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2013

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 156981. October 5, 2009]

ARTURO C. CABARON and BRIGIDA CABARON, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES and SANDIGANBAYAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL UNDER RULE 45; LIMITED ONLY TO QUESTIONS OF LAW.— It is settled that the appellate jurisdiction of the Supreme Court over decisions and final orders of the Sandiganbayan is limited only to questions of law; it does not review the factual findings of the Sandiganbayan which, as a rule, are conclusive upon the Court.

2. ID.; ID.; ID.; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED.— A question of law exists when there is doubt or controversy as to what the law is on a certain state of facts. On the other hand, a question of fact exists when the doubt or controversy arises as to the truth or falsity of the alleged facts. The resolution of a question of fact necessarily involves a calibration of the evidence, the credibility of the witnesses, the existence and the relevance of surrounding circumstances, and the probability of specific situations. Simple as it may seem, determining the true nature and extent of the distinction is not always easy. In a case involving a question of law, the resolution of the issue must rest solely on what the law provides for a given set of facts drawn from the evidence

presented. Once it is clear that the issue invites a review of the *probative value* of the evidence presented, the question posed is one of fact. If the query requires a **re-evaluation of the credibility of witnesses**, or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual.

3. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS THEREON BY TRIAL COURT, GENERALLY NOT DISTURBED ON APPEAL; RATIONALE.— As the tribunal with the full opportunity to observe firsthand the demeanor and deportment of the witnesses, the Sandiganbayan's findings that the witnesses for the prosecution are to be believed as against those of the defense are entitled to great weight. It may not be amiss to reiterate that on the issue of credibility of witnesses, appellate courts will not disturb the findings arrived at by the trial courts — the tribunals in a better position to rate the credibility of witnesses after hearing them and observing their deportment and manner of testifying during the trial; it is not for this Court to review again the evidence already considered in the proceedings below. This rule stands absent any showing that facts and circumstances of weight and value have been overlooked, misinterpreted or misapplied by the lower court that, if considered, would affect the result or outcome of the case. The Sandiganbayan rulings in this case suffer no such infirmities, notwithstanding the efforts of the petitioners to create a contrary impression.

APPEARANCES OF COUNSEL

Juancho L. Botor for petitioners.

R E S O L U T I O N

BRION, *J.*:

For our review is the petition[1] filed by petitioners Arturo C. Cabaron and Brigida Cabaron assailing the

[1] Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court.

decision[2] and resolution[3] of the Sandiganbayan dated October 15, 2002 and January 23, 2003, respectively, in Criminal Case No. 24153. The challenged decision found the petitioners guilty beyond reasonable doubt of violation of Section 7(d) of Republic Act No. 6713 (*R.A. No. 6713*), otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees. The assailed resolution denied the petitioners' motion for reconsideration but modified the imposed penalties.

ANTECEDENT FACTS

The case traces its roots to the complaint for grave threats, extortion, bribery, dereliction of duty, violation of Republic Act No. 3019 (the Anti-Graft and Corrupt Practices Act) and violation of R.A. No. 6713 filed by Richter G. Pacifico (*Pacifico*) before the Deputy Ombudsman (Visayas) against the petitioners, docketed as OMB-VIS-CRIM-96-1213.

The Deputy Ombudsman for the Visayas, in his resolution[4] dated June 27, 1997, recommended the filing of an Information for violation of Section 7(d) of R.A. No. 6713 against the petitioners. The Ombudsman approved the resolution on September 5, 1997.[5] The Information subsequently filed with the Sandiganbayan for violation of Section 7(d) of R.A. No. 6713 states:

That on or about the 7th day of October 1996, at about 2:30 o'clock in the afternoon, and for sometime subsequent thereto, at Cebu City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused ARTURO C. CABARON, a public officer, being an Assistant Provincial Prosecutor of Cebu in such capacity and committing the offense in relation to office, taking advantage of

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[2] Penned by Associate Justice Anacleto D. Badoy, Jr. and concurred in by Associate Justice Teresita Leonardo-De Castro (now a member of this Court) and Associate Justice Diosdado M. Peralta (now a member of this Court); *rollo*, pp. 85-107.

[3] *Id.*, pp. 64-72.

[4] Records, pp. 4-11.

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

his public functions, conniving, confederating and mutually helping with accused BRIGIDA Y. CABARON, his wife and a private individual, with deliberate intent, with intent of gain and evident bad faith, did then and there willfully, unlawfully and feloniously solicit/demand from one Richter G. Pacifico, mother of Abraham Pacifico, Jr., who have pending cases before the Office of the Provincial Prosecutor for preliminary investigation the amount of FIFTY THOUSAND (₱50,000.00) PESOS, Philippine Currency in consideration for the consolidation and handling by him of the case entitled "*Ohyeen Alesna vs. Abraham Pacifico, Jr.*," for Rape (IS No. 96-11651), which is assigned to Provincial Prosecutor Rodolfo Go, with another criminal case entitled "*Abraham Pacifico, Jr. vs. Alvin Alesna*," for Frustrated Murder, which is handled by accused Arturo C. Cabaron, and the giving of a lawyer to defend Abraham Pacifico, Jr. who bears similar family name with the Provincial Prosecutor of Cebu, in order that Abraham Pacifico, Jr. can get a favorable Resolution in the above-mentioned cases, thus, accused in the course of his official functions solicited/demanded anything of monetary value from litigants, which act is prohibited under Sec. 7(d) of R.A. 6713, "The Code of Conduct and Ethical Standards for Public Officials and Employees," to the detriment of public service and interest.

CONTRARY TO LAW.[6]

The Sandiganbayan issued warrants of arrest against the petitioners on September 16, 1997. The petitioners voluntarily surrendered to the Sandiganbayan on October 3, 1997 and filed a *motion for reconsideration/reinvestigation*[7] alleging, among others, that the Ombudsman's findings were based on a false assumption of fact. The Office of the Special Prosecutor recommended the withdrawal of the Information and the dismissal of the case in its order[8] of December 15, 1997. The Ombudsman, however, disapproved this recommendation and directed the petitioners' prosecution.[9]

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

[7] *Id.*, pp. 35-45.

[8] *Id.*, pp. 57-61.

[9] *Id.*, p. 61.

The petitioners were duly arraigned and pleaded "not guilty" to the charge laid.[10] Trial on the merits thereafter followed. Meanwhile, the prosecution filed on October 29, 1998, filed a motion to suspend accused *pendente lite*.[11] The Sandiganbayan denied this motion in its resolution[12] dated June 14, 2000.

The Sandiganbayan convicted the petitioners of the crime charged in its decision of October 15, 2002 as follows:

> WHEREFORE, this Court finds accused ARTURO C. CABARON and BRIGIDA CABARON GUILTY beyond reasonable doubt, of the crime of Violation of Sec. 7(d) R.A. 6713, hereby sentences both accused to each suffer an imprisonment for TWO (2) YEARS and ONE (1) DAY, and to pay the costs. Likewise, both accused are solidarily liable to Richter Pacifico in the amount of ₱30,000 as moral damages.
>
> SO ORDERED.[13]

The petitioners moved to reconsider this decision, but the Sandiganbayan denied their motion in its resolution dated January 23, 2003. The Sandiganbayan, however, applied the Indeterminate Sentence Law and modified the dispositive portion of its decision as follows:

> WHEREFORE, this Court finds accused ARTURO C. CABARON and BRIGIDA Y. CABARON GUILTY beyond reasonable doubt of the crime of violation of Sec. 7(d), R.A. 6713, hereby sentences both accused to each suffer the indeterminate penalty of ONE (1) YEAR AS MINIMUM to TWO (2) YEARS AND ONE (1) DAY AS MAXIMUM, and to pay the costs. Likewise, both accused are solidarily liable to Richter Pacifico in the amount of ₱30,000.00 as moral damages.
>
> SO ORDERED.[14] [*Emphasis and underscoring in the original*]

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[10] *Id.*, pp. 87 and 92.

[11] *Id.*, pp. 156-157.

[12] *Id.*, pp. 393-396.

[13] Decision, *rollo*, p. 116.

[14] Resolution, *id.*, pp. 71-72.

Petitioners filed a petition for review on *certiorari* before this Court, alleging, among others, that the Sandiganbayan erred —

1. in overlooking the fact that the case was merely a harassment case instigated by Atty. Valencia;
2. in relying on the testimonies of Pacifico and Editha Baylon (Editha); and
3. in not giving weight to the testimonies of defense witnesses Russo and Zoe.

This Court's Third Division, in a resolution[15] dated April 7, 2003, denied this petition for *raising factual issues* and for failing to show that the Sandiganbayan committed reversible error in its decision.

The petitioners moved to reconsider this resolution.[16] This Court reinstated the petition for review on *certiorari* in its resolution[17] dated July 7, 2003.

THE COURT'S RULING

We **deny** the petition for raising pure questions of fact.

Only questions of law should be raised in a Rule 45 petition

It is settled that the appellate jurisdiction of the Supreme Court over decisions and final orders of the Sandiganbayan is limited only to questions of law; it does not review the factual findings of the Sandiganbayan which, as a rule, are conclusive upon the Court.[18]

A question of law exists when there is doubt or controversy as to what the law is on a certain state of facts. On the other

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[15] *Id.*, p. 118.

[16] *Id.*, pp. 119-130.

[17] *Id.*, p. 133.

[18] See *Rodriguez v. Sandiganbayan*, G.R. No. 63118, September 1, 1989, 177 SCRA 220.

hand, a question of fact exists when the doubt or controversy arises as to the truth or falsity of the alleged facts. The resolution of a question of fact necessarily involves a calibration of the evidence, the credibility of the witnesses, the existence and the relevance of surrounding circumstances, and the probability of specific situations.[19]

Simple as it may seem, determining the true nature and extent of the distinction is not always easy. In a case involving a question of law, the resolution of the issue must rest solely on what the law provides for a given set of facts drawn from the evidence presented. Once it is clear that the issue invites a review of the *probative value* of the evidence presented, the question posed is one of fact. If the query requires a **re-evaluation of the credibility of witnesses**, or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual.[20]

In the present case, the petitioners seek a review by this Court of the factual findings of the Sandiganbayan, which essentially involve the credibility of the witnesses and the probative weight of their testimonies. The question regarding the credibility of witnesses is obviously one of fact on which the Sandiganbayan had already passed upon in its decision and resolution dated October 15, 2002 and January 23, 2003, respectively.

The Sandiganbayan in its October 15, 2002 Decision gave full probative value to the testimonies of the prosecution witnesses, Pacifico and Editha. It held that the testimony of Pacifico narrating how the petitioners demanded money from him was corroborated on material points by Editha. It gave no credit to the attempt of the defense to impugn the credibility of Pacifico and Editha, and ruled that the inconsistencies in their testimonies refer to trivial and insignificant matters that do not affect at all the conclusion reached.

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[19] See *Republic v. Sandiganbayan*, G.R. No. 135789, January 31, 2002, 375 SCRA 425.

[20] See *Mendoza v. People*, G.R. No. 146234, June 29, 2005, 462 SCRA 160.

The Sandiganbayan also held that the testimonies of the defense witnesses were unreliable and not in accord with the natural course of things. It likewise gave no credence to the defense's theory that Atty. Valencia instigated Pacifico's complaint against the petitioners.

The Sandiganbayan reiterated its conclusions regarding the credibility of witnesses in its resolution dated January 23, 2003 when it said:

> The defense tried to thrust upon this court that the testimonies of the prosecution witnesses are incredible as the same were tainted, impelled as they are and used by Atty. Valencia as "willing tools" in his vendetta against accused prosecutor Cabaron.
>
> This imputation of sinister motive upon the prosecution witnesses is lame and apparently made to save themselves from prosecution. It is worthy to note that although they alleged improper motive on the part of the prosecution witnesses, accused-movants failed to substantiate the same by clear and convincing evidence. In the absence of substantial evidence showing the improper motive so attributed to the prosecution witnesses, the logical conclusion is that no such improper motive exists, and their testimony is therefore worthy of full faith and credence.
>
> Furthermore, in light of the categorical testimonies of the prosecution witnesses showing the accused-movants Cabarons' accountability, their bare denial must fail. As between a categorical testimony that rings of truth on one hand and a bare denial on the other, the former generally prevails. This is so because denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence which cannot be accorded greater weight than the testimony of credible witnesses who testify on affirmative matters.
>
> x x x x x x x x x[21]

As the tribunal with the full opportunity to observe firsthand the demeanor and deportment of the witnesses, the Sandiganbayan's findings that the witnesses for the prosecution are to be believed as against those of the defense are entitled to great weight. It may not be amiss to reiterate that on the issue

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[21] *Rollo*, pp. 68-69.

of credibility of witnesses, appellate courts will not disturb the findings arrived at by the trial courts — the tribunals in a better position to rate the credibility of witnesses after hearing them and observing their deportment and manner of testifying during the trial; it is not for this Court to review again the evidence already considered in the proceedings below. This rule stands absent any showing that facts and circumstances of weight and value have been overlooked, misinterpreted or misapplied by the lower court that, if considered, would affect the result or outcome of the case.[22] The Sandiganbayan rulings in this case suffer no such infirmities, notwithstanding the efforts of the petitioners to create a contrary impression.

As we explained in *Tayaban v. People*:[23]

> [T]he assessment of the credibility of a witness is primarily the function of a trial court, which had the benefit of observing firsthand the demeanor or deportment of the witness. It is well-settled that this Court will not reverse the trial court's assessment of the credibility of witnesses in the absence of arbitrariness, abuse of discretion or palpable error. It is within the discretion of the Sandiganbayan to weigh the evidence presented by the parties, as well as to accord full faith to those it regards as credible and reject those it considers perjurious or fabricated. Moreover, the settled rule is that absent any evidence showing a reason or motive for prosecution witnesses to perjure their testimonies, the logical conclusion is that no improper motive exists, and that their testimonies are worthy of full faith and credit.

WHEREFORE, premises considered, we hereby *DENY* the petition.

SO ORDERED.

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[22] See *Arceño v. People*, G.R. No. 116098, April 26, 1996, 256 SCRA 569.

[23] G.R. No. 150194, March 6, 2007, 517 SCRA 488.

Corona,[*] *Carpio Morales (Acting Chairperson),*[**] *Del Castillo,* and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 165679. October 5, 2009]

ENGR. APOLINARIO DUEÑAS, *petitioner, vs.* **ALICE GUCE-AFRICA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; LIMITED TO REVIEW OF QUESTIONS OF LAW; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED.— Petitioner endeavors to convince us to determine, yet again, the weight, credence, and probative value of the evidence presented. This cannot be done in this petition for review on *certiorari* under Rule 45 of the Rules of Court where only questions of law may be raised by the parties and passed upon by us. In *Fong v. Velayo,* we defined a question of law as distinguished from a question of fact, *viz*: "A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. *For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them.* The resolution of the issue must rest solely on what the law provides on the given set of circumstances.

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[*] Designated additional Member of the Second Division per Special Order No. 718 dated October 2, 2009.

[**] Per Special Order No. 690 dated September 4, 2009.

Once it is clear that the issue invites a review of the evidence presented, the questioned posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether 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 is a question of fact."

2. ID.; ID.; ID.; THE DETERMINATION OF THE EXISTENCE OF A BREACH OF CONTRACT IS A FACTUAL MATTER NOT USUALLY REVIEWABLE IN A PETITION FILED UNDER RULE 45.— It has already been held that the determination of the existence of a breach of contract is a factual matter not usually reviewable in a petition filed under Rule 45. We will not review, much less reverse, the factual findings of the Court of Appeals especially where, as in this case, such findings coincide with those to the trial court, since we are not a trier of facts.

3. ID.;APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS AFFIRMING THOSE OF THE REGIONAL TRIAL COURT ARE CONCLUSIVE AND BINDING; EXCEPTIONS.— The established rule is that the factual findings of the Court of Appeals affirming those of the RTC are conclusive and binding on us. We are not wont to review them, save under exceptional circumstances as: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) *when the findings are grounded entirely on speculations, surmises or conjectures*; (4) when the judgment of the Court of Appeals is based on misapprehension of facts; (5) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (6) when the findings of fact are conclusions without citation of specific evidence on which they are based; (7) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (8) *when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record*.

4. CIVIL LAW; DAMAGES; ACTUAL DAMAGES; AWARDED ONLY UPON SHOWING OF COMPETENT PROOF OF

THE ACTUAL AMOUNT OF LOSS. — Article 2199 of the Civil Code provides that "one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved." In *Ong v. Court of Appeals*, we held that "(a)ctual damages are such compensation or damages for an injury that will put the injured party in the position in which he had been before he was injured. They pertain to such injuries or losses that are actually sustained and susceptible of measurement." To be recoverable, actual damages must not only be capable of proof, but must actually be proved with reasonable degree of certainty. We cannot simply rely on speculation, conjecture or guesswork in determining the amount of damages. Thus, it was held that before actual damages can be awarded, there must be competent proof of the actual amount of loss, and credence can be given only to claims which are duly supported by receipts.

5. ID.; ID.; TEMPERATE DAMAGES; RECOVERED WHEN SOME PECUNIARY LOSS HAS BEEN SUFFERED BUT ITS AMOUNT CANNOT, FROM THE NATURE OF THE CASE, BE PROVED WITH CERTAINTY.— [I]n the absence of competent proof on the amount of actual damages suffered, a party is entitled to temperate damages. x x x Temperate or moderate damages may be recovered when some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. The amount thereof is usually left to the discretion of the courts but the same should be reasonable, bearing in mind that temperate damages should be more than nominal but less than compensatory.

APPEARANCES OF COUNSEL

De Jesus Linatoc Mendoza and Associates for petitioner.
Napoleon M. Marapao for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Time and again, we have held that in a petition for review on *certiorari* filed under Rule 45 of the Rules of Court, we cannot review or pass upon factual matters, save under exceptional

circumstances, none of which obtains in the present case. Petitioner endeavors in vain to convince us that the trial court and the Court of Appeals erred in finding him negligent in the construction of respondent's house and holding him liable for breach of contract.

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to reverse and set aside the April 29, 2004 Decision[2] of the Court Appeals in CA-G.R. CV No. 70757, which affirmed the December 21, 2000 Decision[3] of the Regional Trial Court, Branch 157, Pasig City, in an action for breach of contract with damages[4] filed by respondent against petitioner.

THE FACTS

For respondent and her family, April 18, 1998 was supposed to be a special occasion and a time for family reunion. It was the wedding date of her sister Sally Guce, and respondent's other siblings from the United States of America, as well as her mother, were expected to return to the country. The wedding ceremony was set to be held at the family's ancestral house at San Vicente, Banay-banay, Lipa City, where respondent's relatives planned to stay while in the Philippines.

Respondent found the occasion an opportune time to renovate their ancestral house. Thus, in January 1998 she entered into a Construction Contract[5] with petitioner for the demolition of the ancestral house and the construction of a new four-bedroom residential house. The parties agreed that respondent would pay ₱500,000.00 to the petitioner, who obliged himself to furnish

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[1] *Rollo,* pp. 3-15.

[2] CA *rollo,* pp. 96-103; penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Danilo B. Pine and Edgardo F. Sundiam.

[3] Records, pp. 171-179; penned by Judge Esperanza Fabon-Victorino.

[4] Docketed as Civil Case No. 66930.

[5] Records, p. 6.

all the necessary materials and labor for the completion of the project. Petitioner likewise undertook to finish all interior portions of the house on or before March 31, 1998, or more than two weeks before Sally's wedding.

On April 18, 1998, however, the house remained unfinished. The wedding ceremony was thus held at the Club Victorina and respondent's relatives were forced to stay in a hotel. Her mother lived with her children, transferring from one place to another.

On July 27, 1998, respondent filed a Complaint[6] for breach of contract and damages against petitioner before the Regional Trial Court of Pasig City. She alleged, among others, that petitioner started the project without securing the necessary permit from the City Engineer's Office of Lipa City. Respondent likewise alleged that, all in all, she gave petitioner ₱550,000.00 (which is ₱50,000.00 more than the contract price). However, and despite knowledge that the construction of the house was intended for the forthcoming marriage of respondent's sister, petitioner unjustly and fraudulently abandoned the project leaving it substantially unfinished and incomplete. Several demands were made, but petitioner obstinately refused to make good his contractual obligations. Worse, petitioner's workmanship on the incomplete residential house was substandard.

Respondent prayed for the return of the ₱50,000.00 overpayment. She also prayed for an award of ₱100,000.00 for the purpose of repairing what had been poorly constructed and at least ₱200,000.00 to complete the project.

In his Answer with Counterclaim,[7] petitioner asserted that it was respondent who undertook to secure the necessary government permits.[8] With regard to the alleged overpayment, petitioner claimed that the amount of ₱50,000.00 was in payment

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[6] *Id.* at 1-5.

[7] *Id.* at 19-24.

[8] During trial, however, petitioner declared on the witness stand that the parties agreed that he will secure the necessary permit only if the concerned government agency requires it. TSN, January 25, 2000, p. 7.

for the additional works which respondent requested while the construction was still on going. In fact, the estimated cost for the additional works amounted to ₱133,960.00, over and above the ₱500,000.00 contract price.

Petitioner likewise alleged that the delay in the construction of the house was due to circumstances beyond his control, namely: heavy rains, observance of Holy Week, and celebration of *barangay* fiesta. Ultimately, he was not able to complete the project because on May 27, 1998, respondent went to his house and told him to stop the work.

He maintained that he cannot be held liable for the amounts claimed by the respondent in her complaint considering that he had faithfully complied with the terms and conditions of the Construction Contract.

On February 19, 1999, pre-trial conference was conducted. Thereafter, trial ensued.

Respondent testified on the material points alleged in her complaint. She also presented the testimony of her brother Romeo Guce, who declared on the witness stand that petitioner confided to him that he had to stop the construction because he could no longer pay his workers. He also testified that petitioner asked for additional amount of about ₱20,000.00 to finish the house. He relayed this to the respondent who refused to release any additional amount because of petitioner's unsatisfactory and substandard work. But later on, respondent acceded and gave petitioner ₱20,000.00.

To establish the status of the project and determine the amount necessary for the repair and completion of the house, respondent presented Romeo Dela Cruz, a licensed realtor and a graduate of an engineering course at the Technological Institute of the Philippines. Dela Cruz testified that he conducted an ocular inspection on the construction site in November 1998 and found that only about 60% of the project had been accomplished. Some parts of the project, according to the witness, were even poorly done. He likewise testified that in order to repair the poorly constructed portion of the house, respondent would need

to spend about ₱100,000.00 and another ₱200,000.00 to complete it.

Petitioner also took the witness stand and testified on matters relative to the defenses he raised in his answer.

On December 21, 2000, the RTC rendered a Decision[9] in favor of the respondent and against the petitioner. The RTC gave more credence to respondent's version of the facts, finding that —

> Clearly, Dueñas [herein petitioner] failed to tender performance in accordance with the terms and conditions of the construction contract he executed with Africa [herein respondent]. He failed to construct a four-bedroom residential house suitable and ready for occupancy on a stipulated date. Dueñas was fully aware that Africa needed the new house for a long scheduled family event precisely a completion date was included and specified in the transaction. Despite knowledge and receipt of payment from Africa, Dueñas failed to deliver what was incumbent upon him under the undertaking. He unjustifiably incurred delay in the construction of the new building and wrongfully deprived Africa and her family of the use and enjoyment of the subject property. Bad weather, observance of the Holy Week and *barangay* fiesta are insufficient excuses. As a building contractor Dueñas should have provided for such contingencies. Mere inconvenience or unexpected impediments will not relieve a party of his obligation. Granting that he was not yet fully paid for the additional work by Africa, provisions or arrangements should have been made to ensure completion of the project within the agreed period.
>
> Moreover, Dueñas negligently abandoned the unfinished structure shortly after a confrontation with Africa and family. Rain water sipped[sic] into the house because Dueñas failed to secure the roofing and wall flushing. The house remained [un]habitable because fixtures and devises were yet to be installed. Dueñas failed to exercise the required diligence as a contractor and is guilty of negligence and delay. He must be made responsible for the foreseen effect of the exposure of the new structure to the elements.
>
> Significantly, the poor construction performance manifested in the structure after Dueñas in bad faith abandoned it. Indeed, the

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[9] Records, pp. 171-179.

newly constructed edifice needs significant repairs if only to make it habitable for its occupants.[10]

Consequently, the *fallo* of the RTC decision reads:

> WHEREFORE, judgment is hereby rendered in favor of plaintiff Alice G. Africa and against defendant Apolinario Dueñas who is hereby directed to pay plaintiff:
>
> - ₱100,000.00 for the necessary repair of the structure;
> - 200,000.00 for the completion of the construction;
> - 50,000.00 as and for attorney's fees;
> - and costs of suit.
>
> Plaintiff's claim for moral, nominal and exemplary damages are hereby denied for lack of sufficient basis.
>
> SO ORDERED.[11]

Both parties were unsatisfied. They thus brought the matter to the Court of Appeals assailing the Decision of the RTC. The appellate court, however, found no cogent reason to depart from the trial court's conclusion. Thus, on April 29, 2004, it rendered the herein assailed Decision[12] affirming with modification the RTC's ruling, *viz*:

> WHEREFORE, in view of the foregoing, the Decision of the Regional Trial Court of Pasig City, Branch 157, dated 21 December 2000, is hereby AFFIRMED WITH MODIFICATION that the award of attorney's fees is hereby DELETED.
>
> SO ORDERED.[13]

ISSUES

Feeling aggrieved but still undeterred, petitioner interposes the present recourse anchored on the following grounds:

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[10] *Supra* note 3.

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

[12] *Supra* note 2.

[13] *Id.* at 103.

I.

THE COSTS OF ACTUAL DAMAGES AWARDED ARE BASED ON MERE SPECULATIONS AND CONJECTURES.[14]

II.

THE RULINGS THAT DUEÑAS ABANDONED THE WORK AND INCURRED DELAY ARE CONTRARY TO THE EVIDENCE.[15]

III.

THE DAMAGES CAUSED BY RAIN WATER WERE NOT DUE TO APOLINARIO DUEÑAS' FAULT OR NEGLIGENCE.[16]

OUR RULING

For purposes of clarity, we shall tackle simultaneously the second and third arguments raised by the petitioner.

Instant petition not available to determine whether petitioner violated the contract or abandoned the construction of the house

Petitioner contends that he neither abandoned the project nor violated the contract. He maintains that continuous rains caused the delay in the construction of the house and that he was not able to finish the project because respondent ordered him to stop the work. In fact, there was no reason for him to stop the project because he still had available workers and materials at that time, as well as collectibles from the respondent. Petitioner likewise contends that the Court of Appeals erred in upholding the trial court's finding that he was guilty of negligence.

The contentions lack merit.

Petitioner endeavors to convince us to determine, yet again, the weight, credence, and probative value of the evidence presented. This cannot be done in this petition for review on

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[14] *Rollo,* p. 6.

[15] *Id.* at 10.

[16] *Id.* at 12.

certiorari under Rule 45 of the Rules of Court where only questions of law may be raised by the parties and passed upon by us. In *Fong v. Velayo*,[17] we defined a question of law as distinguished from a question of fact, *viz*:

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. *For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them.* The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the questioned posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether 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 is a question of fact.

It has already been held that the determination of the existence of a breach of contract is a factual matter not usually reviewable in a petition filed under Rule 45.[18] We will not review, much less reverse, the factual findings of the Court of Appeals especially where, as in this case, such findings coincide with those of the trial court, since we are not a trier of facts.[19] The established rule is that the factual findings of the Court of Appeals affirming those of the RTC are conclusive and binding on us. We are not wont to review them, save under exceptional circumstances as: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) *when the findings are grounded entirely on speculations, surmises or conjectures*; (4) when the judgment of the Court of Appeals is based on misapprehension of facts; (5) when the

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[17] G.R. No. 155488, December 6, 2006, 510 SCRA 320, 329-330.

[18] *Omengan v. Philippine National Bank*, G.R. No. 161319, January 23, 2007, 512 SCRA 305, 309.

[19] *Ledonio v. Capitol Development Corporation*, G.R. No. 149040, July 4, 2007, 526 SCRA 379, 392.

Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (6) when the findings of fact are conclusions without citation of specific evidence on which they are based; (7) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (8) *when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record*.[20]

Except with respect to the first ground advanced by the petitioner which will be discussed later, none of the above exceptions obtain in this case. Hence, we find no cogent reason to disturb the findings of the RTC and affirmed by the Court of Appeals that petitioner was negligent in the construction of respondent's house and thus liable for breach of contract.

Respondent not entitled to actual damages for want of evidentiary proof

Petitioner further argues that the appellate court erred in affirming the RTC's award of actual damages for want of evidentiary foundation. He maintains that actual damages must be proved with reasonable degree of certainty. In the case at bench, petitioner argues that the trial and the appellate courts awarded the amounts of ₱100,000.00 and ₱200,000.00 as actual damages based merely on the testimonies of respondent and her witness.

We agree. Article 2199 of the Civil Code provides that "one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved." In *Ong v. Court of Appeals*,[21] we held that "(a)ctual damages are such compensation or damages for an injury that will put the injured party in the position in which he had been before he was injured.

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[20] *College Assurance Plan v. Belfranlt Development, Inc.*, G.R. No. 155604, November 22, 2007, 538 SCRA 27, 37-38.

[21] G.R. No. 117103, January 21, 1999, 301 SCRA 387, 400.

They pertain to such injuries or losses that are actually sustained and susceptible of measurement." To be recoverable, actual damages must not only be capable of proof, but must actually be proved with reasonable degree of certainty. We cannot simply rely on speculation, conjecture or guesswork in determining the amount of damages. Thus, it was held that before actual damages can be awarded, there must be competent proof of the actual amount of loss, and credence can be given only to claims which are duly supported by receipts.[22]

Here, as correctly pointed out by petitioner, respondent did not present documentary proof to support the claimed necessary expenses for the repair and completion of the house. In awarding the amounts of ₱100,000.00 and ₱200,000.00, the RTC and the Court of Appeals merely relied on the testimonies of the respondent and her witness. Thus:

> As to the award of ₱100,000.00 as cost of repair and ₱200,000.00 as the amount necessary to complete the house, the Court finds the same to be in the nature of actual damages. It is settled that actual damages must be supported by best evidence available x x x. In the case at bar, the Court finds that the testimony of the plaintiff-appellant in this regard is supported by the testimony of Romeo dela Cruz, a realtor, who inspected the structure after it remained unfinished. Said testimonies are sufficient to establish the claim. x x x

Respondent entitled to temperate damages in lieu of actual damages

Nonetheless, in the absence of competent proof on the amount of actual damages suffered, a party is entitled to temperate damages. Articles 2216, 2224 and 2225 of the Civil Code provide:

> Art. 2216. No proof of pecuniary loss is necessary in order that moral, nominal, temperate, liquidated or exemplary damages may be adjudicated. The assessment of such damages, except liquidated ones, is left to the discretion of the court, according to the circumstances of each case.

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[22] *Viron Transportation Co., Inc. v. Alberto Delos Santos*, G.R. No. 138296, November 22, 2000, 345 SCRA 509, 519.

Art. 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty.

Art. 2225. Temperate damages must be reasonable under the circumstances.

Temperate or moderate damages may be recovered when some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.[23] The amount thereof is usually left to the discretion of the courts but the same should be reasonable, bearing in mind that temperate damages should be more than nominal but less than compensatory.[24]

There is no doubt that respondent sustained damages due to the breach committed by the petitioner. The transfer of the venue of the wedding, the repair of the substandard work, and the completion of the house necessarily entailed expenses. However, as earlier discussed, respondent failed to present competent proof of the exact amount of such pecuniary loss. To our mind, and in view of the circumstances obtaining in this case, an award of temperate damages equivalent to 20% of the original contract price of ₱500,000.00, or ₱100,000.00 (which, incidentally, is equivalent to 1/3 of the total amount claimed as actual damages), is just and reasonable.

WHEREFORE, the instant petition is *PARTIALLY GRANTED*. The Decision of the Court of Appeals dated April 29, 2004 in CA-G.R. CV No. 70757 is *AFFIRMED* with *MODIFICATION* that the award of actual damages is deleted and, in lieu thereof, petitioner is ordered to pay respondent temperate damages in the amount of ₱100,000.00.

SO ORDERED.

Corona,[*] *Carpio Morales, Brion,* and *Abad, JJ.,* concur.

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[23] Art. 2224, CIVIL CODE OF THE PHILIPPINES.

[24] *Supra* note 20, at 40.

[*] Additional member per Special Order No. 718 dated October 2, 2009.

THIRD DIVISION

[G.R. No. 178199. October 5, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **YOON CHANG WOOK,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS THEREON BY TRIAL COURT, GENERALLY ENTITLED TO GREAT RESPECT.— It is basic, almost elementary, that 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 seen and heard the witnesses themselves and observed their demeanor while in the witness box, the trial court is in a better position to address questions of credibility.

2. ID.; ID.; ID.; CONVICTION ON RAPE CASES MOST OFTEN RESTS SOLELY ON THE BASIS OF THE VICTIM'S TESTIMONY IF CREDIBLE AND CONVINCING.— By the peculiar nature of rape cases, conviction most often rests solely on the basis of the victim's testimony, if credible, natural, convincing, and consistent with human nature and the normal course of things. When a woman testifies to having been raped, she says in effect all that is necessary to show that rape has been committed, for as long as her testimony hurdles the test of credibility.

3. ID.; ID.; ID.; NOT IMPAIRED BY INCONSISTENCIES IN THE TESTIMONIES OF WITNESSES REFERRING TO MINOR DETAILS.— In the case at bench, AAA had testified to the physical and sexual abuse she suffered in the hands of Yoon and his companions. Yoon has invited attention to inconsistencies in AAA's testimony, but which the trial court dismissed as insignificant and surely not of such character as to vitiate the credibility of the witness. We reproduce with approval what the trial court wrote on the matter: "The defense counsel in her Memorandum enumerated a litany of alleged

inconsistencies or discrepancies in the testimony of private complainant [AAA] but as ruled by the High Court time and again, a few discrepancies or inconsistencies in the testimonies of witnesses referring to minor details, and not in actuality touching upon the basic aspects of the whys and wherefores of the crime, do not impair their credibility (*People vs. Custodio*, 197 SCRA 538). Said defense counsel speaks of discrepancies in the testimony of the private complainant such as that she was married but the truth is she and [BBB] are just living together as common-law husband and wife; that she cannot communicate in English but the truth is she undertook six years of English lessons; that it was dark at 2:00 P.M. of June 6, 1998 but later she retracted. But then, these alleged discrepancies, among others do not in actuality touch upon the basic aspects of the why and wherefores of the crime and they do not therefore impair her credibility."

4. ID.; ID.; ID.; NOT ADVERSELY AFFECTED BY THE DELAY IN REPORTING THE CRIME TO THE AUTHORITIES.— It may be, as Yoon has pointed out, that AAA did not timely report the incident to the authorities. This failure, however, does not undermine her credibility. The CA correctly stated why not: "[AAA]'s failure to report to the authorities and to subject herself to genital examination right after the rape incident do not diminish her credibility. [AAA] is a foreigner and is not familiar with the Philippines. Hence, she could hardly be expected to know how to go about reporting the crime to the authorities without the aid of somebody who is very knowledgeable of the laws of the Philippines. Well-settled is the rule that the silence of a victim of rape or her failure to disclose her misfortune to the authorities without loss of material time does not prove that her charge is baseless and fabricated (*People vs. Glodo*, 433 SCRA 535)."

5. ID.; ID.; DENIAL; CANNOT PREVAIL OVER THE POSITIVE TESTIMONY OF RAPE VICTIM.— Denial is to be sure a legitimate defense in rape cases. But bare assertions of not having committed the acts complained of cannot overcome the positive, straightforward, unequivocal, and categorical testimony of the victim. An affirmative testimony, especially when it comes from the mouth of a credible witness, is far stronger than a negative one. Mere denial, if unsubstantiated by clear and convincing evidence, is inherently weak, being

self-serving negative evidence undeserving of weight in law; it cannot be given greater evidentiary value than the positive testimony of a rape victim.

6. CRIMINAL LAW; RAPE; HOW COMMITTED; CASE AT BAR.— Rape, in context, is committed by a man who has carnal knowledge of a woman through force, threat, or intimidation. The elements of carnal knowledge and the use of force, threat and/or intimidation have sufficiently been proved. The second element came in the form of being threatened, beaten up, bound on a chair, and blindfolded by Yoon and his bullies. But being threatened with death by fire before the molestation was perhaps the most frightful act of violence employed on AAA on the fateful day of June 6, 1998.

7. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; AWARDED AS PROPER DETERRENT TO REPUGNANT SEXUAL BEHAVIOR; CASE AT BAR.— In the matter of damages, the Court hereby reduces the PhP 50,000 award as exemplary damages to PhP 30,000. The reduction is in line with prevailing jurisprudence assessing exemplary damages at that level as proper deterrent to repugnant sexual behavior.

8. ID.; ID.; ACTUAL DAMAGES; GRANTED ONLY WHEN EXPENSES ARE SUBSTANTIATED BY COMPETENT PROOF; CASE AT BAR.— [T]he award of PhP 9,000 and 500,000 Korean Won as medical expenses is unsubstantiated. There is nothing in the records to prove that private complainant incurred expenses in the amount aforestated for her medical examination or recovery. Unlike moral damages which may be imposed against the accused in rape cases even without allegation or proof of the emotional suffering or anguish of the victim, the award of actual damages is a different matter altogether. The trial court failed to justify the grant of medical expenses in its decision, this award appearing as it did only in the dispositive portion of its decision. Nowhere in the prosecution's offer of evidence or pleadings such amounts were claimed as medical expenses. Hence, said award should be deleted.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the Decision[1] dated October 31, 2006 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01942, affirming the April 24, 2000 Decision of the Regional Trial Court (RTC), Branch 259 in Parañaque City. The RTC adjudged Yoon Chang Wook guilty beyond reasonable doubt of rape.

In two (2) separate informations filed before the Parañaque City RTC, docketed as Criminal Case Nos. 98-824 and 98-825, Yoon Chang Wook (Yoon) and four (4) John Does were charged with the crime of rape and robbery, allegedly committed as follows:

CRIMINAL CASE No. 98-824

That on or about June 6, 1998, in Parañaque City and within the jurisdiction of this Honorable Court, Yoon Chang Wook with four (4) John Does whose true identities have not been ascertained as of this writing, did then and there, willfully, unlawfully and feloniously, while confederating, conspiring, conniving and mutually helping one another, with malicious intent and lewd design, employing force and physical violence upon the person of [AAA],[2] have carnal relationship with the latter, against her will and consent to the damage and prejudice of the latter.

CONTRARY TO LAW.

CRIMINAL CASE No. 98-825

That on or about June 6, 1998, in Parañaque City and within the jurisdiction of this Honorable Court, accused Yoon Chang Wook

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[1] *Rollo*, pp. 4-15. Penned by Associate Justice Elvi John S. Asuncion and concurred in by Associate Justices Jose Catral Mendoza and Sesinando E. Villon.

[2] The real name and the personal circumstances of the victim and her immediate relatives are withheld per Republic Act No. (RA) 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act) and RA 9262 (Anti-Violence Against Women and Their Children Act). See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 425-426.

and four (4) John Does whose true identities have not been ascertained as of this writing, did then and there, willfully, unlawfully and feloniously, while confederating, conspiring, conniving and mutually helping one another; with intent to gain, employing force and violence upon the person of [AAA] causing serious physical injuries to her, steal, take and carry away the money of [AAA] amounting to Y50,000,000 and $350 to the damage and prejudice of the latter.

CONTRARY TO LAW.[3]

When arraigned for both charges, Yoon entered a "not guilty" plea. Accused John Does remained at large.

To buttress its case, the prosecution presented the testimonies of private complainant AAA, Dr. Armie-Soreta Umil of the National Bureau of Investigation (NBI), and one Janet Collado, a security guard of the Ocean's Best Restaurant.

The totality of the prosecution's evidence tends to establish the following course of events:

Yoon and AAA, both Korean nationals, met in Seoul, South Korea in 1995 through a third party to whom AAA intimated her wish to send her daughter to the Philippines to study. Yoon, claiming to be familiar with the country, asked 20 million Won (approximately PhP 600,000) from AAA to defray processing expenses. Yoon then traveled to the Philippines. Upon Yoon's behest, AAA followed bringing with her some documents for her daughter's studies.

In January 1996, Yoon enrolled AAA's daughter at Brent Southville International School in Metro Manila. AAA later gave PhP 24,000 to Yoon to secure a visa for her daughter.[4]

Soon enough, both Korean nationals entered into a relationship. The affair, however, was short-lived owing to guilt feelings on the part of AAA and her realization that Yoon was just after her money.

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[3] CA *rollo*, pp. 6-9.

[4] *Rollo*, p. 4.

Sometime in April 1998, AAA, now back in Seoul, received a call from Yoon. After informing AAA that he has changed for the better and now owning a restaurant, Yoon asked AAA to come to Manila, promising to pay 80 million Won he owed her. AAA arrived in Manila on June 3, 1998. Two days later, she and her daughter repaired to Yoon's restaurant, Ocean's Best Restaurant, in Parañaque City. While there, Yoon told AAA he was still preparing the money and asked that she return the following day, alone. AAA did return alone on June 6, 1998 at around 2:00 p.m. Yoon approached her at the car and escorted her to the restaurant, placing his left hand on her back. Upon passing the door of the restaurant, Yoon suddenly got hold of her neck, pushed her head down, and dragged her towards the door of the restaurant.[5]

Once inside, Yoon and four unidentified Korean nationals brought her to the second floor of the restaurant. Yoon then stripped her of clothes while his companions punched and kicked her, gagged her mouth, bound her legs and arms, and blindfolded her. They then dragged her to the bathroom where they poured gasoline all over her body. The men scratched a lighter as if to set her on fire. Thereafter, the men forcibly pulled her back into a room and asked that she call her husband. AAA refused and pleaded to spare her husband and daughter from harm. Subsequently, the men untied her arms, removed the tape on her mouth and the blindfold, and she was made to lie down on the sofa. She then saw some men wearing caps and sunglasses, while Yoon, who was stark naked, approached her. AAA's struggles and pleadings for mercy proved in vain as Yoon succeeded in having sexual intercourse with her. The others gave her a beating for every effort she made to free herself. AAA fainted even before Yoon could completely be done with her. When AAA regained her consciousness, she found herself tied up again beside Yoon. There and then, Yoon asked her to copy a promissory note showing indebtedness to Yoon, which she did against her will. After she had put on her clothes, AAA was allowed to leave. When she looked into her bag, ¥50,000,000

[5] *Id.* at 5.

and USD 350 were missing. As AAA would later testify, the barbaric acts of Yoon gave her sleepless nights. Her husband, who took pictures (Exhibits "G" and "G-1" to "G-27") of her injuries as a result of the beatings, also suffered from mental stress.[6]

Yoon denied raping AAA, but admitted to having a two-year relationship with her which ended in 1997 when AAA suggested that he eliminate her husband. Testifying on what transpired on June 6, 1998, Yoon stated being, on that day, at his restaurant to check the electrical system and karaoke machines. The restaurant was closed albeit he received visitors. AAA came at around 2:00 p.m. Soon thereafter, some Korean brokers arrived with prospective buyers of his restaurant, Lee Hyeon Sook (Lee) and her husband. Yoon guided AAA upstairs where she waited until 7:00 p.m. when the other visitors left. AAA was in a hurry to go home since her husband was already awake. Yoon insisted that he and the other men did not commit acts of violence on the person of AAA and there was no intimate relationship between them on the day in question.[7]

Lee corroborated for the most part Yoon's testimony, stating that AAA, whom she met twice before, was in the second floor of Ocean's Best Restaurant in the afternoon of June 6, 1998. Lee belied allegations about incidents of beating and pouring of gasoline on that day. On one occasion, so Lee claimed, she saw AAA inside Yoon's office where the two were arguing about money.[8]

Rogelio Loquinario, AAA's driver from October 1995 to July 1999, testified driving AAA to Ocean's Best Restaurant on June 6, 1998 at around 1:30 p.m. At around 7:30 p.m., Loquinario saw AAA and Yoon come out of the restaurant without talking to each other. According to Loquinario, he failed to notice, while driving AAA home, any bruise on her face or the smell of gasoline.[9]

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[6] *Id.* at 6.

[7] *Id.* at 7.

[8] *Id.*

[9] *Id.*

Abelyn de Vera testified that on June 4, 1998, AAA arrived at Yoon's house at 8:30 p.m. AAA slept at the room of Yoon with only her underwear on. De Vera said that she saw hematomas all over the body of AAA while the latter was asleep. AAA left the house around 11:00 a.m. the following day.

On April 24, 2000, the RTC rendered judgment acquitting Yoon of robbery, but convicting him of the crime of rape, disposing as follows:

> WHEREFORE, PREMISES CONSIDERED, for insufficiency of evidence and for failure of the prosecution to present that quantum of proof necessary to sustain a judgment of conviction for the crime of Robbery as defined and penalized under Arts. 293-294 of the Revised Penal Code as amended by Section 9 of RA 7659, this Court hereby pronounces Yoon Chang Wook NOT GUILTY in Crim. Case No. 98-825. In Crim. Case No. 98-824 for Rape as defined and penalized under Art. 266-A par. 1 and Art. 266-B par. 1 of RA 8353, this Court finds Yoon Chang Wook GUILTY beyond reasonable doubt and hereby sentences him to imprisonment of *reclusion perpetua* and to suffer the accessory penalties provided by law, specifically Art. 41 of the Revised Penal Code as amended and to indemnify [AAA], the private complainant, the amount of ₱50,000.00 in line with existing jurisprudence, ₱50,000.00 in moral damages, ₱50,000.00 as exemplary damages and ₱9,000 and 500,000.00 Won Korean currency for her medical expenses.
>
> SO ORDERED.[10]

Yoon filed a Notice of Appeal on May 6, 2000 and thereafter submitted his brief before the Court which docketed his recourse as G.R. Nos. 143815-16. On September 15, 2004, the Court forwarded the case to the CA for immediate review in accordance with *People v. Mateo*.[11]

On October 31, 2006, the CA rendered the herein appealed decision, the *fallo* of which reads:

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[10] CA *rollo*, p. 40. Penned by Judge Zosimo V. Escano.

[11] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

WHEREFORE, premises considered, the assailed April 24, 2000 Decision of the Regional Trial Court of Parañaque City, Branch 259, is **AFFIRMED** *in toto*.

SO ORDERED.[12]

Yoon is again before us in view of the Notice of Appeal he interposed from the CA's affirmatory decision. Despite their receipt of the Court's resolution for the submission, if they so desired, of supplemental brief, the parties, by their respective manifestations,[13] chose to submit the case for resolution on the basis of available records and the pleadings they have respectively filed, thus effectively reiterating the same arguments raised before the CA.

Yoon claims that the trial court and necessarily the CA erred:

1. [I]n ruling that the lone testimony of private complainant met the required test of credibility to warrant conviction of accused for an alleged crime of rape.
2. [I]n concluding that "It is therefore the word of private complainant [AAA] against the word of accused Yoon Chang Wook" that led to the conviction of the accused.
3. [I]n appreciating the prosecution's Exhibits "G", "G-1" up to "G-27" as evidences for alleged crime of rape.
4. [I]n appreciating the Medical Center Parañaque medico-legal certificate and Roentgenological report (Exhibits "I" and "J", respectively) as evidences for alleged crime of rape.
5. [I]n appreciating that the Department of Justice-[NBI] Medico-Legal Division-Manila "Preliminary Report" and "Living Case No. MG-98-700" (Exhibits "K" and "L", respectively) as evidences for alleged crime of rape.
6. [I]n giving probative value on the testimony of Jennet Collado, a security guard on duty on June 6, 1998 at Ocean's Best Restaurant which was dispensed with upon stipulation of

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[12] CA *rollo*, p. 225.

[13] Plaintiff-appellee chose not to file a supplemental brief, while accused-appellant indicated his inability to file one in view of his counsel's death.

the parties relative to her presence at the said restaurant at 7:00 in the evening of June 6, 1998 x x x.

7. [I]n appreciating that there was stipulation by the parties that Charlie Yoon and private complainant spent the night together until morning of June 7, 1998.

8. [I]n giving probative value on the testimony of Dr. Armie Soreta-Umil which was dispensed with upon stipulation of the parties relative to her findings on private complainant appearing in MG-98-700 (Exhibits "K" and "L"— particularly on the reverse side of Exhibit "L" thereof) as proof of commission of an alleged crime of rape.

9. [I]n not appreciating the circular markings of the sleeveless t-shirt of private complainant imprinted under her armpit as depicted on exhibits offered as proof that she was not naked when she was mauled allegedly.

10. [I]n not appreciating the presence of hematomas on private complainant's body existing as of June 4, 1998 as testified and identified by a 14 year old witness Abelyn de Vera which proves that private complainant is a chronic liar.

11. [I]n disregarding the probative value of the testimonies of the defense witnesses namely, Lee Hyeon Sook, Rogelio Loquinario, Abelyn de Vera, Eleonor Cambel and accused himself as sufficient to establish reasonable doubt on prosecution's evidence thus warranting the acquittal of the accused.[14]

The Court's Ruling

The appeal is without merit.

In essence, Yoon faults the trial court and the CA for according full faith and credit and giving undue weight to the People's evidence, particularly AAA's testimony, but disregarding his evidence. In net effect, he would have the Court set aside his conviction on the ground that the private complainant's tale of rape is one big lie and that the prosecution's other testimonial and documentary pieces of evidence do not deserve the weight and credibility extended them.

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[14] CA *rollo*, pp. 222-223.

It is basic, almost elementary, that 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.[15] For having seen and heard the witnesses themselves and observed their demeanor while in the witness box, the trial court is in a better position to address questions of credibility.[16]

The perceived misapplication or misunderstanding on the part of the trial court of some substantive fact or circumstance does not, to us, just as it did not to the CA, obtain. First, in adjudging Yoon, as accused below, guilty of rape, the trial court did not rely on what security guard Jennet Collado and Dr. Armie Soreta-Umil of the NBI were supposed to testify on upon stipulation as to AAA's presence at the restaurant in the evening of June 6, 1998 until the morning of the following day. Dr. Umil would have had testified on AAA's appearance as captured in Exhibit "L". The Court has examined the trial court's decision. The stipulations were not part of, let alone mentioned in, the RTC's inculpatory findings. Thus, Yoon's interrelated laments — expressed in the 6th, 7th, and 8th assignments of errors, collectively referring to the alleged trial court's undue reliance on and misappreciation of the stipulated facts immediately adverted to above –– have no merit.

Yoon, under items 10 and 11 of the assigned errors, faults the RTC for not appreciating in his favor the testimonies of certain witnesses. Foremost of these is that of Abelyn de Vera, mentioned in item 10, who asserted noticing hematomas in AAA's body even before the June 6, 1998 incident. Reference is also made under item 11 to the respective accounts of Lee, *et al.*, which, to Yoon, have sufficiently raised reasonable doubt as to his guilt.

We are not persuaded. The trial court appeared to have thoroughly evaluated and winnowed the testimonies on direct

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[15] *People v. Virrey*, 420 Phil. 713 (2001).

[16] *People v. Cea*, 464 Phil. 388 (2004).

and cross examinations of all those who took the witness stand, including that of Yoon and others called by the defense, such as de Vera, Eleonor Cambel, who described Yoon, her neighbor, as a good man,[17] Loquinario, AAA's driver, and Lee. The defense witnesses, however, failed to disprove the testimony of the victim as to the fact of rape and those responsible for the crime. AAA clearly and consistently stated that Yoon raped her after he, along with his companions, forcefully stripped of her clothing, gagged, tied, and blindfolded her, and beat her up.

And as if these inhuman treatments were not enough, they poured gasoline on her bruised body. Pictures of AAA's injuries, marked as Exhibits "G" to "G-27", lend compelling support to AAA's account of the beating and other acts of violence. The pictures show the hematomas all over her body which do not appear to be self-inflicted. The medical report, Exhibit "2", confirms the finding of hematomas and contusions on the victim's body. These exhibits, the contents of which have not successfully been rebutted by the defense, augur well for AAA's credibility. Anent the circular markings that allegedly prove that AAA was not naked when mauled, it should be remembered that AAA was dragged from the entrance of the restaurant to the second floor while she was fully clothed. In any case, said markings only confirm the fact of a struggle or beating. Hence, the assigned errors 3, 4, 5, and 9 deserve no merit. For reference, items 3, 4, and 5 of the assignment of errors relate to the appreciation by the RTC of Exhibits "G" and "G-1" to "G-27", representing pictures taken by AAA's husband showing hematomas in her body; the medical examination report issued by the Medical Center of Parañaque City and the NBI physical examination report, respectively. Under item 9, Yoon bemoans the fact that the RTC did not appreciate the circular markings of the sleeveless t-shirt of AAA imprinted under her armpit as proof that she was not naked when she was allegedly beaten.

Under items 1 and 2 of the assignment of errors, Yoon submits that the trial court erred in ruling that AAA's "lone testimony

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[17] CA *rollo*, p. 30.

x x x met the required test of credibility to warrant conviction" and in concluding that the fate of Yoon boils down to the "word of [AAA] against the word of [Yoon]." In fine, the alleged errors 1 and 2 go directly to the trial court's appreciation of the private offended party's testimony and its sufficiency to sustain a finding of guilt. They need not detain us long. By the peculiar nature of rape cases, conviction most often rests solely on the basis of the victim's testimony, if credible, natural, convincing, and consistent with human nature and the normal course of things.[18] When a woman testifies to having been raped, she says in effect all that is necessary to show that rape has been committed, for as long as her testimony hurdles the test of credibility.[19]

In the case at bench, AAA had testified to the physical and sexual abuse she suffered in the hands of Yoon and his companions. Yoon has invited attention to inconsistencies in AAA's testimony, but which the trial court dismissed as insignificant and surely not of such character as to vitiate the credibility of the witness. We reproduce with approval what the trial court wrote on the matter:

> The defense counsel in her Memorandum enumerated a litany of alleged inconsistencies or discrepancies in the testimony of private complainant [AAA] but as ruled by the High Court time and again, a few discrepancies or inconsistencies in the testimonies of witnesses referring to minor details, and not in actuality touching upon the basic aspects of the whys and wherefores of the crime, do not impair their credibility (*People vs. Custodio*, 197 SCRA 538). Said defense counsel speaks of discrepancies in the testimony of the private complainant such as that she was married but the truth is she and [BBB] are just living together as common-law husband and wife; that she cannot communicate in English but the truth is she undertook six years of English lessons; that it was dark at 2:00 P.M. of June 6, 1998 but later she retracted. But then, these alleged

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[18] *People v. Fernandez*, G.R. No. 172118, April 24, 2007, 522 SCRA 189, 200; *People v. Corpuz*, G.R. No. 168101, February 13, 2006, 482 SCRA 435, 444.

[19] *People v. Watiwat*, 457 Phil. 411 (2003).

discrepancies, among others do not in actuality touch upon the basic aspects of the why and wherefores of the crime and they do not therefore impair her credibility.[20]

Yoon's allegation that AAA fabricated the charges in a bid to free herself from unpaid obligations to him strikes the Court as an obvious but puerile afterthought. We join the trial court in saying that this claim is "absurd and too flimsy a reason for the complainant to expose herself to dishonor and public ridicule" attendant in a rape case.[21] The trial court found AAA to be a financially secured Korean who can afford to send her daughter to a foreign land to study in what may be viewed as an exclusive school. Moreover, AAA is a family woman who would not likely suffer social humiliation if not for the purpose of seeking justice and vindicating her honor.

It may be, as Yoon has pointed out, that AAA did not timely report the incident to the authorities. This failure, however, does not undermine her credibility. The CA correctly stated why not:

> [AAA]'s failure to report to the authorities and to subject herself to genital examination right after the rape incident do not diminish her credibility. [AAA] is a foreigner and is not familiar with the Philippines. Hence, she could hardly be expected to know how to go about reporting the crime to the authorities without the aid of somebody who is very knowledgeable of the laws of the Philippines. Well-settled is the rule that the silence of a victim of rape or her failure to disclose her misfortune to the authorities without loss of material time does not prove that her charge is baseless and fabricated (*People vs. Glodo,* 433 SCRA 535).[22]

Yoon has denied AAA's allegations of rape. Denial is to be sure a legitimate defense in rape cases. But bare assertions of not having committed the acts complained of cannot overcome the positive, straightforward, unequivocal, and categorical testimony of the victim. An affirmative testimony, especially

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[20] RTC Decision, p. 18, CA *rollo,* p. 37.

[21] *Id.* at 225.

[22] *Rollo,* p. 9.

when it comes from the mouth of a credible witness, is far stronger than a negative one.[23] Mere denial, if unsubstantiated by clear and convincing evidence, is inherently weak, being self-serving negative evidence undeserving of weight in law;[24] it cannot be given greater evidentiary value than the positive testimony of a rape victim.[25] In the case at bar, Yoon failed to present convincing proof in support of his denial.

Rape, in context, is committed by a man who has carnal knowledge of a woman through force, threat, or intimidation.[26] The elements of carnal knowledge and the use of force, threat and/or intimidation have sufficiently been proved. The second element came in the form of being threatened, beaten up, bound on a chair, and blindfolded by Yoon and his bullies. But being threatened with death by fire before the molestation was perhaps the most frightful act of violence employed on AAA on the fateful day of June 6, 1998.

In the matter of damages, the Court hereby reduces the PhP 50,000 award as exemplary damages to PhP 30,000.[27] The reduction is in line with prevailing jurisprudence assessing exemplary damages at that level as proper deterrent to repugnant sexual behavior. Moreover, the award of PhP 9,000 and 500,000 Korean Won as medical expenses is unsubstantiated. There is nothing in the records to prove that private complainant incurred expenses in the amount aforestated for her medical examination or recovery. Unlike moral damages which may be imposed against the accused in rape cases even without allegation or proof of the emotional suffering or anguish of the victim, the award of actual damages is a different matter altogether. The trial court failed to justify the grant of medical expenses in its decision,

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[23] *People v. Astrologo*, G.R. No. 169873, June 8, 2007, 524 SCRA 477, 488.

[24] *People v. Lizano*, G.R. No. 174470, April 27, 2007, 522 SCRA 803.

[25] *Id.* at 811.

[26] Art. 266-A of RA 8353 or the "Anti-Rape Law of 1997."

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

this award appearing as it did only in the dispositive portion of its decision. Nowhere in the prosecution's offer of evidence or pleadings such amounts were claimed as medical expenses. Hence, said award should be deleted.

WHEREFORE, the CA Decision dated October 31, 2006 in CA-G.R. CR-H.C. No. 01942, affirming that of the RTC which found Yoon Chang Wook guilty beyond reasonable doubt of the crime of rape, is *AFFIRMED* with *MODIFICATION* that the amount of exemplary damages is reduced to PhP 30,000. The award of PhP 9,000 and 500,000 Korean Won for medical expenses is *DELETED*.

SO ORDERED.

Carpio (Chairperson), Carpio Morales,[*] *Nachura,* and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 185285. October 5, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PAUL ALIPIO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; MAY BE COMMITTED IN PLACES WHERE PEOPLE CONGREGATE.— As to accused-appellant's assertion that it is contrary to human experience that a person with lustful design would run after his prey in a place less than private, suffice it to say that lust does not respect either time or place; that sexual abuse is committed

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[*] Additional member as per Special Order No. 720 dated October 5, 2009.

in the most unlikely places. 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 in parks, along the roadside, within school premises, and inside a house where there are other occupants.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT IMPAIRED BY MINOR INCONSISTENCIES IN TESTIMONIES ESPECIALLY WHEN THE WITNESS IS MENTALLY ILL; CASE AT BAR. — To be sure, AAA's testimony is not without discrepancies and inconsistencies, given of course her mental state. It cannot be over-emphasized, however, that the inconsistencies pointed out by accused-appellant strike this Court as trivial. Rape is a harrowing experience, the exact details of which are usually not remembered. Inconsistencies, even if they do exist, tend to bolster, rather than weaken, the credibility of the witness, for they show that the testimony was not contrived or rehearsed. Trivial inconsistencies, like the matter of whether or not accused-appellant called out on AAA before he forcibly grabbed her hands, do not, to borrow from *People v. Cristobal*, rock the pedestal upon which the credibility of the witness rests, but enhances credibility as they manifest spontaneity and lack of scheming. Minor inconsistencies in testimonies should be disregarded. This rule becomes all the more applicable when the witness is mentally ill. x x x Verily, accused-appellant cannot exculpate himself by riding on the alleged inconsistencies in AAA's testimonies. Errorless accounts of what had transpired cannot be expected especially when a witness is recounting specifics of an agonizing experience. To be sure, the trial court had not made much, as it should not have, of what accused-appellant considered inconsistencies in AAA's account of what happened immediately before and during her ordeal.

3. ID.; ID.; ID.; TRIAL COURT'S EVALUATION THEREON, GENERALLY RESPECTED ON APPEAL.— The unyielding rule has been that the trial court's evaluation of the credibility of witnesses and their testimonies is deserving of the highest respect because of its unique opportunity to observe the witnesses firsthand and note their demeanor, conduct, and attitude under grilling examination. Such assessment binds the Court except when the assessment was reached arbitrarily or when the trial court overlooked, misunderstood, or misapplied

some facts or circumstances of weight and substance which could have affected the results of the case.

4. ID.; ID.; ADMISSIBILITY; TESTIMONIAL EVIDENCE; QUALIFICATION OF WITNESSES; A MENTAL RETARDATE IS NOT DISQUALIFIED FROM BEING A WITNESS; CASE AT BAR.— AAA's mental condition, to stress, does not prevent her from being a competent and credible witness. As has been held, a mental retardate is not disqualified from being a witness; the retardate's mental condition does not, on that ground alone, vitiate his or her credibility. If the mental retardate's testimony is coherent, it is admissible in court. Evidently, the trial court had ascertained the veracity and credibility of AAA's testimony sufficient to support a finding of conviction x x x.

5. ID.; ID.; A MEDICAL EXAMINATION OF THE VICTIM IS NOT INDISPENSABLE TO THE SUCCESSFUL PROSECUTION FOR RAPE; CASE AT BAR.— [A] medical examination of the victim is not indispensable to the successful prosecution for rape inasmuch as her testimony alone, if credible, is sufficient to convict the perpetrator of the crime. Thus, accused-appellants' insistence that there should have been a medical examination and a medical certificate showing the condition of AAA's hymen to corroborate her testimony is clearly untenable. It bears stressing that a broken hymen is not an essential element of the crime of rape. And as aptly observed by the Office of the Solicitor General, AAA was already pregnant when BBB found out about the rape and that the former had already given birth when she testified, making a hymeneal examination a worthless exercise.

6. CRIMINAL LAW; STATUTORY RAPE; SEXUAL INTERCOURSE WITH A WOMAN WHO IS A MENTAL RETARDATE CONSTITUTES STATUTORY RAPE.— [S]exual intercourse with a woman who is a mental retardate constitutes statutory rape. As such, the question of whether the circumstances of force or intimidation are absent is of no moment to accused-appellant's liability for rape, albeit the trial court held that he employed force and intimidation on the feebleminded AAA.

7. ID.; EXEMPTING CIRCUMSTANCES; INSANITY; TO BE APPRECIATED, THERE MUST BE COMPLETE

DEPRIVATION OF INTELLIGENCE OR THERE IS COMPLETE ABSENCE OF POWER TO DISCERN OR A TOTAL DEPRIVATION OF THE WILL.— The moral and legal presumption is always in favor of soundness of mind; that freedom and intelligence constitute the normal condition of a person. It is improper to assume the contrary. This presumption, however, may be overcome by evidence of insanity, which, under Art. 12(1) of the RPC, exempts a person from criminal liability. In *People v. Formigones*, the Court has established a more stringent standard for insanity to be an exempting circumstance. There, it was held that, for insanity to be appreciated in favor of the accused, there must be a complete deprivation of intelligence in committing the act, that is, the accused is deprived of reason or there is a complete absence of the power to discern or a total deprivation of the will. Mere abnormality of the mental faculties will not exclude imputability.

8. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PROOF BEYOND REASONABLE DOUBT; MORAL CERTAINTY, DEFINED.— [W]e find the prosecution to have discharged its burden of proving the guilt of accused-appellant beyond reasonable doubt. And needless to stress, guilt beyond reasonable doubt only denotes moral certainty, not absolute certainty. Moral certainty is that degree of proof which, to an unprejudiced mind, produces conviction.

9. CIVIL LAW; DAMAGES; CIVIL INDEMNITY *EX DELICTO*, MORAL DAMAGES AND EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR.— The crime committed being in the nature of simple rape, the award by the trial court, as affirmed by the CA, of PhP 50,000 as civil indemnity *ex delicto* for the victim and the same amount as moral damages is in line with prevailing case law and is accordingly affirmed. Accused-appellant must, however, pay AAA PhP 30,000 by way of exemplary damages as a measure to deter other individuals with aberrant sexual tendencies pursuant to current jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

The Case

On appeal is the June 10, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02354 that affirmed the April 21, 2006 Decision[2] in Criminal Case No. 01-427 of the Regional Trial Court (RTC), Branch 65 in Sorsogon City. The RTC found accused-appellant Paul Alipio guilty of rape and imposed upon him the penalty of *reclusion perpetua*.

The Facts

An Information filed with the RTC charged Paul with one count of rape allegedly committed as follows:

> That sometime in the month of June, 2000 at Sitio Liman, Barangay San Francisco, Municipality of Bulan, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously, have sexual intercourse with one [AAA],[3] a mentally retarded woman against her will and without her consent, to her damage and prejudice.
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> Contrary to law.[4]

Arraigned on May 13, 2002 with the assistance of his counsel *de oficio*, Paul entered a plea of "not guilty."

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[1] *Rollo*, pp. 2-19. Penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Mariano C. Del Castillo and Ricardo R. Rosario.

[2] CA *rollo*, pp. 28-52. Penned by Judge Adolfo G. Fajardo.

[3] In accordance with Republic Act No. 9262 and *People v. Cabalquinto*, G.R. No. 167693, September 16, 2006, 502 SCRA 419, the real name of the victim, her personal circumstances, and other information which tend to establish or compromise her identity are not disclosed to protect her privacy. Fictitious initials are used.

[4] CA *rollo*, p. 10.

During the pre-trial conference, the defense admitted Paul's identity and of his being a resident of Sitio Liman, San Francisco, Bulan, Sorsogon sometime in 2000.

In the ensuing trial, the prosecution offered in evidence the oral testimonies of the private complainant, AAA, BBB, her mother, and Dr. Imelda Escuadra, among others.

For its part, the defense presented in evidence the testimonies of Norma de Leon, Dr. Chona C. Belmonte, Saul Alipio, and Jose Genagaling.

The Prosecution's Version of Facts

AAA is a 41-year old mentally retarded woman whom Marilou Gipit Alipio often hired to watch over her children whenever the latter is out of her house. AAA stopped schooling after finishing Grade VI in a local public school. Marilou is Paul's sister.

Sometime in June 2000, Marilou sent AAA to Sitio Liman, San Francisco, Bulan, Sorsogon to borrow money from Marilou's father, Saul. At the copra kiln in Sitio Laman near his house, Saul told AAA that he would give the necessary amount to Marilou directly.

While about to head for home, AAA heard Paul calling her from his house. Suddenly, Paul held her hand, pushed her inside and, while covering AAA's mouth, brought her to his bedroom. He then removed her shorts and panty and likewise, undressed himself. Paul then went on top of her, kissed her, and fondled her breasts. Eventually, he entered her, first using his finger, then his penis. Before finally letting the crying AAA go, however, Paul threatened her with death should she disclose to anybody what had just happened between them.

Several months later, BBB, AAA's mother, noticed that the latter had missed her monthly period. With some coaxing, AAA told her mother what Paul had done to her. Thereupon, AAA's mother went to see Marilou and her father to apprise them about AAA's pregnancy. The Alipios promised financial help,

albeit Paul would later disown responsibility for AAA's condition. When brought to a doctor for medical examination, AAA was found to be seven (7) months pregnant. AAA eventually gave birth to a baby girl.

Psychiatric evaluation done by Dr. Escuadra revealed that AAA, although 42 years old at that time, had the mental capacity and disposition of a nine or 10 year-old child. Her intelligence quotient (I.Q.) of 60 was way below the average I.Q. of 90, clearly indicating a mental retardation case. When cross-examined, Dr. Escuadra described AAA as possessing a certain level of comprehension of incidents based on experience which she is capable of relaying and relating to. To the doctor, AAA was very well qualified to be a witness provided the questions are asked in a simple manner.[5]

Version of the Defense

The testimonies of the four (4) witnesses the defense presented were intended to establish Paul's innocence of the crime charged and that he himself was a psychiatric case.

Norma de Leon, a laundrywoman employed by Marilou and who acknowledged seeing AAA often in Marilou's house, testified being in Liman to get bamboos at the time the alleged rape incident happened. At around 12 noon of that day, while she and Paul were eating lunch at the kiosk, AAA arrived. After they had finished eating, she saw AAA trying to drag Paul inside his house, but the latter pushed AAA towards the wooden portion of the kiosk. Paul then left for Polot, leaving AAA behind.

Dr. Chona C. Belmonte, a psychiatrist at the Bicol Medical Center, conducted a psychiatric examination on Paul. Her diagnosis: Paul was suffering from schizoaffective disorder, a temporary and reversible psychiatric condition affecting basically an individual's thinking, perception, and emotion. In Paul's case, this psychiatric disorder manifested itself after his brother's death in 1987, and was aggravated when a sister committed suicide in 1990.

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[5] *Id.* at 31.

When recalled to the witness stand after conducting a follow-up examination, Dr. Belmonte stated that Paul was in a much better condition and was fit to stand trial, being free from any perceptual disturbances and acute psychotic signs and symptoms. To Dr. Belmonte, Paul could give positive answers and was aware of the consequences, if found guilty.

Saul Alipio, Paul's father, expressed the belief that Paul could not have committed the crime of which he was accused. At the time the alleged molestation transpired, Paul was, according to Saul, at the farm gathering coconuts.

Jose Genagaling, a coconut farmer and Saul's *compadre*, testified that sometime in June 2000, or on the day the rape incident occurred, he was processing copra at the copra kiln of Saul. With him at the copra kiln at that time was Paul. Nothing unusual happened in Saul's house and copra kiln on that day.

Ruling of the Trial Court

After trial, the RTC convicted Paul of rape penalized under paragraph 1(a) and (d), Article 266-A of the Revised Penal Code (RPC).[6] The dispositive portion of the decision reads:

> WHEREFORE, premises considered, accused PAUL ALIPIO's GUILT having been established beyond reasonable doubt, he is hereby sentenced to suffer the indivisible penalty of *RECLUSION PERPETUA*, to indemnify the victim AAA in the amount of ₱50,000.00 as civil indemnity and another [₱50,000.00] as moral damages, and to pay the costs.
>
> The preventive imprisonment already served by the accused shall be credited in the service of his sentence pursuant to Article 29 of the Revised Penal Code, as amended.
>
> SO ORDERED.[7]

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[6] Rape committed (a) through the use of force, threat or intimidation; or (d) when the offended party is under 12 years old or is demented even though none of the other circumstances specified in par. 1 of Art. 266-A is present.

[7] CA *rollo*, p. 52.

Paul filed a notice of appeal and the records of the case were transmitted to the CA.

Ruling of the Appellate Court

By decision of June 10, 2008, the CA denied Paul's appeal and affirmed the RTC's judgment.

Hence, we have this appeal.

In response to the Court's Resolution for the submission of supplemental briefs, both accused-appellant and plaintiff-appellee manifested that they are no longer filing their respective supplemental briefs considering that such briefs would only contain arguments also raised in their respective appeal briefs filed before the CA.

It is accused-appellant's submission that the RTC and CA gravely erred:

1. x x x in giving credence to the apparently incredible testimonies of the prosecution witnesses; and
2. x x x in rendering a verdict of conviction despite the fact that the guilt of the accused-appellant was not proven beyond reasonable doubt.[8]

In fine, accused-appellant assails the credibility of the prosecution witnesses, particularly that of AAA and the adequacy of its evidence.

The Court's Ruling

The appeal is denied for lack of merit.

Testimony of the Victim Is Credible

Accused-appellant maintains that the trial court erred in giving full credence to and reliance on AAA's inculpatory statements in the witness box, it being his contention that her account of what purportedly happened reeks of inconsistencies and does

[8] *Id.* at 65.

not jibe with the normal flow of things. As asserted, it is quite unnatural for a woman finding herself in a sexually-charged situation not make an outcry or use her hands to ward off the advances of a sex fiend. According to him, it is contrary to human experience too that a person with lustful desire would run after the intended victim in a place that is obviously not secluded.

Accused-appellant draws attention to the fact that when she testified in court, AAA stated that accused-appellant ran after her but did not call out to her. Yet, in her statement before the police, she made it appear that he called out to her.

The Court is not persuaded.

First of all, the Court cannot understand how accused-appellant can talk of and expect, as a matter of course, a "natural" reaction from AAA who is unquestionably mentally retarded, one who does not have a good grasp of information, and who lacks the capacity to make a mental calculation of events unfolding before her eyes. AAA can hardly be described as a normal person with fully developed mental faculties. Hence, it is not fair to judge her according to what is natural or unnatural for normal persons.

As to accused-appellant's assertion that it is contrary to human experience that a person with lustful design would run after his prey in a place less than private, suffice it to say that lust does not respect either time or place;[9] that sexual abuse is committed in the most unlikely places. 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 in parks, along the roadside, within school premises, and inside a house where there are other occupants.[10]

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[9] *People v. Segundo*, G.R. No. 88751, December 27, 1993, 228 SCRA 691, 695-696; *People v. Ramos*, G.R. No. 68209, December 21, 1993, 228 SCRA 648, 655; *People v. Ulili*, G.R. No. 103403, August 24, 1993, 225 SCRA 594, 604.

[10] *People v. Mahinay*, G.R. No. 179190, January 20, 2009; citing *People v. Agbayani*, G.R. No. 122770, January 16, 1998, 284 SCRA 315, 340.

To be sure, AAA's testimony is not without discrepancies and inconsistencies, given of course her mental state. It cannot be over-emphasized, however, that the inconsistencies pointed out by accused-appellant strike this Court as trivial. Rape is a harrowing experience, the exact details of which are usually not remembered. Inconsistencies, even if they do exist, tend to bolster, rather than weaken, the credibility of the witness, for they show that the testimony was not contrived or rehearsed.[11] Trivial inconsistencies, like the matter of whether or not accused-appellant called out on AAA before he forcibly grabbed her hands, do not, to borrow from *People v. Cristobal*, rock the pedestal upon which the credibility of the witness rests, but enhances credibility as they manifest spontaneity and lack of scheming.[12]

Minor inconsistencies in testimonies should be disregarded. This rule becomes all the more applicable when the witness is mentally ill. The Court said as much in *People v. Atuel*:

> Complainant was mentally ill at the time of the incident, and consequently could not be expected to remember in precise detail all that actually happened to her. Her severe traumatic experience was too much for her unstable mental faculties… Her testimony as to what had happened certainly cannot constitute gospel truth… We have said that a rape victim is not and cannot be expected to keep an accurate account of her traumatic experience. And the credibility of a rape victim is not destroyed by some inconsistencies in her testimony. On the contrary, it is a recognized axiom in rape cases that inconsistencies in the victim's testimony do not detract from the vital fact that, in truth, she had been abused. Testimonial discrepancies could have been caused by the natural fickleness of the memory, which variances tend to strengthen rather than weaken credibility as they erase any suspicion of rehearsed testimony.[13]

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[11] *People v. Sagun,* 363 Phil. 1 (1999).

[12] *People v. Cristobal,* G.R. No. 116279, January 29, 1996, 252 SCRA 507, 517.

[13] *People v. Atuel*, G.R. No. 106962, September 3, 1996, 261 SCRA 339, 348-349.

Verily, accused-appellant cannot exculpate himself by riding on the alleged inconsistencies in AAA's testimonies. Errorless accounts of what had transpired cannot be expected especially when a witness is recounting specifics of an agonizing experience. To be sure, the trial court had not made much, as it should not have, of what accused-appellant considered inconsistencies in AAA's account of what happened immediately before and during her ordeal.

The unyielding rule has been that the trial court's evaluation of the credibility of witnesses and their testimonies is deserving of the highest respect because of its unique opportunity to observe the witnesses firsthand and note their demeanor, conduct, and attitude under grilling examination.[14] Such assessment binds the Court except when the assessment was reached arbitrarily or when the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which could have affected the results of the case.[15] None of these exceptions exists in this case.

In fact, the trial court found AAA's testimony clear, convincing, and credible. The trial court wrote:

> The very CANDID, STRAIGHTFORWARD, and CONSISTENT testimony of the RAPE victim, [AAA], narrates with definiteness that she was sexually abused by accused, Paul Alipio @ Ayona, in the latter's house in Sitio Liman, Bgy. San Francisco, Bulan, Sorsogon, sometime in June of 2000; when she was sent by the accused's sister Marilou Gipit Alipio to borrow money from their father, Saul Alipio. A comparative analysis of the declarations given by the victim before the police (See: Sworn Statement, Exhibit 'D', p. 10/*Rollo*); as well as, the declarations she made in open court in the course of the trial (TSN, June 23, 2003, pp. 3 to 33); REVEAL – SUBSTANTIAL similarities and CONSISTENCY of her claim.[16] x x x

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[14] *People v. Bantiling*, G.R. No. 136017, November 15, 2001, 369 SCRA 47; *People v. Godoy*, G.R. Nos. 115908-09, December 6, 1995, 250 SCRA 676.

[15] *Atuel*, *supra* note 13, at 349.

[16] CA *rollo*, p. 95.

AAA's mental condition, to stress, does not prevent her from being a competent and credible witness. As has been held, a mental retardate is not disqualified from being a witness; the retardate's mental condition does not, on that ground alone, vitiate his or her credibility.[17] If the mental retardate's testimony is coherent, it is admissible in court.[18] Evidently, the trial court had ascertained the veracity and credibility of AAA's testimony sufficient to support a finding of conviction, thus:

> To the mind of the court, the testimony alone of the retarded victim will SUFFICE to carry solely for the prosecution the burden of proof required by the law and rules. The victim, [AAA], was CONSISTENT in all the declarations she executed before the police (Sworn Statement), and the testimony she gave before this court during the trial – that she was RAPED by accused PAUL ALIPIO @ AYONA in their house in Sitio Liman, Bgy. San Francisco, Bulan, Sorsogon, when she was sent by the sister of the accused (Marilou Gipit) to borrow money from their father, Saul Alipio. Notwithstanding the fact, that the victim failed to give the approximate date of the rape incident when asked by the prosecutor during the direct-examination, such an omission or mental lapse on her part was supplemented by the testimonies of her mother, [BBB], and another prosecution witness, Dr. Ma. Belen Gordola. The latter testified, that at the time of the examination of the patient – victim, she was able to arrive at the conclusion that the uterus was seven months old because of the palpation she did by measuring the patient's abdomen and palpating the fetus inside. Considering that the fetus was seven (7) months old at the time of her examination, the possible date of conception would be in the month of May or in the FIRST WEEK OF JUNE or in the last week of April. Moreover, even the substance of the testimonies of defense witnesses x x x attest to the fact – that it was in the month of June, 2000 when they saw the victim [AAA] [come] to Sitio Liman, bringing the vale sheet from the daughter of Saul Alipio named Marilou Gipit who sent her for an errand. It must be emphasized likewise, that by reason of her mental abnormality the victim is oriented to place and person BUT NOT TO DATE (Exhibit "C-1"/p. 2 – Psychiatric Evaluation).[19]

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[17] *People v. Salomon*, G.R. No. 96848, January 21, 1994, 229 SCRA 403.

[18] *People v. Lubong*, G.R. No. 132295, May 31, 2000, 332 SCRA 672.

[19] CA *rollo*, p. 105.

To reiterate, the issue of credibility is a matter best addressed by the trial court that has the opportunity to observe the demeanor of witnesses while testifying. Great weight and even finality must be accorded to factual findings of the trial court especially its assessments of witnesses and their credibility, except when there is a clear showing of arbitrariness or oversight of some facts or circumstances of substance.[20] The Court finds no reason to overturn the findings of the trial court.

Likewise, it is a well-entrenched jurisprudence that a medical examination of the victim is not indispensable to the successful prosecution for rape inasmuch as her testimony alone, if credible, is sufficient to convict the perpetrator of the crime.[21] Thus, accused-appellants' insistence that there should have been a medical examination and a medical certificate showing the condition of AAA's hymen to corroborate her testimony is clearly untenable. It bears stressing that a broken hymen is not an essential element of the crime of rape.[22] And as aptly observed by the Office of the Solicitor General, AAA was already pregnant when BBB found out about the rape and that the former had already given birth when she testified, making a hymeneal examination a worthless exercise.[23]

At this juncture, it bears to state that sexual intercourse with a woman who is a mental retardate constitutes statutory rape.[24] As such, the question of whether the circumstances of force or intimidation are absent is of no moment to accused-appellant's liability for rape, albeit the trial court held that he employed force and intimidation on the feebleminded AAA.

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[20] *People v. Virrey*, G.R. No. 133910, November 14, 2001, 368 SCRA 623.

[21] *People v. Castro*, G.R. No. 172874, December 17, 2008; citing *People v. Baring, Jr.*, G.R. No. 137933, January 28, 2002, 374 SCRA 696, 705.

[22] *People v. Balleno*, G.R. No. 149075, August 7, 2003, 408 SCRA 513.

[23] *Rollo*, p. 139. Appellee's Brief before the CA.

[24] *People v. Golimlim*, G.R. No. 145225, April 2, 2004, 427 SCRA 15.

Exempting Circumstance of Insanity Is Absent

In a bid to escape from criminal liability, accused-appellant invokes insanity. He contends that the psychiatrist who examined him consistently testified that there was a high possibility that he was suffering from schizoaffective disorder when the alleged rape incident happened.

We are not convinced.

The moral and legal presumption is always in favor of soundness of mind; that freedom and intelligence constitute the normal condition of a person.[25] It is improper to assume the contrary.[26] This presumption, however, may be overcome by evidence of insanity, which, under Art. 12(1) of the RPC, exempts a person from criminal liability.

In *People v. Formigones*,[27] the Court has established a more stringent standard for insanity to be an exempting circumstance. There, it was held that, for insanity to be appreciated in favor of the accused, there must be a complete deprivation of intelligence in committing the act, that is, the accused is deprived of reason or there is a complete absence of the power to discern or a total deprivation of the will. Mere abnormality of the mental faculties will not exclude imputability.[28]

The evidence offered by the defense in this case miserably failed to establish clearly and convincingly the presence of the stringent criterion for insanity. On the contrary, the evidence tended to show, albeit impliedly, that accused-appellant was not deprived of reason at all and can still distinguish right from wrong when, after satisfying his lust, he threatened AAA not to tell anybody about what he had done; otherwise, she would be

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[25] *People v. Opuran*, G.R. Nos. 147674-75, March 17, 2004, 425 SCRA 654.

[26] *People v. Valledor*, G.R. No. 129291, July 3, 2002, 383 SCRA 653.

[27] 87 Phil. 658 (1950); see also *People v. Madarang*, G.R. No. 132319, May 12, 2000, 332 SCRA 99.

[28] *Madarang*, *supra* note 27.

killed. This single episode irresistibly implies, for one, that accused-appellant knew what he was doing, that it was wrong, and wanted to keep it a secret. And for another, it indicated that the crime was committed during one of accused-appellant's lucid intervals. In this regard, no less than his father admitted in open court that there were times when his son was in his proper senses.[29]

Given the above perspective, the trial court correctly downplayed accused-appellant's plea of insanity. The Court cites with approval the following excerpts from the RTC's decision:

> Dr. Belmonte, the psychiatrist who evaluated the mental condition of the accused testified x x x that the accused was given psychological testing to fully assess his mental condition, and he was found to have an average mental condition. In the intelligent quotient test accused has an average mental function while in the projective test there were several indicators noted, since at the time of the testing accused showed a lot of immaturity, stubbornness and irritability. That it would be difficult for them to employ a mechanism that would prevent selective responses on the part of the accused. They just observed the patient and that is also the reason why they give psychological testing, because in that way they can determine whether the subject is in conflict with his personality. That during those times the accused had his sessions with the psychologist and some doctors accused was barely consistent and their evaluation shows consistent result. Schizoaffective disorder is always precipitated by certain traumatic experience. That there is really a need for them to gather information to know whether the accused was already afflicted with that mental disorder sometime in 1987 or 2000. That the schizoaffective disorder of Paul Alipio is only temporary in character hence, it can be treated. The duration of the treatment would depend on the progress of the patient.
>
> The doctor further stated during the clarificatory questioning propounded by the Court, that there is a high possibility that sometime in 2001 when the alleged rape incident took place implicating the accused as the rapist, accused was not in his normal mental condition. During that time this schizoaffective disorder was already in effect. THAT SHE HAS NO CATEGORICAL FINDINGS YET INSOFAR AS THE SENSE OF DISCERNMENT OF THE ACCUSED BETWEEN RIGHT AND WRONG IS CONCERNED. x x x

[29] TSN, September 21, 2005, pp. 11-12.

Prescinding from the foregoing testimony of the doctor, it is clear therefore that the mental disorder of accused Paul Alipio is only temporary in character and can be treated. Moreover, although the probability is high that in year 2000 when the rape incident took place accused was already suffering from schizoaffective disorder, said doctor has not come up with any categorical findings yet relative to the sense of discernment of the accused when it comes to what is RIGHT and what is WRONG.[30]

With the view we take of this case, we find the prosecution to have discharged its burden of proving the guilt of accused-appellant beyond reasonable doubt. And needless to stress, guilt beyond reasonable doubt only denotes moral certainty, not absolute certainty. Moral certainty is that degree of proof which, to an unprejudiced mind, produces conviction.[31]

The crime committed being in the nature of simple rape, the award by the trial court, as affirmed by the CA, of PhP 50,000 as civil indemnity *ex delicto* for the victim and the same amount as moral damages is in line with prevailing case law and is accordingly affirmed. Accused-appellant must, however, pay AAA PhP 30,000 by way of exemplary damages as a measure to deter other individuals with aberrant sexual tendencies pursuant to current jurisprudence.[32]

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 02354 finding accused-appellant Paul Alipio guilty of the crime charged is *AFFIRMED* with the *MODIFICATION* that he is ordered to pay AAA **exemplary damages** in the amount of **PhP 30,000**.

Costs against accused-appellant.

SO ORDERED.

Carpio (Chairperson), Carpio Morales,[*] *Nachura,* and *Peralta, JJ.,* concur.

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[30] CA *rollo*, pp. 106-107.

[31] RULES OF COURT, Rule 133, Sec. 2.

[32] *People v. Tabio*, G.R. No. 179477, February 6, 2008, 544 SCRA 156, 169.

[*] Additional member as per Special Order No. 720 dated October 5, 2009.

THIRD DIVISION

[G.R. No. 186139. October 5, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LEONARDO RUSIANA *y* BROQUEL,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; ILLEGAL SALE OF REGULATED OR PROHIBITED DRUGS; ELEMENTS.—Jurisprudence dictates that conviction can be had in a prosecution for illegal sale of regulated or prohibited drugs if the following elements are present: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment for it. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* of the crime. We hold that these elements have been satisfied by the prosecution's evidence.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S FINDINGS ON THE CREDIBILITY OF WITNESSES, GENERALLY RESPECTED ON APPEAL.— Trial courts are our eyes. They have the distinct advantage of observing the demeanor and conduct of witnesses during trial. Absent any showing that certain facts of relevance and substance bearing on the elements of the crime have been overlooked, misapprehended, or misapplied by a trial court, we must defer to its findings. As found by the trial court and affirmed by the CA, the police officers who testified gave a straightforward narration of the buy-bust operation. We see no circumstance contradicting this finding.

3. ID.; ID.; ID.; CHAIN OF CUSTODY REQUIREMENT IN DRUG CASES; SUBSTANTIAL COMPLIANCE WITH THE LEGAL REQUIREMENTS ON THE HANDLING OF THE SEIZED ITEM IS SUFFICIENT; CASE AT BAR.— In *People v. Cortez*, this Court held that although ideally the prosecution should offer a perfect chain of custody in the handling of evidence, "substantial compliance with the legal requirements

on the handling of the seized item" is sufficient. Behind this is an acknowledgment that the chain of custody rule is difficult to comply with. Hence, exceptions must be recognized, as indeed the Implementing Rules and Regulations (IRR) of RA 9165 does. On its own, a non-compliance with Sec. 21 of RA 9165 will not invalidate an accused's arrest or a seizure made in drug cases. What should be of importance is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused." x x x As gleaned from PO2 Paule's testimony, the chain of custody over the *shabu* was preserved. It was established by the prosecution, as follows: (1) plastic sachets were seized by PO2 Paule from accused-appellant; (2) PO2 Paule turned the items over to PO2 Dalagdagan, who marked each item with the initials "LBR"; (3) a Request for Laboratory Examination was then made by Police Senior Inspector Vicente V. Raquion; and (4) the items were examined by Forensic Chemist Abraham Tecson, and his findings documented in Chemistry Report No. D-432-02 showed that the specimens tested positive for *shabu*. These links in the chain are undisputed; the integrity of the seized drugs remains intact.

4. ID.; ID.; ID.; THE TESTIMONY OF A SINGLE PROSECUTION WITNESS, IF CREDIBLE AND SATISFIES THE COURT AS TO THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT, IS ENOUGH TO SUSTAIN A CONVICTION.— The presentation of PO2 Dalagdagan to establish the identity of the drugs seized is no longer necessary, as it was even stipulated during pre-trial that the existence of the Investigation Report (Exhibit "B") which he prepared was admitted by accused-appellant. During trial, it was also stipulated by the parties that PO2 Dalagdagan's testimony would be in accordance with said Investigation Report. While the presentation of the testimonies of all those who handled the illegal drugs would be ideal, one of the custodians or links in the chain was not presented by agreement of the parties in the case at bar. The prosecution cannot be faulted for its presentation of evidence as it was willing to present PO2 Dalagdagan. *People v. Rivera* is particularly instructive in this respect: "The non-presentation as witnesses of other persons such as the other police officers forming a buy-bust team is not a crucial point against the prosecution since the matter of presentation of

witnesses by the prosecution is not for the court to decide. It is the prosecution which has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses. Moreover, the testimony of a single prosecution witness, if credible and positive and satisfies the court as to the guilt of the accused beyond reasonable doubt, is enough to sustain a conviction." As jurisprudence has shown, what is of utmost importance is **the preservation of the integrity and evidentiary value of the seized items**, a requisite present in the instant case. The documentary and testimonial evidence, taken together, presented a clear buy-bust operation and satisfied the requisites for a prosecution of illegal sale of drugs.

5. ID.; ID.; PRESUMPTIONS; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTIES BY POLICE OFFICERS, UPHELD IN CASE AT BAR.— In giving credence to the prosecution's presentation of the unbroken chain of custody of the illegal drugs, we adhere to the rule that unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper or ill motive to falsely charge accused-appellant of a serious offense, or were not properly performing their duty, their testimonies on the operation deserve full faith and credit. It must be noted that no complaints were filed against the police officers for their alleged frame-up of accused-appellant. But instead, the defense presented self-serving evidence from accused-appellant's close relatives. To our mind, then, the presumption of regularity in the performance of duties by the police officers must be upheld and accused-appellant's conviction affirmed.

6. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); PENALTY; CASE AT BAR.— RA 9165 provides that the unauthorized sale of *shabu* carries with it the penalty of life imprisonment to death and a fine ranging from PhP 500,000 to PhP 10 million. The trial court, thus, correctly sentenced accused-appellant to life imprisonment and fined him PhP 500,000.

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 dated December 28, 2007 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02347, which affirmed the March 31, 2006 Decision in Criminal Case No. 02-0678 of the Regional Trial Court (RTC), Branch 275 in Las Piñas City. The RTC convicted accused-appellant Leonardo Rusiana of violation of Section 5, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

An Information was filed against accused-appellant, *alias* "Unad," as follows:

> That on or about the 12th day of August 2002, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver, give away to another, distribute or transport 0.04 gram of Methylamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.
>
> CONTRARY TO LAW.[1]

Upon his arraignment, accused-appellant pleaded not guilty to the offense charged.

The Prosecution's Version of Facts

During trial, the prosecution presented PO2 Jerome Mendoza and PO2 Wilson Paule as witnesses. It dispensed with the testimony of Forensic Chemist Abraham Tecson when it was stipulated that he would testify in accordance with Exhibits "C", "D", "G", "H", and "H-1", qualified by the fact that he had no personal knowledge as to where and from whom the subject drugs were recovered.[2] PO2 Rufino Dalagdagan's testimony

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[1] CA *rollo*, p. 38.

[2] *Id.* at 39.

was likewise dispensed with, since the Investigation Report (Exhibit "B") was admitted by the parties during the pre-trial.

PO2 Mendoza testified that at about 9:00 in the evening on August 12, 2002, he was at his office with fellow officers Tuldanes, Castor, Paule, and Dantes. Someone arrived and informed PO2 Paule of a certain Unad's illegal drug activities. PO2 Paule reported the information to Police Inspector Raquion. The resulting buy-bust team created was composed of Police Inspector Dantes, PO2s Tuldanes, Paule, Castor, Dolleton, and Mendoza, with Paule assigned as poseur-buyer. Inspector Raquion handed a PhP 100 bill, as buy-bust money, to PO2 Paule.

The team proceeded to Manukan in Las Piñas past 9:00 p.m. PO2 Paule and the informant went to Unad's house. The informant called Unad, who met with them outside. PO2 Paule exchanged the marked PhP 100 bill with suspected *shabu* from Unad. PO2 Paule then introduced himself as a police officer, which made Unad try to resist. He was caught by PO2 Paule while running back to his house and was frisked. The marked money and another six (6) plastic sachets were found on his person. Two other men were found in his house, one of whom threw a sachet. The man was likewise arrested. Back at the office, all six sachets were marked by the investigator on duty, PO2 Dalagdagan, with the initials "LBR" and numbered from 1 to 6.[3]

PO2 Paule, who acted as poseur-buyer, corroborated PO2 Mendoza's testimony. He testified that he was the one who cornered Unad when he tried to resist and recovered the plastic sachets and buy-bust money from him.[4]

Version of the Defense

The defense witnesses comprised accused-appellant, Susan Camposano, Aileen Badoy, and Celso Ramirez.

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[3] *Id.*

[4] *Id.* at 39-40.

According to accused-appellant, he was home on the night of the supposed buy-bust operation against him. He was tending the store and watching television with his three children when Police Officers Paule, Mendoza, and Dalagdagan introduced themselves. They poked their guns and told him they were searching for *shabu*. He was familiar with the three police officers as he had previously been detained on a carnapping charge that was eventually dismissed. He denied that the three were able to buy *shabu* from him.[5]

Camposano, accused-appellant's mother-in-law, testified that she was likewise home on the night of the alleged buy-bust operation. At one point during the evening, she followed her grandchildren, who were delivering food to accused-appellant's house. While there, she saw two persons named "Susie" and "Padre" as well as four police officers. She then witnessed accused-appellant being held and beaten. Two of the officers also broke down the door to the bedroom and stole the VHS player and some hats on the wall. The officers instructed her to leave and later handcuffed accused-appellant along with "Susie" and "Padre."

Badoy, Camposano's 15-year old grandchild, and Ramirez, accused-appellant's stepson, corroborated Camposano's testimony.

After trial, the RTC decided against accused-appellant. The dispositive portion of its Decision reads:

> WHEREFORE, judgment is rendered finding Leonardo Rusiana *y* Broquel @ Unad GUILTY beyond reasonable doubt of Violation of Sec. 5, Art. II. of R.A. 9165 and hereby sentenced to suffer the penalty of Life Imprisonment and to pay a fine of ₱500,000.00 and to pay the cost.
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> SO ORDERED.[6]

In his appeal before the CA, accused-appellant claimed that the trial court erred in giving credence to the evidence of the

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[5] *Id.* at 40.

[6] *Id.* at 42. Penned by Judge Bonifacio Sanz Maceda.

prosecution. He averred that the prosecution was not able to prove his guilt beyond reasonable doubt.

Ruling of the CA

The appellate court affirmed the challenged decision of the RTC. The CA agreed with the RTC that the elements in the crime of illegal sale of drugs were adequately proved. It gave no merit to accused-appellant's argument that the chain of custody over the evidence was broken. It likewise found the defense of frame-up lacking in merit, as accused-appellant was not able to show convincing evidence that the police officers involved in the buy-bust did not perform their duties in a regular and proper manner, or that they were harboring ill motives against him. The dispositive portion reads:

> WHEREFORE, premises considered, the March 31, 2006 Decision of the Regional Trial Court of Las Piñas, in Criminal Case No. 02-0678, is hereby AFFIRMED. Pursuant to Section 13(c), Rule 124 of the 2000 Rules of Criminal Procedure as amended by A.M. No. 00-5-03-SC dated September 28, 2004, which became effective on October 15, 2004, this judgment of the Court of Appeals may be appealed to the Supreme Court by notice of appeal filed with the Clerk of Court of the Court of Appeals.
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> SO ORDERED.[7]

On January 16, 2008, accused-appellant filed his Notice of Appeal of the CA Decision.

On March 11, 2009, this Court required the parties to submit supplemental briefs if they so desired.

On May 18, 2009, the People, represented by the Solicitor General, manifested that it was no longer filing a supplemental brief.

On June 3, 2009, accused-appellant filed his Supplemental Brief[8] raising an additional assignment of error.

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[7] *Rollo*, p. 9. Penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Japar B. Dimaampao and Ramon R. Garcia.

[8] *Id.* at 28.

Issues

I

WHETHER THE COURT *A QUO* GRAVELY ERRED IN GIVING CREDENCE TO THE EVIDENCE OF THE PROSECUTION WHICH FAILED TO OVERTURN THE PRESUMPTION OF INNOCENCE IN FAVOR OF THE ACCUSED-APPELLANT.

II

WHETHER THE COURT *A QUO* GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

This Court's Ruling

In calling for an acquittal, the defense claims that there were gaps in the chain of custody of the *shabu* allegedly seized from accused-appellant, raising doubts as to the ownership of the *shabu*. It asserts that the non-presentation of PO2 Dalagdagan as prosecution witness resulted in the identity of the prohibited drug being insufficiently established. Citing PO2 Paule and Mendoza's testimonies, the defense claims that since the apprehending officers were not the ones who placed the markings on the *shabu* immediately after its seizure, there is doubt as to whether this was the one presented during trial. The prosecution also allegedly relied on its self-serving statements in establishing the link between accused-appellant and the *shabu* that was recovered. Since the frame-up of accused-appellant is, according to the defense, a probability, the presumption of regularity in the performance of official functions could not overthrow the presumption of innocence to which accused-appellant is entitled.

The appeal is, thus, centered on the contention that the integrity of the subject *shabu* was not ensured and its identity was not established with moral certainty.

Sufficiency of Evidence

Jurisprudence dictates that conviction can be had in a prosecution for illegal sale of regulated or prohibited drugs if

the following elements are present: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment for it. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* of the crime.[9] We hold that these elements have been satisfied by the prosecution's evidence.

Trial courts are our eyes. They have the distinct advantage of observing the demeanor and conduct of witnesses during trial. Absent any showing that certain facts of relevance and substance bearing on the elements of the crime have been overlooked, misapprehended, or misapplied by a trial court, we must defer to its findings.[10] As found by the trial court and affirmed by the CA, the police officers who testified gave a straightforward narration of the buy-bust operation. We see no circumstance contradicting this finding.

Chain of Custody Requirement

In *People v. Cortez*,[11] this Court held that although ideally the prosecution should offer a perfect chain of custody in the handling of evidence, "substantial compliance with the legal requirements on the handling of the seized item" is sufficient. Behind this is an acknowledgment that the chain of custody rule is difficult to comply with. Hence, exceptions must be recognized, as indeed the Implementing Rules and Regulations (IRR) of RA 9165 does.[12] On its own, a non-compliance with

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[9] *People v. Encila*, G.R. No. 182419, February 10, 2009.

[10] See *People v. Darisan*, G.R. No. 176151, January 30, 2009; citing *People v. Nicolas*, G.R. No. 170234, February 8, 2007, 515 SCRA 187, 204.

[11] G.R. No. 183819, July 23, 2009.

[12] SECTION 21. Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.—The PDEA shall take charge and have custody of all dangerous drugs, plant sources 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:

Sec. 21 of RA 9165 will not invalidate an accused's arrest or a seizure made in drug cases. What should be of importance is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."[13]

For reference, we reproduce the testimony of PO2 Paule here:

Q What I am asking you is what did you do with the items that [Unad] handed to you after you have arrested him?

A I turned [it over] to our Duty Investigator PO2 Rufino Dalagdagan.

Q How about the buy-bust money and the other plastic sachets that you confiscated from him, what did you do with those items?

A I turned it over to PO2 Rufino Dalagdagan, sir.

Q Now, what did PO2 Rufino Dalagdagan do with the buy-bust money and the *shabu* that was sold to you by [Unad] after receiving it from you?

A PO2 Rufino Dalagdagan put markings on it, sir.

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and 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 x x x.

[13] *Cortez*, *supra* note 11; citing *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 448.

Q What mark did PO2 Dalagdagan do on the item subject of the buy-bust operation?

A He put markings of LBR 12 August 2000.

Q Now, do you know of the real name of *alias* [Unad]?

A Yes, sir.

Q What is the full name of alias [Unad]?

A Leonardo B. Rusiana, sir.[14]

x x x x x x x x x

Q Now, the *shabu* that was sold to you by Leonardo B. Rusiana, if you will again see it will you be able to identify it?

A Yes, sir.

Q I am showing to you a x x x white mailing envelope marked as Exhibit "H" for the prosecution. Kindly retrieve the items inside that white mailing envelope and pick out [from] the contents thereof, the plastic sachet which according to you was handed to you by Leonardo B. Rusiana during the buy-bust operation[.]

A Yes, sir, this is the one.

Court Interpreter

And the witness is referring to Exhibit "H-1".[15]

As gleaned from PO2 Paule's testimony, the chain of custody over the *shabu* was preserved. It was established by the prosecution, as follows: (1) plastic sachets were seized by PO2 Paule from accused-appellant; (2) PO2 Paule turned the items over to PO2 Dalagdagan, who marked each item with the initials "LBR"; (3) a Request for Laboratory Examination was then made by Police Senior Inspector Vicente V. Raquion; and (4) the items were examined by Forensic Chemist Abraham Tecson, and his findings documented in Chemistry Report No. D-432-02 showed that the specimens tested positive for *shabu*. These

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[14] TSN, August 18, 2004, pp. 13-15.

[15] *Id.* at 16-17.

links in the chain are undisputed; the integrity of the seized drugs remains intact.

The presentation of PO2 Dalagdagan to establish the identity of the drugs seized is no longer necessary, as it was even stipulated during pre-trial that the existence of the Investigation Report (Exhibit "B") which he prepared was admitted by accused-appellant.[16] During trial, it was also stipulated by the parties that PO2 Dalagdagan's testimony would be in accordance with said Investigation Report.[17] While the presentation of the testimonies of all those who handled the illegal drugs would be ideal, one of the custodians or links in the chain was not presented by agreement of the parties in the case at bar. The prosecution cannot be faulted for its presentation of evidence as it was willing to present PO2 Dalagdagan. *People v. Rivera*[18] is particularly instructive in this respect:

> The non-presentation as witnesses of other persons such as the other police officers forming a buy-bust team is not a crucial point against the prosecution since the matter of presentation of witnesses by the prosecution is not for the court to decide. It is the prosecution which has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses. Moreover, the testimony of a single prosecution witness, if credible and positive and satisfies the court as to the guilt of the accused beyond reasonable doubt, is enough to sustain a conviction.

As jurisprudence has shown, what is of utmost importance is the **preservation of the integrity and evidentiary value of the seized items**,[19] a requisite present in the instant case. The documentary and testimonial evidence, taken together, presented a clear buy-bust operation and satisfied the requisites for a prosecution of illegal sale of drugs.

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[16] CA *rollo*, p. 38.

[17] *Id.* at 39.

[18] G.R. No. 182347, October 17, 2008, 569 SCRA 879, 893-894.

[19] *People v. Sy*, G.R. No. 185284, June 22, 2009; citing *People v. Del Monte*, G.R. No. 179940, April 23, 2008, 552 SCRA 627, 636-637.

In giving credence to the prosecution's presentation of the unbroken chain of custody of the illegal drugs, we adhere to the rule that unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper or ill motive to falsely charge accused-appellant of a serious offense, or were not properly performing their duty, their testimonies on the operation deserve full faith and credit.[20] It must be noted that no complaints were filed against the police officers for their alleged frame-up of accused-appellant. But instead, the defense presented self-serving evidence from accused-appellant's close relatives. To our mind, then, the presumption of regularity in the performance of duties by the police officers must be upheld and accused-appellant's conviction affirmed.

Pecuniary Liability

RA 9165 provides that the unauthorized sale of *shabu* carries with it the penalty of life imprisonment to death and a fine ranging from PhP 500,000 to PhP 10 million. The trial court, thus, correctly sentenced accused-appellant to life imprisonment and fined him PhP 500,000.

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 02347 finding Leonardo Rusiana *y* Broquel guilty of illegal sale of drugs is *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Carpio Morales,[*] *Peralta,* and *Del Castillo,*[**] *JJ.,* concur.

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[20] *Naquita*, *supra* note 13, at 454.

[*] Additional member as per Special Order No. 720 dated October 5, 2009.

[**] Additional member as per September 28, 2009 raffle.

SECOND DIVISION

[A.M. No. 09-3-50 MCTC. October 9, 2009]

RE: DROPPING FROM THE ROLLS of MS. GINA P. FUENTES, Court Stenographer I, Municipal Circuit Trial Court, Mabini, Compostela Valley

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; OMNIBUS RULES ON LEAVE, AS AMENDED; ABSENCES WITHOUT APPROVED LEAVE; EFFECT.— Section 63, Rule XVI of the Omnibus Rules on Leave, as amended by Memorandum Circular 13, series of 2007, is quoted by the OCA as follows: "Effect of absences without approved leave. — An official or an employee who is continuously absent **without approved leave** for at least thirty (30) working days shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice. However, when it is clear under the obtaining circumstances that the official or employee concerned has established a scheme to circumvent the rule by incurring substantial absences though less than thirty (30) working days three times in a semester, such that a pattern is already apparent, dropping from the rolls without notice may likewise be justified. If the number of unauthorized absences incurred is less than thirty (30) working days, a written Return-to-Work Order shall be served to him at his last known address on record. Failure on his part to report for work within the period stated in the Order shall be a valid ground to drop him from the rolls."

2. ID.; ID.; ID.; COURT PERSONNEL; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF PUBLIC SERVICE; A COURT EMPLOYEE'S ABSENCE WITHOUT LEAVE FOR A PROLONGED PERIOD OF TIME CONSTITUTES CONDUCT PREJUDICIAL TO THE BEST INTEREST OF PUBLIC SERVICE; CASE AT BAR.— Gina's applications for leave from March 1, 2007 up to March 31, 2007 and from May 1, 2007 up to July 31, 2007 inclusive were disapproved and considered unauthorized x x x. A court employee's absence

without leave for a prolonged period of time disrupts the normal functions of the court; constitutes conduct prejudicial to the best interest of public service; contravenes a public servant's duty to serve the public with the utmost degree of responsibility, integrity, loyalty, and efficiency; and manifests disrespect for one's superiors and colleagues, in particular, and for the service and the public at large, in general. Gina must thus be dropped from the rolls.

R E S O L U T I O N

CARPIO MORALES,[*] *J.*:

On August 24, 2007, the Employees' Leave Division of the Office of Administrative Services,Office of the Court Administrator (OCA), received the vacation leave applications of Gina P. Fuentes (Gina), Court Stenographer I of the Municipal Circuit Trial Court (MCTC) of Mabini, Compostela Valley, covering the periods March 1 to 30, 2007; May 1 to 31, 2007; June 1 to 31, 2007; and July 1 to 31, 2007.[1] The leave application for March 2007 was favorably recommended by then Acting Presiding Judge Antonio A. Betonio, and the applications from May 1 to May 31, 2007, June 1 to June 30, 2007, and July 1 to 31, 2007 were favorably recommended by Presiding Judge Divina T. Samson (Judge Samson).[2]

Gina did not report for work in April 2007 but she did not submit a leave application for the purpose, albeit in her Daily Time Record (DTR), she indicated that she was in such month on leave.[3]

In his letter of August 6, 2007 transmitting the leave applications, Judge Samson stated that Gina had been abroad

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[*] Designated Acting Chairperson per Special Order No. 690 dated September 4, 2009.

[1] *Rollo,* p. 4.

[2] *Ibid.*

[3] *Ibid.*

since March 1, 2007, as confirmed by her husband who had been collecting her pay check twice a month.[4]

By Memorandum[5] dated January 11, 2008 addressed to the Chief Justice, the OCA noted that Gina went abroad without securing authority from the Court in violation of Memorandum Order No. 14-2000 dated November 6, 2000 reading:

> Effective immediately, no official or employee of the Supreme Court in particular and the Judiciary in general, shall leave for any foreign country, whether on official business or official time or at one's own expense, without first obtaining permission from the Supreme Court through the Chief Justice and the Chairmen of the Divisions pursuant to the resolution in A.M. No. 99-12-08-SC. (Underscoring in the original.)

The OCA thus recommended that

> x x x **(1)** Ms. Gina P. Fuentes be **DIRECTED** to explain in writing within ten (10) days from notice on her failure to comply with Memorandum Order No. 14-2000; **(2)** the leave applications of Ms. Gina P. Fuentes from March 1-30; May 1-31; June 1-30; and July 1-31, 2007 be **DISAPPROVED** and considered **UNAUTHORIZED** for violation of Memorandum Order No. 14-2000; **(3)** her absences for the month of April 2007 be likewise considered **UNAUTHORIZED**; (**4)** she be **DIRECTED** to immediately report back for work, otherwise, her name shall be recommended to be dropped from the rolls; and **(5)** the Financial Management Office be **DIRECTED** to release Ms. Fuentes' withheld salaries and benefits upon receipt of notice from the OCA Leave Division of her compliance and return to work.[6] (Emphasis in the original)

The Chief Justice approved[7] the OCA recommendations on February 11, 2008. More than a year later or on March 24, 2009, the OCA noted that Gina had not submitted her "bundy

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[4] *Id.* at 4, 6.

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

[6] *Id.* at 5.

[7] *Ibid.*

cards" since August 2007 and had not yet reported back for work.[8] Thus it recommended that

> x x x **(1)** the name of Ms. Gina P. Fuentes be **DROPPED FROM THE ROLLS effective August 1, 2007** for having been on absence without official leave (**AWOL**); **(2)** her position be declared **VACANT;** and **(3)** she be **INFORMED** of her separation from the service or dropping from the rolls at the address appearing on her 201 file, that is at Park 2, San Antonio, Mabini, Compostela Valley.[9] (Emphasis in the original; underscoring supplied)

The recommendation of the OCA is well-taken.

Section 63, Rule XVI of the Omnibus Rules on Leave,[10] as amended by Memorandum Circular 13, series of 2007, is quoted by the OCA as follows:

> Effect of absences without approved leave.— An official or an employee who is continuously absent **without approved leave** for at least thirty (30) working days shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice. However, when it is clear under the obtaining circumstances that the official or employee concerned has established a scheme to circumvent the rule by incurring substantial absences though less than thirty (30) working days three times in a semester, such that a pattern is already apparent, dropping from the rolls without notice may likewise be justified.

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[8] *Id.* at 1.

[9] *Id.* at 2.

[10] SECTION 63. Effect of Absences Without Approved Leave. — An official or an employee who is continuously absent without approved leave for at least thirty (30) calendar days shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice. He shall, however, be informed, at his address appearing on his 201 files of his separation from the service, not later than five (5) days from its effectivity.

If the number of unauthorized absences incurred is less than thirty (30) calendar days, a written Return-to-Work Order shall be served to him at his last known address on record. Failure on his part to report for work within the period stated in the order shall be a valid ground to drop him from the rolls.

If the number of unauthorized absences incurred is less than thirty (30) working days, a written Return-to-Work Order shall be served to him at his last known address on record. Failure on his part to report for work within the period stated in the Order shall be a valid ground to drop him from the rolls.[11] (Emphasis and underscoring supplied)

Gina's applications for leave from March 1, 2007 up to March 31, 2007 and from May 1, 2007 up to July 31, 2007 inclusive were disapproved and considered unauthorized, as reflected above. A court employee's absence without leave for a prolonged period of time disrupts the normal functions of the court; constitutes conduct prejudicial to the best interest of public service; contravenes a public servant's duty to serve the public with the utmost degree of responsibility, integrity, loyalty, and efficiency; and manifests disrespect for one's superiors and colleagues, in particular, and for the service and the public at large, in general.[12] Gina must thus be dropped from the rolls.

WHEREFORE, Gina P. Fuentes, Court Stenographer I of the Municipal Circuit Trial Court of Mabini, Compostela Valley is *DROPPED FROM THE ROLLS* effective August 1, 2007. Her position is now declared *VACANT*.

Let a copy of this Resolution be served on Ms. Fuentes at her address appearing in her 201 file.

SO ORDERED.

Corona,[**] *Nachura,*[***] *Brion,* and *Abad, JJ.,* concur.

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[11] *Rollo,* p. 2.

[12] Vide *Re: Absence Without Official Leave (AWOL) of Ms. Fernandita B. Borja, Clerk II, Br. 15, MCTC, Bilar, Bohol,* A.M. No. 06-1-10-MCTC, April 13, 2007, 521 SCRA 18, 20.

[**] Additional member per Special Order No. 718 dated October 2, 2009.

[***] Additional member per Special Order No. 730 dated October 5, 2009.

EN BANC

[A.M. No. 2007-08-SC. October 9, 2009]

IN RE: FRAUDULENT RELEASE OF RETIREMENT BENEFITS OF JOSE LANTIN, former Presiding Judge, Municipal Trial Court, San Felipe, Zambales

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT EMPLOYEES; GRAVE MISCONDUCT, CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE, VIOLATION OF THE CODE OF CONDUCT FOR COURT PERSONNEL AND VIOLATION OF REPUBLIC ACT NOS. 3019 AND 6713; COMMITTED IN CASE AT BAR.— The investigation established that De Rivera had deliberately and knowingly conspired with Key, Luzadas, and other court employees to facilitate the fraudulent release of the retirement and leave credits benefits of Lantin. She tampered with court records, specifically the date of receipt of the application for retirement benefits, in violation of Section 3, Canon IV of the *Code of Conduct for Court Personnel*. She accepted the application from Key although the latter was not the designated agent in the SPA, an act amounting to **misconduct**. De Rivera accepted PhP 30,000 in connection with an illegal transaction, which constitutes **grave misconduct**. She used her official position to secure unwarranted benefits, privileges, or exemptions for herself and others, contrary to Canon I of the Code, Fidelity to Duty, as follows: "Sec. 1. Court personnel shall not use their official position to secure unwarranted benefits, privileges or exemptions for themselves or for others. Sec. 2. Court personnel shall not solicit or accept any gift, favor, or benefit based on any or explicit or implicit understanding that such gift, favor or benefit shall influence their official actions. x x x Sec. 4. Court personnel shall not accept any fee or remuneration beyond what they receive or are entitled to in their official capacity." De Rivera is also criminally liable for graft practices under Sec. 3(b) of RA 3019 or the *Anti-Graft and Corrupt Practices Act*; and Sec. 7(d) of the *Code*

of Conduct and Ethical Standards for Public Officials and Employees. x x x From the investigation, it can be gleaned that **Villapando** worked closely with De Rivera and, by his own admission, received money from her. He went beyond his official functions and followed up the papers of Lantin with unusual zeal and received money from Key after the SC clearance was completed. He committed grave misconduct for accepting money in exchange for routing the papers of the judge. He is guilty of the same offenses as De Rivera–-Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service, violation of the *Code of Conduct for Court Personnel*, and violation of Sec. 3(b) of RA 3019 and of RA 6713; and is also guilty of violating Sec. 1 of Canon IV on the Performance of Duties, *Code of Conduct for Court Personnel*. He should be **dismissed** from the service with forfeiture of all benefits.

2. ID.; ID.; ID.; ID.; ID.; PENALTIES; CASE AT BAR.— Grave Misconduct is punishable with dismissal from the service for the first offense, while Conduct Prejudicial to the Best Interest of the Service is punishable with suspension from six (6) months and one (1) day to one (1) year. Violations of RAs 6713 and 3019 warrant removal from office, depending on the gravity of the offense, even if no criminal prosecution is instituted against the public officer. It is worthy to note that the *Code of Conduct for Court Personnel* provides that **"all provisions of law, Civil Service rules, and issuances of the Supreme Court or regulating the conduct of public officers and employees applicable to the Judiciary are deemed incorporated into this Code."** If the respondent is guilty of two (2) or more charges or counts, the penalty to be imposed should be the penalty for the most serious charge, and the rest considered as aggravating. From the investigation, sworn testimonies of other employees, and her own admission, De Rivera is guilty of Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service, violation of the *Code of Conduct for Court Personnel*, and violation of Sec. 3(b) of RA 3019 and of RA 6713. Despite the mitigating circumstance that this is her first offense, she deserves to be **dismissed** from the service with forfeiture of all benefits.

3. ID.; ID.; ID.; ID.; GROSS NEGLECT OF DUTY; COMMITTED IN CASE AT BAR; PENALTY.— Azurin's work in the Records Division was critical in determining whether or not Lantin was

> entitled to any retirement benefits. We are not convinced that Azurin could not remember seeing a copy of the Court Resolution in the former judge's 201 file that contained the Resolution or that could he not remember seeing the notation **"dismissed from the service"** in the folder. It was later discovered that the Resolution was actually in the 201 file. Had he paid more attention to his duty, he would not have missed the annotation. We, therefore, find Azurin guilty of gross negligence. Gross Neglect of Duty is punishable with dismissal for the first offense. In precedent cases, however, the penalty of dismissal was reduced to suspension upon considering mitigating circumstances, such as length of service in the Court. Azurin has served the court for twenty (20) years and, in our view, a suspension of three months is sufficient punishment for his neglect of duty.

D E C I S I O N

PER CURIAM:

The subject matter of the instant administrative proceeding is the fraud perpetrated against the Court by dismissed Judge Jose C. Lantin of the Municipal Trial Court (MTC) in San Felipe, Zambales and his cohorts involving PhP 1,552,437 representing his retirement gratuity.

Lantin compulsorily retired on September 24, 1998. At that time, he had a pending administrative case docketed as A.M. No. MTJ-98-1153 entitled *Huggland v. Lantin*.

Subsequently on February 29, 2000, the Court issued a Resolution forfeiting his retirement benefits including leave credits. The *fallo* reads:

> WHEREFORE, judgment is hereby rendered (a) finding respondent Judge Jose C. Lantin guilty of grave misconduct in office, gross dishonesty, conduct prejudicial to the best interest of the service and conduct unbecoming [of] a judge; (b) holding that respondent [**Judge Lantin] should have been dismissed from the service had the compulsory age of retirement not overtaken this case; (c) forfeiting all his retirement benefits, including leave credits;** and (d) disqualifying him from employment in any branch, agency

or instrumentality of the Government, including government-owned or controlled corporation.[1] (Emphasis ours.)

Copies of said Resolution were reportedly sent to the following:

Court Administrator Alfredo L. Benipayo
Deputy Court Administrator (DCA) Reynaldo Suarez
DCA Zenaida Elepaño
DCA Bernardo Ponferrada
Office of the Administrative Services (OAS)
Leave Division
Records Control Center
Fiscal Management and Budget Office
Finance, Accounting, and Documentation
Office of the Court Administrator (OCA)

As culled from the records, the offices that are mainly involved in the processing of retirement claims are the Employee Welfare and Benefits Division (EWBD) headed by Charlotte C. Labayani; Records Division (Records Control Center) headed by Gloria C. Rosario; Employees Leave Division headed by Hermogena F. Bayani—all of OAS-OCA; and the Docket and Clearance Division (Docket Division) of the Legal Office, OCA headed by Atty. Vener B. Pimentel. The Employees Leave Division and the Records Division denied having received the February 29, 2000 Court Resolution forfeiting the retirement benefits of Lantin.

A certain **Annie Key** introduced herself as the representative of **Dolores Luzadas**, who was named the duly designated attorney-in-fact of Lantin per a Special Power of Attorney (SPA) purportedly signed by Lantin. Key filed the application for the retirement benefits of the former judge with the EWBD under the OAS-OCA. Key's identity was not found in any record. The application was referred to **Cecilia C. De Rivera**, the officer handling compulsory retirement applications of judges. De Rivera admitted that the application was filed on June 29, 2006, a date confirmed by **Charlotte C. Labayani**, Chief of the EWBD. Attached to the application was the SPA issued in favor of Luzadas. The

[1] *Huggland v. Lantin*, 383 Phil. 516 (2000), 537-538.

EWBD records, however, reveal that the application was received on June 26, 2006, three days earlier. De Rivera later asked Key to re-file the application using a newly prescribed form, which was filed on August 10, 2006.

It turned out that the SPA was subscribed on July 3, 2006 and before a notary public whose commission had already expired. Per investigation of the OAS-Supreme Court (SC), the SPA could not have been received on June 29, 2007, since it was acknowledged before the notary public on July 3, 2006. The OAS-SC concluded that De Rivera had tampered with the application, considering that a photocopy of it had erasures as to the date of receipt.[2] Noteworthy too is the fact that De Rivera did not keep the original copy of the SPA.

According to De Rivera, she informed Labayani of the belated filing. Allegedly on Labayani's instructions, she requested a Docket Clearance to ascertain if, due to the belated filing, the claim could be rejected. Labayani signed the request addressed to the Records Division under the OAS-OCA for Lantin's Service Records, clearance from the Office of the Bar Confidant (OBC), clearance from the Docket and Legal Division under the Legal Office of OCA, and Certification of Regular Monthly Salary and Emoluments from the Financial Management Office (FMO) of OCA.

Michelle P. Tuazon of the Docket and Clearance Division, Legal Office, OCA, received the request for clearance on July 31, 2006. It reads:

> x x x in favor of Hon. JOSE C. LANTIN, former Judge, Municipal Trial Court, San Felipe, Zambales, **in connection with his claim for Compulsory Retirement benefits under RA 910**, as amended effective September 24, 1998.

Tuazon verified the request and prepared the Clearance Certificate dated August 7, 2006, signed by **Atty. Vener B. Pimentel**, the Officer-in-Charge (OIC) of the Docket and Legal Division. The certification indicated that the former judge had

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[2] OAS Report citing Annexes "F-F" and "H".

no pending administrative case as of said date, and the certification was being issued for **compulsory retirement**. Thereafter, on instruction of Labayani, De Rivera went to the office of DCA Jose P. Perez to seek advice about the late filing of Lantin's application. Atty. Arturo Noblejas of the said office advised De Rivera to ascertain if Lantin was still alive by submitting a photo of him holding the latest issue of a newspaper.

Meanwhile, the OBC issued a certification that Lantin had no pending case before said office.

When **Joahna S. Iglesias**, a clerk in the Records Office, received the request for the Service Record of Lantin, she entered the request in her logbook and forwarded the application to **Gloria C. Rosario**, Chief of the Records Division. Iglesias also instructed **Rosita M. De Leon**, in charge of requests from the National Capital Region, to process the request, since the person in charge of Region III was on leave then. Satisfied that based on the service record card, the former judge had no pending case against him, De Leon photocopied and initialed the service record card and submitted it on August 10, 2006 to **Rafael D. Azurin**, SC Supervising Judicial Staff Officer, for certification that it was a true copy. Thereafter, Iglesias transmitted the certified copy to the Leave Section and then sent it back to the Service Records Section. Iglesias received the certified photocopy from the Leave Section and requested the 201 file of Lantin from **Fernando R. Inocencio**, the records officer of OAS-OCA. Inocencio, in turn, forwarded the file to Azurin, who counterchecked the entries against the original documents in the 201 file, paying particular attention to the dates of appointment, assumption of office, oath of office, and step increments, *etc*. The photocopies thereafter were sent to **Josephine E. Perlas**, the clerk who encoded the entries and printed the computerized Service Record. Perlas then sent these photocopies to Rosario for signature. These were then forwarded for final notation to **Hermogena F. Bayani**, Chief of the Leave Division, whose certification dated October 13, 2006 as to the leave without pay and sick leave without pay was initialed by one of the employees in her staff.

In the meantime, the processing of Lantin's terminal leave credits was initiated by Utility Worker **Rogelio J. Villapando, Jr.** of the Planning Division of the Court Management Office (CMO). He also frequently followed up said processing with **Amelia G. Serafico** of the Leave Division. According to the investigation report of OAS-SC, De Rivera, along with a certain Luzadas, approached Villapando for assistance for the clearance of Lantin. In October 2006, Villapando gave a photocopy of Lantin's Service Record to Serafico, who in turn asked **Amalia D. Alviso**, a Human Resource Management (HRM) aide, for the leave credits of Lantin from 1984 to 1998. The contents of what was purportedly the leave credits record were all written in ballpen in the same penmanship, allegedly belonging to **Reynaldo B. Sta. Ana**, a former employee of the Leave Division who was dismissed from the service for dishonesty and falsification of public documents. Villapando also told Alviso to prepare the statement of leave credits. This was reviewed by **Edgardo S. Quitevis** and signed by Bayani on October 4, 2006.

Meanwhile, as testified to by **Valeriano P. Pobre**, Assistant Chief of the Retirement Section, and **Edison P. Vasquez**, an employee of the EWBD, Key often met with De Rivera to follow up the retirement benefits of Lantin.

The OAS-SC report also indicated that Lantin's clearance was routed to 14 offices. Then DCA Jose Perez[3] approved the SC clearance on October 19, 2006. On October 23, 2006, Labayani sent a Memorandum, which included the already approved retirement papers of Lantin, to the FMO-OCA. The Memorandum included: (1) a Memorandum dated October 20, 2006 of Pobre endorsing for approval the application that bore the stamp of approval by DCA Perez; (2) the computation of the length of service and the Certification, signed by Pobre, that Lantin was qualified to retire under Republic Act No. (RA) 910; (3) a Certification that Lantin had no money or property responsibility with the MTC in San Felipe, Zambales; (4) his Statement of Assets and Liabilities and Net Worth; (5) a Clearance

[3] Now Court Administrator.

from the Ombudsman that he had no pending or administrative cases as of July 2005; and (6) a Certification of the Sandiganbayan that Lantin was acquitted in a criminal case promulgated on September 2, 2005. In a letter dated November 20, 2006, Pobre sent Lantin a Pensioner's Survey Form, which was received by the EWBD on November 29, 2006. Five years after Lantin's retirement, Labayani secured the judge's retirement voucher from the Government Service Insurance System (GSIS).

After learning from the Bureau of Internal Revenue (BIR) that Lantin had already retired, Atty. Caridad A. Pabello, Chief of the OAS-OCA, asked for a certification as to the amount Lantin received from the BIR, but it did not reply.

Upon completion of the required clearance requirements and approval of his retirement application, Lantin was issued Land Bank of the Philippines (LBP) Check No. 79263 dated November 16, 2006 for PhP 237,760.89 and LBP Check No. 79330 dated November 29, 2006 for PhP 1,552,437, representing his terminal leave and retirement gratuity benefits, respectively. Luzadas allegedly endorsed the first check on November 11, 2006, while Lantin personally endorsed the second check on December 12, 2006. The dorsal portions of the checks did not indicate if these were encashed, although it appears therein that these were negotiated in Equitable PCI Bank and deposited in Account No. 0288-06967-0.[4]

On January 12, 2007, a copy of the February 29, 2000 Resolution dismissing Lantin was found in the 201 File of Lantin by the EWBD. On the cover of the folder was the phrase "**dismissed from the service**" in the handwriting of **Rudy C. Garcia**, a utility worker in the Records Division, who was in charge of the files of judges. Immediately upon this discovery, the EWBD verified with the Checks and Disbursement Division, FMO-OCA, if the checks for Lantin had been released. The checks for the terminal leave pay and retirement gratuity had

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[4] Memorandum dated February 26, 2007, addressed to DCA Christopher O. Lock, from DCA Reuben P. de la Cruz, *Re: Fraudulent retirement benefits claim of Judge Jose C. Lantin, MTC, San Felipe, Zambales.*

been released on November 24, 2006 and December 7, 2006, respectively.

In a Resolution dated November 20, 2007, the Court directed Lantin to return the amount representing his retirement benefits amounting to one million seven hundred ninety thousand one hundred ninety-seven pesos and eighty-nine centavos (PhP 1,790,197.89). It also directed the Register of Deeds of Zambales or the Assessor concerned to cause the annotation of the resolution dated August 14, 2007 on the assets/properties of Lantin pending the return of the aforesaid amount.[5]

Further scrutiny of the 201 file of Lantin showed a **May 14, 1998** Resolution, A.M. No. 97-11-133-MTC—*Manila Daily Bulletin news item about the arrest of Municipal Trial Court Judge Jose C. Lantin.* The Resolution ordered the preventive suspension of Lantin. The records showed that the OAS-OCA and its Records and Leave Divisions received copies of this resolution and its revised version.

Upon discovery of the irregular payment of the retirement benefits of Lantin, then Court Administrator (CA) Christopher O. Lock directed DCA Ruben P. Dela Cruz to conduct an investigation. Consequently, DCA Dela Cruz submitted his Investigation Report to CA Lock on February 26, 2007. Per the OCA March 23, 2007 Indorsement, the Investigation Report of DCA Dela Cruz was referred to OAS-SC for appropriate action.

The OAS-SC called **Virginia N. Rodriguez**, leave processor in the Leave Division, to explain the usual procedure for the handling of the leave cards. She handled the leave cards of Lantin and personally made the entry on Lantin's preventive suspension. She confirmed that in the early 1980s, processors used pencils to write entries in the card, but shifted to using ballpens in the 1990s. She said she was surprised that Lantin was able to claim his benefits despite his suspension. She categorically said that the purported leave cards of Lantin were

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[5] A.M. No. MTJ-98-1153 and A.M. No. 2007-08-SC.

dubious and could not have been the originals, since none of the entries were in her handwriting; and, strangely, all the entries were made by the same hand, which was most unlikely, since employees working on the cards were constantly re-shuffled. She also said that when a correction is made, only the specific mistake is corrected, and this does not entail a change of card. **Cosme F. Corpus**, also of the Leave Division who was the leave processor since 1977, corroborated Rodriguez's testimony on the protocols followed in making entries in the card.

Remedios B. Quintos, an administrative assistant in the Records Section, was the processor for Regions I to IV until 2003. She admitted entering all the data in Lantin's service record cards and photocopying them in 1998 when Lantin asked for a photocopy needed for his Ombudsman clearance; entering the phrase "**compulsory retirement effective 9-24-98**" based on his birthday; and entering "**11-01-97**" and "**9-23-98**." More significantly, she admitted placing the service record cards of Lantin in the inactive files of judges, and that those cards remained there for a long time. She denied receiving a copy of the May 14, 1998 Resolution placing the judge on preventive suspension, that was why there was no such entry in his leave cards.

Rudy C. Garcia, the utility worker mentioned earlier, said he was the one who wrote the "**dismissed from the service**" annotation in the 201 file of Lantin, after receiving a copy of it.

After tracing the paper trail, the OAS-SC investigated the employees who appeared to have had a direct participation in the fraud, and the following information surfaced:

De Rivera admitted that she received thirty thousand pesos (PhP 30,000) from Key allegedly to facilitate the processing of Lantin's retirement papers. She, however, denied receiving an additional forty thousand pesos (PhP 40,000). She claimed that she gave money to Villapando, Butch N. Borres, and Edison P. Vasquez, although she did not say how much. She said she did not know how the other offices had cleared Lantin. She gave no explanation why she accepted the retirement papers of Lantin; why she asked no identification from Key; and why she processed the papers even if incomplete. She denied taking part in processing

the SC clearance of Lantin. **Betty Ignacio**, to whose account the two checks issued to Lantin were allegedly deposited, in a Sworn Affidavit, said that Luzadas sent her a text message that it was De Rivera who facilitated the processing of the judge's retirement claims. De Rivera stopped reporting for work after she was preventively suspended for ninety (90) days.

The investigation established that De Rivera had deliberately and knowingly conspired with Key, Luzadas, and other court employees to facilitate the fraudulent release of the retirement and leave credits benefits of Lantin. She tampered with court records, specifically the date of receipt of the application for retirement benefits, in violation of Section 3, Canon IV of the *Code of Conduct for Court Personnel*. She accepted the application from Key although the latter was not the designated agent in the SPA, an act amounting to **misconduct**. De Rivera accepted PhP 30,000 in connection with an illegal transaction, which constitutes **grave misconduct**. She used her official position to secure unwarranted benefits, privileges, or exemptions for herself and others, contrary to Canon I of the Code, Fidelity to Duty, as follows:

> Sec. 1. Court personnel shall not use their official position to secure unwarranted benefits, privileges or exemptions for themselves or for others.
>
> Sec. 2. Court personnel shall not solicit or accept any gift, favor, or benefit based on any or explicit or implicit understanding that such gift, favor or benefit shall influence their official actions.
>
> x x x x x x x x x
>
> Sec. 4. Court personnel shall not accept any fee or remuneration beyond what they receive or are entitled to in their official capacity.

De Rivera is also criminally liable for graft practices under Sec. 3(b)[6] of RA 3019 or the *Anti-Graft and Corrupt Practices*

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[6] Sec. 3. *Corrupt practices of public officers*:

x x x x x x x x x

Act; and Sec. 7(d)[7] of the *Code of Conduct and Ethical Standards for Public Officials and Employees*.

Grave Misconduct is punishable with dismissal from the service for the first offense,[8] while Conduct Prejudicial to the Best Interest of the Service is punishable with suspension from six (6) months and one (1) day to one (1) year.[9] Violations of RAs 6713 and 3019 warrant removal from office, depending on the gravity of the offense,[10] even if no criminal prosecution is instituted against the public officer. It is worthy to note that the *Code of Conduct for Court Personnel* provides that "**all provisions of law, Civil Service rules, and issuances of the Supreme Court or regulating the conduct of public officers and employees applicable to the Judiciary are deemed incorporated into this Code**." If the respondent is guilty of two (2) or more charges or counts, the penalty to be imposed should be the penalty for the most serious charge, and the rest considered as aggravating.

From the investigation, sworn testimonies of other employees, and her own admission, De Rivera is guilty of Grave Misconduct,

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(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law.

[7] Sec. 7. Prohibited Acts and Transactions

x x x x x x x x x

d. Solicitation or acceptance of gifts.—Public officials and employees shall not solicit or accept directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by or any transaction which may be affected by the functions of their office.

[8] *Uniform Rules on Administrative Cases in the Civil Service*, Rule IV, Penalties, Sec. 52(A), No. 3.

[9] *Id.*, No. 20.

[10] RA 6713, Sec. 11.

Conduct Prejudicial to the Best Interest of the Service, violation of the *Code of Conduct for Court Personnel*, and violation of Sec. 3(b) of RA 3019 and of RA 6713. Despite the mitigating circumstance that this is her first offense, she deserves to be **dismissed** from the service with forfeiture of all benefits.

Rogelio J. Villapando, Jr., a utility worker since 2004 who was then a casual security guard, averred that De Rivera had introduced Luzadas to him. He admitted that (1) he helped follow up the SC clearance of Lantin, but said he did it, not for monetary gain, but out of compassion because De Rivera and Luzadas told him the judge was critically ill; (2) he followed up the terminal leave papers of the judge with the Leave Division; and (3) he received PhP 1,000 for Paglinawan and himself for their *pangkain* from De Rivera when the SC clearance was completed. Villapando claimed that Serafico, who had earlier told him that Lantin's leave cards were missing, asked him to borrow the 201 file of the former judge. He did not expect that it was going to be given to him even without him signing for it. After the leave forms were photocopied, he personally returned these to the Records Division. He said that Serafico told him that the leave cards would be reconstructed if they were not found, that was why they needed the leave forms.

From the investigation, it can be gleaned that **Villapando** worked closely with De Rivera and, by his own admission, received money from her. He went beyond his official functions and followed up the papers of Lantin with unusual zeal and received money from Key after the SC clearance was completed. He committed grave misconduct for accepting money in exchange for routing the papers of the judge. He is guilty of the same offenses as De Rivera—Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service, violation of the *Code of Conduct for Court Personnel*, and violation of Sec. 3(b) of RA 3019 and of RA 6713; and is also guilty of violating Sec. 1[11] of Canon IV on the Performance of Duties, *Code of*

[11] Sec. 1. Court personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours.

Conduct for Court Personnel. He should be **dismissed** from the service with forfeiture of all benefits.

Charlotte C. Labayani, Chief of the EWBD, testified that after the discovery by EWBD of the Court Resolution dismissing Lantin in his 201 File on January 12, 2007, she twice met with Key when the latter followed up the monthly pension of Lantin. During these meetings, she pretended not to know of the irregularity attending the judge's claims. Key gave her a contact number; and, with it, an investigating officer called up Key on the pretext that she had to pick up Lantin's check, but she did not show up. Labayani denied she knew about the SPA designating Luzadas, and about who had actually followed up Lantin's claims. She explained that the Court allowed follow-ups by others, but it was stricter in cases of clearances from the SC where the designated attorney-in-fact was the only person allowed. She said their office kept the list of retiring judges and employees for four years, but did not keep a record of penalized judges. She averred that the EWBD was not at all times furnished with copies of all Court resolutions. She explained that the EWBD request to the Docket and Legal Division was in connection with Lantin's compulsory retirement and not about any pending case.

From the foregoing account, we find no reason why **Labayani** failed to diligently review the papers of Lantin. It was her duty as Chief of the EWBD to do so. Had she been more diligent, she could have averted the fiasco since, from the very start, there were tell-tale signs that should have warned her to look into the application more closely. For being remiss in her supervisory duty, she should be admonished to be more diligent in the performance of her duty, with stern warning that a repetition of the same or a similar act shall be dealt with more severely.

Valeriano P. Pobre is —an SC Supervising Judicial Staff Officer assigned to the Docket and Legal Division. He had worked with the Court since 1985. He claimed that his participation was limited to computing Lantin's length of service and signing the Information Data submitted for approval of DCA Perez whenever Labayani was absent which was what happened in

the case of Lantin's papers. Familiar with the office procedure, he said he noticed that for over two years, only Tuazon handled the verification clearance in the Docket and Legal Divisions, with only the Alpha list, unlike the past practice when different processors were assigned to their respective areas. Based on his experience, it could have been detected that Lantin was not entitled to the benefits, or that his benefits had been forfeited, because his folder would have been marked "BF," which meant "benefit forfeited." He testified that the EWBD was not furnished with a copy of the Court Resolution.

Butch N. Borres is an HRM Assistant. His official functions included circulating the SC clearance. He vehemently denied that he knew Key or received money from her. It was he who first discovered the Court Resolution when Labayani told him to secure documents for the processing of the former judge's monthly pension. He testified it was De Rivera who followed up and personally received Lantin's computerized Service Record, which was not the usual internal procedure. It was his task to bring this record to the Records Division. Borres also averred that Villapando also followed up the judge's papers. The logbooks of the Checks Disbursement Division and the Property Division of the OCA indicated that the SC clearance was released to Eric J. Paglinawan, a casual Utility Worker II. When asked why De Rivera would want to implicate him, Borres surmised that it was probably because it was he who reported to Labayani that De Rivera allowed CMO employees to follow up the SC clearance of Lantin. He said only he was responsible for routing the judge's papers to two out of 14 offices.

Rafael D. Azurin, who started working for the Court as a casual security guard and was later promoted to SC Supervising Judicial Staff Officer, checked the entries in the Service Records against the 201 File of the judges and lower court employees. He said that he only signed the photocopies and certified that these were faithful reproductions of the original. His signature was required before the Leave Division processed the clearance. He said he did not receive a copy of the SC Resolution in A.M. No. MTJ-98-1153; otherwise, he would have noted it on Lantin's file. He also did not notice if a copy of the Resolution on Lantin's

preventive suspension was on file. He observed that it would have been easy to notice the Resolution, since it was thicker than most of the records in the file. He added that their office had no system to monitor the access of employees to the Service Records.

Azurin's work in the Records Division was critical in determining whether or not Lantin was entitled to any retirement benefits. We are not convinced that Azurin could not remember seeing a copy of the Court Resolution in the former judge's 201 file that contained the Resolution or that could he not remember seeing the notation "**dismissed from the service**" in the folder. It was later discovered that the Resolution was actually in the 201 file. Had he paid more attention to his duty, he would not have missed the annotation. We, therefore, find Azurin guilty of **gross negligence**. Gross Neglect of Duty is punishable with dismissal for the first offense. In precedent cases,[12] however, the penalty of dismissal was reduced to suspension upon considering mitigating circumstances, such as length of service in the Court. Azurin has served the court for twenty (20) years and, in our view, a suspension of three months is sufficient punishment for his neglect of duty.

Fernando R. Inocencio is Records Officer II of OAS-OCA. His work consists of filing documents in the 201 file of judges. He said that when he retrieved the file of Lantin, it already had the notation "**dismissed from the service**." He had no idea who borrowed the file of the judge since, as a matter of practice, the borrower's name was not recorded, although there was a prescribed form to be filled out by every borrower of a 201 File. Inocencio recalled that Lantin's 201 file was borrowed only four (4) times and did not indicate that it was borrowed by Villapando. That Villapando was able to get the files and the files did not list the borrowers are indications that Inocencio had been remiss in his duties for which he should be censured.

Gloria C. Rosario, Chief of the Records Division, explained the procedures followed in, and the protocols observed by, her

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[12] *Office of the Court Administrator v. Sirios*, 457 Phil. 42 (2003); *Reyes-Domingo v. Morales*, 396 Phil. 150 (2000).

office and the Leave Division. She gave no explanation when her attention was called that there was no entry on the gap in the service of Lantin because of the preventive suspension despite both resolutions' being in the 201 file. She said that she relied on the fact that Azurin had not reported any problem to her. The OAS noted that a service record was crucial in processing the entitlement to retirement benefits, and that the ineptness of the Records Division was a reflection of Rosario's laxity in supervising her division. For being remiss in her duties, Rosario should be reprimanded with a stern warning that the same or a similar act in the future will be dealt with more severely.

Amelia G. Serafico, the Assistant Chief of the Records Division, testified that it was Villapando who constantly pestered her about the terminal leave payment of Lantin, and who handed her a copy of the judge's Service Record. To get Villapando off her back, she asked Alviso to prepare the judge's statement of leave credits. She said she even jokingly asked Villapando to present his authority to follow up the terminal leave credits of the judge. She denied Villapando's allegation that she had told him to borrow the judge's 201 file. She did, however, admit informing Villapando that the judge's leave cards were missing, and that the leave forms from the 201 file were needed to reconstruct the cards. Eventually, the leave cards were found in the inactive files, and the leave forms were no longer needed. For being remiss in her duties, she should be censured.

Hermogena F. Bayani, Chief of the Leave Division, said she signed the SC Clearance and the Statement of Leave Credits, because she found no indication on them that Lantin was dismissed from the service with forfeiture of benefits. Since the former judge was cleared on his Service Record, on which she relied, she computed the leave credits due Lantin. The SC clearance also had no notation on the dismissal with forfeiture of benefits. She identified the notation "COMP. RET. EFF 9-24-98" as Sta. Ana's. She claimed that the Leave Division did not receive a copy of the Court Resolution, even if the Notice of the Decision indicated that the Leave Division of the OCA received a copy of it. Bayani denied that the leave cards were reconstructed and reiterated that the leave cards were recovered from the

dead files. She explained that a reconstruction of the leave cards needed the approval of the Court Administrator, which had not been sought with regard to the leave cards of Lantin. The errors in the entries on the leave cards of Lantin by the Leave Division are clear indications that Bayani as Chief of the Leave Division was cavalier in her duties. For being remiss in her duties as Chief of the Leave Division, Bayani should also be admonished, with a stern warning that repetition of the same or a similar act shall be dealt with more severely.

Atty. Vener B. Pimentel is the OIC of the Docket Division. The Docket Division received a copy of the February 29, 2000 Resolution in A.M. No. MTJ-98-1153 finding Lantin guilty of gross misconduct in office, gross dishonesty, conduct prejudicial to the best interest of the service, and conduct unbecoming of a judge. The Court had ordered, as one of the sanctions imposed on the judge, the forfeiture of all his retirement benefits.

As to why the Docket and Legal Divisions did not state in the clearance request the outcome of A.M. No. MTJ-98-1153 and the forfeiture of the retirement benefits of Lantin, Atty. Pimentel explained that there was an inherent flaw in the clearance protocols, since the clearance request was only to determine whether a pending case was existing at the time of the request, NOT if there was a decided case against the applicant for docket clearance. Indeed the clearance request bears the following question:

	Comment	Signature	Date
15. As to pending administrative case: a) For lawyers Office of the Bar Confidant			_____ In-charge, BAR office
b) For judges and other lower court employees			_____ Chief, Docket and Clearance Div., Legal Office, OCA

An amendment or correction of the clearance request is in order, to incorporate a query on the sanctions imposed on the applicant for retirement benefits and to forestall similar irregularities relating to the grant of retirement benefits.

Atty. Pimentel seeks exoneration by contending that he acted in good faith when he signed the clearance request as OIC of the Docket Division. He explained that he attended to numerous duties and responsibilities entailing a lot of paper work as head of said division. The Docket Division processes around 36,000 clearances relating to SCSLA, JUSLA, bank, housing, Pag-Ibig, GSIS, cooperative, computer, motorcycle, handgun, and other kinds of loans; and likewise relating to travel abroad, study leave, passport, step increment, loyalty, promotion, retirement, and other personnel action. It issues around 24,000 certifications to bonding companies for purposes of accreditation. It evaluates around 1,200 administrative complaints to determine compliance with Rule 140 on the Discipline of Judges of Regular and Special Courts and Justices. In the process, he had to rely on the work done by his subordinates on the requests and papers submitted to his Division for appropriate action. In this case, Michelle P. Tuazon was in charge of the verification of the clearance request of Lantin and the preparation of the Clearance Certificate dated August 7, 2006, which was signed by Atty. Pimentel as OIC of the Docket Division. While Tuazon saw the "BF" notation in Judge Lantin's file that meant "benefits forfeited," she did not inform Atty. Pimentel about it. Indeed there is no evidence to show that Atty. Pimentel was ever informed of the BF notation in Judge Lantin's file. Thus, Atty. Pimentel cannot be faulted for signing the clearance, especially considering the defect in the question asked in the clearance request.

The Court, however, takes note that the Docket Division received a copy of the resolution in A.M. No. MTJ-98-1153 imposing forfeiture of benefits on Lantin. As OIC of the Docket Division, it is assumed that Atty. Pimentel has read said resolution and is aware of such forfeiture. We note also, however, that the resolution was issued in 2000, while the clearance request was presented to the Docket Division in 2006 or six (6) years

later. It is possible the information on Judge Lantin's case escaped the memory of Atty. Pimentel. The best repository of said data was still the file of the judge in the Docket Division. Unfortunately, Tuazon did not alert Atty. Pimentel of such entry. Thus, we find that Atty. Pimentel failed to observe the necessary caution in his supervisory duty, as he could have remembered that Lantin was sanctioned in A.M. No. MTJ-98-1153. He should be admonished and sternly warned that a repetition of the same or a similar act will be dealt with more severely.

Michelle P. Tuazon admitted that she prepared the certification of the Docket Clearance that Lantin had no pending case; and that she saw the BF notation that meant "**benefits forfeited**" on Lantin's file. She stated that she was aware that retiring judges filed money claims of their leave credits; that the Docket Division certified only "no pending" cases; and that their Division was not concerned with money claims. Nonetheless, she did not explain why. She did not disclose the information to his Chief, Atty. Pimentel, that there was a "BF" notation, when she was duty-bound to do so. She also admitted she did not verify the information against the Docket Book, which was within her reach. Tuazon is patently grossly negligent in her duty; and, without any mitigating circumstance in her favor, the OAS-SC recommends that she be dismissed from the service.

Eric J. Paglinawan, a casual employee, admitted that De Rivera asked for his help in routing Judge Lantin's clearance, a request to which he agreed. This was beyond the scope of his duties as utility worker. There is no proof he accepted money. For his unwarranted participation, his casual appointment shall no longer be renewed after its expiration on December 31, 2007.

It is a sad day for the highest Court to find out that, despite its all-out campaign to inculcate the strictest of codes of conduct in its judges and employees, this fraud has been committed, and there are still those who with criminal minds and greed for money would destroy the reputation of the very institution they have sworn to serve and protect. We most lament the audacity and the cunning with which the perpetrators have taken advantage

of a flaw in the office procedures, the weaknesses of peers as to make them succumb to *pakikisama* pressure, and the ostrich syndrome that prevails among long-tenured officials that has resulted in their incompetence and neglect of duties.

WHEREFORE, considering the factual findings of DCA Dela Cruz; the findings and recommendations in the in-depth investigation of the OAS-SC; and the rules, canons, and cases pertinent to this administrative case, we hereby resolve to:

1. **DISMISS from the service, with forfeiture of all benefits, Cecilia C. De Rivera and Rogelio J. Villapando, Jr.**, for Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service, violation of the *Code of Conduct for Court Personnel*, and violation of Sec. 3(b) of RA 3019 and of RA 6713;

2. **DISMISS Michelle P. Tuazon from the service with forfeiture of benefits except accrued leave credits**, for Gross Neglect of Duty;

3. **ADMONISH Hermogena F. Bayani** for being remiss in her duties as Chief of the Leave Division, with a stern warning that a repetition thereof shall be dealt with more severely;

4. **SUSPEND Rafael D. Azurin for three (3) months** for Gross Neglect of Duty mitigated by his length of service and for the reason that this is his first offense;

5. **CENSURE Fernando R. Inocencio and Amelia G. Serafico** for being remiss in their duties;

6. **ADMONISH Atty. Vener B. Pimentel** for being remiss in his duty as OIC of the Docket and Legal Divisions, with a stern warning that a repetition of the same or a similar act shall be dealt with more severely;

7. **ADMONISH Gloria C. Rosario** for being remiss in her duties as Chief of the Records Division, with a stern warning that a repetition of the same or a similar act will be dealt with more severely;

8. **ADMONISH Charlotte C. Labayani** for being remiss in her duty as Chief of the EWBD, OAS-OCA, with a stern warning that a repetition of the same or a similar act shall be dealt with more severely;

9. **Declare Valeriano P. Pobre, Joahna S. Iglesias, Rosita M. De Leon, Josephine E. Perlas, Amalia D. Alviso, Edgardo S. Quitevis, Eric J. Paglinawan, and Edison P. Vasquez without administrative liability**, for lack of showing that they have participated in the commission of the fraud and without proof of any negligence on their part; and

10. **Order the OCA** to institute the appropriate criminal and civil actions against Judge Lantin, Annie Key, Dolores Luzadas, Cecilia C. De Rivera, Rogelio J. Villapando, Jr. and their accomplices.

SO ORDERED.

Carpio (Acting, C.J.),[*] *Corona, Carpio Morales, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, Bersamin, Del Castillo,* and *Abad, JJ.*, concur.

Puno, C.J. and *Quisumbing, J.*, on official leave.

Chico-Nazario, J., on leave.

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[*] Acting Chief Justice, per Special Order No. 721 dated October 5, 2009.

EN BANC

[A.M. No. P-06-2620. October 9, 2009]
[Formerly OCA IPI No. 07-2517-P]

ANGELITA I. DONTOGAN, *complainant, vs.* **MARIO Q. PAGKANLUNGAN, JR., Process Server,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; GROSS MISCONDUCT, IMMORALITY AND VIOLATION OF A SUPREME COURT CIRCULAR, PERPETRATED IN CASE AT BAR; PENALTY. — Compounding respondent's acts of lasciviousness and drunkenness during office hours were, by his own admission, his smoking within court premises during office hours and leaving his post during office hours in violation of Supreme Court Administrative Circular No. 9-99. In *Merilo-Bedural v. Edroso*, the therein respondent court utility worker who committed lascivious acts against a fellow court employee was found by the Court guilty of "*gross* misconduct and immorality prejudicial to the best interests of the service" and was dismissed from the service. Respondent's gross misconduct and immorality as reflected above, not to mention his violation of a Supreme Court circular, merit his dismissal. The exacting standards of morality and decency expected of those in the service of the judiciary must be maintained, failing which the respect and confidence in the judiciary will be eroded.

APPEARANCES OF COUNSEL

Public Attorney's Office for complainant.
Fidel G. Santos for respondent.

D E C I S I O N

***PER CURIAM*:**

On November 30, 2006, herein respondent Mario Q. Pagkanlungan, Jr., Process Server of the Municipal Trial Court

(MTC) of Kayapa, Nueva Vizcaya, left the court premises at 11:55 a.m. and proceeded to his house to partake of lunch.

After taking lunch, before which he drank beer and/or brandy, respondent reported back for work. At around 4:00-5:00 p.m., after the court employees had left, except herein complainant Angelita Dontogan (Angelita), a court stenographer, respondent kissed Angelita on her lips which respondent sucked after telling her "I love you." The kiss was, by Angelita's account, "so hard and evidently prompted by lust it even left a red mark on [her] upper lip."

Hence, spawned Angelita's letter-complaint subject of the present administrative case, aside from her criminal complaint for acts of lasciviousness.

On the directive of the Office of the Court Administrator (OCA), respondent submitted his Comment which adopted his Counter-Affidavit filed before the Provincial Prosecutor's Office in the criminal complaint, stating that, *inter alia,* between 4:00 and 5:00 p.m. of November 30, 2006, complainant offered him *merienda* but he declined as he was still full, and that "nothing happened" between him and complainant.

The OCA,[1] acting on the complaint which it classified as one for "Misconduct (Acts of Lasciviousness),"[2] referred said complaint to the Bayombong, Nueva Vizcaya Regional Trial Court then Executive Judge Jose Godofredo M. Naui (Judge Naui) for investigation, report, and recommendation.

In his REPORT AND RECOMMENDATION,[3] Judge Naui observed:

> Both complain[an]t and respondent stuck to their version[s] of what happened. Thus, the issue boils down to a question of the word of complain[an]t against the word of respondent.

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[1] *Rollo,* p. 2.

[2] *Id.* at 1.

[3] *Id.* at 20-21.

Naturally, between the positive testimony of complainant and the negative testimony of respondent, the former shall prevail. Complainant clearly and definitely asserted that respondent kissed her with lust while respondent denied the allegations. The denial set up by respondent is a very weak defense, even feebler than alibi since there is an admission that he was actually at the scene at the time that the incident allegedly happened. Respondent claimed that between four and five in the afternoon, he was along the corridor, just a few steps away from where complainant was.

The principle in rape that when the victim says that she has been raped, she says in effect all that is necessary to show that rape has been committed, might as well apply to the instant case. There is no reason at all why a woman in that remote mountain town of Kayapa would perjure herself and impute such indecent conduct to a co-worker were it not the truth. Notably, respondent has not ascribed to complainant any improper motive. All he could say is that he had some misunderstanding with his former boarders who now have friendly relations with complainant. Respondent did not sufficiently explain what the misunderstanding was all about, how strained his relationship with the former boarders and how this has affected his relationship with his fellow court employees. In any case, he admitted that he had no misunderstanding with complainant, that they were civil, if not friendly, towards each other. In his counter-affidavit, he claimed that around four to [f]ive o'clock in the afternoon, complain[an]t offered him merienda. What motive then would complainant have against respondent?

Speaking of lack of improper motive, the same thing can be said of the witnesses of complainant. In her affidavit, Teresita Esconde, Clerk of Court of the MTC Kayapa, stated that after discussing with respondent his performance rating sometime after the complaint was filed, she asked him about the incident. He replied "*OO, inaamin ko hinalikan ko si Angie pero sa pisngi lang at hindi sa lips. Maliit na baga[y] lang [y]un, di naman ako nakapatay, di ako nagrape*." This is an admission against interest that can be taken against respondent. Respondent stated that he had good relationship with Esconde and there is no reason why she would falsely testify against him.

Considering the foregoing, the undersigned believes that there is truth to the accusation of complainant against respondent. What must have happened was respondent was drunk and when he was alone

with complainant inside the office, some evil spirit (probably in the liquor) impelled him to kiss the complainant. Respondent admitted that he and his boarder Juan Galvan [Galvan], the municipal agriculture officer, had drank a bottle of beer grande before lunch. However, Franklin R. Eliseo, contractual administrative aide of the municipal agriculture office, stated that "before eating out lunch, Mario Pagkanlungan offered us a drink and he then bought one (1) bottle of long neck Gran Matador Brandy and while drinking, our OJT's together with Julieta Sinakay our clerk were having their lunch." Eliseo added that from 1:00 PM to 5:00 PM, Sinakay, the two unnamed OJT's and he were the only ones in the municipal agriculture office. Respondent also admitted that he knew no motive for Eliseo to testify falsely against him. Although respondent and his witness Juan Galvan claimed that they drank just a single beer grande, it would appear that they actually finished off a whole bottle of whiskey. Eliseo was a subordinate of Galvan who had even ordered him to cook their lunch. There is no evidence at all why Eliseo would perjure himself against his own superior and respondent.

Robert Malcat, court interpreter stated [in] his affidavit that on at least three occasions, respondent came in drunk.

The testimony of Galvan cannot tilt the scales in favor of respondent. Galvan could not be considered a disinterested witness as he was a boarder of respondent. Moreover, he was a drinking partner of respondent, and as clearly implied in the affidavit of Eliseo, Galvan was nowhere [in] the office in the afternoon.[4] (Italics and underscoring supplied)

He accordingly recommended as follows:

[R]espondent be found **guilty of the charge against him**. His lascivious conduct was compounded by the fact that he was drunk during office hours, apparently not even the first time that [this] has happened. Respondent should be meted the proper penalty.[5] (Emphasis and underscoring supplied)

In its Memorandum dated January 20, 2009, the OCA, after noting Judge Naui's REPORT and further noting from the *rollo* that respondent had admitted that he smoked within the court

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[4] *Id.* at 116-118.

[5] *Id.* at 118.

premises during office hours, left the office for lunch at 11:55 A.M. instead of strictly at 12:00 noon, and reported back for work under the influence of liquor, recommended:

x x x that the instant case be **RE-DOCKETED** as a regular administrative matter and that respondent **MARIO Q. PAGKANLUNGAN, JR.,** Process Server, MTC Kayapa, Nueva Vizcaya, be found guilty of conduct unbecoming a court employee, violation of Supreme Court Administrative Circular No. 09-99 for smoking within court premises during the prescribed office hours, of leaving his post during the prescribed office hours and of reporting to office under the influence of liquor and be meted the penalty of **SUSPENSION** for six (6) months.[6] (Emphasis in the original; underscoring supplied)

The findings of the Investigating Judge, particularly that respondent's conduct was lascivious, are well-taken, as is the observation of the OCA.

Compounding respondent's acts of lasciviousness and drunkenness during office hours were, by his own admission, his smoking within court premises during office hours and leaving his post during office hours in violation of Supreme Court Administrative Circular No. 9-99.

In *Merilo-Bedural v. Edroso*,[7] the therein respondent court utility worker who committed lascivious acts against a fellow court employee was found by the Court guilty of "*gross* misconduct and immorality prejudicial to the best interests of the service"[8] and was dismissed from the service.

Respondent's gross misconduct and immorality as reflected above, not to mention his violation of a Supreme Court circular, merit his dismissal. The exacting standards of morality and decency expected of those in the service of the judiciary must be maintained, failing which the respect and confidence in the judiciary will be eroded.

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[6] *Id.* at 160.

[7] 396 Phil. 756 (2000).

[8] *Id.* at 763.

WHEREFORE, respondent Mario Q. Pagkanlungan, Jr., Process Server of the Municipal Trial Court of Kayapa, Nueva Vizcaya, is found *GUILTY* of Gross Misconduct and violation of Supreme Court Administrative Circular No. 09-99 and *DISMISSED* from the service with forfeiture of all retirement benefits and with prejudice to reemployment in any branch of the government, including government-owned and controlled corporations.

SO ORDERED.

Carpio (Acting C.J.), Corona, Carpio Morales, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, Bersamin, Del Castillo, and *Abad, JJ.,* concur.

Puno, C.J., Quisumbing, and *Chico-Nazario, JJ.,* on leave.

SECOND DIVISION

[A.M. No. P-09-2625. October 9, 2009]

ELISA C. RUSTE, *complainant, vs.* **CRISTINA Q. SELMA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; STENOGRAPHERS; REQUIRED TO TRANSCRIBE STENOGRAPHIC NOTES NOT LATER THAN TWENTY DAYS FROM THE TIME THE NOTES ARE TAKEN. — Administrative Circular No. 24-90 requires stenographers "to transcribe all stenographic notes and to attach the transcripts to the record of the case not later than twenty (20) days from the time the notes are taken. The attaching may be done by putting all said transcripts in a separate folder or envelope, which will than be joined to the record of the case."

Respondent's proffered excuse — that she had to prioritize the transcription of stenographic notes taken in other cases which were needed in the next scheduled hearings — does not impress, however. It bears noting that the stenographic notes subject of the request of Angela's counsel were taken in 2006 yet and had remained untranscribed even despite the lapse of more than one year when the present complaint was filed, and four months despite the payment of respondent's fees for the purpose. Her having had heavy work is not, as the OCA observed, an adequate excuse ". . . for her to be remiss in performing her duties as a public servant. Otherwise, every government employee charged with negligence and dereliction of duty would resort to the same convenient excuse to evade punishment, to the great prejudice of public service. Respondent could have asked for extension of time for the submission of the transcripts of stenographic notes, but she did not."

2. ID.; ID.; ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY, COMMITTED IN CASE AT BAR; PENALTY. — Respondent's guilt of simple neglect of duty — "the failure of an employee to give attention to a task expected of him," signifying a "disregard of a duty resulting from carelessness or indifference," is thus established. As the Court takes note of respondent's more than 22 years of service in the judiciary, the Court, instead of suspending her for one month and one day which is the minimum penalty which the charge calls for on the first offense, imposes on her a fine of Five Thousand (₱5,000) Pesos.

D E C I S I O N

CARPIO MORALES,[*] *J.*:

The trial of Criminal Case No. 19388, "*People of the Philippines v. Beethoven Rodriguez,*" for forcible abduction filed on complaint of Elisa C. Ruste, herein complainant, having been terminated on March 16, 2007, and the trial court, Branch 14 of the Regional Trial Court (RTC) of Zamboanga

[*] Designated Acting Chairperson per Special Order No. 690 dated September 4, 2009.

City, having directed the parties to submit their respective memoranda, complainant's lawyer paid on September 5, 2007 herein respondent Cristina Q. Selma, Stenographer III at the trial court, ₱2,000 representing payment of her services in transcribing her stenographic notes taken during the hearings of the case on September 6, 11 and December 5, 2006.

Respondent failed to transcribe those stenographic notes, however, despite several "follow ups," hence, complainant filed a sworn complaint dated January 28, 2008 charging respondent with dereliction of duty.

Admitting having failed to transcribe the stenographic notes, respondent claimed that she had to prioritize the transcription of stenographic notes taken in other cases as required in open court, the same being needed in the next scheduled hearings thereof; and having become aware that complainant filed the present complaint against her, she returned the ₱2,000 to complainant's secretary who acknowledged receipt thereof.

The Office of the Court Administrator (OCA) found respondent guilty of simple neglect of duty;[1] which is penalized with suspension for one month and one day to six months on the first offense.[2] However, the OCA, noting respondent's more than 22 years of service in the judiciary, recommended a lighter penalty consisting of a ₱2,000 fine.[3]

Administrative Circular No. 24-90 requires stenographers

> to transcribe all stenographic notes and to attach the transcripts to the record of the case not later than twenty (20) days from the time the notes are taken. The attaching may be done by putting all said transcripts in a separate folder or envelope, which will than be joined to the record of the case. (Underscoring supplied)

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[1] *Rollo*, p. 100.

[2] Uniform Rules on Administrative Cases in the Civil Service, Rule IV, Section 52 (B) (1).

[3] *Rollo*, pp. 100-101.

Respondent's proffered excuse — that she had to prioritize the transcription of stenographic notes taken in other cases which were needed in the next scheduled hearings — does not impress, however. It bears noting that the stenographic notes subject of the request of Angela's counsel were taken in 2006 yet and had remained untranscribed even despite the lapse of more than one year when the present complaint was filed, and four months despite the payment of respondent's fees for the purpose. Her having had heavy work is not, as the OCA observed, an adequate excuse

> . . . for her to be remiss in performing her duties as a public servant. Otherwise, every government employee charged with negligence and dereliction of duty would resort to the same convenient excuse to evade punishment, to the great prejudice of public service. Respondent could have asked for extension of time for the submission of the transcripts of stenographic notes, but she did not. (Underscoring supplied)

Respondent's guilt of simple neglect of duty — "the failure of an employee to give attention to a task expected of him,"[4] signifying a "disregard of a duty resulting from carelessness or indifference," is thus established.[5]

As the Court takes note of respondent's more than 22 years of service in the judiciary, the Court, instead of suspending her for one month and one day which is the minimum penalty which the charge calls for on the first offense,[6] imposes on her a fine of Five Thousand (₱5,000) Pesos.[7]

WHEREFORE, respondent, Cristina Q. Selma, is found *GUILTY* of simple neglect of duty and is *FINED* Five Thousand

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[4] *Inting v. Borja,* A.M. No. P-03-1707, July 27, 2004, 435 SCRA 269, 274.

[5] *Ibid*.

[6] *Vide Zamudio v. Auro,* A.M. No. P-04-1793, December 8, 2008, 573 SCRA 178, 187 (length of service considered a mitigating circumstance).

[7] *Ang Kek Chen v. Javalera-Sulit,* A.M. No. MTJ-06-1649, September 12, 2007, 533 SCRA 11, 26-27.

(₱5,000) Pesos. She is *STERNLY WARNED* that a repetition of the same or similar act will merit a more severe sanction.

SO ORDERED.

Corona,[**] *Nachura,*[***] *Brion,* and *Abad, JJ.*, concur.

SECOND DIVISION

[G.R. No. 151903. October 9, 2009]

MANUEL GO CINCO and ARACELI S. GO CINCO, *petitioners, vs.* **COURT OF APPEALS, ESTER SERVACIO and MAASIN TRADERS LENDING CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BY *CERTIORARI*; QUESTION OF LAW; PRESENT IN CASE AT BAR.— Our review of the records shows that there are no factual questions involved in this case; the ultimate facts necessary for the resolution of the case already appear in the records. The RTC and the CA decisions differed not so much on the findings of fact, but on the conclusions derived from these factual findings. The correctness of the conclusions derived from factual findings raises legal questions when the conclusions are so linked to, or are inextricably intertwined with, the appreciation of the applicable law that the case requires, as in the present case. The petition raises the issue of *whether the loan due the MTLC had been extinguished;* this is a question of law that this Court can fully address and settle in an appeal by *certiorari*.

[**] Additional member per Special Order No. 718 dated October 2, 2009.

[***] Additional member per Special Order No. 730 dated October 5, 2009.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; PAYMENT OR PERFORMANCE; EXPLAINED.— Obligations are extinguished, among others, by payment or performance, the mode most relevant to the factual situation in the present case. Under Article 1232 of the Civil Code, payment means not only the delivery of money but also the performance, in any other manner, of an obligation. Article 1233 of the Civil Code states that "a debt shall not be understood to have been paid unless the thing or service in which the obligation consists has been completely delivered or rendered, as the case may be." In contracts of loan, the debtor is expected to deliver the sum of money due the creditor. These provisions must be read in relation with the other rules on payment under the Civil Code, which rules impliedly require acceptance by the creditor of the payment in order to extinguish an obligation.

3. ID.; ID.; MORTGAGE; A SUBSEQUENT MORTGAGE IS RECOGNIZED AS VALID BY LAW AND BY COMMERCIAL PRACTICE, SUBJECT TO THE PRIOR RIGHTS OF PREVIOUS MORTGAGES.— There is nothing legally objectionable in a mortgagor's act of taking a second or subsequent mortgage on a property already mortgaged; a subsequent mortgage is recognized as valid by law and by commercial practice, subject to the prior rights of previous mortgages. Section 4, Rule 68 of the 1997 Rules of Civil Procedure on the disposition of the proceeds of sale after foreclosure actually requires the payment of the proceeds to, among others, the junior encumbrancers in the order of their priority.

4. ID.; ID.; ID.; A STIPULATION FORBIDDING THE OWNER FROM ALIENATING THE IMMOVABLE MORTGAGED IS VOID.— Under Article 2130 of the Civil Code, a stipulation forbidding the owner from alienating the immovable mortgaged is considered void. If the mortgagor-owner is allowed to convey the entirety of his interests in the mortgaged property, reason dictates that the lesser right to encumber his property with other liens must also be recognized.

5. ID.; ID.; EXTINGUISHMENT OF OBLIGATIONS; PAYMENT OR PERFORMANCE; TENDER OF PAYMENT AND

CONSIGNATION; UNJUST REFUSAL TO ACCEPT PAYMENT, NOT EQUIVALENT TO PAYMENT; CASE AT BAR.— While Ester's refusal was unjustified and unreasonable, we cannot agree with Manuel's position that this refusal had the effect of payment that extinguished his obligation to MTLC. Article 1256 is clear and unequivocal on this point when it provides that — "ARTICLE 1256. If the creditor to whom tender of payment has been made **refuses without just cause to accept it**, the debtor shall be released from responsibility by the consignation of the thing or sum due." In short, a refusal without just cause is not equivalent to payment; to have the effect of payment and the consequent extinguishment of the obligation to pay, the law requires the companion acts of tender of payment and consignation.

6. ID.; ID.; ID.; ID.; ID.; TENDER OF PAYMENT, DEFINED; TENDER AND CONSIGNATION HAVE THE EFFECT OF PAYMENT.— Tender of payment, as defined in *Far East Bank and Trust Company v. Diaz Realty, Inc.*, is the definitive act of offering the creditor what is due him or her, together with the demand that the creditor accept the same. When a creditor refuses the debtor's tender of payment, the law allows the consignation of the thing or the sum due. Tender and consignation have the effect of payment, as by consignation, the thing due is deposited and placed at the disposal of the judicial authorities for the creditor to collect.

7. ID.; ID.; NON-PAYMENT OF INTEREST AND AWARD OF DAMAGES, JUSTIFIED IN CASE AT BAR.— [U]nder the circumstances, the spouses Go Cinco have undertaken, at the very least, *the equivalent of a tender of payment* that cannot but have legal effect. Since payment was available and was unjustifiably refused, justice and equity demand that the spouses Go Cinco **be freed from the obligation to pay interest on the outstanding amount from the time the unjust refusal took place;** they would not have been liable for any interest from the time tender of payment was made if the payment had only been accepted. Under Article 19 of the Civil Code, they should likewise be entitled to damages, as the unjust refusal was effectively an abusive act contrary to the duty to act with honesty and good faith in the exercise of rights and the fulfillment of duty.

8. ID.; DAMAGES; ACTUAL DAMAGES; UNSUBSTANTIATED CLAIM OF EXPECTED PROFITS CANNOT BE THE BASIS FOR A CLAIM FOR DAMAGES; CASE AT BAR.— The spouses Go Cinco were unable to substantiate the amount they claimed as unrealized profits; there was only their bare claim that the excess could have been invested in their other businesses. Without more, this claim of expected profits is at best speculative and cannot be the basis for a claim for damages. In *Lucas v. Spouses Royo*, we declared that: "In determining actual damages, the Court cannot rely on speculation, conjecture or guesswork as to the amount. Actual and compensatory damages are those recoverable because of **pecuniary loss** in business, trade, property, profession, job or occupation and the same **must be sufficiently proved, otherwise, if the proof is flimsy and unsubstantiated, no damages will be given.**"

9. ID.; ID.; MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES; AWARDED WHERE ABUSE OF RIGHTS IS ESTABLISHED; CASE AT BAR.— Ester's act of refusing payment was motivated by bad faith as evidenced by the utter lack of substantial reasons to support it. Her unjust refusal, in her behalf and for the MTLC which she represents, amounted to an abuse of rights; they acted in an oppressive manner and, thus, are liable for moral and exemplary damages. We nevertheless reduce the ₱1,000,000.00 to ₱100,000.00 as the originally awarded amount for moral damages is plainly excessive. We affirm the grant of exemplary damages by way of example or correction for the public good in light of the same reasons that justified the grant of moral damages. As the spouses Go Cinco were compelled to litigate to protect their interests, they are entitled to payment of 10% of the total amount of awarded damages as attorney's fees and expenses of litigation.

APPEARANCES OF COUNSEL

Godofredo L. Cualteros for petitioners.
Fajardo & De Los Reyes Law Firm for private respondents.

D E C I S I O N

BRION, *J.*:

Before the Court is a petition for review on *certiorari*[1] filed by petitioners, spouses Manuel and Araceli Go Cinco (collectively, the *spouses Go Cinco*), assailing the decision[2] dated June 22, 2001 of the Court of Appeals (*CA*) in CA-G.R. CV No. 47578, as well as the resolution[3] dated January 25, 2002 denying the spouses Go Cinco's motion for reconsideration.

THE FACTUAL ANTECEDENTS

In December 1987, petitioner Manuel Cinco (*Manuel*) obtained a commercial loan in the amount of ₱700,000.00 from respondent Maasin Traders Lending Corporation (*MTLC*). The loan was evidenced by a promissory note dated December 11, 1987,[4] and secured by a real estate mortgage executed on December 15, 1987 over the spouses Go Cinco's land and 4-storey building located in Maasin, Southern Leyte.

Under the terms of the promissory note, the ₱700,000.00 loan was subject to a monthly interest rate of 3% or 36% per annum and was payable within a term of 180 days or 6 months, renewable for another 180 days. As of July 16, 1989, Manuel's outstanding obligation with MTLC amounted to ₱1,071,256.66, which amount included the principal, interest, and penalties.[5]

To be able to pay the loan in favor of MTLC, the spouses Go Cinco applied for a loan with the Philippine National Bank, Maasin Branch (*PNB* or *the bank*) and offered as collateral the

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure. *Rollo*, pp. 5-32.

[2] Penned by Associate Justice Renato Dacudao (retired), with Associate Justice Romeo Callejo, Jr., who retired as Member of this Court, and Associate Justice Sergio Pestaño, concurring; *id.* at 75-84.

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

[4] *Id.* at 46.

[5] *Id.* at 49.

same properties they previously mortgaged to MTLC. The PNB approved the loan application for ₱1.3 Million[6] through a letter dated July 8, 1989; the release of the amount, however, was conditioned on the cancellation of the mortgage in favor of MTLC.

On July 16, 1989, Manuel went to the house of respondent Ester Servacio (*Ester*), MTLC's President, to inform her that there was money with the PNB for the payment of his loan with MTLC. Ester then proceeded to the PNB to verify the information, but she claimed that the bank's officers informed her that Manuel had no pending loan application with them. When she told Manuel of the bank's response, Manuel assured her there was money with the PNB and promised to execute a document that would allow her to collect the proceeds of the PNB loan.

On July 20, 1989, Manuel executed a Special Power of Attorney[7] (*SPA*) authorizing Ester to collect the proceeds of his PNB loan. Ester again went to the bank to inquire about the proceeds of the loan. This time, the bank's officers confirmed the existence of the ₱1.3 Million loan, but they required Ester to first sign a deed of release/cancellation of mortgage before they could release the proceeds of the loan to her. Outraged that the spouses Go Cinco used the same properties mortgaged to MTLC as collateral for the PNB loan, Ester refused to sign the deed and did not collect the ₱1.3 Million loan proceeds.

As the MTLC loan was already due, Ester instituted foreclosure proceedings against the spouses Go Cinco on July 24, 1989.

To prevent the foreclosure of their properties, the spouses Go Cinco filed an action for specific performance, damages, and preliminary injunction[8] before the Regional Trial Court (*RTC*), Branch 25, Maasin, Southern Leyte. The spouses Go Cinco alleged that foreclosure of the mortgage was no longer proper

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[6] The net proceeds of the PNB loan were ₱1,203,685.17.

[7] *Rollo,* p. 47.

[8] Docketed as Civil Case No. R-2575.

as there had already been settlement of Manuel's obligation in favor of MTLC. They claimed that the assignment of the proceeds of the PNB loan amounted to the payment of the MTLC loan. Ester's refusal to sign the deed of release/cancellation of mortgage and to collect the proceeds of the PNB loan were, to the spouses Go Cinco, completely unjustified and entitled them to the payment of damages.

Ester countered these allegations by claiming that she had not been previously informed of the spouses Go Cinco's plan to obtain a loan from the PNB and to use the loan proceeds to settle Manuel's loan with MTLC. She claimed that she had no explicit agreement with Manuel authorizing her to *apply* the proceeds of the PNB loan to Manuel's loan with MTLC; the SPA merely authorized her to *collect* the proceeds of the loan. She thus averred that it was unfair for the spouses Go Cinco to require the release of the mortgage to MTLC when no actual payment of the loan had been made.

In a decision dated August 16, 1994,[9] the RTC ruled in favor of the spouses Go Cinco. The trial court found that the evidence sufficiently established the existence of the PNB loan whose proceeds were available to satisfy Manuel's obligation with MTLC, and that Ester unjustifiably refused to collect the amount. Creditors, it ruled, cannot unreasonably prevent payment or performance of obligation to the damage and prejudice of debtors who may stand liable for payment of higher interest rates.[10] After finding MTLC and Ester liable for abuse of rights, the RTC ordered the award of the following amounts to the spouses Go Cinco:

(a) ₱1,044,475.15 plus 535.63 per day hereafter, representing loss of savings on interest, by way of actual or compensatory damages, if defendant corporation insists on the original 3% monthly interest rate;
(b) ₱100,000.00 as unrealized profit;
(c) ₱1,000,000.00 as moral damages;

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[9] Penned by Judge Numeriano Avila, Jr. *Rollo*, pp. 60-73.

[10] *Id.* at 67.

(d) ₱20,000.00 as exemplary damages;
(e) ₱22,000.00 as litigation expenses; and
(f) 10% of the total amount as attorney's fees plus costs.[11]

Through an appeal with the CA, MTLC and Ester successfully secured a reversal of the RTC's decision. Unlike the trial court, the appellate court found it significant that there was no explicit agreement between Ester and the spouses Go Cinco for the cancellation of the MTLC mortgage in favor of PNB to facilitate the release and collection by Ester of the proceeds of the PNB loan. The CA read the SPA as merely authorizing Ester to *withdraw* the proceeds of the loan. As Manuel's loan obligation with MTLC remained unpaid, the CA ruled that no valid objection could be made to the institution of the foreclosure proceedings. Accordingly, it dismissed the spouses Go Cinco's complaint. From this dismissal, the spouses Go Cinco filed the present appeal by *certiorari*.

THE PETITION

The spouses Go Cinco impute error on the part of the CA for its failure to consider their acts as equivalent to payment that extinguished the MTLC loan; their act of applying for a loan with the PNB was indicative of their good faith and honest intention to settle the loan with MTLC. They contend that the creditors have the correlative duty to accept the payment.

The spouses Go Cinco charge MTLC and Ester with bad faith and ill-motive for unjustly refusing to collect the proceeds of the loan and to execute the deed of release of mortgage. They assert that Ester's justifications for refusing the payment were flimsy excuses so she could proceed with the foreclosure of the mortgaged properties that were worth more than the amount due to MTLC. Thus, they conclude that the acts of MTLC and of Ester amount to abuse of rights that warrants the award of damages in their (spouses Go Cinco's) favor.

In refuting the claims of the spouses Go Cinco, MTLC and Ester raise the same arguments they raised before the RTC and

[11] *Id.* at 73.

the CA. They claim that they were not aware of the loan and the mortgage to PNB, and that there was no agreement that the proceeds of the PNB loan were to be used to settle Manuel's obligation with MTLC. Since the MTLC loan remained unpaid, they insist that the institution of the foreclosure proceedings was proper. Additionally, MTLC and Ester contend that the present petition raised questions of fact that cannot be addressed in a Rule 45 petition.

THE COURT'S RULING

The Court finds the petition meritorious.

Preliminary Considerations

Our review of the records shows that there are no factual questions involved in this case; the ultimate facts necessary for the resolution of the case already appear in the records. The RTC and the CA decisions differed not so much on the findings of fact, but on the conclusions derived from these factual findings. The correctness of the conclusions derived from factual findings raises legal questions when the conclusions are so linked to, or are inextricably intertwined with, the appreciation of the applicable law that the case requires, as in the present case.[12] The petition raises the issue of *whether the loan due the MTLC had been extinguished;* this is a question of law that this Court can fully address and settle in an appeal by *certiorari*.

Payment as Mode of Extinguishing Obligations

Obligations are extinguished, among others, by payment or performance,[13] the mode most relevant to the factual situation in the present case. Under Article 1232 of the Civil Code, payment means not only the delivery of money but also the performance, in any other manner, of an obligation. Article 1233

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[12] See *Philippine American General Insurance Company v. Pks Shipping Company*, 449 Phil. 223 (2003).

[13] CIVIL CODE, Article 1231 (1).

of the Civil Code states that "a debt shall not be understood to have been paid unless the thing or service in which the obligation consists has been completely delivered or rendered, as the case may be." In contracts of loan, the debtor is expected to deliver the sum of money due the creditor. These provisions must be read in relation with the other rules on payment under the Civil Code,[14] which rules impliedly require acceptance by the creditor of the payment in order to extinguish an obligation.

In the present case, Manuel sought to pay Ester by authorizing her, through an SPA, to collect the proceeds of the PNB loan — an act that would have led to payment if Ester had collected the loan proceeds as authorized. Admittedly, the delivery of

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[14] The pertinent provisions of the Civil Code on Payment are:

Art. 1235. When the obligee accepts the performance, knowing its incompleteness or irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with.

Art. 1236. The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary.

Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

Art. 1238. Payment made by a third person who does not intend to be reimbursed by the debtor is deemed to be a donation, which requires the debtor's consent. But the payment is in any case valid as to the creditor who has accepted it.

Art. 1244. The debtor of a thing cannot compel the creditor to receive a different one, although the latter may be of the same value as, or more valuable than that which is due.

In obligations to do or not to do, an act or forbearance cannot be substituted by another act or forbearance against the obligee's will.

Art. 1248. Unless there is an express stipulation to that effect, the creditor cannot be compelled partially to receive the prestations in which the obligation consists. Neither may the debtor be required to make partial payments.

However, when the debt is in part liquidated and in part unliquidated, the creditor may demand and the debtor may effect the payment of the former without waiting for the liquidation of the latter.

the SPA was not, strictly speaking, a delivery of the sum of money due to MTLC, and Ester could not be compelled to accept it as payment based on Article 1233. Nonetheless, the SPA stood as an authority to collect the proceeds of the already-approved PNB loan that, upon receipt by Ester, would have constituted as payment of the MTLC loan.[15] Had Ester presented the SPA to the bank and signed the deed of release/cancellation of mortgage, the delivery of the sum of money would have been effected and the obligation extinguished.[16] As the records show, Ester refused to collect and allow the cancellation of the mortgage.

Under these facts, Manuel posits two things: *first*, that Ester's refusal was based on completely unjustifiable grounds; and *second*, that the refusal was equivalent to payment that led to the extinguishment of the obligation.

a. *Unjust Refusal to Accept Payment*

After considering Ester's arguments, we agree with Manuel that Ester's refusal of the payment was without basis.

Ester refused to accept the payment because the bank required her to first sign a deed of release/cancellation of the mortgage before the proceeds of the PNB loan could be released. As a prior mortgagee, she claimed that the spouses Go Cinco should have obtained her consent before offering the properties already mortgaged to her as security for the PNB loan. Moreover, Ester alleged that the SPA merely authorized her to collect the proceeds of the loan; there was no explicit agreement that the MTLC loan would be paid out of the proceeds of the PNB loan.

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[15] We apply here, by parity of reasoning, the principle adopted in payment using mercantile documents. Payment by means of mercantile documents like checks and promissory notes in lieu of the sum of money due does not extinguish the obligation until they have been accepted and cashed by the creditor. See *Crystal v. Court of Appeals*, 159 Phil. 557 (1975).

[16] The PNB's officers testified that had the required document (deed of release/cancellation of mortgage) been submitted, the bank could have released the loan proceeds. *Rollo*, p. 81.

There is nothing legally objectionable in a mortgagor's act of taking a second or subsequent mortgage on a property already mortgaged; a subsequent mortgage is recognized as valid by law and by commercial practice, subject to the prior rights of previous mortgages. Section 4, Rule 68 of the 1997 Rules of Civil Procedure on the disposition of the proceeds of sale after foreclosure actually requires the payment of the proceeds to, among others, the junior encumbrancers in the order of their priority.[17] Under Article 2130 of the Civil Code, a stipulation forbidding the owner from alienating the immovable mortgaged is considered void. If the mortgagor-owner is allowed to convey the entirety of his interests in the mortgaged property, reason dictates that the lesser right to encumber his property with other liens must also be recognized. Ester, therefore, could not validly require the spouses Go Cinco to first obtain her consent to the PNB loan and mortgage. Besides, with the payment of the MTLC loan using the proceeds of the PNB loan, the mortgage in favor of the MTLC would have naturally been cancelled.

We find it improbable for Ester to claim that there was no agreement to apply the proceeds of the PNB loan to the MTLC loan. Beginning July 16, 1989, Manuel had already expressed intent to pay his loan with MTLC and thus requested for an updated statement of account. Given Manuel's express intent of fully settling the MTLC loan and of paying through the PNB loan he would secure (and in fact secured), we also cannot give credit to the claim that the SPA only allowed Ester to collect the proceeds of the PNB loan, without giving her the accompanying authority, although verbal, to apply these proceeds to the MTLC loan. Even Ester's actions belie her claim as she in fact even went to the PNB to collect the proceeds. In sum, the surrounding circumstances of the case simply do not support Ester's position.

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[17] SEC. 4. Disposition of proceeds of sale.—The amount realized from the foreclosure sale of the mortgaged property shall, after deducting the costs of the sale, be paid to the person foreclosing the mortgage, and when there shall be any balance or residue, after paying off the mortgage debt due, the same shall be paid to junior encumbrancers in the order of their priority, to be ascertained by the court, or if there be no such encumbrancers or there be a balance or residue after payment to them, then to the mortgagor or his duly authorized agent, or to the person entitled to it.

b. *Unjust Refusal Cannot be Equated to Payment*

While Ester's refusal was unjustified and unreasonable, we cannot agree with Manuel's position that this refusal had the effect of payment that extinguished his obligation to MTLC. Article 1256 is clear and unequivocal on this point when it provides that —

> ARTICLE 1256. If the creditor to whom tender of payment has been made **refuses without just cause to accept it**, the debtor shall be released from responsibility by the consignation of the thing or sum due. [Emphasis supplied.]

In short, a refusal without just cause is not equivalent to payment; to have the effect of payment and the consequent extinguishment of the obligation to pay, the law requires the companion acts of tender of payment and consignation.

Tender of payment, as defined in *Far East Bank and Trust Company v. Diaz Realty, Inc.*,[18] is the definitive act of offering the creditor what is due him or her, together with the demand that the creditor accept the same. When a creditor refuses the debtor's tender of payment, the law allows the consignation of the thing or the sum due. Tender and consignation have the effect of payment, as by consignation, the thing due is deposited and placed at the disposal of the judicial authorities for the creditor to collect.[19]

A sad twist in this case for Manuel was that he could not avail of consignation to extinguish his obligation to MTLC, as PNB would not release the proceeds of the loan unless and until Ester had signed the deed of release/cancellation of mortgage, which she unjustly refused to do. Hence, to compel Ester to accept the loan proceeds and to prevent their mortgaged properties from being foreclosed, the spouses Go Cinco found it necessary to institute the present case for specific performance and damages.

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[18] 416 Phil. 147 (2001).

[19] CIVIL CODE, Article 1258.

c. *Effects of Unjust Refusal*

Under these circumstances, we hold that while no completed tender of payment and consignation took place sufficient to constitute payment, the spouses Go Cinco duly established that they have legitimately secured a means of paying off their loan with MTLC; they were only prevented from doing so by the unjust refusal of Ester to accept the proceeds of the PNB loan through her refusal to execute the release of the mortgage on the properties mortgaged to MTLC. In other words, MTLC and Ester in fact prevented the spouses Go Cinco from the exercise of their right to secure payment of their loan. No reason exists under this legal situation why we cannot compel MTLC and Ester: (1) to release the mortgage to MTLC as a condition to the release of the proceeds of the PNB loan, upon PNB's acknowledgment that the proceeds of the loan are ready and shall forthwith be released; and (2) to accept the proceeds, *sufficient to cover the total amount of the loan to MTLC*, as payment for Manuel's loan with MTLC.

We also find that under the circumstances, the spouses Go Cinco have undertaken, at the very least, *the equivalent of a tender of payment* that cannot but have legal effect. Since payment was available and was unjustifiably refused, justice and equity demand that the spouses Go Cinco be **freed from the obligation to pay interest on the outstanding amount from the time the unjust refusal took place**;[20] they would not have been liable for any interest from the time tender of payment was made if the payment had only been accepted. Under Article 19 of the Civil Code, they should likewise be entitled to damages, as the unjust refusal was effectively an abusive act contrary to the duty to act with honesty and good faith in the exercise of rights and the fulfillment of duty.

For these reasons, we delete the amounts awarded by the RTC to the spouses Go Cinco (₱1,044,475.15, plus ₱563.63

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[20] *Spouses Biesterbos v. Court of Appeals and Bartlome*, G.R. No. 152529, September 22, 2003, 411 SCRA 396, citing *Araneta, Inc. v. De Paterno and Vidal*, 91 Phil. 786 (1952).

per month) representing *loss of savings on interests* for lack of legal basis. These amounts were computed based on the difference in the interest rates charged by the MTLC (36% per annum) and the PNB (17% to 18% per annum), from the date of tender of payment up to the time of the promulgation of the RTC decision. The trial court failed to consider the effects of a tender of payment and erroneously declared that MTLC can charge interest at the rate of only 18% per annum — the same rate that PNB charged, not the 36% interest rate that MTLC charged; the RTC awarded the difference in the interest rates as actual damages.

As part of the actual and compensatory damages, the RTC also awarded ₱100,000.00 to the spouses Go Cinco representing *unrealized profits*. Apparently, if the proceeds of the PNB loan (₱1,203,685.17) had been applied to the MTLC loan (₱1,071,256.55), there would have been a balance of ₱132,428.62 left, which amount the spouses Go Cinco could have invested in their businesses that would have earned them a profit of at least ₱100,000.00.

We find no factual basis for this award. The spouses Go Cinco were unable to substantiate the amount they claimed as unrealized profits; there was only their bare claim that the excess could have been invested in their other businesses. Without more, this claim of expected profits is at best speculative and cannot be the basis for a claim for damages. In *Lucas v. Spouses Royo*,[21] we declared that:

> In determining actual damages, the Court cannot rely on speculation, conjecture or guesswork as to the amount. Actual and compensatory damages are those recoverable because of **pecuniary loss** in business, trade, property, profession, job or occupation and the same **must be sufficiently proved, otherwise, if the proof is flimsy and unsubstantiated, no damages will be given**. [Emphasis supplied.]

We agree, however, that there was basis for the award of moral and exemplary damages and attorney's fees.

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[21] 398 Phil. 400 (2000).

Ester's act of refusing payment was motivated by bad faith as evidenced by the utter lack of substantial reasons to support it. Her unjust refusal, in her behalf and for the MTLC which she represents, amounted to an abuse of rights; they acted in an oppressive manner and, thus, are liable for moral and exemplary damages.[22] We nevertheless reduce the ₱1,000,000.00 to ₱100,000.00 as the originally awarded amount for moral damages is plainly excessive.

We affirm the grant of exemplary damages by way of example or correction for the public good in light of the same reasons that justified the grant of moral damages.

As the spouses Go Cinco were compelled to litigate to protect their interests, they are entitled to payment of 10% of the total amount of awarded damages as attorney's fees and expenses of litigation.

WHEREFORE, we *GRANT* the petitioners' petition for review on *certiorari*, and *REVERSE* the decision of June 22, 2001 of the Court of Appeals in CA-G.R. CV No. 47578, as well as the resolution of January 25, 2002 that followed. We *REINSTATE* the decision dated August 16, 1994 of the Regional Trial Court, Branch 25, Maasin, Southern Leyte, with the following *MODIFICATIONS*:

(1) The respondents are hereby directed to accept the proceeds of the spouses Go Cinco's PNB loan, if still available, and to consent to the release of the mortgage on the property given as security for the loan upon PNB's acknowledgment that the proceeds of the loan, sufficient to cover the total indebtedness to respondent Maasin Traders Lending Corporation computed as of June 20, 1989, shall forthwith be released;

(2) The award for loss of savings and unrealized profit is deleted;

(3) The award for moral damages is reduced to ₱100,000.00; and

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[22] CIVIL CODE, Articles 2220 and 2232.

(4) The awards for exemplary damages, attorney's fees, and expenses of litigation are retained.

The awards under (3) and (4) above shall be deducted from the amount of the outstanding loan due the respondents as of June 20, 1989. Costs against the respondents.

SO ORDERED.

Corona,[*] *Carpio Morales (Acting Chairperson),*[**] *Nachura,*[***] and *Abad, JJ.,* concur.

THIRD DIVISION

[G.R. No. 167764. October 9, 2009]

VICENTE FOZ, JR. and DANNY G. FAJARDO, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; VENUE IN CRIMINAL CASES IS AN ESSENTIAL ELEMENT OF JURISDICTION.— Venue in criminal cases is an essential element of jurisdiction. The Court held in *Macasaet v. People* that: It is a fundamental rule that for jurisdiction to be acquired by courts in criminal cases offense should have been committed

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[*] Designated additional Member of the Second Division per Special Order No. 718 dated October 2, 2009.

[**] Designated Acting Chairperson of the Second Division per Special Order No. 690 dated September 4, 2009.

[***] Designated additional Member of the Second Division per Special Order No. 730 dated October 5, 2009.

or any one of its essential ingredients took place within the territorial jurisdiction of the court. Territorial jurisdiction in criminal cases is the territory where the court has jurisdiction to take cognizance or to try the offense allegedly committed therein by the accused. Thus, it cannot take jurisdiction over a person charged with an offense allegedly committed outside of that limited territory. Furthermore, **the jurisdiction of a court over the criminal case is determined by the allegation in the complaint or information. And once it is so shown, the court may validly take cognizance of the case.** However, if the evidence adduced during the trial show that the offense was committed somewhere else, the court should dismiss the action for want of jurisdiction.

2. CRIMINAL LAW; LIBEL; ARTICLE 360 OF THE REVISED PENAL CODE, AS AMENDED BY REPUBLIC ACT NO. 4363 PROVIDES SPECIFIC RULES AS TO THE VENUE IN CASES OF WRITTEN DEFAMATION.— Article 360 of the Revised Penal Code, as amended by Republic Act No. 4363, provides the specific rules as to the venue in cases of written defamation, to wit: Article 360. *Persons responsible*.— Any person who shall publish, exhibit or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same. The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamations contained therein to the same extent as if he were the author thereof. The criminal action and civil action for damages in cases of written defamations, as provided for in this chapter shall be filed simultaneously or separately with the court of first instance of the **province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense.**

3. ID.; ID.; SINCE THE COMPLAINANT IS A PRIVATE INDIVIDUAL AT THE TIME OF THE PUBLICATION OF THE ALLEGED LIBELOUS ARTICLE, THE VENUE OF THE LIBEL CASE MAY BE IN THE PROVINCE OR CITY WHERE THE LIBELOUS ARTICLE WAS PRINTED AND FIRST PUBLISHED, OR IN THE PROVINCE WHERE COMPLAINANT ACTUALLY RESIDED AT THE TIME OF THE COMMISSION OF THE OFFENSE.— Applying Article

360 to this case, since Dr. Portigo is a private individual at the time of the publication of the alleged libelous article, the venue of the libel case may be in the province or city where the libelous article was printed and first published, or in the province where Dr. Portigo actually resided at the time of the commission of the offense. The relevant portion of the Information for libel filed in this case which for convenience the Court quotes again, to wit: That on or about the 5th day of July, 1994 in the City of Iloilo, Philippines and within the jurisdiction of this court, both the accused as columnists and Editor-Publisher, respectively, of Panay News, a daily publication with a considerable circulation in the City of Iloilo and throughout the region, did then and there willfully, unlawfully and feloniously with malicious intent of impeaching the virtue, honesty, integrity and reputation of Dr. Edgar Portigo, a physician and medical practitioner in Iloilo City, and with the malicious intent of injuring and exposing said Dr. Edgar Portigo to public hatred, contempt and ridicule, write and publish in the regular issue of said daily publication on July 5, 1994, a certain article entitled "MEET DR. PORTIGO, COMPANY PHYSICIAN…." The allegation in the Information that "*Panay News*, a daily publication with a considerable circulation in the City of Iloilo and throughout the region" only showed that Iloilo was the place where *Panay News* was in considerable circulation but did not establish that the said publication was printed and first published in Iloilo City.

4. ID.; ID.; THE INFORMATION AGAINST PETITIONERS FAILED TO ALLEGE THE RESIDENCE OF COMPLAINANT; WHILE THE INFORMATION ALLEGES THAT COMPLAINANT IS A PHYSICIAN AND MEDICAL PRACTITIONER IN ILOILO CITY, SUCH ALLEGATION DID NOT CLEARLY AND POSITIVELY INDICATE THAT HE WAS ACTUALLY RESIDING IN ILOILO CITY AT THE TIME OF THE COMMISSION OF THE OFFENSE.— Article 360 of the Revised Penal Code as amended provides that a private individual may also file the libel case in the RTC of the province where he actually resided at the time of the commission of the offense. The Information filed against petitioners failed to allege the residence of Dr. Portigo. While the Information alleges that "Dr. Edgar Portigo is a physician and medical practitioner in Iloilo City," such allegation did

not clearly and positively indicate that he was actually residing in Iloilo City at the time of the commission of the offense. It is possible that Dr. Portigo was actually residing in another place.

5. ID.; ID.; THE REGIONAL TRIAL COURT OF ILOILO CITY HAD NO JURISDICTION TO HEAR THE LIBEL CASE CONSIDERING THAT THE INFORMATION FAILED TO ALLEGE THE VENUE REQUIREMENTS UNDER ARTICLE 360 OF THE REVISED PENAL CODE.—Settled is the rule that jurisdiction of a court over a criminal case is determined by the allegations of the complaint or information, and the offense must have been committed or any one of its essential ingredients took place within the territorial jurisdiction of the court. Considering that the Information failed to allege the venue requirements for a libel case under Article 360, the Court finds that the RTC of Iloilo City had no jurisdiction to hear this case. Thus, its decision convicting petitioners of the crime of libel should be set aside for want of jurisdiction without prejudice to its filing with the court of competent jurisdiction.

APPEARANCES OF COUNSEL

Medina & Partners Law Office for petitioners.
The Solicitor General for respondent.

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 assailing the Decision[1] of the Court of Appeals (CA), Cebu City, dated November 24, 2004 in CA-G.R. CR No. 22522, which affirmed the Decision of the Regional Trial Court (RTC), Branch 23, Iloilo City, dated December 4, 1997 in Criminal Case No. 44527 finding petitioners guilty beyond reasonable doubt of the crime of libel. Also assailed

[1] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Arsenio J. Magpale and Mariflor Punzalan-Castillo, concurring; *rollo*, pp. 37-46.

is the CA Resolution[2] dated April 8, 2005 denying petitioners' motion for reconsideration.

In an Information[3] dated October 17, 1994 filed before the RTC of Iloilo City, petitioners Vicente Foz, Jr. and Danny G. Fajardo were charged with the crime of libel committed as follows:

> That on or about the 5th day of July, 1994 in the City of Iloilo, Philippines and within the jurisdiction of this court, both the accused as columnist and Editor-Publisher, respectively, of Panay News, a daily publication with a considerable circulation in the City of Iloilo and throughout the region, did then and there willfully, unlawfully and feloniously with malicious intent of impeaching the virtue, honesty, integrity and reputation of Dr. Edgar Portigo, a physician and medical practitioner in Iloilo City, and with the malicious intent of injuring and exposing said Dr. Edgar Portigo to public hatred, contempt and ridicule, write and publish in the regular issue of said daily publication on July 5, 1994, a certain article entitled "MEET DR. PORTIGO, COMPANY PHYSICIAN," quoted verbatim hereunder, to wit:
>
> MEET DR. PORTIGO,
> COMPANY PHYSICIAN
>
> PHYSICIAN (sic) are duly sworn to help to do all their best to promote the health of their patients. Especially if they are employed by a company to serve its employees.
>
> However, the opposite appears to be happening in the Local San Miguel Corporation office, SMC employees are fuming mad about their company physician, Dr. Portigo, because the latter is not doing well in his sworn obligation in looking after the health problems of employees, reports reaching Aim.. Fire say.
>
> One patient, Lita Payunan, wife of employee Wilfredo Payunan, and residing in Burgos, Lapaz, Iloilo City, has a sad tale to say about Dr. Portigo. Her story began September 19 last year when she felt ill and had to go to Dr. Portigo for

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[2] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Arsenio J. Magpale and Isaias P. Dicdican, concurring; *rollo*, p. 47.

[3] Records, pp. 1-3.

consultation. The doctor put her under observation, taking seven months to conclude that she had rectum myoma and must undergo an operation.

Subsequently, the family sought the services of a Dr. Celis and a Dr. de los Reyes at Doctor's Hospital. Incidentally, where Dr. Portigo also maintains a clinic. Dr. Portigo got angry, sources said, after knowing that the family chose a surgeon (Dr. Celis) on their own without his nod as he had one to recommend.

Lita was operated by Dr. de los Reyes last March and was released from the hospital two weeks after. Later, however, she again complained of difficulty in urinating and defecating [On] June 24, she was readmitted to the hospital.

The second operation, done by Dr. Portigo's recommendee, was devastating to the family and the patient herself who woke to find out her anus and vagina closed and a hole with a catheter punched on her right side.

This was followed by a bad news that she had cancer.

Dr. Portigo recommended another operation, this time to bore another hole on the left side of Lita. But a Dr. Rivera to whom he made the referral frankly turned it down because it would only be a waste of money since the disease was already on the terminal state.

The company and the family spent some ₱150,000.00 to pay for the wrong diagnosis of the company physician.

My sympathy for Lita and her family. May the good Lord, Healer of all healers, be on your side, May the Healer of all healers likewise touch the conscience of physicians to remind them that their profession is no license for self-enrichment at the expense of the poor. But, sad to say, Lita passed away, July 2, 1994.

Lita is not alone. Society is replete with similar experience where physicians treat their patients for profits. Where physicians prefer to act like agents of multinational corporations prescribing expensive drugs seen if there are equivalent drugs sold at the counter for much lower price. Yes, Lita, we also have hospitals, owned by a so-called charitable religious institutions and so-called civic groups, too greedy for profits.

> Instead of promoting baby-and mother-friendly practices which are cheaper and more effective, they still prefer the expensive yet unhealthy practices.
>
> The (sic) shun breast feeding and promote infant milk formula although mother's milk is many times cheaper and more nutrious (sic) than the brands they peddle. These hospitals separate newly born from their moms for days, conditioning the former to milk formula while at the same time stunting the mother's mammalia from manufacturing milk. *Kadiri* to death!
>
> My deepest sympathy to the bereaved family of Mrs. Lita Payunan who died July 2, 1994, Her body lies at the Payunan residence located at 236-G Burgos St., Lapaz, Iloilo City. May you rest in peace, Inday Lita.

wherein said Dr. Portigo was portrayed as wanting in high sense of professional integrity, trust and responsibility expected of him as a physician, which imputation and insinuation as both accused knew were entirely false and malicious and without foundation in fact and therefore highly libelous, offensive and derogatory to the good name, character and reputation of the said Dr. Edgar Portigo.

CONTRARY TO LAW.[4]

Upon being arraigned[5] on March 1, 1995, petitioners, assisted by counsel *de parte*, pleaded not guilty to the crime charged in the Information. Trial thereafter ensued.

On December 4, 1997, the RTC rendered its Decision[6] finding petitioners guilty as charged. The dispositive portion of the Decision reads:

WHEREFORE, in the light of the facts obtaining and the jurisprudence aforecited, JUDGMENT is hereby rendered finding both accused Danny Fajardo and Vicente Foz, Jr. GUILTY BEYOND REASONABLE DOUBT for the crime of Libel defined in Article 353 and punishable under Article 355 of the Revised Penal Code,

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[4] *Id.*

[5] *Id.* at 56.

[6] Penned Judge Tito G. Gustilo; CA *rollo*, pp. 13-28.

hereby sentencing aforenamed accused to suffer an indeterminate penalty of imprisonment of Three (3) Months and Eleven (11) Days of *Arresto Mayor*, as Minimum, to One (1) Year, Eight (8) Months and Twenty-One (21) Days of *Prision Correccional*, as Maximum, and to pay a fine of ₱1,000.00 each.[7]

Petitioners' motion for reconsideration was denied in an Order[8] dated February 20, 1998.

Dissatisfied, petitioners filed an appeal with the CA.

On November 24, 2004, the CA rendered its assailed Decision which affirmed *in toto* the RTC decision.

Petitioners filed a motion for reconsideration, which the CA denied in a Resolution dated April 8, 2005.

Hence, herein petition filed by petitioners based on the following grounds:

I. THE COURT OF APPEALS ERRED IN FINDING THE SUBJECT ARTICLE "LIBELOUS" WITHIN THE MEANING AND INTENDMENT OF ARTICLE 353 OF THE REVISED PENAL CODE.

II. THE COURT OF APPEALS ERRED IN FINDING THE EXISTENCE OF MALICE IN THIS CASE AND IN NOT FINDING THAT THE SUBJECT ARTICLE IS CONSTITUTIONALLY PROTECTED AS PRIVILEGED COMMUNICATIONS.

III. THE COURT OF APPEALS ERRED IN AFFIRMING THE CONVICTION OF PETITIONER FAJARDO WHO HAPPENS TO BE MERELY PUBLISHER OF *PANAY NEWS* AND COULD NOT POSSIBLY SHARE ALL THE OPINIONS OF THE NEWSPAPER'S OPINION COLUMNISTS.[9]

Petitioners argue that the CA erred in finding that the element of defamatory imputation was satisfied when petitioner Foz, as columnist, portrayed Dr. Portigo as an incompetent doctor and an opportunist who enriched himself at the expense of the poor.

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[7] *Id.* at 28.

[8] Records, pp. 429-430.

[9] *Rollo*, pp. 15-16.

Petitioners pose the question of whether a newspaper opinion columnist, who sympathizes with a patient and her family and expresses the family's outrage in print, commits libel when the columnist criticizes the doctor's competence or lack of it, and such criticism turns out to be lacking in basis if not entirely false. Petitioners claim that the article was written in good faith in the belief that it would serve the public good. They contend that the CA erred in finding the existence of malice in the publication of the article; that no malice in law or actual malice was proven by the prosecution; and that the article was printed pursuant to the bounden duty of the press to report matters of public interest. Petitioners further contend that the subject article was an opinion column, which was the columnist's exclusive views; and that petitioner Fajardo, as the editor and publisher of *Panay News*, did not have to share those views and should not be held responsible for the crime of libel.

The Solicitor General filed his Comment, alleging that only errors of law are reviewable by this Court in a petition for review on *certiorari* under Rule 45; that petitioners are raising a factual issue, *i.e.*, whether or not the element of malice required in every indictment for libel was established by the prosecution, which would require the weighing anew of the evidence already passed upon by the CA and the RTC; and that factual findings of the CA, affirming those of the RTC, are accorded finality, unless there appears on records some facts or circumstance of weight which the court may have overlooked, misunderstood or misappreciated, and which, if properly considered, may alter the result of the case - a situation that is not, however, obtaining in this case.

In their Reply, petitioners claim that the first two issues presented in their petition do not require the evaluation of evidence submitted in court; that malice, as an element of libel, has always been discussed whenever raised as an issue via a petition for review on *certiorari*. Petitioners raise for the first time the issue that the information charging them with libel did not contain allegations sufficient to vest jurisdiction in the RTC of Iloilo City.

The Court finds that the threshold issue for resolution is whether or not the RTC of Iloilo City, Branch 23, had jurisdiction over the offense of libel as charged in the Information dated October 17, 1994.

The Court notes that petitioners raised for the first time the issue of the RTC's jurisdiction over the offense charged only in their Reply filed before this Court and finds that petitioners are not precluded from doing so.

In *Fukuzume v. People*,[10] the Court ruled:

> It is noted that it was only in his petition with the CA that Fukuzume raised the issue of the trial court's jurisdiction over the offense charged. Nonetheless, the rule is settled that an objection based on the ground that the court lacks jurisdiction over the offense charged may be raised or considered *motu proprio* by the court at any stage of the proceedings or on appeal. Moreover, jurisdiction over the subject matter in a criminal case cannot be conferred upon the court by the accused, by express waiver or otherwise, since such jurisdiction is conferred by the sovereign authority which organized the court, and is given only by law in the manner and form prescribed by law. While an exception to this rule was recognized by this Court beginning with the landmark case of *Tijam vs. Sibonghanoy*, wherein the defense of lack of jurisdiction by the court which rendered the questioned ruling was considered to be barred by laches, we find that the factual circumstances involved in said case, a civil case, which justified the departure from the general rule are not present in the instant criminal case.[11]

The Court finds merit in the petition.

Venue in criminal cases is an essential element of jurisdiction. The Court held in *Macasaet v. People*[12] that:

> It is a fundamental rule that for jurisdiction to be acquired by courts in criminal cases the offense should have been committed or any one of its essential ingredients took place within the territorial

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[10] G.R. No. 143647, November 11, 2005, 474 SCRA 570.

[11] *Id.* at 583-584.

[12] G.R. No. 156747, February 23, 2005, 452 SCRA 255, 271, citing *Uy v. Court of Appeals,* 276 SCRA 367 (1997).

jurisdiction of the court. Territorial jurisdiction in criminal cases is the territory where the court has jurisdiction to take cognizance or to try the offense allegedly committed therein by the accused. Thus, it cannot take jurisdiction over a person charged with an offense allegedly committed outside of that limited territory. Furthermore, **the jurisdiction of a court over the criminal case is determined by the allegations in the complaint or information. And once it is so shown, the court may validly take cognizance of the case.** However, if the evidence adduced during the trial show that the offense was committed somewhere else, the court should dismiss the action for want of jurisdiction. (Emphasis supplied.)[13]

Article 360 of the Revised Penal Code, as amended by Republic Act No. 4363, provides the specific rules as to the venue in cases of written defamation, to wit:

Article 360. *Persons responsible*.— Any person who shall publish, exhibit or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same.

The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamations contained therein to the same extent as if he were the author thereof.

The criminal action and civil action for damages in cases of written defamations, as provided for in this chapter shall be filed simultaneously or separately with the court of first instance of the **province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense:** Provided, however, That where one of the offended parties is a public officer whose office is in the City of Manila at the time of the commission of the offense, the action shall be filed in the Court of First Instance of the City of Manila or of the city or province where the libelous article is printed and first published, and in case such public officer does not hold office in the City of Manila, the action shall be filed in the Court of First Instance of the province or city where he held office at the time of the commission of the offense or where the libelous article is printed and first published and in case one of the offended parties is a private individual, the action shall be filed in

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[13] *Macasaet v. People, supra,* at 271.

the Court of First Instance of the province or city where he actually resides at the time of the commission of the offense or where the libelous matter is printed and first published x x x. (Emphasis supplied.)

In *Agbayani v. Sayo*,[14] the rules on venue in Article 360 were restated as follows:

1. Whether the offended party is a public official or a private person, the criminal action may be filed in the Court of First Instance of the province or city where the libelous article is printed and first published.

2. If the offended party is a private individual, the criminal action may also be filed in the Court of First Instance of the province where he actually resided at the time of the commission of the offense.

3. If the offended party is a public officer whose office is in Manila at the time of the commission of the offense, the action may be filed in the Court of First Instance of Manila.

4. If the offended party is a public officer holding office outside of Manila, the action may be filed in the Court of First Instance of the province or city where he held office at the time of the commission of the offense.[15]

Applying the foregoing law to this case, since Dr. Portigo is a private individual at the time of the publication of the alleged libelous article, the venue of the libel case may be in the province or city where the libelous article was printed and first published, or in the province where Dr. Portigo actually resided at the time of the commission of the offense.

The relevant portion of the Information for libel filed in this case which for convenience the Court quotes again, to wit:

That on or about the 5th day of July, 1994 in the City of Iloilo, Philippines and within the jurisdiction of this court, both the accused as columnists and Editor-Publisher, respectively, of Panay News, a daily publication with a considerable circulation in the City of Iloilo

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[14] 178 Phil. 579 (1979).

[15] *Id.* at 580.

and throughout the region, did then and there willfully, unlawfully and feloniously with malicious intent of impeaching the virtue, honesty, integrity and reputation of Dr. Edgar Portigo, a physician and medical practitioner in Iloilo City, and with the malicious intent of injuring and exposing said Dr. Edgar Portigo to public hatred, contempt and ridicule, write and publish in the regular issue of said daily publication on July 5, 1994, a certain article entitled "MEET DR. PORTIGO, COMPANY PHYSICIAN...."

The allegations in the Information that "*Panay News*, a daily publication with a considerable circulation in the City of Iloilo and throughout the region" only showed that Iloilo was the place where *Panay News* was in considerable circulation but did not establish that the said publication was printed and first published in Iloilo City.

In *Chavez v. Court of Appeals*,[16] which involved a libel case filed by a private individual with the RTC of Manila, a portion of the Information of which reads:

> That on or about March 1995, in the City of Manila, Philippines, the said accused [Baskinas and Manapat] conspiring and confederating with others whose true names, real identities and present whereabouts are still unknown and helping one another, with malicious intent of impeaching the honesty, virtue, character and reputation of one FRANCISCO I. CHAVEZ, former Solicitor General of the Philippines, and with the evident purpose of injuring and exposing him to public ridicule, hatred and contempt, did then and there willfully, unlawfully and maliciously cause to be published in "Smart File," a magazine of general circulation in Manila, and in their respective capacity as Editor-in-Chief and Author-Reporter, ...[17]

the Court ruled that the Information did not sufficiently vest jurisdiction in the RTC of Manila to hear the libel charge in consonance with Article 360. The Court made the following disquisition:

> x x x Still, a perusal of the Information in this case reveals that the word "published" is utilized in the precise context of noting that the

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[16] G.R. No. 125813, February 6, 2007, 514 SCRA 279.

[17] *Id.* at 282.

defendants "cause[d] to be published in 'Smart File', a magazine of general circulation in Manila." The Information states that the libelous articles were published in *Smart File*, and not that they were published in Manila. The place "Manila" is in turn employed to situate where *Smart File* was in general circulation, and not where the libel was published or first printed. The fact that *Smart File* was in general circulation in Manila does not necessarily establish that it was published and first printed in Manila, in the same way that while leading national dailies such as the *Philippine Daily Inquirer* or the *Philippine Star* are in general circulation in Cebu, it does not mean that these newspapers are published and first printed in Cebu.

Indeed, if we hold that the Information at hand sufficiently vests jurisdiction in Manila courts since the publication is in general circulation in Manila, there would be no impediment to the filing of the libel action in other locations where *Smart File* is in general circulation. Using the example of the *Inquirer* or the *Star*, the granting of this petition would allow a resident of Aparri to file a criminal case for libel against a reporter or editor in Jolo, simply because these newspapers are in general circulation in Jolo. Such a consequence is precisely what Rep. Act No. 4363 sought to avoid.[18]

In *Agustin v. Pamintuan*,[19] which also involved a libel case filed by a private individual, the Acting General Manager of the Baguio Country Club, with the RTC of Baguio City where the Information therein alleged that the libelous article was "published in the Philippine Daily Inquirer, a newspaper of general circulation in the City of Baguio and the entire Philippines," the Court did not consider the Information sufficient to show that Baguio City was the venue of the printing and first publication of the alleged libelous article.

Article 360 of the Revised Penal Code as amended provides that a private individual may also file the libel case in the RTC of the province where he actually resided at the time of the commission of the offense. The Information filed against petitioners failed to allege the residence of Dr. Portigo. While the Information alleges that "Dr. Edgar Portigo is a physician

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[18] *Id.* at 290-291.

[19] G.R. No. 164938, August 22, 2005, 467 SCRA 601.

and medical practitioner in Iloilo City," such allegation did not clearly and positively indicate that he was actually residing in Iloilo City at the time of the commission of the offense. It is possible that Dr. Portigo was actually residing in another place.

Again, in *Agustin v. Pamintuan*,[20] where the Information for libel alleged that the "offended party was the Acting General Manager of the Baguio Country Club and of good standing and reputation in the community," the Court did not find such allegation sufficient to establish that the offended party was actually residing in Baguio City. The Court explained its ruling in this wise:

> The residence of a person is his personal, actual or physical habitation or his actual residence or place of abode provided he resides therein with continuity and consistency; no particular length of time of residence is required. However, the residence must be more than temporary. The term residence involves the idea of something beyond a transient stay in the place; and to be a resident, one must abide in a place where he had a house therein. To create a residence in a particular place, two fundamental elements are essential: The actual bodily presence in the place, combined with a freely exercised intention of remaining there permanently or for an indefinite time. While it is possible that as the Acting General Manager of the Baguio Country Club, the petitioner may have been actually residing in Baguio City, the Informations did not state that he was actually residing therein when the alleged crimes were committed. It is entirely possible that the private complainant may have been actually residing in another place. One who transacts business in a place and spends considerable time thereat does not render such person a resident therein. Where one may have or own a business does not of itself constitute residence within the meaning of the statute. Pursuit of business in a place is not conclusive of residence there for purposes of venue.[21]

Settled is the rule that jurisdiction of a court over a criminal case is determined by the allegations of the complaint or information, and the offense must have been committed or any

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[20] *Id*.

[21] *Id.* at 611-612.

one of its essential ingredients took place within the territorial jurisdiction of the court.[22] Considering that the Information failed to allege the venue requirements for a libel case under Article 360, the Court finds that the RTC of Iloilo City had no jurisdiction to hear this case. Thus, its decision convicting petitioners of the crime of libel should be set aside for want of jurisdiction without prejudice to its filing with the court of competent jurisdiction.

WHEREFORE, the petition is *GRANTED*. The Decision dated November 24, 2004 and the Resolution dated April 8, 2005 of the Court of Appeals in CA-G.R. CR No. 22522 are *SET ASIDE* on the ground of lack of jurisdiction on the part of the Regional Trial Court, Branch 23, Iloilo City. Criminal Case No. 44527 is *DISMISSED* without prejudice.

SO ORDERED.

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

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[22] *Id.* at 609.

[*] Designated as an additional member in lieu of Associate Justice Minita V. Chico-Nazario, per Special Order No. 720 dated October 5, 2009.

THIRD DIVISION

[G.R. No. 169541. October 9, 2009]

GERMAN CAYTON and the HEIRS OF THE DECEASED SPOUSE CECILIA CAYTON, *petitioners, vs.* **ZEONNIX TRADING CORPORATION; SPOUSES VICENTE MAÑOSCA and LOURDES MAÑOSCA; MAXIMO CONTRERAS, *Ex-Officio* Sheriff; and PABLO L. SY, Senior Sheriff for Makati, Metro Manila,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; RIGHT OF REDEMPTION; EXPOUNDED.— Right of redemption is the prerogative to reacquire a mortgaged property after registration of the foreclosure sale. It exists only in the case of the extrajudicial foreclosure of the mortgage. No such right is recognized in a judicial foreclosure unless the mortgagee is a bank. An attaching creditor acquires the right to redeem the debtor's attached property subsequently foreclosed extra-judicially by a third party. The "successor-in-interest" of a judgment debtor includes one to whom the debtor has transferred his statutory right of redemption; one to whom the debtor has conveyed his interest in the property for the purpose of redemption; one who succeeds to the interest of the debtor by operation of law; one or more joint debtors who were joint owners of the property sold; or his spouse or heirs. A "redemptioner," on the other hand, is a creditor with a lien subsequent to the judgment which was the basis of the execution sale. If the lien of the creditor is prior to the judgment under which the property was sold, he is not a redemptioner and, therefore, cannot redeem because his interests in his lien are fully protected, since any purchase at public auction of said property takes the same subject to such prior lien which he has to satisfy. Unlike the judgment debtor, a redemptioner must prove his right to redeem by producing the documents called for by Section 30, Rule 39 of the Rules of Court.

2. ID.; ID.; ID.; ID.; ID.; WHILE PETITIONERS ARE INDEED THE SUCCESSORS-IN-INTEREST OF THE JUDGMENT

DEBTOR, THEIR SUPPOSED TITLE OR RIGHT OVER THE PROPERTY IS UNREGISTERED AND, AS SUCH, CANNOT AFFECT THIRD PERSONS; REGISTRATION IS THE OPERATIVE ACT THAT CONVEY OR AFFECT LAND INSOFAR AS THIRD PERSONS ARE CONCERNED.— The Caytons aver that as successor-in-interest of the Mañoscas by virtue of the deed of absolute sale with assumption of mortgage, they have a better right than Zeonnix to redeem the property. This stance deserves scant consideration. Indeed, they are successors in interest of the Mañoscas. However, their supposed title or right over the property is unregistered and, as such, the same cannot affect third persons. This is because it is registration that is the operative act to convey or affect the land insofar as third persons are concerned. A deed, mortgage, lease, or other voluntary instrument, except a will, purporting to convey or affect conveyance involving registered land, shall not take effect as a conveyance or bind the land but shall operate only as a contract between the parties and as evidence of authority of the Register of Deeds to make registration.

3. ID.; ID.; ID.; ID.; ID.; THE UNREGISTERED SALE OF THE HOUSE AND LOT TO PETITIONERS CANNOT PREJUDICE THE RIGHT OF REDEMPTION GRANTED BY LAW IN FAVOR OF RESPONDENT CORPORATION AS JUDGMENT CREDITOR AND REDEMPTIONER WHOSE LEVY ON ATTACHMENT WAS DULY RECORDED ON THE TITLE.— The unregistered sale of the house and lot to the Caytons by the Mañoscas cannot prejudice the right of redemption granted by law in favor of Zeonnix. The levy on attachment of Zeonnix on the subject property was duly recorded on TCT No. S-90836. Thus, the levy on attachment created a constructive notice to all persons from the time of such registration. The record is notice to the entire world. All persons are charged with the knowledge of what it contains. All persons dealing with the land so recorded, or any portion of it, must be charged with notice of whatever it contains. The purchaser is charged with notice of every fact shown by the record and is presumed to know every fact which the record discloses.

4. ID.; ID.; ID.; ID.; ID.; IMPORTANCE AND SIGNIFICANCE OF RECORDING.— When a conveyance has been properly

recorded, such record is constructive notice of its contents and all interests, legal and equitable, included therein. Under the rule of notice, it is presumed that the purchaser has examined every instrument of record affecting the title. Such presumption is irrefutable. He is charged with notice of every fact shown by the record and is presumed to know every fact which an examination of the record would have disclosed. This presumption may not be overcome by proof of innocence or good faith. Otherwise, the very purpose and object of the law requiring a record would be destroyed. Such presumption may not be defeated by proof of want of knowledge of what the record contains, any more than one may be permitted to show that he was ignorant of the provisions of the law. The rule that all persons must take notice of the facts that the public record contains is a rule of law. The rule must be absolute. Any variation would lead to endless confusion and useless litigation.

5. ID.; ID.; ID.; ID.; ID.; BY VIRTUE OF THE WRIT OF EXECUTION, RESPONDENT CORPORATION ACQUIRED BY OPERATION OF LAW THE RIGHT OF REDEMPTION OVER THE FORECLOSED PROPERTIES PURSUANT TO SECTION 6 OF ACT NO. 3135, AS AMENDED BY ACT NO. 4118.— Zeonnix has acquired by operation of law the right of redemption over the foreclosed properties. By virtue of the RTC decision in Civil Case No. 2173, it had the right to redeem the property. This is pursuant to Section 6 of Act No. 3135, as amended by Act No. 4118, which provides: SECTION 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act. The writ of attachment entitled the attaching creditor to exercise the right to redeem the foreclosed properties. A writ of attachment that has been levied on real property or any interest therein belonging to the judgment debtor creates a lien which nothing can destroy but its dissolution.

6. ID.; ID.; ID.; ID.; ID.; REQUIREMENTS OF A VALID TENDER OF PAYMENT.— To constitute valid redemption, the amount tendered must comply with the following requirements: (1) it should constitute the full amount paid by the purchaser; (2) with one percent per month interest on the purchase price in addition, up to the time of redemption; (3) together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase; (4) interest on the taxes paid by the purchaser at the rate of one percent per month, up to the time of the redemption; and (5) if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien, with interest. In exercising the right of redemption, the tender of payment must be for the full amount of the purchase price. Otherwise, to allow payment by installments would be to allow the indefinite extension of the redemption period.

7. ID.; ID.; ID.; ID.; ID.; THE AMOUNT TENDERED BY RESPONDENT CORPORATION, LESS THE AMOUNT OF TAXES PAID BY PETITIONERS, MAY BE CONSIDERED SUFFICIENT FOR PURPOSES OF REDEMPTION AND SHOULD BE DEEMED AS SUBSTANTIAL COMPLIANCE CONSIDERING THAT IT IMMEDIATELY PAID THE AMOUNT OF TAXES WHEN APPRISED OF THE DEFICIENCY.— The amount tendered by Zeonnix may be considered sufficient for purposes of redemption, although it failed to include the amount of taxes paid by the Caytons. The payment of the full amount of the purchase price and interest thereon should be deemed as substantial compliance, considering that Zeonnix immediately paid the amount of taxes when apprised of the deficiency. In *Estanislao, Jr. v. Court of Appeals*, the Court relaxed its rules on the redemptioner's failure to pay the taxes paid by the purchaser. The Court ruled in this wise, *viz*.: There are additional amounts to be made in order to effect a valid redemption required by law, but, as respondent Hi-Yield Realty, Inc. failed to comply with certain requirements, petitioners' failure to pay these additional amounts may be considered excused. As provided in Rule 39, §30 of the 1964 Rules of Court, the redemptioner must also pay the assessment or taxes paid by the purchaser. However, the latter must give notice to the officer who conducted the sale of the assessments

or taxes paid by him and file the same with the Registry of Deeds. x x x. x x x Petitioners were not furnished by respondent Hi-Yield Realty, Inc. such statement of account. Neither was such statement filed with the Registry of Deeds. Respondent Hi-Yield Realty, Inc. claimed that a statement of account (Exh. 8-C and Exh. 8-D) was furnished the office of Atty. Basco, the notary public who had conducted the sale, as received by Elizabeth Roque, an employee therein. However, Atty. Basco denied having received the statement. Petitioners were therefore justified in not paying any assessments or taxes which respondent Hi-Yield Realty, Inc. may have paid.

8. ID.; ID.; ID.; ID.; ID.; FAILURE TO PAY DELINQUENT REAL ESTATE TAXES ON THE PROPERTY WILL NOT RENDER THE REDEMPTION VOID; POLICY OF THE LAW IS TO AID RATHER THAN DEFEAT THE RIGHT OF REDEMPTION.— In *Rosales v. Yboa*, the Court ruled that the failure to pay the delinquent real estate taxes on the property will not render the redemption void. This is in consonance with the policy of the law to aid rather than to defeat the right of redemption. The pertinent portion of the decision reads: In fine, We hold that the failure of the mortgagor Pedro Oliverio to tender the amount of ₱745.47 representing the delinquent real estate taxes of the subject property, the registration fee of ₱3.00 and the interest thereon of ₱0.04, the Sheriff's Commission in the sum of ₱99.82, and the deficiency interest on the purchase price of the subject property, will not render the redemption in question null and void, it having been established that he has substantially complied with the requirements of the law to effect a valid redemption, with his tender of payment of the purchase price and the interest thereon within twelve (12) months from the date of the registration of the sale. This ruling is in obedience of the policy of the law to aid rather than to defeat the right of redemption.

APPEARANCES OF COUNSEL

International Legal Advocates for petitioners.

Antonio M. Chavez for Zeonnix Trading Corporation.

M.R. Villaluz & Associates for Spouses Vicente Mañosca and Lourdes Mañosca.

D E C I S I O N

NACHURA, *J.*:

Before the Court is a petition for review on *certiorari* assailing the Decision[1] dated September 27, 2004 and the Resolution[2] dated September 5, 2005 of the Court of Appeals (CA) in CA-G.R. CV No. 71294.

At the heart of the controversy is a three hundred fifty-seven (357) square meter residential house and lot located in BF Homes, Phase III, Sucat, Parañaque, covered by Transfer Certificate of Title (TCT) No. S-90836 of the Registry of Deeds of Manila in the name of Vicente Mañosca, married to Lourdes Mañosca (Mañoscas).[3]

On May 24, 1980, the Mañoscas executed a deed of real estate mortgage over the house and lot as security for the loan of one hundred fifty thousand pesos (₱150,000.00) that they obtained from Family Savings Bank (FSB). On June 2, 1980, the real estate mortgage was annotated on TCT No. S-90836.[4]

On July 21, 1981, a levy on attachment was annotated on TCT No. S-90836 in favor of Zeonnix Trading Corporation (Zeonnix) pursuant to a writ of preliminary attachment issued by the Court of First Instance of Pasay City in Civil Case No. 9225-P, a case for recovery of a sum of money, entitled "*Zeonnix Trading Corporation v. Vicente D. Mañosca, doing business under the name and style of Vic D. Mañosca Brokerage*." The case was re-raffled to the Regional Trial Court (RTC) of Makati and re-docketed as Civil Case No. 2173, due to the judicial reorganization in 1983.[5]

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[1] Penned by Associate Justice Roberto A. Barrios, with Associate Justices Amelita G. Tolentino and Vicente S. E. Veloso, concurring; *rollo*, pp. 8-19.

[2] *Id.* at 21-23.

[3] *Id.* at 8, 124.

[4] *Rollo*, p. 125.

[5] *Id.*

On September 1, 1981, a Deed of Absolute Sale with Assumption of Mortgage[6] was executed between the Mañoscas and the spouses German G. Cayton and Cecilia R. Cayton (Caytons) over the subject house and lot for the amount of one hundred sixty thousand pesos (₱160,000.00). As part of the consideration, the Caytons assumed payment to FSB of the real estate mortgage amortizations on the property. The Caytons also paid the real estate taxes on the property beginning in 1982.[7] The Deed of Absolute Sale with Assumption of Mortgage contained the following stipulations:

> 2. That the Vendee shall pay Vendors the sum of ONE HUNDRED SIXTY THOUSAND (₱160,000.00) PESOS, the amount of ONE HUNDRED EIGHTEEN THOUSAND FIVE HUNDRED SIXTY-THREE PESOS and SIXTEEN CENTAVOS (₱118,563.16) of which have been paid by the former unto the latter and the balance of FORTY ONE THOUSAND FOUR HUNDRED THIRTY-SIX PESOS and EIGHTY FOUR CENTAVOS (₱41,436.84) to be paid by the Vendee unto the Vendors within six (6) months in six equal monthly installments commencing December 7, 1981 and every 7th of the month thereafter until fully paid, said installments shall be covered by postdated checks of the Vendee.
>
> 3. That as part of the consideration of this sale, the Vendee agrees to assume as [he] hereby assumes, all the duties and obligations of the Vendors imposed upon the latter on the Deed of Real Estate Mortgage executed by the Vendors in favor of Family Savings Bank denominated as Doc. 388; Page No. 79; Book No. V; Series of 1980 of the Notarial Registry of Notary Public Fe Tengco Becina; that Vendee's assumption of the mortgage obligation shall be limited only to the amortization that will fall due [in] September 1981 and that all arrears in the amortizations, penalties and charges that have accrued before said date shall be borne and paid by the Vendors.
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> x x x x x x x x x
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> 7. That Vendors hereby warrant that save to the restrictions annotated in the Transfer of Title, the said property is free from any

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[6] RTC Records, Vol. III, pp. 726-728.

[7] *Rollo*, p. 124.

lien and encumbrance and that Vendors undertake to defend title to the same from whatever claim.[8]

The Caytons failed to register the deed of absolute sale with assumption of mortgage because the owner's duplicate copy of TCT No. S-90836 was in the possession of FSB in view of the loan of the Mañoscas wherein the property was used as security.[9]

Meanwhile, on February 3, 1984, a Decision[10] was rendered by the RTC in Civil Case No. 2173, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered sentencing defendant Vicente D. Mañosca, doing business under the name and style "Vic D. Mañosca Brokerage" to pay plaintiff [Zeonnix] the amount of ₱167,037.00, with interest thereon at the rate of 12% per annum from May 12, 1981, until fully paid.
>
> Defendant is likewise ordered to pay plaintiff the amount of ₱20,000.00 as and for attorney's fees and the costs of suit.
>
> SO ORDERED.[11]

Subsequently, the Caytons defaulted in the payment to FSB of the monthly amortizations, and the property was extrajudicially foreclosed. On April 23, 1984, the property was sold at public auction. The Caytons were declared as the highest bidder, in the amount of ninety-five thousand pesos (₱95,000.00). A Certificate of Sale[12] was issued by the *Ex-Officio* Sheriff, and the same was annotated on TCT No. S-90836 on April 25, 1984.[13]

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[8] RTC Records, Vol. III, pp. 727-728.

[9] *Rollo*, p. 126.

[10] Penned by Judge Ansberto P. Paredes, Regional Trial Court, Makati City, Branch 140; RTC Records, Vol. I, pp. 140-141.

[11] *Id.* at 141.

[12] RTC Records, Vol. I, p. 91.

[13] *Rollo*, pp. 10, 127.

On April 15, 1985, the Caytons filed before the RTC of Makati a civil case for quieting of title and/or removal/prevention of cloud on title against Zeonnix. The case was docketed as Civil Case No. 10316.[14] The Caytons claimed that, with the execution of the deed of absolute sale with assumption of mortgage, all the rights, interests and participation over the property had been transferred to them by the Mañoscas, including the right of redemption. Thus, Zeonnix had no more right of redemption to speak of.[15]

On April 17, 1985, the Caytons filed an amended complaint, in which they impleaded the Mañoscas and the then Clerk of Court and the Senior Deputy Sheriff of Makati City, as additional defendants.[16]

On April 18, 1985, Zeonnix, as judgment creditor of the Mañoscas in Civil Case No. 2173, offered to redeem the property by tendering to the Clerk of Court of the RTC of Makati one hundred six thousand four hundred pesos (₱106,400.00) through Manager's Check No. DV008913 dated April 15, 1985. The amount tendered represented the purchase price of the property and interest that had accrued thereon.[17]

On May 7, 1985, the Caytons filed a supplemental complaint in which they alleged that assuming that Zeonnix had the right of redemption, still the amount it tendered was insufficient to effect a valid redemption because it failed to include the amount of real estate taxes paid by them, amounting to two thousand one hundred seventy-five pesos (₱2,175.00).[18]

On June 4, 1985, Zeonnix tendered to the Clerk of Court of Makati the additional amount of ₱2,175.00 to cover the real estate taxes paid by the Caytons. The latter, however, maintained

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[14] *Id.* at 10.

[15] *Id.*

[16] *Id.* at 127.

[17] *Id.* at 10-11; RTC Records, Vol. I, p. 89.

[18] *Rollo*, p. 127.

that the tender of the deficiency amount representing the real estate taxes did not cure the defect because the payment was done beyond the period of redemption, which lapsed on April 26, 1985.[19]

On March 20, 2001, the RTC rendered a Decision in Civil Case No. 10316, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, the Court hereby renders judgment in favor of the plaintiffs [Caytons] and against the defendant [Zeonnix], holding that:
>
> 1) defendant Zeonnix Trading Corporation has no right of redemption over the property in question as against the plaintiffs [Caytons];
>
> 2) plaintiffs [Caytons] are the legitimate owners of the property in question.
>
> SO ORDERED.[20]

Zeonnix filed an appeal with the CA, assigning the following errors of the trial court: (1) the RTC erred in considering the Caytons as owner-bidders in the foreclosure sale of the property and not as ordinary bidders or buyers; (2) the RTC erred in ruling that Zeonnix was not entitled to redeem the property, which was foreclosed by FSB; (3) the RTC erred in not finding that Zeonnix had a superior or better right, by virtue of the prior attachment/lien on the subject property, than the Caytons who were negligent in buying it despite the recorded or existing attachment lien thereon by Zeonnix; (4) the RTC erred in ruling that the deed of sale with assumption of mortgage was not spurious or fictitious in character; and (5) the RTC erred in not ruling that Zeonnix was entitled to damages and attorney's fees.[21]

On September 27, 2004, the CA rendered a Decision,[22] the *fallo* of which reads:

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[19] *Id.* at 11.

[20] *Id.* at 130.

[21] *Id.* at 13-14.

[22] *Supra* note 1.

WHEREFORE, the appeal [is] **GRANTED** and the appealed Decision is **REVERSED** and **SET ASIDE**. In its place judgment is rendered dismissing the complaint, and ordering the *ex-officio* Sheriff of Makati to accept and receipt for the redemption price paid and to issue the corresponding certificate and other papers of redemption to Zeonnix.

SO ORDERED.[23]

In reversing the decision of the trial court, the CA ratiocinated that:

The levy on attachment was duly annotated and registered in the title of the property on July 21, 1981[,] while the deed of sale with assumption of mortgage was executed on September 1, 1981. The registration of the levy created a constructive notice to the whole world and served to protect the interest of Zeonnix. The Caytons therefore could not raise their mere childlike reliance on the real estate agent to justify their ignorance of the recorded levy for they should have checked the title with the Register of Deeds (tsn Oct. 3, 1986, p. 28). The Caytons did not even cause the registration of the deed of sale with assumption of mortgage. Notable too are the payments of the monthly amortizations by the Caytons with FSB wherein the bank in its receipts simply acknowledged payments in the following manner: "*Paid by Cecilia Cayton for the account of Vicente Mañosca*" x x x. This means that the bank while it received payments from the Caytons, however it did not fully recognize them as the new owners.[24]

The Caytons filed a motion for reconsideration. However, the CA denied the same in a Resolution[25] dated September 5, 2005.

Hence, this petition.

The Caytons submitted the following grounds in support of the petition:

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[23] *Id.* at 18.

[24] *Id.* at 14.

[25] *Supra* note 2.

I

THE COURT OF APPEALS ERRED IN RULING THAT PETITIONER GERMAN CAYTON AND DECEASED SPOUSE ARE NOT SUCCESSORS-IN-INTEREST WHO HAVE PREFERENTIAL RIGHT OVER THE SUBJECT PROPERTY THAN A REDEMPTIONER WHOSE RIGHT TO CLAIM AROSE FROM A MONEY JUDGMENT.

II

THE COURT OF APPEALS ERRED IN RULING THAT THE PAYMENT OF THE INSUFFICIENT REDEMPTION PRICE BY ZEONNIX AS REDEMPTIONER DID NOT RESULT IN ITS FAILURE TO PERFECT ITS RIGHT OF REDEMPTION OVER THE SUBJECT PROPERTY.[26]

The petition is without merit and must be denied.

I

Section 27, Rule 39 of the Rules of Court provides:

Sec. 27. Who may redeem real property so sold.

Real property sold as provided in the last preceding section, or any part thereof sold separately, may be redeemed in the manner hereinafter provided, by the following persons:

(a) The judgment obligor, or his successor in interest in the whole or any part of the property;

(b) A creditor having a lien by virtue of an attachment, judgment or mortgage on the property sold, or on some part thereof, subsequent to the lien under which the property was sold. Such redeeming creditor is termed a redemptioner.

Right of redemption is the prerogative to reacquire a mortgaged property after registration of the foreclosure sale. It exists only in the case of the extrajudicial foreclosure of the mortgage. No such right is recognized in a judicial foreclosure unless the mortgagee is a bank.[27] An attaching creditor acquires the right

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[26] *Rollo,* p. 34.

[27] *Huerta Alba Resort, Inc. v. Court of Appeals,* G.R. No. 128567, September 1, 2000, 339 SCRA 534.

to redeem the debtor's attached property subsequently foreclosed extra-judicially by a third party.

The "successor-in-interest" of a judgment debtor includes one to whom the debtor has transferred his statutory right of redemption; one to whom the debtor has conveyed his interest in the property for the purpose of redemption; one who succeeds to the interest of the debtor by operation of law; one or more joint debtors who were joint owners of the property sold; or his spouse or heirs.[28]

A "redemptioner," on the other hand, is a creditor with a lien subsequent to the judgment which was the basis of the execution sale. If the lien of the creditor is prior to the judgment under which the property was sold, he is not a redemptioner and, therefore, cannot redeem because his interests in his lien are fully protected, since any purchase at public auction of said property takes the same subject to such prior lien which he has to satisfy. Unlike the judgment debtor, a redemptioner must prove his right to redeem by producing the documents called for by Section 30, Rule 39[29] of the Rules of Court.[30]

In the instant case, the Caytons aver that as successor-in-interest of the Mañoscas by virtue of the deed of absolute sale with assumption of mortgage, they have a better right than Zeonnix to redeem the property. This stance deserves scant consideration.

Indeed, they are successors in interest of the Mañoscas. However, their supposed title or right over the property is

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[28] *Magno v. Viola and Sotto*, 61 Phil. 80 (1934).

[29] Sec. 30. Proof required of redemptioner. — A redemptioner must produce to the officer, or person from whom he seeks to redeem, and serve with his notice to the officer a copy of the judgment or final order under which he claims the right to redeem, certified by the clerk of the court wherein the judgment or final order is entered; or, if he redeems upon a mortgage or other lien, a memorandum of the record thereof, certified by the registrar of deeds; or an original or certified copy of any assignment necessary to establish his claim; and an affidavit executed by him or his agent, showing the amount then actually due on the lien.

[30] Regalado, Florenz D., *Remedial Law Compendium*, Vol. I, 8th Revised Edition (2002).

unregistered and, as such, the same cannot affect third persons. This is because it is registration that is the operative act to convey or affect the land insofar as third persons are concerned. A deed, mortgage, lease, or other voluntary instrument, except a will, purporting to convey or affect conveyance involving registered land, shall not take effect as a conveyance or bind the land but shall operate only as a contract between the parties and as evidence of authority of the Register of Deeds to make registration.[31]

The unregistered sale of the house and lot to the Caytons by the Mañoscas cannot prejudice the right of redemption granted by law in favor of Zeonnix. The levy on attachment of Zeonnix on the subject property was duly recorded on TCT No. S-90836. Thus, the levy on attachment created a constructive notice to all persons from the time of such registration.[32] The record is notice to the entire world. All persons are charged with the knowledge of what it contains. All persons dealing with the land so recorded, or any portion of it, must be charged with notice of whatever it contains. The purchaser is charged

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[31] Presidential Decree No. 1529.

SECTION 51. Conveyance and other dealings by registered owner. — An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law. But no deed, mortgage, lease, or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration.

The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or city where the land lies.

[32] Presidential Decree No. 1529.

SECTION 52. Constructive notice upon registration. — Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering.

with notice of every fact shown by the record and is presumed to know every fact which the record discloses.[33]

When a conveyance has been properly recorded, such record is constructive notice of its contents and all interests, legal and equitable, included therein. Under the rule of notice, it is presumed that the purchaser has examined every instrument of record affecting the title. Such presumption is irrefutable. He is charged with notice of every fact shown by the record and is presumed to know every fact which an examination of the record would have disclosed. This presumption may not be overcome by proof of innocence or good faith. Otherwise, the very purpose and object of the law requiring a record would be destroyed. Such presumption may not be defeated by proof of want of knowledge of what the record contains, any more than one may be permitted to show that he was ignorant of the provisions of the law. The rule that all persons must take notice of the facts that the public record contains is a rule of law. The rule must be absolute. Any variation would lead to endless confusion and useless litigation.[34]

Zeonnix has acquired by operation of law the right of redemption over the foreclosed properties. By virtue of the RTC decision in Civil Case No. 2173, it had the right to redeem the property. This is pursuant to Section 6 of Act No. 3135,[35] as amended by Act No. 4118, which provides:

SECTION 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from

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[33] *Garcia v. Court of Appeals*, G.R. Nos. L-48971 & L-49011, January 22, 1980, 95 SCRA 380, 389.

[34] *Id*.

[35] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES.

and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

The writ of attachment entitled the attaching creditor to exercise the right to redeem the foreclosed properties. A writ of attachment that has been levied on real property or any interest therein belonging to the judgment debtor creates a lien which nothing can destroy but its dissolution.[36]

II

Section 28, Rule 39 of the Rules of Court provides for the manner of payment in redemption:

Section 28. Time and manner of, and amounts payable on, successive redemptions; notice to be given and filed.

The judgment obligor, or redemptioner, may redeem the property from the purchaser, at any time within one (1) year from the date of the registration of the certificate of sale, by paying the purchaser the amount of his purchase, with one per centum per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last named amount at the same rate; and if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such lien, with interest.

Property so redeemed may again be redeemed within sixty (60) days after the last redemption upon payment of the sum paid on the last redemption, with two per centum thereon in addition, and the amount of any assessments or taxes which the last redemptioner may have paid thereon after redemption by him, with interest on such last-named amount, and in addition, the amount of any liens held by said last redemptioner prior to his own, with interest. The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within sixty (60) days after the last redemption, on paying the sum paid on the last previous

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[36] *Consolidated Bank and Trust Corporation (Solidbank) v. Intermediate Appellate Court*, G.R. No. 73976, May 29, 1987, 150 SCRA 591.

redemption, with two per centum thereon in addition, and the amounts of any assessments or taxes which the last previous redemptioner paid after the redemption thereon, with interest thereon, and the amount of any liens held by the last redemptioner prior to his own, with interest.

Written notice of any redemption must be given to the officer who made the sale and a duplicate filed with the registry of deeds of the place, and if any assessments or taxes are paid by the redemptioner or if he has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the officer and filed with the registry of deeds; if such notice be not filed, the property may be redeemed without paying such assessments, taxes, or liens.

Accordingly, to constitute valid redemption, the amount tendered must comply with the following requirements: (1) it should constitute the full amount paid by the purchaser; (2) with one percent per month interest on the purchase price in addition, up to the time of redemption; (3) together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase; (4) interest on the taxes paid by the purchaser at the rate of one percent per month, up to the time of the redemption; and (5) if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien, with interest.

In exercising the right of redemption, the tender of payment must be for the full amount of the purchase price. Otherwise, to allow payment by installments would be to allow the indefinite extension of the redemption period.[37]

The amount tendered by Zeonnix may be considered sufficient for purposes of redemption, although it failed to include the amount of taxes paid by the Caytons. The payment of the full amount of the purchase price and interest thereon should be deemed as substantial compliance, considering that Zeonnix

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[37] *Estanislao, Jr. v. Court of Appeals*, G.R. No. 143687, July 31, 2001, 362 SCRA 229.

immediately paid the amount of taxes when apprised of the deficiency.

In *Estanislao, Jr. v. Court of Appeals*,[38] the Court relaxed its rules on the redemptioner's failure to pay the taxes paid by the purchaser. The Court ruled in this wise, *viz.*:

> There are additional amounts to be made in order to effect a valid redemption required by law, but, as respondent Hi-Yield Realty, Inc. failed to comply with certain requirements, petitioners' failure to pay these additional amounts may be considered excused. As provided in Rule 39, §30 of the 1964 Rules of Court, the redemptioner must also pay the assessment or taxes paid by the purchaser. However, the latter must give notice to the officer who conducted the sale of the assessments or taxes paid by him and file the same with the Registry of Deeds. x x x.
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> x x x x x x x x x
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> Petitioners were not furnished by respondent Hi-Yield Realty, Inc. such statement of account. Neither was such statement filed with the Registry of Deeds. Respondent Hi-Yield Realty, Inc. claimed that a statement of account (Exh. 8-C and Exh. 8-D) was furnished the office of Atty. Basco, the notary public who had conducted the sale, as received by Elizabeth Roque, an employee therein. However, Atty. Basco denied having received the statement. Petitioners were therefore justified in not paying any assessments or taxes which respondent Hi-Yield Realty, Inc. may have paid.[39]

Likewise, in *Rosales v. Yboa*,[40] the Court ruled that the failure to pay the delinquent real estate taxes on the property will not render the redemption void. This is in consonance with the policy of the law to aid rather than to defeat the right of redemption. The pertinent portion of the decision reads:

> In fine, We hold that the failure of the mortgagor Pedro Oliverio to tender the amount of ₱745.47 representing the delinquent real estate taxes of the subject property, the registration fee of ₱3.00

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[38] *Id.*

[39] *Id.* at 239.

[40] G.R. No. L-42282, February 28, 1983, 120 SCRA 869, 877.

and the interest thereon of ₱0.04, the Sheriff's Commission in the sum of ₱99.82, and the deficiency interest on the purchase price of the subject property, will not render the redemption in question null and void, it having been established that he has substantially complied with the requirements of the law to effect a valid redemption, with his tender of payment of the purchase price and the interest thereon within twelve (12) months from the date of the registration of the sale. This ruling is in obedience of the policy of the law to aid rather than to defeat the right of redemption.

WHEREFORE, in light of the foregoing, the Decision dated September 27, 2004 and the Resolution dated September 5, 2005 of the Court of Appeals in CA-G.R. CV No. 71294 are hereby *AFFIRMED*. Costs against petitioners.

SO ORDERED.

Carpio, Acting C.J. (Chairperson), Carpio Morales,[*] *Velasco, Jr.* and *Peralta, JJ.,* concur.

FIRST DIVISION

[G.R. No. 171175. October 9, 2009]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **ARTURO F. DUCA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE; AUTHORITY TO REPRESENT THE STATE IN APPEALS BEFORE THE COURT OF APPEALS AND THE

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[*] Additional member in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 720 dated October 5, 2009.

SUPREME COURT IS SOLELY VESTED IN THE OFFICE OF THE SOLICITOR GENERAL.— The authority to represent the State in appeals of criminal cases before the CA and the Supreme Court is **solely** vested in the Office of the Solicitor General (OSG). Section 35(1), Chapter 12, Title III of Book IV of the 1987 Administrative Code. Jurisprudence has been consistent on this point. In the recent case of *Cariño v. De Castro*, it was held: In criminal proceedings on appeal in the Court of Appeals or in the Supreme Court, the authority to represent the People is vested solely in the Solicitor General. Under Presidential Decree No. 478, among the specific powers and functions of the OSG was to "represent the government in the Supreme Court and the Court of Appeals in all criminal proceedings." This provision has been carried over to the Revised Administrative Code particularly in Book IV, Title III, Chapter 12 thereof. Without doubt, the OSG is the appellate counsel of the People of the Philippines in all criminal cases. Likewise, in *City Fiscal of Tacloban v. Espina*, the Court made the following pronouncement: Under Section 5, Rule 110 of the Rules of Court all criminal actions commenced by complaint or information shall be prosecuted under the direction and control of the fiscal. The fiscal represents the People of the Philippines in the prosecution of offenses before the trial courts at the metropolitan trial courts, municipal trial courts, municipal circuit trial courts and the regional trial courts. However, when such criminal actions are brought to the Court of Appeals or this Court, it is the Solicitor General who must represent the People of the Philippines not the fiscal. And in *Labaro v. Panay*, the Court held: The OSG is the law office of the Government authorized by law to represent the Government or the People of the Philippines before us and before the Court of Appeals in all criminal proceedings, or before any court, tribunal, body, or commission in any matter, action, or proceeding which, in the opinion of the Solicitor General, affects the welfare of the people as the ends of justice may require.

2. ID.; ID.; ID.; IN CRIMINAL CASES, THE SOLICITOR GENERAL IS REGARDED AS THE APPELLATE COUNSEL OF THE REPUBLIC OF THE PHILIPPINES AND AS SUCH, SHOULD HAVE BEEN GIVEN THE OPPORTUNITY TO BE HEARD ON BEHALF OF THE PEOPLE; FAILURE OF THE COURT OF APPEALS TO REQUIRE THE SOLICITOR GENERAL TO FILE HIS

COMMENT DEPRIVED THE PROSECUTION OF A FAIR OPPORTUNITY TO PROSECUTE AND PROVE ITS CASE.— [I]n criminal cases, as in the instant case, the Solicitor General is regarded as the appellate counsel of the People of the Philippines and as such, should have been given the opportunity to be heard on behalf of the People. The records show that the CA failed to require the Solicitor General to file his Comment on Duca's petition. A copy of the CA Resolution dated May 26, 2004 which required the filing of Comment was served upon Atty. Jaime Dojillo, Sr. (counsel for Duca), Atty. Villamor Tolete (counsel for private complainant Calanayan) and RTC Judge Crispin Laron. Nowhere was it shown that the Solicitor General had ever been furnished a copy of the said Resolution. The failure of the CA to require the Solicitor General to file his Comment deprived the prosecution of a fair opportunity to prosecute and prove its case.

3. ID.; ID.; ID.; A DECISION RENDERED WITHOUT DUE PROCESS IS VOID *AB INITIO* AND MAY BE ATTACKED DIRECTLY OR COLLATERALLY.— The State, like the accused, is entitled to due process in criminal cases, that is, it must be given the opportunity to present its evidence in support of the charge. The doctrine consistently adhered to by this Court is that a decision rendered without due process is void *ab initio* and may be attacked directly or collaterally. A decision is void for lack of due process if, as a result, a party is deprived of the opportunity to be heard. The assailed decision of the CA acquitting the respondent without giving the Solicitor General the chance to file his comment on the petition for review clearly deprived the State of its right to refute the material allegations of the said petition filed before the CA. The said decision is, therefore, a nullity. In *Dimatulac v. Villon*, we held: Indeed, for justice to prevail, the scales must balance; justice is not to be dispensed for the accused alone. The interests of society and the offended parties which have been wronged must be equally considered. Verily, a verdict of conviction is not necessarily a denial of justice; and an acquittal is not necessarily a triumph of justice; for, to the society offended and the party wronged, it could also mean injustice. Justice then must be rendered even-handedly to both the accused, on one hand, and the State and offended party, on the other.

4. ID.; ID.; ID.; THE COURT APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN RESOLVING THE PETITION AND ACQUITTING RESPONDENT WITHOUT THE SOLICITOR GENERAL'S COMMENT.— Respondent appealed to the CA from the decision of the RTC *via* a petition for review under Rule 42 of the 1997 Rules of Court. The respondent was mandated under Section 1, Rule 42 of the Rules of Court to serve copies of his petition for review upon the adverse party, in this case, the People of the Philippines through the OSG. Respondent failed to serve a copy of his petition on the OSG and instead served a copy upon the Assistant City Prosecutor of Dagupan City. The service of a copy of the petition on the People of the Philippines, through the Prosecutor would be inefficacious for the reason that the Solicitor General is the sole representative of the People of the Philippines in appeals before the CA and the Supreme Court. The respondent's failure to have a copy of his petition served on the People of the Philippines, through the OSG, is a sufficient ground for the dismissal of the petition as provided in Section 3, Rule 42 of the Rules of Court. Thus, the CA has no other recourse but to dismiss the petition. However, the CA, instead of dismissing respondent's petition, proceeded to resolve the petition and even acquitted respondent without the Solicitor General's comment. We, thus, find that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction in rendering its assailed decision.

5. ID.; ID.; ID.; THE FILING OF THE INSTANT PETITION FOR *CERTIORARI* IS JUSTIFIED CONSIDERING THAT THE APPELLATE COURT'S DECISION IS VOID FOR LACK OF DUE PROCESS.— [T]he Court notes that petitioner filed the instant petition for *certiorari* under Rule 65 without filing a motion for reconsideration with the CA. It is settled that the writ of *certiorari* lies only when petitioner has no other plain, speedy, and adequate remedy in the ordinary course of law. Thus, a motion for reconsideration, as a general rule, must be filed before the tribunal, board, or officer against whom the writ of *certiorari* is sought. Ordinarily, *certiorari* as a special civil action will not lie unless a motion for reconsideration is first filed before the respondent tribunal, to allow it an opportunity to correct its assigned errors. This

> rule, however, is not without exceptions. In *National Housing v. Court of Appeals*, we held: However, in *Progressive Development Corporation v. Court of Appeals,* we held that while generally a motion for reconsideration must first be filed before resorting to *certiorari* in order to give the lower court an opportunity to rectify its errors, this rule admits of exceptions and is not intended to be applied without considering the circumstances of the case. The filing of a motion for reconsideration is not a condition *sine qua non* when the issue raised is purely one of law, **or where the error is patent or the disputed order is void**, or the questions raised on *certiorari* are the same as those already squarely presented to and passed upon by the lower court. The CA decision being void for lack of due process, the filing of the instant petition for *certiorari* without a motion for reconsideration is justified.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Dojillo Law Office for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before this Court is a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure which seeks to set aside and annul the Decision[1] dated November 23, 2005 rendered by the Court of Appeals (CA) in *CA-G.R. CR No. 28312.*

The CA decision reversed the decision[2] of the Regional Trial Court (RTC) of Dagupan City, Branch 44, in *Criminal Case No. 2003-0194-D*[3] which affirmed an earlier decision[4] of the

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[1] Penned by Associate Justice Elvi John S. Asuncion (ret.), with Associate Justices Noel J. Tijam and Mariflor P. Punzalan Castillo, concurring; *rollo*, pp. 17-24.

[2] CA *rollo*, pp. 39-43.

[3] Entitled "*People of the Philippines v. Arturo F. Duca*."

[4] CA *rollo*, pp. 25-36.

Municipal Circuit Trial Court of San Fabian-San Jacinto, Pangasinan, convicting respondent Arturo Duca of the crime of falsification under Article 171 of the Revised Penal Code.

The facts as found by the CA are quoted as follows:

It appears that Arturo Duca, together with his mother, Cecilia Duca, were charged of the crime of Falsification of Official Document defined and penalized under *Article 172*, in relation to *Article 171, paragraph 2* of the *Revised Penal Code* in an Information which reads:

> "That on or about December 10, 2001 in the Municipality of San Fabian, Province of Pangasinan, Philippines, within the jurisdiction of this Honorable Court, the said accused confederating together and mutually abiding each other, with intent to cause damage, did then and there, willfully, unlawfully and feloniously cause the preparation of a Declaration of Real Property over a bungalow type residential house covered by Property Index No. 013-32-027-01-116131 of the Municipal Assessor's Office of San Fabian, Pangasinan by making it appear that the signature appearing on the sworn statement of owner is that of Aldrin F. Duca when the truth of the matter is not because the latter was abroad at that time having arrived in the Philippines only on December 12, 2001, and it was accused Arturo F. Duca who affixed his own signature thereon to the damage and prejudice of the undersigned private complainant Pedro Calanayan."

Upon being arraigned, both the accused pleaded 'not guilty.' Then trial on the merits ensued.

The evidence for the prosecution shows that sometime in 1999, Pedro Calanayan (hereinafter "Calanayan"), private complainant herein, filed an action for ejectment and damages against Cecilia F. Duca, Ruel F. Duca, Arsenio F. Duca and Vangie F. Duca before the 4th Municipal Circuit Trial Court (MCTC) of San Fabian-San Jacinto, Pangasinan, docketed as Civil Case No. 960 (SF-99). The case was decided in favor of Calanayan. There being no appeal interposed by the aforesaid defendants, the said decision became final and executory. On November 22, 1999, a writ of execution was issued by the MCTC to enforce the decision. On February 29, 2000, the money judgment was likewise satisfied with the public auction of the lot owned by

Cecilia Duca covered by TCT No. 233647. On March 1, 2000, a certificate of sale was issued in favor of Jocelyn Barque, the highest bidder in the auction sale.

On October 19, 2001, Cecilia Duca filed an action for the Declaration of Nullity of Execution and Damages with prayer for Writ of Injunction and Temporary Restraining order against Sheriff IV Vinez Hortaleza and Police Officers Roberto Vical, Alejandre Arevalo, Emilio Austria, Victor Quitales, Crisostomo Bonavente and Calanayan. The case was docketed as Civil Case No. 2000-0304-D.

When the said case was heard, Cecilia Duca testified to the effect that the house erected on the lot subject of the ejectment case is owned by her son Aldrin Duca. In support of such claim she presented Property Index No. 013-32-027-01-116131 (*Exhibit "B"*). At the back of the said exhibit is a sworn statement showing that the current and fair market value of the property, which is a bungalow, is ₱70,000.00 with the signature affixed on top of the typewritten name Aldrin F. Duca and subscribed and sworn to before Engr. Reynante Baltazar, the Municipal Assessor of San Fabian, Pangasinan, on December 10, 2001. The signature on top of the typewritten name Aldrin F. Duca is that of Arturo Duca. According to the prosecution, Arturo made it appear that the signature is that of his brother Aldrin who was out of the country at that time. Aldrin arrived in the Philippines only on December 12, 2001, as evidenced by a certification from the Bureau of Immigration, Manila. Arturo even made it appear that his Community Tax Certificate (CTC) No. 03841661 issued on December 10, 2001 is that of his brother Aldrin. That because of the misrepresentation, Cecilia and Arturo were able to mislead the RTC such that they were able to get a TRO against Sheriff Hortaleza and the policemen ordering them to stop from evicting the plaintiffs from the property in question.

Both accused denied that they falsified the signature of Aldrin Duca. Cecilia testified that she had no participation in the execution as she was in Manila at that time.

On the other hand, Arturo testified that the signature atop the name Aldrin Duca was his. However, he intersposed the defense that he was duly authorized by the latter to procure the said tax declaration.

On April 3, 2003, the MCTC of San Fabian-San Jacinto rendered a decision, dispositive portion of which reads as follows:

"WHEREFORE, the Court finds the accused Arturo F. Duca guilty beyond reasonable doubt of the crime of falsification defined and penalized under Article 171 of the Revised Penal Code and hereby imposes upon said accused a prison term of two years, four months and one day to six (6) years of *Prision Correccional* and a fine of ₱2,000.00. Accused Cecilia is acquitted for lack of evidence.

The accused Arturo F. Duca is hereby ordered to pay to the complaining witness actual damages in the amount of ₱60,000.00 moral damages of ₱150,000.00 plus exemplary damages in the amount of ₱100,000.00 plus cost.

SO ORDERED."

Dissatisfied with the decision, Arturo Duca appealed. On March 24, 2004, the RTC of Dagupan City, Branch 44, rendered a decision, disposing the case as follows:

"WHEREFORE, the decision dated April 3, 2003 of the 4th Municipal Circuit Trial Court, San Fabian-San Jacinto, Pangasinan convicting accused Arturo F. Duca of the crime of Falsification defined and penalized under Article 171 of the Revised Penal Code and imposing upon said accused an imprisonment of two years, four months and one day to six (6) years of *Prision Correccional* and a fine of ₱2,000.00, and ordering him to pay to the complaining witness actual damages in the amount of ₱60,000.00, moral damages in the amount of ₱150,000.00 plus exemplary damages in the amount of ₱100,000.00 plus cost, is AFFIRMED.

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SO ORDERED."[5]

Aggrieved with the ruling of the RTC, Duca elevated the case to the CA *via* a petition for review. On November 23, 2005, the CA promulgated its assailed decision acquitting Duca of the crime charged and reversing the RTC decision. The CA held:

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[5] *Rollo*, pp. 17-20.

However, the prosecution failed to establish the fact that Arturo was not duly authorized by Aldrin in procuring the tax declaration. On the contrary, the defense was able to establish that Arturo Duca was duly authorized by his brother Aldrin to secure a tax declaration on the house erected on the land registered under their mother's name.

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From the foregoing testimony, it can be deduced that Arturo could not have falsified the Tax Declaration of Real Property under Property Index No. 013-32-027-01-116B1 (Exhibit "B") by making it appear that Aldrin Duca, his brother, participated in the accomplishment of the said document since he was actually acting for and in behalf of the latter. It must be noted that as early as June 2001, Arturo has already been authorized by Aldrin; albeit verbally, to register the house in the latter's name as he cannot do it personally as he was abroad. This authority of Arturo was confirmed by the latter's execution of an Affidavit dated January 19, 2002 confirming the procurement of the said tax declaration (Exhibit "6") as well as a Special Power of attorney executed on June 17, 2002 (Exhibit "7"). Thus, what appeared to be defective from the beginning had already been cured so much so that the said document became valid and binding as an official act of Arturo.

If Arturo did not state in the Tax Declaration in what capacity he was signing, this deficiency was cured by Aldrin's subsequent execution of Exhibits "6" and "7".

The RTC's conclusion that the special power of attorney executed by Aldrin was a mere afterthought designed to extricateArturo from any criminal liability has no basis since from the very start, it has been duly established by the defense that Aldrin had verbally instructed Arturo to cause the execution of Exhibit "B" for the purpose of registering his house constructed on his mother's lot for taxation purposes.[6]

Hence, the instant petition anchored on this sole ground:

PUBLIC RESPONDENT COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND HAD ACTED WITHOUT JURISDICTION WHEN IT RESOLVED PRIVATE RESPONDENT ARTURO F.

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[6] *Id.* at 22-24.

DUCA'S APPEAL WITHOUT GIVING THE PEOPLE OF THE PHILIPPINES THROUGH THE OFFICE OF THE SOLICITOR GENERAL THE OPPORTUNITY TO BE HEARD THEREON.[7]

Petitioner argues that the prosecution was denied due process when the CA resolved the respondent's appeal without notifying the People of the Philippines, through the Solicitor General, of the pendency of the same and without requiring the Solicitor General to file his comment. Petitioner contends that once the case is elevated to the CA or this Court, it is only the Solicitor General who is authorized to bring or defend actions on behalf of the People. Thus, the CA gravely abused its discretion when it acted on respondent's appeal without affording the prosecution the opportunity to be heard. Consequently, the decision of the CA acquitting respondent should be considered void for being violative of due process.

In his Comment,[8] respondent argues that there was no denial of due process because the prosecution was properly represented by the Office of the Provincial Prosecutor and a private prosecutor who handled the presentation of evidence under the control and supervision of the Provincial Prosecutor. Since the control and supervision conferred on the private prosecutor by the Provincial Prosecutor had not been withdrawn, the Solicitor General could not claim that the prosecution was not afforded a chance to be heard in the CA. According to the respondent, he should not be prejudiced by the Provincial Prosecutor's failure to inform the Solicitor General of the pendency of the appeal.

The petition is impressed with merit.

The authority to represent the State in appeals of criminal cases before the CA and the Supreme Court is **solely** vested in the Office of the Solicitor General (OSG). Section 35(1), Chapter 12, Title III of Book IV of the 1987 Administrative Code explicitly provides, *viz.*:

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[7] *Id.* at 6.

[8] *Id.* at 27-30.

SEC. 35. *Powers and Functions*. — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. x x x It shall have the following specific powers and functions:

(1) **Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings**; represent the Government and its officers in the Supreme Court and Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. (emphasis supplied)

Jurisprudence has been consistent on this point. In the recent case of *Cariño v. De Castro*,[9] it was held:

In criminal proceedings on appeal in the Court of Appeals or in the Supreme Court, the authority to represent the People is vested solely in the Solicitor General. Under Presidential Decree No. 478, among the specific powers and functions of the OSG was to "represent the government in the Supreme Court and the Court of Appeals in all criminal proceedings." This provision has been carried over to the Revised Administrative Code particularly in Book IV, Title III, Chapter 12 thereof. Without doubt, the OSG is the appellate counsel of the People of the Philippines in all criminal cases.[10]

Likewise, in *City Fiscal of Tacloban v. Espina*,[11] the Court made the following pronouncement:

Under Section 5, Rule 110 of the Rules of Court all criminal actions commenced by complaint or information shall be prosecuted under the direction and control of the fiscal. The fiscal represents the People of the Philippines in the prosecution of offenses before the trial courts at the metropolitan trial courts, municipal trial courts, municipal circuit trial courts and the regional trial courts. However, when such criminal actions are brought to the Court of Appeals or

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[9] G.R. No. 176084, April 30, 2008, 553 SCRA 688.

[10] *Id.* at 695.

[11] G.R. No. 83996, October 21, 1988, 166 SCRA 614.

this Court, it is the Solicitor General who must represent the People of the Philippines not the fiscal.[12]

And in *Labaro v. Panay*,[13] the Court held:

> The OSG is the law office of the Government authorized by law to represent the Government or the People of the Philippines before us and before the Court of Appeals in all criminal proceedings, or before any court, tribunal, body, or commission in any matter, action, or proceeding which, in the opinion of the Solicitor General, affects the welfare of the people as the ends of justice may require.[14]

Indeed, in criminal cases, as in the instant case, the Solicitor General is regarded as the appellate counsel of the People of the Philippines and as such, should have been given the opportunity to be heard on behalf of the People. The records show that the CA failed to require the Solicitor General to file his Comment on Duca's petition. A copy of the CA Resolution[15] dated May 26, 2004 which required the filing of Comment was served upon Atty. Jaime Dojillo, Sr. (counsel for Duca), Atty. Villamor Tolete (counsel for private complainant Calanayan) and RTC Judge Crispin Laron. Nowhere was it shown that the Solicitor General had ever been furnished a copy of the said Resolution. The failure of the CA to require the Solicitor General to file his Comment deprived the prosecution of a fair opportunity to prosecute and prove its case.

Pertinently, *Saldana v. Court of Appeals, et al.*[16] ruled as follows:

> When the prosecution is deprived of a fair opportunity to prosecute and prove its case, its right to due process is thereby violated (*Uy vs. Genato*, L-37399, 57 SCRA 123 [May 29, 1974]; *Serino vs. Zoa*, L-33116, 40 SCRA 433 [Aug. 31, 1971]; *People vs. Gomez*,

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[12] *Id.* at 616.

[13] G.R. No. 129567, December 4, 1998, 299 SCRA 714.

[14] *Id.* at 720-721.

[15] CA *rollo*, pp. 47-48.

[16] G.R. No. 88889, October 11, 1990, 190 SCRA 396.

L-22345, 20 SCRA 293 [May 29, 1967]; *People vs. Balisacan*, L-26376, 17 SCRA 1119 [Aug. 31, 1966]).

The cardinal precept is that where there is a violation of basic constitutional rights, courts are ousted of their jurisdiction. Thus, the violation of the State's right to due process raises a serious jurisdiction issue (*Gumabon vs. Director of the Bureau of Prisons*, L-30026, 37 SCRA 420 [Jan. 30, 1971]) which cannot be glossed over or disregarded at will. Where the denial of the fundamental right of due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction (*Aducayen vs. Flores*, L-30370, [May 25, 1973] 51 SCRA 78; *Shell Co. vs. Enage*, L-30111-12, 49 SCRA 416 [Feb. 27, 1973]). Any judgment or decision rendered notwithstanding such violation may be regarded as a 'lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever it exhibits its head' (*Aducayen vs. Flores, supra*).[17]

The State, like the accused, is entitled to due process in criminal cases, that is, it must be given the opportunity to present its evidence in support of the charge. The doctrine consistently adhered to by this Court is that a decision rendered without due process is void *ab initio* and may be attacked directly or collaterally. A decision is void for lack of due process if, as a result, a party is deprived of the opportunity to be heard.[18]

The assailed decision of the CA acquitting the respondent without giving the Solicitor General the chance to file his comment on the petition for review clearly deprived the State of its right to refute the material allegations of the said petition filed before the CA. The said decision is, therefore, a nullity. In *Dimatulac v. Villon*,[19] we held:

Indeed, for justice to prevail, the scales must balance; justice is not to be dispensed for the accused alone. The interests of society and the offended parties which have been wronged must be equally

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[17] *Id.* at 403.

[18] *Uy v. Court of Appeals*, G.R. No. 109557, November 29, 2000, 346 SCRA 246, 254-255.

[19] G.R. No. 127107, October 12, 1998, 297 SCRA 679.

considered. Verily, a verdict of conviction is not necessarily a denial of justice; and an acquittal is not necessarily a triumph of justice; for, to the society offended and the party wronged, it could also mean injustice. Justice then must be rendered even-handedly to both the accused, on one hand, and the State and offended party, on the other.[20]

Further, the CA should have been guided by the following provisions of Sections 1 and 3 of Rule 42 of the 1997 Rules of Court:

Sec. 1. *How appeal taken; time for filing.* — A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of ₱500.00 for costs, and **furnishing** the Regional Trial Court and **the adverse party with a copy of the petition**. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to extend fifteen (15) days.

Sec. 3. *Effect of failure to comply with requirements.*— The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the 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**. (emphasis supplied)

Respondent appealed to the CA from the decision of the RTC *via* a petition for review under Rule 42 of the 1997 Rules of Court. The respondent was mandated under Section 1,

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[20] *Id.* at 714.

Rule 42 of the Rules of Court to serve copies of his petition for review upon the adverse party, in this case, the People of the Philippines through the OSG. Respondent failed to serve a copy of his petition on the OSG and instead served a copy upon the Assistant City Prosecutor of Dagupan City.[21] The service of a copy of the petition on the People of the Philippines, through the Prosecutor would be inefficacious for the reason that the Solicitor General is the sole representative of the People of the Philippines in appeals before the CA and the Supreme Court. The respondent's failure to have a copy of his petition served on the People of the Philippines, through the OSG, is a sufficient ground for the dismissal of the petition as provided in Section 3, Rule 42 of the Rules of Court. Thus, the CA has no other recourse but to dismiss the petition. However, the CA, instead of dismissing respondent's petition, proceeded to resolve the petition and even acquitted respondent without the Solicitor General's comment. We, thus, find that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction in rendering its assailed decision.

On a procedural matter, the Court notes that petitioner filed the instant petition for *certiorari* under Rule 65 without filing a motion for reconsideration with the CA. It is settled that the writ of *certiorari* lies only when petitioner has no other plain, speedy, and adequate remedy in the ordinary course of law. Thus, a motion for reconsideration, as a general rule, must be filed before the tribunal, board, or officer against whom the writ of *certiorari* is sought. Ordinarily, *certiorari* as a special civil action will not lie unless a motion for reconsideration is first filed before the respondent tribunal, to allow it an opportunity to correct its assigned errors.[22] This rule, however, is not without exceptions. In *National Housing v. Court of Appeals*,[23] we held:

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[21] CA *rollo*, p. 22.

[22] *Macawiwili Gold Mining and Development Co., Inc. v. Court of Appeals*, G.R. No. 115104, October 12, 1998, 297 SCRA 602, 611.

[23] G.R. No. 144275, July 5, 2001, 360 SCRA 533.

However, in *Progressive Development Corporation v. Court of Appeals*, we held that while generally a motion for reconsideration must first be filed before resorting to *certiorari* in order to give the lower court an opportunity to rectify its errors, this rule admits of exceptions and is not intended to be applied without considering the circumstances of the case. The filing of a motion for reconsideration is not a condition *sine qua non* when the issue raised is purely one of law, **or where the error is patent or the disputed order is void**, or the questions raised on *certiorari* are the same as those already squarely presented to and passed upon by the lower court.[24] (emphasis supplied)

The CA decision being void for lack of due process, the filing of the instant petition for *certiorari* without a motion for reconsideration is justified.

WHEREFORE, the petition for *certiorari* is hereby *GRANTED*. The assailed decision of the CA in *CA-G.R. CR No. 28312* is hereby *SET ASIDE* and the case is *REMANDED* to the CA for further proceedings. The CA is ordered to decide the case with dispatch.

SO ORDERED.

Corona (Acting Chairperson),[*] *Velasco, Jr.,*[**] *Brion,*[***] and *Bersamin, JJ.,* concur.

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[24] *Id.* at 537.

[*] Acting Chairperson as per Special Order No. 724.

[**] Additional member as per Special Order No. 719.

[***] Additional member as per Special Order No. 725-A.

THIRD DIVISION

[G.R. No. 172077. October 9, 2009]

BICOL AGRO-INDUSTRIAL PRODUCERS COOPERATIVE, INC. (BAPCI), *petitioner, vs.* **EDMUNDO O. OBIAS, PERFECTO O. OBIAS, VICTOR BAGASINA, ELENA BENOSA, MELCHOR BRANDES, ROGELIO MONTERO, PEDRO MONTERO, CLAUDIO RESARI, PILAR GALON, ANTONIO BUISON, PRUDENCIO BENOSA, JR., MARIA VILLAMER and ROBERTO PADUA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; IMPROPER REMEDY IN CASE AT BAR; NOTWITHSTANDING THE PROCEDURAL INFIRMITY, THE COURT, IN THE INTEREST OF JUSTICE, SHALL CONSIDER THE INSTANT PETITION AS ONE FILED UNDER RULE 45 SINCE IT WAS FILED WELL WITHIN THE REGLEMENTARY PERIOD PRESCRIBED FOR THE RULE.— Herein petition is denominated as one filed under Rule 65 of the Rules of Court notwithstanding that it seeks to assail the Decision and Resolution of the CA. Clearly, petitioner had availed of the improper remedy as the appeal from a final disposition of the CA is a petition for review under Rule 45 and not a special civil action under Rule 65 of the Rules of Court. Rule 45 is clear that decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceeding involved, may be appealed to this Court by filing a petition for review, which would be but a continuation of the appellate process over the original case. Moreover, it is basic that one cannot avail of the remedy provided for under Rule 65 when an appeal is still available. Hence, petitioner should have filed its petition under Rule 45. The procedural infirmity notwithstanding and in the interest of substantial justice, this Court shall consider herein petition as one filed under Rule 45 especially since it was filed well within the reglementary period proscribed under the said Rule. The Court also takes notice that the assignment of errors raised

by petitioner does not allege grave abuse of discretion or lack of jurisdiction on the part of the CA.

2. ID.; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; ONLY QUESTIONS OF LAW ARE ALLOWED; EXCEPTIONS TO THE RULE; NO JUSTIFICATION TO WARRANT THE APPLICATION OF ANY EXCEPTION TO THE GENERAL RULE IN CASE AT BAR.— The well-entrenched rule in our jurisdiction is that only questions of law may be entertained by this Court in a petition for review on *certiorari*. This rule, however, is not iron-clad and admits certain exceptions, such as when (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. After a painstaking review of the records, this Court finds no justification to warrant the application of any exception to the general rule.

3. CIVIL LAW; PROPERTY; EASEMENT OF RIGHT OF WAY; DISCONTINUOUS EASEMENTS WHETHER APPARENT OR NOT MAY BE ACQUIRED ONLY BY VIRTUE OF A TITLE; IT IS THEN INCUMBENT UPON PETITIONER TO SHOW ITS RIGHT BY TITLE OR BY AN AGREEMENT WITH THE OWNERS OF THE LANDS THAT SAID ROAD TRAVERSED.— An easement of right of way was succinctly explained by the CA in the following manner, to wit: Easement or servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner. By its creation, easement is established either by law (in which case it is a legal easement) or by will of the parties (a voluntary easement). In terms of use, easement may either be continuous or discontinuous. **The easement of right of**

way — the privilege of persons or a particular class of persons to pass over another's land, usually through one particular path or linen – is characterized as a discontinuous easement because its use is in intervals and depends on the act of man. Because of this character, an easement of a right of way may only be acquired by virtue of a title. Article 622 of the New Civil Code is the applicable law in the case at bar, *viz*: Art. 622. Continuous non-apparent easements, and **discontinuous ones**, whether apparent or not, **may be acquired only by virtue of a title**. Based on the foregoing, in order for petitioner to acquire the disputed road as an easement of right-of-way, it was incumbent upon petitioner to show its right by title or by an agreement with the owners of the lands that said road traversed.

4. ID.; ID.; ID.; ID.; THE INABILITY OF PETITIONER TO PROVE THE EXISTENCE OF AN AGREEMENT MILITATES AGAINST ITS ALLEGATIONS IN THE PETITION; BOTH THE TRIAL AND APPELLATE COURT ARE ONE IN RULING THAT PETITIONER HAD FAILED TO PROVE THE EXISTENCE OF AN AGREEMENT FOR THE CONSTRUCTION OF THE ROAD.— For its part, the CA also ruled that petitioner failed to prove the existence of the said agreement, to *wit*: **Like the lower court, we found no conclusive proof to sufficiently establish the existence of an agreement between BISUDECO and the defendants-appellants regarding the construction and the use of the disputed road**. The lower court correctly disbelieved the plaintiffs-appellants' contention that an agreement existed because there is simply no direct evidence to support this allegation. BAPCI submitted purely circumstantial evidence that are not sufficiently adequate as basis for the inference than an agreement existed. By themselves, the circumstances the plaintiffs-appellants cited – *i.e.*, the employment of sixteen (16) relatives of the defendants-appellants; the defendants-appellants' unjustified silence; the fact that the existence of the agreement is known to everyone, *etc.* – are events susceptible of diverse interpretations and do not necessarily lead to BAPCI's desired conclusion. **Additionally, the testimonies that the plaintiffs-appellants presented are mainly hearsay, as not one among the witnesses had personal knowledge of the agreement by reason of direct participation in the**

agreement or because the witness was present when the agreement was concluded by the parties. Thus, given the defendants-appellants' categorical denial that an agreement existed, we sustain the lower court's conclusion that no agreement existed between BISUDECO and the defendants-appellants. Based on the foregoing, the inability of petitioner to prove the existence of an agreement militates its allegations in herein petition. On this score, both the RTC and the CA are one in ruling that petitioner had failed to prove the existence of the agreement between BISUDECO and the respondents for the construction of the road. Also, well-established is the rule that "factual findings of the Court of Appeals are conclusive on the parties and carry even more weight when the said court affirms the factual findings of the trial court." Hence, this Court finds no reason to reverse such findings.

5. ID.; ID.; ID.; ID.; DISCONTINUOUS EASEMENTS WHETHER APPARENT OR NOT MAY BE ACQUIRED ONLY BY VIRTUE OF A TITLE OR AGREEMENT AND CANNOT BE ACQUIRED THROUGH ACQUISITIVE PRESCRIPTION; CASE AT BAR.— Petitioner would have this Court re-examine *Costabella Corporation v. Court of Appeals (Costabella)* where the Court held that, "It is already well-established that a right of way is discontinuous and, as such, cannot be acquired by prescription." Petitioner contends that some recognized authorities share its view that an easement of right of way may be acquired by prescription. Be that as it may, this Court finds no reason to re-examine *Costabella*. This Court is guided by *Bogo-Medellin Milling Co., Inc. v. Court of Appeals* (*Bogo-Medellin*), involving the construction of a railroad track to a sugar mill. In *Bogo-Medellin*, this Court discussed the discontinuous nature of an easement of right of way and the rule that the same cannot be acquired by prescription. Applying *Bogo-Medellin* to the case at bar, the conclusion is inevitable that the road in dispute is a discontinuous easement notwithstanding that the same may be apparent. To reiterate, easements are either continuous or discontinuous according to *the manner they are exercised,* not according to the presence of apparent signs or physical indications of the existence of such easements. Hence, even if the road in dispute has been improved and maintained over a number of years, it will not change its discontinuous nature but simply make the same

apparent. To stress, Article 622 of the New Civil Code states that discontinuous easements, *whether apparent or not*, may be acquired only by virtue of a title.

6. ID.; ID.; ID.; ID.; EQUITABLE PRINCIPLES OF LACHES AND ESTOPPEL; THE FACT THAT THE LAW IS CATEGORICAL THAT DISCONTINUOUS EASEMENTS CANNOT BE ACQUIRED BY PRESCRIPTION LIKEWISE MILITATES AGAINST PETITIONER'S CLAIM OF LACHES; NOR DID PETITIONER PRESENT ANY EVIDENCE THAT WOULD SHOW AN ADMISSION, REPRESENTATION OR CONDUCT BY RESPONDENTS THAT WILL GIVE RISE TO ESTOPPEL.— There is no absolute rule on what constitutes laches. It is a rule of equity and applied not to penalize neglect or sleeping on one's rights, but rather to avoid recognizing a right when to do so would result in a clearly unfair situation. The question of laches is addressed to the sound discretion of the court and each case must be decided according to its particular circumstances. It is the better rule that courts, under the principle of equity, should not be guided or bound strictly by the statute of limitations or the doctrine of laches if wrong or injustice will result. This Court agrees with the CA. The fact that the law is categorical that discontinuous easements cannot be acquired by prescription militates against petitioner's claim of laches. To stress, discontinuous easements can only be acquired by title. More importantly, whether or not the elements of laches are present is a question involving a factual determination by the trial court. Hence, the same being a question of fact, it cannot be the proper subject of herein petition. On the other hand, as to the issue of estoppel, this Court likewise agrees with the finding of the CA that petitioner did not present any evidence that would show an admission, representation or conduct by respondents that will give rise to estoppel.

7. ID.; ID.; ID.; ID.; TRIAL COURT DECISION SHOWS THAT THE ROAD IN DISPUTE IS NOT A *BARANGAY* ROAD; THE DOCUMENTS OF EXPROPRIATION PROCEEDINGS BY THE LOCAL GOVERNMENT WOULD HAVE BEEN THE BEST EVIDENCE AVAILABLE AND THE ABSENCE THEREOF IS CERTAINLY DAMAGING TO PETITIONER'S CAUSE.— The Court also considers portions of the RTC Decision where it can be gathered that the road in

dispute is not a *barangay* road. The RTC findings of fact shows that while certain portions of the property of Edmundo is a *barangay* road, the same only pertains to Lots A, B and C, or a total of 1,497 square meters, which is distinct from the road in dispute which pertains to different lots (lots E to P) and covers a total area of 10,774 square meters. In light of the foregoing, considering that the contents of the 1991 FAAS is disputable, it was incumbent on petitioner to present documents which would evidence the expropriation of the road in dispute by the local government as a *barangay* road. Under the prevailing circumstances, the documents of the expropriation proceedings would have been the best evidence available and the absence thereof is certainly damaging to petitioner's cause.

8. ID.; ID.; ID.; ID.; FINDINGS OF BOTH THE TRIAL AND APPELLATE COURTS ON THE AMOUNT OF INDEMNITY APPEAR TO BE FAIR AND REASONABLE UNDER THE PREVAILING CIRCUMSTANCES AND IN ACCORDANCE WITH ARTICLE 649 OF THE CIVIL CODE.— Petitioner likens the proceedings at bar to an expropriation proceeding where just compensation must be based on the value of the land at the time of taking. Petitioner thus maintains that the compensation due to respondents should have been computed in 1974 when the road was constructed. This Court does not agree. Article 649 of the New Civil Code states: The owner, or any person who by virtue of a real right may cultivate or use any immovable, which is surrounded by other immovables pertaining to other persons and without adequate outlet to a public highway, is entitled to demand a right of way through the neighboring estates, after payment of the proper indemnity. Should this easement be established in such a manner that its use may be continuous for all the needs of the dominant estate, establishing a permanent passage, **the indemnity shall consist of the value of the land occupied and the amount of the damage cause to the servient estate**. Based on the foregoing, it is clear that the law does not provide for a specific formula for the valuation of the land. Neither does the same state that the value of the land must be computed at the time of taking. The only primordial consideration is that the same should consist of the value of the land and the amount of damage caused to the servient estate. Hence, the same is a question of fact which should be left to the sound discretion

of the RTC. Withal, this Court finds no error as to the proper amount of indemnity due respondents as the findings of both the RTC and the CA appear to be fair and reasonable under the prevailing circumstances and in accordance with the provisions of Article 649 of the New Civil Code.

APPEARANCES OF COUNSEL

Rolando M. Carandang for petitioner.
Fe Rosario P. Buelva for respondents.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a Petition for Review on *certiorari*[1] under Rule 65 of the Rules of Court, seeking to set aside the August 24, 2005 Decision[2] and March 28, 2006 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 59016.

The facts of the case:

Sometime in 1972, the Bicol Sugar Development Corporation (BISUDECO) was established at Himaao, Pili, Camarines Sur. In the same year, BISUDECO constructed a road ("the disputed road") — measuring approximately 7 meters wide and 2.9 kilometers long. The disputed road was used by BISUDECO in hauling and transporting sugarcane to and from its mill site (Pensumil) and has thus become indispensable to its sugar milling operations.[4]

On October 30, 1992, petitioner Bicol Agro-Industrial Producers Cooperative, Inc. acquired the assets of BISUDECO. On April

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[1] *Rollo*, pp. 8-37.

[2] Penned by Associate Justice Arturo D. Brion (now a member of this Court), with Associate Justices Eugenio S. Labitoria and Eliezer R. de Los Santos concurring; *id.* at 38-60.

[3] *Rollo* pp. 62-68.

[4] *Id.* at 39-40.

19, 1993, petitioner filed a Complaint[5] against respondents Edmundo Obias, Perfecto Obias, Victor Bagasina, Elena Benosa, Melchor Brandes, Rogelio Montero, Pedro Montero, Claudio Resari, Pilar Galon, Antonio Buison, Prudencio Benosa, Jr., Victor Bagasina Jr., Maria Villamer, and Roberto Padua, alleging that on March 27, 1993 and April 3, 1993, respondents unjustifiably barricaded the disputed road by placing bamboos, woods, placards and stones across it, preventing petitioner's and the other sugar planter's vehicles from passing through the disputed road, thereby causing serious damage and prejudice to petitioner.[6]

Petitioner alleged that BISUDECO constructed the disputed road pursuant to an agreement with the owners of the ricefields the road traversed. The agreement provides that BISUDECO shall employ the children and relatives of the landowners in exchange for the construction of the road on their properties. Petitioner contends that through prolonged and continuous use of the disputed road, BISUDECO acquired a right of way over the properties of the landowners, which right of way in turn was acquired by it when it bought BISUDECO's assets. Petitioner prayed that respondents be permanently ordered to restrain from barricading the disputed road and from obstructing its free passage.[7]

In an Order[8] dated April 19, 1993, the Regional Trial Court of Pili (RTC), Camarines Sur, 5th Judicial Region, Branch 31, ordered respondents, their agents and representatives to cease and desist from placing barricades on the disputed road.[9]

In their Answer,[10] respondents denied having entered into an agreement with BISUDECO regarding the construction and

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[5] Records, p. 1.

[6] *Rollo*, p. 40.

[7] *Rollo*, pp. 40-41.

[8] Records, p. 16.

[9] *Rollo*, p. 41.

[10] Records, p. 30.

the use of the disputed road. They alleged that BISUDECO, surreptitiously and without their knowledge and consent, constructed the disputed road on their properties and has since then intermittently and discontinuously used the disputed road for hauling sugarcane despite their repeated protests. Respondents claimed they tolerated BISUDECO in the construction and the use of the road since BISUDECO was a government-owned and controlled corporation, and the entire country was then under Martial Law. Respondents likewise denied that the road has become a public road, since no public funds were used for its construction and maintenance. Moreover, respondents alleged that with the exception of Edmundo and Perfecto Obias, they are actual tillers of the ricelands, having acquired their rights over said lands under Presidential Decree No. 27 (PD 27). Edmundo and Perfecto Obias are the owners of the eastern portion of the property on which a portion of the road going to BISUDECO was constructed. Respondents denied that they barricaded the road.[11]

Jaime Manubay and Manolito Maralit, for themselves and inrepresentation of other sugarcane planters, filed the first complaint-in-intervention.[12]

Petitioner filed an Amended Complaint[13] and with leave of court a Re-Amended Complaint,[14] where it averred, as an alternative cause of action in the event the lower court does not find merit in its causes of action, that it will avail of the benefits provided for under Article 649[15] of the New Civil Code. Petitioner

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[11] *Rollo*, pp. 41-42.

[12] Records, p. 39; Note that it does not appear that said intervenors join petitioner in herein petition.

[13] *Id* at 19.

[14] *Id* at 67.

[15] The owner, or any person who by virtue of a real right may cultivate or use any immovable, which is surrounded by other immovables pertaining to other persons and without adequate outlet to a public highway, is entitled to demand a right of way through the neighboring estates, after payment of the proper indemnity.

thus demanded from respondents a right of way over the disputed road for its use.[16]

Respondents filed an Answer[17] to refute petitioner's alternative cause of action. Respondents claimed that the road from the sugarmill to the Maharlika Highway at Barangay Romero, Bula, Camarines Sur, which exits at the Rural Bank of Bula site, had a distance of only about 15 kilometers; hence, respondents asserted that said road was shorter and was a more appropriate right of way than the disputed road.[18]

On July 21, 1993, the RTC issued a *Writ* of Preliminary Injunction[19] ordering the respondents to desist from constructing barricades across the road.

On June 28, 1994, nine other cooperatives[20] filed their Complaint-in-Intervention.[21]

On June 25, 1997 the RTC rendered a Decision,[22] the dispositive portion of which reads:

WHEREFORE, premises considered, a decision is hereby rendered declaring the Writ of Preliminary Injunction issued against all the herein defendants, their agents, representatives and such other persons

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Should this easement be established in such a manner that its use may be continuous for all the needs of the dominant estate, establishing a permanent passage, the indemnity shall consist of the value of the land occupied and the amount of the damage cause to the servient estate.

[16] *Rollo*, p. 42.

[17] Records, p. 73.

[18] *Rollo*, p. 43.

[19] Records, p. 145.

[20] Peñafrancia Multi-Purpose Sugar Coop.; San Isidro Development Coop. Inc.; Ocampo Small Multi-Purpose Producers Coop. Inc.; Kilantao-Catalotoan Multi-Purpose Coop. Inc.; May-ogob Planters Coop. Inc.; Aniog Planters Multi-Purpose Coop. Inc., Sagnay Sugar Planters Coop. Inc.; Hda. Magdalena Farmers Coop.; and Bicol Sugar Planters Coop. Inc. Note that it does not appear that said intervenors join petitioner in herein petition.

[21] Records, p. 198.

[22] CA *rollo*, pp. 94-102.

acting in their behalf, permanent and perpetual BUT the plaintiff Bicol Agro-Industrial Cooperative, Inc., (BAPCI) is hereby ordered to pay the owners of the lots affected by the road, *viz*: Pedro Montero – ₱299,040.00; Pedro Galon – ₱52,920.00; Clara Padua – ₱46,410.00; Antonio Buizon – ₱35,070.00; Rogelio Montero – ₱41,160.00; Maria Villamer – ₱41,580.00; Melchor Brandes – ₱76,440.00; Prudencio Benosa – ₱41, 650.00; Elena Benosa – ₱39,550.00; Victor Bagasina, Jr. – ₱39,410.00; and Claudio Resari – ₱40,950.00. Upon full payment thereof, the plaintiff shall be declared the absolute owner of the road in question. Legal rate if interest is hereby imposed upon the plaintiff from the finality of this decision until fully payment hereof. No costs.

SO ORDERED.[23]

The RTC ruled that petitioner failed to present any concrete evidence to prove that there was an agreement between BISUDECO and respondents for the construction of the disputed road.[24] Moreover, it held that petitioner did not acquire the same by prescription.[25] The RTC, however, also held that petitioner was entitled to a compulsory easement of right of way as provided for under Article 649 of the New Civil Code upon payment of proper indemnity to respondents.[26]

Both parties filed a motion for reconsideration of the RTC Decision. Petitioner contended that: (1) the value of the land is excessive; (2) the evidence is insufficient to justify the award; (3) the decision is contrary to law and jurisprudence. Respondents, on the other hand, alleged that: (1) the trial court erred in declaring the persons mentioned in the decision's dispositive portion to be entitled to indemnity for the construction and the use of the disputed road; (2) BAPCI should not be declared the absolute owner of the disputed road upon full payment of the indemnity due to the defendants; and (3) the decision failed to award damages.[27]

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[23] *Id.* at 102.

[24] *Id.* at 96.

[25] *Id.* at 98.

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

[27] *Rollo*, p. 44.

On September 24, 1997, the RTC denied both motions for reconsideration.[28] The parties then appealed to the CA.

On August 24, 2005, the CA rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, the appeal is PARTLY GRANTED. The assailed decision of the Regional Trial Court, Branch 31, Pili, Camarines Sur, in Civil Case No. P-1899 is hereby MODIFIED as follows: the awards of Php46,410.00 to Clara Padua and Php41,650.00 to Prudencio Benosa are hereby DELETED, and the declaration that the plaintiff BAPCI shall become the absolute owner of the disputed road upon full payment of indemnity is REVERSED and SET ASIDE. Accordingly, the owners of the servient estate in the easement of right of way recognized in this Decision shall retain ownership of the lands affected by the easement in accordance with Art. 630 of the Civil Code. We hereby AFFIRM the appeal in all other respects.
>
> SO ORDERED.[29]

The CA affirmed the finding of the RTC that there was no conclusive proof to sufficiently establish the existence of an agreement between BISUDECO and respondents regarding the construction of the disputed road.[30] Moreover, the CA also declared that an easement of right of way is discontinuous and as such cannot be acquired by prescription.[31] The CA likewise affirmed the finding of the RTC that petitioner was entitled to a compulsory easement of right of way upon payment of proper indemnity to respondents. The CA, however, declared that ownership over the disputed road should remain with respondents, despite the grant of a compulsory easement.[32] Lastly, the CA deleted the awards to Prudencio Benosa (Benosa) and Clara Padua (Padua), since the former never claimed ownership of

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[28] *Id*.

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

[30] *Id.* at 50.

[31] *Id.* at 51-52.

[32] *Id.* at 59.

any portion of the lands affected by the disputed road and the latter was not a party to the proceedings below.[33]

Petitioner then filed a Motion for Reconsideration alleging among others that the CA Decision failed to rule on the issue of *estoppel* and *laches*. Moreover, Benosa and Padua filed a Motion for Reconsideration assailing the portion of the CA Decision deleting the award of indemnity to them. On March 28, 2006, the CA issued a Resolution denying the same.

Hence, herein petition, with petitioner raising the following assignment of errors, to wit:

I.

THE HONORABLE COURT OF APPEALS ERRED SERIOUSLY IN NOT FINDING THAT THERE WAS FORGED AN AGREEMENT BETWEEN BISUDECO MANAGEMENT AND THE PRIVATE RESPONDENTS FOR THE CONSTRUCTION OF THE ROAD IN QUESTION.

II.

THE HONORABLE PUBLIC RESPONDENT COURT OF APPEALS ERRED IN NOT CONSIDERING THE PRINCIPLES OF PRESCRIPTION, LACHES AND ESTOPPEL IN THE CASE AT BAR.

III.

THE HONORABLE COURT OF APPEALS ERRED IN COMPLETELY DISREGARDING THE CLASSIFICATION OF THE ROAD IN QUESTION AS *BARANGAY* ROAD.

IV.

IN THE ALTERNATIVE CAUSE OF ACTION, THE PUBLIC RESPONDENT SERIOUSLY ERRED IN CONSIDERING THE VALUATION OF THE LANDS AFFECTED BY THE ROAD IN 1994, AND NOT IN 1974, WHEN SAID ROAD WAS CONSTRUCTED.

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

V.

THE HONORABLE PUBLIC RESPONDENT ERRED SERIOUSLY WHEN IT FAILED ALSO TO CONSIDER THE LEGAL PRINCIPLE OF UNJUST ENRICHMENT AT THE EXPENSE OF ANOTHER.[34]

At the outset, this Court shall address some procedural matter. Quite noticeably, herein petition is denominated as one filed under Rule 65[35] of the Rules of Court notwithstanding that it seeks to assail the Decision and Resolution of the CA. Clearly, petitioner had availed of the improper remedy as the appeal from a final disposition of the CA is a petition for review under Rule 45 and not a special civil action under Rule 65 of the Rules of Court.[36]

In *Active Realty and Development Corporation v. Fernandez,*[37] this Court discussed the difference between petitions filed under Rule 65 and Rule 45, *viz:*

> A petition for *certiorari* under Rule 65 is proper to correct errors of jurisdiction committed by the lower court, or grave abuse of discretion which is tantamount to lack of jurisdiction. This remedy can be availed of when "there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law."
>
> Appeal by *certiorari* under Rule 45 of the Rules of Court, on the other hand, is a mode of appeal available to a party desiring to raise only questions of law 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.

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[34] *Id.* at 15-16.

[35] 1. *Petition for Review* — This is a petition for Review on *Certiorari* under Rule 65 of the New Rules on Civil Procedure assailing the Decision and Resolution rendered by the Honorable Public Respondent Court of Appeals, xxx, with grave abuse of discretion amounting to lack of or excess of jurisdiction and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, hence, this Petition. (*Rollo*, p. 10).

[36] See *National Irrigation Administration v. Court of Appeals*, G.R. No. 129169, November 17, 1999, 318 SCRA 255.

[37] G.R. No. 157186, October 19, 2007, 537 SCRA 116.

x x x **The general rule is that the remedy to obtain reversal or modification of judgment on the merits is appeal. Thus, the proper remedy for the petitioner should have been a petition for review on *certiorari* under Rule 45 of the Rules of Court since the decision sought to be reversed is that of the CA.** The existence and availability of the right of appeal proscribes a resort to *certiorari*, because one of the requisites for availment of the latter is precisely that "there should be no appeal." The remedy of appeal under Rule 45 of the Rules of Court was still available to the petitioner.[38]

Rule 45 is clear that decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceeding involved, may be appealed to this Court by filing a petition for review, which would be but a continuation of the appellate process over the original case.[39] Moreover, it is basic that one cannot avail of the remedy provided for under Rule 65 when an appeal is still available. Hence, petitioner should have filed its petition under Rule 45.

The procedural infirmity notwithstanding and in the interest of substantial justice, this Court shall consider herein petition as one filed under Rule 45 especially since it was filed well within the reglementary period proscribed under the said Rule. The Court also takes notice that the assignment of errors raised by petitioner does not allege grave abuse of discretion or lack of jurisdiction on the part of the CA.

On the Existence of an Agreement between BISUDECO and Respondents

Anent the first error raised, petitioner argues that the CA erred in not finding that BISUDECO and respondents forged an agreement for the construction of the road in dispute. Petitioner thus asserts its entitlement to an easement of right of way over the properties of respondents by virtue of said agreement.

An easement of right of way was succinctly explained by the CA in the following manner, to wit:

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[38] *Id.* at 126-127. (Emphasis supplied)

[39] See *National Irrigation Administration v. Court of Appeals, supra* note 36, at 264.

Easement or servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner. By its creation, easement is established either by law (in which case it is a legal easement) or by will of the parties (a voluntary easement). In terms of use, easement may either be continuous or discontinuous. **The easement of right of way – the privilege of persons or a particular class of persons to pass over another's land, usually through one particular path or linen – is characterized as a discontinuous easement because its use is in intervals and depends on the act of man. Because of this character, an easement of a right of way may only be acquired by virtue of a title**.[40]

Article 622 of the New Civil Code is the applicable law in the case at bar, *viz*:

> Art. 622. Continuous non-apparent easements, and **discontinuous ones**, whether apparent or not, **may be acquired only by virtue of a title**. (Emphasis and underscoring supplied)

Based on the foregoing, in order for petitioner to acquire the disputed road as an easement of right-of-way, it was incumbent upon petitioner to show its right by title or by an agreement with the owners of the lands that said road traversed.

While conceding that they have no direct evidence of the alleged agreement, petitioner posits that they presented circumstantial evidence which, if taken collectively, would prove its existence.[41] Specifically, petitioner cites the following circumstances, to wit:

a. The agreement was of public knowledge.[42] Allegedly BISUDECO and respondents entered into an agreement for the construction of the road provided that the latter, their children or relatives were employed with BISUDECO.
b. The road was continuously used by BISUDECO and the public in general.[43]

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[40] *Rollo*, pp. 51-52. (Emphasis and underscoring supplied)

[41] *Id* at 18.

[42] *Id*.

[43] *Id*.

c. There was no protest or complaint from respondents for almost a period of two decades.[44]
d. The portions of the land formerly belonging to respondents affected by the road were already segregated and surveyed from the main lots.[45]
e. The road in dispute is already a *barangay* road.

The well-entrenched rule in our jurisdiction is that only questions of law may be entertained by this Court in a petition for review on *certiorari*. This rule, however, is not iron-clad and admits certain exceptions, such as when (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[46]

After a painstaking review of the records, this Court finds no justification to warrant the application of any exception to the general rule.

Crucial to the petitioner's cause was its burden of proving the existence of the alleged agreement between BISUDECO and respondents for the construction of the road. In this regard, the RTC found that petitioner failed to prove its existence, to *wit*:

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[44] *Id*.

[45] *Id.* at 19.

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

It is clear that the plaintiff failed to present any concrete evidence to prove that there was such an agreement between BISUDECO and defendants. Hereunder quoted are the testimonies of plaintiff's witnesses regarding the alleged agreement.

Romeo Deveterbo, Transportation Superintendent of BISUDECO testified —

Cross Examination by Atty. Pejo

Q: You also mentioned that there was an agreement between Senator Cea, Mr. Obias and some of the tenants?
A: Yes.

Q: You mentioned that this was not in writing, am I right?
A: Yes.

Q: How did you know about it that it was not in writing, who told you, Senator Cea?
A: It was commonly known to all original employees of the BISUDECO.

Q: You know it from the management?
A: From co-employees.

Q: You learned about that agreement from you co-employees?
A: Yes.

Q: In other words, therefore, that is why you said you are confused between Edmundo Cea and Perfecto Obias because you just learned it from other employees and you were never present when they talked about it, am I right?
A: Yes. x x x

To this effect also is the testimony of Angel Lobo, head of the agricultural Department of BAPCI, to wit:

A: Yes, your Honor?
COURT: From where did you learn?
A: From people whom I talked with at that time and it is a public common knowledge at that time.

x x x x x x x x x

Atty. Carandang: I repeat my question, Your Honor.

You said you acquired it from or because of common knowledge and you mentioned some people. Who are those people you are referring to whom you acquired that knowledge?

A: Most of all, the late Benjamin Bagasina, *Barangay* Captain at that time who was our employee in consideration of this agreement, then we have also a Civil Engineering Head, Civil Engineering Department who is responsible for the maintenance of this road. I learned from him that this arrangement established the fact why this road was constructed.

Q: Who is the head of the Engineering Dept?

x x x x x x x x x

COURT: May answer.
A: Engineer Pablo Tordilla who was then the head of our Civil Engineering Dept.

But this Engineer Pablo Tordilla, Lobo's alleged source of the information, was never presented in Court. And, according to the Chief Accountant of BAPCI, David Severo:

A: When I was interviewing Mrs. Alma Montero Penaflor she filed to me a certain arrangement related to the used of the land to Himaao as road going to the central.
COURT: You mean Himaao Millsite road?
A: Yes, sir.

Atty. Carandang:
Q: What arrangement is that supposedly filed to you?
A: She told me in exchange for the use of the road, the relatives or owners or tenants of the land will be hired by the sugar Central?

COURT:
Q: So, only the tenants not the owners?
A: The tenant's children the road belongs.
x x x x x x x x x

Finally, intervenor Antonio Austria, in trying to show you that there was consent and approval on the part of the defendant Edmundo Obias to give the right of way to BISUDECO at the time to be used in hauling the sugarcane of the planters to the Central, averred the following uncertain statements:

A: Well, he has (sic) having a case against PENSUMIL, regarding the property I think the right of way going to PENSUMIL right now we discuss it and he said he is not allowing it

> anymore but then I reminded him wayback in 1974 to 1980 he was one of the biggest planters in the part of Partido so he consented to the late I think Edmundo Cea, the owner of BISUDECO at that time to pass his property since he is also milling a lot of things at that time and many other things one of the concession mill was I think some of the tenants there in Himaao will be employed in the mill.

x x x x x x x x x

These aforequoted testimonies of the plaintiff's witnesses failed to satisfactorily establish the plaintiff's contention that there was such an agreement. Likewise, the list of the Employees of Defendants' relatives, son/daughter employed by the BISUDECO (Exhibit H) does not in any manner prove the alleged agreement.[47]

For its part, the CA also ruled that petitioner failed to prove the existence of the said agreement, to *wit*:

Like the lower court, we found no conclusive proof to sufficiently establish the existence of an agreement between BISUDECO and the defendants-appellants regarding the construction and the use of the disputed road. The lower court correctly disbelieved the plaintiffs-appellants' contention that an agreement existed because there is simply no direct evidence to support this allegation. BAPCI submitted purely circumstantial evidence that are not sufficiently adequate as basis for the inference than an agreement existed. By themselves, the circumstances the plaintiffs-appellants cited — *i.e.*, the employment of sixteen (16) relatives of the defendants-appellants; the defendants-appellants' unjustified silence; the fact that the existence of the agreement is known to everyone, *etc*. — are events susceptible of diverse interpretations and do not necessarily lead to BAPCI's desired conclusion. **Additionally, the testimonies that the plaintiffs-appellants presented are mainly hearsay, as not one among the witnesses had personal knowledge of the agreement by reason of direct participation in the agreement or because the witness was present when the agreement was concluded by the parties**. Thus, given the defendants-appellants' categorical denial that an agreement existed, we sustain the lower's conclusion that no

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[47] CA *rollo*, 96-98. (Emphasis ours.)

agreement existed between BISUDECO and the defendants-appellants.[48]

Based on the foregoing, the inability of petitioner to prove the existence of an agreement militates its allegations in herein petition. On this score, both the RTC and the CA are one in ruling that petitioner had failed to prove the existence of the agreement between BISUDECO and the respondents for the construction of the road. Also, well-established is the rule that "factual findings of the Court of Appeals are conclusive on the parties and carry even more weight when the said court affirms the factual findings of the trial court."[49] Hence, this Court finds no reason to reverse such findings.

On Acquisition by Prescription

Petitioner would have this Court re-examine *Costabella Corporation v. Court of Appeals*[50] *(Costabella)* where the Court held that, "It is already well-established that a right of way is discontinuous and, as such, cannot be acquired by prescription."[51] Petitioner contends that some recognized authorities[52] share its view that an easement of right of way may be acquired by prescription.

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[48] *Rollo*, pp. 50-51. (Emphasis ours.)

[49] *Blanco v. Quasha*, 376, Phil. 480, 491 (1999), citing *Bridget Boneng y Bagawili v. People of the Philippines*, 304 SCRA 252. (1999).

[50] G.R No. 80511, January 25, 1991, 193 SCRA 333.

[51] *Id.* at 339.

[52] See *rollo*, pp. 24-25. Petitioner contends:

> There are some who believe, however, that the right of way can be acquired by prescription (8 Vera 297). The continuity in the exercise of a right does not have to be absolute. If the right is one that is to be exercised at intervals, there is continuity notwithstanding such intervals. The use of the easement may be continuous. In prescription, it is not the acts of possession which are required to be continuous. It is enough that the acts be exercised with some degree of regularity to indicate continuity of possession of the easement. The continuity of a discontinuous easement, therefore, may be very well be continuous (2-11 Colin & Capitant 913; Roggeiro 839-840).

Be that as it may, this Court finds no reason to re-examine *Costabella*. This Court is guided by *Bogo-Medellin Milling Co., Inc. v. Court of Appeals*[53] (*Bogo-Medellin*), involving the construction of a railroad track to a sugar mill. In *Bogo-Medellin*, this Court discussed the discontinuous nature of an easement of right of way and the rule that the same cannot be acquired by prescription, to wit:

> Continuous and apparent easements are acquired either by virtue of a title or by prescription of ten years.
>
> The trial court and the Court of Appeals both upheld this view for the reason that the railroad right of way was, according to them, *continuous and apparent* in nature. The more or less permanent railroad tracks were visually *apparent* and they *continuously* occupied the subject strip of land from 1959 (the year the easement granted by Feliciana Santillan to petitioner expired). Thus, with the lapse of the 10-year prescriptive period in 1969, petitioner supposedly acquired the easement of right of way over the subject land.
>
> We are inclined to agree with the view just expressed. We must admit that as a general principle, the right of way being discontinuous, it cannot be acquired by prescription, the owner of the tenement would be obliged to disregard the considerations imposed by neighborhoodliness; he would have to prevent passage over his tenement because he may wake up some day to find that the easement has already been established. But if the right is permanent and has an apparent sign, such as a road, we see no reason why it cannot be acquired by prescription. If the land itself occupied by the road can be acquired in ownership, why can't a servitude, which is less than ownership, be acquired? If in order to establish the right to the road, the adverse claimant asserts ownership thereof and not merely the easement of passage, the result would be serious and prejudicial to the owner, in protecting a less right, a greater one would be lost. If there is permanent road, the easement, or at least its possession, should be regarded as continuous, because the existence of the road is a continuous assertion of a right against the exclusive domination of the owner, which right of way under the circumstances should, therefore, be acquired by prescription, so long as the exercise thereof is not by tolerance of the owner of the tenement over which the road has been built. (Tolentino, *Civil Code of the Philippines*, Vol. II, p. 331, 1963).

[53] 455 Phil. 285 (2003).

Following the logic of the courts *a quo*, if a road for the use of vehicles or the passage of persons is permanently cemented or asphalted, then the right of way over it becomes continuous in nature. The reasoning is erroneous.

Under civil law and its jurisprudence, easements are either continuous or discontinuous according to *the manner they are exercised*, not according to the presence of apparent signs or physical indications of the existence of such easements. Thus, easement is continuous if its use is, or may be, incessant without the intervention of any act of man, like the easement of drainage; **and it is discontinuous if it is used at intervals and depends on the act of man, like the easement of right of way.**

The easement of right of way is considered discontinuous because it is exercised only if a person passes or sets foot on somebody else's land. Like a road for the passage of vehicles or persons, an easement of right of way of railroad tracks is discontinuous because the right is exercised only if and when a train operated by a person passes over another's property. In other words, the very exercise of the servitude depends upon the act or intervention of man which is the very essence of discontinuous easements.

The presence of more or less permanent railroad tracks does not, in any way, convert the nature of an easement of right of way to one that is continuous. It is *not the presence of apparent signs or physical indications* showing the existence of an easement, but rather the *manner of exercise thereof*, that categorizes such easement into continuous or discontinuous. The presence of physical or visual signs only classifies an easement into *apparent* or *non-apparent*. Thus, a road (which reveals a right of way) and a window (which evidences a right to light and view) are apparent easements, while an easement of not building beyond a certain height is non-apparent.

In Cuba, it has been held that the existence of a *permanent railway does not make the right of way a continuous one; it is only apparent*. Therefore, it cannot be acquired by prescription. In Louisiana, it has also been held that a right of passage over another's land cannot be claimed by prescription because this easement is discontinuous and can be established only by title.

In this case, the presence of railroad tracks for the passage of petitioner's trains denotes the existence of an apparent but

discontinuous easement of right of way. And *under Article 622 of the Civil Code, discontinuous easements, whether apparent or not, may be acquired only by title*. Unfortunately, petitioner Bomedco never acquired any title over the use of the railroad right of way whether by law, donation, testamentary succession or contract. Its use of the right of way, however long, never resulted in its acquisition of the easement because, under Article 622, the discontinuous easement of a railroad right of way can only be acquired *by title* and not by prescription.[54]

Applying *Bogo-Medellin* to the case at bar, the conclusion is inevitable that the road in dispute is a discontinuous easement notwithstanding that the same may be apparent. To reiterate, easements are either continuous or discontinuous according to *the manner they are exercised*, not according to the presence of apparent signs or physical indications of the existence of such easements. Hence, even if the road in dispute has been improved and maintained over a number of years, it will not change its discontinuous nature but simply make the same apparent. To stress, Article 622 of the New Civil Code states that discontinuous easements, *whether apparent or not*, may be acquired only by virtue of a title.

On Laches and Estoppel

Petitioner argues that estoppel and laches bar respondents from exercising ownership rights over the properties traversed by the road in dispute. In support of said argument, petitioner posits that BISUDECO had been peacefully and continuously using the road without any complaint or opposition on the part of the respondents for almost twenty years. Respondents, on the other hand, claim that they merely tolerated the use of their land as BISUDECO was a government-owned and controlled corporation and considering that the disputed road was constructed during the time of Martial Law.

There is no absolute rule on what constitutes laches. It is a rule of equity and applied not to penalize neglect or sleeping on one's rights, but rather to avoid recognizing a right when to do

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[54] *Id.* at 303-305. (Emphasis and underscoring ours.)

so would result in a clearly unfair situation. The question of laches is addressed to the sound discretion of the court and each case must be decided according to its particular circumstances.[55] It is the better rule that courts, under the principle of equity, should not be guided or bound strictly by the statute of limitations or the doctrine of laches if wrong or injustice will result.[56]

In herein petition, the CA denied petitioner's argument in the wise:

> As previously explained in our Decision, the applicable law is Article 622 of the Civil Code of the Philippines, which provides:
>
> > Art. 622. Continuous non-apparent easements, and discontinuous ones, whether apparent or not, may be acquired only by virtue of a title.
>
> The eminent jurist, former Senator Arturo M. Tolentino, opines that *this provision seeks to prevent the imposition of a burden on a tenement based purely on the generosity, tolerance and spirit of neighborliness of the owners thereof.*
>
> We applied the cited provision to the case in ruling that no easement of right of way was acquired; based on the evidence presented, the plaintiff-appellant failed to satisfactorily prove the existence of an agreement evidencing any right or title to use the disputed road. We additionally rejected the plaintiff-appellant's position that it had acquired the easement of right of way through acquisitive prescription, as settled jurisprudence states that an easement of right of way cannot be acquired by prescription.
>
> We hold the same view on the issue of acquisition of an easement of right of way by laches. To our mind, settled jurisprudence on the application of the principle of estoppel by laches militates against the acquisition of an easement of right of way by laches.
>
> *Laches is a doctrine in equity and our courts are basically courts of law and not courts of equity; equity, which has been aptly described as "justice outside legality," should be applied only in the absence of, and never against, statutory law; Aeguetas*

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[55] *Villanueva-Mijares v. Court of Appeals*, 386 Phil. 555, 565 (2000).

[56] *Bogo-Medellin, supra* note 53, at 303.

nunguam contravenit legis. Based on this principle, we find that the positive mandate of Article 622 of the Civil Code — the statutory provision requiring title as basis for the acquisition of an easement of a right of way —precludes the application of the equitable principle of laches.[57]

This Court agrees with the CA. The fact that the law is categorical that discontinuous easements cannot be acquired by prescription militates against petitioner's claim of laches. To stress, discontinuous easements can only be acquired by title. More importantly, whether or not the elements of laches are present is a question involving a factual determination by the trial court.[58] Hence, the same being a question of fact, it cannot be the proper subject of herein petition. On the other hand, as to the issue of estoppel, this Court likewise agrees with the finding of the CA that petitioner did not present any evidence that would show an admission, representation or conduct by respondents that will give rise to estoppel.[59]

Classification of the Road in Dispute as a *Barangay* Road

Petitioner argues that the CA erred when it disregarded the classification of the road in question as a *barangay* road. In support of said argument, petitioner presented Exhibit Q, a Tax Declaration or Field Appraisal and Assessment Sheet[60] (1991 FAAS) with Survey Number 1688-40 and PIN No. 026-01-009-08-037, dated April 30, 1991, which they claim proves that the road in dispute is already a *barangay* road.

The same is again a question of fact which cannot be the proper subject of herein petition. Petitioner cannot have this Court re-examine the evidentiary value of the documents it presented before the RTC as the same is not a function of this Court. In any case, after a closer scrutiny of the 1991 FAAS,

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[57] *Rollo*, pp. 65-66.

[58] *Pineda v. Heirs of Eliseo Guevara*, G.R No. 143188, February 14, 2007, 515 SCRA 627.

[59] *Rollo* p. 68.

[60] *Id.* at 77.

this Court holds that the same is insufficient to prove petitioner's claim.

Respondents, in their Comment,[61] argue against the classification of the road in dispute as a *barangay* road in the wise:

> Petitioner also stated that the Honorable Court of Appeals fails to consider the fact that the owner of the road in question is the Municipality of Pili in the Province of Camarines Sur and as proof of such claim they presented and marked as Exhibit Q, tax declaration no. 009-756 or Annex D of their Petition. However, private respondents wish to call the attention of this Honorable Court to the following:
>
> a. Tax Declaration No. 009-828 attached as Annex C-6 of the Verified Petition declared in the name of Edmundo Obias (one of the private respondents);
>
> **b. Actual Use portion of said Annex C-6 marked as Exh. No. N-6-a-1 which states "Road Lot (BISUDECO Road)"; and**
>
> c. **The Memoranda portion in the second page of Annex C-6 which states: <u>Revised to declare the property in The name of the rightful owner, Edmundo Obias</u>** based from the approved subdivision plan, Bsd-05-000055 (OLT) & technical descriptions. Likewise area was made to conform with the said subdivision plan from 4,773 sq.m. to 11,209 sq.m.
>
> Obviously, the alleged Exhibit Q of the Petitioner is an erroneous tax declaration, thus, negates the claim of the Petitioner that the same is owned by the Municipality of Pili and has been declared a *barangay* road. Private respondents cannot understand why the herein Petitioner alleged this matter and used it as a proof to support their claim when they are already in possession of a tax declaration correcting the same and even attached the same as part of their Petition.[62]

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[61] *Id.* at 81-86.

[62] *Id.* at 83-84.

In its Reply,[63] petitioner counters:

> II. While Petitioners claim that the road belongs to the Municipal Government of Pili, yet what they attached to the Petition as Annex "C-7" is a tax declaration of Edmundo Obias. Petitioners have the following observations:
>
> x x x x x x x x x
>
> (b) That land of Edmundo Obias covered by Annex "C-6" to the Petition is not included or involved in this case at bar. His name does not appear to be awarded in the Decision of the Honorable Court of Appeals and also in the list of beneficiaries to receive monetary considerations made by Mr. Angel Lobo.[64]

After a painstaking review of the records, this Court is more inclined to believe the claim of respondents. The claim of petitioner to the effect that the land of Edmundo Obias is not included in the case at bar is misleading. It may be true that Edmundo was not awarded indemnity by the lower courts, however, the same does not mean that his lands do not form part of the subject matter of herein petition.

It bears to stress that Edmundo claimed in the CA that he was the owner of the affected ricelands and that respondents were merely his tenants-beneficiaries under PD 27, otherwise known as the Tenant Emancipation Decree.[65] The CA, however, dismissed said claim because it was raised for the first time on appeal. It also held that the averments in the documents submitted by Edmundo in the RTC described respondents as "owners" of the land they till; hence, the same constituted binding judicial admissions.[66]

Based on the foregoing, petitioner's attempt to refute the contents of the 1995 FAAS by claiming that the lands of Edmundo are not involved in the case at bar must fail. It is clear that

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[63] *Id.* at 97-100.

[64] *Id.* at 99.

[65] *Id.* at 45.

[66] *Id.* at 54-55.

respondents are the tenant-beneficiaries of the lands of Edmundo under PD 27; hence, contrary to the claim of petitioner, the lands of Edmundo are the subject matter of herein petition.

In addition, it is curious that petitioner relies on the 1991 FAAS yet finds exception to the contents of the 1995 FAAS. After a closer scrutiny of both documents, it appears to this Court that the land described in the 1991 FAAS is also the same land described in the 1995 FAAS. Both FAAS involve land measuring 4,773 square meters. Likewise, both FAAS have the same PIN Number (026-01-009-08-037) and Survey Number (1688-40). Accordingly, the annotation contained in the 1995 FAAS, to the effect that a "BISUDECO road" does not belong to the Municipality of Pili, serves to weaken petitioner's claim.

The Court also considers portions of the RTC Decision where it can be gathered that the road in dispute is not a *barangay* road, to wit:

> At this point, it is important to note that defendants admitted the identity of the road and the area of the same as reflected in the Commissioner's Report, during the Pre-trial held last September 19, 1995.
>
> **Engr. Roberto Revilla testified that a portion of the road inside the property of Edmundo Obias, is a *barangay* road which are lots A-52 sq.m., B-789 sq.m. and C-655 sq.m. or a total of 1,497 sq.m.** which starts from the intersection of the National Road and the road to Pensumil up to Corner 9 of Lot 37, Bsc-05-000055 (OCT) in the name of Pedro O. Montero. **Engr. Revilla concluded that the actual area occupied by the road in question is the sum of areas of Lots D-2042 sq.m., E-2230 sq.m., F-756 sq.m., G-663 sq.m., H-501 sq.m. , I-588 sq.m., J-594 sq.m., K-l092 sq.m., L-595 sq.m., M-459 sq.m., N-106 sq.m., O-585 sq.m. and P-563 sq.m., or a total of 10,774 square meters**. Said road starts from corner 9 of the lot of Pedro Montero which is equivalent to corner 25 of Lot 40 Bsd-05-000055 (OCT) going to the Southern Direction and ending at corner 25 of Lot 1688 Cad. 291 Pili Cadastre covered by OCT No. 120-217 (1276) in the name of spouses Edmundo Obias and Nelly Valencia and spouses Perfecto Obias and Adelaida Abenojar.[67]

[67] CA *rollo*, p. 100. (Emphasis and underscoring supplied)

The RTC findings of fact thus shows that while certain portions of the property of Edmundo is a *barangay* road, the same only pertains to Lots A, B and C, or a total of 1,497 square meters, which is distinct from the road in dispute which pertains to different lots (lots E to P) and covers a total area of 10,774 square meters.

In light of the foregoing, considering that the contents of the 1991 FAAS is disputable, it was incumbent on petitioner to present documents which would evidence the expropriation of the road in dispute by the local government as a *barangay* road. Under the prevailing circumstances, the documents of the expropriation proceedings would have been the best evidence available and the absence thereof is certainly damaging to petitioner's cause.

Amount of Indemnity Due & On Unjust Enrichment

Petitioner manifested in the RTC its desire, in the alternative, to avail of a compulsory easement of right of way as provided for under Article 649 the New Civil Code. Said relief was granted by the RTC because of the unavailability of another adequate outlet from the sugar mill to the highway. Despite the grant of a compulsory easement of right of way, petitioner, however, assails both the RTC and CA Decision with regard to the amount of indemnity due respondents.

Petitioner likens the proceedings at bar to an expropriation proceeding where just compensation must be based on the value of the land at the time of taking.[68] Petitioner thus maintains that the compensation due to respondents should have been computed in 1974 when the road was constructed.[69]

This Court does not agree. Article 649 of the New Civil Code states:

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[68] *Rollo*, p. 33.

[69] *Id*.

The owner, or any person who by virtue of a real right may cultivate or use any immovable, which is surrounded by other immovables pertaining to other persons and without adequate outlet to a public highway, is entitled to demand a right of way through the neighboring estates, after payment of the proper indemnity.

Should this easement be established in such a manner that its use may be continuous for all the needs of the dominant estate, establishing a permanent passage, **the indemnity shall consist of the value of the land occupied and the amount of the damage cause to the servient estate**. (Emphasis supplied.)

Based on the foregoing, it is clear that the law does not provide for a specific formula for the valuation of the land. Neither does the same state that the value of the land must be computed at the time of taking. The only primordial consideration is that the same should consist of the value of the land and the amount of damage caused to the servient estate. Hence, the same is a question of fact which should be left to the sound discretion of the RTC. In this regard, the RTC ruled:

The market value per hectare in 1974 or at the time of taking or prior to its conversion to road is ₱6,500/hectare, the same being a first class riceland irrigated therefore the total market value is ₱6,864.31. The 1994 Market Value of ₱1,292,880.00 is the value assigned to the property in question after it was already developed as a road lot where the unit value applied per square meter is ₱120.00 for 5th class residential lot.

It has to be remembered however that the cost of transforming the land to road was entirely borne by BISUDECO including its maintenance, repair and the cost of the improvements and by plaintiff after its acquisition. Thus, the ₱120.00 unit value is exorbitant while the 1974 valuation of ₱6,500/hectare is low and unreasonable.

In fine, this Court will adopt the unit value of ₱70.00 per square meter as shown by Exhibit "Q", the Real Property Field Assessment Sheet No. 009-756.[70]

In addition, the CA ruled:

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[70] CA *rollo*, pp. 100-101.

We stress that the amount of proper indemnity due to the landowners does not only relate to the market value of their property but comprehends as well the corresponding damage caused to the servient estate. It is undisputed that the BISUDECO began the construction and used of the disputed road in 1974. While the maintenance was borne by BISUDECO and now by BAPCI who principally used the disputed road for their sugar milling operations, the defendants-appellants have been deprived of the use do their ricefields because of the road's construction since 1974. Thus, it is but proper to compensate them for this deprivation, over and above the prevailing market value of the affected property. To our mind, in light of the circumstances surrounding the acquisition of the affected ricelands and the construction of the disputed road, particularly the absence of a definitive agreement to show that the defendants-appellants consented to the road's construction, we find the ₱70.00 per square meter indemnity awarded by the lower court in accordance with the Real Property Field Assessment Sheet No. 009-756, to be fair and reasonable under the circumstances.[71]

Withal, this Court finds no error as to the proper amount of indemnity due respondents as the findings of both the RTC and the CA appear to be fair and reasonable under the prevailing circumstances and in accordance with the provisions of Article 649 of the New Civil Code.

WHEREFORE, premises considered, the petition is *DENIED*. The August 24, 2005 Decision and March 28, 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 59016 are hereby *AFFIRMED*.

SO ORDERED.

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

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[71] *Rollo,* p. 57.

[*] Designated as an additional member in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 720 dated October 5, 2009.

FIRST DIVISION

[G.R. No. 172710. October 9, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALBERTO BUBAN,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; APPLYING THE JURISPRUDENTIAL GUIDELINES IN THE REVIEW OF RAPE CASES, THE COURT FOUND NO REASON TO OVERTURN THE TRIAL COURT'S ASSESSMENT OF THE VICTIM'S CREDIBILITY.— The Court ruled in *People v. Nazareno* as follows: In reviewing rape cases, the Court is guided by the following jurisprudential guidelines: (a) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) due to the nature of the crime of rape in which only two persons are usually involved, the testimony of complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. Tersely put, the credibility of the offended party is crucial in determining the guilt of a person accused of rape. By the very nature of this crime, it is usually only the victim who can testify as to its occurrence. Thus, in rape cases, the accused may be convicted solely on the basis of the testimony of the victim, provided that such testimony is credible, natural, convincing and consistent with human nature and the normal course of things. Else wise stated, the lone testimony of the offended party, if credible, suffices to warrant a conviction for rape. Guided by these judicial doctrines, the Court scrutinized all the pieces of evidence on record, especially the testimony of AAA and we find no reason to overturn the trial court's assessment of her credibility, which had the opportunity of observing AAA's manner and demeanor on the witness stand. AAA's testimony was indeed candid, spontaneous and consistent.

2. ID.; ID.; ID.; ABSENCE OF IMPROPER MOTIVE ON THE PART OF THE VICTIM TO FALSELY IMPLICATE

APPELLANT ENTITLES HER TESTIMONY TO FULL FAITH AND CREDIT.— We also reject the argument of accused-appellant that it is simply contrary to human nature and experience for AAA who, after having been previously ravished twice, remained calm talking to him and even slept in her room without locking its door, knowing fully well that he was still in the living room watching television. AAA reasoned out that she did not lock her room because her aunt, who was then watching betamax movie in their neighbor, is going to sleep in that room. Accused-appellant failed to show any ill motive, on the part of the victim to fabricate such a story. The testimony of accused-appellant that the reason for the filing of these charges against him was because of the quarrel between her wife and AAA after the former learned about his illicit relationship with AAA is opposed to what he declared in open court that the only time his wife came to know about their relationship was after the complaints were filed because he told her about it when he was already in jail. Since there is no evidence to show any improper motive on the part of the complainant to testify against the accused or to falsely implicate him in the commission of a crime, the logical conclusion is that the testimony is worthy of full faith and credence.

3. ID.; ID.; ID.; DELAY IN REPORTING RAPE BECAUSE OF THREATS OF PHYSICAL VIOLENCE SHOULD NOT BE TAKEN AGAINST THE VICTIM.— [T]he delay of AAA in reporting the incident cannot diminish her credibility. The Court has consistently held that delay in reporting rape because of threats of physical violence should not be taken against the victim. A rape victim is oftentimes controlled by fear rather than reason. It is through fear, springing from the initial rape, that the perpetrator hopes to build up a feeling of extreme psychological terror which will, he hopes, numb his victim to silence and submission. This is true in the case of AAA, whom accused-appellant threatened to kill if she would report the incident to anybody. We are convinced that AAA easily succumbed to fear since she was then an inexperienced young lady. She did not even know that she was pregnant until such time when Dr. Tagum told her of her condition during her medico-legal examination.

4. CRIMINAL LAW; RAPE; ELEMENT OF FORCE AND INTIMIDATION; FORCE NEED NOT BE IRRESISTIBLE,

AS LONG AS IT BRINGS ABOUT THE DESIRED RESULT WHILE INTIMIDATION IS SUFFICIENT IF IT PRODUCES FEAR THAT IF THE VICTIM WILL NOT YIELD TO THE BESTIAL DEMANDS OF HER RAVISHER, SOME EVIL WILL HAPPEN TO HER.— Well-established is the rule that for the crime of rape to exist, it is not necessary that the force employed be so great or be of such character that it could not be resisted; it is only necessary that the force employed by the guilty party be sufficient to consummate the purpose for which it was inflicted. In other words, force as an element of rape need not be irresistible; as long as it brings about the desired result, all considerations of whether it was more or less irresistible are beside the point. Intimidation must be viewed in the light of the perception of the victim at the time of the commission of the crime, not by any hard and fast rule; it is therefore enough that it produced fear — fear that if she did not yield to the bestial demands of her ravisher, some evil would happen to her at that moment or even thereafter. In the present case, there can be no doubt that accused-appellant employed that amount of force sufficient to consummate rape. At the time rape incidents took place, the victim was only seventeen (17) years old, while accused-appellant was more or less twenty-seven years old and in his prime. The obvious disparity between their physical strengths manifests the futility of any resistance exerted by AAA as clearly established in the latter's testimony.

5. ID.; ID.; DATE OR TIME OF THE COMMISSION OF RAPE IS NOT A MATERIAL INGREDIENT OF THE CRIME, AS SUCH, THE DATE OR TIME NEED NOT BE STATED WITH ABSOLUTE ACCURACY.— As regards the alleged discrepancies as to the dates of the commission of the rape, the rule is well settled that in rape cases, the date or time of the incident is not an essential element of the offense and therefore need not be accurately stated. Section 11 of Rule 110 pertinently provides: SEC. 11. Date of commission of the offense. – It is not necessary to state in the complaint or information the precise date the offense was committed except when time is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission. In rape cases, the material fact or circumstance to be considered is the occurrence of the rape, not the time of its commission. The

date or time of the commission of rape is not a material ingredient of the said crime because the gravamen of rape is carnal knowledge of a woman through force and intimidation. In fact, the precise time when the rape takes place has no substantial bearing on its commission. As such, the date or time need not be stated with absolute accuracy. It is sufficient if the complaint or information states that the crime has been committed at any time as near as possible to the date of its actual commission.

6. ID.; ID.; SWEETHEART DEFENSE; REJECTED; SUCH RELATIONSHIP WOULD NOT, BY ITSELF, ESTABLISH CONSENT, FOR LOVE IS NOT A LICENSE FOR LUST.— We also find no reason to overrule the RTC's rejection, as affirmed by the CA, of accused-appellant's contention that although he and AAA had sexual intercourse several times, they were lovers and their acts were consensual. His allegation that they broke-up in August 1995 for an unspecified thing that he failed to give AAA is unworthy of belief. AAA was persistent in her denial that she had an illicit relationship with the accused-appellant whom she knew very well to be married to her cousin. Her testimony, during the direct and cross-examination, reflected the strong hatred that she harbored against accused-appellant for what he had done to her. She testified that she did not even have any affection for her child because she would remind her of the accused-appellant's bestial deed. Verily, accused-appellant's theory that he and AAA were sweethearts is weak and self-serving since he failed to prove the same. His story is a mere concoction in order to exculpate himself from criminal liability. His wife's and sister's testimonies failed to corroborate his claim. Both of them admitted that they never saw accused-appellant and AAA together nor caught them in a compromising situation. In *People v. Turco*, we held: In *People v. Venerable* (290 SCRA 15 [1998]), we held that the sweetheart theory of the accused was unavailing and self-serving where he failed to introduce love letters, gifts, and the like to attest to his alleged amorous affair with the victim. Hence, the defense cannot just present testimonial evidence in support of the theory that he and the victim were sweethearts. Independent proof is necessary, such as tokens, mementos, and photographs. Further, the sweethearts defense does not necessarily preclude rape. Even if it were true, such relationship would not, by itself, establish consent,

for love is not a license for lust. A love affair could not have justified what appellant did — subjecting complainant to his carnal desires against her will.

7. ID.; ID.; ALL THE ELEMENTS OF RAPE ARE PRESENT IN CASE AT BAR.— The law applicable in this case is Art. 335 of the Revised Penal Code, as amended by Republic Act 7659. It provides: Art. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances: a) By using force or intimidation; b) 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*. The prosecution's evidence sufficiently proved the presence of the following elements: first, that the offender had carnal knowledge of a woman; and second, that such act was accomplished by using force or intimidation. Dr. Tagum testified that when she examined AAA on March 19, 1996, the latter was about 5 to 6 weeks pregnant and concluded that the sexual intercourse could have taken place between September 14, 1995 to October 1995. On the other hand, the use of force and intimidation by accused-appellant was testified to by AAA herself. All the elements of the crime being present, we are constrained to affirm appellant's conviction.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court for automatic review is the decision[1] dated August 31, 2005 of the Court of Appeals (CA) in *CA-G.R. CR-H.C. No. 00893* which affirmed, with modification, an earlier

[1] Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justice Juan Q. Enriquez, Jr. and Associate Justice Vicente Q. Roxas concurring; CA *rollo*, pp. 150-168.

decision[2] of the Regional Trial Court (RTC) of Irosin, Sorsogon, Branch 55, in Criminal Case Nos. 1185, 1186, 1187 and 1188, finding herein accused-appellant Alberto Buban guilty beyond reasonable doubt of four counts of rape[3] committed against AAA,[4] and sentenced him to suffer the penalty of *Reclusion Perpetua* on each count of rape, to pay the amount of ₱200,000.00 as moral damages, and the costs of the suit. However, the CA modified the penalties imposed by the RTC by awarding an amount of ₱200,000.00 as civil indemnity in addition to the award of ₱200,000.00 as moral damages.

Accused-appellant was charged with four (4) counts of rape under four (4) separate Informations, allegedly committed against his wife's first cousin AAA on October 12, 1995,[5] November 15, 1995,[6] January 29, 1996,[7] and February 24, 1996.[8] Except as to the aforesaid different dates of the commission of the crimes, the Informations are similarly worded. The information in Criminal Case No. 1188[9] reads:

That on or about the 12th day of October, 1995, at Barangay San Julian, municipality of Irosin, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously, with lewd designs and thru force and intimidation, had sexual

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[2] Penned by Judge Adolfo G. Fajardo, *id.* at 86-114.

[3] Under Art. 335 of the Revised Penal Code as amended by Republic Act No. 7659.

[4] The real name of the victim is withheld to protect her identity and privacy pursuant to Section 29 of Republic Act No. 7610, Section 44 of Republic Act No. 9262, and Section 40 of A.M. No. 04-10-11-SC. See our ruling in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[5] Crim. Case No. 1188; CA *rollo*, pp. 10-11.

[6] Crim. Case No. 1185; *id.* at 4-5.

[7] Crim. Case No. 1187; *id.* at 8.

[8] Crim. Case No. 1186; *id.* at 6-7.

[9] *Supra* note 5.

intercourse with AAA, a minor, without her consent and against her will, to her damage and prejudice.

CONTRARY TO LAW.

On August 21, 1996,[10] accused-appellant, duly assisted by counsel, entered a plea of not guilty in each of the four (4) cases. The cases were then set for a pre-trial conference. During the said conference, no plea bargaining nor stipulations of facts were arrived at by the parties. Thus, the joint trial on the merits ensued.[11]

The prosecution presented the testimonies of the victim, AAA; Dr. Nerissa Tagum (Dr. Tagum), Resident Physician of Irosin District Hospital; and EEE, the sister of AAA's father. The prosecution also offered documentary evidence consisting of the medical certificate[12] issued by Dr. Tagum to prove that the victim was subjected to a medico-legal examination and the Certificate of Live Birth[13] of AAA showing that she was born on May 15, 1978.

The RTC summarized the evidence for the prosecution in its Decision as follows:

> The victim AAA declared in court — that she is already an orphan, her parents having died while she was still very young. She has two (2) other siblings named BBB (15 years old) and CCC (the youngest). Her brother BBB is residing with his first cousin in Camarines Norte, while her youngest sister CCC is staying with her uncle DDD. Since she was a small child she had been living with EEE the sister of her father in San Julian, Irosin, Sorsogon. EEE has nine (9) children the eldest of whom named GGG is the one married to the accused in this case Alberto Buban. She had known the accused for a long time being the husband of her cousin GGG. The witness POSITIVELY

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[10] RTC Record of Criminal Case No. 1185, p. 11.

[11] *Id.* at 23.

[12] Exhibit "A" of the prosecution, RTC Record of Crim. Case No. 1188, p. 8.

[13] Exhibit "B" of the prosecution, RTC Record of Crim. Case No. 1185, p. 114.

IDENTIFIED the accused in open court when asked to do so (TSN/ AAA, dtd. August 27, 1997, p. 6).

The reason why she is testifying in court is because of the RAPE that was committed on her person by the accused ALBERTO BUBAN. Accordingly, she was raped four (4) times by the accused the first of which happened on October 12, 1995; the second on November 15, 1995; the third on January 29, 1996; and the fourth February 24, 1996. All the four incidents of rape happened inside the house of EEE because the accused and his wife GGG used to live with them in the house of EEE. She was only able to file the cases for rape, on March 20, 1996 because that was the time when EEE noticed that her stomach was getting bigger. Due to the persistent questioning of EEE, she finally told her that she was raped by Alberto Buban. EEE was very angry and got mad at Alberto Buban upon learning about it. She was the one who accompanied her to the police station in order to file the criminal complaint (TSN/AAA, dtd. August 27, 1997, pp. 2 to 9).

The declaration of the aforesaid victim was corroborated by the testimony and the findings of Dr. Nerissa Tagum, medico-legal officer, who examined the offended party, AAA. She made the patient undergo an ultra sound testing in order to determine her gestation. During the examination of the patient on March 19, 1996 it was confirmed from the result thereof that she was five to six months pregnant. According to the doctor, the sexual intercourse which caused said pregnancy could have possibly occurred within the period from September 14, 1995 to October 1995. The witness likewise identified the medical certificate (Exhs. "A" to "A-2") she issued and affirmed the signature appearing therein to be hers (TSN/Dr. Tagum, dtd. February 12, 1997, pp. 3 to 6).

EEE the aunt of AAA corroborated further her testimony when she testified that – she is the sister of the father of AAA whom she took into custody when she was about (5) years old after her father died. The first time she was informed that AAA was sexually molested by the accused Alberto Buban was sometime in the end of February, 1996, when she persistently questioned the victim after noticing that her stomach was bulging. The accused Alberto Buban is the husband of her daughter GGG who stayed with them for a year after their marriage. In the month of February, 1996 the accused and her daughter GGG were already living in a separate house but still visit her very often. Accused Alberto Buban usually passed by her house

before reporting for work. She did not tell her daughter GGG about the rape incident although she came to learn about it later. She did not discuss the rape incident with her daughter GGG because the first time she attempted to tell her about it, the latter sided with the accused. In the months of October, 1995 and February, 1996, AAA was about 16 [should be 17] yrs old. From October 12, 1995 to January, 1996 she was able to observe that the stomach of the victim was growing bigger or bulging. At the time the pregnancy of the offended party became apparent, accused Alberto Buban and her daughter GGG were no longer living with them. They transferred to their house across the river in May of 1993. In October, 1995, AAA was in second year high school and was more or less 15 [should be 17] years old. She quits her studies when she became pregnant in February 1996. She didn't have any suitor neither did she see any boy of her age coming to their house. The witness likewise testified that it was the usual habit of the accused Alberto Buban to frequent their place where he usually eats his lunch at least twice (2) a week. In 1995 there were times when the accused passed by her house while she was not around and she came to learn about it because her young daughter who was in Grade II told her. The witness is a businesswoman by occupation. (TSN/EEE, dtd. August 25, 1999, pp. 8 to 16).[14]

The details of the four (4) rape incidents are summarized by the RTC in this wise:

That on October 12, 1995 at more or less 9:00 o'clock in the evening, the victim was in the house of EEE together with the three (3) year old child she was baby sitting when accused Alberto Buban arrived. He sat at the sala for a while then proceeded to the place where their comfort room was. After walking to and fro for a while, the accused entered the room where the offended party together with the child was, and began undressing her. She pulled down her shorts and panty while she was pleading and crying not to do it. It took the accused sometime to remove her shorts and panty because she was resisting and boxing him. After removing completely her panty he forced her to lie down in bed while she continued to resist and boxed him. The accused then succeeded in having her lie down held her two (2) hands on the side of her body then proceeded to rape her. In inserting his penis, the accused held her vagina and

[14] CA *rollo*, pp. 27-29.

guided his penis into it. As he was able to release her hands she continued to box him but her resistance proved futile as the accused was able to succeed in having carnal knowledge of her. The accused lay on top of her for a long time and while in that position he warned her not to tell anybody, particularly EEE or else something might happen to her. After the incident she just kept on crying. When her companions in the house returned at more or less 11:30 p.m., she did not inform them about what happened because of fear. The victim further testified that the little boy whom she was baby sitting and already asleep at the time she was being sexually abused was transferred by the accused from the bed to the floor. Hence, the logical reason why the small child did not wake up from his slumber. The witness, likewise POSITIVELY IDENTIFIED the accused in open court (TSN/ AAA, dtd 8 October 1997, pp. 2 to 7).

That on November 15, 1995 the accused again had carnal knowledge of her. The sexual abuse happened in the same house where she was staying. Oftentimes, she was left alone in the house because her companions were fond of viewing betamax. On the aforestated date at around 10:00 o'clock in the evening, she was alone in their house in San Julian studying when the accused Alberto Buban came. While she was studying in the sala, the accused asked her for an errand and she was asked to enter the room where the accused was. When she heard the voice of the accused calling her, she felt afraid but nevertheless she entered the room and asked him what she will buy. Upon entering the room, the accused came near infront of her and covered her mouth with his left hand while her left shoulder was being held by his right hand. He pulled her to and placed her in the bed and undressed her. While the accused was pulling and undressing her, she kept on boxing and kicking him but her resistance was not successful, and every time she attempted to run away, the accused would block the way. After the accused undressed himself he forced himself into her by separating her thighs and inserting his penis into her vagina. She felt pain on her back hip, vagina and other parts of her body, although according to the victim, the first rape incident on October 12th was more painful. (TSN, dtd. October 8, 1997, pp. 8 to 12).

The incidents on October 12th and November 15th 1995 were again repeated on January 29, 1996. At about 9:00 o'clock in the evening of January 29, 1996 while she was viewing TV alone in their house the accused came and seated himself in one of the chairs. She felt sleepy after a while so she told the accused to just turn off the TV

once he is through and proceeded to her room to sleep. When she went to her room to retire, the accused was still in the sala viewing TV. She was awakened from her slumber when the accused put his hand on her mouth and warned her not to make noise. Despite her plea for the accused to leave and telling him even that she will tell somebody about him, the latter refused to yield and even warned her that something bad might happen to her if she tells somebody. Thereafter, the accused started to remove her shorts and panty and despite her resistance, he succeeded in penetrating her. She felt again the pain that she felt during the two (2) previous rapes that she suffered in the hands of the same accused. After the accused had satisfied his bestial desires he went home and left her alone in her room crying. She did not tell her companions in the house about what happened because of fear of the threat from the accused (TSN, dtd. 8 October 1997, pp. 12 to 14).

The fourth and final sexual abuse suffered by the victim in the hands of the accused happened in the 24th day of February, 1996, she was raped while EEE was out and her other companions was manning the store. On the aforestated date at about 9:00 o'clock in the morning, she was able to sleep on the long bench situated in their sale (sic) while she was whiling away her time, because she was prevailed upon by EEE not to go to school as no one will attend to the house. She was awakened upon feeling that somebody was covering her mouth, and as she opened her eyes she was able to recognize the accused and found out that the door and the window of their house were already closed. When she tried to resist him by boxing him on the chest, he held her two (2) hands with the accused sitting beside her and while she was still in a lying position. Then the accused proceeded to undress her and after he was through removing her underwear, he also undressed himself. She could not run away because the door was locked and the accused was sitting beside her. The accused made her lie down face up, held her by one of his hands, inserted his penis and had carnal knowledge of her. She again felt the pain that she experienced during the three (3) previous rapes. The accused was able to consummate his carnal desires while they were both on top of the bench (which is similar in length and width to the benches inside the computer room). After the accused was through with her, he warned her again not to tell anybody or else something bad might happen to her. The first person to whom she confided the rapes that happened to her was FFF whose husband is the brother of her late father. This happened on March

24, 1996 while FFF was in their house viewing TV. The reaction of FFF was that of anger against the accused Alberto Buban, but she decided not to divulge what she knew, apprehensive that the accused might flee. When she executed her Sworn Statement with the police she was in the company of FFF and EEE. EEE was likewise with her when she was examined by the doctor. She first learned about her pregnancy when she was told by the doctor who examined her. On March 28, 1996 she was transferred to the custody of the DSWD who took care of her up to the time she gave birth to a baby girl on June 3, 1996 at the Sorsogon Provincial Hospital. The child was then brought to Legaspi City by the Social Worker. According to the victim she doesn't feel any love for her child and she doesn't like her child, because whenever she sees the child she remembers the accused Alberto Buban and she hates him. At present she has returned to the custody of EEE. (TSN, dated 8 October 1997, pp. 14-20)[15]

The defense presented a different version of the facts anchored on the claim that the accused-appellant and AAA were lovers so that their sexual encounters were consensual. As culled from the same Decision of the RTC, the gist of the defense evidence is as follows:[16]

The defense upon the other hand, admitted that the accused had carnal knowledge of the victim for several times, but claims likewise that the sexual intercourse had the mutual consent of both parties considering that they are "sweethearts." The accused alleged that it was the victim who proposed to him that she likes him. The first sexual intercourse allegedly happened on February 9, 1995 followed by several other sexual encounters which he could no longer count. He admitted to be the first one to have carnal knowledge of the victim AAA. The accused denied, however, having sexual intercourse with the victim on October 12, and November 15, 1995 and January 29 and February 24, 1996, because accordingly as early as August 1995 he already asked for a break-up as the victim was asking for a thing which he did not like. He failed however to specify what was that thing that he did not like. And he came to realize that he is not capable of giving what AAA was asking from

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[15] *Id.* at 29-32.

[16] *Supra* note 2, pp. 51-52.

him after having carnal knowledge of her for more or less one hundred times. In the course of the cross examination it was admitted however by the accused that his wife GGG never confronted him about his affair with AAA because she did not know anything about his relationship with her. And the first time that his wife came to know about his relationship with AAA was when the latter filed the criminal complaint against him, because he told his wife about it as he was already in jail. Finally, the accused admitted that he cannot show any picture, document or letter that would attest to the fact that he had a love affair with the victim in the instant case. (TSN/Alberto Buban, dtd. November 10, 1999, pp. 2 to 16).

On December 20, 2000, the RTC rendered its Decision finding the accused-appellant guilty of four (4) counts of rape and imposed the penalty mentioned above.

The records of these cases were forwarded to this Court in view of the Notice of Appeal[17] filed by the accused-appellant, which this Court accepted in its Resolution[18] dated June 7, 2004. The Court required the parties to submit their respective briefs, and the Director of the Bureau of Corrections to confirm the confinement of accused-appellant within ten days from notice thereof.

In his letter dated July 22, 2004, the Assistant Director of the Bureau of Corrections confirmed that the accused-appellant was received for confinement at the New Bilibid Prison on February 15, 2001.[19]

Accused-appellant filed his Appellant's Brief[20] on December 6, 2004. Meanwhile, before the People, through the Office of the Solicitor General (OSG), filed its Appellee's Brief[21] on April 12, 2005, the Court issued a Resolution[22] on February 23, 2005,

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[17] RTC Record of Crim. Case No. 1185, p. 160.

[18] CA *rollo*, p. 57.

[19] *Id.* at 59.

[20] *Id.* at 68-84.

[21] *Id.* at 125-142.

[22] *Id.* at 121.

transferring the case to the CA for intermediate review conformably with the ruling in *People v. Mateo.*[23]

As above-stated, the CA, in its decision of August 31, 2005, in *CA-G.R. CR-H.C. No. 00893,* affirmed with modification the judgment of conviction pronounced by the trial court. The *fallo* of the CA decision is quoted as follows:

> WHEREFORE, finding no reversible error in the appealed Decision dated December 20, 2000 of the RTC, Branch 55 of Irosin, Sorsogon, the same is hereby **AFFIRMED** with MODIFICATION that appellant ALBERTO BUBAN is ORDERED to pay complainant AAA an additional ₱200,000.00 as civil indemnity in addition to the award of ₱200,000.00 as moral damages.
>
> SO ORDERED.

On May 29, 2006, the case was elevated to this Court for further review.[24]

In our Resolution[25] of July 12, 2006, we required the parties to simultaneously submit their respective supplemental briefs. We also required the Director of the Bureau of Corrections to confirm whether the accused-appellant has been committed to said prison and to submit to this Court a report thereon, within ten days from notice.

In compliance with our Resolution, the Assistant Director of the Bureau of Corrections informed this Court that accused-appellant was received for confinement since February 15, 2001. Accused-appellant likewise filed his Supplemental Brief[26] on September 20, 2006, while the OSG adopted *in toto* the arguments in the Brief for the Appellee dated April 5, 2005 and thereby dispensed with the filing of a supplemental brief.

The accused-appellant raised the following assignment of errors:

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[23] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 657-658.

[24] *Rollo,* p. 1.

[25] *Id.* at 25-26.

[26] *Id.* at 40.

I

THE TRIAL COURT *A QUO* GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE HIGHLY INCREDIBLE TESTIMONY OF THE PRIVATE COMPLAINANT.

II

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

III

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE ACCUSED-APPELLANT USED FORCE AGAINST PRIVATE COMPLAINANT IN THE COMMISSION OF THE ALLEGED RAPES.

At the outset, accused-appellant puts at issue the credibility of AAA, specifically as regards the third rape which occurred on January 29, 1996. He avers that it is contrary to human nature and experience that after having been previously raped twice, AAA would still feel comfortable, in the presence of appellant, as she was able to speak to him casually as if nothing traumatic happened between them and she even managed to sleep in her room without locking its door while accused-appellant was in the sala watching television.

Accused-appellant also relies on the inconsistencies between AAA's testimony as to the date of the commission of the four (4) rape incidents and as stated in the four (4) Informations. He alleged that on direct examination, AAA declared that she was sexually abused on October 12, 1995, November 15, 1995, November 24, 1995 and January 29, 1996, while the four (4) Informations clearly stated that the rape incidents took place on October 12, 1995, November 15, 1995, January 29, 1996 and the last one on February 24, 1996.

Accused-appellant further asserts that there could be no rape where the sexual act was consensual. He maintains that if the sexual intercourse was truly against AAA's will, she could have easily cried for help when he was pulling her on the bed and

she could have prevented the second rape by not going in the room knowing fully well that she was alone with the accused-appellant at that time. Further, she had every opportunity to run away but she chose to be left alone with him. Accused-appellant adds that AAA's failure to immediately report the alleged rape to her relatives or friends militates against the latter's credibility.

The Court ruled in *People v. Nazareno*[27] as follows:

> In reviewing rape cases, the Court is guided by the following jurisprudential guidelines: (a) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) due to the nature of the crime of rape in which only two persons are usually involved, the testimony of complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.
>
> Tersely put, the credibility of the offended party is crucial in determining the guilt of a person accused of rape. By the very nature of this crime, it is usually only the victim who can testify as to its occurrence. Thus, in rape cases, the accused may be convicted solely on the basis of the testimony of the victim, provided that such testimony is credible, natural, convincing and consistent with human nature and the normal course of things. Else wise stated, the lone testimony of the offended party, if credible, suffices to warrant a conviction for rape.

Guided by these judicial doctrines, the Court scrutinized all the pieces of evidence on record, especially the testimony of AAA and we find no reason to overturn the trial court's assessment of her credibility, which had the opportunity of observing AAA's manner and demeanor on the witness stand. AAA's testimony was indeed candid, spontaneous and consistent. As the trial court observed and we quote:

> xxx. Even on re-cross examination the victim remained consistent and unwavering in her claim that she was sexually abused by the

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[27] G.R. No. 167756, April 9, 2008, 551 SCRA 16, 31-32.

accused. Despite her young age and lack of experience in court proceedings she remained steadfast unfazed by the lengthy cross-examinations conducted by the defense, thus, attesting favorably to her credibility.

AAA narrated how appellant had overpowered her into submitting to his desires in this wise:

On the incident of October 12, 1995:

PROS. PURA

Q What was your position when he was removing your short and panty?
A I was standing.

Q What were you doing while he was removing your short and panty?
A I am boxing him.

Q Were you able to hit him?
A Yes.

Q And what did he do when you hit him?
A He held my hand.

x x x x x x x x x

Q Was the accused able to remove your short and panty?
A Yes.

Q Completely?
A Yes.

Q And how much time did he remove your panty and short?
A Quite a long time.

Q And what did he do after he succeeded in completely removing your panty?
A He let me lie down.

Q Where?
A Inside the room.

Q What were you doing as he was trying to let you lay down on the bed?
A I kept on boxing him.

Q Did he succeed in making you lay down?
A Yes.

Q And what did you do?
A He held me and then he raped me.

x x x x x x x x x.

Q What was the position of your tights (sic) when he was able to succeed in having his penis entered your vagina?
A My thighs were spread open.

Q Who caused your tights (sic) to spread open?
A It was Alberto Buban.

Q How did he cause the same to spread open?
A He used his two hands in separating my thighs.

Q And after your thighs was separated open, what did the accused do?
A He kept on raping me already.

x x x x x x x x x

Q And what happened after that?
A While he is on top of me he kept on saying to me not to tell anybody especially to Mamay Mina. According to him if I tell somebody something might happen to me.[28]

On the incident of November 15, 1995:

Q Where was Alberto Buban when he asked you to run errand for him?
A He was inside the room.

Q How did you feel then when he called for you?
A I was afraid.

Q So were you able to enter the room?
A Yes, I entered the room as he said, and asked him what will I buy.

Q So what did he do?
A He placed his hand on my mouth.

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[28] TSN, dated October 8, 1997, pp. 4-7.

Q What was your position when he placed his hand on your mouth?
A He was also standing inside the room.

Q Where was he in relation to you?
A He was standing near me.

Q In what part of your body, on your side, on your back, on your front?
A In front of me.

Q What happened to you when he placed his hand on your mouth?

A I kept on boxing his body but he did not detach his body on me. He kept on covering his hand on my mouth.

x x x x x x x x x

Q As he was placing you in bed and he was undressing you, what happened?
A I kept on boxing and kicking him.

Q Did you succeed in resisting him?
A I was able to do that.

Q What happened after that?
A Then he is also undressing himself.

Q What was his position when he was undressing himself?
A He was standing.

Q You did not try to run away while he was undressing himself?
A I tried but my attempt is always being blocked by him because he was near me.

Q Was he able to undress himself?
A Yes.

Q And what did he do after undressing?
A Then he entered his penis into my vagina.

Q Was he able to enter his penis into your vagina?
A Yes, sir.

Q How was he able to enter his penis into your vagina?
A He held my vagina and held his penis and inserted into my vagina.

Q This time what was the position of your thighs when he inserted his penis?
A Separated apart.

Q And who caused it to be separated?
A Alberto Buban.

Q Did you not try to prevent it from being separated?
A I tried to prevent but I was overcome by him.[29]

On the January 29, 1996 incident:

Q Where was Alberto Buban?
A He was still in the sala still viewing TV?

Q What happened?
A Then I went to sleep.

Q At what time did you wake up?
A I was awaken when he again put his hand on my mouth?

x x x x x x x x x

Q What happened?
A Then he undress me again.

Q Did he succeed in undressing you?
A Yes.

Q What did he do after undressing you?
A He undress himself.

Q This time what were you doing as one being undress by the accused?
A I kept on boxing him but he refused to leave.

x x x x x x x x x

Q After undressing you and undressing himself, what happened next?
A Then he inserted his penis into my vagina.

Q What were you doing as the accused was inserting his penis into your vagina?
A I kept on boxing him.

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[29] *Id.* at 9-11.

Q Was his penis able to enter your vagina?
A Yes.

x x x x x x x x x

Q Did you not tell your companions in the house about what happened?
A I did not because I remember his warning that if I tell somebody something bad might happen to me. [30]

On the incident of February 24, 1996:

Q What did you do upon seeing that it was again Alberto Buban who covered your mouth?
A I again boxed him on his chest.

Q What about him, what did he do?
A He held my hands.

Q Which hands?
A His two hands held my hand.

Q As you were struggling to free from him, were you still on the bench lying?
A Yes.

x x x x x x x x x

Q So what happened after that?
A Then he proceeded to undress me.

Q And was he able to undress you?
A Yes.

Q What did he do after that?
A Then he undress himself also.

Q You did not try to run while he was undressing?
A I cannot run because the door was locked. He locked the door.

x x x x x x x x x

Q What did he do when he succeeded in making you lie flat on the bench?
A He held me by his one hand and he inserted his penis into my vagina.

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[30] *Id.* at 12-14.

x x x x x x x x x

Q What did you feel?
A Painful.

Q What happened after that?
A Then I kept on crying and then he left but before he left he warned me not to tell somebody because if I did something might happened bad with me.[31]

Well-established is the rule that for the crime of rape to exist, it is not necessary that the force employed be so great or be of such character that it could not be resisted; it is only necessary that the force employed by the guilty party be sufficient to consummate the purpose for which it was inflicted. In other words, force as an element of rape need not be irresistible; as long as it brings about the desired result, all considerations of whether it was more or less irresistible are beside the point.[32]

Intimidation must be viewed in the light of the perception of the victim at the time of the commission of the crime, not by any hard and fast rule; it is therefore enough that it produced fear — fear that if she did not yield to the bestial demands of her ravisher, some evil would happen to her at that moment or even thereafter.[33]

In the present case, there can be no doubt that accused-appellant employed that amount of force sufficient to consummate rape. At the time rape incidents took place, the victim was only seventeen (17) years old, while accused-appellant was more or less twenty-seven years old and in his prime. The obvious disparity between their physical strengths manifests the futility of any resistance exerted by AAA as clearly established in the latter's testimony.

We also reject the argument of accused-appellant that it is simply contrary to human nature and experience for AAA who,

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[31] *Id.* at 16-17.

[32] *People v. Flores*, G.R. No. 141782, December 14, 2001, 372 SCRA 421, 430-431.

[33] *Ibid.*

after having been previously ravished twice, remained calm talking to him and even slept in her room without locking its door, knowing fully well that he was still in the living room watching television. AAA reasoned out that she did not lock her room because her aunt, who was then watching betamax movie in their neighbor, is going to sleep in that room.

Accused-appellant failed to show any ill motive, on the part of the victim to fabricate such a story. The testimony of accused-appellant that the reason for the filing of these charges against him was because of the quarrel between her wife and AAA after the former learned about his illicit relationship with AAA is opposed to what he declared in open court that the only time his wife came to know about their relationship was after the complaints were filed because he told her about it when he was already in jail. Since there is no evidence to show any improper motive on the part of the complainant to testify against the accused or to falsely implicate him in the commission of a crime, the logical conclusion is that the testimony is worthy of full faith and credence.[34]

As regards the alleged discrepancies as to the dates of the commission of the rape, the rule is well settled that in rape cases, the date or time of the incident is not an essential element of the offense and therefore need not be accurately stated.[35] Section 11 of Rule 110 pertinently provides:

> SEC. 11. Date of commission of the offense. — It is not necessary to state in the complaint or information the precise date the offense was committed except when time is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.

In rape cases, the material fact or circumstance to be considered is the occurrence of the rape, not the time of its commission. The date or time of the commission of rape is not a material

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[34] *People v. Dreu*, G.R. No. 126282, June 20, 2000, 334 SCRA 62, 73-74.

[35] *People v. Taperla, et al.*, G.R. No. 142860, January 16, 2003, 395 SCRA 310, 315.

ingredient of the said crime because the gravamen of rape is carnal knowledge of a woman through force and intimidation. In fact, the precise time when the rape takes place has no substantial bearing on its commission. As such, the date or time need not be stated with absolute accuracy. It is sufficient if the complaint or information states that the crime has been committed at any time as near as possible to the date of its actual commission.[36]

Finally, the delay of AAA in reporting the incident cannot diminish her credibility. The Court has consistently held that delay in reporting rape because of threats of physical violence should not be taken against the victim. A rape victim is oftentimes controlled by fear rather than reason. It is through fear, springing from the initial rape, that the perpetrator hopes to build up a feeling of extreme psychological terror which will, he hopes, numb his victim to silence and submission.[37] This is true in the case of AAA, whom accused-appellant threatened to kill if she would report the incident to anybody. We are convinced that AAA easily succumbed to fear since she was then an inexperienced young lady. She did not even know that she was pregnant until such time when Dr. Tagum told her of her condition during her medico-legal examination.

We also find no reason to overrule the RTC's rejection, as affirmed by the CA, of accused-appellant's contention that although he and AAA had sexual intercourse several times, they were lovers and their acts were consensual. His allegation that they broke-up in August 1995 for an unspecified thing that he failed to give AAA is unworthy of belief. AAA was persistent in her denial that she had an illicit relationship with the accused-appellant whom she knew very well to be married to her cousin. Her testimony, during the direct and cross-examination, reflected the strong hatred that she harbored against accused-appellant

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[36] *People v. Segovia*, G.R. No. 138974, September 19, 2002, 389 SCRA 420, 425.

[37] *People v. David*, G.R. Nos. 121731-33, November 12, 2003, 415 SCRA 666, 681-682.

for what he had done to her. She testified that she did not even have any affection for her child because she would remind her of the accused-appellant's bestial deed.[38]

Verily, accused-appellant's theory that he and AAA were sweethearts is weak and self-serving since he failed to prove the same. His story is a mere concoction in order to exculpate himself from criminal liability. His wife's and sister's testimonies failed to corroborate his claim. Both of them admitted that they never saw accused-appellant and AAA together nor caught them in a compromising situation. In *People v. Turco*,[39] we held:

> In *People v. Venerable* (290 SCRA 15 [1998]), we held that the sweetheart theory of the accused was unavailing and self-serving where he failed to introduce love letters, gifts, and the like to attest to his alleged amorous affair with the victim. Hence, the defense cannot just present testimonial evidence in support of the theory that he and the victim were sweethearts. Independent proof is necessary, such as tokens, mementos, and photographs.

Further, the sweethearts defense does not necessarily preclude rape. Even if it were true, such relationship would not, by itself, establish consent, for love is not a license for lust. A love affair could not have justified what appellant did — subjecting complainant to his carnal desires against her will.[40]

The law applicable in this case is Art. 335 of the Revised Penal Code, as amended by Republic Act 7659. It provides:

> Art. 335. When and how rape is committed. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
>
> a) By using force or intimidation;

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[38] TSN, dated October 8, 1997, pp. 19-20.

[39] G.R. No. 137757, August 14, 2000, 337 SCRA 714, 729.

[40] *People v. Flores*, G.R. No. 141782, December 14, 2001, 372 SCRA 421, 434.

b) When the woman is deprived of reason or otherwise unconscious; and

c) When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by *reclusion perpetua*.

The prosecution's evidence sufficiently proved the presence of the following elements: first, that the offender had carnal knowledge of a woman; and second, that such act was accomplished by using force or intimidation. Dr. Tagum testified that when she examined AAA on March 19, 1996, the latter was about 5 to 6 weeks pregnant and concluded that the sexual intercourse could have taken place between September 14, 1995 to October 1995. On the other hand, the use of force and intimidation by accused-appellant was testified to by AAA herself. All the elements of the crime being present, we are constrained to affirm appellant's conviction.

Anent accused-appellant's civil liability, AAA is entitled to moral damages in the amount of ₱200,000.00 as ordered by the trial court. The award of civil indemnity in the amount of ₱50,000.00 each for four (4) counts of rape imposed by the CA should likewise be affirmed, consistent with existing jurisprudence.[41]

WHEREFORE, the decision of the Court of Appeals in *CA-G.R. CR-H.C. No. 0089*3 is *AFFIRMED*. ALBERTO BUBAN is found guilty beyond reasonable doubt of rape, on four (4) counts, and is sentenced to suffer, for each count of rape, the penalty of *reclusion perpetua*. Accused-appellant is also ordered to pay the victim the sum of ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages or the total amount of ₱200,000.00 as civil indemnity and ₱200,000.00 as moral damages.

SO ORDERED.

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[41] *People v. Villafuerte*, G.R. No. 154917, May 18, 2004, 428 SCRA 427, 436.

Corona (Acting Chairperson),[*] *Velasco, Jr.,*[**] *Brion,*[***] and *Bersamin, JJ.,* concur.

SECOND DIVISION

[G.R. No. 172885. October 9, 2009]

MANUEL LUIS S. SANCHEZ, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES, Represented by the Department of Education, Culture and Sports,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION CODE; LIABILITY OF DIRECTORS, TRUSTEES OR OFFICERS; RESPONDENT DOES NOT HAVE TO INVOKE THE DOCTRINE OF PIERCING THE VEIL OF CORPORATE FICTION; SECTION 31 OF THE CORPORATION CODE, UNDER WHICH THE CASE WAS BROUGHT, LAYS DOWN THE CORPORATE OFFICERS' LIABILITY FOR DAMAGES ARISING FROM THEIR GROSS NEGLIGENCE OR BAD FAITH IN DIRECTING CORPORATE AFFAIRS.— Section 31 of the Corporation Code makes directors-officers of corporations jointly and severally liable even to third parties for their gross negligence or bad faith in directing the affairs of their corporations. Thus: Sec. 31. *Liability of directors, trustees or officers.* — Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or **who are guilty of gross negligence or bad faith in directing the affairs of**

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[*] Acting Chairperson as per Special Order No. 724.

[**] Additional member as per Special Order No. 719.

[***] Additional member as per Special Order No. 725-A.

the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons. x x x The DECS does not have to invoke the doctrine of piercing the veil of corporate fiction. Section 31 above expressly lays down petitioner Sanchez and Kahn's liability for damages arising from their gross negligence or bad faith in directing corporate affairs. The doctrine mentioned, on the other hand, is an equitable remedy resorted to only when the corporate fiction is used, among others, to defeat public convenience, justify wrong, protect fraud or defend a crime. Moreover, in a piercing case, the test is complete control or domination, not only of finances, but of policy and business practice in respect of the transaction attacked. This is not the case here. Section 31, under which this case was brought, makes a corporate director accountable for his management of the affairs of the corporation.

2. ID.; ID.; ID.; BAD FAITH AND GROSS NEGLIGENCE, HOW COMMITTED.— Bad faith implies breach of faith and willful failure to respond to plain and well understood obligation. It does not simply connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty through some motive or interest or ill will. It partakes of the nature of fraud. Gross negligence, on the other hand, is the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them; the want or absence of or failure to exercise slight care or diligence, or the entire absence of care.

3. ID.; ID.; ID.; PETITIONER ACTED IN BAD FAITH, IF NOT WITH GROSS NEGLIGENCE, IN FAILING TO PERFORM HIS DUTY TO REMIT TO RESPONDENT OR KEEP IN SAFE HANDS THE UNIVERSITY'S INCOMES FROM THE LEASES.— The Court of Appeals found that from January 1992 to January 1996, after ULFI's authority to manage the Complex expired and despite the ejectment suit that the DECS filed

against it, petitioner Sanchez and Kahn still continued to lease spaces in those facilities to third persons. And they collected and kept all the rents although they knew that these primarily belonged to the DECS. ULFI had merely managed the facilities and collected earnings from them for the DECS. What is more, Sanchez and Kahn were aware that they had to submit written accounts of those rents and remit the net earnings from them to the Bureau of Treasury, through the DECS, at the end of the year. Yet, Sanchez and Kahn, acting in bad faith or with gross neglect did not turn over even one centavo of rent to the DECS nor render an accounting of their collections. Nor did they account for the money they collected by submitting to the Securities and Exchange Commission the required financial statements covering such collections. Parenthetically, a witness for the defense, Evangeline Naniong, ULFI's bookkeeper, testified that the revenues from the rents were deposited in the bank in the names of Sanchez and ULFI's accountant. And so only they could withdraw and spend those revenues. Petitioner Sanchez of course claims that the funds they had collected proved inadequate even to meet expenses. But, as the appellate court held, he had been unable to substantiate such claims. As the officer charged with approving and implementing corporate disbursements, Sanchez had the duty to present documents showing how the incomes of the foundation were spent. But he failed to do so even after the DECS, which took custody of the records, asked Kahn to submit a list of the documents they needed for establishing their defenses so these may be made available to them. Under the circumstances, the indubitable conclusion is that petitioner Sanchez and Kahn acted with bad faith, if not with gross negligence, in failing to perform their duty to remit to DECS or keep in safe hands ULFI's incomes from the leases. Section 31 lays down the "doctrine of corporate opportunity" and holds personally liable corporate directors found guilty of gross negligence or bad faith in directing the affairs of the corporation, which results in damage or injury to the corporation, its stockholders or members, and other persons. The ejectment suit that held only ULFI liable to the DECS for unpaid rents does not constitute *res judicata* to the issue of personal liabilities of Kahn and petitioner Sanchez under the circumstances to pay such obligations, given that the unaccounted funds would have settled the same.

APPEARANCES OF COUNSEL

Atencia and Associates Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

ABAD, *J.*:

This petition for review on *certiorari* assails the February 21, 2006 Decision[1] of the Court of Appeals in CA-G.R. CV 83648 and its Resolution[2] of May 29, 2006, which dismissed the petitioner's appeal from the decision of Branch 71 of the Regional Trial Court (RTC) of Pasig City in Civil Case 66852.

The Facts and the Case

In 1980, during the regime of President Ferdinand E. Marcos, the government-owned Human Settlements Development Corporation (HSDC) built with public funds and on government land the St. Martin Technical Institute Complex at Barangay Ugong, Pasig City. This later on became known as the University of Life Complex.

In July 1980, First Lady Imelda R. Marcos and others organized the University of Life Foundation, Inc. (ULFI), a private non-stock, non-profit corporation devoted to non-formal education. On August 26, 1980 the government gave the management and operation of the Complex to ULFI but HSDC was to continue to construct facilities and acquire equipment for it. Although ULFI was to get all the incomes of the Complex, ULFI had to pay HSDC an annual fee of 14 percent of HSDC's investments in it.

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[1] *Rollo*, pp. 35-55; penned by Associate Justice Renato C. Dacudao, and concurred in by Associate Justices Hakim S. Abdulwahid and Celia C. Librea-Leagogo.

[2] *Id.* at 56; penned by Associate Justice Renato C. Dacudao, and concurred in by Associate Justices Hakim S. Abdulwahid and Celia C. Librea-Leagogo.

After the fall of the Marcos regime in 1986, the new government reorganized HSDC into the Strategic Investment Development Corporation (SIDCOR) under the supervision of the Office of the President. Realizing that ULFI never paid the 14 percent annual fee due to HSDC, now totaling about ₱316 million, on July 25, 1989 SIDCOR rescinded the HSDC-ULFI agreement. Ironically, in its place, SIDCOR entered into an Interim Management Agreement with ULFI, allowing it to continue managing and operating the Complex.

Meantime, in October 1989, the government transferred the ownership of ULFI's properties to the Department of Education, Culture and Sports (DECS). Later in January 1990, Republic Act 6847 transferred full control and management of the Complex to DECS with effect two years from the law's enactment. The DECS transferred its offices to the Complex in December 1990. On January 29, 1991, SIDCOR transferred all its rights in the Complex to the National Government which in turn transferred the same to the DECS.

On January 31, 1991 DECS and ULFI entered into a Management Agreement, granting ULFI the authority to manage and operate the Complex until the end of that year. During this period, ULFI was expressly mandated under the said Management Agreement to remit to the Bureau of the Treasury, through the DECS, all incomes from the Complex, net of allowable expenses.[3] At the end of 1991, the DECS gave ULFI notice to immediately vacate the Complex. But ULFI declined, prompting the DECS to file an action for unlawful detainer against it in Civil Case 2959 of the Metropolitan Trial Court (MeTC) of Pasig City. After hearing, MeTC dismissed the action for lack of merit. On the DECS's appeal to the RTC, the latter affirmed the order of dismissal.

On appeal of the DECS to the Court of Appeals by petition for review,[4] however, the latter rendered judgment on January 17, 1995, reversing the MeTC and RTC decisions. The appeals

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[3] *Id.* at 52.

[4] Docketed as CA-G.R. SP 35141.

court ordered ULFI to vacate the Complex and pay such reasonable rentals as the MeTC might fix. This Court dismissed ULFI's recourse to it from the judgment of the Court of Appeals.[5]

On April 15, 1996 the MeTC fixed, after hearing, the rents that ULFI had to pay the DECS at ₱22,559,215.14 (due from February 1992 to January 1996) plus ₱6,325.00 per month until it shall have vacated the premises.[6] The DECS succeeded in ejecting ULFI but the latter did not pay the amounts due from it.

On June 15, 1998 the DECS filed a complaint[7] before the RTC of Pasig City in Civil Case 66852 for collection of the ₱22,559,215.14 in unremitted rents and damages against Henri Kahn, ULFI's President, and petitioner Manuel Luis S. Sanchez, its Executive Vice-President, based on their personal liability under Section 31 of the Corporation Code. The latter two were Managing Director and Finance Director, respectively, of the corporation.[8]

The complaint alleged that Kahn and petitioner Sanchez, as key ULFI officers, were remiss in safekeeping ULFI's corporate incomes and in accounting for them.[9] They neither placed the incomes derived from the Complex in ULFI's deposit account nor submitted the required financial statements detailing their transactions. The underlying theory of the case is that Kahn and Sanchez "operated ULFI as if it were their own property, handled the collections and spent the money as if it were their personal belonging."[10] The DECS asked the RTC to order Kahn

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[5] *Via* Resolution of January 15, 1996 in G.R. No. 122450.

[6] *Rollo*, pp. 57-58.

[7] *Id.* at 59-67; docketed as Civil Case 66852, RTC of Pasig City, Branch 71.

[8] Defense witness Evangeline Naniong testified that the staff of ULFI were hired by Managing Director Kahn and Finance Director Sanchez.

[9] *Rollo*, p. 62.

[10] Records, p. 146; Opposition to Motion to Dismiss in Civil Case 66852, p. 6.

and Sanchez personally to pay it the ₱22,559,215.14 in rents due from ULFI with legal interest, exemplary damages of ₱1,000,000.00, attorney's fees of ₱500,000.00, and costs.

In his answer, petitioner Sanchez alleged that, being a mere officer of ULFI, he cannot be made personally liable for its adjudged corporate liability. He took exception to the complaint, characterizing it as an attempt to pierce the corporate veil that cloaked ULFI.

Satisfied that the DECS fully established its case, on October 14, 2002, the RTC rendered judgment, ordering Kahn and petitioner Sanchez to pay the DECS, jointly and severally, ₱22,559,215.14 with legal interest from April 1, 1996 until they shall have fully paid the same, ₱500,000.00 in exemplary damages, and ₱200,000.00 in attorney's fees, plus costs.[11]

Both Kahn and petitioner Sanchez appealed to the Court of Appeals. The latter court gave due course to Sanchez's appeal but denied that of Kahn since it was filed out of time. On February 21, 2006 the Court of Appeals rendered judgment, wholly affirming the trial court's decision,[12] hence, this petition.

In a nutshell, Sanchez argues that he cannot be made personally liable for ULFI's corporate obligations absent specific allegations in the complaint and evidence adduced during trial that would warrant a piercing of the corporate veil. He further argues that the DECS is barred by *res judicata* and forum shopping from collecting from him what it could not get by execution from ULFI under the judgment in the ejectment case. Finally, he claims that because ULFI suffered losses in operations during the period 1992 up to 1996, there could have been nothing left of the rentals it collected from the lessees of the Complex.

The DECS points out, on the other hand, that since Kahn and petitioner Sanchez were guilty of fraud and bad faith in managing the funds of ULFI, they can be made to personally answer for those funds and to pay its corporate obligations

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[11] *Rollo*, pp. 84-100.

[12] *Id.* at 55.

pursuant to Section 31 of the Corporation Code. They collected money from rents but did not, as was their duty, remit this to the DECS pursuant to the DECS-ULFI agreement.

The Issues

The case before this Court presents the following issues:

1. Whether or not petitioner Sanchez, a director and chief executive officer of ULFI, can be held liable in damages under Section 31 of the Corporation Code for gross neglect or bad faith in directing the corporation's affairs; and

2. Whether or not the action in Civil Case 66852 is barred by *res judicata* and constitutes forum shopping by the DECS.

Rulings of the Court

Petitioner Sanchez points out that the Court of Appeals' decision arbitrarily changed the DECS's theory of the case from one based on his and Kahn's alleged failure to deposit for the account of ULFI whatever rentals they have collected to another based on their alleged failure to remit to the DECS the incomes of the facilities they managed. But Sanchez is drawing insignificant distinctions from what the DECS claims and what the court below finds. Both essentially rest on Kahn and Sanchez's failure to account for the rent incomes that they collected from lease of spaces in the facilities of the Complex beyond the one-year management authority that the DECS granted ULFI in 1991.

Petitioner Sanchez claims that there is no ground for the courts below to pierce the veil of corporate identity and hold him and Kahn, who were mere corporate officers, personally liable for ULFI's obligations to the DECS. But this is not a case of piercing the veil of corporate fiction. The DECS brought its action against Sanchez and Kahn under Section 31 of the Corporation Code, which should not be confused with actions intended to pierce the corporate fiction.

Section 31 of the Corporation Code makes directors-officers of corporations jointly and severally liable even to third parties

for their gross negligence or bad faith in directing the affairs of their corporations. Thus:

> Sec. 31. *Liability of directors, trustees or officers.* — Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or **who are guilty of gross negligence or bad faith in directing the affairs of the corporation** or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons. (Emphasis supplied)
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> x x x x x x x x x

The DECS does not have to invoke the doctrine of piercing the veil of corporate fiction. Section 31 above expressly lays down petitioner Sanchez and Kahn's liability for damages arising from their gross negligence or bad faith in directing corporate affairs. The doctrine mentioned, on the other hand, is an equitable remedy resorted to only when the corporate fiction is used, among others, to defeat public convenience, justify wrong, protect fraud or defend a crime.[13]

Moreover, in a piercing case, the test is complete control or domination, not only of finances, but of policy and business practice in respect of the transaction attacked.[14] This is not the case here. Section 31, under which this case was brought, makes a corporate director–who may or may not even be a stockholder or member–accountable for his management of the affairs of the corporation.

Bad faith implies breach of faith and willful failure to respond to plain and well understood obligation.[15] It does not simply connote bad judgment or negligence; it imports a dishonest purpose

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[13] *Manila Hotel Corporation v. National Labor Relations Commission*, 397 Phil. 1, 18 (2000).

[14] *Light Rail Transit Authority v. Venus, Jr.*, G.R. No. 163782, March 24, 2006, 485 SCRA 361, 373.

[15] 5 Words and Phrases 14, citing *Nelson v. Board of Trade*, 58 Ill. App. 399 (1895).

or some moral obliquity and conscious doing of wrong; it means breach of a known duty through some motive or interest or ill will.[16] It partakes of the nature of fraud.[17]

Gross negligence, on the other hand, is the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected.[18] It evinces a thoughtless disregard of consequences without exerting any effort to avoid them;[19] the want or absence of or failure to exercise slight care or diligence, or the entire absence of care.[20]

In resolving the issue of whether or not petitioner Sanchez, a director and chief executive officer of ULFI, can be held liable in damages under Section 31 of the Corporation Code for bad faith or gross neglect in directing the corporation's affairs, the Court will consider only the Court of Appeals' findings of facts. This Court's jurisdiction in a petition for review on *certiorari* under Rule 45 is limited to reviewing only errors of law. It is bound by the findings of fact of the Court of Appeals.

The Court of Appeals found that from January 1992 to January 1996, after ULFI's authority to manage the Complex expired and despite the ejectment suit that the DECS filed against it, petitioner Sanchez and Kahn still continued to lease spaces in those facilities to third persons. And they collected and kept all the rents although they knew that these primarily belonged to the DECS. ULFI had merely managed the facilities and

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[16] *Board of Liquidators v. Heirs of M. Kalaw*, 127 Phil. 399, 421 (1967).

[17] *Fonacier v. Sandiganbayan*, G.R. No. 50691, December 5, 1994, 238 SCRA 655, 687; *Spiegel v. Beacon Participations*, 8 NE 2nd Series, 895, 1007.

[18] *Fernando v. Sandiganbayan*, G.R. No. 96182, August 19, 1992, 212 SCRA 680, 691, citing *Ballentine's Law Dictionary*, 3rd ed., p. 537.

[19] *Citibank, N.A. v. Gatchalian*, 310 Phil. 211, 218 (1995).

[20] *National Bookstore, Inc. v. Court of Appeals*, 428 Phil. 235, 245 (2002).

collected earnings from them for the DECS. What is more, Sanchez and Kahn were aware that they had to submit written accounts of those rents and remit the net earnings from them to the Bureau of Treasury, through the DECS, at the end of the year. Yet, Sanchez and Kahn, acting in bad faith or with gross neglect did not turn over even one centavo of rent to the DECS nor render an accounting of their collections. Nor did they account for the money they collected by submitting to the Securities and Exchange Commission the required financial statements covering such collections.

Parenthetically, a witness for the defense, Evangeline Naniong, ULFI's bookkeeper, testified that the revenues from the rents were deposited in the bank in the names of Sanchez and ULFI's accountant. And so only they could withdraw and spend those revenues.[21]

Petitioner Sanchez of course claims that the funds they had collected proved inadequate even to meet expenses. But, as the appellate court held, he had been unable to substantiate such claims. As the officer charged with approving and implementing corporate disbursements, Sanchez had the duty to present documents showing how the incomes of the foundation were spent. But he failed to do so even after the DECS, which took custody of the records, asked Kahn to submit a list of the documents they needed for establishing their defenses so these may be made available to them.[22] Under the circumstances, the indubitable conclusion is that petitioner Sanchez and Kahn acted with bad faith, if not with gross negligence, in failing to perform their duty to remit to DECS or keep in safe hands ULFI's incomes from the leases.

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[21] RTC Decision, *rollo*, p. 91.

[22] In the court *a quo*, Kahn filed a motion to compel the DECS to release ULFI documents left in the University of Life Complex after ULFI was successfully evicted. To this, the DECS filed a motion for bill of particulars requesting Kahn to state with definiteness or particularity what documents and personal property he sought to have the DECS release. The trial court gave Kahn and Sanchez ten (10) days to comment thereon, but they did not. As a result, Kahn's motion was denied.

Section 31 lays down the "doctrine of corporate opportunity" and holds personally liable corporate directors found guilty of gross negligence or bad faith in directing the affairs of the corporation, which results in damage or injury to the corporation, its stockholders or members, and other persons. The ejectment suit that held only ULFI liable to the DECS for unpaid rents does not constitute *res judicata* to the issue of personal liabilities of Kahn and petitioner Sanchez under the circumstances to pay such obligations, given that the unaccounted funds would have settled the same.

Petitioner's allegations of forum shopping must fail as well. 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.[23] This is not the case with respect to the ejectment suit *vis-à-vis* the action for damages.

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the February 21, 2006 Decision of the Court of Appeals in CA-G.R. CV 83648 and its Resolution of May 29, 2006.

SO ORDERED.

Corona,[*] *Carpio Morales,*[**] *Chico-Nazario,*[***] and *Brion, JJ.,* concur.

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[*] Designated as additional member in lieu of Associate Justice Leonardo A. Quisumbing, per Special Order No. 718 dated October 2, 2009.

[**] In lieu of Associate Justice Leonardo A. Quisumbing, per Special Order No. 690 dated September 4, 2009.

[***] Designated as additional member in lieu of Associate Justice Mariano C. Del Castillo, per Special Order No. 737 dated October 12, 2009.

[23] *Lim v. Montano*, A.C. No. 5653, February 27, 2006, 483 SCRA 192, 200.

SECOND DIVISION

[G.R. No. 176527. October 9, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SAMSON VILLASAN *y* BANATI,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; A MATTER BEST LEFT TO THE DETERMINATION OF THE TRIAL COURT.— We have ruled that the credibility of witnesses is a matter best left to the determination of the trial court as this tribunal had the actual opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude. The trial court's assessment of the credibility of witnesses is binding on this Court, except when that tribunal overlooked facts and circumstances of weight and influence that can alter the result.

2. ID.; ID.; ID.; CREDIBILITY OF WITNESS, UPHELD; NO REASON TO DISBELIEVE THE STRAIGHTFORWARD NARRATION OF THE EVENTS SURROUNDING THE KILLING.— We carefully scrutinized the records of this case and found no reason to disbelieve Gaudioso's straightforward narration of the events surrounding Bayron's death. Nor did we see anything on record indicating any improper motive that could have led Gaudioso to falsely testify against the appellant. In fact, the appellant never imputed any ill motive on Gaudioso. To reiterate, Gaudioso and the appellant were in the **same** jeep during the shooting incident; **there was light inside the jeep**. More importantly, Gaudioso **saw** the actual shooting because he was "**very near**" the appellant when the latter shot Bayron. To Gaudioso, what he witnessed must have been a shocking and startling event he would not forget in a long, long time. Under these circumstances, we entertain no doubt on the positive identification of the appellant as the assailant.

3. CRIMINAL LAW; MURDER; CLAIM OF ACCIDENTAL SHOOTING CONTRADICTORY TO THE AVAILABLE EVIDENCE; NATURE, NUMBER AND LOCATION OF VICTIM'S GUNSHOT WOUNDS ALSO BELIE APPELLANT'S CLAIM OF ACCIDENTAL SHOOTING.—

We do not find the appellant's claim of accidental shooting believable as it contradicts the available physical evidence provided by Dr. Cam that the victim suffered **three** gunshot wounds on the **face** and **head.** Dr. Cam's Necropsy Report corroborated by the Autopsy Report of the Cosmopolitan Funeral Homes showing that the victim suffered a total of **three** gunshot wounds, supported the testimony of Gaudioso that the appellant shot the victim **thrice.** Jose notably also testified that he heard **three** successive gunshots. These pieces of evidence are clearly inconsistent with the appellant's claim that the victim's shooting was accidental and that only one shot was fired. The nature, number and location of the victim's gunshot wounds also belie the appellant's claim of accidental shooting. The three wounds, all sustained in the head and the face from shots coming from the rear, are clearly indicative of a determined effort to end the victim's life.

4. ID.; ID.; NEGATIVE RESULT OF PARAFFIN TEST DO NOT CONCLUSIVELY SHOW THAT A PERSON DID NOT DISCHARGE A FIREARM.— While the appellant tested negative for gunpowder nitrates, Forensic Chemist Salinas testified that a paraffin test is not conclusive proof that one has not fired a gun. This view is fully in accord with past findings and observations of this Court that paraffin tests, in general, are inconclusive; the negative findings in paraffin tests do not conclusively show that a person did not discharge a firearm. Our ruling in *People v. Teehankee, Jr.* on this point is particularly instructive: **Scientific experts concur in the view that the paraffin test has "… proved extremely unreliable in use. The only thing that it can definitely establish is the presence or absence of nitrates or nitrites on the hand.** It cannot be established from this test alone that the source of the nitrates or nitrites was the discharge of a firearm. The person may have handled one or more of a number of substances which give the same positive reaction for nitrates or nitrites, such as explosives, fireworks, fertilizers, pharmaceuticals, and leguminous plants such as peas, beans, and alfalfa. A person who uses tobacco may also have nitrate or nitrite deposits on his hands since these substances are present in the products of combustion of tobacco." **In numerous rulings, we have also recognized several factors which may bring about the absence of gunpowder nitrates on the hands of a gunman, *viz*: when the assailant washes his hands after firing the gun, wears gloves at the time of the shooting, or if the**

direction of a strong wind is against the gunman at the time of firing. x x x x In sum, the positive, clear and categorical testimonies of the prosecution witnesses deserve full merit in both probative weight and credibility over the negative results of the paraffin test conducted on the appellant.

5. ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; SHOWN BY THE SWIFT AND SUDDEN ATTACK OF THE UNSUSPECTING VICTIM FROM BEHIND; THE ATTACK ALSO CLEARLY AND PURPOSELY DENIED THE VICTIM OF ANY REAL CHANCE TO DEFEND HIMSELF AND SECURED THE COMMISSION THEREOF WITHOUT RISK TO APPELLANT.— In convicting the appellant of murder, the courts *a quo* appreciated treachery. This circumstance exists 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 means of execution that gives the person attacked no opportunity for self-defense or retaliation; and (2) the deliberate and conscious adoption of this means of execution. The essence of this qualifying circumstance is in the elements of suddenness and 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 offender. The evidence in this case showed that the appellant briefly talked with Bayron as the latter sat on the jeep's driver's seat preparatory to driving off. Thereafter, the appellant entered the jeep through its rear entrance, and sat behind Bayron. Not long after Bayron started his jeep, the appellant shot him three times, hitting him in the head and at the side of the face. This manner and mode of attack by the appellant, to our mind, indicate treachery. The appellant's attack came **without warning,** and was **swift and sudden**. The appellant attacked Bayron **from behind;** the unsuspecting victim had no expectation of the coming attack and was totally defenseless against it. From these facts, the appellant clearly and **purposely DENIED the victim of any real chance to defend himself and secured the commission of the crime without risk to himself.** In *People v. Vallespin*, 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.**

6. ID.; ID.; ID.; EVIDENT PREMEDITATION; NOT ESTABLISHED IN CASE AT BAR.— The Information alleged that the crime was committed with evident premeditation. **We do not find any evidentiary support for this allegation.** Evident premeditation, like other qualifying circumstances, must be established by clear and positive evidence showing that planning and preparation took place prior to the killing. For evident premeditation to be appreciated, the prosecution must show the following: (1) the time the accused determined to commit the crime; (2) an act manifestly indicating that the accused clung to this determination; and (3) a sufficient lapse of time between the resolve to kill and its execution that would have allowed the killer to reflect on the consequences of his act. Significantly, the prosecution did not even attempt to prove the presence of these elements. In *People v. Sison*, we held that evident premeditation should not be appreciated where there is neither evidence of planning or preparation to kill nor of the time when the plot was conceived.

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.*:

We review in this appeal the May 25, 2006 decision of the Court of Appeals (*CA*) in CA-G.R. CR H.C. No. 00250.[1] The

[1] Penned by Associate Justice Isaias P. Dicdican, and concurred in by Associate Justice Ramon M. Bato, Jr. and Associate Justice Apolinario D. Bruselas, Jr.; *rollo*, pp. 4-12.

appellate court affirmed the May 29, 2001 decision of the Regional Trial Court (*RTC*), Branch 18, Cebu City,[2] that in turn found appellant Samson Villasan (*appellant*) guilty beyond reasonable doubt of the crime of murder and imposed on him the penalty of *reclusion perpetua*.

ANTECEDENT FACTS

The prosecution charged the appellant before the RTC with the crime of murder under the following Information:[3]

> That on or about the 1st day of June, 2000, at about 6:30 in the evening, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a .357 caliber Magnum revolver S&W (Homemade), with treachery and evident premeditation, with deliberate intent, with intent to kill, did then and there attack, assault and shot one Jacinto T. Bayron, hitting him on his [*sic*] vital parts of his body, thereby inflicting upon him phys*ic*al injuries, as a consequence of which said Jacinto T. Bayron died instantaneously.
>
> CONTRARY TO LAW.

The appellant pleaded not guilty to the charge upon arraignment.[4] The prosecution presented the following witnesses in the trial on the merits that followed: Jose Secula (*Jose*); Gaudioso Quilaton (*Gaudioso*); Sergio Bayron (*Sergio*); and Dr. Rene Enriquez Cam (*Dr. Cam*). The appellant, Carlito Moalong (*Carlito*), and Police Senior Inspector Mutchit Salinas (*P/Sr. Insp. Salinas*) took the witness stand for the defense.

Jose, a security guard of PROBE Security Agency, testified that he was outside his employer's branch office at the Ayala Business Center, Siquijor Road, Cebu City at around 6:15 p.m. of June 1, 2000, when he heard three successive gunshots.[5] He mounted his motorcycle to go and investigate but before he

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[2] Penned by Judge Galicano Arriesgado; CA *rollo*; pp. 23-31.

[3] *Id.* at 7.

[4] Records, pp. 14-15.

[5] TSN, July 18, 2000, p. 4.

could start it, he saw the appellant "walking fast" and carrying a gun. He ordered the appellant to stop and to drop his weapon. The latter obeyed and dropped his gun. He then approached the appellant, conducted a body search on him,[6] and turned him over to his (Jose's) supervisor who, in turn, contacted the police. The police forthwith brought the suspect to the police station. Jose recalled that he executed an affidavit on the shooting incident before the police.[7]

On cross examination, Jose clarified that he did not see the actual shooting; he only saw the victim's lifeless body after the appellant had been arrested.[8] On re-direct, Jose stated that before the appellant was brought to the police station, the latter told him that he had shot a fellow driver.[9]

Gaudioso, a store assistant at Healthy Options, narrated that he boarded a jeep at the waiting shed at the Ayala Business Center at around 6:30 p.m. of June 1, 2000.[10] He occupied the jeep's front seat, beside the driver Jacinto Bayron (*Bayron*). While so seated, he heard the appellant briefly converse with Bayron, requesting the latter to be allowed to ride the jeep because his own jeep conked out.[11] Soon after the appellant got into Bayron's jeep, Gaudioso heard a gunshot. He looked back and saw the appellant shoot Bayron twice in the head.[12] Gaudioso immediately jumped off but later returned to assist in bringing Bayron to the hospital.[13] It was then that he learned of Bayron's name. Thereafter, the police invited him to the police station for his statement regarding the shooting.[14]

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

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

[8] TSN, July 20, 2000, pp. 4-5.

[9] *Id.* at 5.

[10] TSN, July 25, 2000, p. 4.

[11] *Id.* at 5.

[12] *Id.* at 6.

[13] *Id.* at 7.

[14] *Id.* at 8.

On cross examination, Gaudioso recalled that there were three other passengers at that time inside the jeep. He immediately turned his head towards the passenger's side when he heard the first shot; two more shots followed. He got scared and jumped off the jeep together with the other passengers. He later returned and found that the driver was already dead.[15]

On re-direct, he reiterated that he was the only passenger at the jeep's front seat, and that the appellant was seated at the jeep's rear seats. He maintained that the appellant shot Bayron.[16]

Sergio, the victim's brother, testified that Bayron was a jeep driver earning more or less ₱500.00 daily. He further stated that the funeral and burial expenses for his brother amounted to ₱100,000.00. He also added that Bayron had a common-law wife and had a 1 ½ year-old son with her.[17]

Dr. Cam, the Medico-Legal Officer of the National Bureau of Investigation (NBI), Cebu City, testified that he conducted a post-mortem examination on the victim's body on June 2, 2000,[18] and made the following findings:

NECROPSY REPORT

x x x x x x x x x

GUNSHOT WOUNDS:

1) ENTRANCE: 1.0 x 1.3 cms., ovaloid edges, with an area of tattooing around the wound, 8.0 x 10.0 cms., contusion collar widest supero-laterally, located at the right side of the face, below the right eye, 3.5 cms. x x x

2) ENTRANCE: 0.9 x 1.0 cm., ovaloid, edges inverted, contusion collar widest infero-posteriorly, located at the right side of the head, just in front of the right ear x x x

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[15] TSN, August 4, 2000, pp. 4-5.

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

[17] TSN, August 17, 2000, pp. 5-15.

[18] TSN, September 14, 2000, pp. 3-6.

3) ENTRANCE: 0.6 x 0.8 cm. ovaloid, edges inverted, contusion collar widest, supero-medially, located at the right side of the head, occipital area, 4.0 cms., above 13.0 cms., behind the right external auditory meatus, x x x

POSTMORTEM FINDINGS

Hematoma, scalp, frontal area and right parietal.
Hemorrhage, intracranial, intracerebral, subdural, subarachnoidal, massive, generalized
Internal Organs, congested
Stomach, empty

CAUSE OF DEATH: GUNSHOT WOUNDS OF THE HEAD

Remarks: Two (2) bullets were recovered and submitted to Firearm Investigation Section for Ballistic Examination.[19]

On cross-examination, Dr. Cam stated that the distance between the muzzle of the gun and the entrance wounds was two feet, more or less.[20]

The defense presented a different version of events.

Carlito testified that he was with the appellant at the parking lot of the Ayala Business Park at past 5:00 p.m. of June 1, 2000, when Bayron and another person approached the appellant. Bayron pointed to the appellant and said: "*Pre, pagtarong sa imong pagkatawo, basig magkaaway ta*" (Behave like a good man, otherwise we will become enemies). The appellant replied, "*pre tell me who was the person who told you about that*"?[21] Bayron's companion then accused the appellant of being a traitor.[22]

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[19] Records, p. 37-A.

[20] TSN, September 14, 2000, p. 7.

[21] TSN, November 16, 2000, pp. 3-4.

[22] *Id.* at 5.

The jeepney dispatcher soon after called Bayron as it was his jeep's turn to load passengers.[23] Bayron and his companion boarded the jeep; Bayron sat at the driver's seat while his companion proceeded to the passengers' seats at the rear. The appellant followed them into the jeep and sat behind Bayron. There were 5-7 passengers on board the jeep, one of them at the front seat beside Bayron. Bayron then drove away, leaving the parking area.[24] According to Carlito, he learned of Bayron's death at 6:30 p.m. of that day.[25]

On cross examination, Carlito testified that he went to Ayala on June 1, 2000 to meet the appellant to ask for help on his application as a driver.[26] He saw the appellant and Bayron talking to each other when he arrived, and overheard Bayron warning the appellant to be careful. Bayron thereafter got into his jeep, followed by the appellant who sat behind him (Bayron). While inside the jeep, Bayron pointed his finger at the appellant and continued to argue with the appellant as he drove away.[27] He heard gunshots 15 minutes after the jeep left the parking area. Carlito later saw the appellant being apprehended by security guards.[28]

The appellant stated that he was a driver plying the Ayala-Colon route. At around 5:00-6:00 p.m. of June 1, 2000, he talked to "*Lito*" at the parking area of the Ayala Business Center. Lito was a friend of his son who had been asking for his assistance in applying as a driver.[29] He read a newspaper after talking to Lito. Not long after, Bayron and a certain Roel came and pointed their fingers at him. Roel uttered, "*Even if you are double your*

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[23] *Id*.

[24] TSN, December 5, 2000, pp. 2-3.

[25] *Id.* at 3.

[26] TSN, January 9, 2001, p. 3.

[27] *Id.* at 4.

[28] *Id.* at 5.

[29] TSN, February 1, 2001, p. 3.

body [sic], *I am not afraid.*"[30] The appellant suspected that Roel was mad at him for an incident in 1999 when he reprimanded Roel for indiscriminately firing a gun.[31]

The appellant further narrated that Bayron went to the jeep's driver's seat after the dispatcher called him. Roel followed Bayron but sat on the rear passenger seat. The appellant also got into the jeep and sat across Roel because he was bothered by what was happening between Bayron and Roel.[32] He asked Roel to get off the jeep so they could settle their differences, but Roel instead drew a gun from his waist.[33] The appellant and Roel wrestled for the gun which discharged while they were grappling for its possession. Thereafter, Roel immediately alighted from the jeep. The appellant followed but was unable to catch up with Roel.[34]

On cross examination, the appellant recalled that he read a newspaper at the parking lot after conversing with Lito. At that point, Bayron and Roel came; Roel pointed a finger at him and blamed him for his (Roel's) arrest for illegal possession of firearms.[35] Bayron went to board his jeep when the dispatcher called him; Roel followed him inside the jeep. The appellant then also boarded the jeep, sitting across Roel to "clear the matter" with him.[36] When the jeep was already on its way, Roel suddenly drew a gun from his waist. The appellant held Roel's hand, but the gun went off while they were grappling for its possession. He did not notice if anyone had been hit. The passengers, including Roel, ran out of the jeep.[37] The appellant saw the gun on the ground and picked it up. The appellant tried

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[30] *Id.* at 4.

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

[32] *Id.* at 7.

[33] *Id.* at 8.

[34] *Id.* at 9.

[35] TSN, February 22, 2001, pp. 2-3.

[36] *Id.* at 4.

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

to follow Roel, but the latter was able to board another jeep. Thereafter, the security guards arrested appellant and then turned him over to the police.[38]

P/Sr. Insp. Salinas testified that he conducted a paraffin test on the appellant at the PNP Regional Crime Laboratory on June 2, 2000 to determine the presence of gunpowder nitrates. The appellant tested negative for the presence of gunpowder nitrates.[39]

On cross examination, P/Sr. Insp. Salinas explained that the absence of gunpowder nitrates was not conclusive proof that person did not fire a gun. According to him, a person could remove traces gunpowder nitrates by washing his hands.[40]

The RTC convicted the appellant of the crime of murder in its decision of May 29, 2001, as follows:

> WHEREFORE, in view of the foregoing facts and circumstances, accused Samsom (sic) B. Villasan is found guilty beyond reasonable doubt of the crime of Murder and is hereby imposed the penalty of *RECLUSION PERPETUA*, with the accessory penalties of the law; to indemnify the heirs of the deceased Jacinto Bayron in the sum of ₱50,000.00 and to pay the costs.
>
> The accused is, however, credited in full during the whole period of his detention provided that he will signify in writing that he will abide by all the rules and regulations of the penitentiary.
>
> SO ORDERED.[41]

The appellant directly appealed to this Court in view of the penalty of *reclusion perpetua* that the RTC imposed. We referred the case to the Court of Appeals for intermediate review pursuant to our ruling in *People v. Mateo*.[42]

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[38] *Id.* at 6-8.

[39] TSN, April 17, 2001, pp. 4-5.

[40] *Id.* at 6-8.

[41] CA *rollo*, pp. 30-31.

[42] Per our Resolution dated October 13, 2004; *rollo*, p. 3.

The CA affirmed the RTC Decision *in toto* in its May 25, 2006 Decision.[43]

In his brief,[44] the appellant argued that the prosecution failed to prove his guilt beyond reasonable doubt.

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 in 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.[45]

Gaudioso, in his July 25, 2000 testimony, positively identified the appellant as the person who shot Bayron inside the latter's own jeepney on June 1, 2000; he never wavered in pointing to the appellant as the assailant. To directly quote from the records:

FISCAL VICTOR LABORTE:

Q: At about 6:30 in the evening of June 1, 2000, can you recall where you were?

GAUDIOSO QUILATON:

A: Yes, I can remember.

Q: Please tell the Court where you were at that particular date and time.

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[43] CA *rollo*, pp. 4-12.

[44] *Id.* at 49-61.

[45] See *People v. Ballesteros*, G.R. No. 172696, August 11, 2008.

A: When I went out of my work place, I boarded a jeep.

Q: In what place did you board the jeep?

A: At the waiting shed at the Ayala, where the jeepney stop is located.

Q: Where is this Ayala situated, in what city?

A: Cebu City.

Q: Were you the only one who boarded that jeepney?

A: We were four (4), sir.

Q: I see. In what particular seat of the jeepney were you seated?

A: Front seat, sir.

Q: While you were on board that jeepney, what happened?

A: First, the driver had conversation.

Q: With whom did that driver have conversation?

A: The one who shot. [sic]

Q: So, what happened afterwards, while that man and the jeepney driver were talking with each other?

A: First, I heard there was a request that he would be boarding a jeepney because his jeep conked up. [sic]

Q: Who made that request?

A: That one person who shot. [sic]

Q: And what happened afterwards, after that request was made by the person to the driver?

A: He was able to board.

Q: And then what happened next?

A: Then I heard one (1) gunshot.

Q: And what did you do when you heard that gunshot?

A: I turned towards my back.

Q: And what did you see, if any, when you turned your head?

A: When I turned back, there were two (2) gunshots I heard, two (2) gunshots. [sic]

Q: You only heard two (2) gunshots?

A: Three (3), sir: the first one, and then followed by two (2) gunshots.

Q: Who caused that gunshot?

A: That person who shot the driver.

Q: **Did you actually see that person shot the driver?**

A: **Yes.**

Q: **How far were you to that person who shot the driver?**

A: **Very near.**

Q: How near?

A: Two (2) "*dangaw*" only, which may be loosely translated as thumb and forefinger extended, is less than, from the thumb to the forefinger, because he was sitting at my back. [sic]

Q: **Was the driver hit?**

A: **Yes, he was hit.**

Q: **In what portion of his body was the driver hit?**

A: **On his head.**

Q: **Now, if that person, whom you said you saw shot the driver, is in the courtroom now, can you point to him?**

A: **Yes, I can.**

Q: Please point to that person.

A: That man, third (3rd) from the left.

(Witness pointed to the person who stood up and identified himself as Samson Villasan)

x x x x x x x x x

Q: Now you told the Court Mr. Witness that you were the only one seated at the front of the jeepney, Right?

A: Yes.

Q: And three other passengers were at the back of the jeepney?

A: Yes.

Q: And one of the three passengers at the back shot the driver?

A: That's right, sir.

Q: **Is that person whom you saw shot the driver inside the courtroom now?**

A: **He is around.**

Q: Can you point to him again?

A: Yes.

Q: Please do.

A: That person.

(Witness pointing to the person who stood up and identified himself as Samson Villasan).

x x x x x x x x x[46]

[*Emphasis supplied*]

Time and again, we have ruled that the credibility of witnesses is a matter best left to the determination of the trial court as this tribunal had the actual opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude. The trial court's assessment of the credibility of witnesses is binding on this Court, except when that tribunal overlooked facts and circumstances of weight and influence that can alter the result.[47]

We carefully scrutinized the records of this case and found no reason to disbelieve Gaudioso's straightforward narration of the events surrounding Bayron's death. Nor did we see anything on record indicating any improper motive that could have led Gaudioso to falsely testify against the appellant. In fact, the appellant never imputed any ill motive on Gaudioso. To reiterate,

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[46] TSN, July 25, 2000, pp. 4-10; TSN, August 8, 2000, pp. 2-6.

[47] See *People v. Nueva*, G.R. No.173248, November 3, 2008.

Gaudioso and the appellant were in the **same** jeep during the shooting incident; **there was light inside the jeep**. More importantly, Gaudioso **saw** the actual shooting because he was "**very near**" the appellant when the latter shot Bayron. To Gaudioso, what he witnessed must have been a shocking and startling event he would not forget in a long, long time. Under these circumstances, we entertain no doubt on the positive identification of the appellant as the assailant.

The Appellant's Defenses

The appellant sought to exculpate himself by claiming that the shooting of Bayron was accidental; and that he (appellant) was not sure who pulled the trigger because the gun went off when he and Roel were grappling for its possession.

We do not find the appellant's claim of accidental shooting believable as it contradicts the available physical evidence provided by Dr. Cam that the victim suffered **three** gunshot wounds on the **face** and **head.** Dr. Cam's Necropsy Report corroborated by the Autopsy Report of the Cosmopolitan Funeral Homes showing that the victim suffered a total of **three** gunshot wounds, supported the testimony of Gaudioso that the appellant shot the victim **thrice.** Jose notably also testified that he heard **three** successive gunshots. These pieces of evidence are clearly inconsistent with the appellant's claim that the victim's shooting was accidental and that only one shot was fired.

The nature, number and location of the victim's gunshot wounds also belie the appellant's claim of accidental shooting. The three wounds, all sustained in the head and the face from shots coming from the rear, are clearly indicative of a determined effort to end the victim's life.

The appellant nonetheless claims that his identity as the assailant was not proven with certainty as no trace of gunpowder nitrates was found in his hand.

We do not find the appellant's claim persuasive.

While the appellant tested negative for gunpowder nitrates, Forensic Chemist Salinas testified that a paraffin test is not conclusive proof that one has not fired a gun. This view is fully in accord with past findings and observations of this Court that paraffin tests, in general, are inconclusive; the negative findings in paraffin tests do not conclusively show that a person did not discharge a firearm.[48] Our ruling in *People v. Teehankee, Jr.*[49] on this point is particularly instructive:

> **Scientific experts concur in the view that the paraffin test has "… proved extremely unreliable in use. The only thing that it can definitely establish is the presence or absence of nitrates or nitrites on the hand.** It cannot be established from this test alone that the source of the nitrates or nitrites was the discharge of a firearm. The person may have handled one or more of a number of substances which give the same positive reaction for nitrates or nitrites, such as explosives, fireworks, fertilizers, pharmaceuticals, and leguminous plants such as peas, beans, and alfalfa. A person who uses tobacco may also have nitrate or nitrite deposits on his hands since these substances are present in the products of combustion of tobacco." **In numerous rulings, we have also recognized several factors which may bring about the absence of gunpowder nitrates on the hands of a gunman, *viz*: when the assailant washes his hands after firing the gun, wears gloves at the time of the shooting, or if the direction of a strong wind is against the gunman at the time of firing.** x x x [*Emphasis ours*]

In sum, the positive, clear and categorical testimonies of the prosecution witnesses deserve full merit in both probative weight and credibility over the negative results of the paraffin test conducted on the appellant.

The Crime Committed

Article 248 of the Revised Penal Code defines the crime of murder as follows:

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[48] *People v. Baltazar*, G.R. No. 129933, February 26, 2001, 352 SCRA 678.

[49] G.R. Nos. 111206-08, October 6, 1995, 249 SCRA 54.

Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:

1. With treachery, x x x

In convicting the appellant of murder, the courts *a quo* appreciated treachery. This circumstance exists 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 means of execution that gives the person attacked no opportunity for self-defense or retaliation; and (2) the deliberate and conscious adoption of this means of execution.[50] The essence of this qualifying circumstance is in the elements of suddenness and 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 offender.[51]

The evidence in this case showed that the appellant briefly talked with Bayron as the latter sat on the jeep's driver's seat preparatory to driving off. Thereafter, the appellant entered the jeep through its rear entrance, and sat behind Bayron. Not long after Bayron started his jeep, the appellant shot him three times, hitting him in the head and at the side of the face. This manner and mode of attack by the appellant, to our mind, indicate treachery. The appellant's attack came **without warning,** and was **swift and sudden**. The appellant attacked Bayron **from behind;** the unsuspecting victim had no expectation of the coming attack and was totally defenseless against it. From these facts,

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[50] See *People v. Garcia*, G.R. No. 174479, June 17, 2008, 554 SCRA 616.

[51] See *People v. Felipe*, G.R. No. 142205, December 11, 2003, 418 SCRA 146.

the appellant clearly and **purposely DENIED the victim of any real chance to defend himself and secured the commission of the crime without risk to himself.**[52]

In *People v. Vallespin*,[53] 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.**

No Evident Premeditation

The Information alleged that the crime was committed with evident premeditation. **We do not find any evidentiary support for this allegation.**

Evident premeditation, like other qualifying circumstances, must be established by clear and positive evidence showing that planning and preparation took place prior to the killing. For evident premeditation to be appreciated, the prosecution must show the following: (1) the time the accused determined to commit the crime; (2) an act manifestly indicating that the accused clung to this determination; and (3) a sufficient lapse of time between the resolve to kill and its execution that would have allowed the killer to reflect on the consequences of his act.[54] Significantly, the prosecution did not even attempt to prove the presence of these elements. In *People v. Sison*,[55] we held that evident premeditation should not be appreciated where

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[52] See *People v. Balisoro*, G.R. No. 124980, May 12, 1999, 307 SCRA 48.

[53] G.R. No. 132030, October 18, 2002, 391 SCRA 213.

[54] See *People v. Aytalin*, G.R. No. 134138, June 21, 2001, 359 SCRA 325.

[55] G.R. No. 172752, June 18, 2008.

there is neither evidence of planning or preparation to kill nor of the time when the plot was conceived.

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.

While evident premeditation was alleged in the Information, this circumstance was not adequately proven. Hence, in the absence of mitigating and aggravating circumstances in the commission of the felony, the courts *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 as a consequence of 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.[56] Hence, we modify the award of civil indemnity to this extent, to be paid by the appellant to the victim's heirs.

Moral damages are likewise mandatory in cases of murder and homicide. We award ₱50,000.00 as moral damages to the victim's heirs in accordance with prevailing rules.[57]

The heirs of the victim are likewise entitled to exemplary damages since the qualifying circumstance of treachery was 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 under Article 2230 of the New Civil Code.[58]

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[56] *People v. De Guzman*, G.R. No. 173477, February 4, 2009.

[57] See *People v. Honor*, G.R. No. 175945, April 7, 2009.

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

The lower courts were correct in not awarding actual damages to the victim's heirs because they failed to present any supporting evidence for their claim. To be entitled to actual damages, it is necessary to prove the actual amount of loss with reasonable certainty, based on competent proof and the best evidence obtainable by the injured party. In the absence of proof, jurisprudence dictates an award of ₱25,000.00 as temperate damages for the victim's heirs on the reasonable assumption that when death occurs, the family of the victim incurred expenses for the wake and the funeral.[59]

We cannot award indemnity for loss of earning capacity to the victim's heirs because no documentary evidence was presented to substantiate this claim. As a rule, documentary evidence should be presented to substantiate a claim for this type of damages. While there are exceptions to the rule, these exceptions do not apply; although self-employed, Bayron did not earn less than the current minimum wage under current labor laws.[60]

WHEREFORE, in light of all the foregoing, we hereby *AFFIRM* the May 25, 2006 Decision of the Court of Appeals in CA-G.R. CR H.C. No. 00250 with the following *MODIFICATIONS*:

(1) the awarded civil indemnity is *INCREASED* to ₱75,000.00;

(2) the appellant is *ORDERED* to *PAY* the heirs of the victim ₱50,000.00 as moral damages;

(3) the appellant is *ORDERED* to *PAY* the heirs of the victim ₱25,000.00 as exemplary damages; and

(4) the appellant is *ORDERED* to *PAY* the heirs of the victim ₱25,000.00 as temperate damages.

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[59] See *People v. Abrazaldo*, G.R. No. 124392, February 7, 2003, 397 SCRA 137.

[60] The current daily minimum wage rate in Region VII (non-agriculture) as of August 2009 is ₱222.00-₱267.00.

SO ORDERED.

Corona,[*] *Carpio Morales (Acting Chairperson),*[**] *Nachura,*[***] and *Abad, JJ.*, concur.

SECOND DIVISION

[G.R. No. 181206. October 9, 2009]

MEGAWORLD GLOBUS ASIA, INC., *petitioner, vs.* **MILA S. TANSECO,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; NATURE AND EFFECT OF OBLIGATIONS; RECIPROCAL OBLIGATIONS; COMPLIANCE BY PETITIONER WITH ITS OBLIGATION IS DETERMINATIVE OF THE COMPLIANCE OF RESPONDENT TO PAY THE BALANCE OF THE PURCHASE PRICE; HAVING FAILED TO COMPLY WITH ITS OBLIGATION TO DELIVER THE UNIT ON THE AGREED DATE, PETITIONER IS LIABLE THEREFOR.— The Contract to Buy and Sell of the parties contains reciprocal obligations, *i.e.*, to complete and deliver the condominium unit on October 31, 1998 or six months thereafter on the part of Megaworld, and to pay the balance of the purchase price at or about the time of delivery on the part of Tanseco. Compliance by Megaworld with its obligation is

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[*] Designated additional Member of the Second Division per Special Order No. 718 dated October 2, 2009.

[**] Designated Acting Chairperson of the Second Division per Special Order No. 690 dated September 4, 2009.

[***] Designated additional Member of the Second Division per Special Order No. 730 dated October 5, 2009.

determinative of compliance by Tanseco with her obligation to pay the balance of the purchase price. Megaworld having failed to comply with its obligation under the contract, it is liable therefor. That Megaworld's sending of a notice of turnover preceded Tanseco's demand for refund does not abate her cause. For demand would have been useless, Megaworld admittedly having failed in its obligation to deliver the unit on the agreed date.

2. ID.; ID.; ID.; ID.; THE FLUCTUATING MOVEMENT OF THE PHILIPPINE PESO IN THE FOREIGN EXCHANGE MARKET IS AN EVERYDAY OCCURRENCE AND NOT AN INSTANCE OF *CASO FORTUITO*.— The Court cannot generalize the 1997 Asian financial crisis to be unforeseeable and beyond the control of a business corporation. A real estate enterprise engaged in the pre-selling of condominium units is concededly a master in projections on commodities and currency movements, as well as business risks. The fluctuating movement of the Philippine peso in the foreign exchange market is an everyday occurrence, hence, not an instance of *caso fortuito*. Megaworld's excuse for its delay does not thus lie.

3. ID.; ID.; ID.; ID.; RESPONDENT IS ENTITLED TO BE REIMBURSED THE TOTAL AMOUNT PAID TO PETITIONER PURSUANT TO SECTION 23 OF PRESIDENTIAL DECREE NO. 957.— As for Megaworld's argument that Tanseco's claim is considered barred by laches on account of her belated demand, it does not lie too. Laches is a creation of equity and its application is controlled by equitable considerations. It bears noting that Tanseco religiously paid all the installments due up to January, 1998, whereas Megaworld reneged on its obligation to deliver within the stipulated period. A circumspect weighing of equitable considerations thus tilts the scale of justice in favor of Tanseco.

4. ID.; ID.; ID.; ID.; SINCE ARTICLE 1191 OF THE CIVIL CODE DOES NOT APPLY TO A CONTRACT TO BUY AND SELL, CANCELLATION AND NOT RESCISSION OF THE CONTRACT IS THE CORRECT REMEDY.— Pursuant to Section 23 of Presidential Decree No. 957 which reads: Sec. 23. Non-Forfeiture of Payments. — No installment payment made by a buyer in a subdivision or condominium project for the lot or unit he contracted to buy shall be forfeited in favor

of the owner or developer when the buyer, after due notice to the owner or developer, desists from further payment due to the failure of the owner or developer to develop the subdivision or condominium project according to the approved plans and within the time limit for complying with the same. Such **buyer may**, **at his option**, **be reimbursed the total amount paid including amortization interests** but excluding delinquency interests, **with interest** thereon **at the legal rate**. Tanseco is, as thus prayed for, entitled to be reimbursed the total amount she paid Megaworld. While the appellate court correctly awarded ₱14,281,731.70 then, the interest rate should, however, be 6% per annum accruing from the date of demand on May 6, 2002, and then 12% per annum from the time this judgment becomes final and executory, conformably with *Eastern Shipping Lines, Inc. v. Court of Appeals.*

5. ID.; DAMAGES; ATTORNEY'S FEES AND EXEMPLARY DAMAGES; PROPERLY AWARDED; AMOUNT OF EXEMPLARY DAMAGES AWARDED FOUND EXCESSIVE AND WAS REDUCED ACCORDINGLY.— The award of ₱200,000 attorney's fees and of costs of suit is in order too, the parties having stipulated in the Contract to Buy and Sell that these shall be borne by the losing party in a suit based thereon, not to mention that Tanseco was compelled to retain the services of counsel to protect her interest. And so is the award of exemplary damages. With pre-selling ventures mushrooming in the metropolis, there is an increasing need to correct the insidious practice of real estate companies of proffering all sorts of empty promises to entice innocent buyers and ensure the profitability of their projects. The Court finds the appellate court's award of ₱200,000 as exemplary damages excessive, however. Exemplary damages are imposed not to enrich one party or impoverish another but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions. The Court finds that ₱100,000 is reasonable in this case.

APPEARANCES OF COUNSEL

Manlangit Maquinto Salomon & De Guzman for petitioner.
Cesar C. Cruz and Partners for respondent.

D E C I S I O N

CARPIO MORALES,[*] *J.*:

On July 7, 1995, petitioner Megaworld Globus Asia, Inc. (Megaworld) and respondent Mila S. Tanseco (Tanseco) entered into a Contract to Buy and Sell[1] a 224 square-meter (more or less) condominium unit at a pre-selling project, "The Salcedo Park," located along Senator Gil Puyat Avenue, Makati City.

The purchase price was ₱16,802,037.32, to be paid as follows: (1) 30% less the reservation fee of ₱100,000, or ₱4,940,611.19, by postdated check payable on July 14, 1995; (2) ₱9,241,120.50 through 30 equal monthly installments of ₱308,037.35 from August 14, 1995 to January 14, 1998; and (3) the balance of ₱2,520,305.63 on October 31, 1998, the stipulated delivery date of the unit; *provided* that if the construction is completed earlier, Tanseco would pay the balance within seven days from receipt of a notice of turnover.

Section 4 of the Contract to Buy and Sell provided for the construction schedule as follows:

4. ***CONSTRUCTION SCHEDULE —*** The construction of the Project and the unit/s herein purchased shall be completed and delivered not later than October 31, 1998 with additional grace period of six (6) months within which to complete the Project and the unit/s, barring delays due to fire, earthquakes, the elements, acts of God, war, civil disturbances, strikes or other labor disturbances, government and economic controls making it, among others, impossible or difficult to obtain the necessary materials, acts of third person, or any other cause or conditions beyond the control of the SELLER. In this event, the completion and delivery of the unit are deemed extended accordingly without liability on the part of the SELLER. The foregoing notwithstanding, the SELLER reserves the right to withdraw from this transaction and refund to the BUYER

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[*] Designated Acting Chairperson per Special Order No. 690 dated September 4, 2009.

[1] HLURB records, pp. 164-169.

without interest the amounts received from him under this contract if for any reason not attributable to SELLER, such as but not limited to fire, storms, floods, earthquakes, rebellion, insurrection, wars, coup de etat, civil disturbances or for other reasons beyond its control, the Project may not be completed or it can only be completed at a financial loss to the SELLER. In any event, all construction on or of the Project shall remain the property of the SELLER. (Underscoring supplied)

Tanseco paid all installments due up to January, 1998, leaving unpaid the balance of ₱2,520,305.63 pending delivery of the unit.[2] Megaworld, however, failed to deliver the unit within the stipulated period on October 31, 1998 or April 30, 1999, the last day of the six-month grace period.

A few days shy of three years later, Megaworld, by notice dated April 23, 2002 (notice of turnover), informed Tanseco that the unit was ready for inspection preparatory to delivery.[3] Tanseco replied through counsel, by letter of May 6, 2002, that in view of Megaworld's failure to deliver the unit on time, she was demanding the return of ₱14,281,731.70 representing the total installment payment she had made, with interest at 12% per annum from April 30, 1999, the expiration of the six-month grace period. Tanseco pointed out that none of the excepted causes of delay existed.[4]

Her demand having been unheeded, Tanseco filed on June 5, 2002 with the Housing and Land Use Regulatory Board's (HLURB) Expanded National Capital Region Field Office a complaint against Megaworld for rescission of contract, refund of payment, and damages.[5]

In its Answer, Megaworld attributed the delay to the 1997 Asian financial crisis which was beyond its control; and argued that default had not set in, Tanseco not having made any judicial

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[2] *Id.* at 148-163.

[3] *Id.* at 22.

[4] *Id.* at 146-147.

[5] *Id.* at 13-19.

or extrajudicial demand for delivery before receipt of the notice of turnover.[6]

By Decision of May 28, 2003,[7] the HLURB Arbiter dismissed Tanseco's complaint for lack of cause of action, finding that Megaworld had effected delivery by the notice of turnover before Tanseco made a demand. Tanseco was thereupon ordered to pay Megaworld the balance of the purchase price, plus ₱25,000 as moral damages, ₱25,000 as exemplary damages, and ₱25,000 as attorney's fees.

On appeal by Tanseco, the HLURB Board of Commissioners, by Decision of November 28, 2003,[8] sustained the HLURB Arbiter's Decision on the ground of laches for failure to demand rescission when the right thereto accrued. It deleted the award of damages, however. Tanseco's Motion for Reconsideration having been denied,[9] she appealed to the Office of the President which dismissed the appeal by Decision of April 28, 2006[10] for failure to show that the findings of the HLURB were tainted with grave abuse of discretion. Her Motion for Reconsideration having been denied by Resolution dated August 30, 2006,[11] Tanseco filed a Petition for Review under Rule 43 with the Court of Appeals.[12]

By Decision of September 28, 2007,[13] the appellate court granted Tanseco's petition, disposing thus:

WHEREFORE, premises considered, petition is hereby **GRANTED** and the assailed May 28, 2003 decision of the HLURB

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[6] *Id.* at 24-31.

[7] *Id.* at 136-139.

[8] *Id.* at 247-250.

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

[10] *Rollo,* pp. 260-263.

[11] *Id.* at 264.

[12] CA *rollo,* pp. 8-55.

[13] Penned by Associate Justice Vicente Q. Roxas, with the concurrence of Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia; CA *rollo,* pp. 692-714.

Field Office, the November 28, 2003 decision of the HLURB Board of Commissioners in HLURB Case No. REM-A-030711-0162, the April 28, 2006 Decision and August 30, 2006 Resolution of the Office of the President in O.P. Case No. 05-I-318, are hereby **REVERSED** and **SET ASIDE** and a new one entered: (1) **RESCINDING**, as prayed for by TANSECO, the aggrieved party, the contract to buy and sell; (2) **DIRECTING** MEGAWORLD **TO PAY** TANSECO the amount she had paid totaling ₱14,281,731.70 with *Twelve (12%)* Percent interest per annum *from October 31, 1998*; (3) **ORDERING** MEGAWORLD **TO PAY** TANSECO ₱200,000.00 by way of exemplary damages; (4) **ORDERING** MEGAWORLD **TO PAY** TANSECO ₱200,000.00 as attorney's fees; and (5) **ORDERING** MEGAWORLD **TO PAY** TANSECO the cost of suit. (Emphasis in the original; underscoring supplied)

The appellate court held that under Article 1169 of the Civil Code, no judicial or extrajudicial demand is needed to put the obligor in default if the contract, as in the herein parties' contract, states the date when the obligation should be performed; that time was of the essence because Tanseco relied on Megaworld's promise of timely delivery when she agreed to part with her money; that the delay should be reckoned from October 31, 1998, there being no *force majeure* to warrant the application of the April 30, 1999 alternative date; and that specific performance could not be ordered in lieu of rescission as the right to choose the remedy belongs to the aggrieved party.

The appellate court awarded Tanseco exemplary damages on a finding of bad faith on the part of Megaworld in forcing her to accept its long-delayed delivery; and attorney's fees, she having been compelled to sue to protect her rights.

Its Motion for Reconsideration having been denied by Resolution of January 8, 2008,[14] Megaworld filed the present Petition for Review on *Certiorari*, echoing its position before the HLURB, adding that Tanseco had not shown any basis for the award of damages and attorney's fees.[15]

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[14] *Id.* at 816.

[15] *Vide* Petition, *rollo*, pp. 29-74.

Tanseco, on the other hand, maintained her position too, and citing Megaworld's bad faith which became evident when it insisted on making the delivery despite the long delay,[16] insisted that she deserved the award of damages and attorney's fees.

Article 1169 of the Civil Code provides:

> Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.
>
> However, the demand by the creditor shall not be necessary in order that delay may exist:
>
> (1) When the obligation or the law expressly so declares; or
>
> (2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or
>
> (3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.
>
> In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins. (Underscoring supplied)

The Contract to Buy and Sell of the parties contains reciprocal obligations, *i.e.*, to complete and deliver the condominium unit on October 31, 1998 or six months thereafter on the part of Megaworld, and to pay the balance of the purchase price at or about the time of delivery on the part of Tanseco. Compliance by Megaworld with its obligation is determinative of compliance by Tanseco with her obligation to pay the balance of the purchase price. Megaworld having failed to comply with its obligation under the contract, it is liable therefor.[17]

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[16] *Vide* Comment, *id.* at 432-465.

[17] *Vide Leaño v. Court of Appeals*, 420 Phil. 836, 848 (2001). Article 1170 of the Civil Code provides:

That Megaworld's sending of a notice of turnover preceded Tanseco's demand for refund does not abate her cause. For demand would have been useless, Megaworld admittedly having failed in its obligation to deliver the unit on the agreed date.

Article 1174 of the Civil Code provides:

> Art. 1174. Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable.[18]

The Court cannot generalize the 1997 Asian financial crisis to be unforeseeable and beyond the control of a business corporation. A real estate enterprise engaged in the pre-selling of condominium units is concededly a master in projections on commodities and currency movements, as well as business risks. The fluctuating movement of the Philippine peso in the foreign exchange market is an everyday occurrence, hence, not an instance of *caso fortuito*.[19] Megaworld's excuse for its delay does not thus lie.

As for Megaworld's argument that Tanseco's claim is considered barred by laches on account of her belated demand, it does not lie too. Laches is a creation of equity and its application is controlled by equitable considerations.[20] It bears noting that Tanseco religiously paid all the installments due up to January, 1998, whereas Megaworld reneged on its obligation to deliver within the stipulated period. A circumspect weighing of equitable considerations thus tilts the scale of justice in favor of Tanseco.

> Art. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

[18] *Mondragon Leisure and Resorts Corporation v. Court of Appeals,* 499 Phil. 268, 279 (2005).

[19] *Fil-Estate Properties, Inc., v. Go,* G.R. No. 165164, August 17, 2007, 530 SCRA 621, 628.

[20] *Heirs of Tranquilino Labiste v. Heirs of Jose Labiste,* G.R. No. 162033, May 8, 2009.

Pursuant to Section 23 of Presidential Decree No. 957[21] which reads:

> Sec. 23. Non-Forfeiture of Payments. - No installment payment made by a buyer in a subdivision or condominium project for the lot or unit he contracted to buy shall be forfeited in favor of the owner or developer when the buyer, after due notice to the owner or developer, desists from further payment due to the failure of the owner or developer to develop the subdivision or condominium project according to the approved plans and within the time limit for complying with the same. Such **buyer may**, **at his option**, **be reimbursed the total amount paid including amortization interests** but excluding delinquency interests, **with interest** thereon **at the legal rate**. (Emphasis and underscoring supplied),

Tanseco is, as thus prayed for, entitled to be reimbursed the total amount she paid Megaworld.

While the appellate court correctly awarded ₱14,281,731.70 then, the interest rate should, however, be 6% per annum accruing from the date of demand on May 6, 2002, and then 12% per annum from the time this judgment becomes final and executory, conformably with *Eastern Shipping Lines, Inc. v. Court of Appeals*.[22]

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[21] REGULATING THE SALE OF SUBDIVISION LOTS AND CONDOMINIUMS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF.

[22] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 96-97. The Court, in this case, suggested rules on the award of interest, *viz*:

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> 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 is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained).

The award of ₱200,000 attorney's fees and of costs of suit is in order too, the parties having stipulated in the Contract to Buy and Sell that these shall be borne by the losing party in a suit based thereon,[23] not to mention that Tanseco was compelled to retain the services of counsel to protect her interest. And so is the award of exemplary damages. With pre-selling ventures mushrooming in the metropolis, there is an increasing need to correct the insidious practice of real estate companies of proffering all sorts of empty promises to entice innocent buyers and ensure the profitability of their projects.

The Court finds the appellate court's award of ₱200,000 as exemplary damages excessive, however. Exemplary damages are imposed not to enrich one party or impoverish another but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions.[24] The Court finds that ₱100,000 is reasonable in this case.

Finally, since Article 1191[25] of the Civil Code does not apply to a contract to buy and sell, the suspensive condition of full

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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 . . . 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.

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[23] HLURB records, p. 166.

[24] *Bataan Seedling Association, Inc. v. Republic of the Philippines,* G.R. No. 141009, July 2, 2002, 383 SCRA 590, 600-601.

[25] Article 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 possible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

payment of the purchase price not having occurred to trigger the obligation to convey title, cancellation, not rescission, of the contract is thus the correct remedy in the premises.[26]

WHEREFORE, the challenged Decision of the Court of Appeals is, in light of the foregoing, AFFIRMED with MODIFICATION.

As modified, the dispositive portion of the Decision reads:

> The July 7, 1995 Contract to Buy and Sell between the parties is cancelled. Petitioner, Megaworld Globus Asia, Inc., is directed to pay respondent, Mila S. Tanseco, the amount of ₱14,281,731.70, to bear 6% interest per annum starting May 6, 2002 and 12% interest per annum from the time the judgment becomes final and executory; and to pay ₱200,000 attorney's fees, ₱100,000 exemplary damages, and costs of suit.
>
> Costs against petitioner.
>
> **SO ORDERED.**

Corona,[**] *Nachura,*[***] *Brion,* and *Abad, JJ.,* concur.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

[26] *Vide Sta. Lucia Realty v. Romeo Uyecio,* G.R. No. 176217, August 13, 2008, 562 SCRA 226, 234-235.

[**] Additional member per Special Order No. 718 dated October 2, 2009.

[***] Additional member per Special Order No. 730 dated October 5, 2009.

THIRD DIVISION

[G.R. No. 184874. October 9, 2009]

ROBERT REMIENDO *y* SIBLAWAN, *petitioner, vs.* **THE PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL; STATUTORY RAPE; SEXUAL CONGRESS WITH A GIRL UNDER 12 YEARS OLD IS ALWAYS RAPE.— Considering that AAA was more than 12 years of age, Remiendo then questions her credibility as a witness, claiming that she was smiling during her testimony; and that her failure to flee from the situation, even taking off her panties herself, belies her charges of statutory rape against him. We disagree. As provided in Article 266-A (1)(d) of the Revised Penal Code, sexual intercourse with a girl below 12 years old is statutory rape. Its two elements are: (1) that the accused has carnal knowledge of a woman; and (2) that the woman is below 12 years of age. Sexual congress with a girl under 12 years old is always rape.

2. ID.; ID.; GUIDELINES IN THE APPRECIATION OF THE AGE OF A RAPE VICTIM LAID DOWN IN THE CASE IN *PEOPLE VS. PRUNA*.— As regards the appreciation of the age of a rape victim, the Court, in *People v. Pruna*, laid down the following guidelines: 1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party. 2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age. 3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules of Evidence shall be sufficient under the following circumstances: a. If the victim is alleged to be below 3 years of age and what is sought to be

proved is that she is less than 7 years old; b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old. 4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused. 5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him. 6. The trial court should always make a categorical finding as to the age of the victim.

3. ID.; ID.; EVEN ASSUMING THAT THE CERTIFICATE OF LIVE BIRTH WAS NOT APPRECIATED BY THE TRIAL COURT, THE PROSECUTION WAS ABLE TO ESTABLISH THAT THE VICTIM WAS BELOW 12 YEARS OLD DURING THE OCCASIONS OF RAPE PER THE GUIDELINES LAID IN *PEOPLE V. PRUNA*.— A certificate of live birth is a public document that consists of entries (regarding the facts of birth) in public records (Civil Registry) made in the performance of a duty by a public officer (Civil Registrar). As such, it is *prima facie* evidence of the fact of birth of a child, and it does not need authentication. It can only be rebutted by clear and convincing evidence to the contrary. Thus, despite the September 14, 1999 Order, the RTC correctly appreciated the same in its Joint Judgment. Nevertheless, even assuming that the Certificate of Live Birth was not appreciated by the RTC, the prosecution was able to establish that AAA was below 12 years old during the two occasions of rape per the guidelines laid down in *Pruna*. It is significant to note that both AAA and BBB testified that AAA was born on February 21, 1986. This fact was neither denied nor objected to by the defense. The argument of Remiendo that the prosecution admitted in the course of trial that AAA's birthday was February 21, 1984 cannot stand. This statement cannot qualify as a judicial admission on the birth date of AAA. A judicial admission is an admission, verbal or written, made by a party in the course of the proceedings in the same case and it dispenses with proof with respect to the matter or fact

admitted. It may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. In this case, what was only admitted was that the entry of AAA's date of birth appearing in her school record is February 21, 1983. There was no such admission that the said date was the correct birthday of AAA. And as between the school record and the testimonies of AAA and her mother BBB, the latter must prevail.

4. ID.; ID.; PETITIONER COMMITTED THE ACT OF RAPE WITH DISCERNMENT; HAVING ALREADY REACHED 21 YEARS OF AGE AT THE TIME OF IMPOSITION OF HIS SENTENCE, HIS CLAIM FOR BENEFITS OF R.A. NO. 9344 IS RENDERED MOOT AND ACADEMIC.— Remiendo argues that the prosecution failed to establish that he acted with discernment in the commission of the crimes charged. Thus, he claims that he should be exempt from criminal liability. We differ. Discernment is the mental capacity to understand the difference between right and wrong. The prosecution is burdened to prove that the accused acted with discernment by evidence of physical appearance, attitude or deportment not only before and during the commission of the act, but also after and during the trial. The surrounding circumstances must demonstrate that the minor knew what he was doing and that it was wrong. Such circumstance includes the gruesome nature of the crime and the minor's cunning and shrewdness. Culled from the records of this case, it is manifest that Remiendo acted with discernment, being able to distinguish between right and wrong and knowing fully well the consequences of his acts against AAA. During the rape that occurred in March 1997, Remiendo waited for AAA to be left alone at her house before he came, and, while doing his dastardly act, threatened to kick her should she shout for help. In May 1997, Remiendo again ravished AAA in the room of his house when the latter passed by and, thereafter, threatened to kill her if she told anybody about what had just happened. Per his own testimony, he knew that committing rape was wrong because he claimed to have been enraged when he was asked by AAA's playmates if he indeed raped AAA, to the point of slapping her and revving up the engine of a jitney and directing the smoke from the exhaust pipe towards her. Remiendo, being above 15 and under 18 years of age at the time of the rape, and having

acted with discernment, but having already reached 21 years of age at the time of the imposition of his sentence by the trial court, his claim for the benefits of R.A. No. 9344 is rendered moot and academic in view of Section 40 thereof. Remiendo was born on January 21, 1982. The Joint Judgment was promulgated on October 27, 2004. Thus, at the time of the imposition of his sentence, Remiendo was already 22 years old and could no longer be considered a child for the purposes of the application of R.A. No. 9344.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; BEST ASSESSED BY TRIAL COURTS.— As to the credibility of AAA as a witness, jurisprudence instructs us that the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly.

6. ID.; ID.; ID.; TESTIMONIES OF RAPE VICTIMS WHO ARE YOUNG AND IMMATURE DESERVE FULL CREDENCE; YOUTH AND IMMATURITY ARE GENERALLY BADGES OF TRUTH.— Testimonies of rape victims who are young and immature deserve full credence, inasmuch as no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being the subject of a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. Youth and immaturity are generally badges of truth. It is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime so serious as rape if what she claims is not true.

7. ID.; ID.; ID.; TESTIMONY OF VICTIM IS WELL-CORROBORATED BY THE MEDICO-LEGAL EXAMINATION AND NO EVIDENCE TO SHOW ANY IMPROPER MOTIVE TO TESTIFY FALSELY AGAINST THE ACCUSED OR TO FALSELY IMPLICATE HIM IN THE COMMISSION OF THE CRIME.— What is more, AAA's testimony of rape was corroborated by the NBI medico-legal examination showing healed lacerations on her hymen.

> Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration. 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. When there is no evidence to show any improper motive on the part of the rape victim to testify falsely against the accused or to falsely implicate him in the commission of a crime, the logical conclusion is that the testimony is worthy of full faith and credence. In this case, Remiendo failed to convince us to rule otherwise.

APPEARANCES OF COUNSEL

A.C.E. & Partners Law Firm for petitioners.
The Solicitor General for respondent.

D E C I S I O N

NACHURA, *J.*:

This is a petition[1] for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[2] dated November 16, 2007 and the Resolution[3] dated October 3, 2008 of the Court of Appeals (CA) in CA-G.R. CR No. 29316 entitled, "*People of the Philippines v. Robert Remiendo y Siblawan.*"

The case arose from the filing of two criminal informations, both dated March 10, 2008, against petitioner Robert Remiendo *y* Siblawan (Remiendo), that read—

Criminal Case No. 98-CR-2999

That in or about the month of March 1997, at Badiwan, Municipality of Tuba, Benguet Province, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and

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[1] *Rollo*, pp. 9-33.

[2] Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Marina L. Buzon and Rosmari D. Carandang, concurring; *id.* at 35-55.

[3] *Rollo*, pp. 57-58.

there willfully, unlawfully and feloniously have carnal knowledge of one [AAA], a girl below 12 years of age.

CONTRARY TO LAW.[4]

Criminal Case No. 98-CR-3000

That in or about the month of May 1997, at Badiwan, Municipality of Tuba, Benguet Province, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge of one [AAA], a girl below 12 years of age.

CONTRARY TO LAW.[5]

Upon arraignment, Remiendo pled "not guilty" to both charges. After pretrial, a joint trial ensued before the Regional Trial Court (RTC), Branch 62, La Trinidad, Benguet. Both the prosecution and the defense presented their respective evidence, summarized by the CA in its Decision, to wit:

The prosecution presented the following version of facts:

The complainant [AAA] was born on 16 February 1986. At the time of the commission of the offense, she was a minor below 12 years of age. She knew accused-appellant Robert Remiendo as he was residing near the house where her family used to stay. Sometime in March 1997, she was sexually assaulted by accused-appellant inside said house. On that day, her parents and brother left for work after breakfast, and she was left alone in the house. Accused-appellant came in, pushed her into the room, and threatened to kill her if she reported what happened. He undressed himself and the complainant. The latter was standing and refused to remove her panty but she obliged when accused-appellant insisted. Then he made her lie on the bed and placed his penis in her vagina. The complainant struggled, moved, and pushed accused-appellant. She felt pain when accused-appellant inserted his penis into her vagina. She cried until accused-appellant left, but she did not shout because accused-appellant warned her not to, or else he would kick her. She put on her clothes after accused-appellant left. Her parents arrived in the afternoon but she did not tell them what happened to her because her mother might whip her.

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[4] Records (Crim. Case No. 98-CR-2999), p. 1.

[5] Records (Crim. Case No. 98-CR-3000), p. 1.

Sometime in May 1997, [AAA] was again sexually assaulted by accused-appellant, which took place in the house of the latter. At that time, she was on her way to see her mother at her workplace after she had lunch. When she passed by the house of accused-appellant, the latter pulled her into his house and brought her into his room. She cried and shouted but accused-appellant told her to keep quiet. She struggled but was helpless because accused-appellant was stronger. They were alone in the room. Accused-appellant removed his clothes and told her to remove her panty. Afraid, she removed her panty and was made to lie on the bed. Accused-appellant inserted his penis into her vagina and she felt pain. She kept on moving but she could not push away accused-appellant. She moved her shoulders and pushed accused-appellant with both hands but he was stronger. Afterwards, accused-appellant moved away and threatened to kill her if she told anyone what happened. She responded that she would not tell anyone. Later, she executed a sworn statement and identified accused-appellant as the person who raped her.

Dr. Ronald R. Bandonill, Medico-Legal Officer of the National Bureau of Investigation (NBI)-Cordillera Administrative Region, physically examined the complainant on 2 January 1998. Said medico-legal officer testified that [AAA] was thirteen (13) years old and a Grade III pupil at Badiwan Tuba, Benguet at the time of the examination. She was four feet and eleven inches (4'11") tall, weighed 78 pounds, fairly nourished, and fairly developed. She was conscious, coherent, and cooperative. She was ambulatory and had no extra-genital injuries. Upon examination of her genital area, he found old lacerations of the hymen at 5:00 and 7:00 o'clock positions, which meant that her hymen was altered by a hard rigid instrument. The lacerations were done more than three (3) months prior to the examination. To determine the approximate size of the object that the hymenal opening could accommodate, he inserted a test tube. The 2.5-centimeter diameter of said tube was admitted with ease by the hymenal orifice. He noted that the vaginal walls were lax and the ridges inside were smothered. The complainant told him that accused-appellant raped her. He presented a written report of his findings.

On 12 July 1998, psychiatrist Dr. Elsie I. Caducoy conducted an examination of the mental condition of the complainant. The latter was also scheduled for psychological examination to be conducted by Elma Buadken. The result of the examination showed that [AAA] is suffering from psychosis and organicity. She has a below average intelligence quotient of 88, but not on the level of mental retardation.

She can perform simple tasks but needs guidance. As to her studies, she can hardly comprehend what is being taught to her. Having psychosis means that her brain is afflicted with a disease. Her medical history showed that she suffered head and body injuries brought about by being sideswiped by a motor vehicle sometime in 1996. She was confined in the hospital for twelve (12) days. Said injuries substantially contributed to her present condition. Organicity, on the other hand, means that the complainant suffers from a cloud of memory, upward rolling of the eyeballs, stiffening of the extremities, loss of consciousness, and epileptic seizures. Her psychosis occurs after seizure. She is not, however, insane. During a seizure, she does not know what is going on, but afterwards she returns to her level of consciousness. With regular medication, her seizures will be greatly minimized. During her interview, the complainant had a seizure and the psychiatrist had to wait until her consciousness level returned. The complainant then revealed that accused-appellant and a certain Reynoso Cera raped her. The psychiatrist opined that during the rape, she did not have a seizure because if she had, she would not have remembered what had happened. The fact that she was able to narrate what happened and who raped her suggested that she was on her conscious level at such time. A written report of the foregoing findings was submitted in court.

The defense presented the following version of facts:

Lea F. Chiwayan, thirteen (13) years old, testified that she was a friend, playmate, and neighbor of the complainant. She testified that she and [AAA] played together and talked about their "crushes." The complainant told Lea Chiwayan that she had a crush on accused-appellant. Sometime in April or May 1997, the complainant said that her brother had molested her, and that he and his father had sexual intercourse with her in their house in Poyopoy, Tuba. Sometime in August 1997, the complainant confided that Reynoso Cera raped her in his house. She told Lea Chiwayan that she did not feel anything because she was used to having sexual intercourse with brother and father. One Saturday afternoon, Lea Chiwayan and the complainant were playing when they saw accused-appellant going to the basketball court near the church. They followed him and watched a basketball game. After the game, Lea Chiwayan went home with the others while the complainant stayed behind. A few seconds after they left, the complainant ran after them and told them that something happened between her and accused-appellant. She said that accused-appellant pulled her towards the back of the church

and had sexual intercourse with her. The complainant later took back what she said because she was only joking. She then asked Lea Chiwayan not to tell the accused-appellant. However, Lea Chiwayan told accused-appellant what the complainant told them. Accused-appellant confronted the complainant. He flicked a finger on her head, kicked and spanked her. He said, "what are you saying, why did I do that, if I like and I do it, I'll not do it with you, you should be ashamed of yourself." He then borrowed the vehicle of a certain Junie, started the engine, and stepped on the gas such that the fumes from the exhaust pipe were directed at the complainant. Later, Lea Chiwayan learned that [AAA] filed a case against accused-appellant.

Dolores L. Daniel, Grade II teacher of [AAA] for the school year 1997-1998, testified that the latter was unruly and a liar. The complainant would pick fights and steal money from her classmates. However, the witness admitted that there was no written record in school that she reprimanded complainant for her behavior. She knew that the complainant had an accident before.

Victor Daniel, a jitney operator, testified that accused-appellant was one of his drivers. He described accused-appellant as a hardworking and industrious person. When he learned that Robert Remiendo was accused of rape, he was outraged because he knew the daily activities of accused-appellant. The latter could not have done such act under his strict supervision.

Accused-appellant testified that he knew the complainant, as she was a townmate of his mother. In September 1996, he and his parents were then residing in Badiwan. When the complainant figured in an accident at that time, he was the one who informed her parents. The first time he saw the complainant was during the time when he was doing some repairs on his jitney. He saw the complainant and her playmates go inside the jitney. He told them to alight from the vehicle. Sometime in June 1997, he again saw the complainant and her sister playing inside the jitney. He told them to alight as they were disturbing him. On the day he was playing basketball at the church grounds in Badiwan, Lea and Emma Chiwayan approached him and asked him if it was true that he raped [AAA]. He asked where the latter was and went to see her. Out of anger, he borrowed the vehicle of Junie, started the engine, directed the exhaust pipe at the complainant, and revved the engine so the smoke would go straight to her. He slapped her and said "if I would like someone, it would not be you because there are a lot of girls better than you." During

the Christmas party in Badiwan, he again saw the complainant roaming around the dance area. He told her to get out as she irritated the people dancing. The complainant said nothing and left the dance floor. Thereafter, he saw the complainant laughing and smiling. He learned that he was charged with two (2) counts of rape when he received a subpoena issued by the Office of the Provincial Prosecutor in January 1998.[6]

In its Joint Judgment[7] dated October 27, 2004, the RTC found Remiendo guilty beyond reasonable doubt of two (2) counts of statutory rape. The RTC disposed as follows:

WHEREFORE, in view of all the foregoing, the court finds ROBERT REMIENDO *y* SIBLAWAN guilty beyond reasonable doubt of two counts of rape as charged in the Information docketed as Criminal Case No. 98-CR-2999 and in the Information docketed as Criminal Case No. 98-CR-3000, and hereby sentences him to suffer the penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years and one (1) day of *reclusion temporal*, as maximum for each count of rape.

He shall further indemnify the offended party [AAA] the sum of Fifty Thousand Pesos (₱50,000.00) by way of civil indemnity, the sum of Thirty Thousand Pesos (₱30,000.00) by way of moral damages, and the sum of Ten Thousand Pesos (₱10,000.00) by way of exemplary damages.

Pursuant to Administrative Circular No. 4-92-A of the Court Administrator, the Provincial Jail Warden of Benguet Province is directed to immediately transfer the said accused, Robert Remiendo, to the custody of the Bureau of Corrections, Muntinlupa City, Metro Manila after the expiration of fifteen (15) days from date of promulgation unless otherwise ordered by this Court.

Let a copy of this Judgment be furnished the Provincial Jail Warden of Benguet Province for his information, guidance and compliance.

SO ORDERED.[8]

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[6] *Rollo*, pp. 37-44.

[7] *Id.* at 59-85.

[8] *Id.* at 85.

Aggrieved, Remiendo interposed his appeal before the CA. In its assailed Decision, the CA affirmed the RTC, modifying only the civil liability imposed upon Remiendo. The *fallo* of the CA Decision reads—

> WHEREFORE, premises considered, the instant appeal is ***DISMISSED***. The Joint Judgment dated 27 October 2004 rendered by the Regional Trial Court, Branch 62, La Trinidad, Benguet, is ***AFFIRMED*** with ***MODIFICATION*** on the civil liability of accused-appellant. He is ordered to pay the complainant, for each count of rape, the sum of (a) ₱50,000.00 as civil indemnity, (b) ₱50,000.00 as moral damages, and (c) ₱25,000.00 as exemplary damages.
>
> SO ORDERED.[9]

Remiendo moved to reconsider the November 16, 2007 Decision, but the CA denied the motion in its October 3, 2008 Resolution; hence, this petition alleging that—

(a) THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF THE COURT *A QUO* CONVICTING PETITIONER OF STATUTORY RAPE DESPITE THE ABSENCE OF EVIDENCE TO PROVE THE TRUE AND REAL AGE OF THE PRIVATE COMPLAINANT.

(b) THE COURT OF APPEALS GRAVELY ERRED IN NOT GIVING PETITIONER THE BENEFIT ACCORDED TO HIM BY REPUBLIC ACT 9344 KNOWN AS THE JUVENILE JUSTICE AND WELFARE ACT OF 2006 INCREASING THE AGE OF CRIMINAL RESPONSIBILITY.[10]

Remiendo questions his conviction for statutory rape despite the purported absence of competent proof that AAA was below 12 years old at the time of the alleged commission of the crimes. According to him, the Certificate of Live Birth of AAA offered by the prosecution during its formal offer of exhibits was not admitted by the RTC in its Order[11] dated September 14, 1999 because "it was neither identified by any witness, nor marked

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[9] *Id.* at 54-55.

[10] *Id.* at 20-21,

[11] Records (Crim. Case No. 98-CR-2999), p. 288.

as exhibit during the trial though reserved for marking during the pretrial." He further posits that, on the basis of the testimonies of the defense witnesses and the Elementary School Permanent Record,[12] AAA was more than 12 years old in March and May 1997.

Considering that AAA was more than 12 years of age, Remiendo then questions her credibility as a witness, claiming that she was smiling during her testimony; and that her failure to flee from the situation, even taking off her panties herself, belies her charges of statutory rape against him.

We disagree.

As provided in Article 266-A (1)(d) of the Revised Penal Code, sexual intercourse with a girl below 12 years old is statutory rape. Its two elements are: (1) that the accused has carnal knowledge of a woman; and (2) that the woman is below 12 years of age. Sexual congress with a girl under 12 years old is always rape.[13]

As regards the appreciation of the age of a rape victim, the Court, in *People v. Pruna*,[14] laid down the following guidelines:

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify

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[12] Exhibit "11" for the defense indicating that AAA's date of birth is February 21, 1983.

[13] *People of the Philippines v. Elister Basmayor y Grascilla*, G.R. No. 182791, February 10, 2009.

[14] 439 Phil. 440, 470-471 (2002).

on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules of Evidence shall be sufficient under the following circumstances:

a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

6. The trial court should always make a categorical finding as to the age of the victim.[15]

In this case, the prosecution offered in evidence a certified true copy of AAA's Certificate of Live Birth[16] as part of the testimonies of AAA and her mother that AAA was born on February 21, 1986. It was reserved for marking as part of the exhibits for the prosecution, as shown in the Pretrial Order[17] dated November 16, 1998. During the trial, in order to abbreviate the proceedings, the parties agreed to stipulate on the testimony of AAA's mother, specifically on the following facts:

1. That she is [BBB], the natural mother of [AAA], the victim in these two (2) Criminal Cases Nos. 98-CR-2999 and 98-CR-3000;

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[15] As cited in *People v. Barcena*, G.R. No. 168737, February 16, 2006, 482 SCRA 543, 558-559.

[16] Records (Crim. Case No. 98-CR-2999), p. 273.

[17] *Id.* at 125-127.

2. That on January 5, 1998[,] she executed an affidavit-complaint for and on behalf of her daughter which she subscribed before NBI agent Atty. Dave Alunan; and

3. That the subject matter of her sworn statement against Reynoso Cera and Robert Remiendo is the alleged statutory rape against [AAA].[18]

And part of the affidavit-complaint of BBB is the statement that AAA was born on February 21, 1986.[19]

A certificate of live birth is a public document that consists of entries (regarding the facts of birth) in public records (Civil Registry) made in the performance of a duty by a public officer (Civil Registrar). As such, it is *prima facie* evidence of the fact of birth of a child,[20] and it does not need authentication. It can only be rebutted by clear and convincing evidence to the contrary. Thus, despite the September 14, 1999 Order, the RTC correctly appreciated the same in its Joint Judgment.

Nevertheless, even assuming that the Certificate of Live Birth was not appreciated by the RTC, the prosecution was able to establish that AAA was below 12 years old during the two occasions of rape per the guidelines laid down in *Pruna*. It is significant to note that both AAA and BBB testified that AAA was born on February 21, 1986. This fact was neither denied nor objected to by the defense. The argument of Remiendo that the prosecution admitted in the course of trial that AAA's birthday was February 21, 1984 cannot stand. As quoted by Remiendo in his petition—

Court:

Anyway, it is stated in that document that the birth date of [AAA] was February 21, 1983. Do you agree that that is an entry there?

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[18] *Id.* at 264.

[19] *Id.* at 279.

[20] RULES OF COURT, Rule 132, Sec. 23; *Republic v. T.A.N. Properties, Inc.*, G.R. No. 154953, June 26, 2008, 555 SCRA 477; *People v. Delantar*, G.R. No. 169143, February 2, 2007, 514 SCRA 115.

Pros. Suanding:

Yes, your honor. We agree, your honor.[21]

This statement cannot qualify as a judicial admission on the birth date of AAA. A judicial admission is an admission, verbal or written, made by a party in the course of the proceedings in the same case and it dispenses with proof with respect to the matter or fact admitted. It may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.[22] In this case, what was only admitted was that the entry of AAA's date of birth appearing in her school record is February 21, 1983. There was no such admission that the said date was the correct birthday of AAA. And as between the school record and the testimonies of AAA and her mother BBB, the latter must prevail.

As to the credibility of AAA as a witness, jurisprudence instructs us that the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly.[23]

Testimonies of rape victims who are young and immature deserve full credence, inasmuch as no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being the subject of a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. Youth and immaturity are generally badges of

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[21] TSN, January 27, 1999, p. 5.

[22] RULES OF COURT, Rule 129, Sec. 4; *Jesus Cuenco v. Talisay Tourist Sports Complex, Inc. and Matias B. Aznar III*, G.R. No. 174154, October 17, 2008; *Camitan v. Fidelity Investment Corporation*, G.R. No. 163684, April 16, 2008, 551 SCRA 540.

[23] *People of the Philippines v. Jose Perez y Dalegdeg*, G.R. No. 182924, December 24, 2008.

truth. It is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime so serious as rape if what she claims is not true.[24]

What is more, AAA's testimony of rape was corroborated by the NBI medico-legal examination showing healed lacerations on her hymen. Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration. 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. When there is no evidence to show any improper motive on the part of the rape victim to testify falsely against the accused or to falsely implicate him in the commission of a crime, the logical conclusion is that the testimony is worthy of full faith and credence.[25] In this case, Remiendo failed to convince us to rule otherwise.

Remiendo also posits that he should benefit from the mandate of Republic Act (R.A.) No. 9344, otherwise known as the Juvenile Justice and Welfare Act of 2006.

The pertinent provision of R.A. No. 9344 reads —

SEC. 6. *Minimum Age of Criminal Responsibility*. – A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

A child above fifteen (15) years but below eighteen (18) years of age shall be likewise exempt from criminal liability and be subjected to an intervention program, unless he/she acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

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[24] *People of the Philippines v. Elister Basmayor y Grascilla*, *supra* note 13.

[25] *Id*.

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.[26]

Remiendo argues that the prosecution failed to establish that he acted with discernment in the commission of the crimes charged. Thus, he claims that he should be exempt from criminal liability.

We differ. Discernment is the mental capacity to understand the difference between right and wrong. The prosecution is burdened to prove that the accused acted with discernment by evidence of physical appearance, attitude or deportment not only before and during the commission of the act, but also after and during the trial. The surrounding circumstances must demonstrate that the minor knew what he was doing and that it was wrong. Such circumstance includes the gruesome nature of the crime and the minor's cunning and shrewdness.[27]

Culled from the records of this case, it is manifest that Remiendo acted with discernment, being able to distinguish between right and wrong and knowing fully well the consequences of his acts against AAA. During the rape that occurred in March 1997, Remiendo waited for AAA to be left alone at her house before he came, and, while doing his dastardly act, threatened to kick her should she shout for help. In May 1997, Remiendo again ravished AAA in the room of his house when the latter passed by and, thereafter, threatened to kill her if she told anybody about what had just happened. Per his own testimony, he knew that committing rape was wrong because he claimed to have been enraged when he was asked by AAA's playmates if he indeed raped AAA, to the point of slapping her and revving up the engine of a jitney and directing the smoke from the exhaust pipe towards her.

Remiendo, being above 15 and under 18 years of age at the time of the rape,[28] and having acted with discernment, but having

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[26] Emphasis supplied.

[27] *Llave v. People*, G.R No. 166040, April 26, 2006, 488 SCRA 376.

[28] Per the Certificate of Live Birth of Robert Remiendo. (Records [Crim. Case No. 98-CR-2999], p. 54.)

already reached 21 years of age at the time of the imposition of his sentence by the trial court, his claim for the benefits of R.A. No. 9344 is rendered moot and academic in view of Section 40[29] thereof which provides —

> SEC. 40. *Return of the Child in Conflict with the Law to Court.* — If the court finds that the objective of the disposition measures imposed upon the child in conflict with the law have not been fulfilled, or if the child in conflict with the law has willfully failed to comply with the conditions of his/her disposition or rehabilitation program, the child in conflict with the law shall be brought before the court for execution of judgment.
>
> If the child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to extend the suspended sentence for a certain period or **until the child reaches the maximum age of twenty-one (21) years**.[30]

Remiendo was born on January 21, 1982. The Joint Judgment was promulgated on October 27, 2004. Thus, at the time of the imposition of his sentence, Remiendo was already 22 years old and could no longer be considered a child for the purposes of the application of R.A. No. 9344.

WHEREFORE, the petition is *DENIED*, and the Decision dated November 16, 2007 and the Resolution dated October 3, 2008 of the Court of Appeals are *AFFIRMED*. No costs.

SO ORDERED.

Carpio (Chairperson), Acting C.J., Carpio Morales,[*] *Velasco, Jr.,* and *Peralta, JJ.,* concur.

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[29] *Padua v. People*, G.R. No. 168546, July 23, 2008, 559 SCRA 519.

[30] Emphasis supplied.

[*] Additional member in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 720 dated October 5, 2009.

EN BANC

[G.R. No. 186201. October 9, 2009]

CARMELINDA C. BARRO, *petitioner, vs.* **THE COMMISSION ON ELECTIONS (FIRST DIVISION); HON. DELIA P. NOEL-BERTULFO, in her capacity as Presiding Judge of the Municipal Trial Court, Palompon, Leyte; and ELPEDIO P. CONTINEDAS, JR.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTION LAWS; COMMISSION ON ELECTIONS (COMELEC) RESOLUTION NO. 8486; CLARIFICATION ON THE RULE ON THE PAYMENT OF APPEAL FEES; FAIRNESS AND PRUDENCE DICTATE THAT THE FIRST DIVISION SHOULD HAVE FIRST DIRECTED PETITIONER TO PAY THE ADDITIONAL APPEAL FEE IN ACCORDANCE WITH THE CLARIFICATORY RESOLUTION BEFORE DISMISSING THE APPEAL.— The appeal to the COMELEC was perfected when petitioner filed her Notice of Appeal and paid the appeal fee of ₱1,000.00 on May 13, 2008, which was **two months before** the COMELEC issued Resolution No. 8486, clarifying the rule on the payment of appeal fees. As stated in *Aguilar*, fairness and prudence dictate that the First Division of the COMELEC should have first directed petitioner to pay the additional appeal fee of ₱3,200.00 in accordance with the clarificatory resolution; and if petitioner refused to comply, only then should the appeal be dismissed. The First Division of the COMELEC should have been more cautious in dismissing petitioner's appeal on the mere technicality of non-payment of the additional appeal fee of ₱3,200.00 given the public interest involved in election cases. In view of the foregoing, the Court finds that the First Division of the COMELEC gravely abused its discretion in issuing the Order dated November 25, 2008, dismissing petitioner's appeal. The case is remanded to the First Division of the COMELEC for disposition of the appeal in accordance with this decision, subject to the presentation by petitioner of the receipt evidencing payment

of the appeal fee of ₱1,000.00 as required under Section 9, Rule 14 of A. M. No. 07-4-15-SC. It must be stated, however, that for notices of appeal filed after the promulgation on July 27, 2009 of *Divinagracia v. Commission on Elections*, errors in the matter of non-payment or incomplete payment of the two appeal fees in election cases are no longer excusable.

2. ID.; 1987 CONSTITUTION; THE COMELEC FIRST DIVISION VIOLATED SECTION 7, ARTICLE IX OF THE CONSTITUTION WHEN IT ARROGATED UNTO ITSELF AND DEPRIVED THE *EN BANC* OF THE AUTHORITY TO RULE ON A MOTION FOR RECONSIDERATION.— It is settled that under Section 7, Article IX-A of the Constitution, what may be brought to this Court on *certiorari* is the decision, order or ruling of the COMELEC *en banc*. However, this rule should not apply when a division of the COMELEC arrogates unto itself and deprives the *en banc* of the authority to rule on a motion for reconsideration, like in this case. Section 3, Article IX-C of the Constitution provides for the procedure for the resolution of election cases by the COMELEC, thus: Sec. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, **provided that motions for reconsideration of decisions shall be decided by the Commission *en banc***. The constitutional provision is reflected in Sections 5 and 6, Rule 19 of the COMELEC Rules of Procedure as follows: Sec. 5. *How Motion for Reconsideration Disposed of.* — Upon the filing of a motion to reconsider a decision, resolution, order or ruling of a Division, the Clerk of Court concerned shall, within twenty-four (24) hours from the filing thereof, notify the Presiding Commissioner. The latter shall within two (2) days thereafter certify the case to the Commission *en banc*. Sec. 6. *Duty of Clerk of Court of Commission to Calendar Motion for Reconsideration.*— The Clerk of Court concerned shall calendar the motion for reconsideration **for the resolution of the Commission *en banc*** within ten (10) days from the certification thereof. In this case, the First Division of the COMELEC violated the cited provisions of the Constitution and the COMELEC Rules of Procedure when it resolved petitioner's

motion for reconsideration of its final Order dated November 25, 2008, which dismissed petitioner's appeal. By arrogating unto itself a power constitutionally lodged in the Commission *en banc*, the First Division of the COMELEC exercised judgment in excess of, or without, jurisdiction. Hence, the Order issued by the First Division of the COMELEC dated January 9, 2009, denying petitioner's motion for reconsideration, is null and void.

APPEARANCES OF COUNSEL

Surigao-Villardo Law Office for petitioner.
The Solicitor General for public respondent.
Marcelo C. Oñate for private respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for *certiorari*[1] alleging that the First Division of the Commission on Elections (COMELEC) committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Orders dated November 25, 2008 and January 9, 2009. The Order[2] dated November 25, 2008 dismissed petitioner's appeal for failure to pay the appeal fee prescribed by the COMELEC Rules of Procedure within the reglementary period. The Order[3] dated January 9, 2009 denied petitioner's motion for reconsideration.

The facts are as follows:

Petitioner Carmelinda C. Barro and private respondent Elpedio P. Continedas, Jr. were candidates for *Punong Barangay* of Barangay Plaridel, Palompon, Leyte during the October 29, 2007 synchronized *Barangay* and *Sangguniang Kabataan* Elections. Petitioner garnered 150 votes, while respondent

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[1] Under Rule 64 in relation to Rules 65 of the Rules of Court.

[2] *Rollo,* p. 26.

[3] *Id.* at 27.

garnered 149 votes. The *Barangay* Board of Canvassers proclaimed petitioner as the duly elected *Punong Barangay*, winning by a margin of only one vote.

On November 5, 2007, private respondent filed an election protest before the Municipal Trial Court of Palompon, Leyte (trial court), impugning the result of the canvass in two precincts of the *barangay*.

After the revision of ballots, the trial court found that petitioner and respondent both garnered 151 votes.

In its Decision[4] dated May 5, 2008, the trial court held:

> In sum, the Protestant is credited with three (3) votes and the Protestee with two (2) votes of the contested votes.
>
> The three (3) credited votes added to the 148 votes of the protestant equals 151 votes. The two (2) credited votes added to the 149 votes of the protestee equals 151 votes. The protestant and the protestee, therefore, received the same number of votes.
>
> It appearing that the Protestant and the Protestee received the same number of votes for the position of Barangay Chairman of Brgy. Plaridel, Palompon, Leyte, there shall be a drawing of lots and the party favored by luck shall be proclaimed as the duly-elected Barangay Chairman of Barangay Plaridel, Palompon, Leyte.[5]

On May 13, 2008, petitioner filed a Notice of Appeal[6] with the trial court and she stated in her petition that she also paid the appeal fee required under Section 9, Rule 14 of the *Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials* (A.M. No. 07-4-15-SC).[7] Thereafter, the records of the case were forwarded to the COMELEC.

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[4] *Id.* at 46-54.

[5] *Id.* at 53-54.

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

[7] Rule 14, Sec. 9. *Appeal fee*. — The appellant in an election contest shall pay to the court that rendered the decision an appeal fee of One Thousand Pesos (₱1,000.00), simultaneously with the filing of the notice of appeal.

On November 25, 2008, the First Division of the COMELEC issued an Order dismissing petitioner's appeal for failure to pay the appeal fee, thus:

> Pursuant to Sections 3 and 4, Rule 40 of the COMELEC Rules of Procedure which provide for the payment of appeal fee in the amount of ₱3,000.00 within the period to file the notice of appeal, and Section 9 (a), Rule 22 of the same Rules, which provides that failure to pay the correct appeal fee is a ground for the dismissal of the appeal, the Commission (First Division) RESOLVED as it hereby RESOLVES to DISMISS the instant appeal for Protestee-Appellant's failure to pay the appeal fee as prescribed by the Comelec Rules of Procedure within the five (5)-day reglementary period.[8]

On December 15, 2008, petitioner filed a Motion for Reconsideration[9] of the Order dated November 25, 2008. On the same date, she also posted Postal Money Order Nos. A0820039317; B0810040373 and J1350301774 in the total sum of ₱3,200.00 payable to the Cash Division of the COMELEC to cover the appeal fee.

Petitioner's motion for reconsideration was denied by the First Division of the COMELEC in its Order dated January 9, 2009, thus:

> Protestee-Appellant's "Motion for Reconsideration" filed thru registered mail on 15 December 2008 and received on 23 December 2008, seeking reconsideration of the Commission's (First Division) Order dated 25 November 2008, is hereby DENIED for failure of the movant to pay the necessary motion fees under Sec. 7 (f), Rule 40 of the Comelec Rules of Procedure as amended by Comelec Resolution No. 02-0130. The Judicial Records Division-ECAD, this Commission, is hereby directed to return to the protestee-appellant the Postal Money Order Nos. A0820039317 in the amount of two thousand pesos (₱2,000.00); B0810040373 in the amount of one thousand pesos (₱1,000.00) and J1350301774 in the amount of two hundred pesos (₱200.00) representing his belated payment of appeal fee.[10]

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[8] *Rollo*, p. 26.

[9] *Id.* at 28-35.

[10] *Id.* at 27.

On February 19, 2009, petitioner filed this petition raising the following issues:

1. WHETHER OR NOT THE [FIRST DIVISION OF THE COMELEC] COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING THE APPEAL.
2. WHETHER OR NOT THE [FIRST DIVISION OF THE COMELEC] COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING THE MOTION FOR RECONSIDERATION FILED BY PETITIONER.
3. WHETHER OR NOT THE [FIRST DIVISION OF THE COMELEC] COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ACTING ON THE MOTION FOR RECONSIDERATION WITHOUT ELEVATING THE SAME TO THE COMELEC *EN BANC*.[11]

The first issue is whether or not the First Division of the COMELEC gravely abused its discretion in dismissing petitioner's appeal.

Grave abuse of discretion implies a capricious and whimsical exercise of judgment amounting to lack of jurisdiction or an arbitrary and despotic exercise of power because of passion or personal hostility.[12] The grave abuse of discretion must be so patent and gross as to amount to an evasion or refusal to perform a duty enjoined by law.[13]

The Court notes that in petitioner's Notice of Appeal,[14] she manifested payment of the appeal fees and other lawful fees required for the appeal per Official Receipt Nos. 7719538 and 7719488. However, the receipts were not attached to the record of the case. In her Petition, petitioner stated that when she

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[11] *Id.* at 16.

[12] *Batul v. Bayron*, 468 Phil. 131, 148 (2004).

[13] *Id*.

[14] *Supra* note 6.

filed her Notice of Appeal on May 13, 2008, she also paid the appeal fee required under Section 9, Rule 14 of A.M. No. 07-4-15-SC.[15] In her Reply,[16] petitioner also stated that she relied on the provision of Sections 8 and 9, Rule 14 of A.M. No. 07-4-15-SC,[17] which took effect on May 15, 2007, and that she believed in good faith that the said new Rules of Procedure repealed the COMELEC Rules.

Based on petitioner's pleadings and the fact that the trial court gave due course to petitioner's appeal, it may be presumed that petitioner paid the appeal fee of ₱1,000.00 to the trial court simultaneously with the filing of the Notice of Appeal, despite absence of the receipt showing payment of the appeal fee of ₱1,000.00.

Petitioner contends in her Reply[18] that the recent case of *Jerry B. Aguilar v. Commission on Elections, et al.*,[19] applies to her case. The Court agrees with petitioner.

In *Aguilar*, petitioner Aguilar won as *barangay* chairman in the October 29, 2007 *barangay* elections. An election protest was filed against him with the municipal trial court. The municipal trial court found that Aguilar lost by a margin of one vote; hence, his proclamation was annulled. On April 21, 2008, Aguilar filed a Notice of Appeal and paid the appeal fee of ₱1,000.00 to the municipal trial court in accordance with A.M. No. 07-

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[15] Rule 14, Sec. 9. *Appeal fee*. — The appellant in an election contest shall pay to the court that rendered the decision an appeal fee of One Thousand Pesos (₱1,000.00), simultaneously with the filing of the notice of appeal.

[16] *Rollo*, pp. 97-100.

[17] Rule 14, Sec. 8. *Appeal*. — An aggrieved party may appeal the decision to the Commission on Elections, within five days after promulgation, by filing a notice of appeal with the court that rendered the decision, with copy served on the adverse counsel or party if not represented by counsel.

Rule 14, Sec. 9. *Appeal fee*. — The appellant in an election contest shall pay to the court that rendered the decision an appeal fee of One Thousand Pesos (₱1,000.00), simultaneously with the filing of the notice of appeal.

[18] *Rollo*, pp. 103-110.

[19] G.R. No. 185140, June 30, 2009.

4-15-SC. The First Division of the COMELEC dismissed his appeal pursuant to Section 9 (a), Rule 22 of the COMELEC Rules of Procedure for non-payment of the appeal fee of ₱3,000.00 as required in Sections 3 and 4, Rule 40 of the same Rules. His first and second motions for reconsideration were denied by the First Division of the COMELEC. He filed a petition for *certiorari* with this Court, which held:

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With the promulgation of A.M. No. 07-4-15-SC, the previous rule that the appeal is perfected only upon the full payment of the appeal fee, now pegged at ₱3,200.00, to the COMELEC Cash Division within the period to appeal, as stated in the COMELEC Rules of Procedure, as amended, no longer applies.

It thus became necessary for the COMELEC to clarify the procedural rules on the payment of appeal fees. For this purpose, the COMELEC issued on July 15, 2008, Resolution No. 8486, which the Court takes judicial notice of.

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x x x **The appeal to the COMELEC of the trial court's decision in election contests involving municipal and barangay officials is perfected upon the filing of the notice of appeal and the payment of the ₱1,000.00 appeal fee to the court that rendered the decision within the five-day reglementary period**. The non-payment or the insufficient payment of the additional appeal fee of ₱3,200.00 to the COMELEC Cash Division, in accordance with Rule 40, Section 3 of the COMELEC Rules of Procedure, as amended, does not affect the perfection of the appeal and does not result in outright or *ipso facto* dismissal of the appeal. Following, Rule 22, Section 9 (a) of the COMELEC Rules, the appeal may be dismissed. And pursuant to Rule 40, Section 18 of the same rules, if the fees are not paid, the COMELEC may refuse to take action thereon until they are paid and may dismiss the action or the proceeding. In such a situation, the COMELEC is merely given the discretion to dismiss the appeal or not.

Accordingly, in the instant case, the COMELEC First Division, may dismiss petitioner's appeal, as it in fact did, for petitioner's failure to pay the ₱3,200.00 appeal fee.

Be that as it may, the Court still finds that the COMELEC First Division gravely abused its discretion in issuing the order dismissing petitioner's appeal. The Court notes that the notice of appeal and the ₱1,000.00 appeal fee were, respectively, filed and paid with the MTC of Kapatagan, Lanao del Norte on April 21, 2008. On that date, the petitioner's appeal was deemed perfected. COMELEC issued Resolution No. 8486 clarifying the rule on the payment of appeal fees only on July 15, 2008, or almost three months after the appeal was perfected. Yet, on July 31, 2008, or barely two weeks after the issuance of Resolution No. 8486, the COMELEC First Division dismissed petitioner's appeal for non-payment to the COMELEC Cash Division of the additional ₱3,200.00 appeal fee.

Considering that petitioner filed his appeal months before the clarificatory resolution on appeal fees, petitioner's appeal should not be unjustly prejudiced by COMELEC Resolution No. 8486. Fairness and prudence dictate that the COMELEC First Division should have first directed petitioner to pay the additional appeal fee in accordance with the clarificatory resolution, and if the latter should refuse to comply, then, and only then, dismiss the appeal. Instead, the COMELEC First Division hastily dismissed the appeal on the strength of the recently promulgated clarificatory resolution — which had taken effect only a few days earlier. This unseemly haste is an invitation to outrage.

In this case, the appeal to the COMELEC was perfected when petitioner filed her Notice of Appeal and paid the appeal fee of ₱1,000.00 on May 13, 2008, which was **two months before** the COMELEC issued Resolution No. 8486,[20] clarifying

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[20] COMELEC RESOLUTION NO. 8486

IN THE MATTER OF CLARIFYING THE IMPLEMENTATION OF COMELEC RULES RE: PAYMENT OF FILING FEES FOR APPEALED CASES INVOLVING BARANGAY AND MUNICIPAL ELECTIVE POSITIONS FROM THE MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, METROPOLITAN TRIAL COURTS AND REGIONAL TRIAL COURTS

WHEREAS, the Commission on Elections is vested with appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, and those involving elective *barangay* officials, decided by trial courts of limited jurisdiction;

WHEREAS, Supreme Court Administrative Order No. 07-4-15 (Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal

the rule on the payment of appeal fees. As stated in *Aguilar*, fairness and prudence dictate that the First Division of the COMELEC should have first directed petitioner to pay the additional appeal fee of ₱3,200.00 in accordance with the clarificatory resolution; and if petitioner refused to comply,

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and *Barangay* Officials) promulgated on May 15, 2007 provides in Sections 8 and 9, Rule 14 thereof the procedure for instituting the appeal and the required appeal fees to be paid for the appeal to be given due course, to wit:

> Section 8. *Appeal*. — An aggrieved party may appeal the decision to the Commission on Elections, within five days after promulgation, by filing a notice of appeal with the court that rendered the decision, with copy served on the adverse counsel or party if not represented by counsel.
>
> Section 9. *Appeal fee*. — The appellant in an election contest shall pay to the court that rendered the decision an appeal fee of One Thousand Pesos (₱1,000.00), simultaneously with the filing of the notice of appeal.

WHEREAS, payment of appeal fees in appealed election protest cases is also required in Section 3, Rule 40 of the COMELEC Rules of Procedure the amended amount of which was set at ₱3,200.00 in COMELEC Minute Resolution No. 02-0130 made effective on September 18, 2002.

WHEREAS, the requirement of these two appeal fees by two different jurisdictions had caused confusion in the implementation by the Commission on Elections of its procedural rules on payment of appeal fees for the perfection of appeals of cases brought before it from the Courts of General and Limited Jurisdictions.

WHEREAS, there is a need to clarify the rules on compliance with the required appeal fees for the proper and judicious exercise of the Commission's appellate jurisdiction over election protest cases.

WHEREFORE, in view of the foregoing, the Commission hereby RESOLVES to DIRECT as follows:

1. That if the appellant had already paid the amount of ₱1,000.00 before the Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court or lower courts within the five-day period, pursuant to Section 9, Rule 14 of the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and *Barangay* Officials (Supreme Court Administrative Order No. 07-4-15) and his Appeal was given due course by the Court, said appellant is required to pay the Comelec appeal fee of ₱3,200.00 at the Commission's Cash Division through the Electoral Contests Adjudication Department (ECAD) or by postal money order payable to the Commission on Elections through ECAD, within a period of fifteen days (15) from the time of the filing of the Notice of Appeal with the lower court. If no payment is made within the prescribed period, the appeal shall be dismissed pursuant to Section 9(a) of Rule 22 of the COMELEC Rules of Procedure, which provides:

only then should the appeal be dismissed. The First Division of the COMELEC should have been more cautious in dismissing petitioner's appeal on the mere technicality of non-payment of the additional appeal fee of ₱3,200.00 given the public interest involved in election cases.[21]

In view of the foregoing, the Court finds that the First Division of the COMELEC gravely abused its discretion in issuing the Order dated November 25, 2008, dismissing petitioner's appeal. The case is remanded to the First Division of the COMELEC for disposition of the appeal in accordance with this decision, subject to the presentation by petitioner of the receipt evidencing payment of the appeal fee of ₱1,000.00 as required under Section 9, Rule 14 of A. M. No. 07-4-15-SC.

It must be stated, however, that for notices of appeal filed after the promulgation on July 27, 2009 of *Divinagracia v. Commission on Elections*,[22] errors in the matter of non-payment or incomplete payment of the two appeal fees in election cases are no longer excusable.

The second and third issues shall be discussed jointly.

Petitioner contends that the First Division of the COMELEC committed grave abuse of discretion amounting to lack or excess

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Sec. 9. Grounds for Dismissal of Appeal. — The appeal may be dismissed upon motion of either party or at the instance of the Commission on any of the following grounds:

(a) Failure of the appellant to pay the correct appeal fee; . . .

2. That if the appellant failed to pay the ₱1,000.00 — appeal fee with the lower court within the five (5) day period as prescribed by the Supreme Court New Rules of Procedure but the case was nonetheless elevated to the Commission, the appeal shall be dismissed outright by the Commission, in accordance with the aforestated Section 9(a) of Rule 22 of the Comelec Rules of Procedure.

The Education and Information Department is directed to cause the publication of this resolution in two (2) newspapers of general circulation. This resolution shall take effect on the seventh day following its publication.

[21] *Aguilar v. Commission on Elections*, *supra* note 19.

[22] G.R. Nos. 186007 & 186016, July 27, 2009.

of jurisdiction in acting on the motion for reconsideration without elevating the same to the COMELEC *en banc*, and in denying the motion for reconsideration.

The contention is meritorious.

It is settled that under Section 7, Article IX-A of the Constitution,[23] what may be brought to this Court on *certiorari* is the decision, order or ruling of the COMELEC *en banc*. However, this rule should not apply when a division of the COMELEC arrogates unto itself and deprives the *en banc* of the authority to rule on a motion for reconsideration, like in this case.[24]

Section 3, Article IX-C of the Constitution provides for the procedure for the resolution of election cases by the COMELEC, thus:

> Sec. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, **provided that motions for reconsideration of decisions shall be decided by the Commission *en banc***.

The constitutional provision is reflected in Sections 5 and 6, Rule 19 of the COMELEC Rules of Procedure as follows:

> Sec. 5. *How Motion for Reconsideration Disposed of.* — Upon the filing of a motion to reconsider a decision, resolution, order or ruling of a Division, the Clerk of Court concerned shall, within twenty-four (24) hours from the filing thereof, notify the Presiding

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[23] Art. IX. Sec. 7. Each Commission shall decide by a majority vote of all its members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling or each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof.

[24] *Aguilar v. Commission on Elections*, *supra* note 19.

Commissioner. The latter shall within two (2) days thereafter certify the case to the Commission *en banc*.

Sec. 6. *Duty of Clerk of Court of Commission to Calendar Motion for Reconsideration*. — The Clerk of Court concerned shall calendar the motion for reconsideration **for the resolution of the Commission *en banc*** within ten (10) days from the certification thereof.

In this case, the First Division of the COMELEC violated the cited provisions of the Constitution and the COMELEC Rules of Procedure when it resolved petitioner's motion for reconsideration of its final Order dated November 25, 2008, which dismissed petitioner's appeal. By arrogating unto itself a power constitutionally lodged in the Commission *en banc*, the First Division of the COMELEC exercised judgment in excess of, or without, jurisdiction.[25] Hence, the Order issued by the First Division of the COMELEC dated January 9, 2009, denying petitioner's motion for reconsideration, is null and void.

Petitioner stated in her Reply[26] that on April 1, 2009, the First Division of the COMELEC issued an Order declaring the Order dated November 25, 2008 as final and executory, and ordering the issuance of an Entry of Judgment. On April 1, 2009, an Entry of Judgment was issued by the Electoral Contests Adjudication Department.

WHEREFORE, the petition is *GRANTED*. The Orders dated November 25, 2008 and January 9, 2009 by the First Division of the COMELEC, and the Entry of Judgment issued on April 1, 2009 by the Electoral Contests Adjudication Department are *ANNULLED* and *SET ASIDE*. The case is *REMANDED* to the First Division of the Commission on Elections for disposition in accordance with this Decision.

No costs.

SO ORDERED.

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[25] *Id*.

[26] *Rollo*, pp. 103-109.

Carpio, Corona, Carpio Morales, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Bersamin, Del Castillo, and *Abad, JJ.,* concur.

Puno, C.J., on official leave.

Quisumbing and *Chico-Nazario, JJ.,* on leave.

THIRD DIVISION

[G.R. No. 162095. October 12, 2009]

IBEX INTERNATIONAL, INC., *petitioner, vs.* **GOVERNMENT SERVICE INSURANCE SYSTEM and COURT OF APPEALS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; COVERS ONLY QUESTIONS OF LAW; EXCEPTIONS TO THE RULE; NOT SHOWN IN CASE AT BAR.— We note that IBEX is raising factual issues. A petition for review under Rule 45 of the 1997 Rules of Court should cover only questions of law. A question of law exists when the doubt or difference centers on what the law is on a certain state of facts. A question of fact exists if the doubt centers on the truth or falsity of the alleged facts. We note that matters pertaining to the takeover, completion and delivery of the project are factual issues which had been exhaustively discussed and ruled upon by the CIAC. It is settled that findings of fact of quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but also finality, especially when affirmed by the Court of Appeals. In particular, factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal. This rule, however, admits of certain exceptions. In this case, IBEX failed to show that any of these exceptions apply.

2. ID.; ID.; ID.; NO REASON TO REVERSE THE FACTUAL FINDINGS OF THE CONSTRUCTION INDUSTRY ARBITRARY COMMISSION AS UPHELD BY THE COURT OF APPEALS; THE FACTUAL FINDINGS OF THE COMMISSION AS THE QUASI-JUDICIAL AGENCY ACCORDED WITH JURISDICTION TO RESOLVE DISPUTES ARISING FROM CONSTRUCTION CONTRACTS ARE SUPPORTED BY EVIDENCE AND MUST THEREFORE BE CONFERRED WITH FINALITY.— The Court of Appeals upheld the factual findings of the CIAC. In its 30 October 2003 Decision, the Court of Appeals stated: A careful scrutiny of the records and the assailed decision of the CIAC indubitably shows that the petitioner never completed the project. Thus, we concur with the following findings of the CIAC, *viz*: "Claimant's President Percival F. Cruz himself stated in his letter dated 24 March 1994 protesting the intended re-bidding to be conducted by the respondent since his signage contract was not only in force but "had been partly executed," plainly shows that the contract had indeed not been completed. Further, in his own words, Claimant's Cruz stated that it had "accomplished about 70% of the graphic signage" (Answer to Q.#9, Affidavit). His letter of 05 August 1988 (Exhibit "E") expressing "interest in resuming work" infers an incomplete work. There is, therefore, no question that the project was not completed. The Tribunal takes note that the foregoing percentage claimed by the Claimant's Cruz directly contradicts the allegations made in paragraph 15 of the Complaint that "By the time EDSA Revolution broke out...IBEX had already completed 100% of the project." It must also be noted that the Complaint was verified on 15 December 1999 by Mr. Cruz himself who expressly stated that he had "read the pleading and that the allegations therein are true and correct of my knowledge and belief." Earlier, on 05 February 1999, Counsel for Claimant, Atty. Gerald C. Jacob, had written a final demand letter to the Respondent wherein he stated that "the contract was already 30% completed when GSIS suddenly gave an order for immediate stoppage and unjustifiable contract cancellation." We find no reason to reverse the factual findings of the CIAC as affirmed by the Court of Appeals. The CIAC is the duly constituted quasi-judicial agency accorded with jurisdiction to resolve disputes arising from construction contracts in the Philippines. This Court must confer finality to its factual findings as they are supported by evidence.

APPEARANCES OF COUNSEL

Gerald C. Jacob for petitioner.
GSIS Legal Service Group for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 30 October 2003 Decision[2] and 6 February 2004 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 68606. In its 30 October 2003 Decision, the Court of Appeals dismissed petitioner IBEX International, Inc.'s (IBEX) petition for lack of merit and affirmed the 3 January 2002 Decision[4] of the Construction Industry Arbitration Commission (CIAC). In its 6 February 2004 Resolution, the Court of Appeals denied IBEX's motion for reconsideration.

The Facts

Sometime in 1984, respondent Government Service Insurance System (GSIS), through its project manager, Design Coordinates, Inc. (Design Coordinates), requested IBEX to submit a proposal for the graphic signage requirements of the then on-going construction of the GSIS Headquarters Building (GSIS Building). In their Contract Agreement[5] dated 23 February 1984, IBEX undertook to supply and install the interior and exterior graphic signage requirements of the GSIS Building for ₱11,500,000.

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

[2] *Rollo*, pp. 27-39. Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Eloy R. Bello, Jr. and Arturo D. Brion (now Associate Justice of the Supreme Court), concurring.

[3] *Id.* at 42-43.

[4] *Id.* at 156-177. Penned by Alfredo F. Tadiar, Chairman, with Jacinto M. Butalid and Tomas M. Castro, members, concurring.

[5] *Id.* at 62-88.

IBEX and GSIS also agreed on 26 May 1986 as the delivery date.

In a letter[6] dated 24 March 1986, Design Coordinates, in accordance with the instructions of Benigno Zialcita III, GSIS Officer-in-Charge, informed IBEX that, effective 1 April 1986, all operations in the construction of the GSIS Building would be suspended until further notice.

In two letters dated 25 January 1988[7] and 5 August 1988,[8] IBEX informed GSIS of its interest in resuming the work on the signage project.

In a letter[9] dated 3 April 1991, GSIS advised IBEX that the GSIS Board of Trustees created an Executive Committee to resolve all pending contracts relative to the GSIS Building. The letter also mentioned that, on 2 October 1984, GSIS had released the downpayment of ₱1,725,000, or 15% of the contract price of ₱11,500,000, to IBEX under Check No. 319185.

In a letter[10] dated 19 April 1991, IBEX reiterated that it was still interested and willing to finish the contract. IBEX also clarified that only 10% of the total contract price, not 15%, was released as downpayment.

Sometime in March 1994, GSIS informed IBEX that it intended to hold a bidding for the Parking and Directional Signs and Graphic Signage of the GSIS Building. In a letter[11] dated 24 March 1994, IBEX reminded GSIS that their contract had neither been rescinded nor abrogated and that the said bidding would encroach on certain provisions of their contract. IBEX insisted that there was no need for it to pre-qualify since its contract with GSIS was still valid and existing.

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[6] *Id.* at 89.

[7] *Id.* at 90.

[8] *Id.* at 91.

[9] *Id.* at 92.

[10] *Id.* at 93.

[11] *Id.* at 94.

In a letter[12] dated 10 June 1994, GSIS explained that it had to take-over the contract because of IBEX's failure to meet the deadline for the submission of the requirements for all contractors with suspended contracts.

On 28 December 1999, IBEX filed a complaint with the CIAC.[13] IBEX alleged that the unilateral take-over of GSIS of their contract constituted a breach of its contractual obligation. IBEX prayed that GSIS be ordered to pay actual damages of ₱13,941,664.38 plus one percent interest per month starting March 1987 and attorney's fees of 25% of the actual damages awarded.

On 18 January 2000, GSIS filed its answer with compulsory counterclaim for actual and liquidated damages including attorney's fees.

On 28 February 2000, a preliminary conference was held and the Terms of Reference[14] (TOR) limited the issues to be resolved by the CIAC to the following:

1. Was the project completed?
1.1 If so, when?
1.2 If so, was there a delay in accepting delivery of the completed Project?
1.3 If not, what percentage of accomplishment was reached by the Claimant on 1 April 1986 when the operations were suspended?
1.4 If not, was there delay in the completion of the project in accordance with the contract?
1.5 If there was delay, is Respondent entitled to liquidated damages under the contract?

2. How much was Claimant paid by way of down-payment?

3. Was the Contract Agreement between the Claimant and the Respondent dated 23 February 1984 validly rescinded or abrogated?

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[12] *Id.* at 95.

[13] *Id.* at 46-52.

[14] *Id.* at 164.

4. Is Claimant entitled to its claim for actual damages plus 1% interest per month?[15]

In its 3 January 2002 Decision, the CIAC dismissed IBEX's complaint for being barred by laches and extinctive prescription.

IBEX appealed to the Court of Appeals. In its 30 October 2003 Decision, the Court of Appeals dismissed the petition for lack of merit and affirmed the CIAC's 3 January 2002 Decision.

IBEX filed a motion for reconsideration. In its 6 February 2004 Resolution, the Court of Appeals denied the motion.

Hence, this petition.

The Ruling of the CIAC

According to the CIAC, IBEX's cause of action accrued on 24 March 1986, when GSIS sent IBEX the letter informing them of the suspension of the contract. Since IBEX filed the complaint only on 28 December 1999, or 13 years and 9 months after the cause of action accrued, the CIAC ruled that the complaint was now barred by prescription. The CIAC added that, even assuming that IBEX's letters dated 25 January 1988 and 5 August 1988 interrupted the prescriptive period, laches had set in because of IBEX's unexplained inaction to sue GSIS after GSIS took over the project in 1994. Accordingly, the CIAC denied IBEX's claim for actual damages.

However, the CIAC still discussed the issues raised in the TOR. First, the CIAC ruled that the project was not completed because IBEX, through its President Percival F. Cruz, admitted that the project "had been partly executed" and expressed "interest in resuming the work." According to the CIAC, this inferred an incomplete work. The CIAC noted that IBEX gave three contradictory claims of accomplishment ranging from 30% to 100%. The CIAC also found that IBEX failed to submit monthly progress billings in violation of the contract. The CIAC denied GSIS's claim for liquidated damages as there was no factual or legal basis to support GSIS's claim.

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[15] *Id*.

Second, the CIAC declared that GSIS paid IBEX ₱1,725,000, or 15% of the contract price, as stated in the contract. The CIAC said IBEX failed to present any proof that GSIS gave only 10% of the contract price as downpayment.

Lastly, the CIAC declared that GSIS terminated the contract because of the findings of the Commission on Audit of graft and corruption committed through the negotiated contracts that President Ferdinand E. Marcos had authorized GSIS President/ General Manager Roman Cruz, Jr. to enter into in lieu of the normal bidded contracts.

The Ruling of the Court of Appeals

While the Court of Appeals agreed with the CIAC that IBEX's cause of action accrued when GSIS indefinitely suspended the contract without legal justification, the Court of Appeals ruled that prescription had not set in because the running of the prescriptive period was interrupted by IBEX's 24 March 1994 letter reminding GSIS of the existence of a valid contract. The Court of Appeals said that this can be considered as an extrajudicial demand under Article 1155[16] of the Civil Code sufficient to toll the running of the prescriptive period. Accordingly, the Court of Appeals also declared that laches had not set in.

The Court of Appeals affirmed the CIAC's findings that IBEX never completed the project and that IBEX received 15% of the contract price as downpayment. The Court of Appeals also ruled that IBEX was not entitled to actual damages because (1) GSIS took over the signage contract because of IBEX's failure to submit the necessary requirements for contractors with suspended contracts; (2) the project was not completed; (3) IBEX failed to liquidate the downpayment; and (4) not a single signage manufactured by IBEX was actually used and installed in the GSIS Building. The Court of Appeals also said that the

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[16] Article 1155 of the Civil Code provides:

ART. 1155. The prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgement of the debt by the debtor.

CIAC did not commit any reversible error when it took the inconsistencies in the percentage of work accomplishment against IBEX. According to the Court of Appeals, the percentage of completion at the time of the suspension of the project was very much material to IBEX's cause of action considering that the complaint was for actual damages and interest.

The Issues

IBEX raises the following issues:

I.

WHETHER OR NOT [sic] THE COURT OF APPEALS COMMITTED A GRAVE ERROR AND ABUSE OF DISCRETION WHEN IT FAILED TO CONSIDER CERTAIN RELEVANT FACTS WHICH, IF PROPERLY CONSIDERED, WILL JUSTIFY A DIFFERENT CONCLUSION;

* IN NOT FINDING THAT THE TAKEOVER OF THE CONTRACT PACKAGED VII.E WAS UNJUSTIFIED AND CONSTITUTE [sic] BREACH OF CONTRACT.

II.

WHETHER OR NOT [sic] THE COURT OF APPEALS COMMITTED A GRAVE ERROR AND ABUSE OF DISCRETION WHEN IT FINDS [sic] THAT THERE WAS NO COMPLETED PROJECT, SINCE THE PETITIONER WAS NEVER ABLE TO CONVINCINGLY DEMONSTRATE THAT THE PROJECT WAS IN FACT ACCOMPLISHED.

III.

WHETHER OR NOT [sic] THE COURT OF APPEALS COMMITTED A GRAVE ERROR AND ABUSE OF DISCRETION WHEN IT MADE ITS FINDINGS, BEYOND THE ISSUES OF THE CASE, AND WHICH FINDINGS ARE CONTRARY TO WHAT WERE PUT FORWARD AS ISSUES BY THE PARTIES' TERMS OF REFERENCE (TOR).[17]

GSIS opposes IBEX's petition on the ground that it raised questions of fact.

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[17] *Rollo*, p. 220.

The Ruling of the Court

The petition has no merit.

At the outset, we note that IBEX is raising factual issues. A petition for review under Rule 45 of the 1997 Rules of Court should cover only questions of law.[18] A question of law exists when the doubt or difference centers on what the law is on a certain state of facts.[19] A question of fact exists if the doubt centers on the truth or falsity of the alleged facts.[20] We note that matters pertaining to the takeover, completion and delivery of the project are factual issues which had been exhaustively discussed and ruled upon by the CIAC.

It is settled that findings of fact of quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but also finality, especially when affirmed by the Court of Appeals.[21] In particular, factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal.[22]

This rule, however, admits of certain exceptions. In *Uniwide Sales Realty and Resources Corporation v. Titan-Ikeda Construction and Development Corporation*,[23] we said:

In *David v. Construction Industry and Arbitration Commission*, we ruled that, as exceptions, factual findings of construction arbitrators

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[18] RULES OF COURT, Rule 45, Section 1.

[19] *Microsoft Corporation v. Maxicorp, Inc.*, 481 Phil. 550 (2004).

[20] *Id.*

[21] *Philippine National Construction Corporation v. Court of Appeals*, G.R. No. 159417, 25 January 2007, 512 SCRA 684; *Uniwide Sales Realty and Resources Corporation v. Titan-Ikeda Construction and Development Corporation*, G.R. No. 126619, 20 December 2006, 511 SCRA 335; *Advanced Foundation Construction Systems Corporation v. New World Properties and Ventures, Inc.*, G.R. Nos. 143154 and 143177, 21 June 2006, 491 SCRA 557.

[22] *Uniwide Sales Realty and Resources Corporation v. Titan-Ikeda Construction and Development Corporation*, *supra*.

[23] *Id.*

may be reviewed by this Court when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or any of them; (3) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under Section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.

Other recognized exceptions are as follows: (1) when there is a very clear showing of grave abuse of discretion resulting in lack or loss of jurisdiction as when a party was deprived of a fair opportunity to present its position before the Arbitral Tribunal or when an award is obtained through fraud or the corruption of arbitrators, (2) when the findings of the Court of Appeals are contrary to those of the CIAC, and (3) when a party is deprived of administrative due process.[24]

In this case, IBEX failed to show that any of these exceptions apply.

Moreover, the Court of Appeals upheld the factual findings of the CIAC. In its 30 October 2003 Decision, the Court of Appeals stated:

A careful scrutiny of the records and the assailed decision of the CIAC indubitably shows that the petitioner never completed the project. Thus, we concur with the following findings of the CIAC, *viz*:

> "Claimant's President Percival F. Cruz himself stated in his letter dated 24 March 1994 protesting the intended re-bidding to be conducted by the respondent since his signage contract was not only in force but "had been partly executed," plainly shows that the contract had indeed not been completed. Further, in his own words, Claimant's Cruz stated that it had "accomplished about 70% of the graphic signage" (Answer to Q.#9, Affidavit). His letter of 05 August 1988 (Exhibit "E")

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[24] *Id.* at 345-346.

> expressing "interest in resuming work" infers an incomplete work. There is, therefore, no question that the project was not completed.
>
> The Tribunal takes note that the foregoing percentage claimed by the Claimant's Cruz directly contradicts the allegations made in paragraph 15 of the Complaint that "By the time EDSA Revolution broke out...IBEX had already completed 100% of the project." It must also be noted that the Complaint was verified on 15 December 1999 by Mr. Cruz himself who expressly stated that he had "read the pleading and that the allegations therein are true and correct of my knowledge and belief."
>
> Earlier, on 05 February 1999, Counsel for Claimant, Atty. Gerald C. Jacob, had written a final demand letter to the Respondent wherein he stated that "the contract was already 30% completed when GSIS suddenly gave an order for immediate stoppage and unjustifiable contract cancellation."[25]

We find no reason to reverse the factual findings of the CIAC as affirmed by the Court of Appeals. The CIAC is the duly constituted quasi-judicial agency accorded with jurisdiction to resolve disputes arising from construction contracts in the Philippines. This Court must confer finality to its factual findings as they are supported by evidence.[26]

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 30 October 2003 Decision and 6 February 2004 Resolution of the Court of Appeals in CA-G.R. SP No. 68606.

SO ORDERED.

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

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[25] *Rollo,* p. 36.

[26] *Philippine National Construction Corporation v. Court of Appeals, supra* note 21.

THIRD DIVISION

[G.R. No. 162473. October 12, 2009]

SPOUSES SANTIAGO E. IBASCO AND MILAGROS IBASCO and PRIME FEEDS, INC., *petitioners, vs.* **PRIVATE DEVELOPMENT CORPORATION OF THE PHILIPPINES, PROVINCIAL SHERIFF OF CAMARINES NORTE, and THE COURT OF APPEALS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE COURT OF APPEALS' DECISION IS ALREADY FINAL PRECLUDING THE INSTANT REVIEW.— The Court of Appeals' Decision is already final, precluding this review. Petitioners received the Decision, dated 23 December 2003, on 26 January 2004. Hence, petitioners had until 10 February 2004 within which to seek reconsideration. However, petitioners sought reconsideration only on 1 March 2004, 20 days beyond the prescriptive period. Thus, in its Resolution of 12 March 2004, the Court of Appeals denied petitioners' motion for reconsideration outright for having been filed late.

2. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; PETITIONERS ARE NOT ENTITLED TO INJUNCTIVE RELIEF; THEIR ARGUMENT THAT THE LOAN AGREEMENT IS INVALID ON THE SOLE GROUND THAT RESPONDENT DELAYED THE RELEASE OF THE LOAN PROCEEDS IS ANALYTICALLY WEAK, FACTUALLY BASELESS AND LEGALLY INDEFENSIBLE.— Even if the Court waives the jurisdictional defect to reach the merits of this petition, the Court of Appeals' ruling stands. A writ of injunction will lie upon proof that the applicant is entitled to the relief. For the writ to issue here, forever barring PDCP from collecting on the loan security, petitioners must prove the nullity of the mortgage contract. As an accessory contract, the mortgage agreement derives its validity from the principal contract of loan. Petitioners assail the validity of the loan agreement on the sole ground that PDCP delayed the release

of the loan proceeds. This argument is analytically weak, factually baseless, and legally indefensible.

3. ID.; ID.; ID.; NOT ONLY DID PETITIONERS FAIL TO PROVE THEIR ENTITLEMENT TO INJUNCTIVE RELIEF, THEY CONJURED A FLIMSY EXCUSE TO FORESTALL RESPONDENT'S COLLECTION OF A JUST DEBT.— The claim of delay in the release of the loan proceeds concerns the *implementation* of the loan contract, and not its *intrinsic validity*. At any rate, PDCP, as found by the lower courts, released the loan on time. Indeed, the delay petitioners invoked covered the negotiation stage for the loan agreement, as it took sometime for PDCP to approve Ibasco's loan application. Lastly, any delay PDCP may have incurred in releasing the loan was cured when Ibasco accepted the loan proceeds without protest. Thus, not only did petitioners fail to prove their entitlement to the injunctive relief, they conjured a flimsy excuse to forestall PDCP's collection of a just debt.

APPEARANCES OF COUNSEL

Pio L. Villaluz and *Dalorsindo I. Paner* for petitioners.

Pelaez Gregorio Gregorio & Lim for Private Development Corporation of the Philippines.

R E S O L U T I O N

CARPIO, *J.*:

This resolves the petition for review[1] of the Decision,[2] dated 23 December 2003, and the Resolution, dated 12 March 2004, of the Court of Appeals. The Decision affirmed the dismissal of petitioners' complaint for an injunctive writ to stop foreclosure proceedings while the Resolution denied reconsideration.

In 1980, petitioner Santiago E. Ibasco (Ibasco) obtained a ₱600,000 loan from respondent Private Development Corporation

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

[2] Penned by Associate Justice Cancio C. Garcia with Associate Justices Renato C. Dacudao and Danilo B. Pine, concurring.

of the Philippines (PDCP) to fund his business. The loan was secured by four parcels of land[3] located in Camarines Norte which Ibasco mortgaged to PDCP.[4] Ibasco defaulted in his loan payments, which, by November 1984, had ballooned to ₱1,077,515.58. To collect on the security, PDCP, on 23 November 1984, filed with respondent Camarines Norte Provincial Sheriff a petition for extrajudicial foreclosure of mortgage.

To enjoin the foreclosure proceedings and collect damages against PDCP, Ibasco, joined by his wife, Milagros Ibasco, and an assignee of one of the mortgaged lands (covered by TCT No. T-14584), petitioner Prime Feeds, Inc. (petitioners), sued PDCP in the Regional Trial Court of Daet, Camarines Norte, Branch 38 (trial court) for injunction and damages.[5] Petitioners anchored their cause of action on the contention that PDCP delayed the release of the loan, triggering a series of events causing Ibasco's business to flounder.

In its Answer, PDCP defended the validity of the mortgage contract and insisted on its right to collect on the security to satisfy Ibasco's debt.

After initially issuing a temporary restraining order halting the foreclosure proceedings, the trial court, in its Decision dated 27 April 1994, dismissed the complaint for lack of merit. The trial court found that PDCP released the loan on time and rejected as baseless petitioners' claim for damages.

Petitioners appealed to the Court of Appeals, which, however, affirmed the trial court's ruling in its Decision dated 23 December 2003. Petitioners' motion for reconsideration was denied in the Resolution of 12 March 2004.

Hence, this petition.

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[3] Covered by Transfer Certificate of Title (TCT) Nos. T-12550, T-11799, T-11800 and T-14584.

[4] In the mortgage contract dated 15 October 1980 and its supplement, dated 15 April 1982 (Records, pp. 33-45).

[5] Actual, moral and exemplary.

The petition lacks merit.

First. The Court of Appeals' Decision is already final, precluding this review. Petitioners received the Decision, dated 23 December 2003, on 26 January 2004. Hence, petitioners had until 10 February 2004 within which to seek reconsideration. However, petitioners sought reconsideration only on 1 March 2004, 20 days beyond the prescriptive period. Thus, in its Resolution of 12 March 2004, the Court of Appeals denied petitioners' motion for reconsideration outright for having been filed late.[6]

Second. Even if the Court waives the jurisdictional defect to reach the merits of this petition, the Court of Appeals' ruling stands.

A writ of injunction will lie upon proof that the applicant is entitled to the relief.[7] For the writ to issue here, forever barring PDCP from collecting on the loan security, petitioners must prove the nullity of the mortgage contract. As an accessory contract, the mortgage agreement derives its validity from the principal contract of loan.[8] Petitioners assail the validity of the loan agreement on the sole ground that PDCP delayed the release of the loan proceeds. This argument is analytically weak, factually baseless, and legally indefensible.

The claim of delay in the release of the loan proceeds concerns the *implementation* of the loan contract, and not its *intrinsic*

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[6] Petitioners sought an extension of time within which to seek reconsideration but the Court of Appeals denied their motion in the Resolution dated 2 March 2004.

[7] Sec. 3, Rule 58 of the 1997 Rules of Civil Procedure provides: "Grounds for issuance of preliminary injunction.

A preliminary injunction may be granted when it is established:

(a) **That the applicant is entitled to the relief demanded**, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

x x x x x x x x x" (Emphasis supplied).

[8] *Filipinas Marble Corporation v. Intermediate Appellate Court*, 226 Phil. 109 (1986).

validity.[9] At any rate, PDCP, as found by the lower courts, released the loan on time. Indeed, the delay petitioners invoked covered the negotiation stage for the loan agreement, as it took sometime for PDCP to approve Ibasco's loan application.[10] Lastly, any delay PDCP may have incurred in releasing the loan was cured when Ibasco accepted the loan proceeds without protest. Thus, not only did petitioners fail to prove their entitlement to the injunctive relief, they conjured a flimsy excuse to forestall PDCP's collection of a just debt.[11]

WHEREFORE, we *RESOLVED* to *DENY* the petition for lack of merit. The Decision dated 23 December 2003 and the Resolution dated 12 March 2004 of the Court of Appeals are *AFFIRMED*.

SO ORDERED.

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

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[9] Unlike a claim for lack of consideration (see *Naguiat v. Court of Appeals*, 459 Phil. 237 [2003]).

[10] This was due in part to the misrepresentations of a PDCP employee whose services PDCP terminated.

[11] PDCP's petition for foreclosure of mortgage has been pending with respondent Camarines Norte Provincial Sheriff for more than 23 years.

THIRD DIVISION

[G.R. No. 168061. October 12, 2009]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **TEOFILO P. ICOT, ANOLITA ICOT PILAPIL, LENNIE P. ICOT, VILMA ICOT CUYOS, RESTITUTO C. ICOT, FLORIDO A. CUYOS, CAYETANO GARBO, TEODULA P. ICOT, YOLA P. ICOT, and HEIRS OF GENARO ICOT, namely: AMANCIO P. ICOT, HERMELINA ICOT, EVELYN ICOT GARBO, CARLOS P. ICOT, RENATO P. ICOT, JOSEPHINE A. ICOT, AMELIA I. GARBO, and ROMMEL ICOT,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; MORTGAGE; ACT 3135 (LAW ON EXTRAJUDICIAL FORECLOSURE OF MORTGAGES); WRIT OF POSSESSION; MAY BE ISSUED WITHIN THE ONE YEAR REDEMPTION PERIOD, UPON FILING OF A BOND OR AFTER THE LAPSE OF THE REDEMPTION PERIOD, WITHOUT NEED OF A BOND OR OF A SEPARATE INDEPENDENT ACTION; EXCEPT WHEN A THIRD PARTY IS HOLDING THE PROPERTY ADVERSELY TO THE JUDGMENT DEBTOR.— A writ of possession is generally understood to be an order whereby the sheriff is commanded to place a person in possession of a real or personal property. A writ of possession may be issued under the following instances: (1) land registration proceedings under Section 17 of Act 496; (2) judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; and (3) extrajudicial foreclosure of a real estate mortgage under Section 7 of Act 3135, as amended by Act 4118 (Act 3135). This case involves the third instance. Under Section 7 of Act 3135, a writ of possession may be issued either (1) within the one year redemption period, upon the filing of a bond, or (2) after the lapse of the redemption period, without need of a bond or of

a separate and independent action. This is founded on the purchaser's right of ownership over the property which he bought at the auction sale and his consequent right to be placed in possession thereof. However, this rule admits of an exception, that is, Section 33 (former Section 35) of Rule 39 of the Revised Rules of Court, which provides that the possession of the mortgaged property shall be given to the purchaser *"unless a third party is actually holding the property adversely to the judgment obligor."*

2. ID.; ID.; ID.; ID.; THE RIGHT OF POSSESSION BY A PURCHASER IN AN EXTRAJUDICIAL FORECLOSURE OF REAL PROPERTY IS RECOGNIZED ONLY AS AGAINST THE JUDGMENT DEBTOR AND HIS SUCCESSOR-IN-INTEREST, BUT NOT AGAINST PERSONS WHOSE RIGHT OF POSSESSION IS ADVERSE TO THE LATTER.— The right of possession by a purchaser in an extrajudicial foreclosure of real property is recognized only as against the judgment debtor and his successor-in-interest, but not as against persons whose right of possession is adverse to the latter. In this case, respondents are third parties in possession of the subject real property, holding the same under a title adverse to that of the mortgagor/judgment obligor, Velasco. Respondents are claiming title by virtue of an extrajudicial settlement of their father's estate executed in 1964. Upon learning of the mortgage of the real property by Velasco to petitioner, respondents filed a case for quieting of title against Velasco. The latter later acknowledged or "recognized" respondents' ownership of the real property in the Compromise Agreement executed by the parties in the quieting of title case. Velasco even agreed to undertake restitution of the subject property by contracting anew with and repurchasing the foreclosed property from petitioner.

3. ID.; ID.; ID.; PETITIONER'S RIGHT TO ISSUANCE OF A WRIT OF POSSESSION CANNOT BE INVOKED AGAINST RESPONDENTS SINCE THEY ARE NOT PARTIES TO THE MORTGAGE CONTRACT; RESPONDENT'S POSSESSION OF THE SUBJECT REAL PROPERTY IS LEGALLY PRESUMED TO BE PURSUANT TO A JUST TITLE WHICH PETITIONER MAY ENDEAVOR TO OVERCOME IN A JUDICIAL PROCEEDING FOR RECOVERY OF

PROPERTY.— Respondents are not parties to the mortgage contract between the spouses Velasco and petitioner. As correctly ruled by the appellate court, the mere mention of the mortgage of the real property in the Compromise Agreement did not make respondents privies to the mortgage contract between the spouses Velasco and petitioner. Moreover, respondents' offer to repurchase the foreclosed property from petitioner is not tantamount to stepping into the shoes of Velasco, nor would such offer qualify respondents as Velasco's successors-in-interest. Rather, the offer may be considered as respondents' last ditch effort to avoid being deprived of the property they claim to have possessed since time immemorial. Petitioner's right to issuance of a writ of possession cannot be invoked against respondents. Respondents' possession of the subject real property is legally presumed to be pursuant to a just title which petitioner may endeavor to overcome in a judicial proceeding for recovery of property.

APPEARANCES OF COUNSEL

Yap-Siton Law Office for petitioner.
Danilo L. Pilapil for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the Court of Appeals' Decision[2] dated 7 January 2005 and Resolution dated 3 May 2005 in CA-G.R. SP No. 81495. The Court of Appeals reversed the Decision[3] dated 21 December 2001 and Order dated 29 July 2003 of the Regional Trial Court (RTC) of Mandaue City, Branch 56.

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

[2] Penned by Associate Vicente L. Yap, with Associate Justices Mercedes Gozo-Dadole and Pampio A. Abarintos, concurring.

[3] Penned by RTC Judge Augustine A. Vestil.

The Antecedent Facts

On 6 July 1976, spouses Vicente and Trinidad Velasco (spouses Velasco) obtained from petitioner Bank of the Philippine Islands (petitioner) a loan amounting to ₱50,000, secured by a real estate mortgage over a parcel of land located in Liloan, Cebu. The parcel of land was covered by Transfer Certificate of Title (TCT) No. 675, issued in the name of Vicente Velasco, and was particularly described as follows:

> Lot No. 958, Pls-823; x x x containing an area of SEVEN THOUSAND ONE HUNDRED EIGHTY-NINE (7,189) SQUARE METERS x x x Bounded on the SE., along line 1-2-3 by Lot 980; Pls-823; along lines 3-4-5-6-7 by Lot 992; Pls-823; on the SW., along line 7-8 by Lot 957, Pls 823; on the NW., along line 8-9 by Road; and on the NE., along line 9-1 by Lot 993, Pls 823. x x x[4]

The spouses Velasco failed to pay the loan, resulting in petitioner foreclosing the mortgaged property. During the auction sale held on 6 July 1979, petitioner was the highest bidder. The spouses Velasco failed to redeem the property during the one-year redemption period; hence, petitioner's ownership was consolidated, and a Definite Deed of Sale was issued in its favor. TCT No. 675 was cancelled, and on 14 October 1982, a new title, TCT No. P-1619, was issued in the name of petitioner.

Meanwhile, Teofilo Icot (respondent) and the late Genaro and Felimon Icot (predecessors-in-interest of the other respondents) claimed to have been in quiet, open and continuous possession of the subject real property which they allegedly acquired from their father, Roberto Icot, through an extrajudicial settlement of estate in 1964. Upon learning of the mortgage of the subject real property, respondents filed separate cases for quieting of title against Velasco. These cases were docketed as Civil Case Nos. CEB-1493[5] and CEB-1494[6] in RTC Branch XXI of Cebu City, and were later consolidated.

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[4] *Rollo,* p. 80.

[5] Entitled *Teofilo Icot and Genaro Icot v. Vicente Velasco.* CA *rollo,* pp. 14-17.

[6] Entitled *Filemon Icot v. Vicente Velasco. Id.* at 18-21.

On 22 November 1985, RTC Branch XXI of Cebu City issued an Order stating thus:

> The defendant Vicente Velasco was given 60 days from September 23, 1985 within which to expedite the repurchase of the properties which plaintiffs herein seek to recover. x x x
>
> However, defendant Vicente Velasco informed the Court that the Bank of Philippine Islands, Cebu Branch, to whom he made the offer to repurchase the properties mortgaged by him for the sum of ₱50,000.00 has reportedly indorsed his offer to Manila Office of said bank but up to the present no action has been received whether to accept or reject his offer.
>
> x x x the defendant Vicente Velasco is hereby directed to expedite the negotiation and to inform the Court of the result thereof within 30 days from today.
>
> *The Bank of Philippine Islands, Cebu Branch, thru its manager is hereby requested for (sic) comment on the aforementioned negotiation for confirmation of said negotiation to the satisfaction of the plaintiffs and the Court.* Furnish copy of this order to parties thru their respective counsel and the manager of the bank of Philippine Islands, Cebu Branch.
>
> SO ORDERED.[7] (Emphasis supplied)

In compliance with the above RTC Order, petitioner BPI filed a Manifestation[8] stating that it has favorably endorsed Velasco's proposal to repurchase the real property to its Head Office, but the latter had yet to act on the recommendation.

On 14 August 1986, RTC Branch XXI of Cebu City rendered Judgment based on a Compromise Agreement entered into by the parties, stating thus:

> The parties assisted by their respective counsel (sic) submitted the above-entitled two civil cases for judgment based on the following compromise agreement, *viz*:

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[7] *Rollo*, p. 82.

[8] Undated; signed by BPI Cebu Branch Manager Andres V. Soriano. CA *rollo*, p. 36.

1. That the defendant recognizes the ownership and title of the plaintiffs in Civil Case No. CEB-1493 – Teofilo Icot and Genaro Icot – and the plaintiff Filemon Icot in Civil Case No. CEB-1494 over the lands described in their respective complaints;

2. That these lands are among real properties purchased by the defendant from plaintiffs' predecessor-in-interest, unknowing that it had already been partitioned, hence, the defendant mortgaged the real properties purchased to the Bank of the Philippine Islands for ₱50,000.00;

3. That the whole property mortgaged was foreclosed and remains foreclosed to the present time, but with the awareness brought about by these cases that the properties claimed in the complaints had been included in the mortgage, the defendant had to negotiate with the bank to repurchase the foreclosed collateral to the end that the lands of the plaintiffs, as described in their complaints, would be freed from the encumbrance and plaintiffs' title thereto quieted and restored;

4. That the Bank has agreed at last to have the mortgaged property repurchased in five (5) installments at ₱10,000.00 an installment, the first installment for the month of July, 1986, having been paid on July 14, 1986, as evidenced by Bank of P.I. Miscellaneous receipt No. 273616 and by the month of November, 1986, the whole repurchase price shall have been paid and the mortgaged-foreclosed property will be freed from any and all encumbrance, including the parcels claimed by the plaintiffs in their complaints;

5. That the defendant had never been in possession of the parcels claimed by the plaintiffs and he executed the mortgage in good faith, without in the least intending to prejudice anyone by said mortgage;

6. That the plaintiffs acknowledge the good faith of the defendant and the fact that the latter had never bothered them in their possession of the lands subject-matter of these cases and factually had not prejudiced their possession thereof, except the doubt created by the mortgage to the bank;

7. That with the repurchase of the subject land in these cases by the defendant and the latter's acknowledgment of the ownership and title over the same in (sic) the individual plaintiffs in these cases, the Parties hereto would pray for a judgment based on the

foregoing facts, with the plaintiffs waiving any and all damages alleged and claimed in their complaint.

WHEREFORE, finding the compromise agreement to be not contrary to law, morals, good customs, public order and public policy, the same is hereby approved and judgment is hereby rendered on the basis thereof, with the terms of the compromise agreement constituting as dispositive part thereof and the parties are hereby enjoined to comply therewith in good faith.

SO ORDERED.[9]

On 17 October 1988, petitioner and Velasco entered into a Contract to Sell wherein the former agreed to sell to the latter the subject real property for ₱60,387, payable within a year on installment basis. Velasco failed to pay the amount due, prompting petitioner to cancel the Contract to Sell. In a letter dated 10 June 1993, petitioner reiterated its cancellation of the contract and requested Velasco to peacefully surrender possession of the subject property.[10]

On 23 February 1994, respondents Amancio P. Icot and Florido A. Cuyos wrote petitioner a letter offering to purchase the subject property for the amount of ₱150,000. The amount was later increased to ₱250,000, but the same was rejected by petitioner for being too low.[11]

On 26 October 1999, petitioner filed with the RTC of Mandaue City a Petition for the Issuance of a Writ of Possession, docketed as LRC Case No. 3.

The Trial Court's Ruling

On 21 December 2001, the RTC rendered a Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, and finding the Petition meritorious, the same is hereby granted. Accordingly, let a Writ of Possession be issued to petitioner.

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[9] *Rollo*, pp. 84-85.

[10] *Id.* at 90.

[11] *Id.* at 96-97.

SO ORDERED.[12]

Respondents filed a Motion for Reconsideration, but this was denied by the RTC in its Order dated 29 July 2003.

The Court of Appeals' Ruling

Respondents filed with the Court of Appeals a Petition for *Certiorari* under Rule 65 of the 1997 Revised Rules of Civil Procedure. On 7 January 2005, the Court of Appeals rendered judgment granting the petition and reversing the RTC decision. We quote the dispositive portion of the Court of Appeals' decision below.

> WHEREFORE, premises considered, finding the petition meritorious, the same is hereby granted and the assailed Decision of the trial court dated December 21, 2001 as well as its Order dated July 29, 2003 are hereby reversed and set aside.
>
> SO ORDERED.[13]

Petitioner's Motion for Reconsideration was denied by the Court of Appeals in its Resolution of 3 May 2005.[14]

Hence, this appeal.

The Issue

The sole issue for resolution in this case is whether petitioner is entitled to the issuance of a writ of possession of the subject property.

The Court's Ruling

We find the appeal without merit.

A writ of possession is generally understood to be an order whereby the sheriff is commanded to place a person in possession

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[12] *Id.* at 120.

[13] *Id.* at 139.

[14] *Id.* at 164.

of a real or personal property.[15] A writ of possession may be issued under the following instances: (1) land registration proceedings under Section 17 of Act 496; (2) judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; and (3) extrajudicial foreclosure of a real estate mortgage under Section 7 of Act 3135, as amended by Act 4118 (Act 3135).[16] This case involves the third instance. Under Section 7 of Act 3135, a writ of possession may be issued either (1) within the one year redemption period, upon the filing of a bond, or (2) after the lapse of the redemption period, without need of a bond[17] or of a separate and independent

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[15] *A.G. Development Corporation v. Court of Appeals*, 346 Phil. 136, 141 (1997), citing Moreno, *Philippine Law Dictionary* (1972).

[16] *Spouses Ong v. Court of Appeals*, 388 Phil. 857, 863-864 (2000), citing *Gatchalian v. Arlegui*, 166 Phil. 236, 248 (1977); *Estipona v. Navarro*, 161 Phil. 379, 388 (1976); *Ramos v. Mañalac*, 89 Phil. 270, 275 (1951); *Rivera v. Court of First Instance of Nueva Ecija*, 61 Phil. 201 (1935).

[17] *Spouses Ong v. Court of Appeals*, citing *Navarra v. Court of Appeals*, G.R. No. 86237, 17 December 1991, 204 SCRA 850, 856; *UCPB v. Reyes*, G.R. No. 95095, 7 February 1991, 193 SCRA 756, 760-761, 764; *Banco Filipino Savings and Mortgage Bank v. Intermediate Appellate Court*, 225 Phil. 530 (1986); *Marcelo Steel Corp. v. Court of Appeals*, 153 Phil. 362, 370-371 (1973); *De Gracia v. San Jose*, 94 Phil. 623 (1954).

Section 7 of Act 3135 provides:

> In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under Sec. 194 of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of court shall, upon the filing of such petition, collect the fees specified in par. 11

action.[18] This is founded on the purchaser's right of ownership over the property which he bought at the auction sale and his consequent right to be placed in possession thereof.[19] However, this rule admits of an exception, that is, Section 33 (former Section 35) of Rule 39 of the Revised Rules of Court, which provides that the possession of the mortgaged property shall be given to the purchaser *"unless a third party is actually holding the property adversely to the judgment obligor."*[20] We quote Section 33, to wit:

Sec. 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.* —If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.

Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. **The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor.** (Emphasis supplied)

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of Sec. 114 of Act No. 496, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

[18] *IFC Service Leasing and Acceptance Corporation v. Nera*, 125 Phil. 595, 599 (1967).

[19] *Roxas v. Buan*, G.R. No. 53798, 8 November 1988, 167 SCRA 43, 48.

[20] *Id.*; *IFC Service Leasing and Acceptance Corporation v. Nera*, *supra* note 18.

In the recent case of *Development Bank of the Philippines v. Prime Neighborhood Association*,[21] we reiterated our previous ruling in *Philippine National Bank v. Court of Appeals*[22] that "the obligation of a court to issue an *ex parte* writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor/mortgagor." We further held, thus:

Under [Article 433 of the Civil Code],[23] one who claims to be the owner of a property possessed by another must bring the appropriate judicial action for its physical recovery. The term "judicial process" could mean no less than an ejectment suit or reivindicatory action in which ownership claims of the contending parties may be properly heard and adjudicated.

An *ex parte* petition for issuance of a possessory writ under Section 7 of Act 3135[, as amended,] is not, strictly speaking, a "judicial process" as contemplated above. Even if the same may be considered a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale, it is not an ordinary suit filed in court by which one party "sues another for the enforcement or protection of a right, or the prevention or redress of a wrong."

It should be emphasized that an *ex parte* petition for issuance of a writ of possession is a non-litigious proceeding authorized in an extrajudicial foreclosure of mortgage pursuant to Act 3135, as amended. Unlike a judicial foreclosure of real estate mortgage under Rule 68 of the Rules of Court, any property brought within the ambit of the act is foreclosed by the filing of a petition, not with any court of justice, but with the office of the sheriff of the province where the sale is to be made.

As such, a third person in possession of an extrajudicially foreclosed realty, who claims a right superior to that of the original mortgagor, will have no opportunity to be heard on his claim in a

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[21] G.R. Nos. 175728 and 178914, 8 May 2009.

[22] 424 Phil. 757 (2002).

[23] Art. 433. Actual possession under claim of ownership raises a disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property.

proceeding of this nature. It stands to reason, therefore, that such third person may not be dispossessed on the strength of a mere *ex parte* possessory writ, since to do so would be tantamount to his summary ejectment, in violation of the basic tenets of due process.

Besides, as earlier stressed, Article 433 of the Civil Code, cited above, requires nothing less that an action for ejectment to be brought even by the true owner. After all, the actual possessor of a property enjoys a legal presumption of just title in his favor, which must be overcome by the party claiming otherwise.[24]

We also held in *Tan Soo Huat v. Ongwico,*[25] that:

> There is no law in this jurisdiction whereby the purchaser at a sheriff's sale of real property is obliged to bring a separate and independent suit for possession after the one-year period for redemption has expired and after he has obtained the sheriff's final certificate of sale. There is neither legal ground nor reason of public policy precluding the court from ordering the sheriff in this case to yield possession of the property purchased at public auction where it appears that the judgment debtor is the one in possession thereof **and no rights of third persons are involved.** (Emphasis supplied)

Thus, the right of possession by a purchaser in an extrajudicial foreclosure of real property is recognized only as against the judgment debtor and his successor-in-interest, but not as against persons whose right of possession is adverse to the latter.[26] In this case, respondents are third parties in possession of the subject real property, holding the same under a title adverse to that of the mortgagor/judgment obligor, Velasco. Respondents are claiming title by virtue of an extrajudicial settlement of their father's estate executed in 1964. Upon learning of the mortgage of the real property by Velasco to petitioner, respondents filed a case for quieting of title against Velasco. The latter later

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[24] *DBP v. Prime Neighborhood Association, supra* note 21; *PNB v. Court of Appeals, supra* note 22 at 769-771.

[25] 63 Phil. 746, 749 (1936); reiterated in *IFC Service Leasing and Acceptance Corporation v. Nera, supra* note 18.

[26] *DBP v. Prime Neighborhood Association, supra* note 21, citing *Roxas v. Buan, supra* note 19.

acknowledged or "recognized" respondents' ownership of the real property in the Compromise Agreement executed by the parties in the quieting of title case. Velasco even agreed to undertake restitution of the subject property by contracting anew with and repurchasing the foreclosed property from petitioner.

Moreover, respondents are not parties to the mortgage contract between the spouses Velasco and petitioner. As correctly ruled by the appellate court, the mere mention of the mortgage of the real property in the Compromise Agreement did not make respondents privies to the mortgage contract between the spouses Velasco and petitioner. Moreover, respondents' offer to repurchase the foreclosed property from petitioner is not tantamount to stepping into the shoes of Velasco, nor would such offer qualify respondents as Velasco's successors-in-interest. Rather, the offer may be considered as respondents' last ditch effort to avoid being deprived of the property they claim to have possessed since time immemorial.

Petitioner's right to issuance of a writ of possession cannot be invoked against respondents. Respondents' possession of the subject real property is legally presumed to be pursuant to a just title which petitioner may endeavor to overcome in a judicial proceeding for recovery of property.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Court of Appeals' Decision dated 7 January 2005 and Resolution dated 3 May 2005 in CA-G.R. SP No. 81495.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 168324. October 12, 2009]

METRO CONSTRUCTION, INC. and DR. JOHN LAI, *petitioners, vs.* **ROGELIO AMAN,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; AUTHORIZED CAUSES; RETRENCHMENT; PETITIONER FAILED TO PROVE THAT IT SUSTAINED SERIOUS BUSINESS LOSSES TO JUSTIFY RETRENCHMENT.— Despite petitioners' assertion that there are no longer any construction projects wherein Aman may be given work, both the Labor Arbiter and the NLRC deemed Aman a regular employee instead of a project employee because they both accepted Metro's tale of business loss as justification for Aman's termination. Retrenchment to prevent business loss is considered an authorized cause to terminate employment of regular employees. Consider the following circumstances: On 15 May 2001, Dr. Lai told Aman that Metro no longer needed Aman's services. Prior to this, Metro put Aman on official leave for two weeks, but Metro gave Aman only half of his usual pay. On 21 May 2001, Dr. Lai offered ₱20,000 as financial assistance to Aman for his 26 years of service. Aman refused Dr. Lai's offer. On 6 July 2001, or after a little more than six weeks, Aman filed a complaint for illegal dismissal against respondents. It was only on 19 July 2001, or about two weeks after Aman filed his complaint, that Metro sent Aman a letter about his "temporary lay-off." Metro sent Aman another letter dated 24 July 2001 which required Aman to report to Metro. In an unlawful dismissal case, the employer has the burden of proving the lawful cause sustaining the dismissal of the employee. The employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause. Apart from its self-serving allegations, Metro failed to prove that it sustained serious business losses. To justify retrenchment, the employer must prove serious business losses, and not just any kind or amount of loss. Metro should have produced its

books of accounts, profit and loss statements, and even its accountant to competently amplify its financial position.

2. ID.; ID.; ID.; PETITIONERS' FAILED TO OBSERVE THE TWIN REQUIREMENTS OF NOTICE AND HEARING FOR A VALID DISMISSAL.— Petitioners' unsubstantiated assertion that they did not dismiss Aman, coupled with the two letters sent to Aman, shows that petitioners failed to observe the twin requirements of notice and hearing for a valid dismissal. The law requires that the employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected: (1) notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice which informs the employee of the employer's decision to dismiss him. Failure to comply with the requirements taints the dismissal with illegality.

3. ID.; ID.; ID.; RESPONDENT'S DISMISSAL NOT ONLY FAILED TO OBSERVE PROCEDURAL REQUIREMENTS, IT ALSO LACKED AN AUTHORIZED CAUSE.— Had Metro's cause for terminating Aman rested on a just or authorized cause yet failed to observe procedural requirements, then Metro will only be liable for nominal damages worth ₱30,000. However, such is not the case here. We hold that Aman's dismissal not only failed to observe procedural requirements, it also lacked an authorized cause. Article 279 of the Labor Code mandates that the employee who is illegally dismissed and not given due process is entitled to reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was not paid up to the time of actual reinstatement.

APPEARANCES OF COUNSEL

Batino Law Offices for petitioners.

De Castro Camita & De Leon and *Soriano Baguio & Associates Law Office* for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] assailing the Decision[2] promulgated on 24 November 2004 of the Court of Appeals (appellate court) in CA-G.R. SP No. 80440 as well as the Resolution[3] promulgated on 1 June 2005. The appellate court granted the petition filed by Rogelio Aman (Aman) and ordered Metro Construction, Inc. (Metro) to pay Aman his backwages from the time of his illegal dismissal on 15 May 2001 up to the time of the finality of its decision, as well as separation pay in lieu of reinstatement computed at one month for every year of service, with a fraction of at least six months computed as one whole year. The appellate court remanded the case to the National Labor Relations Commission (NLRC) for proper computation of Aman's backwages and separation pay.

The Facts

Petitioners Metro and Dr. John Lai (Dr. Lai) filed the present petition against Aman. The appellate court narrated the facts as follows:

> On 6 July 2001, [Aman] filed a case of illegal dismissal against [Metro] and/or [Dr. Lai] and the case was docketed as NLRC NCR Case No. 07-03521-2001 and was assigned to Labor Arbiter Manuel P. Asuncion.
>
> For failure to convince the parties to enter into settlement, Labor Arbiter Asuncion directed [Aman] and [petitioners] to file their respective pleadings and documentary evidence.

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

[2] *Rollo*, pp. 121-130. Penned by Associate Justice Rosalinda Asuncion-Vicente with Associate Justices Eugenio S. Labitoria and Bienvenido L. Reyes, concurring.

[3] *Id.* at 144-145.

On 2 October 2001, [petitioners] filed their position paper, alleging the following:

> "Complainant ROGELIO AMAN was hired by [Metro] as one of it's (sic) foreman.
>
> On July 19, 2001, a letter was sent by [Metro] to [Aman] informing him that [Metro] will be temporarily terminating his services because of completed projects, lack of work and continuous financial losses. But with an assurance that [Metro] will be contracting him if ever there will be new projects. xxx
>
> On July 24, 2001, five (5) days after the receipt of temporary termination, [Metro] sent a letter to [Aman] informing him of the prospective project that [Metro] would undertake in a few months time. xxx
>
> On July 6, 2001, [Aman] filed a complaint before the National Labor Relations Commission."

On 20 November 2001, [Aman] filed his position paper where he alleged that:

> "In January 1975, [Metro] employed [Aman] as a laborer in its construction projects. Even if he is not an elementary graduate, [Aman] quickly learned carpentry through perseverance and was promoted as carpenter after a few years. [Aman] observed full dedication and loyalty to the company and in the process, gained the confidence of his immediate superiors. Subsequently, he was promoted as a lead man for all the carpenters of [Metro] in the various projects of [Metro]. Continuously rising in his career, [Aman] finally became a foreman. Indeed, [Aman] continuously served his employer well.
>
> Early this year, or after the lapse of almost TWENTY-SIX (26) YEARS, more specifically upon completion of another [Metro] project in Banawe Street (right beside the PPSTA Building, presently occupied by Rustan's Supermarket), [Aman] was forced by [Dr. Lai] to have an official leave for a period of two (2) weeks. However, while it is termed as an official leave with pay, [Aman] curiously received only half (½) of the supposed salary. [Aman] kept his silence. However, when he reported for work on May 15, 2001, Dr. Lai summoned him

to his office where the former unceremoniously, nay illegally dismissed [Aman] from his employment by asserting that the company no longer needed his services. Right there and then, the hapless [Aman] pleaded for the retention of his post as a project foreman having in mind the welfare of his family. Unfortunately, his plea fell on deaf ears. For four (4) consecutive days, [Aman] reported for work and sought an audience with Dr. Lai, but was turned away by [Dr. Lai].

On May 21, 2001, [Dr. Lai] gave [Aman] an audience, but during the said meeting, [Dr. Lai] offered him the measly amount of Twenty Thousand Pesos (20,000.00) as "financial assistance" for his twenty six (26) years of service, but [Aman] refused. He needed the job to support his family. With his back against the wall, [Aman] countered by seeking at least a full-month separation pay for every year of service, but the cold and ruthless [Dr. Lai] cursed him and retorted: "*Gago ka ba?! Ang dami-dami ko pa tatanggalin, tapos hihingi ka ng separation pay?! Lumayas ka nga sa harap ko baka sipain kita dyan! Ayoko makita ang pagmumukha mo dito!"* Helpless, [Aman] left.

[Aman] wandered aimlessly. Shattered with worries on how to support his family, [Aman] decided to swallow his pride by once again approaching Metro to secure the necessary documents and signature to apply for a salary loan with the Social Security System (SSS). But surprise of all surprises, the Administrative Officer of Metro (Ms. Josephine Ong) turned down his request by asserting that [Aman's] employment was already terminated."[4]

The Labor Arbiter's Ruling

In his Decision dated 29 January 2002, the Labor Arbiter dismissed Aman's case for lack of merit. The Labor Arbiter found that Metro did not dismiss Aman, but only laid him off temporarily. The Labor Arbiter further stated that:

[Aman's] work stoppage was brought about by a cause which was not of [petitioners'] own making. [Metro] ran out of project after the one where [Aman] was last assigned. The economic climate has affected [Metro]. [Aman] was verbally notified of the situation

[4] *Id.* at 121-123.

sometime in May 2001. On 19 July 2001, [petitioners] sent a letter to [Aman] formally notifying the latter of his temporary lay-off. Management assured [Aman] though of reinstatement should there be a new project or if there be none in 6 moths [sic] he will be given his corresponding separation pay. On 24 July 2001, another letter was sent to [Aman] requiring him to report to [Metro] upon receipt for assignment to a new big project or to the smaller ones which are available at that time.

The separate letters issued by [petitioners] to [Aman] have legal implications specially the latter one. When [petitioners] gave the instruction to [Aman] to report for duty assignment the latter should have complied, otherwise he losses [sic] the right to reinstatement.

Evidently, [Aman] did not have the intention to return to his job with [petitioners]. His counsel manifested this in the latter dated 7 September 2001 in reply to the two previous letters of [petitioners] and understandably so because [Aman] has already acquired [a] job in another company.

There is no dismissal by [petitioners] of [Aman] in the case but only temporary lay-off because it so happened that there was no existing project where [Aman] could be assigned after his stint at the last project undertaken by management. The company considered [Aman] though for duty assignment in forthcoming big project or in the small one should he wish to accept any of the offers. [Aman] refused both offers in the letter of his counsel dated 7 September 2001.

This is not to say that [petitioners] are totally absolved from liability. It is important to consider that [Aman] has rendered service quite sometime for [Metro]. Equity dictates that such past service should not go for naught even though he has manifested his dislike to go back to his former job. It would be fair and justified to grant him financial assistance. The claims for overtime compensation, premium pay for holidays and rest days were not particularized leaving this Office with no basis to make an outright award.

WHEREFORE, the complaint is hereby dismissed for lack of merit. For reason of equity, however, [petitioners] are hereby ordered to pay [Aman] the sum of ₱30,000.00 as financial assistance.

SO ORDERED.[5]

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[5] *Id.* at 59-61.

The Ruling of the NLRC

Aman filed an appeal before the NLRC. In its Decision[6] promulgated on 12 September 2002, the NLRC affirmed the ruling of the Labor Arbiter and dismissed Aman's appeal for lack of merit. The NLRC reiterated the Labor Arbiter's finding that petitioners temporarily terminated Aman for lack of work, completed projects, and financial losses. The NLRC believed that Aman left Metro, and that the ₱30,000 awarded by the Labor Arbiter as financial assistance is commensurate to whatever damage that Aman may have suffered.

On 30 June 2003, the NLRC resolved to deny Aman's Motion for Reconsideration for lack of merit.[7]

The Decision of the Appellate Court

Aman assailed the NLRC's decision and resolution before the appellate court. Aman imputed grave abuse of discretion upon the NLRC in sustaining the Labor Arbiter's ruling that there was no illegal dismissal but only a case of temporary lay-off.

The appellate court ruled that petitioners illegally dismissed Aman. Upon a perusal of the letters sent by petitioners to Aman, the appellate court concluded that the letters were vain attempts of petitioners to hide the illegality of Aman's termination from employment. The finding by the NLRC of Aman's temporary termination was not supported by substantial evidence. Moreover, the appellate court declared that Aman's dismissal was illegal because of the lack of observance of both procedural and substantive due process. The dispositive portion of the appellate court's decision reads as follows:

WHEREFORE, the instant petition is hereby GRANTED and the Resolution dated 12 September 2002 of the NLRC as well as its Order dated 30 June 2003 are hereby REVERSED and SET ASIDE. Private respondent Metro Construction, Inc. is hereby ordered to

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[6] *Id.* at 99-101.

[7] *Id.* at 119.

pay [Aman] his backwages from the time of his illegal dismissal on 15 May 2001 up to the time of the finality of this decision, as well as separation pay, in lieu of reinstatement, computed at one month for every year of service, with a fraction of at least six (6) months computed as one whole year.

Let this case be remanded to the NLRC for proper computation of [Aman's] backwages and separation pay.

SO ORDERED.[8]

The appellate court denied petitioners' motion for reconsideration in a Resolution promulgated on 1 June 2005.[9]

The Issues

Petitioners raise the following grounds for allowance of their petition:

1. The Honorable Public Respondent Court of Appeals erred in reversing and setting aside the Resolution dated 12 September 2002 of the NLRC, as well as its Order dated 30 June 2003.

2. The Honorable Public Respondent Court of Appeals gravely misappreciated the facts in ruling that [Aman] is entitled to his backwages from the time of his illegal dismissal on 15 May 2001, as well as separation pay, in lieu of [Aman's] reinstatement from work, computed at one month for every year of service, with a fraction of at least six (6) months computed as one whole year.[10]

The Ruling of the Court

The petition has no merit. Aman was able to show that the Labor Arbiter and the NLRC arbitrarily made factual findings and disregarded evidence on record.

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[8] *Id.* at 129.

[9] *Id.* at 144-145.

[10] *Id.* at 21-22.

Aman's Illegal Dismissal

Pertinent sections of Rule XXIII, Termination of Employment, of the Omnibus Rules Implementing the Labor Code provide as follows:

Section 1. *Security of Tenure*. — (a) In cases of regular employment, the employer shall not terminate the services of an employee except for just or authorized causes as provided by law, and subject to the requirements of due process.

x x x x x x x x x

(c) In cases of project employment or employment covered by legitimate contracting or subcontracting arrangements, no employee shall be dismissed prior to the completion of the project or phase thereof for which the employee was engaged, or prior to the expiration of the contract between the principal and the contractor, unless the dismissal is for just or authorized cause subject to the requirements of due process or prior notice or is brought about by the completion of the phase of the project or contract for which the employee was engaged.

Section 2. *Standards of due process; requirements of due notice.* — In all cases of termination of employment, the following standards of due process shall be substantially observed:

I. For termination of employment based on just causes as defined in Article 282 of the Code:

(a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;

(b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and

(c) 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.

In case of termination, the foregoing notices shall be served on the employee's last known address.

x x x x x x x x x

III. If the termination is brought about by the completion of the contract or phase thereof, no prior notice is required. If the termination is brought about by the failure of an employee to meet the standards of the employer in case of probationary employment, it shall be sufficient that a written notice is served the employee within a reasonable time from the effective date of termination.

It seems that, despite petitioners' assertion that there are no longer any construction projects wherein Aman may be given work, both the Labor Arbiter and the NLRC deemed Aman a regular employee instead of a project employee because they both accepted Metro's tale of business loss as justification for Aman's termination. Retrenchment to prevent business loss is considered an authorized cause to terminate employment of regular employees.[11]

Consider the following circumstances: On 15 May 2001, Dr. Lai told Aman that Metro no longer needed Aman's services. Prior to this, Metro put Aman on official leave for two weeks, but Metro gave Aman only half of his usual pay. On 21 May 2001, Dr. Lai offered ₱20,000 as financial assistance to Aman for his 26 years of service. Aman refused Dr. Lai's offer. On 6 July 2001, or after a little more than six weeks, Aman filed a complaint for illegal dismissal against respondents. It was only on 19 July 2001, or about two weeks after Aman filed his complaint, that Metro sent Aman a letter about his "temporary lay-off." Metro sent Aman another letter dated 24 July 2001 which required Aman to report to Metro.

In an unlawful dismissal case, the employer has the burden of proving the lawful cause sustaining the dismissal of the employee. The employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause.[12] Apart from its self-serving allegations, Metro failed to prove that it sustained serious business losses. To justify retrenchment, the employer must prove serious business losses, and not just any kind or amount of loss. Metro should have produced its

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[11] See Art. 283, Labor Code of the Philippines.

[12] See *Dizon v. National Labor Relations Commission*, G.R. No. 79554, 14 December 1989, 180 SCRA 52.

books of accounts, profit and loss statements, and even its accountant to competently amplify its financial position.[13]

[R]etrenchment strikes at the very core of an individual's employment and the burden clearly falls upon the employer to prove economic or business losses with appropriate supporting evidence. After all, not every asserted potential loss is sufficient legal warrant for a reduction of personnel and the evidence adduced in support of a claim of actual or potential business losses should satisfy certain established standards, to wit:

1. The losses expected and sought to be avoided must be substantial and not merely *de minimis;*
2. The apprehended substantial losses must be reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer;
3. The retrenchment should reasonably necessary and likely to prevent effectively the expected losses;
4. The losses, both the past and forthcoming, must be proven by sufficient and convincing evidence.[14]

We agree with the appellate court's finding that the two letters are vain attempts on the part of petitioners to hide the illegality of the cause of Aman's termination. We quote from the appellate court's decision below:

[E]ven if these two (2) letters could be viewed as truly reflective of their contents, they lack evidentiary value.

First, in the letter dated 16 June 2001, the reasons cited by [Metro] for [Aman's] temporary lay-off are the following: completed projects, lack of work and continuous financial losses. However, apart from the said letter, [Metro] did not present any evidence to show that all their projects had already been completed, that there is no more work available for [Aman], and that [Metro] is suffering from continuous financial losses.

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[13] See *Bogo-Medellin Sugarcane Planters Asso., Inc. v. NLRC*, 357 Phil. 110 (1998).

[14] *Balbalec v. National Labor Relations Commission*, G.R. No. 107756, 19 December 1995, 251 SCRA 398, 403-404.

Second, the said letter dated 16 June 2001 was sent to [Aman] only on 19 July 2001, after the complaint for illegal dismissal was filed on 6 July 2001. This is clearly a mere afterthought on the part of [Metro] to give a semblance of validity to the illegal dismissal which transpired much earlier in May 2001.

We are inclined to favor [Aman's] version that he was illegally dismissed on 15 May 2001. Considering that [Aman] has been in the employ of [Metro] since 1975 or for a period of twenty-six (26) years, coupled with the fact that it is his only source of income and that he has a family to support, it is very unlikely, that during these very difficult times [Aman] would just leave his job, if he was not unceremoniously dismissed by [Metro and Dr. Lai].[15]

Petitioners' unsubstantiated assertion that they did not dismiss Aman, coupled with the two letters sent to Aman, shows that petitioners failed to observe the twin requirements of notice and hearing for a valid dismissal. The law requires that the employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected: (1) notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice which informs the employee of the employer's decision to dismiss him. Failure to comply with the requirements taints the dismissal with illegality.[16]

Had Metro's cause for terminating Aman rested on a just or authorized cause yet failed to observe procedural requirements, then Metro will only be liable for nominal damages worth ₱30,000.[17] However, such is not the case here. We hold that Aman's dismissal not only failed to observe procedural

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[15] *Rollo*, pp. 127-128.

[16] *Pepsi-Cola Bottling Co. v. NLRC*, G.R. No. 101900, 23 June 1992, 210 SCRA 277, 286.

[17] See *Agabon v. National Labor Relations Commission*, 485 Phil. 248 (2004).

requirements, it also lacked an authorized cause.[18] Article 279 of the Labor Code mandates that the employee who is illegally dismissed and not given due process is entitled to reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was not paid up to the time of actual reinstatement.

WHEREFORE, we *DENY* the petition. We *AFFIRM* ***in toto*** the Decision of the Court of Appeals promulgated on 24 November 2004 as well as the Resolution promulgated on 1 June 2005 in CA-G.R. SP No. 80440.

SO ORDERED.

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

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[18] Article 283 of the Labor Code reads as follows:

ART. 283. *Closure of Establishment and Reduction of Personnel. — The* Employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. x x x In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

THIRD DIVISION

[G.R. No. 170122. October 12, 2009]

CLARITA DEPAKAKIBO GARCIA, *petitioner, vs.* **SANDIGANBAYAN and REPUBLIC OF THE PHILIPPINES,** *respondents.*

[G.R. No. 171381. October 12, 2009]

CLARITA DEPAKAKIBO GARCIA, *petitioner, vs.* **SANDIGANBAYAN and REPUBLIC OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; RA 1379 (FORFEITURE LAW); PLUNDER CASE IN CRIM. CASE NO. 28107 DID NOT ABSORB THE FORFEITURE CASES IN CIVIL CASE NOS. 0193 AND 0196.— And in response to what she suggests in some of her pleadings, let it be stated at the outset that the SB has jurisdiction over actions for forfeiture under RA 1379, albeit the proceeding thereunder is civil in nature. We said so in *Garcia v. Sandiganbayan* involving no less than petitioner's husband questioning certain orders issued in Forfeiture I case. Petitioner's posture respecting Forfeitures I and II being absorbed by the plunder case, thus depriving the 4th Division of the SB of jurisdiction over the civil cases, is flawed by the assumptions holding it together, the first assumption being that the forfeiture cases are the corresponding civil action for recovery of civil liability *ex delicto*. As correctly ruled by the SB 4th Division in its May 20, 2005 Resolution, the civil liability for forfeiture cases does not arise from the commission of a criminal offense, thus: Such liability is based on a statute that safeguards the right of the State to recover unlawfully acquired properties. The action of forfeiture arises when a "public officer or employee [acquires] during his incumbency an amount of property which is manifestly out of proportion of his salary x x x and to his other lawful income x x x." Such amount of property is then presumed *prima facie* to have been unlawfully acquired. Thus "if the respondent [public official] is unable to show to the satisfaction of the court that he has lawfully

acquired the property in question, then the court shall declare such property forfeited in favor of the State, and by virtue of such judgment the property aforesaid shall become property of the State. x x x Lest it be overlooked, Executive Order No. (EO) 14, Series of 1986, albeit defining only the jurisdiction over cases involving ill-gotten wealth of former President Marcos, his immediate family and business associates, authorizes under its Sec. 3 the filing of forfeiture suits under RA 1379 which will proceed independently of any criminal proceedings. The Court, in *Republic v. Sandiganbayan*, interpreted this provision as empowering the Presidential Commission on Good Government to file independent civil actions separate from the criminal actions.

2. ID.; ID.; FORFEITURE CASES UNDER RA 1379 AND THE PLUNDER CASE HAVE SEPARATE CAUSES OF ACTION; THE FORMER IS CIVIL IN NATURE WHILE THE LATTER IS CRIMINAL.— It bears stressing, as a second point, that a forfeiture case under RA 1379 arises out of a cause of action separate and different from a plunder case, thus negating the notion that the crime of plunder charged in Crim. Case No. 28107 absorbs the forfeiture cases. In a prosecution for plunder, what is sought to be established is the commission of the criminal acts in furtherance of the acquisition of ill-gotten wealth. In the language of Sec. 4 of RA 7080, for purposes of establishing the crime of plunder, it is "sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy [to amass, accumulate or acquire ill-gotten wealth]." On the other hand, all that the court needs to determine, by preponderance of evidence, under RA 1379 is the disproportion of respondent's properties to his legitimate income, it being unnecessary to prove how he acquired said properties. As correctly formulated by the Solicitor General, the forfeitable nature of the properties under the provisions of RA 1379 does not proceed from a determination of a specific overt act committed by the respondent public officer leading to the acquisition of the illegal wealth.

3. ID.; ID.; DOUBLE JEOPARDY PRESUPPOSES TWO CRIMINAL PROSECUTIONS; FORFEITURE PROCEEDINGS ARE CIVIL IN NATURE.— Petitioner's thesis on possible double jeopardy entanglements should a judgment of conviction ensue in Crim. Case 28107 collapses

entirely. Double jeopardy, as a criminal law concept, refers to jeopardy of punishment for the same offense, suggesting that double jeopardy presupposes two separate criminal prosecutions. Proceedings under RA 1379 are, to repeat, civil in nature. As a necessary corollary, one who is sued under RA 1379 may be proceeded against for a criminal offense. Thus, the filing of a case under that law is not barred by the conviction or acquittal of the defendant in Crim. Case 28107 for plunder. Moreover, given the variance in the nature and subject matter of the proceedings between the plunder case and the subject forfeiture cases, petitioner's apprehension about the likelihood of conflicting decisions of two different divisions of the anti-graft court on the matter of forfeiture as a penal sanction is specious at best.

4. ID.; ID.; RA 7080 (PLUNDER LAW) DID NOT REPEAL RA 1379; BOTH LAWS CAN VERY WELL BE HARMONIZED AND THE COURT PERCEIVES NO IRRECONCILABLE CONFLICT BETWEEN THEM.— Nowhere in RA 7080 can we find any provision that would indicate a repeal, expressly or impliedly, of RA 1379. RA 7080 is a penal statute which, at its most basic, aims to penalize the act of any public officer who by himself or in connivance with members of his family amasses, accumulates or acquires ill-gotten wealth in the aggregate amount of at least PhP 50 million. On the other hand, RA 1379 is not penal in nature, in that it does not make a crime the act of a public official acquiring during his incumbency an amount of property manifestly out of proportion of his salary and other legitimate income. RA 1379 aims to enforce the right of the State to recover the properties which were not lawfully acquired by the officer. It has often been said that all doubts must be resolved against any implied repeal and all efforts should be exerted to harmonize and give effect to all laws and provisions on the same subject. To be sure, both RA 1379 and RA 7080 can very well be harmonized. The Court perceives no irreconcilable conflict between them. One can be enforced without nullifying the other.

5. REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; SUBSTITUTED SERVICE; THE SANDIGANBAYAN DID NOT ACQUIRE JURISDICTION OVER THE PERSONS OF PETITIONER AND HER CHILDREN; THE SUBSTITUTED SERVICE OF SUMMONS ARE INVALID FOR BEING IRREGULAR AND DEFECTIVE.— It is basic that a court

must acquire jurisdiction over a party for the latter to be bound by its decision or orders. Valid service of summons, by whatever mode authorized by and proper under the Rules, is the means by which a court acquires jurisdiction over a person. In the instant case, it is undisputed that summons for Forfeitures I and II were served personally on Maj. Gen. Carlos Flores Garcia, who is detained at the PNP Detention Center, who acknowledged receipt thereof by affixing his signature. It is also undisputed that substituted service of summons for both Forfeitures I and II were made on petitioner and her children through Maj. Gen. Garcia at the PNP Detention Center. However, such substituted services of summons were invalid for being irregular and defective. In *Manotoc v. Court of Appeals*, we broke down the requirements to be: (1) Impossibility of prompt personal service, *i.e.*, the party relying on substituted service or the sheriff must show that defendant cannot be served promptly or there is impossibility of prompt service within a reasonable time. Reasonable time being "so much time as is necessary under the circumstances for a reasonably prudent and diligent man to do, conveniently, what the contract or duty requires that should be done, having a regard for the rights and possibility of loss, if any[,] to the other party." Moreover, we indicated therein that the sheriff must show several attempts for personal service of at least three (3) times on at least two (2) different dates. (2) Specific details in the return, *i.e.*, the sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service. (3) Substituted service effected on a person of suitable age and discretion residing at defendant's house or residence; or on a competent person in charge of defendant's office or regular place of business. From the foregoing requisites, it is apparent that no valid substituted service of summons was made on petitioner and her children, as the service made through Maj. Gen. Garcia did not comply with the first two (2) requirements mentioned above for a valid substituted service of summons. Moreover, the third requirement was also not strictly complied with as the substituted service was made not at petitioner's house or residence but in the PNP Detention Center where Maj. Gen. Garcia is detained, even if the latter is of suitable age and discretion. Hence, no valid substituted service of summons was made.

6. ID.; ID.; VOLUNTARY APPEARANCE; SPECIAL APPEARANCE TO QUESTION A COURT'S JURISDICTION IS NOT

VOLUNTARY APPEARANCE.— A defendant who files a motion to dismiss, assailing the jurisdiction of the court over his person, together with other grounds raised therein, is not deemed to have appeared voluntarily before the court. What the rule on voluntary appearance—the first sentence of the above-quoted rule—means is that the voluntary appearance of the defendant in court is without qualification, in which case he is deemed to have waived his defense of lack of jurisdiction over his person due to improper service of summons. The pleadings filed by petitioner in the subject forfeiture cases, however, do not show that she voluntarily appeared without qualification. Petitioner filed the following pleadings in Forfeiture I: (a) motion to dismiss; (b) motion for reconsideration and/or to admit answer; (c) second motion for reconsideration; (d) motion to consolidate forfeiture case with plunder case; and (e) motion to dismiss and/or to quash Forfeiture I. And in Forfeiture II: (a) motion to dismiss and/or to quash Forfeiture II; and (b) motion for partial reconsideration. The foregoing pleadings, particularly the motions to dismiss, were filed by petitioner solely for **special appearance with the purpose of challenging the jurisdiction of the SB over her person and that of her three children**. Petitioner asserts therein that SB did not acquire jurisdiction over her person and of her three children for lack of valid service of summons through improvident substituted service of summons in both Forfeiture I and Forfeiture II. This stance the petitioner never abandoned when she filed her motions for reconsideration, even with a prayer to admit their attached *Answer Ex Abundante Ad Cautelam* dated January 22, 2005 setting forth affirmative defenses with a claim for damages. And the other subsequent pleadings, likewise, did not abandon her stance and defense of lack of jurisdiction due to improper substituted services of summons in the forfeiture cases. Evidently, from the foregoing Sec. 20, Rule 14 of the 1997 Revised Rules on Civil Procedure, petitioner and her sons did not voluntarily appear before the SB constitutive of or equivalent to service of summons.

7. ID.; ID.; SINCE THE SANDIGANBAYAN DID NOT ACQUIRE JURISDICTION OVER THE PERSONS OF PETITIONER AND HER CHILDREN, THE PROCEEDINGS IN THE SUBJECT FORFEITURE PROCEEDINGS ARE NULL AND VOID FOR LACK OF JURISDICTION.— The leading

La Naval Drug Corp. v. Court of Appeals applies to the instant case. Said case elucidates the current view in our jurisdiction that a special appearance before the court—challenging its jurisdiction over the person through a motion to dismiss even if the movant invokes other grounds—is not tantamount to estoppel or a waiver by the movant of his objection to jurisdiction over his person; and such is not constitutive of a voluntary submission to the jurisdiction of the court. Thus, it cannot be said that petitioner and her three children voluntarily appeared before the SB to cure the defective substituted services of summons. They are, therefore, not estopped from questioning the jurisdiction of the SB over their persons nor are they deemed to have waived such defense of lack of jurisdiction. Consequently, there being no valid substituted services of summons made, the SB did not acquire jurisdiction over the persons of petitioner and her children. And perforce, the proceedings in the subject forfeiture cases, insofar as petitioner and her three children are concerned, are null and void for lack of jurisdiction. Thus, the order declaring them in default must be set aside and voided insofar as petitioner and her three children are concerned. For the forfeiture case to proceed against them, it is, thus, imperative for the SB to serve anew summons or alias summons on the petitioner and her three children in order to acquire jurisdiction over their persons.

CARPIO*, J., concurring and dissenting opinion:*

1. CRIMINAL LAW; RA 1379 (FORFEITURE LAW); THE SANDIGANBAYAN ERRED IN NOT DISMISSING THE FORFEITURE II CASE FOR LACK OF JURISDICTION OVER THE PERSON OF PETITIONER.— Twenty-two days after the filing of Forfeiture II case, subject of G.R. No. 171381, Clarita moved to dismiss the complaint for lack of jurisdiction over her person as a defendant, among other grounds. In her Answer filed *ad cautelam*, Clarita maintained this defense of lack of jurisdiction over her person as a defendant. However, instead of dismissing Forfeiture II case for improper service of summons, the Sandiganbayan cited *Philamlife v. Breva* to justify its non-dismissal of the complaint. The Sandigabayan's reliance on *Philamlife* is misplaced because an amended complaint was subsequently filed therein which prompted the trial court to issue alias summons which was effectively served.

Therefore, as the *ponencia* correctly concludes, the Sandiganbayan erred in not dismissing Forfeiture II case for lack of jurisdiction over Clarita.

2. ID.; ID.; THE DISMISSAL, HOWEVER, SHOULD NOT HAVE BEEN EXTENDED TO PETITIONER'S NON-PETITIONING CHILDREN AND CO-DEFENDANTS; LACK OF JURISDICTION OVER THE PERSON IS PURELY A PERSONAL DEFENSE AND A PARTY WHO DOES NOT APPEAL OR FILE A PETITION FOR *CERTIORARI* TO QUESTION THE SAME IS NOT ENTITLED TO ANY AFFIRMATIVE RELIEF.— I disagree with the *ponencia* in extending the dismissal of Forfeiture II case, on the ground of lack of jurisdiction over the person of the defendant, to Clarita's non-petitioning children and co-defendants. Clarita is the lone petitioner in the present cases. Clearly, here is no reason to apply by extension Clarita's arguments in favor of her children and co-defendants Ian Carl, Juan Paolo and Timothy Mark, who are all of legal age. In fact, the *ponencia* failed to state any basis for vicariously relating Clarita's grounds to her children and co-defendants. The *ponencia* inexplicably extended to Clarita's children the benefits arising from Clarita's invocation of lack of jurisdiction over the person of the defendant. Lack of jurisdiction over the person, being subject to waiver, is a personal defense which can only be asserted by the party who can thereby waive it by silence. By failing to come to this Court to raise the matter of a purely personal defense, non-petitioning Clarita's children and co-defendants have relinguished their right to avail of the present remedy. Since a court acquires jurisdiction over the person of the plaintiff or petitioner by the filing of the complaint, petition or initiatory pleading, the Court has no jurisdiction over Clarita's children who did not file any such pleading before this Court, and thus did not signify their submission to the Court's power and authority. Well-entrenched is the principle that a party who does not appeal, or file a petition for *certiorari*, like the present case, is not entitled to any affirmative relief.

3. ID.; ID.; SINCE PETITIONER HAD ALREADY BEEN DECLARED IN DEFAULT, THE SANDIGANBAYAN COULD NOT BE COMPELLED BY *MANDAMUS* TO RECOGNIZE HER RIGHT TO PARTICIPATE IN THE PROCEEDINGS AND RESOLVE HER MOTIONS,

WITHOUT LIFTING THE DEFAULT ORDER FIRST.— Since Clarita had already been declared in default, the Sandiganbayan could not be compelled by *mandamus* to recognize her right to participate in the proceedings and resolve her motions, without lifting the default order first. As mentioned earlier, Clarita did not pursue the proper remedies available to a party declared in default. She did not file a motion under oath to set aside the order of default or a petition for *certiorari* after receipt of the 20 January 2005 Resolution of the Sandiganbayan denying the first motion to dismiss. The 60-day reglementary period provided by law to assail the Sandiganbayan Resolutions dated 20 January 2005 and 3 February 2005 *via certiorari*, aside from having lapsed, may no longer be pursued since these two Resolutions had already been upheld by this Court in its Decision dated 31 August 2006 in G.R. No. 167103, entitled *Garcia v. Sandiganbayan*.

4. REMEDIAL LAW; CIVIL PROCEDURE; VOLUNTARY APPEARANCE; PETITIONER VOLUNTARILY SUBMITTED HERSELF TO THE JURISDICTION OF THE SANDIGANBAYAN IN THE FORFEITURE I CASE; PETITIONER'S ACT OF INVOKING THE TRANSFER OR CONSOLIDATION OF THE CASES AS AN AFFIRMATIVE RELIEF CLEARLY INDICATES HER RECOGNITION OF THE SANDIGANBAYAN'S POWER AND AUTHORITY.— It is my view that Clarita voluntarily submitted herself to the jurisdiction of the Sandiganbayan in the Forfeiture I case. Section 20, Rule 14 of the Rules of Court provides: Sec. 20. *Voluntary appearance*.— The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance. The Rule clearly provides that the defendant's voluntary appearance shall be equivalent to service of summons. I disagree with the *ponencia's* conclusion that Clarita's special appearance to question the Sandiganbayan's jurisdiction is not voluntary appearance. While the *ponencia* mentioned some of Clarita's pleadings which were filed by way of special appearance, it ignored certain material facts. The first motion to dismiss filed by all the defendants, including Clarita, raised the sole ground of "no jurisdiction over separate civil actions for forfeiture of unlawfully acquired properties." It was only after more than

six months from the denial of the first motion to dismiss that Clarita raised, *via* the second motion to dismiss, the ground of lack of jurisdiction over her person as defendant. In *Fernandez v. Court of Appeals*, this Court ruled that an appearance in whatever form, without expressly objecting to the jurisdiction of the court over the person, is a submission to the jurisdiction of the court over the person. A defendant may *e.g.*, appear by presenting a motion and unless by such appearance he specifically objects to the jurisdiction of the court, he thereby gives his assent to the jurisdiction of the court over his person. Clarita failed to assert the defense of lack of jurisdiction over her person as a defendant in her Answer, even if filed *ex abundante ad cautelam*. Here, she interposed only the defense of "no cause of action" upon a claim of legitimate acquisition of the properties subject of the case. Likewise, the Manifestation with Motion dated 15 April 2005 exhibits voluntary appearance on the part of Clarita who moved not to dismiss but to transfer or consolidate the Forfeiture I case with the plunder case which was pending in a different division of the Sandiganbayan. Such filing of the motion to consolidate was not a conditional appearance entered to question the regularity of the service of summons. Clarita expressly waived her remedy against the default order when she filed such motion "without any intention of participating in the default proceedings." Since Clarita invoked the transfer or consolidation of the cases as an affirmative relief, this clearly indicates a recognition of the Sandiganbayan's power and authority. This is inconsistent with a special appearance for the sole purpose of questioning the court's lack of jurisdiction.

APPEARANCES OF COUNSEL

Madrid and Associates for petitioner.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Before us are these two (2) consolidated petitions under Rule 65, each interposed by petitioner Clarita D. Garcia, with

application for injunctive relief. In the first petition for *mandamus* and/or *certiorari*, docketed as **G.R. No. 170122**, petitioner seeks to nullify and set aside the August 5, 2005 Order,[1] as reiterated in another Order dated August 26, 2005, both issued by the Sandiganbayan, Fourth Division, which effectively denied the petitioner's motion to dismiss and/or to quash **Civil Case No. 0193**, a suit for forfeiture commenced by the Republic of the Philippines against the petitioner and her immediate family. The second petition for *certiorari*, docketed as **G.R. No. 171381**, seeks to nullify and set aside the November 9, 2005 Resolution[2] of the Sandiganbayan, Fourth Division, insofar as it likewise denied the petitioner's motion to dismiss and/or quash **Civil Case No. 0196**, another forfeiture case involving the same parties but for different properties.

The Facts

To recover unlawfully acquired funds and properties in the aggregate amount of PhP 143,052,015.29 that retired Maj. Gen. Carlos F. Garcia, his wife, herein petitioner Clarita, children Ian Carl, Juan Paulo and Timothy Mark (collectively, the Garcias) had allegedly amassed and acquired, the Republic, through the Office of the Ombudsman (OMB), pursuant to Republic Act No. (RA) 1379,[3] filed with the Sandiganbayan (SB) on October 29, 2004 a petition for the forfeiture of those properties. This petition, docketed as **Civil Case No. 0193**, was eventually raffled to the Fourth Division of the anti-graft court.

Civil Case No. 0193 was followed by the filing on July 5, 2005 of another forfeiture case, docketed as **Civil Case No. 0196**, this time to recover funds and properties amounting to PhP 202,005,980.55. Civil Case No. 0196 would eventually be raffled also to the Fourth Division of the SB. For convenience

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[1] *Rollo* (G.R. No. 170122), pp. 49-50.

[2] *Rollo* (G.R. No. 171381), pp. 48-69.

[3] An Act Declaring Forfeiture In Favor of the State Any Property Found to Have Been Unlawfully Acquired By Any Public Officer or Employee and Providing for the Proceedings Therefor.

and clarity, Civil Case No. 0193 shall hereinafter be also referred to as Forfeiture I and Civil Case No. 0196 as Forfeiture II.

Prior to the filing of Forfeiture II, but subsequent to the filing of Forfeiture I, the OMB charged the Garcias and three others with violation of RA 7080 (plunder) under an Information dated April 5, 2005 which placed the value of the property and funds plundered at PhP 303,272,005.99. Docketed as **Crim. Case No. 28107**, the Information was raffled off to the Second Division of the SB. The plunder charge, as the parties' pleadings seem to indicate, covered substantially the same properties identified in both forfeiture cases.

After the filing of Forfeiture I, the following events transpired in relation to the case:

(1) The **corresponding summons were issued and all served on Gen. Garcia at his place of detention**. Per the *Sheriff's Return*[4] dated November 2, 2005, the summons were duly served on respondent Garcias. Earlier, or on October 29, 2004, the SB issued a writ of attachment in favor of the Republic, an issuance which Gen. Garcia challenged before this Court, docketed as G.R. No. 165835.

Instead of an answer, the Garcias filed a motion to dismiss on the ground of the SB's lack of jurisdiction over separate civil actions for forfeiture. The OMB countered with a motion to expunge and to declare the Garcias in default. To the OMB's motion, the Garcias interposed an opposition in which they manifested that they have meanwhile repaired to the Court on *certiorari*, docketed as G.R. No. 165835 to nullify the writ of attachment SB issued in which case the SB should defer action on the forfeiture case as a matter of judicial courtesy.

(2) By Resolution[5] of **January 20, 2005**, the SB denied the motion to dismiss; declared the same motion as *pro forma* and hence without tolling effect on the period to answer. The same resolution **declared the Garcias in default.**

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[4] *Rollo* (G.R. No. 170122), p. 80.

[5] *Id.* at 106-122.

Another resolution[6] denied the Garcias' motion for reconsideration and/or to admit answer, and set a date for the ex-parte presentation of the Republic's evidence.

A second motion for reconsideration was also denied on February 23, 2005, pursuant to the prohibited pleading rule.

(3) Despite the standing default order, the Garcias moved for the transfer and consolidation of Forfeiture I with the plunder case which were respectively pending in different divisions of the SB, contending that such consolidation is mandatory under RA 8249.[7]

On May 20, 2005, the SB 4th Division denied the motion for the reason that the forfeiture case is not the corresponding civil action for the recovery of civil liability arising from the criminal case of plunder.

(4) On July 26, 2005, the Garcias filed another motion to dismiss and/or to quash Forfeiture I on, *inter alia*, the following grounds: (a) the filing of the plunder case ousted the SB 4th Division of jurisdiction over the forfeiture case; and (b) that the consolidation is imperative in order to avoid possible double jeopardy entanglements.

By Order[8] of August 5, 2005, the SB merely noted the motion in view of movants having been declared in default which has yet to be lifted.

It is upon the foregoing factual antecedents that petitioner Clarita has interposed her first special civil action for *mandamus* and/or *certiorari* docketed as **G.R. No. 170122**, raising the following issues:

I. Whether or not the [SB] 4th Division acted without or in excess of jurisdiction or with grave abuse of discretion x x x in issuing its challenged order of August 5, 2005 and August 26 2005 that merely "Noted without action," hence refused to resolve petitioner's motion

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[6] *Id.* at 151-166, dated February 3, 2005.

[7] An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606, as Amended, Providing Funds Therefor, and for Other Purposes.

[8] *Rollo* (G.R. No. 170122), p. 49.

to dismiss and/or to quash by virtue of petitioner's prior default in that:

> A. For **lack of proper and valid service of summons**, the [SB] 4th Division could not have acquired jurisdiction over petitioner's, [and her children's] x x x persons, much less make them become the true "parties-litigants, contestants or legal adversaries" in forfeiture I. As the [SB] has not validly acquired jurisdiction over the petitioner's [and her children's] x x x persons, they could not possibly be declared in default, nor can a valid judgment by default be rendered against them.
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> B. Even then, mere declaration in default does not *per se* bar petitioner from challenging the [SB] 4th Division's lack of jurisdiction over the subject matter of forfeiture I as the same can be raised anytime, even after final judgment. In the absence of jurisdiction over the subject matter, any and all proceedings before the [SB] are null and void.
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> C. Contrary to its August 26, 2005 rejection of petitioner's motion for reconsideration of the first challenged order that the issue of jurisdiction raised therein had already been passed upon by [the SB 4th Division's] resolution of May 20, 2005, the records clearly show that the grounds relied upon by petitioner in her motion to dismiss and/or to quash dated July 26, 2005 were entirely different, separate and distinct from the grounds set forth in petitioner's manifestation and motion [to consolidate] dated April 15, 2005 that was denied by it per its resolution of May 20, 2005.
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> D. In any event, the [SB] 4th Division has been ousted of jurisdiction over the subject matter of forfeiture I upon the filing of the main plunder case against petitioner that mandates the automatic forfeiture of the subject properties in forfeiture cases I & II as a function or adjunct of any conviction for plunder.
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> E. Being incompatible, the forfeiture law (RA No. 1379 [1955]) was impliedly repealed by the plunder law (RA No. 7080 [1991]) with automatic forfeiture mechanism.
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> F. Since the sought forfeiture includes properties purportedly located in the USA, any penal conviction for forfeiture in this case cannot be enforced outside of the Philippines x x x.
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> G. Based on orderly procedure and sound administration of justice, it is imperative that the matter of forfeiture be

exclusively tried in the main plunder case to avoid possible double jeopardy entanglements, and to avoid possible conflicting decisions by 2 divisions of the [SB] on the matter of forfeiture as a penal sanction.[9] (Emphasis added.)

With respect to Forfeiture II, the following events and proceedings occurred or were taken after the petition for Forfeiture II was filed:

(1) On July 12, 2005, the SB sheriff served the corresponding summons. In his return of July 13, 2005, the sheriff stated **giving the copies of the summons to the OIC/Custodian of the PNP Detention Center who in turn handed them to Gen. Garcia**. The general signed his receipt of the summons, but as to those pertaining to the other respondents, Gen. Garcia acknowledged receiving the same, but with the following qualifying note: "*I'm receiving the copies of Clarita, Ian Carl, Juan Paolo & Timothy – but these copies will not guarantee it being served to the above-named* (sic)."

(2) On July 26, 2005, Clarita and her children, thru special appearance of counsel, filed a motion to dismiss and/or to quash Forfeiture II primarily for lack of jurisdiction over their persons and on the subject matter thereof which is now covered by the plunder case.

To the above motion, the Republic filed its opposition with a motion for alternative service of summons. The motion for alternative service would be repeated in another motion of August 25, 2005.

(3) By Joint Resolution of November 9, 2005, the SB denied both the petitioner's motion to dismiss and/or to quash and the Republic's motion for alternative service of summons.

On January 24, 2006, the SB denied petitioner's motion for partial reconsideration.[10]

From the last two issuances adverted to, Clarita has come to this Court via the instant petition for *certiorari*, docketed as **GR No. 171381**. As there submitted, the SB 4th Division acted without or in excess of jurisdiction or with grave abuse of discretion

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[9] *Id.* at 15-17.

[10] *Rollo* (G.R. No. 171381), pp. 70-82.

in issuing its Joint Resolution dated November 9, 2005 and its Resolution of January 24, 2006 denying petitioner's motion to dismiss and/or to quash in that:

A. Based on its own finding that **summons was improperly served** on petitioner, the [SB] ought to have dismissed forfeiture II for lack of jurisdiction over petitioner's person x x x.

B. By virtue of the plunder case filed with the [SB] Second Division that mandates the automatic forfeiture of unlawfully acquired properties upon conviction, the [SB] Fourth Division has no jurisdiction over the subject matter of forfeiture.

C. Being incompatible, the forfeiture law (RA No. 1379 [1955]) was impliedly repealed by the plunder law (RA No. 7080 [1991]) with automatic forfeiture mechanism.

D. Based on orderly procedure and sound administration of justice, it is imperative that the matter of forfeiture be exclusively tried in the main plunder case to avoid possible double jeopardy entanglements and worse conflicting decisions by 2 divisions of the Sandiganbayan on the matter of forfeiture as a penal sanction.[11] (Emphasis added.)

Per Resolution of the Court dated March 13, 2006, **G.R. No. 170122** and **G.R. No. 171381** were consolidated.

The Court's Ruling

The petitions are partly meritorious.

The core issue tendered in these consolidated cases ultimately boils down to the question of jurisdiction and may thusly be couched into whether the Fourth Division of the SB has acquired jurisdiction over the person of petitioner—and her three sons for that matter—considering that, *first*, *vis-à-vis* Civil Case Nos. 0193 (Forfeiture I) and 0196 (Forfeiture II), summons against her have been ineffectively or improperly served and, *second*, that the plunder case—Crim. Case No. 28107—has already been filed and pending with another division of the SB, *i.e.*, Second Division of the SB.

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[11] *Id.* at 71.

Plunder Case in Crim. Case No. 28107 Did Not Absorb the Forfeiture Cases in Civil Case Nos. 0193 and 0196

Petitioner maintains that the SB 4th Division has no jurisdiction over the subject matter of Forfeitures I and II as both cases are now covered or included in the plunder case against the Garcias. Or as petitioner puts it a bit differently, the filing of the main plunder case (Crim. Case No. 28107), with its automatic forfeiture mechanism in the event of conviction, ousted the SB 4th Division of its jurisdiction over the subject matter of the forfeiture cases. The inclusion of the forfeiture cases with the plunder case is necessary, so petitioner claims, to obviate possible double jeopardy entanglements and colliding case dispositions. Prescinding from these premises, petitioner would ascribe grave abuse of discretion on the SB 4th Division for not granting its separate motions to dismiss the two forfeiture petitions and/or to consolidate them with the plunder case on the foregoing ground.

Petitioner's contention is untenable. And in response to what she suggests in some of her pleadings, let it be stated at the outset that the SB has jurisdiction over actions for forfeiture under RA 1379, albeit the proceeding thereunder is civil in nature. We said so in *Garcia v. Sandiganbayan*[12] involving no less than petitioner's husband questioning certain orders issued in Forfeiture I case.

Petitioner's posture respecting Forfeitures I and II being absorbed by the plunder case, thus depriving the 4th Division of the SB of jurisdiction over the civil cases, is flawed by the assumptions holding it together, the first assumption being that the forfeiture cases are the corresponding civil action for recovery of civil liability *ex delicto*. As correctly ruled by the SB 4th Division in its May 20, 2005 Resolution,[13] the civil liability for forfeiture cases does not arise from the commission of a criminal offense, thus:

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[12] 499 Phil. 589 (2005).

[13] *Rollo* (G.R. No. 170122), pp. 219-227.

Such liability is based on a statute that safeguards the right of the State to recover unlawfully acquired properties. The action of forfeiture arises when a "public officer or employee [acquires] during his incumbency an amount of property which is manifestly out of proportion of his salary x x x and to his other lawful income x x x."[14] Such amount of property is then presumed *prima facie* to have been unlawfully acquired.[15] Thus "if the respondent [public official] is unable to show to the satisfaction of the court that he has lawfully acquired the property in question, then the court shall declare such property forfeited in favor of the State, and by virtue of such judgment the property aforesaid shall become property of the State.[16] x x x (Citations in the original.)

Lest it be overlooked, Executive Order No. (EO) 14, Series of 1986, albeit defining only the jurisdiction over cases involving ill-gotten wealth of former President Marcos, his immediate family and business associates, authorizes under its Sec. 3[17] the filing of forfeiture suits under RA 1379 which will proceed independently of any criminal proceedings. The Court, in *Republic v. Sandiganbayan*,[18] interpreted this provision as empowering the Presidential Commission on Good Government to file independent civil actions separate from the criminal actions.

Forfeiture Cases and the Plunder Case Have Separate Causes of Action; the Former Is Civil in Nature while the Latter Is Criminal

It bears stressing, as a second point, that a forfeiture case under RA 1379 arises out of a cause of action separate and different from a plunder case, thus negating the notion that the crime of plunder charged in Crim. Case No. 28107 absorbs the

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[14] RA 1379, Sec. 2.

[15] *Id*.

[16] RA 1379, Sec. 6.

[17] Sec. 3. Civil suits for restitution x x x or x x x forfeiture proceedings provided for under [RA] 1379 x x x may be filed separately from and proceed independently of any proceedings and may be proved by a preponderance of evidence.

[18] G.R. No. 84895, May 4, 1989, 173 SCRA 72.

forfeiture cases. In a prosecution for plunder, what is sought to be established is the commission of the criminal acts in furtherance of the acquisition of ill-gotten wealth. In the language of Sec. 4 of RA 7080, for purposes of establishing the crime of plunder, it is "sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy [to amass, accumulate or acquire ill-gotten wealth]." On the other hand, all that the court needs to determine, by preponderance of evidence, under RA 1379 is the disproportion of respondent's properties to his legitimate income, it being unnecessary to prove how he acquired said properties. As correctly formulated by the Solicitor General, the forfeitable nature of the properties under the provisions of RA 1379 does not proceed from a determination of a specific overt act committed by the respondent public officer leading to the acquisition of the illegal wealth.[19]

Given the foregoing considerations, petitioner's thesis on possible double jeopardy entanglements should a judgment of conviction ensue in Crim. Case 28107 collapses entirely. Double jeopardy, as a criminal law concept, refers to jeopardy of punishment for the same offense,[20] suggesting that double jeopardy presupposes two separate criminal prosecutions. Proceedings under RA 1379 are, to repeat, civil in nature. As a necessary corollary, one who is sued under RA 1379 may be proceeded against for a criminal offense. Thus, the filing of a case under that law is not barred by the conviction or acquittal of the defendant in Crim. Case 28107 for plunder.

Moreover, given the variance in the nature and subject matter of the proceedings between the plunder case and the subject forfeiture cases, petitioner's apprehension about the likelihood of conflicting decisions of two different divisions of the anti-graft court on the matter of forfeiture as a penal sanction is specious at best. What the SB said in this regard merits approving citation:

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[19] *Rollo* (G.R. No. 171381), p. 303. Comment on Petition.

[20] CONSTITUTION, Art. III, Sec. 21 provides that "[n]o person shall be twice put in jeopardy of punishment for the same offense."

On the matter of forfeiture as a penal sanction, respondents argue that the division where the plunder case is pending may issue a decision that would collide or be in conflict with the decision by this division on the forfeiture case. They refer to a situation where this Court's Second Division may exonerate the respondents in the plunder case while the Fourth Division grant the petition for forfeiture for the same properties in favor of the state or vice versa.

Suffice it to say that the variance in the decisions of both divisions does not give rise to a conflict. After all, forfeiture in the plunder case requires the attendance of facts and circumstances separate and distinct from that in the forfeiture case. Between the two (2) cases, there is no causal connection in the facts sought to be established and the issues sought to be addressed. As a result, the decision of this Court in one does not have a bearing on the other.

There is also no conflict even if the decisions in both cases result in an order for the forfeiture of the subject properties. The forfeiture following a conviction in the plunder case will apply only to those ill-gotten wealth not recovered by the forfeiture case and vise (sic) versa. This is on the assumption that the information on plunder and the petition for forfeiture cover the same set of properties.[21]

RA 7080 Did Not Repeal RA 1379

Petitioner takes a different tack in her bid to prove that SB erred in not dismissing Forfeitures I and II with her assertion that RA 7080 impliedly repealed RA 1379. We are not convinced.

Nowhere in RA 7080 can we find any provision that would indicate a repeal, expressly or impliedly, of RA 1379. RA 7080 is a penal statute which, at its most basic, aims to penalize the act of any public officer who by himself or in connivance with members of his family amasses, accumulates or acquires ill-gotten wealth in the aggregate amount of at least PhP 50 million. On the other hand, RA 1379 is not penal in nature, in that it does not make a crime the act of a public official acquiring during his incumbency an amount of property manifestly out of proportion of his salary and other legitimate income. RA 1379

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[21] *Rollo* (G.R. No. 171381), p. 81. SB Resolution dated January 24, 2006.

aims to enforce the right of the State to recover the properties which were not lawfully acquired by the officer.

It has often been said that all doubts must be resolved against any implied repeal and all efforts should be exerted to harmonize and give effect to all laws and provisions on the same subject. To be sure, both RA 1379 and RA 7080 can very well be harmonized. The Court perceives no irreconcilable conflict between them. One can be enforced without nullifying the other.

Sandiganbayan Did Not Acquire Jurisdiction over the Persons of Petitioner and Her Children

On the issue of lack of jurisdiction, petitioner argues that the SB did not acquire jurisdiction over her person and that of her children due to a defective substituted service of summons. There is merit in petitioner's contention.

Sec. 7, Rule 14 of the 1997 Revised Rules of Civil Procedure clearly provides for the requirements of a valid substituted service of summons, thus:

> **SEC. 7. *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.

It is basic that a court must acquire jurisdiction over a party for the latter to be bound by its decision or orders. Valid service of summons, by whatever mode authorized by and proper under the Rules, is the means by which a court acquires jurisdiction over a person.[22]

In the instant case, it is undisputed that summons for Forfeitures I and II were served personally on Maj. Gen. Carlos Flores Garcia, who is detained at the PNP Detention Center,

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[22] *Casimina v. Legaspi*, G.R. No. 147530, June 29, 2005, 462 SCRA 171.

who acknowledged receipt thereof by affixing his signature. It is also undisputed that substituted service of summons for both Forfeitures I and II were made on petitioner and her children through Maj. Gen. Garcia at the PNP Detention Center. However, such substituted services of summons were invalid for being irregular and defective.

In *Manotoc v. Court of Appeals*,[23] we broke down the requirements to be:

(1) Impossibility of prompt personal service, *i.e.*, the party relying on substituted service or the sheriff must show that defendant cannot be served promptly or there is impossibility of prompt service within a reasonable time. Reasonable time being "so much time as is necessary under the circumstances for a reasonably prudent and diligent man to do, conveniently, what the contract or duty requires that should be done, having a regard for the rights and possibility of loss, if any[,] to the other party."[24] Moreover, we indicated therein that the sheriff must show several attempts for personal service of at least three (3) times on at least two (2) different dates.

(2) Specific details in the return, *i.e.*, the sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service.

(3) Substituted service effected on a person of suitable age and discretion residing at defendant's house or residence; or on a competent person in charge of defendant's office or regular place of business.

From the foregoing requisites, it is apparent that no valid substituted service of summons was made on petitioner and her children, as the service made through Maj. Gen. Garcia did not comply with the first two (2) requirements mentioned above for a valid substituted service of summons. Moreover, the third requirement was also not strictly complied with as the

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[23] G.R. No. 130974, August 16, 2006, 499 SCRA 21.

[24] *Id.* at 34; citing *Far Eastern Realty Investment, Inc. v. CA*, No. L-36549, October 5, 1988, 166 SCRA 256, 262.

substituted service was made not at petitioner's house or residence but in the PNP Detention Center where Maj. Gen. Garcia is detained, even if the latter is of suitable age and discretion. Hence, no valid substituted service of summons was made.

The stringent rules on valid service of summons for the court to acquire jurisdiction over the person of the defendants, however, admits of exceptions, as when the party voluntarily submits himself to the jurisdiction of the court by asking affirmative relief.[25] In the instant case, the Republic asserts that petitioner is estopped from questioning improper service of summons since the improvident service of summons in both forfeiture cases had been cured by their (petitioner and her children) voluntary appearance in the forfeiture cases. The Republic points to the various pleadings filed by petitioner and her children during the subject forfeiture hearings. We cannot subscribe to the Republic's views.

Special Appearance to Question a Court's Jurisdiction Is Not Voluntary Appearance

The second sentence of Sec. 20, Rule 14 of the Revised Rules of Civil Procedure clearly provides:

> Sec. 20. *Voluntary appearance*.—The defendant's voluntary appearance in the action shall be equivalent to service of summons. **The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance**. (Emphasis ours.)

Thus, a defendant who files a motion to dismiss, assailing the jurisdiction of the court over his person, together with other grounds raised therein, is not deemed to have appeared voluntarily before the court. What the rule on voluntary appearance—the first sentence of the above-quoted rule—means is that the voluntary appearance of the defendant in court is without qualification, in which case he is deemed to have waived his defense of lack of jurisdiction over his person due to improper service of summons.

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[25] *Oaminal v. Castillo*, 459 Phil. 542 (2003).

The pleadings filed by petitioner in the subject forfeiture cases, however, do not show that she voluntarily appeared without qualification. Petitioner filed the following pleadings in Forfeiture I: (a) motion to dismiss; (b) motion for reconsideration and/or to admit answer; (c) second motion for reconsideration; (d) motion to consolidate forfeiture case with plunder case; and (e) motion to dismiss and/or to quash Forfeiture I. And in Forfeiture II: (a) motion to dismiss and/or to quash Forfeiture II; and (b) motion for partial reconsideration.

The foregoing pleadings, particularly the motions to dismiss, were filed by petitioner solely for **special appearance with the purpose of challenging the jurisdiction of the SB over her person and that of her three children**. Petitioner asserts therein that SB did not acquire jurisdiction over her person and of her three children for lack of valid service of summons through improvident substituted service of summons in both Forfeiture I and Forfeiture II. This stance the petitioner never abandoned when she filed her motions for reconsideration, even with a prayer to admit their attached *Answer Ex Abundante Ad Cautelam* dated January 22, 2005 setting forth affirmative defenses with a claim for damages. And the other subsequent pleadings, likewise, did not abandon her stance and defense of lack of jurisdiction due to improper substituted services of summons in the forfeiture cases. Evidently, from the foregoing Sec. 20, Rule 14 of the 1997 Revised Rules on Civil Procedure, petitioner and her sons did not voluntarily appear before the SB constitutive of or equivalent to service of summons.

Moreover, the leading *La Naval Drug Corp. v. Court of Appeals*[26] applies to the instant case. Said case elucidates the current view in our jurisdiction that a special appearance before the court––challenging its jurisdiction over the person through a motion to dismiss even if the movant invokes other grounds––is not tantamount to estoppel or a waiver by the movant of his objection to jurisdiction over his person; and such is not constitutive of a voluntary submission to the jurisdiction of the court.

[26] G.R. No. 103200, August 31, 1994, 236 SCRA 78.

Thus, it cannot be said that petitioner and her three children voluntarily appeared before the SB to cure the defective substituted services of summons. They are, therefore, not estopped from questioning the jurisdiction of the SB over their persons nor are they deemed to have waived such defense of lack of jurisdiction. Consequently, there being no valid substituted services of summons made, the SB did not acquire jurisdiction over the persons of petitioner and her children. And perforce, the proceedings in the subject forfeiture cases, insofar as petitioner and her three children are concerned, are null and void for lack of jurisdiction. Thus, the order declaring them in default must be set aside and voided insofar as petitioner and her three children are concerned. For the forfeiture case to proceed against them, it is, thus, imperative for the SB to serve anew summons or *alias* summons on the petitioner and her three children in order to acquire jurisdiction over their persons.

WHEREFORE, the petitions for *certiorari* and *mandamus* are *PARTIALLY GRANTED*. The Sandiganbayan, Fourth Division has not acquired jurisdiction over petitioner Clarita D. Garcia and her three children. The proceedings in Civil Case Nos. 0193 and 0196 before the Sandiganbayan, Fourth Division, insofar as they pertain to petitioner and her three children, are *VOID* for lack of jurisdiction over their persons. No costs.

SO ORDERED.

Chico-Nazario, Leonardo-de Castro,[*] and *Peralta, JJ.,* concur.

Carpio, J. (Chairperson), see concurring & dissenting opinion.

CARPIO, *J., concurring and dissenting opinion:*

These are consolidated petitions under Rule 65[1] seeking to nullify various orders[2] issued by the Sandiganbayan involving

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[*] Additional member as per October 7, 2009 raffle.

[1] G.R. No. 170122 is a petition for *certiorari* and *mandamus* while G.R. No. 171381 is a petition for *certiorari*.

[2] In G.R. No. 170122, Clarita assails the 5 August 2005 and 26 August 2005 Orders of the Sandiganbayan, Fourth Division.

two forfeiture cases against petitioner Clarita Depakakibo Garcia (Clarita).

I concur with the *ponente's* views that (1) the Sandiganbayan has and retains jurisdiction over the forfeiture cases, despite the subsequent filing of the plunder case; and (2) there is no need to consolidate the plunder case with the forfeiture cases to avoid double jeopardy.

However, I cannot subscribe to the view that in both forfeiture cases, the Sandiganbayan lacked jurisdiction not only over the person of Clarita but also over Clarita's children due to defective service of summons.

I.

G.R. No. 171381

Twenty-two days after the filing of Forfeiture II case, subject of G.R. No. 171381, Clarita moved to dismiss the complaint for lack of jurisdiction over her person as a defendant, among other grounds. In her Answer filed *ad cautelam,* Clarita maintained this defense of lack of jurisdiction over her person as a defendant. However, instead of dismissing Forfeiture II case for improper service of summons, the Sandiganbayan cited *Philamlife v. Breva*[3] to justify its non-dismissal of the complaint.

The Sandiganbayan's reliance on *Philamlife*[4] is misplaced because an amended complaint was subsequently filed therein which prompted the trial court to issue *alias* summons which was effectively served. Therefore, as the *ponencia* correctly concludes, the Sandiganbayan erred in not dismissing Forfeiture II case for lack of jurisdiction over Clarita.

However, I disagree with the *ponencia* in extending the dismissal of Forfeiture II case, on the ground of lack of jurisdiction

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In G.R. No. 171381, Clarita challenges the 9 November 2005 Resolution issued by the Sandiganbayan, Fourth Division.

[3] 484 Phil. 824 (2004).

[4] *Id.*

over the person of the defendant, to Clarita's non-petitioning children and co-defendants.

Clarita is the lone petitioner in the present cases. Clearly, here is no reason to apply by extension Clarita's arguments in favor of her children and co-defendants Ian Carl, Juan Paolo and Timothy Mark, who are all of legal age. In fact, the *ponencia* failed to state any basis for vicariously relating Clarita's grounds to her children and co-defendants. The *ponencia* inexplicably extended to Clarita's children the benefits arising from Clarita's invocation of lack of jurisdiction over the person of the defendant.

Lack of jurisdiction over the person, being subject to waiver, is a personal defense which can only be asserted by the party who can thereby waive it by silence.[5] By failing to come to this Court to raise the matter of a purely personal defense, non-petitioning Clarita's children and co-defendants have relinquished their right to avail of the present remedy.

Since a court acquires jurisdiction over the person of the plaintiff or petitioner by the filing of the complaint, petition or initiatory pleading,[6] the Court has no jurisdiction over Clarita's children who did not file any such pleading before this Court, and thus did not signify their submission to the Court's power and authority. Well-entrenched is the principle that a party who does not appeal, or file a petition for *certiorari*, like the present cases, is not entitled to any affirmative relief.[7]

In view of the foregoing, I agree with the conclusion in G.R. No. 171381 insofar as the Sandiganbayan has not acquired jurisdiction over the person of Clarita alone.

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[5] *Carandang v. Heirs of Quirino A. De Guzman*, G.R. No. 160347, 29 November 2006, 508 SCRA 469, 480. See *La Naval Drug Corp. v. Court of Appeals*, G.R. No. 103200, 31 August 1994.

[6] *De Joya v. Marquez* , G.R. No. 162416, 31 January 2006, 481 SCRA 376. See *Montaner v. Shari'a District Court*, G.R. No. 174975, 20 January 2009.

[7] *Aklan College, Inc. v. Enero,* G.R. No. 178309, 27 January 2009; *Corinthian Gardens Association, Inc. v. Tanjangco*, G.R. No. 160795, 27 June 2008, 556 SCRA 154; *Tangalin v. Court of Appeals*, G.R. No. 121703, 29 November 2001.

II.

G.R. No. 170122

In its 20 January 2005 Resolution, the Sandiganbayan denied Clarita, *et al.*'s Motion to Dismiss dated 16 November 2004 (first motion to dismiss) and subsequently declared defendants in default. In its 3 February 2005 and 23 February 2005 Resolutions, the Sandiganbayan denied two motions for reconsideration.

Despite notice of the default order, Clarita did not file any motion to set it aside. Instead of forthwith pursuing the proper remedy,[8] Clarita allowed a considerable length of time to lapse.

Clarita thereafter filed a Manifestation with Motion dated 15 April 2005 for the consolidation of Forfeiture I case with the plunder case, and another Motion to Dismiss dated 26 July 2005 (second motion to dismiss).

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[8] *In Cerezo v. Tuazon*, 469 Phil. 1020 (2004), the Court provided the remedies available to a party declared in default. The remedies are as follows:

> a) The defendant in default may, at any time after discovery thereof and before judgment, file a ***motion under oath to set aside the order of default*** on the ground that his failure to answer was due to fraud, accident, mistake or excusable negligence, and that he has a meritorious defense (Sec. 3, Rule 18 [now Sec. 3(b), Rule 9]);
>
> b) If the judgment has already been rendered when defendant discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1(a) of Rule 37;
>
> c) If the defendant discovered the default after the judgment has become final and executory, he may file a ***petition for relief*** under Section 2 [now Section 1] of Rule 38; and
>
> d) He may also ***appeal*** from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him (Sec. 2, Rule 41).
>
> Moreover, a petition for ***certiorari*** to declare the nullity of a judgment by default is also available if the trial court improperly declared a party in default, or even if the trial court properly declared a party in default, if grave abuse of discretion attended such declaration. (Italics in the original; emphasis supplied)

In its Order of 5 August 2005, the Sandiganbayan merely noted the second motion to dismiss in view of its standing default order. Notably, **it was only in this second motion to dismiss that the ground of lack of jurisdiction over the person of the defendant was first raised.** In its Order of 26 August 2005, the Sandiganbayan denied reconsideration of the 5 August 2005 Order after finding a mere repetition of the arguments raised.

Since Clarita had already been declared in default, the Sandiganbayan could not be compelled by *mandamus* to recognize her right to participate in the proceedings and resolve her motions, without lifting the default order first. As mentioned earlier, Clarita did not pursue the proper remedies available to a party declared in default. She did not file a motion under oath to set aside the order of default or a petition for *certiorari* after receipt of the 20 January 2005 Resolution of the Sandiganbayan denying the first motion to dismiss. The 60-day reglementary period provided by law to assail the Sandiganbayan Resolutions dated 20 January 2005 and 3 February 2005 *via certiorari*, aside from having lapsed, may no longer be pursued since these two Resolutions had already been upheld by this Court in its Decision dated 31 August 2006 in G.R. No. 167103, entitled *Garcia v. Sandiganbayan*.[9]

Regardless, it is my view that Clarita voluntarily submitted herself to the jurisdiction of the Sandiganbayan in the Forfeiture I case.

Section 20, Rule 14 of the Rules of Court provides:

> Sec. 20. *Voluntary appearance.* — The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance.

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[9] G.R. No. 167103, 31 August 2006, 500 SCRA 631.

The Rule clearly provides that the defendant's voluntary appearance shall be equivalent to service of summons. I disagree with the *ponencia's* conclusion that Clarita's special appearance to question the Sandiganbayan's jurisdiction is not voluntary appearance. While the *ponencia* mentioned some of Clarita's pleadings which were filed by way of special appearance, it ignored certain material facts. The first motion to dismiss filed by all the defendants, including Clarita, raised the sole ground of "no jurisdiction over separate civil actions for forfeiture of unlawfully acquired properties."[10] It was only after more than six months from the denial of the first motion to dismiss that Clarita raised, *via* the second motion to dismiss, the ground of lack of jurisdiction over her person as defendant.

In *Fernandez v. Court of Appeals*,[11] this Court ruled that an appearance in whatever form, without expressly objecting to the jurisdiction of the court over the person, is a submission to the jurisdiction of the court over the person. A defendant may, *e.g.*, appear by presenting a motion and unless by such appearance he specifically objects to the jurisdiction of the court, he thereby gives his assent to the jurisdiction of the court over his person.

Clarita failed to assert the defense of lack of jurisdiction over her person as a defendant in her Answer, even if filed *ex abundante ad cautelam*. Here, she interposed only the defense of "no cause of action" upon a claim of legitimate acquisition of the properties subject of the case. Likewise, the Manifestation with Motion dated 15 April 2005 exhibits voluntary appearance on the part of Clarita who moved not to dismiss but to transfer or consolidate the Forfeiture I case with the plunder case which was pending in a different division of the Sandiganbayan. Such filing of the motion to consolidate was not a conditional appearance entered to question the regularity of the service of summons. Clarita expressly waived her remedy against the default order when she filed such motion "without any intention of participating in the default proceedings."[12]

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[10] *Rollo* (G.R. No. 170122), p. 81.

[11] G.R. No. 131094, 16 May 2005, 458 SCRA 454.

[12] *Rollo* (G.R. No. 170122), p. 214.

Since Clarita invoked the transfer or consolidation of the cases as an affirmative relief, this clearly indicates a recognition of the Sandiganbayan's power and authority. This is inconsistent with a special appearance for the sole purpose of questioning the court's lack of jurisdiction. In *Hongkong & Shanghai Banking Corp., Ltd. v. Catalan*,[13] this Court held:

> It must be noted that HSBANK initially filed a Motion for Extension of Time to File Answer or Motion to Dismiss. HSBANK already invoked the RTC's jurisdiction over it by praying that its motion for extension of time to file answer or a motion to dismiss be granted. The Court has held that **the filing of motions seeking affirmative relief**, such as, to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration, **are considered voluntary submission to the jurisdiction of the court**. Consequently, HSBANK's expressed reservation in its Answer *ad cautelam* that it filed the same "*as a mere precaution against being declared in default, and without prejudice to the Petition for Certiorari and/or Prohibition...now pending before the Court of Appeals*" to assail the jurisdiction of the RTC over it is of no moment. Having earlier invoked the jurisdiction of the RTC to secure affirmative relief in its motion for additional time to file answer or motion to dismiss, HSBANK effectively submitted voluntarily to the jurisdiction of the RTC and is thereby estopped from asserting otherwise, even before this Court. (Italics in the original; emphasis supplied)

From the foregoing, I submit that the Sandiganbayan acquired jurisdiction over the person of Clarita in the Forfeiture I case.

In sum, Clarita failed to substantiate her allegations that the Sandiganbayan: (1) had not acquired jurisdiction over her person as a defendant in the Forfeiture I case; (2) gravely abused its discretion when it merely noted her second motion to dismiss in view of its standing default order; and (3) unlawfully neglected to perform its legal duty.

Accordingly, I vote to *GRANT* the petition for *certiorari* filed by Clarita Depakakibo Garcia alone in G.R. No. 171381 and to *DISMISS* the petition for *certiorari* and *mandamus* in G.R. No. 170122.

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[13] 483 Phil. 525, 542-543 (2004).

THIRD DIVISION

[G.R. No. 171832. October 12, 2009]

ANTIPOLO PROPERTIES, INC. (now PRIME EAST PROPERTIES, INC.), *petitioner, vs.* **CESAR NUYDA,** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; CONTRACT IS THE LAW BETWEEN THE CONTRACTING PARTIES; WHEN THE LANGUAGE OF THE CONTRACT IS CLEAR AND PLAIN OR READILY UNDERSTANDABLE BY ORDINARY READER, THERE IS ABSOLUTELY NO ROOM FOR INTERPRETATION OR CONSTRUCTION AND THE LITERAL MEANING OF ITS STIPULATION SHALL CONTROL; CASE AT BAR.— The said agreement prepared by petitioner and notarized by its in-house counsel clearly recognizes respondent's entitlement to the benefits stated therein. Petitioner moreover unequivocally obligated itself to extend the said benefits to respondent. Rudimentary is the principle that a contract is the law between the contracting parties. Further, when the language of the contract is clear and plain or readily understandable by any ordinary reader, there is absolutely no room for interpretation or construction and the literal meaning of its stipulations shall control. The Court then fully agrees with the CA's declaration that the contract "leaves no other recourse for the courts than to enforce the contractual stipulations therein, in the exact manner agreed upon and written."

2. ID.; ID.; ID.; BY PETITIONER'S OWN ACT OF ACKNOWLEDGING THE RIGHTS OF RESPONDENT AS A MEMBER OF THE ASSOCIATION AND HIS ENTITLEMENT TO NOT LESS THAN 2,880 SQUARE METER LOT IN THE RESETTLEMENT AREA AND THE CORRESPONDING DISTURBANCE COMPENSATION, PETITIONER IS NOW ESTOPPED FROM CLAIMING THAT RESPONDENT IS NOT QUALIFIED TO AVAIL HIMSELF OF THE BENEFITS IN THE CONTRACT.— To evade its contractual obligations, petitioner invokes a provision

in the earlier February 14, 1991 *Kasunduan* entered into by and between it and MUMI, *viz*.: *Na ang mga nakatira at umaangkin ng ilang bahagi ng mga nasabing lupain ay pawang mga kasapi ng SAMAHAN at ang kanikanilang mga pamilya. Samakatuwid, ang salitang kasapi ay i-intindihin dito sa kasulatang ito bilang mga kasapi ng samahan na nakatira sa, at umaan[g]kin ng mga bahagi ng mga lupain na nabanggit sa itaas*. Petitioner contends that, following this provision, respondent is disqualified from claiming, among others, a lot in the resettlement area and the disturbance compensation, because he was a mere caretaker and not a settler in the concept of an owner in the subject estate. The Court cannot subscribe to such proposition. By its own act of acknowledging the rights of respondent (in their June 7, 1991 *Kasunduan*) as a member of MUMI and his entitlement to not less than 2,880 sq.m. lot in the resettlement area and the corresponding disturbance compensation, petitioner is now estopped from claiming that he is not qualified to avail himself of the benefits in the contract. The Court further notes that it was because of petitioner's representations that respondent was impelled to peacefully vacate the portion of the estate he was tilling. Moreover, petitioner's subsequent act of granting the same contractual benefits to another member of MUMI, who was also a caretaker, defeats any interpretation of the February 14, 1991 *Kasunduan* that only occupants of the estate in the concept of an owner may avail of such benefits.

APPEARANCES OF COUNSEL

Donato Zarate & Rodriguez for petitioner.
Salvador Guevarra & Associates for respondent.

R E S O L U T I O N

NACHURA, *J.*:

Assailed in this petition for review on *certiorari* under Rule 45 are the August 31, 2005 Decision[1] and the March 6,

[1] Penned by Presiding Justice Romeo A. Brawner (now deceased), with Associate Justices Edgardo P. Cruz and Jose C. Mendoza, concurring; *rollo*, pp. 27-40.

2006 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 72194.

The antecedent facts and proceedings follow.

On February 14, 1991, petitioner, a realty development company, and Magtanim Upang Mabuhay, Inc. (MUMI), an association of alleged illegal settlers in the Melitona estate and the Ozaeta lots in Binangonan, Rizal, entered into a contract denominated as *Kasunduan*.[3] As agreed, the MUMI members were to vacate the aforementioned estate and move to a resettlement area, so that petitioner could develop the same into a residential and commercial complex. Petitioner, for its part, was, among others, tasked to provide and develop a resettlement area, award the subdivided lots therein to the members of the association, and pay the displaced members disturbance compensation.

Four months thereafter or on June 7, 1991, petitioner and respondent Cesar Nuyda, a member of the association, entered into an agreement likewise denominated as *Kasunduan*,[4] in which petitioner, among others, recognized respondent's membership in MUMI, awarded to him not less than 2,880 sq m lot in the resettlement area, and guaranteed that he be paid disturbance compensation. In turn, respondent was to vacate the portion of the estate he occupied and transfer to the resettlement area.

Consequently, in 1998, after it had demolished the improvements in the estate, including those of respondent, petitioner reneged on its obligation as stated in the June 7, 1991 *Kasunduan*, prompting respondent to institute a complaint for specific performance and damages with the Regional Trial Court (RTC) of Pasig City. The case was docketed as Civil Case No. 66967.[5]

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[2] Penned by Associate Justice Edgardo P. Cruz, with Associate Justices Andres B. Reyes, Jr. and Fernanda Lampas-Peralta, concurring; *rollo*, p. 41.

[3] *Rollo*, pp. 42-47.

[4] *Id.* at 48-51.

[5] *Id.* at 52.

In its Answer,[6] petitioner traversed the allegations in the complaint and countered in the main that respondent was not a member of MUMI, and even if he was, he did not measure up to the qualifications of a member as contemplated in the February 14, 1991 *Kasunduan*.

After trial on the merits, the RTC rendered its May 20, 2001 Decision,[7] declaring the February 14, 1991 and the June 7, 1991 *Kasunduan* as valid agreements which had the force of law between the contracting parties. Petitioner was, therefore, directed to comply with its obligations as stated therein. The trial court disposed of the case as follows:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the latter:
>
> a. To transfer to plaintiff the ownership, title and possession of 2,880 sq. m. lot in the resettlement area;
>
> b. To pay to the plaintiff disturbance compensation in the amount of PhP22,875.00 in accordance with the agreement;
>
> c. To pay plaintiff the amount of PhP200,000.00 for the destroyed plants and trees[;]
>
> d. To pay to the plaintiff attorney's fees in the amount of PhP50,000.00; [and]
>
> e. [C]osts of suit.
>
> SO ORDERED.[8]

Dissatisfied, petitioner appealed to the CA. In the assailed August 31, 2005 Decision[9] in CA G.R. CV No. 72194, the appellate court affirmed *in toto* the ruling of the RTC. The CA found as unavailing, for being contrary to the evidence presented, petitioner's argument that respondent was not a member of MUMI. It further refused to sustain petitioner's claim that the

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[6] *Id.* at 59-62.

[7] *Id.* at 63-69.

[8] *Id.* at 69.

[9] *Supra* note 1.

June 7, 1991 *Kasunduan* was invalid because it contained the rubber-stamp signature of the company president. The appellate court rather lent credence to the undisputed facts that the deed was prepared by the company and notarized by the in-house counsel and that the original copy thereof was personally signed by the president while, in the other copies, his signature was only rubber-stamped. The appellate court further ruled that the clear terms of the contract were not contrary to law, morals and public policy. Accordingly, in the absence of any showing that the stipulations thereof were objectionable or that the parties' consent thereto was vitiated, the contract must be enforced.

In the further challenged March 6, 2006 Resolution,[10] the CA denied petitioner's motion for reconsideration.

Not giving up despite the successive rejections of its cause, petitioner filed the instant petition for review on *certiorari*, arguing in the main that to be entitled to the benefits stated in the agreement, the claimant must not only be a member of MUMI but must also be an occupant in the concept of an owner of the subject property. Petitioner then contends that respondent was a mere caretaker; hence, he could not avail himself of the benefits in the *Kasunduan*.[11]

The Court denies the petition.

The June 7, 1991 *Kasunduan* executed by the parties pertinently contains the following unmistakable terms:

Na ang mga nakatira at umaangkin ng ilang bahagi ng mga nasabing lupain ay pawang mga kasapi ng samahang MAGTANIM UPANG MABUHAY, INC. (SAMAHAN kung tawagin dito sa kasulatang ito), at ang kanikanilang mga pamilya.

Na si CESAR NUYDA (kasapi kong tawagin dito sa kasulatang ito) ay isang kinikilala at karapatdapat na kasapi ng Samahan at ang bahagi ng mga lupain na kanyang inaangkin ay may sukat na 57,603 metro cuadrado, humigit kumulang;

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[10] *Supra* note 2.

[11] *Rollo,* pp. 13-22.

Na alinsunod sa isang "KASUNDUAN" na ipinagtibay ng Samahan at ng API noong ika 14 ng Febrero 1991, at nakatala sa talaan ni Notario Publico Ateneones S. Bacale bilang Doc. No. 416, Page No. 85, Book No. III, Series of 1991, na kinikilala bilang isang bahagi at karugtong nitong kasulatang ito, ang kasapi at ang kanyang angkan ay pumayag lisanin ang bahagi ng lupain na kanyang inaangkin at lumipat sa "resettlement area" na binabanggit sa nasabing kasunduan.

SAMAKATUWID, ipinagtibay ng API at ng kasapi ang mga sumusunod:

1. Ang kasapi at ang kanyang angkan ay pinagkakalooban ng API dito sa kasulatang ito ng lote o mga loteng bahayan sa nasabeng "resettlement area" na hindi kukulangin sa Two Thousand Eight Hundred Eighty (2,880) metro cuadrado;

2. Na ang lote o mga lote sa "resettlement area" para sa kasapi ay ituturo ng Samahan sangayon at alinsunod sa nasab[i]ng kasunduan;

3. Na maliban sa nasab[i]ng mga lote, ang kasapi ay pagkakalooban din ng API ng isang halaga ng pera na tinatawag dito at sa kasunduang nabanggit na "disturbance compensation" na titiyakin o totuosin alinsunod sa mga alituntunin ng nasabeng kasunduan;

4. Na malinaw sa API at kasapi na ang kasapi ay tuloyan mananatili diyan sa bahagi ng lupain na kanyang inaangkin hanggang hindi pa hinihiling ng API ang paglisan; hanggang hindi inaabot ng pagdebelop ang bahagi ng lupa na kanyang inaangkin; hanggang hindi pa handa ang lote o mga loteng bahayan sa "resettlement area" na nakalaan sa kanya; at hanggang hindi pa siya nababayaran ng kanyang "disturbance compensation";

5. Na sabay sa pagbayad ng nasabeng "disturbance compensation" ang API ay gagawa at pipirma ng kaukulang kasulatan na maglilipat sa kasapi, ng pagmamayari ng lote o mga loteng bahayan na nabanggit pero ang gastos ng pagpatala ng kasulatang x x x kasama ang bayad ng kaukulang silyo documentaryo ay sagot na ng kasapi.[12]

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[12] *Id.* at 49-51.

The said agreement prepared by petitioner and notarized by its in-house counsel clearly recognizes respondent's entitlement to the benefits stated therein. Petitioner moreover unequivocally obligated itself to extend the said benefits to respondent. Rudimentary is the principle that a contract is the law between the contracting parties.[13] Further, when the language of the contract is clear and plain or readily understandable by any ordinary reader, there is absolutely no room for interpretation or construction and the literal meaning of its stipulations shall control.[14] The Court then fully agrees with the CA's declaration that the contract "leaves no other recourse for the courts than to enforce the contractual stipulations therein, in the exact manner agreed upon and written."[15]

To evade its contractual obligations, petitioner invokes a provision in the earlier February 14, 1991 *Kasunduan* entered into by and between it and MUMI, *viz*.:

> *Na ang mga nakatira at umaangkin ng ilang bahagi ng mga nasabing lupain ay pawang mga kasapi ng SAMAHAN at ang kanikanilang mga pamilya. Samakatuwid, ang salitang kasapi ay i-intindihin dito sa kasulatang ito bilang mga kasapi ng samahan na nakatira sa, at umaan[g]kin ng mga bahagi ng mga lupain na nabanggit sa itaas*.[16]

Petitioner contends that, following this provision, respondent is disqualified from claiming, among others, a lot in the resettlement area and the disturbance compensation, because he was a mere caretaker and not a settler in the concept of an owner in the subject estate.

The Court cannot subscribe to such proposition. By its own act of acknowledging the rights of respondent (in their June 7,

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[13] *Riser Airconditioning Services Corporation v. Confield Construction Development Corporation*, G.R. No. 143273, September 20, 2004, 438 SCRA 471, 481.

[14] *Barredo v. Leaño*, G.R. No. 156627, June 4, 2004, 431 SCRA 106, 113.

[15] *Rollo*, p. 37.

[16] *Id.* at 43.

1991 *Kasunduan*) as a member of MUMI and his entitlement to not less than 2,880 sq m lot in the resettlement area and the corresponding disturbance compensation, petitioner is now estopped from claiming that he is not qualified to avail himself of the benefits in the contract.[17] The Court further notes that it was because of petitioner's representations that respondent was impelled to peacefully vacate the portion of the estate he was tilling.

Moreover, petitioner's subsequent act of granting the same contractual benefits to another member of MUMI, who was also a caretaker,[18] defeats any interpretation of the February 14, 1991 *Kasunduan* that only occupants of the estate in the concept of an owner may avail of such benefits.[19]

WHEREFORE, premises considered, the petition is *DENIED*. The August 31, 2005 Decision and the March 6, 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 72194 are *AFFIRMED*.

SO ORDERED.

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

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[17] Article 1431 of the Civil Code provides:

Art. 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

[18] *Rollo,* pp. 65-66.

[19] Article 1371 of the Civil Code provides:

Art. 1371. In order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered.

[*] In lieu of Associate Justice Diosdado M. Peralta per Raffle dated August 12, 2009.

THIRD DIVISION

[G.R. No. 173923. October 12, 2009]

PEDRO MAGO (deceased), represented by his spouse SOLEDAD MAGO, AUGUSTO MAGO (deceased), represented by his spouse NATIVIDAD MAGO, and ERNESTO MAGO, represented by LEVI MAGO, *petitioners, vs.* **JUANA Z. BARBIN,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW; THE MERE ISSUANCE OF AN EMANCIPATION PATENT DOES NOT PUT THE OWNERSHIP OF THE AGRARIAN REFORM BENEFICIARY BEYOND ATTACK AND SCRUTINY.— We do not adhere to petitioners' view. This Court has already ruled that the mere issuance of an emancipation patent does not put the ownership of the agrarian reform beneficiary beyond attack and scrutiny. Emancipation patents issued to agrarian reform beneficiaries may be corrected and cancelled for violations of agrarian laws, rules and regulations. In fact, DAR Administrative Order No. 02, series of 1994, which was issued in March 1994, enumerates the grounds for cancellation of registered Emancipation Patents or Certificates of Landownership Award.

2. ID.; ID.; PETITIONERS FAILED TO PAY THE AMORTIZATIONS TO RESPONDENT LANDOWNER IN ACCORDANCE WITH THEIR DIRECT PAYMENT SCHEME.— Under Section 3 of Executive Order No. 228 (EO 228), one of the modes of paying compensation to the landowner is by direct payment in cash or kind by the farmer-beneficiaries. In this case, petitioners entered into an agreement with respondent for a direct payment scheme embodied in the Deeds of Transfer. However, petitioners failed to pay the amortizations to respondent landowner in accordance with their agreed direct payment scheme. As found by the Court of Appeals: There is no substantial evidence on record that the petitioners had remitted the amortizations due to the landowner

in accordance with their agreed direct payment scheme embodied in their deeds of transfer. In view thereof, We have no recourse but to sustain the findings of fact of the agency below. x x x Indeed, We have scrutinized the evidentiary records but found no valid reason to depart from the challenged decision. Petitioner Pedro Mago's supposed receipts of payment to prove that he paid the amortizations due were not even attached to the records of this case. In the case of Augusto Mago, his payment of ₱3,500.00 does not clearly show that the payment was intended for the subject land. Granting that it was so, it appeared to be for initial payment only. In Ernesto Mago's case, his heirs relied on a MARO Certification stating that Juana Barbin had refused to accept their payment. It was, however, issued only on October 1, 2003 long after the filing of the complaint. While P.D. 27 aims to emancipate landless farmers, it does not also allow unjust treatment of landowners by depriving the latter of the just compensation due.

3. ID.; ID.; THE EMANCIPATION PATENTS AND THE TRANSFER CERTIFICATES OF TITLE SHOULD NOT HAVE BEEN ISSUED TO PETITIONERS WITHOUT FULL PAYMENT OF THE JUST COMPENSATION; THE CANCELLATION OF THE EMANCIPATION PATENTS IS PROPER UNDER SECTION 6 OF EO 228 WHICH PROVIDES THAT OWNERSHIP OF LANDS ACQUIRED UNDER PD 27 MAY BE TRANSFERRED ONLY AFTER THE AGRARIAN REFORM BENEFICIARY HAS FULLY PAID THE AMORTIZATION.— The Emancipation Patents and the Transfer Certificates of Title should not have been issued to petitioners without full payment of the just compensation. Under Section 2 of Presidential Decree No. 266, the DAR will issue the Emancipation Patents only after the tenant-farmers have fully complied with the requirements for a grant of title under PD 27. Although PD 27 states that the tenant-farmers are already deemed owners of the land they till, it is understood that full payment of the just compensation has to be made first before title is transferred to them. Thus, Section 6 of EO 228 provides that ownership of lands acquired under PD 27 may be transferred only after the agrarian reform beneficiary has fully paid the amortizations. In *Coruña v. Cinamin*, the Court held: As discussed above, the laws mandate the full compensation for the lands acquired under

> Pres. Decree No. 27 prior to the issuance of emancipation patents. This is understandable particularly since the emancipation patent presupposes that the grantee thereof has already complied with all the requirements prescribed by Pres. Decree No. 27. x x x While this Court commiserates with respondents in their plight, we are constrained by the explicit requirements of the laws and jurisprudence on the matter to annul the emancipation patents issued to respondents in the absence of any proof that they or the LBP has already fully paid the value of the lands put under the coverage of Pres. Decree No. 27. **The requirement is unequivocal in that the values of the lands awarded to respondents must, prior to the issuance of emancipation patents be paid in full.** In this case, both the Court of Appeals and the DARAB found that petitioners have not fully paid the amortizations for the land granted to them. The PARAD had a similar finding when it recommended that the proper recourse of respondent is to file a claim for just compensation. Clearly, the cancellation of the Emancipation Patents issued to petitioners is proper under the circumstances.

APPEARANCES OF COUNSEL

Bureau of Agrarian legal Assistance for petitioners.
Pajarillo Uybarreta & Uybarreta Law Office for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the Decision[2] dated 20 October 2005 and the Resolution dated 13 July 2006 of the Court of Appeals in CA-G.R. SP No. 87370.

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

[2] Penned by Associate Justice Jose Catral Mendoza with Associate Justices Jose L. Sabio, Jr. and Arturo G. Tayag, concurring.

The Facts

On 11 November 1994, respondent Juana Z. Barbin filed with the Provincial Agrarian Reform Adjudicator (PARAD) of Camarines Norte an action for Cancellation of Emancipation Patents, Disqualification of Tenant-Beneficiary, Repossession and Damages. Respondent alleged that she is the owner in fee simple of an irrigated riceland located in Barangay Guinacutan, Vinzons, Camarines Norte, with an area of 4.7823 hectares, and that Augusto Mago, Crispin Mago, Ernesto Mago, and Pedro Mago were tenants of the subject landholding. Respondent further alleged that petitioners violated the terms of their leasehold contracts when they failed to pay lease rentals for more than two years, which is a ground for their dispossession of the landholding.

On the other hand, petitioners alleged that the subject landholding was placed under the Operation Land Transfer program of the government pursuant to Presidential Decree No. 27 (PD 27).[3] Respondent's title, OCT No. P-4672, was then cancelled and the subject landholding was transferred to Augusto Mago,[4] Crispin Mago,[5] Ernesto Mago,[6] and Pedro Mago,[7] who were issued Emancipation Patents on 20 February 1987 by the Department of Agrarian Reform (DAR). The Transfer Certificates of Title issued to petitioners[8] emanating from the

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[3] DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF THE SOIL, TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISM THEREFOR.

[4] Emancipation Patent No. 745.

[5] Emancipation Patent No. 746.

[6] Emancipation Patent No. 747.

[7] Emancipation Patent No. 749.

[8] CA *rollo*, pp. 34-43. TCT No. EP-745 was issued to Augusto Mago covering a portion of the landholding containing an area of 8,278 square meters. TCT No. EP-747 was issued to Ernesto Mago covering a portion of the landholding containing an area of 15,310 square meters. TCT No. EP-749 was issued to Pedro Mago covering a portion of the landholding containing

Emancipation Patents were registered with the Registry of Deeds on 9 February 1989. Petitioners averred that prior to the issuance of the Emancipation Patents, they already delivered their lease rentals to respondent. They further alleged that after the issuance of the Emancipation Patents, the subject landholding ceased to be covered by any leasehold contract.

In a Decision[9] dated 30 January 1997, the PARAD denied the petition for lack of merit. The PARAD found that in her petition for retention and exemption from the coverage of the Operation Land Transfer, and cancellation of Certificates of Land Transfer, filed before the DAR, respondent admitted that aside from the 6.7434 hectares of riceland, she also owns other agricultural lands with an aggregate of 16.8826 hectares consisting of "cocolands." The PARAD held that the subject landholding is clearly covered by the Operation Land Transfer under Letter of Instruction No. 474 (LOI 474).[10] Under LOI 474, then President Ferdinand E. Marcos directed the Secretary of Agrarian Reform to place under the Land Transfer Program of the government pursuant to PD 27 all tenanted rice/corn lands with areas of seven hectares or less belonging to landowners who own other agricultural lands of more than seven hectares in aggregate areas or lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families.

The PARAD further held that pursuant to DAR Memorandum Circular No. 6, series of 1978, payment of lease rentals to landowners covered by the Operation Land Transfer shall terminate on the date the value of the land is established. Thus, the PARAD held that the proper recourse of respondent is to file a claim for just compensation.

On appeal, the Department of Agrarian Reform Adjudication Board (DARAB) reversed and set aside the PARAD Decision.

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an area of 18,221 square meters. Crispin Mago was not included as petitioner in the petition for review filed with the Court of Appeals.

[9] *Rollo*, pp. 43-49.

[10] LOI 474 was issued on 21 October 1976 by then President Ferdinand E. Marcos.

The dispositive portion of the DARAB Decision dated 18 June 2004 reads:

> WHEREFORE, premises considered, the Decision dated 30 January 1997 is hereby REVERSED and SET ASIDE and a new judgment is hereby entered:
>
> 1. ORDERING the Register of Deeds of Camarines Norte to cancel EP Nos. 745, 747, and 749 issued in the name of Augusto Mago, Ernesto Mago, and Pedro Mago respectively, and
>
> 2. DIRECTING the Municipal Agrarian Reform Officer of Vinzons, Camarines Norte, to reallocate the subject lands to qualified beneficiaries.
>
> SO ORDERED.[11]

The DARAB held that when the subject landholding was placed under the Operation Land Transfer, the tenancy relationship between the parties ceased and the tenant-beneficiaries were no longer required to pay lease rentals to the landowner. However, when petitioners entered into an agreement with respondent for a direct payment scheme embodied in the Deeds of Transfer, petitioners obligated themselves to pay their amortizations to respondent who is the landowner. The DARAB found that except for Crispin Mago, who had fully paid his tillage, petitioners defaulted in their obligation to pay their amortization for more than three consecutive years from the execution of the Deeds of Transfer in July 1991. Under DAR Administrative Order No. 2, series of 1994, one of the grounds for cancellation of registered Emancipation Patents is when there is default in the obligation to pay an aggregate of three consecutive amortizations in case of direct payment schemes. Thus, the DARAB ruled that the cancellation of the Emancipation Patents issued to petitioners is warranted in this case.

Petitioners filed a motion for reconsideration, which the DARAB denied for lack of merit. Petitioners then appealed to the Court of Appeals, which affirmed the DARAB Decision and thereafter denied petitioners' motion for reconsideration. Hence, this petition.

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[11] *Rollo*, p. 60.

The Court of Appeals' Ruling

The Court of Appeals held that the mere issuance of an Emancipation Patent to a qualified farmer-beneficiary is not absolute and can be attacked anytime upon showing of any irregularity in its issuance or non-compliance with the conditions attached to it. The Emancipation Patent is subject to the condition that amortization payments be remitted promptly to the landowner and that failure to comply with this condition is a ground for cancellation under DAR Administrative Order No. 02, series of 1994. The Court of Appeals found that petitioners failed to comply with this condition since petitioners failed to prove that they have remitted the amortizations due to the landowner in accordance with their agreed direct payment scheme embodied in the Deeds of Transfer.

The Issues

Petitioners contend that:

1. THE HONORABLE COURT OF APPEALS ERRED IN FINDING THE PETITIONERS LIABLE FOR VIOLATING DAR ADMINISTRATIVE ORDER NO. 02, SERIES OF 1994;
2. THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE HONORABLE DAR ADJUDICATOR IN ORDERING THE CANCELLATION OF THE EMANCIPATION TITLES ISSUED TO THE PETITIONERS-FARMER BENEFICIARIES DESPITE THE LAPSE OF ONE (1) YEAR WHICH RENDERS THE SAID TITLES INDEFEASIBLE PURSUANT TO THE LAW AND JURISPRUDENCE;
3. THE HONORABLE COURT OF APPEALS ERRED IN NOT CONSIDERING THE RECEIPTS EVIDENCING PAYMENTS OF THE DISPUTED AMORTIZATION WHICH WERE FORMALLY OFFERED AND CONSIDERED BY THE HONORABLE DAR PROVINCIAL ADJUDICATOR OF CAMARINES NORTE (PARAD) IN DECIDING THE CASE AS SHOWN IN THE DECISION DATED JANUARY 30, 1997.[12]

[12] *Id.* at 16.

The Ruling of the Court

We find the petition without merit.

Petitioners argue that the Emancipation Patents and Transfer Certificates of Title issued to them which were already registered with the Register of Deeds have already become indefeasible and can no longer be cancelled.

We do not adhere to petitioners' view. This Court has already ruled that the mere issuance of an emancipation patent does not put the ownership of the agrarian reform beneficiary beyond attack and scrutiny.[13] Emancipation patents issued to agrarian reform beneficiaries may be corrected and cancelled for violations of agrarian laws, rules and regulations. In fact, DAR Administrative Order No. 02, series of 1994, which was issued in March 1994, enumerates the grounds for cancellation of registered Emancipation Patents or Certificates of Landownership Award:

> Grounds for the cancellation of registered EPs [Emancipation Patents] or CLOAs [Certificates of Landownership Award] may include but not be limited to the following:
>
> 1. Misuse or diversion of financial and support services extended to the ARB [Agrarian Reform Beneficiaries]; (Section 37 of R.A. No. 6657)
> 2. Misuse of the land; (Section 22 of R.A. No. 6657)
> 3. Material misrepresentation of the ARB's basic qualifications as provided under Section 22 of R.A. No. 6657, P.D. No. 27, and other agrarian laws;
> 4. Illegal conversion by the ARB; (Cf. Section 73, Paragraphs C and E of R.A. No. 6657)
> 5. Sale, transfer, lease or other forms of conveyance by a beneficiary of the right to use or any other usufructuary right over the land acquired by virtue of being a beneficiary, in order to circumvent the provisions of Section 73 of R.A. No. 6657, P.D. No. 27, and other agrarian laws. However, if the land has been acquired under P.D. No. 27/ E.O. No. 228, ownership may be transferred after full payment of amortization by the beneficiary; (Sec. 6 of E.O. No. 228)

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[13] *Mercado v. Mercado*, G.R. No. 178672, 19 March 2009; Gabriel *v. Jamias*, G.R. No. 156482, 17 September 2008, 565 SCRA 443.

6. **Default in the obligation to pay an aggregate of three (3) consecutive amortizations in case of voluntary land transfer/ direct payment scheme, except in cases of fortuitous events and *force majeure*;**
7. Failure of the ARBs to pay for at least three (3) annual amortizations to the LBP, except in cases of fortuitous events and force majeure; (Section 26 of RA 6657)
8. Neglect or abandonment of the awarded land continuously for a period of two (2) calendar years as determined by the Secretary or his authorized representative; (Section 22 of RA 6657)
9. The land is found to be exempt/excluded from P.D. No. 27/E.O. No. 228 or CARP coverage or to be part of the landowner's retained area as determined by the Secretary or his authorized representative; and
10. Other grounds that will circumvent laws related to the implementation of agrarian reform program. (Emphasis supplied)

Under Section 3 of Executive Order No. 228 (EO 228),[14] one of the modes of paying compensation to the landowner is by direct payment in cash or kind by the farmer-beneficiaries.

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[14] EO 228, issued on 17 July 1987, provides for the manner of payment by the farmer beneficiary covered by PD 27 and the mode of compensation to the landowner. Section 3 of EO 228 reads:

> SECTION 3. Compensation shall be paid to the landowners in any of the following modes, at the point of the landowner:
>
> (a) Bond payment over ten (10) years, with ten percent (10%) of the value of the land payable immediately in cash, and the balance in the form of LBP bonds bearing market rates of interest that are aligned with 90-day treasury bill rates, net of applicable final withholding tax. One tenth of the face value of the bonds shall mature every year from the date of issuances until the tenth year.
>
> The LBP bonds issued hereunder shall be eligible for the purchase of government assets to the privatized.
>
> **(b) Direct payment in cash or kind by the farmer-beneficiaries with the terms to be mutually agreed upon by the beneficiaries and landowners and subject to the approval of the Department of Agrarian Reform;** and
>
> (c) Other modes of payment as may be prescribed or approved by the Presidential Agrarian Reform Council. (Emphasis supplied)

In this case, petitioners entered into an agreement with respondent for a direct payment scheme embodied in the Deeds of Transfer. However, petitioners failed to pay the amortizations to respondent landowner in accordance with their agreed direct payment scheme. As found by the Court of Appeals:

> There is no substantial evidence on record that the petitioners had remitted the amortizations due to the landowner in accordance with their agreed direct payment scheme embodied in their deeds of transfer. In view thereof, We have no recourse but to sustain the findings of fact of the agency below. x x x
>
> Indeed, We have scrutinized the evidentiary records but found no valid reason to depart from the challenged decision. Petitioner Pedro Mago's supposed receipts of payment to prove that he paid the amortizations due were not even attached to the records of this case. In the case of Augusto Mago, his payment of ₱3,500.00 does not clearly show that the payment was intended for the subject land. Granting that it was so, it appeared to be for initial payment only. In Ernesto Mago's case, his heirs relied on a MARO Certification stating that Juana Barbin had refused to accept their payment. It was, however, issued only on October 1, 2003 long after the filing of the complaint. While P.D. 27 aims to emancipate landless farmers, it does not also allow unjust treatment of landowners by depriving the latter of the just compensation due.[15]

Petitioners contend that the Court of Appeals erred in finding them liable for violating DAR Administrative Order No. 02, series of 1994. Well-settled is the rule that only questions of law can be raised in a petition for review under Rule 45 of the Rules of Civil Procedure.[16] The factual findings of the Court of Appeals are conclusive and cannot be reviewed on appeal, provided they are based on substantial evidence.[17] More so in this case where the findings of the Court of Appeals coincide

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

[16] Section 1, Rule 45 states that the petition shall raise only questions of law which must be distinctly set forth. *Ortega v. People*, G.R. No 177944, 24 December 2008, 575 SCRA 519.

[17] *Milestone Realty & Co. v. Court of Appeals*, 431 Phil. 119 (2002).

with those of the DARAB, an administrative body with expertise on matters within its specific and specialized jurisdiction.[18]

In the first place, the Emancipation Patents and the Transfer Certificates of Title should not have been issued to petitioners without full payment of the just compensation.[19] Under Section 2 of Presidential Decree No. 266,[20] the DAR will issue the Emancipation Patents only after the tenant-farmers have fully complied with the requirements for a grant of title under PD 27. Although PD 27 states that the tenant-farmers are already deemed owners of the land they till, it is understood that full payment of the just compensation has to be made first before title is transferred to them.[21] Thus, Section 6 of EO 228 provides that ownership of lands acquired under PD 27 may be transferred only after the agrarian reform beneficiary has fully paid the amortizations. In *Coruña v. Cinamin*,[22] the Court held:

> As discussed above, the laws mandate the full compensation for the lands acquired under Pres. Decree No. 27 prior to the issuance of emancipation patents. This is understandable particularly since the emancipation patent presupposes that the grantee thereof has already complied with all the requirements prescribed by Pres. Decree No. 27. x x x
>
> While this Court commiserates with respondents in their plight, we are constrained by the explicit requirements of the laws and jurisprudence on the matter to annul the emancipation patents issued to respondents in the absence of any proof that they or the LBP has

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[18] *Ayo-Alburo v. Matobato,* 496 Phil. 293 (2005); *Toralba v. Mercado,* 478 Phil. 563 (2004); *Padunan v. DARAB,* 444 Phil. 213 (2003).

[19] *Del Castillo v. Orciga,* G.R. No. 153850, 31 August 2006, 500 SCRA 498.

[20] PROVIDING FOR THE MECHANICS OF REGISTRATION OF OWNERSHIP AND/OR TITLE TO LAND UNDER PRESIDENTIAL DECREE NO. 27. Issued on 4 August 1973.

[21] *Paris v. Alfeche,* 416 Phil. 473 (2001), citing *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform,* G.R. Nos. 78742, 79310, 79744, and 79777, 14 July 1989, 175 SCRA 343.

[22] G.R. No. 154286, 28 February 2006, 483 SCRA 507.

already fully paid the value of the lands put under the coverage of Pres. Decree No. 27. **The requirement is unequivocal in that the values of the lands awarded to respondents must, prior to the issuance of emancipation patents be paid in full.**[23] (Emphasis supplied)

In this case, both the Court of Appeals and the DARAB found that petitioners have not fully paid the amortizations for the land granted to them. The PARAD had a similar finding when it recommended that the proper recourse of respondent is to file a claim for just compensation. Clearly, the cancellation of the Emancipation Patents issued to petitioners is proper under the circumstances.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision dated 20 October 2005 and the Resolution dated 13 July 2006 of the Court of Appeals in CA-G.R. SP No. 87370.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 174497. October 12, 2009]

HEIRS OF GENEROSO SEBE, AURELIA CENSERO SEBE and LYDIA SEBE, *petitioners, vs.* **HEIRS OF VERONICO SEVILLA and TECHNOLOGY AND LIVELIHOOD RESOURCE CENTER,** *respondents.*

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[23] *Id.* at 521-522.

SYLLABUS

1. REMEDIAL LAW; BATAS PAMBANSA 129, AS AMENDED; JURISDICTION OF THE REGIONAL TRIAL COURTS IN CIVIL CASES.— Based on the allegations and prayers of the Sebes's complaint, the law that applies to the action is *Batas Pambansa* 129, as amended. If this case were decided under the original text of *Batas Pambansa* 129 or even under its predecessor, Republic Act 296, determination of the nature of the case as a real action would have ended the controversy. Both real actions and actions incapable of pecuniary estimation fell within the exclusive original jurisdiction of the RTC. But, with the amendment of *Batas Pambansa* 129 by Republic Act 7601, the distinction between these two kinds of actions has become pivotal. The amendment expanded the exclusive original jurisdiction of the first level courts to include real actions involving property with an assessed value of less than ₱20,000.00. The power of the RTC under Section 19 of *Batas Pambansa* 129, as amended, to hear actions involving title to, or possession of, real property or any interest in it now covers only real properties with assessed value in excess of ₱20,000.00. But the RTC retained the exclusive power to hear actions the subject matter of which is not capable of pecuniary estimation. Thus– SEC. 19. *Jurisdiction in Civil Cases.* — Regional Trial Courts shall exercise exclusive original jurisdiction: (1) In all civil actions in which the subject of the litigations is incapable of pecuniary estimation. (2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (₱20,000.00) or for civil actions in Metro Manila, where such value exceeds Fifty thousand pesos (₱50,000.00) except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts; x x x.

2. ID.; ID.; JURISDICTION OF METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, AND MUNICIPAL CIRCUIT TRIAL COURTS IN CIVIL CASES.— Section 33, on the other hand provides that, if the assessed value of the real property outside Metro Manila involved in the suit is ₱20,000.00 and below, as in this case, jurisdiction over the action lies in the

first level courts. Thus— SEC. 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Civil Cases* — Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts shall exercise: x x x (3) Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00) x x x.

3. ID.; ID.; ID.; ACTION "INVOLVING TITLE TO REAL PROPERTY"; "TITLE" DISTINGUISHED FROM "CERTIFICATE OF TITLE."— The Sebes claim that their action is, first, for the declaration of nullity of the documents of conveyance that defendant Sevilla tricked them into signing and, second, for the reconveyance of the certificate of title for the two lots that Sevilla succeeded in getting. The subject of their action is, they conclude, incapable of pecuniary estimation. An action "involving title to real property" means that the plaintiff's cause of action is based on a claim that he owns such property or that he has the legal rights to have exclusive control, possession, enjoyment, or disposition of the same. Title is the "legal link between (1) a person who owns property and (2) the property itself." "Title" is different from a "certificate of title" which is the document of ownership under the Torrens system of registration issued by the government through the Register of Deeds. While title is the claim, right or interest in real property, a certificate of title is the evidence of such claim. Another way of looking at it is that, while "title" gives the owner the right to demand or be issued a "certificate of title," the holder of a certificate of title does not necessarily possess valid title to the real property. The issuance of a certificate of title does not give the owner any better title than what he actually has in law. Thus, a plaintiff's action for cancellation or nullification of a certificate of title may only be a necessary consequence of the defendant's lack of title to real property. Further, although the certificate of title may have been lost, burned, or destroyed and later on reconstituted, title subsists and remains unaffected unless it is transferred or conveyed to another or subjected to a lien or encumbrance.

4. ID.; ID.; ID.; THE PRESENT ACTION IS NOT ABOUT THE DECLARATION OF NULLITY OF THE DOCUMENTS OR THE RECONVEYANCE TO PETITIONERS OF THE CERTIFICATES OF TITLE COVERING THE TWO LOTS BUT ASCERTAINING WHICH OF THE PARTIES IS THE LAWFUL OWNER OF THE SUBJECT LOTS, JURISDICTION OVER WHICH IS DETERMINED BY THE ASSESSED VALUE OF THE LOTS; JURISDICTION LIES WITH THE MUNICIPAL TRIAL COURT SINCE THE TOTAL ASSESSED VALUE OF THE TWO LOTS SUBJECT OF THE SUIT IS ₱9,910.00.— The Sebes claim ownership because according to them, they never transferred ownership of the same to anyone. Such title, they insist, has remained with them untouched throughout the years, excepting only that in 1991 they constituted a real estate mortgage over it in defendant Sevilla's favor. The Sebes alleged that defendant Sevilla violated their right of ownership by tricking them into signing documents of absolute sale, rather than just a real estate mortgage to secure the loan that they got from him. Assuming that the Sebes can prove that they have title to or a rightful claim of ownership over the two lots, they would then be entitled, *first*, to secure evidence of ownership or certificates of title covering the same and, *second*, to possess and enjoy them. The court, in this situation, may in the exercise of its equity jurisdiction and without ordering the cancellation of the Torrens titles issued to defendant Sevilla, direct the latter to reconvey the two lots and their corresponding Torrens titles to them as true owners. The present action is, therefore, not about the declaration of the nullity of the documents or the reconveyance to the Sebes of the certificates of title covering the two lots. These would merely follow after the trial court shall have first resolved the issue of which between the contending parties is the lawful owner of such lots, the one also entitled to their possession. Based on the pleadings, the ultimate issue is whether or not defendant Sevilla defrauded the Sebes of their property by making them sign documents of conveyance rather than just a deed of real mortgage to secure their debt to him. The action is, therefore, about ascertaining which of these parties is the lawful owner of the subject lots, jurisdiction over which is determined by the assessed value of such lots. Here, the total assessed value of the two lots subject of the suit is ₱9,910.00. Clearly, this amount does

not exceed the jurisdictional threshold value of ₱20,000.00 fixed by law. The other damages that the Sebes claim are merely incidental to their main action and, therefore, are excluded in the computation of the jurisdictional amount.

APPEARANCES OF COUNSEL

Alberto P. Concha for petitioners.
Public Attorney's Office for private respondents.
Gloria D. Pilos-Quintos for Technology and Livelihood Resources Center.

D E C I S I O N

ABAD, *J.*:

This case concerns the jurisdiction of Municipal Trial Courts over actions involving real properties with assessed values of less than ₱20,000.00.

The Facts and the Case

In this petition for review on *certiorari*[1] petitioners seek to reverse the *Order*[2] dated August 8, 2006, of the Regional Trial Court (RTC) of Dipolog City, Branch 9, in Civil Case 5435, for annulment of documents, reconveyance and recovery of possession with damages. The trial court dismissed the complaint for lack of jurisdiction over an action where the assessed value of the properties is less than ₱20,000.00. Petitioners asked for reconsideration[3] but the court denied it.[4]

On August 10, 1999 plaintiff spouses Generoso and Aurelia Sebe and their daughter, Lydia Sebe, (the Sebes) filed with the RTC of Dipolog City[5] a complaint against defendants Veronico

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[1] *Rollo*, pp. 16-33.

[2] *Id.* at 89-91.

[3] *Id.* at 92-97.

[4] *Id.* at 98-100.

[5] Branch 9.

Sevilla and Technology and Livelihood Resources Center for Annulment of Document, Reconveyance and Recovery of Possession of two lots, which had a total assessed value of ₱9,910.00, plus damages.[6] On November 25, 1999 they amended their complaint[7] to address a deed of confirmation of sale that surfaced in defendant Sevilla's Answer[8] to the complaint. The Sebes claimed that they owned the subject lots but, through fraud, defendant Sevilla got them to sign documents conveying the lots to him. In his Answer[9] Sevilla insisted that he bought the lots from the Sebes in a regular manner.

While the case was pending before the RTC, plaintiff Generoso Sebe died so his wife and children substituted him.[10] Parenthetically, with defendant Veronico Sevilla's death in 2006, his heirs substituted him as respondents in this case.[11]

On August 8, 2006 the RTC dismissed the case for lack of jurisdiction over the subject matter considering that the ultimate relief that the Sebes sought was the reconveyance of title and possession over two lots that had a total assessed value of less than ₱20,000.00. Under the law,[12] said the RTC, it has jurisdiction over such actions when the assessed value of the property exceeds ₱20,000.00,[13] otherwise, jurisdiction shall be with the first level courts.[14] The RTC concluded that the Sebes should have filed

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[6] *Rollo*, pp. 37-44.

[7] Records, pp. 31-40.

[8] *Rollo*, pp. 54-55.

[9] *Id.*

[10] *Id.* at 86.

[11] *Id.* at 87.

[12] The Judiciary Reorganization Act of 1980 (B.P. Blg. 129, as amended).

[13] B.P. 129, Sec. 19. *Jurisdiction in civil cases* — Regional Trial Courts shall exercise exclusive original jurisdiction: x x x (2) In all civil actions which involve the title to or possession of real property or any interest therein where the assessed value of the property exceeds Twenty Thousand Pesos (₱20,000.00) x x x.

[14] *Id.*, Sec. 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Civil Cases* – Metropolitan

their action with the Municipal Trial Court (MTC) of Dipolog City.

On August 22, 2006 the Sebes filed a motion for reconsideration.[15] They pointed out that the RTC mistakenly classified their action as one involving title to or possession of real property when, in fact, it was a case for the annulment of the documents and titles that defendant Sevilla got. Since such an action for annulment was incapable of pecuniary estimation, it squarely fell within the jurisdiction of the RTC as provided in Section 19 of *Batas Pambansa* 129, as amended.

To illustrate their point, the Sebes drew parallelisms between their case and the cases of *De Rivera v. Halili*[16] and *Copioso v. Copioso*.[17]

The *De Rivera* involved the possession of a fishpond. The Supreme Court there said that, since it also had to resolve the issue of the validity of the contracts of lease on which the opposing parties based their rights of possession, the case had been transformed from a mere detainer suit to one that was incapable of pecuniary estimation. Under Republic Act 296 or the Judiciary Act of 1948, as amended, civil actions, which were incapable of pecuniary estimation, came under the original jurisdiction of the Court of First Instance (now the RTC).[18]

Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts shall exercise: x x x (3) Exclusive original jurisdiction in all civil actions which involve title to or possession of real property or any interest therein where the assessed value of the property or any interest therein does not exceed Twenty Thousand Pesos (₱20,000.00) x x x.

[15] *Rollo*, pp. 92-97.

[16] 118 Phil. 901 (1963).

[17] 439 Phil. 936, 943 (2002): x x x the issue of title, ownership and/or possession thereof is intertwined with the issue of annulment of sale and reconveyance hence within the ambit of the jurisdiction of the RTC. The assessed value of the parcels of land thus becomes merely an incidental matter to be dealt with by the court, when necessary, in the resolution of the case but is not determinative of its jurisdiction.

[18] THE JUDICIARY ACT OF 1948, Sec. 44. *Original jurisdiction.* Courts of First Instance shall have original jurisdiction: (a) In all civil actions

The Sebes pointed out that, like *De Rivera*, the subject of their case was "incapable of pecuniary estimation" since they asked the court, not only to resolve the dispute over possession of the lots, but also to rule on the validity of the affidavits of quitclaim, the deeds of confirmation of sale, and the titles over the properties.[19] Thus, the RTC should try the case.

The *Copioso*, on the other hand, involves the reconveyance of land the assessed value of which was allegedly ₱3,770.00. The Supreme Court ruled that the case comprehended more than just the title to, possession of, or any interest in the real property. It sought the annulment of contracts, reconveyance or specific performance, and a claim for damages. In other words, there had been a joinder of causes of action, some of which were *incapable of pecuniary estimation*. Consequently, the case properly fell within the jurisdiction of the RTC. Here, petitioners argued that their case had the same causes of actions and reliefs as those involved in *Copioso*. Thus, the RTC had jurisdiction over their case.

On August 31, 2006 the RTC denied the Sebes's motion for reconsideration, pointing out that the *Copioso* ruling had already been overturned by *Spouses Huguete v. Spouses Embudo*.[20] Before the *Huguete*, cancellation of titles, declaration of deeds of sale as null and void and partition were actions incapable of

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in which the subject of the litigation is not capable of pecuniary estimation; x x x (June 17, 1948).

[19] *Rollo*, p. 94.

[20] 453 Phil. 170 (2003): Respondent Teofredo bought land in Cebu. He then sold a portion to spouses Huguete, for ₱15,000.00. The Transfer Certificate of Title (TCT), however, only showed him as owner. He refused to partition the lot. Spouses Huguete filed a complaint in 2001 before the RTC for annulment of TCT, tax declaration and deed of sale, partition, damages and attorney's fees. Teofredo moved to dismiss the case for lack of jurisdiction over the subject matter. The RTC dismissed the complaint. The trial court also denied reconsideration. Spouses Huguete filed a petition for review on *certiorari*. The Supreme Court ruled that since the ultimate objective of the petitioners was to obtain title to real property, it should be filed in the proper court having jurisdiction over the assessed value of the property. Thus, the RTC correctly ruled that it had no jurisdiction.

pecuniary estimation. Now, however, the jurisdiction over actions of this nature, said the RTC, depended on the valuation of the properties. In this case, the MTC had jurisdiction because the assessed value of the lots did not exceed ₱20,000.00.

The Issue

The issue in this case is whether or not the Sebes's action involving the two lots valued at less than ₱20,000.00 falls within the jurisdiction of the RTC.

The Court's Ruling

Whether a court has jurisdiction over the subject matter of a particular action is determined by the plaintiff's allegations in the complaint and the principal relief he seeks in the light of the law that apportions the jurisdiction of courts.[21]

The gist of the Sebes's complaint is that they had been the owner for over 40 years of two unregistered lots[22] in Dampalan, San Jose, Dipolog City, covered by Tax Declaration 012-239, with a total assessed value of ₱9,910.00.[23] On June 3, 1991 defendant Sevilla caused the Sebes to sign documents entitled affidavits of quitclaim.[24] Being illiterate, they relied on Sevilla's explanation that what they signed were "deeds of real estate mortgage" covering a loan that they got from him.[25] And, although the documents which turned out to be deeds conveying ownership over the two lots to Sevilla for ₱10,000.00[26] were notarized,

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[21] *Gonzales v. Lacap*, G.R. No. 180730, December 11, 2008, citing *Quinagoran v. Court of Appeals*, G.R. No. 155179, August 24, 2007, 531 SCRA 104, 113-114; *Baltazar v. Ombudsman*, G.R. No. 136433, December 6, 2006, 510 SCRA 74, 89-90; *Pascual v. Beltran*, G.R. No. 129318, October 27, 2006, 505 SCRA 545.

[22] Records, p. 34, par. 12 of the Amended Complaint.

[23] *Id.* at 31-32, par. 4.

[24] *Id.* at 32-33, par. 5 and 6.

[25] *Id.* at 33, par. 8.

[26] *Id.* at 32-33, par. 5 and 6.

the Sebes did not appear before any notary public.[27] Using the affidavits of quitclaim, defendant Sevilla applied for[28] and obtained free patent titles covering the two lots on September 23, 1991.[29] Subsequently, he mortgaged the lots to defendant Technology and Livelihood Resource Center for ₱869,555.00.[30]

On December 24, 1991 the Sebes signed deeds of confirmation of sale covering the two lots.[31] Upon closer examination, however, their signatures had apparently been forged.[32] The Sebes were perplexed with the reason for making them sign such documents to confirm the sale of the lots when defendant Sevilla already got titles to them as early as September.[33] At any rate, in 1992, defendant Sevilla declared the lots for tax purposes under his name.[34] Then, using force and intimidation, he seized possession of the lots from their tenants[35] and harvested that planting season's yield[36] of coconut and *palay* worth ₱20,000.00.[37]

Despite demands by the Sebes, defendant Sevilla refused to return the lots, forcing them to hire a lawyer[38] and incur expenses of litigation.[39] Further the Sebes suffered loss of earnings over the years.[40] They were also entitled to moral[41] and exemplary

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[27] *Id.* at 33, par. 7.

[28] *Id.* at 35, par. 22.

[29] *Id.*

[30] *Id.* at 34, par. 14.

[31] *Id.* at 33, par. 10.

[32] *Id.* at 33-34, par. 11.

[33] *Id.*

[34] *Id.* at 35, par. 21.

[35] *Id.* at 33, par. 9.

[36] *Id.* at 35-36, par. 23.

[37] *Id.* at 36, par. 25.

[38] *Id.* at 37, par. 33.

[39] *Id.*

[40] *Id.* at 36-37, par. 25 and 30.

[41] *Id.*, par. 28 and 31.

damages.[42] They thus asked the RTC a) to declare void the affidavits of quitclaim and the deeds of confirmation of sale in the case; b) to declare the Sebes as lawful owners of the two lots; c) to restore possession to them; and d) to order defendant Sevilla to pay them ₱140,000.00 in lost produce from June 3, 1991 to the date of the filing of the complaint, ₱30,000.00 in moral damages, ₱100,000.00 in attorney's fee, ₱30,000.00 in litigation expenses, and such amount of exemplary damages as the RTC might fix.[43]

Based on the above allegations and prayers of the Sebes's complaint, the law that applies to the action is *Batas Pambansa* 129, as amended. If this case were decided under the original text of *Batas Pambansa* 129 or even under its predecessor, Republic Act 296, determination of the nature of the case as a real action would have ended the controversy. Both real actions and actions incapable of pecuniary estimation fell within the exclusive original jurisdiction of the RTC.

But, with the amendment of *Batas Pambansa* 129 by Republic Act 7601, the distinction between these two kinds of actions has become pivotal. The amendment expanded the exclusive original jurisdiction of the first level courts to include real actions involving property with an assessed value of less than ₱20,000.00.[44]

The power of the RTC under Section 19 of *Batas Pambansa* 129,[45] as amended,[46] to hear actions involving title to, or possession of, real property or any interest in it now covers only real properties with assessed value in excess of ₱20,000.00.

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[42] *Id.* at 37, par. 32.

[43] *Id.* at 36.

[44] *Batas Pambansa* 129, Sec. 33 (3).

[45] The Judiciary Reorganization Act of 1980.

[46] An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, Amending for the Purpose *Batas Pambansa* Blg. 129, otherwise Known as the "Judiciary Reorganization Act of 1980."

But the RTC retained the exclusive power to hear actions the subject matter of which is not capable of pecuniary estimation. Thus—

SEC. 19. *Jurisdiction in Civil Cases.* — Regional Trial Courts shall exercise exclusive original jurisdiction:

(1) In all civil actions in which the subject of the litigations is incapable of pecuniary estimation.

(2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (₱20,000.00) or for civil actions in Metro Manila, where such value exceeds Fifty thousand pesos (₱50,000.00) except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts; x x x.

Section 33, on the other hand provides that, if the assessed value of the real property outside Metro Manila involved in the suit is ₱20,000.00 and below, as in this case, jurisdiction over the action lies in the first level courts. Thus—

SEC. 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Civil Cases* — Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts shall exercise:

x x x x x x x x x

(3) Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00) x x x.

But was the Sebes's action one involving title to, or possession of, real property or any interest in it or one the subject of which is incapable of pecuniary estimation?

The Sebes claim that their action is, first, for the declaration of nullity of the documents of conveyance that defendant Sevilla

tricked them into signing and, second, for the reconveyance of the certificate of title for the two lots that Sevilla succeeded in getting. The subject of their action is, they conclude, incapable of pecuniary estimation.

An action "involving title to real property" means that the plaintiff's cause of action is based on a claim that he owns such property or that he has the legal rights to have exclusive control, possession, enjoyment, or disposition of the same.[47] Title is the "legal link between (1) a person who owns property and (2) the property itself."[48]

"Title" is different from a "certificate of title" which is the document of ownership under the Torrens system of registration issued by the government through the Register of Deeds.[49] While title is the claim, right or interest in real property, a certificate of title is the evidence of such claim.

Another way of looking at it is that, while "title" gives the owner the right to demand or be issued a "certificate of title," the holder of a certificate of title does not necessarily possess valid title to the real property. The issuance of a certificate of title does not give the owner any better title than what he actually has in law.[50] Thus, a plaintiff's action for cancellation or nullification of a certificate of title may only be a necessary consequence of the defendant's lack of title to real property. Further, although the certificate of title may have been lost, burned, or destroyed and later on reconstituted, title subsists and remains unaffected unless it is transferred or conveyed to another or subjected to a lien or encumbrance.[51]

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[47] *Guaranteed Homes, Inc. v. Heirs of Valdez*, G.R. No. 171531, January 30, 2009, citing *Evangelista v. Santiago*, 497 Phil. 269, 291 (2005).

[48] Black's Law Dictionary, 8th Edition, p. 1522, cited in *Manotok IV v. Heirs of Barque*, G.R. Nos. 162335 & 162605, December 18, 2008.

[49] *Manotok IV v. Heirs of Barque*, *supra*, citing *Philippine National Bank v. Intermediate Appellate Court*, 257 Phil. 748, 751 (1989).

[50] *Agne v. The Director of Lands*, G.R. No. L-40399, February 6, 1990, 181 SCRA 793, 809.

[51] *Manotok IV v. Heirs of Barque*, *supra* note 48.

Nestled between what distinguishes a "title" from a "certificate of title" is the present controversy between the Sebes and defendant Sevilla. Which of them has valid title to the two lots and would thus be legally entitled to the certificates of title covering them?

The Sebes claim ownership because according to them, they never transferred ownership of the same to anyone. Such title, they insist, has remained with them untouched throughout the years, excepting only that in 1991 they constituted a real estate mortgage over it in defendant Sevilla's favor. The Sebes alleged that defendant Sevilla violated their right of ownership by tricking them into signing documents of absolute sale, rather than just a real estate mortgage to secure the loan that they got from him.

Assuming that the Sebes can prove that they have title to or a rightful claim of ownership over the two lots, they would then be entitled, *first*, to secure evidence of ownership or certificates of title covering the same and, *second*, to possess and enjoy them. The court, in this situation, may in the exercise of its equity jurisdiction and without ordering the cancellation of the Torrens titles issued to defendant Sevilla, direct the latter to reconvey the two lots and their corresponding Torrens titles to them as true owners.[52]

The present action is, therefore, not about the declaration of the nullity of the documents or the reconveyance to the Sebes of the certificates of title covering the two lots. These would merely follow after the trial court shall have first resolved the issue of which between the contending parties is the lawful owner of such lots, the one also entitled to their possession. Based on the pleadings, the ultimate issue is whether or not defendant Sevilla defrauded the Sebes of their property by making them sign documents of conveyance rather than just a deed of real mortgage to secure their debt to him. The action is, therefore, about ascertaining which of these parties is the lawful owner of

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[52] *Vital v. Anore*, 90 Phil. 855, 859 (1952), cited in *Heirs of Bituin v. Caoleng, Sr.*, G.R. No. 157567, August 10, 2007, 529 SCRA 747, 762.

the subject lots, jurisdiction over which is determined by the assessed value of such lots.

Here, the total assessed value of the two lots subject of the suit is ₱9,910.00. Clearly, this amount does not exceed the jurisdictional threshold value of ₱20,000.00 fixed by law. The other damages that the Sebes claim are merely incidental to their main action and, therefore, are excluded in the computation of the jurisdictional amount.

WHEREFORE, premises considered, the petition is *DISMISSED*. The *Order* dated August 8, 2006, of the Regional Trial Court of Dipolog City, Branch 9, in Civil Case 5435, is *AFFIRMED*.

SO ORDERED.

Quisumbing, Carpio Morales, Nachura,[*] and *Brion, JJ.*, concur.

THIRD DIVISION

[G.R. No. 177710. October 12, 2009]

SPS. RAMON LEQUIN and VIRGINIA LEQUIN, *petitioners, vs.* **SPS. RAYMUNDO VIZCONDE and SALOME LEQUIN VIZCONDE,** *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; ESSENTIAL ELEMENTS; REQUISITES OF CONSENT; INTELLIGENCE IN

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[*] Designated as additional member in lieu of Associate Justice Mariano C. Del Castillo, per Special Order No. 730 dated October 5, 2009.

CONSENT IS VITIATED BY ERROR, FREEDOM BY VIOLENCE, INTIMIDATION OR UNDUE INFLUENCE AND SPONTANEITY BY FRAUD.— Anent the first main issue as to whether the *Kasulatan* over the 512-square meter lot is voidable for vitiated consent, the answer is in the affirmative. A contract, as defined in the Civil Code, is a meeting of minds, with respect to the other, to give something or to render some service. For a contract to be valid, it must have three essential elements: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation which is established. The requisites of consent are (1) it should be intelligent or with an exact notion of the matter to which it refers; (2) it should be free; and (3) it should be spontaneous. In *De Jesus v. Intermediate Appellate Court*, it was explained that intelligence in consent is vitiated by error, freedom by violence, intimidation or undue influence, and spontaneity by fraud.

2. ID.; ID.; ID.; WHEN CONSENT IS GIVEN THROUGH FRAUD, THE CONTRACT IS VOIDABLE.— Article (Art.) 1330 of the Civil Code provides that when consent is given through fraud, the contract is voidable. Tolentino defines fraud as "every kind of deception whether in the form of insidious machinations, manipulations, concealments or misrepresentations, for the purpose of leading another party into error and thus execute a particular act." Fraud has a "determining influence" on the consent of the prejudiced party, as he is misled by a false appearance of facts, thereby producing error on his part in deciding whether or not to agree to the offer. One form of fraud is misrepresentation through insidious words or machinations. Under Art. 1338 of the Civil Code, there is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which without them he would not have agreed to. Insidious words or machinations constituting deceit are those that ensnare, entrap, trick, or mislead the other party who was induced to give consent which he or she would not otherwise have given. Deceit is also present when one party, by means of concealing or omitting to state material facts, with intent to deceive, obtains consent of the other party without which, consent could not have been given. Art. 1339 of the Civil Code is explicit that failure to disclose facts when there is a

duty to reveal them, as when the parties are bound by confidential relations, constitutes fraud.

3. ID.; ID.; ID.; ACTUAL FRAUD IS PRESENT IN CASE AT BAR; IT IS CLEAR AS A DAY THAT THERE WAS DECEPTION ON THE PART OF RESPONDENT WHEN HE MISREPRESENTED TO PETITIONERS THAT THE 1,012-SQUARE METER LOT HE BOUGHT FROM THE VENDOR IS A SEPARATE AND DISTINCT LOT FROM THE 10,115-SQUARE METER LOT PETITIONERS BOUGHT FROM THE SAME VENDOR.— It is clear that actual fraud is present in this case. The sale between petitioners and de Leon over the 10,115 square-meter lot was negotiated by respondent Raymundo Vizconde. As such, Raymundo was fully aware that what petitioners bought was the entire 10,115 square meters and that the 1,012-square meter lot which he claims he also bought from de Leon actually forms part of petitioners' lot. It cannot be denied by respondents that the lot which they actually bought, based on the unrebutted testimony and statement of de Leon, is the dried up canal which is adjacent to petitioners' 10,115-square meter lot. Considering these factors, it is clear as day that there was deception on the part of Raymundo when he misrepresented to petitioners that the 1,012-square meter lot he bought from de Leon is a separate and distinct lot from the 10,115-square meter lot the petitioners bought from de Leon. Raymundo concealed such material fact from petitioners, who were convinced to sign the sale instrument in question and, worse, even pay PhP 50,000 for the 500 square-meter lot which petitioners actually own in the first place.

4. ID.; ID.; ID.; PETITIONERS' CONSENT WAS VITIATED BY FRAUD OR FRAUDULENT MACHINATIONS OF RESPONDENT; BELIEVING THAT THE VENDOR INDEED SOLD A 1,012-SQUARE METER PORTION OF THE SUBJECT PROPERTY TO RESPONDENTS, PETITIONERS SIGNED THE CONTRACT OF SALE BASED ON RESPONDENTS REPRESENTATIONS.— There was vitiated consent on the part of petitioners. There was fraud in the execution of the contract used on petitioners which affected their consent. Petitioners' reliance and belief on the wrongful claim by respondents operated as a concealment of a material fact in their agreeing to and in readily executing the contract of sale, as advised and proposed by a notary public.

Believing that Carlito de Leon indeed sold a 1,012-square meter portion of the subject property to respondents, petitioners signed the contract of sale based on respondents' representations. Had petitioners known, as they eventually would sometime in late 2000 or early 2001 when they made the necessary inquiry from Carlito de Leon, they would not have entered or signed the contract of sale, much less pay PhP 50,000 for a portion of the subject lot which they fully own. Thus, petitioners' consent was vitiated by fraud or fraudulent machinations of Raymundo. In the eyes of the law, petitioners are the rightful and legal owners of the subject 512 square-meter lot anchored on their purchase thereof from de Leon. This right must be upheld and protected.

5. ID.; ID.; SALES; THE CONTRACT OF SALE ON THE 512-SQUARE METER PORTION IS SIMULATED AND UNSUPPORTED BY ANY CONSIDERATION.— The contract of sale or *Kasulatan* states that respondents paid petitioners PhP 15,000 for the 512-square meter portion, thus: *Na kaming magasawang Ramon Lequin at Virginia R. Lequin, nawang may sapat na gulang, pilipino at nakatira sa 9 Diamond Court, Brixton Ville Subdivision, Camarin, Kalookan City,* ***alang-alang sa halagang LABINGLIMANG LIBONG PISO (₱ 15,000.00) salaping pilipino na binayaran sa amin ng buong kasiyahang loob namin ng magasawang Raymundo Vizconde at Salome Lequin****, nawang may sapat na gulang, pilipino at nakatira sa Sto. Rosario, Aliaga, Nueva Ecija, ay amin naman ngayon inilipat, ibinigay at ipinagbili ng bilihang tuluyan sa naulit na magasawang Raymundo Vizconde at Salome Lequin, at sa kanilang mga tagapagmana ang x x x.* On its face, the above contract of sale appears to be supported by a valuable consideration. We, however, agree with the trial court's finding that this is a simulated sale and unsupported by any consideration, for respondents never paid the PhP 15,000 purported purchase price.

6. ID.; ID.; ID.; RECORD IS BEREFT OF ANY PROOF OF PAYMENT BY RESPONDENTS; WHERE A DEED OF SALE STATES THAT THE PURCHASE PRICE HAS BEEN PAID BUT IN FACT HAS NEVER BEEN PAID, THE DEED OF SALE IS VOID *AB INITIO* FOR LACK OF CONSIDERATION.— The evidence of petitioners was uncontroverted as respondents failed to adduce any proof that

they indeed paid PhP 15,000 to petitioners. Indeed, having asserted their purchase of the 512-square meter portion of petitioners based on the *Kasulatan*, it behooves upon respondents to prove such affirmative defense of purchase. Unless the party asserting the affirmative defense of an issue sustains the burden of proof, his or her cause will not succeed. If he or she fails to establish the facts of which the matter asserted is predicated, the complainant is entitled to a verdict or decision in his or her favor. In the instant case, the record is bereft of any proof of payment by respondents and, thus, their affirmative defense of the purported purchase of the 512-square meter portion fails. Thus, the clear finding of the trial court: 2. x x x [I]t was established by the plaintiffs [petitioners] that they were the ones who paid the defendants the amount of FIFTY THOUSAND PESOS (Php50,000.00) and execute a deed of sale also in favor of the defendants. In a simple logic, where can you find a contract that a VENDOR will convey his real property and at the same time pay the VENDEE a certain amount of money without receiving anything in return? There can be no doubt that the contract of sale or *Kasulatan* lacked the essential element of consideration. It is a well-entrenched rule that where the deed of sale states that the purchase price has been paid but in fact has never been paid, the deed of sale is null and void *ab initio* for lack of consideration. Moreover, Art. 1471 of the Civil Code, which provides that "if the price is simulated, the sale is void," also applies to the instant case, since the price purportedly paid as indicated in the contract of sale was simulated for no payment was actually made. Consideration and consent are essential elements in a contract of sale. Where a party's consent to a contract of sale is vitiated or where there is lack of consideration due to a simulated price, the contract is null and void *ab initio*.

7. ID.; ID.; ID.; ₱50,000.00 PAID BY PETITIONERS TO RESPONDENTS AS CONSIDERATION FOR THE TRANSFER OF THE LOT MUST BE RESTORED TO THE FORMER TO PREVENT UNJUST ENRICHMENT FROM ENSUING.— The PhP 50,000 paid by petitioners to respondents as consideration for the transfer of the 500-square meter lot to petitioners must be restored to the latter. Otherwise, an unjust enrichment situation ensues. The facts clearly show that the 500-square meter lot is legally owned by petitioners as shown by the testimony of de Leon; therefore, they have no

legal obligation to pay PhP 50,000 therefor. Art. 22 of the Civil Code provides that "every person who through an act or performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him." Considering that the 512 square-meter lot on which respondents' house is located is clearly owned by petitioners, then the Court declares petitioners' legal ownership over said 512 square-meter lot. The amount of PhP 50,000 should only earn interest at the legal rate of 6% per annum from the date of filing of complaint up to finality of judgment and not 12% since such payment is neither a loan nor a forbearance of credit. After finality of decision, the amount of PhP 50,000 shall earn interest of 12% per annum until fully paid.

APPEARANCES OF COUNSEL

Bauto Bauto and Flores Law Offices and *Cesar G. Dela Fuente III* for petitioners.

Norberto L. Cajucom for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal under Rule 45 from the Decision[1] dated July 20, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 83595, which declared the *Kasulatan ng Bilihang Tuluyan ng Lupa*[2] (*Kasulatan*) valid as between the parties, but required respondents to return the amount of PhP 50,000 to petitioners. Also assailed is the March 30, 2007 CA Resolution[3] denying petitioners' motion for reconsideration.

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[1] *Rollo*, pp. 55-63. Penned by Associate Justice Eliezer R. Delos Santos and concurred in by Associate Justices Fernanda Lampas Peralta and Myrna Dimaranan Vidal.

[2] *Id.* at 88.

[3] *Id.* at 65.

The Facts

Petitioner Ramon Lequin, husband of petitioner Virginia Lequin, is the brother of respondent Salome L. Vizconde and brother-in-law of respondent Raymundo Vizconde. With this consanguine and affinity relation, the instant case developed as follows:

In 1995, petitioners, residents of Diamond Court, Brixton Ville Subdivision, Camarin, Caloocan City, bought the subject lot consisting of 10,115 square meters from one Carlito de Leon (de Leon). The sale was negotiated by respondent Raymundo Vizconde. The subject lot is located near the Sto. Rosario to Magsaysay road in Aliaga, Nueva Ecija. Adjacent thereto and **located in between the subject lot and the road is a dried up canal** (or ***sapang patay*** in the native language).

In 1997, respondents represented to petitioners that they had also bought from Carlito de Leon a 1,012-square meter lot adjacent to petitioners' property and built a house thereon. As later confirmed by de Leon, however, the 1,012-square meter lot claimed by respondents is part of the 10,115-square meter lot petitioners bought from him. Petitioners believed the story of respondents, since it was Raymundo who negotiated the sale of their lot with de Leon. With the consent of respondents, petitioners then constructed their house on the 500-square meter half-portion of the 1,012 square-meter lot claimed by respondents, as this was near the road. Respondents' residence is on the remaining 512 square meters of the lot.

Given this situation where petitioners' house stood on a portion of the lot allegedly owned by respondents, petitioners consulted a lawyer, who advised them that the 1,012-square meter lot be segregated from the subject lot whose title they own and to make it appear that they are selling to respondents 512 square meters thereof. This sale was embodied in the February 12, 2000 *Kasulatan* where it was made to appear that respondents paid PhP 15,000 for the purchase of the 512-square meter portion of the subject lot. In reality, the consideration of PhP 15,000 was not paid to petitioners. Actually, it was petitioners who

paid respondents PhP 50,000 for the 500-square meter portion where petitioners built their house on, believing respondents' representation that the latter own the 1,012-square meter lot.

In July 2000, petitioners tried to develop the dried up canal located between their 500-square meter lot and the public road. Respondents objected, claiming ownership of said dried up canal or *sapang patay*.

This prompted petitioners to look into the ownership of the dried up canal and the 1,012 square-meter lot claimed by respondents. Carlito de Leon told petitioners that what he had sold to respondents was the dried up canal or *sapang patay* and that the 1,012-square meter lot claimed by respondents really belongs to petitioners.

Thus, on July 13, 2001, petitioners filed a Complaint[4] for *Declaration of Nullity of Contract, Sum of Money and Damages* against respondents with the Regional Trial Court (RTC), Branch 28 in Cabanatuan City, praying, among others, for the declaration of the February 12, 2000 *Kasulatan* as null and void *ab initio*, the return of PhP 50,000 they paid to respondents, and various damages. The case was docketed as Civil Case No. 4063.

The Ruling of the RTC

On July 5, 2004, after due trial on the merits with petitioners presenting three witnesses and respondents only one witness, the trial court rendered a Decision[5] in favor of petitioners. The decretal portion reads:

WHEREFORE, viewed from the foregoing, judgment is hereby rendered in favor of the plaintiffs and against the defendants as follows:

1. Declaring the KASULATAN NG TULUYANG BILIHAN dated February 12, 2000 as NULL and VOID; and

2. Ordering the defendants:

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[4] *Id.* at 90-95.

[5] *Id.* at 97-104. Penned by Presiding Judge Tomas B. Talavera.

(a) to return to the plaintiffs the amount of FIFTY THOUSAND PESOS which they have paid in the simulated deed of sale plus an interest of 12% per annum to commence from the date of the filing of this case;

(b) To pay the plaintiffs moral damages in the amount of Php50,000.00;

(c) To pay exemplary damages of Php50,000.00;

(d) To pay attorney's fees in the amount of Php10,000.00; and

(e) To pay the costs of suit.

SO ORDERED.[6]

The RTC found the *Kasulatan* allegedly conveying 512 square meters to respondents to be null and void due to: (1) the vitiated consent of petitioners in the execution of the simulated contract of sale; and (2) lack of consideration, since it was shown that while petitioners were ostensibly conveying to respondents 512 square meters of their property, yet the consideration of PhP 15,000 was not paid to them and, in fact, they were the ones who paid respondents PhP 50,000. The RTC held that respondents were guilty of fraudulent misrepresentation.

Aggrieved, respondents appealed the above RTC Decision to the CA.

The Ruling of the CA

The appellate court viewed the case otherwise. On July 20, 2006, it rendered the assailed Decision granting respondents' appeal and declaring as valid the *Kasulatan*. The *fallo* reads:

WHEREFORE, premises considered, the Appeal is GRANTED. The Kasulatan ng Bilihang Tuluyan dated February 12, 2000 is declared valid. However, Spouses Raymundo Vizconde and Salome Lequin Vizconde are hereby ordered to return to the plaintiffs the amount of ₱50,000.00 without interest.

SO ORDERED.[7]

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[6] *Id.* at 104.

[7] *Id.* at 62.

In reversing and vacating the RTC Decision, the CA found no simulation in the contract of sale, *i.e.*, *Kasulatan*. Relying on *Manila Banking Corporation v. Silverio*,[8] the appellate court pointed out that an absolutely simulated contract takes place when the parties do not intend at all to be bound by it, and that it is characterized by the fact that the apparent contract is not really desired or intended to produce legal effects or in any way alter the juridical situation of the parties. It read the sale contract (*Kasulatan*) as clear and unambiguous, for respondents (spouses Vizconde) were the buyers and petitioners (spouses Lequin) were the sellers. Such being the case, petitioners are, to the CA, the owners of the 1,012-square meter lot, and as owners they conveyed the 512-square meter portion to respondents.

The CA viewed petitioners' claim that they executed the sale contract to make it appear that respondents bought the property as mere gratuitous allegation. Besides, the sale contract was duly notarized with respondents claiming the 512-square meter portion they bought from petitioners and not the whole 1,012-square meter lot as alleged by petitioners.

Moreover, the CA dismissed allegations of fraud and machinations against respondents to induce petitioners to execute the sale contract, there being no evidence to show how petitioners were defrauded and much less the machinations used by respondents. It ratiocinated that the allegation of respondents telling petitioners that they own the 1,012-square meter lot and for which petitioners sold them 512 square meters thereof does not fall in the concept of fraud. Anent the PhP 50,000 petitioners paid to respondents for the 500-square meter portion of the 1,012-square meter lot claimed by respondents, the CA ruled that the receipt spoke for itself and, thus, required respondents to return the amount to petitioners.

On March 30, 2007, the CA denied petitioners' Motion for Reconsideration of the above decision through the assailed resolution. Hence, petitioners went to this Court.

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[8] G.R. No. 132887, August 11, 2005, 466 SCRA 438.

The Issues

I

THE HONORABLE COURT OF APPEALS, WITH ALL DUE RESPECT, ERRED IN NOT CLEARLY STATING IN THE ASSAILED DECISION AND RESOLUTION THE FACTS AND LAW ON WHICH THE SAME WERE BASED;

II

THE HONORABLE COURT OF APPEALS, WITH ALL DUE RESPECT, ERRED IN NOT GIVING DUE CREDENCE TO THE FINDINGS OF FACTS OF THE TRIAL COURT AND HOW THE LATTER APPRECIATED THE TESTIMONIES GIVEN BY THE WITNESSES;

III

THE HONORABLE COURT OF APPEALS, WITH ALL DUE RESPECT, ERRED IN FINDING THAT THERE WAS NO FRAUD ON THE PART OF THE RESPONDENT-VIZCONDES;

IV

THE HONORABLE COURT OF APPEALS, WITH ALL DUE RESPECT, ERRED IN CONSIDERING THAT THE KASULATAN NG BILIHANG TULUYAN IS A VALID CONTRACT OF SALE;

V

THE HONORABLE COURT OF APPEALS, WITH ALL DUE RESPECT, ERRED IN NOT CONSIDERING THAT THE RESPONDENTS DID NOT HAVE THE FINANCIAL CAPACITY TO PURCHASE THE SUBJECT LAND FROM THE PETITIONERS.[9]

The Court's Ruling

The petition is meritorious.

The issues boil down to two core questions: whether or not the *Kasulatan* covering the 512 square-meter lot is a valid contract of sale; and who is the legal owner of the other 500 square-meter lot.

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[9] *Rollo*, pp. 25-26.

We find for petitioners.

The trial court found, *inter alia*, lack of consideration in the contract of sale while the appellate court, in reversing the decision of the trial court, merely ruled that the contract of sale is not simulated. With the contrary rulings of the courts *a quo*, the Court is impelled to review the records to judiciously resolve the petition.

It is true that this Court is not a trier of facts, but there are recognized exceptions to this general rule, such as when the appellate court had ignored, misunderstood, or misinterpreted cogent facts and circumstances which, if considered, would change the outcome of the case; or when its findings were totally devoid of support; or when its judgment was based on a misapprehension of facts.[10]

As may be noted, the CA, without going into details, ruled that the contract of sale was not simulated, as it was duly notarized, and it clearly showed petitioners as sellers, and respondents as buyers, of the 512-square meter lot, subject matter of the sale. But the CA misappreciated the evidence duly adduced during the trial on the merits.

As established during the trial, petitioners bought the entire subject property consisting of 10,115 square meters from Carlito de Leon. The title of the subject property was duly transferred to petitioners' names. Respondents, on the other hand, bought the dried up canal consisting of 1,012 square meters from de Leon. This dried up canal is adjacent to the subject property of petitioners and is the lot or area between the subject property and the public road (Sto. Rosario to Magsaysay).

The affidavit or *Sinumpaang Salaysay*[11] of de Leon attests to the foregoing facts. Moreover, de Leon's testimony in court confirmed and established such facts. These were neither

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[10] *Delos Santos v. Court of Appeals*, G.R. No. 169498, December 11, 2008; citing *Emco Plywood Corporation v. Abelgas*, G.R. No. 148532, April 14, 2004, 427 SCRA 496, 515.

[11] *Rollo*, p. 118.

controverted nor assailed by respondents who did not present any countervailing evidence.

Before this factual clarification was had, respondents, however, made a claim against petitioners in 1997—when subject lot was re-surveyed by petitioners—that respondents also bought a 1,012 square-meter lot from de Leon. Undeniably, the 1,012 square meters was a portion of the 10,115 square meters which de Leon sold to petitioners.

Obviously, petitioners respected respondents' claim—if not, to maintain peace and harmonious relations—and segregated the claimed portion. Whether bad faith or ill-will was involved or an honest erroneous belief by respondents on their claim, the records do not show. The situation was further complicated by the fact that both parties built their respective houses on the 1,012 square-meter portion claimed by respondents, it being situated near the public road.

To resolve the impasse on respondents' claim over 1,012 square meters of petitioners' property and the latter's house built thereon, and to iron out their supposed respective rights, petitioners consulted a notary public, who advised and proposed the solution of a contract of sale which both parties consented to and is now the object of the instant action. Thus, the contract of sale was executed on February 12, 2000 with petitioners, being the title holders of the subject property who were ostensibly selling to respondents 512 square meters of the subject property while at the same time paying PhP 50,000 to respondents for the other 500 square-meter portion.

From the above considerations, we conclude that the appellate court's finding that there was no fraud or fraudulent machinations employed by respondents on petitioners is bereft of factual evidentiary support. We sustain petitioners' contention that respondents employed fraud and machinations to induce them to enter into the contract of sale. As such, the CA's finding of fact must give way to the finding of the trial court that the *Kasulatan* has to be annulled for vitiated consent.

Anent the first main issue as to whether the *Kasulatan* over the 512-square meter lot is voidable for vitiated consent, the answer is in the affirmative.

A contract, as defined in the Civil Code, is a meeting of minds, with respect to the other, to give something or to render some service.[12] For a contract to be valid, it must have three essential elements: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation which is established.

The requisites of consent are (1) it should be intelligent or with an exact notion of the matter to which it refers; (2) it should be free; and (3) it should be spontaneous. In *De Jesus v. Intermediate Appellate Court*,[13] it was explained that intelligence in consent is vitiated by error, freedom by violence, intimidation or undue influence, and spontaneity by fraud.

Article (Art.) 1330 of the Civil Code provides that when consent is given through fraud, the contract is voidable.

Tolentino defines fraud as "every kind of deception whether in the form of insidious machinations, manipulations, concealments or misrepresentations, for the purpose of leading another party into error and thus execute a particular act."[14] Fraud has a "determining influence" on the consent of the prejudiced party, as he is misled by a false appearance of facts, thereby producing error on his part in deciding whether or not to agree to the offer.

One form of fraud is misrepresentation through insidious words or machinations. Under Art. 1338 of the Civil Code, there is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which without them he would not have agreed to. Insidious words or machinations constituting deceit are those that ensnare,

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[12] CIVIL CODE, Art. 1305.

[13] G.R. No. 72282, July 24, 1989, 175 SCRA 559.

[14] 4 Tolentino, CIVIL CODE OF THE PHILIPPINES 475.

entrap, trick, or mislead the other party who was induced to give consent which he or she would not otherwise have given.

Deceit is also present when one party, by means of concealing or omitting to state material facts, with intent to deceive, obtains consent of the other party without which, consent could not have been given. Art. 1339 of the Civil Code is explicit that failure to disclose facts when there is a duty to reveal them, as when the parties are bound by confidential relations, constitutes fraud.

From the factual milieu, it is clear that actual fraud is present in this case. The sale between petitioners and de Leon over the 10,115 square-meter lot was negotiated by respondent Raymundo Vizconde. As such, Raymundo was fully aware that what petitioners bought was the entire 10,115 square meters and that the 1,012-square meter lot which he claims he also bought from de Leon actually forms part of petitioners' lot. It cannot be denied by respondents that the lot which they actually bought, based on the unrebutted testimony and statement of de Leon, is the dried up canal which is adjacent to petitioners' 10,115-square meter lot. Considering these factors, it is clear as day that there was deception on the part of Raymundo when he misrepresented to petitioners that the 1,012-square meter lot he bought from de Leon is a separate and distinct lot from the 10,115-square meter lot the petitioners bought from de Leon. Raymundo concealed such material fact from petitioners, who were convinced to sign the sale instrument in question and, worse, even pay PhP 50,000 for the 500 square-meter lot which petitioners actually own in the first place.

There was vitiated consent on the part of petitioners. There was fraud in the execution of the contract used on petitioners which affected their consent. Petitioners' reliance and belief on the wrongful claim by respondents operated as a concealment of a material fact in their agreeing to and in readily executing the contract of sale, as advised and proposed by a notary public. Believing that Carlito de Leon indeed sold a 1,012-square meter portion of the subject property to respondents, petitioners signed the contract of sale based on respondents' representations. Had

petitioners known, as they eventually would sometime in late 2000 or early 2001 when they made the necessary inquiry from Carlito de Leon, they would not have entered or signed the contract of sale, much less pay PhP 50,000 for a portion of the subject lot which they fully own. Thus, petitioners' consent was vitiated by fraud or fraudulent machinations of Raymundo. In the eyes of the law, petitioners are the rightful and legal owners of the subject 512 square-meter lot anchored on their purchase thereof from de Leon. This right must be upheld and protected.

On the issue of lack of consideration, the contract of sale or *Kasulatan* states that respondents paid petitioners PhP 15,000 for the 512-square meter portion, thus:

Na kaming magasawang Ramon Lequin at Virginia R. Lequin, nawang may sapat na gulang, pilipino at nakatira sa 9 Diamond Court, Brixton Ville Subdivision, Camarin, Kalookan City, ***alang-alang sa halagang LABINGLIMANG LIBONG PISO (₱15,000.00) salaping pilipino na binayaran sa amin ng buong kasiyahang loob namin ng magasawang Raymundo Vizconde at Salome Lequin****, nawang may sapat na gulang, pilipino at nakatira sa Sto. Rosario, Aliaga, Nueva Ecija, ay amin naman ngayon inilipat, ibinigay at ipinagbili ng bilihang tuluyan sa naulit na magasawang Raymundo Vizconde at Salome Lequin, at sa kanilang mga tagapagmana ang x x x.*[15]

On its face, the above contract of sale appears to be supported by a valuable consideration. We, however, agree with the trial court's finding that this is a simulated sale and unsupported by

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[15] Translated as follows:

We, spouses Ramon Lequin and Virginia R. Lequin, of legal age, Filipino and residents of Diamond Court, Brixton Ville Subdivision, Camarin, Kalookan City, **for and in consideration of FIFTEEN THOUSAND PESOS (₱ 15,000.00), Philippine currency, paid to us wholeheartedly by the spouses Raymundo Vizconde and Salome Lequin**, of legal age, Filipino and residents of Sto. Rosario, Aliaga, Nueva Ecija, we transfer, cede and sell absolutely to said spouses Raymundo Vizconde and Salome Lequin and to their successors-in-interest the x x x.

any consideration, for respondents never paid the PhP 15,000 purported purchase price.

Section 9 of Rule 130 of the Revised Rules on Evidence gives both the general rule and exception as regards written agreements, thus:

> SEC. 9. *Evidence of written agreements*.—When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.
>
> However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:
>
> (a) An intrinsic ambiguity, mistake or imperfection in written agreement;
> (b) **The failure of the written agreement to express the true intent and agreement of the parties thereto**;
> (c) The validity of the written agreement; or
> (d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.
>
> The term "agreement" includes wills.

The second exception provided for the acceptance of parol evidence applies to the instant case. Lack of consideration was proved by petitioners' evidence *aliunde* showing that the *Kasulatan* did not express the true intent and agreement of the parties. As explained above, said sale contract was fraudulently entered into through the misrepresentations of respondents causing petitioners' vitiated consent.

Moreover, the evidence of petitioners was uncontroverted as respondents failed to adduce any proof that they indeed paid PhP 15,000 to petitioners. Indeed, having asserted their purchase of the 512-square meter portion of petitioners based on the *Kasulatan*, it behooves upon respondents to prove such affirmative defense of purchase. Unless the party asserting the affirmative defense of an issue sustains the burden of proof, his or her cause will not succeed. If he or she fails to establish the facts

of which the matter asserted is predicated, the complainant is entitled to a verdict or decision in his or her favor.[16]

In the instant case, the record is bereft of any proof of payment by respondents and, thus, their affirmative defense of the purported purchase of the 512-square meter portion fails. Thus, the clear finding of the trial court:

> 2. x x x [I]t was established by the plaintiffs [petitioners] that they were the ones who paid the defendants the amount of FIFTY THOUSAND PESOS (Php50,000.00) and execute a deed of sale also in favor of the defendants. In a simple logic, where can you find a contract that a VENDOR will convey his real property and at the same time pay the VENDEE a certain amount of money without receiving anything in return?[17]

There can be no doubt that the contract of sale or *Kasulatan* lacked the essential element of consideration. It is a well-entrenched rule that where the deed of sale states that the purchase price has been paid but in fact has never been paid, the deed of sale is null and void *ab initio* for lack of consideration.[18] Moreover, Art. 1471 of the Civil Code, which provides that "if the price is simulated, the sale is void," also applies to the instant case, since the price purportedly paid as indicated in the contract of sale was simulated for no payment was actually made.[19]

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[16] *U-Bix Corporation v. Bandiola*, G.R. No. 157168, June 26, 2007, 525 SCRA 566, 581; citing *Aznar Brothers Realty Company v. Aying*, G.R. No. 144773, May 16, 2005, 458 SCRA 496, 512.

[17] *Rollo*, p. 103.

[18] *Montecillo v. Reynes*, G.R. No. 138018, July 26, 2002, 385 SCRA 244, 256; citing *Ocejo Perez & Co. v. Flores*, 40 Phil. 921 (1920); as reiterated in *Mapalo v. Mapalo*, Nos. L-21489 & L-21628, May 19, 1966, 17 SCRA 114.

[19] See *Vda. De Catindig v. Heirs of Catalina Roque*, No. L-23777, November 26, 1976, 74 SCRA 83; see also *Yu Bun Guan v. Ong*, G.R. No. 144735, October 18, 2001, 367 SCRA 559; *Rongavilla v. Court of Appeals*, G.R. No. 83974, August 14, 1998, 294 SCRA 289.

Consideration and consent are essential elements in a contract of sale. Where a party's consent to a contract of sale is vitiated or where there is lack of consideration due to a simulated price, the contract is null and void *ab initio*.

Anent the second issue, the PhP 50,000 paid by petitioners to respondents as consideration for the transfer of the 500-square meter lot to petitioners must be restored to the latter. Otherwise, an unjust enrichment situation ensues. The facts clearly show that the 500-square meter lot is legally owned by petitioners as shown by the testimony of de Leon; therefore, they have no legal obligation to pay PhP 50,000 therefor. Art. 22 of the Civil Code provides that "every person who through an act or performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him." Considering that the 512 square-meter lot on which respondents' house is located is clearly owned by petitioners, then the Court declares petitioners' legal ownership over said 512 square-meter lot. The amount of PhP 50,000 should only earn interest at the legal rate of 6% per annum from the date of filing of complaint up to finality of judgment and not 12% since such payment is neither a loan nor a forbearance of credit.[20] After finality of decision, the amount of PhP 50,000 shall earn interest of 12% per annum until fully paid.

The award of moral and exemplary damages must be reinstated in view of the fraud or fraudulent machinations employed by respondents on petitioners. The grant of damages in the concept of attorney's fees in the amount of PhP 10,000 must be maintained considering that petitioners have to incur litigation expenses to protect their interest in conformity to Art. 2208(2)[21] of the Civil Code.

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[20] *Sunga-Chan v. Court of Appeals*, G.R. No. 164401, June 25, 2008, 555 SCRA 275, 287-289; citing *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78 and *Reformina v. Tomol, Jr.*, No. 59096, October 11, 1985, 139 SCRA 260.

[21] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

Considering that respondents have built their house over the 512-square meter portion legally owned by petitioners, we leave it to the latter what course of action they intend to pursue in relation thereto. Such is not an issue in this petition.

WHEREFORE, the instant petition is hereby *GRANTED*. Accordingly, the CA Decision dated July 20, 2006 and Resolution dated March 30, 2007 in CA-G.R. CV No. 83595 are hereby *REVERSED* and *SET ASIDE*. The Decision of the RTC, Branch 28 in Cabanatuan City in Civil Case No. 4063 is *REINSTATED* with the *MODIFICATION* that the amount of fifty thousand pesos (PhP 50,000) which respondents must return to petitioners shall earn an interest of 6% per annum from the date of filing of the complaint up to the finality of this Decision, and 12% from the date of finality of this Decision until fully paid.

No pronouncement as to costs.

SO ORDERED.

Carpio, Chico-Nazario, Nachura, and *Peralta, JJ.*, concur.

SECOND DIVISION

[G.R. No. 182259. October 12, 2009]

DIONISIO IGNACIO, LYDIA ARCIAGA and EUGENIA DELA CRUZ, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

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(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to **incur expenses to protect his interest**.

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; ONLY QUESTIONS OF LAW ARE ALLOWED; A QUESTION IS LEGAL WHEN THE CONTENDING PARTIES ASSUME THAT A THING EXIST OR HAS ACTUALLY HAPPENED BUT DISAGREE ON ITS LEGAL SIGNIFICANCE.— The Office of the Solicitor General assails the petition for raising questions of fact that are not proper for a petition for review under Rule 45. But a question is factual when the contending parties cannot agree that a thing exists or has actually happened. On the other hand, a question is legal when the contending parties assume that a thing exists or has actually happened but disagree on its legal significance or effect on their rights. Here, no genuine questions of fact are involved since the factual versions of the opposing parties are essentially not in conflict. Indeed, they tend to lend credence to each other's claims. Actually, what petitioners gripe about are the legal implications that the trial court and the Court of Appeals drew from those facts. These are questions of law that are proper subject of a petition for review under Rule 45.

2. CRIMINAL LAW; ESTAFA THROUGH FALSIFICATION OF PUBLIC DOCUMENT; NOWHERE IN THE RECORDS DOES IT APPEAR THAT PETITIONERS TOOK PART IN NEGOTIATING THE SETTLEMENT OR WERE CONSCIOUS OF THE FACT THAT THE FINAL SETTLEMENT PAPERS DEPRIVED COMPLAINANT OF HER RIGHTFUL SHARE IN HER HUSBAND'S ESTATE.— The Court of Appeals held that petitioners, as Brigida's relatives by affinity, not only took advantage of her ignorance and lack of education but also betrayed the trust that she reposed on them when they made her affix her thumbmark on the defective joint motion. But nowhere in the records does it appear that petitioners took part in negotiating the settlement or were conscious of the fact that the final settlement papers deprived Brigida of her rightful share in Lorenzo's estate. In fact, although Brigida testified that she thought the documents covered only the lot belonging to her father, Leon Argana, she did not say that it was the petitioners who made her adopt such assumption.

Parenthetically, the instruction for Brigida to go to the offices of Ayala Land to sign the settlement documents came from her nephew, a certain Bernardino Argana. And she did not go alone. Three nephews or nieces accompanied her. As Brigida admitted, when she got to the Makati offices, she took her seat at a table separate from those that petitioners occupied. And none of them ever approached her. Clearly, it was not petitioners who prepared Brigida's mind so she would place her thumbmarks on the joint motion for judgment based on a compromise or who informed her as to what it was all about. Indeed, it appears that petitioners were in no better position than she was with respect to the documentations. They all testified that they signed with no opportunity to really read and understand what the documents contained. They were apparently too trusting and just wanted to get the sums promised them.

3. ID.; ID.; FACT THAT COMPLAINANT'S OWN CHILDREN SIGNED THE JOINT MOTION ON THE SAME OCCASION AND GOT THEIR MONEY WITHOUT GIVING HER THE SLIGHTEST HINT THAT SOMETHING WAS AMISS INDICATES THAT PETITIONER'S GOOD FAITH AND INNOCENCE ANIMATED ALL THOSE CONCERNED.— Besides, Brigida's own son and daughter, Melchor and Gertrudez, acquiesced in and signed the joint motion that supposedly omitted to mention the fact that their mother was, like them, an heir of Lorenzo. Since the prosecution theorized that petitioners conspired in knowingly allowing such omission to stand on the document, then Brigida should have criminally charged her own children with the same offense. They had a greater responsibility in protecting their mother. But she did not. That her own children signed the joint motion on the same occasion and got their share of the money, without giving their mother the slightest hint that something was amiss, indicates that petitioners' good faith and innocence animated all those concerned.

4. ID.; ID.; THAT COMPLAINANT'S CHILDREN DID NOT THEN OBJECT THAT THE SETTLEMENT HAD LEFT OUT THEIR MOTHER TO HER PREJUDICE INDICATES NO COVETOUSNESS PROMPTED THE OMISSION.—

Petitioner Ignacio of course admitted that it was he who gave Atty. Catly the names of Lorenzo's six descendants who were to inherit from him. But there is no evidence that Ignacio acted in bad faith. It may be assumed that Brigida's children, Melchor and Gertrudez who signed the joint motion along with Ignacio, proportionately benefited from the omission of their mother's name in the list of Lorenzo's heirs. That these two did not then object that the settlement had left out their mother to her prejudice indicates that no covetousness prompted the omission.

5. ID.; ID.; SINCE PETITIONERS HAD NO HAND IN THE PREPARATION OF EITHER THE MEMORANDUM OF AGREEMENT OR THE JOINT MOTION, NO DECEIT, FALSE PRETENSES, OR FRAUDULENT ACTS COULD BE IMPUTED TO THEM.— It does not help the prosecution's case that petitioners had no hand in the actual preparation of either the memorandum of agreement or the joint motion. All that had been established is that Dionisio gave the names of Lorenzo's six descendants-heirs to Atty. Catly. The latter, as prosecution witness, testified that he, too, did not take part in the preparation of the documents. The Ayala Land lawyers, he said, did everything. Thus, the prosecution is unable to impute deceit, false pretenses, or fraudulent acts on petitioners' part.

6. ID.; ID.; SUPPOSED IRREGULARITIES HAD NOTHING TO DO WITH COMPLAINANT'S RIGHT AS AN HEIR.— The Court of Appeals points out that petitioners took no steps to rectify certain irregularities in the documents that Atty. Catly, their counsel in the civil action, called to their attention, indicating a knowing guilt. But it should be observed that these so-called "irregularities" referred merely to the non-inclusion of his attorney's fees and the addition of persons whom he did not think were parties to the action. These supposed irregularities had nothing to do with Brigida's right as Lorenzo's heir.

7. ID.; ID.; KEY ELEMENT OF THE COMPLEX CRIME OF ESTAFA WITH FALSIFICATION OF PUBLIC DOCUMENT THAT THE UNTRUTHFUL STATEMENT WHICH THE OFFENDER HAS MADE IN A DOCUMENT BE A PERVERSION OF TRUTH WITH WRONGFUL INTENT OF INJURING A THIRD PERSON; NOT

PRESENT IN CASE AT BAR.— One of the essential elements of the complex crime of estafa with falsification of public document is that the untruthful statement, which the offender has made in a document, be a perversion of truth with the wrongful intent of injuring a third person. This key element of the falsification aspect of the crime is not present here because, as stated above, all the signatories to the settlement documents simply assumed, when they signed such documents, that these reflected what was right.

8. ID.; ID.; ALTHOUGH NO SUFFICIENT EVIDENCE TO HOLD PETITIONERS CRIMINALLY LIABLE FOR ESTAFA THROUGH FALSIFICATION OF A PULBIC DOCUMENT, THE COURT FOUND THEM CIVILLY LIABLE FOR HAVING UNDULY RECEIVED MORE THAN THEIR FAIR AND LEGAL SHARE OF THE ESTATE AT COMPLAINANT'S EXPENSE.— Although the Court has not found sufficient evidence to hold petitioners criminally liable for estafa through falsification of a public document, it finds them civilly liable for having unduly received more than their fair and legal share of Lorenzo's estate at Brigida's expense. Unfortunately, however, the trial court simply ordered petitioners, jointly and severally, to pay Brigida ₱3,922,004.76 by way of actual damages without stating its basis for arriving at this amount. The Court of Appeals itself adopted this figure also without explanation.

9. ID.; ID.; NO EVIDENCE ON RECORD THAT THE DECEDENT ALONE OWNED THE PROPERTY SUBJECT OF THE SETTLEMENT WHICH WOULD WARRANT EQUAL DISTRIBUTION OF THE PROPERTY TO HIS HEIRS OF EITHER MARRIAGE; RECEPTION OF FURTHER EVIDENCE IS NEEDED TO SETTLE SAID ISSUE.— But the award of ₱3,922,004.76 to Brigida is not supported by the evidence on record. Apparently, the trial court simply added up the shares that petitioners and Brigida's children got out of the settlement with Ayala Land to arrive at a total of ₱27,454,033.38, the presumptive estate of Lorenzo. It then divided this amount by seven, which is the number of Lorenzo's heirs consisting of the four petitioners, Brigida's two children, and Brigida herself, to arrive at a one-seventh individual share

of ₱3,922,004.76 per heir. But there is no evidence on record that Lorenzo alone owned the property subject of the settlement with Ayala Land, which would warrant the equal distribution of the property to his heirs of either marriage. Of course, since the children of the first marriage appear to have received larger shares than those of the second marriage in the settlement, the implication is that the property was conjugal asset of the first marriage and so the children of the latter marriage got the larger shares. But, although this was alleged during the preliminary investigation, no evidence was adduced during the trial to establish this as a fact. There is a need, therefore, for the trial court to receive further evidence to settle that issue.

10. ID.; ID.; COMPLAINANT MUST ALSO TAKE RECOURSE AGAINST HER CHILDREN IN AN APPROPRIATE SUIT FOR THE RECOVERY OF WHAT HAD BEEN UNDULY PAID THEM; PETITIONERS' LIABILITY SHOULD BE LIMITED TO THEIR PROPORTIONATE SHARE OF COMPLAINANT'S LOSSES.— The trial court must also take into account the fact that Brigida's own children also benefited from the exclusion of their mother in the partition of Lorenzo's estate. But since her children are not parties to the case, Brigida must take recourse against them in an appropriate suit for the recovery of what had been unduly paid them, if she is so minded. Petitioner's liability, on the other hand, should be limited to their proportionate share of Brigida's losses. Further, there is evidence on record that the legal expenses incurred in the suit and in its eventual settlement had been incorporated into the share that Ayala Land earmarked for payment to petitioner Ignacio. These expenses were apparently deducted from the shares of the heirs and have to be taken into account in the final computation.

APPEARANCES OF COUNSEL

R.L. Moldez Law Office for petitioners.
The Solicitor General for respondent.

D E C I S I O N

ABAD, *J.*:

The Case

Petitioners[1] seek by this petition for review[2] to set aside the Decision[3] of the Court of Appeals in CA-G.R. CR 30235 dated March 18, 2008, which affirmed the Decision[4] of the Regional Trial Court of Makati City[5] in Criminal Case 98-1648 dated January 25, 2006 that found them guilty of estafa through falsification of a public document.

The Facts

Before his wife Damasa Navaro died, Lorenzo dela Cruz had four children with her, namely, Alejandro,[6] Segunda, Victoria, and Eugenia.[7] On May 30, 1929, after Damasa passed away, Lorenzo married Brigida Argana. They had two children, Melchor and Gertrudez.[8] Lorenzo died intestate on June 4, 1935, leaving an unsettled estate that included a 94,802-sq m land in Las Piñas City.

Apparently, Ayala Land, Inc. (Ayala Land) had a conflicting title on this land and on a number of others in the area. The

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[1] Eugenia dela Cruz died during the pendency of the appeal as evidenced by a Certified True Copy of the Certificate of Death, attached to the Petition, marked as Annex "C"; *rollo*, p. 58.

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

[3] CA *rollo*, pp. 109-118. Penned by Associate Justice Agustin S. Dizon, and concurred in by Associate Justices Amelita G. Tolentino and Lucenito N. Tagle.

[4] Records, pp. 276-282.

[5] Branch 58.

[6] Alejandro was charged in the information but died during the pendency of the trial.

[7] All surnamed dela Cruz

[8] Also surnamed dela Cruz.

individual claimants to this area, including Lorenzo's heirs, joined up and filed a suit against that company before the Regional Trial Court of Las Piñas in Civil Case 93-3094.[9] Lorenzo's heirs who joined the suit were petitioners Dionisio Ignacio (a son of Victoria), Alejandro dela Cruz, Lydia Arciaga (a daughter of Segunda), and Eugenia dela Cruz. Brigida's children, Melchor and Gertrudez, joined, too. While Brigida stood as co-plaintiff in the case, she did so as an heir of her father Leon Argana, with respect to a separate parcel of land that belonged to the latter.

Atty. Hicoblino M. Catly, who represented the plaintiffs in the case, succeeded in negotiating a settlement with Ayala Land. They embodied this settlement in a Memorandum of Agreement[10] that the parties later modified through an Amendatory Agreement.[11] Eventually, they filed a joint motion[12] for judgment based on a compromise in which plaintiffs waived and renounced all their claims to the lands in dispute in favor of Ayala Land. They did so in exchange for specific amounts that it paid each of them.

The witnesses from the opposite sides: Brigida and Atty. Catly for the prosecution, and petitioners Ignacio, Arciaga, and Eugenia dela Cruz for the defense, substantially agreed that on May 13, 1997 they went as instructed to the Makati offices of Ayala Land to sign the documents of settlement, particularly the Memorandum of Agreement between the parties and their joint motion for judgment based on a compromise. Brigida and petitioners Ignacio, Arciaga, and Eugenia dela Cruz uniformly testified that they were unable to properly read and understand the documents they signed. They were just told to sign or thumbmark the papers and they would then be paid. Nor were they able to consult Atty. Catly before signing the same.

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[9] Raffled to Branch 58.

[10] Records, pp. 198-212, Exhibit "A" for the Prosecution.

[11] *Id.* at 213-216, Exhibit "B".

[12] *Id.* at 217-227, Exhibit "C".

Atty. Catly testified that he noticed several irregularities in the documents, particularly the non-inclusion of his attorney's fees and the addition of certain persons in the documents who were not parties to the case. The lawyers of Ayala Land prepared the documents without Atty. Catly's intervention. Nonetheless, he signed the papers because his clients had already done so.

Although Brigida's name appeared in both the memorandum of agreement and the joint motion, the documents referred to her as an heir of Leon Argana. Nowhere did it appear that she was also one of Lorenzo's heirs.

Under the memorandum of agreement, Lorenzo's individual heirs got the following amounts from Ayala Land:

1.	Dionisio Ignacio	₱ 9,086,345.98
2.	Alejandro dela Cruz	₱ 5,332,562.30
3.	Lydia Arciaga	₱ 5,332,562.30
4.	Eugenia dela Cruz	₱ 5,332,562.30
5.	Melchor dela Cruz	₱ 1,185,000.25
6.	Gertrudez dela Cruz	₱ 1,185,000.25

As it happened, Ayala Land paid Brigida only ₱500,000.00 which represented her share as an heir of Leon Argana.

Petitioner Ignacio admitted that, speaking for Lorenzo's heirs, it was he who gave the names of Lorenzo's six heirs to Atty. Catly.[13]

On January 25, 2006 the trial court rendered judgment finding petitioners Dionisio Ignacio, Alejandro dela Cruz, Lydia Arciaga, and Eugenia dela Cruz guilty of the crime charged for failing, in conspiracy with one another, to disclose to those who prepared the settlement documents that Brigida was one of Lorenzo's heirs, too, in fact his surviving wife, thereby depriving her of her just share in his estate. The court sentenced each of the petitioners, applying the Indeterminate Sentence Law, to suffer the penalty of 11 years and 1 month of *prision mayor* as minimum to 20 years of *reclusion temporal* as maximum. It also ordered them to pay Brigida ₱3,922,004.76 in actual damages.

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[13] TSN, February 28, 2003, pp. 30-31; TSN, March 7, 2003, pp. 12-14.

On appeal, the Court of Appeals fully affirmed the trial court's decision, hence, this petition.

The Issue

The core issue in this case is whether or not, in signing the joint motion for judgment based on a compromise, which motion failed to state the fact that Brigida was one of Lorenzo's heirs, and in their thereby profiting from such compromise, petitioners are guilty of estafa through falsification of public documents.

Discussion

In its comment,[14] the Office of the Solicitor General assails the petition for raising questions of fact that are not proper for a petition for review under Rule 45. But a question is factual when the contending parties cannot agree that a thing exists or has actually happened. On the other hand, a question is legal when the contending parties assume that a thing exists or has actually happened but disagree on its legal significance or effect on their rights.

Here, no genuine questions of fact are involved since the factual versions of the opposing parties are essentially not in conflict. Indeed, they tend to lend credence to each other's claims. Actually, what petitioners gripe about are the legal implications that the trial court and the Court of Appeals drew from those facts. These are questions of law that are proper subject of a petition for review under Rule 45.

The information in this case alleges that the four accused heirs of Lorenzo by Damasa, the petitioners in this case, defrauded their deceased father's second wife, Brigida, "by deliberately omitting to disclose the truth" in the joint motion for judgment based on a compromise submitted to the court for approval that she was Lorenzo's surviving wife and by making her place her thumbmark on the document with that fatal omission, resulting in her being deprived of her just share of ₱3,922,004.76 from Ayala Land.

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[14] *Rollo*, pp. 92-111, dated August 26, 2008.

The Court of Appeals held that petitioners, as Brigida's relatives by affinity, not only took advantage of her ignorance and lack of education but also betrayed the trust that she reposed on them when they made her affix her thumbmark on the defective joint motion. But nowhere in the records does it appear that petitioners took part in negotiating the settlement or were conscious of the fact that the final settlement papers deprived Brigida of her rightful share in Lorenzo's estate. In fact, although Brigida testified that she thought the documents covered only the lot belonging to her father, Leon Argana, she did not say that it was the petitioners who made her adopt such assumption.

Parenthetically, the instruction for Brigida to go to the offices of Ayala Land to sign the settlement documents came from her nephew, a certain Bernardino Argana. And she did not go alone. Three nephews or nieces accompanied her.[15] As Brigida admitted, when she got to the Makati offices, she took her seat at a table separate from those that petitioners occupied. And none of them ever approached her.[16]

Clearly, it was not petitioners who prepared Brigida's mind so she would place her thumbmarks on the joint motion for judgment based on a compromise or who informed her as to what it was all about. Indeed, it appears that petitioners were in no better position than she was with respect to the documentations. They all testified that they signed with no opportunity to really read and understand what the documents contained. They were apparently too trusting and just wanted to get the sums promised them.

Besides, Brigida's own son and daughter, Melchor and Gertrudez, acquiesced in and signed the joint motion that supposedly omitted to mention the fact that their mother was, like them, an heir of Lorenzo. Since the prosecution theorized that petitioners conspired in knowingly allowing such omission to stand on the document, then Brigida should have criminally charged her own children with the same offense. They had a

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[15] TSN, December 15, 1998, pp. 21-23.

[16] *Id.* at 27 & 30.

greater responsibility in protecting their mother. But she did not. That her own children signed the joint motion on the same occasion[17] and got their share of the money, without giving their mother the slightest hint that something was amiss, indicates that petitioners' good faith and innocence animated all those concerned.

Petitioner Ignacio of course admitted that it was he who gave Atty. Catly the names of Lorenzo's six descendants who were to inherit from him. But there is no evidence that Ignacio acted in bad faith. It may be assumed that Brigida's children, Melchor and Gertrudez who signed the joint motion along with Ignacio, proportionately benefited from the omission of their mother's name in the list of Lorenzo's heirs. That these two did not then object that the settlement had left out their mother to her prejudice indicates that no covetousness prompted the omission.

It does not help the prosecution's case that petitioners had no hand in the actual preparation of either the memorandum of agreement or the joint motion. All that had been established is that Dionisio gave the names of Lorenzo's six descendants-heirs to Atty. Catly. The latter, as prosecution witness, testified that he, too, did not take part in the preparation of the documents. The Ayala Land lawyers, he said, did everything.[18] Thus, the prosecution is unable to impute deceit, false pretenses, or fraudulent acts on petitioners' part.

The Court of Appeals points out that petitioners took no steps to rectify certain irregularities in the documents that Atty. Catly, their counsel in the civil action, called to their attention, indicating a knowing guilt. But it should be observed that these so-called "irregularities" referred merely to the non-inclusion of his attorney's fees and the addition of persons whom he did not think were parties to the action. These supposed irregularities had nothing to do with Brigida's right as Lorenzo's heir.

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[17] TSN, January 13, 1999, p. 10.

[18] TSN, April 21, 1999, pp. 9-10.

Why a larger share for Ignacio? Ignacio explained that the settlement did not follow the simple formula of just dividing the amount Ayala Land agreed to pay the parties based on their theoretical legal rights. The agreement computed into his share the legal expenses incurred in the suit and in its eventual settlement. These expenses were to be taken from his share. The prosecution did not bother to refute his explanation.[19]

Besides, one of the essential elements of the complex crime of estafa with falsification of public document is that the untruthful statement, which the offender has made in a document, be a perversion of truth with the wrongful intent of injuring a third person.[20] This key element of the falsification aspect of the crime is not here present because, as stated above, all the signatories to the settlement documents simply assumed, when they signed such documents, that these reflected what was right.

Although the Court has not found sufficient evidence to hold petitioners criminally liable for estafa through falsification of a public document, it finds them civilly liable for having unduly received more than their fair and legal share of Lorenzo's estate at Brigida's expense. Unfortunately, however, the trial court simply ordered petitioners, jointly and severally, to pay Brigida ₱3,922,004.76 by way of actual damages without stating its basis for arriving at this amount. The Court of Appeals itself adopted this figure also without explanation.

But the award of ₱3,922,004.76 to Brigida is not supported by the evidence on record. Apparently, the trial court simply added up the shares that petitioners and Brigida's children got out of the settlement with Ayala Land to arrive at a total of ₱27,454,033.38, the presumptive estate of Lorenzo. It then divided this amount by seven, which is the number of Lorenzo's heirs consisting of the four petitioners, Brigida's two children, and Brigida herself, to arrive at a one-seventh individual share of ₱3,922,004.76 per heir.

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[19] TSN, March 07, 2003, p. 18.

[20] *Daan v. Sandiganbayan (Fourth Division)*, G.R. Nos. 163972-77, March 28, 2008, 550 SCRA 233, 246.

But there is no evidence on record that Lorenzo alone owned the property subject of the settlement with Ayala Land, which would warrant the equal distribution of the property to his heirs of either marriage. Of course, since the children of the first marriage appear to have received larger shares than those of the second marriage in the settlement, the implication is that the property was conjugal asset of the first marriage and so the children of the latter marriage got the larger shares. But, although this was alleged during the preliminary investigation,[21] no evidence was adduced during the trial to establish this as a fact. There is a need, therefore, for the trial court to receive further evidence to settle that issue.

The trial court must also take into account the fact that Brigida's own children also benefited from the exclusion of their mother in the partition of Lorenzo's estate. But since her children are not parties to the case, Brigida must take recourse against them in an appropriate suit for the recovery of what had been unduly paid them, if she is so minded. Petitioner's liability, on the other hand, should be limited to their proportionate share of Brigida's losses.

Further, there is evidence on record that the legal expenses incurred in the suit and in its eventual settlement had been incorporated into the share that Ayala Land earmarked for payment to petitioner Ignacio. These expenses were apparently deducted from the shares of the heirs and have to be taken into account in the final computation.

WHEREFORE, the Court *REVERSES* and *SETS ASIDE* the decision of the Court of Appeals in CA-G.R. CR 30235 and *ACQUITS* petitioners of the crime of which they were charged for failure of the prosecution to prove their guilt beyond reasonable doubt.

The Court also *SETS ASIDE* the award of ₱3,922,004.76 by way of actual damages awarded to Brigida Argana *Vda. De* dela Cruz and *DIRECTS* the Regional Trial Court of Makati,

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[21] Records, p. 59.

Branch 58, from which this case emanated to receive further evidence to ascertain whether or not the property subject of settlement belonged to Lorenzo dela Cruz alone or to the conjugal partnership of the first or second marriage and award damages to Brigida as the evidence warrants.

SO ORDERED.

Quisumbing, Carpio Morales, Nachura,[*] and *Brion, JJ.*, concur.

THIRD DIVISION

[G.R. No. 182673. October 12, 2009]

AQUALAB PHILIPPINES, INC., *petitioner, vs.* **HEIRS OF MARCELINO PAGOBO, namely: PELAGIO PAGOBO, GONZALO PAGOBO, ANIANA PAGOBO, ALFREDO SALVADOR, SAMUEL PAGOBO, REMEDIOS PAGOBO, VALENTINA PAGOBO, JONATHAN PAGOBO, VIRGILIO PAGOBO, FELISA YAYON, SIMPLICIO YAYON, BARTOLOME YAYON, BERNARDINA YAYON, and ISIDRA YAYON; HEIRS OF HILARION PAGOBO, namely: PABLO PAGOBO, ALFREDO PAGOBO, FELIX PAGOBO, RUFINA P. DAHIL, BRIGIDA P. GODINEZ, HONORATA P. GODINEZ, MAXIMO PAGOBO, ADRIANA PAGOBO, CECILIA PAGOBO, LILIA PAGOBO, CRESCENCIO PAGOBO, ROBERTO PAGOBO, ALFONSO PAGOBO, CANDIDO PAGOBO, BARTOLOME PAGOBO, ELPIDIO PAGOBO, PEDRO PAGOBO, ROGELIO**

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[*] Designated as additional member in lieu of Associate Justice Mariano C. Del Castillo, per Special Order No. 730 dated October 5, 2009.

PAGOBO, SHIRLEY P. CAÑETE, MILAGROS PAGOBO, JUANITO PAGOBO, JR., ANTONIO PAGOBO, IRENEA PAGOBO, and ANIANO P. WAGWAG; HEIRS OF ANTONIO PAGOBO, namely: GAUDENCIO PAGOBO, LOTITA PAGOBO, ERNESTO PAGOBO, ROMANA P. DANIL, FELISA PAGOBO, CARMEN PAGOBO, and SALUD PAGOBO; HEIRS OF MAXIMO PAGOBO, namely: RAMON PAGOBO, RODULFO PAGOBO, CRIPSIN PAGOBO, and URBANO PAGOBO; HEIRS OF DONATA PAGOBO WAGWAG, namely: FELISA WAGWAG, ANASTACIO WAGWAG, FILDEL WAGWAG, and NEMESIA WAGWAG; HEIR OF AQUILINA PAGOBO: VICTOR PAGOBO; HEIRS OF JUANITO PAGOBO EYAS, namely: MARCELO P. EYAS, ROCHI P. FLORES, and ORDIE P. FLORES; HEIRS OF CATALINA PAGOBO, namely: RESTITUTO PAGOBO, CARLINA P. TALINGTING, TEOFILO P. TALINGTING, and JUANITO P. TALINGTING, *respondents.*

SYLLABUS

1. REMEDIAL LAW; MOTION TO DISMISS; THE MOVANT HYPOTHETICALLY ADMITS THE FACTUAL ALLEGATIONS IN THE COMPLAINT.— In filing a motion to dismiss, the movant hypothetically admits the truth of the material and relevant facts alleged and pleaded in the complaint. The court, in resolving the motion to dismiss, must consider such hypothetical admission, the documentary evidence presented during the hearing thereof, and the relevant laws and jurisprudence bearing on the issues or subject matter of the complaint.

2. ID.; ID.; PRESCRIPTION; TO PROSPER, THE COMPLAINT, ON ITS FACE, MUST SHOW THAT THE ACTION HAS ALREADY PRESCRIBED.— Prescription, as a ground for a motion to dismiss, is adequate when the complaint, on its face, shows that the action has already prescribed. Such is not the case in this instance. Respondents have duly averred continuous possession until 1991 when such was allegedly disturbed by

Aqualab. Being in possession of the subject lots—hypothetically admitted by Aqualab—respondents' right to reconveyance or annulment of title has not prescribed or is not time-barred.

3. CIVIL LAW; LAND REGISTRATION; RECONVEYANCE; ACTION FOR ANNULMENT OF TITLE OR RECONVEYANCE BASED ON FRAUD OR CONSTRUCTIVE TRUST IS IMPRESCRIPTIBLE WHERE THE PLAINTIFF IS IN POSSESSION OF THE PROPERTY SUBJECT OF THE ACTS.— Verily, an action for annulment of title or reconveyance based on fraud is imprescriptible where the plaintiff is in possession of the property subject of the acts. And the prescriptive period for the reconveyance of fraudulently registered real property is 10 years, reckoned from the date of the issuance of the certificate of title, if the plaintiff is not in possession. Thus, one who is in actual possession of a piece of land on a claim of ownership thereof may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right. In the instant case, as hypothetically admitted, respondents were in possession until 1991, and until such possession is disturbed, the prescriptive period does not run. Since respondents filed their complaint in 1994, or three years after their possession was allegedly disturbed, it is clear that prescription has not set in, either due to fraud or constructive trust. Besides, if the plaintiff, as the real owner of the property, remains in possession of the property, the prescriptive period to recover title and possession of the property does not run against him. In such a case, an action for reconveyance, if nonetheless filed, would be in the nature of a suit for quieting of title, an action that is imprescriptible. Thus, the trial court's reliance on *Buenaventura* and *Tenio-Obsequio* for prescription on the right of reconveyance due to fraud and constructive trust, respectively, is misplaced, for in both cases, the plaintiffs before the trial court were not in possession of the lots subject of their action.

4. ID.; ID.; ID.; THE DEFENSE OF INDEFEASIBILITY OF A TORRENS TITLE DOES NOT EXTEND TO A TRANSFEREE WHO TAKES IT WITH NOTICE OF A FLAW IN THE TITLE OF HIS TRANSFEROR.— In the instant case, again based on the hypothetically admitted allegations in the complaint, it would appear that Anthony Gaw Kache, Aqualab's predecessor-in-interest, was not in possession of subject lots. Such a fact

should have put Aqualab on guard relative to the possessors' (respondents') interest over subject lots. A buyer of real property that is in the possession of a person other than the seller must be wary, and a buyer who does not investigate the rights of the one in possession can hardly be regarded as a buyer in good faith. Having hypothetically admitted respondents' possession of subject lots, Aqualab cannot be considered, in the context of its motion to dismiss, to be an innocent purchaser for value or a purchaser in good faith. Moreover, the defense of indefeasibility of a Torrens title does not extend to a transferee who takes it with notice of a flaw in the title of his transferor.

5. REMEDIAL LAW; ACTIONS; CAUSE OF ACTION; ELEMENTS; PRESENT IN CASE AT BAR.— Upon the foregoing disquisitions, it is abundantly clear to the Court that respondents' complaint sufficiently stated, under the premises, a cause of action. Not lost on us is the fact that the RTC dismissed the complaint of respondents on the grounds of prescription and in the finding that Aqualab is an innocent purchaser for value of the subject lots. Quoting *Philippine Bank of Communications v. Trazo*, the Court said in *Bayot v. Court of Appeals* that: A cause of action is an act or omission of one party in violation of the legal right of the other. A motion to dismiss based on lack of cause of action hypothetically admits the truth of the allegations in the complaint. The allegations in a complaint are sufficient to constitute a cause of action against the defendants if, hypothetically admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer therein. A cause of action exists if the following **elements** are present, namely: (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) an act or omission on the part of such defendant violative 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.

6. ID.; MOTION TO DISMISS; LACK OF CAUSE OF ACTION; THE COMPLAINT MUST SHOW THAT THE CLAIM FOR RELIEF DOES NOT EXIST RATHER THAN THAT A

CLAIM HAS BEEN DEFECTIVELY STATED OR IS AMBIGOUS, INDEFINITE OR UNCERTAIN; CASE AT BAR.— Indeed, to sustain a motion to dismiss for lack of cause of action, the complaint must show that the claim for relief does not exist rather than that a claim has been defectively stated or is ambiguous, indefinite, or uncertain. However, a perusal of respondents' Complaint before the RTC, in light of Aqualab's motion to dismiss which hypothetically admitted the truth of the allegations in the complaint, shows that respondents' action before the RTC has sufficiently stated a cause of action. Hypothetically admitting fraud in the transfers of subject lots, which indisputably were first transferred in apparent violation of pertinent provisions in CA 141 prohibiting alienation of homesteads within five years from the grant of the homestead patent, and the continuing possession of respondents until 1991 of the subject lots, the action for reconveyance and nullification filed in 1994 not only sufficiently stated a cause of action but also has not yet prescribed. Given the findings above, the trial court gravely committed an error of judgment in granting Aqualab's motion to dismiss.

7. ID.; ID.; ID.; ABSENT A FULL-BLOWN TRIAL ON THE MERITS, THE RESOLUTION OF THE CASE ON THE MERITS HAS NO FACTUAL BASIS.— The appellate court was, thus, correct insofar as it reversed and set aside the September 30, 1997 Order of dismissal of the trial court. Unfortunately, however, it went further, for it did not merely remand the case for further proceedings, *i.e.*, for trial on the merits, but it also resolved and decided the case in favor of respondents without going into a full-blown trial on the merits. This violated Aqualab's right to due process. The CA reversibly erred when it decided the case on the merits when what was appealed thereto was a dismissal of the case through a motion to dismiss. There was no trial on the merits. Thus, its resolution of the case on the merits had no factual basis. The lynchpins in the resolution of the motion to dismiss are in the issues of prescription and whether Aqualab is an innocent purchaser for value. On these two issues we ruled, as discussed above, that based on the motion to dismiss, the allegations in the complaint, and the pieces of documentary evidence on record, prescription has not yet set in and that Aqualab is apparently not a purchaser in good faith for, as hypothetically admitted, respondents had

possession over subject lots until 1991. Such hypothetical admission, however, is not equivalent to or constitutive of a judicial admission, for, after all, Aqualab has not yet filed its Answer. It was, therefore, erroneous for the CA to decide the case on the merits. And much less can the CA rule that Aqualab did not controvert respondents' allegation of disturbance in their possession. It was a hypothetically admitted fact but not the factual finding of the trial court.

8. CIVIL LAW; LAND REGISTRATION; INNOCENT PURCHASER FOR VALUE; THE BURDEN OF PROVING THE PURCHASER'S GOOD FAITH LIES IN THE ONE WHO ASSERTS THE SAME; INVOCATION OF THE PRESUMPTION OF GOOD FAITH IS NOT SUFFICIENT.— The assertion of respondents that they had possession until 1991, a factual issue, still had to be established on trial. Indeed, he who asserts a fact has the burden of proving it. So, too, the contention of being an innocent purchaser for value by Aqualab still has yet to be determined through a trial on the merits. The hypothetical admission applied against a defendant is relied upon by the court only to resolve his motion to dismiss. Verily, the burden of proving the purchaser's good faith lies in the one who asserts the same—it is not enough to invoke the ordinary presumption of good faith. And if Aqualab is found to be truly an innocent purchaser for value, its rights as such is protected by law; more so in situations where there have been a series of transfers of the subject lots, in which case, respondents' rights, if any, will be for damages from those who perpetrated the fraudulent conveyances.

9. ID.; ID.; ID.; NO FACTUAL AND LEGAL BASES FOR THE CANCELLATION OF CERTIFICATES OF TITLE IN CASE AT BAR.— [G]iven that there is no judicial factual finding that Aqualab is not an innocent purchaser for value, it is legally and factually without bases for the appellate court to order the cancellation of the certificates of title covering subject lots in the name of Aqualab. The issues of reconveyance or redemptive rights of respondents and their action for partition have to be resolved by the trial court in light of its eventual findings from a trial on the merits of the instant case. We, thus, hold that the instant case should proceed to trial for the parties to adduce their respective evidence to support their contrary positions in the defense of their asserted rights.

APPEARANCES OF COUNSEL

Zosa & Quijano Law Offices and Villanueva Gabionza and De Santos for petitioner.

Maderazo and Associates for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

In this Petition for Review on *Certiorari* under Rule 45, Aqualab Philippines, Inc. (Aqualab) assails the March 15, 2007 Decision[1] and April 22, 2008 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 58540, which reversed the September 30, 1997 Order[3] of the Regional Trial Court (RTC), Branch 53 in Lapu-lapu City, Cebu. The RTC dismissed Civil Case No. 4086-L for *Partition, Declaration of Nullity of Documents, Cancellation of Transfer Certificate of Titles, Reconveyance with Right of Legal Redemption, Damages and Attorney's Fees* filed by respondents.

The Facts

Subject of the complaint initiated by respondents are Lots 6727-Q and 6727-Y of the Opon Cadastre, situated in Punta Engaño, Lapu-lapu City, Mactan Island, Cebu, particularly described as follows:

LOT NO. 6727-Q

A parcel of land (Lot 6727-Q of the subdivision on plan (LRC) Psd-117050, being a portion of Lot 6727 of the Cadastral Survey of Opon, L.R.C. (GLRO) Cad. Rec. No. 1004), situated in the Barrio of Punta Engaño, City of Lapu-lapu, Island of Mactan x x x containing

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[1] *Rollo*, pp. 27-40. Penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Arsenio J. Magpale and Agustin S. Dizon.

[2] *Id.* at 52-54.

[3] *Id.* at 65-68. Penned by Presiding Judge Benedicto G. Cobarde.

an area of ONE THOUSAND (1,000) SQUARE METERS, more or less. All points referred to are indicated on the plan and marked on the ground as follows: x x x date of the original survey, Aug. 1927 — Dec. 1928, and that of the subdivision survey, Aug. 7, and 10, 1963, and Sept. 27 and 30, 1967.

LOT NO. 6727-Y

A parcel of land (Lot 6727-Y of the subdivision on plan (LRC) Psd-117050, being a portion of Lot 6727 of the Cadastral Survey of Opon, L.R.C. (GLRO) Cad. Rec. No. 1004), situated in the Barrio of Punta Engaño, City of Lapu-lapu, Island of Mactan x x x containing an area of SIXTEEN THOUSAND ONE HUNDRED SIXTY SEVEN (16,167) SQUARE METERS, more or less. All points referred to are indicated on the plan and marked on the ground as follows: x x x date of the original survey, Aug. 1927 – Dec. 1928, and that of the subdivision survey, Aug. 7, and 10, 1963, and Sept. 27 and 30, 1967.

Lot 6727-Q and Lot 6727-Y used to form part of Lot 6727 owned by respondents' great grandfather, Juan Pagobo, covered by Original Certificate of Title No. (OCT) RO-2246[4] containing an area of 127,436 square meters.

Lot 6727 was once covered by Juan Pagobo's homestead application. Upon his death on January 18, 1947,[5] his homestead application continued to be processed culminating in the issuance on December 18, 1969 of Homestead Patent No. 128470 for Lot 6727. On the basis of this homestead patent, OCT RO-2246 was issued in the name of Juan Pagobo. Apparently, from the description of the subdivision lots of Lot 6727, particularly those of subject Lots 6727-Q and 6727-Y above, and even before the issuance of OCT RO-2246, the mother Lot 6727 was surveyed in 1963 and 1967 and eventually subdivided into 34 subdivision lots denominated as Lots 6727-A to 6727-HH.

Incidentally, on the same date that OCT RO-2246 was issued covering Lot 6727, OCT RO-1277[6] was likewise issued also

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[4] *Id.* at 475-486.

[5] *Id.* at 293. Certificate of Death issued by the Virgen de Regla Parish, Lapu-lapu City, Archdiocese of Cebu.

[6] *Id.* at 471-474.

covering Lot 6727 in the name of the late Juan Pagobo also pursuant to Homestead Patent No. 128470. Subsequently, however, on August 10, 1977, OCT RO-1277 was canceled for being null and void pursuant to an Order issued on August 4, 1977 by the Court of First Instance in Lapu-lapu City in view of the issuance of OCT RO-2246.[7]

Shortly after OCT RO-1277 and OCT RO-2246 were issued, subject Lots 6727-Q and 6727-Y were subsequently sold to Tarcela de Espina who then secured Transfer Certificate of Title No. (TCT) 3294[8] therefor on April 21, 1970. The purchase by Tarcela de Espina of subject Lot 6727-Y from the heirs of Juan Pagobo and subject Lot 6727-Q from one Antonio Alcantara was duly annotated on the Memorandum of Incumbrances of both OCT RO-1277[9] and OCT RO-2246.[10]

Subsequently, Tarcela de Espina sold subject lots to Rene Espina who was issued, on September 28, 1987, TCT 17830[11] for Lot 6727-Q and TCT 17831[12] for Lot 6727-Y. Thereafter, Rene Espina sold subject lots to Anthony Gaw Kache, who in turn was issued TCT 17918[13] and TCT 18177,[14] respectively, on November 9, 1987. Finally, Aqualab acquired subject lots from Anthony Gaw Kache and was issued TCT 18442[15] and TCT 18443,[16] respectively, on May 4, 1988.

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[7] *Id.* at 474. Entry No. 21586, Memorandum of Incumbrances, OCT RO-2177.

[8] *Id.* at 199-200.

[9] *Id.* at 472. Entry Nos. 8137 and 8139.

[10] *Id.* at 476. Entry Nos. 8137 and 8139.

[11] *Id.* at 201-202.

[12] *Id.* at 203-204.

[13] *Id.* at 205-207.

[14] *Id.* at 208-209.

[15] *Id.* at 177-179.

[16] *Id.* at 180-181.

On August 10, 1994, respondents, alleging that Aqualab has disturbed their peaceful occupation of subject lots in 1991, filed a Complaint[17] for *Partition, Declaration of Nullity of Documents, Cancellation of Transfer Certificate of Titles, Reconveyance with Right of Legal Redemption, Damages and Attorney's Fees* against Aqualab, the Register of Deeds of Lapu-Lapu City, Cebu, and, for being unwilling co-plaintiffs and alleged refusal to have subject lots partitioned, the Heirs of Bernabe Pagobo, namely: Anastacio Pagobo, Demetrio Pagobo, Felix Pagobo, Olympia P. Tampus, Damasa Pagobo, Salud P. Maloloy-on, Candida Pagobo, and Adriana P. Mahusay.

The Complaint pertinently alleged that:

ALLEGATIONS COMMON TO ALL CAUSE OF ACTION

4. Plaintiffs are the absolute and legal owners and rightful possessors of Lot [no.] 6727-Q and Lot no. 6727-Y. These are ancestral lands which are part of a bigger parcel of land, registered in the name of the plaintiffs' great grandfather Juan Pagobo and more particularly described as follows:

x x x x x x x x x

5. Ownership and Possession by plaintiff's [sic] predecessors-in-interest, and plaintiffs herein, respectively, over the said land, have been peaceful, continuous [sic] open, public and adverse, since the year 1936 or even earlier. Their peaceful possession was disturbed only in 1991 as hereinafter described.

x x x x x x x x x

15. In the records with the office of the Registry of Deeds of Lapu-Lapu City, Lot No. 6727 of the Opon Cadastre has been subdivided in to THIRTY-FOUR (34) lots and are denominated as Lots Nos. 6727-A to 6727-HH, respectively, as per subdivision plan, a machine copy of which is hereto attached and marked as Annex "A" hereof.

16. Defendants Anastacio Pagobo, x x x are the surviving children and grandchildren, respectively, of the late BERNABE PAGOBO and are herein joined as party-defendants for being "unwilling co-

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[17] *Id.* at 162-175.

plaintiffs"; and also because despite demands by plaintiffs upon these aforenamed defendants for the partition of the aforesaid land, the latter refused and still refuses to have the same partitioned.

FIRST CAUSE OF ACTION AGAINST DEFENDANT AQUALAB PHILIPPINES, INC. AND SANTIAGO TANCHAN, JR.

17. Sometime in 1991, defendant Aqualab Philippines Inc. represented by Santiago Tanchan, Jr., claiming ownership of Lot Nos. 6727-Q and 6727-Y, forcibly entered, and without any court Order, and against the will of the plaintiffs, said Lot no. 6727-Q and Lot no. 6727-Y. The truth of the matter is that these defendants despite full knowledge that absolute and legal ownership of Lot No. 6727-Q and Lot no. 6727-Y belonged to plaintiffs, and despite knowledge that peaceful, public and adverse possession were being continuously exercised by plaintiff over said land for a period in excess of THIRTY (30) years, did there and then, by the use of fraud and misrepresentation and without informing the plaintiffs, caused the transfer into the name of defendant Aqualab Philippines Inc., Lot no. 6727-Q and Lot no. 6727-Y, consisting of an area of ONE THOUSAND (1,000) SQUARE METERS and SIXTEEN THOUSAND ONE HUNDRED SIXTY-SEVEN (16,167) SQUARE METERS, respectively. Lots No. 6727-Q and Lot no. 6727-Y are presently covered by Transfer Certificate of Titles No. 18442 and CTC No. 18443, respectively, copies of which are hereto attached as Annexes "B" and "C", respectively.

18. The defendants entered into transactions of the lands subject matter of this case, without the knowledge of plaintiffs and their predecessors-in-interest, and defendants did so despite full knowledge that ownership of said lands belonged to plaintiffs and their predecessors-in-interest; and that defendants entered into said transactions despite full knowledge by them and their predecessors-in-interest that the lots was [sic] covered by a homestead patent and as such cannot be alienated within twenty-five (25) years from its issuance on February 10, 1970.

SECOND CAUSE OF ACTION

x x x x x x x x x

20. Granting, without necessarily admitting, that the transaction entered into by the defendants are legal and binding; Plaintiffs then

have not been duly notified of the said sale and therefore, have the right to redeem the same under Article 1620 in relation to Article 1623 of the New Civil Code, and also under Commonwealth Acts [sic] No. 141, as amended.[18]

On August 26, 1994, the heirs of Bernabe Pagobo filed their Answer,[19] asserting that subject Lot 6727-Y was owned by their predecessor Bernabe Pagobo as evidenced by Tax Declaration No. (TD) 00520.[20] They maintained that even before the Second World War and before the death of Juan Pagobo on January 18, 1947, Bernabe Pagobo already had possession of subject Lot 6727-Y which was the portion assigned to him. Moreover, they contended that respondents never made any demands for partition of subject Lot 6727-Y.

On September 12, 1994, Aqualab filed its Motion to Dismiss[21] on the grounds of: (1) prescription of the action for declaration of nullity of documents, cancellation of transfer certificates of title, and reconveyance; and (2) no cause of action for partition and legal redemption of the mother title of subject lots, *i.e.*, OCT RO-2246 had already been subdivided and several conveyances made of the subdivided lots.

Ruling of the Trial Court

By Order dated September 30, 1997, the RTC granted Aqualab's motion and dismissed respondents' complaint, disposing as follows:

Wherefore, in the light of the foregoing considerations, defendant Aqualab's motion to dismiss, being impressed with merit, is hereby granted. The complaint in the above-entitled case is hereby dismissed.

SO ORDERED.[22]

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[18] *Id.* at 166-171.

[19] *Id.* at 288-291.

[20] *Id.* at 292, dated February 17, 1967.

[21] *Id.* at 182-186.

[22] *Id.* at 68.

In granting Aqualab's motion to dismiss, the trial court ruled that prescription has set in. Moreover, the trial court held that Aqualab is an innocent purchaser for value and, thus, its rights are protected by law. Finally, it concluded that legal redemption or reconveyance was no longer available to respondents.

Undaunted, respondents appealed the above dismissal to the CA. The parties thereafter filed their respective briefs.

Ruling of the Appellate Court

The CA saw things differently. On March 15, 2007, it rendered the assailed decision, reversing the September 30, 1997 Order of dismissal by the RTC, declaring the sale of subject lots as null and void, and remanding the case to the trial court for partition proceedings. The *fallo* reads:

> WHEREFORE, in view of the foregoing premises, the Order of the Regional Trial Court dismissing the instant Complaint for Partition, Declaration of Nullity of Documents, Cancellation of Transfer Certificates of Title, Reconveyance with Right of Legal Redemption, Damages and Attorney's Fees, and other Reliefs is REVERSED and SET ASIDE, and the instant appeal is GRANTED, hereby declaring the sale of the homestead and TCT Nos. 18442 and 18443 under the name of Aqualab null and void, and ordering the Register of Deeds for the City of Lapu-lapu to cancel both certificates of title and to issue new certificates of title over Lots 6727-Q and 6727-Y under the name of appellants, and let this case be REMANDED to the trial court for the presentation of evidence on the claim for partition and for damages.
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> SO ORDERED.[23]

The CA resolved the following issues: (1) the propriety of the dismissal of the complaint by the RTC; and, (2) whether respondents have the right to redeem subject lots. The CA ruled that the trial court erred in dismissing the complaint as the sale of subject lots to Tarcela de Espina was void, thus making the subsequent conveyances ineffective and no titles were validly transferred. Moreover, it ruled that Aqualab is

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[23] *Id.* at 39-40.

not an innocent purchaser for value, and held that respondents, as heirs of the homestead grantee, never lost their valid title to the subject lots.

Through the equally assailed April 22, 2008 Resolution, the CA denied Aqualab's motion for reconsideration.

Hence, we have this petition.

The Issues

(A)

WHETHER OR NOT THE COURT OF APPEALS COMMITTED A RADICAL DEPARTURE FROM THE USUAL AND ACCEPTED COURSE OF JUDICIAL PROCEEDINGS THAT WOULD WARRANT THE REVERSAL OF THE COURT OF APPEALS' DECISION

(B)

WHETHER OR NOT THE COMPLAINT SHOULD BE DISMISSED COMPLAINT [SIC] ON THE GROUND OF LACK OF CAUSE OF ACTION

(C)

WHETHER OR NOT THE TRANSFERS OF THE DISPUTED PROPERTY TO HEREIN PETITIONER'S PREDECESSORS-IN-INTEREST WERE VIOLATIVE OF THE FIVE (5) YEAR PROHIBITIVE PERIOD UNDER SECTION 118 OF THE PUBLIC LAND ACT SO AS TO WARRANT THEIR NULLIFICATION

(D)

WHETHER OR NOT THE PETITIONER IS AN INNOCENT PURCHASER IN GOOD FAITH

(E)

WHETHER OR NOT THE RESPONDENTS' CAUSE OF ACTION HAS PRESCRIBED WARRANTING THE DISMISSAL OF THEIR COMPLAINT ON THE GROUND OF PRESCRIPTION

(F)

WHETHER OR NOT THE RESPONDENTS' COMPLAINT CONSTITUTES A COLLATERAL ATTACK AGAINST THE TITLES OF HEREIN PETITIONER'S PREDECESSORS-IN-INTEREST WARRANTING THE DISMISSAL THEREOF

(G)

WHETHER OR NOT THE RESPONDENTS' APPEAL BEFORE THE COURT OF APPEALS SHOULD HAVE BEEN DISMISSED IN VIEW OF THE RESPONDENTS' ADMISSION THAT THE CONVEYANCE OF THE DISPUTED PROPERTY TO HEREIN PETITIONER WAS VALID

(H)

WHETHER OR NOT THE COURT OF APPEALS DEPRIVED THE PETITIONER OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW WHEN IT NULLIFIED THE PETITIONER'S TITLE AND OWNERSHIP OVER SUBJECT PROPERTY WITHOUT TRIAL THEREBY DEPRIVING THE PETITIONER OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW[24]

The Court's Ruling

The petition is partly meritorious.

The core issues raised in the instant petition are factual in nature and can be summed up into two: *first*, whether the action of respondents is barred by prescription; and *second*, whether Aqualab is an innocent purchaser for value.

Hypothetical Admission of Factual Allegations in the Complaint by Filing a Motion to Dismiss

In filing a motion to dismiss, the movant hypothetically admits the truth of the material and relevant facts alleged and pleaded in the complaint. The court, in resolving the motion to dismiss, must consider such hypothetical admission, the documentary evidence presented during the hearing thereof, and the relevant laws and jurisprudence bearing on the issues or subject matter of the complaint.

Dismissal by Trial Court on Prescription and Finding Defendant an Innocent Purchaser for Value

The trial court ruled that prescription has set in, since respondents alleged in the complaint fraud and misrepresentation in procuring

[24] *Id.* at 622-623, Memorandum for the Petitioner dated March 25, 2009.

the transfer of subject lots, and such transfer was made on April 21, 1970, while the instant complaint was filed only on August 10, 1994, or a little over 24 years. Relying on *Buenaventura v. Court of Appeals*,[25] where the Court held that an action for reconveyance of title due to fraud is susceptible to prescription either within four or 10 years, the trial court held that the instant action is definitely barred. It also ruled that even if a constructive trust was created as averred by respondents, still, the instant action has prescribed for a constructive trust prescribes in 10 years, relying on *Tenio-Obsequio v. Court of Appeals*.[26]

Moreover, the trial court, also relying on *Tenio-Obsequio*, agreed with Aqualab's assertion that it was an innocent purchaser for value, which merely relied on the correctness of the TCTs covering subject lots, *i.e.*, TCT 17918 and TCT 18177 in the name of Anthony Gaw Kache, and, as such, Aqualab, as vendee, need not look beyond the certificate of title and investigate the title of the vendor appearing on the face of said titles.

Finally, the trial court concluded that respondents cannot invoke legal redemption under Article 1620 in relation to Art. 1623 of the Civil Code and under Commonwealth Act No. (CA) 141, as amended,[27] for Lot 6727 had already been divided into subdivision lots, the subject of numerous transactions. Besides, it reasoned that legal redemption under CA 141 is only applicable to cases of proper conveyance of a land covered by a homestead patent, but not, as in the instant case, when the conveyances were assailed to be improper.

Aqualab Hypothetically Admitted the Fraudulent Conveyances and Respondents' Possession of Subject Lots

Respondents aver that they are the absolute and lawful owners of subject properties, *i.e.*, Lots 6727-Q and 6727-Y, over which

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[25] G.R. No. 50837, December 28, 1992, 216 SCRA 818.

[26] G.R. No. 107967, March 1, 1994, 230 SCRA 550.

[27] "An Act to Amend and Compile the Laws Relative to Lands of the Public Domain," otherwise known as the "Public Land Act," approved on November 7, 1936.

they have had actual possession since 1936 or earlier until sometime in 1991, when Aqualab disturbed such possession.[28] While the records show that respondents did not have in their names the certificate of titles over subject lots, the factual assertion of open, peaceful, public, and adverse possession is hypothetically admitted by Aqualab.

Moreover, respondents allege that the conveyances of subject lots were fraudulently made in violation of the restrictions on alienation of homesteads under CA 141, and that said conveyances were made without their knowledge and, thus, asserting their right to redeem the subject properties in line with the policy of CA 141 that the homestead should remain with the grantee and his family.[29] The alleged fraudulent conveyances were likewise hypothetically admitted by Aqualab.

On the other hand, Aqualab's co-defendants, the heirs of Bernabe Pagobo, to respondents' complaint, filed their Answer asserting possession and ownership over subject Lot 6727-Y by submitting TD 00520 to prove payment of the real estate tax thereon. However, on the allegation of disturbance of possession and fraudulent conveyances without knowledge of respondents, the heirs of Bernabe Pagobo merely maintained that they had no knowledge and information sufficient to form a belief as to the truth thereof.

It is, thus, clear that by filing its motion to dismiss, Aqualab hypothetically admitted the veracity of respondents' continuous possession of subject lots until 1991 when Aqualab disturbed such possession. Aqualab likewise hypothetically admitted the fraudulent and illegal conveyances of subject lots.

In its Motion to Dismiss, Aqualab moved for the dismissal of respondents' complaint on the ground of prescription, that it is an innocent purchaser for value whose rights are protected by law, and that the complaint failed to state a cause of action for partition and legal redemption.

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[28] Paragraphs 5 and 17 of the Complaint.

[29] Paragraphs 18, 19, and 20 of the Complaint.

Prescription Is Not Apparent on the Face of the Complaint

From the foregoing premises, the trial court erred in finding prescription. Prescription, as a ground for a motion to dismiss, is adequate when the complaint, on its face, shows that the action has already prescribed.[30] Such is not the case in this instance. Respondents have duly averred continuous possession until 1991 when such was allegedly disturbed by Aqualab. Being in possession of the subject lots—hypothetically admitted by Aqualab—respondents' right to reconveyance or annulment of title has not prescribed or is not time-barred.

Verily, an action for annulment of title or reconveyance based on fraud is imprescriptible where the plaintiff is in possession of the property subject of the acts.[31] And the prescriptive period for the reconveyance of fraudulently registered real property is 10 years, reckoned from the date of the issuance of the certificate of title, if the plaintiff is not in possession.[32] Thus, one who is in actual possession of a piece of land on a claim of ownership thereof may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right.[33]

In the instant case, as hypothetically admitted, respondents were in possession until 1991, and until such possession is disturbed, the prescriptive period does not run. Since respondents filed their complaint in 1994, or three years after their possession

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[30] *Fil-Estate Golf and Development, Inc.*, G.R. No. 152575, June 29, 2007, 526 SCRA 51, 58; citing *Marquez v. Baldoz*, G.R. No. 143779, April 4, 2003, 400 SCRA 669.

[31] *Llemos v. Llemos*, G.R. No. 150162, January 26, 2007, 513 SCRA 128, 134; citing *Delfin v. Billones*, G.R. No. 146550, March 17, 2006, 485 SCRA 38, 47-48; *Occeña v. Esponilla*, G.R. No. 156973, June 4, 2004, 431 SCRA 116, 126.

[32] *Heirs of Salvador Hermosilla v. Remoquillo*, G.R. No. 167320, January 30, 2007, 513 SCRA 403, 408-409.

[33] *Id.* at 409; citing *Arlegui v. Court of Appeals*, G.R. No. 126437, March 6, 2002, 378 SCRA 322, 324.

was allegedly disturbed, it is clear that prescription has not set in, either due to fraud or constructive trust.

Besides, if the plaintiff, as the real owner of the property, remains in possession of the property, the prescriptive period to recover title and possession of the property does not run against him. In such a case, an action for reconveyance, if nonetheless filed, would be in the nature of a suit for quieting of title, an action that is imprescriptible.[34]

Thus, the trial court's reliance on *Buenaventura*[35] and *Tenio-Obsequio*[36] for prescription on the right of reconveyance due to fraud and constructive trust, respectively, is misplaced, for in both cases, the plaintiffs before the trial court were not in possession of the lots subject of their action.

Aqualab Not an Innocent Purchaser for Value Due to the Hypothetically Admitted Respondents' Possession of Subject Lots

In the instant case, again based on the hypothetically admitted allegations in the complaint, it would appear that Anthony Gaw Kache, Aqualab's predecessor-in-interest, was not in possession of subject lots. Such a fact should have put Aqualab on guard relative to the possessors' (respondents') interest over subject lots. A buyer of real property that is in the possession of a person other than the seller must be wary, and a buyer who does not investigate the rights of the one in possession can hardly be regarded as a buyer in good faith.[37]

Having hypothetically admitted respondents' possession of subject lots, Aqualab cannot be considered, in the context of its

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[34] *Aguirre v. Heirs of Lucas Villanueva*, G.R. No. 169898, June 8, 2007, 524 SCRA 492, 494; citing *Alfredo v. Borras*, G.R. No. 144225, June 17, 2003, 404 SCRA 145, 163-164, 166.

[35] *Supra* note 25.

[36] *Supra* note 26.

[37] *Raymundo v. Bandong*, G.R. No. 171250, July 4, 2007, 526 SCRA 514, 530-531; citing *Potenciano v. Reynoso*, G.R. No. 140707, April 22, 2003, 401 SCRA 391.

motion to dismiss, to be an innocent purchaser for value or a purchaser in good faith. Moreover, the defense of indefeasibility of a Torrens title does not extend to a transferee who takes it with notice of a flaw in the title of his transferor.[38]

The Complaint Sufficiently States a Cause of Action

Upon the foregoing disquisitions, it is abundantly clear to the Court that respondents' complaint sufficiently stated, under the premises, a cause of action. Not lost on us is the fact that the RTC dismissed the complaint of respondents on the grounds of prescription and in the finding that Aqualab is an innocent purchaser for value of the subject lots. Quoting *Philippine Bank of Communications v. Trazo*,[39] the Court said in *Bayot v. Court of Appeals*[40] that:

> A cause of action is an act or omission of one party in violation of the legal right of the other. A motion to dismiss based on lack of cause of action hypothetically admits the truth of the allegations in the complaint. The allegations in a complaint are sufficient to constitute a cause of action against the defendants if, hypothetically admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer therein. A cause of action exists if the following **elements** are present, namely: (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) an act or omission on the part of such defendant violative 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.[41]

Indeed, to sustain a motion to dismiss for lack of cause of action, the complaint must show that the claim for relief does

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[38] *Samonte v. Court of Appeals*, G.R. No. 104223, July 12, 2001, 361 SCRA 173, 183.

[39] G.R. No. 165500, August 30, 2006, 500 SCRA 242, 251-252.

[40] G.R. No. 155635, November 7, 2008, 570 SCRA 472.

[41] *Id.* at 492.

not exist rather than that a claim has been defectively stated or is ambiguous, indefinite, or uncertain.[42] However, a perusal of respondents' Complaint before the RTC, in light of Aqualab's motion to dismiss which hypothetically admitted the truth of the allegations in the complaint, shows that respondents' action before the RTC has sufficiently stated a cause of action. Hypothetically admitting fraud in the transfers of subject lots, which indisputably were first transferred in apparent violation of pertinent provisions in CA 141 prohibiting alienation of homesteads within five years from the grant of the homestead patent, and the continuing possession of respondents until 1991 of the subject lots, the action for reconveyance and nullification filed in 1994 not only sufficiently stated a cause of action but also has not yet prescribed.

Given the findings above, the trial court gravely committed an error of judgment in granting Aqualab's motion to dismiss.

The appellate court was, thus, correct insofar as it reversed and set aside the September 30, 1997 Order of dismissal of the trial court. Unfortunately, however, it went further, for it did not merely remand the case for further proceedings, *i.e.*, for trial on the merits, but it also resolved and decided the case in favor of respondents without going into a full-blown trial on the merits. This violated Aqualab's right to due process.

The CA Committed Reversible Error in Deciding the Case on the Merits

The CA reversibly erred when it decided the case on the merits when what was appealed thereto was a dismissal of the case through a motion to dismiss. There was no trial on the merits. Thus, its resolution of the case on the merits had no factual basis. The lynchpins in the resolution of the motion to dismiss are in the issues of prescription and whether Aqualab is

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[42] *Universal Aquarius, Inc. v. Q.C. Human Resources Management Corp.*, G.R. No. 155900, September 12, 2007, 533 SCRA 38, 47; citing *Pioneer Concrete Philippines, Inc. v. Todaro*, G.R. No. 154830, June 8, 2007, 524 SCRA 153.

an innocent purchaser for value. On these two issues we ruled, as discussed above, that based on the motion to dismiss, the allegations in the complaint, and the pieces of documentary evidence on record, prescription has not yet set in and that Aqualab is apparently not a purchaser in good faith for, as hypothetically admitted, respondents had possession over subject lots until 1991.

Such hypothetical admission, however, is not equivalent to or constitutive of a judicial admission, for, after all, Aqualab has not yet filed its Answer. It was, therefore, erroneous for the CA to decide the case on the merits. And much less can the CA rule that Aqualab did not controvert respondents' allegation of disturbance in their possession. It was a hypothetically admitted fact but not the factual finding of the trial court.

The Parties' Assertions and Allegations Still Have to Be Proved by Trial on the Merits

First, the assertion of respondents that they had possession until 1991, a factual issue, still had to be established on trial. Indeed, he who asserts a fact has the burden of proving it. So, too, the contention of being an innocent purchaser for value by Aqualab still has yet to be determined through a trial on the merits. The hypothetical admission applied against a defendant is relied upon by the court only to resolve his motion to dismiss. Verily, the burden of proving the purchaser's good faith lies in the one who asserts the same—it is not enough to invoke the ordinary presumption of good faith.[43]

And if Aqualab is found to be truly an innocent purchaser for value, its rights as such is protected by law; more so in situations where there have been a series of transfers of the subject lots, in which case, respondents' rights, if any, will be for damages from those who perpetrated the fraudulent conveyances.

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[43] *Raymundo*, *supra* note 37, at 529.

No Factual and Legal Bases for the Cancellation of Certificates of Title

Second, and corollary to the first, given that there is no judicial factual finding that Aqualab is not an innocent purchaser for value, it is legally and factually without bases for the appellate court to order the cancellation of the certificates of title covering subject lots in the name of Aqualab.

Third, the issues of reconveyance or redemptive rights of respondents and their action for partition have to be resolved by the trial court in light of its eventual findings from a trial on the merits of the instant case.

We, thus, hold that the instant case should proceed to trial for the parties to adduce their respective evidence to support their contrary positions in the defense of their asserted rights.

WHEREFORE, this petition is hereby *PARTIALLY GRANTED*. The CA's Decision dated March 15, 2007 and Resolution dated April 22, 2008 in CA-G.R. CV No. 58540 are hereby *REVERSED* and *SET ASIDE*. The RTC's Order dated September 30, 1997 dismissing Civil Case No. 4086-L is likewise *REVERSED* and *SET ASIDE*. The instant case is hereby *REINSTATED*, and petitioner Aqualab is *REQUIRED* within the period available pursuant to Section 4 of Rule 16, 1997 Revised Rules of Civil Procedure *TO FILE* its answer before the trial court. The trial court is ordered to proceed with dispatch to the trial on the merits.

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 184792. October 12, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALFREDO DELA CRUZ *y* MIRANDA, *alias* "DIDONG,"** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S FINDINGS WITH RESPECT THERETO DESERVE A HIGH DEGREE OF RESPECT AND WILL NOT BE DISTURBED ON APPEAL; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.— As a matter of settled jurisprudence, the Court generally defers to the trial court's evaluation of the credibility of witness and their testimonies, for it is in a better position to decide questions of credibility having heard the witnesses themselves and observed their attitude and deportment during trial. Accordingly, a finding on the credibility of witnesses, as here, with respect to the testimony of Anthony and Zenaida, deserves a high degree of respect and will not be disturbed on appeal absent a clear showing that the trial court had overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which could reverse a judgment of conviction. None of the exceptions exists in this case.

2. ID.; ID.; ID.; IN CASE OF INCONSISTENCY, THE OPEN COURT TESTIMONY COMMANDS GREATER WEIGHT THAN *EX PARTE* AFFIDAVITS.— Also going against Didong's submission about Anthony's inconsistency is the recognition that affidavits or statements made before the police, which are usually taken *ex parte*, are often incomplete and inaccurate. Thus, by nature, these affidavits are inferior to open court testimony, and whenever there is inconsistency between the affidavit and the testimony of a witness in court, the testimony commands greater weight. Moreover, inconsistencies between the declaration of the affiant in his sworn statements and those in open court do not necessarily discredit said witness.

3. CRIMINAL LAW; MURDER; ELEMENTS THEREOF AND THE IDENTITY OF THE ACCUSED ESTABLISHED IN

CASE AT BAR.— All told, the prosecution has discharged the burden of proving the commission of the crime charged beyond reasonable doubt. It was able to establish two things: *first*, the *corpus delicti* or the presence of all the elements of the offense of murder; and *second*, the fact that Didong was the perpetrator of the crime. The fact that Didong was one of the men who killed Ahlladin was proved by the testimony and the positive identification by the prosecution witnesses.

4. REMEDIAL LAW; EVIDENCE; ALIBI; REQUISITES TO PROSPER; NOT ESTABLISHED IN CASE AT BAR.— Didong's proffered defense to evade criminal responsibility is too feeble to merit consideration. His defense of alibi cannot overcome, and is in fact destroyed by the categorical testimony of Anthony, who positively pointed to and identified him as one of the malefactors. Moreover, in order to justify an acquittal based on alibi, the accused must establish by clear and convincing evidence that (1) he was somewhere else at the time of the commission of the offense; and (2) it was physically impossible for him to be at the scene of the crime at the time it was committed. And when the law speaks of physical impossibility, the reference is to the distance between the place where the accused was when the crime transpired and the *locus criminis*, as well as the facility of access between the two places. Where the possibility exists for the accused to be present at the crime scene, the defense of alibi must fail. Evidently, here, the requisites for appreciating alibi are not present. In fact, by appellant's own admission, he was with one of his co-accused the day before Ahlladin's death was uncovered. Even supposing that during the latter part of the day, he really did go home, such a detail does not remove the possibility of his being at the forested area, the scene of the crime.

5. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; ESSENCE; EXISTS IN CASE AT BAR.— The essence of treachery is the sudden and unexpected attack by the aggressors on unsuspecting victims, depriving the latter of any real chance to defend themselves, thereby ensuring its commission without risk to the aggressors, and without the slightest provocation on the victim's part. We find that circumstances do exist to justify the finding of treachery in this case. The prosecution alleged and sufficiently proved that

Ahlladin was too drunk to fight off any aggression from his four assailants, at least two of them armed. His killers took advantage of his condition and attacked him without considerable difficulty, as plainly seen in the post mortem report on Ahlladin's body.

6. CIVIL LAW; DAMAGES; CIVIL INDEMNITY; GRANTED TO THE HEIRS OF THE VICTIM WITHOUT NEED OF PROOF OTHER THAN THE COMMISSION OF THE CRIME.— When as a consequence to a criminal act death ensues, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; and (4) exemplary damages. Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. The award of civil indemnity of PhP 50,000 is increased to PhP 75,000 in view of the ruling that the crime is murder qualified by the aggravating circumstances of treachery and evident premeditation. Said crime is a heinous crime under Republic Act 7659 punishable by death but now reduced to *reclusion perpetua* by virtue of RA 9346, which prohibits the imposition of death penalty.

7. ID.; ID.; MORAL DAMAGES; MANDATORY IN CASES OF MURDER WITHOUT NEED OF ALLEGATION AND PROOF OTHER THAN DEATH OF THE VICTIM.— The deletion of the award of moral damages was erroneous. Moral damages are mandatory in cases of murder, without need of allegation and proof other than the death of the victim. The award of PhP 75,000 as moral damages is consequently in order and in accordance with prevailing jurisprudence.

8. ID.; ID.; EXEMPLARY DAMAGES; AWARD THEREOF PROPER WHEN THE KILLING WAS ATTENDED BY THE QUALIFYING CIRCUMSTANCE OF TREACHERY.— The award of exemplary damages, but in the amount of PhP 30,000, up from the PhP 25,000 the CA granted, is proper under Article 2230 of the Civil Code, since the killing was attended by the qualifying circumstance of treachery.

9. ID.; ID.; ACTUAL DAMAGES; ENTITLEMENT TO THE AWARD THEREOF MUST BE SHOWN WITH A REASONABLE DEGREE OF CERTAINTY UNDER THE FACTS OF THE CASE.— Finally, as documentary evidence

of burial expenses was presented during the trial and in fact became the basis of an award of actual damages, a grant of temperate damages is no longer justified. If actual damages cannot be determined because of the absence of supporting receipts, entitlement to said award must be shown with a reasonable degree of certainty under the facts of the case.

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.*:

On appeal is the Decision dated April 15, 2008 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01024, which affirmed the April 15, 2005 Decision in Criminal Case No. 1206-M-2002 of the Regional Trial Court (RTC), Branch 12 in Malolos City, Bulacan. The RTC convicted accused-appellant Alfredo Dela Cruz, *alias* "Didong," of the crime of murder and sentenced him to suffer the penalty of *reclusion perpetua*.

In an Information dated April 10, 2002, appellant and three others, namely: Narciso Samonte, *alias* "Boyet," Alfredo Gongon, alias "Fred," and Florante Flores, *alias* "Nante," were charged with murder allegedly committed as follows:

That on or about the 20th day of November, 2001, in the municipality of San Rafael, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a handgun and fanknives, [sic] conspiring, confederating together and mutually helping one another, with intent to kill one Ahlladin Trinidad *y* Payumo, did then and there willfully, unlawfully and feloniously, with evident premeditation and treachery, attack, assault, shoot and stab the said Ahlladin Trinidad *y* Payumo, hitting the latter on the different parts of his body which directly caused the death of the said Ahlladin Trinidad *y* Payumo.[1]

[1] CA *rollo*, p. 70.

Of the four indicted, only appellant Dela Cruz (Didong) and Samonte (Boyet) were taken into custody. The other two accused, Gongon (Tata Fred) and Flores (Nante), remained at large.

Upon their arraignment, both appellant and Samonte pleaded not guilty to the charge.

The Case for the Prosecution

During trial, the prosecution presented in evidence the testimony of Anthony Villacorta and his mother, Zenaida Soriano, to establish the ensuing course of events:

On November 20, 2001, at around 5 o'clock in the afternoon, Anthony, then 13 years old, was playing in front of the house of Gongon, in Brgy. Pantubig, San Rafael, Bulacan. Anthony addresses Gongon, one of the accused at large, as "Tata Fred." Tata Fred was then having a drinking spree with Boyet, Nante, Rico, Ariel, Arnel, Ahlladin Trinidad (Ahlladin), and appellant, also known as "Didong." At approximately 6 o'clock in the evening of that day, Anthony went home to have dinner and then met up with friends to sing Christmas carols from house to house. The group broke up at around 8:30 that evening, after which Anthony and two of his friends, Edwin and Ronnel, stayed at a store to wait for a certain JR.[2]

At about 9 o'clock, Anthony saw Nante and Boyet, the latter holding an ice pick, pass by going to the direction of a forested area. Shortly thereafter, Ahlladin also passed by, walking unsteadily, followed by Tata Fred who had a gun tucked in his waist. Tata Fred then put an arm around Ahlladin's shoulder and the two then proceeded to the forested area. Moments later, Anthony and his friends heard three gunshots. They stayed at the store for a while before proceeding home. They did not, before leaving, see anyone come out of the forested area.

The next morning, Ahlladin's lifeless body was discovered. Among those who joined the curious onlookers was Anthony who, upon seeing Ahlladin's corpse, remarked, "*Iyan pala ang pinaputukan ni Tata Fred kagabi*." Tata Fred, who was among

[2] *Rollo*, p. 3.

those in the crowd and who heard Anthony's utterances, pulled the latter aside, told him to keep quiet, and slapped him. The next day, Tata Fred threatened Anthony again while the latter was with his mother, Zenaida. He told Anthony not to tell anyone of his drinking spree with Ahlladin. Zenaida then instructed her son to go home.[3]

Zenaida confirmed that there was indeed a drinking session at Tata Fred's house in the afternoon of November 20, 2001. Present at the time were Fred, Boyet, Rico, Nante, Ariel, Arnel, Ahlladin, and Didong. According to Zenaida, she was fetching water nearby when she overheard the group arguing about Ahlladin being a police informant and heard Boyet declared, "All the *salot* in their occupation should be liquidated." Tata Fred commented that they should first wait for Ahlladin's friend, Wowie, so that they could dispose of "two birds with one shot."[4] The exchange enraged Ahlladin who there and then remarked that he would have the police arrest them. He then left and went inside the house of Tata Fred's brother, Hernan. After 20 minutes, Zenaida noticed Nante calling Ahlladin's name and telling him that they were all only kidding. Ahlladin rejoined the drinking group shortly thereafter.[5]

Boyet and Nante then headed to Zenaida's house that same night. It was around 8 o'clock. An inebriated-looking Boyet said out loud, "*Ang mga salot sa hanapbuhay namin ay kailangang patayin*," then left with Nante. Peeping through her window, Zenaida saw the two walking towards a forested area. Sometime later, Zenaida sat out on her yard with her niece, Luz. She saw Ahlladin walking in a wobbly manner. He was accompanied by Tata Fred, who had a gun tucked in his waist. Both men likewise walked towards the forested area. At around 9 o'clock, Zenaida heard three explosions which she surmised to be the sounds coming from firecrackers.[6]

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[3] *Id.*

[4] "*Dalawang ibon sa isang putok.*"

[5] *Rollo*, p. 4.

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

The following morning, Zenaida observed people running in the direction of the forest area. She learned along with her son Anthony that Ahlladin's body had been discovered there. Anthony then told Zenaida that it was his Tata Fred who killed Ahlladin.[7]

On December 1, 2001, Zenaida and Anthony each issued statements on Ahlladin's death to the local police. Anthony's statement named his Tata Fred, Boyet, and Nante as the men he saw walking towards the forested area the night before the discovery of Ahlladin's body.[8] On January 7, 2002, Anthony executed a *Karagdagang Salaysay*. He explained that after giving his first *Salaysay*, he often dreamt of Ahlladin during which he would shout "*Kuya Ahlladin, takbo, babanatan ka nila*." The recurring dreams prompted him to execute an additional affidavit, this time also implicating appellant.[9]

In his *Karagdagang Salaysay*, Anthony recounted that at about 9:00 in the evening of November 20, 2001, while at a store with his two friends, he spotted appellant taking the short-cut route to the forested area which Boyet and Nante had earlier used. Didong was carrying what appeared to be a wooden paddle. He turned to Anthony and his two friends and told them not to follow him. Intrigued, the boys ignored appellant's warning and hid under a hut in the forested area. They saw Ahlladin being killed by Boyet, Nante, Tata Fred, and appellant. Tata Fred was then heard saying "*Siguraduhin na patay na*," to which Boyet answered, "*Siguradong patay na*."[10]

The following day, November 21, 2001, Anthony met appellant who again warned the former not to reveal to anybody what he saw the night before. The terrified Anthony answered "yes" and proceeded home.

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[7] *Id.*

[8] *Id.* at 67.

[9] *Id.* at 70.

[10] *Rollo*, p. 5.

Per Medico-Legal Report No. M-244-01,[11] marked and presented in evidence as Exhibit "F", gunshot wounds on his head and trunk, as well as a stab wound on his trunk, caused Ahlladin's death.

The Case for the Defense

Didong proffered the defenses of alibi and denial. He testified to being at Tata Fred's house from five in the afternoon of November 20, 2001 until seven in the evening.[12] He then headed home and stayed there the whole night. He only found out about Ahlladin's death when his neighbors informed him about it the next day.[13]

When asked of any motive that might have impelled the prosecution witnesses to implicate him in Ahlladin's death, appellant answered that, in 1998, Zenaida was arrested and subsequently convicted of drug charges. He acknowledged being the police informant who reported on her drug activities.[14]

The Ruling of the Trial and Appellate Courts

After trial, the RTC, finding the prosecution's evidence sufficient to sustain a finding of guilt, rendered judgment convicting appellant and his co-accused Samonte of murder. The dispositive portion of the RTC Decision reads:

> WHEREFORE, finding herein accused Alfredo dela Cruz *y* Miranda @ "Didong" and Narciso Samonte *y* Dionisio @ "Boyet" each guilty as principal beyond reasonable doubt of the crime of murder as charged in the information, there being no other circumstances, aggravating or mitigating, found attendant in its commission, except the qualifying circumstance of treachery as alleged, due to the drunkenness of the victim which rendered him helpless to put up any defense or to retaliate, said accused are hereby sentenced each to suffer the penalty of *reclusion perpetua*, to indemnify the heirs of victim Ahlladin

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[11] Records, p. 113.

[12] TSN, April 27, 2004, p. 233.

[13] *Id.* at 235.

[14] *Id.* at 237.

Trinidad *y* Payumo in the amount of ₱75,000.00, plus ₱93,000.00 as actual damages (Exh. "C"), and the further sum of ₱50,000.00 as moral damages subject to the corresponding filing fees as a first lien, and to pay the costs of the proceedings.

In the service of their sentence, each of the aforenamed accused being a detention prisoner, shall be credited with the full time during which he had undergone preventive imprisonment, pursuant to Art. 29 of the Revised Penal Code.

As to the other two accused still at-large, Alfredo Gongon *alias* Fred and Florante Flores *alias* Nante, let *alias* warrant of arrest issue against them and, pending their actual apprehension, let the record of this case be in the meantime committed to the Archives to be recalled therefrom as soon as circumstances demand so.

SO ORDERED.[15]

Therefrom, only Didong appealed to the CA. Eventually, the CA rendered on April 15, 2008 a Decision affirming that of the RTC with a modification as to the damages awarded. The CA reduced the amount assessed as civil indemnity, deleted the award of moral damages, but awarded exemplary damages, as follows:

WHEREFORE, the appealed DECISION dated 15 April 2005 of the Regional Trial Court, Third Judicial Region, Malolos City, Bulacan, Branch 12 is AFFIRMED with the following MODIFICATIONS: (1) the award of civil indemnity is reduced to ₱50,000.00; (2) the award of moral damages is deleted; and (3) appellant Alfredo dela Cruz is further ordered to pay exemplary damages in the amount of ₱25,000.00.

SO ORDERED.[16]

On May 20, 2008, Didong filed a timely Notice of Appeal of the appellate court's decision.

On December 3, 2008, the Court directed the parties to submit supplemental briefs if they so desired. The parties manifested

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[15] CA *rollo*, pp. 36-37. Penned by Judge Crisanto C. Concepcion.

[16] *Rollo*, p. 12. Penned by Associate Justice Japar B. Dimaampo and concurred in by Associate Justices Mario L. Guariña III and Romeo F. Barza.

their willingness to submit the case on the basis of the records already submitted.

Appellant questions his conviction on the following grounds or issues on which he anchored his appeal to the CA, *viz*:

I

WHETHER THE COURT *A QUO* ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF PROSECUTION WITNESSES;

II

WHETHER THE COURT *A QUO* ERRED IN NOT APPLYING THE RULE THAT CONVICTION OF THE ACCUSED IS BASED ON THE STRENGTH OF THE PROSECUTION'S EVIDENCE AND NOT ON THE WEAKNESS OF THE DEFENSE; and

III

WHETHER THE COURT *A QUO* ERRED IN FAILING TO APPLY THE RULE THAT IN CASE OF TWO CONFLICTING CULPATORY FACTS AND CIRCUMSTANCES THE ONE THAT IS EXCULPATORY IN NATURE SHOULD BE RESOLVED IN FAVOR OF THE ACCUSED.[17]

The Court's Ruling

We deny the appeal.

Didong urges the Court to overturn his conviction, basing his plea on the supposed contradictory statements by the prosecution's principal witness. He avers: witness Anthony testified that he, Didong, was not part of the group that went to the forest with the victim on the night of the incident; Didong was not in the vicinity of the crime scene when the victim was shot; and Anthony was not an eyewitness to the killing, as deduced from his *res gestae* statement of "*Iyan pala ang pinaputukan ni Tata Fred kagabi*" the day after the incident. Rounding up his arguments, Didong alleges that Anthony's *Karagdagang Salaysay* is in direct conflict with his earlier statement which did not mention appellant as one of the men who was with the victim when killed.

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[17] *Id.* at 7.

The Court is not convinced.

The appeal essentially assails the credibility accorded by the trial court to the prosecution witnesses' testimonies.

As a matter of settled jurisprudence, the Court generally defers to the trial court's evaluation of the credibility of witness and their testimonies, for it is in a better position to decide questions of credibility having heard the witnesses themselves and observed their attitude and deportment during trial.[18] Accordingly, a finding on the credibility of witnesses, as here, with respect to the testimony of Anthony and Zenaida, deserves a high degree of respect and will not be disturbed on appeal absent a clear showing that the trial court had overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which could reverse a judgment of conviction.[19] None of the exceptions exists in this case.

To be sure, Anthony's testimony is not without discrepancies. But as the trial court and later the CA found, Anthony was able to satisfactorily explain the perceived inconsistencies in his testimony. As noted by the courts *a quo*, Anthony first excluded appellant from his sworn statement as the latter had confronted and frightened him into silence about appellant's participation. As the CA observed keenly, "We can only imagine the fright experienced by a young boy who at the tender age of 13 years old was threatened to be killed by appellant. It was only after his fear had subsided that he was able to recount what truly happened on that fateful day."[20] After somehow overcoming the anxiety and the thought of reprisal troubling his young mind, Anthony subsequently identified appellant as among the perpetrators of the crime. As it turned out later, Anthony's fears were not unfounded, as an attempt on his mother's life was made a few months after Ahlladin's murder. Even the attacker

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[18] *People v. Malibiran*, G.R. No. 178301, April 24, 2009.

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

[20] *Rollo*, p. 10.

apologized to Anthony's mother shortly before taking a shot at her, saying he had just been ordered to kill her by "Mang Teteng," appellant's father. As the trial court noted:

> x x x It is, therefore, understandable, if the son Anthony was so afraid of the [accused], especially Alfredo Gongon. Somehow he was able to testify and he did so without visible traces of lying on the stand. His credibility could have really been tried and destroyed if any of his friends and companions at the time he saw the killing was presented in court to belie his testimony. Edwin Samonte was a relative of accused Boyet Samonte, while Ronnel Alimarcan was a relative of accused Alfredo Gongon. The defense could have utilized any one of them to show that Anthony just made up what he said he saw of the killing of the victim by the four (4) accused while the three of them were together under the hut. The only conceivable explanation why the defense did not do that was because Anthony did tell the whole truth and nothing but, when he testified against herein accused. These friends and companions of Anthony when he saw the killing might even corroborate and confirm what he said to the Court as an eyewitness for the prosecution.[21]

Also going against Didong's submission about Anthony's inconsistency is the recognition that affidavits or statements made before the police, which are usually taken *ex parte*, are often incomplete and inaccurate.[22] Thus, by nature, these affidavits are inferior to open court testimony, and whenever there is inconsistency between the affidavit and the testimony of a witness in court, the testimony commands greater weight. Moreover, inconsistencies between the declaration of the affiant in his sworn statements and those in open court do not necessarily discredit said witness.[23]

All told, the prosecution has discharged the burden of proving the commission of the crime charged beyond reasonable doubt. It was able to establish two things: *first*, the *corpus delicti* or the presence of all the elements of the offense of murder; and

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[21] CA *rollo*, pp. 72-73.

[22] See *Cruz v. People*, G.R. No. 154502, April 27, 2007, 522 SCRA 391.

[23] *People v. Antonio*, 390 Phil. 989 (2000).

second, the fact that Didong was the perpetrator of the crime.[24] The fact that Didong was one of the men who killed Ahlladin was proved by the testimony and the positive identification by the prosecution witnesses.

Didong's proffered defense to evade criminal responsibility is too feeble to merit consideration. His defense of alibi cannot overcome, and is in fact destroyed by the categorical testimony of Anthony, who positively pointed to and identified him as one of the malefactors. Moreover, in order to justify an acquittal based on alibi, the accused must establish by clear and convincing evidence that (1) he was somewhere else at the time of the commission of the offense; and (2) it was physically impossible for him to be at the scene of the crime at the time it was committed.[25] And when the law speaks of physical impossibility, the reference is to the distance between the place where the accused was when the crime transpired and the *locus criminis*, as well as the facility of access between the two places.[26] Where the possibility exists for the accused to be present at the crime scene, the defense of alibi must fail.[27] Evidently, here, the requisites for appreciating alibi are not present. In fact, by appellant's own admission, he was with one of his co-accused the day before Ahlladin's death was uncovered. Even supposing that during the latter part of the day, he really did go home, such a detail does not remove the possibility of his being at the forested area, the scene of the crime.

Finally, the Court lends concurrence to the trial court's determination that treachery attended the killing of Ahlladin.

The essence of treachery is the sudden and unexpected attack by the aggressors on unsuspecting victims, depriving the latter of any real chance to defend themselves, thereby ensuring its

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[24] *People v. Gidoc*, G.R. No. 185162, April 24, 2009.

[25] *People v. Molina*, 370 Phil. 546 (1999).

[26] *People v. Delim*, G.R. No. 175942, September 13, 2007, 533 SCRA 366.

[27] *People v. Dela Cruz*, G.R. No. 168173, December 24, 2008.

commission without risk to the aggressors, and without the slightest provocation on the victim's part.[28] We find that circumstances do exist to justify the finding of treachery in this case. The prosecution alleged and sufficiently proved that Ahlladin was too drunk to fight off any aggression from his four assailants, at least two of them armed. His killers took advantage of his condition and attacked him without considerable difficulty, as plainly seen in the post mortem report on Ahlladin's body. What the trial court wrote indubitably indicated treachery:

> From there, [Anthony] saw Didong hit with his piece of wood the nape of Ahladdin then held by the hand by Nante. When Nante released his hold Didong again hit Ahladdin on the back of the knees. After Boyet, Nante and Didong stabbed Ahladdin, Fred Gongon shot him saying "*Siguraduhin niyo patay na yan*." x x x[29]

We now tackle Didong's civil liability. The appellate court reduced the award of civil indemnity to PhP 50,000, deleted the award of moral damages for want of evidence to support it, and further ordered the payment of PhP 25,000 in exemplary damages.

When as a consequence to a criminal act death ensues, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; and (4) exemplary damages.[30]

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. The award of civil indemnity of PhP 50,000 is increased to PhP 75,000 in view of the ruling that the crime is murder qualified by the aggravating circumstances of treachery and evident premeditation. Said crime is a heinous crime under Republic Act 7659 punishable by death but now reduced to *reclusion perpetua* by virtue of RA 9346, which prohibits the imposition of death penalty.

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[28] *People v. Mara*, G.R. No. 184050, May 8, 2009.

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

[30] *Gidoc, supra* note 23.

The deletion of the award of moral damages was erroneous. Moral damages are mandatory in cases of murder, without need of allegation and proof other than the death of the victim. The award of PhP 75,000 as moral damages is consequently in order and in accordance with prevailing jurisprudence.[31]

The award of exemplary damages, but in the amount of PhP 30,000, up from the PhP 25,000 the CA granted, is proper under Article 2230 of the Civil Code, since the killing was attended by the qualifying circumstance of treachery. Finally, as documentary evidence[32] of burial expenses was presented during the trial and in fact became the basis of an award of actual damages, a grant of temperate damages is no longer justified. If actual damages cannot be determined because of the absence of supporting receipts, entitlement to said award must be shown with a reasonable degree of certainty under the facts of the case.[33]

WHEREFORE, the appeal is *DENIED*. The CA Decision dated April 15, 2008 in CA-G.R. CR-H.C. No. 01024 finding accused-appellant Alfredo Dela Cruz alias "Didong" guilty of murder is *AFFIRMED* with the *MODIFICATION* that he is ordered to pay the heirs of the victim civil indemnity of PhP 75,000, moral damages in the amount of PhP 75,000, and exemplary damages in the increased amount of PhP 30,000.

SO ORDERED.

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

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[31] *People v. Sarcia,* G.R. No. 169641, September 10, 2009.

[32] Records, p. 110. Exhibit "L".

[33] *Gidoc, supra* note 23.

THIRD DIVISION

[G.R. No. 185159. October 12, 2009]

SUBIC TELECOMMUNICATIONS COMPANY, INC., *petitioner, vs.* **SUBIC BAY METROPOLITAN AUTHORITY and INNOVE COMMUNICATIONS, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; MOTION TO DISMISS; *LITIS PENDENTIA*; ELABORATED.— *Litis pendentia*, a Latin term meaning "a pending suit," is also referred to as *lis pendens* and *auter action pendant*. While it is normally connected with the control which the court has over a property involved in a suit during the continuance proceedings, it is interposed more as a ground for the dismissal of a civil action pending in court. *Litis pendentia* as a ground for the dismissal of a civil action contemplates a situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious. In fact, it is one of the grounds that authorizes a court to dismiss a case *motu proprio*. It is provided under Sec. 1(e), Rule 16 of the 1997 Rules of Civil Procedure xxx. *Litis pendentia* is predicated on the principle that a party should not be allowed to vex another more than once regarding the same subject matter and for the same cause of action. This principle in turn is founded on the public policy that the same subject matter should not be the subject of controversy in courts more than once, in order that possible conflicting judgments may be avoided for the sake of the stability of the rights and status of persons, and also to avoid the costs and expenses incident to numerous suits.

2. ID.; ID.; ID.; WHEN MAY BE PROPERLY INVOKED.— Among the several tests resorted to in ascertaining whether two suits relate to a single or common cause of action are: (1) whether the same evidence would support and sustain both the first and second causes of action; and (2) whether the defenses in one case may be used to substantiate the complaint in the other. The determination of whether there is an identity of causes of

action for purposes of *litis pendentia* is inextricably linked with that of *res judicata*, each constituting an element of the other. In either case, both relate to the sound practice of including, in a single litigation, the disposition of all issues relating to a cause of action that is before a court. Thus, the invocation of the *litis pendentia* or *res judicata* rule is proper in cases where a party splits a cause of action by, for example, filing separate cases to recover separate reliefs for a single cause of action, or in cases where a defendant files another case arising from what should have been pleaded in a compulsory counterclaim.

3. ID.; ID.; ID.; REQUISITES TO EXIST.— For *litis pendentia* to exist, the following requisites or elements must concur: (a) identity of parties, or at least such parties who represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) identity with respect to the two (2) preceding particulars in the two (2) cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.

4. ID.; ID.; ID.; ID.; NO IDENTITY OF PARTIES BETWEEN THE ADMINISTRATIVE CASE AND THE CIVIL CASE IN CASE AT BAR.— In the instant case, both cases seemingly involve the same parties, but a close perusal of those cases shows otherwise. In the first case, SBMA Case Nos. 04-001 and 04-002, involving the **application** of Innove before the SBMA Telecommunications Department **for a CPCN to operate international and leased lines services as well as local exchange and toll services**, SBMA was not a party but was the quasi-judicial body hearing the application, while Subic Telecom intervened in said case as oppositor to Innove's application to protect its interests. But in the second case, Civil Case No. 155-O-2006, filed by Subic Telecom, SBMA was the principal party (defendant) for **specific performance and mandatory injunction**, while Innove was impleaded for having been granted a temporary franchise by SBMA. Thus, as between the administrative case and the civil case, there was no identity of parties.

5. ID.; ID.; ID.; ID.; NO IDENTITY OF RIGHTS ASSERTED AND RELIEFS PRAYED FOR BETWEEN THE TWO

ACTIONS IN CASE AT BAR.— The Court can plausibly concede that both cases, insofar as Subic Telecom's defense in the first case and cause of action in the second case are concerned, touch and deal with the interpretation of the pertinent JVA provisions. It cannot be over-emphasized, however, that both cases are not based on the same set of controlling facts, for when Subic Telecom opposed Innove's application, its notices of renewal to SBMA have not yet been rejected or denied. While, in the second case, its notices of renewal have already been denied, prompting it to file a suit for specific performance that entailed a determination by the RTC of the rights of the parties, *i.e.*, primarily those of Subic Telecom and SBMA, based on the June 29, 1994 JVA through the interpretation of its pertinent provisos. From the foregoing distinction, it is clear that there is, as between the two actions, no identity of rights asserted and reliefs prayed for; and the facts whence the reliefs are sought are different.

6. ID.; ID.; ID.; IDENTITY OF CAUSES OF ACTION; ELEMENTS OF CAUSE OF ACTION; PRESENT IN CASE AT BAR.— A cause of action is the fact or combination of facts which affords a party a right to judicial interference in his behalf. The elements that constitute a cause of action are: (1) the legal right of the plaintiff; (2) correlative obligation of the defendant to respect that legal right; and (3) an act or omission of the defendant that violates such right. All the elements above appear to obtain in the instant civil case. Sec. 18(k) of the JVA conferred on Subic Telecom a certain legal right which SBMA has the corresponding obligation to respect. And, to Subic Telecom, SBMA had violated such right by ignoring, if not denying, the former's notice of or request for renewal.

7. ID.; ID.; ID.; PRINCIPLE NOT APPLICABLE TO CASE AT BAR.— Lest it be overlooked, the SMBA is the decision-maker in SBMA Case Nos. 04-001 and 04-002, being the regulator for telecommunications in the SBFZ. Be that as it may, SBMA cannot be impleaded in said case when it denied Subic Telecom's notices of renewal. And for an obvious reason, Subic Telecom cannot, in said administrative case, pursue, let alone succeed in, an action for specific performance against SBMA. Since SMBA is a party to the JVA, thus otherwise rendering it bound for the obligations it freely entered into, Subic Telecom cannot and may not compel SBMA to honor its commitments through

the same administrative case before the SBMA. SBMA, to be sure, would necessarily be biased for the SBMA in cases before it. Upon the foregoing considerations, the appropriate action for Subic Telecom to pursue is a suit for specific performance before an independent body, the RTC, for the latter to interpret the pertinent provisos in the JVA and adjudicate the rights and obligations of SBMA and Subic Telecom, pursuant to Sec. 19(1) of *Batas Pambansa Blg*. 129, as amended, otherwise known as "The Judiciary Reorganization Act of 1980." The bare fact that Subic Telecom included Innove as a party defendant in its complaint for specific performance does not bring into play the application of *litis pendentia.* Innove was impleaded only because SBMA granted it a temporary franchise to operate, a privilege which would necessarily be canceled or dissolved in the event Subic Telecom secures a favorable court ruling. Were it not for the temporary grant, Innove would really be irrelevant in the principal action for specific performance.

8. ID.; ID.; ID.; ID.; REGARDLESS OF THE PREVAILING PARTY, ANY JUDGMENT IN THE ADMINISTRATIVE CASE WILL NOT CONSTITUTE *RES JUDICATA* IN THE CIVIL CASE.— It cannot be said that a judgment in SBMA Case Nos. 04-001 and 04-002 would have settled all matters concerning the rights and obligations of the parties under the JVA. In fine, any judgment in SBMA Case Nos. 04-001 and 04-002, regardless of the prevailing party, would not necessarily resolve Subic Telecom's rights under the JVA, and would not, therefore, constitute *res judicata* as to the second case, *i.e.*, Civil Case No. 155-O-2006.

9. ID.; PROVISIONAL REMEDIES; INJUNCTION; CANNOT BE GRANTED ABSENT A CLEAR CUT DETERMINATION OF THE RIGHT *IN ESSE* OF THE PETITIONER, A MATERIAL EVASION OF SUCH RIGHT AND THE PREVENTION OF IRREPARABLE INJURY.— This brings us to Subic Telecom's plea for injunction, the issuance of which it predicates on its perceived rights under the JVA which SBMA allegedly ignored. In this regard, it is inappropriate for the Court to favorably act on the plea, absent a clear-cut determination of the right *in esse* of Subic Telecom, a material and substantial evasion of such right, and the prevention of irreparable injury, if any. As may be noted, both the RTC and the CA no longer saw fit to delve into the asserted right issue

which to them was rendered moot by their finding, erroneous as it turned out, on the existence of *litis pendentia*. Thus, we cannot make yet a judicious disposition as to the propriety of an injunction, given for one the dearth of evidence on record.

10. ID.; EVIDENCE; THE SUPREME COURT IS NOT A TRIER OF FACTS; REMAND OF THE CASE AT BAR TO THE LOWER COURT, WARRANTED.— By the same token, it would be premature to order the trial court to issue the injunctive writ. The remand of the case to the RTC is in order, thereby allowing Subic Telecom to substantiate its assertions on the existence of its rights and the alleged breach by SBMA of its obligations, and for respondents SBMA and Innove, if so minded, to contest them. The Court has time and again reiterated that it is not a trier of fact or otherwise structurally capacitated to receive and evaluate evidence.

APPEARANCES OF COUNSEL

Rondain and Mendiola for petitioner.

Salalima Gonzales Castelo and Ungos for Innove Communications, Inc.

Michael M. Quintos and *Anna Rosario P. Reyes* for Subic Bay Metropolitan Authority.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

In this Petition for Review on *Certiorari* under Rule 45, petitioner Subic Telecommunications Company, Inc. (Subic Telecom) assails and seeks to set aside the April 4, 2008 Decision,[1] as effectively reiterated in a Resolution[2] of October 28, 2008, both issued by the Court of Appeals (CA) in CA-G.R. CV

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[1] *Rollo*, pp. 39-56. Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Regalado E. Maambong and Agustin S. Dizon.

[2] *Id.* at 58-59.

No. 88757, an appeal from the orders dated June 30, 2006 and August 24, 2006 of the Regional Trial Court (RTC), Branch 74 in Olongapo City in Civil Case No. 155-O-2006, a suit for specific performance.

The Facts

Respondent Subic Bay Metropolitan Authority (SBMA) is a government corporation created pursuant to Republic Act No. (RA) 7227, otherwise known as the "Bases Conversion and Development Act of 1992." Consequent to the withdrawal in 1992 of the American naval forces and its civilian complement from the Subic Naval Base and the earlier eruption of Mt. Pinatubo in 1991, Congress created SBMA to develop the Subic Bay Freeport Zone (SBFZ)[3] as a self-sustaining industrial, commercial, financial, and investment center; to generate employment opportunities; and to attract foreign investments. Among the development projects SBMA prioritized was the upgrading of the antiquated telephone system the US Navy previously established. One scheme to attract investors thereat was a system of exclusivity for a reasonable period of time to allow the recovery of investments. It was against this backdrop that Subic Telecom was conceived.

After winning an international competitive bidding to provide telecommunications services in the SBFZ, the Philippine Long Distance Telephone Co., Inc. (PLDT) and the American Telephone and Telegraph Co. (AT&T) entered on June 29, 1994 into a 25-year renewable Joint Venture Agreement[4] (JVA) with the SBMA for the purpose of, among others, forming a joint venture company to provide telecommunications and related services in the zone. Thus, the incorporation of Subic Telecom.

On January 23, 1995, SBMA, by a Resolution,[5] granted Subic Telecom a franchise to provide telecommunications services

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[3] The SBFZ comprises the former Subic Naval Base, Olongapo City and the municipalities of Subic, Morong, and Hermosa.

[4] *Rollo*, pp. 73-100.

[5] *Id.* at 130-131.

and establish, operate, and maintain telecommunications facilities, networks, and systems in the SBFZ. Subsequent developments saw Subic Telecom investing on telecommunications equipment and other facilities and starting to operate its telecommunications services with its network connected to the nationwide network of PLDT.

To ensure Subic Telecom's viability and safeguard its investments, the joint venture partners agreed that, for a period of 10 years from June 29, 1994, the date of the agreement, up to June 30, 2004, SBMA would not allow third parties to engage in any activity that would materially affect what the partners considered as Subic Telecom's basic and enhanced telecommunications services, *i.e.*, local exchange and toll services. This agreement was reflected in Section 11(c)(ii) of the JVA pertinently providing, thus:

SECTION 11. COVENANTS

x x x x x x x x x

(c) SBMA Covenants. SBMA covenants and agree with as follows:

x x x x x x x x x

(ii) Contracts. Except as provided hereunder, during the terms of the Agreement and any renewal thereof, SBMA shall not enter into contracts with third parties which would materially impair or materially restrict in any unreasonable way Subic Telecom's operations. **For ten (10) years from the date hereof, SBMA shall not enter into contracts with third parties which would materially restrict in any unreasonable way Subic Telecom's operation of local exchange and toll services (domestic and international) ("Basic and Enhanced Telecommunications Services")**; provided however that SBMA shall not be restricted from entering into contracts with or issuing authorizations in favor of parties engaged in businesses other than Basic and Enhanced Telecommunications Services, including, but not limited to wireless or cellular telephone services, paging services, cable television or manufacture, sale, installation or servicing of telecommunications and telephone equipment.[6] (Emphasis supplied.)

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[6] *Id.* at 92-93.

In addition to the non-competition clause on the basic and enhanced telecommunications services in the SBFZ, it is provided under Sec. 18(k) of the JVA that Subic Telecom has the option to renew its exclusivity privilege for three (3) five-year periods subject to the continuing compliance by Subic Telecom of its obligations under the JVA, and provided that neither PLDT nor AT&T defaults under the JVA. Said Sec. 18(k) pertinently provides:

SECTION 18. MISCELLANEOUS

x x x x x x x x x

(k) Non-Competition. — Upon the incorporation and organization of Subic Telecom in accordance with the provisions set-forth in this Agreement and for the duration of its existence, the parties, their subsidiaries and affiliates, hereto shall cease and desist from engaging in competition with Subic Telecom in the Zone; Provided however that the foregoing shall not restrict SBMA other than with regard to Basic and Enhanced Telecommunications Service, as defined in Section 11 (c) (ii) hereof for the period from the date of this Agreement until the tenth anniversary of this Agreement; **Provided further that as long as Subic Telecom has consistently complied with its obligations as set forth in Appendix (g) to this Agreement and as long as PLDT and AT&T are not in default under this Agreement, Subic Telecom shall have the option, for three (3) five year periods, to extend the effectivity of this Section**.[7] (Emphasis supplied.)

Then came the 1997 Asian financial crisis that, among other causes, prevented Subic Telecom from recovering its investments during the initial exclusivity period.

In November 1999, SBMA sold its equity interest in Subic Telecom to PLDT. And in January 2001, AT&T likewise sold its equity interest in Subic Telecom to PLDT. Thus, Subic Telecom became a wholly-owned subsidiary of PLDT.

On April 22, 2004 or shortly before the end of the 10-year period covered by Sec. 11(c)(ii), Subic Telecom notified SBMA

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

that it is exercising its option to renew its exclusivity privilege granted under Sec. 18(k) (notice to renew, hereinafter) for an extended period of five years.[8] Receiving no response from SBMA, Subic Telecom sent a second notice on June 25, 2004.[9]

On July 14, 2004, Subic Telecom and SBMA held a bilateral meeting which saw an exchange of memoranda, with Subic Telecom submitting its Position Paper[10] to argue and defend its right to the desired renewal.

On July 23, 2004, SBMA informed Subic Telecom of its intention to secure the opinion of the Office of the Government Corporate Counsel (OGCC) regarding the matter of extension of the exclusivity privilege under Sec. 18(k) of the JVA.

Meanwhile, as early as March 2004, SBMA started accepting applications for Certificate of Public Convenience and Necessity (CPCN) to operate in the SBFZ international, and leased lines services as well as local exchange and toll services in direct competition with Subic Telecom. Among the CPCN applicants was respondent Innove Communications, Inc. (Innove), which filed its application before the SBMA on March 26, 2004, docketed as SBMA Case Nos. 04-001 and 04-002. As might be expected, Subic Telecom opposed Innove's application.

On September 10, 2004, pending the issuance by the OGCC of an opinion, SBMA issued Resolution No. (Res.) 04-09-4026[11] stating that as a "matter of policy [it] encourages competition." Since its notice of renewal had yet to be acted upon, Subic Telecom sought clarification on the thrust of Res. 04-09-4026, requesting in the process a copy of the minutes of the SBMA Board meeting when said resolution was supposedly set and issued. As records tended to show, SBMA sat on the request. Likewise, Subic Telecom's motion to defer the proceedings on

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[8] *Id.* at 101.

[9] *Id.* at 102.

[10] *Id.* at 103-111.

[11] *Id.* at 112-113, per Certification No. 04-671, Series of 2004, Memorandum dated September 28, 2004.

Innove's application in SBMA Case Nos. 04-001 and 04-002 was denied via a Resolution[12] dated September 30, 2004, which in turn invoked Res. 04-09-4026.

On November 10, 2004, the OGCC issued Opinion No. 236,[13] holding that the exclusivity clause or the restrictions on competition embodied in the aforequoted Sec. 18(k) and Sec. 11(c)(ii) of the JVA cover different subject matters. Sec. 18(k), so the opinion went, only referred to the exclusivity pertaining to a direct competition posed by SBMA itself, and not by other telecommunications companies, noting that the exclusivity scheme under Sec. 11(c)(ii) did not include the option to renew envisaged in Sec. 18(k).

Obviously guided by OGCC Opinion No. 236, SBMA proceeded with the rejection of Subic Telecom's notice to renew and at the same time entertained applications for CPCN of other telecommunications industry players.

Subsequently, on December 1, 2004, SBMA issued Department Order No. (DO) 04-05[14] proposing a liberalized policy for the telecommunications sector in the SBFZ, followed by the issuance of the necessary liberalization guidelines. The issuance of said DO merited a letter-opposition[15] from Subic Telecom.

On February 17, 2006, SBMA ratified and confirmed its previous decision not to grant Subic Telecom's option to renew its exclusivity privilege. And, on the same day, SBMA issued an Order[16] in SBMA Case Nos. 04-001 and 04-002, granting Innove provisional authority to operate in the SBFZ for a period of 18 months in virtual competition with Subic Telecom. Another Order[17] of March 3, 2006 followed in which SBMA

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[12] *Id.* at 114-115, per Jocelyn D. Collins, Head, Telecommunications Department, SBMA.

[13] *Id.* at 116-122.

[14] *Id.* at 123-127.

[15] *Id.* at 128-129.

[16] *Id.* at 132-145.

[17] *Id.* at 146-147.

set the resumption of proceedings on Innove's application for a CPCN.

Subic Telecom moved for reconsideration of the February 17, 2006 SBMA Order.[18] Apparently owing to SBMA's failure after the lapse of several days to act on this motion, Subic Telecom formally withdrew[19] its motion and instead filed on May 16, 2006 a Complaint for *Specific Performance (With Prayer for Temporary Restraining Order and Preliminary Injunction)* against SMBA and Innove before the RTC in Olongapo City, docketed as Civil Case No. 155-O-2006, entitled *Subic Telecommunications Company, Inc. v. Subic Bay Metropolitan Authority and Innove Communications, Inc*.

In its complaint, Subic Telecom, *inter alia*, prayed that: (a) its notices of renewal dated April 22 and June 25, 2004 of its exclusivity privilege under Sec. 18(k) of the JVA be declared as a valid exercise of its option and effective for five years from June 30, 2004 to June 29, 2009; and (b) SBMA be ordered to comply with its contractual obligations under the JVA and be enjoined from violating Subic Telecom's rights in the JVA. To the complaint, SBMA and Innove filed their respective oppositions,[20] with motion to dismiss[21] the complaint.

The RTC Ruling in Civil Case No. 155-O-2006

On June 30, 2006, the RTC issued an Order[22] dismissing the complaint of Subic Telecom on the ground of *litis pendentia*. The *fallo* reads:

> WHEREFORE, foregoing considered, this case is DISMISSED on the ground of *litis pendentia*. With this resolution, the court does not find it necessary anymore to discuss the other grounds. Last, the application for injunctive relief has been rendered academic.

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[18] *Id.* at 148-152.

[19] *Id.* at 153.

[20] *Id.* at 178-187.

[21] *Id.* at 188-211.

[22] *Id.* at 212-214. Penned by Judge Ramon S. Caguioa.

SO ORDERED.[23]

Its motion for reconsideration having been denied in an Order[24] of August 24, 2006, Subic Telecom appealed to the CA.

Ruling of the CA

The CA, in its Decision dated April 4, 2008, denied the appeal and effectively affirmed the dismissal by the RTC of Subic Telecom's complaint on the same ground relied upon by the latter court. The *fallo* of the CA's decision reads:

> WHEREFORE, premises considered, the appeal is DENIED for lack of merit. The Orders dated 30 June 2006 and 24 August 2006 of the Regional Trial Court of Olongapo City, Branch 74 in *Civil Case No. 155-O-2006* are AFFIRMED. Costs against appellant.
>
> SO ORDERED.[25]

Subic Telecom's motion for reconsideration of the assailed decision was denied in the equally assailed CA Resolution of October 28, 2008.

The Issues

Undaunted, Subic Telecom is now with this Court via the present recourse raising the following grounds for the allowance of its petition, thus:

I

THE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORDANCE WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT IN THAT IT FAILED TO RECOGNIZE THAT THERE EXISTS NO *LITIS PENDENTIA* IN THIS INSTANCE.

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[23] *Id.* at 214.

[24] *Id.* at 222.

[25] *Id.* at 54.

II

THE COURT OF APPEALS HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF PROCEEDINGS CALLING FOR THE EXERCISE OF THIS HONORABLE COURT'S SUPERVISION WHEN IT REFUSED TO TAKE COGNIZANCE OF SUBICTEL'S ARGUMENTS IN SUPPORT OF ITS PRAYER FOR INJUNCTION.[26]

The above assignment of errors boils down to the basic question of whether there is *litis pendentia* involving SBMA Case Nos. 04-001 and 04-002 and Civil Case No. 155-O-2006.

The Court's Ruling

The petition is meritorious.

As may be noted, the RTC viewed Subic Telecom's cause of action as oppositor in SBMA Case Nos. 04-001 and 04-002 as the very same cause of action in Civil Case No. 155-O-2006 as the "evidence needed to support both x x x is the correct interpretation and application of the pertinent provisions of the [JVA] under consideration."[27]

Similarly, the appellate court posited the existence in this case of *litis pendentia* on the rationale that "evidently, the judgment that may be rendered in one would, regardless of which party is successful, inevitably amount to *res judicata* in the other. Simply put, the identity of the causes of action in the civil case *a quo* and in the SBMA cases is patent. The causes of action are premised on whether or not appellant [Subic Telecom] has the right to be the exclusive telecommunications service provider within the [SBFZ], so as to preclude appellee Innove from operating therein."[28]

We cannot agree with the case disposition of the courts *a quo*.

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[26] *Id.* at 23.

[27] *Id.* at 214.

[28] *Id.* at 52.

Litis pendentia, a Latin term meaning "a pending suit," is also referred to as *lis pendens* and *auter action pendant*. While it is normally connected with the control which the court has over a property involved in a suit during the continuance proceedings, it is interposed more as a ground for the dismissal of a civil action pending in court.[29]

Litis pendentia as a ground for the dismissal of a civil action contemplates a situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious.[30] In fact, it is one of the grounds that authorizes a court to dismiss a case *motu proprio*.[31] It is provided under Sec. 1(e), Rule 16 of the 1997 Rules of Civil Procedure, thus:

SECTION 1. *Grounds*.— Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

x x x x x x x x x

(e) That there is another action pending between the same parties for the same cause.

Litis pendentia is predicated on the principle that a party should not be allowed to vex another more than once regarding the same subject matter and for the same cause of action.[32] This principle in turn is founded on the public policy that the same subject matter should not be the subject of controversy in courts more than once, in order that possible conflicting judgments may be avoided for the sake of the stability of the

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[29] *Agilent Technologies Singapore (Pte.) Ltd. v. Integrated Silicon Technology Philippines Corporation*, G.R. No. 154618, April 14, 2004, 427 SCRA 593, 601.

[30] *Guevarra v. BPI Securities Corporation*, G.R. No. 159786, August 15, 2006, 498 SCRA 613, 63.

[31] *Rudolf Lietz Holdings, Inc. v. The Registry of Deeds of Parañaque City*, G.R. No. 133007, November 29, 2000, 344 SCRA 680, 686.

[32] *Sherwill Development Corporation v. Sitio Sto. Niño Residents Association, Inc.*, G.R. No. 158455, June 28, 2005, 461 SCRA 517, 531.

rights and status of persons,[33] and also to avoid the costs and expenses incident to numerous suits.

Among the several tests resorted to in ascertaining whether two suits relate to a single or common cause of action are: (1) whether the same evidence would support and sustain both the first and second causes of action;[34] and (2) whether the defenses in one case may be used to substantiate the complaint in the other.[35]

The determination of whether there is an identity of causes of action for purposes of *litis pendentia* is inextricably linked with that of *res judicata*, each constituting an element of the other. In either case, both relate to the sound practice of including, in a single litigation, the disposition of all issues relating to a cause of action that is before a court.[36]

Thus, the invocation of the *litis pendentia* or *res judicata* rule is proper in cases where a party splits a cause of action by, for example, filing separate cases to recover separate reliefs for a single cause of action, or in cases where a defendant files another case arising from what should have been pleaded in a compulsory counterclaim.

For *litis pendentia* to exist, the following requisites or elements must concur: (a) identity of parties, or at least such parties who represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) identity with respect to the two (2) preceding particulars in the two (2) cases is such that any judgment that may be rendered in the pending case, regardless of which

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[33] *Forbes Park Association, Inc. v. Pagrel, Inc.*, G.R. No. 153821, February 13, 2008, 545 SCRA 39, 49.

[34] *Feliciano v. Court of Appeals*, G.R. No. 123293, March 5, 1998, 287 SCRA 61, 68.

[35] *Victronics Computers, Inc. v. RTC, Branch 63, Makati*, G.R. No. 104019, January 25, 1993, 217 SCRA 517, 530.

[36] *See* 2 J.Y. Feria and M.C.S. Noche, CIVIL PROCEDURE ANNOTATED 126 (2001).

party is successful, would amount to *res judicata* in the other case.[37]

In the instant case, both cases seemingly involve the same parties, but a close perusal of those cases shows otherwise. In the first case, SBMA Case Nos. 04-001 and 04-002, involving the **application** of Innove before the SBMA Telecommunications Department **for a CPCN to operate international and leased lines services as well as local exchange and toll services**, SBMA was not a party but was the quasi-judicial body hearing the application, while Subic Telecom intervened in said case as oppositor to Innove's application to protect its interests. But in the second case, Civil Case No. 155-O-2006, filed by Subic Telecom, SBMA was the principal party (defendant) for **specific performance and mandatory injunction**, while Innove was impleaded for having been granted a temporary franchise by SBMA. Thus, as between the administrative case and the civil case, there was no identity of parties.

As regards the reliefs sought, Subic Telecom prays in SBMA Case Nos. 04-001 and 04-002 for (a) the denial of Innove's application on the ground that Subic Telecom is exercising its right for an extension of its alleged exclusivity right to operate basic and enhanced telecommunications services in the SBFZ; and, in the meantime, (b) the SBMA to defer the proceedings on Innove's application pending the resolution by SBMA on Subic Telecom's notices to extend for five years its alleged exclusivity rights under Sec. 18(k) of the JVA. In Civil Case No. 155-O-2006, on the other hand, Subic Telecom pleads that the RTC (a) declare its notices of renewal as a valid exercise of its option to renew the effectivity of Secs. 11(c)(ii) and 18(k) of the June 29, 1994 JVA for five years; (b) order SBMA to comply with its contractual obligations under said JVA; and (c) issue a permanent injunctive writ.

The remedies Subic Telecom sought in the first case hinge on the acceptance by SBMA of Innove's application and the

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[37] *Bangko Silangan Development Bank v. Court of Appeals*, G.R. No. 110480, June 29, 2001, 360 SCRA 322, 335; citation omitted.

consequent proceedings. The second case was based on and was triggered by the denial by SBMA of Subic Telecom's notices to exercise the renewal of its alleged exclusivity rights under the JVA which the latter viewed as violation of the former's contractual obligations under the JVA.

The Court can plausibly concede that both cases, insofar as Subic Telecom's defense in the first case and cause of action in the second case are concerned, touch and deal with the interpretation of the pertinent JVA provisions. It cannot be over-emphasized, however, that both cases are not based on the same set of controlling facts, for when Subic Telecom opposed Innove's application, its notices of renewal to SBMA have not yet been rejected or denied. While, in the second case, its notices of renewal have already been denied, prompting it to file a suit for specific performance that entailed a determination by the RTC of the rights of the parties, *i.e.*, primarily those of Subic Telecom and SBMA, based on the June 29, 1994 JVA through the interpretation of its pertinent provisos. From the foregoing distinction, it is clear that there is, as between the two actions, no identity of rights asserted and reliefs prayed for; and the facts whence the reliefs are sought are different.

In ruling on the presence of *litis pendentia*, both the trial and appellate courts, however, overlooked the fact that there is more to determining the identity of the causes of action than an identity of the documentary evidence presented by Subic Telecom. But the more fundamental question to consider is **whether or not the cause of action in the second case existed at the time of the filing of the first case**.

To reiterate, the denial by SBMA of Subic Telecom's notices of renewal of its exclusivity privilege gave rise to the latter's cause of action in the second case for specific performance based on the JVA stipulations, particularly Sec. 18(k) in relation to Sec. 11(c)(ii). Whereas, in the administrative case (first case), Subic Telecom was pursuing its rights based on the same provisos of the JVA before SBMA could act on its notices for such renewal.

A cause of action is the fact or combination of facts which affords a party a right to judicial interference in his behalf.[38] The elements that constitute a cause of action are: (1) the legal right of the plaintiff; (2) correlative obligation of the defendant to respect that legal right; and (3) an act or omission of the defendant that violates such right.[39]

All the elements above appear to obtain in the instant civil case. Sec. 18(k) of the JVA conferred on Subic Telecom a certain legal right which SBMA has the corresponding obligation to respect. And, to Subic Telecom, SBMA had violated such right by ignoring, if not denying, the former's notice of or request for renewal.

Lest it be overlooked, the SBMA is the decision-maker in SBMA Case Nos. 04-001 and 04-002, being the regulator for telecommunications in the SBFZ. Be that as it may, SBMA cannot be impleaded in said case when it denied Subic Telecom's notices of renewal. And for an obvious reason, Subic Telecom cannot, in said administrative case, pursue, let alone succeed in, an action for specific performance against SBMA. Since SBMA is a party to the JVA, thus otherwise rendering it bound for the obligations it freely entered into, Subic Telecom cannot and may not compel SBMA to honor its commitments through the same administrative case before the SBMA. SBMA, to be sure, would necessarily be biased for the SBMA in cases before it.

Upon the foregoing considerations, the appropriate action for Subic Telecom to pursue is a suit for specific performance before an independent body, the RTC, for the latter to interpret the pertinent provisos in the JVA and adjudicate the rights and

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[38] *Philippine National Construction Corporation v. Court of Appeals*, G.R. No. 165433, February 6, 2007, 514 SCRA 569, 582; citing *Navoa v. Court of Appeals*, G.R. No. 59255, December 29, 1995, 251 SCRA 545, 552.

[39] *Pineda v. Santiago*, G.R. No. 143482, April 13, 2007, 521 SCRA 47, 63; citing *Goodyear Phils., Inc. v. Sy*, G.R. No. 154554, November 9, 2005, 474 SCRA 427, 435.

obligations of SBMA and Subic Telecom, pursuant to Sec. 19(1)[40] of *Batas Pambansa Blg*. 129, as amended, otherwise known as "The Judiciary Reorganization Act of 1980."

The bare fact that Subic Telecom included Innove as a party defendant in its complaint for specific performance does not bring into play the application of *litis pendentia*. Innove was impleaded only because SBMA granted it a temporary franchise to operate, a privilege which would necessarily be canceled or dissolved in the event Subic Telecom secures a favorable court ruling. Were it not for the temporary grant, Innove would really be irrelevant in the principal action for specific performance.

As for the third requisite of *litis pendentia*, we likewise find it absent in this case.

It cannot be said that a judgment in SBMA Case Nos. 04-001 and 04-002 would have settled all matters concerning the rights and obligations of the parties under the JVA. In fine, any judgment in SBMA Case Nos. 04-001 and 04-002, regardless of the prevailing party, would not necessarily resolve Subic Telecom's rights under the JVA, and would not, therefore, constitute *res judicata* as to the second case, *i.e.*, Civil Case No. 155-O-2006.

This brings us to Subic Telecom's plea for injunction, the issuance of which it predicates on its perceived rights under the JVA which SBMA allegedly ignored. In this regard, it is inappropriate for the Court to favorably act on the plea, absent a clear-cut determination of the right *in esse* of Subic Telecom, a material and substantial evasion of such right, and the prevention of irreparable injury, if any. As may be noted, both the RTC and the CA no longer saw fit to delve into the asserted right issue which to them was rendered moot by their finding, erroneous as it turned out, on the existence of *litis pendentia*. Thus, we cannot make yet a judicious disposition as to the propriety of

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[40] SEC. 19. *Jurisdiction in Civil Cases*. — Regional Trial Courts shall exercise exclusive original jurisdiction:

(1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation.

an injunction, given for one the dearth of evidence on record. By the same token, it would be premature to order the trial court to issue the injunctive writ. The remand of the case to the RTC is in order, thereby allowing Subic Telecom to substantiate its assertions on the existence of its rights and the alleged breach by SBMA of its obligations, and for respondents SBMA and Innove, if so minded, to contest them. The Court has time and again reiterated that it is not a trier of fact or otherwise structurally capacitated to receive and evaluate evidence.

WHEREFORE, the petition is hereby *GRANTED*. Accordingly, the CA's April 4, 2008 Decision and October 28, 2008 Resolution in CA-G.R. CV No. 88757 that affirmed the RTC's Orders dated June 30, 2006 and August 24, 2006 are hereby *REVERSED* and *SET ASIDE*. The RTC, Branch 74 in Olongapo City is hereby ordered to continue with the proceedings of Civil Case No. 155-O-2006 and resolve it with dispatch. No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 186101. October 12, 2009]

GINA A. DOMINGO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; FALSIFICATION OF COMMERCIAL DOCUMENTS; ELEMENTS; PRESENT IN CASE AT BAR.— Article 172 of the Revised Penal Code (RPC) punishes

any private individual who commits any of the acts of falsification enumerated in Art. 171 of the Code in any public or official document or letter of exchange or any other kind of commercial document. xxx Essentially, the elements of the crime of Falsification of Commercial Document under Art. 172 are: (1) that the offender is a private individual; (2) that the offender committed any of the acts of falsification; and (3) that the act of falsification is committed in a commercial document. As borne by the records, all the elements of the crime are present in the instant case. Petitioner is a private individual who presented to the tellers of BPI 17 forged encashment slips on different dates and of various amounts. The questioned encashment slips were falsified by petitioner by filling out the same and signing the name of the private complainant, thereby making it appear that Remedios signed the encashment slips and that they are genuine in all respects, when in fact petitioner knew very well that Remedios never signed the subject encashment slips.

2. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; EXPERT WITNESS; OPINION OF HANDWRITING EXPERTS; GUIDELINES IN THE APPRECIATION THEREOF.— Additionally, the Court has held that in gauging the relative weight to be given to the opinion of handwriting experts, the following standards are adhered to: We have held that the value of the opinion of a handwriting expert depends not upon his mere statements of whether a writing is genuine or false, but upon the assistance he may afford in pointing out distinguishing marks, characteristics and discrepancies in and between genuine and false specimens of writing which would ordinarily escape notice or detection from an unpracticed observer. The test of genuineness ought to be the resemblance, not the formation of letters in some other specimens but to the general character of writing, which is impressed on it as the involuntary and unconscious result of constitution, habit or other permanent course, and is, therefore itself permanent.

3. CRIMINAL LAW; FALSIFICATION OF COMMERCIAL DOCUMENTS; IF A PERSON HAS IN HIS POSSESSION A FALSIFIED DOCUMENT AND HE MADE USE OF IT, TAKING ADVANTAGE OF IT AND PROFITING FROM IT, THE PRESUMPTION IS THAT HE IS THE MATERIAL

AUTHOR OF THE FALSIFICATION.— Moreover, it cannot be said that since none of the prosecution witnesses saw the falsification actually done by petitioner, she cannot be held liable. The bank tellers who processed the illegal transactions of petitioner involving the account of Remedios were consistent in their testimonies that it was petitioner herself who presented the encashment slips and received the proceeds of the slips. In such a situation, the applicable rule is that if a person has in his possession a falsified document and he made use of it, taking advantage of it and profiting from it, the presumption is that he is the material author of the falsification. In the instant case, petitioner has failed to overthrow the presumption.

4. ID.; ID.; COMMERCIAL DOCUMENTS, DEFINED; ENCASHMENT SLIPS ARE COMMERCIAL DOCUMENTS.— Furthermore, contrary to petitioner's assertions, the questioned encashment slips are commercial documents. Commercial documents are, in general, documents or instruments which are used by merchants or businessmen to promote or facilitate trade. An encashment slip necessarily facilitates bank transactions for it allows the person whose name and signature appears thereon to encash a check and withdraw the amount indicated therein.

5. ID.; ID.; DAMAGE OR INTENT TO CAUSE DAMAGE IS NOT AN ELEMENT OF THE CRIME.— Even more, petitioner would have this Court believe that the crime of falsification of a commercial document did not exist because Remedios and BPI did not suffer any damage. Such argument is specious. It has been ruled that damage or intent to cause damage is not an element in falsification of a commercial document, because what the law seeks to repress is the prejudice to the public confidence in such documents.

6. ID.; COMPLEX CRIME; ELEMENTS; WHEN THE FALSIFICATION OF COMMERCIAL DOCUMENT IS A NECESSARY MEANS TO ESTAFA, A COMPLEX CRIME IS FORMED BY THE TWO CRIMES.— It has been held that whenever a person carries out on a public, official, or commercial document any of the acts enumerated in Art. 171 of the RPC as a necessary means to perpetrate another crime, such as estafa or malversation, a complex crime is formed by

the two crimes. Under Art. 48 of the RPC, a complex crime refers to: (1) the commission of at least two grave or less grave felonies that must both (or all) be the result of a single act; or (2) one offense must be a necessary means for committing the other (or others). The falsification of a public, official, or commercial document may be a means of committing estafa, because before the falsified document is actually utilized to defraud another, the crime of falsification has already been consummated, damage or intent to cause damage not being an element of the crime of falsification of public, official, or commercial document. In other words, the crime of falsification has already existed. Actually utilizing that falsified public, official, or commercial document to defraud another is estafa. But the damage is caused by the commission of estafa, not by the falsification of the document. Therefore, the falsification of the public, official, or commercial document is only a necessary means to commit estafa.

7. ID.; ESTAFA; ELEMENTS; PRESENT IN CASE AT BAR.— In general, the elements of estafa are: (1) that the accused defrauded another (a) by abuse of confidence or (b) by means of deceit; and (2) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person. Deceit is the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed; and which deceives or is intended to deceive another so that he shall act upon it, to his legal injury. In the case before us, all the elements of estafa are present. Once petitioner acquired the possession of the amounts she encashed by means of deceit, she misappropriated, misapplied, and converted the same to her own personal use and benefit, to the damage and prejudice of the private complainant and BPI.

8. ID.; COMPLEX CRIME OF ESTAFA THROUGH FALSIFICATION OF COMMERCIAL DOCUMENT; THE OFFENSE OF FALSIFICATION IS ALREADY CONSUMMATED EVEN BEFORE THE FALSIFIED DOCUMENT IS USED TO DEFRAUD ANOTHER.— Without a doubt, the falsification of the encashment slips was a necessary means to commit estafa. At that time, the offense of falsification is already considered consummated even before

the falsified document is used to defraud another. Therefore, the trial court aptly convicted petitioner for the complex crime of Estafa through Falsification of Commercial Document.

9. REMEDIAL LAW; EVIDENCE; DENIAL; CANNOT BE GIVEN GREATER EVIDENTIARY VALUE THAN THE TESTIMONY OF CREDIBLE WITNESSES WHO TESTIFIED ON AFFIRMATIVE MATTERS; CASE AT BAR.— It is a hornbook doctrine that the defense of denial, unsubstantiated by clear and convincing evidence, is negative and self-serving, and merits no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses who testified on affirmative matters. In the instant case, petitioner's defense of denial crumbles in the face of the positive identification made by the prosecution witnesses during trial. As enunciated by this Court, "[p]ositive identification where categorical and consistent and not attended by any showing of ill motive on the part of the eyewitnesses on the matter prevails over alibi and denial." The defense has miserably failed to show any evidence of ill motive on the part of the prosecution witnesses as to falsely testify against her. Thus, between the categorical statements of the prosecution witnesses, on the one hand, and bare denials of the accused, on the other hand, the former must, perforce, prevail.

10. ID.; APPEALS; FINDINGS OF FACT OF THE TRIAL COURT ARE NOT DISTURBED ON APPEAL; EXCEPTIONS.— We accord the trial court's findings the probative weight it deserves in the absence of any compelling reason to discredit its findings. It is a fundamental judicial dictum that the findings of fact of the trial court are not disturbed on appeal, except when it overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance that would have materially affected the outcome of the case. We find that the trial court did not err in convicting petitioner of the crime of Estafa through Falsification of Commercial Document.

APPEARANCES OF COUNSEL

Aladdin F. Trinidad for petitioner.
The Solicitor General for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the Decision[1] dated November 24, 2008 of the Court of Appeals (CA) in CA-G.R. CR No. 31158 entitled *People of the Philippines v. Gina A. Domingo*, which affirmed the Decision[2] dated May 21, 2007 in Criminal Case Nos. Q-98-75971-87 of the Regional Trial Court (RTC), Branch 80 in Quezon City. The RTC convicted petitioner Gina Domingo (petitioner) of 17 counts of Estafa through Falsification of Commercial Document.

The Facts

Private complainant, Remedios D. Perez (Remedios), is a businesswoman and a valued depositor of the Bank of the Philippine Islands (BPI), Aurora Boulevard branch. Petitioner, on the other hand, is a dentist who had a clinic in Remedios' compound.

Being the wife of the best friend of Remedios' son, petitioner had a close relationship with Remedios and her family.

On June 15, 1995, Remedios accompanied petitioner to BPI because the latter wanted to open an account therein. Remedios then introduced petitioner to the bank's staff and officers. Soon thereafter, petitioner frequented Remedios' office and volunteered to deposit her checks in her bank account at BPI.

Sometime in October 1996, Remedios wanted to buy a car thinking that she already had a substantial amount in her account. Thus, she went to BPI to withdraw two hundred thousand pesos (PhP 200,000). To her surprise, however, she found out that

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[1] *Rollo*, pp. 56-78. Penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr.

[2] *Id.* at 38-54. Penned by Judge Ma. Theresa Dela Torre-Yadao.

her money had already been withdrawn. The withdrawals were effected through 18 encashment slips bearing her forged signatures reaching the amount of eight hundred thirty-eight thousand pesos (PhP 838,000). She denied having affixed her signatures on the encashment slips used.

Testimonies showed that on several occasions beginning September 18, 1995 until October 18, 1996, petitioner presented a number of encashment slips of various amounts to BPI, and by virtue of which she was able to withdraw huge amounts of money from the checking account of the complainant. She deposited the bigger portion of these amounts to her own account and pocketed some of them, while also paying the rest to Skycable. The transactions were processed by four tellers of BPI, namely: Regina Ramos, Mary Antonette Pozon, Sheila Ferranco, and Kim Rillo who verified the signatures of the complainant on the questioned encashment slips.

As synthesized by the trial court, the transactions are as follows:

Date of encashment slip	**Amount withdrawn via encashment slip**	**Amount deposited to accused's account**	**Amount paid to Skycable (PS) or Pocketed (Po) by the accused**	**Name of Teller who processed the transaction**
1. Sept. 8, 1995	₱10,000.00	₱8,000.00	₱2,000.00 (Po)	Regina Ramos
2. Sept. 18, 1995	30,000.00	20,000.00	10,000.00 (Po)	
3. Feb. 12, 1996	30,000.00	28,550.00	1,450.00 (PS)	Shiela Ferranco
4. Feb. 15, 1996	20,000.00	20,000.00	none	Mary Antonette Pozon
5. March 21, 1996	40,000.00	30,000.00	10,000.00 (Po)	Shiela Ferranco
6. April 8, 1996	40,000.00	35,000.00	5,000.00 (Po)	Regina Ramos
7. April 10, 1996	30,000.00	30,000.00	none	Shiela Ferranco
8. April 29, 1996	40,000.00	34,500.00	5,500.00 (Po)	Regina Ramos
9. May 13, 1996	40,000.00	38,550.00	1,450.00 (PS)	Shiela Ferranco
10. May 24, 1996	50,000.00	50,000.00	none	Mary Antonette Pozon

11. June 7, 1996	40,000.00	40,000.00	none	Shiela Ferranco
12. June 26, 1996	45,000.00	45,000.00	none	Shiela Ferranco
13. July 5, 1996	25,000.00	25,000.00	none	Mary Antonette Pozon
14. July 17, 1996	40,000.00	40,000.00	none	Mary Antonette Pozon
15. Aug. 5, 1996	50,000.00	48,550.00	1,450.00 (PS)	Shiela Ferranco
16. Sept. 17, 1996	35,000.00	35,000.00	none	Shiela Ferranco
17. Oct. 4, 1996	40,000.00	40,000.00	none	Kim P. Rillo
18. Oct. 18, 1996	40,000.00	40,000.00	none	Kim P. Rillo

After having been apprised of the illegal transactions of petitioner on complainant's account, the latter complained to the bank for allowing the withdrawal of the money with the use of falsified encashment slips and demanded that the amount illegally withdrawn be returned. She was required by BPI to submit checks bearing her genuine signature for examination by the Philippine National Police (PNP) Crime Laboratory. After examination, Josefina dela Cruz of the PNP Crime Laboratory came up with a finding that complainant's signatures on the questioned encashment slips had been forged. Only then did the bank agree to pay her the amount of PhP 645,000 representing a portion of the amount illegally withdrawn with the use of the forged encashment slips.

In her defense, petitioner testified that she is a dentist, practicing her profession in her house at No. 21, Alvarez Street, Cubao, Quezon City. She further stated that she knew Remedios as the owner of the house that she and her husband were renting at No. 3 New Jersey Street, New Manila, Quezon City. She declared that she never used "Perez" as an *alias* or nickname and that the signatures appearing on the questioned encashment slips were not hers.

Petitioner, however, admitted that she was once a depositor of BPI Aurora Boulevard branch, having opened an account in said bank sometime in June 1995. She had been maintaining

said account until she was arrested in 1998. She used to frequent the bank three times a week or as the need arose for her bank transactions, for which reason, she and the bank tellers had become familiar with each other. She knows that, like her, Remedios was also a depositor of BPI Aurora Boulevard branch, but there was no occasion that they met each other in the bank.

Remedios and BPI filed a complaint before the prosecutor's office.

The Information in Criminal Case No. Q-98-75971 reads as follows:

That on or about the 18th day of October 1996, in Quezon City, Philippines, the above-named accused, a private individual, by means of false pretenses and/or fraudulent acts executed prior to or simultaneously with the commission of the fraud and by means of falsification of commercial document did, then and there willfully, unlawfully and feloniously defraud Remedios D. Perez and/or the Bank of the Philippine Islands represented in the following manner, to wit: said accused falsified or caused to be falsified an encashment slip of Bank of the Philippine Islands dated October 18, 1996 for ₱40,000.00, Philippine Currency, by then and there filling up said encashment slip and signing the name of one Remedios D. Perez, a depositor of said bank under Account No. 3155-0572-61, thereby making it appear, as it did appear that said encashment slip is genuine in all respect, when in truth and in fact said accused well knew that Remedios D. Perez never signed the said encashment slip; that once said encashment slip was forged and falsified in the manner set forth, accused pretending to be the said Remedios D. Perez used it to withdraw the aforesaid sum of ₱40,000.00 from the latter's account, and once, in possession of the said amount of money misappropriated, misapplied and converted the same to her own personal use and benefit, to the damage and prejudice of the offended party.

CONTRARY TO LAW.[3]

The allegations in the Information in Criminal Case Nos. Q-98-75972-87 are all substantially the same as those in Criminal Case No. Q-98-75971, except for the dates of the commission

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

of the crime or dates of the BPI encashment slips and the amounts involved, to wit:

Criminal Case No.	Date of the commission of the crime/encashment slip	Amount Involved
1. Q-98-75972	October 4, 1996	₱40,000.00
2. Q-98-75973	September 4, 1996	35,000.00
3. Q-98-75974	August 5, 1996	50,000.00
4. Q-98-75975	July 17, 1996	40,000.00
5. Q-98-75976	July 5, 1996	25,000.00
6. Q-98-75977	June 26, 1996	45,000.00
7. Q-98-75978	June 7, 1996	40,000.00
8. Q-98-75979	May 24, 1996	50,000.00
9. Q-98-75980	May 13, 1996	40,000.00
10. Q-98-75981	April 29, 1996	40,000.00
11. Q-98-75982	April 10, 1996	30,000.00
12. Q-98-75983	April 8, 1996	40,000.00
13. Q-98-75984	March 21, 1996	40,000.00
14. Q-98-75985	February 15, 1996	20,000.00
15. Q-98-75986	February 12, 1996	30,000.00
16. Q-98-75987	September 18, 1995	30,000.00[4]

Upon motion by the prosecution, the 17 cases were consolidated and tried jointly by the trial court. When arraigned, petitioner pleaded not guilty to each of the crimes charged in the 17 Informations. Trial on the merits ensued with the prosecution presenting seven witnesses, namely: Remedios; Arturo Amores, General Manager of BPI, Aurora Blvd. Branch; Regina Ramos, Mary Antonette Pozon, Sheila Ferranco, and Kim P. Rillo, all bank tellers of BPI, Aurora Blvd. Branch; and Josefina Dela Cruz, a Document Examiner III of the PNP Crime Laboratory. On the part of the defense, it presented petitioner herself and Carmelita Tanajora, petitioner's house helper.

Ruling of the Trial Court

On May 21, 2007, the RTC rendered its Decision, the dispositive portion of which reads:

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[4] *Id.* at 39.

WHEREFORE, premises considered, joint judgment is hereby rendered finding the accused GUILTY beyond reasonable doubt of the crimes charged in Criminal [Case] Nos. Q-98-75971; Q-98-75972; Q-98-75973; Q-98-75974; Q-98-75975; Q-98-75976; Q-98-75977; Q-98-75978; Q-98-75979; Q-98-75980; Q-98-75981; Q-98-75982; Q-98-75983; Q-98-75984; Q-98-75985; Q-98-75986 and Q-98-75987. Accordingly, and applying the Indeterminate Sentence Law, she is hereby sentenced to suffer the penalty of imprisonment, as follows:

1. In Criminal Case No. Q-98-75971 – Two (2) Years, Eleven (11) Months and Eleven (11) Days of *[prision] correccional* to Seven (7) Years and Twenty One (21) Days of *prision mayor*;

2. In Criminal Case No. Q-98-75972 – Two (2) Years, Eleven (11) Months and Eleven (11) Days of *[prision] correccional* to Seven (7) Years and Twenty One (21) Days of *prision mayor*;

3. In Criminal Case No. Q-98-75973 – Two (2) Years, Eleven (11) Months and Eleven (11) Days of *[prision] correccional* to Seven (7) Years and Twenty One (21) Days of *prision mayor*;

4. In Criminal Case No. Q-98-75974 – Two (2) Years, Eleven (11) Months and Eleven (11) Days of *[prision] correccional* to Eight (8) Years and Twenty One (21) Days of *prision mayor*;

5. In Criminal Case No. Q-98-75975 – Two (2) Years, Eleven (11) Months and Eleven (11) Days of *[prision] correccional* to Seven (7) Years and Twenty One (21) Days of *prision mayor*;

6. In Criminal Case No. Q-98-75976 – Two (2) Years, Eleven (11) Months and Eleven (11) Days of *[prision] correccional* to Six (6) Years and Twenty One (21) Days of *prision mayor*;

7. In Criminal Case No. Q-98-75977 – Two (2) Years, Eleven (11) Months and Eleven (11) Days of *[prision] correccional* to Eight (8) Years and Twenty One (21) Days of *prision mayor*;

8. In Criminal Case No. Q-98-75978 – Two (2) Years, Eleven (11) Months and Eleven (11) Days of *[prision] correccional*

to Seven (7) Years and Twenty One (21) Days of *prision mayor*;

9. In Criminal Case No. Q-98-75979 – Two (2) Years, Eleven (11) Months and Eleven (11) Days of *[prision] correccional* to Eight (8) Years and Twenty One (21) Days of *prision mayor*;

10. In Criminal Case No. Q-98-75980 – Two (2) Years, Eleven (11) Months and Eleven (11) Days of *[prision] correccional* to Seven (7) Years and Twenty One (21) Days of *prision mayor*;

11. In Criminal Case No. Q-98-75981 – Two (2) Years, Eleven (11) Months and Eleven (11) Days of *[prision] correccional* to Seven (7) Years and Twenty One (21) Days of *prision mayor*;

12. In Criminal Case No. Q-98-75982 – Two (2) Years, Eleven (11) Months and Eleven (11) Days of *[prision] correccional* to Six (6) Years and Twenty One (21) Days of *prision mayor*;

13. In Criminal Case No. Q-98-75983 – Two (2) Years, Eleven (11) Months and Eleven (11) Days of *[prision] correccional* to Seven (7) Years and Twenty One (21) Days of *prision mayor*;

14. In Criminal Case No. Q-98-75984 – Two (2) Years, Eleven (11) Months and Eleven (11) Days of *[prision] correccional* to Seven (7) Years and Twenty One (21) Days of *prision mayor*;

15. In Criminal Case No. Q-98-75985 – Two (2) Years, Eleven (11) Months and Eleven (11) Days of *[prision] correccional* to Six (6) Years and Twenty One (21) Days of *prision mayor*;

16. In Criminal Case No. Q-98-75986 – Two (2) Years, Eleven (11) Months and Eleven (11) Days of *[prision] correccional* to Six (6) Years and Twenty One (21) Days of *prision mayor*;

17. In Criminal Case No. Q-98-7598[7] – Two (2) Years, Eleven (11) Months and Eleven (11) Days of *[prision] correccional* to Six (6) Years and Twenty One (21) Days of *prision mayor*;

Further, the accused is hereby ordered to pay BPI and/or Remedios Perez the total sum of Six Hundred Thirty-Five Thousand Pesos

(₱635,000.00), as civil indemnity, plus six percent (6%) interest per *annum* from the time of the filing of these cases, until fully paid.

The bond posted by the accused for her provisional liberty is hereby canceled.

SO ORDERED.[5]

Ruling of the Appellate Court

On appeal, the CA, in its Decision dated November 24, 2008, disposed of the case as follows:

WHEREFORE, premises considered, the Appeal is hereby DISMISSED and the challenged Joint Decision of the Court *a quo* is AFFIRMED *in toto*.

SO ORDERED.[6]

The CA held that petitioner was the one who authored the crimes of which she was convicted reasoning that she was the only person who stood to be benefited by the falsification of the document in question; thus, the presumption that she is the material author of the falsification is present.

Moreover, petitioner's theory that the crimes committed were perpetrated by the bank tellers or is an inside job cannot be sustained because of the lack of any evidence showing that the tellers harbored any ill motive against her. The CA emphasized that the defense of denial, unsubstantiated by clear and convincing evidence, is negative and self-serving and merits no weight in law; it cannot be given greater evidentiary value than the testimony of credible witnesses who testified on affirmative matter.

On March 4, 2009, petitioner filed a timely appeal before this Court.

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[5] *Id.* at 52-54.

[6] *Id.* at 78.

The Issues

Petitioner interposes in the present appeal the following assignment of errors:

I

ERROR IN THE APPRECIATION OF THE EVIDENCE, DOCUMENTARY AND TESTIMONIAL, WERE COMMITTED BY THE LOWER COURT IN THE PROMULGATION AND ISSUANCE OF THE SUBJECT DECISION;

II

ERROR IN THE APPLICATION OF THE LAW, SUBSTANTIVE AND PROCEDURAL, WERE COMMITTED IN THE PROMULGATION OF THE SUBJECT DECISION.

Our Ruling

The appeal has no merit.

Substantially, the issues raised boil down to the question of whether or not the evidence adduced by the prosecution is sufficient to establish the guilt of petitioner beyond reasonable doubt.

Elements of Falsification of Commercial Documents are Present

Petitioner contends that the decision of the lower court is not supported by the evidence on record and that this evidence cannot sustain in law the requirements of proof beyond reasonable doubt for the crime for which she was charged.

Specifically, petitioner claims that, as a matter of policy, the bank personnel verified the signature cards of private complainant Remedios before any encashment can be drawn against the account of Remedios. Thus, petitioner contends that the signatures in the encashment slips are genuine as found by the staff and manager of BPI and that the cases filed against her are the products of inside jobs. Further, she argues that the results of the examinations conducted by Josefina dela Cruz of the PNP Crime Laboratory lack evidentiary value, since the report only

stated that the signatures on the Encashment/Withdrawal Slips were different from the genuine signatures of Remedios based on the checks, which contained the genuine signatures of Remedios, but did not state that the signatures belong to petitioner.

The contentions are flawed.

Article 172 of the Revised Penal Code (RPC) punishes any private individual who commits any of the acts of falsification enumerated in Art. 171 of the Code in any public or official document or letter of exchange or any other kind of commercial document. The acts of falsification enumerated in Art. 171 are:

> Art. 171. *Falsification by public officer, employee or notary or ecclesiastic minister*. — The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:
>
> 1. Counterfeiting or imitating any handwriting, signature, or rubric;
> 2. **Causing it to appear that persons have participated in any act or proceeding when they did not in fact participate**;
> 3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;
> 4. Making untruthful statements in a narration of facts;
> 5. Altering true dates;
> 6. Making any alteration or intercalation in a genuine document which changes its meaning;
> 7. Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such copy a statement contrary to, or different from, that of the genuine original; or
> 8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry or official book. (Emphasis and underscoring supplied.)

Essentially, the elements of the crime of Falsification of Commercial Document under Art. 172 are: (1) that the offender is a private individual; (2) that the offender committed any of

the acts of falsification; and (3) that the act of falsification is committed in a commercial document.

As borne by the records, all the elements of the crime are present in the instant case. Petitioner is a private individual who presented to the tellers of BPI 17 forged encashment slips on different dates and of various amounts. The questioned encashment slips were falsified by petitioner by filling out the same and signing the name of the private complainant, thereby making it appear that Remedios signed the encashment slips and that they are genuine in all respects, when in fact petitioner knew very well that Remedios never signed the subject encashment slips.

In her testimony, Remedios categorically denied having filled out and signed any of the subject encashment slips on the dates indicated on them. Her testimony is further strengthened by the testimonies of the bank manager and the bank tellers, who facilitated the banking transactions carried out by petitioner with their branch. Their testimonies were coherent and consistent in narrating that it was indeed petitioner who presented the encashment slips, received the proceeds of the transactions, and/or caused the transfer of the money to her own bank account.

Moreover, the testimony of Josefina dela Cruz (dela Cruz) bolsters the findings of the trial court that the alleged signatures of Remedios in the encashment slips are forged, to wit:

Q: Using the method you employed in the examination of questioned and standard signatures of Remedios Perez, will you please elaborate the study you made?

A: After conducting the examination, I reduced my examination to writing and my findings are as follows:

'Scientific comparative examination and analysis of the questioned documents and the submitted standard signature reveals significant divergences in handwriting movement, stroke structure and other individual handwriting characteristics.'

Q: You mentioned divergences in handwriting movement, will you please point to this Honorable Court this significant divergences of differences in the strokes of handwriting?

A: First of all the manner of execution. The manner of execution is slow while in the execution of the standard, it is moderate. The line quality in the questioned signature, there is presence of tremors in the strokes while in the standard signatures, all the strokes are smooth. In the capital 'R' in the questioned signature, there is presence of re-trace strokes while in the standard signature, there is no re-trace strokes. In the downward portion of the letter 'R' in the questioned signature, the direction is downward while in the standard it is horizontal. Now the angular strokes following the capital 'R' is traced in the middle part of the letter 'R,' the downward portion while in the standard, it is found in the last stroke of capital 'R.' In the middle name letter 'D,' the shape is more rounded on the questioned signature but in the standard it is more elongated. In the loop of the family name, it is more rounded in questioned signature[;] while in the standard, it is more elongated. With that, I was able to conclude that the questioned signatures Remedios D. Perez marked 'Q-1' to 'Q-36' standard signatures of Remedios Perez marked 'S-1' to 'S-27' inclusive were not written by one and the same person.[7]

Typically, such inconspicuous divergences noted by dela Cruz on the questioned signatures could not be easily detected by untrained eyes or by one who had no formal training in handwriting examination; thus, resort to the opinion of an expert is imperative. This explains why the bank tellers who processed the illegal transactions entered into by the petitioner on the account of Remedios failed to notice the forgery or falsification. As a result, they allowed the encashment by petitioner. The training or skill, if any, of the tellers in detecting forgeries is usually minimal or inadequate and their opinion is generally unreliable. It was, therefore, prudent on the part of the bank to seek the opinion of an expert to determine the genuineness of the signatures in the encashment slips.

As found by the trial court, the totality of the testimonies of Remedios, dela Cruz, the handwriting expert, and the bank tellers bears the earmarks of truth that the questioned encashment

[7] *Id.* at 45-46.

slips had been falsified by petitioner and that they were presented to the bank in order to defraud the bank or holder of the account.

Additionally, the Court has held that in gauging the relative weight to be given to the opinion of handwriting experts, the following standards are adhered to:

> We have held that the value of the opinion of a handwriting expert depends not upon his mere statements of whether a writing is genuine or false, but upon the assistance he may afford in pointing out distinguishing marks, characteristics and discrepancies in and between genuine and false specimens of writing which would ordinarily escape notice or detection from an unpracticed observer. The test of genuineness ought to be the resemblance, not the formation of letters in some other specimens but to the general character of writing, which is impressed on it as the involuntary and unconscious result of constitution, habit or other permanent course, and is, therefore itself permanent.[8]

Moreover, it cannot be said that since none of the prosecution witnesses saw the falsification actually done by petitioner, she cannot be held liable. The bank tellers who processed the illegal transactions of petitioner involving the account of Remedios were consistent in their testimonies that it was petitioner herself who presented the encashment slips and received the proceeds of the slips. In such a situation, the applicable rule is that if a person has in his possession a falsified document and he made use of it, taking advantage of it and profiting from it, the presumption is that he is the material author of the falsification.[9] In the instant case, petitioner has failed to overthrow the presumption.

Furthermore, contrary to petitioner's assertions, the questioned encashment slips are commercial documents. Commercial documents are, in general, documents or instruments which are used by merchants or businessmen to promote or facilitate trade.[10]

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[8] *Eduarte v. Court of Appeals*, G.R. No. 105944, February 9, 1996, 253 SCRA 391, 399; citations omitted.

[9] *Pacasum v. People*, G.R. No. 180314, April 16, 2009.

[10] *Monteverde v. People*, G.R. No. 139610, August 12, 2002, 387 SCRA 196.

An encashment slip necessarily facilitates bank transactions for it allows the person whose name and signature appears thereon to encash a check and withdraw the amount indicated therein.

Even more, petitioner would have this Court believe that the crime of falsification of a commercial document did not exist because Remedios and BPI did not suffer any damage. Such argument is specious. It has been ruled that damage or intent to cause damage is not an element in falsification of a commercial document, because what the law seeks to repress is the prejudice to the public confidence in such documents.[11]

Therefore, the acts of petitioner clearly satisfy all the essential elements of the crime of Falsification of Commercial Document.

Crime of Falsification was a Necessary Means to Commit Estafa

It has been held that whenever a person carries out on a public, official, or commercial document any of the acts enumerated in Art. 171 of the RPC as a necessary means to perpetrate another crime, such as estafa or malversation, a complex crime is formed by the two crimes.[12]

Under Art. 48 of the RPC, a complex crime refers to: (1) the commission of at least two grave or less grave felonies that must both (or all) be the result of a single act; or (2) one offense must be a necessary means for committing the other (or others).

The falsification of a public, official, or commercial document may be a means of committing estafa, because before the falsified document is actually utilized to defraud another, the crime of falsification has already been consummated, damage or intent to cause damage not being an element of the crime of falsification of public, official, or commercial document. In other words, the crime of falsification has already existed. Actually utilizing that falsified public, official, or commercial document to defraud another is estafa. But the damage is caused by the commission

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[11] See *Samson v. Court of Appeals*, 103 Phil. 277 (1958).

[12] *Ambito v. People*, G.R. No. 127327, February 13, 2009.

of estafa, not by the falsification of the document. Therefore, the falsification of the public, official, or commercial document is only a necessary means to commit estafa.[13]

In general, the elements of estafa are: (1) that the accused defrauded another (a) by abuse of confidence or (b) by means of deceit; and (2) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person. Deceit is the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed; and which deceives or is intended to deceive another so that he shall act upon it, to his legal injury.

In the case before us, all the elements of estafa are present. Once petitioner acquired the possession of the amounts she encashed by means of deceit, she misappropriated, misapplied, and converted the same to her own personal use and benefit, to the damage and prejudice of the private complainant and BPI.

Without a doubt, the falsification of the encashment slips was a necessary means to commit estafa. At that time, the offense of falsification is already considered consummated even before the falsified document is used to defraud another.

Therefore, the trial court aptly convicted petitioner for the complex crime of Estafa through Falsification of Commercial Document.

Defense of Denial Is Untenable

It is a hornbook doctrine that the defense of denial, unsubstantiated by clear and convincing evidence, is negative and self-serving, and merits no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses who testified on affirmative matters.[14]

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[13] 2 Reyes, THE REVISED PENAL CODE 226 (2006).

[14] *People v. Aguilar*, G.R. No. 177749, December 17, 2007, 540 SCRA 509; *People v. Castillo*, G.R. No. 118912, May 28, 2004, 430 SCRA 40.

In the instant case, petitioner's defense of denial crumbles in the face of the positive identification made by the prosecution witnesses during trial. As enunciated by this Court, "[p]ositive identification where categorical and consistent and not attended by any showing of ill motive on the part of the eyewitnesses on the matter prevails over alibi and denial."[15] The defense has miserably failed to show any evidence of ill motive on the part of the prosecution witnesses as to falsely testify against her.

Thus, between the categorical statements of the prosecution witnesses, on the one hand, and bare denials of the accused, on the other hand, the former must, perforce, prevail.[16]

We accord the trial court's findings the probative weight it deserves in the absence of any compelling reason to discredit its findings. It is a fundamental judicial dictum that the findings of fact of the trial court are not disturbed on appeal, except when it overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance that would have materially affected the outcome of the case. We find that the trial court did not err in convicting petitioner of the crime of Estafa through Falsification of Commercial Document.

WHEREFORE, the appeal is *DENIED* for failure to sufficiently show reversible error in the assailed decision. The Decision dated November 24, 2008 of the CA in CA-G.R. CR No. 31158 is *AFFIRMED*.

No costs.

SO ORDERED.

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

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

[16] *People v. Bello*, G.R. No. 92597, October 4, 1994, 237 SCRA 347; *People v. Carizo*, G.R. No. 96510, July 6, 1994, 233 SCRA 687.

THIRD DIVISION

[G.R. No. 186380. October 12, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MANUEL RESURRECCION,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT WITH RESPECT THERETO WILL NOT BE DISTURBED; EXCEPTIONS.— Inconsistencies referring to who the informant talked to at the NBI office, how many informants there were, and how many vehicles were used, are not material. These matters were not necessary to establish the elements of the crimes committed. The inconsistencies do not detract from the elements of the offense of illegal sale of drugs, which the prosecution adequately established. xxx In fact, it may well be pointed out that it was accused-appellant's witness, Meliton, who substantially contradicted the evidence presented by accused-appellant. She stated under oath that upon accused-appellant's arrest, she immediately left the place out of fear and to inform the wife of accused-appellant of the arrest. Yet accused-appellant testified that he was boarded into a van **with** Meliton and a few others. We find this contradiction substantial as Meliton's testimony could have otherwise backed up accused-appellant's alibi. What is more, the allegation of material inconsistencies involves a question of fact which generally cannot be raised. We will not disturb the findings of the trial court in assessing the credibility of the witnesses, unless some facts or circumstances of weight and influence have been overlooked or the significance of which has been misinterpreted by the trial court. This is so because of the judicial experience that trial courts have; they are in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. They can, thus, more easily detect whether a witness is telling the truth or not. All the more do we apply this rule when the trial courts' findings are sustained by the appellate court.

2. CRIMINAL LAW; REPUBLIC ACT 9165, ARTICLE II, SECTION 21 (1) THEREOF; CHAIN OF CUSTODY RULE; FAILURE TO STRICTLY COMPLY THEREWITH DOES NOT NECESSARILY RENDER AN ACCUSED'S ARREST ILLEGAL OR THE ITEMS SEIZED FROM HIM INADMISSIBLE.— Jurisprudence tells us that the failure to immediately mark seized drugs will not automatically impair the integrity of chain of custody. The failure to strictly comply with Sec. 21(1), Art. II of RA 9165 does not necessarily render an accused's arrest illegal or the items seized or confiscated from him inadmissible. What is of utmost importance is the **preservation of the integrity and the evidentiary value of the seized items**, as these would be utilized in the determination of the guilt or innocence of the accused. As we held in *People v. Cortez*, testimony about a perfect chain is not always the standard because it is almost always impossible to obtain an unbroken chain.

3. ID.; ID.; ID.; MARKING OF THE SEIZED DRUGS MUST BE MADE IN THE PRESENCE OF THE ACCUSED AND UPON IMMEDIATE CONFISCATION.— Accused-appellant broaches the view that SA Isidoro's failure to mark the confiscated *shabu* immediately after seizure creates a reasonable doubt as to the drug's identity. *People v. Sanchez*, however, explains that RA 9165 does not specify a time frame for "immediate marking," or where said marking should be done: What Section 21 of R.A. No. 9165 and its implementing rule do not expressly specify is the matter of "marking" of the seized items in warrantless seizures to ensure that the evidence seized upon apprehension is the same evidence subjected to inventory and photography when these activities are undertaken at the police station rather than at the place of arrest. Consistency with the "chain of custody" rule requires that the "marking" of the seized items – to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence – should be done (1) **in the presence of the apprehended violator** (2) **immediately upon confiscation.** To be able to create a first link in the chain of custody, then, what is required is that the marking be made in the presence of the accused and upon immediate confiscation. "Immediate confiscation" has no exact definition. Thus, in *People v. Gum-Oyen*, testimony that included the marking of the seized items

at the police station and in the presence of the accused was sufficient in showing compliance with the rules on chain of custody. Marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.

4. ID.; ID.; ID.; COMPLIED WITH IN CASE AT BAR.— It is clear then that the prosecution was able to provide all the facts necessary to establish adherence to the chain of custody rule. *First*, SA Vallejo, upon consummation of the transaction with accused-appellant, handed the sachets of *shabu* to SI Isidoro; *second*, SI Isidoro marked the sachets at their headquarters; *third*, SI Isidoro then personally brought the specimens to Forensic Chemist Felicisima Francisco, who found the items positive for *shabu*; and *fourth*, the same specimens were presented during trial as Exhibit "C".

5. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE HANDLING OF EVIDENCE; INTEGRITY OF EVIDENCE IS PRESUMED TO BE PRESERVED UNLESS THERE IS A SHOWING OF BAD FAITH, ILL-WILL OR PROOF THAT THE EVIDENCE HAS BEEN TAMPERED WITH.— Moreover, the presumption of regularity works against accused-appellant. The integrity of the evidence is presumed to be preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Accused-appellant in this case has the burden to show that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers and a presumption that public officers properly discharge their duties. Having failed to discharge this burden, his conviction must be affirmed.

6. CRIMINAL LAW; SECTION 15, ARTICLE III OF REPUBLIC ACT 6425, AS AMENDED; UNAUTHORIZED SALE OF SHABU; IMPOSABLE PENALTY.— The penalty prescribed under Sec. 15, Article III of RA 6425, as amended by RA 7659, for unauthorized sale of 200 grams or more of *shabu* or methamphetamine hydrochloride, is *reclusion perpetua* to death and a fine ranging from PhP 500,000 to PhP 10 million. Accused-appellant was found guilty of selling 992.9835 grams of *shabu*. We, thus, affirm the RTC and CA's imposition of *reclusion perpetua* and a fine of PhP 1,000,000.

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 8, 2008 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02399 entitled *People of the Philippines v. Manuel Resurreccion*, which affirmed the August 5, 2002 Decision of the Regional Trial Court (RTC), Branch 119 in Pasay City in Criminal Case No. 00-1225 for violation of Section 15, Article III of Republic Act No. (RA) 6425, as amended by RA 7659. Accused-appellant Manuel Resurreccion was sentenced to *reclusion perpetua*.

The Facts

An Information charged accused-appellant as follows:

> That on or about the 13th day of July 2000, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Manuel Resurreccion, without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver to another 992.9835 grams of Methamphetamine Hydrochloride (*shabu*), a regulated drug.
>
> Contrary to law.[1]

During his arraignment, accused-appellant gave a not guilty plea.

The Prosecution's Version of Facts

At the trial, the prosecution presented the following witnesses: Forensic Chemist Felicisima Francisco and National Bureau of Investigation (NBI) Special Task Force members Atty. Reynaldo

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[1] CA *rollo*, p. 229.

Esmeralda, Special (SA) Agent Romeo J. Vallejo, and Special Investigator (SI) Eric Isidoro.

According to Atty. Esmeralda, an informant went to the NBI Special Task Force office on July 13, 2000. The informant reported to SI Eduardo Villa the drug activities of a certain Manuel Resurreccion. Atty. Esmeralda assembled and briefed a 12-member buy-bust team on the basis of the informant's report. He designated SA Vallejo as the poseur-buyer. The team headed to Matias St. in Pasay City on board five vehicles. Atty. Esmeralda was 200 to 300 meters away from their target when the pre-arranged signal, a radio transmission, was received. The target turned out to be accused-appellant, whom SA Vallejo had arrested. Along with the seized *shabu*, they brought accused-appellant to their office where he was subjected to printing and photographing.[2]

During cross-examination, Atty. Esmeralda stated that their computer records also revealed that accused-appellant was convicted in one case by the RTC, for which he was presently serving sentence.[3]

SA Vallejo gave details as to his role as poseur-buyer and likewise corroborated Atty. Esmeralda's testimony. He testified that he and the informant waited for accused-appellant to arrive while the rest of the buy-bust team hid within the vicinity. Accused-appellant arrived around 3:30 in the afternoon. Inside accused-appellant's house, the informant introduced SA Vallejo as an interested buyer. Accused-appellant then handed SA Vallejo a green plastic bag and demanded payment. SA Vallejo took out a white envelope containing marked money and gave it to accused-appellant. Once accused-appellant had the white envelope in his hand, SA Vallejo announced that he was a law enforcer and that he was conducting a buy-bust. He then alerted the rest of the team via radio transmitter that the operation had just concluded. SA Vallejo then gave the green plastic bag to SI Isidoro, who counted 10 small plastic bags inside containing suspected *shabu*.

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[2] *Id.* at 21.

[3] *Id.* at 22.

The specimens were marked at the office and brought to the Forensic Chemistry Division for laboratory examination.[4]

During his rebuttal examination, SA Vallejo said that accused-appellant's claim of extortion on the part of the buy-bust team was incredible. He said the amount of PhP 300,000 mentioned by accused-appellant as the buy-bust team's asking price was unbelievable considering that the street value of a kilo of *shabu* is PhP1,500,000.[5]

SI Isidoro, a member of the back-up team, was likewise presented by the prosecution. On the witness stand he said that after the buy-bust operation, SA Vallejo gave him the green plastic bag. He, in turn, marked the plastic bag and its contents and personally brought the *shabu* to the Forensic Chemistry Division.[6]

NBI Forensic Chemist Francisco stated that she received the specimen, a plastic bag, from SA Vallejo at her office. It was pre-marked and accompanied by a Disposition Form. The contents of the 10 plastic sachets inside the plastic bag were tested positive for methamphetamine hydrochloride or *shabu* after a series of examinations. She likewise subjected accused-appellant to examination and found traces of ultra-violet fluorescent powder on his hands.[7]

Version of the Defense

The defense offered the testimonies of accused-appellant, his housemaid, Corazon Meliton (Meliton), and Barangay Captain Dominador Costales.

Accused-appellant claimed that on the morning of July 13, 2000, he bought food for his invalid friend, Vilma Vivas. He proceeded to her house on foot, accompanied by his house maid, Meliton. At her house, they handed her the food they

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[4] *Id.* at 23.

[5] *Id.* at 27.

[6] *Id.* at 24-25.

[7] *Id.* at 26-27.

bought. Accused-appellant and Vivas started talking. Suddenly, three men barged in around 11 o'clock in the morning. They introduced themselves as NBI agents and manhandled accused-appellant. They dragged him out of the house and started shouting, "*Shabu shabu shabu*!" Accused-appellant was then made to lie on his stomach, and frisked. His belongings were confiscated and he was boarded into a van along with Meliton and three others. Inside the van, the agents asked him about a certain "Nestor." He was hit with a gun when he answered that he did not know who they were referring to. They likewise demanded payment of PhP 300,000 for his release. When he said he did not have money, he was brought to the NBI where he was beaten up and forced to hold a white envelope. He was also made to place his hands over a machine. Four days later, he was taken for inquest.[8]

Meliton, who had been accused-appellant's housemaid for three years, testified that while they were at Vivas' house, three men arrived and arrested accused-appellant. One of the men ordered Meliton to go out. She then saw accused-appellant being hit by a gun on his right side. He was also frisked and his wallet taken from him. She immediately left the place since she was scared and wanted to inform accused-appellant's wife of what had happened.[9]

Costales was last to testify for the defense. He was the *Barangay* Captain of the area where the buy-bust operation took place. He confirmed that Vivas walked with a limp and said that he would see her in the area. He testified that Vivas has since left her house and that he received a letter from accused-appellant seeking his assistance.[10]

The Ruling of the Trial Court

The RTC pronounced accused-appellant guilty of the crime charged. It found that the prosecution was able to establish all

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[8] *Rollo*, pp. 7-8.

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

[10] *Id.* at 9.

the elements in the sale of illegal drugs. The dispositive portion of the RTC Decision[11] reads:

> WHEREFORE, finding the guilt of the accused MANUEL [RESURRECCION] *y* ALBERTO beyond reasonable doubt of violation of Section 15, Article III, Republic Act 6425, as amended by Republic Act 7659, said accused is hereby sentenced to *reclusion perpetua* and to pay a fine of One Million Pesos (₱1,000,000.00).
>
> SO ORDERED.

The Ruling of the Appellate Court

On appeal, accused-appellant faulted the trial court for disregarding his defense of denial. He pointed to inconsistencies in the testimonies of the prosecution witnesses. The CA, however, affirmed the Decision of the RTC.[12] It agreed with the trial court in holding that the inconsistencies cited by accused-appellant were trivial and did not affect the integrity of the prosecution's evidence as a whole. The appellate court also observed that accused-appellant failed to prove his claim that the evidence against him was manufactured and that the police tried to extort money from him.

On September 2, 2008, accused-appellant filed his Notice of Appeal from the appellate court's Decision.

On March 30, 2009, this Court directed the parties to submit supplemental briefs if they so desired. The parties manifested that they were submitting the case for decision based on the records already submitted to the Court.

The Issues

I

WHETHER THE COURT OF APPEALS ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE

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[11] CA *rollo*, p. 39. Penned by Judge Pedro De Leon Gutierrez.

[12] *Id.* at 3-15. Penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Mariano C. Del Castillo (now a member of this Court) and Arcangelita M. Romilla-Lontok.

DOUBT OF VIOLATION OF SECTION 15, ARTICLE III OF RA 6425.

II

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN NOT GIVING WEIGHT AND CREDENCE TO ACCUSED-APPELLANT'S DEFENSE OF DENIAL.

The Ruling of this Court

Accused-appellant maintains that certain flaws in SA Vallejo and the other witnesses' testimonies were overlooked.

Another claim made in this appeal is that the first link in the chain of custody was not established by the prosecution. Accused-appellant points to the failure of the buy-bust team to immediately mark the seized drugs as a cause to doubt the identity of the *shabu* allegedly confiscated from him.

The Office of the Solicitor General (OSG), on the other hand, counters accused-appellant's arguments by saying that the alleged inconsistencies referred to are too trivial to merit consideration. On the issue of chain of custody, the OSG argues that accused-appellant's contention is speculative and without basis. The OSG likewise reasons that it is of no moment that the confiscated drugs were marked at the NBI office.

We affirm accused-appellant's conviction.

Inconsistencies in Testimonial Evidence

Inconsistencies referring to who the informant talked to at the NBI office, how many informants there were, and how many vehicles were used, are not material. These matters were not necessary to establish the elements of the crimes committed.[13] The inconsistencies do not detract from the elements of the offense of illegal sale of drugs, which the prosecution adequately established.[14]

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[13] See *People v. Darisan*, G.R. No. 176151, January 30, 2009.

[14] *People v. Encila*, G.R. No. 182419, February 10, 2009: When what is involved is a prosecution for illegal sale of regulated or prohibited drugs, conviction can be had if the following elements are present: (1) the identity

Thus, the trial court observed:

> While this Court notes some discrepancy in the testimony of SA Vallejo and SI Isidoro as to the identity of the informant, wherein the former claimed that he [talked] to only a male informant while the former saw SA Vallejo talking with a male and a female [informant], this is trivial and does not impair the essential integrity of the prosecution's evidence as a whole. SI Isidoro even explained that he was busy with other work in the office and just saw SA Vallejo conversing with the informants and his participation in this operation commenced when he was called in for a briefing.[15]

In fact, it may well be pointed out that it was accused-appellant's witness, Meliton, who substantially contradicted the evidence presented by accused-appellant. She stated under oath that upon accused-appellant's arrest, she immediately left the place out of fear and to inform the wife of accused-appellant of the arrest. Yet accused-appellant testified that he was boarded into a van **with** Meliton and a few others. We find this contradiction substantial as Meliton's testimony could have otherwise backed up accused-appellant's alibi.

What is more, the allegation of material inconsistencies involves a question of fact which generally cannot be raised. We will not disturb the findings of the trial court in assessing the credibility of the witnesses, unless some facts or circumstances of weight and influence have been overlooked or the significance of which has been misinterpreted by the trial court.[16] This is so because of the judicial experience that trial courts have; they are in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. They can, thus, more easily detect whether a

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of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* of the crime. The delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapment officers and the accused.

[15] CA *rollo*, p. 38.

[16] *Cruz v. People*, G.R. No. 164580, February 6, 2009.

witness is telling the truth or not.[17] All the more do we apply this rule when the trial courts' findings are sustained by the appellate court.[18]

Chain of Custody Requirements

Jurisprudence tells us that the failure to immediately mark seized drugs will not automatically impair the integrity of chain of custody.

The failure to strictly comply with Sec. 21(1), Art. II of RA 9165 does not necessarily render an accused's arrest illegal or the items seized or confiscated from him inadmissible. What is of utmost importance is the **preservation of the integrity and the evidentiary value of the seized items**, as these would be utilized in the determination of the guilt or innocence of the accused.[19]

As we held in *People v. Cortez*,[20] testimony about a perfect chain is not always the standard because it is almost always impossible to obtain an unbroken chain. Cognizant of this fact, the Implementing Rules and Regulations of RA 9165 on the handling and disposition of seized dangerous drugs provides as follows:

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

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[17] *People v. Mateo*, G.R. No. 179036, July 28, 2008, 560 SCRA 375.

[18] *People v. Macatingag*, G.R. No. 181037, January 19, 2009.

[19] *Zalameda v. People*, G.R. No. 183656, September 4, 2009.

[20] G.R. No. 183819, July 23, 2009.

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; ***Provided,*** **that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further,* that non-compliance with these requirements under justifiable grounds, as long as the integrity and 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** x x x. (Emphasis supplied.)

Accused-appellant broaches the view that SA Isidoro's failure to mark the confiscated *shabu* immediately after seizure creates a reasonable doubt as to the drug's identity. *People v. Sanchez*,[21] however, explains that RA 9165 does not specify a time frame for "immediate marking," or where said marking should be done:

> What Section 21 of R.A. No. 9165 and its implementing rule do not expressly specify is the matter of "marking" of the seized items in warrantless seizures to ensure that the evidence seized upon apprehension is the same evidence subjected to inventory and photography when these activities are undertaken at the police station rather than at the place of arrest. Consistency with the "chain of custody" rule requires that the "marking" of the seized items — to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence — should be done (1) **in the presence of the apprehended violator** (2) **immediately upon confiscation.**

To be able to create a first link in the chain of custody, then, what is required is that the marking be made in the presence of the accused and upon immediate confiscation. "Immediate confiscation" has no exact definition. Thus, in *People v. Gum-*

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[21] G.R. No. 175832, October 15, 2008, 569 SCRA 194.

Oyen,[22] testimony that included the marking of the seized items at the police station and in the presence of the accused was sufficient in showing compliance with the rules on chain of custody. Marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.

It is clear then that the prosecution was able to provide all the facts necessary to establish adherence to the chain of custody rule. *First*, SA Vallejo, upon consummation of the transaction with accused-appellant, handed the sachets of *shabu* to SI Isidoro; *second*, SI Isidoro marked the sachets at their headquarters; *third*, SI Isidoro then personally brought the specimens to Forensic Chemist Felicisima Francisco, who found the items positive for *shabu*; and *fourth*, the same specimens were presented during trial as Exhibit "C".

Moreover, the presumption of regularity works against accused-appellant. The integrity of the evidence is presumed to be preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Accused-appellant in this case has the burden to show that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers and a presumption that public officers properly discharge their duties.[23] Having failed to discharge this burden, his conviction must be affirmed.

Penalty Imposed

The penalty prescribed under Sec. 15, Article III of RA 6425, as amended by RA 7659, for unauthorized sale of 200 grams or more of *shabu* or methamphetamine hydrochloride, is *reclusion perpetua* to death and a fine ranging from PhP 500,000 to PhP 10 million.[24]

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[22] G.R. No. 182231, April 16, 2009.

[23] *People v. Macatingag*, *supra* note 18.

[24] *Ching v. People*, G.R. No. 177237, October 17, 2008, 569 SCRA 711.

Accused-appellant was found guilty of selling 992.9835 grams of *shabu*. We, thus, affirm the RTC and CA's imposition of *reclusion perpetua* and a fine of PhP 1,000,000.

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 02399 finding accused-appellant Manuel Resurreccion guilty of violation of Sec. 15, Art. III of RA 6425, as amended, is *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 187084. October 12, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CARLITO PABOL,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; DIRECT EVIDENCE IS NOT THE ONLY WAY TO ESTABLISH GUILT.— Appellant harps at every turn on the absence of direct evidence to show he had forced himself sexually on AAA. Direct evidence, however, is not the only way to establish guilt. Circumstantial evidence is a recognized method to establish the commission and the authorship of a crime. The Rules of Court in fact contains provisions on the matter.

2. ID.; ID.; ID.; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT FOR CONVICTION.— Circumstantial evidence, also known as indirect or presumptive evidence, refers to proof of collateral facts and circumstances whence the

existence of the main fact may be inferred according to reason and common experience. It can support a conviction as long as the following requisites prescribed under Section 4, Rule 133 of the Rules of Court are satisfied: Sec. 4. *Circumstantial evidence, when sufficient*.— 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. In *People v. Delim*, we held that: For circumstantial evidence to be sufficient to support a conviction, all the circumstances must be consistent with each other, consistent with the hypothesis that accused is guilty and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt. If the prosecution adduced the requisite circumstantial evidence to prove the guilt of accused beyond reasonable doubt, the burden of evidence shifts to the accused to controvert the evidence of the prosecution.

3. ID.; ID.; DENIAL; WEAKEST OF DEFENSES FOR IT IS EASY TO FABRICATE AND CONCOCT.— It cannot be over-emphasized that appellant admitted hitting the victim and leaving her on the side of the road. His gratuitous allegations that he did not rape AAA and that he ran away because he thought he had killed her do not inspire concurrence. Denial is the weakest of defenses for, like alibi, it is easy to fabricate and concoct. Appellant offered nothing in support of his denial. Not one witness was presented to testify on his whereabouts soon after the incident. After admitting to the assault of a 14-year-old girl, he cannot plausibly expect this Court to believe that something else caused her defloration. Faced with all the established facts of this case, however, appellant's mere denial cannot hold water.

4. ID.; ID.; CREDIBILITY OF WITNESSES; NO ILL-MOTIVE TO FALSELY IMPUTE THE COMMISSION OF A SERIOUS CRIME AGAINST APPELLANT IN CASE AT BAR.— Jurisprudence is replete with cases of rape where conviction was based on circumstantial evidence. In *People v. Coja, People v. Darilay, People v. Abulencia, People v. Salonga, et al., People v. Sabardan, People v. Gaufo,* and *People v. Perez*, to cite a few, the victims were unconscious but the circumstances

in those cases all point to the accused as the perpetrator. Similarly in this case, we find sufficient evidence to affirm appellant's conviction. Lest it be overlooked, as a final consideration, the immature AAA had no motive—and none was ascribed by the defense—to falsely impute the commission of a serious crime against appellant.

5. CRIMINAL LAW; RAPE; CIVIL LIABILITY OF ACCUSED-APPELLANT.— Finally, we sustain the trial court's award of moral damages and civil indemnity, it being in accordance with recent jurisprudence. As a public example, however, to protect hapless individuals from molestation, we decree an award of exemplary damages in the amount of PhP 30,000 in line with *People v. Sia*.

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.*:

For review before the Court is the Decision[1] dated August 31, 2007 of the Court of Appeals (CA) in CA-G.R. CEB-CR-H.C. No. 00644, affirming the November 14, 2003 judgment[2] in Crim. Case No. N-98-096-J of the Regional Trial Court (RTC), Branch 45 in Bais City, Negros Oriental. The RTC found accused-appellant Carlito Pabol guilty of rape.

The Facts

In an amended information dated August 21, 1998 filed with the RTC, appellant was charged with rape with less serious physical injuries, allegedly committed as follows:

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[1] *Rollo*, pp. 5-11. Penned by Associate Justice Agustin S. Dizon and concurred in by Associate Justices Isaias P. Dicdican and Pampio A. Abarintos.

[2] CA *rollo*, pp. 16-27. Penned by Judge Victor C. Patrimonio.

That at around 6:00 o'clock in the morning of October 9, 1997 at Barangay Pacuan, Jimalalud, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused waylaid the victim [AAA][3] who was then and there alone, and by means of force and bodily attacks, willfully, unlawfully and feloniously did lie, and succeeded in having carnal knowledge of said victim against her will.

CONTRARY TO LAW.[4]

When arraigned, appellant, assisted by a public attorney, pleaded not guilty. During trial, the prosecution presented AAA, the offended private party, her sister, BBB, Dr. Maritoni Ceniza, Dr. Alain Go, and PO2 Pepe Bomediano. Only appellant testified in his defense.

The following facts were found by the trial court:

On October 9, 1997 at around 6:00 in the morning, AAA, then a 14-year old Grade V student, was on her way to school, passing by the lower portion of the house of appellant, a neighbor. Along the way, AAA met appellant who inquired about the whereabouts of her father. After she had told appellant that her father was home, appellant suddenly struck her on the right side of her face[5] causing her to fall. Appellant then hugged her from behind, sat her on his lap and struck her breast with a piece of stone. When she shouted for help, appellant covered her mouth. At that point, she fell unconscious. When she had woken up some two hours later, she found herself alone on the shoulder of the road, covered by tall grasses, and with her school bag on her head. She sustained wounds on her face. Both of her ears were sliced. Her blouse was opened and there were

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[3] The real name and the personal circumstances of the victim and her immediate relatives are withheld per Republic Act No. (RA) 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act) and RA 9262 (Anti-Violence Against Women and Their Children Act). See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 425-426.

[4] CA *rollo*, p. 8.

[5] *Rollo*, p. 8; citing TSN, November 11, 2002, pp. 7-9.

traces of blood on her panty. She later told the court that she experienced pain between her legs when urinating.[6]

AAA's elder sister, BBB, testified seeing AAA leave for school at around 6:00 a.m. on October 9, 1997. She said that AAA's usual route to school was past the house of appellant. At around 8:00 a.m. on the same day, while nursing her baby, BBB saw a bloodied AAA walking towards their house with a torn dress. BBB lost no time in rushing towards and hugging her little sister. AAA, when asked, related that it was appellant who inflicted the wounds on her face. Thereupon, BBB brought AAA to Gov. William Villegas District Hospital in Guihulngan, Negros Oriental for treatment.

Dr. Ceniza attended to AAA. Testifying on the medical certificate she prepared, Dr. Ceniza revealed that AAA sustained, among others, multiple lacerated wounds on the forehead. Specifically, the doctor's report contained the following findings:

I. Multiple lacerated wounds forehead
   1. 2cm x 0.5cm Traversing eyebrow, right
   2. 1cm x 0.5cm – Middle forehead
   3. 2cm x 0.5cm – -do-
   4. 3cm x 0.5cm – -do-
   5. 1cm x 0.5cm – -do-
   6. 3cm x 0.5cm above eyebrow, left

II. Lacerated wounds vertex
   1. 3cm x 0.5cm
   2. 3cm x 0.5

III. Lacerated wound occipital area
   1. 2cm x 0.5cm

IV. Lacerated wound Pinna, right
   1. 2m through and through

V. Lacerated wound Pinna, left 1cm

VI. Lacerated wounds Post auricular area, left
   1. 4cm x 0.5cm
   2. 2cm x 0.5cm

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[6] CA *rollo*, p. 17.

3. 2cm superficial
4. 1cm superficial

VII. Multiple Abrasion

1. Chin
2. Cheek, left
3. Anterior neck
4. Right hand
5. Left hand
6. Left forearm
7. Left thigh
8. Left knee

VIII. Contusion mandibular area, right[7]

BBB further testified that, in the afternoon of October 9, 1997, she noticed bloodstains on AAA's panty when the latter changed clothing, making her suspect that AAA is no longer a virgin. The following day, BBB brought AAA again to the hospital for a vaginal examination. The examining doctor, Dr. Go,[8] found AAA to have a completely healed laceration at 8 o'clock position.[9] The laceration, according to the doctor, could have been due to previous sexual intercourse, injection and trauma, among other causes. The healing period of hymenal laceration is from four to 10 days. Even as she noticed that the victim's vagina could admit two fingers, Dr. Go could not determine whether or not AAA is a virgin. When cross-examined, Dr. Go stated the observation that if a woman had sexual intercourse by force, she would sustain hematoma if the injury is recent. That type of hematoma would heal in seven to 10 days depending on its size. In the absence of resistance on the part of the woman, the hematoma may be slight and would heal from four to ten days. Dr. Go added that vaginal lacerations could be due to causes other than a penile insertion and that it is not

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[7] *Id.* at 20.

[8] In his testimony, Dr. Go made it appear that he examined AAA on October 13, 1997.

[9] CA *rollo*, p. 19.

unusual for virgins to have ruptured hymens. On re-direct examination, Dr. Go stated that it is possible that the hematoma of the victim would be much less severe if the woman were unconscious when it was caused.[10]

AAA testified that, out of embarrassment of talking about the pain she felt in her vagina, she did not truthfully answer some of the questions during the preliminary investigation. On cross-examination, AAA admitted to not noticing appellant undressing himself, removing her panty, or inserting his sex organ into hers because she was unconscious at some point during the incident.[11]

The prosecution presented PO2 Bomediano who testified about appellant's flight after the October 9, 1997 occurrence. PO2 Bomediano also related that, when he and a colleague in the force arrested appellant five years later, the latter readily gave himself up.[12]

Appellant's defense consisted mainly of partial denial. He testified knowing AAA's father, a neighbor who he claimed was indebted to him. He admitted hurting AAA on October 9, 1997, but denied allegations of rape. According to appellant, he slapped and boxed AAA when she got mad when asked where her father was. Appellant added that he then dragged the unconscious AAA to the shoulder of the road and ran away for fear of having killed her. He denied raping AAA.

By decision dated November 14, 2003, the trial court found the accused guilty of simple rape only, noting that when a rapist employs force the rape victim invariably sustains injury. The dispositive portion of the RTC's decision reads:

> WHEREFORE, premises considered, the court finds accused CARLITO PABOL guilty beyond reasonable [doubt] of the crime of simple rape defined under *Article 266-A (1) of the Revised Penal Code*, as amended and he is hereby sentenced to suffer the penalty

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[10] *Id.* at 21-22.

[11] *Id.* at 17-18.

[12] *Id.* at 22-23.

of *reclusion perpetua,* to indemnify the victim AAA the sum of Php50,000.00 and to pay her the sum of Php50,000.00 as moral damages, plus costs of the suit.

SO ORDERED.[13]

The Ruling of the CA

Agreeing with and relying on the findings of the trial court as to what transpired between AAA and appellant in the fateful morning of October 9, 1997, the CA affirmed appellant's conviction. The appellate court held that rape was established by circumstantial evidence based on the victim's credible and straight account. The dispositive portion of the CA's decision reads:

WHEREFORE, in the light of the foregoing, the assailed decision is **AFFIRMED *in toto***.

Costs against appellant.

SO ORDERED.[14]

Hence, this appeal is before us.

Assignment of Errors

THE TRIAL COURT ERRED IN FINDING THAT CARNAL KNOWLEDGE WAS ESTABLISHED BY PROOF BEYOND REASONABLE DOUBT

THE TRIAL COURT ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE

Appellant is obviously questioning the credibility and sufficiency of the inculpatory evidence against him. He insists that the prosecution failed to prove the fact of his having carnal

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[13] *Id.* at 27.

[14] *Rollo,* p. 11.

knowledge of the victim. Since AAA, according to appellant, testified to having passed out during the October 9, 1997 encounter, she could not competently testify as to what transpired between the time she was hit by appellant and the moment she regained consciousness. The bloodstains on her underwear could have come from anywhere since she sustained various injuries. The pain in her vagina could also be attributed to the beating and blows she received from the hands of appellant. Appellant also points out that the vaginal examination of the victim was conducted four days after the incident. That the hymenal laceration was completely healed when AAA was examined suggests, according to him, that the laceration could have been caused by prior sexual intercourse, not necessarily by his alleged act of molestation.

Appellant argues, too, that there is a complex crime of rape with less serious physical injuries; nonetheless, he could not be convicted of the lesser crime of less serious physical injuries because the amended information merely charged him with simple rape. He, thus, prays for his acquittal since carnal knowledge was not proved.

The Ruling of the Court

The appeal has no merit.

Appellant harps at every turn on the absence of direct evidence to show he had forced himself sexually on AAA. Direct evidence, however, is not the only way to establish guilt. Circumstantial evidence is a recognized method to establish the commission and the authorship of a crime. The Rules of Court in fact contains provisions on the matter.

Circumstantial evidence, also known as indirect or presumptive evidence, refers to proof of collateral facts and circumstances whence the existence of the main fact may be inferred according to reason and common experience.[15] It can support a conviction

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[15] *People v. Delim*, G.R. No. 142773, January 28, 2003, 396 SCRA 386, 401.

as long as the following requisites prescribed under Section 4, Rule 133 of the Rules of Court are satisfied:

> Sec. 4. *Circumstantial evidence, when sufficient*.— 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.

In *People v. Delim*, we held that:

> For circumstantial evidence to be sufficient to support a conviction, all the circumstances must be consistent with each other, consistent with the hypothesis that accused is guilty and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt. If the prosecution adduced the requisite circumstantial evidence to prove the guilt of accused beyond reasonable doubt, the burden of evidence shifts to the accused to controvert the evidence of the prosecution.[16]

In the case at bar, the prosecution has successfully established the following circumstances and facts that, when taken together, very well constitute evidence of guilt beyond reasonable doubt, to wit: (1) appellant having met AAA on the latter's way to school and hitting her on the face; (2) the positive identification of appellant as the person she met while she was on her way to school; (3) appellant then hugging AAA from behind, sitting her on his lap and striking her breast with a piece of stone; (4) AAA shouting for help and appellant covering her mouth; (5) appellant hitting AAA until she lost consciousness and then dragging her body to the side of the road; (6) AAA waking up two hours later to discover that her ears had been sliced, her blouse opened, and her underwear stained with her own blood; (7) AAA feeling pain in her private part after the incident; and (8) AAA sustaining hymenal laceration. Given the foregoing circumstances, there

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[16] *Id.* at 401-402; citing *People v. Casingal*, G.R. No. 87163, March 29, 1995, 243 SCRA 37.

is no other conclusion that we can make with moral certainty other than that appellant raped the victim.

As the trial court aptly held:

> The testimony of the private offended (sic) bears the ring of truth. When the testimony of a rape victim is plain and straightforward and unflawed by any material or significant inconsistency, it deserves full faith and credit (*People vs. Lopez*, 302 SCRA 669). A victim who says she has been raped always says all that there is to be said (*People vs. Borja*, 267 SCRA 370). In clear, candid and straightforward manner, the victim narrated to the court how she was assaulted by the accused. After hitting her right face and she fell down from behind, the accused hugged [the victim] and this showed that the accused had the clear intent of sexually assaulting her. He also let her sit in (sic) his lap and not [contented], he struck her breast with [a] piece of stone causing her to be unconscious. The private offended (sic) cried when she narrated her ordeal. Yes, the private offended (sic) did not see how the accused raped her, for how can she see the rapist when she was unconscious. But the fact that the panty that she wore that fateful morning was stained with blood, that she sustained vaginal laceration and that after the incident she felt pain every time she urinated, fortify that indeed she was raped by the accused when she was unconscious.[17]

It cannot be over-emphasized that appellant admitted hitting the victim and leaving her on the side of the road. His gratuitous allegations that he did not rape AAA and that he ran away because he thought he had killed her do not inspire concurrence. Denial is the weakest of defenses for, like alibi, it is easy to fabricate and concoct.[18] Appellant offered nothing in support of his denial. Not one witness was presented to testify on his whereabouts soon after the incident. After admitting to the assault of a 14-year-old girl, he cannot plausibly expect this Court to believe that something else caused her defloration. Faced with all the established facts of this case, however, appellant's mere denial cannot hold water.

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[17] CA *rollo*, pp. 25-26.

[18] *People v. Enoja*, G.R. No. 102596, December 17, 1999, 321 SCRA 7.

Jurisprudence is replete with cases of rape where conviction was based on circumstantial evidence. In *People v. Coja, People v. Darilay, People v. Abulencia, People v. Salonga, et al., People v. Sabardan, People v. Gaufo,* and *People v. Perez,*[19] to cite a few, the victims were unconscious but the circumstances in those cases all point to the accused as the perpetrator. Similarly in this case, we find sufficient evidence to affirm appellant's conviction. Lest it be overlooked, as a final consideration, the immature AAA had no motive—and none was ascribed by the defense—to falsely impute the commission of a serious crime against appellant.

Finally, we sustain the trial court's award of moral damages and civil indemnity, it being in accordance with recent jurisprudence. As a public example, however, to protect hapless individuals from molestation, we decree an award of exemplary damages in the amount of PhP 30,000 in line with *People v. Sia.*[20]

WHEREFORE, the CA Decision dated August 31, 2007 is *AFFIRMED* with the *MODIFICATION* that appellant Carlito Pabol is further ordered to pay the private offended party the amount of PhP 30,000 as exemplary damages.

SO ORDERED.

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

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[19] G.R. No. 179277, June 18, 2008, 555 SCRA 176; G.R. Nos. 139751-52, January 26, 2004, 421 SCRA 45; G.R. No. 138403, August 22, 2001, 363 SCRA 496; G.R. No. 128647, March 31, 2000, 329 SCRA 468; G.R. No. 132135, May 21, 2004, 429 SCRA 9; 469 Phil. 66 (2004); and 366 Phil. 741 (1999), respectively.

[20] G.R. No. 174059, February 27, 2009.

THIRD DIVISION

[G.R. No. 114217. October 13, 2009]

HEIRS OF JOSE SY BANG, HEIRS OF JULIAN SY and OSCAR SY,[1] *petitioners*, *vs*. **ROLANDO SY, ROSALINO SY, LUCIO SY, ENRIQUE SY, ROSAURO SY, BARTOLOME SY, FLORECITA SY, LOURDES SY, JULIETA SY, and ROSITA FERRERA-SY,** *respondents*.

[G.R. No. 150797. October 13, 2009]

ILUMINADA TAN, SPOUSES JULIAN SY AND ROSA TAN, ZENAIDA TAN, and MA. EMMA SY, *petitioners, vs.* **BARTOLOME SY, ROSALINO SY, FLORECITA SY, ROLANDO SY, LOURDES SY, ROSAURO SY, JULIETA SY, and ROSITA FERRERA-SY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; SEVERAL JUDGMENTS, WHEN PROPER.— Section 4, Rule 36 of the Revised Rules on Civil Procedure states: SEC. 4. *Several judgments*. — In an action against several defendants, the court may, when a several judgment is proper, render judgment against one or more of them, leaving the action to proceed against the others. The trial court's Third Partial Decision is in the nature of a several judgment as contemplated by the rule quoted above. The trial court ruled on the status of the properties in the names of petitioners (defendants below) while deferring the ruling on the properties in the names of respondents pending the presentation of evidence. A several judgment is proper when the liability of each party is clearly separable and distinct from

[1] The Petition was originally filed by Spouse Jose Sy Bang and Iluminada Tan, Spouses Julian Sy and Rosa Tan, Zenaida Sy, Ma. Emma Sy, and Oscar Sy. Respondents filed a Motion for Substitution of Parties on June 23, 2006, informing this Court of the deaths of Jose Sy Bang and Julian Sy. The Court granted the Motion in a Resolution dated July 5, 2006.

that of his co-parties, such that the claims against each of them could have been the subject of separate suits, and judgment for or against one of them will not necessarily affect the other. Petitioners, although sued collectively, each held a separate and separable interest in the properties of the Sy Bang estate.

2. ID.; SPECIAL PROCEEDINGS; SETTLEMENT OF THE ESTATE OF DECEASED PERSON; DISTRIBUTION OF THE ESTATE PROPERTIES, WHEN CAN BE MADE.— The trial court painstakingly examined the evidence on record and narrated the details, then carefully laid out the particulars in the assailed Decision. The evidence that formed the basis for the trial court's conclusion is embodied in the Decision itself — evidence presented by the parties themselves, including petitioners. However, notwithstanding the trial court's pronouncement, the Sy Bang estate cannot be partitioned or distributed until the final determination of the extent of the estate and only until it is shown that the obligations under Rule 90, Section 1, have been settled. In the settlement of estate proceedings, the distribution of the estate properties can only be made: (1) after all the debts, funeral charges, expenses of administration, allowance to the widow, and estate tax have been paid; or (2) before payment of said obligations only if the distributees or any of them gives a bond in a sum fixed by the court conditioned upon the payment of said obligations within such time as the court directs, or when provision is made to meet those obligations.

3. ID.; SPECIAL CIVIL ACTIONS; PARTITION; ISSUE OF OWNERSHIP OR CO-OWNERSHIP MUST BE INITIALLY SETTLED.— Settling the issue of ownership is the first stage in an action for partition. As this Court has ruled: The issue of ownership or co-ownership, to be more precise, must first be resolved in order to effect a partition of properties. This should be done in the action for partition itself. As held in the case of *Catapusan v. Court of Appeals*: "In actions for partition, the court cannot properly issue an order to divide the property, unless it first makes a determination as to the existence of co-ownership. The court must initially settle the issue of ownership, the first stage in an action for partition. Needless to state, an action for partition will not lie if the claimant has no rightful interest over the subject property. In fact, Section 1 of Rule 69 requires the party filing the action to state in his

complaint the "nature and extent of his title" to the real estate. Until and unless the issue of ownership is definitely resolved, it would be premature to effect a partition of the properties x x x." Moreover, the Third Partial Decision does not have the effect of terminating the proceedings for partition. By its very nature, the Third Partial Decision is but a determination based on the evidence presented thus far. There remained issues to be resolved by the court. There would be no final determination of the extent of the Sy Bang estate until the court's examination of the properties in the names of Rosalino, Bartolome, Rolando, and Enrique. Based on the evidence presented, the trial court will have to make a pronouncement whether the properties in the names of Rosalino, Bartolome, Rolando, and Enrique indeed belong to the Sy Bang estate. Only after the full extent of the Sy Bang estate has been determined can the trial court finally order the partition of each of the heirs' share.

4. REMEDIAL LAW; PLEADINGS AND PRACTICES; *LIS PENDENS*; FILING OF NOTICE, TWO FOLD EFFECT.— The filing of a notice of *lis pendens* has a two-fold effect: (1) to keep the subject matter of the litigation within the power of the court until the entry of the final judgment in order to prevent the final judgment from being defeated by successive alienations; and (2) to bind a purchaser, *bona fide* or not, of the land subject of the litigation to the judgment or decree that the court will promulgate subsequently.

5. ID.; ID.; ID.; CANCELLATION OF NOTICE OF *LIS PENDENS*, GROUNDS; "NOTICE OF *LIS PENDENS*," CONSTRUED; CASE AT BAR.— While the trial court has an inherent power to cancel a notice of *lis pendens*, such power is to be exercised within the express confines of the law. As provided in Section 14, Rule 13 of the 1997 Rules of Civil Procedure, a notice of *lis pendens* may be cancelled on two grounds: (1) when the annotation was for the purpose of molesting the title of the adverse party, or (2) when the annotation is not necessary to protect the title of the party who caused it to be recorded. This Court has interpreted the notice as: The notice is but an incident in an action, an extrajudicial one, to be sure. It does not affect the merits thereof. It is intended merely to constructively advise, or warn, all people who deal with the property that they so deal with it at their own risk, and whatever rights they may acquire in the property in any voluntary transaction are subject to the results of the action, and may

well be inferior and subordinate to those which may be finally determined and laid down therein. The cancellation of such a precautionary notice is therefore also a mere incident in the action, and may be ordered by the Court having jurisdiction of it at any given time. And its continuance or removal-like the continuance or removal of a preliminary attachment of injunction — is not contingent on the existence of a final judgment in the action, and ordinarily has no effect on the merits thereof. The CA found, and we affirm, that Rosalino, Bartolome and Rolando were able to prove that the notice was intended merely to molest and harass the owners of the property, some of whom were not parties to the case. It was also proven that the interest of Oscar Sy, who caused the notice to be annotated, was only 1/14 of the assessed value of the property. Moreover, Rosalino, Bartolome and Rolando were ordered to post a ₱50,000.00 bond to protect whatever rights or interest Oscar Sy may have in the properties under *litis pendentia*.

6. ID.; SPECIAL PROCEEDINGS; SETTLEMENT OF THE ESTATE OF DECEASED PERSON; THE COURT HEARING THE SETTLEMENT OF THE ESTATE SHOULD EFFECT THE PAYMENT OF WIDOW'S ALLOWANCE.— The court hearing the petition for guardianship had limited jurisdiction. It had no jurisdiction to enforce payment of the widow's allowance ordered by this Court. Reviewing the antecedents, we note that the claim for widow's allowance was made before the Supreme Court in a case that did not arise from the guardianship proceedings. The case subject of the Supreme Court petition (Civil Case No. 8578) is still pending before the RTC of Lucena City. Rule 83, Sec. 3, of the Rules of Court states: SEC. 3. Allowance to widow and family. — The widow and minor or incapacitated children of a deceased person, during the settlement of the estate, shall receive therefrom, under the direction of the court, such allowance as are provided by law. Correlatively, Article 188 of the Civil Code states: Art. 188. From the common mass of property support shall be given to the surviving spouse and to the children during the liquidation of the inventoried property and until what belongs to them is delivered; but from this shall be deducted that amount received for support which exceeds the fruits or rents pertaining to them. Obviously, "the court" referred to in Rule 83, Sec. 3, of the Rules of Court is the court hearing the settlement of the estate. Also crystal clear is the provision of the law that

the widow's allowance is to be taken from the common mass of property forming part of the estate of the decedent. Thus, as evident from the foregoing provisions, it is the court hearing the settlement of the estate that should effect the payment of widow's allowance considering that the properties of the estate are within its jurisdiction, to the exclusion of all other courts.

7. ID.; ID.; GUARDIANSHIP; DELIVERY OF THE EMBEZZLED, CONCEALED OR CONVEYED PROPERTY OF THE WARD, WHEN CAN BE ORDERED BY THE COURT; LIMITED JURISDICTION OF THE GUARDIANSHIP COURT; DISTRIBUTION OF THE RESIDUE OF THE ESTATE OF THE DECEASED INCOMPETENT PERTAINS TO ANOTHER PROCEEDING, NOT TO THE GUARDIANSHIP PROCEEDINGS.— In emphasizing the limited jurisdiction of the guardianship court, this Court has pronounced that: Generally, the guardianship court exercising special and limited jurisdiction cannot actually order the delivery of the property of the ward found to be embezzled, concealed, or conveyed. In a categorical language of this Court, only in extreme cases, where property clearly belongs to the ward or where his title thereto has been already judicially decided, may the court direct its delivery to the guardian. In effect, there can only be delivery or return of the embezzled, concealed or conveyed property of the ward, where the right or title of said ward is clear and undisputable. However, where title to any property said to be embezzled, concealed or conveyed is in dispute, x x x the determination of said title or right whether in favor of the persons said to have embezzled, concealed or conveyed the property must be determined in a separate ordinary action and not in a guardianship proceedings. Further, this Court has held that the distribution of the residue of the estate of the deceased incompetent is a function pertaining properly, not to the guardianship proceedings, but to another proceeding in which the heirs are at liberty to initiate.

8. ID.; ID.; SETTLEMENT OF THE ESTATE OF DECEASED PERSON; PROPERTIES OF THE ESTATE WHICH HAVE BEEN IDENTIFIED SHOULD BE MADE TO ANSWER FOR THE WIDOW'S ALLOWANCE.— x x x. The widow's allowance, as discussed above, is chargeable to Sy Bang's estate. It must be stressed that the issue of whether the properties in the names of Rosalino, Bartolome, Rolando, and Enrique Sy

form part of Sy Bang's estate remains unsettled since this Petition questioning the trial court's Third Partial Decision has been pending. On the other hand, there has been a categorical pronouncement that petitioners are holding properties belonging to Sy Bang's estate. That the full extent of Sy Bang's estate has not yet been determined is no excuse from complying with this Court's order. Properties of the estate have been identified — *i.e.*, those in the names of petitioners – thus, these properties should be made to answer for the widow's allowance of Rosita. In any case, the amount Rosita receives for support, which exceeds the fruits or rents pertaining to her, will be deducted from her share of the estate.

9. ID.; CRIMINAL PROCEDURE; PROBABLE CAUSE; DEFINED; A FINDING OF PROBABLE CAUSE DOES NOT CONCLUSIVELY PROVE THE CHARGE OF FALSIFICATION.— A finding of probable cause does not conclusively prove the charge of falsification against respondents. In a preliminary investigation, probable cause has been defined as "the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted." It is well-settled that a finding of probable cause needs to rest only on evidence showing that **more likely than not** a crime has been committed and was committed by the suspects. Probable cause **need not be based on clear and convincing evidence of guilt**, neither on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. Hence, until the marriage is finally declared void by the court, the same is presumed valid and Rosita is entitled to receive her widow's allowance to be taken from the estate of Sy Bang. We remind petitioners again that they are duty-bound to comply with whatever the courts, in relation to the properties under litigation, may order.

APPEARANCES OF COUNSEL

Tan Acut & Lopez for petitioners.

Euclides G. Forbes & Antonio P. Acyatan for Jose Sy Bang, Jr., *et al*.

Delia Hermoso for Rolando Sy, *et al*.

Herminio F. Valerio for Rosita F. Sy, *et al.*
Villanueva Law Office and *Joyas Mendoza Dauz Law Office* for Rose Tan.
Ramon L. Quiño for Iluminada Tan, *et al.*

D E C I S I O N

NACHURA, *J.*:

Before this Court are two Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court. The first Petition, G.R. No. 114217, assails the Decision[2] dated May 6, 1993 and the Resolution[3] dated February 28, 1994 of the Court of Appeals (CA) in CA-G.R. SP No. 17686. On the other hand, the second Petition, G.R. No. 150797, questions the Decision dated February 28, 2001 and the Resolution dated November 5, 2001 of the CA in CA-G.R. SP No. 46244.

The factual antecedents are as follows:

G.R. No. 114217

On May 28, 1980, respondent Rolando Sy filed a Complaint for Partition against spouses Jose Sy Bang and Iluminada Tan, spouses Julian Sy and Rosa Tan, Zenaida Sy, Ma. Emma Sy, Oscar Sy, Rosalino Sy, Lucio Sy, Enrique Sy, Rosauro Sy, Bartolome Sy, Florecita Sy, Lourdes Sy, Julieta Sy, Rosita Ferrera-Sy, and Renato Sy before the then Court of First Instance of Quezon, Branch 2, docketed as Civil Case No. 8578.[4]

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[2] Penned by Associate Justice Consuelo Ynares-Santiago (a retired member of this Court), with Associate Justices Luis A. Javellana (ret.) and Minerva P. Gonzaga-Reyes (a retired member of this Court), concurring; *rollo* (G.R. No. 114217), pp. 154-164.

[3] Penned by Associate Justice Consuelo Ynares-Santiago (a retired member of this Court), with Associate Justices Alfredo L. Benipayo (ret.) and Minerva P. Gonzaga-Reyes (a retired member of this Court), concurring; *rollo*, pp. 186-187.

[4] Other respondents became complainants; *rollo* (G.R. No. 114217), p. 155.

Respondents Rolando Sy, Rosalino Sy, Lucio Sy, Enrique Sy, Rosauro Sy, Bartolome Sy, Julieta Sy, Lourdes Sy, and Florecita Sy are the children of Sy Bang by his second marriage to respondent Rosita Ferrera-Sy, while petitioners Jose Sy Bang, Julian Sy and Oscar Sy are the children of Sy Bang from his first marriage to Ba Nga, and petitioners Zenaida Tan and Ma. Emma Sy are the children of petitioner spouses Jose Sy Bang and Iluminada Tan.[5]

Sy Bang died intestate in 1971, leaving behind real and personal properties, including several businesses.[6]

During an out-of-court conference between petitioners and respondents, it was agreed that the management, supervision or administration of the common properties and/or the entire estate of the deceased Sy Bang shall be placed temporarily in the hands of petitioner Jose Sy Bang, as trustee, with authority to delegate some of his functions to any of petitioners or private respondents. Thus, the function or duty of bookkeeper was delegated by Jose Sy Bang to his co-petitioner Julian Sy, and the duty or function of management and operation of the business of cinema of the common ownership was delegated by petitioner Jose Sy Bang to respondent Rosauro Sy.[7]

Herein petitioners and respondents also agreed that the income of the three cinema houses, namely, Long Life, SBS and Sy-Co Theaters, shall exclusively pertain to respondents for their support and sustenance, pending the termination of Civil Case No. 8578, for Judicial Partition, and the income from the vast parts of the entire estate and other businesses of their common father, to pertain exclusively to petitioners. Hence, since the year 1980, private respondents, through respondent Rosauro Sy, had taken charge of the operation and management of the three cinema houses, with the income derived therefrom evenly divided among themselves for their support and maintenance.[8]

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[5] *Rollo*, p. 155.

[6] *Id.*

[7] *Id.*

[8] *Id.*

On March 30, 1981, the Judge rendered a First Partial Decision based on the Compromise Agreement dated November 10, 1980, submitted in Civil Case No. 8578 by plaintiff Rolando Sy and defendants Jose Sy Bang and Julian Sy. On April 2, 1981, the Judge rendered a Second Partial Decision based on the pretrial order of the court, dated March 25, 1981, entered into by and between respondent Renato Sy and petitioner spouses. Said First Partial Decision and Second Partial Decision had long become final, without an appeal having been interposed by any of the parties.[9]

On June 8, 1982, the Judge rendered a Third Partial Decision,[10] the dispositive portion of which reads as follows:

WHEREFORE, the Court hereby renders this Third Partial Decision:

(a) Declaring that all the properties, businesses or assets, their income, produce and improvements, as well as all the rights, interests or participations (sic) in the names of defendants Jose Sy Bang and his wife Iluminada Tan and their children, defendants Zenaida and Ma. Emma; both surnamed Sy, and defendants Julian Sy and his wife Rosa Tan, as belonging to the estate of Sy Bang, including the properties in the names of said defendants which are enumerated in the Complaints in this case and all those properties, rights and interests which said defendants may have concealed or fraudulently transferred in the names of other persons, their agents or representatives;

(b) Declaring the following as the heirs of Sy Bang, namely: his surviving widow, Maria Rosita Ferrera-Sy and her children, Enrique, Bartolome, Rosalino, Rolando, Rosauro, Maria Lourdes, Florecita and Julieta, all surnamed Sy, and his children by his first wife, namely: Jose Sy Bang, Julian Sy, Lucio Sy, Oscar Sy and Renato Sy;

(c) Ordering the partition of the Estate of Sy Bang among his heirs entitled thereto after the extent thereof shall have been determined at the conclusion of the proper accounting which the parties in this case, their agents and representatives, shall render

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[9] *Id.* at 155-156.

[10] Penned by Judge Benigno M. Puno, *id.* at 77-101.

and after segregating and delivering to Maria Rosita Ferrera-Sy her one-half (½) share in the conjugal partnership between her and her deceased husband Sy Bang;

(d) Deferring resolution on the question concerning the inclusion for partition of properties in the names of Rosalino, Bartolome, Rolando and Enrique, all surnamed Sy.

SO ORDERED.

On June 16, 1982, petitioners filed a Motion to Suspend Proceedings and for Inhibition, alleging, among others, that the Judge had patently shown partiality in favor of their co-defendants in the case. This motion was denied on August 16, 1982.[11]

On July 4, 1982, petitioners filed a Petition for Prohibition and for Inhibition (Disqualification) and *Mandamus* with Restraining Order with the Supreme Court docketed as G.R. No. 60957. The Petition for Prohibition and for Inhibition was denied, and the Petition for *Mandamus* with Restraining Order was Noted.[12]

On August 17, 1982, the Judge issued two Orders: (1) in the first Order,[13] Mrs. Lucita L. Sarmiento was appointed as Receiver, and petitioners' Motion for New Trial and/or Reconsideration, dated July 9, 1982 and their Supplemental Motion, dated July 12, 1982, were denied for lack of merit; and (2) in the second Order,[14] the Judge ordered the immediate cancellation of the *lis pendens* annotated at the back of the certificates of title in the names of Bartolome Sy, Rosalino Sy and Rolando Sy.

On August 18, 1982, the trial court approved the bond posted by the receiver, Mrs. Lucita L. Sarmiento, Bartolome Sy, Rolando Sy and Rosalino Sy.[15]

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[11] *Id.* at 157.

[12] *Id.*

[13] *Id.* at 110-113.

[14] *Id.* at 118-119.

[15] *Id.* at 114.

While the Petition for *Mandamus* with Restraining Order was pending before the First Division of the Supreme Court, petitioners filed a Petition for *Certiorari* and Prohibition before the Supreme Court, docketed as G.R. No. 61519. A Temporary Restraining Order was issued on August 31, 1982, to enjoin the Judge from taking any action in Civil Case No. 8578 and, likewise, restraining the effectivity of and compliance with the Resolution dated August 16, 1982, the two Orders dated August 17, 1982, and the Order dated August 18, 1982.

On September 2, 1982, petitioners withdrew their Petition for *Mandamus* with Restraining Order, docketed as G.R. No. 60957.

On September 11, 1982, an Urgent Manifestation and Motion was filed by Mrs. Lucita L. Sarmiento, the appointed receiver, which was opposed by petitioners on September 24, 1982.[16]

After several incidents in the case, the Court, on May 8, 1989, referred the petition to the CA for proper determination and disposition.

The CA rendered the assailed Decision[17] on May 6, 1993, denying due course to and dismissing the petition for lack of merit. It held that Judge Puno acted correctly in issuing the assailed Third Partial Decision. The CA said that the act of Judge Puno in rendering a partial decision was in accord with then Rule 36, Section 4, of the Rules of Court, which stated that in an action against several defendants, the court may, when a judgment is proper, render judgment against one or more of them, leaving the action to proceed against the others. It found that the judge's decision to defer resolution on the properties in the name of Rosalino, Bartolome, Rolando, and Enrique would not affect the resolution on the properties in the names of Jose Sy Bang, Iluminada, Julian, Rosa, Zenaida, and Ma. Emma, since the properties were separable and distinct from one another such that the claim that the same formed part of the Sy Bang estate could be the subject of separate suits.

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[16] *Id.* at 155-159.

[17] *Supra* note 2.

The CA also upheld the judge's appointment of a receiver, saying that the judge did so after both parties had presented their evidence and upon verified petition filed by respondents, and in order to preserve the properties under litigation. Further, the CA found proper the order to cancel the notice of *lis pendens* annotated in the certificates of title in the names of Rosalino, Rolando and Bartolome.

The Motion for Reconsideration was denied on February 28, 1994.[18]

On April 22, 1994, petitioners filed this Petition for Review on *Certiorari* under Rule 43 of the Rules of Court.

The Court denied the Petition for non-compliance with Circulars 1-88 and 19-91 for failure of petitioners to attach the registry receipt. Petitioners moved for reconsideration, and the Petition was reinstated on July 13, 1994.

In this Petition for Review, petitioners seek the reversal of the CA Decision and Resolution in CA-G.R. SP No. 17686 and, consequently, the nullification of the Third Partial Decision and orders of the trial court in Civil Case No. 8578. They also pray for the Court to direct the trial court to proceed with the reception of further evidence in Civil Case No. 8578.[19] In particular, petitioners allege that the CA decided questions of substance not in accord with law when it upheld the trial court's Third Partial Decision which, they alleged, was rendered in violation of their rights to due process.

Petitioners narrate that the trial court initially gave them two trial days — May 26 and 27, 1982 — to present their evidence. However, at the hearing on May 26, the judge forced them to terminate the presentation of their evidence. On June 2, 1982, following petitioners' submission of additional documentary evidence, the trial court scheduled the case for hearing on June 8 and 9, 1982, at 2 o'clock in the afternoon "in view of the importance of the issue concerning whether all the properties

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[18] *Supra* note 3.

[19] *Rollo* (G.R. No. 114217), p. 39.

in the names of Enrique Sy, Bartolome Sy, Rosalino Sy, and Rolando Sy and/or their respective wives (as well as those in the names of other party-litigants in this case) shall be declared or included as part of the Estate of Sy Bang, and in view of the numerous documentary evidences (sic) presented by Attys. Raya and Camaligan." At the June 8 hearing, petitioners presented additional evidence. Unknown to them, however, the trial court had already rendered its Third Partial Decision at 11 o'clock that morning. Thus, petitioners argue that said Third Partial Decision is void.[20]

They also question the trial court's First Order dated August 17, 1982 and Order dated August 18, 1982 granting the prayer for receivership and appointing a receiver, respectively, both allegedly issued without a hearing and without showing the necessity to appoint a receiver. Lastly, they question the Second Order dated August 17, 1982 canceling the notice of *lis pendens ex parte* and without any showing that the notice was for the purpose of molesting the adverse parties, or that it was not necessary to protect the rights of the party who caused it to be recorded.[21]

On May 9, 1996, Rosita Ferrera-Sy filed a Motion for Payment of Widow's Allowance. She alleged that her deceased husband, Sy Bang, left an extensive estate. The properties of the estate were found by the trial court to be their conjugal properties. From the time of Sy Bang's death in 1971 until the filing of the motion, Rosita was not given any widow's allowance as provided in Section 3, Rule 83 of the Rules of Court by the parties in possession and control of her husband's estate, or her share in the conjugal partnership.[22]

In their Comment on the Motion for Payment of Widow's Allowance, petitioners argued that Section 3, Rule 83 of the Rules of Court specifically provides that the same is granted only "during the settlement of the estate" of the decedent, and

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[20] *Id.* at 29-32.

[21] *Id.* at 16-17.

[22] *Id.* at 576.

this allowance, under Article 188 of the Civil Code (now Article 133 of the Family Code), shall be taken from the "common mass of property" during the liquidation of the inventoried properties.[23] Considering that the case before the trial court is a special civil action for partition under Rule 69 of the Rules of Court, Rosita is not entitled to widow's allowance.

On September 23, 1996, the Court granted the Motion for Payment of Widow's Allowance and ordered petitioners jointly and severally to pay Rosita ₱25,000.00 as the widow's allowance to be taken from the estate of Sy Bang, effective September 1, 1996 and every month thereafter until the estate is finally settled or until further orders from the Court.[24]

In a Manifestation dated October 1, 1996, petitioners informed the Court that Rosita and co-petitioner Enrique Sy had executed a waiver of past, present and future claims against petitioners and, thus, should be dropped as parties to the case.[25] Attached thereto was a *Sinumpaang Salaysay* wherein Rosita and Enrique stated that they were given ₱1 million and a 229-square meter parcel of land, for which reason they were withdrawing as plaintiffs in Civil Case No. 8578.[26]

Respondents, except Enrique Sy, filed a Counter-Manifestation and Opposition to Drop Rosita Sy as a Party.[27] They said that it would be ridiculous for Rosita to give up her share in Sy Bang's estate, amounting to hundreds of millions of pesos, which had already been ordered partitioned by the trial court, to the prejudice of her seven full-blooded children. They alleged that Rosita was not in possession of her full faculties when she affixed her thumbmark on the *Sinumpaang Salaysay* considering her age, her frequent illness, and her lack of ability to read or write. Hence, they filed a petition before the Regional Trial

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[23] *Id.* at 644-645.

[24] *Id.* at 658.

[25] *Id.* at 659.

[26] *Sinumpaang Salaysay*, *id.* at 661.

[27] *Rollo* (G.R. No. 114217), pp. 664-668.

Court (RTC) of Lucena City for guardianship over her person and properties. They also alleged that Enrique and some of Jose Sy Bang's children would stealthily visit Rosita in Rosauro's house while the latter was away. On one of those occasions, she was asked to affix her thumbmark on some documents she could not read and knew nothing about. They claim that Rosita has never received a single centavo of the ₱1 million allegedly given her.

In their Reply to Counter-Manifestation,[28] petitioners countered that respondents failed to present any concrete evidence to challenge the *Sinumpaang Salaysay*. Since the same was duly notarized, it was a public document and presumed valid. They, likewise, alleged that the Counter-Manifestation was filed without Rosita's authorization as, in fact, she had written her counsel with instructions to withdraw said pleading.[29] Further, they averred that Rosita executed the *Sinumpaang Salaysay* while in full possession of her faculties. They alleged that Rosita intended to oppose the petition for guardianship and they presented a copy of a sworn certification from Rosita's physician that "she (Rosita) is physically fit and mentally competent to attend to her personal or business transactions."[30]

On the other hand, petitioners filed a Motion for Reconsideration of the Court's September 23, 1996 Resolution. It alleged that Rosita and Enrique executed their *Sinumpaang Salaysay* on August 29, 1996. However, this development was made known to the Court only on October 1, 1996; hence, the Court was not aware of this when it issued its Resolution. Petitioners prayed for the reconsideration of the September 23, 1996 Resolution and dropping Rosita and Enrique as parties to the case.[31]

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[28] *Id.* at 689-691.

[29] *Id.* at 689-690.

[30] *Id.* at 685-686.

[31] *Id.* at 679-670.

In their Opposition to the Motion for Reconsideration, respondents maintained that the Court should not consider the Motion for Reconsideration. Respondents alleged that Rosita thumbmarked the *Sinumpaang Salaysay* without understanding the contents of the document or the implications of her acts. Respondents also tried to demonstrate that their mother would thumbmark any document that their children asked her to by exhibiting four documents each denominated as *Sinumpaang Salaysay* and thumbmarked by Rosita. One purported to disown the earlier *Sinumpaang Salaysay*. The second was a reproduction of the earlier *Sinumpaang Salaysay* with the amount changed to ₱100.00, the Transfer Certificate of Title number changed to 12343567, and the size of the property to "as big as the entire Lucena City." The third purported to bequeath her shares in the conjugal partnership of gains to Rosauro, Bartolome, Rolando, and Rosalino, while refusing to give any inheritance to Florecita, Lourdes, Julieta, and Enrique. Lastly, the fourth contradicted the third in that it was in favor of Florecita, Lourdes, Julieta, and Enrique, while disinheriting Rosauro, Bartolome, Rolando, and Rosalino. These, respondents assert, clearly show that their mother would sign any document, no matter the contents, upon the request of any of her children.[32]

The Court denied the Motion for Reconsideration on November 18, 1996.[33]

Petitioners filed a Supplement to their Memorandum, additionally arguing that the Third Partial Decision did not only unduly bind the properties without due process, but also ignored the fundamental rule on the indefeasibility of Torrens titles.[34]

G.R. No. 150797

Meanwhile, on September 30, 1996, respondents filed a Joint Petition for the Guardianship of the Incompetent Rosita Ferrera-Sy before the RTC of Lucena City, Branch 58 (Guardianship

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[32] *Id.* at 697-702.

[33] *Id.* at 684-685 (unnumbered pages).

[34] *Id.* at 617.

court), docketed as Special Proceedings No. 96-34. On May 19, 1997, Rosauro Sy, who sought to be named as the special guardian, filed before the Guardianship court a Motion to Order Court Deposit of Widow's Allowance Ordered by the Supreme Court.[35] Then, he filed a Motion before this Court seeking an Order for petitioners to pay Rosita ₱2,150,000.00 in widow's allowance and ₱25,000.00 every month thereafter, as ordered by this Court in its September 23, 1996 Resolution. He also prayed for petitioners' imprisonment should they fail to comply therewith.[36]

On July 8, 1997, the Guardianship court issued an Order, the dispositive portion of which reads:

> WHEREFORE, Mr. Jose Sy Bang and his wife Iluminada Tan; and their children, Zenaida Sy and Ma. Emma Sy; and Julian Sy and his wife Rosa Tan, are hereby ordered to deposit to this Court, jointly and severally, the amount of ₱250,000.00 representing the widow's allowance of the incompetent Rosita Ferrera Sy corresponding the (sic) periods from September 1, 1996 to June 30, 1997, and additional amount of ₱25,000.00 per month and every month thereafter, within the first ten (10) days of each month.[37]

Petitioners' Motion for Reconsideration was denied. Rosauro, the appointed guardian, then asked the Guardianship court to issue a writ of execution. Meanwhile, on December 10, 1997, petitioners filed a Petition for *Certiorari* with the CA docketed as CA-G.R. SP No. 46244 to annul the July 8, 1997 Order and October 9, 1997 Resolution of the Guardianship court.[38]

In a Decision[39] dated February 28, 2001, the CA ruled in respondents' favor, finding "nothing legally objectionable in private respondent Rosauro Sy's filing of the motion to order the deposit

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[35] *Rollo* (G.R. No. 150797), pp. 43-44.

[36] *Rollo* (G.R. No. 114217), p. 719.

[37] *Rollo* (G.R. No. 150797), p. 271.

[38] *Id.* at 45.

[39] Penned by Associate Justice Fermin A. Martin, Jr. (ret.), with Associate Justices Portia Aliño-Hormachuelos and Mercedes Gozo-Dadole (ret.), concurring; *id.* at 11-20.

of the widow's allowance ordered by the Supreme Court in G.R. No. 114217 or, for that matter, in the public respondent's grant thereof in the order herein assailed. More so, when the public respondent's actions are viewed in the light of the Supreme Court's denial of petitioners' motion for reconsideration of its resolution dated September 23, 1996."[40] Thus it held:

> WHEREFORE, the petition is **DENIED** for lack of merit and the assailed resolution dated September 23, 1996 (sic) is **AFFIRMED *in toto***. No pronouncement as to costs.
>
> SO ORDERED.

Their Motion for Reconsideration having been denied on November 5, 2001,[41] petitioners filed this Petition for Review[42] under Rule 45 of the Rules of Court praying for this Court to reverse the CA's February 28, 2001 Decision and its Resolution denying the Motion for Reconsideration, and to declare the Guardianship court to have exceeded its jurisdiction in directing the deposit of the widow's allowance in Special Proceedings No. 96-34.[43] They argued that the Guardianship court's jurisdiction is limited to determining whether Rosita was incompetent and, upon finding in the affirmative, appointing a guardian. Moreover, under Rule 83, Section 3, of the Rules of Court, a widow's allowance can only be paid in an estate proceeding. Even if the complaint for partition were to be considered as estate proceedings, only the trial court hearing the partition case had the exclusive jurisdiction to execute the payment of the widow's allowance.[44]

They raised the following issues:

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[40] *Rollo* (G.R. No. 150797), p. 69. (Citations omitted.)

[41] CA Resolution penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Andres B. Reyes, Jr. and Mercedes Gozo-Dadole (ret.), concurring; *id.* at 73.

[42] *Rollo* (G.R. No. 150797), pp. 33-59.

[43] *Id.* at 55.

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

The Court of Appeals erred in affirming the Guardianship Court's Order dated 8 July 1997, and *Resolution* dated 9 October 1997, in that:

I

The trial court, acting as a Guardianship Court, and limited jurisdiction, had no authority to enforce payment of widow's allowance.

II

The payment of widow's allowance cannot be implemented at [the] present because the estate of Sy Bang – the source from which payment is to be taken – has not been determined with finality.

III

The Order of the trial court purporting to enforce payment of widow's allowance unduly modified the express terms of this Honorable Court's Resolution granting it.[45]

Petitioners, likewise, question the Guardianship court's omission of the phrase "to be taken from the estate of Sy Bang" from the July 8, 1997 Order. They interpreted this to mean that the Guardianship court was ordering that the widow's allowance be taken from their own properties and not from the estate of Sy Bang – an "undue modification" of this Court's September 23, 1996 Resolution.[46]

On January 21, 2002, the Court resolved to consolidate G.R. No. 114217 and G.R. No. 150797. The parties submitted their respective Memoranda on May 21, 2003 and June 19, 2003, both of which were noted by this Court in its August 11, 2003 Resolution.

Pending the issuance of this Court's Decision in the two cases, respondent Rosauro Sy filed, on November 11, 2003, a Motion to Order Deposit in Court of Supreme Court's Ordered Widow's Allowance Effective September 23, 1996 and Upon Failure of Petitioners Julian Sy, *et al*. to Comply Therewith to

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[45] *Id.* at 46-47.

[46] *Id.* at 53.

Order Their Imprisonment Until Compliance. He alleged that his mother had been ill and had no means to support herself except through his financial assistance, and that respondents had not complied with this Court's September 23, 1996 Resolution, promulgated seven years earlier.[47] He argued that respondents' defiance constituted indirect contempt of court. That the Guardianship court had found them guilty of indirect contempt did not help his mother because she was still unable to collect her widow's allowance.[48]

Petitioners opposed said Motion arguing that the estate from which the widow's allowance is to be taken has not been settled. They also reiterated that Rosita, together with son Enrique, had executed a *Sinumpaang Salaysay* waiving all claims against petitioners. Hence, there was no legal ground to cite them in contempt.[49]

On April 4, 2005, this Court granted Rosauro's Motion, to wit:

> WHEREFORE, the Court finds and so holds petitioner **Iluminada Tan** (widow of deceased petitioner Jose Sy Bang), their children and co-petitioners **Zenaida Sy**, **Ma. Emma Sy**, **Julian Sy** and the latter's wife **Rosa Tan**, **GUILTY** of contempt of this Court and are collectively sentenced to pay a **FINE** equivalent to ten (10%) percent of the total amount due and unpaid to Rosita Ferrera-Sy by way of a widow's allowance pursuant to this Court's Resolution of September 13, 1996, and accordingly **ORDERS** their immediate imprisonment until they shall have complied with said Resolution by paying Rosita Ferrera-Sy the amount of TWO MILLION SIX HUNDRED THOUSAND ONE HUNDRED PESOS (₱2,600,100.00), representing her total accumulated unpaid widow's allowance from September, 1996 to April, 2005 at the rate of TWENTY-FIVE THOUSAND PESOS (₱25,000.00) a month, plus six (6%) percent interest thereon. The Court further **DIRECTS** petitioners to faithfully pay Rosita Ferrera-Sy her monthly widow's allowance for the succeeding months as they fall due, under pain of imprisonment.

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[47] *Id.* at 451.

[48] *Id.* at 488-494.

[49] *Id.* at 467-474.

This Resolution is immediately **EXECUTORY**.

SO ORDERED.[50]

Iluminada, Zenaida and Ma. Emma paid the court fine of ₱260,010.00 on April 5, 2005.[51]

Respondents, except Rosauro Sy (who had died), filed a Motion for Execution[52] before this Court on April 25, 2005. On the other hand, petitioner Rosa Tan filed a Motion for Reconsideration with Prayer for Clarification.[53] She alleged that, in accordance with Chinese culture, she had no participation in the management of the family business or Sy Bang's estate. After her husband's death, she allegedly inherited nothing but debts and liabilities, and, having no income of her own, was now in a quandary on how these can be paid. She asked the Court to consider that she had not disobeyed its Resolution and to consider her motion.

Other petitioners, Iluminada, Zenaida and Ma. Emma, also filed a Motion for Reconsideration with Prayer for Clarification.[54] They stressed that the ₱1 million and the piece of land Rosita had already received from Jose Sy Bang in 1996 should form part of the widow's allowance. They also argued that whatever allowance Rosita may be entitled to should come from the estate of Sy Bang. They further argued the unfairness of being made to pay the allowance when none of them participated in the management of Sy Bang's estate; Zenaida and Ma. Emma being minors at the time of his death, while Iluminada and Rosa had no significant role in the family business.

Respondents then filed a Motion for Issuance of Order Requiring Respondents to Deposit with the Supreme Court's Cashier its Ordered Widow's Allowance[55] and a Motion for

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[50] *Rollo* (G.R. No. 114217), pp. 762-763.

[51] *Rollo* (G.R. No. 150797), p. 511.

[52] *Id.* at 512-516.

[53] *Id.* at 517-526.

[54] *Id.* at 527-538.

[55] *Id.* at 565-568.

Execution of Resolution dated April 4, 2005.[56] Petitioners opposed the same.[57]

On July 25, 2005, the Court issued a Resolution granting both of respondents' motions and denying petitioners' motion for reconsideration.[58]

Petitioners Iluminada, Zenaida and Ma. Emma filed, on August 15, 2005, a Manifestation of Compliance and Motion for Clarification.[59] They maintained that the issues they had raised in the motion for reconsideration had not been duly resolved. They argued that when this Court issued its September 23, 1996 Resolution, it was not yet aware that Rosita had executed a *Sinumpaang Salaysay*, wherein she waived her claims and causes of action against petitioners. They also informed this Court that, on April 17, 1998, the Guardianship court had issued an Order which recognized a "temporary agreement" based on the voluntary offer of Jose Sy Bang of a financial assistance of ₱5,000.00 per month to Rosita while the case was pending. Moreover, as a manifestation of good faith, petitioners Iluminada, Zenaida and Ma. Emma paid the ₱430,000.00 out of their own funds in partial compliance with the Court's Resolution. However, the same did not in any way constitute a waiver of their rights or defenses in the present case. They underscored the fact that the allowance must come from the estate of Sy Bang, and not from Jose Sy Bang or any of the latter's heirs, the extent of which remained undetermined. They further asked the Court to adjudicate the liability for the widow's allowance to be equally divided between them and the other set of petitioners, the heirs of Julian Sy.

On August 30, 2005, respondents filed a motion asking this Court to issue an Order for the immediate incarceration of petitioners for refusing to comply with the Court's resolution.[60]

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[56] *Id.* at 573-577.

[57] *Id.* at 578-590, 617-622.

[58] *Id.* at 611-616.

[59] *Id.* at 657-690.

[60] *Id.* at 709-715.

They aver that the period within which petitioners were to comply with the Court's Resolution had now lapsed, and thus, petitioners must now be incarcerated for failure to abide by said Resolution. They likewise asked the Court to refer petitioners' counsel, Atty. Vicente M. Joyas, to the Integrated Bar of the Philippines (IBP) for violations of the Canons of Professional Responsibility or to declare him in contempt of court. They alleged that despite the finality of the Court's denial of petitioners' motion for reconsideration, Atty. Joyas still filed a Manifestation with compliance arguing the same points. Further, Atty. Joyas is not petitioners' counsel of record in this case since he never formally entered his appearance before the Court.[61]

In a Resolution dated September 14, 2005, the Court denied the motion to refer Atty. Joyas to the IBP for being a wrong remedy.[62]

Petitioners Iluminada, Zenaida and Ma. Emma then filed an Omnibus Motion,[63] seeking an extension of time to comply with the Court's Resolution and Motion to delete the penalty of "fine" as a consequence of voluntary compliance. They insist that their compliance with the order to pay the widow's allowance should "obliterate, expunge, and blot out" the penalty of fine and imprisonment. They alleged that for their failure to comply with this Court's Resolution, the RTC, Lucena City, found them guilty of indirect contempt and imposed on them a fine of ₱30,000.00. They had appealed said order to the CA.

They also tried to make a case out of the use of the terms "joint and several" in the September 23 Resolution, and "collectively" in the April 5, 2005 Resolution. They argued that "joint and several" creates individual liability for each of the parties for the full amount of the obligation, while "collectively" means that all members of the group are responsible together for the action of the group. Hence, "collectively" would mean that the liability belongs equally to the two groups of petitioners.

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[61] *Id.* at 712.

[62] *Id.* at (between 715-716).

[63] *Id.* at 787-802.

They requested for an additional 60 days to raise the necessary amount. They also asked the Court to hold their imprisonment in abeyance until their "just and reasonable compliance" with the Court's orders.

Barely a month later, petitioners, through their new counsel, filed another Manifestation stressing that Sy Bang's marriage to Rosita Ferrera is void. They claimed that respondents have falsified documents to lead the courts into believing that Rosita's marriage to Sy Bang is valid.

The Omnibus Motion was denied in a Resolution dated October 17, 2005. Thereafter, respondents filed a Motion to Immediately Order Incarceration of Petitioners,[64] which petitioners opposed.[65]

In a Resolution dated December 12, 2005,[66] the Court issued a Warrant of Arrest[67] against petitioners and directed the National Bureau of Investigation (NBI) to detain them until they complied with this Court's April 4, 2005 and July 25, 2005 Resolutions.

Petitioner Rosa Tan filed a Manifestation with Motion.[68] She informed the Court that, to show that she was not obstinate and contumacious of the Court and its orders, she had begged and pleaded with her relatives to raise money to comply, but concedes that she was only able to raise a minimal amount since she has no source of income herself and needs financial support to buy her food and medicines. She obtained her brother's help and the latter issued six checks in the total amount of ₱650,000.00. She also alleged that she was not informed by her husband's counsel of the developments in the case, and remained unconsulted on any of the matters or incidents of the case. She reiterated that she had no participation in the management of the Sy Bang estate and received nothing of

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[64] *Id.* at 900-905.

[65] *Id.* at 908-922.

[66] *Id.* at 924-925.

[67] *Id.* at 926-928.

[68] *Id.* at 933-946.

value upon her husband's death. She prayed that the Court would not consider her failure to raise any further amount as contempt or defiance of it's orders.

The motion was denied in a Resolution dated January 16, 2006.

In an Urgent Manifestation of Compliance with the Contempt Resolutions with Payment of Widow's Allowance with Prayer Reiterating the Lifting of Warrant of Arrest on Humanitarian Grounds,[69] petitioners Iluminada, Zenaida and Ma. Emma asked the Court to delete the penalty of indefinite imprisonment considering their partial compliance and the partial compliance of Rosa Tan. They expressed willingness to deposit the widow's allowance with the Supreme Court's Cashier pending the determination of Sy Bang's estate. They reasoned that the money to be deposited is their own and does not belong to Sy Bang's estate. The deposit is made for the sole purpose of deleting the penalty of indefinite imprisonment. They claim that they are not willfully disobeying the Court's order but are merely hesitating to comply because of pending incidents such as the falsification charges against Rosita, the resolution of the partition case, the *Sinumpaang Salaysay* executed by Rosita, and the pendency of Rosita's guardianship proceedings, as well as humanitarian considerations. Thus, they prayed for the Court to reconsider the order of contempt and to recall the warrant of arrest.

On February 15, 2006, this Court issued a Resolution[70] lifting the warrant of arrest on petitioners Iluminada, Zenaida, Ma. Emma, and Rosa Tan on the condition that they issue the corresponding checks to settle the accrued widow's allowance of Rosita Ferrera-Sy. They were also directed to submit proof of their compliance to the Court within ten (10) days from notice.

In a Manifestation[71] dated February 28, 2006, petitioners Iluminada, Zenaida and Ma. Emma informed the Court that

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[69] *Id.* at 992-1001.

[70] *Id.* at 1073-1074.

[71] *Id.* at 1023-1024.

they had deposited the checks in favor of Rosita with the RTC, Lucena City, Branch 58, during the proceedings on February 28, 2006.[72]

Respondents filed a Comment to the Manifestation arguing that the deposit of said checks, amounting to ₱1,073,053.00, does not amount to full compliance with the Court's order considering that the accrued widow's allowance now amounted to ₱4,528,125.00.

Then, petitioners Iluminada, Zenaida and Ma. Emma filed a Motion to include Rosalino Sy, Bartolome Sy, Rolando Sy, and Heirs of Enrique Sy as Likewise Liable for the Payment of Widow's Allowance as Heirs of Sy Bang as they may also hold Assets-Properties of the Estate of Sy Bang.[73] They argued that it is denial of the equal protection clause for the Court to single out only the two children of the first marriage — Jose Sy Bang and Julian Sy — and their heirs, as the ones responsible for the widow's allowance. This ruling, they aver, does not take into consideration the numerous and valuable properties from the estate of Sy Bang being held in the names of Rosalino, Bartolome, Rolando, and Enrique. They alleged that two compromise agreements, both approved by the trial court, transferred properties to Rolando and Renato. They further alleged that respondents Rolando, Maria Lourdes, Florecita, Rosalino, Enrique, and Rosita Ferrera-Sy have executed separate waivers and quitclaims over their shares in the estate of Sy Bang for certain considerations. However, out of respect for the Court and their fear of incarceration, they complied with the Court's orders using their personal funds which they claim is unfair because they have never participated in the management of the properties of Sy Bang. They prayed that the Court pronounce that the liability for the widow's allowance be divided proportionately among the following groups: Iluminada, Zenaida, and Ma. Emma; Rosa Tan; Rosalino Sy and wife Helen Loo; Bartolome Sy and wife Virginia Lim; Rolando Sy and wife Anacorita Rioflorido; and

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[72] *Id.* at 1025.

[73] *Id.* at 1032-1043.

the heirs of Enrique Sy, namely, Elaine Destura and Edwin Maceda.

On March 23, 2006, petitioners filed an Urgent Reply to respondents' Comment on the manifestation of compliance with Opposition[74] to the motion filed by respondents for the Court to reiterate its order for the NBI to arrest petitioners for failure to comply with the February 15, 2006 Resolution. They argued that they had fully complied with the Court's orders. They alleged that on three occasions within the period, they had tried to submit 12 postdated checks to the Court's cashiers, but the same were refused due to the policy of the Court not to issue receipts on postdated checks. They then filed a motion before the RTC of Lucena City praying for authority to deposit the checks with the trial court. The motion was denied but, on reconsideration, was later granted. The checks are now in the custody of the RTC. The only issue respondents raise, they claim, is the amount of the checks. Hence, there is no basis for the Court to direct the NBI to effect their arrest.

The Court, in a Resolution dated March 29, 2006, required respondents to comment on the motion to include some of them in the payment of widow's allowance. Petitioners, on the other hand, were required to comment on a motion filed by respondents for the Court to reiterate its order to the NBI to arrest petitioners for failure to comply with the February 15, 2006 Resolution.[75]

Petitioners filed their Comment with Motion for Partial Reconsideration of the March 29, 2006 Resolution.[76] They reiterated their arguments in their Urgent Reply to respondents' Comment on the manifestation of compliance with Opposition. They further alleged that there is now a Resolution by the Regional State Prosecutor, Region IV, San Pablo City, finding probable cause to charge respondents with falsification of three marriage contracts between Sy Bang and Rosita Ferrera. According to

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[74] *Id.* at 1076-1084.

[75] *Id.* at 1067-1069.

[76] *Id.* at 1100-1114.

them, this development now constitutes a "highly prejudicial question" on whether they should comply with the order to pay widow's allowance. They claim that, while the filing of the information is merely the first step in the criminal prosecution of respondents, it already casts doubt on whether Rosita is legally entitled to the widow's allowance. They now seek partial reconsideration of the Resolution inasmuch as it requires them to deposit with the Clerk of Court, RTC of Lucena City, Branch 58, new checks payable to Rosita Ferrera.

Respondents, on the other hand, filed a Comment and Manifestation[77] on why they should not be made to pay the widow's allowance. They argued that the RTC had already decided that the estate of Sy Bang was comprised of properties in the names of Jose Sy Bang, Iluminada Tan, Zenaida, Ma. Emma, Julian Sy, and Rosa Tan, and the same was affirmed by the CA. Pending the resolution of the appeal before this Court, this Decision stands. Thus, petitioners' claim that the estate of Sy Bang is yet undetermined is false. They also claim that, contrary to petitioners' claims of being poor, they still hold enormous properties of the Sy Bang estate, which had been transferred in their names through falsification of public documents, now subject of several cases which respondents filed against them before the Department of Justice (DOJ). Respondents further claim that the validity of their mother's marriage to Sy Bang has been recognized by the courts in several cases where the issue had been raised, including the case for recognition of Rosita's Filipino citizenship, the guardianship proceedings, and the partition proceedings.

On June 23, 2006, respondents filed a Motion for Substitution of Parties.[78] They averred that Jose Sy Bang died on September 11, 2001, leaving behind his widow Iluminada and 14 children, while Julian Sy died on August 28, 2004, leaving behind his widow Rosa and eight children. The claims against

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[77] *Id.* at 1141-1159.

[78] *Id.* at 1162-1167.

Jose and Julian were not extinguished by their deaths. It was the duty of petitioners' counsel, under Rule 3, Section 16 of the Rules of Court, to inform the Court of these deaths within 30 days thereof. Petitioners' counsel failed to so inform this Court, which should be a ground for disciplinary action. Hence, respondents prayed that the Court order the heirs of the two deceased to appear and be substituted in these cases within 30 days from notice.

In a Resolution[79] dated July 5, 2006, the Court granted the motion for substitution and noted the Comment and Manifestation on the Motion to include Rosalino Sy, Bartolome Sy, Rolando Sy, and Heirs of Enrique Sy as Likewise Liable for the Payment of Widow's Allowance as Heirs of Sy Bang.

Respondents then filed a Manifestation and Motion to Implement the Supreme Court's Resolutions of September 23, 1996, April 4, 2005, July 25, 2005, December 12, 2005, and February 15, 2006.[80] They prayed that petitioners be given a last period of five days within which to deposit with the Supreme Court Cashier all the accrued widow's allowances as of June 2006.

Petitioners Iluminada, Zenaida and Ma. Emma opposed respondents' manifestation and motion.[81] They argued that the resolutions sought to be implemented were all issued prior to the DOJ Resolution finding probable cause to file the falsification charges against respondents. They contended that the criminal cases for falsification expose Rosita as a mere common-law wife and not a "widow"; hence, there is no legal justification to give her the widow's allowance. They also reiterated their earlier arguments against the grant of widow's allowance.

Meanwhile, Rosa Tan filed a Comment on the Substitution of Parties with Motion for Reconsideration.[82] She argued that

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[79] *Id.* at 1168-1169.

[80] *Id.* at 1170-1178.

[81] *Id.* at 1173-1207.

[82] *Id.* at 1258-1263.

since the trial court had already appointed a judicial administrator for the estate of Sy Bang, which includes Julian Sy's estate, the proper party to be substituted should be the administrator and not Julian's heirs who never exercised ownership rights over the properties thereof.

The Court denied the motion for reconsideration to the Resolution granting substitution of parties for lack of merit on November 20, 2006.

The Court's Ruling

G.R. No. 114217

Finding no reversible error therein, we affirm the CA Decision.

The Third Partial Decision of the RTC

To review, the CA held, to wit:

> The respondent Judge acted correctly inasmuch as his decision to defer the resolution on the question concerning the properties in the name of Rosalino, Bartolome, Rolando and Enrique, all surnamed Sy, will not necessarily affect the decision he rendered concerning the properties in the names of Jose Sy Bang and wife, Julian Sy and wife, Zenaida Sy and Maria Sy, considering that the properties mentioned were separable and distinct from each other, such that the claim that said properties were not their own, but properties of the late Sy Bang, could have been the subject of separate suits.[83]

We agree with the CA.

Section 4, Rule 36 of the Revised Rules on Civil Procedure states:

> SEC. 4. *Several judgments*. — In an action against several defendants, the court may, when a several judgment is proper, render judgment against one or more of them, leaving the action to proceed against the others.

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[83] *Rollo* (G.R. No. 114217), p. 161.

The trial court's Third Partial Decision is in the nature of a several judgment as contemplated by the rule quoted above. The trial court ruled on the status of the properties in the names of petitioners (defendants below) while deferring the ruling on the properties in the names of respondents pending the presentation of evidence.

A several judgment is proper when the liability of each party is clearly separable and distinct from that of his co-parties, such that the claims against each of them could have been the subject of separate suits, and judgment for or against one of them will not necessarily affect the other.[84]

Petitioners, although sued collectively, each held a separate and separable interest in the properties of the Sy Bang estate.

The pronouncement as to the obligation of one or some petitioners did not affect the determination of the obligations of the others. That the properties in the names of petitioners were found to be part of the Sy Bang estate did not preclude any further findings or judgment on the status or nature of the properties in the names of the other heirs.

The trial court's June 2, 1982 Order reads:

IN view of the importance of the issue concerning whether all the properties in the name (sic) of Enrique Sy, Bartolome Sy, Rosalino Sy and Rolando Sy and/or their respective wives (as well as those in the names of the other parties litigants in this case), (sic) shall be declared or included as part of the Estate of Sy Bang, and in view of the numerous documentary evidences (sic) presented by Attys. Raya and Camaligan after the said question was agreed to be submitted for resolution on May 26, 1982, the Court hereby sets for the reception or for the resolution of said issue in this case on June 8 and 9, 1982, both at 2:00 o'clock in the afternoon; notify all parties litigants in this case of these settings.[85]

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[84] *Fernando v. Santamaria*, 487 Phil. 351, 357 (2004).

[85] *Rollo* (G.R. No. 114217), p. 161.

It is obvious from the trial court's order[86] that the June 8, 1982 hearing is for the purpose of determining whether properties in the names of Enrique Sy, Bartolome Sy, Rosalino Sy, and Rolando Sy and/or their respective wives are also part of the Sy Bang estate.

Hence, in the assailed Decision, the trial court said:

> [I]n fact, the Court will require further evidence for or against any of the parties in this case in the matter of whatever sums of money, property or asset belonging to the estate of Sy Bang that came into their possession in order that the Court may be properly guided in the partition and adjudication of the rightful share and interest of the heirs of Sy Bang over the latter's estate; this becomes imperative in view of new matters shown in the Submission and Formal Offer of Reserve Exhibits and the Offer of Additional Documentary Evidence filed respectively by Oscar Sy and Jose Sy Bang, *et al.*, thru their respective counsels after the question of whether or not the properties in the names of Enrique, Bartolome, Rosalino, and Rolando, all surnamed Sy, should form part or be included as part of the estate of Sy Bang, had been submitted for resolution as of May 26, 1982; the Court deems it proper to receive additional evidence on the part of any of the parties litigants in this case if only to determine the true extent of the estate belonging to Sy Bang.[87]

The trial court painstakingly examined the evidence on record and narrated the details, then carefully laid out the particulars in the assailed Decision. The evidence that formed the basis for the trial court's conclusion is embodied in the Decision itself — evidence presented by the parties themselves, including petitioners.

However, notwithstanding the trial court's pronouncement, the Sy Bang estate cannot be partitioned or distributed until the final determination of the extent of the estate and only

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[86] *Id.* at 76.

[87] *Id.* at 100.

until it is shown that the obligations under Rule 90, Section 1,[88] have been settled.[89]

In the settlement of estate proceedings, the distribution of the estate properties can only be made: (1) after all the debts, funeral charges, expenses of administration, allowance to the widow, and estate tax have been paid; or (2) before payment of said obligations only if the distributees or any of them gives a bond in a sum fixed by the court conditioned upon the payment of said obligations within such time as the court directs, or when provision is made to meet those obligations.[90]

Settling the issue of ownership is the first stage in an action for partition.[91] As this Court has ruled:

> The issue of ownership or co-ownership, to be more precise, must first be resolved in order to effect a partition of properties. This should be done in the action for partition itself. As held in the case of *Catapusan v. Court of Appeals*:

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[88] SECTION 1. *When order for distribution of residue made.*—When the debts, funeral charges, and expenses of administration, the allowance to the widow, and inheritance tax, if any, chargeable to the estate in accordance with law, have been paid, the court, on the application of the executor or administrator, or of a person interested in the estate, and after hearing upon notice, shall assign the residue of the estate to the persons entitled to the same, naming them and the proportions, or parts, to which each is entitled, and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same in his possession. If there is a controversy before the court as to who are the lawful heirs of the deceased person or as to the distributive shares to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases.

No distribution shall be allowed until the payment of the obligations above mentioned has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs.

[89] See *Estate of Ruiz v. Court of Appeals*, 322 Phil. 590, (1996).

[90] *Estate of Ruiz v. Court of Appeals*, *id.*, citing *Castillo v. Castillo*, 124 Phil. 485 (1966); *Edmands v. Philippine Trust Co.*, 87 Phil. 405 (1952).

[91] *Heirs of Velasquez v. Court of Appeals*, G.R. No. 126996, February 15, 2000, 325 SCRA 552, 566, citing *de Mesa v. CA*, 231 SCRA 773.

> "In actions for partition, the court cannot properly issue an order to divide the property, unless it first makes a determination as to the existence of co-ownership. The court must initially settle the issue of ownership, the first stage in an action for partition. Needless to state, an action for partition will not lie if the claimant has no rightful interest over the subject property. In fact, Section 1 of Rule 69 requires the party filing the action to state in his complaint the "nature and extent of his title" to the real estate. Until and unless the issue of ownership is definitely resolved, it would be premature to effect a partition of the properties x x x."[92]

Moreover, the Third Partial Decision does not have the effect of terminating the proceedings for partition. By its very nature, the Third Partial Decision is but a determination based on the evidence presented thus far. There remained issues to be resolved by the court. There would be no final determination of the extent of the Sy Bang estate until the court's examination of the properties in the names of Rosalino, Bartolome, Rolando, and Enrique. Based on the evidence presented, the trial court will have to make a pronouncement whether the properties in the names of Rosalino, Bartolome, Rolando, and Enrique indeed belong to the Sy Bang estate. Only after the full extent of the Sy Bang estate has been determined can the trial court finally order the partition of each of the heirs' share.

Appointment of Receiver

As to the issue of the judge's appointment of a receiver, suffice it to say that the CA conclusively found thus:

> The records show that the petitioners were never deprived of their day in court. Upon Order of the respondent Judge, counsel for the petitioners submitted their opposition to [the] petition for appointment of a receiver filed by private respondents. x x x.
>
> Moreover, evidence on record shows that respondent Judge appointed the receiver after both parties have presented their evidence and after the Third Partial Decision has been promulgated. Such appointment was made upon verified petition of herein private

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[92] *Reyes-de Leon v. del Rosario*, 479 Phil. 98, 107 (2004).

respondents, alleging that petitioners are mismanaging the properties in litigation by either mortgaging or disposing the same, hence, the said properties are in danger of being lost, wasted, dissipated, misused, or disposed of. The respondent Judge acted correctly in granting the appointment of a receiver in Civil Case No. 8578, in order to preserve the properties in *litis pendentia* and neither did he abuse his discretion nor acted arbitrarily in doing s. On the contrary, We find that it was the petitioners who violated the *status quo* sought to be maintained by the Supreme Court, in G.R. No. 61519, by their intrusion and unwarranted seizures of the 3 theaters, subject matter of the litigation, and which are admittedly under the exclusive management and operation of private respondent, Rosauro Sy.[93]

Cancellation of Notice of Lis Pendens

Next, petitioners question the trial court's Order canceling the notice of *lis pendens*.[94]

Section 77 of Presidential Decree No. 1529, or the Property Registration Decree, provides:

SEC. 77. ***Cancellation of lis pendens***. Before final judgment, a notice of *lis pendens* may be cancelled upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be registered. It may also be cancelled by the Register of Deeds upon verified petition of the party who caused the registration thereof.

At any time after final judgment in favor of the defendant, or other disposition of the action such as to terminate finally all rights of the plaintiff in and to the land and/or buildings involved, in any case in which a memorandum or notice of *lis pendens* has been registered as provided in the preceding section, the notice of *lis pendens* shall be deemed cancelled upon the registration of certificate of the clerk of court in which the action or proceeding was pending stating the manner of disposal thereof.

The filing of a notice of *lis pendens* has a two-fold effect: (1) to keep the subject matter of the litigation within the power

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[93] *Rollo* (G.R. No. 114217), p. 162.

[94] *Id.* at 118-119.

of the court until the entry of the final judgment in order to prevent the final judgment from being defeated by successive alienations; and (2) to bind a purchaser, *bona fide* or not, of the land subject of the litigation to the judgment or decree that the court will promulgate subsequently.[95]

While the trial court has an inherent power to cancel a notice of *lis pendens*, such power is to be exercised within the express confines of the law. As provided in Section 14, Rule 13 of the 1997 Rules of Civil Procedure, a notice of *lis pendens* may be cancelled on two grounds: (1) when the annotation was for the purpose of molesting the title of the adverse party, or (2) when the annotation is not necessary to protect the title of the party who caused it to be recorded.[96]

This Court has interpreted the notice as:

> The notice is but an incident in an action, an extrajudicial one, to be sure. It does not affect the merits thereof. It is intended merely to constructively advise, or warn, all people who deal with the property that they so deal with it at their own risk, and whatever rights they may acquire in the property in any voluntary transaction are subject to the results of the action, and may well be inferior and subordinate to those which may be finally determined and laid down therein. The cancellation of such a precautionary notice is therefore also a mere incident in the action, and may be ordered by the Court having jurisdiction of it at any given time. And its continuance or removal — like the continuance or removal of a preliminary attachment of injunction — is not contingent on the existence of a final judgment in the action, and ordinarily has no effect on the merits thereof.[97]

The CA found, and we affirm, that Rosalino, Bartolome and Rolando were able to prove that the notice was intended merely

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[95] *Romero v. Court of Appeals*, 497 Phil. 775, 784-785 (2005), citing *Heirs of Eugenio Lopez, Sr. v. Enriquez*, G.R. No. 146262, January 21, 2005, 449 SCRA 173.

[96] *Romero v. Court of Appeals*, *id.* (Citations omitted.)

[97] *Magdalena Homeowners Association, Inc. v. Court of Appeals*, G.R. No. 60323, April 17, 1990, 184 SCRA 325, 330; *Yared v. Ilarde*, G.R. No. 114732, August 1, 2000, 337 SCRA 53.

to molest and harass the owners of the property, some of whom were not parties to the case. It was also proven that the interest of Oscar Sy, who caused the notice to be annotated, was only 1/14 of the assessed value of the property. Moreover, Rosalino, Bartolome and Rolando were ordered to post a ₱50,000.00 bond to protect whatever rights or interest Oscar Sy may have in the properties under *litis pendentia*.[98]

G.R. No. 150797

In G.R. No. 150797, petitioners are asking this Court to reverse the CA's February 28, 2001 Decision and its Resolution denying the Motion for Reconsideration, and to declare the Guardianship court to have exceeded its jurisdiction in directing the deposit of the widow's allowance in Special Proceedings No. 96-34.

We find merit in petitioners' contention.

The court hearing the petition for guardianship had limited jurisdiction. It had no jurisdiction to enforce payment of the widow's allowance ordered by this Court.

Reviewing the antecedents, we note that the claim for widow's allowance was made before the Supreme Court in a case that did not arise from the guardianship proceedings. The case subject of the Supreme Court petition (Civil Case No. 8578) is still pending before the RTC of Lucena City.

Rule 83, Sec. 3, of the Rules of Court states:

> SEC. 3. Allowance to widow and family. — The widow and minor or incapacitated children of a deceased person, during the settlement of the estate, shall receive therefrom, under the direction of the court, such allowance as are provided by law.

Correlatively, Article 188 of the Civil Code states:

> Art. 188. From the common mass of property support shall be given to the surviving spouse and to the children during the liquidation of the inventoried property and until what belongs to them is delivered;

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[98] *Rollo* (G.R. No. 114217), p. 163.

but from this shall be deducted that amount received for support which exceeds the fruits or rents pertaining to them.

Obviously, "the court" referred to in Rule 83, Sec. 3, of the Rules of Court is the court hearing the settlement of the estate. Also crystal clear is the provision of the law that the widow's allowance is to be taken from the common mass of property forming part of the estate of the decedent.

Thus, as evident from the foregoing provisions, it is the court hearing the settlement of the estate that should effect the payment of widow's allowance considering that the properties of the estate are within its jurisdiction, to the exclusion of all other courts.[99]

In emphasizing the limited jurisdiction of the guardianship court, this Court has pronounced that:

Generally, the guardianship court exercising special and limited jurisdiction cannot actually order the delivery of the property of the ward found to be embezzled, concealed, or conveyed. In a categorical language of this Court, only in extreme cases, where property clearly belongs to the ward or where his title thereto has been already judicially decided, may the court direct its delivery to the guardian. In effect, there can only be delivery or return of the embezzled, concealed or conveyed property of the ward, where the right or title of said ward is clear and undisputable. However, where

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[99] Rule 73, Sec. 1 of the Rules of Court states:

SECTION 1. *Where estate of deceased persons settled.*—If the decedent is an inhabitant of the Philippines at the time of his death, whether a citizen or an alien, his will shall be proved, or letters of administration granted, and his estate settled, in the Regional Trial Court in the province in which he resides at the time of his death, and if he is an inhabitant of a foreign country, the Regional Trial Court of any province in which he had estate. **The court first taking cognizance of the settlement of the estate of a decedent, shall exercise jurisdiction to the exclusion of all other courts.** The jurisdiction assumed by a court, so far as it depends on the place of residence of the decedent, or of the location of his estate, shall not be contested in a suit or proceeding, except in an appeal from that court, in the original case, or when the want of jurisdiction appears on the record. (Emphasis supplied.)

title to any property said to be embezzled, concealed or conveyed is in dispute, x x x the determination of said title or right whether in favor of the persons said to have embezzled, concealed or conveyed the property must be determined in a separate ordinary action and not in a guardianship proceedings.[100]

Further, this Court has held that the distribution of the residue of the estate of the deceased incompetent is a function pertaining properly, not to the guardianship proceedings, but to another proceeding in which the heirs are at liberty to initiate.[101]

Other Unresolved Incidents

Payment of Widow's Allowance

It has been 13 years since this Court ordered petitioners to pay Rosita Ferrera-Sy her monthly widow's allowance. Petitioners Iluminada, Zenaida and Ma. Emma have since fought tooth and nail against paying the said allowance, grudgingly complying only upon threat of incarceration. Then, they again argued against the grant of widow's allowance after the DOJ issued its Resolution finding probable cause in the falsification charges against respondents. They contended that the criminal cases for falsification proved that Rosita is a mere common-law wife and not a "widow" and, therefore, not entitled to widow's allowance.

This argument deserves scant consideration.

A finding of probable cause does not conclusively prove the charge of falsification against respondents.

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[100] *Paciente v. Dacuycuy, etc., et al.*, 200 Phil. 403, 408-409 (1982), citing *Cui, et al. v. Piccio, et al.*, 91 Phil. 712 (1952*); Parco and Bautista v. Court of Appeals*, 197 Phil. 240 (1982).

[101] *Gomez v. Imperial*, 134 Phil. 858, 864 (1968); *Garcia v. Court of Appeals*, 350 Phil. 465 (1998), where the Court upheld the ruling of the Court of Appeals affirming the trial court's jurisdiction over a case for guardianship holding that the reliance on *Gomez* was misplaced, since in that case, the petition was only for guardianship; while in Garcia, the action was for both guardianship and settlement of the estate.

In a preliminary investigation, probable cause has been defined as "the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted." It is well-settled that a finding of probable cause needs to rest only on evidence showing that **more likely than not** a crime has been committed and was committed by the suspects. Probable cause **need not be based on clear and convincing evidence of guilt**, neither on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt.[102]

Hence, until the marriage is finally declared void by the court, the same is presumed valid and Rosita is entitled to receive her widow's allowance to be taken from the estate of Sy Bang.

We remind petitioners again that they are duty-bound to comply with whatever the courts, in relation to the properties under litigation, may order.

Motion to Include Rosalino Sy, Bartolome Sy, Rolando Sy, and Heirs of Enrique Sy as Likewise Liable for the Payment of Widow's Allowance as Heirs of Sy Bang

On March 14, 2006, petitioners filed a Motion to include Rosalino Sy, Bartolome Sy, Rolando Sy, and Heirs of Enrique Sy as Likewise Liable for the Payment of Widow's Allowance as Heirs of Sy Bang.

The Motion is denied.

The widow's allowance, as discussed above, is chargeable to Sy Bang's estate. It must be stressed that the issue of whether the properties in the names of Rosalino, Bartolome, Rolando, and Enrique Sy form part of Sy Bang's estate remains unsettled since this Petition questioning the trial court's Third Partial Decision has been pending. On the other hand, there has been

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[102] *Lastrilla v. Granada*, G.R. No. 160257, January 31, 2006, 481 SCRA 324, 340. (Citations omitted.)

a categorical pronouncement that petitioners are holding properties belonging to Sy Bang's estate.

That the full extent of Sy Bang's estate has not yet been determined is no excuse from complying with this Court's order. Properties of the estate have been identified — *i.e.*, those in the names of petitioners — thus, these properties should be made to answer for the widow's allowance of Rosita. In any case, the amount Rosita receives for support, which exceeds the fruits or rents pertaining to her, will be deducted from her share of the estate.[103]

A Final Note

We are appalled by the delay in the disposition of this case brought about by petitioners' propensity to challenge the Court's every directive. That the petitioners would go to extreme lengths to evade complying with their duties under the law and the orders of this Court is truly deplorable. Not even a citation for contempt and the threat of imprisonment seemed to deter them. Their contumacious attitude and actions have dragged this case for far too long with practically no end in sight. Their abuse of legal and court processes is shameful, and they must not be allowed to continue with their atrocious behavior. Petitioners deserve to be sanctioned, and ordered to pay the Court treble costs.

WHEREFORE, the foregoing premises considered, the Petition in G.R. No. 150797 is *GRANTED*, while the Petition in G.R. No. 114217 is *DENIED*. The Regional Trial Court of Lucena City is directed to hear and decide Civil Case No. 8578 with dispatch. The Motion to include Rosalino Sy, Bartolome Sy, Rolando Sy, and Heirs of Enrique Sy as Likewise Liable for the Payment of Widow's Allowance as Heirs of Sy Bang is *DENIED*. Treble costs against petitioners.

SO ORDERED.

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

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[103] *See* Article 188 of the Civil Code.

THIRD DIVISION

[G.R. No. 162474. October 13, 2009]

HON. VICENTE P. EUSEBIO, LORNA A. BERNARDO, VICTOR ENDRIGA, and the CITY OF PASIG, *petitioners, vs.* **JOVITO M. LUIS, LIDINILA LUIS SANTOS, ANGELITA CAGALINGAN, ROMEO M. LUIS, and VIRGINIA LUIS-BELLESTEROS,**[*] *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; THE OWNER'S ACTION TO RECOVER HIS PROPERTY TAKEN BY THE GOVERNMENT FOR PUBLIC USE WITHOUT FIRST ACQUIRING TITLE THERETO DOES NOT PRESCRIBE.— At the outset, petitioners must be disabused of their belief that respondents' action for recovery of their property, which had been taken for public use, or to claim just compensation therefor is already barred by prescription. In *Republic of the Philippines v. Court of Appeals*, the Court emphasized "that where private property is taken by the Government for public use without first acquiring title thereto either through expropriation or negotiated sale, the owner's action to recover the land or the value thereof *does not prescribe*." The Court went on to remind government agencies not to exercise the power of eminent domain with wanton disregard for property rights as Section 9, Article III of the Constitution provides that "private property shall not be taken for public use without just compensation."

2. ID.; ID.; ID.; THE LANDOWNER IS ENTITLED TO JUST COMPENSATION ALTHOUGH HE MAY BE BARRED FROM RECOVERING POSSESSION OF THE PROPERTY

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[*] The Court of Appeals is dropped as one of the respondents in accordance with Section 4, Rule 45 of the Rules of Court, which states that the petition shall not implead the lower courts or judges thereof either as petitioners or respondents.

ON GROUND OF ESTOPPEL.— The remaining issues here are whether respondents are entitled to regain possession of their property taken by the city government in the 1980's and, in the event that said property can no longer be returned, how should just compensation to respondents be determined. These issues had been squarely addressed in *Forfom Development Corporation v. Philippine National Railways*, which is closely analogous to the present case. xxx. In said case, the Court held that because the landowner did not act to question the lack of expropriation proceedings for a very long period of time and even negotiated with the PNR as to how much it should be paid as just compensation, said landowner is deemed to have waived its right and is estopped from questioning the power of the PNR to expropriate or the public use for which the power was exercised. xxx Just like in the *Forfom* case, herein respondents also failed to question the taking of their property for a long period of time (from 1980 until the early 1990's) and, when asked during trial what action they took after their property was taken, witness Jovito Luis, one of the respondents, testified that "when we have an occasion to talk to Mayor Caruncho we always asked for compensation." It is likewise undisputed that what was constructed by the city government on respondents' property was a road for public use, namely, A. Sandoval Avenue in Pasig City. Clearly, as in *Forfom*, herein respondents are also estopped from recovering possession of their land, but are entitled to just compensation.

3. ID.; ID.; ID.; JUST COMPENSATION; EVEN ABSENT EXPROPRIATION PROCEEDINGS TO DETERMINE JUST COMPENSATION, THE TRIAL COURT IS MANDATED TO ACT IN ACCORDANCE WITH THE PROCEDURE PROVIDED FOR BY THE RULES.— Now, with regard to the trial court's determination of the amount of just compensation to which respondents are entitled, the Court must strike down the same for being contrary to established rules and jurisprudence. The prevailing doctrine on judicial determination of just compensation is that set forth in *Forfom*. Therein, the Court ruled that even if there are no expropriation proceedings instituted to determine just compensation, the trial court is still mandated to act in accordance with the procedure provided for in Section 5, Rule 67 of the 1997 Rules of Civil Procedure, requiring the appointment of not more than three competent and disinterested commissioners to ascertain and

report to the court the just compensation for the subject property. The Court reiterated its ruling in *National Power Corporation v. Dela Cruz* that "trial with the aid of commissioners is a substantial right that may not be done away with capriciously or for no reason at all." It was also emphasized therein that although ascertainment of just compensation is a judicial prerogative, the commissioners' findings may only be disregarded or substituted with the trial court's own estimation of the property's value only if 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, the Court concluded in *Forfom* that: The judge should not have made a determination of just compensation without first having appointed the required commissioners who would initially ascertain and report the just compensation for the property involved. This being the case, **we find the valuation made by the trial court to be ineffectual, not having been made in accordance with the procedure provided for by the rules**.

4. ID.; ID.; ID.; ID.; DETERMINATION THEREOF MUST BE DONE NOT ONLY FOR THE PROTECTION OF THE LANDOWNERS' INTEREST BUT ALSO FOR THE GOOD OF THE PUBLIC; RATIONALE.— Verily, the determination of just compensation for property taken for public use must be done not only for the protection of the landowners' interest but also for the good of the public. In *Republic v. Court of Appeals*, the Court explained as follows: The concept of just compensation, however, does not imply fairness to the property owner alone. **Compensation must be just not only to the property owner, but also to the public which ultimately bears the cost of expropriation**. It is quite clear that the Court, in formulating and promulgating the procedure provided for in Sections 5 and 6, Rule 67, found this to be the fairest way of arriving at the just compensation to be paid for private property taken for public use.

5. ID.; ID.; ID.; ID.; WHERE PROPERTY IS TAKEN WITHOUT THE BENEFIT OF EXPROPRIATION PROCEEDINGS, AND ITS OWNER FILES AN ACTION FOR RECOVERY OF PROPERTY BEFORE THE COMMENCEMENT OF THE EXPROPRIATION PROCEEDINGS, THE VALUE OF

THE PROPERTY AT THE TIME OF THE TAKING IS CONTROLLING; RATIONALE.— With regard to the time as to when just compensation should be fixed, it is settled jurisprudence that where property was taken without the benefit of expropriation proceedings, and its owner files an action for recovery of possession thereof before the commencement of expropriation proceedings, it is the value of the property at the time of taking that is controlling. Explaining the reason for this rule in *Manila International Airport Authority v. Rodriguez*, the Court, quoting *Ansaldo v. Tantuico, Jr.*, stated, thus: The reason for the rule, as pointed out in *Republic v. Lara*, is that — . . . [w]here property is taken ahead of the filing of the condemnation proceedings**, the value thereof may be enchanced by the public purpose for which it is taken; the entry by the plaintiff upon the property may have depreciated its value thereby; or, there may have been a natural increase in the value of the property from the time the complaint is filed, due to general economic conditions. The owner of private property should be compensated only for what he actually loses; it is not intended that his compensation shall extend beyond his loss or injury. And what he loses is only the actual value of his property at the time it is taken.** This is the only way that compensation to be paid can be truly just; *i.e.*, 'just not only to the individual whose property is taken,' 'but to the public, which is to pay for it.' In this case, the trial court should have fixed just compensation for the property at its value as of the time of taking in 1980, but there is nothing on record showing the value of the property at that time. The trial court, therefore, clearly erred when it based its valuation for the subject land on the price paid for properties in the same location, taken by the city government only sometime in the year 1994.

6. ID.; ID.; ID.; ID.; THE LANDOWNER WHOSE PROPERTY WAS ILLEGALLY TAKEN IS ENTITLED TO DAMAGES.— However, in taking respondents' property without the benefit of expropriation proceedings and without payment of just compensation, the City of Pasig clearly acted in utter disregard of respondents' proprietary rights. Such conduct cannot be countenanced by the Court. For said illegal taking, the City of Pasig should definitely be held liable for damages to respondents. Again, in *Manila International Airport Authority*

v. Rodriguez, the Court held that the government agency's illegal occupation of the owner's property for a very long period of time surely resulted in pecuniary loss to the owner. The Court held as follows: **Such pecuniary loss entitles him to adequate compensation in the form of actual or compensatory damages, which in this case should be the legal interest (6%) on the value of the land at the time of taking, from said point up to full payment by the MIAA.** This is based on the principle that interest "runs as a matter of law and follows from the right of the landowner to be placed in as good position as money can accomplish, as of the date of the taking." xxx **The uniform rule of this Court, however, is that this compensation must be, not in the form of rentals, but by way of 'interest from the date that the company [or entity] exercising the right of eminent domain take possession of the condemned lands, and the amounts granted by the court shall cease to earn interest only from the moment they are paid to the owners or deposited in court** x x x. x x x For more than twenty (20) years, the MIAA occupied the subject lot without the benefit of expropriation proceedings and without the MIAA exerting efforts to ascertain ownership of the lot and negotiating with any of the owners of the property. To our mind, **these are wanton and irresponsible acts which should be suppressed and corrected. Hence, the award of exemplary damages and attorneys fees is in order.** However, while Rodriguez is entitled to such exemplary damages and attorney's fees, the award granted by the courts below should be equitably reduced. We hold that Rodriguez is entitled only to ₱200,000.00 as exemplary damages, and attorney's fees equivalent to one percent (1%) of the amount due.

7. ID.; ID.; ID.; ID.; ID.; OFFICIALS OF THE CITY GOVERNMENT ARE NOT JOINTLY LIABLE IN THEIR PERSONAL CAPACITY WITH THE CITY GOVERNMENT FOR PAYMENTS OF DAMAGES TO THE LANDOWNER, ABSENT ANY INVOLVEMENT IN THE ILLEGAL TAKING OF THE PROPERTY THEREOF.— Lastly, with regard to the liability of petitioners Vicente P. Eusebio, Lorna A. Bernardo, and Victor Endriga — all officials of the city government — the Court cannot uphold the ruling that said petitioners are jointly liable in their personal capacity with the City of Pasig for payments to be made to respondents.

There is a dearth of evidence which would show that said petitioners were already city government officials in 1980 or that they had any involvement whatsoever in the illegal taking of respondents' property. Thus, any liability to respondents is the sole responsibility of the City of Pasig.

APPEARANCES OF COUNSEL

City Legal Officer (Pasig) for petitioners.
Capco and Campanilla Law Offices for respondents.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Decision[1] of the Court of Appeals (CA) dated November 28, 2003, affirming the trial court judgment, and the CA Resolution[2] dated February 27, 2004, denying petitioners' motion for reconsideration, be reversed and set aside.

The antecedent facts are as follows:

Respondents are the registered owners of a parcel of land covered by Transfer Certificate of Title Nos. 53591 and 53589 with an area of 1,586 square meters. Said parcel of land was taken by the City of Pasig sometime in 1980 and used as a municipal road now known as A. Sandoval Avenue, Barangay Palatiw, Pasig City. On February 1, 1993, the *Sanggunian* of Pasig City passed Resolution No. 15 authorizing payments to respondents for said parcel of land. However, the Appraisal Committee of the City of Pasig, in Resolution No. 93-13 dated October 19, 1993, assessed the value of the land only at ₱150.00 per square meter. In a letter dated June 26, 1995, respondents

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[1] Penned by Associate Justice Renato C. Dacudao, with Associate Justices Cancio C. Garcia (now retired SC Associate Justice) and Danilo B. Pine, concurring; *rollo*, pp. 44-56.

[2] *Id.* at 58-59.

requested the Appraisal Committee to consider ₱2,000.00 per square meter as the value of their land.

One of the respondents also wrote a letter dated November 25, 1994 to Mayor Vicente P. Eusebio calling the latter's attention to the fact that a property in the same area, as the land subject of this case, had been paid for by petitioners at the price of ₱2,000.00 per square meter when said property was expropriated in the year 1994 also for conversion into a public road. Subsequently, respondents' counsel sent a demand letter dated August 26, 1996 to Mayor Eusebio, demanding the amount of ₱5,000.00 per square meter, or a total of ₱7,930,000.00, as just compensation for respondents' property. In response, Mayor Eusebio wrote a letter dated September 9, 1996 informing respondents that the City of Pasig cannot pay them more than the amount set by the Appraisal Committee.

Thus, on October 8, 1996, respondents filed a Complaint for Reconveyance and/or Damages (Civil Case No. 65937) against herein petitioners before the Regional Trial Court (RTC) of Pasig City, Branch 155. Respondents prayed that the property be returned to them with payment of reasonable rental for sixteen years of use at ₱500.00 per square meter, or ₱793,000.00, with legal interest of 12% per annum from date of filing of the complaint until full payment, or in the event that said property can no longer be returned, that petitioners be ordered to pay just compensation in the amount of ₱7,930,000.00 and rental for sixteen years of use at ₱500.00 per square meter, or ₱793,000.00, both with legal interest of 12% per annum from the date of filing of the complaint until full payment. In addition, respondents prayed for payment of moral and exemplary damages, attorney's fees and costs.

After trial, the RTC rendered a Decision[3] dated January 2, 2001, the dispositive portion of which reads as follows:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiffs and against the defendants:

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[3] *Rollo,* pp. 41-42.

1. Declaring as ILLEGAL and UNJUST the action of the defendants in taking the properties of plaintiffs covered by Transfer Certificates of Title Nos. 53591 and 53589 without their consent and without the benefit of an expropriation proceedings required by law in the taking of private property for public use;

2. Ordering the defendants to jointly RETURN the subject properties to plaintiffs with payment of reasonable rental for its use in the amount of ₱793,000.00 with legal interest at the rate of 6% per annum from the filing of the instant Complaint until full payment is made;

3. In the event that said properties can no longer be returned to the plaintiffs as the same is already being used as a public road known as A. Sandoval Avenue, Pasig City, the defendants are hereby ordered to jointly pay the plaintiffs the fair and reasonable value therefore at ₱5,000.00 per square meter or a total of ₱7,930,000.00 with payment of reasonable rental for its use in the amount of ₱500.00 per square meter or a total of ₱793,000.00, both with legal interest at the rate of 6% per annum from the filing of the instant Complaint until full payment is made; and

4. Ordering the defendants to jointly pay the plaintiffs attorney's fees in the amount of ₱200,000.00.

No pronouncement as to costs.

SO ORDERED.

Petitioners then appealed the case to the CA, but the CA affirmed the RTC judgment in its Decision dated November 28, 2003.

Petitioners' motion for reconsideration of the CA Decision was denied per Resolution dated February 27, 2004.

Hence, this petition where it is alleged that:

I. PUBLIC RESPONDENT COURT ERRED IN UPHOLDING THE RULING OF THE LOWER COURT DESPITE THE APPARENT LACK OF JURISDICTION BY REASON OF PRESCRIPTION OF PRIVATE RESPONDENTS' CLAIM FOR JUST COMPENSATION;

II. PUBLIC RESPONDENT COURT ERRED IN FIXING THE FAIR AND REASONABLE COMPENSATION FOR RESPONDENTS' PROPERTY AT ₱5,000.00 PER SQUARE METER DESPITE THE GLARING FACT THAT AT THE TIME OF TAKING IN THE YEAR 1980 THE FAIR MARKET VALUE WAS PEGGED BY AN APPRAISAL COMMITTEE AT ONE HUNDRED SIXTY PESOS (PHP160.00);

III. PUBLIC RESPONDENT COURT ERRED IN UPHOLDING THE JUDGMENT OF THE LOWER COURT AWARDING THE AMOUNT OF ₱793,000.00 AS REASONABLE RENTAL FOR THE USE OF RESPONDENTS' PROPERTY IN SPITE OF THE FACT THAT THE SAME WAS CONVERTED INTO A PUBLIC ROAD BY A PREVIOUSLY ELECTED MUNICIPAL MAYOR WITHOUT RESPONDENTS' REGISTERING ANY COMPLAINT OR PROTEST FOR THE TAKING AND DESPITE THE FACT THAT SUCH TAKING DID NOT PERSONALLY BENEFIT THE PETITIONERS BUT THE PUBLIC AT LARGE; AND

IV. PUBLIC RESPONDENT COURT OF APPEALS ERRED IN AFFIRMING THE ₱200,000.00 AWARD FOR ATTORNEY'S FEES TO THE PRIVATE RESPONDENTS' COUNSEL DESPITE THE ABSENCE OF NEGLIGENCE OR INACTION ON THE PART OF PETITIONERS RELATIVE TO THE INSTANT CLAIM FOR JUST COMPENSATION.[4]

At the outset, petitioners must be disabused of their belief that respondents' action for recovery of their property, which had been taken for public use, or to claim just compensation therefor is already barred by prescription. In *Republic of the Philippines v. Court of Appeals*,[5] the Court emphasized "that where private property is taken by the Government for public use without first acquiring title thereto either through expropriation or negotiated sale, the owner's action to recover the land or the value thereof *does not prescribe*." The Court went on to remind government agencies not to exercise the power of eminent domain

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[4] *Id.* at 18-19.

[5] G.R. No. 147245, March 31, 2005, 454 SCRA 516.

with wanton disregard for property rights as Section 9, Article III of the Constitution provides that "private property shall not be taken for public use without just compensation."[6]

The remaining issues here are whether respondents are entitled to regain possession of their property taken by the city government in the 1980's and, in the event that said property can no longer be returned, how should just compensation to respondents be determined.

These issues had been squarely addressed in *Forfom Development Corporation v. Philippine National Railways*,[7] which is closely analogous to the present case. In said earlier case, the Philippine National Railways (PNR) took possession of the private property in 1972 without going through expropriation proceedings. The San Pedro-Carmona Commuter Line Project was then implemented with the installation of railroad facilities on several parcels of land, including that of petitioner Forfom. Said owner of the private property then negotiated with PNR as to the amount of just compensation. No agreement having been reached, Forfom filed a complaint for Recovery of Possession of Real Property and/or Damages with the trial court sometime in August 1990.

In said case, the Court held that because the landowner did not act to question the lack of expropriation proceedings for a very long period of time and even negotiated with the PNR as to how much it should be paid as just compensation, said landowner is deemed to have waived its right and is estopped from questioning the power of the PNR to expropriate or the public use for which the power was exercised. It was further declared therein that:

x x x **recovery of possession of the property by the landowner can no longer be allowed on the grounds of estoppel** and, more importantly, of public policy which imposes upon the public utility the obligation to continue its services to the public. **The non-filing of the case for expropriation will not necessarily lead to the**

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[6] *Id.* at 528.

[7] G.R. No. 124795, December 10, 2008.

return of the property to the landowner. What is left to the landowner is the right of compensation.

x x x It is settled that non-payment of just compensation does not entitle the private landowners to recover possession of their expropriated lot.[8]

Just like in the *Forfom* case, herein respondents also failed to question the taking of their property for a long period of time (from 1980 until the early 1990's) and, when asked during trial what action they took after their property was taken, witness Jovito Luis, one of the respondents, testified that "when we have an occasion to talk to Mayor Caruncho we always asked for compensation."[9] It is likewise undisputed that what was constructed by the city government on respondents' property was a road for public use, namely, A. Sandoval Avenue in Pasig City. Clearly, as in *Forfom*, herein respondents are also estopped from recovering possession of their land, but are entitled to just compensation.

Now, with regard to the trial court's determination of the amount of just compensation to which respondents are entitled, the Court must strike down the same for being contrary to established rules and jurisprudence.

The prevailing doctrine on judicial determination of just compensation is that set forth in *Forfom*.[10] Therein, the Court ruled that even if there are no expropriation proceedings instituted to determine just compensation, the trial court is still mandated to act in accordance with the procedure provided for in Section 5, Rule 67 of the 1997 Rules of Civil Procedure, requiring the appointment of not more than three competent and disinterested commissioners to ascertain and report to the court the just compensation for the subject property. The Court reiterated its ruling in *National Power Corporation v. Dela Cruz*[11] that

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[8] Emphasis ours.

[9] TSN, September 15, 1998; records, p. 110.

[10] *Supra.* See note 7.

[11] G.R. No. 156093, February 2, 2007, 514 SCRA 56.

"trial with the aid of commissioners is a substantial right that may not be done away with capriciously or for no reason at all."[12] It was also emphasized therein that although ascertainment of just compensation is a judicial prerogative, the commissioners' findings may only be disregarded or substituted with the trial court's own estimation of the property's value only if 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, the Court concluded in *Forfom* that:

> The judge should not have made a determination of just compensation without first having appointed the required commissioners who would initially ascertain and report the just compensation for the property involved. This being the case, **we find the valuation made by the trial court to be ineffectual, not having been made in accordance with the procedure provided for by the rules.**[13]

Verily, the determination of just compensation for property taken for public use must be done not only for the protection of the landowners' interest but also for the good of the public. In *Republic v. Court of Appeals,*[14] the Court explained as follows:

> The concept of just compensation, however, does not imply fairness to the property owner alone. **Compensation must be just not only to the property owner, but also to the public which ultimately bears the cost of expropriation.**[15]

It is quite clear that the Court, in formulating and promulgating the procedure provided for in Sections 5 and 6, Rule 67, found this to be the fairest way of arriving at the just compensation to be paid for private property taken for public use.

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[12] *Id.* at 70.

[13] *Supra* note 7. (Emphasis and underscoring ours.)

[14] *Supra* note 5.

[15] *Id.* at 536. (Emphasis ours.)

With regard to the time as to when just compensation should be fixed, it is settled jurisprudence that where property was taken without the benefit of expropriation proceedings, and its owner files an action for recovery of possession thereof before the commencement of expropriation proceedings, it is the value of the property at the time of taking that is controlling.[16] Explaining the reason for this rule in *Manila International Airport Authority v. Rodriguez*,[17] the Court, quoting *Ansaldo v. Tantuico, Jr.*,[18] stated, thus:

> The reason for the rule, as pointed out in *Republic v. Lara*, is that —
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> . . . [w]here property is taken ahead of the filing of the condemnation proceedings, **the value thereof may be enchanced by the public purpose for which it is taken; the entry by the plaintiff upon the property may have depreciated its value thereby; or, there may have been a natural increase in the value of the property from the time the complaint is filed, due to general economic conditions. The owner of private property should be compensated only for what he actually loses; it is not intended that his compensation shall extend beyond his loss or injury. And what he loses is only the actual value of his property at the time it is taken.** This is the only way that compensation to be paid can be truly just; *i.e.*, 'just not only to the individual whose property is taken,' 'but to the public, which is to pay for it.'[19]

In this case, the trial court should have fixed just compensation for the property at its value as of the time of taking in 1980, but there is nothing on record showing the value of the property at that time. The trial court, therefore, clearly erred when it based its valuation for the subject land on the price paid for

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[16] *Forfom v. Philippine National Railways*, *supra* note 7; *Manila International Airport Authority v. Rodriguez*, G.R. No. 161836, February 28, 2006, 483 SCRA 619, 627; *Republic v. Court of Appeals*, *supra* note 5, at 534-535.

[17] *Supra*, at 628.

[18] G.R. No. 50147, August 3, 1990, 188 SCRA 300.

[19] *Id.* at 628-629.

properties in the same location, taken by the city government only sometime in the year 1994.

However, in taking respondents' property without the benefit of expropriation proceedings and without payment of just compensation, the City of Pasig clearly acted in utter disregard of respondents' proprietary rights. Such conduct cannot be countenanced by the Court. For said illegal taking, the City of Pasig should definitely be held liable for damages to respondents. Again, in *Manila International Airport Authority v. Rodriguez*,[20] the Court held that the government agency's illegal occupation of the owner's property for a very long period of time surely resulted in pecuniary loss to the owner. The Court held as follows:

Such pecuniary loss entitles him to adequate compensation in the form of actual or compensatory damages, which in this case should be the legal interest (6%) on the value of the land at the time of taking, from said point up to full payment by the MIAA. This is based on the principle that interest "runs as a matter of law and follows from the right of the landowner to be placed in as good position as money can accomplish, as of the date of the taking."

The award of interest renders unwarranted the grant of back rentals as extended by the courts below. In *Republic v. Lara, et al.*, the Court ruled that the indemnity for rentals is inconsistent with a property owner's right to be paid legal interest on the value of the property, for if the condemnor is to pay the compensation due to the owners from the time of the actual taking of their property, the payment of such compensation is deemed to retroact to the actual taking of the property; and, hence, there is no basis for claiming rentals from the time of actual taking. More explicitly, the Court held in *Republic v. Garcellano* that:

The uniform rule of this Court, however, is that this compensation must be, not in the form of rentals, but by way of 'interest from the date that the company [or entity] exercising the right of eminent domain take possession of the condemned lands, and the amounts granted by the court shall cease to earn

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[20] *Supra* note 16.

interest only from the moment they are paid to the owners or deposited in court x x x.

x x x x x x x x x

For more than twenty (20) years, the MIAA occupied the subject lot without the benefit of expropriation proceedings and without the MIAA exerting efforts to ascertain ownership of the lot and negotiating with any of the owners of the property. To our mind, **these are wanton and irresponsible acts which should be suppressed and corrected. Hence, the award of exemplary damages and attorneys fees is in order.** However, while Rodriguez is entitled to such exemplary damages and attorney's fees, the award granted by the courts below should be equitably reduced. We hold that Rodriguez is entitled only to ₱200,000.00 as exemplary damages, and attorney's fees equivalent to one percent (1%) of the amount due.[21]

Lastly, with regard to the liability of petitioners Vicente P. Eusebio, Lorna A. Bernardo, and Victor Endriga ? all officials of the city government — the Court cannot uphold the ruling that said petitioners are jointly liable in their personal capacity with the City of Pasig for payments to be made to respondents. There is a dearth of evidence which would show that said petitioners were already city government officials in 1980 or that they had any involvement whatsoever in the illegal taking of respondents' property. Thus, any liability to respondents is the sole responsibility of the City of Pasig.

IN VIEW OF THE FOREGOING, the petition is *PARTIALLY GRANTED*. The Decision of the Court of Appeals dated November 28, 2003 is *MODIFIED* to read as follows:

1. The valuation of just compensation and award of back rentals made by the Regional Trial Court of Pasig City, Branch 155 in Civil Case No. 65937 are hereby *SET ASIDE*. The City of Pasig, represented by its duly-authorized officials, is *DIRECTED* to institute the appropriate expropriation action over the subject parcel of land within fifteen (15) days from finality of this

[21] *Id.* at 630-632. (Emphasis and underscoring supplied.)

Decision, for the proper determination of just compensation due to respondents, with interest at the legal rate of six (6%) percent per annum from the time of taking until full payment is made.

2. The City of Pasig is *ORDERED* to pay respondents the amounts of ₱200,000.00 as exemplary damages and ₱200,000.00 as attorney's fees.

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 171587. October 13, 2009]

EASTERN SHIPPING LINES, INC., *petitioner, vs.* **FERRER D. ANTONIO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; RETIREMENT; ABSENT ANY EXISTING AGREEMENT, THE RETIREMENT AGE SHALL BE FIXED BY LAW.— Respondent is not entitled to optional retirement benefits. Under the Labor Code, it is provided that: ART. 287. *Retirement. — Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract*. xxx In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is

hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year. Clearly, the age of retirement is primarily determined by the existing agreement or employment contract. In the absence of such agreement, the retirement age shall be fixed by law. Under the aforecited law, the mandated compulsory retirement age is set at 65 years, while the minimum age for optional retirement is set at 60 years.

2. ID.; ID.; ID.; AN EMPLOYEE CANNOT CLAIM OPTIONAL RETIREMENT BENEFITS AS A MATTER OF RIGHT WHERE HE HAS NOT YET REACHED THE REQUIRED ELIGIBILITY AGE.— In the case at bar, there is a retirement gratuity plan between the petitioner and the respondent xxx. Under Paragraph B of the plan, a shipboard employee, upon his written request, may retire from service if he has reached the eligibility age of 60 years. In this case, the option to retire lies with the employee. Records show that respondent was only 41 years old when he applied for optional retirement, which was 19 years short of the required eligibility age. Thus, he cannot claim optional retirement benefits as a matter of right.

3. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS MAY BE REVIEWED IF THE SAME FAILED TO NOTICE CERTAIN RELEVANT FACTS WHICH, IF PROPERLY CONSIDERED, WILL JUSTIFY A DIFFERENT CONCLUSION.— xxx. Due to the foregoing findings of facts of the CA, although generally deemed conclusive, may admit review by this Court if the CA failed to notice certain relevant facts which, if properly considered, will justify a different conclusion and when the judgment of the CA is premised on misapprehension of facts. The CA erred in affirming the rulings of the LA and the NLRC, as the availment of the optional retirement benefits is subject to the exclusive prerogative and sole option of the petitioner.

4. LABOR AND SOCIAL LEGISLATION; SEAFARERS; CONSIDERED CONTRACTUAL EMPLOYEES AND ARE NOT ENTITLED TO SEPARATION PAY UPON

EXPIRATION OF THEIR CONTRACTS OF ENLISTMENT.— It is also worth to note that respondent, being a seaman, is not entitled to the payment of separation pay. In *Millares v. National Labor Relations Commission,* we ruled that: x x x [I]t is clear that seafarers are considered contractual employees. They cannot be considered as regular employees under Article 280 of the Labor Code. Their employment is governed by the contracts they sign everytime they are rehired and their employment is terminated when the contract expires. Their employment is contractually fixed for a certain period of time. They fall under the exception of Article 280 whose employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season. We need not depart from the rulings of the Court in the two aforementioned cases which indeed constitute *stare decisis* with respect to the employment status of seafarers. x x x From all the foregoing, we hereby state that petitioners are not considered regular or permanent employees under Article 280 of the Labor Code. Petitioners' employment have automatically ceased upon the expiration of their contracts of enlistment (COE). Since there was no dismissal to speak of, ***it follows that petitioners are not entitled to reinstatement or payment of separation pay or backwages***, as provided by law.

5. CIVIL LAW; DAMAGES ; AWARD OF MORAL DAMAGES, WHEN PROPER.— The CA affirmed the award of moral damages due to the refusal of the petitioner to reemploy respondent after he had recovered from his injury and was declared fit to work, forcing him to apply instead for optional retirement benefit. We rule that the award of moral damages is not proper. Moral damages are recoverable only if the defendant has acted fraudulently or in bad faith, or is guilty of gross negligence amounting to bad faith, or in wanton disregard of his contractual obligations. The breach must be wanton, reckless, malicious, or in bad faith, oppressive or abusive. Further, moral damages are recoverable only where the dismissal 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.

6. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; AN EMPLOYEE CANNOT FORCE THE EMPLOYER TO REEMPLOY HIM AS A MATTER OF RIGHT UPON THE EXPIRATION OF HIS CONTRACT OF EMPLOYMENT.— In the present case, there was no contractual obligation on the part of the petitioner to mandatorily reemploy respondent. The reason, as provided in the *Millares* case, is that their employment is contractually fixed for a certain period of time and automatically ceased upon the expiration of their contract. Records will show that respondent's last employment with the petitioner ended on February 22, 1996. Thereafter, no new contract was executed between the parties. Thus, upon the expiration of the contract on February 22, 1996, respondent's employ with the petitioner also ended. In *Gu-Miro v. Adorable*, this Court said that: Thus, even with the continued re-hiring by respondent company of petitioner to serve as Radio Officer on board Bergesen's different vessels, this should be interpreted not as a basis for regularization but rather a series of contract renewals sanctioned under the doctrine set down by the second *Millares* case. If at all, petitioner was preferred because of practical considerations — namely, his experience and qualifications. However, this does not alter the status of his employment from being contractual. With respect to the claim for backwages and separation pay, it is now well settled that the award of backwages and separation pay in lieu of reinstatement are reliefs that are awarded to an employee who is unjustly dismissed. ***In the instant case, petitioner was separated from his employment due to the termination of an impliedly renewed contract with respondent company.*** Hence, there is no illegal or unjust dismissal. Clearly, after the termination of the renewed contract with the petitioner, respondent cannot force the petitioner to reemploy him as a matter of right. The employment ends at the precise time the contract ends. Hence, there was no illegal or unjust dismissal, or even a constructive dismissal.

7. ID.; ID.; ID.; GRANT OF FINANCIAL ASSISTANCE TO THE RESPONDENT, PROPER IN CASE AT BAR.— Nonetheless, although respondent's entitlement to optional retirement pay is wanting and despite petitioner's non-obligation to mandatorily rehire him, the grant of financial assistance is in order as an equitable concession under the circumstances of the case.

APPEARANCES OF COUNSEL

Contreras & Limqueco Law Offices for petitioner.
Nathaniel F. Sauz 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 set aside the Decision[1] dated December 1, 2005, and the Resolution[2] dated February 21, 2006 of the Court of Appeals (CA) in CA-G.R. SP. No. 75701 which affirmed with modification the Resolutions rendered by the National Labor Relations Commission (NLRC), Second Division, dated September 19, 2002 and January 30, 2003, respectively, in NLRC NCR CA NO. 029121-01, ordering petitioner to pay respondent his optional retirement benefit, plus moral damages and attorney's fees.

Petitioner Eastern Shipping Lines is a domestic corporation doing business in the Philippines. Respondent was hired by petitioner to work as a seaman on board its various vessels. Respondent started as an Apprentice Engineer on December 12, 1981 and worked in petitioner's various vessels where he was assigned to different positions. The last position he held was that of 3rd Engineer on board petitioner's vessel *M/V Eastern Venus*, where he worked until February 22, 1996. In January 1996, respondent took the licensure examinations for 2nd Engineer while petitioner's vessel was dry-docked for repairs. On February 13, 1996, while in Yokohama, Japan and in the employ of petitioner, he suffered a fractured left transverse process of the fourth lumbar vertebra. He consulted a doctor in Ogawa Hospital in Osaka, Japan and was advised to rest for a month. He was

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[1] Penned by Associate Justice Monina Arevalo-Zenarosa, with Associate Justices Andres B. Reyes, Jr. and Rosmari D. Carandang, concurring; *rollo*, pp. 40-47.

[2] *Id.* at 24-25.

later examined by the company doctor and declared fit to resume work. However, he was not admitted back to work. Being in dire financial need at that time to support his family, he applied for an optional retirement on January 16, 1997.[3] Petitioner, in a letter[4] dated February 10, 1997, disapproved his application on the ground that his shipboard employment history and track record as a seaman did not meet the standard required in granting the optional retirement benefits. For refusing to heed his repeated requests, respondent filed a complaint for payment of optional retirement benefits against petitioner before the Industrial Relations Division of the Department of Labor and Employment (DOLE). For their failure to reach an amicable settlement, the complaint was forwarded to the National Labor Relations Commission (NLRC) for proper proceedings.

In its defense, petitioner alleged that sometime in January 1996, respondent filed a vacation leave to take the licensure examinations for 2nd Engineer while his vessel was dry-docked for repairs. The following month, respondent, while waiting for the results of his licensure examinations, filed another vacation leave for an alleged medical check-up. Having passed the licensure examinations for 2nd Engineer, he signified his intention to petitioner that he be assigned to a vessel for the said position. In the meantime, since there was still no vacancy in the desired position, respondent was instructed to undergo medical examinations as a prerequisite for boarding a vessel. He was found to be medically fit. Respondent, however, for unknown reasons, failed to report to petitioner after undergoing the medical examinations. He did not even bother to verify whether he had a voyage assignment for his new position as 2nd Engineer. On January 16, 1997, respondent suddenly went to the office and decided to avail himself of the company's retirement gratuity plan by formally applying for payment of his optional retirement benefits due to financial reasons. Petitioner denied his application ratiocinating that his shipboard employment history and track record as a

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[3] Records, p. 92.

[4] *Id.* at 91.

seaman did not meet the standard required in granting the optional retirement benefits.

The Labor Arbiter (LA), in his Decision[5] dated April 18, 2001, rendered judgment in favor of the respondent. It found that respondent was forced to file his optional retirement due to petitioner's failure to give him any work assignment despite that he had already recovered from his injury and was declared fit to work. The LA found that petitioner's actuations amounted to constructive dismissal and, hence, ordered the payment of respondent's optional retirement benefits, as well as moral and exemplary damages, and attorney's fees. The dispositive portion of LA's Decision reads:

> WHEREFORE, premises all considered, judgment is hereby rendered as follows:
>
> Ordering respondent to pay complainant his optional retirement benefit of US$4,014.84 (55% x 608.30 x 12 yrs = 4,104.84) or its peso equivalent computed at the rate of exchange at the time of actual payment; Ordering respondents to pay complainant moral damages in the amount of ₱150,000.00 and exemplary damages in the amount of ₱75,000.00; and to pay complainant ten (10%) percent of the total monetary award by way of attorney's fees.
>
> SO ORDERED.[6]

Dissatisfied with the LA's finding, petitioner appealed to the NLRC on grounds of serious errors which would cause grave or irreparable damage or injury to petitioner and for grave abuse of discretion. It alleged that the LA erred in ruling that respondent was entitled to the optional retirement benefits, as well as to the payment of moral and exemplary damages, and attorney's fees.

The NLRC, Second Division, in its Resolution[7] dated September 19, 2002, affirmed the findings of the LA and dismissed petitioner's

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[5] *Rollo*, pp. 142-149.

[6] *Id.* at 148-149.

[7] Penned by Commissioner Angelita A. Gacutan, with Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay, concurring; *rollo*, pp. 109-118.

appeal. It held that petitioner's denial of respondent's application for optional retirement benefits was arbitrary and illegal.

Petitioner filed a motion for reconsideration,[8] which the NLRC denied in a Resolution[9] dated January 30, 2003.

Undaunted, petitioner filed a petition for *certiorari* with the CA alleging that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in awarding the retirement gratuity/separation pay to the respondent in the amount of US$4,104.84, plus moral and exemplary damages, and attorney's fees.

The CA, in its Decision dated December 1, 2005, affirmed the resolutions of the NLRC, but modified the award of moral damages in the reduced amount of PhP25,000.00 and deleted the award of exemplary damages. The CA ruled that the affirmance by the NLRC of the LA's ruling was supported by substantial evidence. Judicial prudence dictates that the NLRC's exercise of discretion in affirming the LA's factual findings should be accorded great weight and respect. The CA ruled that while it acknowledged that the company's optional retirement benefits were in the form of a gratuity, which may or may not be awarded at the company's discretion, such exercise of discretion must still comply with the basic and common standard reason may require. Since respondent had complied with the minimum requirement provided in the gratuity plan, *i.e.*, actual rendition of 3,650 days on board petitioner's vessel, thus, petitioner's denial of the optional retirement benefits of the respondent was arbitrary and illegal.

Petitioner filed a motion for reconsideration,[10] which the CA denied in a Resolution[11] dated February 21, 2006.

Hence, the instant petition raising this sole assignment of error:

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[8] *Rollo*, pp. 96-107.

[9] *Id.* at 94-95.

[10] *Rollo*, pp. 29-38.

[11] *Id.* at 24-25.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN AWARDING THE RESPONDENT THE OPTIONAL RETIREMENT BENEFIT BEING APPLIED FOR IN US DOLLARS UNDER THE GRATUITY PLAN OF HEREIN PETITIONER.[12]

The petition is meritorious.

Respondent is not entitled to optional retirement benefits. Under the Labor Code, it is provided that:

> ART. 287. *Retirement. — Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.*
>
> In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: *Provided, however,* That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.
>
> In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.[13]

Clearly, the age of retirement is primarily determined by the existing agreement or employment contract. In the absence of such agreement, the retirement age shall be fixed by law. Under the aforecited law, the mandated compulsory retirement age is set at 65 years, while the minimum age for optional retirement is set at 60 years.

In the case at bar, there is a retirement gratuity plan between the petitioner and the respondent, which provides the following:

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[12] *Id.* at 10.

[13] Emphasis ours.

Retirement Gratuity

x x x x x x x x x

B. Retirement under the Labor Code:

Any employee whether land-based office personnel or shipboard employee who shall reach the age of sixty (60) while in active employment with this company may retire from the service upon his written request in accordance with the provisions of Art. 277 of the Labor Code and its Implementing Rules, Book 6, Rule 1, Sec. 13 and he shall be paid termination pay equivalent to fifteen (15) days pay for every year of service as stated in said Labor Code and its Implementing Rules. However, the company may at its own volition grant him a higher benefit which shall not exceed the benefits provided for in the Retirement Gratuity table mentioned elsewhere in this policy.

C. Optional Retirement:

It will be the exclusive prerogative and sole option of this company to retire any covered employee who shall have rendered at least fifteen (15) years of credited service for land-based employees and 3,650 days actually on board vessel for shipboard personnel. x x x

Under Paragraph B of the plan, a shipboard employee, upon his written request, may retire from service if he has reached the eligibility age of 60 years. In this case, the option to retire lies with the employee.

Records show that respondent was only 41 years old when he applied for optional retirement, which was 19 years short of the required eligibility age. Thus, he cannot claim optional retirement benefits as a matter of right.

In *Eastern Shipping Lines, Inc. v. Sedan*,[14] respondent Dioscoro Sedan, a 3rd Marine Engineer and Oiler in one of the vessels of Eastern Shipping Lines, after several voyages, applied for optional retirement. Eastern Shipping Lines deferred action since his services on board ship were still needed. Despite several demands for his optional retirement, the requests were not acted

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[14] G.R. No. 159354, April 7, 2006, 486 SCRA 565.

upon. Thus, Sedan filed a complaint before the LA demanding payment of his retirement benefits. This Court ruled that the eligibility age for optional retirement was set at 60 years. Since respondent was only 48 years old when he applied for optional retirement, he cannot claim optional retirement benefits as a matter of right. We further added that employees who are under the age of 60 years, but have rendered at least 3,650 days (10 years) on board ship may also apply for optional retirement, but the approval of their application depends upon the exclusive prerogative and sole option of petitioner company. In that case, the retirement gratuity plan is the same as in the case at bar.

The aforecited Paragraph B is different from Paragraph C on optional retirement. The difference lies on who exercises the option to retire. Unlike in Paragraph B, the option to retire in Paragraph C is exclusively lodged in the employer. Although respondent may have rendered at least 3,650 days of service on board a vessel, which qualifies him for optional retirement under Paragraph C, however, he cannot demand the same as a matter of right.

If an employee upon rendering at least 3,650 days of service would automatically be entitled to the benefits of the gratuity plan, then it would not have been termed as optional, as the foregoing scenario would make the retirement mandatory and compulsory.

Due to the foregoing findings of facts of the CA, although generally deemed conclusive, may admit review by this Court if the CA failed to notice certain relevant facts which, if properly considered, will justify a different conclusion and when the judgment of the CA is premised on misapprehension of facts.[15]

The CA erred in affirming the rulings of the LA and the NLRC, as the availment of the optional retirement benefits is subject to the exclusive prerogative and sole option of the petitioner.

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[15] *Fuentes v. Court of Appeals*, 335 Phil. 1163, 1168 (1997).

It is also worth to note that respondent, being a seaman, is not entitled to the payment of separation pay. In *Millares v. National Labor Relations Commission*,[16] we ruled that:

> x x x [I]t is clear that seafarers are considered contractual employees. They cannot be considered as regular employees under Article 280 of the Labor Code. Their employment is governed by the contracts they sign everytime they are rehired and their employment is terminated when the contract expires. Their employment is contractually fixed for a certain period of time. They fall under the exception of Article 280 whose employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season. We need not depart from the rulings of the Court in the two aforementioned cases which indeed constitute *stare decisis* with respect to the employment status of seafarers.
>
> x x x x x x x x x
>
> From all the foregoing, we hereby state that petitioners are not considered regular or permanent employees under Article 280 of the Labor Code. Petitioners' employment have automatically ceased upon the expiration of their contracts of enlistment (COE). Since there was no dismissal to speak of, ***it follows that petitioners are not entitled to reinstatement or payment of separation pay or backwages***, as provided by law.[17]

The CA affirmed the award of moral damages due to the refusal of the petitioner to reemploy respondent after he had recovered from his injury and was declared fit to work, forcing him to apply instead for optional retirement benefit.

We rule that the award of moral damages is not proper. Moral damages are recoverable only if the defendant has acted fraudulently or in bad faith, or is guilty of gross negligence amounting to bad faith, or in wanton disregard of his contractual obligations. The breach must be wanton, reckless, malicious,

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[16] 434 Phil. 524 (2002).

[17] *Id.* at 538-540. (Emphasis ours.)

or in bad faith, oppressive or abusive.[18] Further, moral damages are recoverable only where the dismissal 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.[19]

In the present case, there was no contractual obligation on the part of the petitioner to mandatorily reemploy respondent. The reason, as provided in the *Millares* case, is that their employment is contractually fixed for a certain period of time and automatically ceased upon the expiration of their contract. Records will show that respondent's last employment with the petitioner ended on February 22, 1996.[20] Thereafter, no new contract was executed between the parties. Thus, upon the expiration of the contract on February 22, 1996, respondent's employ with the petitioner also ended.

In *Gu-Miro v. Adorable*,[21] this Court said that:

> Thus, even with the continued re-hiring by respondent company of petitioner to serve as Radio Officer on board Bergesen's different vessels, this should be interpreted not as a basis for regularization but rather a series of contract renewals sanctioned under the doctrine set down by the second *Millares* case. If at all, petitioner was preferred because of practical considerations — namely, his experience and qualifications. However, this does not alter the status of his employment from being contractual.

With respect to the claim for backwages and separation pay, it is now well settled that the award of backwages and separation pay in lieu of reinstatement are reliefs that are awarded to an employee who is unjustly dismissed. ***In the instant case, petitioner was separated from his employment due to the termination of an***

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[18] *McLeod v. National Labor Relations Commission*, G.R. No. 146667, January 23, 2007, 512 SCRA 222, 260.

[19] *Rutaquio v. National Labor Relations Commission*, 375 Phil. 405, 416-417 (1999).

[20] Records, p. 94.

[21] 480 Phil. 597 (2004).

impliedly renewed contract with respondent company. Hence, there is no illegal or unjust dismissal.[22]

Clearly, after the termination of the renewed contract with the petitioner, respondent cannot force the petitioner to reemploy him as a matter of right. The employment ends at the precise time the contract ends. Hence, there was no illegal or unjust dismissal, or even a constructive dismissal.

Nonetheless, although respondent's entitlement to optional retirement pay is wanting and despite petitioner's non-obligation to mandatorily rehire him, the grant of financial assistance is in order as an equitable concession under the circumstances of the case.

In the aforecited case of *Eastern*,[23] this Court affirmed the CA's grant of financial assistance to the respondent therein. In that case, we said that:

> But we must stress that this Court did allow, in several instances, the grant of financial assistance. In the words of Justice Sabino de Leon, Jr., now deceased, financial assistance may be allowed as a measure of social justice and exceptional circumstances, and as an equitable concession. The instant case equally calls for balancing the interests of the employer with those of the worker, if only to approximate what Justice Laurel calls justice in its secular sense.
>
> In this instance, our attention has been called to the following circumstances: that private respondent joined the company when he was a young man of 25 years and stayed on until he was 48 years old; that he had given to the company the best years of his youth, working on board ship for almost 24 years; that in those years there was not a single report of him transgressing any of the company rules and regulations; that he applied for optional retirement under the company's non-contributory plan when his daughter died and for his own health reasons; and that it would appear that he had served the company well, since even the company said that the reason it refused his application for optional retirement was that it still needed his services; that he denies receiving the telegram asking him to

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[22] *Id.* at 608. (Emphasis ours.)

[23] *Supra* note 14.

report back to work; but that considering his age and health, he preferred to stay home rather than risk further working in a ship at sea.

In our view, with these special circumstances, we can call upon the same "social and compassionate justice" cited in several cases allowing financial assistance. These circumstances indubitably merit equitable concessions, via the principle of "compassionate justice" for the working class. x x x[24]

In the present case, respondent had been employed with the petitioner for almost twelve (12) years. On February 13, 1996, he suffered from a "fractured left transverse process of fourth lumbar vertebra," while their vessel was at the port of Yokohama, Japan. After consulting a doctor, he was required to rest for a month. When he was repatriated to Manila and examined by a company doctor, he was declared fit to continue his work. When he reported for work, petitioner refused to employ him despite the assurance of its personnel manager. Respondent patiently waited for more than one year to embark on the vessel as 2nd Engineer, but the position was not given to him, as it was occupied by another person known to one of the stockholders. Consequently, for having been deprived of continued employment with petitioner's vessel, respondent opted to apply for optional retirement. In addition, records show that respondent's seaman's book, as duly noted and signed by the captain of the vessel was marked "*Very Good,*" and "*recommended for hire.*" Moreover, respondent had no derogatory record on file over his long years of service with the petitioner.

Considering all of the foregoing and in line with *Eastern*, the ends of social and compassionate justice would be served best if respondent will be given some equitable relief. Thus, the award of ₱100,000.00 to respondent as financial assistance is deemed equitable under the circumstances.

WHEREFORE, the petition is *GRANTED*. The Decision and Resolution of the Court of Appeals, dated December 1, 2005 and February 21, 2006, respectively, in CA-G.R. SP. No. 75701,

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[24] *Id.* at 574-575.

are *REVERSED* and *SET ASIDE*. Respondent is awarded financial assistance in the amount of ₱100,000.00.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 174451. October 13, 2009]

VERONICA CABACUNGAN ALCAZAR, *petitioner, vs.* **REY C. ALCAZAR,** *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; ARTICLE 45, PARAGRAPH 5 THEREOF; INCAPACITY TO CONSUMMATE THE MARRIAGE, EXPLAINED; PHYSICAL INCAPACITY OF THE RESPONDENT TO CONSUMMATE HIS MARRIAGE WITH THE PETITIONER, NOT ESTABLISHED IN CASE AT BAR.— At the outset, it must be noted that the Complaint originally filed by petitioner before the RTC was for **annulment of marriage** based on **Article 45, paragraph 5 of the Family Code**, xxx Article 45(5) of the Family Code refers to lack of power to copulate. Incapacity to consummate denotes the permanent inability on the part of the spouses to perform the complete act of sexual intercourse. Non-consummation of a marriage may be on the part of the husband or of the wife and may be caused by a physical or structural defect in the anatomy of one of the parties or it may be due to chronic illness and inhibitions or fears arising in whole or in part from psychophysical conditions. It may be caused by psychogenic causes, where such mental block or disturbance has the result of making the spouse physically incapable of performing the

marriage act. No evidence was presented in the case at bar to establish that respondent was in any way physically incapable to consummate his marriage with petitioner. Petitioner even admitted during her cross-examination that she and respondent had sexual intercourse after their wedding and before respondent left for abroad. There obviously being no physical incapacity on respondent's part, then, there is no ground for annulling petitioner's marriage to respondent. Petitioner's Complaint was, therefore, rightfully dismissed.

2. LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; THE CLIENT IS BOUND BY THE ACTS, EVEN MISTAKES, OF THE COUNSEL IN THE REALM OF PROCEDURAL TECHNIQUE; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.— As can be gleaned from the evidence presented by petitioner and the observations of the RTC and the Court of Appeals, it appears that petitioner was actually seeking the **declaration of nullity** of her marriage to respondent based on the latter's psychological incapacity to comply with his marital obligations of marriage under **Article 36 of the Family Code**. Petitioner attributes the filing of the erroneous Complaint before the RTC to her former counsel's mistake or gross ignorance. But even said reason cannot save petitioner's Complaint from dismissal. It is settled in this jurisdiction that the client is bound by the acts, even mistakes, of the counsel in the realm of procedural technique. Although this rule is not a hard and fast one and admits of exceptions, such as where the mistake of counsel is so gross, palpable and inexcusable as to result in the violation of his client's substantive rights, petitioner failed to convince us that such exceptional circumstances exist herein.

3. CIVIL LAW; FAMILY CODE; ARTICLE 36 THEREOF; PSYCHOLOGICAL INCAPACITY; EXPLAINED; CASE AT BAR.— In *Santos v. Court of Appeals*, the Court declared that "psychological incapacity" under Article 36 of the Family Code is not meant to comprehend all possible cases of psychoses. It should refer, rather, to no less than a **mental (not physical) incapacity** that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage. Psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability. The Court laid

down the guidelines in resolving petitions for declaration of nullity of marriage, based on Article 36 of the Family Code, in *Republic v. Court of Appeals*, xxx Being accordingly guided by the aforequoted pronouncements in *Republic v. Court of Appeals*, we scrutinized the totality of evidence presented by petitioner and found that the same was not enough to sustain a finding that respondent was psychologically incapacitated.

4. ID.; ID.; ID.; ID.; MUST BE MORE THAN JUST A DIFFICULTY, A REFUSAL OR A NEGLECT IN THE PERFORMANCE OF SOME MARITAL OBLIGATIONS.— Tayag concluded in her report that respondent was suffering from Narcissistic Personality Disorder, traceable to the latter's experiences during his childhood. Yet, the report is totally bereft of the basis for the said conclusion. Tayag did not particularly describe the "pattern of behavior" that showed that respondent indeed had a Narcissistic Personality Disorder. Tayag likewise failed to explain how such a personality disorder made respondent psychologically incapacitated to perform his obligations as a husband. We emphasize that the burden falls upon petitioner, not just to prove that respondent suffers from a psychological disorder, but also that such psychological disorder renders him "truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage." Psychological incapacity must be more than just a "difficulty," a "refusal," or a "neglect" in the performance of some marital obligations. In this instance, we have been allowed, through the evidence adduced, to peek into petitioner's marital life and, as a result, we perceive a simple case of a married couple being apart too long, becoming strangers to each other, with the husband falling out of love and distancing or detaching himself as much as possible from his wife.

5. ID.; ID.; ID.; ID.; FALLING OUT OF LOVE NOT NECESSARILY A SIGN OF PSYCHOLOGICAL ILLNESS.— To be tired and give up on one's situation and on one's spouse are not necessarily signs of psychological illness; neither can falling out of love be so labeled. When these happen, the remedy for some is to cut the marital knot to allow the parties to go their separate ways. This simple remedy, however, is not available to us under our laws. Ours is a limited remedy that addresses only a very specific situation — a relationship where no marriage could have validly been concluded because the

parties; or where one of them, by reason of a grave and incurable psychological illness existing when the marriage was celebrated, did not appreciate the obligations of marital life and, thus, could not have validly entered into a marriage.

6. ID.; ID.; ID.; ID.; MERE IRRECONCILABLE DIFFERENCES AND CONFLICTING PERSONALITIES DO NOT CONSTITUTE PSYCHOLOGICAL INCAPACITY.— An unsatisfactory marriage is not a null and void marriage. As we stated in *Marcos v. Marcos*: Article 36 of the Family Code, we stress, is not to be confused with a divorce law that cuts the marital bond at the time the causes therefor manifest themselves. It refers to a serious psychological illness afflicting a party even before the celebration of the marriage. It is a malady so grave and so permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume. x x x. Resultantly, we have held in the past that mere "irreconcilable differences" and "conflicting personalities" in no wise constitute psychological incapacity.

7. ID.; ID.; ID.; ID.; SEXUAL INFIDELITY, *PER SE*, DOES NOT CONSTITUTE PSYCHOLOGICAL INCAPACITY.— As a last-ditch effort to have her marriage to respondent declared null, petitioner pleads abandonment by and sexual infidelity of respondent. In a Manifestation and Motion dated 21 August 2007 filed before us, petitioner claims that she was informed by one Jacinto Fordonez, who is residing in the same *barangay* as respondent in Occidental Mindoro, that respondent is living-in with another woman named "Sally." Sexual infidelity, *per se*, however, does not constitute psychological incapacity within the contemplation of the Family Code. Again, petitioner must be able to establish that respondent's unfaithfulness is a manifestation of a disordered personality, which makes him completely unable to discharge the essential obligations of the marital state.

8. ID.; ID.; ID.; ANY DOUBT SHOULD BE RESOLVED IN FAVOR OF THE EXISTENCE AND CONTINUATION OF THE MARRIAGE AND AGAINST ITS DISSOLUTION AND NULLITY.— It remains settled that the State has a high stake in the preservation of marriage rooted in its recognition of the sanctity of married life and its mission to protect and strengthen the family as a basic autonomous social institution.

Hence, any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity.

9. ID.; ID.; ID.; ID.; PRESUMPTION IS ALWAYS IN FAVOR OF THE VALIDITY OF MARRIAGE.— Presumption is always in favor of the validity of marriage. *Semper praesumitur pro matrimonio*. In the case at bar, petitioner failed to persuade us that respondent's failure to communicate with petitioner since leaving for Saudi Arabia to work, and to live with petitioner after returning to the country, are grave psychological maladies that are keeping him from knowing and/or complying with the essential obligations of marriage. We are not downplaying petitioner's frustration and misery in finding herself shackled, so to speak, to a marriage that is no longer working. Regrettably, there are situations like this one, where neither law nor society can provide the specific answers to every individual problem.

APPEARANCES OF COUNSEL

Michael E. David for petitioner.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This Petition for Review on *Certiorari* seeks to reverse the Decision[1] dated 24 May 2006 of the Court of Appeals in CA-G.R. CV No. 84471, affirming the Decision dated 9 June 2004 of the Regional Trial Court (RTC) of Malolos City, Branch 85, in Civil Case No. 664-M-2002, which dismissed petitioner Veronica Cabacungan Alcazar's Complaint for the annulment of her marriage to respondent Rey C. Alcazar.

The Complaint,[2] docketed as Civil Case No. 664-M-2002, was filed by petitioner before the RTC on 22 August 2002.

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[1] Penned by Associate Justice Magdangal de Leon with Justices Conrado M. Vasquez, Jr. and Mariano C. del Castillo (now a member of this Court) concurring; *rollo*, pp. 18-24.

[2] Records, pp. 3-5.

Petitioner alleged in her Complaint that she was married to respondent on 11 October 2000 by Rev. Augusto G. Pabustan (Pabustan), at the latter's residence. After their wedding, petitioner and respondent lived for five days in San Jose, Occidental Mindoro, the hometown of respondent's parents. Thereafter, the newlyweds went back to Manila, but respondent did not live with petitioner at the latter's abode at 2601-C Jose Abad Santos Avenue, Tondo, Manila. On 23 October 2000, respondent left for Riyadh, Kingdom of Saudi Arabia, where he worked as an upholsterer in a furniture shop. While working in Riyadh, respondent did not communicate with petitioner by phone or by letter. Petitioner tried to call respondent for five times but respondent never answered. About a year and a half after respondent left for Riyadh, a co-teacher informed petitioner that respondent was about to come home to the Philippines. Petitioner was surprised why she was not advised by respondent of his arrival.

Petitioner further averred in her Complaint that when respondent arrived in the Philippines, the latter did not go home to petitioner at 2601-C Jose Abad Santos Avenue, Tondo, Manila. Instead, respondent proceeded to his parents' house in San Jose, Occidental Mindoro. Upon learning that respondent was in San Jose, Occidental Mindoro, petitioner went to see her brother-in-law in Velasquez St., Tondo, Manila, who claimed that he was not aware of respondent's whereabouts. Petitioner traveled to San Jose, Occidental Mindoro, where she was informed that respondent had been living with his parents since his arrival in March 2002.

Petitioner asserted that from the time respondent arrived in the Philippines, he never contacted her. Thus, petitioner concluded that respondent was physically incapable of consummating his marriage with her, providing sufficient cause for annulment of their marriage pursuant to paragraph 5, Article 45 of the Family Code of the Philippines (Family Code). There was also no more possibility of reconciliation between petitioner and respondent.

Per the Sheriff's Return[3] dated 3 October 2002, a summons, together with a copy of petitioner's Complaint, was served upon respondent on 30 September 2002.[4]

On 18 November 2002, petitioner, through counsel, filed a Motion[5] to direct the public prosecutor to conduct an investigation of the case pursuant to Article 48 of the Family Code.

As respondent did not file an Answer, the RTC issued on 27 November 2002 an Order[6] directing the public prosecutor to conduct an investigation to ensure that no collusion existed between the parties; to submit a report thereon; and to appear in all stages of the proceedings to see to it that evidence was not fabricated or suppressed.

On 4 March 2003, Public Prosecutrix Veronica A.V. de Guzman (De Guzman) submitted her Report manifesting that she had conducted an investigation of the case of petitioner and respondent in January 2003, but respondent never participated therein. Public Prosecutrix De Guzman also noted that no collusion took place between the parties, and measures were taken to prevent suppression of evidence between them. She then recommended that a full-blown trial be conducted to determine whether petitioner's Complaint was meritorious or not.

Pre-trial was held and terminated on 20 May 2003.

On 21 May 2003, the RTC received the Notice of Appearance of the Solicitor General.

Trial on the merits ensued thereafter.

During trial, petitioner presented herself, her mother Lolita Cabacungan (Cabacungan), and clinical psychologist Nedy L. Tayag (Tayag) as witnesses.

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[3] *Id.* at 10.

[4] *Id.* at 75.

[5] *Id.* at 12.

[6] *Id.* at 13.

Petitioner first took the witness stand and elaborated on the allegations in her Complaint. Cabacungan corroborated petitioner's testimony.

Petitioner's third witness, Tayag, presented the following psychological evaluation of petitioner and respondent:

> After meticulous scrutiny and careful analysis of the collected data, petitioner is found to be free from any underlying personality aberration neither (sic) of any serious psychopathological traits, which may possibly impede her normal functioning (sic) of marriage. On the other hand, the undersigned arrived to (sic) a firm opinion that the sudden breakdown of marital life between petitioner and respondent was clearly due to the diagnosed personality disorder that the respondent is harboring, making him psychologically incapacitated to properly assume and comply [with] essential roles (sic) of obligations as a married man.
>
> The pattern of behaviors displayed by the respondent satisfies the diagnostic criteria of a disorder clinically classified as **Narcissistic Personality Disorder,** a condition deemed to be grave, severe, long lasting in proportion and incurable by any treatment.
>
> People suffering from **Narcissistic Personality Disorder** are known to have a pervasive pattern of grandiosity (in fantasy or behavior), need for admiration, and lack of empathy, beginning by early adulthood and present in a variety of contexts, as indicated by five (or more) of the following:
>
> 1. has a grandiose of self-importance (*e.g.* exaggerates achievements and talents, expect to be recognized as superior without commensurate achievements)
>
> 2. is preoccupied with fantasies of unlimited success, power, brilliance, beauty or ideal love
>
> 3. believes that he or she is "special" and unique and can only be understood by, or should associate with, other special or high status people (institutions)
>
> 4. requires excessive admiration
>
> 5. has sense of entitlement, *i.e.*, unreasonable expectations of especially favorable treatment or automatic compliance with his or her expectations

6. is interpersonally exploitative, *i.e.*, takes advantage of others to achieve his or her own ends

7. lacks empathy: is unwilling to recognize or identify with the feelings and needs of others

8. is often envious of others or believes that others are envious of him or her

9. shows arrogant, haughty behavior or attitudes.

The root cause of respondent's personality disorder can be attributed to his early childhood years with predisposing psychosocial factors that influence[d] his development. It was recounted that respondent is the first child of his mother's second family. Obviously, unhealthy familial constellation composed his immediate environment in his growing up years. Respondent had undergone a severe longing for attention from his father who had been unfaithful to them and had died early in life, that he was left alone to fend for the family needs. More so that they were coping against poverty, his caregivers failed to validate his needs, wishes or responses and overlooked the love and attention he yearned which led to develop a pathological need for self-object to help him maintain a cohesive sense of self-such so great that everything other people offer is "consumed." Hence, he is unable to develop relationship with other (sic) beyond this need. There is no capacity for empathy sharing, or loving others.

The psychological incapacity of the respondent is characterized by juridical antecedence as it already existed long before he entered into marriage. Since it already started early in life, it is deeply engrained within his system and becomes a[n] integral part of his personality structure, thereby rendering such to be permanent and incurable.[7]

Tayag concluded in the end that:

As such, their marriage is already beyond repair, considering the fact that it has long been (sic) ceased to exist and have their different life priorities. Reconciliation between them is regarded to be (sic). The essential obligations of love, trust, respect, fidelity, authentic cohabitation as husband and wife, mutual help and support, and commitment, did not and will no lon[g]er exist between them. With

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[7] *Rollo,* pp. 67-68.

due consideration of the above-mentioned findings, the undersigned recommends, the declaration of nullity of marriage between petitioner and respondent.[8]

On 18 February 2004, petitioner filed her Formal Offer of Evidence. Public Prosecutrix Myrna S. Lagrosa (Lagrosa), who replaced Public Prosecutrix De Guzman, interposed no objection to the admission of petitioner's evidence and manifested that she would no longer present evidence for the State.

On 9 June 2004, the RTC rendered its Decision denying petitioner's Complaint for annulment of her marriage to respondent, holding in substance that:

> In the case at bar, the Court finds that the acts of the respondent in not communicating with petitioner and not living with the latter the moment he returned home from Saudi Arabia despite their marriage do (sic) not lead to a conclusion of psychological incapacity on his part. There is absolutely no showing that his "defects" were already present at the inception of their marriage or that these are incurable.
>
> That being the case, the Court resolves to deny the instant petition.
>
> WHEREFORE, premises considered, the Petition for Annulment of Marriage is hereby DENIED.[9]

Petitioner filed a Motion for Reconsideration[10] but it was denied by the RTC in an Order[11] dated 19 August 2004.

Aggrieved, petitioner filed an appeal with the Court of Appeals, docketed as CA-G.R. CV No. 84471. In a Decision[12] dated 24 May 2006, the Court of Appeals affirmed the RTC Decision dated 9 June 2004. The Court of Appeals ruled that the RTC did not err in finding that petitioner failed to prove respondent's psychological incapacity. Other than petitioner's bare allegations,

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[8] Records, p. 69.

[9] *Id.* at 80.

[10] *Id.* at 91-95.

[11] *Id.* at 96.

[12] *Rollo*, p. 24.

no other evidence was presented to prove respondent's personality disorder that made him completely unable to discharge the essential obligations of the marital state. Citing *Republic v. Court of Appeals*,[13] the appellate court ruled that the evidence should be able to establish that at least one of the spouses was mentally or physically ill to such an extent that said person could not have known the marital obligations to be assumed; or knowing the marital obligations, could not have validly assumed the same. At most, respondent's abandonment of petitioner could be a ground for legal separation under Article 5 of the Family Code.

Petitioner's Motion for Reconsideration was denied by the Court of Appeals in a Resolution[14] dated 28 August 2008.

Hence, this Petition raising the sole issue of:

WHETHER OR NOT, AS DEFINED BY THE LAW AND JURISPRUDENCE, RESPONDENT IS PSYCHOLOGICALLY INCAPACITATED TO PERFORM THE ESSENTIAL MARITAL OBLIGATONS.[15]

At the outset, it must be noted that the Complaint originally filed by petitioner before the RTC was for **annulment of marriage** based on **Article 45, paragraph 5 of the Family Code**, which reads:

ART. 45. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

x x x x x x x x x

(5) That either party was physically incapable of consummating the marriage with the other, and such incapacity continues and appears to be incurable; x x x.

Article 45(5) of the Family Code refers to lack of power to copulate.[16] Incapacity to consummate denotes the permanent

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[13] 335 Phil. 664 (1997).

[14] *Rollo*, p. 27.

[15] *Id.* at 6.

[16] Alicia V. Sempio-Dy, *Handbook on the Family Code of the Philippines*, p. 58.

inability on the part of the spouses to perform the complete act of sexual intercourse.[17] Non-consummation of a marriage may be on the part of the husband or of the wife and may be caused by a physical or structural defect in the anatomy of one of the parties or it may be due to chronic illness and inhibitions or fears arising in whole or in part from psychophysical conditions. It may be caused by psychogenic causes, where such mental block or disturbance has the result of making the spouse physically incapable of performing the marriage act.[18]

No evidence was presented in the case at bar to establish that respondent was in any way physically incapable to consummate his marriage with petitioner. Petitioner even admitted during her cross-examination that she and respondent had sexual intercourse after their wedding and before respondent left for abroad. There obviously being no physical incapacity on respondent's part, then, there is no ground for annulling petitioner's marriage to respondent. Petitioner's Complaint was, therefore, rightfully dismissed.

One curious thing, though, caught this Court's attention. As can be gleaned from the evidence presented by petitioner and the observations of the RTC and the Court of Appeals, it appears that petitioner was actually seeking the **declaration of nullity** of her marriage to respondent based on the latter's psychological incapacity to comply with his marital obligations of marriage under **Article 36 of the Family Code**.

Petitioner attributes the filing of the erroneous Complaint before the RTC to her former counsel's mistake or gross ignorance.[19] But even said reason cannot save petitioner's Complaint from dismissal. It is settled in this jurisdiction that the client is bound by the acts, even mistakes, of the counsel in the realm of procedural technique.[20] Although this rule is

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[17] Melencio S. Sta. Maria, Jr., *Persons and Family Relations Law* (2004 Edition,) p. 278.

[18] *Id.* at 279.

[19] *Rollo*, p. 8.

[20] *Tan Hang v. Paredes*, 241 Phil. 740 (1988).

not a hard and fast one and admits of exceptions, such as where the mistake of counsel is so gross, palpable and inexcusable as to result in the violation of his client's substantive rights,[21] petitioner failed to convince us that such exceptional circumstances exist herein.

Assuming for the sake of argument that we can treat the Complaint as one for declaration of nullity based on Article 36 of the Family Code, we will still dismiss the Complaint for lack of merit, consistent with the evidence presented by petitioner during the trial.

Article 36 of the Family Code provides:

> ART. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

In *Santos v. Court of Appeals*,[22] the Court declared that "psychological incapacity" under Article 36 of the Family Code is not meant to comprehend all possible cases of psychoses. It should refer, rather, to no less than a **mental (not physical) incapacity** that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage. Psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability.[23]

The Court laid down the guidelines in resolving petitions for declaration of nullity of marriage, based on Article 36 of the Family Code, in *Republic v. Court of Appeals*,[24] to wit:

> (1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence

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[21] *Heirs of Pael and Destura v. Court of Appeals*, 382 Phil. 222, 244-245 (2000).

[22] 310 Phil. 21, 30 (1995).

[23] *Id.*; *Marcos v. Marcos*, 397 Phil. 840, 850 (2000).

[24] *Supra* note 13 at 676-678.

and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it "as the foundation of the nation." It decrees marriage as legally "inviolable," thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state.

The Family Code echoes this constitutional edict on marriage and the family and emphasizes their permanence, inviolability and solidarity.

(2) The root cause of the psychological incapacity must be a) medically or clinically identified, b) alleged in the complaint, c) sufficiently proven by experts and d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological — not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis*, nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.

(3) The incapacity must be proven to be existing at the "time of the celebration" of the marriage. The evidence must show that the illness was existing when the parties exchanged their "I do's." The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

(4) Such incapacity must also be shown to be medically or clinically permanent or incurable. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. Hence, a pediatrician may be effective in diagnosing illnesses of children and prescribing medicine to cure

them but may not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage.

(5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characteriological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. x x x.

Being accordingly guided by the aforequoted pronouncements in *Republic v. Court of Appeals*, we scrutinized the totality of evidence presented by petitioner and found that the same was not enough to sustain a finding that respondent was psychologically incapacitated.

Petitioner's evidence, particularly her and her mother's testimonies, merely established that respondent left petitioner soon after their wedding to work in Saudi Arabia; that when respondent returned to the Philippines a year and a half later, he directly went to live with his parents in San Jose, Occidental Mindoro, and not with petitioner in Tondo, Manila; and that respondent also did not contact petitioner at all since leaving for abroad. These testimonies though do not give us much insight into respondent's psychological state.

Tayag's psychological report leaves much to be desired and hardly helps petitioner's cause. It must be noted that Tayag

was not able to personally examine respondent. Respondent did not appear for examination despite Tayag's invitation.[25] Tayag, in evaluating respondent's psychological state, had to rely on information provided by petitioner. Hence, we expect Tayag to have been more prudent and thorough in her evaluation of respondent's psychological condition, since her source of information, namely, petitioner, was hardly impartial.

Tayag concluded in her report that respondent was suffering from Narcissistic Personality Disorder, traceable to the latter's experiences during his childhood. Yet, the report is totally bereft of the basis for the said conclusion. Tayag did not particularly describe the "pattern of behavior" that showed that respondent indeed had a Narcissistic Personality Disorder. Tayag likewise failed to explain how such a personality disorder made respondent psychologically incapacitated to perform his obligations as a husband. We emphasize that the burden falls upon petitioner, not just to prove that respondent suffers from a psychological disorder, but also that such psychological disorder renders him "truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage."[26] Psychological incapacity must be more than just a "difficulty," a "refusal," or a "neglect" in the performance of some marital obligations.

In this instance, we have been allowed, through the evidence adduced, to peek into petitioner's marital life and, as a result, we perceive a simple case of a married couple being apart too long, becoming strangers to each other, with the husband falling out of love and distancing or detaching himself as much as possible from his wife.

To be tired and give up on one's situation and on one's spouse are not necessarily signs of psychological illness; neither can falling out of love be so labeled. When these happen, the remedy for some is to cut the marital knot to allow the parties to go their separate ways. This simple remedy, however, is not

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[25] TSN, 21 January 2004, p. 6.

[26] *Santos v. Court of Appeals*, *supra* note 22.

available to us under our laws. Ours is a limited remedy that addresses only a very specific situation — a relationship where no marriage could have validly been concluded because the parties; or where one of them, by reason of a grave and incurable psychological illness existing when the marriage was celebrated, did not appreciate the obligations of marital life and, thus, could not have validly entered into a marriage.[27]

An unsatisfactory marriage is not a null and void marriage. As we stated in *Marcos v. Marcos:*[28]

> Article 36 of the Family Code, we stress, is not to be confused with a divorce law that cuts the marital bond at the time the causes therefor manifest themselves. It refers to a serious psychological illness afflicting a party even before the celebration of the marriage. It is a malady so grave and so permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume. x x x.

Resultantly, we have held in the past that mere "irreconcilable differences" and "conflicting personalities" in no wise constitute psychological incapacity.[29]

As a last-ditch effort to have her marriage to respondent declared null, petitioner pleads abandonment by and sexual infidelity of respondent. In a Manifestation and Motion[30] dated 21 August 2007 filed before us, petitioner claims that she was informed by one Jacinto Fordonez, who is residing in the same *barangay* as respondent in Occidental Mindoro, that respondent is living-in with another woman named "Sally."

Sexual infidelity, *per se,* however, does not constitute psychological incapacity within the contemplation of the Family Code. Again, petitioner must be able to establish that respondent's unfaithfulness is a manifestation of a disordered personality,

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[27] *Renato Reyes So v. Valera,* G.R. No. 150677, 5 June 2009.

[28] *Marcos v. Marcos, supra* note 23 at 851.

[29] *Republic v. Court of Appeals, supra* note 13.

[30] *Rollo,* pp. 41-43.

which makes him completely unable to discharge the essential obligations of the marital state.[31]

It remains settled that the State has a high stake in the preservation of marriage rooted in its recognition of the sanctity of married life and its mission to protect and strengthen the family as a basic autonomous social institution. Hence, any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity.[32] Presumption is always in favor of the validity of marriage. *Semper praesumitur pro matrimonio*.[33] In the case at bar, petitioner failed to persuade us that respondent's failure to communicate with petitioner since leaving for Saudi Arabia to work, and to live with petitioner after returning to the country, are grave psychological maladies that are keeping him from knowing and/or complying with the essential obligations of marriage.

We are not downplaying petitioner's frustration and misery in finding herself shackled, so to speak, to a marriage that is no longer working. Regrettably, there are situations like this one, where neither law nor society can provide the specific answers to every individual problem.[34]

WHEREFORE, the Petition is *DENIED*. The 24 May 2006 Decision and 28 August 2008 Resolution of the Court of Appeals in CA-G.R. CV No. 84471, which affirmed the 9 June 2004 Decision of the Regional Trial Court of Malolos City, Branch 85, dismissing petitioner Veronica Cabacungan Alcazar's Complaint in Civil Case No. 664-M-2002, are *AFFIRMED*. No costs.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

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[31] *Santos v. Court of Appeals, supra* note 22; *Hernandez v. Court of Appeals*, 377 Phil. 919, 931-932 (1999); *Dedel v. Court of Appeals*, 466 Phil. 226, 233-232 (2004).

[32] *Carating-Siayngco v Siayngco*, 484 Phil. 396, 412 (2004).

[33] *Id*.

[34] *Dedel v. Court of Appeals, supra* note 31.

THIRD DIVISION

[G.R. No. 182836. October 13, 2009]

CONTINENTAL STEEL MANUFACTURING CORPORATION, *petitioner, vs.* **HON. ACCREDITED VOLUNTARY ARBITRATOR ALLAN S. MONTAÑO and NAGKAKAISANG MANGGAGAWA NG CENTRO STEEL CORPORATION-SOLIDARITY OF UNIONS IN THE PHILIPPINES FOR EMPOWERMENT AND REFORMS (NMCSC-SUPER),** *respondents*.

SYLLABUS

1. CIVIL LAW; PERSONS; CIVIL PERSONALITY OF THE UNBORN CHILD NEED NOT BE ESTABLISHED WHERE HIS JURIDICAL CAPACITY AND CAPACITY TO ACT AS A PERSON ARE NOT IN ISSUE.— The reliance of Continental Steel on Articles 40, 41 and 42 of the Civil Code for the legal definition of *death* is misplaced. Article 40 provides that a conceived child acquires personality only when it is born, and Article 41 defines when a child is considered born. Article 42 plainly states that civil personality is extinguished by death. *First*, the issue of civil personality is not relevant herein. Articles 40, 41 and 42 of the Civil Code on natural persons, must be applied in relation to Article 37 of the same Code, the very first of the general provisions on civil personality, which reads: Art. 37. Juridical capacity, which is the fitness to be the subject of legal relations, is inherent in every natural person and is lost only through death. Capacity to act, which is the power to do acts with legal effect, is acquired and may be lost. We need not establish civil personality of the unborn child herein since his/her juridical capacity and capacity to act as a person are not in issue. It is not a question before us whether the unborn child acquired any rights or incurred any obligations prior to his/her death that were passed on to or assumed by the child's parents. The rights to bereavement leave and other death benefits in the instant case pertain directly to the parents of the unborn child upon the latter's death.

2. ID.; ID.; THE CIVIL CODE DOES NOT EXPLICITLY STATE THAT ONLY THOSE WHO HAVE ACQUIRED JURIDICAL

PERSONALITY COULD DIE.— Sections 40, 41 and 42 of the Civil Code do not provide at all a definition of *death*. Moreover, while the Civil Code expressly provides that civil personality may be extinguished by death, it does not explicitly state that only those who have acquired juridical personality could die.

3. ID.; ID.; IF THE UNBORN ALREADY HAS LIFE, THEN THE CESSATION THEREOF EVEN PRIOR TO THE CHILD BEING DELIVERED, QUALIFIES AS DEATH.— [*D*]*eath* has been defined as the cessation of life. Life is not synonymous with civil personality. One need not acquire civil personality first before he/she could die. Even a child inside the womb already has life. No less than the Constitution recognizes the **life of the unborn from conception**, that the State must protect equally with the life of the mother. If the unborn already has life, then the cessation thereof even prior to the child being delivered, qualifies as *death*.

4. ID.; ID.; WHERE THE COLLECTIVE BARGAINING AGREEMENT DID NOT PROVIDE A QUALIFICATION FOR THE CHILD DEPENDENT, AN UNBORN CHILD CAN BE CONSIDERED A DEPENDENT OF HIS/HER PARENTS.— Likewise, the unborn child can be considered a *dependent* under the CBA. As Continental Steel itself defines, a *dependent* is "one who relies on another for support; one not able to exist or sustain oneself without the power or aid of someone else." Under said general definition, even an unborn child is a *dependent* of its parents. Hortillano's child could not have reached 38-39 weeks of its gestational life without depending upon its mother, Hortillano's wife, for sustenance. Additionally, it is explicit in the CBA provisions in question that the *dependent* may be the parent, spouse, or *child* of a married employee; or the parent, brother, or sister of a single employee. The CBA did not provide a qualification for the *child dependent*, such that the child must have been born or must have acquired civil personality, as Continental Steel avers. Without such qualification, then *child* shall be understood in its more general sense, which includes the unborn fetus in the mother's womb.

5. ID.; ID.; THE LEGITIMACY OR ILLEGITIMACY OF A CHILD ATTACHES UPON HIS CONCEPTION.— The term

legitimate merely addresses the dependent child's status in relation to his/her parents. In *Angeles v. Maglaya*, we have expounded on who is a legitimate child, *viz*: A legitimate child is a product of, and, therefore, implies a valid and lawful marriage. Remove the element of lawful union and there is strictly no legitimate filiation between parents and child. Article 164 of the Family Code cannot be more emphatic on the matter: "Children **conceived** or born during the marriage of the parents are legitimate." Conversely, in *Briones v. Miguel*, we identified an illegitimate child to be as follows: The fine distinctions among the various types of illegitimate children have been eliminated in the Family Code. Now, there are only two classes of children — legitimate (and those who, like the legally adopted, have the rights of legitimate children) and illegitimate. All children **conceived** and born outside a valid marriage are illegitimate, unless the law itself gives them legitimate status. (Emphasis ours.) It is apparent that according to the Family Code and the afore-cited jurisprudence, the legitimacy or illegitimacy of a child attaches upon his/her conception. In the present case, it was not disputed that Hortillano and his wife were validly married and that their child was conceived during said marriage, hence, making said child *legitimate* upon her conception.

6. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT; THE PROVISIONS THEREIN SHOULD BE INTERPRETED IN FAVOR OF LABOR; PROVISIONS ON BEREAVEMENT LEAVE AND OTHER DEATH BENEFITS SHOULD BE LIBERALLY INTERPRETED.— Also incontestable is the fact that Hortillano was able to comply with the fourth element entitling him to death and accident insurance under the CBA, *i.e.*, presentation of the death certificate of his unborn child. Given the existence of all the requisites for bereavement leave and other death benefits under the CBA, Hortillano's claims for the same should have been granted by Continental Steel. We emphasize that bereavement leave and other death benefits are granted to an employee to give aid to, and if possible, lessen the grief of, the said employee and his family who suffered the loss of a loved one. It cannot be said that the parents' grief and sense of loss arising from the death of their unborn child, who, in this case, had a gestational life of 38-39 weeks

but died during delivery, is any less than that of parents whose child was born alive but died subsequently. Being for the benefit of the employee, CBA provisions on bereavement leave and other death benefits should be interpreted liberally to give life to the intentions thereof. Time and again, the Labor Code is specific in enunciating that in case of doubt in the interpretation of any law or provision affecting labor, such should be interpreted in favor of labor. In the same way, the CBA and CBA provisions should be interpreted in favor of labor.

APPEARANCES OF COUNSEL

Gerardo B. Collado for petitioner.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is a Petition for Review on *Certiorari*, under Rule 45 of the Rules of Court, assailing the Decision[1] dated 27 February 2008 and the Resolution[2] dated 9 May 2008 of the Court of Appeals in CA-G.R. SP No. 101697, affirming the Resolution[3] dated 20 November 2007 of respondent Accredited Voluntary Arbitrator Atty. Allan S. Montaño (Montaño) granting bereavement leave and other death benefits to Rolando P. Hortillano (Hortillano), grounded on the death of his unborn child.

The antecedent facts of the case are as follows:

Hortillano, an employee of petitioner Continental Steel Manufacturing Corporation (Continental Steel) and a member of respondent Nagkakaisang Manggagawa ng Centro Steel Corporation-Solidarity of Trade Unions in the Philippines for

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[1] Penned by Associate Justice Martin S. Villarama, Jr. with Associate Justices Noel G. Tijam and Sesinando E. Villon concurring; *rollo*, pp. 32-40.

[2] *Id.* at 42.

[3] Penned by Atty. Allan S. Montaño, Accredited Voluntary Arbitrator; records, pp. 381-392.

Empowerment and Reforms (Union) filed on 9 January 2006, a claim for Paternity Leave, Bereavement Leave and Death and Accident Insurance for dependent, pursuant to the Collective Bargaining Agreement (CBA) concluded between Continental and the Union, which reads:

ARTICLE X: LEAVE OF ABSENCE

x x x x x x x x x

Section 2. BEREAVEMENT LEAVE—The Company agrees to grant a bereavement leave with pay to any employee in case of death of the employee's legitimate dependent (parents, spouse, children, brothers and sisters) based on the following:

2.1 Within Metro Manila up to Marilao, Bulacan - 7 days

2.2 Provincial/Outside Metro Manila - 11 days

x x x x x x x x x

ARTICLE XVIII: OTHER BENEFITS

x x x x x x x x x

Section 4. DEATH AND ACCIDENT INSURANCE—The Company shall grant death and accidental insurance to the employee or his family in the following manner:

x x x x x x x x x

4.3 DEPENDENTS—Eleven Thousand Five Hundred Fifty Pesos (Php11,550.00) in case of death of the employees legitimate dependents (parents, spouse, and children). In case the employee is single, this benefit covers the legitimate parents, brothers and sisters only with proper legal document to be presented (*e.g.* death certificate).[4]

The claim was based on the death of Hortillano's unborn child. Hortillano's wife, Marife V. Hortillano, had a premature delivery on 5 January 2006 while she was in the 38th week of pregnancy.[5] According to the Certificate of Fetal Death dated 7 January 2006, the female fetus died during labor due to fetal

[4] CA *rollo,* p. 26.

[5] *Rollo,* pp. 84-92.

Anoxia secondary to uteroplacental insufficiency.[6]

Continental Steel immediately granted Hortillano's claim for paternity leave but denied his claims for bereavement leave and other death benefits, consisting of the death and accident insurance.[7]

Seeking the reversal of the denial by Continental Steel of Hortillano's claims for bereavement and other death benefits, the Union resorted to the grievance machinery provided in the CBA. Despite the series of conferences held, the parties still failed to settle their dispute,[8] prompting the Union to file a Notice to Arbitrate before the National Conciliation and Mediation Board (NCMB) of the Department of Labor and Employment (DOLE), National Capital Region (NCR).[9] In a Submission Agreement dated 9 October 2006, the Union and Continental Steel submitted for voluntary arbitration the sole issue of whether Hortillano was entitled to bereavement leave and other death benefits pursuant to Article X, Section 2 and Article XVIII, Section 4.3 of the CBA.[10] The parties mutually chose Atty. Montaño, an Accredited Voluntary Arbitrator, to resolve said issue.[11]

When the preliminary conferences again proved futile in amicably settling the dispute, the parties proceeded to submit their respective Position Papers,[12] Replies,[13] and Rejoinders[14] to Atty. Montaño.

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[6] *Id.* at 93.

[7] *Id.* at 86.

[8] *Id.* at 33.

[9] CA *rollo*, p. 60.

[10] *Id.* at 67.

[11] *Id.* at 46.

[12] *Id.* at 25.

[13] *Id.* at 62-65.

[14] *Id.* at 66-72.

The Union argued that Hortillano was entitled to bereavement leave and other death benefits pursuant to the CBA. The Union maintained that Article X, Section 2 and Article XVIII, Section 4.3 of the CBA did not specifically state that the **dependent** should have first been born alive or must have acquired juridical personality so that his/her subsequent death could be covered by the CBA death benefits. The Union cited cases wherein employees of MKK Steel Corporation (MKK Steel) and Mayer Steel Pipe Corporation (Mayer Steel), sister companies of Continental Steel, in similar situations as Hortillano were able to receive death benefits under similar provisions of their CBAs.

The Union mentioned in particular the case of Steve L. Dugan (Dugan), an employee of Mayer Steel, whose wife also prematurely delivered a fetus, which had already died prior to the delivery. Dugan was able to receive paternity leave, bereavement leave, and voluntary contribution under the CBA between his union and Mayer Steel.[15] Dugan's child was only 24 weeks in the womb and died before labor, as opposed to Hortillano's child who was already 37-38 weeks in the womb and only died during labor.

The Union called attention to the fact that MKK Steel and Mayer Steel are located in the same compound as Continental Steel; and the representatives of MKK Steel and Mayer Steel who signed the CBA with their respective employees' unions were the same as the representatives of Continental Steel who signed the existing CBA with the Union.

Finally, the Union invoked Article 1702 of the Civil Code, which provides that all doubts in labor legislations and labor contracts shall be construed in favor of the safety of and decent living for the laborer.

On the other hand, Continental Steel posited that the express provision of the CBA did not contemplate the death of an unborn child, a fetus, without legal personality. It claimed that there are two elements for the entitlement to the benefits, namely:

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[15] Records, pp. 46-53.

(1) *death* and (2) status as legitimate *dependent*, none of which existed in Hortillano's case. Continental Steel, relying on Articles 40, 41 and 42[16] of the Civil Code, contended that only one with civil personality could die. Hence, the unborn child never died because it never acquired juridical personality. Proceeding from the same line of thought, Continental Steel reasoned that a fetus that was dead from the moment of delivery was not a person at all. Hence, the term *dependent* could not be applied to a fetus that never acquired juridical personality. A fetus that was delivered dead could not be considered a *dependent*, since it never needed any support, nor did it ever acquire the right to be supported.

Continental Steel maintained that the wording of the CBA was clear and unambiguous. Since neither of the parties qualified the terms used in the CBA, the legally accepted definitions thereof were deemed automatically accepted by both parties. The failure of the Union to have *unborn child* included in the definition of *dependent*, as used in the CBA – the death of whom would have qualified the parent-employee for bereavement leave and other death benefits – bound the Union to the legally accepted definition of the latter term.

Continental Steel, lastly, averred that similar cases involving the employees of its sister companies, MKK Steel and Mayer Steel, referred to by the Union, were irrelevant and incompetent evidence, given the separate and distinct personalities of the companies. Neither could the Union sustain its claim that the

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[16] Article 40. Birth determines personality; but the conceived child shall be considered born for all purposes that are favorable to it, provided it be born later with the conditions specified in the following article.

Article 41. For civil purposes, the foetus is considered born if it is alive at the time it is completely delivered from the mother's womb. However, if the foetus had an intra-uterine life of less than seven months, it is not deemed born if it dies within twenty-four hours after its complete delivery from the maternal womb.

Article 42. Civil personality is extinguished by death. The effect of death upon the rights and obligations of the deceased is determined by law, by contract and by will.

grant of bereavement leave and other death benefits to the parent-employee for the loss of an unborn child constituted "company practice."

On 20 November 2007, Atty. Montaño, the appointed Accredited Voluntary Arbitrator, issued a Resolution[17] ruling that Hortillano was entitled to bereavement leave with pay and death benefits.

Atty. Montaño identified the elements for entitlement to said benefits, thus:

> This Office declares that for the entitlement of the benefit of bereavement leave with pay by the covered employees as provided under Article X, Section 2 of the parties' CBA, three (3) indispensable elements must be present: (1) there is "death"; (2) such death must be of employee's "dependent"; and (3) such dependent must be "legitimate."
>
> On the otherhand, for the entitlement to benefit for death and accident insurance as provided under Article XVIII, Section 4, paragraph (4.3) of the parties' CBA, four (4) indispensable elements must be present: (a) there is "death"; (b) such death must be of employee's "dependent"; (c) such dependent must be "legitimate"; and (d) proper legal document to be presented.[18]

Atty. Montaño found that there was no dispute that the death of an employee's legitimate dependent occurred. The fetus had the right to be supported by the parents from the very moment he/she was conceived. The fetus had to rely on another for support; he/she could not have existed or sustained himself/herself without the power or aid of someone else, specifically, his/her mother. Therefore, the fetus was already a dependent, although he/she died during the labor or delivery. There was also no question that Hortillano and his wife were lawfully married, making their dependent, unborn child, legitimate.

In the end, Atty. Montaño decreed:

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[17] CA *rollo*, pp. 24-34.

[18] *Id.* at 32.

WHEREFORE, premises considered, a resolution is hereby rendered ORDERING [herein petitioner Continental Steel] to pay Rolando P. Hortillano the amount of Four Thousand Nine Hundred Thirty-Nine Pesos (₱4,939.00), representing his bereavement leave pay and the amount of Eleven Thousand Five Hundred Fifty Pesos (₱11,550.00) representing death benefits, or a total amount of ₱16,489.00

The complaint against Manuel Sy, however, is ORDERED DISMISSED for lack of merit.

All other claims are DISMISSED for lack of merit.

Further, parties are hereby ORDERED to faithfully abide with the herein dispositions.

Aggrieved, Continental Steel filed with the Court of Appeals a Petition for Review on *Certiorari*,[19] under Section 1, Rule 43 of the Rules of Court, docketed as CA-G.R. SP No. 101697.

Continental Steel claimed that Atty. Montaño erred in granting Hortillano's claims for bereavement leave with pay and other death benefits because no *death* of an employee's *dependent* had occurred. The death of a fetus, at whatever stage of pregnancy, was excluded from the coverage of the CBA since what was contemplated by the CBA was the death of a legal person, and not that of a fetus, which did not acquire any juridical personality. Continental Steel pointed out that its contention was bolstered by the fact that the term *death* was qualified by the phrase *legitimate dependent*. It asserted that the status of a child could only be determined upon said child's birth, otherwise, no such appellation can be had. Hence, the conditions *sine qua non* for Hortillano's entitlement to bereavement leave and other death benefits under the CBA were lacking.

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[19] *Id.* at 2-18.

Art. 262-A of the Labor Code as amended in relation to Section 7, Rule XIX of Department Order No. 40-03 series of 2003 provides that the decision, order, resolution or award of the Voluntary Arbitrator shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties and that it shall not be subject of a motion for reconsideration.

The Court of Appeals, in its Decision dated 27 February 2008, affirmed Atty. Montaño's Resolution dated 20 November 2007. The appellate court interpreted *death* to mean as follows:

> [Herein petitioner Continental Steel's] exposition on the legal sense in which the term "death" is used in the CBA fails to impress the Court, and the same is irrelevant for ascertaining the purpose, which the grant of bereavement leave and death benefits thereunder, is intended to serve. While there is no arguing with [Continental Steel] that the acquisition of civil personality of a child or fetus is conditioned on being born alive upon delivery, it does not follow that such event of premature delivery of a fetus could never be contemplated as a "death" as to be covered by the CBA provision, undoubtedly an event causing loss and grief to the affected employee, with whom the dead fetus stands in a legitimate relation. [Continental Steel] has proposed a narrow and technical significance to the term "death of a legitimate dependent" as condition for granting bereavement leave and death benefits under the CBA. Following [Continental Steel's] theory, there can be no experience of "death" to speak of. The Court, however, does not share this view. A dead fetus simply cannot be equated with anything less than "loss of human life," especially for the expectant parents. In this light, bereavement leave and death benefits are meant to assuage the employee and the latter's immediate family, extend to them solace and support, rather than an act conferring legal status or personality upon the unborn child. [Continental Steel's] insistence that the certificate of fetal death is for statistical purposes only sadly misses this crucial point.[20]

Accordingly, the *fallo* of the 27 February 2008 Decision of the Court of Appeals reads:

> WHEREFORE, premises considered, the present petition is hereby DENIED for lack of merit. The assailed Resolution dated November 20, 2007 of Accredited Voluntary Arbitrator Atty. Allan S. Montaño is hereby AFFIRMED and UPHELD.
>
> With costs against [herein petitioner Continental Steel].[21]

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[20] *Rollo,* pp. 38-39.

[21] *Id.* at 39.

In a Resolution[22] dated 9 May 2008, the Court of Appeals denied the Motion for Reconsideration[23] of Continental Steel.

Hence, this Petition, in which Continental Steel persistently argues that the CBA is clear and unambiguous, so that the literal and legal meaning of *death* should be applied. Only one with juridical personality can die and a dead fetus never acquired a juridical personality.

We are not persuaded.

As Atty. Montaño identified, the elements for bereavement leave under Article X, Section 2 of the CBA are: (1) death; (2) the death must be of a dependent, *i.e.*, parent, spouse, child, brother, or sister, of an employee; and (3) legitimate relations of the dependent to the employee. The requisites for death and accident insurance under Article XVIII, Section 4(3) of the CBA are: (1) death; (2) the death must be of a dependent, who could be a parent, spouse, or child of a married employee; or a parent, brother, or sister of a single employee; and (4) presentation of the proper legal document to prove such death, *e.g.*, death certificate.

It is worthy to note that despite the repeated assertion of Continental Steel that the provisions of the CBA are clear and unambiguous, its fundamental argument for denying Hortillano's claim for bereavement leave and other death benefits rests on the purportedly proper interpretation of the terms "death" and "dependent" as used in the CBA. If the provisions of the CBA are indeed clear and unambiguous, then there is no need to resort to the interpretation or construction of the same. Moreover, Continental Steel itself admitted that neither management nor the Union sought to define the pertinent terms for bereavement leave and other death benefits during the negotiation of the CBA.

The reliance of Continental Steel on Articles 40, 41 and 42 of the Civil Code for the legal definition of *death* is misplaced.

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[22] *Id.* at 153.

[23] *Id.* at 136-143.

Article 40 provides that a conceived child acquires personality only when it is born, and Article 41 defines when a child is considered born. Article 42 plainly states that civil personality is extinguished by death.

First, the issue of civil personality is not relevant herein. Articles 40, 41 and 42 of the Civil Code on natural persons, must be applied in relation to Article 37 of the same Code, the very first of the general provisions on civil personality, which reads:

> Art. 37. Juridical capacity, which is the fitness to be the subject of legal relations, is inherent in every natural person and is lost only through death. Capacity to act, which is the power to do acts with legal effect, is acquired and may be lost.

We need not establish civil personality of the unborn child herein since his/her juridical capacity and capacity to act as a person are not in issue. It is not a question before us whether the unborn child acquired any rights or incurred any obligations prior to his/her death that were passed on to or assumed by the child's parents. The rights to bereavement leave and other death benefits in the instant case pertain directly to the parents of the unborn child upon the latter's death.

Second, Sections 40, 41 and 42 of the Civil Code do not provide at all a definition of *death*. Moreover, while the Civil Code expressly provides that civil personality may be extinguished by death, it does not explicitly state that only those who have acquired juridical personality could die.

And third, *death* has been defined as the cessation of life.[24] Life is not synonymous with civil personality. One need not acquire civil personality first before he/she could die. Even a child inside the womb already has life. No less than the Constitution recognizes the **life of the unborn from conception**,[25] that the

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[24] Black's Law Dictionary

[25] Article II, Section 12 of the Constitution reads in full:

> Sec. 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution.

State must protect equally with the life of the mother. If the unborn already has life, then the cessation thereof even prior to the child being delivered, qualifies as *death*.

Likewise, the unborn child can be considered a *dependent* under the CBA. As Continental Steel itself defines, a *dependent* is "one who relies on another for support; one not able to exist or sustain oneself without the power or aid of someone else." Under said general definition,[26] even an unborn child is a *dependent* of its parents. Hortillano's child could not have reached 38-39 weeks of its gestational life without depending upon its mother, Hortillano's wife, for sustenance. Additionally, it is explicit in the CBA provisions in question that the *dependent* may be the parent, spouse, or *child* of a married employee; or the parent, brother, or sister of a single employee. The CBA did not provide a qualification for the *child dependent*, such that the child must have been born or must have acquired civil personality, as Continental Steel avers. Without such qualification, then *child* shall be understood in its more general sense, which includes the unborn fetus in the mother's womb.

The term *legitimate* merely addresses the dependent child's status in relation to his/her parents. In *Angeles v. Maglaya*,[27] we have expounded on who is a legitimate child, *viz*:

> A legitimate child is a product of, and, therefore, implies a valid and lawful marriage. Remove the element of lawful union and there is strictly no legitimate filiation between parents and child. Article 164 of the Family Code cannot be more emphatic on the

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It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

[26] As opposed to the more limited or precise definition of a dependent child for income tax purposes, which means "a legitimate, illegitimate or legally adopted child chiefly dependent upon and living with the taxpayer if such dependent is not more than twenty-one (21) years of age, unmarried and not gainfully employed or if such dependent, regardless of age, is incapable of self-support because of mental or physical defect."

[27] G.R. No. 153798, 2 September 2005, 469 SCRA 363, 369.

matter: "Children **conceived** or born during the marriage of the parents are legitimate." (Emphasis ours.)

Conversely, in *Briones v. Miguel*,[28] we identified an illegitimate child to be as follows:

> The fine distinctions among the various types of illegitimate children have been eliminated in the Family Code. Now, there are only two classes of children — legitimate (and those who, like the legally adopted, have the rights of legitimate children) and illegitimate. All children **conceived** and born outside a valid marriage are illegitimate, unless the law itself gives them legitimate status. (Emphasis ours.)

It is apparent that according to the Family Code and the afore-cited jurisprudence, the legitimacy or illegitimacy of a child attaches upon his/her conception. In the present case, it was not disputed that Hortillano and his wife were validly married and that their child was conceived during said marriage, hence, making said child *legitimate* upon her conception.

Also incontestable is the fact that Hortillano was able to comply with the fourth element entitling him to death and accident insurance under the CBA, *i.e.*, presentation of the death certificate of his unborn child.

Given the existence of all the requisites for bereavement leave and other death benefits under the CBA, Hortillano's claims for the same should have been granted by Continental Steel.

We emphasize that bereavement leave and other death benefits are granted to an employee to give aid to, and if possible, lessen the grief of, the said employee and his family who suffered the loss of a loved one. It cannot be said that the parents' grief and sense of loss arising from the death of their unborn child, who, in this case, had a gestational life of 38-39 weeks but died during delivery, is any less than that of parents whose child was born alive but died subsequently.

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[28] 483 Phil. 483, 491 (2004).

Being for the benefit of the employee, CBA provisions on bereavement leave and other death benefits should be interpreted liberally to give life to the intentions thereof. Time and again, the Labor Code is specific in enunciating that in case of doubt in the interpretation of any law or provision affecting labor, such should be interpreted in favor of labor.[29] In the same way, the CBA and CBA provisions should be interpreted in favor of labor. In *Marcopper Mining v. National Labor Relations Commission*,[30] we pronounced:

> Finally, petitioner misinterprets the declaration of the Labor Arbiter in the assailed decision that "when the pendulum of judgment swings to and fro and the forces are equal on both sides, the same must be stilled in favor of labor." While petitioner acknowledges that all doubts in the interpretation of the Labor Code shall be resolved in favor of labor, it insists that what is involved-here is the amended CBA which is essentially a contract between private persons. What petitioner has lost sight of is the avowed policy of the State, enshrined in our Constitution, to accord utmost protection and justice to labor, a policy, we are, likewise, sworn to uphold.
>
> In *Philippine Telegraph & Telephone Corporation v. NLRC* [183 SCRA 451 (1990)], we categorically stated that:
>
> > When conflicting interests of labor and capital are to be weighed on the scales of social justice, the heavier influence of the latter should be counter-balanced by sympathy and compassion the law must accord the underprivileged worker.
>
> Likewise, in *Terminal Facilities and Services Corporation v. NLRC* [199 SCRA 265 (1991)], we declared:
>
> > Any doubt concerning the rights of labor should be resolved in its favor pursuant to the social justice policy.

IN VIEW WHEREOF, the Petition is *DENIED*. The Decision dated 27 February 2008 and Resolution dated 9 May 2008 of the Court of Appeals in CA-G.R. SP No. 101697, affirming the

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[29] *Faculty Association of Mapua Institute of Technology (FAMIT) v. Court of Appeals*, G.R. No. 164060, 15 June 2007, 524 SCRA 709, 716.

[30] 325 Phil. 618, 634-635 (1996).

Resolution dated 20 November 2007 of Accredited Voluntary Arbitrator Atty. Allan S. Montaño, which granted to Rolando P. Hortillano bereavement leave pay and other death benefits in the amounts of Four Thousand Nine Hundred Thirty-Nine Pesos (₱4,939.00) and Eleven Thousand Five Hundred Fifty Pesos (₱11,550.00), respectively, grounded on the death of his unborn child, are *AFFIRMED*. Costs against Continental Steel Manufacturing Corporation.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 183619. October 13, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **SALVINO SUMINGWA,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MERE RETRACTION BY A PROSECUTION WITNESSES DOES NOT NECESSARILY VITIATE HER ORIGINAL TESTIMONY.— In rape cases particularly, the conviction or acquittal of the accused most often depends almost entirely on the credibility of the complainant's testimony. By the very nature of this crime, it is generally unwitnessed and usually the victim is left to testify for herself. When a rape victim's testimony is straightforward and marked with consistency despite grueling examination, it deserves full faith and confidence and cannot be discarded. If such testimony is clear, consistent and credible to establish the crime beyond reasonable doubt, a conviction may be based on it,

notwithstanding its subsequent retraction. Mere retraction by a prosecution witness does not necessarily vitiate her original testimony.

2. ID.; ID.; ID.; RETRACTION; LOOKED UPON WITH DISFAVOR; REASONS.— A retraction is looked upon with considerable disfavor by the courts. It is exceedingly unreliable for there is always the probability that such recantation may later on be repudiated. It can easily be obtained from witnesses through intimidation or monetary consideration. Like any other testimony, it is subject to the test of credibility based on the relevant circumstances and, especially, on the demeanor of the witness on the stand. As correctly held by the CA, AAA's testimony is credible notwithstanding her subsequent retraction.

3. CRIMINAL LAW; RAPE; VIOLENCE AND INTIMIDATION; IN RAPE COMMITTED BY A FATHER AGAINST HIS OWN DAUGHTER, THE FORMER'S MORAL ASCENDANCY AND INFLUENCE OVER THE LATTER MAY SUBSTITUTE FOR ACTUAL PHYSICAL VIOLENCE AND INTIMIDATION.— It is noteworthy that appellant pulled AAA's leg, so that he could insert his penis into her vagina. This adequately shows that appellant employed force in order to accomplish his purpose. Moreover, in rape committed by a father against his own daughter, the former's moral ascendancy and influence over the latter may substitute for actual physical violence and intimidation. The moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires, and no further proof need be shown to prove lack of the victim's consent to her own defilement.

4. ID.; ID.; WHEN A RAPE VICTIM'S ACCOUNT IS STRAIGHTFORWARD AND CANDID, AND IS CORROBORATED BY THE MEDICAL FINDINGS OF THE EXAMINING PHYSICIAN, THE SAME IS SUFFICIENT TO SUPPORT A CONVICTION FOR RAPE.— While appellant's conviction was primarily based on the prosecution's testimonial evidence, the same was corroborated by physical evidence consisting of the medical findings of the medico-legal officer that there were hymenal lacerations. When a rape victim's account is straightforward and candid, and is corroborated by the medical findings of the examining physician, the same is sufficient to support a conviction for rape.

5. ID.; QUALIFIED RAPE; QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP ESTABLISHED IN CASE AT BAR; IMPOSABLE PENALTY.— Aside from the fact of commission of rape, the prosecution likewise established that appellant is the biological father of AAA and that the latter was then fifteen (15) years old. Thus, the CA aptly convicted him of qualified rape, defined and penalized by Article 266-B of the RPC, *viz.*: ART. 266-B. *Penalties*. — 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/qualifying 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. In view of the effectivity of Republic Act (R.A.) 9346, appellant was correctly meted the penalty of *reclusion perpetua*, without eligibility for parole.

6. ID.; ID.; CIVIL LIABILITIES OF APPELLANT.— As to damages, appellant should pay AAA ₱75,000.00 as civil indemnity, which is awarded if the crime is qualified by circumstances that warrant the imposition of the death penalty. In light of prevailing jurisprudence, we increase the award of moral damages from ₱50,000.00 to ₱75,000.00. Further, the award of exemplary damages in the amount of ₱30,000.00 is authorized due to the presence of the qualifying circumstances of minority and relationship.

7. ID.; REPUBLIC ACT 7610; ARTICLE III, SECTION 5 (B) THEREOF; ELEMENTS OF SEXUAL ABUSE.— In Criminal Case Nos. 1649 and 1654, although appellant was charged with qualified rape allegedly committed on the second week of November 2000 and May 27, 2001, he should be convicted with Acts of Lasciviousness committed against a child under Section 5(b), Article III of R.A. 7610, which reads: SEC. 5. *Child Prostitution and Other Sexual Abuse.* — x x x The elements of sexual abuse under the above provision are as follows: 1. The accused commits the act of sexual intercourse or *lascivious conduct.* 2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse. 3. The child, whether male or female, is below 18 years of age.

8. ID.; ID.; SECTION 2(G) AND (B) OF THE RULES AND REGULATIONS ON THE REPORTING AND INVESTIGATION OF CHILD ABUSE CASES; TERMS "SEXUAL ABUSE" AND "LASCIVIOUS CONDUCT," DEFINED; VARIANCE DOCTRINE APPLIED TO CASE AT BAR.— AAA testified that in November 2000, while she and appellant were inside the bedroom, he went on top of her and rubbed his penis against her vaginal orifice until he ejaculated. She likewise stated in open court that on May 27, 2001, while inside their comfort room, appellant rubbed his penis against her vagina while they were in a standing position. In both instances, there was no penetration, or even an attempt to insert his penis into her vagina. The aforesaid acts of the appellant are covered by the definitions of "sexual abuse" and "lascivious conduct" under Section 2(g) and (h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases promulgated to implement the provisions of R.A. 7610: (g) **"Sexual abuse"** includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children; (h) **"Lascivious conduct"** means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or public area of a person. Following the "variance doctrine" embodied in Section 4, in relation to Section 5, Rule 120 of the Rules of Criminal Procedure, appellant can be found guilty of the lesser crime of Acts of Lasciviousness committed against a child.

9. ID.; ACTS OF LASCIVIOUSNESS; RELATIONSHIP IS ALWAYS AGGRAVATING; IMPOSABLE PENALTY.— As the crime was committed by the father of the offended party, the alternative circumstance of relationship should be appreciated. In crimes against chastity, such as Acts of Lasciviousness, relationship is always aggravating. Section 5(b) of R.A. 7610 prescribes the penalty of *reclusion temporal* in

its medium period to *reclusion perpetua*. Since there is an aggravating circumstance and no mitigating circumstance, the penalty shall be applied in its maximum period — *reclusion perpetua* for each count.

10. ID.; ID.; CIVIL LIABILITY OF APPELLANT.— Consistent with previous rulings of the Court, appellant must also indemnify AAA in the amount of ₱15,000.00 as moral damages and pay a fine in the same amount in Criminal Case Nos. 1649 and 1654.

11. ID.; ID.; APPELLANT FOUND GUILTY THEREOF IN CASE AT BAR.— Appellant is likewise guilty of two (2) counts of Acts of Lasciviousness under Section 5(b), Article III, R.A. 7610 committed against AAA on the second week of August 1999 and on the first week of September 1999. AAA testified that in August, appellant, with lewd design, inserted his hands inside her shirt then fondled her breasts; and in September, he forced her to hold his penis until he ejaculated.

12. REMEDIAL LAW; EVIDENCE; DEFENSE OF DENIAL AND ALIBI; MERE DENIAL OF ONE'S INVOLVEMENT IN A CRIME CANNOT TAKE PRECEDENCE OVER THE POSITIVE TESTIMONY OF THE OFFENDED PARTY.— The trial and the appellate courts were correct in giving credence to the victim's testimony, in dismissing appellant's defense of denial and alibi, and in disbelieving that AAA initiated the criminal cases only upon the prodding of the latter's grandmother. Settled jurisprudence tells us that the mere denial of one's involvement in a crime cannot take precedence over the positive testimony of the offended party.

13. ID.; CRIMINAL PROCEDURE; INFORMATION; FAILURE TO DESIGNATE THE OFFENSE BY STATUTE OR TO MENTION THE SPECIFIC PROVISION PENALIZING THE ACT, OR AN ERRONEOUS SPECIFICATION OF THE LAW VIOLATED, DOES NOT VITIATE THE INFORMATION IF THE FACTS ALLEGED CLEARLY RECITE THE FACTS CONSTITUTING THE CRIME CHARGED.— We are not unmindful of the fact that appellant was specifically charged in an Information for Acts of Lasciviousness defined and penalized by Article 336 of the RPC. However, the failure to designate the offense by statute, or to mention the specific provision penalizing the act, or an

erroneous specification of the law violated, does not vitiate the information if the facts alleged clearly recite the facts constituting the crime charged. The character of the crime is not determined by the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, but by the recital of the ultimate facts and circumstances in the complaint or information. In the present case, the body of the information contains an averment of the acts alleged to have been committed by appellant which unmistakably refers to acts punishable under Section 5(b), Article III, R.A. 7610. Appellant should, therefore, be meted the same penalties and be made to answer for damages as in Criminal Case Nos. 1649 and 1654.

14. CRIMINAL LAW; ATTEMPTED FELONY; ELEMENTS.— A careful review of the records reveals, though, that the evidence is insufficient to support appellant's conviction of Attempted Rape. Rape is attempted when the offender commences the commission of rape directly by overt acts and does not perform all the acts of execution by reason of some cause or accident other than his own spontaneous desistance. The prosecution must, therefore, establish the following elements of an attempted felony: 1. The offender commences the commission of the felony directly by overt acts; 2. He does not perform all the acts of execution which should produce the felony; 3. The offender's act be not stopped by his own spontaneous desistance; 4. The non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance.

15. ID.; ID.; OVERT OR EXTERNAL ACT, DEFINED; ACT OF REMOVING THE VICTIM'S PANTS DOES NOT CONSTITUTE AN OVERT ACT OF RAPE.— *Overt* or *external act* has been defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the voluntary desistance of the perpetrator, will logically and necessarily ripen into a concrete offense. The evidence on record does not show that the above elements are present. The detailed acts of execution showing an attempt to rape are simply lacking. It would be too strained to construe appellant's act of removing AAA's pants as an overt act that will logically and necessarily ripen

into rape. Hence, appellant must be acquitted of Attempted Rape.

16. REMEDIAL LAW; CRIMINAL PROCEDURE; DEMURRER TO EVIDENCE; GRANT THEREOF IS A RESOLUTION OF THE CASE ON THE MERITS AND AMOUNTS TO AN ACQUITTAL.— Neither can we hold appellant liable for Other Light Threats for threatening AAA with a bolo; for Unjust Vexation for undressing her without her consent, causing disturbance, torment, distress, and vexation; nor for Maltreatment for boxing the right side of AAA's buttocks. Although all of the above acts were alleged in the Information for Attempted Rape in the Order dated September 24, 2004, Criminal Case Nos. 1650, 1652 and 1653 involving the above crimes were dismissed for insufficiency of evidence based on the demurrer to evidence filed by appellant. The order granting appellant's demurrer to evidence was a resolution of the case on the merits, and it amounted to an acquittal. Any further prosecution of the accused after an acquittal would violate the proscription on double jeopardy. Accordingly, appellant's conviction of any of the above crimes, even under Criminal Case No. 1651, would trench in his constitutional right against double jeopardy.

17. CRIMINAL LAW; UNJUST VEXATION; ELEMENTS; IMPOSABLE PENALTY.— Appellant was charged with Unjust Vexation, defined and penalized by Article 287 of the RPC xxx. The second paragraph of this provision is broad enough to include any human conduct that, although not productive of some physical or material harm, could unjustifiably annoy or vex an innocent person. The paramount question to be considered is whether the offender's act caused annoyance, irritation, torment, distress, or disturbance to the mind of the person to whom it was directed. Appellant's acts of embracing, dragging and kissing AAA in front of her friend annoyed AAA. The filing of the case against appellant proved that AAA was disturbed, if not distressed by the acts of appellant. The penalty for coercion falling under the second paragraph of Article 287 of the RPC is *arresto menor* or a fine ranging from ₱5.00 to ₱200.00 or both. Accordingly, appellant is sentenced to 30 days of *arresto menor* and to pay a fine of ₱200.00, with the accessory penalties thereof.

APPEARANCES OF COUNSEL

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

D E C I S I O N

NACHURA, *J.*:

On appeal before us is the January 31, 2008 Court of Appeals (CA) Decision[1] in CA-G.R. CR No. 30045 affirming with modification the February 14, 2006 Regional Trial Court[2] (RTC) Consolidated Judgment[3] against appellant Salvino Sumingwa in Criminal Case Nos. 1644 and 1645 for *Acts of Lasciviousness*; 1646, 1649 and 1654 for *Rape*; 1651 for *Attempted Rape*; and 1655 for *Unjust Vexation*. Assailed also is the June 5, 2008 CA Resolution[4] denying appellant's motion for reconsideration.

In twelve Informations, the prosecution charged appellant with two (2) counts of Acts of Lasciviousness,[5] four (4) counts of Rape,[6] three (3) counts of Unjust Vexation,[7] one (1) count of Other Light Threats,[8] one (1) count of Maltreatment,[9] and one (1) count of Attempted Rape[10] for acts committed against his minor[11] daughter AAA from 1999-2001.

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[1] Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Jose Catral Mendoza and Jose C. Reyes, Jr., concurring; *rollo*, pp. 2-38.

[2] Branch 35, Bontoc Mountain Province.

[3] Penned by Pairing Judge Artemio B. Marrero; CA *rollo*, pp. 59-74.

[4] *Rollo*, pp. 42-44.

[5] Docketed as Criminal Case Nos. 1644 and 1645.

[6] Docketed as Criminal Case Nos. 1646, 1647, 1649 and 1654.

[7] Docketed as Criminal Case Nos. 1648, 1652 and 1655.

[8] Docketed as Criminal Case No. 1650.

[9] Docketed as Criminal Case No. 1653.

[10] Docketed as Criminal Case No. 1651.

[11] The acts complained of were committed when the victim was 15 and 16 years old.

Appellant pleaded "not guilty" to all the charges. On September 24, 2004, the RTC dismissed[12] Criminal Case Nos. 1647 for Rape; 1648 for Unjust Vexation; 1650 for Other Light Threats; 1652 for Unjust Vexation; and 1653 for Maltreatment, on the basis of the Demurrer to Evidence[13] filed by appellant.

Sometime in August 1999, between 8:00 and 10:00 in the morning, AAA, together with her brothers and her father, appellant herein, was in their residence in Mountain Province, watching television. Appellant called AAA and ordered her to sit in front of him. As she was sitting, appellant told her that it was not good for a girl to have small breasts. Suddenly, he inserted his hands into AAA's shirt then fondled her breast. AAA resisted by moving her hands backwards.[14]

One afternoon in September 1999, AAA's mother and brothers went to school leaving AAA and appellant in their house. While in the master's bedroom, appellant ordered AAA to join him inside. There, appellant removed his undergarments then forced her to grasp and fondle his penis until he ejaculated. Appellant thereafter told her not to be malicious about it.[15]

The same incident took place in August 2000. This time, appellant forced AAA to lie down on the bed, went on top of her, removed her short pants and panty, then rubbed his penis against her vaginal orifice. AAA resisted by crossing her legs but appellant lifted her right leg and partially inserted his penis into her vagina. As she struggled, appellant stood up then ejaculated. AAA felt numbness on her buttocks after the bestial act committed against her.[16]

Appellant repeated his dastardly act against AAA on separate occasions in September and November 2000. During these times, appellant satisfied himself by rubbing his penis against AAA's

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[12] Records (Criminal Case No. 1644), pp. 156-158.

[13] *Id.* at 141-148.

[14] TSN, December 10, 2003, pp. 4-6.

[15] *Id.* at 6-8.

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

vagina without trying to penetrate it. After reaching the top of his lust, he used AAA's short pants to wipe his mess. Instead of keeping her harrowing experience to herself, AAA narrated it to her best friend.[17]

On November 24, 2000, appellant approached AAA and told her that he wanted to have sex with her. When she refused, appellant forcibly removed her pants and boxed her right buttock. AAA still refused, which angered appellant. He then went to the kitchen and returned with a bolo which he used in threatening her. Luckily, AAA's grandmother arrived, prompting appellant to desist from his beastly desires.[18]

On December 20, 2000, AAA and her best friend were doing their school work in front of the former's house. When appellant arrived, he embraced AAA. He, thereafter, pulled her inside the house and kissed her on the lips.[19]

The last incident occurred inside the comfort room of their house on May 27, 2001. When AAA entered, appellant pulled down her short pants and panty, unzipped his trousers, brought out his penis, then repeatedly rubbed it on her vagina while they were in a standing position.[20]

AAA decided to report the sexual abuses to her grandmother who forthwith brought her to the National Bureau of Investigation where she was examined by the medico-legal officer. It was found during the examination that there were no extragenital physical injuries on AAA's body but there were old, healed, and incomplete hymenal lacerations.[21]

Appellant denied all the accusations against him. He claimed that in August and September 1999, he was at the house of his mistress in Antipolo City. He also explained that in August

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[17] *Id.* at 11-12.

[18] *Id.* at 12-13.

[19] *Id.* at 14.

[20] *Id.* at 14-15.

[21] Records (Criminal Case No. 1644), p. 20.

2000, he stayed in Baguio City and worked there as a karate instructor. He added that he only went home in September 2000 but left again in October for Quirino, Ilocos Sur where he stayed for three weeks. When he went back home, his wife informed him that AAA had not been coming home. Thereafter, appellant went to Baguio City to buy medicine for his wife, then returned home again on the third week of December 2000. While there, he was confronted by his wife about his womanizing. His wife got mad and refused to forgive him despite his repeated pleas. Consequently, he became furious and almost choked his wife to death when she ignored and refused to talk to him. This prompted him to leave and go back to Baguio.[22]

Sometime in April 2001, appellant went back home to reconcile with his wife. While talking to his wife and the latter's family, his mother-in-law berated him and demanded his separation from his wife. Appellant got mad and threatened to kill his wife's family. His mother-in-law, in turn, threatened to file charges against him.[23]

To belie the claim of AAA that she was sexually abused in August, November and December 2000, allegedly during school hours, her teacher testified that the former was not absent in class during those times.[24]

On November 24, 2004, AAA executed an Affidavit of Recantation[25] claiming that while appellant indeed committed lascivious acts against her, she exaggerated her accusations against him. She explained that appellant did not actually rape her, as there was no penetration. She added that she charged appellant with such crimes only upon the prodding of her mother and maternal grandmother.

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[22] *Rollo*, pp. 10-11.

[23] *Id.* at 11.

[24] *Id*.

[25] Records (Criminal Case No. 1644), p. 206.

On February 14, 2006, the RTC rendered a decision convicting appellant of six (6) counts of acts of lasciviousness,[26] one (1) count of attempted rape[27] and one (1) count of unjust vexation,[28] the dispositive portion of which reads:

> WHEREFORE, a Consolidated Judgment is hereby rendered sentencing Salvino Sumingwa to suffer —
>
> 1. The penalty of six (6) months of [*arresto mayor*] as minimum to six (6) years of [*prision correccional*] as maximum; and ordering him to pay the offended party ₱10,000.00 [as] indemnity [*ex-delicto*], ₱10,000.00 as moral damages and ₱5,000.00 as exemplary damages for each count of Acts of Lasciviousness charged in Crim. Cases 1644, 1645, 1646, 1649 and 1654;
>
> 2. The penalty of six (6) years of [*prision correccional*] as minimum to twelve (12) years of [*prision mayor*] as maximum; and ordering said offender to pay the victim ₱15,000.00 as indemnity [*ex-delicto*], ₱15,000.00 as moral damages and ₱10,000.00 as exemplary damages in Crim. Case 1651 for Attempted Rape; and
>
> 3. The penalty of thirty (30) days of [*arresto menor*] and fine of ₱200.00 for Unjust Vexation in Crim. Case 1655.
>
> SO ORDERED.[29]

The trial court gave credence to AAA's testimonies on the alleged lascivious acts committed against her. In view of the withdrawal of her earlier claim of the fact of penetration, the court sustained the innocence of appellant on the rape charges and concluded that the crime committed was only Acts of Lasciviousness.

In Criminal Case No. 1651, the RTC found that appellant committed all the acts of execution of the crime of Rape, but failed to consummate it because of the arrival of AAA's grandmother. Hence, he was convicted of attempted rape. In

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[26] In Criminal Cases No. 1644, 1645, 1646, 1649, and 1654.

[27] In Criminal Case No. 1651.

[28] In Criminal Case No. 1655.

[29] CA *rollo,* p. 73.

embracing and kissing AAA in full view of the latter's best friend, appellant was convicted of Unjust Vexation.

On appeal, the CA affirmed the conviction of appellant, except that in Criminal Case No. 1646; it convicted him of Qualified Rape instead of Acts of Lasciviousness. The pertinent portion of the assailed decision reads:

> WHEREFORE, premises considered, herein appeal is hereby **DISMISSED** for evident lack of merit and the assailed Consolidated Judgment dated 14 February 2006 is hereby **AFFIRMED with the following MODIFICATION**:
>
> 1. The Appellant SALVINO SUMINGWA is hereby convicted of the crime of **QUALIFIED RAPE** in **Criminal Case No. 1646** and the penalty of ***RECLUSION PERPETUA*** is hereby imposed upon him. The Appellant is likewise ordered to pay the Victim, [AAA], civil indemnity in the amount of Php75,000.00 as well as moral damages in the amount of Php50,000.00, in conformity with prevailing jurisprudence.
> 2. In **Criminal Case No. 1651** for Attempted Rape, the Appellant, is hereby ordered to indemnify the victim [AAA] in the sum of ₱30,000.00 as civil indemnity, plus the sum of ₱25,000.00 as moral damages.
>
> SO ORDERED.[30]

The appellate court concluded that, notwithstanding AAA's retraction of her previous testimonies, the prosecution sufficiently established the commission of the crime of Rape. It added that the qualifying circumstances of minority and relationship were adequately proven.

Hence, this appeal.

First, in light of the recantation of AAA, appellant questions the credibility of the prosecution witnesses and insists that his constitutional right to be presumed innocent be applied.[31] Second, he argues that in Criminal Case No. 1651 for Attempted Rape,

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[30] *Rollo*, pp. 37-38.

[31] *Id.* at 56.

he should only be convicted of Acts of Lasciviousness, there being no overt act showing the intent to have sexual intercourse.[32] Lastly, he insists that he could not be convicted of all the charges against him for failure of the prosecution to show that he employed force, violence or intimidation against AAA; neither did the latter offer resistance to appellant's advances.[33]

In rape cases particularly, the conviction or acquittal of the accused most often depends almost entirely on the credibility of the complainant's testimony. By the very nature of this crime, it is generally unwitnessed and usually the victim is left to testify for herself. When a rape victim's testimony is straightforward and marked with consistency despite grueling examination, it deserves full faith and confidence and cannot be discarded.[34] If such testimony is clear, consistent and credible to establish the crime beyond reasonable doubt, a conviction may be based on it, notwithstanding its subsequent retraction. Mere retraction by a prosecution witness does not necessarily vitiate her original testimony.[35]

A retraction is looked upon with considerable disfavor by the courts.[36] It is exceedingly unreliable for there is always the probability that such recantation may later on be repudiated. It can easily be obtained from witnesses through intimidation or monetary consideration.[37] Like any other testimony, it is subject to the test of credibility based on the relevant circumstances and, especially, on the demeanor of the witness on the stand.[38]

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[32] *Id.* at 56-58.

[33] CA *rollo*, p. 53.

[34] *People v. Abulon*, G.R. No. 174473, August 17, 2007, 530 SCRA 675, 687-688.

[35] *People v. Deauna*, 435 Phil. 141, 163 (2002).

[36] *People v. Miñon*, G.R. Nos. 148397-400, July 7, 2004, 433 SCRA 671, 685-686.

[37] *People v. Deauna*, *supra* note 35, at 164.

[38] *People v. Miñon*, *supra* note 36, at 685-686.

As correctly held by the CA, AAA's testimony is credible notwithstanding her subsequent retraction. We quote with approval its ratiocination in this wise:

> Clearly, the retraction made by the Victim is heavily unreliable. The primordial factor that impelled the Victim to retract the rape charges against her father was her fear and concern for the welfare of her family especially her four (4) siblings. It does not go against reason or logic to conclude that a daughter, in hopes of bringing back the harmony in her family tormented by the trauma of rape, would eventually cover for the dastardly acts committed by her own father. Verily, the Victim's subsequent retraction does not negate her previous testimonies accounting her ordeal in the hands for (sic) her rapist.[39]

We now proceed to discuss the specific crimes with which appellant was charged.

Criminal Case Nos. 1646, 1649 and 1654 for Rape

The CA correctly convicted appellant of Qualified Rape in Criminal Case No. 1646, and of Acts of Lasciviousness in Criminal Case Nos. 1649 and 1654.

The crime of rape is defined in Article 266-A of the Revised Penal Code (RPC), as amended by the Anti-Rape Law of 1997, 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.

In her direct testimony, AAA stated that appellant removed her short pants and panty, went on top of her and rubbed his penis against her vaginal orifice. She resisted by crossing her legs but her effort was not enough to prevent appellant from pulling her leg and eventually inserting his penis into her vagina. Clearly, there was penetration.

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[39] *Rollo,* pp. 17-18.

It is noteworthy that appellant pulled AAA's leg, so that he could insert his penis into her vagina. This adequately shows that appellant employed force in order to accomplish his purpose. Moreover, in rape committed by a father against his own daughter, the former's moral ascendancy and influence over the latter may substitute for actual physical violence and intimidation. The moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires, and no further proof need be shown to prove lack of the victim's consent to her own defilement.[40]

While appellant's conviction was primarily based on the prosecution's testimonial evidence, the same was corroborated by physical evidence consisting of the medical findings of the medico-legal officer that there were hymenal lacerations. When a rape victim's account is straightforward and candid, and is corroborated by the medical findings of the examining physician, the same is sufficient to support a conviction for rape.[41]

Aside from the fact of commission of rape, the prosecution likewise established that appellant is the biological father of AAA and that the latter was then fifteen (15)[42] years old. Thus, the CA aptly convicted him of qualified rape, defined and penalized by Article 266-B of the RPC, *viz.*:

ART. 266-B. *Penalties*. — x x x.

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/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative

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[40] *Campos v. People*, G.R. No. 175275, February 19, 2008, 546 SCRA 334, 347-348; *People v. Balonzo*, G.R. No. 176153, September 21, 2007, 533 SCRA 760, 771.

[41] *People v. Guambor*, 465 Phil. 671 (2004).

[42] AAA was born on November 12, 1984 as shown in her Certificate of Live Birth; records (Criminal Case No. 1644), p. 138.

by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.

In view of the effectivity of Republic Act (R.A.) 9346, appellant was correctly meted the penalty of *reclusion perpetua*, without eligibility for parole.

As to damages, appellant should pay AAA ₱75,000.00 as civil indemnity, which is awarded if the crime is qualified by circumstances that warrant the imposition of the death penalty.[43] In light of prevailing jurisprudence,[44] we increase the award of moral damages from ₱50,000.00 to ₱75,000.00. Further, the award of exemplary damages in the amount of ₱30,000.00[45] is authorized due to the presence of the qualifying circumstances of minority and relationship.[46]

In Criminal Case Nos. 1649 and 1654, although appellant was charged with qualified rape allegedly committed on the second week of November 2000 and May 27, 2001, he should be convicted with Acts of Lasciviousness committed against a child under Section 5(b), Article III of R.A. 7610,[47] which reads:

SEC. 5. *Child Prostitution and Other Sexual Abuse*. — Children, whether male or female, who for money, profit, or any other consideration or *due to the coercion or influence of any adult*, syndicate or group, indulge in sexual intercourse or *lascivious conduct*, are deemed to be children exploited in prostitution and other sexual abuse.

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[43] *People v. Antonio*, G.R. No. 180920, March 27, 2008, 549 SCRA 569, 574.

[44] *People v. Bejic*, G.R. No. 174060, June 25, 2007, 525 SCRA 488; *People v. Ibañez*, G.R. No. 174656, May 11, 2007, 523 SCRA 136.

[45] *People of the Philippines v. Lilio U. Achas*, G.R. No. 185712, August 4, 2009; *People of the Philippines v. Adelado Anguac y Ragadao*, G.R. No. 176744, June 5, 2009; *The People of the Philippines v. Lorenzo Layco, Sr.*, G.R. No. 182191, May 8, 2009.

[46] *People v. Bejic*, *supra* note 44; *People v. Ibañez*, *supra* note 44, at 145.

[47] "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act."

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x x x x x x x

(b) Those who commit the act of sexual intercourse or *lascivious conduct* with a child exploited in prostitution or subjected to other sexual abuse: *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; x x x. (Italics supplied.)

The elements of sexual abuse under the above provision are as follows:

1. The accused commits the act of sexual intercourse or *lascivious conduct.*
2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.
3. The child, whether male or female, is below 18 years of age.[48]

AAA testified that in November 2000, while she and appellant were inside the bedroom, he went on top of her and rubbed his penis against her vaginal orifice until he ejaculated.[49] She likewise stated in open court that on May 27, 2001, while inside their comfort room, appellant rubbed his penis against her vagina while they were in a standing position.[50] In both instances, there was no penetration, or even an attempt to insert his penis into her vagina.

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[48] *Malto v. People*, G.R. No. 164733, September 21, 2007, 533 SCRA 643, 656; *Navarrete v. People*, G.R. No. 147913, January 31, 2007, 513 SCRA 509, 521; *Olivares v. Court of Appeals*, G.R. No. 163866, July 29, 2005, 465 SCRA 465, 473.

[49] TSN, December 10, 2003, p. 22.

[50] *Id.* at 25.

The aforesaid acts of the appellant are covered by the definitions of "sexual abuse" and "lascivious conduct" under Section 2(g) and (h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases promulgated to implement the provisions of R.A. 7610:

(g) **"Sexual abuse"** includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in**,** sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children;

(h) **"Lascivious conduct"** means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or public area of a person.

Following the "variance doctrine" embodied in Section 4, in relation to Section 5, Rule 120 of the Rules of Criminal Procedure, appellant can be found guilty of the lesser crime of Acts of Lasciviousness committed against a child. The pertinent provisions read:

SEC. 4. *Judgment in case of variance between allegation and proof.* — When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

SEC. 5. *When an offense includes or is included in another.* — An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

As the crime was committed by the father of the offended party, the alternative circumstance of relationship should be appreciated. In crimes against chastity, such as Acts of Lasciviousness, relationship is always aggravating.[51]

Section 5(b) of R.A. 7610 prescribes the penalty of *reclusion temporal* in its medium period to *reclusion perpetua*. Since there is an aggravating circumstance and no mitigating circumstance, the penalty shall be applied in its maximum period — *reclusion perpetua* for each count.[52]

Consistent with previous rulings[53] of the Court, appellant must also indemnify AAA in the amount of ₱15,000.00 as moral damages and pay a fine in the same amount in Criminal Case Nos. 1649 and 1654.

Criminal Case Nos. 1644 and 1645 for Acts of Lasciviousness

Appellant is likewise guilty of two (2) counts of Acts of Lasciviousness under Section 5(b), Article III, R.A. 7610 committed against AAA on the second week of August 1999 and on the first week of September 1999. AAA testified that in August, appellant, with lewd design, inserted his hands inside her shirt then fondled her breasts; and in September, he forced her to hold his penis until he ejaculated.

The trial and the appellate courts were correct in giving credence to the victim's testimony, in dismissing appellant's defense of denial and alibi, and in disbelieving that AAA initiated the criminal cases only upon the prodding of the latter's grandmother. Settled jurisprudence tells us that the mere denial of one's involvement in a crime cannot take precedence over the positive testimony of the offended party.[54]

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[51] *People v. Montinola*, G.R. No. 178061, January 31, 2008, 543 SCRA 412.

[52] *Id*.

[53] *Id.*; *People v. Candaza*, G.R. No. 170474, June 16, 2006, 491 SCRA 280; *Olivares v. Court of Appeals*, *supra* note 48.

[54] *People of the Philippines v. Heracleo Abello y Fortada*, G.R. No. 151952, March 25, 2009.

We are not unmindful of the fact that appellant was specifically charged in an Information for Acts of Lasciviousness defined and penalized by Article 336 of the RPC. However, the failure to designate the offense by statute, or to mention the specific provision penalizing the act, or an erroneous specification of the law violated, does not vitiate the information if the facts alleged clearly recite the facts constituting the crime charged.[55] The character of the crime is not determined by the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, but by the recital of the ultimate facts and circumstances in the complaint or information.[56]

In the present case, the body of the information contains an averment of the acts alleged to have been committed by appellant which unmistakably refers to acts punishable under Section 5(b), Article III, R.A. 7610.

Appellant should, therefore, be meted the same penalties and be made to answer for damages as in Criminal Case Nos. 1649 and 1654.

Criminal Case No. 1651 for Attempted Rape

AAA testified that on November 24, 2000, while AAA and her brothers were sleeping inside their parents' bedroom, appellant entered and asked AAA to have sex with him. When AAA refused, appellant forcibly removed her clothes and boxed her right buttock. As she still resisted, he took a bolo, which he poked at her. Appellant desisted from committing further acts because of the timely arrival of AAA's grandmother. With these, appellant was charged with Other Light Threats in Criminal Case No. 1650; Attempted Rape in Criminal Case No. 1651; Unjust Vexation in Criminal Case No. 1652; and Maltreatment in Criminal Case No. 1653.

On September 24, 2004, the RTC dismissed Criminal Case Nos. 1650, 1652 and 1653 for insufficiency of evidence. Criminal

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[55] *Malto v. People*, *supra* note 48.

[56] *Olivares v. Court of Appeals*, *supra* note 48.

Case No. 1651, among others, proceeded, however. Eventually, appellant was convicted of Attempted Rape, which the CA affirmed.

A careful review of the records reveals, though, that the evidence is insufficient to support appellant's conviction of Attempted Rape.

Rape is attempted when the offender commences the commission of rape directly by overt acts and does not perform all the acts of execution by reason of some cause or accident other than his own spontaneous desistance.[57] The prosecution must, therefore, establish the following elements of an attempted felony:

1. The offender commences the commission of the felony directly by overt acts;
2. He does not perform all the acts of execution which should produce the felony;
3. The offender's act be not stopped by his own spontaneous desistance;
4. The non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance.[58]

The attempt that the RPC punishes is that which has a logical connection to a particular, concrete offense; and that which is the beginning of the execution of the offense by overt acts of the perpetrator, leading directly to its realization and consummation.[59] In the instant case, the primary question that comes to the fore is whether or not appellant's act of removing AAA's pants constituted an overt act of Rape.

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[57] *People of the Philippines v. Catalino Mingming y Discalso*, G.R. No. 174195, December 10, 2008; *Baleros, Jr. v. People*, G.R. No. 138033, February 22, 2006, 483 SCRA 10, 27.

[58] *People of the Philippines v. Catalino Mingming y Discalso*, *supra* note 57; *People v. Lizada*, G.R. Nos. 143468-71, January 24, 2003, 396 SCRA 62, 94.

[59] *Baleros, Jr. v. People*, *supra* note 57, at 27.

We answer in the negative.

Overt or *external act* has been defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the voluntary desistance of the perpetrator, will logically and necessarily ripen into a concrete offense.[60]

The evidence on record does not show that the above elements are present. The detailed acts of execution showing an attempt to rape are simply lacking. It would be too strained to construe appellant's act of removing AAA's pants as an overt act that will logically and necessarily ripen into rape. Hence, appellant must be acquitted of Attempted Rape.

Neither can we hold appellant liable for Other Light Threats for threatening AAA with a bolo; for Unjust Vexation for undressing her without her consent, causing disturbance, torment, distress, and vexation; nor for Maltreatment for boxing the right side of AAA's buttocks. Although all of the above acts were alleged in the Information for Attempted Rape in the Order dated September 24, 2004, Criminal Case Nos. 1650, 1652 and 1653 involving the above crimes were dismissed for insufficiency of evidence based on the demurrer to evidence filed by appellant.

The order granting appellant's demurrer to evidence was a resolution of the case on the merits, and it amounted to an acquittal. Any further prosecution of the accused after an acquittal would violate the proscription on double jeopardy.[61] Accordingly, appellant's conviction of any of the above crimes, even under Criminal Case No. 1651, would trench in his constitutional right against double jeopardy.

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[60] *Baleros, Jr. v. People, id.* at 27-28; *People v. Lizada, supra* note 58, at 94.

[61] *People v. Lizada, Jr.,* G.R. No. 128587, March 16, 2007, 518 SCRA 393, 403; *People v. Sandiganbayan*, 426 Phil. 453 (2002).

Criminal Case No. 1655 for Unjust Vexation

Appellant was charged with Unjust Vexation, defined and penalized by Article 287 of the RPC, which reads:

> ART. 287. *Light coercions*. — Any person who, by means of violence, shall seize anything belonging to his debtor for the purpose of applying the same to the payment of the debt, shall suffer the penalty of *arresto mayor* in its minimum period and a fine equivalent to the value of the thing, but in no case less than 75 pesos.
>
> Any other coercion or unjust vexation shall be punished by *arresto menor* or a fine ranging from 5 to 200 pesos, or both.

The second paragraph of this provision is broad enough to include any human conduct that, although not productive of some physical or material harm, could unjustifiably annoy or vex an innocent person. The paramount question to be considered is whether the offender's act caused annoyance, irritation, torment, distress, or disturbance to the mind of the person to whom it was directed.[62]

Appellant's acts of embracing, dragging and kissing AAA in front of her friend annoyed AAA. The filing of the case against appellant proved that AAA was disturbed, if not distressed by the acts of appellant.

The penalty for coercion falling under the second paragraph of Article 287 of the RPC is *arresto menor* or a fine ranging from ₱5.00 to ₱200.00 or both. Accordingly, appellant is sentenced to 30 days of *arresto menor* and to pay a fine of ₱200.00, with the accessory penalties thereof.

WHEREFORE, the Court *AFFIRMS* the January 31, 2008 Court of Appeals Decision in CA-G.R. CR No. 30045 with *MODIFICATIONS*. The Court finds appellant Salvino Sumingwa:

1. *GUILTY* of *QUALIFIED RAPE* in Criminal Case No. 1646. He is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and ordered to pay AAA ₱75,000.00

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[62] *Maderazo v. People*, G.R. No. 165065, September 26, 2006, 503 SCRA 234, 247; *Baleros, Jr. v. People*, *supra* note 57, at 30.

as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

2. *GUILTY* of four (4) counts of *ACTS OF LASCIVIOUSNESS* under Section 5 (b) Article III of R.A. 7610 in Criminal Case Nos. 1644, 1645, 1649, and 1654. He is sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay AAA ₱15,000.00 as moral damages and a fine of ₱15,000.00, for *EACH COUNT*.

3. *NOT GUILTY* in Criminal Case No. 1651.

4. *GUILTY of UNJUST VEXATION* in Criminal Case No. 1655. He is sentenced to suffer 30 days of *arresto menor* and to pay a fine of ₱200.00, with the accessory penalties thereof.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 187074. October 13, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALLAN DEL PRADO *y* CAHUSAY,** *defendant-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NO STANDARD FORM OF HUMAN BEHAVIORAL RESPONSE WHEN CONFRONTED WITH A FRIGHTFUL EXPERIENCE.— In arguing that the prosecution failed to prove the guilt of Del Prado beyond reasonable doubt, the latter's main argument is that the testimony of Tubigan is incredible and contrary to human experience. According to Del Prado,

it is unbelievable that Hudo's friends did not lend assistance to him despite being present at the time of the incident. This Court disagrees with Del Prado's observations. There is no standard form of human behavioral response when confronted with a frightful experience. Not every witness to a crime can be expected to act reasonably and conformably with the expectations of mankind, because witnessing a crime is an unusual experience that elicit different reactions from witnesses, and for which no clear-cut, standard form of behavior can be drawn. In the case at bar, it was not even unusual for Hudo's unarmed companions to refrain from risking their lives to defend him when the assailants were brandishing a foot-long knife, a baseball bat and a 6x8-inch stone.

2. ID.; ID.; ID.; TRIAL COURT'S DETERMINATION THEREOF AND ITS SUBSEQUENT FINDINGS OF FACT MUST BE GIVEN WEIGHT AND RESPECT ON APPEAL; EXCEPTION.— Furthermore, this Court has held in a long line of cases that the trial court's determination of the issue of the credibility of witnesses and its consequent findings of fact must be given great weight and respect on appeal, unless certain facts of substance and value have been overlooked which, if considered, might affect the result of the case. This is so because of the judicial experience that trial courts are in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. It can thus more easily detect whether a witness is telling the truth or not.

3. ID.; ID.; ID.; THE PROSECUTOR HAS THE EXCLUSIVE PREROGATIVE TO DETERMINE THE WITNESSES TO BE PRESENTED.— Del Prado also claims that the prosecution was not able to sufficiently explain why Hudo's companions in the incident were unable to testify. We are not convinced. We have held in *People v. Jumamoy*, that: The prosecutor has the exclusive prerogative to determine the witnesses to be presented for the prosecution. If the prosecution has several eyewitnesses, as in the instant case, the prosecutor need not present all of them but only as many as may be needed to meet the quantum of proof necessary to establish the guilt of the accused beyond reasonable doubt. The testimonies of the other witnesses may, therefore, be dispensed with for being merely corroborative in nature. x x x. In the case at bar, the prosecutor

must have deemed it unnecessary to present other witnesses on the belief that the quantum of proof necessary to prove the guilt of Del Prado beyond reasonable doubt had been met. Upon examination of Tubigan's testimony on the incident, this Court finds that the prosecutor was correct in making such assumption, since Tubigan's testimony was clear and convincing: xxx.

4. ID.; ID.; ID.; CREDIBILITY OF A WITNESS' IDENTIFICATION, FACTORS TO CONSIDER.— In *People v. Teehankee, Jr.*, we enumerated the factors for determining the credibility of a witness' identification: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure. In the case at bar, Tubigan witnessed the incident in a well lighted place from barely seven meters away. She positively identified Del Prado as one of the assailants on the same day of the incident. Her testimonies are adequately supported by her affidavit, taken on the day of the incident, which she identified in open court. Furthermore, her account was corroborated by the testimony of Dr. Freyra, whose identification of the wounds sustained by Hudo matches those which were stated by Tubigan in her testimony and affidavit.

5. ID.; ID.; ID.; WHERE THERE IS NO EVIDENCE TO INDICATE THAT THE PRINCIPAL WITNESS WAS ACTUATED BY IMPROPER MOTIVE, THE PRESUMPTION IS THAT HE WAS NOT SO ACTUATED AND HIS TESTIMONY IS ENTITLED TO FULL FAITH AND CREDIT.— Finally, there is also nothing on the record to show that Tubigan was actuated by bias, prejudice or improper motive. It is settled that where there is no evidence and there is nothing to indicate that the principal witness for the prosecution was actuated by improper motive, the presumption is that the witness was not so actuated, and his testimony is entitled to full faith and credit. Indeed, if an accused had really nothing to do with the crime, it is against the natural order of events and of human nature and against the presumption of good faith that the prosecution witness would falsely testify against the former.

6. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; THE NUMBER OF

ASSAILANTS AND THE NATURE OF WEAPONS USED SHOW A NOTORIOUS INEQUALITY OF FORCE BETWEEN THE VICTIM AND THE AGGRESSORS.— Del Prado argues that the trial court erred in convicting him of murder, since the prosecution allegedly failed to establish the presence of the qualifying circumstances of treachery and evident premeditation. Del Prado's argument is misleading. Firstly, the Information did not allege the qualifying circumstance of treachery. The qualifying circumstances alleged therein are abuse of superior strength and evident premeditation. Secondly, the trial court did not rule that either treachery or evident premeditation was present in the case at bar. The only circumstance found by the trial court to have qualified the killing to murder was abuse of superior strength: xxx We agree in the findings of the trial court that Del Prado, together with his co-accused, abused their superior strength in killing Hudo. Hudo was unarmed and defenseless at the time Del Prado and his co-accused bludgeoned his head and body with a baseball bat, hit him with a stone, and stabbed him twice. The number of assailants and the nature of the weapons used against Hudo show a notorious inequality of force between Hudo and his aggressors. The actuations of Del Prado and his co-accused in inflicting injury successively furthermore show that they purposely used excessive force to ensure the killing of Hudo.

7. ID.; MURDER; CIVIL LIABILITIES OF ACCUSED-APPELLANT.— Article 2206 of the Civil Code authorizes the award of civil indemnity for death caused by a crime. Current jurisprudence sets the award at ₱50,000.00. The Court of Appeals was likewise correct in replacing the award of ₱14,300.00 as actual damages with the amount of ₱25,000.00 as temperate damages. In *People v. Dela Cruz,* this Court declared that when actual damages proven by receipts during the trial amount to less than ₱25,000.00, such as in the present case, the award of temperate damages for ₱25,000.00, is justified in lieu of actual damages for a lesser amount. This Court ratiocinated therein that it was anomalous and unfair that the heirs of the victim who tried but succeeded in proving actual damages of less than ₱25,000.00 only would be in a worse situation than those who might have presented no receipts at all but would be entitled to ₱25,000.00 temperate damages. This Court, however, deems it necessary to include an award

of exemplary damages in favor of the heirs of Hudo. An aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code. The award of ₱30,000.00 as exemplary damages is therefore, proper under current jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is an appeal from the Decision[1] of the Court of Appeals on CA-G.R. CR-H.C. No. 02216 dated 30 September 2008 affirming with modifications the Decision of the Regional Trial Court (RTC) of Mandaluyong City finding accused-appellant Allan del Prado *y* Cahusay (Del Prado) guilty beyond reasonable doubt of the crime of murder.

Del Prado, together with co-accused Lloyd Peter Asurto (Asurto) and Jaylord Payago (Payago), was charged with murder under the following Information:

That on or about the 24th day of January 2003, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, armed with a knife and stone, with intent to kill and attended by the qualifying aggravating circumstances of abuse of superior strength and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one Anthony Hudo *y* Magtanong, by then and there hitting him with the said stone and even if he is already wounded,

[1] Penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Remedios A. Salazar-Fernando and Rosalinda Asuncion-Vicente concurring; *rollo,* pp. 2-20.

weak and unarmed, accused Allan del Prado stabbed him, thereby inflicting upon him mortal wounds which directly caused his death.[2]

Del Prado was arraigned on 17 March 2004, wherein he pleaded not guilty. His two co-accused, Asurto and Payago, remained at large.

The evidence of the prosecution, consisting of the testimonies of Sheryll Ann Tubigan (Tubigan); Police Officer (PO)1 Nerito Lobrido (Lobrido); Southern Police District Chief Medico-Legal Officer Dr. Ma. Cristina B. Freyra (Dr. Freyra); and the mother of Anthony Hudo (Hudo), Yolanda Magtanong (Magtanong), tended to establish the following facts:

On 24 January 2003, at around 10:40 p.m., Tubigan (Tubigan) and her friends Angela Camado (Camado) and Maria Theresa Rio (Rio) were standing and having a conversation inside a well-lit basketball court at Barangay Addition Hills, Mandaluyong City. The deceased, Hudo was standing seven meters from them when, suddenly, Payago struck him with a baseball bat on the head and body several times. Asurto then hit Hudo several times on the face with an 8x6-inch stone. Hudo fell to the ground. Del Prado then stabbed Hudo at his neck and chest with a foot-long knife. Del Prado, Payago and Asurto shouted invectives at Hudo while the latter bled profusely on the ground.

Tubigan left the basketball court and sought the assistance of Hudo's friends and cousins. Hudo's cousins, Pony and his brother, carried Hudo's body. They boarded a tricycle and took Hudo's body to the Mandaluyong City Hospital. Tubigan, Camado and Rio proceeded to the Central Intelligence Unit (CIU) office at the Mandaluyong City Hall where they executed their affidavits.

Dr. Freyra, chief Medico-Legal Officer at the Southern Police District, conducted the autopsy examination on Hudo's body. Hudo sustained two stab wounds, two lacerated wounds, one contusion, one incised wound, one punctured wound and several abrasions. The two stab wounds were fatal.

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[2] CA *rollo,* p. 10.

At around midnight of 24 January 2003, Magtanong, the mother of Hudo, received a phone call from her nephew Jeffrey Arceo who told her that Hudo was dead. Magtanong went to the Mandaluyong City Hospital where she saw the body of her son, which caused her great grief. She then proceeded to the Mandaluyong City Police Station to give her statement. She spent ₱14,300.00 in funeral expenses.

The defense's version of the facts is as follows:

On the night of the incident, Del Prado was on his way to his mother's house in Binangonan coming from the house of his sister at Welfareville Compound, Mandaluyong City. He intended to pass through the basketball court in order to catch a jeepney ride on the other side. Upon reaching the basketball court, he saw Hudo and Payago quarreling and struggling for the possession of a baseball bat. He saw Asurto, whom he called "Bunso," hit Hudo with a stone. Hudo slumped to the ground. Upon seeing what happened, people ran towards his direction, causing him to join them as they ran away from the scene.

Del Prado did not know Tubigan and maintained that her testimony was untruthful. Nobody arrested him for over a year, but the parents of Hudo asked ₱50,000.00 from him by way of settlement. He later on voluntarily surrendered to the police to clear his name and to verify if a case had been filed against him. Despite being Hudo's friend, he did not inquire further into what happened to the former, as he was afraid of being implicated. He did not go to the wake and burial of Hudo.

On 30 March 2006, the RTC rendered its Decision finding Del Prado guilty of murder, as follows:

> WHEREFORE then, in view of the foregoing, judgment is hereby rendered finding the accused ALLAN DEL PRADO *Y* CAHUSAY, "GUILTY" of the crime of MURDER as defined and penalized in Article 248 of the Revised Penal Code.
>
> As a consequence of this judgment, the accused is hereby sentenced to suffer the penalty of *reclusion perpetua* which penalty shall be served at the National Penitentiary, New Bilibid Prison in Muntinlupa.

Any period of detention the accused shall have served shall be credited in his favor in the service of his sentence as provided for in Art. 29 of the Revised Penal Code.

With respect to the civil liability arising from the commission of the crime, the accused is herein ordered to pay the sum of Fourteen Thousand Three Hundred Pesos (Php 14,300.00) as actual damages and the sum of Fifty Thousand Pesos (Php 50,000.00) as moral damages.[3]

Del Prado's appeal to the Court of Appeals was docketed as CA-G.R. CR-H.C. No. 02216, and was raffled to the Fifth Division of the said court. On 30 September 2008, the Court of Appeals rendered its Decision modifying the Decision of the RTC:

WHEREFORE, the Decision dated March 30, 2006 of the Regional Trial Court of Mandaluyong City, Branch 213 is hereby ***AFFIRMED WITH MODIFICATIONS*** to the effect that the accused-appellant is hereby ordered to pay the heirs of the victim the sum of ₱50,000.00 as civil indemnity, ₱50,000.00 moral damages and ₱25,000.00 as temperate damages in lieu of the ₱14,300.00 actual damages awarded by the trial court.[4]

Hence, this appeal, wherein Del Prado asserts that:

I.

THE COURT *A QUO* ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II.

ASSUMING *ARGUENDO* THAT THE ACCUSED IS GUILTY, THE TRIAL COURT ERRED IN CONVICTING HIM OF MURDER INSTEAD OF HOMICIDE CONSIDERING THAT NEITHER THE QUALIFYING CIRCUMSTANCE OF TREACHERY NOR PREMEDITATION WAS DULY ESTABLISHED.

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[3] *Id.* at 16.

[4] *Rollo,* p. 19.

Sufficiency of the Evidence to Prove Guilt Beyond Reasonable Doubt

In arguing that the prosecution failed to prove the guilt of Del Prado beyond reasonable doubt, the latter's main argument is that the testimony of Tubigan is incredible and contrary to human experience. According to Del Prado, it is unbelievable that Hudo's friends did not lend assistance to him despite being present at the time of the incident.

This Court disagrees with Del Prado's observations. There is no standard form of human behavioral response when confronted with a frightful experience.[5] Not every witness to a crime can be expected to act reasonably and conformably with the expectations of mankind,[6] because witnessing a crime is an unusual experience that elicit different reactions from witnesses, and for which no clear-cut, standard form of behavior can be drawn.[7] In the case at bar, it was not even unusual for Hudo's unarmed companions to refrain from risking their lives to defend him when the assailants were brandishing a foot-long knife, a baseball bat and a 6x8-inch stone.

Furthermore, this Court has held in a long line of cases that the trial court's determination of the issue of the credibility of witnesses and its consequent findings of fact must be given great weight and respect on appeal, unless certain facts of substance and value have been overlooked which, if considered, might affect the result of the case.[8] This is so because of the judicial experience that trial courts are in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the

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[5] *People v. Tio*, 404 Phil. 936, 947 (2001).

[6] *People v. Merino*, 378 Phil. 828, 844 (1999).

[7] *People v. Rubio*, 327 Phil. 316, 324 (1996).

[8] *People v. Deunida*, G.R. Nos. 105199-200, 28 March 1994, 231 SCRA 520, 532; *People v. Acuña*, G.R. No. 94702, 2 October 1995, 248 SCRA 668, 675.

trial. It can thus more easily detect whether a witness is telling the truth or not.[9]

Del Prado also claims that the prosecution was not able to sufficiently explain why Hudo's companions in the incident were unable to testify.

We are not convinced. We have held in *People v. Jumamoy*,[10] that:

> The prosecutor has the exclusive prerogative to determine the witnesses to be presented for the prosecution. If the prosecution has several eyewitnesses, as in the instant case, the prosecutor need not present all of them but only as many as may be needed to meet the quantum of proof necessary to establish the guilt of the accused beyond reasonable doubt. The testimonies of the other witnesses may, therefore, be dispensed with for being merely corroborative in nature. x x x.

In the case at bar, the prosecutor must have deemed it unnecessary to present other witnesses on the belief that the quantum of proof necessary to prove the guilt of Del Prado beyond reasonable doubt had been met. Upon examination of Tubigan's testimony on the incident, this Court finds that the prosecutor was correct in making such assumption, since Tubigan's testimony was clear and convincing:

Q So, you said, Madam Witness, that the unusual incident you saw on the evening of January 24, 2003 was about the death of this Anthony Hudo. Can you please give the circumstances of his death before this Honorable Court?

A He was hit by a bat, ma'am.

Q By the way, Madam Witness, how far away were you from Anthony Hudo during this incident?

A From where I am sitting right now to the door of the courtroom.

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[9] *People v. Acuña, id.*; *People v. Deunida, id.*

[10] G.R. No. 101584, 7 April 1993, 221 SCRA 332, 344.

PROS. LAZARO:

May we request the defense counsel to stipulate, more or less seven (7) meters, Your Honor?

COURT:

From the place of the incident.

PROS. LAZARO:

Yes, Your Honor, the position of the witness from the victim.

Q Can you tell before this Honorable Court the lighting condition of the place at that time?

A Well lighted, ma'am.

Q Where did the light come from?

A From the electric post, ma'am.

Q You said that Anthony was hit by a bat. Who hit him with a bat, Madam Witness?

A Jaylord, ma'am.

Q Do you know the family name of this Jaylord?

A. No, ma'am.

Q. Do you personally know this Jaylord?

A Yes, ma'am. He is our friend.

Q How long have you friends with Jaylord? (sic)

A For a long time but not as long as my friendship with Anthony.

Q And what kind of bat was used by this Jaylord in hitting Anthony Hudo?

A Baseball bat, ma'am.

Q How many times did Jaylord hit Anthony Hudo with the said baseball bat?

A For several times, Ma'am.

Q In which body parts of Anthony Hudo were hit by the said baseball bat?

A In his head and body, ma'am.

Q And what happened to Anthony Hudo after he was hit by a baseball bat by Jaylord?

A He fell down, ma'am.

Q By the way, Madam Witness, can you describe this Jaylord before this Honorable Court?

A Quite taller than me, ma'am.

Q How tall are you?

A I do not know, ma'am.

COURT:

Can you stand up, please?

Can you stipulate Atty. Cruz and Public Prosecutor?

PROS. LAZARO:

The witness is five (5) feet in height and Jaylord is taller than the witness.

Q How about his complexion, Madam Witness?

A I'm quite fairer than Jaylord.

Q The length of his hair?

A Short hair, ma'am.

Q The shape of his face?

A Round face, ma'am.

Q If Jaylord Payago is present here in court, will you be able to identify him?

A Yes, ma'am.

COURT:

Q Is he in court?

A None, You[r] Honor.

PROS. LAZARO:

For the record, Your Honor, Jaylord Payago, one of the accused is still unarraigned and still at large.

COURT:

When did we issue the last warrant, Homer? Based on the return, he cannot be found?

INTERPRETER:

Yes, Your Honor.

COURT:

When was that?

INTERPRETER:

May 12, 2003, Your Honor.

COURT:

How about Lloyd Peter?

INTERPRETER:

The same, Your Honor.

COURT:

Cannot be found also, still unarraigned?

INTERPRETER:

Yes, Your Honor.

PROS. LAZARO:

We request, Your Honor, for the issuance of an *alias* bench warrant to these accused Jaylord Payago and Lloyd Peter Asurto.

COURT:

Okay. Continue please.

x x x x x x x x x

Q Madam Witness, prior to the hitting of the bat of victim Anthony Hudo, can you please tell to this Honorable Court his position in relation to Jaylord?

A He was facing Jaylord, ma'am.

Q Who were the companions of Jaylord, if any?

A Bunso and Allan, ma'am.

COURT:

Q Who is Bunso?

A Lloyd, Your Honor.

PROS. LAZARO:

Q What were these two (2) doing during that time?

A They were, likewise, standing by.

Q And while Jaylord was hitting Anthony Hudo with a base ball ba[t], what were these two (2) persons, Allan and Lloyd doing?

A Bunso was also hitting Anthony with a stone in his face.

Q Can you tell before this Honorable Court the size of the stone used by Lloyd Peter *alias* Bunso in hitting Anthony Hudo?

COURT:

Can you please stipulate the size of the stone?

PROS. LAZARO:

We stipulate, Your Honor, eight (8) inches in length and six (6) inches in width.

COURT:

Okay.

PROS. LAZARO:

Q. And how many times did this Lloyd Peter or *alias* Bunso hit Anthony Hudo with a stone?

A For several times, ma'am.

Q And which parts of Anthony Hudo were hit?

A On the face, ma'am.

COURT:

Q What else?

A At the body, Your Honor.

PROS. LAZARO:

Q And what happen (sic) to Anthony Hudo after he was hit by a stone by Lloyd Peter?

A He could not anymore stand up, ma'am.

Q Can you please describe this Lloyd Peter before this honorable Court?

A With long hair, dark complexion.

Q Do you know his height?

A Like the height of Jaylord, ma'am.

Q About the shape of his face?

A Long face, ma'am.

Q Do you personally know hit (sic) Lloyd Peter *alias* Bunso?

A He is, likewise, our friend, ma'am.

Q How long have you been friends with Lloyd Peter?

A Like Jaylord, ma'am.

Q If this Lloyd Peter *alias* Bunso is here in court, would you be able to identify him?

A Yes, ma'am.

Q Is he here in court?

A None (sic), ma'am.

PROS. LAZARO:

We would like to manifest, Your honor, that Lloyd Peter Asurto is still unarraigned.

Q How about Allan, Madam Witness, what was he doing that time?

A He stabbed Tokoy, ma'am.

COURT:

Q With what?

A With a knife, Your Honor.

PROS. LAZARO:

Q Can you describe the knife before this honorable Court?

A It is one (1) foot long.

COURT:

Q Including the handle?

A Yes, Your Honor.

PROS. LAZARO:

Q Would you know the family name of this Allan, Madam Witness?

A Del Prado, ma'am.

Q Do you know him?

A Yes, ma'am.

Q Why do you know him?

A He is the husband of my friend, ma'am.

Q If Allan Del Prado is here in court today, would you be able to identify him?

A Yes, ma'am.

Q Kindly look around and tell this Honorable Court if he is present.

A Yes, ma'am. He is present.

Q Can you please identify him by stepping down and approach him? Tap him lightly on his shoulder.

INTERPRETER:

Witness goes down the gallery and tap the shoulder of the male person seated on the first row who when asked identified himself as ALLAN DEL PRADO *y* CAHUSAY.

PROS. LAZARO:

Q. How many times did accused Allan del Prado stab victim Anthony Hudo with a knife?

A Two (2) times, ma'am.

Q Which body parts of Anthony Hudo were hit?

INTERPRETER:

Witness pointing to her upper left chest.

PROS. LAZARO:

Q What other body parts, Madam Witness?

INTERPRETER:

Witness pointing to center upper rib.

PROS. LAZARO:

Q What happened to Anthony Hudo after he was stabbed by Allan del Prado?

A He failed to stand up.

Q What word or words, if any, Madam Witness, were uttered by the three (3) accused during this incident?

A They were hurling invectives, ma'am.

Q What else, if any?

A Nothing more, ma'am.

Q To whom were these invectives addressed?

A To Tokoy, ma'am.

Q How about victim Anthony Hudo *alias* Tokoy, what word or words, if any, were uttered by him during this incident?

A Nothing, ma'am.

Q Can you please describe the physical condition of Anthony Hudo while he was sprawled to the ground?

A He was facing up, ma'am.

Q What was his physical appearance at that time?

A He was bleeding, ma'am.

Q So, after seeing that situation, Madam Witness, what did you do, if any?

A We ran outside of the basketball court and we called our friends, ma'am.

Q Whom did you call?

A Our friends and the cousins of Tokoy.

Q Would you know the name of the cousins of this Anthony Hudo?

A Pony and the brother of Pony, ma'am.

Q After you called your friends and the cousins of Anthony Hudo, what happened next?

A They went to the basketball court and lifted Anthony Hudo.

Q Where did they bring Anthony Hudo?

A They boarded Anthony Hudo in a tricycle and brought him to the Mandaluyong Hospital.

Q How about you, Madam Witness, what did you do after that?

A We went to the city hall, ma'am.

Q Who were with you when you went to the city hall?

A Angela and Teresa, ma'am.

Q What particular office of the city hall did you go to?

A At the CIU, ma'am.

Q Why did you go to the CIU, Madam Witness?

A To narrate the incident, ma'am.[11]

In *People v. Teehankee, Jr.*,[12] we enumerated the factors for determining the credibility of a witness' identification: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure.

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[11] CA *rollo*, pp. 86-94.

[12] 319 Phil. 128, 180 (1995).

In the case at bar, Tubigan witnessed the incident in a well lighted place from barely seven meters away. She positively identified Del Prado as one of the assailants on the same day of the incident. Her testimonies are adequately supported by her affidavit, taken on the day of the incident, which she identified in open court. Furthermore, her account was corroborated by the testimony of Dr. Freyra, whose identification of the wounds sustained by Hudo matches those which were stated by Tubigan in her testimony and affidavit.

Finally, there is also nothing on the record to show that Tubigan was actuated by bias, prejudice or improper motive. It is settled that where there is no evidence and there is nothing to indicate that the principal witness for the prosecution was actuated by improper motive, the presumption is that the witness was not so actuated, and his testimony is entitled to full faith and credit. Indeed, if an accused had really nothing to do with the crime, it is against the natural order of events and of human nature and against the presumption of good faith that the prosecution witness would falsely testify against the former.[13]

Circumstances Qualifying the Crime to Murder

Del Prado argues that the trial court erred in convicting him of murder, since the prosecution allegedly failed to establish the presence of the qualifying circumstances of treachery and evident premeditation.[14]

Del Prado's argument is misleading. Firstly, the Information did not allege the qualifying circumstance of treachery. The qualifying circumstances alleged therein are abuse of superior strength and evident premeditation. Secondly, the trial court did not rule that either treachery or evident premeditation was present in the case at bar. The only circumstance found by the trial court to have qualified the killing to murder was abuse of superior strength:

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[13] *People v. Grefaldia*, G.R. No. 121787, 17 June 1997, 273 SCRA 591, 602.

[14] CA *rollo*, pp. 34-35.

Apart from the foregoing, the testimony of witness Sheryll Ann Tubigan is plain and unambiguous in that the accused resorted to the use of superior strength in order to ensure the success of their concerted attack against the deceased victim. The deliberate intent of the accused to use excessive force out of proportion to the means available to the victim is clearly evident because at the time of the attack the victim had no means available to defend himself but his bare hands. Clearly then, the accused took advantage of their combined strength in order to consummate the commission of the crime and therefore the aggravating circumstance of superior strength may be applied to increase the penalty the accused shall serve for the commission of the crime of murder.

Art. 248 of the Revised Penal Code states that any person who, not falling within the provision of Art. 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances: (1) with … taking advantage of superior strength… As regards the abuse of superior strength as aggravating circumstance, what should be considered is not that there were three, four or more assailants as against one victim, but whether the aggressors took advantage of their combined strength in order to consummate the offense. To take advantage of superior strength is to use excessive force out of proportion to the means available to the person attacked to defend himself, and in order to be appreciated it must be clearly shown that there was deliberate intent on the part of the malefactors to take advantage thereof.[15]

We agree in the findings of the trial court that Del Prado, together with his co-accused, abused their superior strength in killing Hudo. Hudo was unarmed and defenseless at the time Del Prado and his co-accused bludgeoned his head and body with a baseball bat, hit him with a stone, and stabbed him twice. The number of assailants and the nature of the weapons used against Hudo show a notorious inequality of force between Hudo and his aggressors. The actuations of Del Prado and his co-accused in inflicting injury successively furthermore show that they purposely used excessive force to ensure the killing of Hudo.

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[15] *Id.* at 15-16.

Liability of Accused-Appellant for Civil Damages

The trial court awarded the following to Hudo's heirs: (1) ₱14,300.00 as actual damages; and (2) ₱50,000.00 as moral damages. The Court of Appeals modified the award of civil damages by adding the amount of ₱50,000.00 as civil indemnity and replacing the award of ₱14,300.00 as actual damages with the amount of ₱25,000.00 as temperate damages.

We sustain the modifications made by the Court of Appeals.

Article 2206[16] of the Civil Code authorizes the award of civil indemnity for death caused by a crime. Current jurisprudence[17] sets the award at ₱50,000.00.

The Court of Appeals was likewise correct in replacing the award of ₱14,300.00 as actual damages with the amount of ₱25,000.00 as temperate damages. In *People v. Dela Cruz*,[18] this Court declared that when actual damages proven by receipts during the trial amount to less than ₱25,000.00, such as in the

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[16] Art. 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

(2) If the deceased was obliged to give support according to the provisions of Article 291, the recipient who is not an heir called to the decedent's inheritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;

(3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

[17] *People v. Callet*, 431 Phil. 622, 637 (2002); *People v. Muñez*, 451 Phil. 264, 274 (2003).

[18] 461 Phil. 471, 480 (2003).

present case, the award of temperate damages for ₱25,000.00, is justified in lieu of actual damages for a lesser amount. This Court ratiocinated therein that it was anomalous and unfair that the heirs of the victim who tried but succeeded in proving actual damages of less than ₱25,000.00 only would be in a worse situation than those who might have presented no receipts at all but would be entitled to ₱25,000.00 temperate damages.

This Court, however, deems it necessary to include an award of exemplary damages in favor of the heirs of Hudo. An aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230[19] of the Civil Code.[20] The award of ₱30,000.00 as exemplary damages is therefore, proper under current jurisprudence.[21]

WHEREFORE, the instant appeal is *DENIED*. The Decision of the Court of Appeals on CA-G.R. CR-H.C. No. 02216 dated 30 September 2008 affirming with modifications the Decision of the Regional Trial Court of Mandaluyong City finding accused-appellant Allan del Prado y Cahusay guilty beyond reasonable doubt of the crime of murder is hereby *AFFIRMED*, with the further *MODIFICATION* that Allan del Prado *y* Cahusay is additionally ordered to pay the heirs of the victim the amount of ₱30,000.00 as exemplary damages.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

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[19] Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

[20] *People v. Catubig*, 416 Phil. 102, 120-121 (2001); see *People v. Beltran, Jr.*, G.R. No. 168051, 27 September 2006, 503 SCRA 715, 741.

[21] *People v. Gidoc*, G.R. No. 185162, 24 April 2009; *People v. Anguac*, G.R. No. 176744, 5 June 2009; *People v. Layco, Sr.*, G.R. No. 182191, 8 May 2009.

FIRST DIVISION

[G.R. No. 188742. October 13, 2009]

SUPERLINES TRANSPORTATION COMPANY, INC., *petitioner, vs.* **EDUARDO PINERA,** *respondent.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; THE EMPLOYEE'S MISAPPROPRIATION OF THE FUNDS ENTRUSTED TO HIM CONSTITUTES SERIOUS MISCONDUCT.— An employee who fails to account for and deliver the funds entrusted to him is liable for misappropriating the same and is consequently guilty of serious misconduct. Petitioner therefore validly dismissed respondent.

APPEARANCES OF COUNSEL

L.G. Yambao & Partners for petitioners.
Banzuela Velandres & Associates for respondent.

R E S O L U T I O N

CORONA,[*] *J.*:

Sometime in 2004, Zeny Iligan sent a letter to petitioner Superlines Transportation Company, Inc. complaining against respondent Eduardo Pinera for allegedly misappropriating the ₱1,000 which she sent her children thru petitioner Superlines. Petitioner immediately investigated the complaint. It informed respondent of the allegations against him and ordered him to answer the same. Respondent admitted using the money for his personal needs. Thus, petitioner terminated respondent's employment on June 18, 2004 and notified him of its decision.

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[*] Per Special Order No. 724 dated October 5, 2009.

Subsequently, respondent filed a complaint for illegal dismissal with the labor arbiter asserting that petitioner did not have any just or valid cause for terminating his employment. In a decision dated March 23, 2007,[1] the labor arbiter dismissed the complaint for lack of cause of action. She found that respondent's dismissal was legal as he was guilty of serious misconduct.

On appeal, the National Labor Relations Commission (NLRC) affirmed the decision of the labor arbiter *in toto*.[2]

On petition for *certiorari* in the Court of Appeals (CA), the appellate court held that misappropriation did not constitute serious misconduct, hence, respondent was illegally dismissed. Thus, the CA set aside the decision of the NLRC and remanded the matter to the labor arbiter for the computation of respondent's backwages, service incentive leave pay and holiday pay as well as attorney's fees.[3]

Petitioner moved for reconsideration but it was denied.[4] Hence, this petition.

We grant the petition.

An employee who fails to account for and deliver the funds entrusted to him is liable for misappropriating the same and is consequently guilty of serious misconduct.[5] Petitioner therefore validly dismissed respondent.

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[1] Penned by labor arbiter Danna M. Castillon. *Rollo,* pp. 67-75.

[2] Resolution dated August 31, 2007 penned by Commissioner Gregorio O. Bilog III and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo. *Id*., pp. 102-109.

[3] Decision dated December 5, 2008 penned by Associate Justice Mariflor P. Punzalan-Castillo and concurred in by Associate Justices Isaias P. Dicdican and Japar B. Dimaampao of the Special First Division of the Court of Appeals. *Id.,* pp. 7-27.

[4] Resolution dated July 9, 2009. Id., pp. 28-30.

[5] See *Cosmopolitan Funeral Homes v. Maalat,* G.R. No. 86693, 2 July 1990, 187 SCRA 108; *Villamor Golf Club v. Pehid,* G.R. No. 166152, 4 October 2005, 472 SCRA 36.

WHEREFORE, the December 5, 2008 decision and July 9, 2009 resolution of the Court of Appeals in CA-G.R. SP No. 102097 are hereby *REVERSED* and *SET ASIDE*. The August 31, 2007 resolution of the National Labor Relations Commission in NLRC CN. RAB IV 08-19687-04-Q CA No. 052520-07 is *REINSTATED*.

SO ORDERED.

Velasco, Jr.,[**] *Nachura,*[***] *Leonardo-de Castro,* and *Bersamin, JJ.,* concur.

FIRST DIVISION

[G.R. No. 188961. October 13, 2009]

AIR FRANCE PHILIPPINES/KLM AIR FRANCE, *petitioner, vs.* **JOHN ANTHONY DE CAMILIS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON CERTIORARI; LIMITED ONLY TO QUESTIONS OF LAW; EXCEPTION NOT PRESENT IN CASE AT BAR.— Time and again, we have held that the jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 is limited only to questions of law, save for certain exceptions, none of which are present in this case. Both the RTC and the CA have competently ruled on the issue of respondent's entitlement to damages and attorney's fees as they properly laid down both the factual and legal bases for their respective decisions. We see no reason to disturb their findings.

[**] Per Special Order No. 719 dated October 5, 2009.

[***] Per Special Order No. 725 dated October 5, 2009.

2. CIVIL LAW; DAMAGES; INTEREST; LEGAL INTEREST OF 6% SHALL BE RECKONED FROM THE TIME THE LOWER COURT RENDERED ITS JUDGMENT.— xxx. The above liabilities of AF shall earn legal interest pursuant to the Court's ruling in *Construction Development Corporation of the Philippines v. Estrella*, citing *Eastern Shipping Lines, Inc. v. CA.* Pursuant to this ruling, the legal interest is 6% p.a. and it shall be reckoned from April 25, 2007 when the RTC rendered its judgment, not from the time of respondent's extrajudicial demand. This must be so as it was at the time the RTC rendered its judgment that the quantification of damages may be deemed to have been reasonably ascertained. Then, from the time this decision becomes final and executory, the interest rate shall be 12% p.a. until full satisfaction.

APPEARANCES OF COUNSEL

Platon Martinez Flores San Pedro & Leaño for petitioner.
Eric Henry Joseph F. Mallonga for respondent.

R E S O L U T I O N

CORONA,[*] *J.*:

Respondent John Anthony de Camilis filed a case for breach of contract of carriage, damages and attorney's fees against petitioner Air France Philippines/KLM Air France (AF) in the Regional Trial Court (RTC) of Makati City, Branch 59.

Respondent alleged that he went on a pilgrimage with a group of Filipinos to selected countries in Europe. According to respondent: (1) AF's agent in Paris failed to inform him of the need to secure a transit visa for Moscow, as a result of which he was denied entry to Moscow and was subjected to humiliating interrogation by the police; (2) another AF agent (a certain Ms. Soeyesol) rudely denied his request to contact his travel companions to inform them that he was being sent back to Paris from Moscow with a police escort; Ms. Soeyesol even

[*] Per Special Order No. 724 dated October 5, 2009.

reported him as a security threat which resulted in his being subjected to further interrogation by the police in Paris and Rome, and worse, also lifted his flight coupons for the rest of his trip; (3) AF agents in Rome refused to honor his confirmed flight to Paris; (4) upon reaching Paris for his connecting flight to Manila, he found out that the AF agents did not check in his baggage and since he had to retrieve his bags at the baggage area, he missed his connecting flight; (5) he had to shoulder his extended stay in Paris for AF's failure to make good its representation that he would be given a complimentary motel pass and (6) he was given a computer print-out of his flight reservation for Manila but when he went to the airport, he was told that the flight was overbooked. It was only when he made a scene that the AF agent boarded him on an AF flight to Hongkong and placed him on a connecting Philippine Airlines flight to Manila.

The RTC found that AF breached its contract of carriage and that it was liable to pay ₱200,000 actual damages, ₱1 million moral damages, ₱1 million exemplary damages and ₱300,000 attorney's fees to respondent.

On appeal, the Court of Appeals (CA) affirmed the RTC decision with modifications.[1]

The CA ruled that it was respondent (as passenger), and not AF, who was responsible for having the correct travel documents. However, the appellate court stated that this fact did not absolve AF from liability for damages.

The CA agreed with the findings of fact of the RTC that AF's agents and representatives repeatedly subjected respondent to very poor service, verbal abuse and abject lack of respect and consideration. As such, AF was guilty of bad faith for which respondent ought to be compensated.

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[1] Decision dated March 23, 2009 in CA-G.R. CV No. 90151, penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Jose C. Mendoza and Ramon M. Bato, Jr. of the Former Second Division of the CA. *Rollo*, pp. 53-68. Motion for reconsideration of this decision was denied in a resolution dated July 9, 2009. Id., pp. 90-91.

The appellate court affirmed the award of ₱1 million moral damages and ₱300,000 attorney's fees. However, it reduced the actual damages to US$906 (or its peso equivalent). According to the CA, this amount represented the expenses respondent incurred from the time he was unable to join his group in Rome (due to the unfounded "communiqué" of Ms. Soeyesol that he was a security threat) up to the time his flight reservation from Paris to Manila was dishonored for which he was forced to stay in Paris for two additional days. The appellate court pointed out that, on the other hand, respondent's expenses for the Moscow leg of the trip must be borne by him as AF could not be faulted when he was refused entry to Moscow for lack of a transit visa.

The CA also decreased the exemplary damages from ₱1 million to ₱300,000. The CA further imposed interest at the rate of 6% p.a. from the date of extrajudicial demand[2] until full satisfaction, but before judgment becomes final. From the date of finality of the judgment until the obligation is totally paid, 12% interest p.a. shall be imposed.

Hence, this recourse.

Essentially, AF assails the CA's award of moral and exemplary damages and attorney's fees to respondent as the alleged injury sustained was not clearly established. AF added that, even if respondent was entitled to the same, the amounts awarded were exorbitant. Lastly, it argued that the interest rate should run not from the time of respondent's extrajudicial demand but from the time of judgment of the RTC.

We deny the petition.

Preliminarily, on the issue pertaining to whether or not respondent was entitled to damages and attorney's fees, the same entails a resort to the parties' respective evidence. Thus, AF is clearly asking us to consider a question of fact.

Time and again, we have held that the jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 is

[2] August 1, 2003.

limited only to questions of law,[3] save for certain exceptions,[4] none of which are present in this case.

Both the RTC and the CA have competently ruled on the issue of respondent's entitlement to damages and attorney's fees as they properly laid down both the factual and legal bases for their respective decisions. We see no reason to disturb their findings.

The above liabilities of AF shall earn legal interest pursuant to the Court's ruling in *Construction Development Corporation of the Philippines v. Estrella*,[5] citing *Eastern Shipping Lines, Inc. v. CA*.[6]

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[3] *B & I Realty Co., Inc. v. Spouses Caspe*, G.R. No. 146972, 29 January 2008, 543 SCRA 1, 7.

[4] See *Baricuatro v. CA*, 382 Phil. 15, 24 (2000).

[5] G.R. No. 147791, 8 September 2006, 501 SCRA 228, 244-245.

[6] 379 Phil. 84, 89-90 (2000).

> II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed as follows:
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> 1. x x x x x x x x x
>
> 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 is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) **but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained).** The actual base for the computation of 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. (Emphasis supplied.)

Pursuant to this ruling, the legal interest is 6% p.a. and it shall be reckoned from April 25, 2007 when the RTC rendered its judgment, not from the time of respondent's extrajudicial demand. This must be so as it was at the time the RTC rendered its judgment that the quantification of damages may be deemed to have been reasonably ascertained. Then, from the time this decision becomes final and executory, the interest rate shall be 12% p.a. until full satisfaction.

WHEREFORE, the petition is hereby *DENIED*. The decision of the Court of Appeals in CA-G.R. CV No. 90151 is *AFFIRMED*. Petitioner is ordered to *PAY* legal interest of 6% p.a. from the date of promulgation of the decision dated April 25, 2007 of the Regional Trial Court, Branch 59, Makati City and 12% p.a. from the time the decision of this Court attains finality, on all sums awarded until their full satisfaction.

Costs against petitioner.

SO ORDERED.

Velasco, Jr.,[**] *Nachura,*[***] *Leonardo-de Castro,* and *Bersamin, JJ.,* concur.

[**] Per Special Order No. 719 dated October 5, 2009.

[***] Per Special Order No. 725 dated October 5, 2009.

FIRST DIVISION

[G.R. No. 189303. October 13, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **FELIX CASAS PEREZ,** *appellant.*

SYLLABUS

CRIMINAL LAW; RAPE; ACCUSED-APPELLANT FOUND GUILTY THEREOF IN CASE AT BAR; CIVIL LIABILITY THEREOF.— We find no reason to disturb the findings of the RTC as affirmed by the CA. The RTC and the CA found that accused-appellant forced his daughter AAA to have sexual intercourse with him on December 20 and 25, 1995. In both instances, he was armed with a knife and a *pinuti* (or a long bolo) and threatened to kill her if she told anyone about the incident. The records are replete with evidence establishing accused-appellant's guilt beyond reasonable doubt. However, to conform with existing jurisprudence, ₱50,000 civil indemnity *ex delicto,* ₱50,000 moral damages and ₱30,000 exemplary damages for each count of rape must be awarded to the offended party.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

CORONA,[*] *J.*:

In a decision dated October 25, 1999,[1] the Regional Trial Court (RTC) of Danao City, Branch 25 found accused-appellant Felix Casas Perez guilty of two counts of qualified rape for

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[*] Per Special Order No. 724 dated October 5, 2009.

[1] Penned by Judge Esperidion Rivera. CA *rollo,* pp. 24-32.

sexually abusing his 15-year-old daughter, AAA.[2] He was sentenced to death for each count of qualified rape and to pay ₱100,000 as damages.

On intermediate appellate review,[3] the Court of Appeals (CA) modified the decision of the RTC.[4] Because the Information did not state the age of AAA at the time of the commission of the offense, the CA downgraded accused-appellant's offenses to simple rape and consequently lowered the penalty to *reclusion perpetua* for each count thereof. It likewise ordered accused-appellant to pay ₱50,000 moral damages and ₱25,000 exemplary damages.

The RTC and the CA found that accused-appellant forced his daughter AAA to have sexual intercourse with him on December 20 and 25, 1995. In both instances, he was armed with a knife and a *pinuti* (or a long bolo) and threatened to kill her if she told anyone about the incident.

We find no reason to disturb the findings of the RTC as affirmed by the CA. The records are replete with evidence establishing accused-appellant's guilt beyond reasonable doubt. However, to conform with existing jurisprudence, ₱50,000 civil

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[2] Criminal Case Nos. DNO-1620 and DNO-1621. The information against the accused-appellant uniformly stated:

> That on or about December 20 (and 25), 1995, in the evening, in Ibo, Danao City, Philippines and within the jurisdiction of this Honorable Court, [accused-appellant] who is the father of the offended party, [AAA], by means of force and intimidation willfully, unlawfully and feloniously did lie and [succeed] in having carnal knowledge [of his daughter, AAA].
>
> CONTRARY TO LAW.

[3] CA-G.R. CR-HC No. 00653.

[4] Decision dated March 26, 2009 penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Franchito N. Diamante and Edgardo L. de los Santos of the Nineteenth Division of the Court of Appeals. *Rollo,* pp. 2-17.

indemnity *ex delicto*,[5] ₱50,000 moral damages[6] and ₱30,000 exemplary damages for each count of rape must be awarded to the offended party.[7]

WHEREFORE, the appeal is hereby *DISMISSED*. The March 26, 2009 decision of the Court of Appeals in CA-G.R. CR-HC No. 00653 finding accused-appellant Felix Casas Perez guilty of two counts of simple rape is *AFFIRMED* with *MODIFICATION*. Accused-appellant is sentenced to *reclusion perpetua* and to pay AAA ₱50,000 civil indemnity *ex delicto*, ₱50,000 moral damages and ₱30,000 exemplary damages for each count of rape.

Costs against accused-appellant.

SO ORDERED.

Velasco, Jr.,[**] *Nachura,*[***] *Leonardo-de Castro,* and *Bersamin, JJ.,* concur.

EN BANC

[G.R. No. 188308. October 15, 2009]

JOSELITO R. MENDOZA, *petitioner*, *vs*. **COMMISSION ON ELECTIONS and ROBERTO M. PAGDANGANAN,** *respondents*.

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[5] *People v. Mallari,* G.R. No. 179051, 28 March 2008, 550 SCRA 477, 478-479.

[6] *Id.*

[7] *People v. Abellera,* G.R. No. 166617, 3 July 2007, 526 SCRA 329, 343.

[**] Per Special Order No. 719 dated October 5, 2009.

[***] Per Special Order No. 725 dated October 5, 2009.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* GRAVE ABUSE OF DISCRETION; EXPLAINED.— We review the present petition on the basis of the combined application of Rules 64 and 65 of the Rules of Court. While COMELEC jurisdiction over the Bulacan election contest is not disputed, the legality of subsequent COMELEC action is assailed for having been undertaken with grave abuse of discretion amounting to lack or excess of jurisdiction. Thus, our standard of review is "grave abuse of discretion," a term that defies exact definition, but generally refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Mere abuse of discretion is not enough; the abuse must be grave to merit our positive action.

2. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL POWER; DEFINED; TO WHOM VESTED; NATURE OF THE POWER OF THE COMMISSION ON ELECTIONS.— As a preliminary matter, we note that the petitioner has claimed that COMELEC exercises *judicial power* in its action over provincial election contests and has argued its due process position from this view. We take this opportunity to clarify that judicial power in our country is "*vested in* ***one Supreme Court*** *and in such* ***lower courts*** *as may be established by law*." This exclusive grant of authority to the Judiciary is reinforced under the second paragraph of Section 1, Article VIII of the Constitution which further states that "*Judicial power includes the duty of the* ***courts of justice*** *to settle actual controversies involving rights which are legally demandable and enforceable...,*" thus constitutionally locating the *situs* of the exercise of judicial power in the courts. In contrast with the above definitions, Section 2, Article IX(C) of the Constitution lists the COMELEC's powers and functions xxx. Under these terms, the COMELEC under our governmental structure is a constitutional administrative agency and its powers are essentially executive in nature (*i.e.*, to enforce and

administer election laws), quasi-judicial (to exercise original jurisdiction over election contests of regional, provincial and city officials and appellate jurisdiction over election contests of other lower ranking officials), and quasi-legislative (rulemaking on all questions affecting elections and the promulgation of its rules of procedure).

3. ID.; ELECTIONS; COMMISSION ON ELECTIONS (COMELEC); ADJUDICATIVE FUNCTION THEREOF IS QUASI-JUDICIAL.— The COMELEC's adjudicative function is quasi-judicial since it is a constitutional body, *other than a court*, vested with authority to decide election contests, and in the course of the exercise of its jurisdiction, to hold hearings and exercise discretion of a judicial nature; it receives evidence, ascertain the facts from these submissions, determine the law and the legal rights of the parties, and on the basis of all these decides on the merits of the case and renders judgment. Despite the exercise of discretion that is essentially judicial in character, particularly with respect to election contests, COMELEC is not a tribunal within the judicial branch of government and is not a court exercising judicial power in the constitutional sense; hence, its adjudicative function, exercised as it is in the course of administration and enforcement, is quasi-judicial.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY TO ASSAIL THE DECISION OF THE COMELEC *EN BANC*.— As will be seen on close examination, the 1973 Constitution used the unique wording that the COMELEC shall "be the *sole judge* of all contests," thus giving the appearance that judicial power had been conferred. This phraseology, however, was changed in the 1987 Constitution to give the COMELEC "exclusive jurisdiction over all contests," thus removing any vestige of exercising its adjudicatory power *as a court* and correctly aligning it with what it is — a quasi-judicial body. Consistent with the characterization of its adjudicatory power as quasi-judicial, the judicial review of COMELEC en banc decisions (together with the review of Civil Service Commission decisions) is *via* the prerogative writ of *certiorari*, not through an appeal, as the traditional mode of review of quasi-judicial decisions of administrative tribunals in the exercise the Court's supervisory authority. This means that the Court will not supplant the decision of the COMELEC

as a quasi-judicial body except where a grave abuse of discretion or any other jurisdictional error exists.

5. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; DUE PROCESS; CARDINAL PRIMARY RIGHTS; ELABORATED.— The appropriate due process standards that apply to the COMELEC, as an administrative or quasi-judicial tribunal, are those outlined in the seminal case of *Ang Tibay v. Court of Industrial Relations,* xxx These are now commonly referred to as **cardinal primary rights** in administrative proceedings. The first of the enumerated rights pertain to the substantive rights of a party at **hearing stage** of the proceedings. The essence of this aspect of due process, we have consistently held, is simply the opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. A formal or trial-type hearing is not at all times and in all instances essential; in the case of COMELEC, Rule 17 of its Rules of Procedure defines the requirements for a hearing and these serve as the standards in the determination of the presence or denial of due process. The second, third, fourth, fifth, and sixth aspects of the *Ang Tibay* requirements are reinforcements of the right to a hearing and are the inviolable rights applicable at the **deliberative stage**, as the decision-maker decides on the evidence presented during the hearing. These standards set forth the guiding considerations in deliberating on the case and are the material and substantial components of decision-making. *Briefly, the tribunal must consider the totality of the evidence presented which must all be found in the records of the case (i.e., those presented or submitted by the parties); the conclusion, reached by the decision-maker himself and not by a subordinate, must be based on substantial evidence.* Finally, the last requirement, relating to the form and substance of the decision of a quasi-judicial body, further complements the hearing and decision-making due process rights and is similar in substance to the constitutional requirement that a decision of a court must state distinctly the facts and the law upon which it is based. As a component of the rule of fairness that underlies due process, this is the *"duty to give reason"* to enable the affected person to understand how the rule of fairness has been administered in his case, to expose the reason to public scrutiny and criticism,

and to ensure that the decision will be thought through by the decision-maker.

6. ID.; ID.; ID.; ID.; ID.; HEARING STAGE RIGHTS; NO DENIAL THEREOF WHERE BOTH PARTIES WERE GIVEN THEIR DAY IN COURT; CASE AT BAR.— Based on the pleadings filed, we see no factual and legal basis for the petitioner to complain of denial of his hearing stage rights. In the first place, he does not dispute that he fully participated in the proceedings of the election protest until the case was deemed submitted for resolution; he had representation at the revision of the ballots, duly presented his evidence, and summed up his case through a memorandum. These various phases of the proceedings constitute the hearing proper of the election contest and the COMELEC has more than satisfied the opportunity to be heard that the *Ang Tibay* hearing stage rights require. In these proceedings, the petitioner stood head-to-head with the respondent in an adversarial contest where both sides were given their respective rights to speak, make their presentations, and controvert each other's submission, subject only to established COMELEC rules of procedures. Under these undisputed facts, both parties had their day in court, so to speak, and neither one can complain of any denial of notice or of the right to be heard.

7. ID.; ID.; ID.; ID.; ID.; ID.; THE COMELEC IS UNDER NO OBLIGATION TO NOTIFY THE PARTIES OF THEIR INTERNAL DELIBERATION ON THE MERITS OF THE ELECTION CONTEST.— To conclude, the rights to notice and to be heard are not material considerations in the COMELEC's handling of the Bulacan provincial election contest after the transfer of the ballot boxes to the SET; no proceedings at the instance of one party or of COMELEC has been conducted at the SET that would require notice and hearing because of the possibility of prejudice to the other party. The COMELEC is under no legal obligation to notify either party of the steps it is taking in the course of deliberating on the merits of the provincial election contest. In the context of our standard of review for the petition, we see no grave abuse of discretion amounting to lack or excess of jurisdiction committed by the COMELEC in its deliberation on the Bulacan election contest and the appreciation of ballots this deliberation entailed.

8. ID.; ID.; ID.; ID.; ID.; DELIBERATION STAGE RIGHTS; NO BASIS TO DETERMINE VIOLATIONS THEREOF WHERE THE COMELEC HAS NOT YET RENDERED ITS DECISION ON THE ELECTION PROTEST.— xxx On the basis of the above conclusion, we see no point in discussing any alleged violation of the deliberative stage rights. First, no illegal proceeding ever took place that would bear the "poisonous fruits" that the petitioner fears. Secondly, in the absence of the results of the COMELEC deliberations through its decision on the election protest, no basis exists to apply the *Ang Tibay* deliberative stage rights; there is nothing for us to test under the standards of the due process deliberative stages rights before the COMELEC renders its decision. Expressed in terms of our standard of review, we have as yet no basis to determine the existence of any grave abuse of discretion.

9. REMEDIAL LAW; JURISDICTION; ADHERENCE OF JURISDICTION; RULE; TRANSMITTAL OF THE PROVINCIAL BALLOT BOXES AND OTHER ELECTION MATERIALS TO THE SENATE ELECTORAL TRIBUNAL WILL NOT DIVEST THE COMELEC OF ITS JURISDICTION OVER THE ELECTION CONTEST; REASON.— We state at the outset that the COMELEC did not lose jurisdiction over the provincial election contest, as the petitioner seems to imply, because of the transmittal of the provincial ballot boxes and other election materials to the SET. The Constitution conferred upon the COMELEC jurisdiction over election protests involving provincial officials. The COMELEC in this case has lawfully acquired jurisdiction over the subject matter, *i.e.*, the provincial election contest, as well as over the parties. After its jurisdiction attached, this jurisdiction cannot be ousted by subsequent events such as the temporary transfer of evidence and material records of the proceedings to another tribunal exercising its own jurisdiction over another election contest pursuant to the Constitution. This is the rule of adherence of jurisdiction. Thus, the jurisdiction of the COMELEC over provincial election contest exists side by side with the jurisdiction of the Senate Electoral Tribunal, with each tribunal being supreme in their respective areas of concern (the Senate election contests for the SET, and the regional, provincial and city election contests for the COMELEC), and with neither one being higher than

the other in terms of precedence so that the jurisdiction of one must yield to the other.

10. POLITICAL LAW; SEPARATION OF POWERS; RULE NOT VIOLATED BY THE COMELEC WHEN IT PHYSICALLY TRANSFERS THE BALLOT BOXES AND OTHER ELECTION MATERIALS TO THE SENATE ELECTORAL TRIBUNAL FOR IT'S OWN REVISION OF THE BALLOTS.— With the COMELEC retaining its jurisdiction over the Bulacan provincial election contest, the legal effect of the physical transfer of the ballots and other election materials to the SET for purposes of its own revision becomes a non-issue, given the arrangement between the COMELEC and the SET, pursuant to COMELEC Resolution No. 2812, to "coordinate and make arrangements with each other so as not to delay or interrupt the revision of ballots being conducted," all for the purpose of the expeditious disposition of their respective protest cases. The SET itself honored this arrangement as shown by the letter of the SET Secretary that the COMELEC could "conduct proceedings" within the Tribunal premises as authorized by the Acting Chairman of the Tribunal, Justice Antonio T. Carpio. This arrangement recognized the COMELEC's effective authority over the Bulacan ballots and other election materials, although these were temporarily located at the SET premises. This arrangement, too, together with the side by side and non-conflicting existence of the COMELEC and SET jurisdictions, negate the validity of the petitioner's argument that the COMELEC transgressed the rule on separation of powers when it acted on the Bulacan provincial election contest while the ballot boxes were at the SET premises. Rather than negate, this arrangement reinforced the separate but co-existing nature of these tribunals' respective jurisdictions.

11. ID.; ELECTIONS; COMMISSION ON ELECTIONS; APPRECIATION THEREOF OF THE BALLOTS SIDE BY SIDE WITH THE SENATE ELECTORAL TRIBUNAL'S OWN REVISION OF THE BALLOTS IS A VALID EXERCISE OF DISCRETION.— As the petitioner argues and the COMELEC candidly admits, "there is no specific rule which allows the COMELEC to conduct an appreciation of ballots outside its premises and of those which are outside its own custody." But while this is true, there is likewise nothing to prohibit the COMELEC from undertaking the appreciation

of ballot side by side with the SET's own revision of ballots for the senatorial votes, in light especially of the COMELEC's general authority to adopt means to effect its powers and jurisdiction under its Rules of Procedure. Section 4 of these Rules states: Sec. 4. *Means to Effect Jurisdiction*. — All auxiliary writs, processes and other means necessary to carry into effect its powers or jurisdiction may be employed by the Commission; and if the procedure to be followed in the exercise of such power or jurisdiction is not specifically provided for by law or these rules, any suitable process or proceeding may be adopted. This rule is by no means unusual and unique to the COMELEC as the courts have the benefit of this same type of rule under Section 6, Rule 136 of the Rules of Court. xxx Incidentally, the COMELEC authority to promulgate the above rule enjoys constitutional moorings; in the grant to the COMELEC of its jurisdiction, the Constitution provided it with the accompanying authority to promulgate its own rules concerning pleadings and practice before it or before any of its offices, provided that these rules shall not diminish, increase or modify substantive rights. The Constitution additionally requires that the rules of procedure that the COMELEC will promulgate must *expedite the disposition of election cases*, including pre-proclamation controversies. This constitutional standard is authority, no less, that the COMELEC can cite in defending its action. For ultimately, the appreciation of the Bulacan ballots that the COMELEC undertook side by side with the SET's own revision of ballots, constitutes an exercise of discretion made under the authority of the above-cited COMELEC rule of procedure. **On the basis of the standards set by Section 4 of the COMELEC Rules of Procedure, and of the Constitution itself in the handling of election cases, we rule that the COMELEC action is a valid exercise of discretion as it is a suitable and reasonable process within the exercise of its jurisdiction over provincial election contests, aimed at expediting the disposition of this case, and with no adverse, prejudicial or discriminatory effects on the parties to the contest that would render the rule unreasonable.**

12. ID.; ID.; ID.; THE COMELEC SECOND DIVISION'S APPRECIATION OF THE BALLOT WITHIN THE SENATE ELECTORAL TRIBUNAL'S PREMISES SIDE BY SIDE WITH THE LATTER'S REVISION OF THE BALLOTS IS

NOT AN INTRUSION INTO THE COMELEC *EN BANC*'S RULE MAKING PREROGATIVE.— Since the COMELEC action, taken by its Second Division, is authorized under the COMELEC Rules of Procedure, the Second Division cannot in any sense be said to be intruding into the COMELEC *en banc* rule-making prerogative when the Second Division chose to undertake ballot appreciation within the SET premises side by side with the SET revision of ballots. To be exact, the Second Division never laid down any new rule; it merely acted pursuant to a rule that the COMELEC *en banc* itself had previously enacted.

APPEARANCES OF COUNSEL

Bello Law Offices and *Sanidad & Villanueva Law Offices* for petitioner.

The Solicitor General for public respondent.

George Erwin M. Garcia for private respondent.

D E C I S I O N

BRION, *J.*:

The present case involves a clash between the power under the Philippine Constitution of the respondent Commission on Elections (*COMELEC*) in the handling of a provincial election contest, and the claimed due process rights of a party to the contest. The petitioner Joselito R. Mendoza (the *petitioner*) essentially asserts in his petition for *certiorari*[1] that the COMELEC conducted proceedings in the election contest for the gubernatorial position of the Province of Bulacan, between him and the respondent Roberto M. Pagdanganan (*the respondent*), without due regard to his fundamental due process rights. The COMELEC, on the other hand, claims that its decision-making deliberations are internal, confidential and do not require notice to and the participation of the contending parties.

[1] Filed under Rule 64, in relation to Rule 65, of the Rules of Court.

THE ANTECEDENTS

The petitioner and the respondent vied for the position of Governor of the Province of Bulacan in the May 14, 2007 elections. The petitioner was proclaimed winning candidate and assumed the office of Governor.

The respondent seasonably filed an election protest with the COMELEC, which was raffled to the Second Division and docketed as EPC No. 2007-44. Revision of ballots involving the protested and counter-protested precincts in Angat, Bocaue, Calumpit, Doña Remedios Trinidad, Guiginto, Malolos, Meycauayan, Norzagaray, Pandi, Paombong, Plaridel, Pulilan, San Rafael and San Jose del Monte soon followed. The revision was conducted at the COMELEC's office in Intramuros. After revision, the parties presented their other evidence, leading to the parties' formal offer of their respective evidence.

The COMELEC approved the parties' formal offer of evidence and then required the parties to submit their respective memoranda. The parties complied with the COMELEC's order. **The case was thereafter submitted for resolution.**

On March 2, 2009 the COMELEC transferred the Bulacan ballot boxes, including those involved in the provincial election contest, to the Senate Electoral Tribunal (*SET*) in connection with the protest filed by Aquilino Pimentel III against Juan Miguel Zubiri. In light of this development, the petitioner moved to suspend further proceedings. .

The COMELEC's Second Division denied the petitioner's motion in its Order of April 29, 2009, ruling that the COMELEC has plenary powers to find alternative methods to facilitate the resolution of the election protest; thus, it concluded that it would continue the proceedings after proper coordination with the SET. The petitioner moved to reconsider this Order, but the COMELEC's Second Division denied the motion in its Order of May 26, 2009. These inter-related Resolutions led to the COMELEC's continued action — **specifically, the appreciation of ballots** — on the provincial election contest at the SET offices.

Allegedly alarmed by information on COMELEC action on the provincial election contest *within the SET premises without notice to him and without his participation,* the petitioner's counsel wrote the SET Secretary, Atty. Irene Guevarra, a letter dated June 10, 2009 to confirm the veracity of the reported conduct of proceedings.[2] The SET Secretary responded on June 17, 2009 as follows:

> x x x please be informed that the conduct of proceedings in COMELEC EPC No. 2007-44 (*Pagdanganan vs. Mendoza*) within the Tribunal Premises was authorized by then Acting Chairman of the Tribunal, Justice Antonio T. Carpio, upon formal request of the Office of Commissioner Lucenito N. Tagle.
>
> Basis of such grant is Section 3, Comelec Resolution No. 2812 dated 17 October 1995, stating that "(t)he Tribunals, the Commission and the Courts shall coordinate and make arrangement with each other so as not to delay or interrupt the revision of ballots being conducted. The synchronization of *revision of ballots* shall be such that the expeditious disposition of the respective protest case shall be the primary concern." *While the said provision speaks only of revision, it has been the practice of the Tribunal to allow the conduct of other proceedings in local election protest cases within its premises as may be requested.* [emphasis supplied][3]

THE PETITION

The SET Secretary's response triggered the filing of the present petition raising the following **ISSUES —**

A. WHETHER OR NOT THE COMELEC VIOLATED DUE PROCESS BY CONDUCTING PROCEEDINGS WITHOUT GIVING DUE NOTICE TO THE PETITIONER.

B. WHETHER OR NOT THE COMELEC GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO AN EXCESS OF JURISDICTION IN APPRECIATING BALLOTS WHICH ARE NOT IN ITS OFFICIAL CUSTODY AND ARE OUTSIDE ITS OWN PREMISES, AUTHORITY AND CONTROL.

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[2] See Petition, p. 12.

[3] *Rollo,* p. 45.

The petitioner argues that the election protest involves his election as Governor; thus, its subject matter involves him and the people of the Province of Bulacan who elected him. On this basis, he claims entitlement to notice and participation in all matters that involve or are related to the election protest. He further asserts that he had the legitimate expectation that no further proceedings would be held or conducted in the case after its submission for decision.

Citing the commentaries of Father Joaquin Bernas,[4] the petitioner argues that the proceedings before the COMELEC in election protests are judicial in nature and character. Thus, the strictures of judicial due process — specifically, (a) opportunity to be heard and (b) that judgment be rendered only after lawful hearing — apply. Notices in judicial dispute, he claims, are not really just a matter of courtesy; they are elementary fundamental element of due process, they are part and parcel of a right of a party to be heard. He further cites Justice Isagani A. Cruz,[5] who wrote:

> x x x *Every litigant is entitled to his day in court. He has a right to be notified of every incident of the proceeding and to be present at every stage thereof so that he may be heard by himself and counsel for the protection of his interest.*

The petitioner claims that without notice to him of the proceedings, the due process element of the right to have judgment only after lawful hearing is absent. There is no way, he claims, that a judicial proceeding held without notice to the parties could be described as a lawful hearing, especially a proceeding which has as its subject matter the sovereign will of an entire province.

He was therefore denied his day in court, he claims, when the COMELEC conducted the examination and appreciation of ballots. The proceedings should be stopped and declared null and void; its future results, too, should be nullified, *as nothing*

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[4] J. Bernas, *Constitutional Structure and Powers of Government*, 2005, pp. 718-719.

[5] I. Cruz, *Constitutional Law*, 2003, p. 14.

derived from the anomalous and unconstitutional clandestine and unilateral proceedings should ever be part of any decision that the COMELEC may subsequently render. The poisonous fruits (derived from the proceedings) should have no part and should not be admitted for any purpose and/or in any judicial proceeding.

Other than his due process concern, the petitioner takes issue with the COMELEC's appreciation of ballots even when the ballots and other election materials were no longer in its official custody and were outside its premises, authority and control. He asserts that an important element of due process is that the judicial body should have jurisdiction over the property that is the subject matter of the proceedings. In this case, the COMELEC has transferred possession, custody and jurisdiction over the ballots to the SET, a tribunal separate and independent from the COMELEC and over which the COMELEC exercises no authority or jurisdiction. For the COMELEC to still conduct proceedings on property, materials and evidence no longer in its custody violates the principle of separation of powers.

The petitioner also points out that the COMELEC's unilateral appreciation of the ballots in the SET premises deviates from the Commission's usual and time honored practice and procedure of conducting proceedings within its premises and while it has custody over the ballots. There is no precedent, according to the petitioner, for this deviation, nor is there any compelling reason to make the present case an exception. Citing *Cabagnot v. Commission on Elections* (G.R. No. 124383, August 9, 1996) which involves a transfer or change of venue of the revision of ballots, the petitioner alleges that this Court has been very emphatic in denouncing the COMELEC for its departure from its own rules and usual practice; while *Cabagnot* involves the issue of change of venue, the petitioner finds parallel applicability in the present case which also involves a deviation from COMELEC rules and usual practice. The petitioner adds that the act of the Second Division is effectively an arrogation of the authority to promulgate rules of procedure — a power that solely belongs to the COMELEC *en banc*.

After a *preliminary* finding of a genuine due process issue, we issued a Status Quo Order on July 14, 2009.

THE RESPONDENTS' COMMENTS

In his *Comment to the Petition with Extremely Urgent Motion to Lift/Dissolve Status Quo Ante Order*, the private respondent asserts that the petition contains deliberate falsehoods and misleading allegations that led the Court to grant the injunctive relief the petitioner had asked. He asserts that the "proceeding" the petitioner stated in his petition was actually the COMELEC's decision-making process, *i.e.*, the appreciation of ballots, which is a procedure internal to the Members of the Second Division of the COMELEC and their staff members; no revision of ballots took place as revision had long been finished. What was therefore undertaken within the SET's premises was unilateral COMELEC action that is exclusive to the COMELEC and an internal matter that is confidential in nature. In this light, no due process violation ever arose.

The private respondent also asserts that the petitioner cannot claim that he was not notified of and denied participation in the revision proceedings, as the petitioner himself is fully aware that the revision of the ballots was completed as early as July 28, 2008 and the petitioner was present and actively participated in the entire proceedings, all the way to the filing of the required memoranda. Thus, the petitioner's right to due process was duly satisfied.

The private respondent implores us to commence contempt proceedings against the petitioner who, the respondent claims, has not been forthright in his submissions and was not guided by the highest standards of truthfulness, fair play and nobility in his conduct as a party and in his relations with the opposing party, the other counsel and the Court.

Lastly, the private respondent posits that the present petition was filed out of time — *i.e.*, beyond the reglementary period provided under Rule 64. **All these reasons, the petitioner argues, constitute sufficient basis for the lifting of the status quo order and the dismissal of the petition.**

Public respondent COMELEC, for its part, claims that the petition is without basis in fact and in law and ought to be dismissed outright. Given the possibility of simultaneous election contests involving national and local officials, it has institutionalized an **order of preference** in the custody and **revision of ballots** in contested ballot boxes. The established order of preference is not without exception, as the expeditious disposition of protest cases is a primary concern. Additionally, the order of preference does not prevent the COMELEC from proceeding with pending protest cases, particularly those already submitted for decision. It claims that it has wide latitude to employ means to effectively perform its duty in safeguarding the sanctity of the elections and the integrity of the ballot.

The COMELEC further argues that in the absence of a specific rule on whether it can conduct **appreciation of ballots** outside its premises or official custody, the issue boils down to one of discretion — the authority of the COMELEC to control as it deems fit the processes or incidents of a pending election protest. Under Section 4 of the COMELEC Rules of Procedure, the COMELEC may use all auxiliary writs, processes and other means to carry into effect its powers or jurisdiction; if the procedure to be followed in the exercise of such power or jurisdiction is not specifically provided for by law or the Rules of Procedure, any suitable process or proceeding not prohibited by law or by its rules may be adopted.

The COMELEC lastly submits that while due process requires giving the parties an opportunity to intervene in all stages of the proceedings, the COMELEC in the present case is not actually conducting further proceedings requiring notice to the parties; there is no revision or correction of the ballots, as the election protest had already been submitted for resolution. When the COMELEC coordinated with the SET, it was simply for purposes of resolving the submitted provincial election contest before it; the parties do not take part in this aspect of the case which necessarily requires utmost secrecy. On the whole, the petitioner was afforded every opportunity to present his case. To now hold the election protest hostage until the conclusion of the

protest pending before the SET defeats the COMELEC's mandate of ensuring free, orderly and honest election.

THE COURT'S RULING

We review the present petition on the basis of the combined application of Rules 64 and 65 of the Rules of Court. While COMELEC jurisdiction over the Bulacan election contest is not disputed, the legality of subsequent COMELEC action is assailed for having been undertaken with grave abuse of discretion amounting to lack or excess of jurisdiction. Thus, our standard of review is "grave abuse of discretion," a term that defies exact definition, but generally refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility."[6] Mere abuse of discretion is not enough; the abuse must be grave to merit our positive action.[7]

After due consideration, we find the petition devoid of merit.

The petition is anchored on the alleged conduct of proceedings in the election protest — following the completed revision of ballots — at the SET premises without notice to and without the participation of the petitioner. Significantly, "the conduct of proceedings" is confirmed by the SET Secretary in the letter we quoted above.[8] As the issues raised show — the petitioner's focus is not really on the COMELEC Orders denying the suspension of proceedings when the ballot boxes and other election materials pertinent to the election contest were transferred to

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[6] *Quintos v. Commission on Elections*, G.R. No. 149800, November 21, 2002, 392 SCRA 489.

[7] *Suliguin v. Commission on Elections*, G.R. No. 166046, March 23, 2006, 485 SCRA 219.

[8] *Supra* note 3.

the SET; *the focus is on what the COMELEC did after to the issuance of the Resolutions.* We read the petition in this context as these COMELEC Orders are now unassailable as the period to challenge them has long passed.[9]

The substantive issue we are primarily called upon to resolve is whether there were proceedings within the SET premises, entitling the petitioner to notice and participation, which were denied to him; in other words, the issue is whether the petitioner's right to due process has been violated. A finding of due process violation, because of the inherent arbitrariness it carries, necessarily amounts to grave abuse of discretion.

As a preliminary matter, we note that the petitioner has claimed that COMELEC exercises *judicial power* in its action over provincial election contests and has argued its due process position from this view. We take this opportunity to clarify that judicial power in our country is *"vested in* ***one Supreme Court*** *and in such* ***lower courts*** *as may be established by law."*[10] This exclusive grant of authority to the Judiciary is reinforced under the second paragraph of Section 1, Article VIII of the Constitution which further states that *"Judicial power includes the duty of the* ***courts of justice*** *to settle actual controversies involving rights which are legally demandable and enforceable...,"* thus constitutionally locating the *situs* of the exercise of judicial power in the courts.

In contrast with the above definitions, Section 2, Article IX(C) of the Constitution lists the COMELEC's powers and functions, among others, as follows:

(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

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[9] See Section 3, Rule 64 of the Rules of Court. The petitioner received the COMELEC Resolution denying his motion for reconsideration on June 1, 2009. Thirty (30) days later or on July 1, 2009, he filed a motion for extension of time to file the petition. The petition cannot but be late because of the remainder rule under Section 3, Rule 64.

[10] Section 1 (first paragraph), Article VIII, 1987 Constitution.

(2) Exercise exclusive original jurisdiction over all contests relating to the elections, returns and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective *barangay* officials by trial courts of limited jurisdiction.

Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and *barangay* officials shall be final, executory, and not appealable.

(3) Decide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters.

Under these terms, the COMELEC under our governmental structure is a constitutional administrative agency and its powers are essentially executive in nature (*i.e.*, to enforce and administer election laws),[11] quasi-judicial (to exercise original jurisdiction over election contests of regional, provincial and city officials and appellate jurisdiction over election contests of other lower ranking officials), and quasi-legislative (rulemaking on all questions affecting elections and the promulgation of its rules of procedure).

Historically, the COMELEC has always been an administrative agency whose powers have been increased from the 1935 Constitution to the present one, to reflect the country's awareness of the need to provide greater regulation and protection to our electoral processes to ensure their integrity. In the 1935 Constitution, the powers and functions of the COMELEC were defined as follows:

SECTION 2. The Commission on Elections shall have exclusive charge of the *enforcement and administration of all laws relative to the conduct of elections* and shall exercise all other functions which may be conferred upon it by law. It shall decide, save those involving the right to vote, all administrative questions affecting elections, including the determination of the number and location

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[11] *Ututalum v. Commission on Elections*, G.R. No. L-25349, December 3, 1965, 15 SCRA 465.

of polling places, and the appointment of election inspectors and of other election officials. All law enforcement agencies and instrumentalities of the Government, when so required by the Commission, shall act as its deputies for the purpose of insuring free, orderly, and honest election. The decisions, orders, and rulings of the Commission shall be subject to review by the Supreme Court. [emphasis supplied]

These evolved into the following powers and functions under the 1973 Constitution:

(1) *Enforce and administer all laws relative to the conduct of elections.*

(2) Be the sole judge of all contests relating to the elections, returns, and qualifications of all members of the National Assembly and elective provincial and city officials.

(3) Decide, save those involving the right to vote, administrative questions affecting elections, including the determination of the number and location of polling places, the appointment of election officials and inspectors, and the registration of voters.

These powers have been enhanced in scope and details under the 1987 Constitution, but retained all the while the character of an administrative agency.

The COMELEC's adjudicative function is quasi-judicial since it is a constitutional body, *other than a court*, vested with authority to decide election contests, and in the course of the exercise of its jurisdiction, to hold hearings and exercise discretion of a judicial nature;[12] it receives evidence, ascertain the facts from these submissions, determine the law and the legal rights of the parties, and on the basis of all these decides on the merits of the case and renders judgment.[13] Despite the exercise of discretion that is essentially judicial in character, particularly with respect

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[12] See: *Presidential Anti-Dollar Salting Task Force v. Court of Appeals*, G.R. No. 83578, March 16, 1989, 171 SCRA 348; *Midland Insurance Corporation v. IAC*, No. 71905, August 13, 1986, 143 SCRA 458.

[13] See: *Cariño v. Commission on Human Rights*, G.R. No. 96681, December 2, 1991, 204 SCRA 483, on the activities encompassed by the exercise of quasi-judicial power.

to election contests, COMELEC is not a tribunal within the judicial branch of government and is not a court exercising judicial power in the constitutional sense;[14] hence, its adjudicative function, exercised as it is in the course of administration and enforcement, is quasi-judicial.

As will be seen on close examination, the 1973 Constitution used the unique wording that the COMELEC shall "be the *sole judge* of all contests," thus giving the appearance that judicial power had been conferred. This phraseology, however, was changed in the 1987 Constitution to give the COMELEC "exclusive jurisdiction over all contests," thus removing any vestige of exercising its adjudicatory power *as a court* and correctly aligning it with what it is — a quasi-judicial body.[15] Consistent with the characterization of its adjudicatory power as quasi-judicial, the judicial review of COMELEC *en banc* decisions (together with the review of Civil Service Commission decisions) is *via* the prerogative writ of *certiorari*, not through an appeal, as the traditional mode of review of quasi-judicial decisions of administrative tribunals in the exercise the Court's supervisory authority. This means that the Court will not supplant the decision of the COMELEC as a quasi-judicial body except where a grave abuse of discretion or any other jurisdictional error exists.

The appropriate due process standards that apply to the COMELEC, as an administrative or quasi-judicial tribunal, are those outlined in the seminal case of *Ang Tibay v. Court of Industrial Relations*,[16] quoted below:

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[14] See: *Cipriano v. COMELEC*, G.R. No. 158830, August 10, 2004, 436 SCRA 45, citing *Sandoval v. COMELEC*, 323 SCRA 403 [2000].

[15] The Senate and House of Representatives Electoral Tribunals, as provided in the Constitution are still the "sole judge" of their respective election contests, but like the COMELEC, they are quasi-judicial bodies and do not exercise judicial power under the Constitution. For its part, the Presidential Electoral Tribunal, wholly composed of the Justices of the Supreme Court, is not a quasi-judicial body because adjudicative power is given to the Supreme Court, as a court sitting *en banc*.

[16] 69 Phil. 635 (1940).

(1) The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. xxx

(2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented.

(3) While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. A decision with absolutely nothing to support it is a nullity, a place when directly attached.

(4) Not only must there be some evidence to support a finding or conclusion, but the evidence must be "substantial." "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

(5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.

(6) The Court of Industrial Relations or any of its judges, therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision.

(7) The Court of Industrial Relations should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered. The performance of this duty is inseparable from the authority conferred upon it.

These are now commonly referred to as **cardinal primary rights** in administrative proceedings.

The first of the enumerated rights pertain to the substantive rights of a party at **hearing stage** of the proceedings. The essence of this aspect of due process, we have consistently held, is simply the opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or

ruling complained of.[17] A formal or trial-type hearing is not at all times and in all instances essential; in the case of COMELEC, Rule 17 of its Rules of Procedure defines the requirements for a hearing and these serve as the standards in the determination of the presence or denial of due process.

The second, third, fourth, fifth, and sixth aspects of the *Ang Tibay* requirements are reinforcements of the right to a hearing and are the inviolable rights applicable at the **deliberative stage**, as the decision-maker decides on the evidence presented during the hearing. These standards set forth the guiding considerations in deliberating on the case and are the material and substantial components of decision-making. *Briefly, the tribunal must consider the totality of the evidence presented which must all be found in the records of the case (i.e., those presented or submitted by the parties); the conclusion, reached by the decision-maker himself and not by a subordinate, must be based on substantial evidence.*[18]

Finally, the last requirement, relating to the form and substance of the decision of a quasi-judicial body, further complements the hearing and decision-making due process rights and is similar in substance to the constitutional requirement that a decision of a court must state distinctly the facts and the law upon which it is based.[19] As a component of the rule of fairness that underlies due process, this is the *"duty to give reason"* to enable the affected person to understand how the rule of fairness has been administered in his case, to expose the reason to public scrutiny and criticism, and to ensure that the decision will be thought through by the decision-maker.

In the present case, the petitioner invokes both the due process component rights at the hearing and deliberative stages and alleges

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[17] *Bautista v. Comelec*, G.R. Nos. 154796-97, October 23, 2003, 414 SCRA 299.

[18] *Supra* note 17.

[19] CONSTITUTION, Article VIII, Section 14; See *Solid Homes, Inc. v. Laserna*, G.R. No. 166051, April 8, 2008, 550 SCRA 613.

that these component rights have all been violated. We discuss all these allegations below.

The Right to Notice and to be Heard.

a. At the Hearing and Revision of Ballots.

Based on the pleadings filed, we see no factual and legal basis for the petitioner to complain of denial of his hearing stage rights. In the first place, he does not dispute that he fully participated in the proceedings of the election protest until the case was deemed submitted for resolution; he had representation at the revision of the ballots, duly presented his evidence, and summed up his case through a memorandum. These various phases of the proceedings constitute the hearing proper of the election contest and the COMELEC has more than satisfied the opportunity to be heard that the *Ang Tibay* hearing stage rights require. In these proceedings, the petitioner stood head-to-head with the respondent in an adversarial contest where both sides were given their respective rights to speak, make their presentations, and controvert each other's submission, subject only to established COMELEC rules of procedures. Under these undisputed facts, both parties had their day in court, so to speak, and neither one can complain of any denial of notice or of the right to be heard.

b. At the "Proceedings" at the SET.

A critical question to be answered in passing upon due process questions at this stage of the election contest is the nature of the so-called "proceedings" after the ballots and other materials pertinent to the provincial election contest were transferred to the SET.

In the petition, the petitioner alleged that there were "strange proceedings"[20] which were "unilateral, clandestine and surreptitious" within the premises of the SET, on "documents, ballots and election materials whose possession and custody have been transferred" to the SET, and the "petitioner was

[20] *Rollo*, p. 12.

NEVER OFFICIALLY NOTIFIED of the strange on-goings" at the SET.[21] Attached to the petition was the letter of the Secretary of the SET confirming the "conduct of proceedings" in the provincial election contest, and citing as basis the authority of Acting SET Chairman, Justice Antonio T. Carpio, upon the formal request of the Office of Commissioner Lucenito N. Tagle, and citing Section 3, COMELEC Resolution No. 2812 dated 17 October 1995 on the coordination envisioned among the COMELEC, the SET and the courts "so as not to delay or interrupt the ***revision of ballots*** being conducted." While the SET letter made the reservation that "While the said provision speaks only of revision, it has been the practice of the Tribunal to allow the conduct of other proceedings in local election protest cases within its premises as may be requested," no mention whatsoever was made of the kind of proceedings taking place.

It was at this point that this Court intervened, in response to the petitioner's prayer for the issuance of temporary injunctive relief, through the issuance of a Status Quo Order with a non-extendible directive for the respondents to file their comments on the petition; for indeed, any further revision of ballots or other adversarial proceedings after the case has been submitted for resolution, would not only be strange and unusual but would indicate a gross violation of due process rights.

After consideration of the respondents' Comments and the petitioner's petition and Reply, we hold that the contested proceedings at the SET (*contested proceedings*) are no longer part of the adversarial aspects of the election contest that would require notice of hearing and the participation of the parties. As the COMELEC stated in its Comment and without any contrary or disputing claim in the petitioner's Reply:[22]

"However, contrary to the claim of petitioner, public respondent in the appreciation of the contested ballots in EPC No. 2007-44 simultaneously with the SET in SET Case No. 001-07 is not conducting "further proceedings" requiring notice to the parties. There is no

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

[22] COMELEC Comment; *rollo*, pp. 72-S and 72-T.

revision or correction of the ballots because EPC No. 2007-04 was already submitted for resolution. Public respondent, in coordinating with the SET, is simply resolving the submitted protest case before it. The parties necessarily take no part in said deliberation, which require utmost secrecy. Needless to state, the actual decision-making process is supposed to be conducted only by the designated members of the Second Division of the public respondent in strict confidentiality."

In other words, what took place at the SET were the internal deliberations of the COMELEC, as a quasi-judicial body, in the course of appreciating the evidence presented and deciding the provincial election contest on the merits. These deliberations are no different from judicial deliberations which are considered confidential and privileged.[23] We find it significant that the private respondent's Comment fully supported the COMELEC's position and disavowed any participation in the contested proceeding the petitioner complained about. The petitioner, on the other hand, has not shown that the private respondent was ever present in any proceeding at the SET relating to the provincial election contest.

To conclude, the rights to notice and to be heard are not material considerations in the COMELEC's handling of the Bulacan provincial election contest after the transfer of the ballot boxes to the SET; no proceedings at the instance of one party or of COMELEC has been conducted at the SET that would require notice and hearing because of the possibility of prejudice to the other party. The COMELEC is under no legal obligation to notify either party of the steps it is taking in the course of deliberating on the merits of the provincial election contest. In the context of our standard of review for the petition, we see no grave abuse of discretion amounting to lack or excess of jurisdiction committed by the COMELEC in its deliberation on the Bulacan election contest and the appreciation of ballots this deliberation entailed.

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[23] See *Chavez v. Public Estates Authority*, G.R. No. 133250, July 9, 2002, 384 SCRA 152.

Alleged Violations of Deliberation Stage Rights.

On the basis of the above conclusion, we see no point in discussing any alleged violation of the deliberative stage rights. First, no illegal proceeding ever took place that would bear the "poisonous fruits" that the petitioner fears. Secondly, in the absence of the results of the COMELEC deliberations through its decision on the election protest, no basis exists to apply the *Ang Tibay* deliberative stage rights; there is nothing for us to test under the standards of the due process deliberative stages rights before the COMELEC renders its decision. Expressed in terms of our standard of review, we have as yet no basis to determine the existence of any grave abuse of discretion.

Conduct of COMELEC Deliberations at the SET Premises

We turn to the issue of the propriety of the COMELEC's consideration of the provincial election contest (specifically its appreciation of the contested ballots) at the SET premises and while the same ballots are also under consideration by the SET for another election contest legitimately within the SET's own jurisdiction.

We state at the outset that the COMELEC did not lose jurisdiction over the provincial election contest, as the petitioner seems to imply, because of the transmittal of the provincial ballot boxes and other election materials to the SET. The Constitution conferred upon the COMELEC jurisdiction over election protests involving provincial officials. The COMELEC in this case has lawfully acquired jurisdiction over the subject matter, *i.e.*, the provincial election contest, as well as over the parties. After its jurisdiction attached, this jurisdiction cannot be ousted by subsequent events such as the temporary transfer of evidence and material records of the proceedings to another tribunal exercising its own jurisdiction over another election

contest pursuant to the Constitution. This is the rule of adherence of jurisdiction.[24]

Thus, the jurisdiction of the COMELEC over provincial election contest exists side by side with the jurisdiction of the Senate Electoral Tribunal, with each tribunal being supreme in their respective areas of concern (the Senate election contests for the SET, and the regional, provincial and city election contests for the COMELEC), and with neither one being higher than the other in terms of precedence so that the jurisdiction of one must yield to the other.

But while no precedence in jurisdiction exists, the COMELEC, vowing to the reality that only a single ballot exists in an election for national and local officials, saw it fit to lay down the rule on the "order of preference in the *custody and revision of ballots* and other documents contained in the ballot boxes." The order, in terms of the adjudicatory tribunal and as provided in COMELEC Resolution No. 2812, runs:

1. Presidential Electoral Tribunal;
2. Senate Electoral Tribunal;
3. House of Representatives Electoral Tribunal;
4. Commission on Elections; and
5. Regional Trial Courts.

This order of preference dictated that the ballot boxes and other election materials in Bulacan's provincial election contest, had to be transferred to the SET when the latter needed these materials for its revision of ballots. The transfer to the SET, however, did not mean that the Bulacan provincial election contest — at that time already submitted for decision — had to be suspended as the COMELEC held in its Orders of 29 April 2009 and 26

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[24] See: *Ramos v. Central Bank of the Philippines*, No. L-29352, October 4, 1971, 41 SCRA 565; *Bengzon v. Inciong*, Nos. L-48706-07, June 29, 1079, 91 SCRA 248; *Baltazar v. CA*, 104 SCRA 619 [1981]; *Ramos v. Our Lady of Peace School*, No. 55950, December 26, 1984, 133 SCRA 741; *Lee v. Presiding Judge, MTC – Legazpi City*, No. 68789, November 10, 1986, 145 SCRA 408.

May 2009 in EPC No. 2007-44.[25] This is particularly true in Bulacan's case as no revision had to be undertaken, the revision having been already terminated.

With the COMELEC retaining its jurisdiction over the Bulacan provincial election contest, the legal effect of the physical transfer of the ballots and other election materials to the SET for purposes of its own revision becomes a non-issue, given the arrangement between the COMELEC and the SET, pursuant to COMELEC Resolution No. 2812, to "coordinate and make arrangements with each other so as not to delay or interrupt the revision of ballots being conducted," all for the purpose of the expeditious disposition of their respective protest cases. The SET itself honored this arrangement as shown by the letter of the SET Secretary that the COMELEC could "conduct proceedings" within the Tribunal premises as authorized by the Acting Chairman of the Tribunal, Justice Antonio T. Carpio.[26] This arrangement recognized the COMELEC's effective authority over the Bulacan ballots and other election materials, although these were temporarily located at the SET premises. This arrangement, too, together with the side by side and non-conflicting existence of the COMELEC and SET jurisdictions, negate the validity of the petitioner's argument that the COMELEC transgressed the rule on separation of powers when it acted on the Bulacan provincial election contest while the ballot boxes were at the SET premises. Rather than negate, this arrangement reinforced the separate but co-existing nature of these tribunals' respective jurisdictions.

As the petitioner argues and the COMELEC candidly admits, "there is no specific rule which allows the COMELEC to conduct an appreciation of ballots outside its premises and of those which are outside its own custody."[27] But while this is true, there is likewise nothing to prohibit the COMELEC from undertaking the appreciation of ballot side by side with the SET's own revision

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[25] *Rollo*, pp. 29-34.

[26] *Supra* note 3.

[27] Petition, pp. 13-14; *rollo*, pp. 18-19; COMELEC Reply; *rollo*, pp. 72-R – 72-S.

of ballots for the senatorial votes, in light especially of the COMELEC's general authority to adopt means to effect its powers and jurisdiction under its Rules of Procedure. Section 4 of these Rules states:

> Sec. 4. *Means to Effect Jurisdiction*. — All auxiliary writs, processes and other means necessary to carry into effect its powers or jurisdiction may be employed by the Commission; and if the procedure to be followed in the exercise of such power or jurisdiction is not specifically provided for by law or these rules, any suitable process or proceeding may be adopted.

This rule is by no means unusual and unique to the COMELEC as the courts have the benefit of this same type of rule under Section 6, Rule 136 of the Rules of Court. The courts' own rule provides:

> *Means to Carry Jurisdiction into Effect*. When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules.

Incidentally, the COMELEC authority to promulgate the above rule enjoys constitutional moorings; in the grant to the COMELEC of its jurisdiction, the Constitution provided it with the accompanying authority to promulgate its own rules concerning pleadings and practice before it or before any of its offices, provided that these rules shall not diminish, increase or modify substantive rights.[28] The Constitution additionally requires that the rules of procedure that the COMELEC will promulgate must *expedite the disposition of election cases*, including pre-proclamation controversies.[29] This constitutional standard is authority, no less, that the COMELEC can cite in defending its action. For ultimately, the appreciation of the Bulacan ballots

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[28] CONSTITUTION, Article IX-A, Section 6.

[29] CONSTITUTION, Article IX-C, Section 3.

that the COMELEC undertook side by side with the SET's own revision of ballots, constitutes an exercise of discretion made under the authority of the above-cited COMELEC rule of procedure.

On the basis of the standards set by Section 4 of the COMELEC Rules of Procedure, and of the Constitution itself in the handling of election cases, we rule that the COMELEC action is a valid exercise of discretion as it is a suitable and reasonable process within the exercise of its jurisdiction over provincial election contests, aimed at expediting the disposition of this case, and with no adverse, prejudicial or discriminatory effects on the parties to the contest that would render the rule unreasonable.

Since the COMELEC action, taken by its Second Division, is authorized under the COMELEC Rules of Procedure, the Second Division cannot in any sense be said to be intruding into the COMELEC *en banc* rule-making prerogative when the Second Division chose to undertake ballot appreciation within the SET premises side by side with the SET revision of ballots. To be exact, the Second Division never laid down any new rule; it merely acted pursuant to a rule that the COMELEC *en banc* itself had previously enacted.

In light of these conclusions, we need not discuss the other issues raised.

WHEREFORE, premises considered, we *DISMISS* the petition for *certiorari* for lack of merit. We accordingly *LIFT* the *STATUS QUO ORDER* we issued, *effective immediately*.

SO ORDERED.

Quisumbing,[*] *Carpio, Corona, Carpio Morales, Chico-Nazario, Nachura, Leonardo-de Castro, Peralta, Bersamin,* and *Abad, JJ.,* concur.

Puno, C.J., Velasco, Jr., and *Del Castillo, JJ.,* on official leave.

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[*] Acting Chief Justice from October 12 to 16, 2009 per Special Order No. 721 dated October 5, 2009.

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Principle of Adherence of Jurisdiction — Transmittal of the provincial ballot boxes and other election materials to the Senate Electoral Tribunal will not divest the COMELEC of its jurisdiction over the election contest; reason. (Mendoza *vs.* COMELEC, G.R. No. 188308, Oct. 15, 2009) p. 706

EMPLOYMENT, TERMINATION OF

Dismissal — Effect of failure to observe the twin requirements of notice and hearing for a valid dismissal. (Metro Construction, Inc. *vs.* Aman, G.R. No. 168324, Oct. 12, 2009) p.333

Retirement — Absent any existing agreement, the retirement age shall be fixed by law. (Eastern Shipping Lines, Inc. *vs*. Antonio, G.R. No. 171587, Oct. 13, 2009) p. 601

— An employee cannot claim optional retirement benefits as a matter of right where he has not yet reached the required eligibility age. *(Id.)*

Retrenchment — Financial losses must be supported by sufficient and convincing evidence. (Metro Construction, Inc. *vs*. Aman, G.R. No. 168324, Oct. 12, 2009) p.333

Serious misconduct as a ground — The employee's misappropriation of the funds entrusted to him constitutes serious misconduct. (Superlines Transportation Co., Inc. *vs*. Pinera, G.R. No. 188742, Oct. 13, 2009) p. 696

.ESTAFA

Commission of — Elements. (Domingo *vs.* People, G.R. No. 186101, Oct. 12, 2009) p. 499

ESTAFA THROUGH FALSIFICATION OF PUBLIC DOCUMENTS

Commission of — Key element of crime is that the untruthful statement which the offender has made in a document be a perversion of the truth with wrongful intent of injuring a third person; when not present. (Ignacio *vs*. People, G.R. No. 182259, Oct. 12, 2009) p. 428

EVIDENCE

Circumstantial evidence — Sufficient to convict the accused if it shows a series of circumstances duly proved and consistent with each other. (People *vs*. Pabol, G.R. No. 187084, Oct. 12, 2009) p. 533

Direct evidence — Not the only way to establish guilt. (People *vs*. Pabol, G.R. No. 187084, Oct. 12, 2009) p. 533

Open court testimony — Commands greater weight than ex parte affidavits in case of inconsistency. (People *vs*. Dela Cruz, G.R. No. 184792, Oct. 12, 2009) p. 465

Paraffin test — Negative result of paraffin test does not conclusively show that a person did not discharge a firearm. (People *vs.* Villasan, G.R. No. 176527, Oct. 09, 2009) p. 240

EXEMPLARY DAMAGES

Award of — Award thereof is proper when the qualifying circumstance of treachery is established. (People *vs*. Dela Cruz, G.R. No. 184792, Oct. 12, 2009) p. 465

— Awarded as proper deterrent to repugnant sexual behavior. (People *vs*. Yoon Chang Wook, G.R. No. 178199, Oct. 05, 2009) p. 23

EXEMPTING CIRCUMSTANCES

Insanity — To be appreciated, there must be complete deprivation of intelligence or there is complete absence of power to discern or a total deprivation of the will. (People *vs*. Alipio, G.R. No. 185285, Oct. 05, 2009) p. 38

EXPROPRIATION

Just compensation — Determination of just compensation must be done not only for the protection of the landowners' interest but also for the good of the public; rationale. (Hon. Eusebio *vs.* Luis, G.R. No. 162474, Oct. 13, 2009) p. 586

— Even if there are no expropriation proceedings to determine just compensation, the trial court is mandated to act in accordance with the procedure provided for by the rules. *(Id.)*

— The landowner is entitled to just compensation although he may be barred from recovering possession of the property on ground of estoppel. *(Id.)*

— Where property is taken without the benefit of expropriation proceedings, and its owner files an action for recovery of property before the commencement of the expropriation proceedings, the value of the property at the time of the taking is controlling; rationale. *(Id.)*

EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE (ACT NO. 3135)

Right of possession — The right of possession by a purchaser in an extrajudicial foreclosure of real property is recognized only as against the judgment debtor and his successor-in-interest, but not against persons whose right of possession is adverse to the latter. (BPI *vs*. Icot, G.R. No. 168061, Oct. 12, 2009) p. 320

Writ of possession — May be issued within the one year redemption period, upon filing of a bond or after the lapse of the redemption period, without need of a bond or of a separate independent action, except when a third party is

holding the property adversely to the judgment debtor. (BPI *vs.* Icot, G.R. No. 168061, Oct. 12, 2009) p. 320

— Petitioner's right to issuance of a writ of possession cannot be invoked against respondents since they are not parties to the mortgage contract; respondent's possession of the subject real property is legally presumed to be pursuant to a just title which petitioner may endeavor to overcome in a judicial proceeding for recovery of property. *(Id.)*

FALSIFICATION OF COMMERCIAL DOCUMENTS

Commercial documents — Defined; encashment slips are covered. (Domingo *vs*. People, G.R. No. 186101, Oct. 12, 2009) p. 499

Commission of — Damage or intent to cause damage is not an element of the crime. *(Id.)*

— Elements. *(Id.)*

— If a person has in his possession a falsified document and he made use of it, taking advantage of it and profiting from it, the presumption is that he is the material author of the falsification. *(Id.)*

FELONIES

Attempted felony — Elements. (People *vs*. Sumingwa, G.R. No. 183619, Oct. 13, 2009) p. 650

— Overt or external act, defined; act of removing the victim's pants does not constitute an overt act of rape. *(Id.)*

FORFEITURE OF ILL-GOTTEN WEALTH LAW (R.A. NO. 1379)

Application — Forfeiture cases under R.A. No. 1379 and the plunder case have separate causes of action; the former is civil in nature while the latter is criminal. (Garcia *vs*. Sandiganbayan, G.R. No. 170122, Oct. 12, 2009; *Velasco, Jr., J., concurring and dissenting opinion*) p. 346

— The Sandiganbayan erred in not dismissing the forfeiture case for lack of jurisdiction over the person of petitioner. *(Id.)*

GUARDIANSHIP

Guardianship court — Limited jurisdiction of the guardianship court; distribution of the residue of the estate of the incompetent deceased pertains to another proceeding, not to the guardianship proceedings. (Heirs of Jose Sy Bang *vs*. Sy, G.R. No. 114217, Oct. 13, 2009) p. 545

Property of ward — When court may order the delivery of the embezzled, concealed or conveyed property of the ward. (Heirs of Jose Sy Bang *vs*. Sy, G.R. No. 114217, Oct. 13, 2009) p. 545

INJUNCTION

Preliminary injunction — When a party is entitled to injunctive relief. (Sps. Ibasco *vs*. Private Dev't. Corp. of the Phils., G.R. No. 162473, Oct. 12, 2009) p. 315

Writ of — Cannot be issued absent a clear cut determination of the right in esse of the party, a material evasion of such right and the prevention of irreparable injury. (Subic Telecommunications Co., Inc. *vs*. Subic Bay Metropolitan Authority and Innove Communications, Inc., G.R. No. 185159, Oct. 12, 2009) p. 480

INSANITY

As an exempting circumstance — To be appreciated, there must be complete deprivation of intelligence or there is complete absence of power to discern or a total deprivation of the will. (People *vs*. Alipio, G.R. No. 185285, Oct. 05, 2009) p. 38

INTEREST

Legal interest — Legal interest of 6% shall be reckoned from the time the lower court rendered its judgment. (Air France Phils./KLM Air France *vs*. De camilis, G.R. No. 188961, Oct. 13, 2009) p. 698

JUDGMENT, EXECUTION OF

Right of redemption — By virtue of the writ of execution, judgment creditor and redemptioner acquired by operation

of law the right of redemption over the foreclosed properties pursuant to Section 6 of Act No. 3135, as amended by Act No. 4118. (Cayton *vs.* Zeonnix Trading Corp., G.R. No. 169541, Oct. 09, 2009) p. 136

— Expounded. *(Id.)*

— Failure to pay delinquent real estate taxes on the property will not render the redemption void; policy of the law is to aid rather than defeat the right of redemption. *(Id.)*

— The amount tendered by judgment creditor and redemptioner, less the amount of taxes paid by petitioners, may be considered sufficient for purposes of redemption and should be deemed as substantial compliance considering that it immediately paid the amount of taxes when apprised of the deficiency. *(Id.)*

— The unregistered sale of the house and lot to petitioners cannot prejudice the right of redemption granted by law in favor of the judgment creditor and redemptioner whose levy on attachment was duly recorded on the title. *(Id.)*

JUDGMENTS

Several judgments — When proper. (Heirs of Jose Sy Bang *vs.* Sy, G.R. No. 114217, Oct. 13, 2009) p. 545

JUDICIAL DEPARTMENT

Judicial power — Defined; to whom vested. (Mendoza *vs.* COMELEC, G.R. No. 188308, Oct. 15, 2009) p. 706

JURISDICTION

Jurisdiction over the person — Since the Sandiganbayan did not acquire jurisdiction over the persons of petitioner and her children, the proceedings in the subject forfeiture proceedings are null and void for lack of jurisdiction. (Garcia *vs.* Sandiganbayan, G.R. No. 170122, Oct. 12, 2009; *Velasco, Jr., J., concurring and dissenting opinion*) p. 346

— Special appearance to question a court's jurisdiction is not a voluntary appearance. *(Id.)*

Lack of jurisdiction over the person — A purely personal defense and a party who does not appeal or file a petition for *certiorari* to question the same is not entitled to any affirmative relief. (Garcia *vs.* Sandiganbayan, G.R. No. 170122, Oct. 12, 2009; *Carpio, J., concurring and dissenting opinion*) p. 346

Voluntary appearance — Petitioner voluntarily submitted herself to the jurisdiction of the Sandiganbayan in the forfeiture case; petitioner's act of invoking the transfer or consolidation of the cases as an affirmative relief clearly indicates her recognition of the Sandiganbayan's power and authority. (Garcia *vs.* Sandiganbayan, G.R. No. 170122, Oct. 12, 2009; *Carpio, J., concurring and dissenting opinion*) p. 346

JUST COMPENSATION

Determination of — Even if there are no expropriation proceedings to determine just compensation, the trial court is mandated to act in accordance with the procedure provided for by the rules. (Hon. Eusebio *vs*. Luis, G.R. No. 162474, Oct. 13, 2009) p. 586

— Must be done not only for the protection of the landowners' interest but also for the good of the public; rationale. *(Id.)*

— Where property is taken without the benefit of expropriation proceedings, and its owner files an action for recovery of property before the commencement of the expropriation proceedings, the value of the property at the time of the taking is controlling; rationale. *(Id.)*

LAND REGISTRATION

Reconveyance — Action for annulment of title or reconveyance based on fraud or constructive trust is imprescriptible where the plaintiff is in possession of the property subject of the acts. (Aqualab Phils., Inc. *vs*. Heirs of Marcelino Pagobo, G.R. No. 182673, Oct. 12, 2009) p. 442

Registration — An operative act to convey land insofar as third persons are concerned. (Cayton *vs*. Zeonnix Trading Corp., G.R. No. 169541, Oct. 09, 2009) p. 136

Torrens title — The defense of indefeasibility of a Torrens Title does not extend to a transferee who takes it with notice of a flaw in the title of his transferor. (Aqualab Phils., Inc. *vs*. Heirs of Marcelino Pagobo, G.R. No. 182673, Oct. 12, 2009) p. 442

LIBEL

Venue in libel cases — Article 360 of the Revised Penal Code, as amended by Republic Act No. 4363 provides specific rules as to the venue in cases of written defamation. (Foz, Jr. *vs*. People, G.R. No. 167764, Oct. 09, 2009) p. 120

— Since the complainant is a private individual at the time of the publication of the alleged libelous article, the venue of the libel case may be in the province or city where the libelous article was printed and first published, or in the province where complainant actually resided at the time of the commission of the offense. *(Id.)*

— The Regional Trial Court of Iloilo City had no jurisdiction to hear the libel case considering that the information failed to allege the venue requirements under Article 360 of the Revised Penal Code. *(Id.)*

LIS PENDENS

Notice of lis pendens — Construed. (Heirs of Jose Sy Bang *vs*. Sy, G.R. No. 114217, Oct. 13, 2009) p. 545

— Effect of filing thereof. *(Id.)*

— Grounds for cancellation of notice of *lis pendens*. *(Id.)*

MARRIAGE

Presumption of validity of — Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity; presumption is always in favor of the validity of marriage. (Alcazar *vs*. Alcazar, G.R. No. 174451, Oct. 13, 2009) p. 616

MARRIAGE, ANNULMENT OF

Physical incapacity — Article 45, paragraph 5 of the Family Code; physical incapacity to consummate the marriage,

explained. (Alcazar *vs*. Alcazar, G.R. No. 174451, Oct. 13, 2009) p. 616

MORAL DAMAGES

Award of — Mandatory in cases of murder and homicide, without need of any allegation or proof other than the death of the victim. (People *vs*. Dela Cruz, G.R. No. 184792, Oct. 12, 2009) p. 465

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Extrajudicial Foreclosure of Real Estate Mortgage (Act No. 3135, as amended by Act No. 4118) — Petitioner's right to issuance of a writ of possession cannot be invoked against respondents since they are not parties to the mortgage contract; respondent's possession of the subject real property is legally presumed to be pursuant to a just title which petitioner may endeavor to overcome in a judicial proceeding for recovery of property. (BPI *vs*. Icot, G.R. No. 168061, Oct. 12, 2009) p. 320

— The right of possession by a purchaser in an extrajudicial foreclosure of real property is recognized only as against the judgment debtor and his successor-in-interest, but not against persons whose right of possession is adverse to the latter. *(Id.)*

— Writ of possession may be issued within the one-year redemption period, upon filing of a bond or after the lapse of the redemption period, without need of a bond or of a separate independent action, except when a third party is holding the property adversely to the judgment debtor. *(Id.)*

Stipulations — A stipulation forbidding the owner from alienating the immovable mortgaged is void. (Cinco *vs*. CA, G.R. No. 151903, Oct. 09, 2009) p. 104

Subsequent mortgage — Recognized as valid by law and by commercial practice, subject to the prior rights of previous mortgages. *(Id.)*

MOTION TO DISMISS

Lis pendentia as a ground — Elaborated. (Subic Telecommunications Co., Inc. *vs*. Subic Bay Metropolitan Authority and Innove Communications, Inc., G.R. No. 185159, Oct. 12, 2009) p. 480

— Not applicable when there is no identity of parties between the administrative case and the civil case in case at bar. *(Id.)*

— Not applicable when there is no identity of rights asserted and reliefs prayed for between the two actions. *(Id.)*

— Requisites to exist. *(Id.)*

— When may be properly invoked. *(Id.)*

MURDER

Commission of — The nature, number and location of the victim's gunshot wounds also belie appellant's claim of accidental shooting. (People *vs*. Villasan, G.R. No. 176527, Oct. 09, 2009) p. 240

OBLIGATIONS

Reciprocal obligations — Compliance by petitioner with its obligation is determinative of the compliance of buyer to pay the balance of the purchase price; having failed to comply with its obligation to deliver the unit on the agreed date, the seller is liable. (Megaworld Globus Asia, Inc. *vs*. Tanseco, G.R. No. 181206, Oct. 09, 2009) p. 261

OBLIGATIONS, EXTINGUISHMENT OF

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— Tender of payment and consignation; unjust refusal to accept payment, not equivalent to payment. *(Id.)*

— Tender of payment, defined; tender and consignation have the effect of payment. *(Id.)*

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Results of — Negative result of paraffin test does not conclusively show that a person did not discharge a firearm. (People *vs*. Villasan, G.R. No. 176527, Oct. 09, 2009) p. 240

PARTITION

Complaint for — Issue of ownership or co-ownership must be initially settled. (Heirs of Jose Sy Bang *vs*. Sy, G.R. No. 114217, Oct. 13, 2009) p. 545

PERSONS

Civil personality — Civil personality of the unborn child need not be established where his juridical capacity and capacity to act as a person are not in issue. (Continental Steel Manufacturing Corp. *vs*. Hon. Montaño, G.R. No. 182836, Oct. 13, 2009) p. 634

— If the unborn child already has life, then the cessation thereof even prior to the child being delivered, qualifies as death. *(Id.)*

— The Civil Code does not explicitly state that only those who have acquired juridical personality could die. *(Id.)*

— Where the collective bargaining agreement did not provide a qualification for the child dependent, an unborn child can be considered a dependent of his/her parents. *(Id.)*

PIERCING THE VEIL OF CORPORATE ENTITY

Doctrine of — Section 31 of the Corporation Code lays down the corporate officers' liability for damages arising from their gross negligence or bad faith in directing corporate affairs. (Sanchez *vs*. Rep. of the Phils., G.R. No. 172885, Oct. 09, 2009) p. 228

PLUNDER LAW (R.A. NO. 7080)

Application — Did not repeal Forfeiture Law (R.A. No 1379); both laws can very well be harmonized and the court perceives no irreconcilable conflict between them. (Garcia *vs.* Sandiganbayan, G.R. No. 170122, Oct. 12, 2009; *Velasco, Jr., J., concurring and dissenting opinion*) p. 346

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Writ of — Petitioners are not entitled to injunctive relief in case at bar; reasons. (Sps. Ibasco *vs*. Private Dev't. Corp. of the Phils., G.R. No. 162473, Oct. 12, 2009) p. 315

PRESCRIPTION OF ACTIONS

Expropriation proceedings — The owner's action to recover his property taken by the government for public use without first acquiring title thereto does not prescribe. (Hon. Eusebio *vs.* Luis, G.R. No. 162474, Oct. 13, 2009) p. 586

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Regularity in the handling of evidence — Integrity of evidence is presumed to be preserved unless there is a showing of bad faith, ill-will or proof that the evidence has been tampered with. (People *vs*. Resurreccion, G.R. No. 186380, Oct. 12, 2009) p. 520

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Moral certainty — Defined. (People *vs.* Alipio, G.R. No. 185285, Oct. 05, 2009) p. 38

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Information — Failure to designate the offense by statute or to mention the specific provision penalizing the act, or an erroneous specification of the law violated, does not vitiate the information if the facts alleged clearly recite the facts constituting the crime charged. (People *vs.* Sumingwa, G.R. No. 183619, Oct. 13, 2009) p. 650

PSYCHOLOGICAL INCAPACITY

Determination of — Falling out of love not necessarily a sign of psychological illness. (Alcazar *vs.* Alcazar, G.R. No. 174451, Oct. 13, 2009) p. 616

— Irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility do not by themselves warrant a finding of psychological incapacity. *(Id.)*

— Psychological incapacity must be more than just a difficulty, a refusal or a neglect in the performance of some marital obligations. *(Id.)*

RAPE

Commission of — Discussed. (People *vs*. Yoon Chang Wook, G.R. No. 178199, Oct. 05, 2009) p. 23

— Failure to specify the exact dates or times when the rapes occurred does not ipso facto make the information defective on its face; the date or time of commission of rape is not a material ingredient of the crime. (People vs. Buban, G.R. No. 172710, Oct. 09, 2009) p. 202

— How committed. (People *vs*. Yoon Chang Wook, G.R. No. 178199, Oct. 05, 2009) p. 23

— Imposable civil liability. (People *vs*. Perez, G.R. No. 189303, Oct. 13, 2009) p. 704

— Lust is no respecter of time and place. (People *vs*. Alipio, G.R. No. 185285, Oct. 05, 2009) p. 38

Force and intimidation — Force need not be irresistible, as long as it brings about the desired result; intimidation is sufficient if it produces fear that if the victim will not yield to the bestial demands of her ravisher, some evil will happen to her. (People *vs*. Buban, G.R. No. 172710, Oct. 09, 2009) p. 202

Prosecution for rape — A medical examination of the victim is not indispensable to the successful prosecution for rape. (People *vs*. Alipio, G.R. No. 185285, Oct. 05, 2009) p. 38

Review of rape cases — Guiding principles. (People *vs*. Buban, G.R. No. 172710, Oct. 09, 2009) p. 202

Statutory rape — Petitioner committed the act of rape with discernment; having already reached 21 years of age at the time of imposition of his sentence, his claim for benefits under R.A. No. 9344 is rendered moot and academic. (Remiendo *vs.* People, G.R. No. 184874, Oct. 09, 2009) p. 273

— Sexual congress with a girl under 12 years old is always rape. *(Id.)*

— Sexual intercourse with a woman who is a mental retardate constitutes statutory rape. (People *vs*. Alipio, G.R. No. 185285, Oct. 05, 2009) p. 38

Sweetheart defense — Relationship would not, by itself, establish consent, for love is not a license for lust. (People *vs*. Buban, G.R. No. 172710, Oct. 09, 2009) p. 202

Violence and intimidation — In rape committed by a father against his daughter, the father's moral ascendancy and influence over the latter substitute for violence and intimidation. (People *vs.* Sumingwa, G.R. No. 183619, Oct. 13, 2009) p. 650

RECIPROCAL OBLIGATIONS

Nature and effect — Compliance by vendor with its obligation is determinative of the compliance of vendee to pay the balance of the purchase price; having failed to comply with its obligation to deliver the unit on the agreed date, vendor is liable therefor. (Megaworld Globus Asia, Inc. *vs.* Tanseco, G.R. No. 181206, Oct. 09, 2009) p. 261

RETIREMENT

Optional retirement benefits — An employee cannot claim optional retirement benefits as a matter of right where he has not yet reached the required eligibility age. (Eastern Shipping Lines, Inc. *vs*. Antonio, G.R. No. 171587, Oct. 13, 2009) p. 601

Retirement age — Absent any existing agreement, the retirement age shall be fixed by law. *(Id.)*

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Innocent purchaser for value — The burden of proving the purchaser's good faith lies in the one who asserts the same; invocation of the presumption of good faith is not sufficient. (Aqualab Phils., Inc. *vs.* Heirs of Marcelino Pagobo, G.R. No. 182673, Oct. 12, 2009) p. 442

SEAFARERS, CONTRACT OF EMPLOYMENT

Nature of employment — Seafarers are considered contractual employees and are not entitled to separation pay upon expiration of their contracts of enlistment. (Eastern Shipping Lines, Inc. *vs.* Antonio, G.R. No. 171587, Oct. 13, 2009) p. 601

SEPARATION OF POWERS

Doctrine of — Not violated by the COMELEC when it physically transferred the ballot boxes and other election materials to the Senate Electoral Tribunal for its own revision of the ballots. (Mendoza *vs*. COMELEC, G.R. No. 188308, Oct. 15, 2009) p. 706

SETTLEMENT OF THE ESTATE OF DECEASED PERSONS

Distribution of the estate — When can be made; conditions. (Heirs of Jose Sy Bang *vs.* Sy, G.R. No. 114217, Oct. 13, 2009) p. 545

Payment of widow's allowance — The court hearing the settlement of the estate should effect the payment of widow's allowance. (Heirs of Jose Sy Bang *vs.* Sy, G.R. No. 114217, Oct. 13, 2009) p. 545

SOLICITOR GENERAL

Powers — Authority to represent the State in appeals before the Court of Appeals and the Supreme Court is solely vested in the Office of the Solicitor General. (People *vs*. Duca, G.R. No. 171175, Oct. 09, 2009) p. 154

STATUTORY RAPE

Commission of — Petitioner committed the act of rape with discernment; having already reached 21 years of age at the time of imposition of his sentence, his claim for benefits

under R.A. No. 9344 is rendered moot and academic. (Remiendo vs. People, G.R. No. 184874, Oct. 09, 2009) p. 273

— Sexual congress with a girl under 12 years old is always rape. *(Id.)*

— Sexual intercourse with a woman who is a mental retardate constitutes statutory rape. (People *vs*. Alipio, G.R. No. 185285, Oct. 05, 2009) p. 38

SUMMONS

Substituted service — The Sandiganbayan did not acquire jurisdiction over the persons of petitioner and her children; the substituted service of summons is invalid for being irregular and defective. (Garcia *vs*. Sandiganbayan, G.R. No. 170122, Oct. 12, 2009; *Velasco, Jr., J., concurring and dissenting opinion*) p. 346

TEMPERATE DAMAGES

Recovery of — Proper only when some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. (Engr. Dueñas *vs*. Guce-Africa, G.R. No. 165679, Oct. 05, 2009) p. 10

TREACHERY

As a qualifying circumstance — The essence of treachery is the sudden and unexpected attack by an aggressor on an 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. (People *vs*. Dela Cruz, G.R. No. 184792, Oct. 12, 2009) p. 465

(People *vs*. Villasan, G.R. No. 176527, Oct. 09, 2009) p. 240

UNJUST VEXATION

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Venue in criminal cases – An essential element of jurisdiction. (Foz, Jr. *vs.* People, G.R. No. 167764, Oct. 09, 2009) p. 120

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Credibility of — A matter best left to the determination of the trial court. (Remiendo *vs*. People, G.R. No. 184874, Oct. 09, 2009) p. 273

(People *vs.* Villasan, G.R. No. 176527, Oct. 09, 2009) p. 240

— Absence of improper motive on the part of the victim to falsely implicate appellant entitles her testimony to full faith and credit. (People *vs*. Buban, G.R. No. 172710, Oct. 09, 2009) p. 202

— Delay in the reporting the rape because of threats of physical violence should not be taken against the victim. *(Id.)*

— Findings of trial court generally deserve great respect and are accorded finality; exceptions. (People *vs*. Del Prado, G.R. No. 187074, Oct. 13, 2009) p. 674

(People *vs*. Resurreccion, G.R. No. 186380, Oct. 12, 2009) p. 520

(People *vs.* Dela Cruz, G.R. No. 184792, Oct. 12, 2009) p. 465

(People *vs*. Rusiana, G.R. No. 186139, Oct. 05, 2009) p. 55

(People *vs*. Yoon Chang Wook, G.R. No. 178199, Oct. 05, 2009) p. 23

(Cabaron *vs*. People, G.R. No. 156981, Oct. 05, 2009) p.1

— Inconsistencies in the testimonies of prosecution witnesses with respect to minor details and collateral matters do not affect the substance of their declarations, their veracity, or the weight of their testimonies. (People *vs*. Yoon Chang Wook, G.R. No. 178199, Oct. 05, 2009) p. 23

— Mere retraction by a prosecution witness does not necessarily vitiate her original testimony. (People *vs*. Sumingwa, G.R. No. 183619, Oct. 13, 2009) p. 650

— Not adversely affected by the delay in reporting the crime to the authorities. (People *vs*. Yoon Chang Wook, G.R. No. 178199, Oct. 05, 2009) p. 23

— Not impaired by minor inconsistencies in testimonies especially when the witness is mentally ill. (People *vs*. Alipio, G.R. No. 185285, Oct. 05, 2009) p. 38

— Retraction is looked upon with disfavor by the courts; reasons. (People *vs*. Sumingwa, G.R. No. 183619, Oct. 13, 2009) p. 650

— Testimonies of rape victims who are young and immature deserve full credence; youth and immaturity are generally badges of truth. (Remiendo *vs*. People, G.R. No. 184874, Oct. 09, 2009) p. 273

— The testimony of a single prosecution witness, if credible and satisfies the court as to the guilt of the accused beyond reasonable doubt, is enough to sustain a conviction. (People *vs*. Rusiana, G.R. No. 186139, Oct. 05, 2009) p. 55

— When a rape victim's account is straightforward and candid, and is corroborated by the medical findings of the examining physician, the same is sufficient to support a conviction for rape. (People *vs*. Sumingwa,G.R. No. 183619, Oct. 13, 2009) p. 650

— Where there is no evidence to indicate that the principal witness was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit. (People *vs*. Del Prado, G.R. No. 187074, Oct. 13, 2009) p. 674

Expert witness — Guidelines in the appreciation of the opinions of handwriting experts. (Domingo *vs*. People, G.R. No. 186101, Oct. 12, 2009) p. 499

Qualification of — A mental retardate is not disqualified from being a witness. (People *vs*. Alipio, G.R. No. 185285, Oct. 05, 2009) p. 38

CITATION

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