Annex "U", *id.* at 687.

[16] Annex "V", *id.* at 688-706.

in support of its claim. ROMAGO, thus, contended that SBTI could not ask for the confirmation and execution of the Arbitrator's decision.

After due proceedings, the RTC issued an Order, dated September 5, 2005, declaring the case submitted for decision. Subsequently, on October 10, 2005, Atty. Hernani Barrios entered his appearance as ROMAGO's new counsel,[17] after Atty. Evangelista withdrew his appearance.[18]

On June 22, 2006, the RTC issued an Order[19] granting SBTI's petition, *viz.*:

> After a careful consideration of the parties' respective evidence, the Court resolves to GRANT the Petition.
>
> The instant proceeding is simply a petition for the confirmation of the arbitral award rendered by the PDRCI and for the issuance of a writ for its execution, pursuant to Section 23 of R.A. No. 876. Thus, the only relevant issues to be resolved are: (1) whether there has been an Arbitral Award rendered by PDRCI in favor of the petitioner; and (2) whether such award has attained finality in the absence of any motion to vacate the same.
>
> There is no dispute with respect to the first issue as the existence of the Decision is admitted by the parties. The only point of contention now is the issue of whether or not the same Decision has attained finality and hence may now be confirmed for purposes of execution. It is clear to the Court that the answer to this core issue should be in the affirmative. [SBTI] has for its legal anchor Section 26 of the Arbitration Law, which states that, ***"a motion to vacate, modify or correct the award or decision must be made within 30 days after the award is filed or delivered."***
>
> [ROMAGO] does not dispute that it did not file any Motion to Vacate the Award made by the PDRCI Arbitrator. It insists however that it met the requirements for the timely filing of such Motion when it alleged the grounds for vacation in its Answer to the herein petition. This is faulty reasoning. As correctly argued by [SBTI],

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[17] Records, p. 419.

[18] *Id.* at 414.

[19] Annex "Z", *rollo*, pp. 774-780.

there is a difference between the act of setting forth an affirmative defense and filing a Motion to Vacate within the context of the law on Arbitration. The Arbitration Law requires the losing party to seek vacation of the award by filing a Motion for this purpose within a period of thirty (30) days from service of the Decision. For as a matter of consequence, failure to do so will amount to an unqualified acquiescence to the findings of the Arbitrator, and if he does not, then the award must be confirmed in accordance with Section 23 of the law. The Arbitration Law provides that, *where an award is vacated, the Court, in its discretion, may direct a new hearing either before the same arbitrator(s) or before a new arbitrator(s) to be chosen in the manner provided in the submission of the contract for the selection of the original arbitrator(s) and any provision limiting the time in which the arbitrator(s) may make a decision shall be deemed applicable to the new arbitration and to commence from the date of the court's order. (Sec. 24 par. (d), R.A. 876).*

"It is possible therefore, that when the prevailing party file[d] a petition to confirm a domestic arbitral award, the losing party responds with a counterclaim to have the award vacated. ***There is a time limit, however, to actions to vacate domestic arbitral awards. The party dissatisfied with the award must institute a suit to vacate the award within one (1) month from the time it is served upon him.*** *If he fails to institute the suit to vacate the award within this period, the award becomes final and executory" x x x.*

ROMAGO avers that it actually received its copy of the arbitral Decision on February 28, 2005. But a review of the records would show that it was furnished with a copy of the Arbitral Decision twice. One, by courier on February 3, 2005, received on February 4, 2005 by certain Amie Arciaga, as evidenced by the courier's internet tracking services; and the second, by registered mail on February 28, 2005 under registry receipt no. 5653, issued by the Ayala post office. Thirty (30) days from February 4, 2005, is March 6, 2005. Hence, the filing of an Answer with Affirmative and special defenses to the Petition now pending before this Court on March 30, 2005 is way beyond that period prescribed by law hence rendering the subject arbitral Decision final and executory.[20]

The RTC disposed, thus:

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[20] *Id.* at 778-779.

WHEREFORE, **PREMISES CONSIDERED**, the Court resolves to **CONFIRM** the February 1, 2005 Decision of the Philippine Dispute Resolution Center Inc. (PDRCI) docketed as PDRCI Case No. 20-2003/SSP. As the said Decision has already attained finality, and as prayed for, let a Writ of Execution be issued to enforce the same. Costs against [ROMAGO].

SO ORDERED.[21]

ROMAGO and Atty. Barrios were served copies of the RTC Order on July 3, 2006.[22] Despite receipt of the Order, ROMAGO did not interpose an appeal.

On August 22, 2006, Atty. Barrios withdrew his appearance as counsel for ROMAGO. The Law Office of Mutia Trinidad Venadas & Verzosa thereafter entered its appearance as ROMAGO's new counsel, and filed a Petition for Relief from Judgment.[23] ROMAGO claimed that Atty. Barrios failed to interpose an appeal from the June 22, 2006 Order of the RTC, because he was then at his ancestral house in Cabanatuan City taking a three-week rest after being diagnosed with severe hypertension. Atty. Barrios became aware of the June 22, 2006 Order only on July 20, 2006,[24] upon his return to Manila. By then, the period to appeal had already lapsed. ROMAGO asserted that it should not be bound or prejudiced by the negligence of its previous counsel. It added that there exist sufficient grounds to deny SBTI's application for confirmation of decision. Thus, if given a chance to present its side in court, ROMAGO could prove its bona fide and meritorious claims against SBTI. ROMAGO, therefore, prayed for the setting aside of the Arbitrator's decision and of the June 22, 2006 Order. In the alternative, it prayed that it be allowed to file a Notice of Appeal.

SBTI opposed the petition, arguing that ROMAGO's failure to appeal was far from excusable, and prayed for its denial. It argued that to allow the petition to prosper would put a premium

[21] *Id.* at 780.

[22] *See* records, p. 431-A.

[23] Annex "CC", *rollo*, p. 783.

[24] Annex "AA", *id.* at 781.

on the negligence of ROMAGO's former counsel and would encourage the non-termination of the case. SBTI added that ROMAGO could not invoke the alleged negligence of its counsel as a ground for the setting aside of the Arbitrator's decision, because the negligence took place only after the judgment was rendered.[25]

On December 12, 2006, the RTC denied ROMAGO's petition for relief from judgment, holding that:

> [T]he Supreme [C]ourt has repeatedly reminded lawyers to be circumspect in the handling of their affairs particularly when it comes to pleadings and documents that may spell the difference between the misery or success of their clients. Atty. Barrios, unfortunately, seemed to have failed to exercise that degree of diligence expected of him as [Romago's] counsel, and such failure cannot, by established jurisprudential standards, be described as "excusable." Consequently, such lack of diligence binds his client Romago, Inc., the petitioner herein.
>
> WHEREFORE, the Petition for Relief from Judgment is DENIED for lack of merit. The Order dated 22 June 2006 confirming the 01 February Decision of the P[DR]CI and directing the issuance of a Writ of Execution stands.
>
> SO ORDERED.[26]

ROMAGO filed a motion for reconsideration and to set the case for clarificatory hearing,[27] but the RTC denied the same on March 20, 2007.[28]

ROMAGO then filed a petition for *certiorari* with application for temporary restraining order (TRO) and writ of preliminary injunction[29] with the CA. It sought the annulment and reversal of the RTC Orders dated June 22, 2006, December 12, 2006 and March 20, 2007; and the Arbitrator's decision on grounds of lack of jurisdiction and grave abuse of discretion. ROMAGO contended that the PDRCI and the RTC had no jurisdiction

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[25] Annex "DD", *id.* at 794-806.

[26] Annex "HH", *id.* at 828-830.

[27] Annex "II", *id.* at 831-835.

[28] Annex "JJ", *id.* at 837-838.

[29] Annex "KK", *id.* at 839-882.

over the dispute. Its contract with SBTI, it continued, is a construction contract, cognizable by the Construction Industry Arbitration Commission (CIAC). It, therefore, asserted that the RTC abused its discretion in confirming the Arbitrator's decision.

On October 19, 2007, the CA rendered the now assailed Decision[30] dismissing the petition for *certiorari*. Rejecting ROMAGO's argument, it held that the contract between SBTI and ROMAGO is a supply contract, which may be taken cognizance of by the PDRCI. The CA further held that ROMAGO is already estopped from assailing the PDRCI's jurisdiction over the dispute, after actively participating in all its proceedings. The CA added that the Arbitrator's decision already attained finality; thus, the RTC committed no reversible error or grave abuse of discretion in confirming the decision. The CA also sustained the denial of ROMAGO's petition for relief from judgment. It applied the well-settled rule that the negligence of counsel binds the client, and further held that Atty. Barrios' negligence in checking his mails during his three-week rest could hardly be characterized as excusable. Finally, the CA found no grave abuse of discretion, bias or partiality on the part of the Arbitrator in rendering the decision.

The CA disposed, thus:

> WHEREFORE, premises considered, the assailed orders dated June 22, 2006, December 12, 2006 and March 20, 2007, respectively, of the RTC, Branch 143, Makati City in Special Proceedings No. M-6039, and the decision dated February 1, 2005 in PDRCI Case No. 20-2003/SSP are hereby **AFFIRMED**.
>
> SO ORDERED.[31]

ROMAGO's motion for reconsideration suffered the same fate, as the CA denied the same in its Resolution[32] dated February 26, 2008.

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[30] *Supra* note 1.

[31] *Id.* at 129.

[32] *Supra* note 2.

ROMAGO is now before us faulting the CA for dismissing its petition for *certiorari*. It also prayed for a TRO to enjoin the execution of the Arbitrator's decision. In its April 2, 2009 Resolution, this Court granted ROMAGO's prayer, and issued a TRO enjoining the execution of the Arbitrator's decision.

In the main, ROMAGO seeks the nullification of all the proceedings before the PDRCI, RTC and CA, and the setting aside of all the decisions and orders rendered against it on grounds of lack of jurisdiction, grave abuse of discretion and reversible error. Specifically, ROMAGO asserts that SBTI's claim arose from a construction contract. As such, it is a construction dispute that falls within the jurisdiction of the CIAC. It, thus, insists on a new trial before the CIAC.

The petition is devoid of merit.

Executive Order No. 1008 defines the jurisdiction of CIAC, *viz.*:

> SEC. 4. Jurisdiction. — The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.
>
> The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual provisions; amount of damages and penalties; commencement time and delays; maintenance and defects; payment default of employer or contractor and changes in contract cost.
>
> Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

In *Fort Bonifacio Development Corporation v. Manuel M. Domingo*,[33] the word *construction* is defined as referring to all

[33] G.R. No. 180765, February 27, 2009.

on-site works on buildings or altering structures, from land clearance through completion, including excavation, erection, and assembly and installation of components and equipment.

SBTI's scope of work under the ESSA[34] was:

> 1.01 x x x to furnish all equipment in accordance with the equipment and delivery schedule x x x, to commence and complete the delivery of all equipment in accordance with the Equipment Supply Sub-contract and to delivery (sic) the equipment ready for installation (except for equipment to be supplied by others (sic) parties as specifically excluded herefrom by agreement of the parties hereto) x x x.
>
> 1.02 [to] supply and deliver the equipment in accordance with the Bill of Quantities and Cost Schedule (Attachment Nos. 1 &2) and equipment delivery schedule (Attachment -3) to the jobsite/designated areas including unloading of equipment from the delivery truck.
>
> 1.03 [to] furnish all the necessary shopdrawings (sic) and installation drawings, product brochures/catalogs, spare parts as stipulated on (sic) the Original Bill of Quantities concerning **NEES** supply equipment.
>
> 1.04 [to] have a (sic) responsible representatives for the start up energization including testing and commissioning of **NEES** supply equipment.

By no stretch of the imagination can the ESSA be characterized as a construction contract. Crystal clear from the provisions of the ESSA is that SBTI's role was merely to supply the needed equipment for the Insular Life Corporate Center project. The ESSA is, therefore, a mere supply contract that does not fall within the original and exclusive jurisdiction of CIAC.

We also note that the Consortium Agreement[35] between ROMAGO and SBTI contained an arbitration clause, wherein the parties agreed to submit any dispute between them for arbitration under the Philippine Chamber of Commerce and

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[34] Annex "E", *supra* note 4, at 191.

[35] Annex "D", *supra* note 3.

[36] 6. ARBITRATION:

Industry (PCCI),[36] such as the PDRCI. It is well settled that the arbitral clause in the agreement is a commitment by the parties to submit to arbitration the disputes covered therein. Because that clause is binding, they are expected to abide by it in good faith.[37] The CA, therefore, correctly rejected ROMAGO's assertion that the PDRCI had no jurisdiction over the suit in the first instance.

Furthermore, the issue of jurisdiction was rendered moot by ROMAGO's active participation in the proceedings before the PDRCI and the RTC.

Records show that ROMAGO's Vice-President for Operations, Ramon Lorenzo R. Arel, Sr., signed an Agreement to Submit Dispute to Arbitration before the PDRCI.[38] ROMAGO also concluded and signed the TOR and the Amended TOR confirming its intention and agreement to submit the dispute to PDRCI. It actively participated in the discussion on the merits of the case, even going to the extent of seeking affirmative relief.

We are not unmindful of the settled doctrine that the issue of jurisdiction may be raised by any of the parties or may be reckoned by the court at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel.

However, this case falls within the exception. To repeat, ROMAGO actively participated in the proceedings before the PDRCI; even after an adverse judgment had been rendered by the Arbitrator, it did not assail the PDRCI's jurisdiction over the dispute. In fact, during the proceedings for the confirmation of the Arbitrator's award, ROMAGO's opposition zeroed in on the alleged bias and partiality of the Arbitrator in rendering the decision. Even in its petition for relief from judgment filed with the RTC, the PDRCI's alleged lack of jurisdiction was

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In case of dispute arising from this agreement or any other agreement between the parties herein and relative to the PROJECT, the parties herein agree to submit such dispute to Arbitration in MAKATI before a single arbitrator under the PCCI Conciliation and Arbitration Rules.

[37] *Reyes v. Balde II*, G.R. No. 168384, August 7, 2006, 498 SCRA 186.

[38] Annex "H", *supra* note 6.

never raised as an issue. It was only in its petition for *certiorari* with the CA, and after a writ of execution had been issued, that ROMAGO raised the issue of lack of jurisdiction.

In *Tijam, et al. v. Sibonghanoy, et al.*[39] we held:

> [A] party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction (*Dean vs. Dean*, 136 Or. 694, 86 A.L.R. 79). x x x the question whether the court had jurisdiction either of the subject-matter of the action or of the parties was not important in such cases because the party is barred from such conduct not because the judgment or order of the Court is valid and conclusive as an adjudication, but for the reason that such a practice cannot be tolerated – obviously for reasons of public policy.
>
> Furthermore, it has also been held that after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court x x x [a]nd in *Littleton vs. Burgess*, 16 Wyo. 58, the Court said that it is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty.

We had emphasized in *Figueroa v. People*[40] and recently in *Apolonia Banayad Frianela v. Servillano Banayad, Jr.*[41] that estoppel by laches supervenes in exceptional cases similar to the factual milieu in *Tijam v. Sibonghanoy*. It is, therefore, too late in the day for ROMAGO to repudiate the jurisdiction of PDRCI over the dispute, and consequently, of the RTC to confirm the decision.

Finally, ROMAGO conceded and estopped itself from further questioning the jurisdiction of the PDRCI and the RTC when it filed a petition for relief from judgment. A petition for relief under Rule 38 of the Rules of Court is only available against a final and executory judgment. If ROMAGO indeed believed

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[39] 131 Phil. 556, 564 (1968).

[40] G.R. No. 147406, July 14, 2008, 558 SCRA 63, 81.

[41] G.R. No. 169700, July 30, 2009.

that the PDRCI had no jurisdiction over the suit in the first instance, then all the proceedings therein, including the decision, are null and void. Hence, it would not have filed a petition for relief from judgment. In so doing, ROMAGO recognized that the PDRCI had jurisdiction over the dispute.

Certainly, the Arbitrator's decision, which was confirmed by the RTC, had attained finality when ROMAGO failed to interpose an appeal to the CA. Hence, the decision may now be executed.

In a last ditch effort, ROMAGO attempted to avoid this final and executory judgment by filing a petition for relief from judgment with the RTC.

Unfortunately for ROMAGO, a petition for relief from judgment, being an equitable remedy, is allowed only in exceptional cases, as when there is no other available or adequate remedy. Under Rule 38[42] of the 1997 Rules of Civil Procedure, it may be availed of only after a judgment, final order or other proceedings were taken against petitioner in any court through fraud, accident, mistake, or excusable negligence.[43]

Thus, a party is not entitled to relief under Rule 38, Section 2, of the Rules of Court if he was not prevented from filing his notice of appeal by fraud, accident, mistake, or excusable negligence. Such relief will not be granted to a party who seeks to be relieved from the effects of the judgment, when the loss of the remedy at law was due to his own negligence or to a mistaken mode of procedure for that matter; otherwise, the petition for relief will be tantamount to reviving the right of appeal, which has already been lost either due to inexcusable negligence or due to a mistake of procedure by counsel.[44]

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[42] SEC. 2. Petition for relief from denial of appeal. — When a judgment or final order is rendered by any court in a case, and a party thereto, by fraud, accident, mistake, or excusable negligence, has been prevented from taking an appeal, he may file a petition in such court and in the same case praying that the appeal be given due course.

[43] *Dela Cruz v. Andres*, G.R. No. 161864, April 27, 2007, 522 SCRA 585.

[44] *Fukuzumi v. Sanritsu Great International Corporation*, G.R. No. 140630, August 12, 2004, 436 SCRA 228.

ROMAGO ascribes its failure to appeal to the negligence of its previous counsel, Atty. Barrios. It claims that the receipt of the June 22, 2006 Order was not brought to Atty. Barrios' attention, because the latter was then at his ancestral house taking a three-week rest after being diagnosed with severe hypertension. According to ROMAGO, this is a clear case of excusable negligence on the part of its counsel, warranting a relief from judgment.

We are not convinced.

Records show that ROMAGO was also served a copy of the Order dated June 22, 2006 on July 3, 2006.[45] Yet, it did not bother to contact its counsel to inquire on the status of the case or the possibility of, or the need to, appeal. Clearly, ROMAGO's failure to appeal was not only due to its counsel's negligence, but also due to its own negligence.

Besides, we are not convinced by ROMAGO's claim that its counsel was suffering from high blood pressure at that time.

The affidavit[46] attached to ROMAGO's petition for relief from judgment left blank the names of the doctor and the hospital that Atty. Barrios consulted. Thus:

> 1. On 29 June 2006, I was at my ancestral home in Cabanatuan City. As my pulsating headaches, blurred or impaired vision, nausea and vomiting had become too unbearable, I consulted Dr. _____, the physician in charge in _____ Hospital, Cabanatuan City.[47]

The omission of these important details casts serious doubts on the credibility of the excuse proffered by ROMAGO and its counsel, and strengthens our belief that the said allegation was a mere afterthought to cover up its and its own counsel's collective negligence.

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[45] *See* return card, records, p. 431-A.

[46] Records, p. 445.

[47] *Id.*

It is settled that clients are bound by the mistakes, negligence and omission of their counsel. [48] While, exceptionally, the client may be excused from the failure of counsel,[49] the circumstances obtaining in the present case do not persuade this Court to take exception.

Public interest demands an end to every litigation and a belated effort to reopen a case that has already attained finality will serve no purpose other than to delay the administration of justice. To reverse the CA Decision denying petitioner's petition for relief from judgment would put a premium on the negligence of petitioner's former counsel and encourage endless litigation. If the negligence of counsel is generally admitted as a justification for opening cases, there would never be an end to a suit so long as a new counsel can be employed who could allege and show that prior counsel had not been sufficiently diligent, experienced or learned.[50] We, therefore, write *finis* to this litigation.

WHEREFORE, the petition is *DENIED.* The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 99128 are *AFFIRMED.* The temporary restraining order issued by this Court on April 2, 2008 is *LIFTED.*

Costs against petitioner.

SO ORDERED.

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

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[48] *Insular Life Savings and Trust Company v. Runes, Jr.*, G.R. No. 152530, August 12, 2004, 436 SCRA 317.

[49] (i) where reckless or gross negligence of counsel deprives the client of due process of law; (2) when its application will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so require, such exceptions are unavailing in the instant case. See *Azucena v. Foreign Manpower Services*, G.R. No. 147955, October 25, 2004, 441 SCRA 346, 356.

[50] *Azucena v. Foreign Manpower Services, supra.*

THIRD DIVISION

[G.R. No. 182499. October 2, 2009]

CONCEPCION FAELDONIA, *petitioner, vs.* **TONG YAK GROCERIES, JAYME GO and MERLITA GO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF LABOR OFFICIALS, GENERALLY ACCORDED NOT ONLY RESPECT BUT EVEN FINALITY; EXCEPTION. — The factual findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality. However, when there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined by the courts.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; NATIONAL LABOR RELATIONS COMMISSION; JURISDICTION; PROPERLY EXERCISED IN CASE AT BAR. — We find that the NLRC acted well within its appellate jurisdiction over the labor arbiter in reversing the latter's factual conclusions. The powers and jurisdiction of the NLRC as the country's labor court is well-defined in the Labor Code. Article 223 states that decisions, awards or orders of the Labor Arbiter may be appealed if there is *prima facie* evidence of **abuse of discretion** on the part of the Labor Arbiter, or **serious errors in the finding of facts** are raised which would cause grave or irreparable damage or injury to the appellant while Article 217 specifically provides that the Commission has exclusive appellate jurisdiction over all cases decided by the labor arbiters. Moreover, Article 218 (c) vests the Commission the power to "correct, amend, or waive any error, defect or irregularity whether in substance or form" in the exercise of its appellate jurisdiction.

3. ID.; ID.; TERMINATION OF EMPLOYMENT; THE BURDEN OF PROOF RESTS UPON THE EMPLOYER TO SHOW THAT THE DISMISSAL IS FOR A JUST AND VALID CAUSE. — In termination cases, the burden of proof rests

upon the employer to show that the dismissal is for a just and valid cause and failure to do so would necessarily mean that the dismissal was illegal. In *Philippine Long Distance Telephone Company, Inc. v. Tiamson*, the Court ruled: "The employer's case succeeds or fails on the strength of its evidence and not on the weakness of the employee's defense. If doubt exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. Moreover, the quantum of proof required in determining the legality of an employee's dismissal is only substantial evidence. Substantial evidence is more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise."

4. ID.; ID.; ID.; JUST CAUSES; ABANDONMENT; REQUISITES. — For abandonment to exist, it must be shown that (1) the employee has failed to report for work or must have been absent without valid or justifiable reason; and (2) that there must have been a clear intention to sever the employer-employee relationship as manifested by some overt acts.

5. ID.; ID.; ID.; ID.; ID.; NOT DULY ESTABLISHED IN CASE AT BAR. — Mere absence of petitioner is not sufficient to establish the allegation of abandonment. The prolonged absence of petitioner was not without justifiable reason because it was established that her failure to report for work was due to the injury she suffered in the course of her employment and with sufficient notice to respondents. Petitioner also presented herself for work on the date stated in the medical certificate which stated that she is fit to resume work. Above all, the intention to sever the employer-employee relationship was not duly established by respondents. The prior submission of a medical certificate that petitioner is fit to resume work negates the claim of respondents that the former demanded for separation pay on account of her failing health. Certainly, petitioner cannot demand for separation benefits on the ground of illness while at the same time presenting a certification that she is fit to work. Respondents could have denied petitioner's demand at that instance and ordered her to return to work had it not been their intention to sever petitioner from their employ. Hence, we find the allegation that petitioner

presented herself for work but was refused by respondents more credible.

6. ID.; ID.; ID.; TWO-NOTICE REQUIREMENT; NOT COMPLIED WITH IN CASE AT BAR. — It should be noted that respondents also failed to observe the requirements of procedural due process in effecting petitioner's dismissal. In dismissing an employee, the employer has the burden of proving that the dismissed worker has been served 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. In cases of abandonment of work, the ground alleged by respondents, notice shall be served at the worker's last known address. Here, no such notice was served to petitioner. Hence, for breach of the due process requirements, respondents shall also be liable in the amount of ₱30,000 as indemnity in the form of nominal damages.

APPEARANCES OF COUNSEL

J.P. Vitangcol and *Andres Marcelo Padernal Guerrero & Paras* for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This Petition for Review on *Certiorari* assails the Decision[1] and Resolution[2] of the Court of Appeals (CA) dated February 14, 2007 and March 18, 2008, respectively, in CA-G.R. SP No. 76651 which set aside the Decision[3] of the National Labor Relations Commission (NLRC) dated September 19, 2002 and

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[1] *Rollo*, pp. 19-26. Penned by Associate Justice Lucas P. Bersamin and concurred in by Associate Justices Rodrigo V. Cosico and Estela M. Perlas-Bernabe.

[2] *Id.* at 28. Penned by Associate Justice Lucas P. Bersamin and concurred in by Associate Justices Portia Aliño Hormachuelos and Estela M. Perlas-Bernabe.

[3] *Id.* at 95-110. Penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan.

its Resolution[4] dated January 27, 2003 finding that petitioner Concepcion Faeldonia was illegally dismissed.

Petitioner alleged that she worked at *Tong Yak Groceries* as sales/stock clerk from March 1978 until her dismissal on April 20, 2000; that on January 26, 2000, while on an errand for her employer, she stepped on a rusted half-inch nail which injured her foot and caused her to be absent from work; that respondent Jayme Go advised her to visit Dr. William Ty, who gave her antibiotics and pain killers as medications;[5] that after two weeks of medication, the wounds did not heal and even worsened; that she was brought to the Metropolitan Hospital in Sta. Cruz, Manila where she was also diagnosed to be diabetic; that her foot was operated on and she was confined at the hospital for 24 days; that the respondents paid the hospital bill amounting to ₱22,266.40;[6] that she was released from the hospital on March 1, 2000, but was advised to report daily for wound dressing for three weeks; and that respondents paid for all the expenses.[7]

Petitioner also alleged that on March 10, 2000, she was summoned by respondent Merlita Go who told her that, "*ayaw na namin sa iyo dahil may sakit ka, paengkang-engkang kung lumakad at pagtatawanan ka lamang ng mga kasamahan mo dito*"; however, petitioner did not give much attention to said statement;[8] that she was able to secure from the SSS a Sickness Notification[9] signed by Dr. William Ty certifying that she is fit to resume work by April 20, 2000; that petitioner reported back to work on April 20, 2000 but was told to resign and that she would be given a sum of money to start a business; that when petitioner asked how much financial assistance would be

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4 *Id.* at 115-116.

5 *Id.* at 48.

6 *Id.* at 72.

7 *Id.* at 48.

8 *Id.* at 49, 55.

9 *Id.* at 57.

given her, respondent Merlita Go angrily stated, "*Marami na akong nagastos sa pagpapa-ospital sa iyo.*"[10]

Thereafter, respondents no longer allowed petitioner to go back to work. Hence, she filed a complaint for illegal dismissal with money claims before the NLRC,[11] claiming that her dismissal was not for cause and without due process.

Respondents denied that they dismissed petitioner. They alleged that after petitioner's accident, they had extended the necessary medical and hospital assistance to her amounting to almost ₱70,000.00; that they had been lenient in her attendance at work; that petitioner demanded for separation pay citing her health condition; that they required petitioner to submit a certification issued by a government physician stating her fitness to work,[12] but petitioner no longer reported back for work; that although petitioner submitted a certification that she is fit to resume work, the same was not issued by a government physician; and that they were surprised to receive the Notice of Hearing by the labor tribunal.[13]

On October 29, 2001, the Labor Arbiter rendered a decision finding that petitioner was not dismissed from employment, the dispositive portion of which states:

WHEREFORE, premises considered, judgment is hereby rendered finding that complainant was not dismissed from work, legally or otherwise. Respondents are hereby ordered to pay as follows, to wit:

1. Separation pay
   ₱223.50 x 15 days x 22 years =
   ₱73,755.00 – 52,266.45 = ₱21,488.55

2. Wage differential
   ₱3.50 x 26 x 5.5 months = ₱ 500.50

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[10] *Id.* at 49, 56.

[11] *Id.* at 46.

[12] *Id.* at 59.

[13] *Id.* at 60.

3.	Service incentive leave ₱223.50 x 15	=	₱ 3,352.50
4.	13th Month Pay ₱223.50 x 26 x 2	=	₱11,622.00

All other claims are hereby dismissed for lack of merit.

SO ORDERED.[14]

The Labor Arbiter found that the assistance given by respondents to petitioner by way of medical and hospital expenses amounting to about ₱73,755.00, belies the allegation that respondents asked petitioner to resign without benefits. The arbiter also held that petitioner filed the complaint when her demand for separation pay was not granted for her failure to produce a certification from a public health physician. However, despite the finding that there was no dismissal, the labor arbiter awarded separation pay to petitioner considering her length of service and in accordance with Art. 284 of the Labor Code.

On appeal, the NLRC reversed the decision of the Labor Arbiter, the dispositive portion of which reads:

> WHEREFORE, premises considered, the decision under review is REVERSED and SET ASIDE. Judgment is hereby entered, declaring complainant Concepcion Faeldonia as illegally dismissed from her employment. Accordingly, respondents are ordered to REINSTATE the complainant to her former position without loss of seniority rights, and to pay the said complainant, jointly and severally, FULL BACKWAGES computed from April 20, 2000 until actually reinstated.
>
> Respondents are likewise ordered to pay complainant, her salary differentials in the amount of ₱500.50, Service Incentive Leave Pay of ₱3,352.50 and 13th month pay of ₱11,622.00.
>
> All other claims of the complainant are dismissed for lack of merit.
>
> SO ORDERED.[15]

[14] *Id.* at 83-84.

[15] *Id.* at 109.

The NLRC found that respondents failed to prove that petitioner abandoned her job. It found that the submission of a certification that petitioner is fit to work is contrary to the claim that she is demanding for separation pay for health reasons. The NLRC thus stated:

> Not only were the respondents unable to prove that the complainant abandoned her job. Evidence on hand corroborates the fact that there was no abandonment at all. Firstly, had there been truth to respondent's claim that the complainant opted to be separated from employment due to health reasons, and that she was not able to prove entitlement to separation benefits on account of her failure to produce a medical certification concerning her no longer fit to work as issued by a public health authority, she should not have, in the first place, requested the company physician to accomplish the SSS Sickness Notification form where the latter certified, in clear terms, that complainant was already fit to work on April 20, 2000. Secondly, respondents in fact admitted that the said Certification was submitted to them by the complainant. This again would not be the logical recourse of an employee seeking separation benefits on the representation that she is no longer physically fit to work, since the certification of respondents' physician actually pertains to complainant's being fit to resume her employment. In effect, the facts obtaining bolster complainant's assertion that she endeavored to present herself for resumption of her work, but was refused. This conclusion is far from being conjectural, as it is based on law, evidence on record, and the existing jurisprudential norm on the issue of abandonment. Hence, the finding that complainant was dismissed from employment, and that such dismissal is illegal.[16]

Respondents filed a motion for reconsideration but it was denied; hence, they filed a petition for *certiorari* before the Court of Appeals which issued on February 14, 2007 the herein assailed Decision,[17] the dispositive portion of which states—

> WHEREFORE, the PETITION FOR *CERTIORARI* is GRANTED.
>
> The decision promulgated on September 19, 2002 and the resolution dated January 27, 2003 of the National Labor Relations Commission are NULLIFIED AND SET ASIDE.

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[16] *Id.* at 106-107.

[17] *Id.* at 19-26.

The decision dated October 29, 2001 of the Labor Arbiter is REINSTATED.

SO ORDERED.[18]

Hence, this petition.

Petitioner argues that the Court of Appeals erred in reversing the NLRC and in affirming the Labor Arbiter's ruling. She claims that the appellate court failed to consider the medical certificate she submitted which was issued by the company physician attesting her fitness to resume work. According to petitioner, this only supports her claim that she presented herself for work but was refused. She maintains that the findings of the NLRC were based on substantial evidence while those of the labor arbiter were groundless.

On the other hand, respondents assert that only questions of law may be raised in a petition for review on *certiorari* under Rule 45. Respondents also argue that the findings of the labor arbiter as affirmed by the Court of Appeals should be accorded not only respect but even finality because it was supported by substantial evidence.

The petition is meritorious.

The issue in the instant case is factual: whether petitioner abandoned her work or was illegally dismissed.

The factual findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality.[19] However, when there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined by the courts.[20]

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[18] *Id.* at 26.

[19] *Bughaw v. Treasure Island Industrial Corporation*, G.R. No. 173151, March 28, 2008, 550 SCRA 307, 316.

[20] *R & E Transport, Inc. v. Latag*, G.R. No. 155214, February 13, 2004, 422 SCRA 698, 704-705.

We find that the NLRC acted well within its appellate jurisdiction over the labor arbiter in reversing the latter's factual conclusions. The powers and jurisdiction of the NLRC as the country's labor court is well-defined in the Labor Code. Article 223 states that decisions, awards or orders of the Labor Arbiter may be appealed if there is *prima facie* evidence of **abuse of discretion** on the part of the Labor Arbiter, or **serious errors in the finding of facts** are raised which would cause grave or irreparable damage or injury to the appellant[21] while Article 217 specifically provides that the Commission has exclusive appellate jurisdiction over all cases decided by the labor arbiters. Moreover, Article 218 (c) vests the Commission the power to "correct, amend, or waive any error, defect or irregularity whether in substance or form" in the exercise of its appellate jurisdiction.[22]

In termination cases, the burden of proof rests upon the employer to show that the dismissal is for a just and valid cause and failure to do so would necessarily mean that the dismissal was illegal.[23] In *Philippine Long Distance Telephone Company, Inc. v. Tiamson*, the Court ruled:

> The employer's case succeeds or fails on the strength of its evidence and not on the weakness of the employee's defense. If doubt exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. Moreover, the quantum of proof required in determining the legality of an employee's dismissal is only substantial evidence. Substantial evidence is more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise. [24]

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[21] Article 223 (a), (d).

[22] *Judy Philippines, Inc. v. National Labor Relations Commission*, 352 Phil. 593, 604 (1998).

[23] *Philippine Long Distance Telephone Company, Inc. v. Tiamson*, G.R. Nos. 164684-85, November 11, 2005, 474 SCRA 761, 771.

[24] *Id.*

Following this principle, it is incumbent upon the respondents to prove by substantial evidence that petitioner abandoned her job. For abandonment to exist, it must be shown that (1) the employee has failed to report for work or must have been absent without valid or justifiable reason; and (2) that there must have been a clear intention to sever the employer-employee relationship as manifested by some overt acts.[25]

Respondents failed to discharge this burden. Mere absence of petitioner is not sufficient to establish the allegation of abandonment. The prolonged absence of petitioner was not without justifiable reason because it was established that her failure to report for work was due to the injury she suffered in the course of her employment and with sufficient notice to respondents. Petitioner also presented herself for work on the date stated in the medical certificate which stated that she is fit to resume work.

Above all, the intention to sever the employer-employee relationship was not duly established by respondents. The prior submission of a medical certificate that petitioner is fit to resume work negates the claim of respondents that the former demanded for separation pay on account of her failing health. Certainly, petitioner cannot demand for separation benefits on the ground of illness while at the same time presenting a certification that she is fit to work. Respondents could have denied petitioner's demand at that instance and ordered her to return to work had it not been their intention to sever petitioner from their employ. Hence, we find the allegation that petitioner presented herself for work but was refused by respondents more credible.

It should be noted that respondents also failed to observe the requirements of procedural due process in effecting petitioner's dismissal. In dismissing an employee, the employer has the burden of proving that the dismissed worker has been served two notices: (1) the first to inform the employee of the particular acts or omissions for which the employer seeks his dismissal,

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[25] See *Macahilig v. National Labor Relations Commission*, G.R. No. 158095, November 23, 2007, 538 SCRA 375, 384-385.

and (2) the second to inform the employee of his employer's decision to terminate him.[26]

In cases of abandonment of work, the ground alleged by respondents, notice shall be served at the worker's last known address.[27] Here, no such notice was served to petitioner. Hence, for breach of the due process requirements, respondents shall also be liable in the amount of ₱30,000 as indemnity in the form of nominal damages.[28]

WHEREFORE, the petition is *GRANTED*. The Decision and Resolution of the Court of Appeals dated February 14, 2007 and March 18, 2008, respectively, in CA-G.R. SP No. 76651 are hereby *REVERSED* and *SET ASIDE*. The Decision of the National Labor Relations Commission dated September 19, 2002 declaring Concepcion Faeldonia as illegally dismissed is hereby *REINSTATED* and *AFFIRMED* with *MODIFICATION* that respondents are further ordered to pay nominal damages in the amount of ₱30,000.00.

SO ORDERED.

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

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[26] *Coca-Cola Bottlers Philippines, Inc. v. Garcia*, G.R. No. 159625, January 31, 2008, 543 SCRA 364, 372.

[27] *Supra* at 374.

[28] See *Mobilia Products, Inc. v. Demecillo*, G.R. No. 170669, February 4, 2009, 578 SCRA 39, 50; *Tongko v. The Manufacturers Life Insurance Co. (Phils.), Inc.*, G.R. No. 167622, November 7, 2008, 570 SCRA 503, 527.

SECOND DIVISION

[G.R. No. 184702. October 2, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **CHRISTOPHER TALITA,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS THEREON BY TRIAL COURT, GENERALLY ENTITLED TO GREAT WEIGHT ON APPEAL. — Since this Court's appreciation of the testimonies of the prosecution witnesses is hampered by the fact that its members took no part at the trial, it must of necessity lend weight to the trial court's factual findings especially since there is no showing that its findings are palpably unsound or have nothing to support them in the record. The trial judge had the benefit of observing the witnesses first hand, their emotions or lack of it, their spontaneity or reluctance, their bodily reactions to interrogations, or the slight changes in the expressions on their faces. These send strong signs of falsehood or truth in testimonies. For this reason, the factual findings and conclusions of the trial court from such testimonies are usually entitled to much weight.

2. ID.; ID.; ID.; POSITIVE IDENTIFICATION OF ACCUSED BY WITNESSES, NOT RENDERED IMPOSSIBLE WHEN THE CRIME IS COMMITTED IN BROAD DAYLIGHT; CASE AT BAR. — Appellant Talita of course claims that positive identification is impossible since the shooting was too swift for ample observation. But it was not that swift. Sunshine saw Talita as he walked towards the car and pumped about six shots into the vehicle's occupants. What is more, Talita returned shortly after and fired his gun at Sunshine , giving her further opportunity to observe him. Besides, conditions of visibility at the time favored the witnesses, factors that lend credence to their testimonies. The incident took place in broad daylight. Talita stood just about one meter from Sunshine, and a mere half meter from Maxima. Marty also said that Talita shot him from a distance of about two feet. Under these circumstances, positive identification could not have been elusive.

3. ID.; ID.; MOTIVE TO COMMIT THE CRIME, NOT INDISPENSABLE TO CONVICTION WHEN THE WITNESSES HAVE POSITIVELY IDENTIFIED THE ACCUSED. — The absence of proof that appellant Talita had a motive to commit the crime is of course not indispensable to conviction since the witnesses positively identified him and described with definiteness his role in the crime.

4. ID.; ID.; NON-FLIGHT, CANNOT BE SINGULARLY CONSIDERED AS EVIDENCE OF INNOCENCE. — [T]he fact that Talita did not go into hiding cannot be considered proof of innocence. While it has been held that flight is an indication of guilt, non-flight does not necessarily mean non-guilt or innocence. Evidence of flight is usually taken into account merely to strengthen a finding of guilt. Non-flight cannot be singularly considered as evidence of innocence.

5. ID.; ID.; DENIAL; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION OF THE ACCUSED. — Talita mainly relied on denial which, like alibi, is inherently a weak defense because it can easily be fabricated. The Court held in *People v. Bandin* that denial and alibi cannot be given greater evidentiary value than the testimonies of credible witnesses on affirmative matters. Positive identification, where categorical and consistent and without any showing of ill-motive on the part of the witnesses, prevails over denial which, if not supported by clear and convincing proof, is a negative and self-serving evidence, undeserving of weight in law.

APPEARANCES OF COUNSEL

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

D E C I S I O N

ABAD, *J.*:

This is an appeal from the March 14, 2008 Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. 01747, finding appellant

[1] *Rollo*, pp. 3-24. Penned by Associate Justice Apolinario D. Bruselas, Jr., and concurred in by Associate Justices Bienvenido L. Reyes and Lucenito N. Tagle.

Christopher Talita *a.k.a.* "Praning," who had been charged along with Abraham Cinto and Virgilio Ramiro (still at large), guilty beyond reasonable doubt of the crimes of a) murder in Criminal Case 98-727,[2] b) frustrated murder in Criminal Case 98-728,[3] and c) attempted murder in Criminal Case 98-729,[4] all of the Regional Trial Court of Parañaque City.[5]

The evidence for the prosecution shows that, at about 2:00 p.m. on August 7, 1998, Marty Sarte parked his car before his house on 1st Street, Meliton Ave., Barangay San Antonio, Parañaque, Metro Manila. As his wife, Sunshine Sarte, was about to board the car, she saw appellant Talita walking from behind the car toward its windows. Marty was then at the driver's seat while her aunt, Marilou Tolentino, occupied the backseat. Sunshine's grandmother, Maxima Alejandro, stood in front of the house, bidding goodbye to those who were about to leave.

Suddenly, appellant Talita turned around, pulled out a caliber .38 revolver, fired at least six shots through the window at those in the car, and left. Once the firing ceased, Sunshine saw Marty and Marilou wounded and motionless. She moved toward the driver's side of the car. But Talita returned, this time astride the motorcycle that someone wearing a helmet drove for him. He fired his gun at her but hit the car's hood instead. The motorcycle riders then fled.

Sunshine drove her wounded kin to the Parañaque Medical Center but Marilou was brought in dead. Marty received first aid treatment and was later transferred to the Far Eastern University Hospital where he was confined for over a month. He incurred at least ₱388,478.00 in medical expenses.

Shortly after the shooting, Enriqueta De Ocampo, a traffic enforcer directing traffic along Sucat Intersection, noticed two

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[2] Records, p. 1.

[3] *Id.* at 14.

[4] *Id.* at 27.

[5] Branch 259, presided by Judge Zosimo V. Escano.

men riding a motorcycle. She was unable to see the face of the driver who wore a helmet but she later identified his passenger as appellant Talita. He carried a gun. She saw the motorcycle riders force their way across the intersection, heading toward the Manila Memorial Park.[6]

Meanwhile, SPO4 Alfredo Bagunas got a call from the Tactical Operations Center about the shooting incident. He proceeded to the Parañaque Medical Center to investigate. Sunshine gave him her story. Repairing to the crime scene, he recovered two empty shells and one deformed slug which were fired from a caliber .38 revolver.

On follow-up investigations, Bagunas learned that appellant Talita and Cinto rented a Kawasaki 125cc motorcycle with plate number PK 9770 from Manuelito Balais in the morning of August 7, promising to return it at 8:30 in the evening. Acting on this information, on August 11, 1998 the police arrested Talita and Cinto at Blk. 18, Lot 6, Sitio Imelda, Taguig, Metro Manila. Sunshine and Maxima, who stood in front of the house during the shooting, later identified Talita in a police line-up. Marty also pointed to Talita as the man who took a shot at him.

For their part, appellant Talita and Cinto denied having committed the crimes of which they were charged. While they admitted having rented a motorcycle from Balais, they said that they in turn rented it to Virgilio Ramiro at Severina Village. Ramiro introduced them to two other men who allegedly needed the motorcycle for picking up money somewhere in Sucat. After Ramiro and the two men left, Talita and Cinto lingered at the village's gate. Ramiro returned the motorcycle at about 4:00 p.m. Talita and Cinto then brought it back to Balais at about 8:00 p.m. on the same day.

In a decision dated August 15, 2001, the trial court rejected appellant Talita and Cinto's defense of denial and found them guilty beyond reasonable doubt of the crimes charged. The cases against their fellow accused Ramiro were archived pending his arrest.[7]

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[6] TSN, January 25, 1999, pp. 136-140.

[7] CA *rollo*, pp. 71-81. Penned by Judge Zosimo V. Escano.

In Criminal Case 98-727, the trial court found Talita and Cinto guilty of murder, qualified by the aggravating circumstances of treachery and evident premeditation, and sentenced them to suffer the penalty of death by lethal injection. The court further ordered them to pay Marilou's heirs ₱50,000.00 as civil indemnity and ₱50,000.00 as exemplary damages. In Criminal Case 98-728 for frustrated murder, the trial court sentenced them to suffer imprisonment ranging from 17 years and 4 months to 20 years each and ordered them to jointly pay their victim ₱388,478.00 in actual damages. And, in Criminal Case 98-729 for attempted murder, the trial court sentenced them to suffer imprisonment ranging from 8 years and one day to 10 years.[8]

Both appellant Talita and Cinto appealed to this Court. But, pursuant to our ruling in *People v. Mateo*,[9] their cases were referred to the Court of Appeals for adjudication.[10] On March 14, 2008, the latter court reversed the trial court's decision with respect to Cinto but affirmed it with modification as to appellant Talita. It acquitted Cinto on ground of reasonable doubt given that the prosecution failed to have him clearly identified as the motorcycle's driver.[11]

As regards appellant Talita, the Court of Appeals agreed with the trial court's factual findings and affirmed his conviction. The appeals court held, however, that evident premeditation as aggravating circumstance cannot be appreciated against him since the prosecution failed to show how and when the assailants decided to commit the crimes charged and how much time had elapsed before these were carried out.[12] The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, all premises considered, the instant appeal is PARTLY GRANTED.

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[8] *Id.* at 80-81.

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

[10] CA *rollo*, p. 203.

[11] *Rollo*, pp. 17-19.

[12] *Id*. at 15-17.

In Criminal Case No. 98-727 for murder, the decision of the trial court, insofar as Christopher Talita is concerned, is AFFIRMED with the following modifications:

a. The penalty is reduced to *Reclusion Perpetua*;
b. The award of exemplary damages is reduced to ₱25,000.00; and
c. The appellant Christopher Talita is ordered to pay, on top of the ₱50,000.00 death indemnity, the additional sum of ₱50,000.00 to the heirs of Marilou Tolentino, as moral damages.

In Criminal Case No. 98-728 for frustrated murder, the decision of the trial court is AFFIRMED with the modification that the appellant Christopher Talita is to suffer the indeterminate sentence of eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal* as maximum.

In Criminal Case No. 98-729 for attempted murder, the decision of the trial court is AFFIRMED with the modification that the appellant Christopher Talita is to suffer the indeterminate sentence of four (4) years and two (2) months of *prision correccional* as minimum to ten (10) years of *prision mayor* as maximum.

The appellant Abraham Cinto is ACQUITTED in Criminal Case Nos. 98-727, 98-728 and 98-729 on the ground of reasonable doubt, his identity not having been clearly established. Consequently, the appealed judgment of the trial court with respect to appellant Abraham Cinto is REVERSED and SET ASIDE.

The appellant Abraham Cinto being in detention, his custodian/ Director, Bureau of Corrections, is directed to cause his release from notice hereof and to make a return of such compliance within five (5) days to the Clerk of this Court unless he be held for some other lawful cause.

IT IS SO ORDERED.[13]

Appellant Talita seeks by notice of appeal this Court's review of the decision of the Court of Appeals.[14]

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[13] *Id.* at 22-23.

[14] CA *rollo*, p. 257.

The key issue in this appeal is whether or not it was appellant Talita who walked by the car mentioned in this case and fired his gun at Marilou, Marty, and Sunshine.

Here, the trial court relied, in pinning the liability on appellant Talita, on the testimonies of Sunshine and Maxima, both of whom positively identified him as the assailant. Sunshine pointed to Talita in open court:

Atty. Bautista:

Q: And when you said you saw Talita passing by before he shot you and your companions, where was he in relation to your location?
A: Sir, *nasa likuran po siya*.

Q: Back of what?
A: At the back of the car, sir.

Q: When you saw him for the first time and you said about to board your Nissan Sentra, where was Talita then?
A: Sir *noong pasakay na po kami ng kotse, nakita ko siyang nag-pass by*.

Q: Where was he when you first saw him?
A: *Nasa gilid lang po namin siya.*

Q: And how far was he when you first saw him?
A: *Mga ganyan lang po.* (Witness demonstrated a distance of about one (1) meter).

x x x x x x x x x

Q: You have been mentioning and testifying about this person named Talita. If you will see him again, will you be able to recognize him?
A: Yes, sir.

Q: And will you kindly look around this courtroom now and tell us if this person Talita is present?
A: Yes.

Q: Will you kindly stand up and point to the person of Talita?
A: Yes, sir. (Witness stood up and pointed to a person who, when asked his name, answered Christopher Talita).

x x x x x x x x x

Q: Now, you said that Talita shot you and your companions. Who were your companions madam witness?
A: My companions then are my aunt, my husband and my baby sir.

x x x x x x x x x

Q: What kind of gun did Talita use in shooting at you and your group?
A: *Maliit lang pong baril iyong ginamit niya.*

Q: And how many times did he fire at you and your group if you can still remember?
A: *Maraming beses po*, perhaps more than six (6) times.[15]

Maxima confirmed Sunshine's above statements in this manner:

Atty. Bautista:

Q: You said that Talita approached you, from what direction, left or right?
A: He came from the back portion of the car.

x x x x x x x x x

Q: When the motorcycle stopped, how far was it from the back of the car?
A: *Malapit lang po.*

Atty. Bautista:

Witness demonstrating a distance of about half a meter from the back portion of the car.

x x x x x x x x x

Q: How about you, what were you doing when Talita approached you?
A: I stopped because I saw Talita carrying a gun.

Q: What kind of gun was Talita holding then, a short or long firearm?

Atty. Bautista:

Witness demonstrating a short firearm, Your Honor.

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[15] TSN, December 14, 1998, pp. 72-82.

When Talita approached you from the back of the car, what did you do?

A: He repeatedly shot my daughter, Marilou Tolentino.

Q: How many times did he fire his gun?
A: Around six times and twice at Marty.[16]

Sunshine and Maxima's identification of appellant Talita as the assailant is corroborated by the testimonies of Marty, Sunshine's wounded husband, and Enriqueta De Ocampo, the traffic enforcer, who also identified him.

Since this Court's appreciation of the testimonies of the prosecution witnesses is hampered by the fact that its members took no part at the trial, it must of necessity lend weight to the trial court's factual findings especially since there is no showing that its findings are palpably unsound or have nothing to support them in the record. The trial judge had the benefit of observing the witnesses first hand, their emotions or lack of it, their spontaneity or reluctance, their bodily reactions to interrogations, or the slight changes in the expressions on their faces. These send strong signs of falsehood or truth in testimonies. For this reason, the factual findings and conclusions of the trial court from such testimonies are usually entitled to much weight.[17]

What is more, the trial court found that soon after the police arrested Talita and his co-accused, both Sunshine and Maxima identified them at the police line-up on August 12, 1998, just five days after the shooting incident.[18] No doubt, their recollections of what happened were then still fresh in their minds. The possibility of their committing a mistake is somewhat remote.

Appellant Talita of course claims that positive identification is impossible since the shooting was too swift for ample observation. But it was not that swift. Sunshine saw Talita as

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[16] TSN, November 10, 1998, pp. 43-48.

[17] *Libuit v. People*, G.R. No. 154363, September 13, 2005, 469 SCRA 610, 618.

[18] TSN, October 30, 1998, pp. 16-17.

he walked towards the car and pumped about six shots into the vehicle's occupants. What is more, Talita returned shortly after and fired his gun at Sunshine, giving her further opportunity to observe him. Besides, conditions of visibility at the time favored the witnesses, factors that lend credence to their testimonies.[19] The incident took place in broad daylight. Talita stood just about one meter from Sunshine, and a mere half meter from Maxima. Marty also said that Talita shot him from a distance of about two feet. [20] Under these circumstances, positive identification could not have been elusive.

The absence of proof that appellant Talita had a motive to commit the crime is of course not indispensable to conviction since the witnesses positively identified him and described with definiteness his role in the crime.[21] Likewise, the fact that Talita did not go into hiding cannot be considered proof of innocence. While it has been held that flight is an indication of guilt, non-flight does not necessarily mean non-guilt or innocence. Evidence of flight is usually taken into account merely to strengthen a finding of guilt. Non-flight cannot be singularly considered as evidence of innocence.[22]

Talita mainly relied on denial which, like alibi, is inherently a weak defense because it can easily be fabricated.[23] The Court held in *People v. Bandin*[24] that denial and alibi cannot be given greater evidentiary value than the testimonies of credible witnesses on affirmative matters. Positive identification, where categorical and consistent and without any showing of ill-motive on the part of the witnesses, prevails over denial which, if not supported by clear and convincing proof, is a negative and self-serving evidence, undeserving of weight in law.[25]

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[19] *People v. Dela Cruz*, G.R. No. 175929, December 16, 2008.

[20] TSN, December 7, 1999, pp. 245-246.

[21] *People v. Benito*, 363 Phil. 90, 98-99 (1999).

[22] *People v. Eduarte*, G.R. No. 176566, April 16, 2009.

[23] *People v. Honor*, G.R. No. 175945, April 7, 2009.

[24] G.R. No. 176531, April 24, 2009.

[25] *Danofrata v. People*, 458 Phil. 1018, 1028-1029 (2003).

In sum, the Court finds no compelling reason to disturb the factual findings of the trial court with regard to Talita's culpability. There being no mitigating or aggravating circumstances, the Court of Appeals correctly reduced the penalty for murder in Criminal Case 98-727 from death to *reclusion perpetua*.[26] Accordingly, this Court affirms the modification of penalties in Criminal Cases 98-728 and 98-729 for frustrated murder and attempted murder, respectively. But, while the trial court and the Court of Appeals commonly awarded ₱50,000.00 as death indemnity to the heirs of Marilou Tolentino in Criminal Case 98-727, prevailing jurisprudence dictates an award of P75,000.00.[27] All other monetary awards are sustained.

WHEREFORE, the appealed decision of the Court of Appeals in CA-G.R. CR-H.C. 01747 is *AFFIRMED* with *MODIFICATION*.

In Criminal Case 98-727, accused-appellant Christopher Talita is found GUILTY beyond reasonable doubt of the crime of Murder and is SENTENCED to suffer the penalty of *Reclusion Perpetua*. He is ORDERED to pay the heirs of Marilou Tolentino the sum of ₱75,000.00 as indemnity for death, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages.

In Criminal Case 98-728, accused-appellant Christopher Talita is found GUILTY beyond reasonable doubt of the crime of Frustrated Murder, and is SENTENCED to suffer the indeterminate sentence of eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal* as maximum. He is ORDERED to pay Marty Sarte the sum of P388,478.00 as actual damages.

In Criminal Case 98-729, accused-appellant Christopher Talita is found GUILTY beyond reasonable doubt of the crime of Attempted Murder, and is SENTENCED to suffer the indeterminate sentence of four (4) years and two (2) months of *prision correccional* as minimum to ten (10) years of *prision mayor* as maximum.

SO ORDERED.

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[26] *People v. Balleras*, 432 Phil. 1018, 1027 (2002).

[27] *People v. De Guzman*, G.R. No. 173477, February 4, 2009.

Ynares-Santiago,[*] *Carpio Morales (Acting Chairperson),*[**] *Brion,* and *Del Castillo, JJ.,* concur.

THIRD DIVISION

[G.R. No. 184778. October 2, 2009]

BANGKO SENTRAL NG PILIPINAS MONETARY BOARD and CHUCHI FONACIER, *petitioners, vs.* **HON. NINA G. ANTONIO-VALENZUELA, in her capacity as Regional Trial Court Judge of Manila, Branch 28; RURAL BANK OF PARAÑAQUE, INC.; RURAL BANK OF SAN JOSE (BATANGAS), INC.; RURAL BANK OF CARMEN (CEBU), INC.; PILIPINO RURAL BANK, INC.; PHILIPPINE COUNTRYSIDE RURAL BANK, INC.; RURAL BANK OF CALATAGAN (BATANGAS), INC. (now DYNAMIC RURAL BANK); RURAL BANK OF DARBCI, INC.; RURAL BANK OF KANANGA (LEYTE), INC. (now FIRST INTERSTATE RURAL BANK); RURAL BANK OF BISAYAS MINGLANILLA (now BANK OF EAST ASIA); and SAN PABLO CITY DEVELOPMENT BANK, INC.,** *respondents.*

SYLLABUS

1.REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; PRELIMINARY INJUNCTIVE RELIEF; REQUISITES. — In *Lim v. Court of Appeals* it was stated: "The

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[*] Designated additional member in lieu of Associate Justice Leonardo A. Quisumbing, per Special order No. 691 dated September 4, 2009.

[**] In lieu of Associate Justice Leonardo A. Quisumbing, per Special order No. 690 dated September 4, 2009.

requisites for preliminary injunctive relief are: (a) the invasion of right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage. As such, a writ of preliminary injunction may be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action. The twin requirements of a valid injunction are the existence of a right and its actual or threatened violations. Thus, to be entitled to an injunctive writ, the right to be protected and the violation against that right must be shown."

2. ID.; ID.; ID.; ID.; INVASION OF RIGHTS OF RESPONDENT BANKS, NOT SHOWN IN CASE AT BAR. — The respondent banks have failed to show that they are entitled to copies of the ROEs. They can point to no provision of law, no section in the procedures of the BSP that shows that the BSP is required to give them copies of the ROEs. Sec. 28 of RA 7653, or the New Central Bank Act, which governs examinations of banking institutions, provides that the ROE shall be submitted to the MB; the bank examined is not mentioned as a recipient of the ROE. The respondent banks cannot claim a violation of their right to due process if they are not provided with copies of the ROEs. The same ROEs are based on the lists of findings/exceptions containing the deficiencies found by the SED examiners when they examined the books of the respondent banks. As found by the RTC, these lists of findings/exceptions were furnished to the officers or representatives of the respondent banks, and the respondent banks were required to comment and to undertake remedial measures stated in said lists. Despite these instructions, respondent banks failed to comply with the SED's directive. Respondent banks are already aware of what is required of them by the BSP, and cannot claim violation of their right to due process simply because they are not furnished with copies of the ROEs. x x x [I]f the banks are already aware of the contents of the ROEs, they cannot say that fairness and transparency are not present. If sanctions are to be imposed upon the respondent banks, they are already well aware of the reasons for the sanctions, having been informed via the lists of findings/ exceptions, demolishing that particular argument. The ROEs would then be superfluities to the respondent banks, and should not be the basis for a writ of preliminary injunction.

3. ID.; ID.; ID.; ISSUANCE THEREOF IS AN UNWARRANTED INTERFERENCE WITH THE POWERS OF THE MONETARY BOARD; CASE AT BAR. — The issuance by the RTC of writs of preliminary injunction is an unwarranted interference with the powers of the MB. Secs. 29 and 30 of RA 7653 refer to the appointment of a conservator or a receiver for a bank, which is a power of the MB for which they need the ROEs done by the supervising or examining department. The writs of preliminary injunction issued by the trial court hinder the MB from fulfilling its function under the law. The actions of the MB under Secs. 29 and 30 of RA 7653 "may not be restrained or set aside by the court except on petition for *certiorari* on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction." The writs of preliminary injunction order are precisely what cannot be done under the law by preventing the MB from taking action under either Sec. 29 or Sec. 30 of RA 7653.

4. ID.; ID.; ID.; PRELIMINARY INJUNCTIVE RELIEF; REQUISITES; NECESSITY FOR THE WRIT TO PREVENT SERIOUS DAMAGE, NOT ESTABLISHED IN CASE AT BAR; "CLOSE NOW, HEAR LATER" DOCTRINE, EXPLAINED. — [T]he respondent banks have shown no necessity for the writ of preliminary injunction to prevent serious damage. The serious damage contemplated by the trial court was the possibility of the imposition of sanctions upon respondent banks, even the sanction of closure. Under the law, the sanction of closure could be imposed upon a bank by the BSP even without notice and hearing. The apparent lack of procedural due process would not result in the invalidity of action by the MB. This was the ruling in *Central Bank of the Philippines v. Court of Appeals.* This "close now, hear later" scheme is grounded on practical and legal considerations to prevent unwarranted dissipation of the bank's assets and as a valid exercise of police power to protect the depositors, creditors, stockholders, and the general public. The writ of preliminary injunction cannot, thus, prevent the MB from taking action, by preventing the submission of the ROEs and worse, by preventing the MB from acting on such ROEs. x x x The "close now, hear later" doctrine has already been justified as a measure for the protection of the public interest. Swift action is called for

on the part of the BSP when it finds that a bank is in dire straits. Unless adequate and determined efforts are taken by the government against distressed and mismanaged banks, public faith in the banking system is certain to deteriorate to the prejudice of the national economy itself, not to mention the losses suffered by the bank depositors, creditors, and stockholders, who all deserve the protection of the government.

5. ID.; ID.; ID.; A WRIT OF PRELIMINARY INJUNCTION CANNOT BE ISSUED IN CASES OF CLOSURE OF BANKS BY THE MONETARY BOARD; REMEDY; CASE AT BAR. — The trial court required the MB to respect the respondent banks' right to due process by allowing the respondent banks to view the ROEs and act upon them to forestall any sanctions the MB might impose. Such procedure has no basis in law and does in fact violate the "close now, hear later" doctrine. We held in *Rural Bank of San Miguel, Inc. v. Monetary Board, Bangko Sentral ng Pilipinas*: "It is well-settled that the closure of a bank may be considered as an exercise of police power. The action of the MB on this matter is final and executory. Such exercise may nonetheless be subject to judicial inquiry and can be set aside if found to be in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction." The respondent banks cannot—through seeking a writ of preliminary injunction by appealing to lack of due process, in a roundabout manner—prevent their closure by the MB. Their remedy, as stated, is a subsequent one, which will determine whether the closure of the bank was attended by grave abuse of discretion. Judicial review enters the picture only after the MB has taken action; it cannot prevent such action by the MB. The threat of the imposition of sanctions, even that of closure, does not violate their right to due process, and cannot be the basis for a writ of preliminary injunction.

APPEARANCES OF COUNSEL

Ongkiko Manhit Custodio & Acorda for petitioners.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is a Petition for Review on *Certiorari* under Rule 45 with Prayer for Issuance of a Temporary Restraining Order (TRO)/Writ of Preliminary Injunction, questioning the Decision dated September 30, 2008[1] of the Court of Appeals (CA) in CA-G.R. SP No. 103935. The CA Decision upheld the Order[2] dated June 4, 2008 of the Regional Trial Court (RTC), Branch 28 in Manila, issuing writs of preliminary injunction in Civil Case Nos. 08-119243, 08-119244, 08-119245, 08-119246, 08-119247, 08-119248, 08-119249, 08-119250, 08-119251, and 08-119273, and the Order dated May 21, 2008 that consolidated the civil cases.

The Facts

In September of 2007, the Supervision and Examination Department (SED) of the *Bangko Sentral ng Pilipinas* (BSP) conducted examinations of the books of the following banks: Rural Bank of Parañaque, Inc. (RBPI), Rural Bank of San Jose (Batangas), Inc., Rural Bank of Carmen (Cebu), Inc., Pilipino Rural Bank, Inc., Philippine Countryside Rural Bank, Inc., Rural Bank of Calatagan (Batangas), Inc. (now Dynamic Rural Bank), Rural Bank of Darbci, Inc., Rural Bank of Kananga (Leyte), Inc. (now First Interstate Rural Bank), Rural Bank de Bisayas Minglanilla (now Bank of East Asia), and San Pablo City Development Bank, Inc.

After the examinations, exit conferences were held with the officers or representatives of the banks wherein the SED examiners provided them with copies of Lists of Findings/ Exceptions containing the deficiencies discovered during the

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[1] Penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Bienvenido L. Reyes and Mariflor P. Punzalan Castillo.

[2] Penned by Judge Nina G. Antonio Valenzuela.

examinations. These banks were then required to comment and to undertake the remedial measures stated in these lists within 30 days from their receipt of the lists, which remedial measures included the infusion of additional capital. Though the banks claimed that they made the additional capital infusions, petitioner Chuchi Fonacier, officer-in-charge of the SED, sent separate letters to the Board of Directors of each bank, informing them that the SED found that the banks failed to carry out the required remedial measures. In response, the banks requested that they be given time to obtain BSP approval to amend their Articles of Incorporation, that they have an opportunity to seek investors. They requested as well that the basis for the capital infusion figures be disclosed, and noted that none of them had received the Report of Examination (ROE) which finalizes the audit findings. They also requested meetings with the BSP audit teams to reconcile audit figures. In response, Fonacier reiterated the banks' failure to comply with the directive for additional capital infusions.

On May 12, 2008, the RBPI filed a complaint for nullification of the BSP ROE with application for a TRO and writ of preliminary injunction before the RTC docketed as Civil Case No. 08-119243 against Fonacier, the BSP, Amado M. Tetangco, Jr., Romulo L. Neri, Vicente B. Valdepenas, Jr., Raul A. Boncan, Juanita D. Amatong, Alfredo C. Antonio, and Nelly F. Villafuerte. RBPI prayed that Fonacier, her subordinates, agents, or any other person acting in her behalf be enjoined from submitting the ROE or any similar report to the Monetary Board (MB), or if the ROE had already been submitted, the MB be enjoined from acting on the basis of said ROE, on the allegation that the failure to furnish the bank with a copy of the ROE violated its right to due process.

The Rural Bank of San Jose (Batangas), Inc., Rural Bank of Carmen (Cebu), Inc., Pilipino Rural Bank, Inc., Philippine Countryside Rural Bank, Inc., Rural Bank of Calatagan (Batangas), Inc., Rural Bank of Darbci, Inc., Rural Bank of Kananga (Leyte), Inc., and Rural Bank de Bisayas Minglanilla followed suit, filing complaints with the RTC substantially similar to that of RBPI, including the reliefs prayed for, which were raffled to different branches and docketed as Civil Cases Nos. 08-119244, 08-

119245, 08-119246, 08-119247, 08-119248, 08-119249, 08-119250, and 08-119251, respectively.

On May 13, 2008, the RTC denied the prayer for a TRO of Pilipino Rural Bank, Inc. The bank filed a motion for reconsideration the next day.

On May 14, 2008, Fonacier and the BSP filed their opposition to the application for a TRO and writ of preliminary injunction in Civil Case No. 08-119243 with the RTC. Respondent Judge Nina Antonio-Valenzuela of Branch 28 granted RBPI's prayer for the issuance of a TRO.

The other banks separately filed motions for consolidation of their cases in Branch 28, which motions were granted. Judge Valenzuela set the complaint of Rural Bank of San Jose (Batangas), Inc. for hearing on May 15, 2008. Petitioners assailed the validity of the consolidation of the nine cases before the RTC, alleging that the court had already prejudged the case by the earlier issuance of a TRO in Civil Case No. 08-119243, and moved for the inhibition of respondent judge. Petitioners filed a motion for reconsideration regarding the consolidation of the subject cases.

On May 16, 2008, San Pablo City Development Bank, Inc. filed a similar complaint against the same defendants with the RTC, and this was docketed as Civil Case No. 08-119273 that was later on consolidated with Civil Case No. 08-119243. Petitioners filed an Urgent Motion to Lift/Dissolve the TRO and an Opposition to the earlier motion for reconsideration of Pilipino Rural Bank, Inc.

On May 19, 2008, Judge Valenzuela issued an Order granting the prayer for the issuance of TROs for the other seven cases consolidated with Civil Case No. 08-119243. On May 21, 2008, Judge Valenzuela issued an Order denying petitioners' motion for reconsideration regarding the consolidation of cases in Branch 28. On May 22, 2008, Judge Valenzuela granted the urgent motion for reconsideration of Pilipino Rural Bank, Inc. and issued a TRO similar to the ones earlier issued.

On May 26, 2008, petitioners filed a Motion to Dismiss against all the complaints (except that of the San Pablo City Development Bank, Inc.), on the grounds that the complaints stated no cause of action and that a condition precedent for filing the cases had not been complied with. On May 29, 2008, a hearing was conducted on the application for a TRO and for a writ of preliminary injunction of San Pablo City Development Bank, Inc.

The Ruling of the RTC

After the parties filed their respective memoranda, the RTC, on June 4, 2008, ruled that the banks were entitled to the writs of preliminary injunction prayed for. It held that it had been the practice of the SED to provide the ROEs to the banks before submission to the MB. It further held that as the banks are the subjects of examinations, they are entitled to copies of the ROEs. The denial by petitioners of the banks' requests for copies of the ROEs was held to be a denial of the banks' right to due process.

The dispositive portion of the RTC's order reads:

> WHEREFORE, the Court rules as follows:
>
> 1) *Re: Civil Case No. 08-119243*. Pursuant to Rule 58, Section 4(b) of the Revised Rules of Court, plaintiff Rural Bank of Paranaque Inc. is directed to post a bond executed to the defendants, in the amount of ₱500,000.00 to the effect that the plaintiff will pay to the defendants all damages which they may sustain by reason of the injunction if the Court should finally decide that the plaintiff was not entitled thereto. After posting of the bond and approval thereof, let a writ of preliminary injunction be issued to enjoin and restrain the defendants from submitting the Report of Examination or any other similar report prepared in connection with the examination conducted on the plaintiff, to the Monetary Board. In case such a Report on Examination [sic] or any other similar report prepared in connection with the examination conducted on the plaintiff has been submitted to the Monetary Board, the latter and its members (*i.e.* defendants Tetangco, Neri, Valdepenas, Boncan, Amatong, Antonio, and Villafuerte) are enjoined and restrained from acting on the basis of said report.

2) *Re: Civil Case No. 08-119244*. Pursuant to Rule 58, Section 4(b) of the Revised Rules of Court, plaintiff Rural Bank of San Jose (Batangas), Inc. is directed to post a bond executed to the defendants, in the amount of ₱500,000.00 to the effect that the plaintiff will pay to the defendants all damages which they may sustain by reason of the injunction if the Court should finally decide that the plaintiff was not entitled thereto. After posting of the bond and approval thereof, let a writ of preliminary injunction be issued to enjoin and restrain the defendants from submitting the Report of Examination or any other similar report prepared in connection with the examination conducted on the plaintiff, to the Monetary Board. In case such a Report on Examination [sic] or any other similar report prepared in connection with the examination conducted on the plaintiff has been submitted to the Monetary Board, the latter and its members (*i.e.* defendants Tetangco, Neri, Valdepenas, Boncan, Amatong, Antonio, and Villafuerte) are enjoined and restrained from acting on the basis of said report.

3) *Re: Civil Case No. 08-119245*. Pursuant to Rule 58, Section 4(b) of the Revised Rules of Court, plaintiff Rural Bank of Carmen (Cebu), Inc. is directed to post a bond executed to the defendants, in the amount of ₱500,000.00 to the effect that the plaintiff will pay to the defendants all damages which they may sustain by reason of the injunction if the Court should finally decide that the plaintiff was not entitled thereto. After posting of the bond and approval thereof, let a writ of preliminary injunction be issued to enjoin and restrain the defendants from submitting the Report of Examination or any other similar report prepared in connection with the examination conducted on the plaintiff, to the Monetary Board. In case such a Report on Examination [sic] or any other similar report prepared in connection with the examination conducted on the plaintiff has been submitted to the Monetary Board, the latter and its members (*i.e.* defendants Tetangco, Neri, Valdepenas, Boncan, Amatong, Antonio, and Villafuerte) are enjoined and restrained from acting on the basis of said report.

4) *Re: Civil Case No. 08-119246*. Pursuant to Rule 58, Section 4(b) of the Revised Rules of Court, plaintiff Pilipino Rural Bank Inc. is directed to post a bond executed to the defendants,

in the amount of ₱500,000.00 to the effect that the plaintiff will pay to the defendants all damages which they may sustain by reason of the injunction if the Court should finally decide that the plaintiff was not entitled thereto. After posting of the bond and approval thereof, let a writ of preliminary injunction be issued to enjoin and restrain the defendants from submitting the Report of Examination or any other similar report prepared in connection with the examination conducted on the plaintiff, to the Monetary Board. In case such a Report on Examination [sic] or any other similar report prepared in connection with the examination conducted on the plaintiff has been submitted to the Monetary Board, the latter and its members (i.e. defendants Tetangco, Neri, Valdepenas, Boncan, Amatong, Antonio, and Villafuerte) are enjoined and restrained from acting on the basis of said report.

5) *Re: Civil Case No. 08-119247*. Pursuant to Rule 58, Section 4(b) of the Revised Rules of Court, plaintiff Philippine Countryside Rural Bank Inc. is directed to post a bond executed to the defendants, in the amount of ₱500,000.00 to the effect that the plaintiff will pay to the defendants all damages which they may sustain by reason of the injunction if the Court should finally decide that the plaintiff was not entitled thereto. After posting of the bond and approval thereof, let a writ of preliminary injunction be issued to enjoin and restrain the defendants from submitting the Report of Examination or any other similar report prepared in connection with the examination conducted on the plaintiff, to the Monetary Board. In case such a Report on Examination [sic] or any other similar report prepared in connection with the examination conducted on the plaintiff has been submitted to the Monetary Board, the latter and its members (*i.e.* defendants Tetangco, Neri, Valdepenas, Boncan, Amatong, Antonio, and Villafuerte) are enjoined and restrained from acting on the basis of said report.

6) *Re: Civil Case No. 08-119248*. Pursuant to Rule 58, Section 4(b) of the Revised Rules of Court, plaintiff Dynamic Bank Inc. (Rural Bank of Calatagan) is directed to post a bond executed to the defendants, in the amount of ₱500,000.00 to the effect that the plaintiff will pay to the defendants all damages which they may sustain by reason of the injunction if the Court should finally decide that the plaintiff was not

entitled thereto. After posting of the bond and approval thereof, let a writ of preliminary injunction be issued to enjoin and restrain the defendants from submitting the Report of Examination or any other similar report prepared in connection with the examination conducted on the plaintiff, to the Monetary Board. In case such a Report on Examination [sic] or any other similar report prepared in connection with the examination conducted on the plaintiff has been submitted to the Monetary Board, the latter and its members (*i.e.* defendants Tetangco, Neri, Valdepenas, Boncan, Amatong, Antonio, and Villafuerte) are enjoined and restrained from acting on the basis of said report.

7) *Re: Civil Case No. 08-119249*. Pursuant to Rule 58, Section 4(b) of the Revised Rules of Court, plaintiff Rural Bank of DARBCI, Inc. is directed to post a bond executed to the defendants, in the amount of P500,000.00 to the effect that the plaintiff will pay to the defendants all damages which they may sustain by reason of the injunction if the Court should finally decide that the plaintiff was not entitled thereto. After posting of the bond and approval thereof, let a writ of preliminary injunction be issued to enjoin and restrain the defendants from submitting the Report of Examination or any other similar report prepared in connection with the examination conducted on the plaintiff, to the Monetary Board. In case such a Report on Examination [sic] or any other similar report prepared in connection with the examination conducted on the plaintiff has been submitted to the Monetary Board, the latter and its members (*i.e.* defendants Tetangco, Neri, Valdepenas, Boncan, Amatong, Antonio, and Villafuerte) are enjoined and restrained from acting on the basis of said report.

8) *Re: Civil Case No. 08-119250*. Pursuant to Rule 58, Section 4(b) of the Revised Rules of Court, plaintiff Rural Bank of Kananga Inc. (First Intestate Bank), is directed to post a bond executed to the defendants, in the amount of ₱500,000.00 to the effect that the plaintiff will pay to the defendants all damages which they may sustain by reason of the injunction if the Court should finally decide that the plaintiff was not entitled thereto. After posting of the bond and approval thereof, let a writ of preliminary injunction be issued to enjoin and restrain the defendants from submitting

the Report of Examination or any other similar report prepared in connection with the examination conducted on the plaintiff, to the Monetary Board. In case such a Report on Examination [sic] or any other similar report prepared in connection with the examination conducted on the plaintiff has been submitted to the Monetary Board, the latter and its members (*i.e.* defendants Tetangco, Neri, Valdepenas, Boncan, Amatong, Antonio, and Villafuerte) are enjoined and restrained from acting on the basis of said report.

9) *Re: Civil Case No. 08-119251*. Pursuant to Rule 58, Section 4(b) of the Revised Rules of Court, plaintiff Banco Rural De Bisayas Minglanilla (Cebu) Inc. (Bank of East Asia) is directed to post a bond executed to the defendants, in the amount of ₱500,000.00 to the effect that the plaintiff will pay to the defendants all damages which they may sustain by reason of the injunction if the Court should finally decide that the plaintiff was not entitled thereto. After posting of the bond and approval thereof, let a writ of preliminary injunction be issued to enjoin and restrain the defendants from submitting the Report of Examination or any other similar report prepared in connection with the examination conducted on the plaintiff, to the Monetary Board. In case such a Report on Examination [sic] or any other similar report prepared in connection with the examination conducted on the plaintiff has been submitted to the Monetary Board, the latter and its members (i.e. defendants Tetangco, Neri, Valdepenas, Boncan, Amatong, Antonio, and Villafuerte) are enjoined and restrained from acting on the basis of said report.

10) *Re: Civil Case No. 08-119273*. Pursuant to Rule 58, Section 4(b) of the Revised Rules of Court, plaintiff San Pablo City Development Bank, Inc. is directed to post a bond executed to the defendants, in the amount of ₱500,000.00 to the effect that the plaintiff will pay to the defendants all damages which they may sustain by reason of the injunction if the Court should finally decide that the plaintiff was not entitled thereto. After posting of the bond and approval thereof, let a writ of preliminary injunction be issued to enjoin and restrain the defendants from submitting the Report of Examination or any other similar report prepared in connection with the examination conducted on the plaintiff,

> to the Monetary Board. In case such a Report on Examination [sic] or any other similar report prepared in connection with the examination conducted on the plaintiff has been submitted to the Monetary Board, the latter and its members (*i.e.* defendants Tetangco, Neri, Valdepenas, Boncan, Amatong, Antonio, and Villafuerte) are enjoined and restrained from acting on the basis of said report.[3]

The Ruling of the CA

Petitioners then brought the matter to the CA via a petition for *certiorari* under Rule 65 claiming grave abuse of discretion on the part of Judge Valenzuela when she issued the orders dated May 21, 2008 and June 4, 2008.

The CA ruled that the RTC committed no grave abuse of discretion when it ordered the issuance of a writ of preliminary injunction and when it ordered the consolidation of the 10 cases.

It held that petitioners should have first filed a motion for reconsideration of the assailed orders, and failed to justify why they resorted to a special civil action of *certiorari* instead.

The CA also found that aside from the technical aspect, there was no grave abuse of discretion on the part of the RTC, and if there was a mistake in the assessment of evidence by the trial court, that should be characterized as an error of judgment, and should be correctable via appeal.

The CA held that the principles of fairness and transparency dictate that the respondent banks are entitled to copies of the ROE.

Regarding the consolidation of the 10 cases, the CA found that there was a similarity of facts, reliefs sought, issues raised, defendants, and that plaintiffs and defendants were represented by the same sets of counsels. It found that the joint trial of these cases would prejudice any substantial right of petitioners.

Finding that no grave abuse of discretion attended the issuance of the orders by the RTC, the CA denied the petition.

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[3] *Rollo*, pp. 352-356.

On November 24, 2008, a TRO was issued by this Court, restraining the CA, RTC, and respondents from implementing and enforcing the CA Decision dated September 30, 2008 in CA-G.R. SP No. 103935.[4]

By reason of the TRO issued by this Court, the SED was able to submit their ROEs to the MB. The MB then prohibited the respondent banks from transacting business and placed them under receivership under Section 53 of Republic Act No. (RA) 8791[5] and Sec. 30 of RA 7653[6] through MB Resolution No. 1616 dated December 9, 2008; Resolution Nos. 1637 and 1638 dated

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[4] *Id.* at 457-459.

[5] **SECTION 53. Other Banking Services**.—In addition to the operations specifically authorized in this Act, a bank may perform the following services:

53.1. Receive in custody funds, documents and valuable objects;

53.2. Act as financial agent and buy and sell, by order of and for the account of their customers, shares, evidences of indebtedness and all types of securities;

53.3. Make collections and payments for the account of others and perform such other services for their customers as are not incompatible with banking business;

53.4. Upon prior approval of the Monetary Board, act as managing agent, adviser, consultant or administrator of investment management/advisory/consultancy accounts; and

53.5. Rent out safety deposit boxes.

The bank shall perform the services permitted under Subsections 53.1, 53.2, 53.3 and 53.4 as depositary or as an agent. Accordingly, it shall keep the funds, securities and other effects which it receives duly separate from the bank's own assets and liabilities.

The Monetary Board may regulate the operations authorized by this Section in order to ensure that such operations do not endanger the interests of the depositors and other creditors of the bank.

In case a bank or quasi-bank notifies the Bangko Sentral or publicly announces a bank holiday, or in any manner suspends the payment of its deposit liabilities continuously for more than thirty (30) days, the Monetary Board may summarily and without need for prior hearing close such banking institution and place it under receivership of the Philippine Deposit Insurance Corporation.

[6] **SECTION 30. Proceedings in Receivership and Liquidation**.—Whenever, upon report of the head of the supervising or examining department, the Monetary Board finds that a bank or quasibank:

December 11, 2008; Resolution Nos. 1647, 1648, and 1649 dated December 12, 2008; Resolution Nos. 1652 and 1653 dated December 16, 2008; and Resolution Nos. 1692 and 1695 dated December 19, 2008, with the Philippine Deposit Insurance Corporation as the appointed receiver.

Now we resolve the main petition.

(a) is unable to pay its liabilities as they become due in the ordinary course of business: Provided, That this shall not include inability to pay caused by extraordinary demands induced by financial panic in the banking community;

(b) by the Bangko Sentral, to meet its liabilities; or

(c) cannot continue in business without involving probable losses to its depositors or creditors; or

(d) has willfully violated a cease and desist order under Section 37 that has become final, involving acts or transactions which amount to fraud or a dissipation of the assets of the institution; in which cases, the Monetary Board may summarily and without need for prior hearing forbid the institution from doing business in the Philippines and designate the Philippine Deposit Insurance Corporation as receiver of the banking institution.

For a quasi-bank, any person of recognized competence in banking or finance may be designed as receiver.

The receiver shall immediately gather and take charge of all the assets and liabilities of the institution, administer the same for the benefit of its creditors, and exercise the general powers of a receiver under the Revised Rules of Court but shall not, with the exception of administrative expenditures, pay or commit any act that will involve the transfer or disposition of any asset of the institution: Provided, That the receiver may deposit or place the funds of the institution in nonspeculative investments. The receiver shall determine as soon as possible, but not later than ninety (90) days from take over, whether the institution may be rehabilitated or otherwise placed in such a condition so that it may be permitted to resume business with safety to its depositors and creditors and the general public: Provided, That any determination for the resumption of business of the institution shall be subject to prior approval of the Monetary Board.

If the receiver determines that the institution cannot be rehabilitated or permitted to resume business in accordance with the next preceding paragraph, the Monetary Board shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution. The receiver shall:

1. file *ex parte* with the proper regional trial court, and without requirement of prior notice or any other action, a petition for assistance in the liquidation of the institution pursuant to a liquidation plan adopted by the Philippine Deposit

Grounds in Support of Petition

I. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT FINDING THAT THE INJUNCTION ISSUED BY THE REGIONAL TRIAL COURT VIOLATED SECTION 25 OF THE NEW CENTRAL BANK ACT AND EFFECTIVELY HANDCUFFED THE BANGKO SENTRAL FROM DISCHARGING ITS FUNCTIONS TO THE GREAT AND IRREPARABLE DAMAGE OF THE COUNTRY'S BANKING SYSTEM;

II. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT RESPONDENTS ARE ENTITLED TO BE FURNISHED COPIES OF THEIR RESPECTIVE ROEs BEFORE THE SAME IS SUBMITTED

Insurance Corporation for general application to all closed banks. In case of quasi-banks, the liquidation plan shall be adopted by the Monetary Board. Upon acquiring jurisdiction, the court shall, upon motion by the receiver after due notice, adjudicate disputed claims against the institution, assist the enforcement of individual liabilities of the stockholders, directors and officers, and decide on other issues as may be material to implement the liquidation plan adopted. The receiver shall pay the cost of the proceedings from the assets of the institution.

2. convert the assets of the institutions to money, dispose of the same to creditors and other parties, for the purpose of paying the debts of such institution in accordance with the rules on concurrence and preference of credit under the Civil Code of the Philippines and he may, in the name of the institution, and with the assistance of counsel as he may retain, institute such actions as may be necessary to collect and recover accounts and assets of, or defend any action against, the institution. The assets of an institution under receivership or liquidation shall be deemed in *custodia legis* in the hands of the receiver and shall, from the moment the institution was placed under such receivership or liquidation, be exempt from any order of garnishment, levy, attachment, or execution.

The actions of the Monetary Board taken under this section or under Section 29 of this Act shall be final and executory, and may not be restrained or set aside by the court except on petition for *certiorari* on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction. The petition for *certiorari* may only be filed by the stockholders of record representing the majority of the capital stock within ten (10) days from receipt by the board of directors of the institution of the order directing receivership, liquidation or conservatorship. The designation of a conservator under Section 29 of this Act or the appointment of a receiver under this section shall be vested exclusively with the Monetary Board. Furthermore, the designation of a conservator is not a precondition to the designation of a receiver.

TO THE MONETARY BOARD IN VIEW OF THE PRINCIPLES OF FAIRNESS AND TRANSPARENCY DESPITE LACK OF EXPRESS PROVISION IN THE NEW CENTRAL BANK ACT REQUIRING BSP TO DO THE SAME

III. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DEPARTING FROM WELL-ESTABLISHED PRECEPTS OF LAW AND JURISPRUDENCE

A. THE EXCEPTIONS CITED BY PETITIONER JUSTIFIED RESORT TO PETITION FOR *CERTIORARI* UNDER RULE 65 INSTEAD OF FIRST FILING A MOTION FOR RECONSIDERATION

B. RESPONDENT BANKS' ACT OF RESORTING IMMEDIATELY TO THE COURT WAS PREMATURE SINCE IT WAS MADE IN UTTER DISREGARD OF THE PRINCIPLE OF PRIMARY JURISDICTION AND EXHAUSTION OF ADMINISTRATIVE REMEDY

C. THE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION BY THE REGIONAL TRIAL COURT WAS NOT ONLY IMPROPER BUT AMOUNTED TO GRAVE ABUSE OF DISCRETION[7]

Our Ruling

The petition is meritorious.

In *Lim v. Court of Appeals* it was stated:

The requisites for preliminary injunctive relief are: (a) the invasion of right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage.

As such, a writ of preliminary injunction may be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action. The twin requirements of a valid injunction are the existence of a right and its actual or threatened violations. Thus, to be entitled to an injunctive writ, the right to be protected and the violation against that right must be shown.[8]

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[7] *Rollo*, pp. 28-29.

[8] G.R. No. 134617, February 13, 2006, 482 SCRA 326, 331.

These requirements are absent in the present case.

In granting the writs of preliminary injunction, the trial court held that the submission of the ROEs to the MB before the respondent banks would violate the right to due process of said banks.

This is erroneous.

The respondent banks have failed to show that they are entitled to copies of the ROEs. They can point to no provision of law, no section in the procedures of the BSP that shows that the BSP is required to give them copies of the ROEs. Sec. 28 of RA 7653, or the New Central Bank Act, which governs examinations of banking institutions, provides that the ROE shall be submitted to the MB; the bank examined is not mentioned as a recipient of the ROE.

The respondent banks cannot claim a violation of their right to due process if they are not provided with copies of the ROEs. The same ROEs are based on the lists of findings/exceptions containing the deficiencies found by the SED examiners when they examined the books of the respondent banks. As found by the RTC, these lists of findings/exceptions were furnished to the officers or representatives of the respondent banks, and the respondent banks were required to comment and to undertake remedial measures stated in said lists. Despite these instructions, respondent banks failed to comply with the SED's directive.

Respondent banks are already aware of what is required of them by the BSP, and cannot claim violation of their right to due process simply because they are not furnished with copies of the ROEs. Respondent banks were held by the CA to be entitled to copies of the ROEs prior to or simultaneously with their submission to the MB, on the principles of fairness and transparency. Further, the CA held that if the contents of the ROEs are essentially the same as those of the lists of findings/exceptions provided to said banks, there is no reason not to give copies of the ROEs to the banks. This is a flawed conclusion, since if the banks are already aware of the contents of the ROEs, they cannot say that fairness and transparency are not present. If sanctions are to be imposed upon the respondent

banks, they are already well aware of the reasons for the sanctions, having been informed via the lists of findings/ exceptions, demolishing that particular argument. The ROEs would then be superfluities to the respondent banks, and should not be the basis for a writ of preliminary injunction. Also, the reliance of the RTC on *Banco Filipino v. Monetary Board*[9] is misplaced. The petitioner in that case was held to be entitled to annexes of the Supervision and Examination Sector's reports, as it already had a copy of the reports themselves. It was not the subject of the case whether or not the petitioner was entitled to a copy of the reports. And the ruling was made after the petitioner bank was ordered closed, and it was allowed to be supplied with annexes of the reports in order to better prepare its defense. In this instance, at the time the respondent banks requested copies of the ROEs, no action had yet been taken by the MB with regard to imposing sanctions upon said banks.

The issuance by the RTC of writs of preliminary injunction is an unwarranted interference with the powers of the MB. Secs. 29 and 30 of RA 7653[10] refer to the appointment of a conservator or a receiver for a bank, which is a power of the MB for which they need the ROEs done by the supervising or examining department. The writs of preliminary injunction issued by the trial court hinder the MB from fulfilling its function under the law. The actions of the MB under Secs. 29 and 30 of RA 7653 "may not be restrained or set aside by the court except on petition for *certiorari* on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction." The writs of preliminary injunction order are precisely what cannot be done under the law by preventing the MB from taking action under either Sec. 29 or Sec. 30 of RA 7653.

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[9] No. 70054, July 8, 1986, 142 SCRA 523.

[10] **SECTION 29. Appointment of Conservator**.— Whenever, on the basis of a report submitted by the appropriate supervising or examining department, the Monetary Board finds that a bank or a quasi-bank is in a state of continuing inability or unwillingness to maintain a condition of liquidity

As to the third requirement, the respondent banks have shown no necessity for the writ of preliminary injunction to prevent

deemed adequate to protect the interest of depositors and creditors, the Monetary Board may appoint a conservator with such powers as the Monetary Board shall deem necessary to take charge of the assets, liabilities, and the management thereof, reorganize the management, collect all monies and debts due said institution, and exercise all powers necessary to restore its viability. The conservator shall report and be responsible to the Monetary Board and shall have the power to overrule or revoke the actions of the previous management and board of directors of the bank or quasi-bank.

The conservator should be competent and knowledgeable in bank operations and management.

The conservatorship shall not exceed one (1) year.

The conservator shall receive remuneration to be fixed by the Monetary Board in an amount not to exceed two-thirds (2/3) of the salary of the president of the institution in one (1) year, payable in twelve (12) equal monthly payments: Provided, That, if at any time within one-year period, the conservatorship is terminated on the ground that the institution can operate on its own, the conservator shall receive the balance of the remuneration which he would have received up to the end of the year; but if the conservatorship is terminated on other grounds, the conservator shall not be entitled to such remaining balance. The Monetary Board may appoint a conservator connected with the Bangko Sentral, in which case he shall not be entitled to receive any remuneration or emolument from the Bangko Sentral during the conservatorship. The expenses attendant to the conservatorship shall be borne by the bank or quasi-bank concerned.

The Monetary Board shall terminate the conservatorship when it is satisfied that the institution can continue to operate on its own and the conservatorship is no longer necessary. The conservatorship shall likewise be terminated should the Monetary Board, on the basis of the report of the conservator or of its own findings, determine that the continuance in business of the institution would involve probable loss to its depositors or creditors, in which case the provisions of Section 30 shall apply.

SECTION 30. Proceedings in Receivership and Liquidation.— Whenever, upon report of the head of the supervising or examining department, the Monetary Board finds that a bank or quasi bank:

(a) is unable to pay its liabilities as they become due in the ordinary course of business: Provided, That this shall not include inability to pay caused by extraordinary demands induced by financial panic in the banking community;

(b) by the Bangko Sentral, to meet its liabilities; or

(c) cannot continue in business without involving probable losses to its depositors or creditors; or

(d) has willfully violated a cease and desist order under Section 37 that has

serious damage. The serious damage contemplated by the trial court was the possibility of the imposition of sanctions upon respondent banks, even the sanction of closure. Under the law, the sanction of closure could be imposed upon a bank by the BSP even without notice and hearing. The apparent

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become final, involving acts or transactions which amount to fraud or adissipation of the assets of the institution; in which cases, the MonetaryBoard may summarily and without need for prior hearing forbid the institution from doing business in the Philippines and designate the Philippine Deposit Insurance Corporation as receiver of the banking institution.

For a quasi-bank, any person of recognized competence in banking or finance may be designed as receiver.

The receiver shall immediately gather and take charge of all the assets and liabilities of the institution, administer the same for the benefit of its creditors, and exercise the general powers of a receiver under the Revised Rules of Court but shall not, with the exception of administrative expenditures, pay or commit any act that will involve the transfer or disposition of any asset of the institution: Provided, That the receiver may deposit or place the funds of the institution in nonspeculative investments. The receiver shall determine as soon as possible, but not later than ninety (90) days from take over, whether the institution may be rehabilitated or otherwise placed in such a condition so that it may be permitted to resume business with safety to its depositors and creditors and the general public: Provided, That any determination for the resumption of business of the institution shall be subject to prior approval of the Monetary Board.

If the receiver determines that the institution cannot be rehabilitated or permitted to resume business in accordance with the next preceding paragraph, the Monetary Board shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution. The receiver shall:

1. file *ex parte* with the proper regional trial court, and without requirement of prior notice or any other action, a petition for assistance in the liquidation of the institution pursuant to a liquidation plan adopted by the Philippine Deposit Insurance Corporation for general application to all closed banks. In case of quasi-banks, the liquidation plan shall be adopted by the Monetary Board. Upon acquiring jurisdiction, the court shall, upon motion by the receiver after due notice, adjudicate disputed claims against the institution, assist the enforcement of individual liabilities of the stockholders, directors and officers, and decide on other issues as may be material to implement the liquidation plan adopted. The receiver shall pay the cost of the proceedings from the assets of the institution.

2. convert the assets of the institutions to money, dispose of the same to creditors and other parties, for the purpose of paying the debts of such institution in accordance with the rules on concurrence and preference of credit under the

lack of procedural due process would not result in the invalidity of action by the MB. This was the ruling in *Central Bank of the Philippines v. Court of Appeals*.[11] This "close now, hear later" scheme is grounded on practical and legal considerations to prevent unwarranted dissipation of the bank's assets and as a valid exercise of police power to protect the depositors, creditors, stockholders, and the general public. The writ of preliminary injunction cannot, thus, prevent the MB from taking action, by preventing the submission of the ROEs and worse, by preventing the MB from acting on such ROEs.

The trial court required the MB to respect the respondent banks' right to due process by allowing the respondent banks to view the ROEs and act upon them to forestall any sanctions the MB might impose. Such procedure has no basis in law and does in fact violate the "close now, hear later" doctrine. We held in *Rural Bank of San Miguel, Inc. v. Monetary Board, Bangko Sentral ng Pilipinas*:

> It is well-settled that the closure of a bank may be considered as an exercise of police power. The action of the MB on this matter is final and executory. Such exercise may nonetheless be subject to

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Civil Code of the Philippines and he may, in the name of the institution, and with the assistance of counsel as he may retain, institute such actions as may be necessary to collect and recover accounts and assets of, or defend any action against, the institution. The assets of an institution under receivership or liquidation shall be deemed in *custodia legis* in the hands of the receiver and shall, from the moment the institution was placed under such receivership or liquidation, be exempt from any order of garnishment, levy, attachment, or execution.

The actions of the Monetary Board taken under this section or under Section 29 of this Act shall be final and executory, and may not be restrainedor set aside by the court except on petition for *certiorari* on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction. The petition for *certiorari* may only be filed by the stockholders of record representing the majority of the capital stock within ten (10) days from receipt by the board of directors of the institution of the order directing receivership, liquidation or conservatorship. The designation of a conservator under Section 29 of this Act or the appointment of a receiver under this section shall be vested exclusively with the Monetary Board. Furthermore, the designation of a conservator is not a precondition to the designation of a receiver.

[11] G.R. No. 76118, March 30, 1993, 220 SCRA 536.

judicial inquiry and can be set aside if found to be in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction.[12]

The respondent banks cannot — through seeking a writ of preliminary injunction by appealing to lack of due process, in a roundabout manner — prevent their closure by the MB. Their remedy, as stated, is a subsequent one, which will determine whether the closure of the bank was attended by grave abuse of discretion. Judicial review enters the picture only after the MB has taken action; it cannot prevent such action by the MB. The threat of the imposition of sanctions, even that of closure, does not violate their right to due process, and cannot be the basis for a writ of preliminary injunction.

The "close now, hear later" doctrine has already been justified as a measure for the protection of the public interest. Swift action is called for on the part of the BSP when it finds that a bank is in dire straits.Unless adequate and determined efforts are taken by the government against distressed and mismanaged banks, public faith in the banking system is certain to deteriorate to the prejudice of the national economy itself, not to mention the losses suffered by the bank depositors, creditors, and stockholders, who all deserve the protection of the government.[13]

The respondent banks have failed to show their entitlement to the writ of preliminary injunction. It must be emphasized that an application for injunctive relief is construed strictly against the pleader.[14] The respondent banks cannot rely on a simple appeal to procedural due process to prove entitlement. The requirements for the issuance of the writ have not been proved. No invasion of the rights of respondent banks has been shown, nor is their right to copies of the ROEs clear and unmistakable. There is also no necessity for the writ to prevent serious damage.

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[12] G.R. No. 150886, February 16, 2007, 516 SCRA 154, 160.

[13] *Philippine Veterans Bank Employees Union-NUBE v. Philippine Veterans Bank*, G.R. No. 67125, August 24, 1990, 189 SCRA 14, 28.

[14] *Marquez v. Presiding Judge (Hon. Ismael B. Sanchez), RTC Br. 58, Lucena City*, G.R. No. 141849, February 13, 2007, 515 SCRA 577, 594.

Indeed the issuance of the writ of preliminary injunction tramples upon the powers of the MB and prevents it from fulfilling its functions. There is no right that the writ of preliminary injunction would protect in this particular case. In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion.[15] In the absence of proof of a legal right and the injury sustained by the plaintiff, an order for the issuance of a writ of preliminary injunction will be nullified.[16]

Courts are hereby reminded to take greater care in issuing injunctive relief to litigants, that it would not violate any law. The grant of a preliminary injunction in a case rests on the sound discretion of the court with the caveat that it should be made with great caution.[17] Thus, the issuance of the writ of preliminary injunction must have basis in and be in accordance with law.All told, while the grant or denial of an injunction generally rests on the sound discretion of the lower court, this Court may and should intervene in a clear case of abuse.[18]

WHEREFORE, the petition is hereby *GRANTED*. The assailed CA Decision dated September 30, 2008 in CA-G.R. SP No. 103935 is hereby *REVERSED*. The assailed order and writ of preliminary injunction of respondent Judge Valenzuela in Civil Case Nos. 08-119243, 08-119244, 08-119245, 08-119246, 08-119247, 08-119248, 08-119249, 08-119250, 08-119251, and 08-119273 are hereby declared *NULL* and *VOID*.

SO ORDERED.

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

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[15] *Selegna Management and Development Corporation v. United Coconut Planters Bank*, G.R. No. 165662, May 3, 2006, 489 SCRA 125, 145.

[16] *Nisce v. Equitable PCI Bank, Inc.*, G.R. No. 167434, February 19, 2007, 516 SCRA 231, 253.

[17] *Rural Bank of San Miguel, Inc., supra* note 12, at 252.

[18] *Republic v. Caguioa*, G.R. No. 168584, October 15, 2007, 536 SCRA 193, 220.

SECOND DIVISION

[G.R. No. 185066. October 2, 2009]

PHILIPPINE CHARTER INSURANCE CORPORATION, *petitioner, vs.* **PHILIPPINE NATIONAL CONSTRUCTION CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; COMPLAINT; RELIEFS; ANY RELIEF MAY BE GRANTED ONLY WHERE A CAUSE OF ACTION EXISTS, BASED ON THE COMPLAINT, THE PLEADINGS, AND THE EVIDENCE ON RECORD. — The fundamental rule is that reliefs granted a litigant are limited to those specifically prayed for in the complaint; other reliefs prayed for may be granted only when related to the specific prayer(s) in the pleadings and supported by the evidence on record. Necessarily, any such relief may be granted only where a cause of action exists, based on the complaint, the pleadings, and the evidence on record.

2. ID.; ID.; CAUSE OF ACTION; ELEMENTS. — Section 2, Rule 2 of the 1997 Rules of Civil Procedure defines a cause of action as the act or omission by which a party violates the right of another. It is the delict or the wrongful act or omission committed by the defendant in violation of the primary right of the plaintiff. Its essential elements are as follows: "1. A right in favor of the plaintiff by whatever means and under whatever law it arises or is created; 2. An obligation on the part of the named defendant to respect or not to violate such right; and 3. Act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief." Only upon the occurrence of the last element does a cause of action arise, giving the plaintiff the right to maintain an action in court for recovery of damages or other appropriate relief.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; SURETYSHIP; EXTENT OF SURETY'S LIABILITY, DETERMINED ONLY BY THE CLAUSE OF THE SURETYSHIP CONTRACT AND THE CONDITIONS STATED IN THE BOND; CASE AT BAR. — Each of the two bonds is a distinct contract by itself, subject to its own terms and conditions. They each contain a provision that the surety, PCIC, will not be liable for any claim not presented to it in writing within 15 days from the expiration of the bond, and that the obligee (PNCC) thereby waives its right to claim or file any court action against the surety (PCIC) after the termination of 15 days from the time its cause of action accrues. **This *written claim provision* creates a condition precedent for the accrual of: (1) PCIC's obligation to comply with its promise under the particular bond, and of (2) PNCC's right to collect or sue on these bonds. PCIC's liability to repay the bonded down payments arises only upon PNCC's filing of the required written claim – notifying PCIC of Kalingo's default and demanding collection under the bond – within 15 days from the bond's expiry date. PNCC's failure to comply with the written claim provision has the effect of extinguishing PCIC's liability and constitutes a waiver by PNCC of the right to claim or sue under the bond.** Liability on a bond is contractual in nature and is ordinarily restricted to the obligation expressly assumed under the contract of suretyship. We have repeatedly held that the extent of a surety's liability is determined only by the clause of the suretyship contract and by the conditions stated in the bond. It cannot be extended by implication beyond the terms of the contract.

4. ID.; ID.; OBLIGATORY FORCE OF CONTRACT PRINCIPLE; APPLIED IN CASE AT BAR. — Equally basic is the principle that obligations arising from contracts have the force of law between the parties and should be complied with in good faith. Nothing can stop the parties from establishing stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy. Nothing in the records of the present case shows the invalidity of the written claim provision; the parties therefore must strictly and in good faith comply with this requirement.

5. REMEDIAL LAW; CIVIL PROCEDURE; PARTS OF A PLEADING; RELIEF; GENERAL PRAYER FOR "OTHER RELIEFS JUST

AND EQUITABLE"; EFFECT. — Section 2(c), Rule 7 of the Rules of Court x x x provides that a pleading shall specify the relief sought, but may add a general prayer for such further or other reliefs that may be deemed just and equitable. Under this rule, a court can grant the relief warranted by the allegation and the proof even if it is not specifically sought by the injured party; the inclusion of a general prayer may justify the grant of a remedy different from or together with the specific remedy sought if the facts alleged in the complaint and the evidence introduced so warrant. x x x A general prayer for "other reliefs just and equitable" appearing on a complaint or pleading normally enables the court to award reliefs supported by the complaint or other pleadings, by the facts admitted at the trial, and by the evidence adduced by the parties, even if these reliefs are not specifically prayed for in the complaint.

6. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACT OF ADHESION, DEFINED; A BOND CONTRACT, IS IN THE NATURE OF A CONTRACT OF ADHESION. — [A] bond contract, as the bond in question in the present case, is in the nature of a contract of adhesion. A contract of adhesion is defined as one where one party imposes a ready-made form that the other party may accept or reject, but cannot modify; one party prepares the stipulations in the contract, while the other party merely affixes his signature or his "adhesion" thereto, giving no room for negotiation and resulting in the latter's lack of effective opportunity to bargain on equal footing. In light of this uneven situation, ambiguities in the contract are strictly construed against the party who prepared the contract.

APPEARANCES OF COUNSEL

Conrado R. Ayuyao and Associates for petitioner.
The Government Corporate Counsel for respondent.

R E S O L U T I O N

BRION, *J.*:

Petitioner Philippine Charter Insurance Corporation (*PCIC*) submits the present motion for the reconsideration[1] of our Resolution dated December 17, 2008, which denied due course to its petition for review on *certiorari*.[2] It seeks to reinstate the petition and effect a reversal of the Court of Appeals (*CA*) Decision[3] and Resolution[4] dated January 7, 2008 and October 29, 2008, respectively, in CA-G.R. CV No. 86948. In its petition, the petitioner imputes reversible error on the appellate court for ruling that it is liable under PCIC Bond No. 27547 and under PCIC Bond No. 27546, as the latter bond was not covered by the complaint for collection of sum of money filed by respondent Philippine National Construction Corporation (*PNCC*).[5]

The facts, as drawn from the records, are briefly summarized below.

PNCC is engaged in the construction business and tollway operations. On October 16, 1997, PNCC conducted a public bidding for the supply of labor, materials, tools, supervision, equipment, and other incidentals necessary for the fabrication and delivery of 27 tollbooths to be used for the automation of toll collection along the expressways. Orlando Kalingo (*Kalingo*) won in the bidding and was awarded the contract.

On November 13, 1997, PNCC issued in favor of Kalingo Purchase Order (*P.O.*) No. 71024L for 25 units of tollbooths in the total amount of ₱2,100,000.00, and P.O. No. 71025L for two units of tollbooths in the amount of ₱168,000.00. These issuances were subject to the condition, among others, that each P.O. shall be covered by a surety bond equivalent to

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[1] *Rollo,* pp. 59-68.

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

[3] Penned by Associate Justice Monina Arevalo-Zenarosa, and concurred in by Associate Justice Conrado M. Vasquez, Jr. and Associate Justice Edgardo F. Sundiam; *rollo,* pp. 26-37.

[4] *Id.,* pp. 40-42.

[5] *Id.,* pp. 51-57.

100% of the total down payment (50% of the total cost reflected on the P.O.), and that the surety bond shall continue in full force until the supplier shall have complied with all the undertakings and covenants to the full satisfaction of PNCC.

Kalingo, hence, posted surety bonds – Surety Bond Nos. 27546 and 27547 – issued by the PCIC and whose terms and conditions read:

Surety Bond No. 27546

To supply labor, materials, tools, supervision equipment, and other incidentals necessary for the fabrication and delivery of Two (2) Units Toll Booth at San Fernando Interchange SB Entry as per Purchase Order No. 71025L, copy of which is attached as Annex "A." This bond also guarantees the repayment of the down payment or whatever balance thereof in the event of failure on the part of the Principal to finish the project due to his own fault.

It is understood that the liability of the Surety under this bond shall in no case exceed the sum of P84,000.00, Philippine Currency.[6]

Surety Bond No. 27547

To supply labor, materials, tools, supervision equipment, and other incidentals necessary for the fabrication and delivery of Twenty-five (25) Units Toll Booth at designated Toll Plaza as per Purchase Order No. 71024L, copy of which is attached as Annex "A". This bond also guarantees the repayment of the down payment or whatever balance thereof in the event of failure on the part of the Principal to finish the project due to his own fault.

It is understood that the liability of the Surety under this bond shall in no case exceed the sum of ₱1,050,000.00, Philippine Currency.[7]

To illustrate, the PCIC surety bonds are in the amounts corresponding to down payments on each P.O., as follows:

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[6] CA Decision, *id.,* p. 30.

[7] *Id.,* p. 31.

Surety Bond No.	**Purchase Order**	**Units Covered**	**Total Cost**	**Surety Amount** (equivalent to 50% down payment)
Bond No. **27547**	P.O. No. 71024L	**25**	₱2,100,000	**₱1,050,000**
Bond No. **27546**	P.O. No. 71025L	**2**	₱168,000	**₱ 84,000**

Both surety bonds also contain the following conditions: (1) the liability of PCIC under the bonds expires on March 16, 1998; and (2) **a written extrajudicial demand must first be tendered to the surety, PCIC, within 15 days from the expiration date; otherwise PCIC shall not be liable thereunder and the obligee waives the right to claim or file any court action to collect on the bond.** The following stipulation appears in the last paragraph of these bonds:

> The liability of PHILIPPINE CHARTER INSURANCE CORPORATION under this bond will expire on March 16, 1998. Furthermore, it is hereby agreed and understood that **PHILIPPINE CHARTER INSURANCE CORPORATION will not be liable for any claim not presented to it in writing within FIFTEEN (15) DAYS from the expiration of this bond, and that the Obligee hereby waives its right to claim or file any court action against the Surety after the termination of FIFTEEN (15) DAYS from the time its cause of action accrues**.[8] (Emphasis supplied.)

PNCC released two checks to Kalingo representing the down payment of 50% of the total project cost, which were properly receipted by Kalingo.[9] Kalingo in turn submitted the two PCIC surety bonds securing the down payments, which bonds were accepted by PNCC.

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[8] PCIC's Motion for Reconsideration, *id.*, pp. 64-65.

[9] The date appearing on the checks was erroneously placed as "26 January 1997." As clarified by the RTC, and affirmed by the CA, the year "**1997**" appearing on the checks was a mere typographical error which should have been written as "**1998**"; *id.*, pp. 28 and 35.

On March 3, 4, and 5, 1998, Kalingo made partial/initial delivery of four units of tollbooths under P.O. No. 71024L. However, the delivered tollbooths were incomplete or were not fabricated according to PNCC specifications. Kalingo failed to deliver the other 23 tollbooths up to the time of filing of the complaint; despite demands, he failed and refused to comply with his obligation under the POs.

On March 9, 1998, six days before the expiration of the surety bonds and after the expiration of the delivery period provided for under the award, PNCC filed a **written extrajudicial claim** against PCIC notifying it of Kalingo's default and demanding the repayment of the down payment on P.O. No. 71024L as secured by **PCIC Bond No. 27547**, in the amount of ₱1,050,000.00. The claim went unheeded despite repeated demands. For this reason, on April 24, 2001, PNCC filed with the Regional Trial Court (*RTC*), Mandaluyong City a complaint for collection of a sum of money against Kalingo and PCIC.[10] PNCC's complaint against PCIC called solely on PCIC Bond No. 27547; **it did not raise or plead collection under PCIC Bond No. 27546 which secured the down payment of ₱84,000.00 on P.O. No. 71025L.**

PCIC, in its answer, argued that the partial delivery of four out of the 25 units of tollbooth by Kalingo under P.O. No. 71024L should reduce Kalingo's obligation.

The RTC, by Decision of October 31, 2005, ruled in favor of PNCC and ordered PCIC and Kalingo to jointly and severally pay the latter ₱1,050,000.00, representing the value of PCIC Bond No. 27547, plus legal interest from last demand, and ₱50,000.00 as attorney's fees. Reconsideration of the trial court's decision was denied. **The trial court made no ruling on PCIC's liability under PCIC Bond No. 27546, a claim that was not pleaded in the complaint.**

On appeal, the CA, by Decision[11] of January 7, 2008, held that the RTC erred in ruling that PCIC's liability is limited only

[10] *Id.*, pp. 51-57.

[11] *Id.*, pp. 26-38.

to the payment of ₱1,050,000.00 under PCIC Bond No. 27547 which secured the down payment on P.O. No. 71024L. **The appellate court held that PCIC, as surety, is liable jointly and severally with Kalingo for the amount of the two bonds securing the two POs to Kalingo; thus, the CA also held PCIC liable under PCIC Bond No. 27546 which secured the ₱84,000.00 down payment on P.O. No. 71025L.**

The PCIC lodged a petition for review on *certiorari* before the Court[12] after the CA denied its motion for reconsideration in its Resolution of October 29, 2008.[13]

The Court, by Resolution of December 17, 2008, denied due course to the petition.[14] Hence, the PCIC filed the present motion for reconsideration submitting the following issues for our resolution:

I. WHETHER THE APPELLATE COURT ERRED IN RULING THAT PCIC SHOULD ALSO BE HELD LIABLE UNDER BOND NO. 27546, COLLECTION UNDER WHICH WAS NOT SUBJECT OF RESPONDENT PNCC's COMPLAINT FOR COLLECTION OF SUM OF MONEY;

II. WHETHER THE CHECKS ISSUED IN "1997" BY RESPONDENT PNCC TO KALINGO WERE GIVEN 10 MONTHS PRIOR TO THE AWARD OF THE PROJECT AND AMOUNTS TO CONCEALMENT OF MATERIAL FACT VITIATING THE SURETY BONDS ISSUED BY THE PETITIONER; and

III. WHETHER THE APPELLATE COURT ERRED IN HOLDING PETITIONER PCIC LIABLE FOR ATTORNEY'S FEES.

The second issue is a factual matter not proper in proceedings before this Court. The PCIC's position that the checks were issued 10 months prior to the award had already been rejected by both the RTC and the CA; both found that the year "1997"

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[12] *Id.,* pp. 8-21.

[13] *Id.,* pp. 40-42.

[14] *Id.,* p. 58.

appearing on the checks was a mere typographical error which should have been written as "1998."[15] Consequently, we shall no longer discuss the PCIC's allegation of material concealment; the factual findings of the RTC, as affirmed by the CA, are conclusive on us.

Our consideration shall focus on the remaining two issues.

The PCIC presents, as its first issue, the argument that "[w]hen the Court of Appeals rendered judgment on Bond No. 27546, which was not subject of respondent's complaint, on the ground that respondent was incorrect in not filing suit for Bond No. 27546, the Court of Appeals virtually acted as lawyer for respondent."[16]

We find the PCIC's position meritorious.

The issue before us calls for a discussion of a court's basic appreciation of allegations in a complaint. The fundamental rule is that reliefs granted a litigant are limited to those specifically prayed for in the complaint; other reliefs prayed for may be granted only when related to the specific prayer(s) in the pleadings and supported by the evidence on record. Necessarily, any such relief may be granted only where a cause of action therefor exists, based on the complaint, the pleadings, and the evidence on record.

Section 2, Rule 2 of the 1997 Rules of Civil Procedure defines a cause of action as the act or omission by which a party violates the right of another. It is the delict or the wrongful act or omission committed by the defendant in violation of the primary right of the plaintiff.[17] Its essential elements are as follows:

1. A right in favor of the plaintiff by whatever means and under whatever law it arises or is created;

2. An obligation on the part of the named defendant to respect or not to violate such right; and

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[15] *Id.*, pp. 28 and 35.

[16] *See* Motion for Reconsideration, *id.*, p. 59.

[17] *Ferrer v. Ferrer*, G.R. No. 166496, November 29, 2006, 508 SCRA 570, 578-579; *Danfoss, Incorporated v. Continental Cement Corporation*, G.R. No. 143788, September 9, 2005, 469 SCRA 505, 511.

3. Act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief.[18]

Only upon the occurrence of the last element does a cause of action arise, giving the plaintiff the right to maintain an action in court for recovery of damages or other appropriate relief.[19]

Each of the surety bonds issued by PCIC created a right in favor of PNCC to collect the repayment of the bonded down payments made on the two POs if contractor Kalingo defaults on his obligation under the award to fabricate and deliver to PNCC the tollbooths contracted for. Concomitantly, PCIC, as surety, had the obligation to comply with its undertaking under the bonds to repay PNCC the down payments the latter made on the POs if Kalingo defaults.

Each of the two bonds is a distinct contract by itself, subject to its own terms and conditions. They each contain a provision that the surety, PCIC, will not be liable for any claim not presented to it in writing within 15 days from the expiration of the bond, and that the obligee (PNCC) thereby waives its right to claim or file any court action against the surety (PCIC) after the termination of 15 days from the time its cause of action accrues. **This *written claim provision* creates a condition precedent for the accrual of: (1) PCIC's obligation to comply with its promise under the particular bond, and (2) PNCC's right to collect or sue on these bonds. PCIC's liability to repay the bonded down payments arises only upon PNCC's filing of the required written claim – notifying PCIC of Kalingo's default and demanding collection under the bond – within 15 days from the bond's expiry date. PNCC's failure to comply with the written claim provision has the effect of**

[18] *Agoy v. Court of Appeals*, G.R. No. 162927, March 6, 2007, 517 SCRA 535, 541; *Swagman Hotels and Travel, Inc. v. Court of Appeals*, G.R. No. 161135, April 8, 2005, 455 SCRA 175, 183.

[19] *Zepeda v. China Banking Corporation*, G.R. No. 172175, October 9, 2006, 504 SCRA 126, 131; *Swagman Hotels and Travel, Inc. v. Court of Appeals, supra*.

extinguishing PCIC's liability and constitutes a waiver by PNCC of the right to claim or sue under the bond.

Liability on a bond is contractual in nature and is ordinarily restricted to the obligation expressly assumed under the contract of suretyship. We have repeatedly held that the extent of a surety's liability is determined only by the clause of the suretyship contract and by the conditions stated in the bond. It cannot be extended by implication beyond the terms of the contract.[20]

Equally basic is the principle that obligations arising from contracts have the force of law between the parties and should be complied with in good faith.[21] Nothing can stop the parties from establishing stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.[22] Nothing in the records of the present case shows the invalidity of the written claim provision; the parties therefore must strictly and in good faith comply with this requirement.

The records reveal that PNCC complied with the written claim provision, but only with respect to PCIC Bond No. 27547. PNCC filed an extrajudicial demand with PCIC informing it of Kalingo's default under the award and demanding the repayment of the bonded down payment on P.O. No. 71024L. Conversely, nothing in the records shows that PNCC ever complied with the provision with respect to PCIC Bond No. 27546. Why PNCC complied with the written claim provision with respect to PCIC Bond No. 27547, but not with respect to PCIC Bond No. 27546, has not been explained by PNCC. **Under the circumstances, PNCC's cause of action with respect to PCIC Bond No. 27546 did not and cannot exist, such that no relief for collection under this bond may be validly awarded.**

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[20] *Philippine Commercial & Industrial Bank v. Court of Appeals*, G.R. No. L-34959, March 18, 1988, 159 SCRA 24, citing *Zenith Insurance Corp. v. Court of Appeals*, G.R. No. 57957, December 29, 1982, 119 SCRA 485.

[21] CIVIL CODE, Article 1159.

[22] *Id.*, Article 1306.

Hence, the trial court's decision finding PCIC liable solely under PCIC Bond No. 27547 is correct – not only because collection under the other bond, PCIC Bond No. 27546, was not raised or pleaded in the complaint — but for the more important reason that no cause of action arose in PNCC's favor with respect to this bond. Consequently, the appellate court was in error for including liability under PCIC Bond No. 27546.

PNCC insists that conformably with the ruling of the CA, it should be entitled to collection under PCIC Bond No. 27546, although collection under this bond was not specifically raised nor pleaded in its complaint, because the bond was attached to the complaint and formed part of the records. Also, considering that PCIC's liability as surety has been duly proven before the trial and the appellate courts, PNCC posits that it is entitled to repayment under PCIC Bond No. 27546.

PNCC might be alluding to Section 2(c), Rule 7 of the Rules of Court, which provides that a pleading shall specify the relief sought, but may add a general prayer for such further or other reliefs as may be deemed just and equitable. Under this rule, a court can grant the relief warranted by the allegation and the proof even if it is not specifically sought by the injured party;[23] the inclusion of a general prayer may justify the grant of a remedy different from or together with the specific remedy sought[24] if the facts alleged in the complaint and the evidence introduced so warrant.[25]

We find PNCC's argument to be misplaced. A general prayer for "other reliefs just and equitable" appearing on a complaint or pleading normally enables the court to award reliefs supported by the complaint or other pleadings, by the facts admitted at the trial, and by the evidence adduced by the parties, even if

[23] *De Guzman v. NLRC*, G.R. No. 90856, July 23, 1992, 211 SCRA 723, 732.

[24] *Sps. Gutierrez v. Sps. Valiente*, G.R. No. 166802, July 4, 2008, 557 SCRA 211, 225-226; *BPI Family Bank v. Buenaventura*, G.R. Nos. 148196 & 148259, September 30, 2005, 471 SCRA 431.

[25] *Eugenio, Sr. v. Velez*, G.R. No. 85140, May 17, 1990, 185 SCRA 425, 432-433.

these reliefs are not specifically prayed for in the complaint. We cannot, however, grant PNCC the "other relief" of recovering under PCIC Bond No. 27546 because of the respect due the contractual stipulations of the parties. While it is true that PCIC's liability under PCIC Bond No. 27546 would have been clear under ordinary circumstances (considering that Kalingo's default under his contract with PNCC is now beyond dispute), it cannot be denied that the bond contains a written claim provision, and compliance with it is essential for the accrual of PCIC's liability and PNCC's right to collect under the bond.

As already discussed, this provision is the law between the parties on the matter of liability and collection under the bond. Knowing fully well that PCIC Bond No. 27546 is a matter of record, duly proven and susceptible of the court's scrutiny, the trial and appellate courts must respect the terms of the bond and cannot just disregard its terms and conditions in the absence of any showing that they are contrary to law, morals, good customs, public order, or public policy. For its failure to file a written claim with PCIC within 15 days from the bond's expiry date, PNCC clearly waived its right to collect under PCIC Bond No. 27546. That, wittingly or unwittingly, PNCC did not collect under one bond in favor of calling on the other creates no other conclusion than that the right to collect under the former had been lost. Consequently, PNCC's cause of action with respect to PCIC Bond No. 27546 cannot juridically exist and no relief therefore may be validly given. Hence, the CA invalidly rendered judgment with respect to PCIC Bond No. 27546, and its award based on this bond must be deleted.

On a parenthetical note, PNCC's complaint was never amended to include relief for collection under PCIC Bond No. 27546. And, even if PNCC's complaint had been amended to include relief for collection under bond No. 27546, the inclusion would have been futile; as discussed earlier, PNCC's non-performance of its duty under the bond contract to file a written claim with PCIC caused the non-accrual and waiver of PNCC's entitlement to collect on the bond and of PCIC's liability thereunder. Clearly, without the fulfillment of the precondition,

no cause of action with respect to PCIC Bond No. 27546 could arise and no relief could be granted.

We note, too, that a bond contract, as the bond in question in the present case, is in the nature of a contract of adhesion. A contract of adhesion is defined as one where one party imposes a ready-made form that the other party may accept or reject, but cannot modify; one party prepares the stipulations in the contract, while the other party merely affixes his signature or his "adhesion" thereto, giving no room for negotiation and resulting in the latter's lack of effective opportunity to bargain on equal footing.[26] In light of this uneven situation, ambiguities in the contract are strictly construed against the party who prepared the contract.[27]

In this case, however, no such ambiguity has been raised or brought in issue in this case. We reiterate that no proof or argument assailing the written claim provision of the bond contract was ever adduced or submitted in this case. Moreover, PNCC is a corporation whose long existence and experience in granting awards and contracts (such as that concluded with Kalingo) should have sufficiently apprised it of the nature of bond contracts and the established practices pertaining to claims on bonded transactions. We note that PNCC itself required, as one of the conditions of the award (and perhaps of others granted by it to other persons) that surety bonds be secured on the down payments it makes on the POs issued to the awardee, Kalingo. No reason exists, therefore, for PNCC not to know of the standard practices in surety-claimant affairs, and cannot accord credence to the argument that since a bond contract partakes of the nature of a contract of adhesion that is construed in *strictissimi juris* against the one issuing or preparing the contract, PCIC had the duty as the surety who prepared the contract, to apprise the

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[26] *Philippine Commercial International Bank vs. Court of Appeals*, 325 Phil. 588, 597 (1996), cited in *Metropolitan Bank v. Go*, G.R. No. 155647, November 23, 2007, 538 SCRA 337, 349.

[27] *Philippine Telephone Corporation v. Tecson*, G.R. No. 156966, May 7, 2004, 428 SCRA 378, 380; *National Development Company v. Madrigal Wan Hai Lines Corp.*, 458 Phil. 1038, 1050-1051 (2003).

petitioner PNCC and the courts of the non-compliance with the written claim privision in order to escape liability under this bond.

We note finally that while PCIC, the surety and issuer of the bond, did not raise early on that the written claim provision for PCIC Bond No. 27546 had not been complied with, it raised the matter in issue in its motion for reconsideration before this Court. Even without PCIC bringing the matter in issue, however, the Court cannot but respect, as the courts below should have respected, the contractual stipulations, including the written claim provision, contained in the bond contract that had been there as an attachment since PNCC's initiatory and unamended because it was attached to the complaint, we should recognize it in its entirety and cannot play blind to its terms.

On the third issue, we hold that PCIC should be held liable for the attorney's fees PNCC incurred in bringing suit. PCIC's unjust refusal to pay despite PNCC's written claim compelled the latter to hire the services of an attorney to collect on PCIC Bond No. 27547.

WHEREFORE, premises considered, we *SET ASIDE* our Resolution of December 17, 2008 and *GRANT* the present motion for reconsideration. The petition for review on *certiorari* is *PARTLY GRANTED*. The assailed Court of Appeals Decision of January 7, 2008 and Resolution of October 29, 2008 are hereby *AFFIRMED with MODIFICATION,* deleting petitioner PCIC's liability under PCIC Bond No. 27546. All other matters in the assailed Court of Appeals decision and resolution are *AFFIRMED*.

SO ORDERED.

Ynares-Santiago,[*] *Carpio Morales (Acting Chairperson),*[**] *Del Castillo,* and *Abad, JJ.*, concur.

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[*] Designated additional Member of the Second Division per Special Order No. 691 dated September 4, 2009.

[**] Designated Acting Chairperson of the Second Division per Special Order No. 690 dated September 4, 2009.

THIRD DIVISION

[G.R. No. 185251. October 2, 2009]

RAUL G. LOCSIN and EDDIE B. TOMAQUIN, *petitioners, vs.* **PHILIPPINE LONG DISTANCE TELEPHONE COMPANY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; DISPUTABLE PRESUMPTIONS; THE PRESUMPTION THAT THINGS HAVE HAPPENED ACCORDING TO THE ORDINARY COURSE OF NATURE AND THE ORDINARY HABITS OF LIFE IS SATISFACTORY IF UNCONTRADICTED. — Rule 131, Section 3(y) of the Rules of Court provides: "SEC. 3. *Disputable presumptions*. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence: x x x (y) That things have happened according to the ordinary course of nature and the ordinary habits of life." In the ordinary course of things, responsible business owners or managers would not allow security guards of an agency with whom the owners or managers have severed ties with to continue to stay within the business' premises. This is because upon the termination of the owners' or managers' agreement with the security agency, the agency's undertaking of liability for any damage that the security guard would cause has already been terminated. Thus, in the event of an accident or otherwise damage caused by such security guards, it would be the business owners and/or managers who would be liable and not the agency. The business owners or managers would, therefore, be opening themselves up to liability for acts of security guards over whom the owners or managers allegedly have no control. At the very least, responsible business owners or managers would inquire or learn why such security guards were remaining at their posts, and would have a clear understanding of the circumstances of the guards' stay. It is but logical that responsible business owners or managers would be aware of the situation in their premises.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; POWER OF

CONTROL; DULY ESTABLISHED IN CASE AT BAR. — We point out that with respondent's hypothesis, it would seem that SSCP was paying petitioners' salaries while securing respondent's premises despite the termination of their Agreement. Obviously, it would only be respondent that would benefit from such a situation. And it is seriously doubtful that a security agency that was established for profit would allow its security guards to secure respondent's premises when the Agreement was already terminated. From the foregoing circumstances, reason dictates that we conclude that petitioners remained at their post under the instructions of respondent. We can further conclude that respondent dictated upon petitioners that the latter perform their regular duties to secure the premises during operating hours. This, to our mind and under the circumstances, is sufficient to establish the existence of an employer-employee relationship. Certainly, the facts as narrated by petitioners are more believable than the irrational denials made by respondent. x x x To reiterate, while respondent and SSCP no longer had any legal relationship with the termination of the Agreement, petitioners remained at their post securing the premises of respondent while receiving their salaries, allegedly from SSCP. Clearly, such a situation makes no sense, and the denials proffered by respondent do not shed any light to the situation. It is but reasonable to conclude that, with the behest and, presumably, directive of respondent, petitioners continued with their services. Evidently, such are *indicia* of control that respondent exercised over petitioners. Such power of control has been explained as the "right to control not only the end to be achieved but also the means to be used in reaching such end." With the conclusion that respondent directed petitioners to remain at their posts and continue with their duties, it is clear that respondent exercised the power of control over them; thus, the existence of an employer-employee relationship. x x x Evidently, respondent having the power of control over petitioners must be considered as petitioners' employer from the termination of the Agreement onwards — as this was the only time that any evidence of control was exhibited by respondent over petitioners and in light of our ruling in *Abella*. Thus, as aptly declared by the NLRC, petitioners were entitled to the rights and benefits of employees of respondent, including due process requirements in the termination of their services.

APPEARANCES OF COUNSEL

Confucius M. Amistad for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This Petition for Review on *Certiorari* under Rule 45 seeks the reversal of the May 6, 2008 Decision[1] and November 4, 2008 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 97398, entitled *Philippine Long Distance Telephone Company v. National Labor Relations Commission, Raul G. Locsin and Eddie B. Tomaquin*. The assailed decision set aside the Resolutions of the National Labor Relations Commission (NLRC) dated October 28, 2005 and August 28, 2006 which in turn affirmed the Decision dated February 13, 2004 of the Labor Arbiter. The assailed resolution, on the other hand, denied petitioners' motion for reconsideration of the assailed decision.

The Facts

On November 1, 1990, respondent Philippine Long Distance Telephone Company (PLDT) and the Security and Safety Corporation of the Philippines (SSCP) entered into a Security Services Agreement[3] (Agreement) whereby SSCP would provide armed security guards to PLDT to be assigned to its various offices.

Pursuant to such agreement, petitioners Raul Locsin and Eddie Tomaquin, among other security guards, were posted at a PLDT office.

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[1] *Rollo*, pp. 31-41. Penned by Associate Justice Rosalinda Asuncion-Vicente and concurred in by Associate Justices Remedios A. Salazar-Fernando (Chairperson) and Sesinando E. Villon.

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

[3] *Id.* at 16-19.

On August 30, 2001, respondent issued a Letter dated August 30, 2001 terminating the Agreement effective October 1, 2001.[4]

Despite the termination of the Agreement, however, petitioners continued to secure the premises of their assigned office. They were allegedly directed to remain at their post by representatives of respondent. In support of their contention, petitioners provided the Labor Arbiter with copies of petitioner Locsin's pay slips for the period of January to September 2002.[5]

Then, on September 30, 2002, petitioners' services were terminated.

Thus, petitioners filed a complaint before the Labor Arbiter for illegal dismissal and recovery of money claims such as overtime pay, holiday pay, premium pay for holiday and rest day, service incentive leave pay, Emergency Cost of Living Allowance, and moral and exemplary damages against PLDT.

The Labor Arbiter rendered a Decision finding PLDT liable for illegal dismissal. It was explained in the Decision that petitioners were found to be employees of PLDT and not of SSCP. Such conclusion was arrived at with the factual finding that petitioners continued to serve as guards of PLDT's offices. As such employees, petitioners were entitled to substantive and procedural due process before termination of employment. The Labor Arbiter held that respondent failed to observe such due process requirements. The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondent Philippine Long Distance and Telephone Company (PLDT) to pay complainants Raul E. Locsin and Eddie Tomaquin their separation pay and back wages computed as follows:

NAME	SEPARATION PAY	BACKWAGES
1. Raul E. Locsin	₱127,500.00	₱240,954.67
2. Eddie B. Tomaquin	₱127,500.00	₱240,954.67
		₱736,909.34

[4] *Id.* at 20.

[5] *Id.* at 21-24.

All other claims are DISMISSED for want of factual basis.

Let the computation made by the Computation and Examination Unit form part of this decision.

SO ORDERED.

PLDT appealed the above Decision to the NLRC which rendered a Resolution affirming *in toto* the Arbiter's Decision.

Thus, PDLT filed a Motion for Reconsideration of the NLRC's Resolution which was also denied.

Consequently, PLDT filed a Petition for *Certiorari* with the CA asking for the nullification of the Resolution issued by the NLRC as well as the Labor Arbiter's Decision. The CA rendered the assailed decision granting PLDT's petition and dismissing petitioners' complaint. The dispositive portion of the CA Decision provides:

WHEREFORE, the instant Petition for *Certiorari* is GRANTED. The Resolutions dated October 28, 2005 and August 28, 2006 of the National Labor Relations Commission are ANNULLED and SET ASIDE. Private respondents' complaint against Philippine Long Distance Telephone Company is DISMISSED.

SO ORDERED.

The CA applied the four-fold test in order to determine the existence of an employer-employee relationship between the parties but did not find such relationship. It determined that SSCP was not a labor-only contractor and was an independent contractor having substantial capital to operate and conduct its own business. The CA further bolstered its decision by citing the Agreement whereby it was stipulated that there shall be no employer-employee relationship between the security guards and PLDT.

Anent the pay slips that were presented by petitioners, the CA noted that those were issued by SSCP and not PLDT; hence, SSCP continued to pay the salaries of petitioners after the Agreement. This fact allegedly proved that petitioners

continued to be employees of SSCP albeit performing their work at PLDT's premises.

From such assailed decision, petitioners filed a motion for reconsideration which was denied in the assailed resolution.

Hence, we have this petition.

The Issues

1. Whether or not; complainants extended services to the respondent for one (1) year from October 1, 2001, the effectivity of the termination of the contract of complainants agency SSCP, up to September 30, 2002, without a renewed contract, constitutes an employer-employee relationship between respondent and the complainants.

2. Whether or not; in accordance to the provision of the Article 280 of the Labor Code, complainants extended services to the respondent for another one (1) year without a contract be considered as contractual employment.

3. Whether or not; in accordance to the provision of the Article 280 of the Labor Code, does complainants thirteen (13) years of service to the respondent with manifestation to the respondent thirteen (13) years renewal of its security contract with the complainant agency SSCP, can be considered only as "seasonal in nature" or fixed as [specific projects] or undertakings and its completion or termination can be dictated as [controlled] by the respondent anytime they wanted to.

4. Whether or not; complainants from being an alleged contractual employees of the respondent for thirteen (13) years as they were then covered by a contract, becomes regular employees of the respondent as the one (1) year extended services of the complainants were not covered by a contract, and can be considered as direct employment pursuant to the provision of the Article 280 of the Labor Code.

5. Whether or not; the Court of Appeals committed grave abuse of discretion when it set aside and [annulled] the labor

[arbiter's] decision and of the NLRC's resolution declaring the dismissal of the complainant as illegal.[6]

The Court's Ruling

This petition is hereby granted.

An Employer-Employee Relationship Existed Between the Parties

It is beyond cavil that there was no employer-employee relationship between the parties from the time of petitioners' first assignment to respondent by SSCP in 1988 until the alleged termination of the Agreement between respondent and SSCP. In fact, this was the conclusion that was reached by this Court in *Abella v. Philippine Long Distance Telephone Company*,[7] where we ruled that petitioners therein, including herein petitioners, cannot be considered as employees of PLDT. It bears pointing out that petitioners were among those declared to be employees of their respective security agencies and not of PLDT.

The only issue in this case is whether petitioners became employees of respondent after the Agreement between SSCP and respondent was terminated.

This must be answered in the affirmative.

Notably, respondent does not deny the fact that petitioners remained in the premises of their offices even after the Agreement was terminated. And it is this fact that must be explained.

To recapitulate, the CA, in rendering a decision in favor of respondent, found that: (1) petitioners failed to prove that SSCP was a labor-only contractor; and (2) petitioners are employees of SSCP and not of PLDT.

In arriving at such conclusions, the CA relied on the provisions of the Agreement, wherein SSCP undertook to supply PLDT with the required security guards, while furnishing PLDT with a performance bond in the amount of PhP 707,000. Moreover,

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

[7] G.R. No. 159469, June 8, 2005, 459 SCRA 724.

the CA gave weight to the provision in the Agreement that SSCP warranted that it "carry on an independent business and has substantial capital or investment in the form of equipment, work premises, and other materials which are necessary in the conduct of its business."

Further, in determining that no employer-employee relationship existed between the parties, the CA quoted the express provision of the Agreement, stating that no employer-employee relationship existed between the parties herein. The CA disregarded the pay slips of Locsin considering that they were in fact issued by SSCP and not by PLDT.

From the foregoing explanation of the CA, the fact remains that petitioners remained at their post after the termination of the Agreement. Notably, in its Comment dated March 10, 2009,[8] respondent never denied that petitioners remained at their post until September 30, 2002. While respondent denies the alleged circumstances stated by petitioners, that they were told to remain at their post by respondent's Security Department and that they were informed by SSCP Operations Officer Eduardo Juliano that their salaries would be coursed through SSCP as per arrangement with PLDT, it does not state why they were not made to vacate their posts. Respondent said that it did not know why petitioners remained at their posts.

Rule 131, Section 3(y) of the Rules of Court provides:

> SEC. 3. *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
>
> x x x x x x x x x
>
> (y) That things have happened according to the ordinary course of nature and the ordinary habits of life.

In the ordinary course of things, responsible business owners or managers would not allow security guards of an agency with whom the owners or managers have severed ties with to continue to stay within the business' premises. This is because

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[8] *Rollo*, pp. 57-75.

upon the termination of the owners' or managers' agreement with the security agency, the agency's undertaking of liability for any damage that the security guard would cause has already been terminated. Thus, in the event of an accident or otherwise damage caused by such security guards, it would be the business owners and/or managers who would be liable and not the agency. The business owners or managers would, therefore, be opening themselves up to liability for acts of security guards over whom the owners or managers allegedly have no control.

At the very least, responsible business owners or managers would inquire or learn why such security guards were remaining at their posts, and would have a clear understanding of the circumstances of the guards' stay. It is but logical that responsible business owners or managers would be aware of the situation in their premises.

We point out that with respondent's hypothesis, it would seem that SSCP was paying petitioners' salaries while securing respondent's premises despite the termination of their Agreement. Obviously, it would only be respondent that would benefit from such a situation. And it is seriously doubtful that a security agency that was established for profit would allow its security guards to secure respondent's premises when the Agreement was already terminated.

From the foregoing circumstances, reason dictates that we conclude that petitioners remained at their post under the instructions of respondent. We can further conclude that respondent dictated upon petitioners that the latter perform their regular duties to secure the premises during operating hours. This, to our mind and under the circumstances, is sufficient to establish the existence of an employer-employee relationship. Certainly, the facts as narrated by petitioners are more believable than the irrational denials made by respondent. Thus, we ruled in *Lee Eng Hong v. Court of Appeals*:[9]

Evidence, to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself — such as the

[9] G.R. No. 114145, February 15, 1995, 241 SCRA 392, 398.

common experience and observation of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation and experience. Whatever is repugnant to these belongs to the miraculous and is outside judicial cognizance (*Castañares v. Court of Appeals*, 92 SCRA 568 [1979]).

To reiterate, while respondent and SSCP no longer had any legal relationship with the termination of the Agreement, petitioners remained at their post securing the premises of respondent while receiving their salaries, allegedly from SSCP. Clearly, such a situation makes no sense, and the denials proffered by respondent do not shed any light to the situation. It is but reasonable to conclude that, with the behest and, presumably, directive of respondent, petitioners continued with their services. Evidently, such are *indicia* of control that respondent exercised over petitioners.

Such power of control has been explained as the "right to control not only the end to be achieved but also the means to be used in reaching such end."[10] With the conclusion that respondent directed petitioners to remain at their posts and continue with their duties, it is clear that respondent exercised the power of control over them; thus, the existence of an employer-employee relationship.

In *Tongko v. The Manufacturers Life Insurance Co. (Phils.) Inc.*,[11] we reiterated the oft repeated rule that control is the most important element in the determination of the existence of an employer-employee relationship:

> In the determination of whether an employer-employee relationship exists between two parties, this Court applies the four-fold test to determine the existence of the elements of such relationship. In *Pacific Consultants International Asia, Inc. v. Schonfeld*, the Court set out the elements of an employer-employee relationship, thus:
>
> > Jurisprudence is firmly settled that whenever the existence of an employment relationship is in dispute, four elements

[10] *Francisco v. National Labor Relations Commission*, G.R. No. 170087, August 31, 2006, 500 SCRA 690, 697.

[11] G.R. No. 167622, November 7, 2008, 570 SCRA 503, 516.

> constitute the reliable yardstick: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee's conduct. It is the so-called "control test" which constitutes the most important index of the existence of the employer-employee relationship that is, whether the employer controls or has reserved the right to control the employee not only as to the result of the work to be done but also as to the means and methods by which the same is to be accomplished. Stated otherwise, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end to be achieved but also the means to be used in reaching such end.

Furthermore, Article 106 of the Labor Code contains a provision on contractors, to wit:

Art. 106. Contractor or subcontractor. Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting-out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are

performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him. (Emphasis supplied.)

Thus, the Secretary of Labor issued Department Order No. 18-2002, Series of 2002, implementing Art. 106 as follows:

Section 5. Prohibition against labor-only contracting. — Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:

> (i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or
>
> **(ii) the contractor does not exercise the right to control over the performance of the work of the contractual employee.**

The foregoing provisions shall be without prejudice to the application of Article 248 (C) of the Labor Code, as amended.

"Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out.

The "right to control" shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.

On the other hand, Sec. 7 of the department order contains the consequence of such labor-only contracting:

Section 7. Existence of an employer-employee relationship.—The contractor or subcontractor shall be considered the employer of the contractual employee for purposes of enforcing the provisions of the Labor Code and other social legislation. The principal, however, shall be solidarily liable with the contractor in the event of any violation of any provision of the Labor Code, including the failure to pay wages.

The principal shall be deemed the employer of the contractual employee in any of the following cases as declared by a competent authority:

(a) where there is labor-only contracting; or

(b) where the contracting arrangement falls within the prohibitions provided in Section 6 (Prohibitions) hereof. (Emphasis supplied.)

Evidently, respondent having the power of control over petitioners must be considered as petitioners' employer — from the termination of the Agreement onwards — as this was the only time that any evidence of control was exhibited by respondent over petitioners and in light of our ruling in *Abella*.[12] Thus, as aptly declared by the NLRC, petitioners were entitled to the rights and benefits of employees of respondent, including due process requirements in the termination of their services.

Both the Labor Arbiter and NLRC found that respondent did not observe such due process requirements. Having failed to do so, respondent is guilty of illegal dismissal.

WHEREFORE, we *SET ASIDE* the CA's May 6, 2008 Decision and November 4, 2008 Resolution in CA-G.R. SP No. 97398. We hereby *REINSTATE* the Labor Arbiter's Decision dated February 13, 2004 and the NLRC's Resolutions dated October 28, 2005 and August 28, 2006.

No costs.

SO ORDERED.

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

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[12] *Supra* note 7.

SECOND DIVISION

[G.R. No. 185261. October 2, 2009]

WALLEM MARITIME SERVICES, INC. and SCANDIC SHIPMANAGEMENT LIMITED, *petitioners, vs.* **ERIBERTO S. BULTRON,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; APPEALS; APPEAL FROM JUDGMENTS INVOLVING MONETARY AWARD; REQUISITES; PERFECTION OF APPEALS IN THE MANNER AND WITHIN THE PERIOD PERMITTED BY LAW IS NOT ONLY MANDATORYBUT JURISDICTIONAL. — The decisions, awards or orders of the Labor Arbiter are final and executory unless appealed to the NLRC by any parties within ten (10) calendar days from receipt thereof, with proof of payment of the required appeal fee accompanied by a memorandum of appeal. And where, as here, the judgment involves monetary award, an appeal therefrom by the employer may be "perfected only upon the posting of a cash or surety bond." A mere notice of appeal without complying with the other requisites mentioned does not stop the running of the period for perfecting an appeal as in fact no motion for extension of said period is allowed. The perfection of appeals in the manner and within the period permitted by law is not only mandatory but jurisdictional and must, therefore, be strictly observed.

2. ID.; ID.; ID.; ID.; ALL THE ESSENTIAL REQUIREMENTS FOR THE PERFECTION OF THE APPEAL MUST BE FILED WITHIN THE REGLEMENTARY PERIOD; CASE AT BAR. — Petitioners' re-filing on the next working day, November 17, 2003, of the *Notice of Appeal with Appeal Memorandum*, which was accompanied, this time, by the *appeal bond*, did not cure the fatal defect of their appeal since said bond was filed after the ten-day reglementary period had expired – at which time the Labor Arbiter's judgment had already become final and executory and, therefore, immutable. Respecting petitioners' argument that their appeal was "initiated" within the ten-day reglementary period," suffice it to state that all

the essential **requirements** for the perfection of the appeal **must be filed within** the reglementary period.

3. ID.; ID.; ID.; RULE THEREON MAY BE RELAXED ONLY UNDER EXCEPTIONALLY MERITORIOUS CASES. — Petitioners' bare invocation of "the interest of substantial justice" does not lie." Only under exceptionally meritorious cases may a relaxation from an otherwise stringent rule be allowed "to relieve a litigant of an injustice not commensurate with the degree of thoughtlessness in not complying with the procedure prescribed"– the existence of which petitioners failed to demonstrate.

APPEARANCES OF COUNSEL

Sugay Law for petitioners.
Capuyan & Quimpo for respondent.

D E C I S I O N

CARPIO MORALES,[*] *J.*:

Wallem Maritime Services, Inc. and Scandic Shipmanagement, Ltd. (petitioners) hired Eriberto S. Bultron (respondent) on February 3, 1999 as crane operator in their vessel *MV EASTERN FALCON* for a period of twelve (12) months.

In the course of his employment, respondent developed "chronic coughs," hence, petitioners referred him to their company physician in Langkawi, Malaysia who issued a medical report dated April 6, 2000 stating, *inter alia*, that "by the nature of [respondent's] work as a seaman, he has been exposed to cement dust as his cargo ship carries cement"; and that his "Chest X-ray shows bilateral apical infiltrations of the lungs, minimal pleural effusion of the left lung and heart configuration is enlarged." Dr. Haroun thus advised petitioners to take care of him "for further management . . ."[1]

[*] Per Special Order No. 690 in lieu of the sabbatical leave of Senior Associate Justice Leonardo A. Quisumbing.

[1] Annex "B" of Respondent's Position Paper, *rollo*, pp. 265-266, 278.

Petitioners allowed respondent to continue with his job until he was repatriated to Manila on April 29, 2000 at the expiration of his contract.[2] As respondent constantly complained of "on and off cough[ing]," petitioners referred him to the Metropolitan Hospital.

After a series of medical tests, Dr. Robert D. Lim (Dr. Lim), petitioners' medical coordinator at the Metropolitan Hospital, issued a medical report on July 28, 2000 stating that, *inter alia*, respondent "is now fit to work."[3]

Respondent refused, however, to sign the certificate of fitness for work as he felt he was still ill and suffering from disabilities.[4]

Petitioners having discontinued providing medical services and treatment, respondent consulted, at his own expense, a private physician, Dr. Juan Alejandro Legaspi (Dr. Legaspi), who diagnosed him on August 10, 2000 to be suffering from "spinal stenosis, L4-L5, L5-S1," and thus advised him to "avoid exertional activities and prolonged sitting" and to have 'bed rest.'[5]

Claiming, *inter alia*, that his illness has "persisted" and has "totally disabled [him] from pursuing his work as a seaman" due to petitioners' failure to provide safety measures and protective gears during his work to shield him from contracting illnesses, respondent filed a *Complaint*[6] for disability benefits and damages against petitioners before the NLRC-NCR Arbitration Branch, Quezon City.

Petitioners resisted respondent's *Complaint*, contending that under the POEA Standard Employment Contract, he may only recover such benefits when his repatriation is due to medical reasons, not when it is due to completion of contract as in his case.

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[2] CA Decision, *id.* at 96.

[3] *Id.* at 96-97.

[4] *Id.* at 97; Labor Arbiter's Decision, *id.* at 115.

[5] *Ibid.*

[6] *Id.* at 184-193.

By Decision dated October 8, 2003, Labor Arbiter Felipe P. Pati found for respondent, disposing as follows:

> WHEREFORE, premises all considered, judgment is hereby rendered ordering respondents [now petitioners] jointly and severally liable to:
>
> 1. pay complainant [now respondent] his proportionate disability benefits in the amount of US$60,000.00 or its peso equivalent at the time of payment; and
>
> 2. pay complainant attorney's fees at 10% of the total monetary award to be recovered.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[7]

After petitioners received a copy of the Labor Arbiter's Decision on November 4, 2003, they filed a *Notice of Appeal with Appeal Memorandum* via registered mail on the last day of the 10-day reglementary period of appeal or on November 14, 2003, a Friday, without the requisite *appeal bond*. It was only on the next business day, November 17, 2003, that they filed the *appeal bond*, together with another copy of petitioners' *Notice of Appeal with Appeal Memorandum*.

Respondent thus filed a *Motion to Dismiss Appeal*[8] on the ground that petitioners' appeal was filed out of time.

Explaining their failure to file their *appeal bond* on November 14, 2003, petitioners, through counsel, stated that the appeal bond "was not processed on time by the bonding company" and "was issued only on 14 November 2003 at around 4:05 PM in the office of Pioneer Insurance Corporation at Paseo de Roxas, Makati City"; and that "undersigned counsel then carried the *appeal bond*, drove his car from Makati to Manila area," but "due to extreme traffic condition, he called-up thru his mobile phone his legal assistant to file the appeal via registered mail."[9]

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[7] *Id.* at 120-121.

[8] Annex "M" of Petition, *id.* at 321-323.

[9] Opposition to Complainant's Motion to Dismiss Appeal, *id.* at 324-325 (underscoring supplied).

Petitioners thus concluded that "**there is actually no delay** inasmuch as the appeal was initiated within the ten-day reglementary period via registered mail."[10]

The National Labor Relations Commission (NLRC), by Decision[11] of March 8, 2006, denied respondent's motion to dismiss petitioners' appeal which it considered to have been effected on November 14, 2003. On the merits, it reversed the Labor Arbiter's decision and accordingly dismissed respondent's complaint, as well as petitioners' permissive counter-claims.

Respondent's *Motion for Reconsideration*[12] having been denied, he filed a petition for *Certiorari* before the Court of Appeals.

By Decision[13] of February 20, 2008, the appellate court annulled the NLRC Decision and Resolution, and reinstated the Labor Arbiter's Decision, it ruling that the NLRC "never acquired jurisdiction" over the appeal of petitioners as they "failed to perfect their appeal "within the ten calendar-day period" and thus render the Labor Arbiter's Decision final and executory.[14]

Petitioners' *Motion for Reconsideration* having been denied by Resolution of October 22, 2008,[15] they filed the present Petition for Review on *Certiorari*.

The petition fails.

The decisions, awards or orders of the Labor Arbiter are final and executory unless appealed to the NLRC by any parties

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[10] *Ibid.* (underscoring and emphasis supplied).

[11] Penned by Presiding Commissioner Benedicto Ernesto R. Bitonio, Jr., with Commissioners Perlita B. Velasco and Romeo L. Go, concurring; *id.* at 121-128.

[12] *Id.* at 330-354.

[13] Penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Rebecca De Guia-Salvador and Ricardo R. Rosario; *id.* at 33-44.

[14] *Id.* at 39, 41-42.

[15] *Id.* at 47-50.

within ten (10) calendar days from receipt thereof, with proof of payment of the required appeal fee accompanied by a memorandum of appeal. And where, as here, the judgment involves monetary award, an appeal therefrom by the employer may be "perfected only upon the posting of a cash or surety bond."[16] A mere notice of appeal without complying with the other requisites mentioned does not stop the running of the period for perfecting an appeal[17] as in fact no motion for extension of said period is allowed.[18]

The perfection of appeals in the manner and within the period permitted by law is not only mandatory but jurisdictional and must, therefore, be strictly observed.

Petitioners' re-filing on the next working day, November 17, 2003, of the *Notice of Appeal with Appeal Memorandum*, which was accompanied, this time, by the *appeal bond*, did not cure the fatal defect of their appeal since said bond was filed after the ten-day reglementary period had expired – at which time the Labor Arbiter's judgment had already become final and executory and, therefore, immutable.[19]

Respecting petitioners' argument that their appeal was "initiated" within the ten-day reglementary period,"[20] suffice it to state that **all** the essential **requirements** for the perfection of the appeal **must be filed within** the reglementary period.

Petitioners' bare invocation of "the interest of substantial justice" does not lie."[21] Only under exceptionally meritorious

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[16] Article 223 of the Labor Code, as amended; Section 3, Rule VI of the New Rules of Procedure of the NLRC; *Mary Abigail's Food Services, Inc. v. Court of Appeals*, G.R. No. 140294, May 9, 2005, 458 SCRA 265, 273-274 (underscoring supplied).

[17] Section 3, Rule VI of the New Rules of Procedure of the NLRC.

[18] Section 7, *id.*

[19] *Stolt-Nielsen Marine Services, Inc. v. NLRC*, G.R. No. 147623, December 13, 2005, 477 SCRA 516, 531.

[20] *Rollo*, pp. 324-325 (underscoring supplied).

[21] *Zaragoza v. Nobleza*, G.R. No. 144560, May 13, 2004, 428 SCRA 410, 420-421.

cases may a relaxation from an otherwise stringent rule be allowed "to relieve a litigant of an injustice not commensurate with the degree of thoughtlessness in not complying with the procedure prescribed"[22] – the existence of which petitioners failed to demonstrate.

WHEREFORE, the present Petition for Review on *Certiorari* is *DENIED*. Costs against petitioners.

SO ORDERED.

Ynares-Santiago,[**] *Peralta,*[***] *Del Castillo,* and *Abad, JJ.*, concur.

SECOND DIVISION

[G.R. No. 186001. October 2, 2009]

ANTONIO CABADOR, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; TRIAL; TRIAL PROPER IN A CRIMINAL CASE; STAGES. — The trial proper in a criminal case usually has two stages: first, the prosecution's presentation of evidence against the accused and, second, the accused's presentation of evidence in his defense. If, after the prosecution has presented its evidence, the same appears insufficient to support a conviction, the trial court may at its own initiative or on motion of the accused dispense with the second stage and dismiss the criminal action.

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[22] *Id.*

[**] Additional member per Special Order No. 691.

[***] Additional member per Special Order No. 711.

There is no point for the trial court to hear the evidence of the accused in such a case since the prosecution bears the burden of proving his guilt beyond reasonable doubt. The order of dismissal amounts to an acquittal.

2. ID.; ID.; ID.; CRITERIA IN DETERMINING WHETHER THE PLEADING FILED IS A DEMURRER TO EVIDENCE OR A MOTION TO DISMISS. — This Court held in *Enojas, Jr. v. Commission on Elections* that, to determine whether the pleading filed is a demurrer to evidence or a motion to dismiss, the Court must consider (1) the allegations in it made in good faith; (2) the stage of the proceeding at which it is filed; and (3) the primary objective of the party filing it.

3. ID.; ID.; ID.; MOTION TO DISMISS ON THE GROUND OF DENIAL OF THE ACCUSED'S RIGHT TO SPEEDY TRIAL; EXPLAINED. — In criminal cases, a motion to dismiss may be filed on the ground of denial of the accused's right to speedy trial. This denial is characterized by unreasonable, vexatious, and oppressive delays without fault of the accused, or by unjustified postponements that unreasonably prolonged the trial. This was the main thrust of Cabador's motion to dismiss and he had the right to bring this up for a ruling by the trial court.

4. ID.; ID.; ID.; DEMURRER TO EVIDENCE; ASSUMES THAT THE PROSECUTION HAD ALREADY RESTED ITS CASE; CASE AT BAR. — [A] demurrer to evidence assumes that the prosecution has already rested its case. Section 23, Rule 119 of the Revised Rules of Criminal Procedure, reads: "*Demurrer to evidence.* – **After the prosecution rests its case**, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to the evidence filed by the accused with or without leave of court." Here, after the prosecution filed its formal offer of exhibits on August 1, 2006, the same day Cabador filed his motion to dismiss, the trial court still needed to give him an opportunity to object to the admission of those exhibits. It also needed to rule on the formal offer. And only after such a ruling could the prosecution be deemed to have rested its case. Since Cabador filed his motion to dismiss before he could object to the prosecution's formal offer, before the trial court could act on the offer, and before the prosecution could rest its case,

it could not be said that he had intended his motion to dismiss to serve as a demurrer to evidence.

APPEARANCES OF COUNSEL

UP Office of Legal Aid for petitioner.
The Solicitor General for respondent.

D E C I S I O N

ABAD, *J.*:

Before the Court is a petition for review on *certiorari*, assailing the Court of Appeals' (CA) Decision of August 4, 2008[1] and Resolution of October 28, 2008[2] in CA-G.R. SP 100431 that affirmed the August 31, 2006 Order[3] of the Regional Trial Court (RTC) of Quezon City.

The facts are not disputed.

On June 23, 2000 the public prosecutor accused petitioner Antonio Cabador before the RTC of Quezon City in Criminal Case Q-00-93291 of murdering, in conspiracy with others, Atty. Jun N. Valerio.[4] On February 13, 2006, after presenting only five witnesses over five years of intermittent trial, the RTC declared at an end the prosecution's presentation of evidence and required the prosecution to make a written or formal offer of its documentary evidence within 15 days from notice.[5] But the public prosecutor asked for three extensions of time, the last of which was to end on July 28, 2006. Still, the prosecution did not make the required written offer.

On August 1, 2006 petitioner Cabador filed a motion to dismiss the case,[6] complaining of a turtle-paced proceeding in the case

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[1] *Rollo*, p. 39. Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Mario L. Guariña III and Mariflor P. Punzalan-Castillo.

[2] *Id.* at 56.

[3] *Id.* at 100. Issued by Judge Ma. Theresa L. De La Torre-Yadao.

[4] Also referred to as "Justice Valerio" in the Petition.

[5] *Rollo*, p. 120.

[6] *Id.* at 75.

since his arrest and detention in 2001 and invoking his right to a speedy trial. Further, he claimed that in the circumstances, the trial court could not consider any evidence against him that had not been formally offered. He also pointed out that the prosecution witnesses did not have knowledge of his alleged part in the crime charged.

Unknown to petitioner Cabador, however, four days earlier or on July 28, 2006 the prosecution asked the RTC for another extension of the period for its formal offer, which offer it eventually made on August 1, 2006, the day Cabador filed his motion to dismiss.[7]

On August 31, 2006 the RTC issued an Order treating petitioner Cabador's August 1, 2006 motion to dismiss as a demurrer to evidence. And, since he filed his motion without leave of court, the RTC declared him to have waived his right to present evidence in his defense. The trial court deemed the case submitted for decision insofar as he was concerned. Cabador filed a motion for reconsideration of this Order but the RTC denied it on February 19, 2007.[8] Cabador questioned the RTC's actions before the CA but on August 4, 2008 the latter denied his petition and affirmed the lower court's actions.[9] With the CA's denial of his motion for reconsideration, on October 28, 2008 petitioner came to this Court *via* a petition for review on *certiorari*.

The issue in this case is whether or not petitioner Cabador's motion to dismiss before the trial court was in fact a demurrer to evidence filed without leave of court, with the result that he effectively waived his right to present evidence in his defense and submitted the case for decision insofar as he was concerned.

The trial proper in a criminal case usually has two stages: first, the prosecution's presentation of evidence against the accused and, second, the accused's presentation of evidence in his defense. If, after the prosecution has presented its evidence,

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[7] Petition, *id.* at 24 and 30.

[8] *Id.* at 107.

[9] *Id.* at 53.

the same appears insufficient to support a conviction, the trial court may at its own initiative or on motion of the accused dispense with the second stage and dismiss the criminal action.[10] There is no point for the trial court to hear the evidence of the accused in such a case since the prosecution bears the burden of proving his guilt beyond reasonable doubt. The order of dismissal amounts to an acquittal.

But because some have in the past used the demurrer in order to delay the proceedings in the case, the remedy now carries a caveat. When the accused files a demurrer *without leave of court*, he shall be deemed to have waived the right to present evidence and the case shall be considered submitted for judgment.[11] On occasions, this presents a problem such as when, like the situation in this case, the accused files a motion to dismiss that, to the RTC, had the appearance of a demurrer to evidence. Cabador insists that it is not one but the CA, like the lower court, ruled that it is.

This Court held in *Enojas, Jr. v. Commission on Elections*[12] that, to determine whether the pleading filed is a demurrer to evidence or a motion to dismiss, the Court must consider (1) the allegations in it made in good faith; (2) the stage of the proceeding at which it is filed; and (3) the primary objective of the party filing it.

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[10] SEC. 23 (Rule 119 of the Revised Rules on Criminal Procedure). *Demurrer to evidence*. – After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to the evidence filed by the accused with or without leave of court.

If the Court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

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[11] *Id.*, par. 2; see *Hun Hyung Park v. Eung Won Choi*, G.R. No. 165496, February 12, 2007, 515 SCRA 502, 512.

[12] 347 Phil. 510 (1997).

Here, the pertinent portions of petitioner Cabador's motion to dismiss read as follows:

2. On November 9, 2001, the accused was arrested and subsequently brought to the Quezon City jail through a commitment order dated November 21, 2001 where he had been detained during the course of this case.

3. The accused was arraigned on January 8, 2002 and trial began soon after.

4. UP-OLA entered its appearance as counsel for the accused on January 20, 2005.

5. On February 10, 2006, the Honorable Court terminated the presentation of evidence for the prosecution considering that the case has been going on for 5 years already and during that period the prosecution has only presented 5 witnesses. Moreover, xxx there had been numerous postponements due to failure of the prosecution to ensure the presence of its witnesses.

6. In an order dated March 31, 2006, the Honorable court required the public prosecutor to submit its formal offer of evidence within fifteen (15) days from receipt of such order.

7. On April 17, 2006, the public prosecutor was again absent so the presentation of evidence for the accused was reset to June 6, 2006.

8. During the same hearing, the Prosecution was again granted an additional fifteen (15) days within which to file their formal offer of evidence.

9. On June 6, 2006, the public prosecutor again failed to appear and to file their formal offer of evidence. In an order, the Honorable Court again extended to the prosecution an additional fifteen (15) days from receipt of the order within which to file their formal offer of evidence.

10. On June 28, 2006, the Honorable Court issued an order granting the prosecution a thirty-day extension, or until July 28, 2006 within which to file their formal offer of evidence since the public prosecutor was on leave.

11. Upon the expiration of the extension granted by the Honorable Court, the prosecution failed to file their formal offer of evidence.

10. (Sic) Despite three (3) extensions, the prosecution failed to file formal offer of evidence.

11. (Sic) Sec. 34, Rule 132 of the Rules of Court provides that "the court shall consider no evidence which has not been formally offered." A formal offer is necessary, since judges are required to base their findings of fact and their judgment solely and strictly upon the evidence offered by the parties at the trial (*Ong vs. CA*, G.R. No. 117103). Hence, without any formal offer of evidence, this Honorable Court has no evidence to consider.

12. The charge against the accused has no leg to stand on. The witnesses that had been presented by the prosecution testified mainly on the occurrences on the night of the incident and had no knowledge of any connection with or any participation by the accused in the incident.

13. The hearings of the case have been delayed since 2001 through no fault of the defense to the prejudice of the rights of the accused to a speedy trial, mandated by no less than Art. III, Sec. 16 of the Constitution.

14. Since UP-OLA had entered its appearance in 2005, the case had been reset for twelve (12) times, most of which are due to the fault or absence of the prosecution. For the five year duration of the case, the prosecution still has not presented any evidence to prove the guilt of the accused beyond reasonable doubt. Meanwhile, the accused has been unduly stripped of this liberty for more than five (5) years upon an unsubstantiated charge.

15. The accused was injured and debilitated in the course of his arrest which resulted in the amputation of his left leg. His movement is severely hampered and his living conditions are less adequate. To subject him to further delays when there is no substance to the charge against him would tantamount to injustice.[13]

It can be seen from the above that petitioner Cabador took pains to point out in paragraphs 2, 3, 5, 6, 7, 8, 9, 10, 11, "10 (sic)", 13, 14, and 15 above how trial in the case had painfully

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[13] *Rollo*, pp. 75-76.

dragged on for years. The gaps between proceedings were long, with hearings often postponed because of the prosecutor's absence. This was further compounded, Cabador said, by the prosecution's repeated motions for extension of time to file its formal offer and its failure to file it within such time. Cabador then invoked in paragraph 13 above his right to speedy trial. But the RTC and the CA simply chose to ignore these extensive averments and altogether treated Cabador's motion as a demurrer to evidence because of a few observations he made in paragraphs "11 (sic)" and 12 regarding the inadequacy of the evidence against him.

In criminal cases, a motion to dismiss may be filed on the ground of denial of the accused's right to speedy trial.[14] This denial is characterized by unreasonable, vexatious, and oppressive delays without fault of the accused, or by unjustified postponements that unreasonably prolonged the trial.[15] This was the main thrust of Cabador's motion to dismiss and he had the right to bring this up for a ruling by the trial court.

Cabador of course dropped a few lines in his motion to dismiss in paragraphs "11 (sic)" and 12, saying that the trial court "has no evidence to consider," "the charge has no leg to stand on," and that "the witnesses x x x had no knowledge of any connection with or any participation by the accused in the incident." But these were mere conclusions, highlighting what five years of trial had accomplished.

The fact is that Cabador did not even bother to do what is so fundamental in any demurrer. He did not state what evidence the prosecution had presented against him to show in what respects such evidence failed to meet the elements of the crime charged. His so-called "demurrer" did not touch on any particular testimony of even one witness. He cited no documentary exhibit. Indeed, he could not because, he did not know that the prosecution finally made its formal offer of exhibits

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[14] *People v. Hernandez*, G.R. Nos. 154218 & 154372, August 28, 2006, 499 SCRA 688, 700-701, 708.

[15] *Guerrero v. Court of Appeals*, 327 Phil. 496, 507 (1996).

on the same date he filed his motion to dismiss.[16] To say that Cabador filed a demurrer to evidence is equivalent to the proverbial blind man, touching the side of an elephant, and exclaiming that he had touched a wall.

Besides, a demurrer to evidence assumes that the prosecution has already rested its case. Section 23, Rule 119 of the Revised Rules of Criminal Procedure, reads:

> *Demurrer to evidence.* – **After the prosecution rests its case**, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to the evidence filed by the accused with or without leave of court. (Emphasis supplied)

Here, after the prosecution filed its formal offer of exhibits on August 1, 2006, the same day Cabador filed his motion to dismiss, the trial court still needed to give him an opportunity to object to the admission of those exhibits. It also needed to rule on the formal offer. And only after such a ruling could the prosecution be deemed to have rested its case. Since Cabador filed his motion to dismiss before he could object to the prosecution's formal offer, before the trial court could act on the offer, and before the prosecution could rest its case, it could not be said that he had intended his motion to dismiss to serve as a demurrer to evidence.

In sum, tested against the criteria laid down in *Enojas*, the Court finds that petitioner Cabador filed a motion to dismiss on the ground of violation of his right to speedy trial, not a demurrer to evidence. He cannot be declared to have waived his right to present evidence in his defense.

On a final note, a demurrer to evidence shortens the proceedings in criminal cases. Caution must, however, be exercised[17] in view of its pernicious consequence on the right of the accused to present evidence in his defense, the seriousness of the crime charged, and the gravity of the penalty involved.

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[16] *Rollo*, pp. 24 and 30.

[17] *Consolidated Bank and Trust Corporation v. Del Monte Motor Works, Inc.*, G.R. No. 143338, July 29, 2005, 465 SCRA 117, 135.

WHEREFORE, the petition is *GRANTED*, the August 4, 2008 Decision and the October 28, 2008 Resolution of the Court of Appeals in CA-G.R. SP 100431 are *REVERSED* and *SET ASIDE*, and the August 31, 2006 Order of the Regional Trial Court of Quezon City, Branch 81 is *NULLIFIED*. The latter court is *DIRECTED* to resolve petitioner Antonio Cabador's motion to dismiss based on the circumstances surrounding the trial in the case.

SO ORDERED.

Ynares-Santiago,[*] *Carpio Morales,*[**] *Brion* and *Del Castillo, JJ.,* concur.

THIRD DIVISION

[G.R. No. 186233. October 2, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROMEO SATONERO @ RUBEN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS. — One who admits killing another in the name of self-defense bears the onus of proving the justifiability of the killing. The accused, therefore, must convincingly prove the following elements of the justifying circumstance of self-defense: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient

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[*] Designated additional member in lieu of Associate Justice Leonardo A. Quisumbing, per Special Order No. 691 dated September 4, 2009.

[**] In lieu of Associate Justice Leonardo A. Quisumbing, per Special Order No. 690 dated September 4, 2009.

provocation on the part of the person claiming self-defense. While all three elements must concur to support a claim of complete self-defense, self-defense relies first and foremost on a showing of unlawful aggression on the part of the victim. Absent clear proof of unlawful aggression on the part of the victim, self-defense may not be successfully pleaded.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT THEREON BY TRIAL COURT IS GENERALLY ENTITLED TO GREAT RESPECT. — The testimony of a single eyewitness to a killing, if worthy of credence, is sufficient to support a conviction for homicide or murder, as the case may be. It bears stressing that, as a rule, the trial court's factual determinations, especially its assessments of the witnesses' testimony and their credibility, are entitled to great respect, barring arbitrariness or oversight of some fact or circumstance of weight and substance. For having the opportunity to observe the witnesses' demeanor while in the witness box, such as their facial expression and the tone of their voice, the trial court is in a better position to address questions of credibility. The trial court's proximate contact with those who take the witness stand places it in a more competent position to discriminate between a true and false testimony.

3. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; FAILURE TO ACCOUNT FOR THE NON-PRESENTATION OF THE WEAPON ALLEGEDLY WIELDED BY THE VICTIM IS FATAL TO THE PLEA OF SELF-DEFENSE; CASE AT BAR. — [T]he allegation of accused-appellant which pictured Ramon as purportedly pulling out a knife and attempting to stab the former came uncorroborated, although several onlookers — potential witnesses all — were at the *situs* of the crime. And while claiming to have grappled for some time with Ramon for the possession of the knife, accused-appellant managed to stay unscathed, which in itself is incredible. And lest it be overlooked, appellant failed, without explanation, to present the knife purportedly used by the victim. Jurisprudence teaches that the failure to account for the non-presentation of the weapon allegedly wielded by the victim is fatal to the plea of self-defense. The Court, thus, joins the trial court in its determination, as affirmed by the CA, of the absence of unlawful aggression on the part of Ramon.

4. ID.; ID.; ID.; ELEMENTS; UNLAWFUL AGGRESSION; WHEN PRESENT. — For unlawful aggression to be present, there must be a real danger to life or personal safety. There must be an actual, sudden, and unexpected attack or imminent danger, and not merely a threatening or intimidating attitude. As the element of unlawful aggression on the part of the victim is absent, or at least not convincingly proved, accused-appellant's claim of self-defense cannot be appreciated.

5. ID.; ID.; ID.; ID.; REASONABLE NECESSITY OF THE MEANS EMPLOYED TO PREVENT OR REPEL THE UNLAWFUL AGGRESSION; ABSENT IN CASE AT BAR. — But assuming *arguendo* that there was unlawful aggression on Ramon's part, the Court distinctly notes that the means accused-appellant employed to prevent or repel the supposed unlawful aggression were far from reasonably necessary. The number and nature of the wounds sustained by Ramon certainly belie a claim of self-defense. It is worth stressing that accused-appellant inflicted nine stab wounds on Ramon after he pumped a bullet on the latter's lower left chest. Said gunshot wound, as medical report later showed, was by itself already fatal. Significantly, after Ramon fell as a result of his bullet wound, accused-appellant still proceeded to stab him. As aptly observed by the trial court, Ramon could not have walked far after he was hit by the bullet. Accused-appellant's pretense, therefore, that he had no intention to harm Ramon after the shooting and that he only approached the fallen Ramon to bring him to the doctor, stretches credulity to the absurd and must be rejected. Certainly, the nature and number of the injuries inflicted by accused-appellant on the victim should be significant *indicia* in determining the plausibility of the self-defense plea.

6. ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; APPRECIATED WHEN THE ATTACK IS EXECUTED IN A MANNER THAT THE VICTIM IS RENDERED DEFENSELESS AND UNABLE TO RETALIATE. — It may be, as postulated, that the suddenness of the attack would not, by itself, suffice to support a finding of treachery. Where, however, proof obtains that the victim was completely deprived of a real chance to defend himself against the attack, as in the instant case, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim, the qualifying circumstance of treachery

ought to and should be appreciated. Verily, what is decisive is that the attack was executed in a manner that the victim was rendered defenseless and unable to retaliate.

7. CIVIL LAW; DAMAGES; CIVIL INDEMNITY *EX DELICTO*, MORAL DAMAGES AND EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR. — The trial court correctly awarded the amount of ₱75,000 to the heirs of Ramon by way of civil indemnity *ex delicto.* Its award of ₱50,000.00 as moral damages is, however, increased to ₱75,000.00 to conform to existing jurisprudence. Moral damages may be awarded without need of pleading or proof. The Court, however, deems it proper to award exemplary damages in the amount of ₱30,000.00 in accordance with Article 2230 of the Civil Code considering that the killing was attended by the qualifying circumstance of treachery.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the Decision[1] dated July 11, 2008 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00220 which affirmed the May 16, 2003 Decision[2] in Criminal Case No. 39-98 of the Regional Trial Court (RTC), Branch 17 in Kidapawan City, Cotabato. The RTC found accused-appellant Romeo Satonero guilty of the crime of murder and sentenced him to suffer the penalty of *reclusion perpetua*.

The Facts

In an information dated February 26, 1998, accused-appellant was charged with murder allegedly committed as follows:

[1] *Rollo*, pp. 5-16. Penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Jane Aurora C. Lantion and Elihu A. Ybañez.

[2] CA *rollo*, pp. 15-27. Penned by Judge Rogelio R. Narisma.

That on or about December 25, 1997, in the Municipality of Tulunan, Province of Cotabato, Philippines, the said accused, armed with a handgun and a knife, with intent to kill, with treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously attack, assault, shot, stab and use physical violence to the person of RAMON AMIGABLE, thereby hitting and [inflicting] upon [the] latter gunshot wound and multiple [stab] wounds on the different parts of his body, which is the direct and immediate cause of his death thereafter.

Contrary to law.[3]

When arraigned, accused-appellant, with the assistance of counsel, pleaded "not guilty" to the charge against him. After the pre-trial, trial on the merits ensued.

The prosecution offered in evidence the testimonies of Leticia Amigable *Vda. De* Omega, Lorenzo Lines, Dr. Ruel Sarillo, and Leonila Amigable. On the other hand, the defense presented, as its witnesses, accused-appellant and his wife, Nena, and one Ronnie Peñafiel.

The Prosecution's Version of Facts

At around five o'clock in the afternoon of December 25, 1997, Leticia and her nephew, Ramon Amigable were in Brgy. La Esperanza, Tulunan waiting for a tricycle ride to a place called M'lang. Leticia had just received a gift from her sister. Accused-appellant, Leticia's nephew too, happened to be nearby. Accused-appellant, upon seeing the gift Leticia was holding, inquired where it came from. When told of the source, accused-appellant mocked the gift-giver for giving more to those who have more in life. Accused-appellant then asked Leticia if she knew who he was, followed by a remark that he would throw her into the irrigation ditch.[4]

At that moment, Leticia told Ramon not to mind accused-appellant because he was drunk. When Ramon was about to board the tricycle, accused-appellant followed him, shot him

[3] *Id.* at 5.

[4] TSN, July 7, 1998, pp. 4-5.

three times with a short-barreled gun, then stabbed him several times. All told, Ramon sustained nine stab wounds on different parts of his body.[5]

Despite the presence of other persons at the scene of the crime, nobody attempted to approach the protagonists as accused-appellant threatened to harm anyone who dared come near them.[6]

Afterwards, accused-appellant went to the house of *Barangay Kagawad* Nestor Porras ostensibly to notify, via radio, the police about the incident. But no policeman came. Instead, Pastor Peñafiel, the Citizens' Crime Watch coordinator, arrived and accompanied accused-appellant to the police station in Tulunan, Cotabato.[7]

Dr. Sarillo, the Municipal Health Officer of Tulunan, conducted an autopsy on Ramon. The death certificate Dr. Sarillo signed indicated "severe hemorrhage" consequent to multiple stab wounds on the chest and feet and gunshot wound in the left sub-coastal area as the cause of Ramon's death.[8]

Version of the Defense

Returning home after working on the rice field owned by Soledad Amigable in the afternoon of December 25, 1997, accused-appellant saw Ramon standing outside accused-appellant and wife Nena's store, which is adjacent to their house. He then heard Ramon mutter, "*Ari na ang dungol*,"[9] after which the latter tried to box and stab him. Accused-appellant somehow managed to avoid the blows and to go inside the store, where his wife was.[10]

Ramon, however, followed him inside the store and attempted to stab him again. Whereupon, accused-appellant took a .38

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5 *Id.* at 5-7.

6 *Id.* at 17.

7 TSN, April 21, 2003, pp. 10-11.

8 Records, p. 9.

9 "Here comes the fool."

10 TSN, April 21, 2003, pp. 5-7.

Caliber gun under the pillow of his bed and fired a warning shot directed towards the wall. Impervious, Ramon still tried to hit him. This time, accused-appellant fired a second shot, hitting Ramon but who nonetheless still made it outside the store, eventually falling to the ground about three meters away from the store.[11]

Upon seeing Ramon fall, accused-appellant threw the gun away and went to Ramon's side so he could bring him to a doctor. Instead of allowing himself to be helped, Ramon, who was lying on his side, made another crack to stab accused-appellant and a scuffle ensued for the possession of the knife.[12]

Per accused-appellant's account, he shouted at those nearby, "*Indi kamo mag-palapit*,"[13] so to as keep them away from possible harm. Eventually, Ramon collapsed dead. Accused-appellant then told his wife that he would be giving himself up. True enough, he went to the house of *kagawad* Porras so that the latter could transmit a radio message to the police about the incident. But no law enforcer arrived. Pastor, the *barangay* Citizens' Crime Watch coordinator, took it upon himself to accompany accused-appellant to the police station.[14]

According to accused-appellant, he did not intend to kill Ramon, claiming that he poked his gun at the latter and was impelled to squeeze the trigger only because Ramon was chasing him.[15]

Ruling of the Trial Court

On May 16, 2003, the RTC rendered judgment convicting accused-appellant of murder and accordingly sentencing him thus:

WHEREFORE, this Court finds and so holds that accused Romeo Satonero *alias* Ruben is guilty beyond reasonable doubt of the crime

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[11] *Id.* at 8.

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

[13] "Don't come near."

[14] TSN, April 21, 2003, pp. 9-11.

[15] *Id.* at 13.

of Murder as defined and penalized under Article 248 of the Revised Penal Code. Appreciating voluntary surrender as ordinary mitigating circumstance, accused Romeo Satonero *alias* Ruben is directed to serve the penalty of *Reclusion Perpetua* with its accessory penalties. His detention from December 29, 1997 is counted full in his favor.

He is directed to pay cost.

Accused Romeo Satonero *alias* Ruben is directed to indemnify the heirs of Ramon Amigable the following:

a.	Loss of life	₱ 75,000.00
b.	Moral damages	50,000.00
		₱ 125,000.00

SO ORDERED.[16]

Pursuant to a notice of appeal accused-appellant filed, the RTC forwarded the records of the case to this Court. In line with *People v. Mateo*,[17] however, the Court transferred the case to the CA for intermediate review.

Ruling of the Appellate Court

On July 11, 2008, the CA rendered a decision affirming that of the trial court. The dispositive portion of the CA's decision reads:

FOR THE REASONS GIVEN, the Decision of the Regional Trial Court of Kidapawan City, Branch 17, finding accused-appellant Romeo Satonero guilty beyond reasonable doubt of the crime of murder, sentencing him to suffer the penalty of *reclusion perpetua*, and directing him to indemnify the heirs of Ramon Amigable is AFFIRMED. Costs *de oficio*.

SO ORDERED.[18]

Accused-appellant is again before this Court, having earlier interposed a notice of appeal from the foregoing CA decision.

In response to the Court's directive to submit, if they so desired, supplemental briefs, both accused-appellant and plaintiff-

[16] CA *rollo*, p. 26.

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

[18] *Rollo*, p. 15.

appellee People separately manifested that they are no longer filing their respective supplemental briefs and are willing to submit the case for resolution on the basis of their respective appeal briefs filed before the CA.

The Issue

As it was before the CA, the sole issue tendered in this appeal boils down to the question of whether or not:

THE COURT *A QUO* ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR THE CRIME OF MURDER AND IN NOT APPRECIATING APPELLANT'S SELF-DEFENSE.[19]

The Court's Ruling

The Court sustains accused-appellant's conviction, the prosecution's evidence being sufficient to establish his guilt for murder beyond reasonable doubt.

There Was No Self Defense

Accused-appellant urges his acquittal on the ground he acted in self-defense. He asserts that the unlawful aggressor in the fatal episode in question was Ramon, who started it by calling accused-appellant a fool and then chasing him around with a knife. Pressing the point, accused-appellant alleges that the assault came without sufficient provocation on his part, having just arrived from a farm work when Ramon attacked him.[20] Ramon, so accused-appellant claims, resented the fact that he, accused-appellant, was presently working on a piece of land which the former used to till and longed to possess.[21]

On another angle, accused-appellant maintains that the wounds Ramon sustained do not necessarily argue against or automatically foreclose a claim of self-defense.[22]

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[19] CA *rollo*, p. 45.

[20] *Id.* at 54.

[21] *Id.* at 51.

[22] *Id.* at 52.

The Court finds no cogent reason to overturn the finding of the CA, confirmatory of that of the RTC, that there was no self-defense on the part of accused-appellant in the instant case.

One who admits killing another in the name of self-defense bears the onus of proving the justifiability of the killing. The accused, therefore, must convincingly prove the following elements of the justifying circumstance of self-defense: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person claiming self-defense. While all three elements must concur to support a claim of complete self-defense, self-defense relies first and foremost on a showing of unlawful aggression on the part of the victim. Absent clear proof of unlawful aggression on the part of the victim, self-defense may not be successfully pleaded.[23]

In the instant case, accused-appellant failed to discharge his burden of proving unlawful aggression. From a perusal of the trial court's decision, the prosecution's testimonial evidence, notably Leticia's testimony, had been carefully weighed and was found by the trial court to be more credible and convincing than the bare and self-serving testimony of accused-appellant as to who initiated the fight and what transpired after the initial assault ensued. The testimony of a single eyewitness to a killing, if worthy of credence, is sufficient to support a conviction for homicide or murder, as the case may be.[24] It bears stressing that, as a rule, the trial court's factual determinations, especially its assessments of the witnesses' testimony and their credibility, are entitled to great respect, barring arbitrariness or oversight of some fact or circumstance of weight and substance.[25] For having the opportunity to observe the witnesses' demeanor while in the witness box, such as their facial expression and the tone

[23] *People v. Mara*, G.R. No. 184050, May 8, 2009; citing *People v. Abesamis*, G.R. No. 140985, August 28, 2007, 531 SCRA 300, 310-311.

[24] *People v. Villanueva*, G.R. Nos. 115555-59, January 22, 1998, 284 SCRA 501, 509.

[25] *People v. Virrey*, G.R. No. 133910, November 14, 2001, 368 SCRA 623, 630.

of their voice, the trial court is in a better position to address questions of credibility.[26] The trial court's proximate contact with those who take the witness stand places it in a more competent position to discriminate between a true and false testimony.[27]

The testimony of Leticia had established the following: Accused-appellant, who was drunk at the time and day when the incident in question occurred, followed her and Ramon when they were about to board a tricycle. Immediately after a brief but ugly exchange between Leticia and accused-appellant, the shooting and stabbing started, with Ramon at the receiving end and culminating in his death.

On the other hand, the allegation of accused-appellant which pictured Ramon as purportedly pulling out a knife and attempting to stab the former came uncorroborated, although several onlookers — potential witnesses all — were at the *situs* of the crime. And while claiming to have grappled for some time with Ramon for the possession of the knife, accused-appellant managed to stay unscathed, which in itself is incredible. And lest it be overlooked, appellant failed, without explanation, to present the knife purportedly used by the victim. Jurisprudence teaches that the failure to account for the non-presentation of the weapon allegedly wielded by the victim is fatal to the plea of self-defense.[28] The Court, thus, joins the trial court in its determination, as affirmed by the CA, of the absence of unlawful aggression on the part of Ramon.

For unlawful aggression to be present, there must be a real danger to life or personal safety.[29] There must be an actual, sudden, and unexpected attack or imminent danger, and not

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[26] *Mara*, *supra* note 23; citing *People v. Roma*, G.R. No. 147996, September 30, 2005, 471 SCRA 413, 426-427.

[27] *People v. Olivo*, G.R. No. 130335, January 18, 2005, 349 SCRA 499.

[28] *People v. Camacho*, G.R. No. 138629, June 20, 2001, 359 SCRA 200; citing *People v. Alfaro*, No. L-32461, December 15, 1982, 119 SCRA 204.

[29] *People v. Villegas*, G.R. No. 138782, September 27, 2002, 390 SCRA 111.

merely a threatening or intimidating attitude.[30] As the element of unlawful aggression on the part of the victim is absent, or at least not convincingly proved, accused-appellant's claim of self-defense cannot be appreciated.

But assuming *arguendo* that there was unlawful aggression on Ramon's part, the Court distinctly notes that the means accused-appellant employed to prevent or repel the supposed unlawful aggression were far from reasonably necessary. The number and nature of the wounds sustained by Ramon certainly belie a claim of self-defense. It is worth stressing that accused-appellant inflicted nine stab wounds on Ramon after he pumped a bullet on the latter's lower left chest. Said gunshot wound, as medical report later showed, was by itself already fatal. Significantly, after Ramon fell as a result of his bullet wound, accused-appellant still proceeded to stab him. As aptly observed by the trial court, Ramon could not have walked far after he was hit by the bullet.[31] Accused-appellant's pretense, therefore, that he had no intention to harm Ramon after the shooting and that he only approached the fallen Ramon to bring him to the doctor, stretches credulity to the absurd and must be rejected. Certainly, the nature and number of the injuries inflicted by accused-appellant on the victim should be significant *indicia* in determining the plausibility of the self-defense plea.[32]

Accused-appellant's underlying posture that he shot Ramon as a measure of repelling the latter's unlawful attack on his person crumbles in the face of Leticia's testimony on what actually transpired on the fateful afternoon in question. Leticia, being also the aunt of accused-appellant, had no reason to falsely testify against the latter and none was established. Per her account, accused-appellant was the unlawful aggressor.

Leticia on direct examination:

Q: After that, what happened?

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30 *Id.*

31 Records, p. 132.

32 *People v. Dijan*, G.R. No. 142682, June 5, 2002, 383 SCRA 15.

A: At that time, my nephew [Ramon] was about to [stand] up and about to board because the vehicle is already there.

Q. And then what happened?

A. He [accused-appellant] followed him and he fired shot.

x x x x x x x x x

Q: You said that Romeo Satonero shot your nephew by the name of Ramon Amigable, how many times?

A: Three times.

x x x x x x x x x

Q. What happened after he was shot three times?

A. He died.

Q. After the three shots, what happened to him?

A. He was stabbed.

The Qualifying Circumstance of Treachery Was Properly Appreciated by the Trial Court

Accused-appellant also argues that granting his criminal responsibility for Ramon's death, the trial court erred in its determination that the killing constitutes murder attended by treachery.[33] He claims that the suddenness of the attack cannot, standing alone, sustain a finding of *alevosia*, even if his purpose was to kill.[34]

We disagree. It may be, as postulated, that the suddenness of the attack would not, by itself, suffice to support a finding of treachery.[35] Where, however, proof obtains that the victim was completely deprived of a real chance to defend himself against the attack, as in the instant case, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim, the qualifying circumstance of treachery ought to and should be appreciated.[36] Verily, what is decisive is that the attack was

[33] CA *rollo*, p. 54.

[34] *Id.* at 55.

[35] *People v. Peralta*, G.R. No. 128116, January 24, 2001, 350 SCRA 198.

executed in a manner that the victim was rendered defenseless and unable to retaliate.[37]

As shown by the prosecution's evidence thus adduced and as determined by the trial court, Ramon was without a weapon and had no opportunity to defend himself against accused-appellant's unexpected assault. In fact, Ramon was about to board a tricycle– an *indicium* of the suddenness of the attack — when accused-appellant shot him three times, with at least one bullet finding its mark. The assault with the knife came immediately after Ramon fell to the ground. It was physically impossible for Ramon to safely distance himself due to the swiftness of the assault. Any suggestion, therefore, that the killing of Ramon was not attended by treachery cannot be accepted.

The trial court correctly awarded the amount of ₱75,000 to the heirs of Ramon by way of civil indemnity *ex delicto.* Its award of ₱50,000.00 as moral damages is, however, increased to ₱75,000.00 to conform to existing jurisprudence. Moral damages may be awarded without need of pleading or proof.[38] The Court, however, deems it proper to award exemplary damages in the amount of ₱30,000.00 in accordance with Article 2230 of the Civil Code considering that the killing was attended by the qualifying circumstance of treachery.

WHEREFORE, the appeal is *DENIED.* The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00220 finding Romeo Satonero *alias* Ruben guilty of the crime of murder is *AFFIRMED* with the following *MODIFICATION*: (1) The award of moral damages is increased to PhP 75,000; and (2) Accused-appellant is also ordered to pay the heirs of Ramon Amigable exemplary damages in the amount of PhP 30,000.

SO ORDERED.

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[36] See *Mara, supra* note 23; citing *People v. De Guzman*, G.R. No. 169082, August 17, 2007, 530 SCRA 631, 638.

[37] *Mara, id.*; citing *People v. Glino*, G.R. No. 173793, December 4, 2007, 539 SCRA 432, 457.

[38] *People v. Martinez*, G.R. No. 182687, July 23, 2009.

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

THIRD DIVISION

[G.R. No. 186390. October 2, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROSEMARIE R. SALONGA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; RULE. — Accused-appellant relies solely on her word against that of the police officers, who are presumed to have done their official duties in a regular manner. As a general rule, the testimony of the police officers who apprehended the accused is usually accorded full faith and credit because of the presumption that they have performed their duties regularly. But when the performance of their duties is tainted with irregularities, such presumption is effectively destroyed. We find in the instant case that there are circumstances which serve to successfully dispute the presumption normally accorded to law enforcement officers.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); REQUIRES THE BUY-BUST TEAM TO MARK ALL SEIZED EVIDENCE AT THE BUY-BUST SCENE; REQUIREMENT, NOT COMPLIED WITH IN CASE AT BAR. — RA 9165 and its implementing rules require the buy-bust team to mark all seized evidence at the buy-bust scene. This, the buy-bust team led by SPO1 Arcoy failed to do. x x x We do not wish to speculate as to why PO1 Reyes

contradicted her own testimony during the three separate hearings where she was on the witness stand. Generally, little inconsistencies serve to even strengthen the credibility of a witness. To our mind, however, these inconsistencies must be seen together with the unjustified lapses in the handling of the illegal drugs subject of the buy-bust operation. These lapses could have been explained by the prosecution but its lone witness could not accurately recall the reasons for the lapses. Worse, SPO2 Nebres, who had found two of the four sachets of *shabu* on accused-appellant's person during the buy-bust, was already dead and could not testify to clarify SPO1 Reyes' contradictory statements. When asked why no photographs of the illegal drugs were taken, SPO1 Reyes answered that the photographer was absent. But during her cross-examination she was asked the same question and she replied that they did not take a photograph because the camera was broken. When asked why the buy-bust team did not make an inventory, PO1 Reyes simply stated, "Because our team leader **did not bother to make the inventory.**" SPO1 Arcoy could have clarified PO1 Reyes' testimony but he too was already deceased at the time of the trial. Evidence could have been presented showing a justifiable reason why the evidence was not marked immediately after the buy-bust and in front of accused-appellant, but again, SPO1 Reyes' testimony was lacking in this regard.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY; CHAIN OF CUSTODY PROCEDURE OF SEIZED DRUGS; NON-COMPLIANCE THEREWITH RAISES DOUBT AS TO THEIR ORIGINS AND NEGATES THE OPERATION OF THE PRESUMPTION OF REGULARITY ACCORDED TO POLICE OFFICERS. — While a lone witness' testimony is sufficient to convict an accused, it must be credible and believable, qualities we cannot ascribe to this case. Major lapses were not explained, raising doubts as to the preservation of the integrity of the evidence. The varying reasons the prosecution proffered as to why there was a departure from the procedure found in RA 9165 do not, to our mind, justify the buy-bust team's non-compliance. We are not ready to affirm a conviction in the face of such flimsy and contradictory excuses for why the evidence was improperly handled. As this Court recently observed in *People v. Robles*, the failure of the police to comply with the procedure in the custody of seized drugs

raises doubt as to their origins, and negates the operation of the presumption of regularity accorded to police officers.

4. ID.; ID.; ID.; ID.; EXPLAINED. — To emphasize the importance of the *corpus delicti* in drug charges, we have held that it is essential that the prohibited drug confiscated or recovered from the suspect is **the very same substance** offered in court as exhibit; and that **the identity of said drug be established with the same unwavering exactitude as that requisite to make a finding of guilt.** This requirement is found wanting in this case. With the buy-bust team's unwarranted non-compliance with the chain of custody procedure, we are unable to say with certainty that the identity of the seized drugs is intact and its evidentiary value undiminished. For this reason, we find that the prosecution has not been able to prove the guilt of accused-appellant beyond reasonable doubt. The weakness of accused-appellant's defense is no longer material as the prosecution was not able to overcome the presumption of innocence accused-appellant enjoys.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the August 29, 2008 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02887 entitled *People of the Philippines v. Rosemarie R. Salonga* which affirmed the June 27, 2007 Decision of the Regional Trial Court (RTC), Branch 80 in Criminal Case No. Q-02-110989 for Violation of Section 5 of Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

Accused-appellant was charged for two different offenses, as quoted in the following Informations:

Criminal Case No. Q-02-110988

That on or about the 31st of July 2002 in Quezon City, Philippines, the said accused, not being authorized by law to possess or use any dangerous drug, did, then and there, willfully, unlawfully and knowingly possess, sniff and/or use and under [her] control zero point zero seven (0.07) gram of methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.[1]

Criminal Case No. Q-02-110989

That on or about the 31st day of July 2002, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did then and there, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, ZERO POINT ZERO SIX (0.06) grams of white crystalline substance containing Methylamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.[2]

Upon the consolidation of the two cases, a joint trial was conducted by the trial court. Accused-appellant pleaded not guilty to both charges.

The Prosecution's Version of Facts

The sole witness for the prosecution was PO1 Teresita Reyes (PO1 Reyes). A stipulation was agreed on by the parties with regard to the testimony of Forensic Chemical Officer Leonard T. Arban.

At the hearing on July 28, 2003, PO1 Reyes recalled that an informant arrived at their office on July 30, 2002. Their Police Chief, Col. Pareño, subsequently instructed them to form a buy-bust team in *Barangay* Sto. Domingo in Quezon City with one "*alyas* Marie" as the subject.[3] Their team was composed of PO1 Reyes as the poseur-buyer, SPO1 Arcoy as team leader,

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[1] CA *rollo*, p. 54.

[2] *Id.* at 62.

[3] *Id.* at 3.

and the confidential informant. Upon their arrival at dawn the next day, PO1 Reyes told "*alyas* Marie" that she was interested in buying *shabu* worth two hundred pesos. During the exchange she paid with two hundred peso marked bills.[4] "*Alyas* Marie" gave her two small plastic sachets in return. At this point, PO1 Reyes raised her hand to signal the consummation of the transaction. SPO2 Nebres took hold of Marie and recovered the buy-bust money from her. Back at Camp Karingal she was turned over to the desk officer. PO1 Reyes marked the two sachets she received with the initials "TBR-RRS."[5] "*Alyas* Marie" was found to be accused-appellant Rosemarie Salonga.[6]

Evidence for the Defense

Accused-appellant resolutely denied having sold *shabu* to the poseur-buyer. She likewise declared that the police did not recover any *shabu* from her. According to her, PO1 Reyes, PO2 Nebres, and SPO1 Arcoy barged into her house on July 31, 2002. They dragged her outside while she struggled. When asked why they were accosting her, the police officers just told her to do her explaining at Camp Karingal. Once there, PO1 Reyes frisked her and he later brought out *shabu* that had come from him and told her that the illegal drug came from her. Accused-appellant cried and was angered at the police officers' false accusations. She was then detained. The next day, she was charged with violation of RA 9165. Later, when her sister came to visit her in jail, the police told them to settle the case "through financial means."[7]

The Ruling of the Trial Court

After a trial on the merits, the RTC acquitted accused-appellant on the drug possession charge but convicted her on drug pushing. The trial court exonerated accused-appellant on the possession charge as the police officer who recovered the two sachets of

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[4] *Id.* at 4-7.

[5] TSN, June 27, 2006, p. 3.

[6] CA *rollo*, p. 9.

[7] *Id.* at 115-116

shabu was already dead and could not testify on the seizure. The sole witness, PO1 Reyes, did not see the actual confiscation of the *shabu*. The RTC, however, found PO1 Reyes' testimony, though uncorroborated, to have sufficiently established the elements of the offense with regard to drug pushing.

The dispositive portion of the RTC Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> a) In Criminal Case No. Q-02-110989, the Court finds the accused GUILTY beyond reasonable doubt of the crime charged. Accordingly, she is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.00; and
>
> b) In Criminal Case No. Q-02-110988. Accused is ACQUITTED of the crime for insufficiency of evidence.
>
> x x x x x x x x x
>
> SO ORDERED.[8]

The Ruling of the CA

On appeal, the CA affirmed the RTC Decision in its entirety.[9] It held that the elements of the offense under RA 9165 had been adequately shown by the prosecution. It found that the chain of custody over the subject specimen was amply established and the defense of frame-up was unavailing.

Accused-appellant filed a timely Notice of Appeal before this Court.

On March 30, 2009, this Court directed the parties to submit supplemental briefs if they so desired. The parties manifested that they were no longer submitting additional briefs.

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[8] *Id.* at 22. Penned by Judge Ma. Theresa Dela Torre-Yadao.

[9] *Rollo*, p. 18. Penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr.

The Issues

I

WHETHER THE COURT *A QUO* GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED

II

WHETHER THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THE PROCEDURE FOR THE CUSTODY AND CONTROL OF PROHIBITED DRUGS WAS COMPLIED WITH

The defense claims that since no one else could corroborate PO1 Reyes' testimony, the lower court should have given emphasis on the version of the defense that no buy-bust operation took place and that the plastic sachet of *shabu* was only shown to accused-appellant inside Camp Karingal.

The defense also argues that the first link in the chain of custody of the seized drugs was not shown, thus giving serious doubts about its identity. They insist that no proof was shown that the police officers marked the confiscated drug where it was seized. There is, thus, uncertainty as to whether the seized *shabu* was the same specimen forwarded by the police officers to the crime laboratory and subsequently presented during trial.

The issues raised are interrelated and need to be jointly discussed.

Accused-appellant relies solely on her word against that of the police officers, who are presumed to have done their official duties in a regular manner. As a general rule, the testimony of the police officers who apprehended the accused is usually accorded full faith and credit because of the presumption that they have performed their duties regularly. But when the performance of their duties is tainted with irregularities, such presumption is effectively destroyed.[10]

We find in the instant case that there are circumstances which serve to successfully dispute the presumption normally accorded to law enforcement officers.

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[10] *People v. Cantalejo*, G.R. No. 182790, April 24, 2009.

RA 9165 and its implementing rules require the buy-bust team to mark all seized evidence at the buy-bust scene. This, the buy-bust team led by SPO1 Arcoy failed to do.

Sec. 21(a), Art. II of the Implementing Rules and Regulations of RA 9165 provides:

> (a) 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: **Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.** (Emphasis supplied.)

The records reveal the non-compliance with RA 9165, as follows:

> DIRECT EXAMINATION OF SPO1 REYES
>
> Q When you said that you were interested to buy two hundred pesos worth of *shabu*, what did *alyas* Marie do?
>
> A She took my money.
>
> Q And what did she do after getting your money?
>
> A After that she handed to me two pieces of [a] small plastic sachet.
>
> Q What were contained in those two small pieces of plastic sachet?
>
> A The one I bought from her.
>
> Q And after you received those two (2) plastic [sachets], what else did you do?

A After that I gave my [pre-arranged] signal by raising my hand.

Q And what happened after you raised your right hand as your [pre-arranged] signal?

A My companions arrived.

Q What happened after they arrived?

A We were able to arrest Marie.

Q Who took hold of Marie?

A SPO2 Nebres.

Q And what happened to the buy bust money you gave?

A Nebres [was] able to recover the [buy bust] money from Marie.[11]

x x x x x x x x x

CROSS-EXAMINATION OF SPO1 REYES

Q But prior to that, Madam witness, did you coordinate with the Barangay Captain or Brgy. Operation of Sto. Domingo before you went there?

A **No, sir.**

Q And is it not a fact that it is an SOP in the conduct of buy-bust operation[s] to have a coordination before you conduct a buy bust operation[?] [P]lease answer it by yes or no. It is SOP in the conduct of buy-bust operation[s] that there has to be [c]oordination first?

A It was the TOC who dispatch[ed] [us] and who made the call to hold on to the police station.

x x x x x x x x x

CROSS-EXAMINATION OF SPO1 REYES

Q Madam Witness, when you allegedly recovered these sachets from the accused, did you submit your inventory report to the PDEA?

A **No, sir.**

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[11] TSN, July 28, 2003, pp. 7-10.

x x x x x x x x x

RE-DIRECT EXAMINATION OF SPO1 REYES

Q Why did you not make an inventory and [take] pictures of the shabu that you recovered?

A Because our photographer at [the] time was absent.

Q And how about the inventory, why did you not make an inventory?

A **Because our team leader did not bother to make [an] inventory.**

Q So it is the team leader who will make the inventory?

A Yes, sir.[12]

DIRECT EXAMINATION OF SPO1 REYES

x x x x x x x x x

Q So, there were only two pieces of sachet that you [recovered]?

A Yes, sir.

Q You don't have any participation in the recovery of the other two?

A **None, sir.**

Q [Who] was in charge of the recovery of the other two?

A PO2 Nebres.

Q And where is she now?

A Dead already.[13]

x x x x x x x x x

CROSS EXAMINATION OF SPO1 REYES

Q And you are very much experience[d] in conducting buy bust operation, am I correct?

A Yes, sir.

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[12] TSN, March 23, 2004, pp. 2-8.

[13] TSN, June 27, 2006, pp. 2-5.

Q And in fact you can no longer recall the number of times that you appeared in court where you were call[ed] to testify as a government witness in cases of violation of drug law?

A Yes, sir.

Q So am I correct in saying that you were well aware on the requirement of law in view of your length of service in the PNP in conducting buy bust operation?

A Yes, sir.

Q Madam Witness, on July 30, 2002 before you and SPO4 Arcoy and SPO2 Nebres proceeded with the buy bust operation, what procedural requirement did you do?

A **SPO2 Arcoy coordinated with the PDEA.**

Q How did you know that SPO2 Arcoy coordinated with the PDEA?

A He has a copy of the coordination paper.

Q When did you see that coordination paper with the PDEA, Madam Witness?

A I was at the office at that time.

Q When was the last time that you saw that coordination paper with the PDEA?

A Last 2002.

Q Where is Arcoy now, Madam Witness?

A Dead already.

Q In other words, that coordination report can no longer [be] produce[d] anymore considering the death of Arcoy?

A Yes, sir.

x x x x x x x x x

Q Madam Witness, I asked you a while ago whether you are familiar with the requirement of law in conducting buy bust operation and you answered in the affirmative. Madam witness, under RA 9165 there are certain legal safeguard[s] which should be followed by the police officer and some of the requirements are photographs to be taken of the alleged confiscated items, did

you take photograph[s] of the alleged *shabu* that you [allegedly] recovered?

A We did not take a picture because the camera [was broken].

Q Madam Witness, considering that you were very much familiar with the requirement of law, did you not submit a post operation report with the PDEA informing them regarding the result of your buy bust operation where a certain *alias* Marie later on identified as Rosemarie Salonga was caught for violation of Section 5 of RA 9165?

A **No sir, but Arcoy [did].**

We do not wish to speculate as to why PO1 Reyes contradicted her own testimony during the three separate hearings where she was on the witness stand. Generally, little inconsistencies serve to even strengthen the credibility of a witness. To our mind, however, these inconsistencies must be seen together with the unjustified lapses in the handling of the illegal drugs subject of the buy-bust operation. These lapses could have been explained by the prosecution but its lone witness could not accurately recall the reasons for the lapses. Worse, SPO2 Nebres, who had found two of the four sachets of *shabu* on accused-appellant's person during the buy-bust, was already dead and could not testify to clarify SPO1 Reyes' contradictory statements. When asked why no photographs of the illegal drugs were taken, SPO1 Reyes answered that the photographer was absent.[14] But during her cross-examination she was asked the same question and she replied that they did not take a photograph because the camera was broken.[15] When asked why the buy-bust team did not make an inventory, PO1 Reyes simply stated, "Because our team leader **did not bother to make the inventory.**"[16] (Emphasis supplied.) SPO1 Arcoy could have clarified PO1 Reyes' testimony but he too was already deceased at the time of the trial. Evidence could have been presented showing a justifiable reason why the evidence was not marked

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[14] TSN, March 23, 2004, p. 7.

[15] TSN, June 27, 2006, p. 12.

[16] TSN, March 23, 2004, p. 8.

immediately after the buy-bust and in front of accused-appellant, but again, SPO1 Reyes' testimony was lacking in this regard.

We see here a situation similar to *People v. Partoza*,[17] which dealt with a police officer who failed to observe Sec. 21 of RA 9165:

> PO3 Tougan did not mark the seized drugs immediately after he arrested appellant in the latter's presence. Neither did he make an inventory and take a photograph of the confiscated items in the presence of appellant. There was no representative from the media and the Department of Justice, or any elected public official who participated in the operation and who were supposed to sign an inventory of seized items and be given copies thereof. None of these statutory safeguards were observed.
>
> While this Court recognizes that non-compliance by the buy-bust team with Section 21 is not fatal as long as there is a justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items are properly preserved by the apprehending team, yet these conditions were not met in the case at bar.

While a lone witness' testimony is sufficient to convict an accused, it must be credible and believable, qualities we cannot ascribe to this case. Major lapses were not explained, raising doubts as to the preservation of the integrity of the evidence. The varying reasons the prosecution proffered as to why there was a departure from the procedure found in RA 9165 do not, to our mind, justify the buy-bust team's non-compliance. We are not ready to affirm a conviction in the face of such flimsy and contradictory excuses for why the evidence was improperly handled. As this Court recently observed in *People v. Robles*,[18] the failure of the police to comply with the procedure in the custody of seized drugs raises doubt as to their origins, and negates the operation of the presumption of regularity accorded to police officers.

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[17] G.R. No. 182418, May 8, 2009.

[18] G.R. No. 177220, April 24, 2009.

To emphasize the importance of the *corpus delicti* in drug charges, we have held that it is essential that the prohibited drug confiscated or recovered from the suspect is **the very same substance** offered in court as exhibit; and that **the identity of said drug be established with the same unwavering exactitude as that requisite to make a finding of guilt**.[19] This requirement is found wanting in this case. With the buy-bust team's unwarranted non-compliance with the chain of custody procedure, we are unable to say with certainty that the identity of the seized drugs is intact and its evidentiary value undiminished. For this reason, we find that the prosecution has not been able to prove the guilt of accused-appellant beyond reasonable doubt. The weakness of accused-appellant's defense is no longer material as the prosecution was not able to overcome the presumption of innocence accused-appellant enjoys.

WHEREFORE, the appeal is *GRANTED*. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02887 is *REVERSED* and *SET ASIDE*. Accused-appellant Rosemarie R. Salonga is *ACQUITTED* on ground of reasonable doubt.

The Bureau of Corrections is ordered to cause the immediate release of accused-appellant, unless she is being lawfully held for another cause, and to inform this Court of action taken within ten (10) days from notice.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Nachura, and *Bersamin,*[*] *JJ.,* concur.

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[19] *Sales v. People*, G.R. No. 182296, April 7, 2009.

[*] Additional member as per July 28, 2009 raffle.

THIRD DIVISION

[G.R. No. 186566. October 2, 2009]

REP. LUIS R. VILLAFUERTE, PROSPERO A. PICHAY, CHRISTIAN TAN, WILSON YOUNG, TERESITA ABUNDO, TONY FABICO, BONIFACIO ALENTAJAN, RIZALITO DELMORO, GODOFREDO E. GALLEGA, MANNY A. GATCHALIAN, MA. CARMEN S. PADOR, CELESTINO S. MARTINEZ, ANTONIO TAN ITURALDE, ALEXANDER WANG, YUL C. BENOSA, ELBERT CATAMPUNGAN ATILLANO, SR., LORENZO CO SY, EDWARD YU CHUA and LEONCIO CHUA, *petitioners, vs.* **GOV. OSCAR S. MORENO, MANUEL V. PANGILINAN, MARIEVIC G. RAMOS-AÑONUEVO, JOSE A. CAPISTRANO, JR., PEDRO C. ALFARO, JR., BERNARDO GABRIEL L. ATIENZA, JOSE EMMANUEL M. EALA, FERNANDO G. LOZANO, FR. PAUL M. DE VERA OSB, NICANOR FORTICH JORGE, DANIEL DANILO V. SORIA and NATHANIEL P. PADILLA,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION LAW; CORPORATIONS; NON-STOCK CORPORATIONS; MEMBERS; PROCESS FOR VALIDATION OF MEMBERSHIP, INTENDED IN CASE AT BAR. — We find that the Court of Appeals correctly held that Clause 3 of the Bangkok Agreement merely intended to recognize the associations affiliated with BAP and PB as "members" as against being labeled as just "probationary members" of the BAP-SBP. However, said recognition does not dispense with the need to classify said members in accordance with the provisions of BAP-SBP's Articles of Incorporation and By-Laws, and the Tokyo Communique. Had the intention been otherwise, the parties would have expressed this by means of the appropriate provisions repealing or amending the contradictory provisions in said documents as what they did to a provision in the Bangkok Agreement with respect to the removal of officers. Moreover,

Clause 3 of the Bangkok Agreement must be read not in isolation but in conjunction with the Tokyo Communique and the BAP-SBP's Article of Incorporation and By-Laws. x x x To reiterate, the Tokyo Communique's directive to the three-man panel is for it to review, verify, and validate the list of members as submitted by PB and BAP to the FIBA Central Board Special Commission created to hear the Philippine Case based on an agreed set of criteria for membership as formulated by said three-man panel. In other words, there is a given process for validation of membership rather than the automatic grant of voting or active membership status being insisted upon by petitioners. Besides, had it intended all *bona fide* members to be admitted as "accredited members" or "first members" or "active members", the three-man panel would have specifically used such term since its members were all aware that the SBP's Articles of Incorporation and by-laws were already in existence at the time and also provided for three classes or categories of "members." We agree with respondents that the term "probationary" was deleted to remove the suggestion that members of that sort only had temporary membership status. While the organizations submitted by BAP and PB for BAP-SBP membership are no longer to be considered as probationary, such consideration does not intend to do away with the validation or accreditation process to determine which of these would qualify as active or voting members of SBP and which ones would be classified as associate and affiliate members. While all three classes are considered as regular members, not all could be granted the right to vote.

2. ID.; ID.; ID.; ID.; ID.; ID.; VALIDATION PROCESS, A PREREQUISITE TO A MEMBER'S ACQUISITION OF ACTIVE MEMBERSHIP STATUS; CASE AT BAR. — [T]he three-man panel is mandated to review, verify and validate the lists of members submitted by BAP and PB to FIBA based on an agreed set of criteria for membership formulated by the three-man panel. In this connection, there is no question that the three-man panel had not yet formulated a set of criteria prior to or as of the time of signing of the Bangkok Agreement. If only for this, it stands to reason that the three-man panel could not have, by any stretch of the imagination, possibly validated all organizations proposed by the BAP and PB for BAP-SBP membership as "active" or "voting" members on a wholesale basis. It could not have done so since there was

still no set of criteria by which to embark on such an endeavor. The rules and procedures for validation were formulated by the three-man panel only after the execution of the Bangkok Agreement. In fact, several of the petitioners actively participated in the membership validation process which was done after the execution of the Bangkok Agreement. The membership validation resulted in the conferment of active membership status upon 19 BAP-SBP members, 17 of which participated in the June 12, 2008 meeting. Petitioners even constituted the majority of the Committee that undertook the task; they actively participated in the formulation of the validation rules based on the by-laws providing for this; some of them actively participated in the validation of the membership list and even voted along with other members of the Committee for the grant of active membership status to the 19 regular members. Thus, as correctly held by the Court of Appeals, petitioners are now estopped from assailing the validity and mandatory nature of the BAP-SBP's validation process as a prerequisite to a member's acquisition of active (voting) membership status.

3. ID.; ID.; ID.; ID.; BOARD OF TRUSTEES; THE CHAIRMAN OF THE BOARD OF TRUSTEES MUST BE A TRUSTEE HIMSELF; CASE AT BAR. — Anent the chairmanship of the Board of Trustees of the BAP-SBP, the Court of Appeals correctly held that petitioner Villafuerte's nomination must of necessity be understood as being subject to or in accordance with the qualifications set forth in the By-Laws of the BAP-SBP. Since the said by-laws require the Chairman of the Board of Trustees to be a trustee himself, petitioner Villafuerte was not qualified since he had neither been elected nor appointed as one of the trustees of BAP-SBP. In other words, petitioner Villafuerte never validly assumed the position of Chairman because he failed in the first place to qualify therefor.

APPEARANCES OF COUNSEL

Castillo Laman Tan Pantaleon and San Jose for petitioners.

Sycip Salazar Hernandez and Gatmaitan and Angara Abello Concepcion Regala and Cruz for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

Assailed in this Petition for Review on *Certiorari* is the November 18, 2008 Decision[1] of the Court of Appeals in CA-G.R. SP No. 105368, which reversed and set aside the September 3, 2008 Decision of the Regional Trial Court (RTC) of Manila, Branch 24, in Civil Case No. 08-119546 and dismissed the petition for declaration of nullity of elections. Also assailed is the February 18, 2009 Resolution[2] denying the Motion for Reconsideration.

The facts as found by the Court of Appeals are as follows:

On 28 August 2006, at the sideline of the 18th FIBA World Congress held at Tokyo, Japan, a Joint Communique (*"Tokyo Communique"*) was entered into by the feuding Basketball Association of the Philippines (*"BAP"*) and the newly formed Pilipinas Basketbol (*"PB"*), through their then incumbent Presidents, Jose D. Lina, Jr. and Bernardo Gabriel L. Atienza, respectively, and as witnessed not only by their other representatives but also by the representative of the Philippine Olympic Committee (*"POC"*) and the FIBA Secretary General Patrick Baumann. The main objectives of the Tokyo Communique are (1) to unify said rival basketball associations and (2) to facilitate the lifting of the suspension imposed by the Federation Internationale de Basketball (*"FIBA"*), which prevented the country from participating in any international basketball competitions.

Specifically, the Tokyo Communique provides for the merger of the BAP and the PB resulting to a single united basketball organization that will seek membership with the POC and will eventually take over the membership of BAP in the FIBA, subject to the appropriate FIBA regulations on membership. It also provides for the creation of a three-man panel composed of the incumbent presidents of the BAP and the PB and a third member to be agreed upon by both presidents, which will undertake the tasks of (1) writing and finalizing the organization's constitution and by-laws; (2) reviewing, verifying

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[1] *Rollo*, pp. 100-115. Penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Teresita Dy-Liacco Flores and Ramon R. Garcia.

[2] *Id*. at 117-120.

and validating the list of members as submitted by BAP and PB to the FIBA Central Board Special Commission based on agreed set of criteria for membership as formulated by the panel; and (3) convening the National Congress of the united organization and to oversee the election of officers.

Pursuant to the provisions of the Tokyo Communique relative to the creation of a three-man panel, petitioner Manuel V. Pangilinan ("Petitioner Pangilinan") was named as its third member and was even chosen as its Chairman. Also, the BAP and PB submitted to FIBA their respective lists of members-associations in compliance with the provisions thereof.

On 17 September 2006, in keeping with the merger and unification efforts as embodied in the Tokyo Communique, the Samahang Basketbol ng Pilipinas, Inc. ("SBP") was established and its constitutive documents consisting of the Articles of Incorporation were signed by the five (5) incorporators, which include petitioner Pangilinan. On the same day, the incorporators likewise passed and signed its by-laws.[3]

On 4 February 2007, the three-man panel met in Bangkok, Thailand where it forged and executed a Memorandum of Agreement (*"Bangkok Agreement"*) integrating therein the final terms and conditions of the unity and merger of BAP and PB. In said agreement, the BAP and PB amended the corporate name of SBP from "Samahang Basketbol ng Pilipinas, Inc." to "BAP-Samahang Basketbol ng Pilipinas, Inc." ("BAP-SBP"). It also stipulated the following: (1) the amendment of the SBP by-laws with regard to the voting requirement for the removal of officers; (2) the admission of all the bona fide members of BAP and PB as appearing in the lists submitted to FIBA as "members" instead of "probationary members" of SBP; (3) the respective rights of BAP and PB to nominate for corporate positions; (4) the lists of officers to be elected by the BAP and PB at the Unity Congress that will serve during the transitory period as provided in the by-laws; (5) the composition of and the respective right to nominate the members of the different committees of the BAP-SBP; and (6) the binding effect of the right to nominate, which shall be valid only during the aforesaid transitory period.

On 5 February 2007, as contemplated by and pursuant to the Bangkok Agreement, the First Trustees of the SBP attended a Unity

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[3] *Id.* at 262-283.

Congress wherein the nomination and election of its transitory officers for the years 2007-2008 had taken place, the results of which had led to the proclamation of respondent Villafuerte as Chairman, Victorico P. Vargas, as Vice-Chairman, petitioner Pangilinan, as President, petitioner Marievic Añonuevo (*"Petitioner Añonuevo"*), as secretary, respondent Christian Tan *("Respondent Tan"*), as treasurer, and respondent Bonifacio Alentajan, (*"Respondent Alentajan"*), as legal counsel.

Consequently however, contrary to the *raison d'etre* of the Tokyo Communique, Bangkok Agreement and the convened Unity Congress, enmity and contest among the different personalities involved in Philippine basketball have prevailed leading to the formation of two (2) factions, the petitioners, on one hand, and the respondent, on the other. As can be gleaned from the records, said dispute evolved from the resolve of petitioner Pangilinan not to recognize the election of respondent Villafuerte as Chairman of BAP-SBP on account of the alleged failure of the latter to qualify for the said position.

On 14 May 2008, petitioner Pangilinan released a Press Statement announcing the validation of four (4) more organizations, in addition to the fifteen (15) organizations earlier validated, as active members of the SBP, the postponement of the scheduled 31 May 2008 National Congress and its resetting to 12 June 2008. This Press Statement prompted respondents Villafuerte, Alentajan and Tan to write to the FIBA Secretary General to report the alleged refusal of petitioner Pangilinan to follow the terms and conditions as stated in the Bangkok Agreement, as well as to inform FIBA of the convening of the National Congress of SBP on 4 June 2008.

On 17 May 2008, respondents Villafuerte, Alentajan and Tan along with a majority of the members of BAP-SBP approved and jointly issued a Notice of National Elections to be held on 4 June 2008, the agenda of which included the election of officers, organization of standing committees, accreditation of new applicants for membership, financial report, report on program for Nationwide Development of Basketball and other matters.

On 4 June 2008, respondents and the BAP-SBP members sympathetic to their faction attended the National Congress, wherein the regular trustees and the executive officers of SBP were elected. Respondent Villafuerte and Alentajan retained their previous positions while respondent Tan assumed the position of Executive Director. On the other hand, respondent Prospero A. Pichay, Jr. (*"Respondent*

Pichay") replaced petitioner Pangilinan as president, respondent Wilson Young (*"Respondent Young"*) replaced Victorico P. Vargas as Vice-Chairman and Teresita D. Abundo replaced petitioner Añonuevo as secretary.

Meanwhile, petitioner Añonuevo issued a Notice of National Congress to be held on 12 June 2008 for purposes of (1) hearing the reports of the President and the Executive Director, (2) recognizing the validated members of BAP-SBP, (3) conferring of the appropriate membership status to these members, (4) electing the members of the Board of Trustees, (5) overseeing the conduct of the organizational meetings of the board, (6) amending the Articles of Incorporation and By-Laws and (7) transacting any other matters of business.

On 12 June 2008, seventeen (17) of the nineteen (19) active members of BAP-SBP attended the National Congress that had been called by petitioner Añonuevo. The members of the Board of Trustees were then elected for the term of 2008 to 2012 and until their successors shall have been duly elected and qualified. Thereafter, the newly elected trustees held their Organizational Meeting and proceeded to elect the officers of BAP-SBP. Petitioners Pangilinan, Vargas and Añonuevo retained their respective positions while petitioners Oscar S. Moreno and Jose Emmanuel Eala were elected as Chairman and Executive Director, respectively. Replacing respondent Tan, Ernesto Jay Adalem was designated as treasurer of the organization.[4]

On June 27, 2008, petitioners filed before the Regional Trial Court of Manila a petition[5] for declaration of nullity of the election of respondents as members of the Board of Trustees and Officers of BAP-SBP. The case was docketed as Civil Case No. 08-119546. Petitioners alleged that the June 12, 2008 election was a sham, illegal, and void. They also claimed to be the rightful and legally elected trustees and officers of the BAP-SBP and thus prayed that the corporate reins of BAP-SBP be turned over to them.

By way of answer, respondents argued that petitioners have no cause of action; that Villafuerte never assumed the position

[4] *Id.* at 102-106.

[5] *Id.* at 301-328.

of Chairman of the BAP-SBP because he failed to qualify for the same; that before Villafuerte could legally assume the Chairmanship of BAP-SBP, he must first be elected a member of the Board of Trustees; that petitioners' June 4, 2008 National Congress had no quorum because the attendees thereof were either mere associates and non-voting members or actually non-members; and that only six of the attendees were active and voting members.

On September 3, 2008, the trial court rendered its Decision[6] declaring the convening of the National Congress on June 12, 2008 and the election of respondents null and without legal effect. The dispositive portion of the Decision, reads:

> ACCORDINGLY, finding merit in the petition, the same is hereby granted.
>
> The National Congress convened by the respondents is hereby declared null and void. Consequently, the election of officers at said meeting is similarly declared to be without force and effect.
>
> Respondents are further directed to cease and desist from further acting as officers of the SBP and to turn over the affairs of the organization to the petitioners.
>
> SO ORDERED.[7]

The trial court found that at the time the opposing parties convened their respective National Congress, BAP-SBP was still at its transition period; that pursuant to Section 2 of the Transitory Provisions, only those members of the BAP and PB included in the lists submitted to the FIBA shall be recognized as members of BAP-SBP with full rights and privileges, including the right to elect the regular board of trustees; that Villafuerte was validly elected as Chairman of SBP; and that the National Congress convened by petitioners was validly called. Consequently, it declared as null and void the National Congress convened on June 12, 2008 by the respondents, as well as the election of the trustees and officers conducted thereat.

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[6] *Id.* at 212-232. Penned by Judge Antonio M. Eugenio, Jr.

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

Aggrieved, respondents filed before the Court of Appeals a Petition for Review under Rule 43 of the Rules of Court. On November 18, 2008, the Court of Appeals rendered the herein assailed Decision reversing and setting aside the Decision of the trial court and dismissing the petition for declaration of nullity of elections.

The appellate court noted that the crux of the controversy hinges on the interpretation of the terms and conditions of the Tokyo Communique, the Bangkok Agreement, the BAP-SBP Articles of Incorporation and its by-laws *vis-a vis* the determination of which members are entitled to vote and be voted upon as trustess and officers of said organization. The Court of Appeals held that the Bangkok Agreement merely provided for the recognition of those included in the lists submitted to FIBA as probationary members; that the Bangkok Agreement should not be exploited as to clothe petitioners with the authority to convene the National Congress and conduct themselves as trustees and officers of the BAP-SBP because the attendees of said June 4, 2008 National Congress did not constitute a quorum; that only six of the attendees were active and voting members, while the rest were associates, or non-voting members, or even non-members.

The appellate court likewise held that to be considered as members of BAP-SBP with full rights and privileges, including the right to elect the regular board of trustees, the association should be included in the lists submitted to FBA and validated by the three-man panel. The validation by the three-man panel is a condition *sine qua non* for a basketball association to be considered as an active and voting member of BAP-SBP.

Finally, the Court of Appeals found Villafuerte not qualified to hold the position of Chairman of BAP-SBP. It held that the organization's By-laws require that the Chairman of the Board of Trustees must first be a trustee. Since Villafuerte was not yet named as a trustee of the BAP-SBP when the National Congress was held, therefore he was unqualified to hold the position of Chairman.

Petitioners filed a motion for reconsideration but it was denied, hence, this petition on the following grounds:

I

THIS COURT OF APPEALS GRIEVOUSLY MISCONSTRUED THE TOKYO COMMUNIQUE, THE BANGKOK AGREEMENT, AND THE ARTICLES OF INCORPORATION AND THE BY-LAWS OF THE SAMAHANG BASKETBOL NG PILIPINAS, INC.

II

PETITIONERS WERE DULY ELECTED DURING THE NATIONAL CONGRESS OF BAP-SBP ON JUNE 4, 2008, WHICH WAS ATTENDED BY MAJORITY OF THE MEMBERS OF BAP-SBP.

III

PETITIONER LUIS R. VILLAFUERTE WAS DULY ELECTED AS CHAIRMAN OF BAP-SBP AT THE UNITY CONGRESS IN FEBRUARY 2007.

The petition lacks merit.

Reduced to its simplest, the only issue for resolution is: Which members of the BAP-SBP are entitled to vote and be voted upon as trustees and officers of said organization based on the terms and conditions of the Tokyo Communique, the Bangkok Agreement and the Articles of Incorporation and By-Laws of the organization.

Petitioners insist that the provision in the Bangkok Agreement that "all *bona fide* members appearing in the lists submitted by BAP and PB to FIBA pursuant to the Tokyo Communique shall be admitted as 'members' instead of 'probationary members' of SBP," is equivalent to the requisite validation by the three-man panel. They insist that all the *bona fide* members of BAP and PB included in the lists submitted to the FIBA Central Board Special Commission automatically became voting members of BAP-SBP.

Petitioners also argue that the need to classify members of BAP-SBP into different categories, *i.e.*, active members, associates or affiliates, is not relevant for purposes of the first election of the regular Board of Trustees of BAP-SBP because

this becomes necessary only after the conduct of the first regular election. They contend that before and during the First National Congress of BAP-SBP, all its members as submitted to FIBA were entitled to vote and elect the trustees and officers of BAP-SBP.

We are not persuaded.

We find that the Court of Appeals correctly held that Clause 3 of the Bangkok Agreement merely intended to recognize the associations affiliated with BAP and PB as "members" as against being labeled as just "probationary members" of the BAP-SBP. However, said recognition does not dispense with the need to classify said members in accordance with the provisions of BAP-SBP's Articles of Incorporation and By-Laws, and the Tokyo Communique. Had the intention been otherwise, the parties would have expressed this by means of the appropriate provisions repealing or amending the contradictory provisions in said documents as what they did to a provision in the Bangkok Agreement with respect to the removal of officers.

Moreover, Clause 3 of the Bangkok Agreement must be read not in isolation but in conjunction with the Tokyo Communique and the BAP-SBP's Article of Incorporation and By-Laws. The Court of Appeal's historical account as to how all subject documents came into being is enlightening, thus:

> Pertinently, the Tokyo Communique purposely created a three-man panel '*to review, verify, and validate the list of members as submitted by PB and BAP to the FIBA Central Board Special Commission created to hear the Philippine case based on agreed set of criteria for membership formulated by three-man panel.*' Pursuant to the stipulations of the Tokyo Communique, the SBP was created leading to the execution and adoption of its Articles of Incorporation and by-laws, which laid down, among others, the criteria for membership of the SBP. Subsequent thereto, the three-man panel again convened and executed the said Bangkok Agreement, in which the admission of all the bona fide members of BAP and PB as appearing in the lists submitted to FIBA as 'members' instead of 'probationary members' of SBP was agreed upon.[8]

[8] *Id.* at 110.

To reiterate, the Tokyo Communique's directive to the three-man panel is for it to review, verify, and validate the list of members as submitted by PB and BAP to the FIBA Central Board Special Commission created to hear the Philippine Case based on an agreed set of criteria for membership as formulated by said three-man panel. In other words, there is a given process for validation of membership rather than the automatic grant of voting or active membership status being insisted upon by petitioners. Besides, had it intended all *bona fide* members to be admitted as "accredited members" or "first members" or "active members", the three-man panel would have specifically used such term since its members were all aware that the SBP's Articles of Incorporation and by-laws were already in existence at the time and also provided for three classes or categories of "members."

We agree with respondents that the term "probationary" was deleted to remove the suggestion that members of that sort only had temporary membership status. While the organizations submitted by BAP and PB for BAP-SBP membership are no longer to be considered as probationary, such consideration does not intend to do away with the validation or accreditation process to determine which of these would qualify as active or voting members of SBP and which ones would be classified as associate and affiliate members.While all three classes are considered as regular members, not all could be granted the right to vote.

There can be no gainsaying the necessity for such qualification. Section 2 of the Transitory Provisions of the By-Laws[9] states in no uncertain terms that:

> Section 2. Accredited Members. All *bona fide* members in good standing of the Basketball Association of the Philippines (BAP) and Pilipinas Basketball (PB) at the time of the incorporation of the Corporation and as submitted to FIBA by BAP and PB **and validated** by the three-man panel organized pursuant to the August 28, 2006 joint communiqué signed in Tokyo, Japan by and among representatives from FIBA, POC, BAP and PB, which joint communiqué is incorporated herein by reference, shall be recognized

[9] Article XVII, Section 2.

as the first members of the Corporation (the "First Members") with full rights and privileges, including the right to elect the regular board of trustees that will replace the First Board of Trustees named in Article Eighth of the Articles of Incorporation (the "First Trustees"), unless suspended or expelled in accordance with appropriate rules and regulations. For this purpose, **the three-man panel shall formulate the rules and procedures for validation and, when necessary, form a committee that will assist the panel in the validation process**.

Indeed, the three-man panel is mandated to review, verify and validate the lists of members submitted by BAP and PB to FIBA based on an agreed set of criteria for membership formulated by the three-man panel.[10] In this connection, there is no question that the three-man panel had not yet formulated a set of criteria prior to or as of the time of signing of the Bangkok Agreement. If only for this, it stands to reason that the three-man panel could not have, by any stretch of the imagination, possibly validated all organizations proposed by the BAP and PB for BAP-SBP membership as "active" or "voting" members on a wholesale basis. It could not have done so since there was still no set of criteria by which to embark on such an endeavor. The rules and procedures for validation were formulated by the three-man panel only after the execution of the Bangkok Agreement. In fact, several of the petitioners actively participated in the membership validation process which was done after the execution of the Bangkok Agreement.

The membership validation resulted in the conferment of active membership status upon 19 BAP-SBP members, 17 of which participated in the June 12, 2008 meeting. Petitioners even constituted the majority of the Committee that undertook the task; they actively participated in the formulation of the validation rules based on the by-laws providing for this; some of them actively participated in the validation of the membership list and even voted along with other members of the Committee for the grant of active membership status to the 19 regular members.Thus, as correctly held by the Court of Appeals,

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[10] *Rollo,* p. 40.

petitioners are now estopped from assailing the validity and mandatory nature of the BAP-SBP's validation process as a prerequisite to a member's acquisition of active (voting) membership status.

Verily, petitioners' bare denial deserves short shrift in light of the documentary evidence attesting to their active participation during BAP-SBP's validation of its members' credentials leading to the confirmation of active membership status to 19 members. Hence, respondents, who were elected by 17 of the 19 active and voting members of the BAP-SBP during the meeting held on June 12, 2008, are the legitimate officers of the organization, their election in accordance with the applicable rules on the said exercise.

Anent the chairmanship of the Board of Trustees of the BAP-SBP, the Court of Appeals correctly held that petitioner Villafuerte's nomination must of necessity be understood as being subject to or in accordance with the qualifications set forth in the By-Laws of the BAP-SBP. Since the said by-laws require the Chairman of the Board of Trustees to be a trustee himself, petitioner Villafuerte was not qualified since he had neither been elected nor appointed as one of the trustees of BAP-SBP. In other words, petitioner Villafuerte never validly assumed the position of Chairman because he failed in the first place to qualify therefor.

WHEREFORE, the petition is *DENIED*. The assailed Decision dated November 18, 2008 of the Court of Appeals in CA-G.R. SP No. 105368 which reversed and set aside the Decision of the Regional Trial Court of Manila, Branch 24, in Civil Case No. 08-119546 and dismissed the petition for declaration of nullity of elections, and the February 18, 2009 Resolution denying reconsideration, are *AFFIRMED*.

SO ORDERED.

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

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* In lieu of Associate Justice Antonio Eduardo B. Nachura per raffle dated May 20, 2009.

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