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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 148225. March 3, 2010]

CARMEN DEL PRADO, *petitioner, vs.* **SPOUSES ANTONIO L. CABALLERO and LEONARDA CABALLERO,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; SALES INVOLVING REAL ESTATES; CASE OF *ESGUERRA V. TRINIDAD*; UNIT PRICE CONTRACT AND LUMP SUM CONTRACT; WHERE SALE MADE FOR LUMP SUM, THERE SHALL BE NO INCREASE OR DECREASE IN THE PRICE ALTHOUGH THERE BE A GREATER OR LESS AREAS OR NUMBER THAN THAT STATED IN THE CONTRACT (ART. 1542, CIVIL CODE).— In *Esguerra v. Trinidad,* the Court had occasion to discuss the matter of sales involving real estates. The Court's pronouncement is quite instructive: In sales involving real estate, the parties may choose between two types of pricing agreement: **a unit price contract** wherein the purchase price is determined by way of reference to a stated rate per unit area (*e.g.*, ₱1,000 per square meter), or **a lump sum contract** which states a full purchase price for an immovable the area of which may be declared based on the estimate or where both the area and boundaries are stated (*e.g.*, ₱1 million for 1,000 square meters, *etc.*). In *Rudolf Lietz, Inc. v. Court of Appeals* (478 SCRA 451), the Court discussed the distinction: "…In a unit price contract, the statement of

area of immovable is not conclusive and the price may be reduced or increased depending on the area actually delivered. If the vendor delivers less than the area agreed upon, the vendee may oblige the vendor to deliver all that may be stated in the contract or demand for the proportionate reduction of the purchase price if delivery is not possible. If the vendor delivers more than the area stated in the contract, the vendee has the option to accept only the amount agreed upon or to accept the whole area, provided he pays for the additional area at the contract rate. x x x In the case where the area of an immovable is stated in the contract based on an estimate, the actual area delivered may not measure up exactly with the area stated in the contract. According to Article 1542 of the Civil Code, in the sale of real estate, made for a lump sum and not at the rate of a certain sum for a unit of measure or number, there shall be no increase or decrease of the price, although there be a greater or less areas or number than that stated in the contract. . . . x x x *Where both the area and the boundaries of the immovable are declared,* ***the area covered within the boundaries of the immovable prevails*** *over the stated area.* In cases of conflict between areas and boundaries, it is the latter which should prevail. ***What really defines a piece of ground*** *is not the area, calculated with more or less certainty, mentioned in its description, but the boundaries therein laid down, as enclosing the land and indicating its limits.* In a contract of sale of land in a mass, it is well established that the specific boundaries stated in the contract must control over any statement with respect to the area contained within its boundaries. It is not of vital consequence that a deed or contract of sale of land should disclose the area with mathematical accuracy. It is sufficient if its extent is objectively indicated with sufficient precision to enable one to identify it. An error as to the superficial area is immaterial. Thus, the obligation of the vendor is to deliver everything within the boundaries, inasmuch as it is the entirety thereof that distinguishes the determinate object.

2. ID.; ID.; ID.; ID.; ID.; ID.; ID.; "MORE OR LESS" IN QUANTITY, ELUCIDATED.— The Court, clarified that the rule laid down in Article 1542 is not hard and fast and admits of an exception. It held: A caveat is in order, however. The use of "more or less" or similar words in designating quantity covers only a **reasonable excess or deficiency.** A vendee of

land sold in gross or with the description "more or less" with reference to its area does not thereby *ipso facto* take all risk of quantity in the land. Numerical data are not of course the sole gauge of unreasonableness of the excess or deficiency in area. Courts must consider a host of other factors. In one case (see *Roble v. Arbasa*,414 Phil. [343 2001]), the Court found substantial discrepancy in area due to contemporaneous circumstances. Citing change in the physical nature of the property, it was therein established that the excess area at the southern portion was a product of reclamation, which explained why the land's technical description in the deed of sale indicated the seashore as its southern boundary, hence, the inclusion of the reclaimed area was declared unreasonable. x x x In a contract of sale of land in a mass, the specific boundaries stated in the contract must control over any other statement, with respect to the area contained within its boundaries. Black's Law Dictionary defines the phrase "more or less" to mean: About; substantially; or approximately; implying that both parties assume the risk of any ordinary discrepancy. The words are intended ***to cover slight or unimportant inaccuracies*** in quantity, *Carter v. Finch*, 186 Ark. 954, 57 S.W.2d 408; and are ordinarily to be interpreted as taking care of unsubstantial differences or differences of small importance compared to the whole number of items transferred.

3. ID.; ID.; ID.; ESSENTIAL ELEMENTS OF A CONTRACT OF SALE.— Contracts are the law between the contracting parties. Sale, by its very nature, is a consensual contract, because it is perfected by mere consent. The essential elements of a contract of sale are the following: (a) consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price; (b) determinate subject matter; and (c) price certain in money or its equivalent. All these elements are present in the instant case.

4. ID.; LAND TITLES AND REGISTRATION; INDEFEASIBILITY OF TITLE; CASE AT BAR.— It is a fundamental principle in land registration that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. Such indefeasibility commences after one year from the date of entry of the decree of registration. Inasmuch as the petition for registration of document did not interrupt the running of the

period to file the appropriate petition for review and considering that the prescribed one-year period had long since expired, the decree of registration, as well as the certificate of title issued in favor of respondents, had become incontrovertible.

APPEARANCES OF COUNSEL

Villanueva Gabionza & De Santos for petitioner.
Maderazo and Associates for respondents.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* of the decision[1] of the Court of Appeals (CA) dated September 26, 2000 and its resolution denying the motion for reconsideration thereof.

The facts are as follows:

In a judgment rendered on February 1, 1985 in Cadastral Case No. N-6 (LRC Rec. No. N-611), Judge Juan Y. Reyes of the Regional Trial Court (RTC) of Cebu City, Branch 14, adjudicated in favor of Spouses Antonio L. Caballero and Leonarda B. Caballero several parcels of land situated in Guba, Cebu City, one of which was Cadastral Lot No. 11909, the subject of this controversy.[2] On May 21, 1987, Antonio Caballero moved for the issuance of the final decree of registration for their lots.[3] Consequently, on May 25, 1987, the same court, through then Presiding Judge Renato C. Dacudao, ordered the National Land Titles and Deeds Registration Administration to issue the decree of registration and the corresponding titles of the lots in favor of the Caballeros.[4]

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[1] Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Presbitero J. Velasco, Jr. (now a member of this Court) and Juan Q. Enriquez, Jr., concurring; *rollo,* pp. 8-15.

[2] Lot Nos. 10222, 10516, 10585, 10752, 11833, 11834, 11854, 11860, **11909**, 11911, 11888; RTC Judgment dated February 1, 1985; records, p. 191.

[3] Records, p. 193.

[4] RTC Order dated May 25, 1987; Exhibit "14" *id.* at 194.

On June 11, 1990, respondents sold to petitioner, Carmen del Prado, Lot No. 11909 on the basis of the tax declaration covering the property. The pertinent portion of the deed of sale reads as follows:

> That we, Spouses ANTONIO L. CABALLERO and LEONARDA B. CABALLERO, Filipinos, both of legal age and residents of Talamban, Cebu City, Philippines, for and in consideration of the sum of FORTY THOUSAND PESOS (₱40,000.00), Philippine Currency, paid by CARMEN DEL PRADO, Filipino, of legal age, single and a resident of Sikatuna St., Cebu City, Philippines, the receipt of which is full is hereby acknowledged, do by these presents SELL, CEDE, TRANSFER, ASSIGN & CONVEY unto the said CARMEN DEL PRADO, her heirs, assigns and/or successors-in-interest, one (1) unregistered parcel of land, situated at Guba, Cebu City, Philippines, and more particularly described and bounded, as follows:
>
> "A parcel of land known as Cad. Lot No. 11909, bounded as follows:
>
> | | | |
> |---|---|---|
> | North | : | Lot 11903 |
> | East | : | Lot 11908 |
> | West | : | Lot 11910 |
> | South | : | Lot 11858 & 11912 |
>
> containing an area of 4,000 square meters, more or less, covered by Tax Dec. No. 00787 of the Cebu City Assessor's Office, Cebu City."
>
> of which parcel of land we are the absolute and lawful owners.

Original Certificate of Title (OCT) No. 1305, covering Lot No. 11909, was issued only on November 15, 1990, and entered in the "Registration Book" of the City of Cebu on December 19, 1990.[5] Therein, the technical description of Lot No. 11909 states that said lot measures about 14,457 square meters, more or less.[6]

On March 20, 1991, petitioner filed in the same cadastral proceedings a "Petition for Registration of Document Under

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[5] "Exhibit 2-B", records, p. 9.

[6] OCT No. 1305; Exhibit "15", records, p. 196.

Presidential Decree (P.D.) 1529"[7] in order that a certificate of title be issued in her name, covering the whole Lot No. 11909. In the petition, petitioner alleged that the tenor of the instrument of sale indicated that the sale was for a lump sum or *cuerpo cierto,* in which case, the vendor was bound to deliver all that was included within said boundaries even when it exceeded the area specified in the contract. Respondents opposed, on the main ground that only 4,000 sq m of Lot No. 11909 was sold to petitioner. They claimed that the sale was not for a *cuerpo cierto*. They moved for the outright dismissal of the petition on grounds of prescription and lack of jurisdiction.

After trial on the merits, the court found that petitioner had established a clear and positive right to Lot No. 11909. The intended sale between the parties was for a lump sum, since there was no evidence presented that the property was sold for a price per unit. It was apparent that the subject matter of the sale was the parcel of land, known as Cadastral Lot No. 11909, and not only a portion thereof.[8]

Thus, on August 2, 1993, the court *a quo* rendered its decision with the following dispositive portion:

> WHEREFORE, premises considered, the petition is hereby granted and judgment is hereby rendered in favor of herein petitioner. The Register of Deeds of the City of Cebu is hereby ordered and directed to effect the registration in his office of the Deed of Absolute Sale between Spouses Antonio Caballero and Leonarda Caballero and Petitioner, Carmen del Prado dated June 11, 1990 covering Lot No. 11909 after payment of all fees prescribed by law. Additionally, the Register of Deeds of the City of Cebu is hereby ordered to cancel Original Certificate No. 1305 in the name of Antonio Caballero and Leonarda Caballero and the Transfer Certificate of Title be issued in the name of Petitioner Carmen del Prado covering the entire parcel of land known as Cadastral Lot No. 11909.[9]

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[7] Records, p. 1.

[8] *Rollo,* pp. 226-227.

[9] *Id.* at 90.

An appeal was duly filed. On September 26, 2000, the CA promulgated the assailed decision, reversing and setting aside the decision of the RTC.

The CA no longer touched on the character of the sale, because it found that petitioner availed herself of an improper remedy. The "petition for registration of document" is not one of the remedies provided under P.D. No. 1529, after the original registration has been effected. Thus, the CA ruled that the lower court committed an error when it assumed jurisdiction over the petition, which prayed for a remedy not sanctioned under the *Property Registration Decree*. Accordingly, the CA disposed, as follows:

> IN VIEW OF ALL THE FOREGOING, the appealed decision is REVERSED and SET ASIDE and a new one entered dismissing the petition for lack of jurisdiction. No pronouncement as to costs.[10]

Aggrieved, petitioner filed the instant petition, raising the following issues:

> I. WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE ERROR IN MAKING FINDINGS OF FACT CONTRARY TO THAT OF THE TRIAL COURT[;]
>
> II. WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE ERROR IN FAILING TO RULE THAT THE SALE OF THE LOT IS FOR A LUMP SUM OR *CUERPO CIERTO*[*;*]
>
> III. WHETHER OR NOT THE COURT *A QUO* HAS JURISDICTION OVER THE PETITION FOR REGISTRATION OF THE DEED OF ABSOLUTE SALE DATED 11 JUNE 1990 EXECUTED BETWEEN HEREIN PETITIONER AND RESPONDENTS[.][11]

The core issue in this case is whether or not the sale of the land was for a lump sum or not.

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[10] *Id.* at 55.

[11] *Id.* at 358.

Petitioner asserts that the plain language of the Deed of Sale shows that it is a sale of a real estate for a lump sum, governed under Article 1542 of the Civil Code.[12] In the contract, it was stated that the land contains an area of 4,000 sq m *more or less*, bounded on the North by Lot No. 11903, on the East by Lot No. 11908, on the South by Lot Nos. 11858 & 11912, and on the West by Lot No. 11910. When the OCT was issued, the area of Lot No. 11909 was declared to be 14,475 sq m, with an excess of 10,475 sq m. In accordance with Article 1542, respondents are, therefore, duty-bound to deliver the whole area within the boundaries stated, without any corresponding increase in the price. Thus, petitioner concludes that she is entitled to have the certificate of title, covering the whole Lot No. 11909, which was originally issued in the names of respondents, transferred to her name.

We do not agree.

In *Esguerra v. Trinidad*,[13] the Court had occasion to discuss the matter of sales involving real estates. The Court's pronouncement is quite instructive:

> In sales involving real estate, the parties may choose between two types of pricing agreement: **a unit price contract** wherein the purchase price is determined by way of reference to a stated rate per unit area (*e.g.*, ₱1,000 per square meter), or **a lump sum contract** which states a full purchase price for an immovable the area of which

[12] Article 1542. In the sale of real estate, made for a lump sum and not at the rate of a certain sum for a unit of measure or number, there shall be no increase or decrease of the price, although there be a greater or lesser areas or number than that stated in the contract.

The same rule shall be applied when two or more immovables are sold for a single price; but if, besides mentioning the boundaries, which is indispensable in every conveyance of real estate, its area or number should be designated in the contract, the vendor shall be bound to deliver all that is included within said boundaries, even when it exceeds the area or number specified in the contract; and, should he not be able to do so, he shall suffer a reduction in the price, in proportion to what is lacking in the area or number, unless the contract is rescinded because the vendee does not accede to the failure to deliver what has been stipulated.

[13] G.R. No. 169890, March 12, 2007, 518 SCRA 186.

may be declared based on the estimate or where both the area and boundaries are stated (*e.g.*, ₱1 million for 1,000 square meters, *etc.*). In *Rudolf Lietz, Inc. v. Court of Appeals* (478 SCRA 451), the Court discussed the distinction:

> "…In a unit price contract, the statement of area of immovable is not conclusive and the price may be reduced or increased depending on the area actually delivered. If the vendor delivers less than the area agreed upon, the vendee may oblige the vendor to deliver all that may be stated in the contract or demand for the proportionate reduction of the purchase price if delivery is not possible. If the vendor delivers more than the area stated in the contract, the vendee has the option to accept only the amount agreed upon or to accept the whole area, provided he pays for the additional area at the contract rate.
>
> xxx xxx xxx
>
> In the case where the area of an immovable is stated in the contract based on an estimate, the actual area delivered may not measure up exactly with the area stated in the contract. According to Article 1542 of the Civil Code, in the sale of real estate, made for a lump sum and not at the rate of a certain sum for a unit of measure or number, there shall be no increase or decrease of the price, although there be a greater or less areas or number than that stated in the contract. . . .
>
> xxx xxx xxx
>
> *Where both the area and the boundaries of the immovable are declared,* ***the area covered within the boundaries of the immovable prevails*** *over the stated area.* In cases of conflict between areas and boundaries, it is the latter which should prevail. ***What really defines a piece of ground*** *is not the area, calculated with more or less certainty, mentioned in its description, but the boundaries therein laid down, as enclosing the land and indicating its limits.* In a contract of sale of land in a mass, it is well established that the specific boundaries stated in the contract must control over any statement with respect to the area contained within its boundaries. It is not of vital consequence that a deed or contract of sale of land should disclose the area with mathematical accuracy. It is sufficient if its extent is objectively indicated with sufficient precision to enable one to identify it. An error as to the

> superficial area is immaterial. Thus, the obligation of the vendor is to deliver everything within the boundaries, inasmuch as it is the entirety thereof that distinguishes the determinate object.[14]

The Court, however, clarified that the rule laid down in Article 1542 is not hard and fast and admits of an exception. It held:

> A caveat is in order, however. The use of "more or less" or similar words in designating quantity covers only a **reasonable excess or deficiency.** A vendee of land sold in gross or with the description "more or less" with reference to its area does not thereby *ipso facto* take all risk of quantity in the land.
>
> Numerical data are not of course the sole gauge of unreasonableness of the excess or deficiency in area. Courts must consider a host of other factors. In one case (see *Roble v. Arbasa*, 414 Phil. 343 [2001]), the Court found substantial discrepancy in area due to contemporaneous circumstances. Citing change in the physical nature of the property, it was therein established that the excess area at the southern portion was a product of reclamation, which explained why the land's technical description in the deed of sale indicated the seashore as its southern boundary, hence, the inclusion of the reclaimed area was declared unreasonable.[15]

In the instant case, the deed of sale is not one of a unit price contract. The parties agreed on the purchase price of ₱40,000.00 for a predetermined area of 4,000 sq m, *more or less*, bounded on the North by Lot No. 11903, on the East by Lot No. 11908, on the South by Lot Nos. 11858 & 11912, and on the West by Lot No. 11910. In a contract of sale of land in a mass, the specific boundaries stated in the contract must control over any other statement, with respect to the area contained within its boundaries.[16]

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[14] *Id.* at 196-198.

[15] *Id.* at 199.

[16] *Salinas v. Faustino*, G.R. No. 153077, September 19, 2008, 566 SCRA 18.

Black's Law Dictionary[17] defines the phrase "more or less" to mean:

> About; substantially; or approximately; implying that both parties assume the risk of any ordinary discrepancy. The words are intended ***to cover slight or unimportant inaccuracies*** in quantity, *Carter v. Finch*, 186 Ark. 954, 57 S.W.2d 408; and are ordinarily to be interpreted as taking care of unsubstantial differences or differences of small importance compared to the whole number of items transferred.

Clearly, the discrepancy of 10,475 sq m cannot be considered a slight difference in quantity. The difference in the area is obviously sizeable and too substantial to be overlooked. It is not a reasonable excess or deficiency that should be deemed included in the deed of sale.

We take exception to the avowed rule that this Court is not a trier of facts. After an assiduous scrutiny of the records, we lend credence to respondents' claim that they intended to sell only 4,000 sq m of the whole Lot No. 11909, contrary to the findings of the lower court. The records reveal that when the parties made an ocular inspection, petitioner specifically pointed to that portion of the lot, which she preferred to purchase, since there were mango trees planted and a deep well thereon. After the sale, respondents delivered and segregated the area of 4,000 sq m in favor of petitioner by fencing off the area of 10,475 sq m belonging to them.[18]

Contracts are the law between the contracting parties. Sale, by its very nature, is a consensual contract, because it is perfected by mere consent. The essential elements of a contract of sale are the following: (a) consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price; (b) determinate subject matter; and (c) price certain in money or its equivalent. All these elements are present in the instant case.[19]

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[17] 6th Ed., 1990.

[18] TSN, January 20, 1992, pp. 44, 53.

[19] *Roble v. Arbasa*, G.R. No. 130707, July 31, 2001, 362 SCRA 69, 82.

More importantly, we find no reversible error in the decision of the CA. Petitioner's recourse, by filing the petition for registration in the same cadastral case, was improper. It is a fundamental principle in land registration that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. Such indefeasibility commences after one year from the date of entry of the decree of registration.[20] Inasmuch as the petition for registration of document did not interrupt the running of the period to file the appropriate petition for review and considering that the prescribed one-year period had long since expired, the decree of registration, as well as the certificate of title issued in favor of respondents, had become incontrovertible.[21]

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Corona (Chairperson), Del Castillo,[*] *Abad,*[**] and *Mendoza, JJ.,* concur.

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[20] *Rollo,* p. 54.

[21] *Id*.

[*] Additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 824 dated February 12, 2010.

[**] In lieu of Associate Justice Presbitero J. Velasco, Jr. per Raffle dated February 22, 2010.

SECOND DIVISION

[G.R. No. 169504. March 3, 2010]

COFFEE PARTNERS, INC., *petitioner, vs.* **SAN FRANCISCO COFFEE & ROASTERY, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF QUASI-JUDICIAL TRIBUNAL AFFIRMED BY THE COURT OF APPEALS, RESPECTED. – The binding effect of the factual findings of the Court of Appeals on this Court applies with greater force when both the quasi-judicial body or tribunal like the Bureau of Legal Affairs – Intellectual Property Office (BLA-IPO) and the Court of Appeals are in complete agreement on their factual findings. It is also settled that absent any circumstance requiring the overturning of the factual conclusions made by the quasi-judicial body or tribunal, particularly if affirmed by the Court of Appeals, the Court necessarily upholds such findings of fact.

2. COMMERCIAL LAW; INFRINGEMENT OF AN UNREGISTERED TRADE NAME; WHAT CONSTITUTES SUCH INFRINGEMENT. – Coming now to the main issue, in *Prosource International, Inc. v. Horphag Research Management SA*, this Court laid down what constitutes infringement of an unregistered trade name, thus: (1) The trademark being infringed is registered in the Intellectual Property Office; however, **in infringement of trade name, the same need not be registered**; (2) The trademark or trade name is reproduced, counterfeited, copied, or colorably imitated by the infringer; (3) The infringing mark or trade name is used in connection with the sale, offering for sale, or advertising of any goods, business or services; or the infringing mark or trade name is applied to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with such goods, business, or services; (4) The use or application of the infringing mark or trade name is likely to cause confusion or mistake or to deceive purchasers or others as to the goods or services themselves or as to the source or

origin of such goods or services or the identity of such business; and (5) It is without the consent of the trademark or trade name owner or the assignee thereof.

3. ID.; ID.; THAT TRADE NAME NEED NOT BE REGISTERED BEFORE AN INFRINGEMENT SUIT MAY BE FILED AS PREVIOUS USE OF TRADE NAME IN TRADE OR COMMERCE IN THE PHILIPPINES IS SUFFICIENT, EMPHASIZED. – A trade name need not be registered with the Intellectual Property Office (IPO) before an infringement suit may be filed by its owner against the owner of an infringing trademark. All that is required is that the trade name is previously used in trade or commerce in the Philippines. x x x RA 8293, which took effect on 1 January 1998, has dispensed with the registration requirement. Section 165.2 of RA 8293 categorically states that trade names shall be protected, even prior to or without registration with the IPO, against any unlawful act including any subsequent use of the trade name by a third party, whether as a trade name or a trademark likely to mislead the public.

4. ID.; ID.; "LIKELIHOOD OF CONFUSION;" DETERMINATION THEREOF; DOMINANCY TEST AND HOLISTIC TEST; ELUCIDATED. – It is the likelihood of confusion that is the gravamen of infringement. But there is no absolute standard for likelihood of confusion. Only the particular, and sometimes peculiar, circumstances of each case can determine its existence. Thus, in infringement cases, precedents must be evaluated in the light of each particular case. In determining similarity and likelihood of confusion, our jurisprudence has developed two tests: the dominancy test and the holistic test. The dominancy test focuses on the similarity of the prevalent features of the competing trademarks that might cause confusion and deception, thus constituting infringement. If the competing trademark contains the main, essential, and dominant features of another, and confusion or deception is likely to result, infringement occurs. Exact duplication or imitation is not required. The question is whether the use of the marks involved is likely to cause confusion or mistake in the mind of the public or to deceive consumers. In contrast, the holistic test entails a consideration of the entirety of the marks as applied to the products, including the labels and packaging, in

determining confusing similarity. The discerning eye of the observer must focus not only on the predominant words but also on the other features appearing on both marks in order that the observer may draw his conclusion whether one is confusingly similar to the other.

5. ID.; ID.; ID.; ID.; ID.; INFRINGEMENT OF TRADE NAME, PRESENT IN CASE AT BAR. – Applying either the dominancy test or the holistic test, petitioner's "SAN FRANCISCO COFFEE" trademark is a clear infringement of respondent's "SAN FRANCISCO COFFEE & ROASTERY, INC." trade name. The descriptive words "SAN FRANCISCO COFFEE" are precisely the dominant features of respondent's trade name. Petitioner and respondent are engaged in the same business of selling coffee, whether wholesale or retail. The likelihood of confusion is higher in cases where the business of one corporation is the same or substantially the same as that of another corporation. In this case, the consuming public will likely be confused as to the source of the coffee being sold at petitioner's coffee shops. x x x In *Philips Export B.V. v. Court of Appeals*, this Court held that a corporation has an exclusive right to the use of its name. The right proceeds from the theory that it is a fraud on the corporation which has acquired a right to that name and perhaps carried on its business thereunder, that another should attempt to use the same name, or the same name with a slight variation in such a way as to induce persons to deal with it in the belief that they are dealing with the corporation which has given a reputation to the name.

APPEARANCES OF COUNSEL

Puyat Jacinto & Sanros for petitioner.

International Legal Advocates for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 15 June 2005 Decision[2] and the 1 September 2005 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 80396. In its 15 June 2005 Decision, the Court of Appeals set aside the 22 October 2003 Decision[4] of the Office of the Director General-Intellectual Property Office and reinstated the 14 August 2002 Decision[5] of the Bureau of Legal Affairs-Intellectual Property Office. In its 1 September 2005 Resolution, the Court of Appeals denied petitioner's motion for reconsideration and respondent's motion for partial reconsideration.

The Facts

Petitioner Coffee Partners, Inc. is a local corporation engaged in the business of establishing and maintaining coffee shops in the country. It registered with the Securities and Exchange Commission (SEC) in January 2001. It has a franchise agreement[6] with Coffee Partners Ltd. (CPL), a business entity organized and existing under the laws of British Virgin Islands, for a non-exclusive right to operate coffee shops in the Philippines using trademarks designed by CPL such as "SAN FRANCISCO COFFEE."

Respondent is a local corporation engaged in the wholesale and retail sale of coffee. It registered with the SEC in May

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

[2] *Rollo*, pp. 71-98. Penned by Associate Justice Arturo D. Brion, with Associate Justices Eugenio S. Labitoria and Eliezer R. Delos Santos, concurring.

[3] *Id.* at 100-101.

[4] *Id.* at 195-212.

[5] *Id.* at pp. 149-161.

[6] *Id.* at 128-140.

1995. It registered the business name "SAN FRANCISCO COFFEE & ROASTERY, INC." with the Department of Trade and Industry (DTI) in June 1995. Respondent had since built a customer base that included Figaro Company, Tagaytay Highlands, Fat Willy's, and other coffee companies.

In 1998, respondent formed a joint venture company with Boyd Coffee USA under the company name Boyd Coffee Company Philippines, Inc. (BCCPI). BCCPI engaged in the processing, roasting, and wholesale selling of coffee. Respondent later embarked on a project study of setting up coffee carts in malls and other commercial establishments in Metro Manila.

In June 2001, respondent discovered that petitioner was about to open a coffee shop under the name "SAN FRANCISCO COFFEE" in Libis, Quezon City. According to respondent, petitioner's shop caused confusion in the minds of the public as it bore a similar name and it also engaged in the business of selling coffee. Respondent sent a letter to petitioner demanding that the latter stop using the name "SAN FRANCISCO COFFEE." Respondent also filed a complaint with the Bureau of Legal Affairs-Intellectual Property Office (BLA-IPO) for infringement and/or unfair competition with claims for damages.

In its answer, petitioner denied the allegations in the complaint. Petitioner alleged it filed with the Intellectual Property Office (IPO) applications for registration of the mark "SAN FRANCISCO COFFEE & DEVICE" for class 42 in 1999 and for class 35 in 2000. Petitioner maintained its mark could not be confused with respondent's trade name because of the notable distinctions in their appearances. Petitioner argued respondent stopped operating under the trade name "SAN FRANCISCO COFFEE" when it formed a joint venture with Boyd Coffee USA. Petitioner contended respondent did not cite any specific acts that would lead one to believe petitioner had, through fraudulent means, passed off its mark as that of respondent, or that it had diverted business away from respondent.

Mr. David Puyat, president of petitioner corporation, testified that the coffee shop in Libis, Quezon City opened sometime in June 2001 and that another coffee shop would be opened in

Glorietta Mall, Makati City. He stated that the coffee shop was set up pursuant to a franchise agreement executed in January 2001 with CPL, a British Virgin Island Company owned by Robert Boxwell. Mr. Puyat said he became involved in the business when one Arthur Gindang invited him to invest in a coffee shop and introduced him to Mr. Boxwell. For his part, Mr. Boxwell attested that the coffee shop "SAN FRANCISCO COFFEE" has branches in Malaysia and Singapore. He added that he formed CPL in 1997 along with two other colleagues, Shirley Miller John and Leah Warren, who were former managers of Starbucks Coffee Shop in the United States. He said they decided to invest in a similar venture and adopted the name "SAN FRANCISCO COFFEE" from the famous city in California where he and his former colleagues once lived and where special coffee roasts came from.

The Ruling of the Bureau of Legal Affairs-Intellectual Property Office

In its 14 August 2002 Decision, the BLA-IPO held that petitioner's trademark infringed on respondent's trade name. It ruled that the right to the exclusive use of a trade name with freedom from infringement by similarity is determined from priority of adoption. Since respondent registered its business name with the DTI in 1995 and petitioner registered its trademark with the IPO in 2001 in the Philippines and in 1997 in other countries, then respondent must be protected from infringement of its trade name.

The BLA-IPO also held that respondent did not abandon the use of its trade name as substantial evidence indicated respondent continuously used its trade name in connection with the purpose for which it was organized. It found that although respondent was no longer involved in blending, roasting, and distribution of coffee because of the creation of BCCPI, it continued making plans and doing research on the retailing of coffee and the setting up of coffee carts. The BLA-IPO ruled that for abandonment to exist, the disuse must be permanent, intentional, and voluntary.

The BLA-IPO held that petitioner's use of the trademark "SAN FRANCISCO COFFEE" will likely cause confusion

because of the exact similarity in sound, spelling, pronunciation, and commercial impression of the words "SAN FRANCISCO" which is the dominant portion of respondent's trade name and petitioner's trademark. It held that no significant difference resulted even with a diamond-shaped figure with a cup in the center in petitioner's trademark because greater weight is given to words – the medium consumers use in ordering coffee products.

On the issue of unfair competition, the BLA-IPO absolved petitioner from liability. It found that petitioner adopted the trademark "SAN FRANCISCO COFFEE" because of the authority granted to it by its franchisor. The BLA-IPO held there was no evidence of intent to defraud on the part of petitioner.

The BLA-IPO also dismissed respondent's claim of actual damages because its claims of profit loss were based on mere assumptions as respondent had not even started the operation of its coffee carts. The BLA-IPO likewise dismissed respondent's claim of moral damages, but granted its claim of attorney's fees.

Both parties moved for partial reconsideration. Petitioner protested the finding of infringement, while respondent questioned the denial of actual damages. The BLA-IPO denied the parties' partial motion for reconsideration. The parties appealed to the Office of the Director General-Intellectual Property Office (ODG-IPO).

The Ruling of the Office of the Director General-Intellectual Property Office

In its 22 October 2003 Decision, the ODG-IPO reversed the BLA-IPO. It ruled that petitioner's use of the trademark "SAN FRANCISCO COFFEE" did not infringe on respondent's trade name. The ODG-IPO found that respondent had stopped using its trade name after it entered into a joint venture with Boyd Coffee USA in 1998 while petitioner continuously used the trademark since June 2001 when it opened its first coffee shop in Libis, Quezon City. It ruled that between a subsequent user of a trade name in good faith and a prior user who had stopped

using such trade name, it would be inequitable to rule in favor of the latter.

The Ruling of the Court of Appeals

In its 15 June 2005 Decision, the Court of Appeals set aside the 22 October 2003 decision of the ODG-IPO in so far as it ruled that there was no infringement. It reinstated the 14 August 2002 decision of the BLA-IPO finding infringement. The appellate court denied respondent's claim for actual damages and retained the award of attorney's fees. In its 1 September 2005 Resolution, the Court of Appeals denied petitioner's motion for reconsideration and respondent's motion for partial reconsideration.

The Issue

The sole issue is whether petitioner's use of the trademark "SAN FRANCISCO COFFEE" constitutes infringement of respondent's trade name "SAN FRANCISCO COFFEE & ROASTERY, INC.," even if the trade name is not registered with the Intellectual Property Office (IPO).

The Court's Ruling

The petition has no merit.

Petitioner contends that when a trade name is not registered, a suit for infringement is not available. Petitioner alleges respondent has abandoned its trade name. Petitioner points out that respondent's registration of its business name with the DTI expired on 16 June 2000 and it was only in 2001 when petitioner opened a coffee shop in Libis, Quezon City that respondent made a belated effort to seek the renewal of its business name registration. Petitioner stresses respondent's failure to continue the use of its trade name to designate its goods negates any allegation of infringement. Petitioner claims no confusion is likely to occur between its trademark and respondent's trade name because of a wide divergence in the channels of trade, petitioner serving ready-made coffee while respondent is in wholesale blending, roasting, and distribution of coffee. Lastly, petitioner avers the proper noun "San Francisco" and the generic word "coffee" are not capable of exclusive appropriation.

Respondent maintains the law protects trade names from infringement even if they are not registered with the IPO. Respondent claims Republic Act No. 8293 (RA 8293)[7] dispensed with registration of a trade name with the IPO as a requirement for the filing of an action for infringement. All that is required is that the trade name is previously used in trade or commerce in the Philippines. Respondent insists it never abandoned the use of its trade name as evidenced by its letter to petitioner demanding immediate discontinuation of the use of its trademark and by the filing of the infringement case. Respondent alleges petitioner's trademark is confusingly similar to respondent's trade name. Respondent stresses ordinarily prudent consumers are likely to be misled about the source, affiliation, or sponsorship of petitioner's coffee.

As to the issue of alleged abandonment of trade name by respondent, the BLA-IPO found that respondent continued to make plans and do research on the retailing of coffee and the establishment of coffee carts, which negates abandonment. This finding was upheld by the Court of Appeals, which further found that while respondent stopped using its trade name in its business of selling coffee, it continued to import and sell coffee machines, one of the services for which the use of the business name has been registered. The binding effect of the factual findings of the Court of Appeals on this Court applies with greater force when both the quasi-judicial body or tribunal like the BLA-IPO and the Court of Appeals are in complete agreement on their factual findings. It is also settled that absent any circumstance requiring the overturning of the factual conclusions made by the quasi-judicial body or tribunal, particularly if affirmed by the Court of Appeals, the Court necessarily upholds such findings of fact.[8]

Coming now to the main issue, in *Prosource International, Inc. v. Horphag Research Management SA*,[9] this Court laid

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[7] Otherwise known as the Intellectual Property Code. Took effect on 1 January 1998.

[8] *New City Builders, Inc. v. NLRC*, 499 Phil. 207 (2005).

[9] G.R. No. 180073, 25 November 2009.

down what constitutes infringement of an unregistered trade name, thus:

> (1) The trademark being infringed is registered in the Intellectual Property Office; however, **in infringement of trade name, the same need not be registered**;
>
> (2) The trademark or trade name is reproduced, counterfeited, copied, or colorably imitated by the infringer;
>
> (3) The infringing mark or trade name is used in connection with the sale, offering for sale, or advertising of any goods, business or services; or the infringing mark or trade name is applied to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with such goods, business, or services;
>
> (4) The use or application of the infringing mark or trade name is likely to cause confusion or mistake or to deceive purchasers or others as to the goods or services themselves or as to the source or origin of such goods or services or the identity of such business; and
>
> (5) It is without the consent of the trademark or trade name owner or the assignee thereof.[10] (Emphasis supplied)

Clearly, a trade name need not be registered with the IPO before an infringement suit may be filed by its owner against the owner of an infringing trademark. All that is required is that the trade name is previously used in trade or commerce in the Philippines.[11]

Section 22 of Republic Act No. 166,[12] as amended, required registration of a trade name as a condition for the institution of an infringement suit, to wit:

> Sec. 22. *Infringement, what constitutes.* – Any person who shall use, **without the consent of the registrant**, any reproduction, counterfeit, copy, or colorable imitation of any registered mark or

[10] *Id.*

[11] *Philips Export B.V. v. Court of Appeals*, G.R. No. 96161, 21 February 1992, 206 SCRA 457.

[12] Otherwise known as the Trademark Law. Took effect on 20 June 1947.

trade name in connection with the sale, offering for sale, or advertising of any goods, business or services on or in connection with which such use is likely to cause confusion or mistake or to deceive purchasers or others as to the source or origin of such goods or services, or identity of such business; or reproduce, counterfeit, copy, or colorably imitate any such mark or trade name and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with such goods, business, or services, **shall be liable to a civil action by the registrant** for any or all of the remedies herein provided. (Emphasis supplied)

However, RA 8293, which took effect on 1 January 1998, has dispensed with the registration requirement. Section 165.2 of RA 8293 categorically states that trade names shall be protected, even prior to or without registration with the IPO, against any unlawful act including any subsequent use of the trade name by a third party, whether as a trade name or a trademark likely to mislead the public. Thus:

SEC. 165.2 (a) **Notwithstanding any laws or regulations providing for any obligation to register trade names, such names shall be protected**, **even prior to or without registration**, against any unlawful act committed by third parties.

(b) In particular, any subsequent use of a trade name by a third party, whether as a trade name or a mark or collective mark, or any such use of a similar trade name or mark, likely to mislead the public, shall be deemed unlawful. (Emphasis supplied)

It is the likelihood of confusion that is the gravamen of infringement. But there is no absolute standard for likelihood of confusion. Only the particular, and sometimes peculiar, circumstances of each case can determine its existence. Thus, in infringement cases, precedents must be evaluated in the light of each particular case.[13]

In determining similarity and likelihood of confusion, our jurisprudence has developed two tests: the dominancy test and

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[13] *Philip Morris, Inc. v. Fortune Tobacco Corporation*, G.R. No. 158589, 27 June 2006, 493 SCRA 333.

the holistic test. The dominancy test focuses on the similarity of the prevalent features of the competing trademarks that might cause confusion and deception, thus constituting infringement. If the competing trademark contains the main, essential, and dominant features of another, and confusion or deception is likely to result, infringement occurs. Exact duplication or imitation is not required. The question is whether the use of the marks involved is likely to cause confusion or mistake in the mind of the public or to deceive consumers.[14]

In contrast, the holistic test entails a consideration of the entirety of the marks as applied to the products, including the labels and packaging, in determining confusing similarity.[15] The discerning eye of the observer must focus not only on the predominant words but also on the other features appearing on both marks in order that the observer may draw his conclusion whether one is confusingly similar to the other.[16]

Applying either the dominancy test or the holistic test, petitioner's "SAN FRANCISCO COFFEE" trademark is a clear infringement of respondent's "SAN FRANCISCO COFFEE & ROASTERY, INC." trade name. The descriptive words "SAN FRANCISCO COFFEE" are precisely the dominant features of respondent's trade name. Petitioner and respondent are engaged in the same business of selling coffee, whether wholesale or retail. The likelihood of confusion is higher in cases where the business of one corporation is the same or substantially the same as that of another corporation. In this case, the consuming public will likely be confused as to the source of the coffee being sold at petitioner's coffee shops. Petitioner's argument that "San Francisco" is just a proper name referring to the famous city in California and that "coffee" is simply a generic term, is untenable. Respondent has acquired an exclusive right to the use of the trade name "SAN FRANCISCO COFFEE & ROASTERY, INC." since the registration of the business name

[14] *Id.*

[15] *Id.*

[16] *Prosource International, Inc. v. Horphag Research Management SA*, *supra* note 9.

with the DTI in 1995. Thus, respondent's use of its trade name from then on must be free from any infringement by similarity. Of course, this does not mean that respondent has exclusive use of the geographic word "San Francisco" or the generic word "coffee." Geographic or generic words are not, *per se*, subject to exclusive appropriation. It is only the combination of the words "SAN FRANCISCO COFFEE," which is respondent's trade name in its coffee business, that is protected against infringement on matters related to the coffee business to avoid confusing or deceiving the public.

In *Philips Export B.V. v. Court of Appeals*,[17] this Court held that a corporation has an exclusive right to the use of its name. The right proceeds from the theory that it is a fraud on the corporation which has acquired a right to that name and perhaps carried on its business thereunder, that another should attempt to use the same name, or the same name with a slight variation in such a way as to induce persons to deal with it in the belief that they are dealing with the corporation which has given a reputation to the name.[18]

This Court is not just a court of law, but also of equity. We cannot allow petitioner to profit by the name and reputation so far built by respondent without running afoul of the basic demands of fair play. Not only the law but equity considerations hold petitioner liable for infringement of respondent's trade name.

The Court of Appeals was correct in setting aside the 22 October 2003 Decision of the Office of the Director General-Intellectual Property Office and in reinstating the 14 August 2002 Decision of the Bureau of Legal Affairs-Intellectual Property Office.

WHEREFORE, we *DENY* the petition for review. We *AFFIRM* the 15 June 2005 Decision and 1 September 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 80396.

Costs against petitioner.

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[17] *Supra* note 11.

[18] *Id.*

SO ORDERED.

Velasco, Jr.,[*] *Del Castillo, Abad,* and *Perez, JJ.,* concur.

EN BANC

[G.R. No. 172623. March 3, 2010]

COMMISSION ON APPOINTMENTS, represented herein by its Secretary HON. ARTURO L. TIU, *petitioner, vs.* **CELSO M. PALER,**[1] *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; NON-FORUM SHOPPING; VERIFICATION AND CERTIFICATION; APPLICATION OF THE RULE TO PETITIONER COMMISSION ON APPOINTMENTS.— The petitioner in this case is the Commission on Appointments, a government entity created by the Constitution, and headed by its Chairman. There was no need for the Chairman himself to sign the verification. Its representative, **lawyer** or any person who personally knew the truth of the facts alleged in the petition could sign the verification. With regard, however, to the certification of non-forum shopping, the established rule is that it must be executed by the plaintiff or any of the principal parties and not by counsel. In this case, Atty. Tiu failed to show that he was specifically authorized by the Chairman to sign the certification of non-forum shopping, much less file the petition in his behalf. There is nothing on record to prove such

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[*] Designated additional member per Raffle dated 15 February 2010.

[1] The Court of Appeals and the Civil Service Commission were impleaded as respondents but their exclusion is proper under Section 4, Rule 45 of the Rules of Court.

authority. Atty. Tiu did not even bother to controvert Paler's allegation of his lack of authority. This renders the petition dismissible.

2. POLITICAL LAW; ADMINISTRATIVE LAW; REVISED UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; APPEAL FOR NON-DISCIPLINARY ACTIONS; PERIOD; LIBERAL APPLICATION PROPER IN THE INTEREST OF SUBSTANTIAL JUSTICE.— Section 72 of CSC Memorandum Circular No. 19, s. 1999, provides for the period of appeal for non-disciplinary actions, to wit: Section 72. *When and Where to File*. — A decision or ruling of a department or agency may be appealed within fifteen (15) days from receipt thereof by the party adversely affected to the Civil Service Regional Office and finally, to the Commission Proper within the same period. x x x Paler's son received the letter from the Commission Chairman denying Paler's motion for reconsideration on March 18, 2004. Thus, Paler's had until April 2, 2004 within which to file his appeal with the CSC. It was filed, however, only on April 5, 2004. Nevertheless, the CSC entertained the appeal in the interest of substantial justice. We agree with the CSC. We uphold its decision to relax the procedural rules because Paler's appeal was meritorious. xxx When substantial justice dictates it, procedural rules may be relaxed in order to arrive at a just disposition of a case. The purpose behind limiting the period of appeal is to avoid unreasonable delay in the administration of justice and to put an end to controversies. A one-day delay, as in this case, does not justify denial of the appeal where there is absolutely no indication of intent to delay justice on the part of Paler and the pleading is meritorious on its face.

3. ID.; ID.; OMNIBUS RULES ON LEAVE; ABSENCE WITHOUT OFFICIAL LEAVE (AWOL); ELUCIDATED.— Paler was dropped from the roll of employees pursuant to Section 63, Rule XVI of the Omnibus Rules on 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. AWOL means that the

employee has left or abandoned his post for a continuous period of thirty (30) calendar days or more without any justifiable reason and notice to his employer.

4. ID.; ID.; ID.; THAT APPLICATION FOR LEAVE SHOULD BE ACTED UPON WITHIN 5 DAYS FROM RECEIPT OR APPLICATION, DEEMED APPROVED; INTERPRETED BY THE CSC.— Section 49, Rule XVI of the Omnibus Rules on Leave requires that an application for leave should be acted upon within 5 working days from receipt, otherwise, such application is deemed approved. The CSC interpreted said provision in this wise – It is explicit from the aforequoted rule that an application for leave of absence which had not been acted upon – *either by approving or disapproving* – by the head of agency or his/her authorized representative within five (5) working days from the date of its filing shall be deemed approved. The CSC also ruled that "Section 49 calls for a specific action to be done by the head of the agency or his duly authorized representative on the application for leave filed which is either to approve or to deny the same."

5. ID.; ID.; ID.; ID.; ID.; CSC INTERPRETATION, RESPECTED. — Being the central agency mandated to "prescribe, amend, and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws," the CSC has the power to interpret its own rules and any phrase contained in them, with its interpretation significantly becoming part of the rules themselves. The Court has consistently yielded and accorded great respect to the interpretation by administrative agencies of their own rules unless there is an error of law, abuse of power, lack of jurisdiction or grave abuse of discretion clearly conflicting with the letter and spirit of the law.

APPEARANCES OF COUNSEL

Agustinus V. Gonzaga for petitioner.

Wilson S. Palaran for respondent.

D E C I S I O N

CORONA, *J.*:

This is a petition for review under Rule 45 of the Rules of Court assailing the decision[2] dated December 20, 2005 and resolution dated April 27, 2005 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 90360.

The facts are undisputed.

Respondent Celso M. Paler was a Supervising Legislative Staff Officer II (SG-24)[3] with the Technical Support Service of the Commission on Appointments.[4] On April 8, 2003, he submitted a request for vacation leave for 74 working days – from August 1, 2003 to November 14, 2003.[5] In a memorandum dated April 22, 2003, Ramon C. Nghuatco, Director III of Technical Support Service, submitted to the Commission Secretary his comments/ recommendation on Paler's application:

"1. The request to go on leave of Mr. Paler is contingent upon the completion of his various Committee assignments.

2. We have already acted favorably on his Leave Applications for 09 June 2003 - 30 July 2003, which may already cover his reasons enumerated under items 1-5.

3. Mr. Paler's Sick Leave Application shall require a medical certificate from the attending physician advising him of the need to undergo medical operation and the treatment and recuperation period therefor.

Mr. Paler's Application for Leave may be acted upon depending on the completion of his work load and

[2] Penned by Associate Justice Rebecca de Guia-Salvador and concurred in by Presiding Justice Ruben T. Reyes (now a retired Member of this Court) and Associate Justice Aurora Santiago-Lagman (retired).

[3] The Civil Service Commission erroneously denominated Paler's position as "Committee Secretary."

[4] The Commission on Appointments shall be hereafter referred to as the "Commission."

[5] *Rollo*, p. 132.

> **submission of the medical certificate**."[6] (Emphasis supplied)

Since he already had an approved leave from June 9 to July 30, 2003, Paler left for the United States on June 8, 2003, without verifying whether his application for leave (for August 1 – November 14, 2003) was approved or denied.

In a letter dated September 16, 2003, the Commission Chairman informed Paler that he was being dropped from the roll of employees effective said date, due to his continuous 30-day absence without leave and in accordance with Section 63, Civil Service Commission (CSC) Memorandum Circular No. 14, s. 1999.[7] Paler's son received the letter on September 23, 2003.[8]

Paler moved for reconsideration but this was denied on February 20, 2004, on the ground that it was filed beyond the 15-day reglementary period.[9] The denial was received by Paler's son on March 18, 2004.

On appeal, the CSC reversed and set aside the Commission Chairman's decision dated September 16, 2003 per resolution 04-1214 dated November 9, 2004.[10] The dispositive portion of the resolution read:

> WHEREFORE, the appeal of Celso M. Paler is hereby GRANTED. Accordingly, the decision dated September 16, 2003 of Commission on Appointments Chairman Franklin M. Drilon dropping Celso M. Paler from the rolls; and the decision dated February 20, 2004 denying his motion for reconsideration are REVERSED and SET ASIDE. It is directed that Celso M. Paler be immediately reinstated as Committee Secretary of the Commission on Appointments and shall be considered to be on leave with pay until the exhaustion of his vacation leave credits.

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[6] *Id.*, p. 135.

[7] *Id.*, p. 123.

[8] *Ibid.*

[9] *Id.*, p. 124, Resolution/Letter dated February 20, 2004 of the Chairman of the Commission.

[10] Penned by Civil Service Commission Chairman Karina Constantino-David, and concurred in by Commissioner J. Waldemar V. Valmores. Commissioner Cesar D. Buenaflor inhibited himself from the case.

Quezon City, Nov. 09, 2004.[11]

The Commission filed a motion for reconsideration but this was denied by the CSC per resolution No. 050833 dated June 23, 2005.

This constrained petitioner to file with the CA a petition for review under Rule 43 of the Rules of Court.

Since Paler had in the meantime already reached the compulsory age of retirement on July 28, 2005 and was no longer entitled to reinstatement, the CA affirmed with modification CSC resolution 04-1214 dated November 9, 2004 and resolution No. 050833 dated June 23, 2005. The dispositive portion of the assailed decision dated December 20, 2005 provided:

WHEREFORE, the assailed Resolutions of the Civil Service Commission are AFFIRMED with the MODIFICATION that the order of reinstatement is DELETED. In lieu thereof, Paler should be awarded backwages, retirement benefits and other privileges that accrued to him from the time of his dismissal up to the date of his retirement.

SO ORDERED.[12]

Petitioner filed a motion for reconsideration but this was denied by the CA in the assailed resolution dated April 27, 2005.

Hence, this petition based on the following grounds:

A. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN GIVING DUE COURSE TO THE APPEAL OF RESPONDENT PALER WITH THE RESPONDENT CIVIL SERVICE COMMISSION DESPITE THE FACT THAT IT WAS FILED OUT OF TIME.

B. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE LEAVE APPLICATIONS OF RESPONDENT PALER WAS DEEMED APPROVED ON A MISTAKEN INTERPRETATION OF SEC. 49, RULE XVI OF THE OMNIBUS RULE ON LEAVE AS AMENDED.[13]

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[11] *Rollo*, p. 113.

[12] *Id.*, p. 43.

[13] *Id.*, pp. 21-22.

Petitioner's contentions are basically the same as those it presented to the CSC[14] and the CA,[15] *viz*.: (1) the CSC should not have entertained Paler's appeal since it was filed beyond the 15-day reglementary period; there were no meritorious reasons to relax the procedural rules, specially since there was bad faith and misrepresentation on Paler's part in filing staggered applications for leave; (2) the Commission Chairman's decision to drop Paler from the roll of employees was in accord with Section 63 of CSC Memorandum Circular No. 14, series of 1999 and (3) Paler's application for leave was not "deemed approved" as petitioner acted on his application by holding it in abeyance in view of the contingencies of his work and the submission of a medical certificate.[16]

In his comment, Paler, aside from arguing that the CA did not commit any error in sustaining the CSC resolutions, also assails Atty. Arturo L. Tiu's authority to file the petition and sign the verification and certification of non-forum shopping on behalf of the Commission Chairman.[17]

The CSC, represented by the Office of the Solicitor General (OSG), maintains the correctness of the CSC and CA judgments.

ISSUES

This petition involves both procedural and substantive issues.

On the procedural aspect, Paler questions the authority of the Commission Secretary to file the petition and sign the verification and certification of non-forum shopping in behalf of the Commission Chairman. On the other hand, the Commission disputes the CSC's grant of Paler's appeal despite having been filed beyond the reglementary period.

On the substantive aspect, was Paler's application for leave "deemed approved" within the purview of Section 49, Rule XVI of the Omnibus Rules on Leave?

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[14] *Id.*, pp. 50-56, 59-63.

[15] *Id.*, pp. 71-80.

[16] *Id.*, pp. 22-27.

[17] *Id.*, pp. 181-183.

AUTHORITY TO FILE PETITION

First, we tackle Atty. Tiu's authority to file the petition and sign the verification and certification of non-forum shopping.

The petitioner in this case is the Commission on Appointments, a government entity created by the Constitution, and headed by its Chairman.[18] There was no need for the Chairman himself to sign the verification. Its representative, **lawyer** or any person who personally knew the truth of the facts alleged in the petition could sign the verification.[19] With regard, however, to the certification of non-forum shopping, the established rule is that it must be executed by the plaintiff or any of the principal parties and not by counsel.[20] In this case, Atty. Tiu failed to show that he was specifically authorized by the Chairman to sign the certification of non-forum shopping, much less file the petition in his behalf. There is nothing on record to prove such authority. Atty. Tiu did not even bother to controvert Paler's allegation of his lack of authority. This renders the petition dismissible.[21]

Furthermore, the petition is bereft of merit as it merely restates the arguments presented before the CSC and CA. It does not advance any cogent reason that will convince this Court to deviate from the rulings of both tribunals.

THE ISSUE OF LATE FILING

Section 72 of CSC Memorandum Circular No. 19, s. 1999,[22] provides for the period of appeal for non-disciplinary actions, to wit:

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[18] Section 18, Article VI, 1987 Constitution.

[19] *LDP Marketing, Inc. v. Monter*, G.R. No. 159653, 25 January 2006, 480 SCRA 137, 141.

[20] *Gutierrez v. Secretary of the Department of Labor and Employment*, G.R. No. 142248, 16 December 2004, 447 SCRA 107, 117.

[21] *Metropolitan Cebu Water District (MCWD) v. Adala*, G.R. No. 168914, 4 July 2007, 526 SCRA 465, 474.

[22] Revised Uniform Rules on Administrative Cases in the Civil Service.

Section 72. *When and Where to File*. — A decision or ruling of a department or agency may be appealed within fifteen (15) days from receipt thereof by the party adversely affected to the Civil Service Regional Office and finally, to the Commission Proper within the same period.

xxx xxx xxx

Paler's son received the letter from the Commission Chairman denying Paler's motion for reconsideration on March 18, 2004. Thus, Paler's had until April 2, 2004 within which to file his appeal with the CSC. It was filed, however, only on April 5, 2004.[23] Nevertheless, the CSC entertained the appeal in the interest of substantial justice.[24]

We agree with the CSC. We uphold its decision to relax the procedural rules because Paler's appeal was meritorious. This is not the first time that the Court has upheld such exercise of discretion. In *Rosales, Jr. v. Mijares*[25] involving Section 49(a) of the CSC Revised Rules of Procedure, the Court ruled:

On the contention of the petitioner that the appeal of the respondent to the CSC was made beyond the period therefor under Section 49(a) of the CSC Revised Rules of Procedure, the CSC correctly ruled that:

> Movant claims that Mijares' appeal was filed way beyond the reglementary period for filing appeals. He, thus, contends that the Commission should not have given due course to said appeal.
>
> The Commission need not delve much on the dates when Mijares was separated from the service and when he assailed his separation. **Suffice it to state that the Commission found his appeal meritorious. This being the case, procedural rules need not be strictly observed.** This principle was explained by in the case of *Mauna vs. CSC*, 232 SCRA 388, where the Supreme Court ruled, to wit:
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> "Assuming for the sake of argument that the petitioner's appeal was filed out of time, **it is within the power of**

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[23] April 2, 2004 was a Friday; the appeal was filed on April 5, 2004, a Monday.

[24] *Rollo*, p. 111.

[25] G.R. No. 154095, 17 November 2004, 442 SCRA 532.

> **this Court to temper rigid rules in favor of substantial justice. While it is desirable that the Rules of Court be faithfully and even meticulously observed, courts should not be so strict about procedural lapses that do not really impair the proper administration of justice. If the rules are intended to ensure the orderly conduct of litigation, it is because of the higher objective they seek which is the protection of substantive rights of the parties.** As held by the Court in a number of cases:
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> xxx xxx xxx

It bears stressing that the case before the CSC involves the security of tenure of a public officer sacrosanctly protected by the Constitution. Public interest requires a resolution of the merits of the appeal instead of dismissing the same based on a strained and inordinate application of Section 49(a) of the CSC Revised Rules of Procedure.[26] (Emphasis supplied)

Constantino-David v. Pangandaman-Gania[27] likewise sustained the CSC when it modified an otherwise final and executory resolution and awarded backwages to the respondent, in the interest of justice and fair play. The Court stated –

> No doubt, the Civil Service Commission was in the legitimate exercise of its mandate under Sec. 3, Rule I, of the *Revised Uniform Rules on Administrative Cases in the Civil Service* that "[a]dministrative investigations shall be conducted without necessarily adhering strictly to the technical rules of procedure and evidence applicable to judicial proceedings." This authority is consistent with its powers and functions to "[p]rescribe, amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws" being the central personnel agency of the Government.
>
> Furthermore, there are special circumstances in accordance with the tenets of justice and fair play that warrant such liberal attitude

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[26] *Id.,* pp. 547-549.

[27] G.R. No. 156039, 14 August 2003, 409 SCRA 80.

on the part of the CSC and a compassionate like-minded discernment by this Court. x x x[28]

When substantial justice dictates it, procedural rules may be relaxed in order to arrive at a just disposition of a case. The purpose behind limiting the period of appeal is to avoid unreasonable delay in the administration of justice and to put an end to controversies. A one-day delay, as in this case, does not justify denial of the appeal where there is absolutely no indication of intent to delay justice on the part of Paler[29] and the pleading is meritorious on its face.

Petitioner harps on Paler's alleged bad faith and misrepresentation in filing his previous applications for leave. However, as correctly found by the CSC and CA, the basis for Paler's dismissal was his continuous absence without leave, not bad faith and misrepresentation. The CSC even noted that Paler never misrepresented or misled petitioner as to where he was spending his vacation leave. He clearly stated in his application for leave dated April 17, 2003 that he was spending it not only in the Philippines but also in the U.S.[30] According to the CA, "to utilize Paler's alleged misrepresentation in his previously approved applications for leave as basis for his separation from work, even in the absence of opportunity for him to controvert the matter, would constitute a violation of the fundamental requirements of fairness and equity and the constitutional guarantee of due process."[31] The Court finds no reason to deviate from the findings of both the CSC and CA, given that they concur with each other and should be accorded great weight and respect.[32]

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[28] *Id*, p. 88; see also *Bunsay v. Civil Service Commission*, G.R. No. 153188, 14 August 2007, 530 SCRA 68.

[29] *Philippine Amusement and Gaming Corporation v. Angara*, G.R. No. 142937, 15 November 2005, 475 SCRA 41, 52.

[30] *Rollo*, p. 118; CSC Resolution No. 05-8333 dated June 23, 2005, p. 4.

[31] *Id.*, p. 42; CA Decision dated December 20, 2005, p. 12.

[32] *Civil Service Commission v. Ledesma*, G.R. No. 154521, 30 September 2005, 471 SCRA 589, 605-606.

The CSC and CA were also correct in ruling that Paler could not be considered absent without leave (AWOL) for the period of August 1, 2003 to November 14, 2003.

Paler was dropped from the roll of employees pursuant to Section 63, Rule XVI of the Omnibus Rules on 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. (Emphasis and underscoring supplied)

AWOL means that the employee has left or abandoned his post for a continuous period of thirty (30) calendar days or more without any justifiable reason and notice to his employer.[33]

The bone of contention in this case is whether or not Paler had an approved leave.

Section 49, Rule XVI of the Omnibus Rules on Leave requires that an application for leave should be acted upon within 5 working days from receipt, otherwise, such application is deemed approved.[34] The CSC interpreted said provision in this wise –

> It is explicit from the aforequoted rule that an application for leave of absence which had not been acted upon – *either by approving or disapproving* – by the head of agency or his/her authorized representative within five (5) working days from the date of its filing shall be deemed approved.[35] (Italics supplied)

The CSC also ruled that "Section 49 calls for a specific action to be done by the head of the agency or his duly authorized

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[33] *Binay v. Odeña*, G.R. No. 163683, 8 June 2007, 524 SCRA 248, 258.

[34] Sec. 49. *Period within which to act on leave application.* — Whenever the application for leave of absence, including terminal leave, is not acted upon by the head of agency or his duly authorized representative within five (5) working days after receipt thereof, the application for leave of absence shall be deemed approved.

[35] *Rollo*, p. 112; CSC Resolution 04-1214 dated November 9, 2004, p. 9.

representative on the application for leave filed which is either to approve or to deny the same."[36]

Being the central agency mandated to "prescribe, amend, and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws," the CSC has the power to interpret its own rules and any phrase contained in them, with its interpretation significantly becoming part of the rules themselves.[37] The Court has consistently yielded and accorded great respect to the interpretation by administrative agencies of their own rules unless there is an error of law, abuse of power, lack of jurisdiction or grave abuse of discretion clearly conflicting with the letter and spirit of the law.[38]

The CA added its own reading of Section 49 which the Court now sustains:

> x x x The action contemplated therein connotes a clear and explicit exercise of discretion. It pertains to an absolute and unequivocal "approval" or "disapproval" of the request for leave and not one which is merely "recommendatory" in nature. If the rule were otherwise, the authority to act on the application for leave would not have been vested on the head of the agency or the CA [Commission on Appointments] Chairman's authorized representative. Needless to state, the purpose of the provision is for the applicant to be immediately informed of the status of his application, whether it has been approved or denied, so that he can act accordingly. x x x[39]

Clearly, Atty. Nghuatco's memorandum did not cover the action contemplated by Section 49. For one, it did not bear the *imprimatur* of the Commission Chairman (or his duly authorized representative) who was the proper party to grant or deny the application, as dictated by Section 52 of the Omnibus Rules on

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[36] *Id*, p. 118; CSC Resolution No. 05-8333 dated June 23, 2005, p. 4.

[37] *City Government of Makati v. Civil Service Commission*, G.R. No. 131392, 6 February 2002, 376 SCRA 248, 264.

[38] *Eastern Telecommunications Philippines, Inc. v. International Communication Corporation*, G.R. No. 135992, 31 January 2006, 481 SCRA 163, 167.

[39] *Rollo*, p. 39; CA Decision dated December 20, 2005, p. 9.

Leave.[40] For another, it only submitted to the Commission Secretary Atty. Nghuatco's comments and/or recommendations on Paler's application. It was merely preliminary and did not propose any definitive action (*i.e.*, approval or disapproval) on Paler's application, and simply recommended what action to take. It was obviously not controlling and the Chairman could have agreed or disagreed with the recommended action. In fact, the memorandum clearly provided that Paler's request was still to be referred to the Legal Service for comment,[41] and that the application "(could) be acted upon depending on the completion of his work load and submission of the medical certificate."[42] These circumstances plainly meant that further action was yet to be made on the application. And since there was no final approval or disapproval of Paler's application within 5 working days from receipt as required by Section 49, the application was deemed approved. Paler, therefore, could not be considered on AWOL.

All told, the CA committed no error in affirming, with modification, CSC Resolution Nos. 04-1214 dated November 9, 2004 and 050833 dated June 23, 2005.

WHEREFORE, the petition is *DENIED*.

No costs.

SO ORDERED.

Puno, C.J., Carpio, Carpio Morales, Leonardo-de Castro, Brion, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Velasco, Jr. and *Nachura, JJ.,* no part.

Peralta, J., on official leave.

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[40] Section 52 states, "[L]eave of absence for any reason other than illness of an official or employee or of any member of his immediate family must be contingent upon the needs of the service. Hence, the grant of vacation leave shall be at the discretion of the head of department/agency."

[41] *Rollo,* p. 134.

[42] *Id.,* p. 135.

THIRD DIVISION

[G.R. No. 172690. March 3, 2010]

HEIRS OF JOSE LIM, represented by ELENITO LIM, *petitioners, vs.* **JULIET VILLA LIM,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; ONLY QUESTIONS OF LAW ALLOWED; EXCEPTIONS.— Verily, the evaluation and calibration of the evidence necessarily involves consideration of factual issues — an exercise that is not appropriate for a petition for review on *certiorari* under Rule 45. This rule provides that the parties may raise only questions of law, because the Supreme Court is not a trier of facts. Generally, we are not duty-bound to analyze again and weigh the evidence introduced in and considered by the tribunals below. When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions: (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) When the findings are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.

2. CIVIL LAW; SPECIAL CONTRACTS; PARTNERSHIP; WHEN PRESENT.— A partnership exists when two or more

persons agree to place their money, effects, labor, and skill in lawful commerce or business, with the understanding that there shall be a proportionate sharing of the profits and losses among them. A contract of partnership is defined by the Civil Code as one where two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.

3. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; PREPONDERANCE OF EVIDENCE; HOW DETERMINED. — In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. "Preponderance of evidence" is the weight, credit, and value of the aggregate evidence on either side and is usually considered synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." "Preponderance of evidence" is a phrase that, in the last analysis, means probability of the truth. It is evidence that is more convincing to the court as worthy of belief than that which is offered in opposition thereto. Rule 133, Section 1 of the Rules of Court provides the guidelines in determining preponderance of evidence, thus: SECTION I. *Preponderance of evidence, how determined.*— In civil cases, the party having burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

4. CIVIL LAW; SPECIAL CONTRACTS; PARTNERSHIP; DETERMINATION OF ITS EXISTENCE.— At this juncture, our ruling in *Heirs of Tan Eng Kee v. Court of Appeals* is enlightening. Therein, we cited Article 1769 of the Civil Code, which provides: Art. 1769. In determining whether a partnership exists, these rules shall apply: (1) Except as provided by Article

1825, persons who are not partners as to each other are not partners as to third persons; (2) Co-ownership or co-possession does not of itself establish a partnership, whether such co-owners or co-possessors do or do not share any profits made by the use of the property; (3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived; (4) The receipt by a person of a share of the profits of a business is a *prima facie* evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment: (a) As a debt by installments or otherwise; (b) As wages of an employee or rent to a landlord; (c) As an annuity to a widow or representative of a deceased partner; (d) As interest on a loan, though the amount of payment vary with the profits of the business; (e) As the consideration for the sale of a goodwill of a business or other property by installments or otherwise. x x x As repeatedly stressed in *Heirs of Tan Eng Kee*, a demand for periodic accounting is evidence of a partnership.

5. REMEDIAL LAW; EVIDENCE; DOCUMENTARY EVIDENCE CARRIES MORE WEIGHT THAN ORAL EVIDENCE.— Petitioners could not offer any credible evidence other than their bare assertions. Thus, we apply the basic rule of evidence that between documentary and oral evidence, the former carries more weight.

APPEARANCES OF COUNSEL

Abesamis Law Offices for petitioners.

Agabin Verzola Hermoso & Layaoen Law Offices for respondent.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Civil Procedure, assailing the

[1] *Rollo,* pp. 9-31.

Court of Appeals (CA) Decision[2] dated June 29, 2005, which reversed and set aside the decision[3] of the Regional Trial Court (RTC) of Lucena City, dated April 12, 2004.

The facts of the case are as follows:

Petitioners are the heirs of the late Jose Lim (Jose), namely: Jose's widow Cresencia Palad (Cresencia); and their children Elenito, Evelia, Imelda, Edelyna and Edison, all surnamed Lim (petitioners), represented by Elenito Lim (Elenito). They filed a Complaint[4] for Partition, Accounting and Damages against respondent Juliet Villa Lim (respondent), widow of the late Elfledo Lim (Elfledo), who was the eldest son of Jose and Cresencia.

Petitioners alleged that Jose was the liaison officer of Interwood Sawmill in Cagsiay, Mauban, Quezon. Sometime in 1980, Jose, together with his friends Jimmy Yu (Jimmy) and Norberto Uy (Norberto), formed a partnership to engage in the trucking business. Initially, with a contribution of ₱50,000.00 each, they purchased a truck to be used in the hauling and transport of lumber of the sawmill. Jose managed the operations of this trucking business until his death on August 15, 1981. Thereafter, Jose's heirs, including Elfledo, and partners agreed to continue the business under the management of Elfledo. The shares in the partnership profits and income that formed part of the estate of Jose were held in trust by Elfledo, with petitioners' authority for Elfledo to use, purchase or acquire properties using said funds.

Petitioners also alleged that, at that time, Elfledo was a fresh commerce graduate serving as his father's driver in the trucking business. He was never a partner or an investor in the business and merely supervised the purchase of additional trucks using the income from the trucking business of the partners. By the time the partnership ceased, it had nine trucks, which were all registered in Elfledo's name. Petitioners asseverated that it was

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[2] Particularly docketed as CA-G.R. CV No. 83331; penned by Associate Justice Roberto A. Barrios (deceased), with Associate Justices Amelita G. Tolentino and Vicente S.E. Veloso, concurring; *id.* at 57-69.

[3] Particularly docketed as Civil Case No. 97-60; *rollo*, pp. 49-55.

[4] Records, pp. 1-9.

also through Elfledo's management of the partnership that he was able to purchase numerous real properties by using the profits derived therefrom, all of which were registered in his name and that of respondent. In addition to the nine trucks, Elfledo also acquired five other motor vehicles.

On May 18, 1995, Elfledo died, leaving respondent as his sole surviving heir. Petitioners claimed that respondent took over the administration of the aforementioned properties, which belonged to the estate of Jose, without their consent and approval. Claiming that they are co-owners of the properties, petitioners required respondent to submit an accounting of all income, profits and rentals received from the estate of Elfledo, and to surrender the administration thereof. Respondent refused; thus, the filing of this case.

Respondent traversed petitioners' allegations and claimed that Elfledo was himself a partner of Norberto and Jimmy. Respondent also claimed that per testimony of Cresencia, sometime in 1980, Jose gave Elfledo ₱50,000.00 as the latter's capital in an informal partnership with Jimmy and Norberto. When Elfledo and respondent got married in 1981, the partnership only had one truck; but through the efforts of Elfledo, the business flourished. Other than this trucking business, Elfledo, together with respondent, engaged in other business ventures. Thus, they were able to buy real properties and to put up their own car assembly and repair business. When Norberto was ambushed and killed on July 16, 1993, the trucking business started to falter. When Elfledo died on May 18, 1995 due to a heart attack, respondent talked to Jimmy and to the heirs of Norberto, as she could no longer run the business. Jimmy suggested that three out of the nine trucks be given to him as his share, while the other three trucks be given to the heirs of Norberto. However, Norberto's wife, Paquita Uy, was not interested in the vehicles. Thus, she sold the same to respondent, who paid for them in installments.

Respondent also alleged that when Jose died in 1981, he left no known assets, and the partnership with Jimmy and Norberto ceased upon his demise. Respondent also stressed that Jose left no properties that Elfledo could have held in trust. Respondent

maintained that all the properties involved in this case were purchased and acquired through her and her husband's joint efforts and hard work, and without any participation or contribution from petitioners or from Jose. Respondent submitted that these are conjugal partnership properties; and thus, she had the right to refuse to render an accounting for the income or profits of their own business.

Trial on the merits ensued. On April 12, 2004, the RTC rendered its decision in favor of petitioners, thus:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> 1) Ordering the partition of the above-mentioned properties equally between the plaintiffs and heirs of Jose Lim and the defendant Juliet Villa-Lim; and
>
> 2) Ordering the defendant to submit an accounting of all incomes, profits and rentals received by her from said properties.
>
> SO ORDERED.

Aggrieved, respondent appealed to the CA.

On June 29, 2005, the CA reversed and set aside the RTC's decision, dismissing petitioners' complaint for lack of merit. Undaunted, petitioners filed their Motion for Reconsideration,[5] which the CA, however, denied in its Resolution[6] dated May 8, 2006.

Hence, this Petition, raising the sole question, *viz.*:

> IN THE APPRECIATION BY THE COURT OF THE EVIDENCE SUBMITTED BY THE PARTIES, CAN THE TESTIMONY OF ONE OF THE PETITIONERS BE GIVEN GREATER WEIGHT THAN THAT BY A FORMER PARTNER ON THE ISSUE OF THE IDENTITY OF THE OTHER PARTNERS IN THE PARTNERSHIP?[7]

In essence, petitioners argue that according to the testimony of Jimmy, the sole surviving partner, Elfledo was not a partner;

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[5] CA *rollo*, pp. 116-128.

[6] *Id.* at 157-158.

[7] Petitioners' Memorandum; *rollo*, pp. 271-295, at 285.

and that he and Norberto entered into a partnership with Jose. Thus, the CA erred in not giving that testimony greater weight than that of Cresencia, who was merely the spouse of Jose and not a party to the partnership.[8]

Respondent counters that the issue raised by petitioners is not proper in a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure, as it would entail the review, evaluation, calibration, and re-weighing of the factual findings of the CA. Moreover, respondent invokes the rationale of the CA decision that, in light of the admissions of Cresencia and Edison and the testimony of respondent, the testimony of Jimmy was effectively refuted; accordingly, the CA's reversal of the RTC's findings was fully justified.[9]

We resolve first the procedural matter regarding the propriety of the instant Petition.

Verily, the evaluation and calibration of the evidence necessarily involves consideration of factual issues — an exercise that is not appropriate for a petition for review on *certiorari* under Rule 45. This rule provides that the parties may raise only questions of law, because the Supreme Court is not a trier of facts. Generally, we are not duty-bound to analyze again and weigh the evidence introduced in and considered by the tribunals below.[10] When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:

(1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;

(2) When the inference made is manifestly mistaken, absurd or impossible;

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[8] *Id.*

[9] Respondent's Memorandum; *id.* at 204-234.

[10] *Francisco Madrid and Edgardo Bernardo v. Spouses Bonifacio Mapoy and Felicidad Martinez*, G.R. No. 150887, August 14, 2009. (Citations omitted.)

(3) Where there is a grave abuse of discretion;

(4) When the judgment is based on a misapprehension of facts;

(5) When the findings of fact are conflicting;

(6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;

(7) When the findings are contrary to those of the trial court;

(8) When the findings of fact are conclusions without citation of specific evidence on which they are based;

(9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and

(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[11]

We note, however, that the findings of fact of the RTC are contrary to those of the CA. Thus, our review of such findings is warranted.

On the merits of the case, we find that the instant Petition is bereft of merit.

A partnership exists when two or more persons agree to place their money, effects, labor, and skill in lawful commerce or business, with the understanding that there shall be a proportionate sharing of the profits and losses among them. A contract of partnership is defined by the Civil Code as one where two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.[12]

Undoubtedly, the best evidence would have been the contract of partnership or the articles of partnership. Unfortunately, there

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[11] *Ontimare, Jr. v. Elep*, G.R. No. 159224, January 20, 2006, 479 SCRA 257, 265.

[12] *Litonjua, Jr. v. Litonjua, Sr.*, G.R. Nos. 166299-300, December 13, 2005, 477 SCRA 576, 584.

is none in this case, because the alleged partnership was never formally organized. Nonetheless, we are asked to determine who between Jose and Elfledo was the "partner" in the trucking business.

A careful review of the records persuades us to affirm the CA decision. The evidence presented by petitioners falls short of the quantum of proof required to establish that: (1) Jose was the partner and not Elfledo; and (2) all the properties acquired by Elfledo and respondent form part of the estate of Jose, having been derived from the alleged partnership.

Petitioners heavily rely on Jimmy's testimony. But that testimony is just one piece of evidence against respondent. It must be considered and weighed along with petitioners' other evidence *vis-à-vis* respondent's contrary evidence. In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. "Preponderance of evidence" is the weight, credit, and value of the aggregate evidence on either side and is usually considered synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." "Preponderance of evidence" is a phrase that, in the last analysis, means probability of the truth. It is evidence that is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[13] Rule 133, Section 1 of the Rules of Court provides the guidelines in determining preponderance of evidence, thus:

SECTION I. *Preponderance of evidence, how determined.* In civil cases, the party having burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately

[13] *Perfecta Cavile, Jose de la Cruz and Rural Bank of Bayawan, Inc. v. Justina Litania-Hong, accompanied and joined by her husband, Leopoldo Hong and Genoveva Litania*, G.R. No. 179540, March 13, 2009, citing *Go v. Court of Appeals*, 403 Phil. 883, 890-891 (2001).

appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

At this juncture, our ruling in *Heirs of Tan Eng Kee v. Court of Appeals*[14] is enlightening. Therein, we cited Article 1769 of the Civil Code, which provides:

Art. 1769. In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by Article 1825, persons who are not partners as to each other are not partners as to third persons;

(2) Co-ownership or co-possession does not of itself establish a partnership, whether such co-owners or co-possessors do or do not share any profits made by the use of the property;

(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived;

(4) The receipt by a person of a share of the profits of a business is a *prima facie* evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

(a) As a debt by installments or otherwise;

(b) As wages of an employee or rent to a landlord;

(c) As an annuity to a widow or representative of a deceased partner;

(d) As interest on a loan, though the amount of payment vary with the profits of the business;

(e) As the consideration for the sale of a goodwill of a business or other property by installments or otherwise.

Applying the legal provision to the facts of this case, the following circumstances tend to prove that Elfledo was himself the partner of Jimmy and Norberto: 1) Cresencia testified that Jose gave Elfledo ₱50,000.00, as share in the partnership, on a date that coincided with the payment of the initial capital in

[14] 396 Phil. 68 (2000).

the partnership;[15] (2) Elfledo ran the affairs of the partnership, wielding absolute control, power and authority, without any intervention or opposition whatsoever from any of petitioners herein;[16] (3) all of the properties, particularly the nine trucks of the partnership, were registered in the name of Elfledo; (4) Jimmy testified that Elfledo did not receive wages or salaries from the partnership, indicating that what he actually received were shares of the profits of the business;[17] and (5) none of the petitioners, as heirs of Jose, the alleged partner, demanded periodic accounting from Elfledo during his lifetime. As repeatedly stressed in *Heirs of Tan Eng Kee*,[18] a demand for periodic accounting is evidence of a partnership.

Furthermore, petitioners failed to adduce any evidence to show that the real and personal properties acquired and registered in the names of Elfledo and respondent formed part of the estate of Jose, having been derived from Jose's alleged partnership with Jimmy and Norberto. They failed to refute respondent's claim that Elfledo and respondent engaged in other businesses. Edison even admitted that Elfledo also sold Interwood lumber as a sideline.[19] Petitioners could not offer any credible evidence other than their bare assertions. Thus, we apply the basic rule of evidence that between documentary and oral evidence, the former carries more weight.[20]

Finally, we agree with the judicious findings of the CA, to wit:

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[15] TSN, June 8, 1999, pp. 4, 8 and 9-10.

[16] TSN, May 2, 2000, p. 17.

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

[18] *Supra* note 14, at 83, citing *Estanislao, Jr. v. Court of Appeals*, 160 SCRA 830, 837 (1988).

[19] TSN, September 15, 1999, p. 8.

[20] *SPO2 Yap v. Judge Inopiquez, Jr.*, 451 Phil. 182, 192 (2003), citing *Romago Electric Co., Inc. v. Court of Appeals*, 333 SCRA 291, 302 (2000), further citing *Ereñeta v. Bezore*, 54 SCRA 13 (1973) and *Soriano v. Compañia General de Tabacos de Filipinas*, 18 SCRA 999 (1966); and *Government Service Insurance System v. Court of Appeals*, 222 SCRA 685, 696 (1993), further citing *Marvel Building Corporation, et al. v. David*, 94 Phil. 376 (1954).

The above testimonies prove that Elfledo was not just a hired help but one of the partners in the trucking business, active and visible in the running of its affairs from day one until this ceased operations upon his demise. The extent of his control, administration and management of the partnership and its business, the fact that its properties were placed in his name, and that he was not paid salary or other compensation by the partners, are indicative of the fact that Elfledo was a partner and a controlling one at that. It is apparent that the other partners only contributed in the initial capital but had no say thereafter on how the business was ran. Evidently it was through Elfredo's efforts and hard work that the partnership was able to acquire more trucks and otherwise prosper. Even the appellant participated in the affairs of the partnership by acting as the bookkeeper sans salary.

It is notable too that Jose Lim died when the partnership was barely a year old, and the partnership and its business not only continued but also flourished. If it were true that it was Jose Lim and not Elfledo who was the partner, then upon his death the partnership should have been dissolved and its assets liquidated. On the contrary, these were not done but instead its operation continued under the helm of Elfledo and without any participation from the heirs of Jose Lim.

Whatever properties appellant and her husband had acquired, this was through their own concerted efforts and hard work. Elfledo did not limit himself to the business of their partnership but engaged in other lines of businesses as well.

In sum, we find no cogent reason to disturb the findings and the ruling of the CA as they are amply supported by the law and by the evidence on record.

WHEREFORE, the instant Petition is *DENIED*. The assailed Court of Appeals Decision dated June 29, 2005 is *AFFIRMED*. Costs against petitioners.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Del Castillo,[*] and *Mendoza, JJ.*, concur.

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[*] Additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 824 dated February 12, 2010.

THIRD DIVISION

[G.R. No. 173181. March 3, 2010]

HUTAMA-RSEA/SUPERMAX PHILS., J.V., *petitioner, vs.* **KCD BUILDERS CORPORATION, represented by its President CELSO C. DIOKNO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED; EXCEPTIONS. — A petition under Rule 45 of the Rules of Court shall raise only questions of law. As a rule, findings of fact of a trial judge, when affirmed by the CA, are binding upon the Supreme Court. This rule admits of only a few exceptions, such as when the findings are grounded entirely on speculations, surmises or conjectures; when an inference made by the appellate court from its factual findings is manifestly mistaken, absurd or impossible; when there is grave abuse of discretion in the appreciation of facts; when the findings of the appellate court go beyond the issues of the case, run contrary to the admissions of the parties to the case, or fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; when there is a misappreciation of facts; when the findings of fact are conclusions without mention of the specific evidence on which they are based, are premised on the absence of evidence, or are contradicted by the evidence on record.

2. ID.; ID.; PLEADING; ELUCIDATED.— A pleading is verified by an affidavit that an affiant has read the pleading and that the allegations therein are true and correct as to his personal knowledge or based on authentic records. The party does not need to sign the verification. A party's representative, lawyer, or any person who personally knows the truth of the facts alleged in the pleading may sign the verification.

3. ID.; ID.; NON-FORUM SHOPPING; ELUCIDATED.— A certification of non-forum shopping is a certification under oath by the plaintiff or principal party in the complaint or other initiatory pleading, asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith, that (a) he has not theretofore commenced any action or filed

any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

4. ID.; ID.; ID.; VERIFICATION AND CERTIFICATION THEREOF MAY BE SIGNED BY THE PRESIDENT OF A PARTY CORPORATION.— It is true that the power of a corporation to sue and be sued is lodged in the board of directors that exercises its corporate powers. However, it is settled – and we have so declared in numerous decisions – that the president of a corporation may sign the verification and the certification of non-forum shopping.

APPEARANCES OF COUNSEL

A. Tan Zoleta & Associates Law Firm for petitioner.

Benito C. Se for respondent.

D E C I S I O N

NACHURA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated October 14, 2005 and the Resolution[2] dated June 19, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 78262.

The Facts

The facts of the case, as summarized by the CA, are as follows:

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[1] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Delilah Vidallon-Magtolis and Fernanda Lampas-Peralta, concurring; *rollo*, pp. 28-35.

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

On 10 December 2001, appellee KCD Builders Corporation filed a complaint for sum of money against appellants [Hutama-RSEA/ SuperMax, Philippines and/or Charles H.C. Yang] before the Regional Trial Court of Makati. Its cause of action arose from a written contract which was the Notice to Proceed dated 10 November 2000 executed by the parties whereby appellant [Hutama] as principal contractor of Package 2-Site Works in Philips Semiconductors Phils. Inc. – Integrated Circuits Plant Phase II Project located at the Light Industry and Science Park of the Philippines-2 (LISPP-2) Calamba, Laguna contracted with appellee [KCD] as sub-contractor for the said project. The final billing dated 20 September 2001 was submitted to appellant Charles H.C. Yang, and despite a joint evaluation by the parties through their respective representatives who agreed on the amount [of] ₱2,967,164.71 as HUTAMA's total obligation to appellee [KCD], and a letter of demand, appellant corporation [Hutama] failed and refused to pay.

Summons was served on appellants [Hutama and Yang] on 8 February 2002 which was received by their secretary, Ms. Evelyn Estrabela in behalf of the two defendants [Hutama and Yang]. On 21 February 2002, their counsel filed an Entry of Appearance and Motion for Extension of time to File Responsive Pleading. They were given a 20-day extension period to file the responsive pleading, or until 16 March 2002.

On 11 April 2002, appellee [KCD] filed a Motion to Declare Defendant/s [Hutama and Yang] in Default for failure to file the responsive pleading within the extended period, and set the same for hearing on 26 April 2002.

On 23 April 2002, appellant Charles H.C. Yang filed a Motion to Dismiss for failure of the complaint to state a case of action against him, as he merely signed the sub-contract between the parties not for his personal benefit but only in behalf of appellant HUTAMA. On the same date, appellant HUTAMA filed an Urgent Motion to Admit Attached Answer with Compulsory Counterclaim, together with the said answer.

During the hearing on appellee's [KCD's] motion to declare defendant/s [Hutama and Yang] in default, the trial court noted the filing of appellants' [Hutama and Yang's] respective motion to dismiss and answer with counterclaim but noted that the filing thereof on 27 March 2002 was too late considering that they were only given an extended period up [to] 16 March 2002 to do the same. Thus, the

trial court granted the motion to declare defendants [Hutama and Yang] in default and directed, upon appellee's [KCD's] motion, the presentation of evidence *ex-parte* before the branch clerk of court who was appointed as commissioner to received evidence.

Appellants [Hutama and Yang] filed an Urgent Motion to Set Aside Order of Default. During the hearing, the trial court ordered appellee [KCD] to file an opposition or comment. After the Manifestation filed by appellee [KCD] on 24 June 2002, the trial court set anew the hearing on the motion to set aside order of default on 22 August 2002, but appellants [Hutama and Yang] failed to appear. The trial court then denied the said motion in the Order dated 19 September 2002.

During the ex-parte presentation of evidence, appellee's [KCD's] witness Celso C. Dioko testified that there was a contract executed between appellants [Hutama and Yang] and appellee [KCD] regarding the construction of Package 2 Site Works in Philips Semiconductor Phils. Inc., Calamba, Laguna where appellee [KCD] was the sub-contractor as evidenced by a Notice to Proceed. After the completion of the project, he [Dioko] billed them the total amount of ₱3,009,954.05. After they [Hutama and Yang] received the bill, they asked him [Dioko] to have a joint evaluation by their engineer and his engineer on site. The authorized engineer to evaluate the amount arrived at was Engr. Jose De Asis. Thus, their authorized engineers came out with the total amount of ₱2,967,164.71 as cost of the project. After the joint evaluation, he [Dioko] again sent the bill to appellant Charles H.C. Yang and wrote a letter to HUTAMA to pay the final billing. The appellants [Hutama and Yang], however, failed to comply with the demand. Upon the filing of this case, appellee [KCD] paid ₱30,000.00 acceptance fee and ₱3,000.00 per appearance fee and a contingency of 15% of the total amount due as attorney's fees.

Engr. Jose De Asis testified that he is an employee of appellee corporation [KCD] and knows the appellants [Hutama and Yang] to be the representatives of HUTAMA. He was the one who prepared the final evaluation and the total outstanding obligation inside the office of Philips Conductors [in] Calamba, Laguna. He and appellants [Hutama and Yang] were present when the agreement was prepared and the amount agreed upon was promised to be paid to Dioko.[3]

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

On February 20, 2003, the Regional Trial Court (RTC) rendered a decision[4] in favor of KCD Builders Corporation (KCD), *viz*.:

WHEREFORE, in view of the foregoing premises, judgment is rendered in favor of the plaintiff [KCD] as against the defendant[s Hutama and Yang], ordering the defendants to:

1.) Pay the plaintiff [KCD] the amount of ₱2,967,164.71 representing the defendants [Hutama and Yang's] total indebtedness in favor of the plaintiff [KCD] with interest of 12% per annum from October 11, 2001, until the same has been fully paid;

2.) Pay the plaintiff [KCD] 5% of the total amount awarded plus ₱30,000.00 acceptance fees and ₱3,000.00 appearance fees as and by way of attorney's fees; and

3.) Costs of the suit.

SO ORDERED.[5]

Aggrieved, Hutama Semiconductor Phils., Inc. (Hutama) and Charles H.C. Yang (Yang) filed an appeal before the CA. On October 14, 2005, the CA rendered a Decision,[6] the dispositive portion of which reads:

WHEREFORE, the foregoing considered, the assailed decision is hereby modified by dismissing the complaint against appellant Charles H.C. Yang for lack of cause of action. The decision is AFFIRMED in all other respects.

SO ORDERED.[7]

Unsatisfied, Hutama and Yang filed a motion for reconsideration; however, the same was denied in a Resolution[8] dated June 19, 2006.

Hence, this petition.

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[4] Penned by Judge Romeo F. Barza, RTC, Makati City, Branch 61; *id*. at 86-88.

[5] *Id*. at 88.

[6] *Supra* note 1.

[7] *Rollo*, p. 35.

[8] *Supra* note 2.

The Issues

Petitioner assigned the following errors:

I

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS, REVERSIBLE ERROR, IF NOT GRAVE ABUSE OF DISCRETION, IN REFUSING TO RESOLVE AS TO –

(A) WHETHER OR NOT THE COURT *A QUO* COMMITTED SERIOUS, REVERSIBLE ERROR, WHEN IT FAILED TO CONSIDER THAT RESPONDENT ABANDONED THE PROJECT AND IT IS THE LATTER (sic) LIABLE TO PETITIONER;

(B) WHETHER OR NOT THE COURT *A QUO* COMMITTED SERIOUS, REVERSIBLE ERROR, WHEN IT DENIED PETITIONER'S RIGHTS TO PRESENT ITS EVIDENCE IN VIOLATION OF ITS CONSTITUTIONAL RIGHTS TO DUE PROCESS; AND

(C) WHETHER OR NOT THE COURT *A QUO* COMMITTED SERIOUS, REVERSIBLE ERROR, WHEN IT FAILED TO CONSIDER THAT RESPONDENT FAILED TO COMPLY WITH SECTION 5, RULE 7 OF THE 1997 RULES OF CIVIL PROCEDURE ON VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING;

II

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS, REVERSIBLE ERROR, IF NOT GRAVE ABUSE OF DISCRETION, IN DENYING PETITIONER['S] MOTION FOR RECONSIDERATION WITHOUT STATING CLEARLY AND DISTINCTLY THE FACTUAL AND LEGAL BASIS THEREOF.[9]

In sum, the sole issue for resolution is whether the CA erred in affirming the decision of the RTC as to the liability of Hutama to KCD.

The Ruling of the Court

We resolve to deny the petition.

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[9] *Rollo,* pp. 173-174.

First, Hutama assails the decision of the CA based on its claim that it is KCD which owes them a sum of money because the latter abandoned the project. In other words, Hutama is asking this Court to review the factual findings of the RTC and the CA. This position of petitioner is untenable.

A petition under Rule 45 of the Rules of Court shall raise only questions of law. As a rule, findings of fact of a trial judge, when affirmed by the CA, are binding upon the Supreme Court. This rule admits of only a few exceptions, such as when the findings are grounded entirely on speculations, surmises or conjectures; when an inference made by the appellate court from its factual findings is manifestly mistaken, absurd or impossible; when there is grave abuse of discretion in the appreciation of facts; when the findings of the appellate court go beyond the issues of the case, run contrary to the admissions of the parties to the case, or fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; when there is a misappreciation of facts; when the findings of fact are conclusions without mention of the specific evidence on which they are based, are premised on the absence of evidence, or are contradicted by the evidence on record.[10] However, not one of the exceptions is present in this case.

Based on the findings of fact of the RTC, which were affirmed by the CA, it was proven that Hutama contracted the services of KCD as a sub-contractor of Package 2 Site Works at Phillips Semiconductors Philippines, Inc. – Integrated Circuits Plant Phase II Project, located in Calamba, Laguna. After the completion of the project, KCD billed Hutama Three Million Nine Hundred Nine Thousand Nine Hundred Sixty-Four Pesos and 05/100 (₱3,909,964.05). The amount was reduced to Two Million Nine Hundred Sixty-Seven Thousand One Hundred Sixty-Four Pesos and 71/100 (₱2,967,164.71) by agreement of the parties. Thus, on October 11, 2001, KCD sent Hutama the final bill. However, Hutama refused to settle the obligation and its refusal compelled KCD to file the collection suit before the RTC.

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[10] *Halili v. Court of Appeals*, G.R. No. 113539, March 12, 1998, 287 SCRA 465.

Second, Hutama avers that the CA committed a reversible error when it upheld the decision of the RTC, which was based on the ex-parte evidence presented by KCD. Allegedly, its constitutional right to due process was violated when the RTC issued an order of default[11] which resulted in its failure to present evidence.

However, we find that the RTC acted within the confines of its discretion when it issued the order of default upon the motion of KCD when Hutama failed to file an answer within the extended period. The RTC did not hastily issue the order of default. It

[11] Rules of Court, Rule 9, Sec. 3 reads:

Sec. 3. *Default; declaration of.* — If the defending party fails to answer within the time allowed therefore, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.

(a) Effect of order of default. — A party in default shall be entitled to notice of subsequent proceedings but not to take part in the trial.

(b) Relief from order of default.— A party declared in default may at any time after notice thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable negligence and that he has a meritorious defense. In such case, the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice.

(c) Effect of partial default.— When a pleading asserting a claim states a common cause of action against several defending parties, some of whom answer and the others fail to do so, the court shall try the case against all upon the answers thus filed and render judgment upon the evidence presented.

(d) Extent of relief to be awarded.— A judgment rendered against a party in default shall not exceed the amount or be different in kind from that prayed for nor award unliquidated damages.

(e) Where no defaults allowed.— If the defending party in an action for annulment or declaration of nullity of marriage or for legal separation fails to answer, the court shall order the prosecuting attorney to investigate whether or not a collusion between the parties exists, and if there is no collusion, to intervene for the State in order to see to it that the evidence submitted is not fabricated.

gave Hutama the opportunity to explain its side. On August 22, 2002, the motion to set aside the order of default was set for hearing, but neither Hutama's counsel, nor any other representative of petitioner corporation, appeared. According to the counsel of Hutama, in his Memorandum,[12] he failed to file an answer on time because he went to the province for the Lenten season. He assigned the case to his associate, but the latter also went to the province. This flimsy excuse deserves scant consideration.

Third, Hutama questions the verification and certification on non-forum shopping of KCD, issued by its board of directors, because the same was signed by the latter's president without proof of authority to sign the same.

A pleading is verified by an affidavit that an affiant has read the pleading and that the allegations therein are true and correct as to his personal knowledge or based on authentic records. The party does not need to sign the verification. A party's representative, lawyer, or any person who personally knows the truth of the facts alleged in the pleading may sign the verification.[13]

On the other hand, a certification of non-forum shopping is a certification under oath by the plaintiff or principal party in the complaint or other initiatory pleading, asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith, that (a) he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five days therefrom to the court

[12] *Rollo,* pp. 164-178.

[13] Rules of Court, Rule 7, Sec. 4; *LDP Marketing, Inc. v. Monter,* G.R. No. 159653, January 25, 2006, 480 SCRA 137.

wherein his aforesaid complaint or initiatory pleading has been filed.[14]

It is true that the power of a corporation to sue and be sued is lodged in the board of directors that exercises its corporate powers.[15] However, it is settled – and we have so declared in numerous decisions – that the president of a corporation may sign the verification and the certification of non-forum shopping.

In *Ateneo de Naga University v. Manalo*,[16] we held that the lone signature of the University President was sufficient to fulfill the verification requirement, because such officer had sufficient knowledge to swear to the truth of the allegations in the petition.

In *People's Aircargo and Warehousing Co., Inc. v. CA*,[17] we held that in the absence of a charter or bylaw provision to the contrary, the president of a corporation is presumed to have the authority to act within the domain of the general objectives of its business and within the scope of his or her usual duties. Moreover, even if a certain contract or undertaking is outside the usual powers of the president, the corporation's ratification of the contract or undertaking and the acceptance of benefits therefrom make the corporate president's actions binding on the corporation.

Finally, Hutama questions the resolution of the CA on its motion for reconsideration on the ground that it denied the same without stating clearly and distinctly the factual and legal basis thereof.

In denying petitioner's motion for reconsideration, the CA ruled that it found no plausible reason to depart from its earlier decision wherein all the issues had been exhaustively passed upon. That ruling contained a sufficient legal reason or basis to deny the motion. There was no need for the CA to restate the rationale for its decision that the petitioner wanted reconsidered.

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[14] Rules of Court, Rule 7, Sec. 5 (par. 1).

[15] *LDP Marketing, Inc. v. Monter*, *supra* note 13.

[16] G.R. No. 160455, May 9, 2005, 458 SCRA 325.

[17] G.R. No. 117847, October 7, 1998, 297 SCRA 170.

WHEREFORE, in view of the foregoing, the instant petition is *DENIED*. The Decision dated October 14, 2005 and the Resolution dated June 19, 2006 of the Court of Appeals in CA-G.R. CV No. 78262 are hereby *AFFIRMED*. Costs against petitioners.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Del Castillo,[*] and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. Nos. 175045-46. March 3, 2010]

ENGR. RICARDO L. SANTILLANO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PROOF OF SERVICE OF THE PETITION ON THE LOWER COURT, TRIBUNAL OR OFFICE CONCERNED, REQUIRED.— In the procedural aspect of the petition, Santillano failed to complete the requirements of a petition under Rule 45, despite our resolution requiring him to submit a statement of material dates and proof of service of the petition on the Sandiganbayan. The aforementioned requirement on proof of service may be found under Supreme Court Circular No. 19-91 dated August 13, 1991. x x x While the Rules of Court does not require that the lower court be impleaded, proof of service of the petition on the lower court is mandated. The

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[*] Additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 824 dated February 12, 2010.

People, thus, correctly maintains that service of the petition upon the Sandiganbayan should have been made.

2. ID.; ID.; LIBERAL APPLICATION OF THE RULES; FAILURE TO COMPLY WITH A RULE MUST BE EXPLAINED.— There have been exceptional cases where we have set aside procedural defects to correct a patent injustice. To justify a relaxation of the Rules, however, there should be an effort on the part of the party invoking liberality to at least explain its failure to comply with the Rules. Jurisprudence holds that the utter disregard of the Rules cannot be justified by harking to substantial justice and the policy of liberal construction of the Rules. Technical rules of procedure are not meant to frustrate the ends of justice. Rather, they serve to effect the proper and orderly disposition of cases and, thus, effectively prevent the clogging of court dockets.

3. POLITICAL LAW; ADMINISTRATIVE LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019); PRIVATE INDIVIDUALS WHO INDUCE OR CAUSE PUBLIC OFFICIALS TO COMMIT OFFENSES THEREIN ARE ALSO PUNISHED. – The relevant provision of RA 3019 states: **Section 3.** *Corrupt practices of public officers.*—In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful: x x x (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions. x x x While the afore-quoted provision does not contain a reference to private individuals, it must be read in conjunction with the following sections also of RA 3019: **Section 4.** *Prohibition on private individuals.*— xxx (b) It shall be unlawful for any person knowingly to induce or cause any public official to commit any of the offenses defined in Section 3 hereof. **Section 9.** *Penalties for violations.*– - (a) **Any public officer or private person** committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for

not less than one year nor more than ten years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income. Clearly, the law punishes not only public officers who commit prohibited acts enumerated under Sec. 3, but also those who induce or cause the public official to commit those offenses. This is supported by Sec. 9, which includes private persons as liable for violations under Secs. 3, 4, 5, and 6.

4. ID.; ID.; ID.; ID.; CONSPIRACY MAY BE ESTABLISHED BY CIRCUMSTANTIAL EVIDENCE.— Proof of conspiracy need not be direct or actual. Indeed, prosecutors would be hard-pressed to secure a conviction for those charged under RA 3019 if direct evidence were required to be established. Rule 133 of the Rules of Court on circumstantial evidence applies to this case. It states: 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. A judgment of conviction based on circumstantial evidence can be upheld only if the circumstances proved constitute an unbroken chain that leads to one fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person, that is, the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilty.

5. ID.; CONSTITUTIONAL LAW; SANDIGANBAYAN; FACTUAL FINDINGS THEREOF ARE CONCLUSIVE TO THE COURT; EXCEPTIONS.— The factual findings of the Sandiganbayan are conclusive on this Court, subject to established exceptions, among them: (1) the conclusion is a finding grounded entirely on speculations, surmises, and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; and (5) the findings of fact of the Sandiganbayan are premised on the absence of evidence and are contradicted by evidence on record.

6. ID.; ADMINISTRATIVE LAW; RA NO. 3019; PENALTIES; APPLICATION OF THE INDETERMINATE SENTENCE LAW. – On the penalty imposed, RA 3019 lays down the penalty for a violation committed under its Secs. 3, 4, 5, and 6. x x x We find the penalty imposed in all three criminal cases within that prescribed by law. The Sandiganbayan was correct in applying Sec. 1 of the Indeterminate Sentence Law. Said law provides that in offenses punishable by a law, other than the Revised Penal Code, the maximum term of the penalty should "not exceed the maximum fixed by said law and the minimum (should) not be less than the minimum term prescribed by the same."

APPEARANCES OF COUNSEL

Midpantao L. Adil for petitioner.
The Solicitor General for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the October 13, 2006 Decision of the Sandiganbayan entitled *People of the Philippines v. Ecleo, Jr., et al.* (Criminal Case Nos. 24467-24468) and *People of the Philippines v. Ecleo, Jr. and Orejas* (Criminal Case No. 24469), finding petitioner Ricardo Santillano guilty of three counts of violation of Section 3(e) of Republic Act No. (RA) 3019 or the *Anti-Graft and Corrupt Practices Act*.

Santillano was charged along with three others in the following Informations:

Criminal Case No. 24467

That on or about the period September 23, 1991 to March 4, 1993, or sometime prior or subsequent thereto, in the municipality of San Jose, Surigao del Norte, Philippines and within the jurisdiction of this Honorable Court, accused Ruben B. Ecleo, Jr., Arsenia N. Orejas and Anadelia N. Navarra, all public officers being then the Municipal Mayor, Municipal Treasurer and Municipal Planning and Development

Coordinator and designated Municipal Engineer, respectively, of San Jose, Surigao del Norte, with salary grades below 27, except for accused Ecleo with salary grade 27 and therefore a high ranking officer; while in the discharge of their official duties and functions, in conspiracy with accused Ricardo L, Santillano, proprietor of PBMA Builders, San Jose, Surigao del Norte, through manifest partiality, evident bad faith or gross inexcusable negligence, did then and there, willfully, unlawfully, and criminally, cause the approval and release of funds in the total amount of ₱4,008,005.00 as payment to accused Ricardo L. Santillano for the construction of a public market, despite the fact that the project accomplishment was only equivalent to ₱3,563,247.83 thereby giving unwarranted benefits, advantage or preference to Ricardo L. Santillano and causing undue injury to the government in the total amount of ₱444,575.17.

CONTRARY TO LAW.[1]

Criminal Case No. 24468

That on or about the period June 21, 1993 to July 22, 1993, or sometime prior or subsequent thereto, in the municipality of San Jose, Surigao del Norte, Philippines and within the jurisdiction of this Honorable Court, accused Ruben B. Ecleo, Jr., Arsenia N. Orejas, and Anadelia N. Navarra, all public officers, being then the Municipal Mayor, Municipal Treasurer, and Municipal Planning and Development Coordinator and designated Municipal Engineer, respectively, of San Jose, Surigao del Norte, with salary grades below grade 27, except for accused Ecleo with salary grade 27 and therefore a high ranking officer; while in the discharge of their official duties and functions, in conspiracy with accused Ricardo L. Santillano, proprietor of PBMA Builders, San Jose, Surigao del Norte, through manifest partiality, evident bad faith or gross inexcusable negligence, did then and there, willfully, unlawfully and criminally, cause the approval and release of funds in the total amount of ₱3,949,664.00 as payment to accused Ricardo L. Santillano for the construction of a municipal building, despite the fact that the contract price was only ₱3,684,575.00, and despite the fact that the project accomplishment was only 37.38% or equivalent to ₱1,437,024.30, thereby giving unwarranted benefits, advantage or preference to Ricardo L. Santillano and causing undue injury to the government in the total amount of ₱2,412,639.70.

[1] *Rollo,* p. 24.

CONTRARY TO LAW.[2]

Criminal Case No. 24469

That on or about the year 1994, or sometime prior or subsequent thereto, in the municipality of San Jose, Surigao del Norte, Philippines and within the jurisdiction of this Honorable Court, accused Ruben B. Ecleo, Jr., and Arsenia N. Orejas, all public officers, being then the Municipal Mayor with salary grade above grade 27, and Municipal Treasurer, with salary grade below 27, respectively of San Jose, Surigao del Norte; while in the discharge of their official duties and functions, in conspiracy with one another, through manifest partiality, evident bad faith or gross inexcusable negligence, did then and there, willfully, unlawfully and criminally, cause the approval and release of funds in the total amount of ₱300,000.00 for the repair and rehabilitation of a building owned by the PBMA Women's League, a private organization, thereby giving unwarranted benefits, advantage or preference to the PBMA Women's League and causing undue injury to the government in the total amount of ₱300,000.00.

CONTRARY TO LAW.[3]

At the arraignment on August 16, 1998, only Ruben Ecleo, Jr. and Anadelia Navarra appeared. They pleaded not guilty to all the charges against them.

Santillano surrendered to the trial court while the defense was presenting evidence at the ensuing trial. He was arraigned on December 6, 1999 under the Informations covering Criminal Case Nos. 24467 and 24468. He entered a plea of not guilty and the proceedings against Ecleo, Jr. and Navarra were held in abeyance.[4] A joint trial was subsequently ordered by the trial court.

The prosecution had for its witnesses State Auditors Carlo Miagao Galenzoga and Marcos Torralba of the Commission on Audit (COA). Based on their testimonies, it was established that in 1994, a request for audit was addressed to the COA by a San Jose, Surigao del Norte *Sangguniang Bayan* member by the name of Leo Durano. A special audit team was formed to

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[2] *Id.* at 24-25.

[3] *Id.* at 25.

[4] *Id.* at 26.

investigate irregularities committed in violation of COA rules. It was composed of State Auditors Torralba, Galenzoga, and Victor Azote.[5]

An examination of the books, records, and related documents of the municipality of San Jose, Surigao del Norte was undertaken. At the time of the investigation, the municipality was headed by Mayor Ecleo, Jr. Arsenia Orejas was the municipal treasurer, while Navarra was the municipal planning and development coordinator. An ocular inspection of infrastructure projects such as the public market, a municipal building, and a guest house was likewise made. The team reported its findings in an audit report submitted to the COA Regional Office, as follows:

(1) **Public market**. The construction was undertaken by a contractor, Philippine Benevolent Missionaries Association (PBMA) Builders, represented by Santillano under a negotiated contract involving three phases (Phases II to IV). Phase I had earlier been directly carried out by the municipality at a cost of PhP 346,639. The rates for the remaining phases were:

Phase II: PhP 1,469,500
Phase III: PhP 1,274,000
Phase IV: PhP 1,300,000
Total: PhP 4,043,500

Santillano submitted programs of work detailing the project's costs and expenses. He submitted billings and included the progress of the construction. Navarra certified that she inspected the implementation of the project and that the progress of the work as certified by Santillano was correct. Navarra and Ecleo, Jr. both consequently recommended payment be made to Santillano. Additionally, Ecleo, Jr. made requests for obligation of allotment and ordered and approved disbursements of funds for payment of billings from Santillano. Orejas certified to the availability of funds, and payment was made to Santillano amounting to PhP 4,008,005, evidenced by PBMA Builders official receipts.

[5] *Id.* at 27.

According to State Auditor Galenzoga, an inspection of the project site revealed discrepancies between what was declared in project documents and the actual status of the structures. There were items of work that were included in the contract but not actually executed. It was found out that some items constructed were not part of the contract and would have needed a supplemental contract to be valid. Santillano also claimed payment for items under Phase II that were not included in the contract. A comparative cost analysis yielded an overpricing of PhP 444,757.17 of the project cost.[6]

(2) **Municipal building**. The construction of the municipal building was also awarded to PBMA Builders per contract for two phases, negotiated as follows:

Phase I: PhP 1,119,575
Phase II: PhP 2,565,000
Total: PhP 3,684,575

Navarra, however, estimated the individual program of work for Phase I at PhP 2,051,387.55. As with the public market project, Ecleo, Jr. and Navarra approved Santillano's billing for the construction. Requests for obligation of allotment were prepared by Ecleo, Jr., which was followed by Orejas' certification of availability of funds. The mayor then signed and approved the disbursement vouchers for payments to be made to Santillano via checks. Santillano acknowledged payment through PBMA official receipts. The total payment made amounted to PhP 3,849,664, of which the audit team noted an overpayment of PhP 165,089.[7]

An ocular inspection of the municipal building made the audit team conclude that contrary to the reported accomplishment rate of 100%, only 37.33% of the construction was actually finished. Payment had been made on activities that had not yet been started. The comparative cost analysis prepared by Galenzoga

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[6] *Id.* at 28.

[7] *Id.* at 29.

showed that the cost of the project was PhP 1,437,024.30, which meant that there was an overpayment of PhP 2,412,639.70.

(3) **Municipal guest house**. The special audit team also discovered an allotment of PhP 300,000 from the Countrywide Development Fund for the repair and rehabilitation of the municipality's guest house. A cash advance for the said amount was approved by Ecleo, Jr. given to Navarra for the expenses of the project. State Auditor Torralba learned, however, that the funds were not spent for the repair of the municipal guest house but that of a private building owned by PBMA. Records with Orejas as well as a ledger of fixed assets disclosed that the municipality did not even have its own guest house.

The defense proffered alibi and denial in claiming innocence. Navarra testified that in Janury 1991, she was a municipal project development assistant. Her position, she reasoned, showed that she had no responsibility to sign official documents. Her leave of absence from July to November 1991 also foreclosed any opportunity for her to sign the certificates of work for Phases II to IV of the construction of the public market. She claimed that her signatures on the certificates had been forged. She did, however, admit that she signed the programs of work, certificates of work, and disbursement vouchers for the construction of the municipal building.[8]

Ecleo, Jr. denied the charges against him by claiming that he signed the pertinent documents in good faith as he relied on Navarra's certification. He admitted indorsing Santillano's request for a supplemental contract and recommended its approval. He also added that the vice-mayor was acting mayor for a time and he signed collection requests and disbursement vouchers also based on Navarra's certification of the necessity and lawfulness of the expenses incurred.

Ecleo, Jr. buttressed his claim of innocence by saying that he recommended the immediate prosecution of Santillano when the audit team finished its findings. He stated that the San Jose *Sangguniang Bayan* passed Resolution No. 30, Series of 1995

[8] *Id.* at 31.

in order to file a civil case against Santillano. He represented the municipal government of San Jose, Surigao del Norte in its civil case for breach of contract and damages against Santillano. A compromise agreement was allegedly reached, with Santillano acknowledging PhP 2,856,396.87. The Regional Trial Court of Surigao City rendered judgment on the basis of the said agreement.[9]

Santillano testified that when PBMA Builders started work on Phase II of the public market, they had to relocate the site as it was too close to the sea and could get flooded in high tide. The relocation purportedly had the approval of the municipal development and planning coordinator. He asserted that the variance between the audit's valuation of both the public market project and the municipal building and what he actually received was justified because of the additional work done on Phase I. He invoked Presidential Decree No. (PD) 1594 in explaining the excess in expense, as the said law allowed adjustments in billings by as much as 25%.[10] He likewise justified collecting additional amount of PhP 165,089 for the construction of the municipal building by saying that it was approved by the municipal planning and development coordinator.[11]

On the matter of the compromise agreement between him and the municipality of San Jose, Santillano denied entering into one and said he never admitted to any liability. He stated that he even filed a petition with the Court of Appeals to nullify the judicially-approved compromise agreement.

Deciding against Santillano, the Sandiganbayan found that all the elements of the offense charged were present in the three cases on appeal. In Criminal Case No. 24467 (construction of public market), it found the prosecution's evidence sufficient to show that: (1) Ecleo, Jr. entered into contracts with Santillano for Phases II to IV of the project; (2) Ecleo, Jr. and Navarra

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

[10] *Id.* at 34.

[11] *Id.* at 35.

approved and released funds to Santillano worth PhP 4,008,005; and (3) there was an overpayment of PhP 444,575.17 to Santillano.

In Criminal Case No. 24468 (construction of municipal building), the evidence adduced showed that: (1) Ecleo, Jr. entered into an agreement with Santillano for the construction of a municipal building for PhP 3,684,575; (2) payments approved and released by Ecleo, Jr. and Navarra amounted to PhP 3,849,664; and (3) there was an overpayment of PhP 2,412,639.70.

In Criminal Case No. 24469 (repair and rehabilitation of municipality guest house), it was adequately shown that: (1) funds amounting to PhP 300,000 were approved by Ecleo, Jr. and Orejas for the repair of the municipality guest house; (2) the funds were actually used for the guest house of a private building owned by PBMA; and (3) in reality the municipality did not have a guest house. The appellate court, however, ruled that there was not enough evidence showing that Orejas conspired with Ecleo, Jr. to use public funds for the repair of a private building.

The Sandiganbayan rejected the argument of Santillano that he was justified in collecting additional payments because of additional work he undertook. The law he invoked, PD 1594, requires the government to direct the performance of additional works through written orders and within limits set within the contract. The Sandiganbayan noted that Santillano's authority to undertake additional work per his testimony was merely verbal. On Santillano's claim that the state auditor was not qualified to estimate the projects' cost analysis, the Sandiganbayan held that the audit team's conclusions were based on substantial evidence; therefore, it upheld the principle that factual findings of administrative agencies are generally respected and given finality.

On October 13, 2006, the Sandiganbayan made a Decision, the dispositive portion of which reads:

WHEREFORE, judgment is rendered in the following:

(1) In Criminal Case No. 24467, the Court finds the accused Ruben B. Ecleo, Jr., Anadelia Naluan Navarra and Ricardo L. Santillano GUILTY beyond reasonable doubt of violation of Section 3(e) of Republic Act No. 3019 and they are each sentenced to suffer the

penalty of imprisonment of six (6) years and one (1) month to ten (10) years and six (6) months. In addition, they shall each suffer the penalty of perpetual disqualification from public office. They are likewise ordered to return, jointly and solidarily, to the municipality of San Jose, Surigao del Norte the amount of ₱444,575.17.

(2) In Criminal Case No. 24468, the Court finds the accused Ruben B. Ecleo, Jr., Anadelia Naluan Navarra and Ricardo L. Santillano GUILTY beyond reasonable doubt of violation of Section 3(e) of Republic Act No. 3019 and they are each sentenced to suffer the penalty of imprisonment of six (6) years and one (1) month to ten (10) years and six (6) months. In addition, they shall each suffer the penalty of perpetual disqualification from public office. They are likewise ordered to return, jointly and solidarily, to the municipality of San Jose, Surigao del Norte the amount of ₱2,412,639.70.

(3) In Criminal Case No. 24469, the Court finds the accused Ruben B. Ecleo, Jr., GUILTY beyond reasonable doubt of violation of Section 3(e) of Republic Act No. 3019 and he is hereby sentenced to suffer the penalty of imprisonment of six (6) years and one (1) month to ten (10) years and six (6) months and to suffer perpetual disqualification from public office.

Considering that accused Arsenia Orejas, who is charged in Criminal [Case Nos.] 24467-24469, has not been brought to the jurisdiction of this Court to answer the charges herein, let warrant of arrest issue against her.

The cash bonds posted by accused Ruben Ecleo, Jr. and Anadelia Naluan Navarra are hereby ordered cancelled in view of their conviction.

SO ORDERED.[12]

Thus, on October 27, 2006, Santillano filed the instant petition.

On December 4, 2006, this Court issued a Resolution[13] requiring Santillano to submit the following: (1) a statement of material

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[12] *Id.* at 49-50. Penned by Associate Justice Diosdado M. Peralta (now a member of this Court) and concurred in by Presiding Justice Teresita J. Leonardo-De Castro (now a member of this Court) and Associate Justice Gregory S. Ong.

[13] *Id.* at 53.

dates showing when notice of the assailed judgment was received, pursuant to Sections 4(b) and 5, Rule 45 in relation to Sec. 5(d), Rule 56 of the Rules of Court; and (2) proof of service of the petition on the lower court concerned pursuant to Sec. 5(d), Rule 56 and Sec. 13, Rule 13 of the Rules.

On February 5, 2007, the People, through the Office of the Special Prosecutor, filed its Comment on the Petition.

On February 28, 2007, this Court required Santillano to file a reply to the People's Comment. Santillano filed his Reply on May 15, 2007.

Santillano raised the issue of:

WHETHER THE DECISION OF THE SANDIGANBAYAN PROMULGATED ON OCTOBER 13, 2006 IS CONTRARY TO LAW BECAUSE PETITIONER-ACCUSED ENGR. RICARDO L. SANTILLANO IS A PRIVATE PERSON AND NOT A PUBLIC OFFICER

Our ruling is to deny the appeal.

In the procedural aspect of the petition, Santillano failed to complete the requirements of a petition under Rule 45, despite our resolution requiring him to submit a statement of material dates and proof of service of the petition on the Sandiganbayan. The aforementioned requirement on proof of service may be found under Supreme Court Circular No. 19-91 dated August 13, 1991, which states:

2. Form and Service of Petition. —

A petition filed under Rule 45, or under Rule 65, or a motion for extension may be denied outright if it is not clearly legible, or there is no proof of service on the lower court, tribunal, or office concerned and on the adverse party in accordance with Sections 3, 5 and 10 of Rule 13, attached to the petition or motion for extension when filed.

Effective September 15, 1991, henceforth, **a petition or motion for extension filed before this Court shall be dismissed/denied outright if there is no such proof of service** in accordance with Sections 3 and 5 in relation to Section 10 of Rule 13 of the Rules

of Court attached to the petition/motion when filed. (Emphasis supplied.)

The People, through the Office of the Special Prosecutor, observed in its Comment[14] on the Petition, "Verily, Petitioner fatally failed to implead the Court *a quo (Sandiganbayan)* and to serve a copy of his Petition to the said court."

While the Rules of Court does not require that the lower court be impleaded, proof of service of the petition on the lower court is mandated. The People, thus, correctly maintains that service of the petition upon the Sandiganbayan should have been made.

There have been exceptional cases where we have set aside procedural defects to correct a patent injustice. To justify a relaxation of the Rules, however, there should be an effort on the part of the party invoking liberality to at least explain its failure to comply with the Rules.[15] Jurisprudence holds that the utter disregard of the Rules cannot be justified by harking to substantial justice and the policy of liberal construction of the Rules. Technical rules of procedure are not meant to frustrate the ends of justice. Rather, they serve to effect the proper and orderly disposition of cases and, thus, effectively prevent the clogging of court dockets.[16]

In the instant case, while Santillano filed a Reply to the Comment of the Special Prosecutor, no explanation whatsoever was made on why he failed to comply with the requirements on material dates and proof of service. The Reply tackled substantial matters, but did not touch on why no compliance was made with regard to proof of service. We, thus, find no reason to give due course to the present petition.

But even if we entertain the petition, we must still affirm the conviction of Santillano.

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[14] *Id.* at 63.

[15] *Cirineo Bowling Plaza, Inc. v. Sensing*, G.R. No. 146572, January 14, 2005, 448 SCRA 175, 185.

[16] *Ferrer v. Villanueva*, G.R. No. 155025, August 24, 2007, 531 SCRA 97.

Santillano claims that the Sandiganbayan added an element to the crime charged. The Sandiganbayan allegedly added the phrase "or a private person charged in conspiracy with the public officer" to the law in order to have a legal basis in holding him liable. The assertion completely lacks merit.

The relevant provision of RA 3019 states:

Section 3. *Corrupt practices of public officers.*—In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

xxx xxx xxx

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions. x x x

While the afore-quoted provision does not contain a reference to private individuals, it must be read in conjunction with the following sections also of RA 3019:

Section 4. *Prohibition on private individuals.*—

xxx xxx xxx

(b) It shall be unlawful for any person knowingly to induce or cause any public official to commit any of the offenses defined in Section 3 hereof.

Section 9. *Penalties for violations.*—(a) **Any public officer or private person** committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than one year nor more than ten years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income. (Emphasis supplied.)

Clearly, the law punishes not only public officers who commit prohibited acts enumerated under Sec. 3, but also those who induce or cause the public official to commit those offenses. This is supported by Sec. 9, which includes private persons as liable for violations under Secs. 3, 4, 5, and 6.

Santillano's argument echoes the issue raised in *Go v. Fifth Division, Sandiganbayan*,[17] where the appellant was also a private person. Affirming his conviction, we held that appellant's assertion was at odds with the policy and spirit behind RA 3019, which was "to repress certain acts of public officers and private persons alike which constitute graft or corrupt practices or which may lead thereto."[18] *Go* went on to explain:

> The fact that one of the elements of Section 3(g) of RA 3019 is "that the accused is a public officer" does not necessarily preclude its application to private persons who, like petitioner Go, are being charged with conspiring with public officers in the commission of the offense thereunder.

Go, citing *Luciano v. Estrella*,[19] *Singian, Jr. v. Sandiganbayan*,[20] and *Domingo v. Sandiganbayan*, laid to rest the debate on a private person's culpability in cases involving RA 3019 by unequivocally stating that private persons found acting in conspiracy with public officers may be held liable for the applicable offenses found in Sec. 3 of the law.

Santillano argues too that there was no evidence that he conspired with his co-accused. He cites as basis the Sandiganbayan's statement that there was no proof of actual agreement among the accused to commit violations of RA 3019.

Proof of conspiracy need not be direct or actual. Indeed, prosecutors would be hard-pressed to secure a conviction for those charged under RA 3019 if direct evidence were required

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[17] G.R. No. 172602, April 13, 2007, 521 SCRA 270.

[18] Sec. 1.

[19] 145 Phil. 448 (1970).

[20] G.R. Nos. 160577-94, December 16, 2005, 478 SCRA 348.

to be established. Rule 133 of the Rules of Court on circumstantial evidence applies to this case. It states:

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.

A judgment of conviction based on circumstantial evidence can be upheld only if the circumstances proved constitute an unbroken chain that leads to one fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person, that is, the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilty.[21]

In petitioner's case, the finding of conspiracy is not unfounded. In all three criminal cases, the prosecution was able to establish that Ecleo, Jr. and Navarra approved of overpayments made to Santillano. The Sandiganbayan did not give much weight to their weak defense of alibi. What is more, it correctly ruled that the doctrine in *Arias v. Sandiganbayan*[22] could not be used by Ecleo, Jr. to escape liability, as the documents he had to approve were not so voluminous so as to preclude him from studying each one carefully. On the contrary, if he had the best interest of his constituents in mind, he should have examined all the project documents, as a good deal of taxpayers' money was involved. Navarra's alibi was also not enough to acquit her. She was not precluded from signing the documents relating to the subject projects while she was on leave. She also did not establish any proof that her signatures were forged. Worse,

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[21] *Mangangey v. Sandiganbayan*, G.R. Nos. 147773-74, February 18, 2008, 546 SCRA 51.

[22] G.R. No. 81563, December 19, 1989, 180 SCRA 309.

both Ecleo, Jr. and Navarra were parties to an agreement that approved disbursement of funds for a bogus municipal guest house and they could not come up with a plausible justification for such a gaffe.

Santillano, on the other hand, was indisputably on the receiving end of the overpayments and even issued receipts for them. He was unable to justify the excessive payments by showing a written agreement with the municipality pursuant to the Implementing Rules and Regulations of PD 1594. All these undeniable circumstances lead to the logical conclusion that all three accused acted in a concerted effort to, as the Sandiganbayan put it, deprive the government of its much-needed funds.

Also worthy to note is the futile attempt of Ecleo, Jr. to evade liability by initiating a suit against Santillano in 1995. The case was allegedly settled through a compromise agreement covering PhP 2,856,396.87, but Santillano denied being a party to it. It appears that Ecleo, Jr. sought to cover up his role in the irregular disbursement of government funds by trying to belatedly have Santillano prosecuted. We agree with the Sandiganbayan that this only proved that the audit team correctly made a finding of overpayment, a finding Ecleo, Jr. could not dispute.

The factual findings of the Sandiganbayan are conclusive on this Court, subject to established exceptions, among them: (1) the conclusion is a finding grounded entirely on speculations, surmises, and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; and (5) the findings of fact of the Sandiganbayan are premised on the absence of evidence and are contradicted by evidence on record.[23] None of these exceptions being present, we affirm the appealed judgment.

On the penalty imposed, RA 3019 lays down the penalty for a violation committed under its Secs. 3, 4, 5, and 6. To recapitulate:

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[23] *Pareño v. Sandiganbayan*, G.R. Nos. 107119-20 & 108037-38, April 17, 1996, 256 SCRA 242.

Section 9. *Penalties for violations.*—(a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than one year nor more than ten years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

We find the penalty imposed in all three criminal cases within that prescribed by law. The Sandiganbayan was correct in applying Sec. 1 of the Indeterminate Sentence Law. Said law provides that in offenses punishable by a law, other than the Revised Penal Code, the maximum term of the penalty should "not exceed the maximum fixed by said law and the minimum (should) not be less than the minimum term prescribed by the same."[24]

WHEREFORE, the appeal is *DENIED*. The Decision of the Sandiganbayan in Criminal Case Nos. 24467 to 24469 finding Ricardo L. Santillano guilty of three counts of violation of Sec. 3(e), RA 3019 is *AFFIRMED*.

SO ORDERED.

Corona (Chairperson), Brion,[*] *Bersamin,*[**] and *Mendoza, JJ.,* concur.

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[24] *Fonacier v. Sandiganbayan*, G.R. No. 50691, December 5, 1994, 238 SCRA 655.

[*] Additional member per June 17, 2009 raffle.

[**] Additional member per February 10, 2010 raffle.

THIRD DIVISION

[G.R. No. 179169. March 3, 2010]

LEONIS NAVIGATION CO., INC. and WORLD MARINE PANAMA, S.A., *petitioners, vs.* **CATALINO U. VILLAMATER and/or The Heirs of the Late Catalino U. Villamater, represented herein by Sonia Mayuyu Villamater; and NATIONAL LABOR RELATIONS COMMISSION,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; NATIONAL LABOR RELATIONS COMMISSION (NLRC); JUDICIAL REVIEW OF NLRC DECISION MUST BE FILED BEFORE THE COURT OF APPEALS (CA) VIA PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT; PERIOD IS 60 DAYS.— In the landmark case of *St. Martin Funeral Home v. NLRC*, we ruled that judicial review of decisions of the NLRC is sought via a petition for *certiorari* under Rule 65 of the Rules of Court, and the petition should be filed before the CA, following the strict observance of the hierarchy of courts. Under Rule 65, Section 4, petitioners are allowed sixty (60) days from notice of the assailed order or resolution within which to file the petition. Thus, although the petition was not filed within the 10-day period, petitioners reasonably filed their petition for *certiorari* before the CA within the 60-day reglementary period under Rule 65.

2. ID.; ID.; ID.; THAT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AS DETERMINED FROM THE EVIDENCE, MUST BE ESTABLISHED.— A petition for *certiorari* does not normally include an inquiry into the correctness of its evaluation of the evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for *certiorari*, which is merely confined to issues of jurisdiction or grave abuse of discretion. It is, thus, incumbent upon petitioners to satisfactorily establish that the NLRC acted capriciously and whimsically in order that the extraordinary writ of *certiorari* will lie. By grave abuse of discretion is meant such capricious and whimsical

exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically. The CA, therefore, could grant the petition for *certiorari* if it finds that the NLRC, in its assailed decision or resolution, committed grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence that is material to or decisive of the controversy; and it cannot make this determination without looking into the evidence of the parties. Necessarily, the appellate court can only evaluate the materiality or significance of the evidence, which is alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC, in relation to all other evidence on record. Notably, if the CA grants the petition and nullifies the decision or resolution of the NLRC on the ground of grave abuse of discretion amounting to excess or lack of jurisdiction, the decision or resolution of the NLRC is, in contemplation of law, null and void *ab initio*; hence, the decision or resolution never became final and executory.

3. ID.; ID.; NLRC RULES OF PROCEDURE; EFFECT OF FILING OF PETITION FOR *CERTIORARI* ON EXECUTION OF DECISION.— In the recent case *of Bago v. National Labor Relations Commission*, we had occasion to rule that although the CA may review the decisions or resolutions of the NLRC on jurisdictional and due process considerations, particularly when the decisions or resolutions have already been executed, this does not affect the statutory finality of the NLRC decisions or resolutions in view of Rule VIII, Section 6 of the 2002 New Rules of Procedure of the NLRC, *viz.*: RULE VIII x x x SECTION 6. *EFFECT OF FILING OF PETITION FOR CERTIORARI ON EXECUTION*. – A petition for *certiorari* with the Court of Appeals or the Supreme Court shall not stay the execution of the assailed decision unless a temporary restraining order is issued by the Court of Appeals or the Supreme Court. Simply put, the execution of the final and executory decision or resolution of the NLRC shall proceed despite the pendency of a petition for *certiorari*, unless it is restrained by the proper court.

4. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; INDISPENSABLE PARTIES; ELUCIDATED.— Rule 3, Section 7 of the Rules of Court defines indispensable parties as those who are parties in interest without whom there can be

no final determination of an action. They are those parties who possess such an interest in the controversy that a final decree would necessarily affect their rights, so that the courts cannot proceed without their presence. A party is indispensable if his interest in the subject matter of the suit and in the relief sought is inextricably intertwined with the other parties' interest.

5. **ID.; ID.; ID.; MISJOINDER AND NON-JOINDER OF PARTIES; RE INDISPENSABLE PARTY.—** Under Rule 3, Section 11 of the Rules of Court, neither misjoinder nor non-joinder of parties is a ground for the dismissal of an action, thus: Sec. 11. *Misjoinder and non-joinder of parties*.— Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately. The proper remedy is to implead the indispensable party at any stage of the action. The court, either *motu proprio* or upon the motion of a party, may order the inclusion of the indispensable party or give the plaintiff an opportunity to amend his complaint in order to include indispensable parties. If the plaintiff ordered to include the indispensable party refuses to comply with the order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion. Only upon unjustified failure or refusal to obey the order to include or to amend is the action dismissed.

6. **LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); POEA STANDARD CONTRACT; COMPENSABLE DISEASES; CANCERS LISTED AS OCCUPATIONAL DISEASES AND OTHER ILLNESSES NOT LISTED BUT PRESUMED WORK-RELATED; CONDITIONS FOR COMPENSABILITY.—** It is true that under Section 32-A of the POEA Standard Contract, only two types of cancers are listed as occupational diseases – (1) Cancer of the epithelial lining of the bladder (papilloma of the bladder); and (2) cancer, epithellematous or ulceration of the skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil or paraffin, or compound products or residues of these substances.

Section 20 of the same Contract also states that those illnesses not listed under Section 32 are disputably presumed as work-related. Section 20 should, however, be read together with Section 32-A on the conditions to be satisfied for an illness to be compensable, to wit: For an occupational disease and the resulting disability or death to be compensable, all the following conditions must be established: 1. The seafarer's work must involve the risk described herein; 2. The disease was contracted as a result of the seafarer's exposure to the described risks; 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; 4. There was no notorious negligence on the part of the seafarer.

7. ID.; ID.; ID.; ID.; ID.; COLON CANCER IN CASE AT BAR FOUND COMPENSABLE FOR PERMANENT AND TOTAL DISABILITY AS DIETARY PROVISION WHILE AT SEA INCREASED THE RISK OF SEAFARER IN CONTRACTING THE DISEASE.— In the case of Villamater, it is manifest that the interplay of age, hereditary, and dietary factors contributed to the development of colon cancer. By the time he signed his employment contract on June 4, 2002, he was already 58 years old, having been born on October 5, 1943, an age at which the incidence of colon cancer is more likely. He had a familial history of colon cancer, with a brother who succumbed to death and an uncle who underwent surgery for the same illness. Both the Labor Arbiter and the NLRC found his illness to be compensable for permanent and total disability, because they found that his dietary provisions while at sea increased his risk of contracting colon cancer because he had no choice of what to eat on board except those provided on the vessels and these consisted mainly of high-fat, high-cholesterol, and low-fiber foods. x x x On this matter, noticeably, petitioners were silent when they argued that Villamater's affliction was brought about by diet and genetics. It was only after the Labor Arbiter issued his Decision, finding colon cancer to be compensable because the risk was increased by the victuals provided on board, that petitioners started claiming that the foods available on the vessels also consisted of fresh fruits and vegetables, not to mention fish and poultry. It is also worth mentioning that while Dr. Salvador declared that Villamater's cancer "appears to be not work-related," she nevertheless suggested to petitioners Disability Grade 1, which, under the POEA Standard Contract, "shall be considered or shall constitute

total and permanent disability." During his confinement in Hamburg, Germany, Villamater was diagnosed to have colon cancer and was advised to undergo chemotherapy and medical treatment, including blood transfusions. These findings were, in fact, confirmed by the findings of the company-designated physicians. The statement of Dr. Salvador that Villamater's colon cancer "appears to be not work-related" remained at that, without any medical explanation to support the same. However, this statement, not definitive as it is, was negated by the same doctor's suggestion of Disability Grade 1. Under Section 20-B of the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), it is the company-designated physician who must certify that the seafarer has suffered a permanent disability, whether total or partial, due to either injury or illness, during the term of his employment. On these points, we sustain the Labor Arbiter and the NLRC in granting total and permanent disability benefits in favor of Villamater, as it was sufficiently shown that his having contracted colon cancer was, at the very least, aggravated by his working conditions, taking into consideration his dietary provisions on board, his age, and his job as Chief Engineer, who was primarily in charge of the technical and mechanical operations of the vessels to ensure voyage safety. Jurisprudence provides that to establish compensability of a non-occupational disease, reasonable proof of work-connection and not direct causal relation is required. Probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings.

8. CIVIL LAW; ATTORNEY'S FEES; PROPER IN CASE AT BAR, FOR INDEMNITY UNDER WORKMEN'S COMPENSATION AND EMPLOYER'S LIABILITY LAWS. — By reason of Villamater's entitlement to total and permanent disability benefits, he (or in this case his widow Sonia) is also entitled to the award of attorney's fees, not under Article 2208(2) of the Civil Code, "[w]hen the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest," but under Article 2208(8) of the same Code, involving actions for indemnity under workmen's compensation and employer's liability laws.

APPEARANCES OF COUNSEL

Soo Gutierrez Leogardo & Lee for petitioners.
The Solicitor General for public respondent.
Rolando B. Go, Jr. for private respondents.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, seeking to annul and set aside the Decision[2] dated May 3, 2007 and the Resolution[3] dated July 23, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 85594, entitled *"Leonis Navigation Co., Inc., et al. v. Catalino U. Villamater, et al."*

The antecedents of this case are as follows:

Private respondent Catalino U. Villamater (Villamater) was hired as Chief Engineer for the ship *MV Nord Monaco*, owned by petitioner World Marine Panama, S.A., through the services of petitioner Leonis Navigation Co., Inc. (Leonis), as the latter's local manning agent. Consequent to this employment, Villamater, on June 4, 2002, executed an employment contract,[4] incorporating the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels as prescribed by the Philippine Overseas Employment Administration (POEA).

Prior to his deployment, Villamater underwent the required Pre-Employment Medical Examination (PEME). He passed the PEME and was declared "Fit to Work."[5] Thereafter, Villamater was deployed on June 26, 2002.

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[1] *Rollo*, pp. 9-41.

[2] Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Conrado M. Vasquez, Jr. and Regalado E. Maambong, concurring; *id.* at 47-61.

[3] *Id.* at 63-64.

[4] *Rollo*, p. 84.

[5] *Id.* at 85.

Sometime in October 2002, around four (4) months after his deployment, Villamater suffered intestinal bleeding and was given a blood transfusion. Thereafter, he again felt weak, lost considerable weight, and suffered intermittent intestinal pain. He consulted a physician in Hamburg, Germany, who advised hospital confinement. Villamater was diagnosed with Obstructive Adenocarcinoma of the Sigmoid, with multiple liver metastases, possibly local peritoneal carcinosis and infiltration of the bladder, possibly lung metastasis, and anemia; Candida Esophagitis; and Chronic Gastritis. He was advised to undergo chemotherapy and continuous supportive treatment, such as pain-killers and blood transfusion.[6]

Villamater was later repatriated, under medical escort, as soon as he was deemed fit to travel. As soon as he arrived in the Philippines, Villamater was referred to company-designated physicians. The diagnosis and the recommended treatment abroad were confirmed. He was advised to undergo six (6) cycles of chemotherapy. However, Dr. Kelly Siy Salvador, one of the company-designated physicians, opined that Villamater's condition "appears to be not work-related," but suggested a disability grading of 1.[7]

In the course of his chemotherapy, when no noticeable improvement occurred, Villamater filed a complaint[8] before the Arbitration Branch of the National Labor Relations Commission (NLRC) for payment of permanent and total disability benefits in the amount of US$80,000.00, reimbursement of medical and hospitalization expenses in the amount of ₱11,393.65, moral damages in the sum of ₱1,000,000.00, exemplary damages in the amount of ₱1,000,000.00, as well as attorney's fees.

After the submission of the required position papers, the Labor Arbiter rendered a decision[9] dated July 28, 2003 in favor of Villamater, holding that his illness was compensable, but denying

[6] *Id.* at 86-87.

[7] *Id.* at 131-132.

[8] *Id.* at 65.

[9] *Id.* at 199-210.

his claim for moral and exemplary damages. The Labor Arbiter disposed as follows—

> WHEREFORE, foregoing premises considered, judgment is hereby rendered declaring complainant's illness to be compensable and ordering respondents LEONIS NAVIGATION CO., INC. and WORLD MARINE PANAMA, S.A. liable to pay, jointly and severally, complainant CATALINO U. VILLAMATER, the amount of US$60,000.00 or its Philippine Peso equivalent at the time of actual payment, representing the latter's permanent total disability benefits plus ten percent (10%) thereof as Attorney's Fees.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[10]

Petitioners appealed to the NLRC. Villamater also filed his own appeal, questioning the award of the Labor Arbiter and claiming that the 100% degree of disability should be compensated in the amount of US$80,000.00, pursuant to Section 2, Article XXI of the ITF-JSU/AMOSUP Collective Bargaining Agreement (CBA) between petitioners and Associated Marine Officers & Seamen's Union of the Philippines, which covered the employment contract of Villamater.

On February 4, 2004, the NLRC issued its resolution,[11] dismissing the respective appeals of both parties and affirming *in toto* the decision of the Labor Arbiter.

Petitioners filed their motion for reconsideration of the February 4, 2004 resolution, but the NLRC denied the same in its resolution dated June 15, 2004.

Aggrieved, petitioners filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA. After the filing of the required memoranda, the CA rendered its assailed May 3, 2007 Decision, dismissing the petition. The appellate court, likewise, denied petitioners' motion for reconsideration in its July 23, 2007 Resolution.

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[10] *Id.* at 209-210.

[11] *Id.* at 274-279.

Hence, this petition based on the following grounds, to wit:

First, the Court of Appeals erroneously held that [the] Commission's Dismissal Decision does not constitute grave abuse of discretion amounting to lack or excess of jurisdiction but mere error of judgment, considering that the decision lacks evidentiary support and is contrary to both evidence on record and prevailing law and jurisprudence.

Second, the Court of Appeals seriously erred in upholding the NLRC's decision to award Grade 1 Permanent and Total Disability Benefits in favor of seaman Villamater despite the lack of factual and legal basis to support such award, and more importantly, when it disregarded undisputed facts and substantial evidence presented by petitioners which show that seaman Villamater's illness was not work-related and hence, not compensable, as provided by the Standard Terms of the POEA Contract.

Third, the Court of Appeals erred in holding that non-joinder of indispensable parties warrant the outright dismissal of the Petition for Review on *Certiorari*.

Fourth, the Court of Appeals erroneously held that final and executory decisions or resolutions of the NLRC render appeals to superior courts moot and academic.

Last, the Court of Appeals seriously erred in upholding the award of attorney's fees considering that the grant has neither factual nor legal basis.[12]

Before delving into the merits of this petition, we deem it fit to discuss the procedural issues raised by petitioners.

First. It is worthy to note that the CA dismissed the petition, considering that (1) the June 15, 2004 Resolution of the NLRC had already become final and executory on June 26, 2004, and the same was already recorded in the NLRC Book of Entries of Judgments; and that (2) the award of the Labor Arbiter was already executed, thus, the case was closed and terminated.

According to Sections 14 and 15, Rule VII of the 2005 Revised Rules of Procedure of the NLRC—

[12] *Id.* at 17.

Section 14. Finality of decision of the commission and entry of judgment. – a) Finality of the Decisions, Resolutions or Orders of the Commission. – Except as provided in Section 9 of Rule X, the decisions, resolutions or orders of the Commission shall become final and executory after ten (10) calendar days from receipt thereof by the parties.

b) Entry of Judgment. – Upon the expiration of the ten (10) calendar day period provided in paragraph (a) of this Section, the decision, resolution, or order shall be entered in a book of entries of judgment.

The Executive Clerk or Deputy Executive Clerk shall consider the decision, resolution or order as final and executory after sixty (60) calendar days from date of mailing in the absence of return cards, certifications from the post office, or other proof of service to parties.

Section 15. Motions for reconsideration. – Motion for reconsideration of any decision, resolution or order of the Commission shall not be entertained except when based on palpable or patent errors; provided that the motion is under oath and filed within ten (10) calendar days from receipt of decision, resolution or order, with proof of service that a copy of the same has been furnished, within the reglementary period, the adverse party; and provided further, that only one such motion from the same party shall be entertained.

Should a motion for reconsideration be entertained pursuant to this SECTION, the resolution shall be executory after ten (10) calendar days from receipt thereof.[13]

Petitioners received the June 15, 2004 resolution of the NLRC, denying their motion for reconsideration, on June 16, 2004. They filed their petition for *certiorari* before the CA only on August 9, 2004,[14] or 54 calendar days from the date of notice of the June 15, 2004 resolution. Considering that the above-mentioned 10-day period had lapsed without petitioners filing the appropriate appeal, the NLRC issued an Entry of Judgment dated June 28, 2004.

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[13] Emphasis supplied.

[14] *Rollo*, p. 15.

Moreover, by reason of the finality of the June 15, 2004 NLRC resolution, the Labor Arbiter issued on July 29, 2004 a Writ of Execution.[15] Consequently, Leonis voluntarily paid Villamater's widow, Sonia M. Villamater (Sonia), the amount of ₱3,649,800.00, with Rizal Commercial and Banking Corporation (RCBC) Manager's Check No. 0000008550[16] dated August 12, 2004, as evidenced by the Acknowledgment Receipt[17] dated August 13, 2004, and the Cheque Voucher[18] dated August 12, 2004. Following the complete satisfaction of the judgment award, the Labor Arbiter issued an Order[19] dated September 8, 2004 that reads—

> There being complete satisfaction of the judgment award as shown by the record upon receipt of the complainant of the amount of ₱3,649,800.00, voluntarily paid by the respondent, as full and final satisfaction of the Writ of Execution dated July 29, 2004; and finding the same to be not contrary to law, morals, good custom, and public policy, and pursuant to Section 14, Rule VII of the Rules of Procedure of the National Labor Relations Commission (NLRC), this case is hereby ordered **DISMISSED** with prejudice, and considered **CLOSED** and **TERMINATED.**
>
> SO ORDERED.

Petitioners never moved for a reconsideration of this Order regarding the voluntariness of their payment to Sonia, as well as the dismissal with prejudice and the concomitant termination of the case.

However, petitioners argued that the finality of the case did not render the petition for *certiorari* before the CA moot and academic. On this point, we agree with petitioners.

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[15] *Id.* at 505-507.

[16] *Id.* at 508-509.

[17] *Id.* at 510.

[18] *Id*.

[19] *Id.* at 511.

In the landmark case of *St. Martin Funeral Home v. NLRC,*[20] we ruled that judicial review of decisions of the NLRC is sought via a petition for *certiorari* under Rule 65 of the Rules of Court, and the petition should be filed before the CA, following the strict observance of the hierarchy of courts. Under Rule 65, Section 4,[21] petitioners are allowed sixty (60) days from notice of the assailed order or resolution within which to file the petition. Thus, although the petition was not filed within the 10-day period, petitioners reasonably filed their petition for *certiorari* before the CA within the 60-day reglementary period under Rule 65.

Further, a petition for *certiorari* does not normally include an inquiry into the correctness of its evaluation of the evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for *certiorari*, which is merely confined to issues of jurisdiction or grave abuse of discretion. It is, thus, incumbent upon petitioners to satisfactorily establish that the NLRC acted capriciously and whimsically in order that the extraordinary writ of *certiorari* will lie. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically.

The CA, therefore, could grant the petition for *certiorari* if it finds that the NLRC, in its assailed decision or resolution, committed grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence that is material to or decisive of the controversy; and it cannot make this determination without looking into the evidence of the parties. Necessarily, the appellate court can only evaluate the materiality or significance of the evidence, which is alleged to have been capriciously, whimsically,

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[20] G.R. No. 130866, September 16, 1998, 295 SCRA 494.

[21] SEC. 4. *When and where position filed.* – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

or arbitrarily disregarded by the NLRC, in relation to all other evidence on record.[22] Notably, if the CA grants the petition and nullifies the decision or resolution of the NLRC on the ground of grave abuse of discretion amounting to excess or lack of jurisdiction, the decision or resolution of the NLRC is, in contemplation of law, null and void *ab initio*; hence, the decision or resolution never became final and executory.[23]

In the recent of case *Bago v. National Labor Relations Commission*,[24] we had occasion to rule that although the CA may review the decisions or resolutions of the NLRC on jurisdictional and due process considerations, particularly when the decisions or resolutions have already been executed, this does not affect the statutory finality of the NLRC decisions or resolutions in view of Rule VIII, Section 6 of the 2002 New Rules of Procedure of the NLRC, *viz.*:

RULE VIII

xxx xxx xxx

SECTION 6. *EFFECT OF FILING OF PETITION FOR CERTIORARI ON EXECUTION*. – A petition for *certiorari* with the Court of Appeals or the Supreme Court shall not stay the execution of the assailed decision unless a temporary restraining order is issued by the Court of Appeals or the Supreme Court.[25]

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[22] *Dole Philippines, Inc. v. Esteva*, G.R. No. 161115, November 30, 2006, 509 SCRA 332, 363.

[23] *Tomas Claudio Memorial College, Inc. v. Court of Appeals*, G.R. No. 152568, February 16, 2004, 423 SCRA 122, 130.

[24] G.R. No. 170001, April 4, 2007, 520 SCRA 644.

[25] This rule has been substantially incorporated in the NLRC 2005 Revised Rules of Procedure, which became effective on January 6, 2006, thus:

RULE XI

xxx xxx xxx

Section 10. *Effect of Petition for Certiorari on Execution.*—A petition for *certiorari* with the Court of Appeals or the Supreme Court shall not stay the execution of the assailed decision unless a restraining order is issued by said courts.

Simply put, the execution of the final and executory decision or resolution of the NLRC shall proceed despite the pendency of a petition for *certiorari*, unless it is restrained by the proper court. In the present case, petitioners already paid Villamater's widow, Sonia, the amount of ₱3,649,800.00, representing the total and permanent disability award plus attorney's fees, pursuant to the Writ of Execution issued by the Labor Arbiter. Thereafter, an Order was issued declaring the case as "closed and terminated." However, although there was no motion for reconsideration of this last Order, Sonia was, nonetheless, estopped from claiming that the controversy had already reached its end with the issuance of the Order closing and terminating the case. This is because the Acknowledgment Receipt she signed when she received petitioners' payment was without prejudice to the final outcome of the petition for *certiorari* pending before the CA.

Second. We also agree with petitioners in their position that the CA erred in dismissing outright their petition for *certiorari* on the ground of non-joinder of indispensable parties. It should be noted that petitioners impleaded only the then deceased Villamater[26] as respondent to the petition, excluding his heirs.

Rule 3, Section 7 of the Rules of Court defines indispensable parties as those who are parties in interest without whom there can be no final determination of an action.[27] They are those parties who possess such an interest in the controversy that a final decree would necessarily affect their rights, so that the courts cannot proceed without their presence.[28] A party is indispensable if his interest in the subject matter of the suit and in the relief sought is inextricably intertwined with the other parties' interest.[29]

Unquestionably, Villamater's widow stands as an indispensable party to this case.

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[26] He died on January 4, 2004.

[27] *Uy v. Court of Appeals*, G.R. No. 157065, July 11, 2006, 494 SCRA 535.

[28] *Seno v. Mangubat*, G.R. No. L-44339, December 2, 1987, 156 SCRA 113.

[29] *Uy v. Court of Appeals, supra* note 27.

Under Rule 3, Section 11 of the Rules of Court, neither misjoinder nor non-joinder of parties is a ground for the dismissal of an action, thus:

> Sec. 11. *Misjoinder and non-joinder of parties*.— Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately.

The proper remedy is to implead the indispensable party at any stage of the action. The court, either *motu proprio* or upon the motion of a party, may order the inclusion of the indispensable party or give the plaintiff an opportunity to amend his complaint in order to include indispensable parties. If the plaintiff ordered to include the indispensable party refuses to comply with the order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion. Only upon unjustified failure or refusal to obey the order to include or to amend is the action dismissed.[30]

On the merits of this case, the questions to be answered are: (1) Is Villamater entitled to total and permanent disability benefits by reason of his colon cancer? (2) If yes, would he also be entitled to attorney's fees?

As to Villamater's entitlement to total and permanent disability benefits, petitioners argue, in essence, that colon cancer is not among the occupational diseases listed under Section 32-A of the POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean Going Vessels (POEA Standard Contract), and that the risk of contracting the same was not increased by Villamater's working conditions during his deployment. Petitioners posit that Villamater had familial history of colon cancer; and that, although dietary considerations

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[30] *Nieves Plasabas and Marcos Malazarte v. Court of Appeals (Special Former Ninth Division), Dominador Lumen and Aurora Aunzo*, G.R. No. 166519, March 31, 2009; *PepsiCo, Inc. v. Emerald Pizza, Inc.*, G.R. No. 153059, August 14, 2007, 530 SCRA 58, 67.

may be taken, his diet — which might have been high in fat and low in fiber and could have thus increased his predisposition to develop colon cancer — might only be attributed to him, because it was he who chose what he ate on board the vessels he was assigned to. Petitioners also cited the supposed declaration of their company-designated physicians who attended to Villamater that his disease was not work-related.

We disagree.

It is true that under Section 32-A of the POEA Standard Contract, only two types of cancers are listed as occupational diseases – (1) Cancer of the epithelial lining of the bladder (papilloma of the bladder); and (2) cancer, epithellematous or ulceration of the skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil or paraffin, or compound products or residues of these substances. Section 20 of the same Contract also states that those illnesses not listed under Section 32 are disputably presumed as work-related. Section 20 should, however, be read together with Section 32-A on the conditions to be satisfied for an illness to be compensable,[31] to wit:

> For an occupational disease and the resulting disability or death to be compensable, all the following conditions must be established:
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> 1. The seafarer's work must involve the risk described herein;
> 2. The disease was contracted as a result of the seafarer's exposure to the described risks;
> 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it;
> 4. There was no notorious negligence on the part of the seafarer.

Colon cancer, also known as colorectal cancer or large bowel cancer, includes cancerous growths in the colon, rectum and appendix. With 655,000 deaths worldwide per year, it is the fifth most common form of cancer in the United States of America

[31] *Estate of Posedio Ortega v. Court of Appeals*, G.R. No. 175005, April 30, 2008, 553 SCRA 649.

and the third leading cause of cancer-related deaths in the Western World. Colorectal cancers arise from adenomatous polyps in the colon. These mushroom-shaped growths are usually benign, but some develop into cancer over time. Localized colon cancer is usually diagnosed through colonoscopy.[32]

Tumors of the colon and rectum are growths arising from the inner wall of the large intestine. Benign tumors of the large intestine are called polyps. Malignant tumors of the large intestine are called cancers. Benign polyps can be easily removed during colonoscopy and are not life-threatening. If benign polyps are not removed from the large intestine, they can become malignant (cancerous) over time. Most of the cancers of the large intestine are believed to have developed as polyps. Colorectal cancer can invade and damage adjacent tissues and organs. Cancer cells can also break away and spread to other parts of the body (such as liver and lung) where new tumors form. The spread of colon cancer to distant organs is called metastasis of the colon cancer. Once metastasis has occurred in colorectal cancer, a complete cure of the cancer is unlikely.[33]

Globally, colorectal cancer is the third leading cause of cancer in males and the fourth leading cause of cancer in females. The frequency of colorectal cancer varies around the world. It is common in the Western world and is rare in Asia and in Africa. In countries where the people have adopted western diets, the incidence of colorectal cancer is increasing.[34]

Factors that increase a person's risk of colorectal cancer include high fat intake, a family history of colorectal cancer and polyps, the presence of polyps in the large intestine, and chronic ulcerative colitis.[35]

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[32] Colorectal cancer <http://en.wikipedia.org/wiki/Colorectal_cancer (visited February 15, 2010).

[33] Colon Cancer (Colorectal Cancer) <http://www.medicinenet.com/colon_cancer/article.htm (visited February 15, 2010).

[34] *Id*.

[35] Colon Cancer (cont.), What are the causes of colon cancer? <http://www.medicinenet.com/colon_cancer/page2.htm (visited February 15, 2010).

Diets high in fat are believed to predispose humans to colorectal cancer. In countries with high colorectal cancer rates, the fat intake by the population is much higher than in countries with low cancer rates. It is believed that the breakdown products of fat metabolism lead to the formation of cancer-causing chemicals (carcinogens). Diets high in vegetables and high-fiber foods may rid the bowel of these carcinogens and help reduce the risk of cancer.[36]

A person's genetic background is an important factor in colon cancer risk. Among first-degree relatives of colon-cancer patients, the lifetime risk of developing colon cancer is 18%. Even though family history of colon cancer is an important risk factor, majority (80%) of colon cancers occur sporadically in patients with no family history of it. Approximately 20% of cancers are associated with a family history of colon cancer. And 5% of colon cancers are due to hereditary colon cancer syndromes. Hereditary colon cancer syndromes are disorders where affected family members have inherited cancer-causing genetic defects from one or both of the parents.[37]

In the case of Villamater, it is manifest that the interplay of age, hereditary, and dietary factors contributed to the development of colon cancer. By the time he signed his employment contract on June 4, 2002, he was already 58 years old, having been born on October 5, 1943,[38] an age at which the incidence of colon cancer is more likely.[39] He had a familial history of colon cancer, with a brother who succumbed to death and an uncle who underwent surgery for the same illness.[40] Both the Labor Arbiter and the NLRC found his illness to be compensable for permanent and total disability, because they found that his dietary provisions while at sea increased his risk of contracting colon cancer because he had no choice of what to eat on board except

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[36] *Id*.

[37] *Id*.

[38] *Rollo*, p. 128.

[39] Risk factors by Mayo Clinic staff <http://www.mayoclinic.com/health/colon-cancer/DS00035/DSection=risk%2Dfactors (visited February 15, 2010).

[40] *Supra* note 38.

those provided on the vessels and these consisted mainly of high-fat, high-cholesterol, and low-fiber foods.

While findings of the Labor Arbiter, which were affirmed by the NLRC, are entitled to great weight and are binding upon the courts, nonetheless, we find it also worthy to note that even during the proceedings before the Labor Arbiter, Villamater cited that the foods provided on board the vessels were mostly meat, high in fat and high in cholesterol. On this matter, noticeably, petitioners were silent when they argued that Villamater's affliction was brought about by diet and genetics. It was only after the Labor Arbiter issued his Decision, finding colon cancer to be compensable because the risk was increased by the victuals provided on board, that petitioners started claiming that the foods available on the vessels also consisted of fresh fruits and vegetables, not to mention fish and poultry. It is also worth mentioning that while Dr. Salvador declared that Villamater's cancer "appears to be not work-related," she nevertheless suggested to petitioners Disability Grade 1, which, under the POEA Standard Contract, "shall be considered or shall constitute total and permanent disability."[41] During his confinement in Hamburg, Germany, Villamater was diagnosed to have colon cancer and was advised to undergo chemotherapy and medical treatment, including blood transfusions. These findings were, in fact, confirmed by the findings of the company-designated physicians. The statement of Dr. Salvador that Villamater's colon cancer "appears to be not work-related" remained at that, without any medical explanation to support the same. However, this statement, not definitive as it is, was negated by the same doctor's suggestion of Disability Grade 1. Under Section 20-B of the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), it is the company-designated physician who must certify that the seafarer has suffered a permanent disability, whether total or partial, due to either injury or illness, during the term of his employment.[42]

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[41] POEA Standard Contract, Sec. 32.

[42] *Cadornigara v. National Labor Relations Commission*, G.R. No. 158073, November 23, 2007, 538 SCRA 363.

On these points, we sustain the Labor Arbiter and the NLRC in granting total and permanent disability benefits in favor of Villamater, as it was sufficiently shown that his having contracted colon cancer was, at the very least, aggravated by his working conditions,[43] taking into consideration his dietary provisions on board, his age, and his job as Chief Engineer, who was primarily in charge of the technical and mechanical operations of the vessels to ensure voyage safety. Jurisprudence provides that to establish compensability of a non-occupational disease, reasonable proof of work-connection and not direct causal relation is required. Probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings.[44]

The Labor Arbiter correctly awarded Villamater total and permanent disability benefits, computed on the basis of the schedule provided under the POEA Standard Contract, considering that the schedule of payment of benefits under the ITF-JSU/AMOSUP CBA refers only to permanent disability as a result of an accident or injury.[45]

By reason of Villamater's entitlement to total and permanent disability benefits, he (or in this case his widow Sonia) is also entitled to the award of attorney's fees, not under Article 2208(2) of the Civil Code, "[w]hen the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest," but under Article 2208(8) of the same Code, involving actions for indemnity under workmen's compensation and employer's liability laws.

WHEREFORE, the petition is *DENIED* and the assailed May 3, 2007 Decision and the July 23, 2007 Resolution of the Court of Appeals are *AFFIRMED*. Costs against petitioners.

SO ORDERED.

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[43] *Masangcay v. Trans-Global Maritime Agency, Inc.*, G.R. No. 172800, October 17, 2008, 569 SCRA 592.

[44] *Debaudin v. Social Security System*, G.R. No. 148308, September 21, 2007, 533 SCRA 601.

[45] *Rollo*, p. 102.

Corona (Chairperson), Velasco, Jr., Peralta, and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 184805. March 3, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **VICTORIO PAGKALINAWAN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; ENTRAPMENT DISTINGUISHED FROM INSTIGATION.— Instigation is the means by which the accused is lured into the commission of the offense charged in order to prosecute him. On the other hand, entrapment is the employment of such ways and means for the purpose of trapping or capturing a lawbreaker. In *People v. Lua Chu and Uy Se Tieng*, the Court laid down the distinction between entrapment and instigation, to wit: ENTRAPMENT AND INSTIGATION.— While it has been said that the practice of entrapping persons into crime for the purpose of instituting criminal prosecutions is to be deplored, and while instigation, as distinguished from mere entrapment, has often been condemned and has sometimes been held to prevent the act from being criminal or punishable, the general rule is that it is no defense to the perpetrator of a crime that facilities for its commission were purposely placed in his way, or that the criminal act was done at the 'decoy solicitation' of persons seeking to expose the criminal, or that detectives feigning complicity in the act were present and apparently assisting in its commission. Especially is this true in that class of cases where the offense is one of a kind habitually committed, and the solicitation merely furnishes evidence of a course of conduct. Mere deception by the detective will not shield defendant, if the offense was committed by him, free

from the influence or instigation of the detective. The fact that an agent of an owner acts as a supposed confederate of a thief is no defense to the latter in a prosecution for larceny, provided the original design was formed independently of such agent; and where a person approached by the thief as his confederate notifies the owner or the public authorities, and, being authorized by them to do so, assists the thief in carrying out the plan, the larceny is nevertheless committed. It is generally held that it is no defense to a prosecution for an illegal sale of liquor that the purchase was made by a 'spotter,' detective, or hired informer; but there are cases holding the contrary.

2. ID.; ID.; BUY-BUST OPERATION AS FORM OF ENTRAPMENT; VALIDITY THEREOF DETERMINED BY "OBJECTIVE" TEST, THE DETAILS OF THE PURPORTED TRANSACTION MUST BE EFFECTIVELY SHOWN.— One form of entrapment is the buy-bust operation. It is legal and has been proved to be an effective method of apprehending drug peddlers, provided due regard to constitutional and legal safeguards is undertaken. In order to determine the validity of a buy-bust operation, this Court has consistently applied the "objective" test. In *People v. Doria*, this Court stressed that in applying the "objective" test, the details of the purported transaction during the buy-bust operation must be clearly and adequately shown, *i.e.*, the initial contact between the poseur-buyer and the pusher, the offer to purchase, and the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. It further emphasized that the "manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the 'buy-bust' money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense."

3. ID.; ID.; ID.; "DECOY SOLICITATION," NOT PROHIBITED AND DOES NOT RENDER THE BUY-BUST OPERATION INVALID.— Contrary to appellant's argument that the acts of the informant and the poseur-buyer in pretending that they were in need of *shabu* instigated or induced him to violate the Anti-Drugs Law, a police officer's act of soliciting drugs from the

accused during a buy-bust operation, or what is known as a "decoy solicitation," is not prohibited by law and does not render the buy-bust operation invalid. This was clarified by the Court in *People v. Sta Maria*: It is no defense to the perpetrator of a crime that facilities for its commission were purposely placed in his way, or that the criminal act was done at the "decoy solicitation" of persons seeking to expose the criminal, or that detectives feigning complicity in the act were present and apparently assisting its commission. Especially is this true in that class of cases where the office is one habitually committed, and the solicitation merely furnishes evidence of a course of conduct. As here, the solicitation of drugs from appellant by the informant utilized by the police merely furnishes evidence of a course of conduct. The police received an intelligence report that appellant has been habitually dealing in illegal drugs. They duly acted on it by utilizing an informant to effect a drug transaction with appellant. There was no showing that the informant induced the appellant to sell illegal drugs to him.

4. ID.; DANGEROUS DRUGS ACT; ILLEGAL SALE OF PROHIBITED DRUGS; ESSENTIAL ELEMENTS.— It bears stressing that what is material to the prosecution for illegal sale of drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*. In other words, the essential elements of the crime of illegal sale of prohibited drugs are: (1) the accused sold and delivered a prohibited drug to another; and (2) he knew that what he had sold and delivered was a prohibited drug.

5. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— The prosecution was also able to prove with moral certainty the guilt of appellant for the crime of illegal possession of dangerous drugs. It was able to prove the following elements: (1) that the accused is in possession of the object identified as a prohibited or regulatory drug; (2) that such possession is not authorized by law; and (3) that the accused freely and consciously possessed the said drug. x x x Having been caught *in flagrante delicto*, there is, therefore, a *prima facie* evidence of *animus possidendi* on appellant's part.

6. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF TRIAL COURT, RESPECTED.— This Court has consistently relied upon the assessment of the trial court, which had the

opportunity to observe the conduct and demeanor of the witnesses during the trial. It is a fundamental rule that findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial.

7. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); IMPLEMENTING RULES; ON THE CUSTODY AND DISPOSITION OF EVIDENCE; FAILURE COMPLY STRICTLY WITH THE RULE, NOT FATAL. — Appellant argues that the prosecution failed to show compliance with Sec. 21 of RA 9165 and its implementing rules regarding the custody and disposition of the evidence against him. He contends that absolute compliance is required and that anything short of that renders the evidence against him inadmissible. x x x As can be gleaned from the language of Sec. 21 of the Implementing Rules, it is clear that the failure of the law enforcers to comply strictly with it is not fatal. It does not render appellant's arrest illegal nor the evidence adduced against him inadmissible. What is essential 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."

8. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; REGULAR PERFORMANCE OF OFFICIAL DUTIES; PREVAILS AGAINST DEFENSE OF DENIAL.— Notably, in the absence of clear and convincing evidence that the police officers were inspired by any improper motive, this Court will not appreciate the defense of denial and instead apply the presumption of regularity in the performance of official duty by law enforcement agents. In the instant case, the defense of appellant consists of bare denial. It is considered as an inherently weak defense, for it can easily be concocted and is a common standard line of defense in drug cases.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

Public Attorney's Office for accused-appellant.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the May 9, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 02648 entitled *People of the Philippines v. Victorio Pagkalinawan*, which affirmed the January 16, 2007 Joint Decision[2] in Criminal Case Nos. 13624-D and 13625-D of the Regional Trial Court (RTC), Branch 267 in Pasig City. The RTC found accused-appellant Victorio[3] Pagkalinawan guilty of violation of Sections 5 and 11, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

The charges against appellant stemmed from the following Informations:

Criminal Case No. 13624-D

(Violation of Sec. 5, paragraph 1 [Sale], Art. II of RA 9165)

That, on or about the 20th day of July 2004, in the Municipality of Taguig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did, then and there willfully, unlawfully and knowingly sell, deliver, and give away to another 0.28 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet, which was found positive to the test for

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[1] *Rollo*, pp. 2-11. Penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Vicente Q. Roxas and Pampio A. Abarintos.

[2] CA *rollo*, pp. 11-22. Penned by Judge Florito S. Macalino.

[3] Also referred to as "Virgilio" and "Victorino" in some parts of the records.

Methylamphetamine Hydrochloride, also known as *shabu*, a dangerous drug, in consideration of the amount of Php500.00, and violation of the above-cited law.

Contrary to law.[4]

Criminal Case No. 13625-D
(Violation of Sec. 11, par. 2 [Possession], Art. II of RA 9165)

That, on or about the 20th day of July 2004, in the Municipality of Taguig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess any dangerous drug, did, then and there willfully, unlawfully and knowingly possess 0.13 gram and 0.08 gram, respectively, or a total of 0.21 gram of white crystalline substance separately contained in two (2) heat-sealed transparent plastic sachets, which substance was found positive to the test for Methylamphetamine Hydrochloride, also known as *shabu*, a dangerous drug, in violation of the above-cited law.

Contrary to law.[5]

On August 9, 2004, appellant was arraigned. He pleaded "not guilty" to the charges against him. After the pre-trial conference, trial on the merits ensued.

During the trial, the prosecution presented as its witnesses Police Officer (PO1) Rey Memoracion and PO3 Arnulfo Vicuña, both members of the Station Drug Enforcement Unit, Taguig Police Station, Taguig City. On the other hand, the defense presented as its witnesses appellant Pagkalinawan, Paula San Pedro, and May Pagkalinawan.

The Prosecution's Version of Facts

On July 20, 2004, at around 11:00 p.m., a confidential informant arrived at the office of the Station Anti-Illegal Drugs-Special Operations Task Force (SAID-SOTF) of the Taguig City Police and reported the illegal activities of a certain "Berto," a resident of Captain Ciano St., Ibayo, Tipaz, Taguig City.

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[4] Records, p. 1.

[5] *Id.* at 11.

The leader of the group, Police Senior Inspector Romeo Paat, immediately formed a buy-bust team with PO1 Memoracion as the poseur-buyer and the rest of the group as back-up. The buy-bust money was then marked and recorded in the blotter. Afterwards, the team, along with the police informant, proceeded to where Berto lives. Upon reaching the place, PO1 Memoracion and the informant alighted from the service vehicle and walked towards Berto, who was leaning against a wall, while the rest of the team positioned themselves in strategic locations from where they could see clearly what was going on.

The informant introduced PO1 Memoracion to Berto as a taxi driver who wanted to buy *shabu*. Berto immediately took the PhP 500 buy-bust money from PO1 Memoracion and showed three (3) plastic sachets containing *shabu* in his palm, and asked the poseur-buyer to pick one. Once PO1 Memoracion took hold of the *shabu*, he took off his cap, which was the pre-arranged signal for the rest of the team to close in and arrest Berto. Berto suddenly became suspicious of PO3 Vicuña, who was coming up to them, so he attempted to flee the scene. PO1 Memoracion was able to stop him and ordered him to empty his pockets. The other two (2) sachets of *shabu* were recovered from him and the appropriate markings were made on them. Berto was identified later on as appellant Pagkalinawan.

Afterwards, the team brought appellant to its headquarters in Taguig City for investigation. After the police investigator made the request for laboratory examination of the confiscated transparent plastic sachets of suspected *shabu*, PO1 Memoracion brought these to the Philippine National Police (PNP) Crime Laboratory, Southern Police District Crime Laboratory Office. Police Inspector (P/Insp.) May Andrea A. Bonifacio, Forensic Chemical Officer, conducted a qualitative examination on the specimens, which tested positive for methamphetamine hydrochloride, a dangerous drug. She issued Physical Science Report No. D-546-04S dated July 21, 2004, which showed the following results:

SPECIMEN SUBMITTED:

Three (3) heat-sealed transparent sachets each containing white crystalline substance with the following markings and net weights:

A ("SAID-SOTF" VSP) = 0.28 gram

B ("SAID-SOTF" VSP) = 0.13 gram

C ("SAID-SOTF" VSP) = 0.08 gram

xxx xxx xxx

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of any dangerous drug. x x x

FINDINGS:

Qualitative examination conducted on the above-stated specimen gave POSITIVE result to the tests for the presence of Methylamphetamine hydrochloride, a dangerous drug. x x x

CONCLUSION:

Specimen A to C contain Methylamphetamine Hydrochloride, a dangerous drug.[6] x x x

Version of the Defense

Appellant, on the other hand, interposed the defense of denial.

Appellant recounted that, on July 20, 2004, he was watching television inside their house at No. 10-D Ibayo, Tipaz, Taguig City. His granddaughter Paula San Pedro and sister-in-law May Pagkalinawan were with him in the house at the time. Suddenly, armed men barged into the house and introduced themselves as policemen. One of them pointed a gun at him and asked where he was keeping the *shabu*. He denied having what the policemen were looking after. Despite his denial, the policemen still searched his house. When they could not find any prohibited drugs there, the policemen brought him to the Drug Enforcement Unit of the Taguig City Police Station. At the police station, he was told by the policemen to amicably settle the case with them. But because he did not heed their

[6] *Id.* at 8.

order, cases for violation of RA 9165 were filed against him by the policemen.

May Pagkalinawan testified that, on July 20, 2004, she was resting inside their house at No. 10-D Ibayo, Tipaz, Taguig City after selling her wares, while appellant was watching television. Between 10:00 to 11:00 p.m., however, she went to the house of her sister-in-law Zenaida for about ten minutes, but when she returned home, she saw policemen apprehending appellant. She asked the policemen where they were bringing appellant and they told her to follow them at the police station in the Taguig City Hall. She also averred that the policemen did not present any document giving them authority to search their house and arrest appellant. She further claimed that the police officers did not apprise appellant of his constitutional rights during and after the arrest.

Defense witness Paula San Pedro, who claimed to be appellant's granddaughter, also corroborated the stories of both May Pagkalinawan and appellant. In her testimony, she stressed that her grandfather was apprehended but not bodily frisked by the policemen inside their house; hence, it was not possible for an illegal drug to be found in the possession of appellant.

Ruling of the Trial Court

After trial, the RTC convicted appellant. The dispositive portion of its Joint Decision reads:

WHEREFORE, in view of the foregoing considerations, the Court finds accused VIRGILIO PAGKALINAWAN y Silvestre alyas "Berto" in *Criminal Case No. 13624-D* for Violation of Section 5, 1st paragraph, Article II of Republic Act No. 9165, otherwise known as "The Comprehensive Drugs Act of 2002", ***GUILTY*** beyond reasonable doubt. Hence, accused Virgilio Pagkalinawan y Silvestre alyas "Berto" is hereby sentenced to suffer LIFE IMPRISONMENT and ordered to pay a fine of FIVE HUNDRED THOUSAND PESOS (PhP500,000.00).

Moreover, accused VIRGILIO PAGKALINAWAN *y* Silvestre *alyas* "Berto" is also found ***GUILTY*** beyond reasonable doubt in *Criminal Case No. 13625-D* for Violation of Section 11, 2nd paragraph,

Article II of Republic Act No. 9165, otherwise known as "The Comprehensive Drugs Act of 2002". And since the quantity of methylamphetamine hydrochloride (*shabu*) found in the possession of the accused is only 0.21 gram, accused Virgilio Pagkalinawan *y* Silvestre *alyas* "Berto" is hereby sentenced to suffer imprisonment ranging from *TWELVE (12) YEARS and ONE (1) DAY as minimum* -to- *FOURTEEN (14) YEARS and TWENTY-ONE (21) DAYS as maximum*. Accused Virgilio Pagkalinawan y Silvestre alyas "Berto" is further penalized to pay a fine in the amount of *THREE HUNDRED THOUSAND PESOS (PhP300,000.00)*.

Accordingly, the Jail Warden of the Taguig City Jail where accused Virgilio Pagkalinawan *y* Silvestre *alyas* "Berto" is presently detained is hereby ordered to forthwith commit the person of convicted Virgilio Pagkalinawan *y* Silvestre *alyas* "Berto" to the New Bilibid Prisons, Bureau of Corrections in Muntinlupa City, Metro Manila.

Upon the other hand, the *shabu* contained in three (3) heat-sealed transparent plastic sachets with a total weight of 0.49 [gram] which are the subject matter of the above-captioned cases are hereby ordered to be immediately transmitted and/or submitted to the custody of the Philippine Drug Enforcement Agency (PDEA) for its proper disposition.

Costs *de oficio*.

SO ORDERED.[7]

On appeal to the CA, appellant disputed the RTC's finding of his guilt beyond reasonable doubt of the crimes charged. He argued that the presumption of innocence should prevail over the principle of regularity of performance of the police officers. Further, he contended that what actually happened was an instigation and not a buy-bust operation. Lastly, he claimed that there was no compliance with the law as to the proper requirements for a valid buy-bust operation.

Ruling of the Appellate Court

On May 9, 2008, the CA affirmed the judgment of the RTC. It ruled that the prosecution was able to discharge the statutory burden of guilt beyond reasonable doubt. It also dismissed the

[7] CA *rollo*, p. 22.

allegation of instigation, saying that what happened was actually an entrapment, to wit:

> x x x It should be noted that the accused-appellant was neither cajoled nor seduced into peddling drugs. In fact, when he was told that the poseur buyer wanted to score *shabu*, the accused-appellant had several sachets of *shabu* ready in his pocket. This means that even without the slightest prodding from the police officers, the accused-appellant already harbored the intent to commit the crime of drug pushing. The feigned offer to buy on the part of the poseur-buyer was merely a ploy to entrap a drug peddler who was about to actualize his felonious intent.[8]

The dispositive portion of the CA Decision reads:

> WHEREFORE, in the light of the foregoing discussion, the appealed Joint decision dated 16 January 2007 is perforce ***affirmed in toto***.
>
> SO ORDERED.[9]

Appellant filed a timely notice of appeal of the decision of the CA.

The Issue

Appellant assigns the following errors:

I.

The trial court gravely erred in giving credence to the incredible testimony of the prosecution witnesses while totally disregarding the evidence adduced by the defense.

II.

The trial court gravely erred in finding that the guilt of the accused-appellant for the crime charged has been proven beyond reasonable doubt.

Our Ruling

We sustain appellant's conviction.

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

[9] *Id.* at 10-11.

Buy-Bust Operation Is a Form of Entrapment

Appellant argues that the buy-bust operation conducted was invalid and that what really happened was instigation, not entrapment. Such contention lacks basis and is contrary to jurisprudence.

Instigation is the means by which the accused is lured into the commission of the offense charged in order to prosecute him. On the other hand, entrapment is the employment of such ways and means for the purpose of trapping or capturing a lawbreaker.[10]

In *People v. Lua Chu and Uy Se Tieng*, the Court laid down the distinction between entrapment and instigation, to wit:

ENTRAPMENT AND INSTIGATION.—While it has been said that the practice of entrapping persons into crime for the purpose of instituting criminal prosecutions is to be deplored, and while instigation, as distinguished from mere entrapment, has often been condemned and has sometimes been held to prevent the act from being criminal or punishable, the general rule is that it is no defense to the perpetrator of a crime that facilities for its commission were purposely placed in his way, or that the criminal act was done at the 'decoy solicitation' of persons seeking to expose the criminal, or that detectives feigning complicity in the act were present and apparently assisting in its commission. Especially is this true in that class of cases where the offense is one of a kind habitually committed, and the solicitation merely furnishes evidence of a course of conduct. Mere deception by the detective will not shield defendant, if the offense was committed by him, free from the influence or instigation of the detective. The fact that an agent of an owner acts as a supposed confederate of a thief is no defense to the latter in a prosecution for larceny, provided the original design was formed independently of such agent; and where a person approached by the thief as his confederate notifies the owner or the public authorities, and, being authorized by them to do so, assists the thief in carrying out the plan, the larceny is nevertheless committed. It is generally held that it is no defense to a prosecution for an illegal sale of liquor

[10] *People v. Bayani*, G.R. No. 179150, June 17, 2008, 554 SCRA 741; citing *People v. Gatong-o*, No. 78698, December 29, 1988, 168 SCRA 716, 717.

that the purchase was made by a 'spotter,' detective, or hired informer; but there are cases holding the contrary.[11]

One form of entrapment is the buy-bust operation. It is legal and has been proved to be an effective method of apprehending drug peddlers, provided due regard to constitutional and legal safeguards is undertaken.[12]

In order to determine the validity of a buy-bust operation, this Court has consistently applied the "objective" test. In *People v. Doria*,[13] this Court stressed that in applying the "objective" test, the details of the purported transaction during the buy-bust operation must be clearly and adequately shown, *i.e.*, the initial contact between the poseur-buyer and the pusher, the offer to purchase, and the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. It further emphasized that the "manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the 'buy-bust' money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense."[14]

In the instant case, the evidence clearly shows that the police officers used entrapment, not instigation, to capture appellant in the act of selling a dangerous drug. It was the confidential informant who made initial contact with appellant when he introduced PO1 Memoracion as a buyer for *shabu*. Appellant immediately took the PhP 500 buy-bust money from PO1 Memoracion and showed him three pieces of sachet containing *shabu* and asked him to pick one. Once PO1 Memoracion got the *shabu*, he gave the pre-arranged signal and appellant was arrested. The facts categorically show a typical buy-bust operation

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[11] 56 Phil. 44, 52-53 (1931).

[12] *People v. Herrera*, G.R. No. 93728, August 21, 1995, 247 SCRA 433, 439; *People v. Tadepa*, G.R. No. 100354, May 26, 1995, 244 SCRA 339.

[13] G.R. No. 125299, January 22, 1999, 301 SCRA 668.

[14] *Id.* at 698-699.

as a form of entrapment. The police officers' conduct was within the acceptable standards for the fair and honorable administration of justice.

Moreover, contrary to appellant's argument that the acts of the informant and the poseur-buyer in pretending that they were in need of *shabu* instigated or induced him to violate the Anti-Drugs Law, a police officer's act of soliciting drugs from the accused during a buy-bust operation, or what is known as a "decoy solicitation," is not prohibited by law and does not render the buy-bust operation invalid.[15] This was clarified by the Court in *People v. Sta Maria*:

> It is no defense to the perpetrator of a crime that facilities for its commission were purposely placed in his way, or that the criminal act was done at the "decoy solicitation" of persons seeking to expose the criminal, or that detectives feigning complicity in the act were present and apparently assisting its commission. Especially is this true in that class of cases where the office is one habitually committed, and the solicitation merely furnishes evidence of a course of conduct.
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> As here, the solicitation of drugs from appellant by the informant utilized by the police merely furnishes evidence of a course of conduct. The police received an intelligence report that appellant has been habitually dealing in illegal drugs. They duly acted on it by utilizing an informant to effect a drug transaction with appellant. There was no showing that the informant induced the appellant to sell illegal drugs to him.[16]

It bears stressing that what is material to the prosecution for illegal sale of drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*. In other words, the essential elements of the crime of illegal sale of prohibited drugs are: (1) the accused sold and delivered a prohibited drug to another; and (2) he knew that what he had sold and delivered was a prohibited drug.[17] All these elements were satisfactorily proved by the

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[15] *People v. Bayani*, *supra* note 10.

[16] G.R. No. 171019, February 23, 2007, 516 SCRA 621, 628.

[17] *People v. Pendatun*, G.R. No. 148822, July 12, 2004, 434 SCRA 148, 155-156; citing *People v. Cercado*, G.R. No. 144494, July 26, 2002, 385

prosecution in the instant case. Appellant sold and delivered the *shabu* for PhP 500 to PO1 Memoracion posing as buyer; the said drug was seized and identified as a prohibited drug and subsequently presented in evidence; there was actual exchange of the marked money and contraband; and finally, appellant was fully aware that he was selling and delivering a prohibited drug.

Likewise, the prosecution was also able to prove with moral certainty the guilt of appellant for the crime of illegal possession of dangerous drugs. It was able to prove the following elements: (1) that the accused is in possession of the object identified as a prohibited or regulatory drug; (2) that such possession is not authorized by law; and (3) that the accused freely and consciously possessed the said drug.[18]

In the case at bar, appellant was caught in actual possession of prohibited drugs without showing any proof that he was duly authorized by law to possess them. Having been caught *in flagrante delicto*, there is, therefore, a *prima facie* evidence of *animus possidendi* on appellant's part. [19]

As a matter of fact, the trial court, in disposing of the case, said:

> The substance of the prosecution's evidence is to the effect that accused Virgilio Pagkalinawan *y* Silvestre *alyas* "Berto" was arrested by the police because of the existence of *shabu* he sold to PO1 Rey B. Memoracion as well as the recovery of the buy-bust money from his possession together with the other two (2) plastic sachets similarly containing *shabu*.
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> To accentuate, the prosecution witnesses in the person of PO1 B. Memoracion and PO3 Arnulfo J. Vicuña positively identified accused Virgilio Pagkalinawan *y* Silvestre *alyas* "Berto" as the person

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SCRA 277; *People v. Pacis*, G.R. No. 146309, July 18, 2002, 384 SCRA 684.

[18] *People v. Del Norte*, G.R. No. 149462, March 29, 2004, 426 SCRA 383.

[19] *U.S. v. Bandoc*, 23 Phil. 14, 15 (1912).

that they apprehended on July 20, 2004 at Ibayo, Tipaz, Taguig City. That they arrested accused Virgilio S. Pagkalinawan within the vicinity of a store because their team was able to procure *shabu* from him during the buy-bust operation they purposely conducted against the aforementioned accused.

The buy-bust money recovered by the arresting police officers from the possession of the accused Virgilio Pagkalinawan *y* Silvestre *alyas* "Berto" as well as the *shabu* they were able to purchase from the accused sufficiently constitute as the very *corpus delicti* of the crime of "Violation of Section 5, 1st paragraph, Article II of Republic Act No. 9165", and the two (2) plastic sachets containing *shabu* that were recovered from the same accused Pagkalinawan similarly constitute as the *corpus delicti* of the crime of "Violation of Section 11, 2nd paragraph, No. 3, Article II of Republic Act No. 9165". As already established, *corpus delicti* has been defined x x x as the body or substance of the crime and refers to the fact that a crime has actually been committed. As applied to a particular offense, it means the actual commission by someone of the particular crime.

The testimony of PO1 Rey B. Memoracion that was corroborated by PO3 Arnulfo J. Vicuña, who have not shown and displayed any ill motive to arrest the accused, is sufficient enough to convict the accused of the crimes charged against him. x x x As law enforcers, their narration of the incident is worthy of belief and as such they are presumed to have performed their duties in a regular manner, in the absence of any evidence to the contrary. To stress x x x testimony of arresting officers, with no motive or reason to falsely impute a serious charge against the accused, is credible.[20]

This Court has consistently relied upon the assessment of the trial court, which had the opportunity to observe the conduct and demeanor of the witnesses during the trial. It is a fundamental rule that findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner

[20] CA *rollo*, pp. 19-20.

of testifying during the trial.[21] In this case, appellant has not sufficiently demonstrated the application of any of the aforementioned exceptions.

Sec. 21 of RA 9165 Provides for Exceptions

Additionally, appellant argues that the prosecution failed to show compliance with Sec. 21 of RA 9165 and its implementing rules regarding the custody and disposition of the evidence against him. He contends that absolute compliance is required and that anything short of that renders the evidence against him inadmissible.

We are not persuaded.

Sec. 21 of the Implementing Rules and Regulations of RA 9165 provides:

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:

(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**

[21] *People v. Julian-Fernandez*, 423 Phil. 895, 910 (2001).

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.)

As can be gleaned from the language of Sec. 21 of the Implementing Rules, it is clear that the failure of the law enforcers to comply strictly with it is not fatal. It does not render appellant's arrest illegal nor the evidence adduced against him inadmissible.[22] What is essential 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."[23]

Here, there was substantial compliance with the law and the integrity of the drugs seized from appellant was preserved. The chain of custody of the drugs subject matter of the case was shown not to have been broken. The factual milieu of the case reveals that after PO1 Memoracion seized and confiscated the dangerous drugs, as well as the marked money, appellant was immediately arrested and brought to the police station for investigation, where the sachets of suspected *shabu* were marked appropriately. Immediately thereafter, the confiscated substance, with a letter of request for examination, was submitted to the PNP Crime Laboratory for laboratory examination to determine the presence of any dangerous drug. Per Physical Science Report No. D-546-04S dated July 21, 2004, the specimen submitted contained methamphetamine hydrochloride, a dangerous drug. The examination was conducted by one P/Insp. May Andrea A. Bonifacio, a Forensic Chemical Officer of the PNP Crime Laboratory. Therefore, it is evidently clear that there was an unbroken chain in the custody of the illicit drug purchased from appellant.

Presumption of Regularity of Performance Stands

Notably, in the absence of clear and convincing evidence that the police officers were inspired by any improper motive,

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[22] *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 448; citing *People v. Del Monte*, G.R. No. 179940, April 23, 2008, 552 SCRA 627.

[23] *Id.*; citing *People v. Concepcion*, G.R. No. 178876, June 27, 2008, 556 SCRA 421.

this Court will not appreciate the defense of denial and instead apply the presumption of regularity in the performance of official duty by law enforcement agents.

In the instant case, the defense of appellant consists of bare denial. It is considered as an inherently weak defense, for it can easily be concocted and is a common standard line of defense in drug cases.

Furthermore, as found by the trial court, the defense has failed to show any evidence of ill motive on the part of the police officers:

> Such allegation of the accused that his apprehension was just a result of a frame-up, as he was not really engaged in peddling *shabu* when he was arrested, cannot be given credence because he was not able to offer and show proof of any previous disagreement between him and the arresting law officers that may lead the police officers to concoct and hatch baseless accusations against him, or the presence of any other circumstances that may have fired up the ire of the police officers against him.[24] x x x

For this reason, we uphold the presumption of regularity in the performance of official duties and find that the prosecution has discharged its burden of proving the guilt of appellant beyond reasonable doubt.

WHEREFORE, the appeal is *DENIED*. The Decision of the CA in CA-G.R. CR No. 02648 finding appellant Victorio Pagkalinawan guilty of the crimes charged is *AFFIRMED*.

S**O ORDERED.**

Corona (Chairperson), Nachura, Peralta, and *Mendoza, JJ.,* concur.

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[24] CA *rollo,* p. 62.

THIRD DIVISION

[G.R. No. 185843. March 3, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RONIE DE GUZMAN,** *appellant.*

SYLLABUS

CRIMINAL LAW; RAPE; CRIMINAL LIABILITY TOTALLY EXTINGUISHED BY MARRIAGE VALIDLY CONTRACTED BETWEEN OFFENDER AND OFFENDED PARTY IN THE CRIME OF RAPE.— Appellant prays that he be absolved of his conviction for the two counts of rape and be released from imprisonment, pursuant to Article 266-C of the Revised Penal Code (RPC). [A]ppellant alleges that he and private complainant contracted marriage on August 19, 2009, solemnized by Reverend Lucas R. Dangatan of Jeruel Christ-Centered Ministries, Inc. at the Amazing Grace Christian Ministries, Inc., Bldg. XI-A, Bureau of Corrections, Muntinlupa City. Attached to the motion is the pertinent Certificate of Marriage and a joint sworn statement *("Magkasamang Sinumpaang Salaysay"*) executed by appellant and private complainant, attesting to the existence of a valid and legal marriage between them. x x x In relation to Article 266-C of the RPC, Article 89 of the same Code reads – **ART. 89.** *How criminal liability is totally extinguished.* – Criminal liability is totally extinguished: x x x 7. By the marriage of the offended woman, as provided in Article 344 of this Code. Article 344 of the same Code also provides – **ART. 344.** *Prosecution of the crimes of adultery, concubinage, seduction, abduction, rape, and acts of lasciviousness.* – x x x. In cases of seduction, abduction, acts of lasciviousness, and rape, the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him. x x x. Based on the documents, including copies of pictures taken after the ceremony and attached to the motion, we find the marriage between appellant and private complainant to have been contracted validly, legally, and in good faith, as an expression of their mutual love for each other and their desire to establish a family of their own. Given public policy

considerations of respect for the sanctity of marriage and the highest regard for the solidarity of the family, we must accord appellant the full benefits of Article 89, in relation to Article 344 and Article 266-C of the RPC.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Daniel Balaoing Valdez for appellant.

R E S O L U T I O N

NACHURA, *J.*:

This resolves the motion for extinguishment of the criminal action and reconsideration of our Resolution dated July 20, 2009 filed by appellant Ronie de Guzman.

Appellant was indicted before the Regional Trial Court, Branch 163, Pasig City, for two counts of rape. He pled "not guilty" when arraigned. After pretrial and trial, the trial court found him guilty as charged and imposed on him the penalty of *reclusion perpetua* for each count. The trial court further ordered him to indemnify the victim ₱50,000.00 in each case or a total amount of ₱100,000.00 as civil indemnity.

On appeal, the Court of Appeals (CA) affirmed, in its Decision dated March 27, 2008, appellant's conviction, but modified it with an additional award of ₱50,000.00 for each case, or an aggregate amount of ₱100,000.00, as moral damages.

Appellant elevated the case to this Court on appeal.

In a Resolution dated July 20, 2009, we dismissed the appeal for failure of appellant to sufficiently show reversible error in the challenged decision as would warrant the exercise of the Court's appellate jurisdiction. Accordingly, the March 27, 2008 Decision of the CA was affirmed *in toto*.

In the instant motion, appellant alleges that he and private complainant contracted marriage on August 19, 2009, solemnized

by Reverend Lucas R. Dangatan of Jeruel Christ-Centered Ministries, Inc. at the Amazing Grace Christian Ministries, Inc., Bldg. XI-A, Bureau of Corrections, Muntinlupa City. Attached to the motion is the pertinent Certificate of Marriage[1] and a joint sworn statement *("Magkasamang Sinumpaang Salaysay")*[2] executed by appellant and private complainant, attesting to the existence of a valid and legal marriage between them. Appellant, thus, prays that he be absolved of his conviction for the two counts of rape and be released from imprisonment, pursuant to Article 266-C[3] of the Revised Penal Code (RPC).

In its Comment/Manifestation,[4] appellee, through the Office of the Solicitor General, interposed no objection to the motion, finding the marriage to have been contracted in good faith, and the motion to be legally in order.

The motion should be granted.

In relation to Article 266-C of the RPC, Article 89 of the same Code reads—

ART. 89. *How criminal liability is totally extinguished.* – Criminal liability is totally extinguished:

xxx xxx xxx

7. By the marriage of the offended woman, as provided in Article 344 of this Code.

Article 344 of the same Code also provides –

ART. 344. *Prosecution of the crimes of adultery, concubinage, seduction, abduction, rape, and acts of lasciviousness.* – x x x.

[1] Annex "A" to the motion; *rollo*, p. 35.

[2] Annex "C" to the motion; *rollo*, p. 37.

[3] **ART. 266-C.** *Effect of Pardon.* – **The subsequent valid marriage between the offender and the offended party shall extinguish the criminal action or the penalty imposed.**

In case it is the legal husband who is the offender, the subsequent forgiveness by the wife as the offended party shall extinguish the criminal action or the penalty: ***Provided,* That the crime shall not be extinguished or the penalty shall not be abated if the marriage be void *ab initio***. (Emphasis supplied.)

[4] *Rollo*, pp. 43-51.

In cases of seduction, abduction, acts of lasciviousness, and rape, the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him. x x x.

On several occasions, we applied these provisions to marriages contracted between the offender and the offended party in the crime of rape,[5] as well as in the crime of abuse of chastity,[6] to totally extinguish the criminal liability of and the corresponding penalty that may have been imposed upon those found guilty of the felony. Parenthetically, we would like to mention here that prior to the case at bar, the last case bearing similar circumstances was decided by this Court in 1974, or around 36 years ago.

Based on the documents, including copies of pictures[7] taken after the ceremony and attached to the motion, we find the marriage between appellant and private complainant to have been contracted validly, legally, and in good faith, as an expression of their mutual love for each other and their desire to establish a family of their own. Given public policy considerations of respect for the sanctity of marriage and the highest regard for the solidarity of the family, we must accord appellant the full benefits of Article 89, in relation to Article 344 and Article 266-C of the RPC.

WHEREFORE, the motion is *GRANTED*. Appellant Ronie de Guzman is *ABSOLVED* of the two (2) counts of rape against private complainant Juvilyn Velasco, on account of their subsequent marriage, and is ordered *RELEASED* from imprisonment.

Let a copy of this Resolution be furnished the Bureau of Corrections for appropriate action. No costs.

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[5] *People v. Velasco*, G.R. No. L-28081, January 21, 1974, 55 SCRA 217; *People v. Miranda*, 57 Phil. 274 (1932); *Laceste v. Santos*, 56 Phil. 472 (1932).

[6] *People v. Mariano*, 50 Phil. 587 (1927).

[7] Annex "B" to the motion; *rollo*, p. 36.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Del Castillo,[*] and *Mendoza, JJ.*, concur.

THIRD DIVISION

[G.R. No. 186441. March 3, 2010]

SALVADOR FLORDELIZ *y* ABENOJAR, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF YOUNG RAPE VICTIMS AND THEIR MOTHER, UPHELD.— We have repeatedly held that when the offended parties are young and immature girls, as in this case, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability, but also the shame and embarrassment to which they would be exposed if the matter about which they testified were not true. x x x Neither can we sustain petitioner's claim that the charges against him were products of ABC's fabrication to cover up the infidelity she committed while working abroad. No matter how enraged a mother may be, it would take nothing less than psychological depravity for her to concoct a story too damaging to the welfare and well-being of her own daughter. Courts are seldom, if at all, convinced that a mother would stoop so low as to expose her own daughter to physical, mental and emotional hardship concomitant to a rape prosecution.

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[*] Additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 824 dated February 12, 2010.

2. CRIMINAL LAW; ANTI-RAPE LAW OF 1997 (RA NO. 8353); RAPE THROUGH SEXUAL ASSAULT; INSERTION OF FINGERS INTO THE VICTIM'S VAGINA.— The insertion of petitioner's fingers into the victim's vagina constituted the crime of Rape through sexual assault under Republic Act (R.A.) No. 8353, or "The Anti-Rape Law of 1997."

3. ID.; REVISED PENAL CODE; RAPE BY SEXUAL ASSAULT; CRIME ATTENDED BY AGGRAVATING CIRCUMSTANCES OF RELATIONSHIP AND MINORITY; PROPER PENALTY.— Aside from proving the fact that Rape was committed, the prosecution also established that petitioner is the biological father of BBB and that the latter was less than twelve (12) years old at the time of the commission of the crimes. Under Article 266-B of the Revised Penal Code (RPC), rape by sexual assault, if attended by any of the aggravating circumstances under paragraph 1 of Article 266-B, would carry the penalty of *reclusion temporal*, ranging from twelve (12) years and one (1) day to twenty (20) years.

4. ID.; ID.; ID.; ID.; ID.; APPLYING THE INDETERMINATE SENTENCE LAW, DISCUSSED.— Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the RPC. Other than the aggravating/qualifying circumstances of minority and relationship (which are already taken into account to raise the penalty from *prision mayor* to *reclusion temporal*), no other aggravating circumstance was alleged and proven. Hence, the penalty shall be imposed in its medium period, or fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. On the other hand, the minimum term of the indeterminate sentence should be within the range of the penalty next lower in degree than that prescribed by the Code which is *prision mayor* or six (6) years and one (1) day to twelve (12) years. For each count of sexual assault, petitioner should be meted the indeterminate sentence of ten (10) years of *prision mayor* as minimum, to seventeen (17) years and four (4) months of *reclusion temporal* as maximum.

5. ID.; ID.; ID.; ID.; CIVIL PENALTIES.— In line with prevailing jurisprudence, the victim of Rape through sexual assault is entitled to recover civil indemnity in the amount of ₱30,000.00 for each count. This is mandatory upon a finding of the fact of Rape. Moreover, the award of moral damages is automatically

granted without need of further proof, it being assumed that a rape victim has actually suffered moral damages entitling her to such award. She is, thus, entitled to recover moral damages of ₱30,000.00 for each count. In addition, the presence of the aggravating circumstances of minority and relationship entitles her to an award of exemplary damages. The amount of ₱30,000.00 for each count is appropriate under the circumstances.

6. ID.; THE SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT (RA 7610); CHILD PROSTITUTION AND OTHER SEXUAL ABUSE; DEFINITION AND PENALTY.— It is undisputed that at the time of the commission of the sexual abuse, AAA was eleven (11) years old. This calls for the application of R.A. No. 7610 or "The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act," which defines sexual abuse of children and prescribes the penalty therefor in its Article III, Section 5, to wit: 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. The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following: 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.**

7. ID.; ID.; ID.; CHILD ABUSE THROUGH LASCIVIOUS CONDUCT COMMITTED AGAINST A MINOR BELOW 12 YEARS OLD; REQUISITES FOR ACTS OF LASCIVIOUSNESS UNDER THE REVISED PENAL CODE (RPC) IN ADDITION TO ELEMENTS OF SEXUAL ABUSE UNDER RA NO. 7610, MUST BE ESTABLISHED.— Paragraph (b) Section 5 of RA No. 7610 punishes sexual

intercourse or lascivious conduct not only with a child exploited in prostitution, but also with a child subjected to other sexual abuses. It covers not only a situation where a child is abused for profit, but also where one — through coercion, intimidation or influence — engages in sexual intercourse or lascivious conduct with a child. However, pursuant to the foregoing provision, before an accused can be convicted of child abuse through lascivious conduct committed against a minor below 12 years of age, the requisites for acts of lasciviousness under Article 336 of the RPC must be met in addition to the requisites for sexual abuse under Section 5 of R.A. No. 7610. The crime of Acts of Lasciviousness, as defined in Article 336 of the RPC, has the following elements: (1) That the offender commits any act of lasciviousness or lewdness; (2) That it is done under any of the following circumstances: a. By using force or intimidation; or b. When the offended party is deprived of reason or otherwise unconscious; or c. When the offended party is under 12 years of age; and (3) That the offended party is another person of either sex. In addition, the following elements of sexual abuse under Section 5, Article III of R.A. No. 7610 must be proven: (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; and (3) The child, whether male or female, is below 18 years of age. Section 32, Article XIII of the Implementing Rules and Regulations of R.A. No. 7610 defines lascivious conduct as follows: [T]he 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 pubic area of a person.

8. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; NOT VITIATED BY FAILURE TO SPECIFICALLY DESIGNATE THE OFFENSE AS LONG AS THE FACTS CONSTITUTING THE CRIME CHARGED ARE CLEARLY RECITED; CASE AT BAR. — We are aware that the Information specifically charged petitioner with Acts of Lasciviousness under the RPC, without stating therein that it was in relation to R.A. No. 7610. 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 therein 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 by 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 instant case, the body of the Information contains an averment of the acts alleged to have been committed by petitioner and unmistakably describes acts punishable under Section 5(b), Article III of R.A. No. 7610. It is also undisputed that petitioner is the father of AAA. x x x The resolution of the investigating prosecutor, which formed the basis of the Information, a copy of which is attached thereto, stated that petitioner is the victim's biological father. There was, therefore, substantial compliance with the mandate that an accused be informed of the nature of the charge against him.

9. CRIMINAL LAW; CRIMES AGAINST CHASTITY; ACTS OF LASCIVIOUSNESS; CRIME COMMITTED AGAINST A MINOR LESS THAN 12 YEARS OLD AGGRAVATED BY RELATIONSHIP; PROPER PENALTY AND APPLYING THE INDETERMINATE SENTENCE LAW.— In crimes against chastity, like acts of lasciviousness, relationship is considered aggravating. Considering that AAA was less than twelve (12) years old at the time the crime was committed, petitioner should be meted the penalty of *reclusion temporal* in its medium period, or fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. Applying the Indeterminate Sentence Law, petitioner should be meted the indeterminate penalty of thirteen (13) years, nine (9) months and eleven (11) days of *reclusion temporal* as minimum, to sixteen (16) years, five (5) months and ten (10) days of *reclusion temporal* as maximum.

10. ID.; ID.; ID.; ID.; PROPER CIVIL PENALTIES.— With respect to the lascivious conduct amounting to child abuse under Section 5(b) of R.A. No. 7610 committed by petitioner, we impose a fine of ₱15,000.00. Civil indemnity *ex delicto* in the amount of ₱20,000.00 shall be awarded. Additionally, upon a finding of guilt of the accused for acts of lasciviousness, the amount

of ₱15,000.00 as moral damages may be awarded to the victim in the same way that moral damages are awarded to victims of rape even without need of proof because it is assumed that they suffered moral injury. In view of the presence of the aggravating circumstance of relationship, the amount of ₱15,000.00 as exemplary damages should likewise be awarded.

APPEARANCES OF COUNSEL

Gene B. Calonge for petitioner.

The Solicitor General for respondent.

D E C I S I O N

NACHURA, *J.*:

For review are the Court of Appeals (CA) Decision[1] and Resolution[2] dated July 29, 2008 and February 16, 2009, respectively, in CA-G.R. CR No. 30949. The assailed decision affirmed the Regional Trial Court's[3] (RTC's) Joint Judgment[4] dated March 9, 2007, convicting petitioner Salvador Flordeliz *y* Abenojar of nine (9) counts of *Rape* and one (1) count of *Acts of Lasciviousness*, with a modification of the award of damages, while the assailed resolution denied petitioner's motion for reconsideration.

The case stemmed from the following facts:

Sometime in March 1995, ABC, the wife of petitioner and the mother of private complainants AAA and BBB, left for Malaysia as an overseas worker. AAA and BBB were left under

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[1] Penned by Associate Justice Magdangal M. de Leon, with Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia, concurring; CA *rollo*, pp. 392-402.

[2] *Id.* at 412-413.

[3] Branch 59, Baguio City.

[4] Penned by Judge Iluminada P. Cabato; records (Criminal Case Nos. 23072-R), pp. 691-715.

the care and custody of petitioner. They resided in a small house in Quezon Hill, Baguio City.[5]

In April 1995, while sleeping with BBB and AAA, who was then eleven (11) years old, petitioner woke up AAA, touched her vagina, then played with it. AAA cried and told petitioner that it was painful. The latter stopped, but warned AAA not to tell anyone about it; otherwise, she would be harmed.[6] Petitioner allegedly committed the same acts against AAA repeatedly.

Petitioner and his daughters later transferred residence and lived with the former's siblings. Not long after, petitioner was convicted of homicide and imprisoned in Muntinlupa City. Consequently, AAA and BBB lived with their grandparents in La Trinidad, Benguet.[7] While petitioner was incarcerated, AAA and BBB visited him and sent him two greeting cards containing the following texts, among others: "happy valentine"; "ur the best dad in the world"; "I love you papa, love BBB, Love BJ"; "till we meet again"; portrait of Jesus Christ with a heart, "this is for you dad"; "flordeliz, AAA P., love AAA and Iyos."[8]

In 2001, petitioner was released on parole. He would frequently fetch AAA and BBB from their grandparents' house during weekends and holidays and they would stay with him in Gabriela Silang, Baguio City.[9]

Unsatisfied with the abuses committed against AAA, petitioner allegedly started molesting BBB in May 2002.[10] In 2003, BBB spent New Year's Day with her father. On January 3, 2003, while they were sleeping, petitioner inserted his two (2) fingers into BBB's vagina.[11] BBB did not attempt to stop petitioner

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[5] *Rollo*, p. 95.

[6] Records (Criminal Case No. 23072-R), p. 701.

[7] *Rollo*, p. 95.

[8] *Id.*

[9] *Id.*

[10] *Id*.

[11] BBB demonstrated how her father touched her vagina with her forefinger and middle finger by making a sliding up and down motion on the area between the two legs of the doll. (*Id.* at 96.)

because of fear. Thereafter, they slept beside each other.[12] BBB suffered the same ordeal the following night.[13]

On February 8, 2003, BBB visited petitioner. Again, petitioner held her vagina, played with it and inserted his fingers, which caused her pain.[14]

The same incident allegedly took place on August 3, 2003.[15] On October 26, 2003, a day before AAA's birthday, while BBB was with petitioner, the latter committed the same dastardly act. This time, it was for a longer period.[16]

During All Saints' Day of 2003, BBB spent two nights with her father and, during those nights (November 1 and 2), she experienced the same sexual abuse.[17] The same thing happened on December 28, 2003.[18]

Notwithstanding the repeated incidents of sexual abuse committed against her, BBB did not reveal her ordeal to anybody because of fear for her life and that of her mother.[19]

AAA and BBB had the chance to reveal their horrifying experiences when their mother ABC arrived for a vacation. AAA immediately told ABC what petitioner did to her. When confronted by ABC, BBB likewise admitted the repeated abuses committed by petitioner. ABC forthwith reported the incidents to the National Bureau of Investigation.[20]

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[12] TSN, February 7, 2005; records (Criminal Case No. 23072-R), pp. 441-445.

[13] TSN, June 2, 2005; *id.* at 452-453.

[14] *Id.* at 454-455.

[15] *Rollo,* p. 96.

[16] TSN, June 2, 2005; records (Criminal Case No. 23072-R), pp. 456-457.

[17] *Id.* at 458-461.

[18] *Id.* at 461-462.

[19] *Rollo,* p. 97.

[20] *Id*.

After conducting medical examinations on AAA and BBB, the attending physician remarked that there was a "disclosure of sexual abuse and she noted the presence of hymenal notch in posterior portion of hymenal rim that may be due to previous blunt force or penetrating trauma suggestive of abuse."[21]

With these findings, petitioner was charged with the crimes of Acts of Lasciviousness,[22] committed against AAA, and nine (9) counts of Qualified Rape through Sexual Assault,[23] committed against BBB, before the RTC. The crime of acts of lasciviousness was allegedly committed as follows:

> That sometime in the month of April 1995 up to 1996 in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and deliberate intent to cause malice and satisfy his lascivious desire, did then and there willfully, unlawfully and feloniously touched and play the private part of the offended party AAA, a minor 14 years of age against her will and consent which act debeased (sic), demeaned and degraded the intrinsic worth and dignity of the minor as a human being.
>
> CONTRARY TO LAW.[24]

On the other hand, except for the dates of the commission of the crime, each Information for Rape reads:

> That on or about the 8th day of February 2003, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation and taking advantage of his moral ascendancy over the private offended party he being the biological father of said offended party, did then and there remove the pants and underwear of said offended party and thereupon fondles her private part and forcibly inserted his finger into the vagina of the offended party BBB, a minor, 11 years of age against her will and consent, which acts constitute Rape as defined under Republic Act 8353 and which acts demeaned, debased and degraded the intrinsic worth and dignity of the minor as a human being.

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[21] Records (Criminal Case No. 23072-R), p. 7.

[22] Docketed as Criminal Case No. 23145-R.

[23] Docketed as Criminal Case Nos. 23072-80.

[24] Records (Criminal Case No. 23145-R), p. 1.

CONTRARY TO LAW.[25]

Upon arraignment, petitioner pleaded "Not guilty" to all the charges. During trial, he interposed the defense of denial and insisted that the charges against him were fabricated by his wife to cover up the infidelity she committed while working abroad.[26] Petitioner also relied on the testimonies of Florabel Flordeliz, Levy Hope Flordeliz and Roderick Flordeliz, whose testimonies consisted mainly of the alleged infidelity of ABC; and petitioner, being a good father, was often visited by his daughters at his residence, where the rooms they occupied were only separated by see-through curtains.[27]

On March 9, 2007, the RTC rendered a Joint Judgment[28] finding petitioner guilty as charged, the dispositive portion of which reads:

WHEREFORE, premises all duly considered[,] the court finds that the prosecution has established the guilt of the accused beyond reasonable doubt and hereby imposes upon him the following penalties:

1. In **Criminal Case No. 23145-R** for Acts of Lasciviousness, the Indeterminate Penalty of 6 months of *Arresto Mayor* as the minimum penalty to 6 years of *Prision Correccional* as the maximum penalty and to indemnify the victim AAA the amount of ₱20,000.00 as moral damages and to pay the costs.

The penalty shall also carry the accessory penalty of perpetual special disqualification from the right of suffrage (Art. 43, Revised Penal Code)[.]

2. In **Criminal Cases Nos. 23072-R to 23080-R**, the Indeterminate Penalty of twelve (12) years of *Prision Mayor* as the minimum penalty to twenty (20) years of *Reclusion Temporal* as the maximum penalty for each case or nine (9) counts of sexual assault considering the aggravating/qualifying circumstance of

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[25] Records (Criminal Case No. 23072-R), p. 1.

[26] *Rollo*, p. 98.

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

[28] Records (Criminal Case No. 23072-R), pp. 691-715.

relationship against the accused and to indemnify BBB the amount of ₱75,000.00 as moral damages and to pay the costs.

The penalties shall carry with them the accessory penalties of civil interdiction for life and perpetual absolute disqualification (Art. 41, Revised Penal Code).

The accused shall be credited with 4/5 of his preventive imprisonment in the service of his sentences.

In the service of his sentences, the same shall be served successively subject to the provisions of Article 70 of the Revised Penal Code or the Three-Fold Rule.

SO ORDERED.[29]

On appeal, the CA affirmed petitioner's conviction with a modification of the amount of his civil liabilities.

Petitioner now comes before us, raising the following errors:

ACTS OF LASCIVIOUSNESS

The Honorable Court *A Quo* gravely erred in affirming the judgment of conviction of the Honorable Regional Trial Court for the crime charged despite the fact that the **guilt of the petitioner has not been proven beyond reasonable doubt with moral certainty**.

RAPES THROUGH SEXUAL ASSAULT

1. The Honorable Court *A Quo* gravely erred in affirming the judgments of conviction of the Honorable Regional Trial Court in Criminal Cases Nos. 23075-R (*alleged rape through sexual assault sometime in May, 2002)* and 23078-R (*alleged rape through sexual assault on August 3, 2003)* respectively, despite the **complete absence of evidence** to show how the alleged incidents of rape through sexual assault were committed by petitioner on said particular dates.

2. The Honorable Court *A Quo* gravely erred in affirming the judgments of conviction of the Honorable Regional Trial Court in the other alleged counts of rape through sexual assault despite the fact that the **guilt of the petitioner has not been proven beyond reasonable doubt with moral certainty**.[30]

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[29] *Id.* at 714-715.

[30] *Rollo*, pp. 26-27.

Simply put, petitioner assails the factual and legal bases of his conviction, allegedly because of lack of the essential details or circumstances of the commission of the crimes. Petitioner, in effect, questions the credibility of the witnesses for the prosecution and insists that the charges against him were designed to conceal ABC's infidelity.

We have repeatedly held that when the offended parties are young and immature girls, as in this case, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability, but also the shame and embarrassment to which they would be exposed if the matter about which they testified were not true.[31]

It is not uncommon in incestuous rape for the accused to claim that the case is a mere fabrication, and that the victim was moved by familial discord and influence, hostility, or revenge. There is nothing novel about such defense, and this Court had the occasion to address it in the past. In *People v. Ortoa*,[32] we held that:

> Verily, no child would knowingly expose herself and the rest of her family to the humiliation and strain that a public trial surely entails unless she is so moved by her desire to see to it that the person who forcibly robbed her of her cherished innocence is penalized for his dastardly act. The imputation of ill motives to the victim of an incestuous rape [or lascivious conduct] becomes even more unconvincing as the victim and the accused are not strangers to each other. By electing to proceed with the filing of the complaint, the victim risks not only losing a parent, one whom, before his moral descent, she previously adored and looked up to, but also the likelihood of losing the affection of her relatives who may not believe her claim. Indeed, it is not uncommon for families to be torn apart by an accusation of incestuous rape. Given the serious nature of the crime and its adverse consequences not only to her, it is highly improbable for a daughter to manufacture a rape charge for the sole purpose of getting even with her father. Thus, the alleged ill motives

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[31] *People v. Candaza*, G.R. No. 170474, June 16, 2006, 491 SCRA 280, 295-296.

[32] G.R. No. 176266, August 8, 2007, 529 SCRA 536.

have never swayed the Court against giving credence to the testimonies of victims who remained firm and steadfast in their account of how they were ravished by their sex offenders.[33]

Neither can we sustain petitioner's claim that the charges against him were products of ABC's fabrication to cover up the infidelity she committed while working abroad. No matter how enraged a mother may be, it would take nothing less than psychological depravity for her to concoct a story too damaging to the welfare and well-being of her own daughter. Courts are seldom, if at all, convinced that a mother would stoop so low as to expose her own daughter to physical, mental and emotional hardship concomitant to a rape prosecution.[34]

We now proceed to discuss the specific crimes with which petitioner was charged.

Criminal Case Nos. 23072-R, 23073-R, 23074-R, 23076-R, 23077-R, 23079-R, and 23080-R for Rape Through Sexual Assault

The RTC, affirmed by the CA, correctly convicted petitioner of Rape in Criminal Case Nos. 23072-R, 23073-R, 23074-R, 23076-R, 23077-R, 23079-R, and 23080-R.

In her direct testimony, BBB clearly narrated that, on seven (7) separate occasions, petitioner woke her up, held her vagina, played with it, and inserted his fingers. During trial, the prosecutor presented a small doll where BBB demonstrated how petitioner inserted his forefinger and middle finger, making an up and down motion between the doll's legs.[35]

The insertion of petitioner's fingers into the victim's vagina constituted the crime of Rape through sexual assault[36] under Republic Act (R.A.) No. 8353, or "The Anti-Rape Law of 1997," which in part provides:

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[33] *Id.* at 552.

[34] *Id.* at 553.

[35] Records (Criminal Case No. 23072-R), p. 702.

[36] *People v. Hermocilla*, G.R. No. 175830, July 10, 2007, 527 SCRA 296; *People v. Palma*, 463 Phil. 767 (2003).

Art. 266-A. *Rape*: *When And How Committed*. — Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2) **By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person**.[37]

Aside from proving the fact that Rape was committed, the prosecution also established that petitioner is the biological father of BBB and that the latter was less than twelve (12) years old at the time of the commission of the crimes. Under Article 266-B of the Revised Penal Code (RPC), rape by sexual assault, if attended by any of the aggravating circumstances under paragraph 1[38] of Article 266-B, would carry the penalty of *reclusion temporal*, ranging from twelve (12) years and one (1) day to twenty (20) years.

Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly

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[37] Emphasis supplied.

[38] Article 266-B. *Penalties*. – 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.

imposed under the RPC. Other than the aggravating/qualifying circumstances of minority and relationship (which are already taken into account to raise the penalty from *prision mayor* to *reclusion temporal*),[39] no other aggravating circumstance was alleged and proven. Hence, the penalty shall be imposed in its medium period, or fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months.

On the other hand, the minimum term of the indeterminate sentence should be within the range of the penalty next lower in degree than that prescribed by the Code which is *prision mayor* or six (6) years and one (1) day to twelve (12) years.

For each count of sexual assault, petitioner should be meted the indeterminate sentence of ten (10) years of *prision mayor* as minimum, to seventeen (17) years and four (4) months of *reclusion temporal* as maximum.

In line with prevailing jurisprudence, the victim of Rape through sexual assault is entitled to recover civil indemnity in the amount of ₱30,000.00 for each count. This is mandatory upon a finding of the fact of Rape.[40] Moreover, the award of moral damages is automatically granted without need of further proof, it being assumed that a rape victim has actually suffered moral damages entitling her to such award. She is, thus, entitled to recover moral damages of ₱30,000.00 for each count.[41] In addition, the presence of the aggravating circumstances of minority and relationship entitles her to an award of exemplary damages. The amount of ₱30,000.00 for each count is appropriate under the circumstances.

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[39] See *People v. Noveras*, G.R. No. 171349, April 27, 2007, 522 SCRA 777, 794; see also *People v. Tonyacao*, G.R. No. 134531-32, July 7, 2004, 433 SCRA 513, 534.

[40] *People v. Bunagan*, G.R. No. 177161, June 30, 2008, 556 SCRA 808, 814; *People v. Hermocilla, supra* note 36, at 305.

[41] *People v. Bunagan, supra*, at 814; *People v. Hermocilla, supra* note 36, at 305.

Criminal Case Nos. 23075-R and 23078-R

In Criminal Case No. 23075-R, it was alleged that petitioner sexually abused BBB on August 3, 2003. Indeed, the RTC and the CA stated in their narration of facts that on that particular date, while BBB was visiting her father, the incident happened. A perusal of the transcript of the prosecution witnesses' testimonies, however, reveals that no such incident took place. No details were related by BBB herself as to the circumstances surrounding the alleged incident.

In Criminal Case No. 23078-R, it was also stated in the Information that, from May 2002 to December 2003, petitioner committed the crime of Rape through sexual assault against BBB. The Court notes, however, that the RTC decision is silent as to the sexual abuse allegedly committed in May 2002. The RTC's narration of facts started only with the incident that occurred in January 2003. While the CA stated that, in May 2002, petitioner started sexually abusing BBB, the statement was merely a conclusion unsupported by proof of how the crime was committed. Assuming that acts of Rape were indeed committed in 2003 (which is within the period from May 2002 to December 2003 as stated in the Information), those instances could very well be the same incidents covered by the other Informations discussed earlier.

Absent specific details of how and when the sexual abuses were committed, petitioner should be acquitted in Criminal Case Nos. 23075-R and 23078-R.

Criminal Case No. 23145-R for Acts of Lasciviousness

In Criminal Case No. 23145-R, petitioner was charged with and convicted of Acts of Lasciviousness and sentenced to suffer the penalty prescribed by Article 336 of the RPC. While we sustain petitioner's conviction of acts of lasciviousness, we modify the assailed Decision in order to give the proper designation to the crime committed and the law violated, and eventually to impose the proper penalty.

It is undisputed that at the time of the commission of the sexual abuse, AAA was eleven (11) years old.[42] This calls for the application of R.A. No. 7610 or "The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act," which defines sexual abuse of children and prescribes the penalty therefor in its Article III, Section 5, to wit:

> 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.
>
> The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:
>
> xxx xxx xxx
>
> (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.**[43]

Paragraph (b) punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution, but also with a child subjected to other sexual abuses. It covers not only a situation where a child is abused for profit, but also where one — through coercion, intimidation or influence — engages in sexual intercourse or lascivious conduct with a child.[44]

However, pursuant to the foregoing provision, before an accused can be convicted of child abuse through lascivious conduct

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[42] TSN, March 8, 2005; records (Criminal Case No. 23145-R), p. 217.

[43] Emphasis ours.

[44] *Malto v. People*, G.R. No. 164733, September 21, 2007, 533 SCRA 643, 656-657.

committed against a minor below 12 years of age, the requisites for acts of lasciviousness under Article 336 of the RPC must be met in addition to the requisites for sexual abuse under Section 5 of R.A. No. 7610.[45]

The crime of Acts of Lasciviousness, as defined in Article 336 of the RPC, has the following elements:

(1) That the offender commits any act of lasciviousness or lewdness;

(2) That it is done under any of the following circumstances:

   a. By using force or intimidation; or

   b. When the offended party is deprived of reason or otherwise unconscious; or

   c. When the offended party is under 12 years of age; and

(3) That the offended party is another person of either sex.[46]

In addition, the following elements of sexual abuse under Section 5, Article III of R.A. No. 7610 must be proven:

(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; and

(3) The child, whether male or female, is below 18 years of age.[47]

Section 32, Article XIII of the Implementing Rules and Regulations of R.A. No. 7610 defines lascivious conduct as follows:

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[45] *Navarrete v. People*, G.R. No. 147913, January 31, 2007, 513 SCRA 509, 517; *Amployo v. People*, 496 Phil. 747, 755 (2005).

[46] *Navarrete v. People*, *supra*, at 517; *Amployo v. People*, *supra*, at 755; *People v. Bon*, 444 Phil. 571, 583-584 (2003).

[47] *People of the Philippines v. Salvino Sumingwa*, G.R. No. 183619, October 13, 2009; *People v. Montinola*, G.R. No. 178061, January 31, 2008, 543 SCRA 412, 431; *Navarrete v. People*, *supra* note 45, at 521; *Olivarez v. Court of Appeals*, G.R. No. 163866, July 29, 2005, 465 SCRA 465, 473; *Amployo v. People*, *supra* note 45, at 758.

[T]he 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 pubic area of a person.[48]

Based on the foregoing definition, petitioner's act of touching AAA's vagina and playing with it obviously amounted to lascivious conduct. Considering that the act was committed on a child less than twelve years old and through intimidation, it is beyond cavil that petitioner is guilty under the aforesaid laws.

We are aware that the Information specifically charged petitioner with Acts of Lasciviousness under the RPC, without stating therein that it was in relation to R.A. No. 7610. 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 therein 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 by 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.[49]

In the instant case, the body of the Information contains an averment of the acts alleged to have been committed by petitioner and unmistakably describes acts punishable under Section 5(b), Article III of R.A. No. 7610.

It is also undisputed that petitioner is the father of AAA. The RTC did not appreciate the alternative circumstance of relationship, because it was not alleged in the Information. We do not agree.

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[48] *Navarrete v. People, supra* note 45, at 521-522; *Olivarez v. Court of Appeals, supra*, at 473-474; *People v. Bon, supra* note 46, at 584.

[49] *People of the Philippines v. Salvino Sumingwa, supra* note 47, citing *Malto v. People, supra* note 44; and *Olivarez v. Court of Appeals, supra* note 47.

The resolution[50] of the investigating prosecutor, which formed the basis of the Information, a copy of which is attached thereto, stated that petitioner is the victim's biological father. There was, therefore, substantial compliance with the mandate that an accused be informed of the nature of the charge against him.[51]

In crimes against chastity, like acts of lasciviousness, relationship is considered aggravating.[52] Considering that AAA was less than twelve (12) years old at the time the crime was committed, petitioner should be meted the penalty of *reclusion temporal* in its medium period, or fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. Applying the Indeterminate Sentence Law, petitioner should be meted the indeterminate penalty of thirteen (13) years, nine (9) months and eleven (11) days of *reclusion temporal* as minimum, to sixteen (16) years, five (5) months and ten (10) days of *reclusion temporal* as maximum.

With respect to the lascivious conduct amounting to child abuse under Section 5(b) of R.A. No. 7610 committed by petitioner, we impose a fine of ₱15,000.00.[53]

Civil indemnity *ex delicto* in the amount of ₱20,000.00 shall be awarded.[54] Additionally, upon a finding of guilt of the accused for acts of lasciviousness, the amount of ₱15,000.00 as moral damages may be awarded to the victim in the same way that moral damages are awarded to victims of rape even without need of proof because it is assumed that they suffered moral injury.[55] In view of the presence of the aggravating circumstance

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[50] Records (Criminal Case No. 23145-R), p. 3.

[51] *Olivarez v. Court of Appeals, supra* note 47, at 478-479.

[52] *People of the Philippines v. Salvino Sumingwa, supra* note 47; *People v. Montinola, supra* note 47, at 432.

[53] *People of the Philippines v. Salvino Sumingwa, supra* note 47; *People v. Montinola, supra* note 47; *People v. Candaza, supra* note 31; *Amployo v. People, supra* note 45, at 762-763.

[54] See *People v. Palma, supra* note 36.

[55] *Amployo v. People, supra* note 45, at 761-762.

of relationship, the amount of ₱15,000.00 as exemplary damages should likewise be awarded.

WHEREFORE, premises considered, the Court of Appeals' July 29, 2008 Decision and February 16, 2009 Resolution in CA-G.R. CR No. 30949 are *AFFIRMED* with *MODIFICATIONS*. The Court finds petitioner Salvador Flordeliz *y* Abenojar:

1. *GUILTY* of seven (7) counts of *RAPE* Through Sexual Assault in Criminal Case Nos. 23072-R, 23073-R, 23074-R, 23076-R, 23077-R, 23079-R, and 23080-R. He is sentenced to suffer the indeterminate penalty of ten (10) years of *prision mayor,* as minimum, to seventeen (17) years and four (4) months of *reclusion temporal,* as maximum, for each count. Petitioner is ordered to indemnify BBB ₱30,000.00 as civil indemnity; ₱30,000.00 as moral damages; and ₱30,000.00 as exemplary damages, for each count;

2. *GUILTY of ACTS OF LASCIVIOUSNESS* in Criminal Case No. 23145-R. He is sentenced to suffer the indeterminate penalty of thirteen (13) years, nine (9) months and eleven (11) days of *reclusion temporal,* as minimum, to sixteen (16) years, five (5) months and ten (10) days of *reclusion temporal,* as maximum. He is likewise ordered to pay a fine of ₱15,000.00 and to indemnify AAA ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, and ₱15,000.00 as exemplary damages;

3. *NOT GUILTY* in Criminal Case Nos. 23075-R and 23078-R.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Del Castillo,[*] and *Mendoza, JJ.,* concur.

[*] Additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 824 dated February 12, 2010.

THIRD DIVISION

[G.R. No. 187743. March 3, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROLANDO BAUTISTA IROY,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; MAY BE COMMITTED IN A STANDING POSITION.— It is settled that sexual intercourse in a standing position, while perhaps uncomfortable, is not improbable. Prosecution witness Dr. Paul Ed dela Cruz Ortiz, who conducted the physical examination on the victim AAA, positively testified that the latter was in a non-virgin state. Significantly, prosecution's eyewitness, Sarmiento, unequivocably identified appellant as the malefactor who ravished AAA.

2. ID.; ID.; NOT NEGATED BY VICTIM'S LACK OF RESISTANCE OR FAILURE TO SHOUT FOR HELP.— We are not persuaded by appellant's contention that the victim offered no resistance to appellant's sexual advances, for as testified to by Sarmiento, AAA continuously pushed appellant while the latter was raping her. We also disagree with the contention that the victim's failure to shout for help is fatal to the charge of rape. Physical resistance is not an essential element of the felony and need not be established when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's embrace because of fear for her life and personal safety. The moral and physical ascendancy of the father over his daughter-victim is sufficient to cow her into submission to his bestial desires.

3. ID.; ID.; NOT NEGATED BY FAILURE TO IMMEDIATELY REPORT THE CRIME.— AAA's failure to report the rape to her family or to the police authorities does not weaken the prosecution's case, the victim's hesitation being attributable to her age, the moral ascendancy of the appellant and his threats to the former.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT AFFIRMED

BY THE COURT OF APPEALS, RESPECTED.— The RTC found all the prosecution witnesses to be credible witnesses, whose testimonies were natural and convincing, thus, deserving of full faith and credence. It bears stressing that full weight on and respect for the determination by the trial court of the credibility of witnesses is usually accorded by the appellate courts, since a trial court judge has the opportunity to observe the demeanor of these witnesses. The CA did not disturb the RTC's appreciation of their credibility. Thus, the cardinal rule applies that factual findings of the trial court, its calibration of the testimonies of the witnesses, and its conclusions anchored on its findings are accorded by the appellate court high respect, if not conclusive effect, more so when affirmed by the CA. The exception is when it is established that the trial court ignored, overlooked, misconstrued, or misinterpreted cogent facts and circumstances which, if considered, will change the outcome of the case.

5. CRIMINAL LAW; QUALIFIED RAPE; ELEMENTS.— We have reviewed the records of the RTC and the CA, and we find no justification to deviate from both courts' findings and their unanimous conclusion that appellant **is guilty** beyond reasonable doubt of the crime of qualified rape under Article 266-A, in relation to Article 266-B of the RPC. To convict appellant of the offense, the prosecution must allege and prove the ordinary elements of (1) sexual congress, (2) with a woman, (3) by force and without consent; and in order to warrant the imposition of the death penalty, the additional elements that (4) the victim is under eighteen years of age at the time of the rape, and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim. The prosecution was able to prove the existence of all these elements beyond the shadow of a doubt.

6. ID.; ID.; PENALTY.— [T]he penalty of *reclusion perpetua* was properly meted out. Under Article 266-B of the RPC, an accused found guilty of qualified rape should be meted the supreme penalty of death. However, with the enactment of Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the death penalty has been prohibited. Pursuant to Section 2 thereof, the penalty to be imposed on appellant shall be *reclusion perpetua*. Said section reads: Sec. 2. In lieu of the death penalty, the following shall be imposed: (a) the penalty of

reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal code; or (b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code. Notwithstanding the reduction of the penalty imposed on appellant, he is not eligible for parole following Section 3 of said law, which provides: Sec. 3. Person convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

7. ID.; ID.; CIVIL PENALTIES.— The appellate court correctly ruled when it modified that, in addition to the award of civil indemnity of Seventy-Five Thousand Pesos (₱75,000.00), appellant is likewise ordered to pay the victim, AAA, another Seventy-Five Thousand Pesos (₱75,000.00) as moral damages. Civil indemnity, which is actually in the nature of actual or compensatory damages, is mandatory upon the finding of the fact of rape. Moral damages are automatically granted in a rape case without need of further proof other than the fact of its commission. For it is assumed that a rape victim has actually suffered moral injuries entitling her to such an award. It, however, erred when it only awarded Twenty-Five Thousand Pesos (₱25,000.00) as exemplary damages. The amount should have been ₱30,000.00, in accordance with *People of the Philippines v. Lorenzo Layco, Sr.*, in order to serve as public example and to protect the young from sexual abuse.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

NACHURA, *J.*:

For final review by the Court is the trial court's conviction of appellant Rolando Bautista Iroy for qualified rape. In the December 15, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02947, the appellate court affirmed with modification the June 22, 2007 Decision[2] of the Regional Trial Court (RTC), Branch 69, Pasig City, in Criminal Case Nos. 128200-H and 128201-H.

Appellant, a widower and a fish ball vendor, rented a room in the house of prosecution witness Jojo Sarmiento (Sarmiento). Appellant lived there together with his daughter AAA and son BBB. At around 8:30 p.m. on May 31, 2004, while Sarmiento was in the restroom answering the call of nature, he noticed that the partition wall was shaking. He got out of the restroom and moved closer to the partition wall, which also served as the wall of appellant's room. Intrigued, Sarmiento peeped through a hole on the wall and, to his surprise, he saw appellant and his daughter standing face to face, with appellant's shorts pushed down to his knees, while his daughter AAA was naked. Appellant was having sexual intercourse with his daughter in a standing position. AAA was pushing appellant but the latter persisted in having sexual intercourse with her. After satisfying his lust, appellant ordered his daughter to get dressed.

Sarmiento did not try to stop appellant, since the former was afraid that the latter might create a scandal or commotion. The following day, Sarmiento reported what he saw to their Zone Leader, a certain Evelyn Geraldino (Geraldino), and asked her to report the incident to the police.

On June 1, 2004, Geraldino called the Municipality's Public Order and Safety Officer, Abdon C. Lozano (Lozano), and

[1] Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Rebecca de Guia-Salvador and Vicente S.E. Veloso, concurring; CA *rollo*, pp. 86-96.

[2] CA *rollo*, pp. 47-51.

reported the incident. Responding to the report, Lozano immediately went to the house of Geraldino to verify the information. On his way, he met AAA, whom he confronted. AAA readily admitted that her father sexually abused her not only on May 31, 2004, but also on May 15, 2004. Her father purportedly threatened to kill her if she refused to have sexual intercourse with him.

When examined by Medico-Legal Officer Dr. Paul Ed dela Cruz Ortiz, AAA was found to be in a non-virgin state. Based on the testimony of Ma. Victoria Delfin of the National Statistics Office, AAA was fourteen (14) years old at the time she was sexually abused on May 15 and 31, 2004, it appearing in her Certificate of Live Birth that AAA was born on October 4, 1989.

For his part, appellant interposed the defense of denial and alleged that AAA charged him with rape because of ill feelings. Appellant alleged that AAA may have harbored ill feelings toward him when he berated and spanked her on two occasions, once on May 15, 2004 and again on May 31, 2004, for allegedly not preparing food and water for him. Appellant purportedly came home tired from vending fish balls on such dates and was irritated when he found no water and food. With respect to Sarmiento, appellant averred that the former wanted him out of his house, that was why he testified against appellant in this case.

Consequently, in an Information dated June 2, 2004, appellant was charged with qualified rape under paragraph 1(a), Article 266-A of the Revised Penal Code (RPC), allegedly committed as follows:

> That on or about the 15th day of May, 2004, in the City of (PPP), Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of his moral ascendancy and authority, and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of his daughter (AAA), against her will and consent, the crime having been attended by the qualifying circumstances of relationship and minority, the accused being the father of the victim who is a fourteen (14) year old minor at the time of the commission of the offense, thereby raising the crime

to Qualified Rape aggravated by nighttime, dwelling and abuse of superior strength.

CONTRARY TO LAW.

Subsequently, another Information of even date, similarly charging appellant with qualified rape, was filed before the trial court. Except for the date of the alleged commission, which was May 31, 2004, said Information was committed against the same victim and was similarly worded as the first Information.

The defense attempted to discredit the testimony of Sarmiento by arguing that it was highly unlikely for a man to consummate rape while in a standing position. Appellant insinuated that the alleged sexual intercourse in a standing position was improbable unless both parties acted in concert. He further sought to establish that the sexual intercourse, if any, took place with the consent of AAA, owing to the absence of any outcry or sufficient resistance on her part. Appellant likewise harped on the alleged failure of AAA to report the rape incident to her brother or to her relatives.

After trial on the merits, the RTC rendered the June 22, 2007 Decision,[3] convicting appellant of qualified rape and imposing the penalty of *reclusion perpetua*. It further ordered appellant to pay the victim the amount of ₱75,000.00 as moral damages.[4]

On review, the appellate court affirmed with modification the ruling of the trial court as follows:

WHEREFORE, the appealed Decision, dated 22 June 2007, of the Regional Trial Court of Pasig City (Branch 69) in Criminal Case No. 128201-H, is AFFIRMED with the MODIFICATION that, in addition to the award of civil indemnity of Seventy-Five Thousand

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[3] *Id.* at 47-51.

[4] The dispositive portion of the trial court's decision reads:

WHEREFORE, finding accused Rolando Bautista Iroy guilty beyond reasonable doubt of Qualified Rape under Article 266-A No. 1(a) in relation to Article 266-B, 6th par. No. 1 of R.A. 8353, the Court hereby sentences him to suffer the penalty of *Reclusion Perpetua*; and to pay AAA the amount of Php 75,000.00 as moral damages on account of her tender age.

SO ORDERED. (*Id.* at 51.)

Pesos (₱75,000.00), appellant is likewise ordered to pay the victim AAA another Seventy-Five Thousand Pesos (₱75,000.00) as moral damages and Twenty-Five Thousand Pesos (₱25,000.00) as exemplary damages.

SO ORDERED.[5]

In their respective Manifestations[6] filed before this Court, appellee, People of the Philippines, as represented by the Office of the Solicitor General, and Iroy, as represented by the Public Attorney's Office, intimate that they are no longer filing any Supplemental Brief in support of their respective positions, for the same has been adequately discussed in their earlier briefs, and to avoid a repetition of arguments.

The case having been elevated to this Court, we now finally review the trial and the appellate courts' findings.

The instant appeal is bereft of merit.

It is settled that sexual intercourse in a standing position, while perhaps uncomfortable, is not improbable.[7] Prosecution witness Dr. Paul Ed dela Cruz Ortiz, who conducted the physical examination on the victim AAA, positively testified that the latter was in a non-virgin state. Significantly, prosecution's eyewitness, Sarmiento, unequivocably identified appellant as the malefactor who ravished AAA.

Furthermore, we are not persuaded by appellant's contention that the victim offered no resistance to appellant's sexual advances, for as testified to by Sarmiento, AAA continuously pushed appellant while the latter was raping her. We also disagree with the contention that the victim's failure to shout for help is fatal to the charge of rape. Physical resistance is not an essential element of the felony and need not be established when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's embrace because of fear

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[5] CA *rollo*, pp. 95-96.

[6] *Rollo*, pp. 27-30 and 31-33, respectively.

[7] *People v. Castro*, G.R. No. 91490, May 6, 1991, 196 SCRA 679.

for her life and personal safety.[8] The moral and physical ascendancy of the father over his daughter-victim is sufficient to cow her into submission to his bestial desires.[9]

Verily, AAA's failure to report the rape to her family or to the police authorities does not weaken the prosecution's case, the victim's hesitation being attributable to her age, the moral ascendancy of the appellant and his threats to the former.

The RTC found all the prosecution witnesses to be credible witnesses, whose testimonies were natural and convincing, thus, deserving of full faith and credence. It bears stressing that full weight on and respect for the determination by the trial court of the credibility of witnesses is usually accorded by the appellate courts, since a trial court judge has the opportunity to observe the demeanor of these witnesses.[10] The CA did not disturb the RTC's appreciation of their credibility. Thus, the cardinal rule applies that factual findings of the trial court, its calibration of the testimonies of the witnesses, and its conclusions anchored on its findings are accorded by the appellate court high respect, if not conclusive effect, more so when affirmed by the CA. The exception is when it is established that the trial court ignored, overlooked, misconstrued, or misinterpreted cogent facts and circumstances which, if considered, will change the outcome of the case.

We have reviewed the records of the RTC and the CA, and we find no justification to deviate from both courts' findings and their unanimous conclusion that appellant **is guilty** beyond reasonable doubt of the crime of qualified rape under Article 266-A, in relation to Article 266-B of the RPC. To convict appellant of the offense, the prosecution must allege and prove the ordinary elements of (1) sexual congress, (2) with a woman, (3) by force and without consent; and in order

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[8] *People v. Rebose*, 367 Phil. 768, 777 (1999).

[9] *People v. Sagaral*, G.R. Nos. 112714-15, February 7, 1997, 267 SCRA 671.

[10] *People v. Roma*, G.R. No. 147996, September 30, 2005, 471 SCRA 413, 426-427.

to warrant the imposition of the death penalty, the additional elements that (4) the victim is under eighteen years of age at the time of the rape, and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim. The prosecution was able to prove the existence of all these elements beyond the shadow of a doubt.

Accordingly, the penalty of *reclusion perpetua* was properly meted out. Under Article 266-B of the RPC, an accused found guilty of qualified rape should be meted the supreme penalty of death. However, with the enactment of Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the death penalty has been prohibited. Pursuant to Section 2 thereof, the penalty to be imposed on appellant shall be *reclusion perpetua*. Said section reads:

> Sec. 2. In lieu of the death penalty, the following shall be imposed:
>
> (a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or
>
> (b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

Notwithstanding the reduction of the penalty imposed on appellant, he is not eligible for parole following Section 3 of said law, which provides:

> Sec. 3. Person convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

The appellate court correctly ruled when it modified that, in addition to the award of civil indemnity of Seventy-Five Thousand Pesos (₱75,000.00), appellant is likewise ordered to pay the victim, AAA, another Seventy-Five Thousand Pesos (₱75,000.00) as moral damages. Civil indemnity, which is actually in the

nature of actual or compensatory damages, is mandatory upon the finding of the fact of rape.[11] Moral damages are automatically granted in a rape case without need of further proof other than the fact of its commission. For it is assumed that a rape victim has actually suffered moral injuries entitling her to such an award.[12]

It, however, erred when it only awarded Twenty-Five Thousand Pesos (₱25,000.00) as exemplary damages.[13] The amount should have been ₱30,000.00, in accordance with *People of the Philippines v. Lorenzo Layco, Sr.*,[14] in order to serve as public example and to protect the young from sexual abuse.

WHEREFORE, premises considered, the December 15, 2008 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02947 is *AFFIRMED WITH MODIFICATION* that the award for exemplary damages is increased to ₱30,000.00.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Peralta, and *Mendoza, JJ.,* concur.

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[11] *People v. Molleda*, G.R. No. 153219, December 1, 2003, 417 SCRA 53.

[12] *People v. Codilan*, G.R. No. 177144, July 23, 2008, 559 SCRA 623.

[13] In criminal offenses, exemplary damages as a part of civil liability may be imposed when the crime was committed with one or more aggravating circumstances. (Civil Code, Art. 2230.)

[14] G.R. No. 182191, May 8, 2009.

SECOND DIVISION

[G.R. No. 158627. March 5, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MARITESS MARTINEZ *y* DULAY,** *appellant.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; RECRUITMENT AND PLACEMENT; PRESENT IN CASE AT BAR.— Article 13(b) of the Labor Code defines "recruitment and placement" *viz:* (b) "Recruitment and placement" refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not: *Provided,* That any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement. In this case, all the four complainants unanimously declared that appellant offered and promised them employment abroad. They also testified that they gave various amounts to appellant as payment for placement and processing fees. Notwithstanding said promises and payments, they were not able to leave for abroad to work. These testimonies, as well as the documentary evidence they submitted consisting of the receipts issued them by the appellant, all prove that the latter was engaged in recruitment and placement activities. Even conceding that appellant merely referred the complainants to JH Imperial Organization Placement Corp., the same still constituted an act of recruitment. As explicitly enumerated in Article 13(b) of the Labor Code, "recruitment and placement" includes the act of making referrals, whether for profit or not.

2. ID.; ID.; ILLEGAL RECRUITMENT IN LARGE SCALE; PRESENT IN CASE AT BAR AS RECRUITMENT CARRIED OUT AGAINST FOUR COMPLAINANTS BY ONE WHO WAS NEITHER LICENSED TO DO SO NOR AN AGENT OF A LEGAL AGENCY; PROPER PENALTY.— Article 38 of the Labor Code defines "illegal recruitment" as: ART. 38. *ILLEGAL RECRUITMENT.* – (a) Any recruitment activities,

including the prohibited practices enumerated under Article 34 of this Code, to be undertaken by non-licensees or non-holders of authority shall be deemed illegal and punishable under Article 39 of this Code. x x x (b) Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage and shall be penalized in accordance with Article 39 hereof. Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme defined under the first paragraph hereof. Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group. In the instant case, the prosecution satisfactorily established that appellant was not a licensee or holder of authority to deploy workers abroad. By this fact alone, she is deemed to have engaged in illegal recruitment and the same was committed in large scale because it was carried out against the four complainants. The fact that JH Imperial Organization Placement Corp. was a holder of a valid license to deploy workers abroad did not serve to benefit herein appellant. There was no evidence at all that said recruitment agency authorized herein appellant to act as its agent. x x x [T]he applicable law at the time of the commission of the crime of Illegal Recruitment in large scale was Article 39 of the Labor Code. x x x The CA therefore correctly imposed upon herein appellant the penalty of life imprisonment and a fine of ₱100,000.00.

3. CRIMINAL LAW; ESTAFA; ELEMENTS.— We also affirm the findings of the trial court and the CA that appellant is guilty of four counts of Estafa, the elements of which are: a) the accused defrauded another by abuse of confidence or by means of deceit; and b) the offended party suffered damage or prejudice capable of pecuniary estimation.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Mercado Lim and Associates Law Offices for appellant.

D E C I S I O N

DEL CASTILLO, *J.*:

No less than the Constitution ordains that labor – local and overseas, organized and unorganized – shall be given full protection. Further it mandates the promotion of full employment and equality of employment opportunities. Thus, if an individual illegally recruits another for employment abroad, he shall be meted the penalty of life imprisonment and fined. The same individual could also be held liable for the crime of Estafa.[1]

This appeal assails the December 11, 2002 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR No. 24144 which affirmed with modifications the October 12, 1999 Decision[3] of the Regional Trial Court (RTC) of Manila, Branch 3, finding appellant guilty of the crimes of Illegal Recruitment in large scale and four counts of Estafa.

Factual Antecedents

On June 21, 1995, herein appellant Maritess Martinez and her daughter, Jenilyn Martinez, were charged with seven counts of Estafa before the RTC of Manila. The cases were docketed as Criminal Case Nos. 95-143311,[4] 95-143312,[5] 95-143313,[6] 95-143314,[7] 95-143315,[8] 95-143316,[9] and 95-143317.[10]

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[1] *People v. Africa,* G.R. No. 176638, December 2, 2009. (Unsigned Resolution)

[2] CA *rollo,* pp. 101-113; penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Bernardo P. Abesamis and Edgardo F. Sundiam.

[3] Records, pp. 378-381; penned by Judge Antonio I. De Castro.

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

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

[6] *Id.* at 14-15.

[7] *Id.* at 18-19.

[8] *Id.* at 45-46.

[9] *Id.* at 50-51.

[10] *Id.* at 57-58.

Except for the dates of commission of the crimes, the amounts defrauded, and the names of the complainants, the Informations for Estafa were similarly worded as follows:

That in or about and during the period comprised between _____,[11] inclusive, in the City of Manila, Philippines, the said accused, conspiring and confederating and helping with one Julius Martinez who was previously charged [with] the same offense before the Regional Trial Court of Manila, Branch ___, docketed under Criminal Case No[s]. 94-139797 to 139803 did then and there willfully and feloniously defraud _____[12] in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representations which she/he/they made to said _____[13] to the effect that he had the power and capacity to recruit and employ as factory worker in Korea and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof, and by means of other similar deceits, induced and succeeded in inducing said _____[14] to give and deliver, as in fact he/she/they gave and delivered to said accused the amount of _____[15] on the strength of said

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[11] February 9, 1993 and February 24, 1993 for Criminal Case No. 95-143311, *id.* at 2; February 5, 1993 for Criminal Case No. 95-143312, *id.* at 8; November 29, 1993 and February 8, 1994 for Criminal Case No. 95-143313, *id.* at 14; October 26, 1993 for Criminal Case No. 95-143314, *id.* at 18; February 4, 1993 and August 14, 1994 for Criminal Case No. 95-143315, *id.* at 45; February 8, 1993 for Criminal Case No. 95-143316, *id.* at 50; and November 1993 and July 1994 for Criminal Case No. 95-143317, *id.* at 57.

[12] Dominador Ilacin *y* Pascua for Criminal Case No. 95-143311, *id.* at 2; Nelson Laplano *y* Malapit for Criminal Case No. 95-143312, *id.* at 8; Necito Serquina *y* Tuvera for Criminal Case No. 95-143313, *id.* at 14; Crizaldo Fernandez *y* Martinez for Criminal Case No. 95-143314, *id.* at 18; Vevencio Martinez *y* Cornelio for Criminal Case No. 95-143315, *id.* at 45; Walter Isuan *y* Ortiz for Criminal Case No. 95-143316, *id.* at 50; and Arnulfo Suyat *y* Loyola for Criminal Case No. 95-143317, *id.* at 57.

[13] *Id.*

[14] *Id.*

[15] ₱40,000.00 in Criminal Case No. 95-143311, *id.* at 2; ₱25,000.00 in Criminal Case No. 95-143312, *id.* at 8; ₱40,000.00 in Criminal Case No. 95-143313, *id.* at 14; ₱40,000.00 in Criminal Case No. 95-143314, *id.* at 18; ₱55,000.00 in Criminal Case No. 95-143315, *id.* at 45; ₱23,000.00 in Criminal Case No. 95-143316, *id.* at 50; and ₱45,000.00 in Criminal Case No. 95-143317, *id.* at 57.

manifestations and representations, said accused well knowing that the same were false and fraudulent and were made solely to obtain, as in fact she/he/they did obtain the amount of _____[16] which amount once in her/his/their possession, with intent to defraud, willfully, unlawfully and feloniously misappropriated, misapplied and converted to her/his/their own personal use and benefit, to the damage and prejudice of said _____[17] in the aforesaid amount of _____[18] Philippine Currency.

Contrary to law.

On even date, appellant together with her children Jenilyn Martinez and Julius Martinez, were also charged with the crime of Illegal Recruitment in large scale which was docketed as Criminal Case No. 95-143318.[19] The accusatory portion of the Information reads:

That in or about and during the period comprised between February 1993 and July, 1994, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, representing themselves to have the capacity to contract, enlist and transport Filipino workers for employment abroad, did then and there willfully and unlawfully for a fee recruit and promise employment/job placement abroad to the following persons, to wit: NELSON LAPLANO, CRIZALDO FERNANDEZ *Y* MARTINEZ, WALTER ISUAN *Y* ORTIZ, NECITO SERQUINA[20] *Y* TUVERA, DOMINADOR ILASIN,[21] ARNULFO SUYAT *Y* LOYOLA, and VIVENCIO[22] MARTINEZ *Y* CORNELIO without first having secured the necessary license or authority from the Department of Labor and Employment (POEA).

Contrary to law.[23]

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[16] *Id.*

[17] *Supra* note 12.

[18] *Supra* note 15.

[19] Records, pp. 61-62.

[20] Sometimes spelled as "Serquiña" in the records.

[21] Sometimes spelled as "Ilacin" in the records.

[22] Sometimes spelled as "Vevencio" in the records.

[23] Records, p. 61.

The cases were raffled to Branch 3 of the RTC of Manila. Thereafter, warrants of arrest[24] were issued against the three accused. However, the same were served only against appellant[25] and Julius Martinez[26] whereas accused Jenilyn Martinez remains at large.

During his arraignment on August 18, 1995, Julius Martinez pleaded not guilty to the charge of Illegal Recruitment.[27] Meanwhile, appellant was arraigned on September 6, 1995 where she entered a plea of not guilty to the charges of Estafa and Illegal Recruitment in large scale.[28]

The cases were consolidated upon motion of the prosecution.[29] Trial on the merits thereafter ensued.

The following complainants were presented by the prosecution as witnesses, to wit: Dominador Ilacin, Necito Serquiña, Vivencio Martinez, and Arnulfo Suyat. However, complainants Walter Isuan, Nelson Laplano, and Crizaldo Fernandez failed to testify despite being given several opportunities.[30] Thus, on February 14, 1996, the trial court issued an Order *viz:*

> For failure of the complaining witnesses, Nelson Laplano *y* Malapit, Crizaldo Fernandez *y* Martinez, and Walter Isuan *y* Ortiz, to appear at today's trial, despite personal service of notice of this setting, as prayed for by the accused' counsel and without objection from the public prosecutor, insofar as Crim. Case No. 95-143312, 95-143314, and 95-143316 are concerned, the same are hereby PROVISIONALLY DISMISSED, with the express consent of accused Maritess Martinez *y* Dulay only. With costs *de oficio*.
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> SO ORDERED.[31]

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

[25] *Id.* at 89.

[26] *Id.* at 92.

[27] *Id.* at 110.

[28] *Id.* at 124.

[29] *Id.* at 1.

[30] *Id.* at 182, 186, 191, 195.

[31] *Id.* at 203; penned by Judge Antonio I. De Castro.

Ruling of the Regional Trial Court

On October 12, 1999, the trial court issued its Decision acquitting Julius Martinez of the crime of Illegal Recruitment in large scale while finding appellant guilty of Illegal Recruitment and four counts of Estafa.

The trial court found that appellant was not a holder of a license or authority to deploy workers abroad; that appellant falsely represented herself to have the capacity to send complainants as factory workers in South Korea; that she asked from complainants various amounts allegedly as placement and processing fees; that based on said false representations, complainants parted with their money and gave the same to appellant; that appellant appropriated for herself the amounts given her to the damage and prejudice of the complainants; and that she failed to deploy complainants for work abroad.

The trial court did not lend credence to appellant's allegation that she merely assisted complainants in their applications with JH Imperial Organization Placement Corp. Instead, it held that complainants directly applied with the appellant, *viz:*

> x x x Maritess was not licensed to recruit workers for overseas employment by the POEA. She is directly accountable to complainants as the recipient of the money. Besides, no one from Imperial Agency was even presented to show that it was the entity handling the recruitment. They relied on her representations that she could send them abroad to work. x x x[32]

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

> WHEREFORE, accused Julius Martinez is acquitted while accused Maritess Martinez is FOUND GUILTY of estafa on 4 counts and illegal recruitment. She is hereby sentenced to an imprisonment of from 10 years, 8 months and 21 days to 11 years, 11 months and 10 days of *prision mayor* for 4 counts of estafa. Further, she shall suffer an imprisonment of from 5 years, 5 months and 11 days to 6 years, 8 months and 20 days of *prision correccional* for illegal recruitment.

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[32] *Id.* at 380.

Accused shall also indemnify private complainants for actual damages, as follows: ₱40,000.00 to Dominador Ilacin, ₱40,000.00 to Necito Serquiña, ₱55,000.00 to Vivencio Martinez, and ₱45,000.00 to Arnulfo Suyat; and to pay the costs.

SO ORDERED.[33]

Ruling of the Court of Appeals

Appellant appealed to the CA arguing that no evidence was presented to show that she falsely represented herself as having the capacity to send complainants as factory workers in South Korea.[34] She alleged that there was no proof that she personally undertook to deploy them for work abroad.[35] She maintained that she merely assisted complainants in their applications with JH Imperial Organization Placement Corp. and that she was merely an agent of the latter.[36] She claimed that there is no truth to the claim of the complainants that she was holding office in her residence considering its very limited space and that the same is occupied by her six family members.[37]

On December 11, 2002, the CA rendered its assailed Decision denying the appeal for lack of merit. It found appellant guilty of Illegal Recruitment in large scale for having "committed acts of recruitment such as making promises of profitable overseas employment to complainants"[38] and of "collecting from the complainants payment for their passports, placement fees and other sundry expenses."[39] It likewise found that appellant "did not have the authority to recruit workers for overseas employment."[40] The appellate court disregarded appellant's

[33] *Id.* at 381. Underscoring in the original text.

[34] CA *rollo*, p. 54.

[35] *Id.*

[36] *Id.*

[37] *Id.* at 55.

[38] *Id.* at 110.

[39] *Id.*

[40] *Id.*

argument that she merely assisted complainants in their applications with JH Imperial Organization Placement Corp. The CA likewise affirmed appellant's conviction for four counts of Estafa.

The dispositive portion of the CA Decision reads:

Accordingly, the Court modifies the penalties imposed by the trial court, *viz:*

In Criminal Case No. 95-143311, the amount involved is ₱30,000.00 ([appellant] having returned to complainant Dominador Ilacin the amount of ₱10,000.00). The minimum term of the indeterminate sentence should be four (4) years and two (2) months of *prision correccional* and the maximum term should be eight (8) years of *prision mayor.*

In Criminal Case No. 95-143313, the amount involved is ₱40,000.00. The minimum term of the indeterminate sentence should be four (4) years and two (2) months of *prision correccional* and the maximum term should at least be eight (8) years of *prision mayor* plus a period of one (1) year [one (1) year for each additional ₱10,000.00] or a total maximum period of nine (9) years of *prision mayor.*

In Criminal Case No. 95-143315, the amount involved is ₱39,000.00 ([appellant] having returned to complainant Vivencio Martinez the amount of ₱16,000.00). The minimum term of the indeterminate sentence should be four (4) years and two (2) months of *prision correccional* and the maximum term should be at least eight (8) years of *prision mayor* plus a period of one (1) year [one (1) year for each additional ₱10,000.00] for a total maximum period of nine (9) years of *prision mayor.*

In Criminal Case No. 95-143317, the amount involved is ₱29,000.00 ([appellant] having returned to complainant Arnulfo Suyat the amount of ₱16,000.00). The minimum term of the indeterminate sentence should be four (4) years and two (2) months of *prision correccional* and the maximum term should be eight (8) [years] of *prision mayor.*

In Criminal Case No. 95-143318, large scale illegal recruitment is punishable with life imprisonment and a fine of One Hundred Thousand Pesos (*Article 39, Labor Code).*

The amount of actual damages awarded to the three complainants is modified there being partial payments made by the appellant, *viz*:

1) Dominador Ilacin	-	₱30,000.00
2) Vivencio Martinez	-	₱39,000.00
3) Arnulfo Suyat	-	₱29,000.00

WHEREFORE, considering that the imposable penalty in Criminal Case No. 95-143318 (Illegal Recruitment in Large Scale) is life imprisonment consistent with Section 13, paragraph (b), Rule 124 of the 2000 Revised Rules on Criminal Procedure, the Court hereby certifies this case and elevates the entire records to the Honorable Supreme Court for the mandated review.

SO ORDERED.[41]

Hence, this appeal filed by appellant raising the following assignment of errors:

Issues

I.

THE COURT OF APPEALS COMMITTED PALPABLE ERROR IN NOT FINDING [THAT] THE PROSECUTION EVIDENCE IS INSUFFICIENT TO PROVE THE GUILT OF THE [APPELLANT].

II.

THE COURT OF APPEALS DECIDED [THE CASE] IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT.[42]

Appellant's Arguments

As regards the crime of Illegal Recruitment in large scale, appellant maintains that she could not be convicted of the same because she merely assisted complainants in their applications with the recruitment agency. She likewise insists that she turned over the amounts she received from the complainants to JH Imperial Organization Placement Corp.[43]

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[41] *Id.* at 112-113.

[42] *Rollo*, p. 14.

[43] *Id.* at 16.

Appellant insists that the courts below erred in finding her guilty of the crime of Estafa because there is no proof that she falsely represented to have the capacity to send complainants as factory workers in South Korea. She also avers that there is no evidence presented to show that she personally undertook to deploy complainants for work abroad.[44]

Appellee's Arguments

Appellee argues that the trial court and the CA correctly convicted appellant of the crime of Illegal Recruitment in large scale. There is proof beyond reasonable doubt that she impressed upon the complainants that she had the authority to deploy them for employment abroad. She even received money from the complainants and issued corresponding receipts. There was also proof that she was not a licensee or holder of authority to deploy workers abroad. In fact, her admission that she merely "referred" the complainants to JH Imperial Organization Placement Corp. was already an act of recruitment under Article 13(b) of the Labor Code. Appellee also argues that all the elements of Estafa were satisfactorily proven by the prosecution.

Our Ruling

The appeal lacks merit.

Article 13(b) of the Labor Code defines "recruitment and placement" *viz:*

> (b) "Recruitment and placement" refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not: *Provided,* That any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement.

In this case, all the four complainants unanimously declared that appellant offered and promised them employment abroad. They also testified that they gave various amounts to appellant as payment for placement and processing fees. Notwithstanding

[44] *Id.* at 15.

said promises and payments, they were not able to leave for abroad to work. These testimonies, as well as the documentary evidence they submitted consisting of the receipts issued them by the appellant, all prove that the latter was engaged in recruitment and placement activities.

Even conceding that appellant merely referred the complainants to JH Imperial Organization Placement Corp., the same still constituted an act of recruitment. As explicitly enumerated in Article 13(b) of the Labor Code, "recruitment and placement" includes the act of making referrals, whether for profit or not. Thus, the CA correctly held that:

> x x x Even if [appellant] did no more that "suggest" to complainants where they could apply for overseas employment, her act constituted "referral" within the meaning of Article 13(b) of the Labor Code (*People v. Ong,* 322 SCRA 38). Referral is the act of passing along or forwarding of an applicant for employment after an initial interview of a selected applicant for employment to a selected employer, placement officer or bureau. (*People v. Goce,* 247 SCRA 780).[45]

Having already established that appellant was engaged in "recruitment and placement," the issue that must be resolved next is whether such activities may be considered illegal and whether the acts were committed in large scale.

Article 38 of the Labor Code defines "illegal recruitment" as:

> ART. 38. *ILLEGAL RECRUITMENT.* – (a) Any recruitment activities, including the prohibited practices enumerated under Article 34 of this Code, to be undertaken by non-licensees or non-holders of authority[46] shall be deemed illegal and punishable under Article 39 of this Code. x x x

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[45] CA *rollo,* p. 110.

[46] This has been amended by Republic Act (RA) No. 8042 or the Migrant Workers and Overseas Filipinos Act of 1995, which considers as illegal recruiter even a licensee or holder of authority who commits acts prohibited under Article 34 of the Labor Code. Moreover, the failure to deploy recruits is also considered as illegal recruitment under Section 6 of RA 8042.

(b) Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage and shall be penalized in accordance with Article 39 hereof.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme defined under the first paragraph hereof. Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

In the instant case, the prosecution satisfactorily established that appellant was not a licensee or holder of authority to deploy workers abroad. By this fact alone, she is deemed to have engaged in illegal recruitment and the same was committed in large scale because it was carried out against the four complainants.

The fact that JH Imperial Organization Placement Corp. was a holder of a valid license to deploy workers abroad did not serve to benefit herein appellant. There was no evidence at all that said recruitment agency authorized herein appellant to act as its agent. As aptly noted by the appellate court:

From the testimonies of the complainants, it is clearly shown that [appellant] did more than just make referrals. It was [appellant] whom they approached regarding their plans of working overseas. It was [appellant] who collected the fees and receipts [therefor] were issued in her name. It was x x x [appellant] from whom they learned what papers or documents to submit. Despite the denial, [appellant], nevertheless, failed to explain why recruitment activities were done in her residence. Likewise, she failed to present Milagros Lopez, one of the staff of Imperial, to whom she allegedly turned over the money she collected from the complainants or any officer from the recruitment agency to prove that she was merely a conduit thereof. x x x[47]

The three elements of the crime of illegal recruitment, to wit: a) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers; b) the offender undertakes any of the

[47] CA *rollo*, p. 110.

activities within the meaning of "recruitment and placement" under Article 13(b) of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the said Code (now Section 6 of RA 8042); and c) the offender committed the same against three or more persons, individually or as a group,[48] are present in the instant case. Consequently, we rule that the trial court and the CA correctly found appellant guilty of Illegal Recruitment in large scale.

In the instant case, the applicable law at the time of the commission of the crime of Illegal Recruitment in large scale was Article 39 of the Labor Code. Under said law, the imposable penalty is life imprisonment and a fine of ₱100,000.00. The CA therefore correctly imposed upon herein appellant the penalty of life imprisonment and a fine of ₱100,000.00 in Criminal Case No. 95-143318.

We also affirm the findings of the trial court and the CA that appellant is guilty of four counts of Estafa, the elements of which are: a) the accused defrauded another by abuse of confidence or by means of deceit; and b) the offended party suffered damage or prejudice capable of pecuniary estimation.[49] In the instant case, we agree with the observations of the CA that:

> In this case, [appellant] misrepresented herself to the complainants as one who can make arrangements for job placements in South Korea as factory workers. By reason of her misrepresentations, false assurances, and deceit, complainants were induced to part with their money. The recruits waited for at least a year, only to realize that they were hoodwinked, as no jobs were waiting for them abroad.
>
> Criminal liability for estafa already committed is not affected by the fact that [appellant] returned a portion of their money. Compromise or novation of contract pertains and affects only the civil aspect of the case. *Estafa* is a public offense that must be prosecuted and punished by the Court in its motion even though

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[48] See *People v. Temporada*, G.R. No. 173473, December 17, 2008, 574 SCRA 258, 279.

[49] *Id.* at 282-283.

complete reparation should have been made of the damage suffered by the offended party. x x x[50]

Anent the penalties for the four counts of Estafa, we held in *People v. Temporada*[51] that:

The prescribed penalty for *estafa* under Article 315, par. 2(d) of the RPC, when the amount defrauded exceeds ₱22,000.00, is *prision correccional* maximum to *prision mayor* minimum. The minimum term is taken from the penalty next lower or anywhere within *prision correccional* minimum and medium (*i.e.*, from 6 months and 1 day to 4 years and 2 months). Consequently, the RTC correctly fixed the minimum term for the five *estafa* cases at 4 years and 2 months of *prision correccional* since this is within the range of *prision correccional* minimum and medium.

On the other hand, the maximum term is taken from the prescribed penalty of *prision correccional* maximum to *prision mayor* minimum in its maximum period, adding 1 year of imprisonment for every ₱10,000.00 in excess of ₱22,000,00, provided that the total penalty shall not exceed 20 years. However, the maximum period of the prescribed penalty of *prision correccional* maximum to *prision mayor* minimum is not *prision mayor* minimum as apparently assumed by the RTC. To compute the maximum period of the prescribed penalty, *prision correccional* maximum to *prision mayor* minimum should be divided into three equal portions of time each of which portion shall be deemed to form one period in accordance with Article 65 of the RPC. Following this procedure, the maximum period of *prision correccional* maximum to *prision mayor* minimum is from 6 years, 8 months and 21 days to 8 years. The incremental penalty, when proper, shall thus be added to anywhere from 6 years, 8 months and 21 days to 8 years, at the discretion of the court.

In computing the incremental penalty, the amount defrauded shall be subtracted by ₱22,000.00, and the difference shall be divided by ₱10,000.00. Any fraction of a year shall be discarded as was done starting with the case of *People v. Pabalan* in consonance with the settled rule that penal laws shall be construed liberally in favor of the accused. x x x[52]

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[50] CA *rollo*, p. 111.

[51] *Supra* note 48.

[52] *Id.* at 283-284.

Following the aforementioned procedure, we find that the penalties imposed by the appellate court are proper.

WHEREFORE, the December 11, 2002 Decision of the Court of Appeals in CA-G.R. CR No. 24144 which affirmed with modifications the October 12, 1999 Decision of the Regional Trial Court of Manila, Branch 3, finding appellant Maritess Martinez guilty of the crimes of Illegal Recruitment in large scale and four counts of Estafa is *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.*, concur.

SECOND DIVISION

[G.R. No. 168726. March 5, 2010]

PIO DELOS REYES (Deceased), represented by heirs FIDEL DELOS REYES, MAURO DELOS REYES and IRENE BONGCO (Deceased), represented by surviving spouse RODOLFO BONGCO, *petitioners, vs.* **HONORABLE WALDO Q. FLORES, in his capacity as Senior Deputy Executive Secretary, Office of the President, HONORABLE RENE C. VILLA, in his capacity as Secretary of the Department of Land Reform (formerly Department of Agrarian Reform), THE PROVINCIAL AGRARIAN REFORM OFFICER (PARO) OF DINALUPIHAN BATAAN, THE MUNICIPAL AGRARIAN REFORM OFFICER (MARO) OF HERMOSA AND ORANI, BATAAN, and FORTUNATO QUIAMBAO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI* AND *MANDAMUS*; AVAILABILITY.— We have held in a litany of cases that the extraordinary remedies of *certiorari* and mandamus are available only when there is no other plain, speedy, and adequate remedy in the ordinary course of law, such as a motion for reconsideration. The writ of *certiorari* does not lie where another adequate remedy is available for the correction of the error. Likewise, *mandamus* is granted only in cases where no other remedy is available which is sufficient to afford redress because generally, a writ of *mandamus* will not lie from one branch of the government to a coordinate branch, for the obvious reason that neither is inferior to the other.

2. ID.; ID.; *CERTIORARI*; REQUIRES PRIOR FILING OF MOTION FOR RECONSIDERATION; EXCEPTIONS.— [T]here are several exceptions where a petition for *certiorari* will lie without the prior filing of a motion for reconsideration, to wit: a. where the order is a patent nullity, as where the court *a quo* has no jurisdiction; b. where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; c. where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the government or the petitioner or the subject matter of the action is perishable; d. **where, under the circumstances, a motion for reconsideration would be useless**; e. where petitioner was deprived of due process and there is extreme urgency for relief; f. where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; g. where the proceedings in the lower court are a nullity for lack of due process; h. where the proceedings was *ex parte* or in which the petitioner had no opportunity to object; and i. where the issue raised is one purely of law or where public interest is involved.

3. ID.; ID.; ID.; ID.; ID.; PETITIONERS MAY NOT ARROGATE TO THEMSELVES THE DETERMINATION OF WHETHER A MOTION FOR RECONSIDERATION IS NECESSARY OR NOT.— Petitioners submit they no longer filed a motion

for reconsideration of the 30 September 2004 order because it would have been useless. Petitioners point out that the 30 September 2004 order warned that no further pleadings would be entertained. We are not convinced that this constitutes an exception to the rule on exhaustion of administrative remedies. Petitioners may not arrogate to themselves the determination of whether a motion for reconsideration is necessary or not. The language of the order notwithstanding, petitioners are bound by procedural rules and may not disregard the same on a wrong assumption that a motion for reconsideration might no longer be entertained. Even so, they should have awaited the denial of their motion for reconsideration before filing the extraordinary remedy of petition for *certiorari*.

4. POLITICAL LAW; ADMINISTRATIVE LAW; EXHAUSTION OF ADMINISTRATIVE REMEDIES; THRUST OF THE RULE.— The thrust of the rule on exhaustion of administrative remedies is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. To this end, administrative agencies are afforded a chance to correct any previous error committed in its forum. Furthermore, reasons of law, comity, and convenience prevent the courts from entertaining cases proper for determination by administrative agencies.

5. REMEDIAL LAW; PROCEDURAL RULES MUST BE STRICTLY ABIDEN BY.— Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules. While the Court, in some instances, allows a relaxation in the application of the rules, this was never intended to forge a bastion for erring litigants to violate the rules with impunity. It is true that litigation is not a game of technicalities, but it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.

6. ID.; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ALLOWED; FACTUAL FINDINGS OF DAR SECRETARY, RESPECTED.— As to the merits of the case, the question of whether petitioners owned landholdings used for residential, commercial, industrial, or other urban purposes

from which they derived adequate income is a question of fact. In a petition for review under Rule 45 of the Rules of Court, only questions of law, not of fact, may be raised before this Court. Well-settled is the rule that this Court is not a trier of facts. It is not this Court's function to re-examine the respective sets of evidence submitted by the parties. As this case involves the application of P.D. No. 27 and LOI No. 474, the DAR Secretary, owing to his agrarian expertise, is in a better position to make a final determination whether petitioners' landholdings may be subject of exclusion from operation land transfer or retention. This Court need not weigh anew the evidence submitted by the parties and supplant the findings of fact by the DAR Secretary, especially when such findings are fully supported by evidence consisting of certifications issued by the Office of the Provincial Assessor of Bataan and the various certificates of title on record.

APPEARANCES OF COUNSEL

Quasha Ancheta Peña & Nolasco for petitioners.
The Solicitor General for respondents.
Delfin B. Samson for Department of Agrarian Reform.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 7 January 2005 and 17 June 2005 Resolutions[2] of the Court of Appeals in CA-G.R. No. 87584. In its 7 January 2005 Resolution, the Court of Appeals dismissed the petition for *certiorari*[3] of Pio delos Reyes, represented by surviving heirs Fidel delos Reyes, Mauro delos Reyes, and Irene delos Reyes Bongco, who was represented by her surviving spouse, Rodolfo Bongco (collectively referred to as "petitioners"). In its 17 June 2005 Resolution, the Court

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

[2] *Rollo*, pp. 97-102.

[3] Under Rule 65 of the Rules of Court.

of Appeals denied the motion for reconsideration filed by petitioners.

The Facts

In 1985, Pio delos Reyes applied for exclusion from the coverage of operation land transfer, under Presidential Decree (P.D.) No. 27[4] and Letter of Instruction (LOI) No. 474,[5] parcels of land situated in Hermosa and Ornani, Bataan, covered by Transfer Certificate of Title Nos. T-2058 on Lots 2 and 3, T-4581, and T-2057 on Lots 1156 and 1159. Alternatively, he applied for the right of retention of seven hectares if the properties mentioned would be subject of operation land transfer. He claimed that the properties remained undivided and were still under co-ownership pending the extrajudicial settlement of the estate of his late wife, Margarita Manalili.[6]

In 1988, Pio and his children, Fidel, Mauro, and Irene, executed a deed of extrajudicial partition,[7] which included the properties subject of the application for exclusion or retention. Under the extrajudicial partition, Pio became the owner of 11.4842 hectares of tenanted rice and corn land, Fidel of 4.5212 hectares, Mauro of 4.5212 hectares, and Irene of 4.3740 hectares. Aside from their shares in the extrajudicial partition, Fidel co-owned 2.5212 hectares of rice land and Mauro co-owned 2.5273 hectares.[8] However, in the proceedings for his application for exclusion or retention, Pio failed to submit vital documents such as the deed of extrajudicial partition. Thus, the Department of

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[4] 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. 21 October 1972.

[5] Placing under the operation land transfer program of the government, pursuant to Presidential Decree No. 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. 21 October 1976.

[6] *Rollo*, pp. 103-104.

[7] *Id.* at 106-108.

[8] *Id.* at 113-114.

Agrarian Reform (DAR) placed the subject landholdings within the coverage of P.D. No. 27 and LOI No. 474. The DAR wasted no time effecting operation land transfer and issuing emancipation permits in favor of farmer beneficiaries.[9]

In April 1989, the Provincial Agrarian Reform Officer recommended approval of Pio's application for (i) retention of not more than seven hectares of his tenanted land planted to rice and corn, (ii) exclusion of his children's properties from the coverage of operation land transfer, (iii) cancellation of certificates of land transfer covering the properties of his children issued in favor of farmer beneficiaries, and (iv) cancellation of certificates of land transfer covering his retention area.[10] The Legal Officer and the Regional Director of the DAR approved the recommendation.[11]

Fortunato Quiambao, a tenant-farmer in Pio's landholdings, appealed to the DAR Secretary. He claimed that Pio was guilty of misrepresentation amounting to fraud for not stating the totality of his landholdings. He averred Pio and his children owned lands used for residential, commercial, industrial, or other urban purposes from which they derived adequate income to support themselves and their families. He further alleged that during the pendency of the petition for exclusion or retention, Pio converted portions of their landholdings into residential lands.[12]

After examining the records of the case and the evidence submitted by the parties, the DAR Secretary concluded that the subject landholdings fell under the government's operation land transfer program. In its order,[13] the DAR Secretary ruled that Pio and his children actually owned landholdings used for residential, commercial, industrial, or other urban purposes from which they derived adequate income, as evidenced by certifications issued by the Office of the Provincial Assessor of Bataan and

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[9] *Id.* at 113.

[10] *Id.* at 109-110.

[11] *Id.* at 111-114.

[12] *Id.* at 133-136.

[13] *Id.* at 154-158.

the various certificates of title submitted on record. Pio and his children moved for reconsideration, which the DAR Secretary dismissed.[14]

Meanwhile, Pio died and was substituted by his surviving heirs, Fidel delos Reyes, Mauro delos Reyes, and Irene delos Reyes Bongco, represented by her surviving spouse, Rodolfo Bongco.

Petitioners appealed to the Office of the President.[15] In its 20 June 2003 Resolution,[16] the Office of the President dismissed petitioners' appeal for being filed out of time. Petitioners' motion for reconsideration was denied.[17] Petitioners then filed a petition for relief from denial of appeal arguing that the failure of their so-called provisional lawyer to advise them of the receipt of the 20 June 2003 resolution was justifiable. The Office of the President dismissed the same in its 30 September 2004 order, to wit:

> WHEREFORE, the instant petition is hereby DISMISSED for lack of merit. The finality of the Resolution dated June 20, 2003, pursuant to Sec. 7 of Presidential A.O. No. 18, S. 1987, is hereby reiterated. The Department of Agrarian Reform is hereby directed to implement the said resolution. No further pleadings shall be entertained.
>
> SO ORDERED.[18]

Instead of filing in the Office of the President a motion for reconsideration of the 30 September 2004 order, petitioners filed in the Court of Appeals a petition for *certiorari* and *mandamus* with prayer for the issuance of a temporary restraining order and a writ of preliminary injunction.

The Ruling of the Court of Appeals

In its 7 January 2005 Resolution, the Court of Appeals dismissed for prematurity the petition for *certiorari* and *mandamus*

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[14] *Id.* at 163-165.

[15] *Id.* at 175-197.

[16] *Id.* at 253-254.

[17] *Id.* at 255-256.

[18] *Id.* at 301-302.

filed by petitioners. The appellate court found that petitioners failed to exhaust the administrative remedies available from the dismissal of their petition for relief. According to the appellate court, petitioners failed to file in the Office of the President a motion for reconsideration of the assailed order. In its 17 June 2005 Resolution, the Court of Appeals denied petitioners' motion for reconsideration.

The Issue

The sole issue is whether the Court of Appeals erred when it dismissed for prematurity the petition for *certiorari* and *mandamus* filed by petitioners.

The Court's Ruling

The petition has no merit.

Petitioners contend the Court of Appeals erred when it dismissed the petition for *certiorari* and *mandamus* despite sufficient allegation in the petition why the motion for reconsideration would be useless, one of the exceptions to the rule on exhaustion of administrative remedies. Petitioners claim they no longer filed a motion for reconsideration of the 30 September 2004 order because it was already final and executory on its face as the order itself stated that no further pleadings would be entertained. Petitioners submit that a disposition of controversies through resolution on the merits is preferred over a peremptory dismissal by reason of a technicality.

Respondents maintain that the filing of a motion for reconsideration is a condition *sine qua non* to the filing of a petition for *certiorari*, being the plain and adequate remedy referred to in Section 1 of Rule 65 of the Rules of Court. Respondents argue that a petition for *certiorari* will not prosper unless the administrative agency has been given, through a motion for reconsideration, a chance to correct the errors imputed to it. Respondents insist the law intends to afford the administrative agency an opportunity to rectify the errors it may have lapsed into before resort to the courts of justice can be had.

At the outset, we must point out that petitioners' arguments are a mere rehash of their arguments in the petition for *certiorari* and *mandamus* filed in the Court of Appeals. We agree with the Court of Appeals that petitioners ignored the procedural requirement of filing a motion for reconsideration and simply went ahead with the filing of a petition for *certiorari* and *mandamus*. The appellate court correctly dismissed the same for prematurity.

We have held in a litany of cases that the extraordinary remedies of *certiorari* and *mandamus* are available only when there is no other plain, speedy, and adequate remedy in the ordinary course of law, such as a motion for reconsideration. The writ of *certiorari* does not lie where another adequate remedy is available for the correction of the error.[19] Likewise, *mandamus* is granted only in cases where no other remedy is available which is sufficient to afford redress because generally, a writ of *mandamus* will not lie from one branch of the government to a coordinate branch, for the obvious reason that neither is inferior to the other.[20] However, there are several exceptions where a petition for *certiorari* will lie without the prior filing of a motion for reconsideration, to wit:

a. where the order is a patent nullity, as where the court *a quo* has no jurisdiction;

b. where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;

c. where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the government or the petitioner or the subject matter of the action is perishable;

d. **where, under the circumstances, a motion for reconsideration would be useless**;

e. where petitioner was deprived of due process and there is extreme urgency for relief;

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[19] *Marawi Marantao General Hospital, Inc. v. Court of Appeals*, 402 Phil. 356 (2001).

[20] *Dwikarna v. Domingo*, G.R. No. 153454, 7 July 2004, 433 SCRA 748.

f. where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;

g. where the proceedings in the lower court are a nullity for lack of due process;

h. where the proceedings was *ex parte* or in which the petitioner had no opportunity to object; and

i. where the issue raised is one purely of law or where public interest is involved.[21] (Emphasis supplied)

The thrust of the rule on exhaustion of administrative remedies is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. To this end, administrative agencies are afforded a chance to correct any previous error committed in its forum. Furthermore, reasons of law, comity, and convenience prevent the courts from entertaining cases proper for determination by administrative agencies.[22]

In this case, a motion for reconsideration is a plain, speedy, and adequate remedy in the ordinary course of law. Petitioners should have first filed a motion for reconsideration of the 30 September 2004 order of the Office of the President. They cannot prematurely resort to a petition for *certiorari* on the wrong assumption that a plain reading of the 30 September 2004 order hinted that it was already final and executory. The parties are presumed to know the hornbook rule that judgments become final and executory only upon the lapse of the reglementary period to appeal or to file a motion for reconsideration without any appeal or motion for reconsideration having been made.

Petitioners submit they no longer filed a motion for reconsideration of the 30 September 2004 order because it would have been useless. Petitioners point out that the 30 September 2004 order warned that no further pleadings would be entertained. We are not convinced that this constitutes an exception to the rule on exhaustion of administrative remedies. Petitioners may

[21] *Marawi Marantao General Hospital, Inc. v. Court of Appeals*, *supra*.

[22] *Gonzales v. Court of Appeals*, 409 Phil. 684 (2001).

not arrogate to themselves the determination of whether a motion for reconsideration is necessary or not.[23] The language of the order notwithstanding, petitioners are bound by procedural rules and may not disregard the same on a wrong assumption that a motion for reconsideration might no longer be entertained. Even so, they should have awaited the denial of their motion for reconsideration before filing the extraordinary remedy of petition for *certiorari*.

Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules. While the Court, in some instances, allows a relaxation in the application of the rules, this was never intended to forge a bastion for erring litigants to violate the rules with impunity. It is true that litigation is not a game of technicalities, but it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.[24]

The procedural shortcut taken by petitioners finds no justification either in law or in jurisprudence. It is fatal to their cause of action. Accordingly, we rule that the Court of Appeals committed no error in dismissing for prematurity the petition for *certiorari* and *mandamus* filed by petitioners.

As to the merits of the case, the question of whether petitioners owned landholdings used for residential, commercial, industrial, or other urban purposes from which they derived adequate income is a question of fact. In a petition for review under Rule 45 of the Rules of Court, only questions of law, not of fact, may be raised before this Court. Well-settled is the rule that this Court is not a trier of facts. It is not this Court's function to re-examine the respective sets of evidence submitted by the parties.[25]

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

[24] *Asian Spirit Airlines v. Spouses Bautista*, 491 Phil. 476 (2005).

[25] *Land Bank of the Philippines v. Chico*, G.R. No. 168453, 13 March 2009, 581 SCRA 226.

As this case involves the application of P.D. No. 27 and LOI No. 474, the DAR Secretary, owing to his agrarian expertise, is in a better position to make a final determination whether petitioners' landholdings may be subject of exclusion from operation land transfer or retention. This Court need not weigh anew the evidence submitted by the parties and supplant the findings of fact by the DAR Secretary, especially when such findings are fully supported by evidence consisting of certifications issued by the Office of the Provincial Assessor of Bataan and the various certificates of title on record.

WHEREFORE, we *DENY* the petition for review. We *AFFIRM* the 7 January 2005 and 17 June 2005 Resolutions of the Court of Appeals in CA-G.R. No. 87584.

Costs against petitioners.

SO ORDERED.

Brion, Del Castillo, Abad, and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 169202. March 5, 2010]

MARIA VIRGINIA V. REMO, *petitioner, vs.* **THE HONORABLE SECRETARY OF FOREIGN AFFAIRS,** *respondent.*

SYLLABUS

1. CIVIL LAW; USE OF SURNAME; A MARRIED WOMAN HAS AN OPTION, BUT NOT DUTY, TO USE THE SURNAME OF THE HUSBAND IN ANY OF THE WAYS PROVIDED BY ARTICLE 370 OF THE CIVIL CODE; APPLICATION IN CASE AT BAR.— We agree with petitioner

that the use of the word "may" in the above provision indicates that the use of the husband's surname by the wife is permissive rather than obligatory. This has been settled in the case of *Yasin v. Honorable Judge Shari'a District Court.* In *Yasin*, petitioner therein filed with the Shari'a District Court a "Petition to resume the use of maiden name" in view of the dissolution of her marriage by divorce under the Code of Muslim Personal Laws of the Philippines, and after marriage of her former husband to another woman. In ruling in favor of petitioner therein, the Court explained that: When a woman marries a man, she need not apply and/or seek judicial authority to use her husband's name by prefixing the word "Mrs." before her husband's full name or by adding her husband's surname to her maiden first name. The law grants her such right (Art. 370, Civil Code). Similarly, when the marriage ties or *vinculum* no longer exists as in the case of death of the husband or divorce as authorized by the Muslim Code, the widow or divorcee need not seek judicial confirmation of the change in her civil status in order to revert to her maiden name as **the use of her former husband's name is optional and not obligatory for her (Tolentino, Civil Code, p. 725, 1983 ed.; Art. 373, Civil Code). When petitioner married her husband, she did not change her name but only her civil status.** Neither was she required to secure judicial authority to use the surname of her husband after the marriage as no law requires it. Clearly, a married woman has an option, but not a duty, to use the surname of the husband in any of the ways provided by Article 370 of the Civil Code. She is therefore allowed to use not only any of the three names provided in Article 370, but also her maiden name upon marriage. She is not prohibited from continuously using her maiden name once she is married because when a woman marries, she does not change her name but only her civil status. Further, this interpretation is in consonance with the principle that surnames indicate descent.

2. ID.; ID.; ONCE A MARRIED WOMAN OPTED TO ADOPT THE HUSBAND'S SURNAME IN HER PASSPORT SHE MAY NOT REVERT TO THE USE OF HER MAIDEN NAME; EXCEPTIONS.— The conflict between Article 370 of the Civil Code and Section 5(d) of RA 8239 is more imagined than real. RA 8239, including its implementing rules and regulations, does not prohibit a married woman from using

her maiden name in her passport. In fact, in recognition of this right, the DFA allows a married woman who applies for a passport for the first time to use her maiden name. Such an applicant is not required to adopt her husband's surname. In the case of renewal of passport, a married woman may either adopt her husband's surname or continuously use her maiden name. If she chooses to adopt her husband's surname in her new passport, the DFA additionally requires the submission of an authenticated copy of the marriage certificate. Otherwise, if she prefers to continue using her maiden name, she may still do so. The DFA will not prohibit her from continuously using her maiden name. However, once a married woman opted to adopt her husband's surname in her passport, she may not revert to the use of her maiden name, except in the cases enumerated in Section 5(d) of RA 8239. These instances are: (1) death of husband, (2) divorce, (3) annulment, or (4) nullity of marriage. Since petitioner's marriage to her husband subsists, she may not resume her maiden name in the replacement passport. Otherwise stated, a married woman's reversion to the use of her maiden name must be based only on the severance of the marriage.

3. POLITICAL LAW; PHILIPPINE PASSPORT; DEFINED; ACQUISITION OF PHILIPPINE PASSPORT IS A PRIVILEGE.— The acquisition of a Philippine passport is a privilege. The law recognizes the passport applicant's constitutional right to travel. However, the State is also mandated to protect and maintain the integrity and credibility of the passport and travel documents proceeding from it as **a Philippine passport remains at all times the property of the Government.** The holder is merely a possessor of the passport as long as it is valid and the same may not be surrendered to any person or entity other than the government or its representative. As the OSG correctly pointed out: [T]he issuance of passports is impressed with public interest. A passport is an official document of identity and nationality issued to a person intending to travel or sojourn in foreign countries. It is issued by the Philippine government to its citizens requesting other governments to allow its holder to pass safely and freely, and in case of need, to give him/her aid and protection. x x x Viewed in the light of the foregoing, it is within respondent's competence to regulate any amendments intended to be made

therein, including the denial of unreasonable and whimsical requests for amendments such as in the instant case.

4. STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; SPECIAL LAW PREVAILS OVER GENERAL LAW; EXEMPLIFIED. – A basic tenet in statutory construction is that a special law prevails over a general law, thus: [I]t is a familiar rule of statutory construction that to the extent of any necessary repugnancy between a general and a special law or provision, the latter will control the former without regard to the respective dates of passage.

5. ID.; ID.; AN IMPLIED REPEAL IS DISFAVORED. – Well-entrenched is the rule that an implied repeal is disfavored. The apparently conflicting provisions of a law or two laws should be harmonized as much as possible, so that each shall be effective. For a law to operate to repeal another law, the two laws must actually be inconsistent. The former must be so repugnant as to be irreconcilable with the latter act. This petitioner failed to establish.

APPEARANCES OF COUNSEL

Zamora Poblador Vasquez & Bretaña for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] of the 27 May 2005 Decision[2] and 2 August 2005 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 87710. The Court of Appeals affirmed the decision of the Office of the President, which in

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

[2] *Rollo*, pp. 37-44. Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Rosmari D. Carandang and Monina Arevalo Zenarosa, concurring.

[3] *Id.* at 35.

turn affirmed the decision of the Secretary of Foreign Affairs denying petitioner's request to revert to the use of her maiden name in her replacement passport.

The Facts

Petitioner Maria Virginia V. Remo is a married Filipino citizen whose Philippine passport was then expiring on 27 October 2000. Petitioner being married to Francisco R. Rallonza, the following entries appear in her passport: "Rallonza" as her surname, "Maria Virginia" as her given name, and "Remo" as her middle name. Prior to the expiry of the validity of her passport, petitioner, whose marriage still subsists, applied for the renewal of her passport with the Department of Foreign Affairs (DFA) office in Chicago, Illinois, U.S.A., with a request to revert to her maiden name and surname in the replacement passport.

Petitioner's request having been denied, Atty. Manuel Joseph R. Bretana III, representing petitioner, wrote then Secretary of Foreign Affairs Domingo Siason expressing a similar request.

On 28 August 2000, the DFA, through Assistant Secretary Belen F. Anota, denied the request, stating thus:

> This has reference to your letter dated 17 August 2000 regarding one Ms. Maria Virginia V. Remo who is applying for renewal of her passport using her maiden name.
>
> This Office is cognizant of the provision in the law that it is not obligatory for a married woman to use her husband's name. **Use of maiden name is allowed in passport application only if the married name has not been used in previous application.** The Implementing Rules and Regulations for Philippine Passport Act of 1996 clearly defines the conditions when a woman applicant may revert to her maiden name, that is, only in cases of annulment of marriage, divorce and death of the husband. Ms. Remo's case does not meet any of these conditions.[4] (Emphasis supplied)

Petitioner's motion for reconsideration of the above-letter resolution was denied in a letter dated 13 October 2000.[5]

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[4] *Id.* at 49.

[5] *Id.* at 50.

On 15 November 2000, petitioner filed an appeal with the Office of the President.

On 27 July 2004, the Office of the President dismissed the appeal[6] and ruled that Section 5(d) of Republic Act No. 8239 (RA 8239) or the *Philippine Passport Act of 1996* "offers no leeway for any other interpretation than that only in case of divorce, annulment, or declaration [of nullity] of marriage may a married woman revert to her maiden name for passport purposes." The Office of the President further held that in case of conflict between a general and special law, the latter will control the former regardless of the respective dates of passage. Since the Civil Code is a general law, it should yield to RA 8239.

On 28 October 2004, the Office of the President denied the motion for reconsideration.[7]

Petitioner filed with the Court of Appeals a petition for review under Rule 43 of the Rules of Civil Procedure.

In its Decision of 27 May 2005, the Court of Appeals denied the petition and affirmed the ruling of the Office of the President. The dispositive portion of the Court of Appeals' decision reads:

> WHEREFORE, premises considered, the petition is DENIED, and the resolution dated July 27, 2004, and the order dated October 28, 2004 of the Office of the President in O.P. Case No. 001-A-9344 are hereby AFFIRMED.
>
> SO ORDERED.[8]

Petitioner moved for reconsideration which the Court of Appeals denied in its Resolution dated 2 August 2005.

Hence, this petition.

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[6] *Id.* at 45-47.

[7] *Id.* at 48.

[8] *Id.* at 44.

The Court of Appeals' Ruling

The Court of Appeals found no conflict between Article 370 of the Civil Code[9] and Section 5(d) of RA 8239.[10] The Court of Appeals held that for passport application and issuance purposes, RA 8239 limits the instances when a married woman applicant may exercise the option to revert to the use of her maiden name such as in a case of a divorce decree, annulment or declaration of nullity of marriage. Since there was no showing that petitioner's marriage to Francisco Rallonza has been annulled, declared void or a divorce decree has been granted to them, petitioner cannot simply revert to her maiden name in the replacement passport after she had adopted her husband's surname in her old passport. Hence, according to the Court of Appeals, respondent was justified in refusing the request of petitioner to revert to her maiden name in the replacement passport.

The Issue

The sole issue in this case is whether petitioner, who originally used her husband's surname in her expired passport, can revert to the use of her maiden name in the replacement passport, despite the subsistence of her marriage.

The Ruling of the Court

The petition lacks merit.

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[9] Art. 370. A married woman may use:

(1) Her maiden first name and surname and add her husband's surname, or

(2) Her maiden first name and her husband's surname or

(3) Her husband's full name, but prefixing a word indicating that she is his wife, such as "Mrs."

[10] Section 5(d) for RA 8239 provides: In case of a woman who is married, separated, divorced or widowed or whose marriage has been annulled or declared by court as void, a copy of the certificate of marriage, court decree of separation, divorce or annulment or certificate of death of the deceased spouse duly issued and authenticated by the Office of the Civil Registrar General: *Provided,* That in case of a divorce decree, annulment or declaration of marriage as void, the woman applicant may revert to the use of her maiden name: *Provided, further,* That such divorce is recognized under existing laws of the Philippines;

Title XIII of the Civil Code governs the use of surnames. In the case of a married woman, Article 370 of the Civil Code provides:

> ART. 370. A married woman ***may*** use:
>
> 1. Her maiden first name and surname and add her husband's surname, or
> 2. Her maiden first name and her husband's surname, or
> 3. Her husband's full name, but prefixing a word indicating that she is his wife, such as "Mrs."

We agree with petitioner that the use of the word "may" in the above provision indicates that the use of the husband's surname by the wife is permissive rather than obligatory. This has been settled in the case of *Yasin v. Honorable Judge Shari'a District Court.*[11]

In *Yasin,*[12] petitioner therein filed with the Shari'a District Court a "Petition to resume the use of maiden name" in view of the dissolution of her marriage by divorce under the Code of Muslim Personal Laws of the Philippines, and after marriage of her former husband to another woman. In ruling in favor of petitioner therein, the Court explained that:

> When a woman marries a man, she need not apply and/or seek judicial authority to use her husband's name by prefixing the word "Mrs." before her husband's full name or by adding her husband's surname to her maiden first name. The law grants her such right (Art. 370, Civil Code). Similarly, when the marriage ties or *vinculum* no longer exists as in the case of death of the husband or divorce as authorized by the Muslim Code, the widow or divorcee need not seek judicial confirmation of the change in her civil status in order to revert to her maiden name as **the use of her former husband's name is optional and not obligatory for her (Tolentino, Civil Code, p. 725, 1983 ed.; Art. 373, Civil Code). When petitioner married her husband, she did not change her name but only her**

[11] 311 Phil. 696, 707 (1995). See also Bar Matter No. 1625, In re*: Petition to Use Maiden Name in Petition to Take the 2006 Bar Examinations, Josephine P. Uy-Timosa* (*En Banc* Resolution dated 18 July 2006).

[12] *Supra*.

civil status. Neither was she required to secure judicial authority to use the surname of her husband after the marriage as no law requires it. (Emphasis supplied)

Clearly, a married woman has an option, but not a duty, to use the surname of the husband in any of the ways provided by Article 370 of the Civil Code.[13] She is therefore allowed to use not only any of the three names provided in Article 370, but also her maiden name upon marriage. She is not prohibited from continuously using her maiden name once she is married because when a woman marries, she does not change her name but only her civil status. Further, this interpretation is in consonance with the principle that surnames indicate descent.[14]

In the present case, petitioner, whose marriage is still subsisting and who opted to use her husband's surname in her old passport, requested to resume her maiden name in the replacement passport arguing that no law prohibits her from using her maiden name. Petitioner cites *Yasin* as the applicable precedent. However, *Yasin* is not squarely in point with this case. Unlike in *Yasin*, which involved a Muslim divorcee whose former husband is already married to another woman, petitioner's marriage remains subsisting. Another point, *Yasin* did not involve a request to resume one's maiden name in a replacement passport, but a petition to resume one's maiden name in view of the dissolution of one's marriage.

The law governing passport issuance is RA 8239 and the applicable provision in this case is Section 5(d), which states:

Sec. 5. *Requirements for the Issuance of Passport*. — No passport shall be issued to an applicant unless the Secretary or his duly authorized representative is satisfied that the applicant is a Filipino citizen who has complied with the following requirements: x x x

(d) In case of a woman who is married, separated, divorced or widowed or whose marriage has been annulled or declared by court as void, a copy of the certificate of marriage, court decree of

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[13] TOLENTINO, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES*, Vol. 1 (1990 edition), p. 675.

[14] *Id*.

separation, divorce or annulment or certificate of death of the deceased spouse duly issued and authenticated by the Office of the Civil Registrar General: ***Provided***, **That in case of a divorce decree, annulment or declaration of marriage as void, the woman applicant may revert to the use of her maiden name: *Provided, further***, That such divorce is recognized under existing laws of the Philippines; x x x (Emphasis supplied)

The Office of the Solicitor General (OSG), on behalf of the Secretary of Foreign Affairs, argues that the highlighted proviso in Section 5(d) of RA 8239 "limits the instances when a married woman may be allowed to revert to the use of her maiden name in her passport." These instances are death of husband, divorce decree, annulment or nullity of marriage. Significantly, Section 1, Article 12 of the Implementing Rules and Regulations of RA 8239 provides:

The passport can be amended only in the following cases:

a) Amendment of woman's name due to marriage;

b) Amendment of woman's name due to death of spouse, annulment of marriage or divorce initiated by a foreign spouse; or

c) Change of surname of a child who is legitimated by virtue of a subsequent marriage of his parents.

Since petitioner's marriage to her husband subsists, placing her case outside of the purview of Section 5(d) of RA 8239 (as to the instances when a married woman may revert to the use of her maiden name), she may not resume her maiden name in the replacement passport.[15] This prohibition, according to petitioner, conflicts with and, thus, operates as an implied repeal of Article 370 of the Civil Code.

Petitioner is mistaken. The conflict between Article 370 of the Civil Code and Section 5(d) of RA 8239 is more imagined than real. RA 8239, including its implementing rules and regulations, does not prohibit a married woman from using her maiden name in her passport. In fact, in recognition of this

[15] *Rollo*, pp. 264-265.

right, the DFA allows a married woman who applies for a passport for the first time to use her maiden name. Such an applicant is not required to adopt her husband's surname.[16]

In the case of renewal of passport, a married woman may either adopt her husband's surname or continuously use her maiden name. If she chooses to adopt her husband's surname in her new passport, the DFA additionally requires the submission of an authenticated copy of the marriage certificate. Otherwise, if she prefers to continue using her maiden name, she may still do so. The DFA will not prohibit her from continuously using her maiden name.[17]

However, once a married woman opted to adopt her husband's surname in her passport, she may not revert to the use of her maiden name, except in the cases enumerated in Section 5(d) of RA 8239. These instances are: (1) death of husband, (2) divorce, (3) annulment, or (4) nullity of marriage. Since petitioner's marriage to her husband subsists, she may not resume her maiden name in the replacement passport. Otherwise stated, a married woman's reversion to the use of her maiden name must be based only on the severance of the marriage.

Even assuming RA 8239 conflicts with the Civil Code, the provisions of RA 8239 which is a special law specifically dealing with passport issuance must prevail over the provisions of Title XIII of the Civil Code which is the general law on the use of surnames. A basic tenet in statutory construction is that a special law prevails over a general law,[18] thus:

[I]t is a familiar rule of statutory construction that to the extent of any necessary repugnancy between a general and a special law or

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[16] See http://dfa.gov.ph/main/index.php/consular-services/passport.

[17] See http://dfa.gov.ph/main/index.php/renewal-of-passport.

[18] *Sitchon v. Aquino*, 98 Phil. 458, 465 (1956); *Laxamana v. Baltazar*, 92 Phil. 32, 35 (1952); *De Joya v. Lantin*, 126 Phil. 286, 290 (1967); *Nepomuceno v. RFC*, 110 Phil. 42, 47 (1960).

provision, the latter will control the former without regard to the respective dates of passage.[19]

Moreover, petitioner's theory of implied repeal must fail. Well-entrenched is the rule that an implied repeal is disfavored. The apparently conflicting provisions of a law or two laws should be harmonized as much as possible, so that each shall be effective.[20] For a law to operate to repeal another law, the two laws must actually be inconsistent. The former must be so repugnant as to be irreconcilable with the latter act.[21] This petitioner failed to establish.

The Court notes that petitioner would not have encountered any problems in the replacement passport had she opted to continuously and consistently use her maiden name from the moment she was married and from the time she first applied for a Philippine passport. However, petitioner consciously chose to use her husband's surname before, in her previous passport application, and now desires to resume her maiden name. If we allow petitioner's present request, definitely nothing prevents her in the future from requesting to revert to the use of her husband's surname. Such unjustified changes in one's name and identity in a passport, which is considered superior to all other official documents,[22] cannot be countenanced. Otherwise, undue confusion and inconsistency in the records of passport holders will arise. Thus, for passport issuance purposes, a married woman, such as petitioner, whose marriage subsists, may not change her family name at will.

The acquisition of a Philippine passport is a privilege. The law recognizes the passport applicant's constitutional right to

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[19] *Lagman v. City of Manila*, 123 Phil. 1439, 1447 (1966) citing *Cassion v. Banco Nacional Filipino*, 89 Phil. 560, 561 (1951).

[20] *Valera v. Tuason, Jr.*, 80 Phil. 823, 827 (1948); *Republic v. Asuncion*, G.R. No. 108208, 11 March 1994, 231 SCRA 211, 231, citing *Gordon v. Veridiano II*, G.R. No. 55230, 8 November 1988, 167 SCRA 51, 58-59; *People v. Antillon*, 200 Phil. 144, 149 (1982).

[21] *U.S. v. Palacio*, 33 Phil. 208 (1916).

[22] Section 19, RA 8239.

travel. However, the State is also mandated to protect and maintain the integrity and credibility of the passport and travel documents proceeding from it[23] as **a Philippine passport remains at all times the property of the Government.** The holder is merely a possessor of the passport as long as it is valid and the same may not be surrendered to any person or entity other than the government or its representative.[24]

As the OSG correctly pointed out:

> [T]he issuance of passports is impressed with public interest. A passport is an official document of identity and nationality issued to a person intending to travel or sojourn in foreign countries. It is issued by the Philippine government to its citizens requesting other governments to allow its holder to pass safely and freely, and in case of need, to give him/her aid and protection. x x x
>
> Viewed in the light of the foregoing, it is within respondent's competence to regulate any amendments intended to be made therein, including the denial of unreasonable and whimsical requests for amendments such as in the instant case.[25]

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 27 May 2005 Decision and 2 August 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 87710.

SO ORDERED.

Brion, Del Castillo, Abad, and *Perez, JJ.*, concur.

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[23] See http://philippine-embassy.org.sg/index.cfm?GPID=9.

[24] Section 11, RA 8239.

[25] *Rollo,* p. 272.

SECOND DIVISION

[G.R. No. 169958. March 5, 2010]

DEPARTMENT OF JUSTICE SECRETARY RAUL M. GONZALEZ, BUREAU OF IMMIGRATION COMMISSIONER and BOARD OF COMMISSIONERS CHAIRMAN ALIPIO F. FERNANDEZ, JR., and IMMIGRATION ASSOCIATE COMMISSIONERS and BOARD OF COMMISSIONERS MEMBERS ARTHEL B. CARONONGAN, TEODORO B. DELARMENTE, JOSE D.L. CABOCHAN, and FRANKLIN Z. LITTUA, *petitioners, vs.* **MICHAEL ALFIO PENNISI,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; ONE-DAY DELAY IN FILING THE PETITION FOR REVIEW DOES NOT JUSTIFY DISMISSAL OF CASE; SUSTAINED.— A one-day delay does not justify the appeal's dismissal where no element of intent to delay the administration of justice could be attributed to the petitioner. The Court has ruled: The general rule is that the perfection of an appeal in the manner and within the period prescribed by law is, not only mandatory, but jurisdictional, and failure to conform to the rules will render the judgment sought to be reviewed final and unappealable. By way of exception, unintended lapses are disregarded so as to give due course to appeals filed beyond the reglementary period on the basis of strong and compelling reasons, such as serving the ends of justice and preventing a grave miscarriage thereof. The purpose behind the limitation of the period of appeal is to avoid an **unreasonable** delay in the administration of justice and to put an end to controversies. Respondent had a valid excuse for the late filing of the petition before the Court of Appeals. It is not disputed that there was a pending petition for prohibition before the trial court. Before filing the petition for review before the Court of Appeals, respondent had to withdraw the petition for prohibition before the trial court. The trial court granted the withdrawal of the petition only on 4 November 2004, the date of filing of the petition for review before the

Court of Appeals. Under the circumstances, we find the one-day delay in filing the petition for review excusable.

2. POLITICAL LAW; CONSTITUTIONAL LAW; CITIZENSHIP; CITIZENSHIP PROCEEDINGS; *RES JUDICATA*, WHEN APPLICABLE.— In *Go v. Ramos*, the Court ruled that citizenship proceedings are a class of its own and can be threshed out again and again as the occasion may demand. *Res judicata* may be applied in cases of citizenship only if the following concur: 1. a person's citizenship must be raised as a material issue in a controversy where said person is a party; 2. the Solicitor General or his authorized representative took active part in the resolution thereof; and 3. the finding or citizenship is affirmed by this Court.

3. ID.; ID.; ID.; ID.; THE COURTS ARE NOT PRECLUDED FROM REVIEWING FINDINGS OF THE BUREAU OF IMMIGRATION; RATIONALE.— [T]he courts are not precluded from reviewing the findings of the BI. Judicial review is permitted if the courts believe that there is substantial evidence supporting the claim of citizenship, so substantial that there are reasonable grounds for the belief that the claim is correct. When the evidence submitted by a deportee is conclusive of his citizenship, the right to immediate review should be recognized and the courts should promptly enjoin the deportation proceedings. Courts may review the actions of the administrative offices authorized to deport aliens and reverse their rulings when there is no evidence to sustain the rulings.

4. REMEDIAL LAW; EVIDENCE; REAL EVIDENCE; DOCUMENTS CONSISTING OF ENTRIES IN PUBLIC RECORDS MADE IN THE PERFORMANCE OF A DUTY BY A PUBLIC OFFICER ARE *PRIMA FACIE* EVIDENCE OF THE FACTS STATED THEREIN.— We agree with the Court of Appeals that while the affidavits of Soliman and Peralta might have cast doubt on the validity of Quintos' certificate of live birth, such certificate remains valid unless declared invalid by competent authority. The rule stands that "(d)ocuments consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts stated therein. x x x."

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Laogan & Trespeses Law Offices for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the 30 September 2005 Decision[2] of the Court of Appeals in CA-G.R. SP No. 87271.

The Antecedent Facts

The facts, gathered from the Court of Appeals' decision, are as follows:

Michael Alfio Pennisi (respondent) was born on 13 March 1975 in Queensland, Australia to Alfio Pennisi, an Australian national, and Anita T. Quintos (Quintos), allegedly a Filipino citizen. In March 1999, respondent filed a petition for recognition as Filipino citizen before the Bureau of Immigration (BI). Respondent submitted the following documents before the BI:

1. Certified photocopy of the certificate of birth of Quintos, and a certification issued by the Local Civil Registrar of San Antonio, Nueva Ecija stating that Quintos was born on 14 August 1949 of Filipino parents, Felipe M. Quintos and Celina G. Tomeda, in Panabingan, San Antonio, Nueva Ecija;
2. Certified true copy of the certificate of marriage of respondent's parents dated 9 January 1971, indicating the Philippines as Quintos' birthplace;
3. Certified true copy of Quintos' Australian certificate of registration of alien, indicating her nationality as Filipino;

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

[2] *Rollo*, pp. 31-43. Penned by Associate Justice Edgardo P. Cruz with Associate Justices Josefina Guevara-Salonga and Sesinando E. Villon, concurring.

4. Certified true copy of respondent's birth certificate stating that he was born on 13 March 1975 and indicating the Philippines as his mother's birthplace; and

5. Certified true copy of the letter dated 14 July 1999 of the Australian Department of Immigration and Multicultural Affairs, stating that as of 14 July 1999, Quintos has not been granted Australian citizenship.

On 17 February 2000, BI Associate Commissioner Alan Roullo Yap issued an order granting respondent's petition for recognition as Filipino citizen. In a 2nd Indorsement dated 28 February 2000, the Secretary of the Department of Justice (DOJ) disapproved the order. However, upon respondent's submission of additional documents, BI Commissioner Rufus B. Rodriguez granted the order as per Recognition Order No. 206679 dated 3 March 2000 which states:

> Finding the grounds cited in the instant petition for recognition as a citizen of the Philippines filed on behalf of the applicant to be well-founded and meritorious, we hereby authorize the recognition of MICHAEL ALFIO PENNISI as a citizen of the Philippines pursuant to Article III[,] Section 1, para. 2 of the 1973 Constitution.
>
> Henceforth, applicant shall be entitled to all the rights and privileges appurtenant thereto. Once this Order is affirmed by the Secretary of Justice and upon payment of the corresponding fees, he/she shall be issued an identification Certificate which shall indicate prominently thereon the date of affirmation.
>
> An Exit Clearance Certificate (ECC) fee shall also be assessed against the applicant whenever he/she departs for abroad using a foreign passport or travel documents.
>
> Give the applicant a copy of this Order.
>
> SO ORDERED.[3]

In a 2nd Indorsement dated 8 March 2000, the DOJ affirmed Recognition Order No. 206679, as follows:

> Respectfully returned to the Commissioner of Immigration, Manila, the within records relating to the request for reconsideration of

[3] *Rollo*, pp. 32-33.

this Department's 2nd Indorsement dated February 28, 2000, which disapproved the Order of that Office dated February 17, 2000 granting the petition for recognition as a Filipino citizen of MICHAEL ALFIO PENNISI.

The additional documents submitted (duly authenticated Certificate of Birth of the petitioner and Certificate of Marriage of his parents), together with the original records, satisfactorily establish that petitioner was born in Queensland, Australia, on March 13, 1975, the legitimate issue of the spouses Anita T. Quintos, a natural-born Filipino citizen, and Alfio Pennisi, an Australian national, and may, therefore, be deemed a citizen of the Philippines pursuant to Section 1(2), Article III of the 1973 Constitution, in relation to Section 1(2), Article IV of the present Constitution.

Wherefore, the instant request for reconsideration is hereby granted and the above-mentioned Order of that Office dated February 17, 2000 granting the petition for recognition as a Filipino citizen of Michael Alfio Pennisi is now AFFIRMED.

This supersedes our aforesaid 2nd Indorsement dated February 28, 2000 on the same subject matter.[4]

Thereafter, respondent was drafted and played for the Red Bull, a professional basketball team in the Philippine Basketball Association (PBA).

On 7 August 2003, the Senate Committees on Games, Amusement and Sports and on Constitutional Amendments (Senate Committees) jointly submitted Committee Report No. 256[5] (Committee Report) recommending, among other things, that (1) the BI conduct summary deportation proceedings against several Filipino-foreign PBA players, including respondent; and (2) the DOJ Secretary conduct an immediate review of all orders of recognition. Respondent was included in the list on the basis of the following findings of the Senate Committees:

F. Michael Alfio Pennisi was able to present before the BI and the committees, the documents required in granting recognition of

[4] *Id.* at 33-34.

[5] *Id.* at 45-56.

Philippine citizenship, particularly the birth certificate of his Filipino mother, Anita Tomeda Quintos;

However, a verification on the authenticity of the above documents reveals highly suspicious circumstances.

His alleged mother and other relatives, specifically the parents of the former, namely: Felipe M. Quintos and Celina G. Tomeda, who were mentioned in his application for recognition of Philippine citizenship in the BI, are not known and have never existed in Panabingan, San Antonio, Nueva Ecija.

According to the affidavits executed by Barangay Captain Ramon Soliman and Barangay Treasurer Condrado P. Peralta of the abovementioned place, there are no Quintoses or Tomedas that have lived or have resided in the said *barangay*.

Both *barangay* officials further claimed that even in their census or master list of voters, the family names of Quintos or Tomedas do not exist.

His mother's certificate of birth in the civil registrar of San Antonio, Nueva Ecija was issued on the basis of an application for late registration, which is ten (10) years after the date of birth.

Thereafter, the DOJ issued Department Order No. 412 dated 21 September 2004 creating a special committee, with Chief State Counsel Ricardo V. Paras as Chairperson, to investigate the citizenship of Filipino-foreign players in the PBA. The special committee required respondent to submit a position paper in connection with the investigation. On 18 October 2004, the DOJ issued a resolution revoking respondent's certificate of recognition and directing the BI to begin summary deportation proceedings against respondent and other Filipino-foreign PBA players.

On 20 October 2004, respondent and Davonn Harp (Harp), another Filipino-foreign PBA player, filed a petition for prohibition with an application for temporary restraining order and preliminary injunction before the Regional Trial Court of Pasig City, Branch 268 (trial court), to enjoin the DOJ and BI from instituting summary deportation proceedings against them. On even date, respondent received a letter from the BI directing

him to submit, within five days from notice, a memorandum in connection with the deportation proceedings being conducted against him. Respondent submitted his memorandum on 25 October 2004.

In a hearing before the trial court on the same date, the Office of the Solicitor General, representing the DOJ and BI, manifested that respondent would not be subjected to summary deportation and that he would be given an opportunity to present evidence of his Filipino citizenship in a full-blown trial on the merits. However, in a Summary Deportation[6] Order dated 26 October 2004, the BI directed the deportation of several Filipino-foreign PBA players, including respondent. Respondent and Harp withdrew their petition before the trial court without prejudice, which the trial court granted in its order of 4 November 2004. Respondent filed a petition for review, with an application for temporary restraining order and preliminary injunction, before the Court of Appeals.

The Decision of the Court of Appeals

In its 30 September 2005 Decision, the Court of Appeals granted the petition.

The Court of Appeals noted that respondent's citizenship was previously recognized by the BI and DOJ and it was only after four years that the BI and DOJ reversed themselves in view of the finding in the Committee Report. The Court of Appeals ruled that the "highly suspicious circumstances" stated in the Committee Report referred to the affidavits of Barangay Captain Ramon Soliman (Soliman) and Barangay Treasurer Condrado P. Peralta (Peralta) that there were no Quintoses or Tomedas in the birthplace of respondent's mother and that no such surnames appeared in the census or master list of voters. The Court of Appeals ruled that apart from the affidavits, no other evidence was presented to prove that Quintos was not a Filipino citizen or that her birth certificate was false or fraudulently obtained. The Court of Appeals ruled that respondent's documentary evidence before the BI and DOJ have more probative

[6] *Id.* at 138-145.

value and must prevail over the allegations of Soliman and Peralta. The Court of Appeals further noted that among the documents presented by respondent were authenticated documents issued by the Commonwealth of Australia attesting that Quintos consistently presented herself to be a Filipino citizen. The Court of Appeals ruled that the authenticity of the documents issued by the Australian government was never questioned nor put in issue. The Court of Appeals further ruled that the fact that the Quintoses and Tomedas were not included in the census or master list of voters did not automatically render Quintos' birth certificate invalid. The Court of Appeals ruled that unless a public document is declared invalid by competent authority, it should be presumed valid and binding for all intents and purposes.

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

> WHEREFORE, the instant petition is GRANTED. The assailed resolution of the Department of Justice dated October 18, 2004 and summary deportation order of the Bureau of Immigration dated October 26, 2004 are hereby ANNULLED and SET ASIDE.
>
> SO ORDERED.[7]

Hence, the petition before this Court.

The Issue

Petitioners raise this sole issue in their Memorandum:[8]

Whether the Court of Appeals committed a reversible error in finding that respondent is a Filipino citizen.

Petitioners allege that respondent's petition was filed out of time. Petitioners further allege that respondent's voluntary departure from the Philippines had rendered the petition moot. Finally, petitioners allege that the cancellation of respondent's certificate of recognition as a Filipino citizen and the issuance of the deportation order against him are valid.

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[7] *Id.* at 43.

[8] *Id.* at 341-357.

The Ruling of this Court

The petition has no merit.

Late Filing of Petition

Petitioners allege that the petition filed before the Court of Appeals should have been dismissed for late filing. Petitioners allege that respondent only had 15 days from 19 October 2004, the date of receipt of the 18 October 2004 DOJ Resolution, within which to file a petition for review before the Court of Appeals. However, respondent filed his petition only on 4 November 2004, or one day beyond the reglementary period for filing the petition for review. Petitioners allege that when the petition was filed, the 18 October 2004 DOJ Resolution had already lapsed into finality.

We do not agree.

A one-day delay does not justify the appeal's dismissal where no element of intent to delay the administration of justice could be attributed to the petitioner.[9] The Court has ruled:

> The general rule is that the perfection of an appeal in the manner and within the period prescribed by law is, not only mandatory, but jurisdictional, and failure to conform to the rules will render the judgment sought to be reviewed final and unappealable. By way of exception, unintended lapses are disregarded so as to give due course to appeals filed beyond the reglementary period on the basis of strong and compelling reasons, such as serving the ends of justice and preventing a grave miscarriage thereof. The purpose behind the limitation of the period of appeal is to avoid an **unreasonable** delay in the administration of justice and to put an end to controversies.[10]

Respondent had a valid excuse for the late filing of the petiiton before the Court of Appeals. It is not disputed that there was apending petition for prohibition before the trial court. Before filing the petition for review before the Court of Appeals,

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[9] *Philippine Amusement and Gaming Corporation v. Angara*, G.R. No. 142937, 15 November 2005, 475 SCRA 41.

[10] *Republic Cement Corporation v. Guinmapang*, G.R. No. 168910, 24 August 2009. Emphasis in the original.

respondent had to withdraw the petition for prohibition before the trial court. The trial court granted the withdrawal of the petition only on 4 November 2004, the date of filing of the petition for review before the Court of Appeals. Under the circumstances, we find the one-day delay in filing the petition for review excusable.

We reiterate:

> Rules of procedure are merely tools designed to facilitate the attainmnet of justice. If the application of the Rules would tend to frustrate rather than to promote justice, it is always within our power to suspend the rules or except a particular case from their operation. Law and jurisprudence grant to courts the prerogative to relax compliance with the procedural rules, even the most mandatory in character, mindful of the duty to reconcile the need to put an end to litigation speedily and the parties' right to an opportunity to be heard.[11]

Hence, we sustain the Court of Appeals in accepting the petition for review although it was filed one-day late.

Mootness of the Petition

Petitioners allege that the petition had been rendered moot because respondent already left the country.

Petitioners cited *Lewin v. the Deportation Board*[12] where the court ruled:

> x x x. Even if the deportation case is to proceed and even if this Court will decide this appeal on the merits, there would be no practical value or effect of such action upon Lewin, because he has already left the country. Consequently, the issues involved herein have become moot and academic.[13]

However, we agree with respondent that the factual circumstances in *Lewin* are different from the case before us.

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[11] *Sta. Ana v. Carpo,* G.R. No. 164340, 28 November 2008, 572 SCRA 463, 477.

[12] No. L-16872, 31 January 1962, 4 SCRA 307.

[13] *Id.* at 311.

In *Lewin*, petitioner was an alien who entered the country as a temporary visitor, to stay for only 50 days. He prolonged his stay by securing several extensions. Before his last extension expired, he voluntarily left the country, upon filing a bond, without any assurance from the Deportation Board that he would be admitted to the country upon his return. The Court found that he did not return to the country, and at the time he was living in another country. The Court ruled that Lewin's voluntary departure from the country, his long absence, and his status when he entered the country as a temporary visitor rendered academic the question of his deportation as an undesirable alien.

In this case, respondent, prior to his deportation, was recognized as a Filipino citizen. He manifested his intent to return to the country because his Filipino wife and children are residing in the Philippines. The filing of the petitions before the Court of Appeals and before this Court showed his intention to prove his Filipino lineage and citizenship, as well as the error committed by petitioners in causing his deportation from the country. He was precisely questioning the DOJ's revocation of his certificate of recognition and his summary deportation by the NBI.

Therefore, we rule that respondent's deportation did not render the present case moot.

Validity of the Cancellation of Respondent's Certicate of Recognition and the Issuance of Deportation Ordered by the BID

Petitioners allege that the DOJ adduced substantial evidence warranting the revocation of respondent's certificate of recognition and the filing of the deportation proceedings against him. Petitioners likewise allege that the certificate of recognition did not attain finality as claimed by respondent.

We agree with petitioners that the issuance of certificate of recognition to respondent has not attained finality. In *Go v. Ramos*,[14] the Court ruled that citizenship proceedings are a class of its own and can be threshed out again and again as the occasion

[14] G.R. No. 167569, 4 September 2009.

may demand. *Res judicata* may be applied in cases of citizenship only if the following concur:

1. a person's citizenship must be raised as a material issue in a controversy where said person is a party;
2. the Solicitor General or his authorized representative took active part in the resolution thereof; and
3. the finding or citizenship is affirmed by this Court.[15]

However, the courts are not precluded from reviewing the findings of the BI. Judicial review is permitted if the courts believe that there is substantial evidence supporting the claim of citizenship, so substantial that there are reasonable grounds for the belief that the claim is correct.[16] When the evidence submitted by a deportee is conclusive of his citizenship, the right to immediate review should be recognized and the courts should promptly enjoin the deportation proceedings.[17] Courts may review the actions of the administrative offices authorized to deport aliens and reverse their rulings when there is no evidence to sustain the rulings.[18]

In this case, we sustain the Court of Appeals that the evidence presented before the BI and the DOJ, *i.e.*, (1) certified photocopy of the certificate of birth of Quintos, and a certification issued by the Local Civil Registrar of San Antonio, Nueva Ecija stating that Quintos was born on 14 August 1949 of Filipino parents, Felipe M. Quintos and Celina G. Tomeda, in Panabingan, San Antonio, Nueva Ecija; (2) certified true copy of the certificate of marriage of respondent's parents dated 9 January 1971, indicating the Philippines as Quintos' birthplace; (3) certified true copy of Quintos' Australian certificate of registration of alien, indicating her nationality as Filipino; (4) certified true copy of respondent's birth certificate stating that he was born 13 March 1975 and indicating the Philippines as

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[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Domingo v. Scheer,* 466 Phil. 235 (2004).

his mother's birthplace; and (5) certified true copy of the letter dated 14 July 1999 of the Australian Department of Immigration and Multicultural Affairs, stating that as of 14 July 1999, Quintos has not been granted Australian citizenship, have more probative value and must prevail over the statements of Soliman and Peralta before the Senate Committees. The Committee Report on respondent stated:

> F. **Michael Alfio Pennisi** was able to present before the BI and the committees, the documents required in granting recognition of Philippine citizenship, particularly the birth certificate of his Filipino mother, Anita Tomeda Quintos.
>
> However, a verification of the authenticity of the above documents reveals highly suspicious circumstances.
>
> His alleged mother and other relatives, specifically the parents of the former, namely: Felipe M. Quintos and Celina G. Tomeda, who were mentioned in his application for recognition of Philippine citizenship in the BI, are not known and have never existed in Panabingan, San Antonio, Nueva Ecija.
>
> According to the affidavits executed by Barangay Captain Ramon Soliman and Barangay Treasurer Condrado P. Peralta of the abovementioned place, there are no Quintoses or Tomedas that have lived or have resided in the said barangay.
>
> Both *barangay* officials further claimed that even in the census or master list of voters, the family names of Quintos or Tomedas do not exist.
>
> His mother's certificate of birth in the civil registrar of San Antonio, Nueva Ecija was issued on the basis of an application of late registration, which is ten (10) years after the date of birth.[19]

The memorandum[20] of the DOJ special committee also cited only the affidavits of Soliman and Peralta and then concluded that the evidence presented before the Senate Committees had overcome the presumption that the entries in the certificate of

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[19] *Rollo,* p. 51.

[20] *Id.* at 64-111.

live birth of Quintos are *prima facie* evidence of the facts stated therein.[21]

We agree with the Court of Appeals that while the affidavits of Soliman and Peralta might have cast doubt on the validity of Quintos' certificate of live birth, such certificate remains valid unless declared invalid by competent authority. The rule stands that "(d)ocuments consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts stated therein. x x x."[22]

We further sustain the Court of Appeals that there could be reasons why the Quintoses and Tomedas were not included in the census, such as they could have been mere transients in the place. As for their absence in the master's list of voters, they could have failed to register themselves as voters. The late registration of Quintos' certificate of live birth was made 10 years after her birth and not anytime near the filing of respondent's petition for recognition as Filipino citizen. As such, it could not be presumed that the certificate's late filing was meant to use it fraudulently. Finally, the Australian Department of Immigration and Multicultural Affairs itself attested that as of 14 July 1999, Quintos has not been granted Australian citizenship. Respondent submitted a certified true copy of Quintos' Australian certificate of registration of alien, indicating her nationality as Filipino. These pieces of evidence should prevail over the affidavits submitted by Soliman and Peralta to the Senate Committees.

WHEREFORE, we *DENY* the petition. WE *AFFIRM* the 30 September 2005 decision of the Court of Appeals in CA-G.R. SP No. 87271.

SO ORDERED.

Brion, Del Castillo, Abad, and *Perez, JJ.,* concur.

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

[22] Section 23, Rule 132 of the Rules of Court.

SECOND DIVISION

[G.R. No. 178274. March 5, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **AURELIO MATUNHAY,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT; ENTITLED TO RESPECT; EXCEPTION.— The Court will not disturb the findings of the trial court on the credibility of witnesses, as it was in the better position to observe their candor and behavior on the witness stand. Evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court; it had the unique opportunity to observe the witnesses and their demeanor, conduct, and attitude, especially under cross-examination. Its assessment is entitled to respect unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case.

2. CRIMINAL LAW; RAPE; THE LONE TESTIMONY OF THE VICTIM IF CREDIBLE IS ENOUGH TO SUSTAIN CONVICTION.— AAA's candid and straightforward narration of the two sexual assaults perpetrated on her deserves credence. The records show that she testified in a spontaneous and straightforward manner. As earlier stated, she never wavered in identifying the appellant despite the defense's grueling cross-examination. A young girl would not usually concoct a tale of defloration; publicly admit having been ravished and her honor tainted; allow the examination of her private parts; and undergo all the trouble and inconvenience, not to mention the trauma and scandal of a public trial, had she not in fact been raped and been truly moved to protect and preserve her honor, and motivated by the desire to obtain justice for the wicked acts committed against her. We see no plausible reason – and no evidence on this point has been adduced – showing why AAA should testify against the appellant, imputing to him the grave crime of rape if this crime did not happen. This Court has consistently held that where no evidence exists to show any

convincing reason or improper motive for a prosecution witness to testify falsely against the accused or implicate him in a serious offense, the testimony deserves faith and credit. So, also, the Court has repeatedly said that the lone testimony of the victim in a rape case, if credible, is enough to sustain a conviction.

3. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; THESE TWO DEFENSES ARE INHERENTLY WEAK AND MUST BE SUPPORTED BY CLEAR AND CONVINCING EVIDENCE IN ORDER TO BE BELIEVED.— Our judicial experience teaches us that denial and alibi are the common defenses in rape cases. Sexual abuse is denied on the allegation that the accused was somewhere else and could not have physically committed the crime. We have always held that these two defenses are inherently weak and must be supported by clear and convincing evidence in order to be believed. As negative defenses, they cannot prevail over the positive testimony of the complainant.

4. ID.; ID.; ALIBI; IT IS NOT ENOUGH FOR THE APPELLANT TO PROVE THAT HE WAS SOMEWHERE ELSE WHEN THE CRIME WAS COMMITTED HE MUST LIKEWISE DEMONSTRATE THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO HAVE BEEN AT THE CRIME SCENE AT THE TIME OF ITS COMMISSION.— For *alibi* to prosper it is not enough for the appellant to prove that he was somewhere else when the crime was committed; he must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission. In the present case, the appellant admitted that his place of work was "very near" the victim's house, and that it would just take a few minutes to get there. Considering the proximity of the appellant's place of work from the crime scene, we cannot accord the appellant's alibi – standing alone – any weight or value.

5. CRIMINAL LAW; RAPE; EVERY CHARGE OF RAPE IS A SEPARATE AND DISTINCT CRIME.— It is settled that each and every charge of rape is a separate and distinct crime that the law requires to be proven beyond reasonable doubt. The prosecution's evidence must pass the exacting test of moral

certainty that the law demands to satisfy the burden of overcoming the appellant's presumption of innocence.

6. ID.; ID.; PENALTY.— The Information for the rape committed in the last week of March 1998 failed to specifically allege the use of a deadly weapon in the commission of the rape. In light of this omission, we cannot appreciate this circumstance to increase the penalty; thus, the lower courts were correct in imposing the penalty of *reclusion perpetua*. With respect to the rape committed in the first week of May 1998, the Information specifically alleged the use of a deadly weapon – a bolo – in the commission of rape. Under Article 266-B quoted above, the use of a deadly weapon qualifies the rape, so that the imposable penalty is *reclusion perpetua* to death. Since *reclusion perpetua* and death are two indivisible penalties, Article 63 of the Revised Penal Code applies: when there are neither mitigating nor aggravating circumstances in the commission of the deed, as in this case, the lesser penalty shall be applied. The courts a *quo* were therefore also correct in imposing the penalty of *reclusion perpetua* on the appellant.

7. ID.; ID.; CIVIL INDEMNITY.— We affirm the CA's awards of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. The award of civil indemnity to the rape victim is mandatory upon the finding that rape took place. Moral damages, on the other hand, are awarded to rape victims without need of proof other than the fact of rape under the assumption that the victim suffered moral injuries from the experience she underwent. Separately from the above awards, we order the appellant to additionally pay the victim ₱30,000.00 as exemplary damages in accordance with an established ruling on this point.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

Public Attorney's Office for accused-appellant.

D E C I S I O N

BRION, *J.*:

This is an appeal from the June 7, 2006 decision of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 00166[1] affirming with modification the October 16, 2002 decision of the Regional Trial Court (*RTC*), Branch 51, Carmen, Bohol.[2] The RTC decision found appellant Aurelio Matunhay (*appellant*) guilty beyond reasonable doubt of six (6) counts of rape, and sentenced him to suffer the penalty of *reclusion perpetua* for each count.

The prosecution charged the appellant with seven (7) counts of rape, to which the appellant pleaded not guilty. Joint trial on the merits took place with the parties' consent.

Evidence for the Prosecution

AAA[3] declared on the witness stand that she had been raped seven (7) times by her uncle, herein appellant Aurelio Matunhay (*appellant*), when she was 14 years old. She became pregnant as a result of one of those rapes, and gave birth in November 1998.[4]

AAA recalled that in the **last week of March 1998**, the appellant threatened her with a bolo, and then struck her feet with a piece of wood. Thereafter, the appellant embraced and kissed her, and then undressed her. AAA struggled, but the appellant

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[1] Penned by Associate Justice Isaias P. Dicdican, and concurred in by Associate Justice Apolinario D. Bruselas, Jr., and Associate Justice Agustin S. Dizon; *rollo*, pp. 5-21.

[2] Penned by Executive Presiding Judge Patsita Sarmiento-Gamutan; CA *rollo*, pp. 27-45.

[3] The Court withholds the real name of the victim-survivor and uses fictitious initials instead to represent her. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate families or household members, are not to be disclosed; see *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] TSN, May 10, 2000, pp. 4-6.

went on top of her and inserted his penis into her vagina.[5] She became pregnant as a result of this incident.[6]

AAA further testified that the appellant had also raped her in **May 1998**. She recalled that she was in their house when the appellant threatened to kill her, and then removed her clothes and panty. Immediately after, the appellant removed his shorts, went on top of her, and inserted his penis into her vagina.[7]

AAA likewise stated that she was also raped on other occasions in January, March and June 1998, but could not remember the exact dates.[8] She discovered that she was pregnant when her mother, BBB, and her teacher brought her to a doctor for a medical examination. She disclosed to BBB that she had been raped by the appellant when the results of the medical examination showed that she was pregnant. Thereafter, BBB accompanied her to the police station to file a complaint against the appellant.[9]

On cross examination, AAA reiterated that the appellant had sexual intercourse with her in the months of January, March and May 1998. In all these incidents, the appellant had threatened her with a bolo. She confirmed that the appellant was the common-law husband of her mother. She denied having any romantic relationship with anyone before the appellant raped her.[10]

BBB, the mother of AAA, narrated that she learned about her daughter's pregnancy after her (AAA's) teacher brought her to a doctor for examination. AAA told her that the appellant was the father of the child after the pregnancy test yielded a positive finding. Thereafter, they went to a social worker, who, in turn, accompanied them to the chief of police.[11]

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[5] *Id.*, at 7-11.

[6] *Id.*, at 18-19.

[7] *Id.*, at 15-17.

[8] *Id.*, at 5.

[9] *Id.*, at 18-21.

[10] *Id.*, at 28-34.

[11] TSN, May 16, 2000, pp. 4-6.

BBB explained that her husband, CCC, was the appellant's brother and AAA's father. She became the appellant's common-law wife after accepting his (appellant's) offer to take care of her and her children after she separated from CCC. She wanted to kill the appellant when she discovered the rape.[12] CCC fetched her and AAA and brought them to Bukidnon after they filed a complaint against the appellant.[13]

Dr. Amalia Añana (*Dr. Añana*), the Municipal Health Officer of Carmen, Bohol, stated that she examined AAA on July 2, 1998, and found her to be pregnant. According to Dr. Añana, AAA was brought by her teacher after noticing that AAA's abdomen was getting bigger and that she was always sleeping in class.[14]

Evidence for the Defense

The appellant confirmed that AAA is his niece and is the daughter of his younger brother, CCC. He has a wife but they separated because of BBB. According to him, BBB offered to live with him because CCC beat her up.[15]

The appellant claimed that he supported AAA's schooling until high school. He often saw AAA's male visitors in their house. He denied raping AAA, and maintained that he was at home sleeping on May 22, 1997. He could not have raped AAA in December 1997; in January 1998; during the first and last weeks of March 1998; and in June 1998 because he was always at work and came home only at night. He got angry when he discovered AAA's pregnancy.[16]

The appellant further testified that AAA's boyfriend visited him in jail and told him that he (the boyfriend) was responsible for AAA's pregnancy. He claimed that BBB wanted to withdraw

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[12] *Id.*, at 8-10.

[13] *Id.*, at 15.

[14] TSN, November 16, 2000, pp. 3-7.

[15] TSN, March 28, 2001, pp. 4-5.

[16] *Id.*, at 6-9.

the case against him, although he (appellant) was not sure if BBB had executed any document evidencing the intended withdrawal.[17]

On cross examination, the appellant confirmed that BBB is the legal wife of his brother, CCC. He maintained that it was BBB who initiated their common-law relationship. He lived with BBB and AAA in Alegria after CCC had left them. He treated AAA like his own child; he paid for her food and clothing. He likewise insisted that AAA had a boyfriend.[18]

The appellant reiterated that he worked as a road maintenance worker in Nueva Fuerza, Carmen, Bohol on May 22, 1997. He only went home once a week although Nueva Fuerza was only about two (2) kilometers from Villaflor; he slept at a bunker in Sagbayan. He also maintained that he did not rape AAA in January 1998 and March 1998, because he was at work and did not go home on those dates.[19]

Alberto Josol (*Alberto*), the appellant's co-worker at YS Construction in Sagbayan, testified that he and the appellant stayed at the "bunkhouse" after work. The appellant went home on Sunday to get clothes, but returned in the afternoon.[20]

On cross-examination, Alberto admitted that although he worked with the appellant from January to May, they were not always together; at times they were assigned to different areas.[21]

The RTC Ruling

In its decision dated October 16, 2002, the RTC found the appellant guilty beyond reasonable doubt of six (6) counts of rape, and sentenced him to suffer the penalty of *reclusion perpetua* for each count. The RTC likewise ordered the appellant to pay the victim the amounts of ₱50,000.00 and ₱30,000.00 as civil

[17] *Id.*, at 10-12.

[18] TSN, April 23, 2001, pp. 2-8.

[19] *Id.*, at 10-16.

[20] TSN, September 12, 2001, pp. 4-10.

[21] *Id.*, at 10-13.

indemnity and moral damages, respectively, for each count of rape.

The RTC held that the exact date and time of the commission of the rape is not an essential element of the crime. That AAA could not remember the exact date of some of the rape incidents was due to the significant lapse of time between the dates of the rape and the victim's court testimony.

The RTC added that an examination of AAA's affidavit and her court testimony showed that she had been raped six (6) times by the appellant by using violence and intimidation on the following dates: December 1997;[22] first week of January 1998; first week of March 1998; last week of March 1998; first week of May 1998; and first week of June 1998. AAA was consistent in her narration, and did not waver during the cross examination.

Moreover, the RTC did not believe the appellant's alibi as he failed to show that it was physically impossible for him to be at the crime scene at the times and dates of the rapes. The RTC further disbelieved the appellant's claim that AAA's boyfriend caused her pregnancy, as the defense failed to adduce proof that a boyfriend ever existed. In addition, the defense failed to show that the victim was motivated by ill-will in testifying against the appellant.

The RTC did not impose the death penalty because the prosecution failed to prove AAA's minority. Article 335 of the Revised Penal Code requires the concurrence of minority and relationship to warrant the imposition of the death penalty.

The CA Decision

The CA affirmed the RTC decision but increased the moral damages awarded for each count of rape from ₱30,000.00 to ₱50,000.00.

The CA held that AAA positively identified the appellant as the person who had raped her. The CA accorded respect to the

[22] Records, pp. 4-7.

RTC's findings that the victim's testimony was credible since the trial court had the unique opportunity to observe her attitude, conduct, and demeanor.

The CA explained that the inconsistencies in AAA's testimony regarding the dates she was raped did not destroy her credibility; an honest witness is not always expected to give an error-free testimony considering the lapse of time and the frailty of human memory. The CA likewise disregarded the appellant's alibi and denial, as these defenses cannot prevail over the victim's positive identification.

The CA further explained that AAA's and BBB's initial attempt to abandon the case was due to lack of financial support. Nonetheless, AAA and BBB still vigorously pursued the case despite the distance between Bukidnon (where they resided) and Bohol (the site of the court hearings).

THE COURT'S RULING

We resolve to **affirm with modification** the June 7, 2006 decision of the Court of Appeals in CA-G.R. CR-HC No. 00166, as follows: (1) the appellant is found guilty of only two counts of rape; and (2) the appellant is further **ordered to pay** the victim ₱30,000.00 as exemplary damages for each count of rape.

Positive identification of the appellant

AAA, while recounting her unfortunate ordeal, positively identified the appellant as the person who had raped her on two (2) occasions in March and May 1998. She never wavered in this identification despite the defense's attempt to confuse her during cross-examination.

AAA narrated in detail how the appellant had raped her in the **last week of March 1998**. She testified that the appellant *threatened her with a bolo*, and then struck her feet with a piece of wood. Thereafter, the appellant embraced and kissed her, and then undressed her. AAA struggled, but the appellant went on top of her and *inserted his penis into her vagina*. She felt pain afterwards.

AAA also vividly described how the appellant had raped her in the **first week of May 1998**. She recalled that the appellant *threatened to kill her with a bolo*, and then removed her clothes and panty. The appellant then removed his own shorts. Thereafter, the appellant went on top of her, and *inserted his penis into her vagina*. AAA described her ordeal as "painful."

Subject to the observed paucity of evidence discussed below on the four other counts of rape, the Court will not disturb the findings of the trial court on the credibility of witnesses, as it was in the better position to observe their candor and behavior on the witness stand. Evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court; it had the unique opportunity to observe the witnesses and their demeanor, conduct, and attitude, especially under cross-examination. Its assessment is entitled to respect unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case.[23]

AAA's candid and straightforward narration of the two sexual assaults perpetrated on her deserves credence. The records show that she testified in a spontaneous and straightforward manner. As earlier stated, she never wavered in identifying the appellant despite the defense's grueling cross-examination. A young girl would not usually concoct a tale of defloration; publicly admit having been ravished and her honor tainted; allow the examination of her private parts; and undergo all the trouble and inconvenience, not to mention the trauma and scandal of a public trial, had she not in fact been raped and been truly moved to protect and preserve her honor, and motivated by the desire to obtain justice for the wicked acts committed against her. We see no plausible reason – and no evidence on this point has been adduced – showing why AAA should testify against the appellant, imputing to him the grave crime of rape if this crime did not happen. This Court has consistently held that where no evidence exists to show any convincing reason or improper motive for a prosecution witness to testify falsely against the accused or implicate him in a serious offense, the testimony deserves faith

[23] *People v. Tormis*, G.R. No. 183456, December 18, 2008, 574 SCRA 903.

and credit. So, also, the Court has repeatedly said that the lone testimony of the victim in a rape case, if credible, is enough to sustain a conviction.[24]

The Appellant's Defenses

For his defense, the appellant denied having raped AAA, and claims he was always at work in Nueva Fuerza, Carmen, Bohol. He also insists that AAA's boyfriend impregnated her.

Our judicial experience teaches us that denial and alibi are the common defenses in rape cases. Sexual abuse is denied on the allegation that the accused was somewhere else and could not have physically committed the crime. We have always held that these two defenses are inherently weak and must be supported by clear and convincing evidence in order to be believed. As negative defenses, they cannot prevail over the positive testimony of the complainant.

For *alibi* to prosper it is not enough for the appellant to prove that he was somewhere else when the crime was committed; he must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[25] In the present case, the appellant admitted that his place of work was "very near" the victim's house, and that it would just take a few minutes to get there. Considering the proximity of the appellant's place of work from the crime scene, we cannot accord the appellant's alibi – standing alone – any weight or value.

The testimony of defense witness Alberto does not also support the appellant's *alibi*, as he admitted that he and the appellant were not always together because, at times, they were assigned to different areas. Thus, he could not have accounted for the whereabouts of the appellant during the times they were apart.

We give no merit to the appellant's allegation that AAA's boyfriend impregnated her, as he failed to present any evidence to corroborate this claim. As aptly held by the lower court:

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[24] *People v. Quiñanola*, 366 Phil. 390 (1999).

[25] *People v. Mingming*, G.R. No. 174195, December 10, 2008, 573 SCRA 509.

The court notes that in addition to alibi, the accused ventured to pass the blame on an imaginary boyfriend of AAA. The accused testified that the said boyfriend with a surname of Adlaon had visited AAA in her house when she was in high school and had caused her pregnancy, but defense failed to produce even the minutest of proof that such boyfriend really does exist. The court does not believe that AAA had a boyfriend who caused her pregnancy because AAA attributed her pregnancy to no other person except the accused. It is contrary to common experience that AAA would point to her uncle as the perpetrator of the rapes and of having caused her pregnancy if indeed it were true that she had a boyfriend who caused the same. More likely, the boyfriend merely existed in the imagination of the accused.[26]

The Other Rapes Not Proven With Moral Certainty

We cannot sustain the lower courts' convictions for the rapes committed in December 1997; first week of January 1998; first week of March 1998; and first week of June 1998. It is settled that each and every charge of rape is a separate and distinct crime that the law requires to be proven beyond reasonable doubt. The prosecution's evidence must pass the exacting test of moral certainty that the law demands to satisfy the burden of overcoming the appellant's presumption of innocence.[27]

For the December 1997 incident, we emphasize that AAA did not state during her court testimony that she had been raped on this date. The trial court convicted him merely on account of her answer in her affidavit before the police on July 2, 1998 that the appellant first raped her on December 22, 1997.

For the rape that allegedly happened in the first week of January 1998, AAA merely testified that the appellant had "raped" her after threatening her with a bolo. With regard to the rape in the first week of March 1998, AAA merely stated that the appellant had threatened to kill her with a bolo "if she refused" and provided no other details. AAA also stated that the appellant had "raped" her in May and June 1998 without saying more. She could not

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[26] CA *rollo*, pp. 17-18.

[27] *People v. Valenzuela*, G.R. No. 182057, February 6, 2009, 578 SCRA 157.

even remember if she reported these alleged rape incidents to the police.

These statements, to our mind, are clearly inadequate and grossly insufficient to engender a well-founded belief in an unprejudiced mind that the appellant had indeed raped the victim on the above-mentioned occasions. A witness is not permitted to make her own conclusions of law; her testimony must state evidentiary facts, specifically in rape cases, that the appellant's penis, at the very least, touched the *labia* of the victim's private part. In other words, AAA could not simply claim that she had been raped without elaborating on how the appellant had perpetrated his lustful act. To reiterate, whether AAA had been raped is a conclusion for this Court to make based on the evidence presented.

In *People v. Garcia*[28] where the appellant was charged with 183 counts of rape, we held that:

> x x x Be that as it may, however, on the bases of the evidence adduced by the prosecution, appellant can be convicted only of the two rapes committed in November, 1990 and on July 21, 1994 as testified to by complainant, and for the eight counts of rape committed in May and June and on July 16, 1994 as admitted in appellants aforementioned letter of August 24, 1994. We cannot agree with the trial court that appellant is guilty of 183 counts of rape because, as correctly asserted by the defense, each and every charge of rape is a separate and distinct crime so that each of them should be proven beyond reasonable doubt. On that score alone, **the indefinite testimonial evidence that complainant was raped every week is decidedly inadequate and grossly insufficient to establish the guilt of appellant therefor with the required quantum of evidence**. So much of such indefinite imputations of rape, which are uncorroborated by any other evidence, fall within this category. [*Emphasis ours*]

The Proper Penalty

The applicable provisions of the Revised Penal Code, as amended by Republic Act No. 8353 (effective October 22, 1997),

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[28] 346 Phil. 475 (1997).

covering the crime of Rape, are Articles 266-A and 266-B which provide:

Article 266-A. *Rape; When and How Committed*. — Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

xxx xxx xxx

Article 266-B. Penalties. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

xxx xxx xxx

The Information for the rape committed in the last week of March 1998 failed to specifically allege the use of a deadly weapon in the commission of the rape. In light of this omission, we cannot appreciate this circumstance to increase the penalty; thus, the lower courts were correct in imposing the penalty of *reclusion perpetua*.

With respect to the rape committed in the first week of May 1998, the Information specifically alleged the use of a deadly weapon – a bolo – in the commission of rape. Under Article 266-B quoted above, the use of a deadly weapon qualifies the rape, so that the imposable penalty is *reclusion perpetua* to death. Since *reclusion perpetua* and death are two indivisible penalties, Article 63 of the Revised Penal Code applies: when there are neither mitigating nor aggravating circumstances in the commission of the deed, as in this case, the lesser penalty shall be applied. The courts a *quo* were therefore also correct in imposing the penalty of *reclusion perpetua* on the appellant.

Civil Indemnity

We affirm the CA's awards of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.[29] The award of civil indemnity to the rape victim is mandatory upon the finding that rape took place. Moral damages, on the other hand, are awarded to rape victims without need of proof other than the fact of rape under the assumption that the victim suffered moral injuries from the experience she underwent.

Separately from the above awards, we order the appellant to additionally pay the victim ₱30,000.00 as exemplary damages in accordance with an established ruling on this point.[30]

WHEREFORE, in light of all the foregoing, we *AFFIRM with MODIFICATION* the June 7, 2006 decision of the Court of Appeals in CA-G.R. CR-HC No. 00166. We find appellant Aurelio Matunhay *GUILTY* beyond reasonable doubt of two (2) counts of rape, particularly the rapes in the *last week of March 1998* and in the *first week of May 1998*, and sentence him to suffer the penalty of *reclusion perpetua* for each count. We also order him to pay the victim ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; and ₱30,000.00 as exemplary damages, for each count. We *ACQUIT* him of the four (4) other rape charges.

SO ORDERED.

Carpio (Chairperson), Del Castillo, Abad, and *Perez, JJ.,* concur.

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[29] *People v. Jimenez*, G.R. No. 170235, April 24, 2009; *People v. Baldo*, G.R. No. 175238, February 24, 2009.

[30] See *People v. Cañada*, G.R. No. 175317, October 2, 2009; *People v. Jumawid*, G.R. No. 184756, June 5, 2009; *People v. Anguac*, G.R. No. 176744, June 5, 2009.

SECOND DIVISION

[G.R. No. 179792. March 5, 2010]

LNS INTERNATIONAL MANPOWER SERVICES, *petitioner, vs.* **ARMANDO C. PADUA, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF AN ADMINISTRATIVE AND QUASI-JUDICIAL AGENCIES; MUST BE ACCORDED HIGH RESPECT IF NOT FINALITY; EXCEPTION.— As a general rule, factual findings of administrative and quasi-judicial agencies specializing in their respective fields, especially when affirmed by the CA, must be accorded high respect, if not finality. However, we are not bound to adhere to the general rule if we find that the factual findings do not conform to the evidence on record or are not supported by substantial evidence, as in the instant case.

2. ID.; EVIDENCE; BARE ALLEGATIONS WHICH ARE NOT SUPPORTED BY ANY EVIDENCE FALL SHORT TO SATISFY THE DEGREE OF PROOF NEEDED.— Bare allegations which are not supported by any evidence, documentary or otherwise, sufficient to support a claim, fall short to satisfy the degree of proof needed. On the other hand, petitioner's denial of these allegations was corroborated by the withdrawal form proffered as evidence, the existence and due execution of which were not disputed by respondent. In addition, if respondent's allegations were to be believed, we find it rather odd that LNS would require him to fill up the withdrawal form if the intention of LNS was to endorse the papers to Sharikat. If LNS allowed respondent to withdraw all his documents, then there is nothing left for LNS to endorse to Sharikat.

APPEARANCES OF COUNSEL

Manicad Ong Dela Cruz & Fallarme Law Offices for petitioner.

Oscar R. Ramos, Sr. for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Bare and unsubstantiated allegations do not constitute substantial evidence and have no probative value.

This petition for review on *certiorari*[1] assails the Decision[2] dated November 30, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 90526, which affirmed the Order[3] dated October 16, 2004 of the Department of Labor and Employment (DOLE), which in turn affirmed the Order[4] dated April 28, 2004 of the Philippine Overseas Employment Administration (POEA), which held petitioner LNS International Manpower Services (LNS) liable for misrepresentation and non-issuance of official receipt. Also assailed is the CA Resolution dated September 12, 2007[5] which denied the motion for reconsideration.

Factual Antecedents

On January 6, 2003, respondent Armando C. Padua, Jr. (Padua) filed a Sworn Statement[6] before the Adjudication Office of the POEA against LNS and Sharikat Al Saedi International Manpower (Sharikat) for violation of Section 2(b), (d), and (e) of Rule I, Part VI of the 2002 POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers which provides:

> Section 2. Grounds for imposition of administrative sanctions:
>
> xxx xxx xxx
>
> b. Charging or accepting directly or indirectly any amount greater

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[1] *Rollo,* pp. 8-25.

[2] *Id.* at 29-39; penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Amelita G. Tolentino and Arcangelita Romilla-Lontok.

[3] CA *rollo,* pp. 55-58.

[4] *Id.* at 37-41.

[5] *Rollo,* p. 41.

[6] CA *rollo,* pp. 19-20.

than that of specified in the schedule of allowable fees prescribed by the Secretary, or making a worker pay any amount greater than that actually received by him as a loan or advance;

xxx xxx xxx

d. Collecting any fee from a worker without issuing the appropriate receipt clearly showing the amount paid and the purpose for which payment was made;

e. Engaging in act/s of misrepresentation in connection with recruitment and placement of workers, such as furnishing or publishing any false notice, information or document in relation to recruitment or employment;

xxx xxx xxx

Padua alleged that on July 12, 2002, he applied as auto electrician with petitioner LNS and was assured of a job in Saudi Arabia. He paid LNS the amounts of ₱15,000.00 as processing fees, ₱6,000.00 for medical expenses, and ₱1,000.00 for trade test, but he was not issued the corresponding receipts. He further alleged that he signed an employment contract with LNS as a body builder with a monthly salary of US$370.00.

Padua further alleged that it was another agency, Sharikat, which processed his papers and eventually deployed him on September 29, 2002 to Saudi Arabia. However, he returned to the Philippines on December 23, 2002 because he was not allegedly paid his salaries and also because of violations in the terms and conditions of his employment contract.

LNS and Sharikat filed their respective Answers.

In its Verified Answer,[7] LNS averred that it is a sole proprietorship owned and managed by Ludevina E. Casabuena. It admitted that Padua applied for employment abroad but he withdrew all the documents he submitted to LNS on July 27, 2002. As proof, LNS attached the withdrawal letter duly signed by Padua.

[7] *Id.* at 21-25.

LNS alleged that it did not know that Padua applied with Sharikat or that he was eventually deployed by the latter to Saudi Arabia. LNS denied that it endorsed Padua's application papers to Sharikat. LNS claimed that after Padua withdrew his documents, it no longer had any knowledge whether he applied with another employment agency. LNS insisted that the contract of employment submitted by Padua to the POEA clearly indicated that the same was only between him and Sharikat and not LNS.

Thus, LNS claimed that it could not be held liable for non-issuance of receipt or misrepresentation.

For its part, Sharikat admitted that it processed Padua's papers for employment in Saudi Arabia.[8] However, it argued that it cannot be held liable for any alleged violation of labor standards because its principal in Saudi Arabia faithfully complied with the terms and conditions of Padua's employment.[9] Sharikat also argued that Padua's contentions are vague and unsubstantiated and deserve no probative weight at all. Aside from his bare allegations, Padua did not present evidence to show that he was not paid his salaries or that he was illegally dismissed.[10]

In his Reply to Answer of LNS,[11] Padua admitted signing the withdrawal letter but alleged that he did not actually receive the documents because he was made to understand that the same would be endorsed to Sharikat.

Ruling of POEA

On April 28, 2004, the POEA issued its Order finding LNS liable for non-issuance of receipt and misrepresentation. As to Sharikat, the POEA found no sufficient evidence to hold it liable for the violations charged. The dispositive portion of the said Order reads:

WHEREFORE, premises considered, We find and so hold respondent LNS International liable for violation of Section 2(d)

[8] *Id.* at 27.

[9] *Id.* at 28.

[10] *Id*.

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

Rule 1, part VI of the 2002 POEA Rules and Regulations and the penalty of Four (4) months suspension or fine of ₱40,000.00 is hereby imposed, being its first offense and for violation of Section 2(e) Rule 1, part VI of the 2002 POEA Rules and Regulations, the penalty of Eight (8) months suspension or fine of ₱80,000.00 is hereby imposed, being its second offense.

The charges against SHARIKAT AL SAIDI INTERNATIONAL MANPOWER are hereby dismissed for insufficiency of evidence.

SO ORDERED.[12]

Ruling of the Secretary of DOLE

Only LNS filed its Appeal Memorandum with the DOLE.[13] Padua did not appeal from the said POEA Order absolving Sharikat from any liability. Hence, the same is already deemed final as against Sharikat.

On December 16, 2004, the DOLE dismissed the appeal of petitioner and affirmed the ruling of the POEA. The decretal portion of the Order reads:

WHEREFORE, the Appeal, herein treated as Petition for Review, filed by L.N.S. International Manpower Services is hereby **DISMISSED** for lack of merit. The Order dated April 28, 2004 of the POEA Administrator, finding petitioner liable for violation of Section 2 (d) and (e), Rule I, Part VI of the POEA Rules and Regulations, and imposing upon it the penalty of suspension of license for a period of twelve (12) months or, in lieu thereof, the payment of fine in the amount of One Hundred Twenty Thousand Pesos (₱120,000.00), is **AFFIRMED**.

SO ORDERED.[14]

Petitioner moved for reconsideration, but the motion was denied for lack of merit in an Order dated May 12, 2005.[15]

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[12] *Id.* at 41.

[13] *Id.* at 42-52.

[14] *Id.* at 58.

[15] *Id.* at 66-68.

Ruling of the Court of Appeals

Aggrieved, petitioner filed with the CA a petition for *certiorari* but it was dismissed in its November 30, 2006 Decision. The CA opined that the affirmative assertion of respondent that he paid petitioner a placement fee is entitled to great weight than the bare denials of petitioner; and, that respondent was made to believe that petitioner would be solely responsible for the processing of his employment abroad.

Petitioner filed a Motion for Reconsideration which was denied by the CA in its Resolution dated September 12, 2007.

Issue

The lone issue in this petition for review on *certiorari* is whether petitioner is liable for non-issuance of receipt and misrepresentation.

Petitioner contends that the CA gravely abused its discretion in giving credence to respondent's claims which were all anchored on bare allegations. According to petitioner, the CA erred in ruling that its defense is purely denial since the same was corroborated by a document indubitably showing respondent's withdrawal of his application for overseas employment. Considering such withdrawal, petitioner is naturally not bound to issue any receipt and could not as well be responsible for the recruitment of respondent. Petitioner likewise asserts that it never asked or received any payment from the respondent.

Our Ruling

We grant the petition.

As a general rule, factual findings of administrative and quasi-judicial agencies specializing in their respective fields, especially when affirmed by the CA, must be accorded high respect, if not finality.[16] However, we are not bound to adhere to the general rule if we find that the factual findings do not conform

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[16] *V.V. Aldaba Engineering v. Ministry of Labor and Employment*, G.R. No. 76925, September 26, 1994, 237 SCRA 31, 38-39.

to the evidence on record or are not supported by substantial evidence,[17] as in the instant case.

The self-serving and unsubstantiated allegations of respondent cannot defeat the concrete evidence submitted by petitioner. We note that respondent did not deny the due execution of the withdrawal form as well as the genuineness of his signature and thumb mark affixed therein. On the contrary, he admitted signing the same. When he voluntarily signed the document, respondent is bound by the terms stipulated therein.[18]

We are not persuaded by respondent's contention that he signed the withdrawal form upon representations by LNS that it would endorse his papers to Sharikat. This really makes no sense at all. Why would LNS allow Padua to withdraw his application papers, and even go through the process of making him execute a withdrawal form, if its ultimate intention is to endorse the said papers to Sharikat? If respondent's allegation is to be believed, why then would LNS relinquish its possession over said documents if it will refer them anyway to Sharikat?

Moreover, we are inclined to give more evidentiary weight to the allegation of petitioner that it did not receive any amount from the respondent. This conclusion is more logical considering that it has been duly established that respondent had withdrawn all his documents from LNS. Having withdrawn said documents, there is no more reason for him to pay any fees to LNS. In his Sworn Statement filed before the POEA, respondent alleged that he paid the ₱15,000.00 processing fees and ₱6,000.00 medical fees to LNS sometime in August, 2002. This self-serving and unsubstantiated allegation deserves no credence at all considering that even before August, 2002, respondent had already withdrawn his documents from LNS. It has not escaped our notice that the withdrawal form was dated and

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[17] *Pleyto v. Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG),* G.R. No. 169982, November 23, 2007, 538 SCRA 534, 554-555.

[18] *Camacho v. Court of Appeals,* G.R. No. 127520, February 9, 2007, 515 SCRA 242, 261.

signed by respondent on July 27, 2002. As such, after said date, there is no more reason for respondent to pay any fees to LNS. Hence, we are not convinced or persuaded by respondent's allegation that he still paid LNS in August 2002 after having withdrawn his documents on July 27, 2002.

There is likewise no basis for the POEA, DOLE, and the CA's conclusion that it was petitioner that endorsed respondent's documents to Sharikat. Other than respondent's self-serving claim, there is no proof whatsoever that petitioner endorsed respondent's application papers to Sharikat. Bare allegations which are not supported by any evidence, documentary or otherwise, sufficient to support a claim, fall short to satisfy the degree of proof needed.[19] On the other hand, petitioner's denial of these allegations was corroborated by the withdrawal form proffered as evidence, the existence and due execution of which were not disputed by respondent. In addition, if respondent's allegations were to be believed, we find it rather odd that LNS would require him to fill up the withdrawal form if the intention of LNS was to endorse the papers to Sharikat. If LNS allowed respondent to withdraw all his documents, then there is nothing left for LNS to endorse to Sharikat.

No evidence whatsoever was adduced that LNS was acting as a conduit of Sharikat. Likewise, there is no evidence, other than respondent's unsubstantiated claim, that petitioner endorsed his application to Sharikat. On the contrary, this was belied by the withdrawal letter the existence of which was not even denied by the respondent. In fact, he admitted its due execution and his signature which appeared thereon. There is also no denying that respondent was deployed to Saudi Arabia. In fact, Sharikat admitted in its Answer that it was the one responsible for respondent's deployment to Saudi Arabia. From the foregoing, it is more logical that it was Sharikat to whom respondent eventually paid the corresponding fees. However, for failure to interpose any appeal from the judgment of the POEA insofar as it absolved Sharikat,

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[19] *Cuizon v. Court of Appeals*, 329 Phil. 456, 483 (1996).

respondent is thereby bound by it and is considered final as to him.[20]

In fine, for failure to adduce any shred of evidence of payment made to petitioner, or that petitioner referred or endorsed respondent for employment abroad to another agency, the charges of non-issuance of receipt and misrepresentation against petitioner could not possibly prosper. By the voluntary withdrawal of respondent's application from petitioner, the latter could not have been involved in the recruitment and placement of respondent and consequently could not be held liable for any violation.

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals in CA-G.R. SP No. 90526 dated November 30, 2006, and its Resolution dated September 12, 2007, are *REVERSED* and *SET ASIDE*. The complaint against petitioner LNS International Manpower Services is hereby *DISMISSED* for lack of merit. Accordingly, the amounts of ₱40,000.00 and ₱80,000.00 representing petitioner's appeal bond are ordered *REFUNDED*.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.*, concur.

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[20] *Pison-Arceo Agricultural and Development Corp. v. National Labor Relations Commission,* 344 Phil. 723, 736 (1997).

SECOND DIVISION

[G.R. No. 180595. March 5, 2010]

ARTHUR DEL ROSARIO and ALEXANDER DEL ROSARIO, *petitioners, vs.* **HELLENOR D. DONATO, JR. and RAFAEL V. GONZAGA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; COMPLAINT; CAUSE OF ACTION; ELEMENTS.— The test of sufficiency of a complaint is whether or not, assuming the truth of the facts that plaintiff alleges in it, the court can render judgment granting him the judicial assistance he seeks. And judgment would be right only if the facts he alleges constitute a cause of action that consists of three elements: (1) the plaintiff's legal right in the matter; (2) the defendant's corresponding obligation to honor or respect such right; and (3) the defendant's subsequent violation of the right. Absent any of these, the complaint would have failed to state a cause of action.

2. ID.; CRIMINAL PROCEDURE; SEARCH WARRANT; A JUDICIALLY ORDERED SEARCH THAT FAILED TO YIELD THE DESCRIBED ILLICIT ARTICLE DOES NOT OF ITSELF RENDER THE COURT'S ORDER "UNLAWFUL"; SUSTAINED.— But a judicially ordered search that fails to yield the described illicit article does not of itself render the court's order "unlawful." The Del Rosarios did not allege that respondents NBI agents violated their right by fabricating testimonies to convince the RTC of Angeles City to issue the search warrant. Their allegation that the NBI agents used an unlawfully obtained search warrant is a mere conclusion of law. While a motion to dismiss assumes as true the facts alleged in the complaint, such admission does not extend to conclusions of law. Statements of mere conclusions of law expose the complaint to a motion to dismiss on ground of failure to state a cause of action. Further, the allegation that the search warrant in this case was served in a malicious manner is also not sufficient. Allegations of bad faith, malice, and other related words without ultimate facts to support the same are mere conclusions of law.

3. ID.; ID.; ID.; SEARCH CONDUCTED IN FULL VIEW OF THE NEIGHBORS IS NOT MALICIOUS.— The Del Rosarios' broad assertion in their complaint that the search was conducted "in full and plain view of members of the community" does not likewise support their claim that such search was maliciously enforced. There is nothing inherently wrong with search warrants being enforced in full view of neighbors. In fact, when the respondent or his representative is not present during the search, the rules require that it be done in the presence of two residents of the same locality. These safeguards exist to protect persons from possible abuses that may occur if searches were done surreptitiously or clandestinely.

4. ID.; ID.; FILING OF COUNTERCLAIMS FOR DAMAGES AGAINST THOSE WHO MAY HAVE IMPROPERLY SOUGHT THE ISSUANCE OF SEARCH WARRANT, NOT ALLOWED; REMEDY.— The proceeding under Rule 126, a limited criminal one, does not provide for the filing of counterclaims for damages against those who may have improperly sought the issuance of the search warrant. Consequently, the Del Rosarios had the right to seek damages, if the circumstances warranted, by separate civil action for the wrong inflicted on them by an improperly obtained or enforced search warrant. Unfortunately, their complaint, as worded, failed to state a proper cause of action. Petitioner Arthur del Rosario claims that respondents NBI agents wrongfully included him as respondent in their application for a search warrant since he neither owned the house at 51 New York Street nor resided in it. But the rules do not require respondents in search warrant proceedings to be residents of the premises to be searched. If this were the case, criminals in possession of illegal articles could simply use other people's residence for storing such articles to avoid being raided and searched.

APPEARANCES OF COUNSEL

Villanueva Gabionza & De Santos for petitioners.
Roque & Butuyan Law Offices for respondents.

D E C I S I O N

ABAD, *J.*:

This case is about the need for plaintiff to state the facts constituting his cause of action and the correct forum for actions for damages arising from alleged wrongful procurement and enforcement of a search warrant issued in connection with an alleged criminal violation of the intellectual property law.

The Facts and the Case

On January 23, 2002 Philip Morris Products, Inc. (Philip Morris) wrote the National Bureau of Investigation (NBI), requesting assistance in curtailing the proliferation of fake Marlboro cigarettes in Angeles City, Pampanga. After doing surveillance work in that city, respondent Hellenor Donato, Jr., the NBI agent assigned to the case, succeeded in confirming the storage and sale of such fake cigarettes at the house at 51 New York Street, Villasol Subdivision, Angeles City, that belonged to petitioner Alexander del Rosario.

On March 5, 2002 respondent Donato applied for a search warrant with Branch 57 of the Regional Trial Court (RTC) of Angeles City to search the subject premises. But it took a week later or on March 12, 2002 for the RTC to hear the application and issue the search warrant. Although Donato felt that the delayed hearing compromised the operation, the NBI agents led by respondent Rafael V. Gonzaga proceeded to implement the warrant. Their search yielded no fake Marlboro cigarettes.

Subsequently, petitioners Alexander and Arthur del Rosario (the Del Rosarios) filed a complaint for ₱50 million in damages against respondents NBI agents Donato and Gonzaga and two others before the RTC of Angeles City, Branch 62, in Civil Case 10584. On August 6, 2003 respondents NBI agents answered the complaint with a motion to dismiss on the grounds of: a) the failure of the complaint to state a cause of action; b) forum shopping; and c) the NBI agents' immunity from suit, they being sued as such agents. The RTC denied the motion on

March 25, 2003. The NBI agents filed a motion for reconsideration but the RTC denied the same on June 27, 2003.

Dissatisfied, respondents NBI agents filed a special civil action of *certiorari* before the Court of Appeals (CA) in CA-G.R. SP 79496. On June 29, 2007 the latter court granted the petition and annulled the RTC's orders, first, in alleging merely that the NBI agents unlawfully procured the search warrant without stating the facts that made the procurement unlawful, the complaint failed to state a cause of action; and second, the Del Rosarios were guilty of forum shopping in that they should have filed their claim for damages against the NBI agents through a motion for compensation with the court that issued the search warrant.

The Del Rosarios sought reconsideration of the decision but the CA denied it on November 19, 2007, prompting them to file this petition for review.

The Issues Presented

The petition presents two issues:

1. Whether or not the CA correctly ruled that the complaint of the Del Rosarios did not state a cause of action; and

2. Whether or not the CA correctly ruled that the Del Rosarios were guilty of forum shopping.

The Court's Rulings

One. The CA held that the Del Rosarios' complaint before the RTC failed to state a cause of action against respondents NBI agents. Such complaint said that the NBI agents unlawfully procured and enforced the search warrant issued against the Del Rosarios but it failed to state the ultimate facts from which they drew such conclusion.

The test of sufficiency of a complaint is whether or not, assuming the truth of the facts that plaintiff alleges in it, the court can render judgment granting him the judicial assistance he seeks.[1] And judgment would be right only if the facts he

[1] *Guaranteed Homes, Inc. v. Heirs of Maria P. Valdez*, G.R. No. 171531, January 30, 2009, 577 SCRA 441, 448-449.

alleges constitute a cause of action that consists of three elements: (1) the plaintiff's legal right in the matter; (2) the defendant's corresponding obligation to honor or respect such right; and (3) the defendant's subsequent violation of the right. Absent any of these, the complaint would have failed to state a cause of action.[2]

According to the Del Rosarios, the following allegations in their complaint state a cause or causes of action against respondents NBI agents:

2.4 On 12 March 2002, elements of the [NBI] x x x led by Defendant Rafael I. Gonzaga x x x entered by force the premises belonging to Plaintiff Alexander del Rosario situated at No. 51 New York Street, Villasol Subdivision, Angeles City, pursuant to a Search Warrant unlawfully obtained from the [RTC] of Angeles City, Branch 57 x x x.

xxx xxx xxx

2.6 Contrary to the sworn statements given before the court by defendants Hellenor D. Donato Jr. x x x and contrary to the allegation in Search Warrant No. 02-09A, no 'fake Marlboro cigarettes and their packaging' were found at No. 51 New York Street, Villasol Subdivision, Angeles City x x x.

2.7 The inclusion of Plaintiff Arthur del Rosario in Search Warrant No. 02-09 had no factual basis considering that the premises searched is the property solely of Plaintiff Alexander del Rosario.

2.8 Worse the enforcement of Searched [*sic*] Warrant No. 02-09 was just part of the series of raids and searches that was conducted in Angeles City and Pampanga, which was done with much publicity in the community and had tended to include the Plaintiffs in the same category as other persons and entities who were in fact found to be dealing with fake *Marlboro* cigarettes.

xxx xxx xxx

3.2 The baseless sworn allegations that Plaintiffs had under their control and possession counterfeit *Marlboro* cigarettes and packaging to obtain a search warrant, and the malicious

[2] *Heirs of Loreto C. Maramag v. Maramag*, G.R. No. 181132, June 5, 2009.

service of the such warrant at the residential premises of Plaintiff Alexander del Rosario in full and plain view of members of the community, as part of the series of raids and operations conducted within Angeles City and Pampanga during that period, has tainted irreversibly the good names which Plaintiffs have painstakingly built and maintained over the years.

xxx xxx xxx

3.4 Plaintiffs were subjected to so much humiliation and embarrassment by the raid conducted on the subject residential premises, and subjected them to much unwarranted speculation of engaging in the sale of fake merchandise.

Essentially, however, all that the Del Rosarios allege is that respondents NBI agents used an unlawfully obtained search warrant against them, evidenced by the fact that, contrary to the sworn statements used to get such warrant, the NBI agents found no fake Marlboro cigarettes in petitioner Alexander del Rosario's premises.

But a judicially ordered search that fails to yield the described illicit article does not of itself render the court's order "unlawful." The Del Rosarios did not allege that respondents NBI agents violated their right by fabricating testimonies to convince the RTC of Angeles City to issue the search warrant. Their allegation that the NBI agents used an unlawfully obtained search warrant is a mere conclusion of law. While a motion to dismiss assumes as true the facts alleged in the complaint, such admission does not extend to conclusions of law.[3] Statements of mere conclusions of law expose the complaint to a motion to dismiss on ground of failure to state a cause of action.[4]

Further, the allegation that the search warrant in this case was served in a malicious manner is also not sufficient. Allegations of bad faith, malice, and other related words without ultimate facts to support the same are mere conclusions of law.[5]

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[3] *Drilon v. Court of Appeals*, 409 Phil. 14, 28 (2001).

[4] *Philippine National Bank v. Encina*, G.R. No. 174055, February 12, 2008, 544 SCRA 608, 620.

[5] *Drilon v. Court of Appeals*, *supra* note 3, at 30.

The Del Rosarios' broad assertion in their complaint that the search was conducted "in full and plain view of members of the community" does not likewise support their claim that such search was maliciously enforced. There is nothing inherently wrong with search warrants being enforced in full view of neighbors. In fact, when the respondent or his representative is not present during the search, the rules require that it be done in the presence of two residents of the same locality. These safeguards exist to protect persons from possible abuses that may occur if searches were done surreptitiously or clandestinely.

Two. Invoking Section 21 of this Court's Administrative Matter (A.M.) 02-1-06-SC (not A.O. 01-1-06-SC as cited), the CA held that, rather than file a separate action for damages, the Del Rosarios should have filed their claim for compensation in the same proceeding and with the same court that issued the writ of search and seizure. The Del Rosarios were thus guilty of forum shopping.

A.M. 02-1-06-SC, the Rule on Search and Seizure in Civil Actions for Infringement of Intellectual Property Rights, provides:

SEC. 21. *Claim for damages.* – Where the writ [of search and seizure] is discharged on any of the grounds provided in this Rule, or where it is found after trial that there has been no infringement or threat of infringement of an intellectual property right, the court, upon motion of the alleged infringing defendant or expected adverse party and after due hearing, shall order the applicant to compensate the defendant or expected adverse party upon the cash bond, surety bond or other equivalent security for any injury or damage the latter suffered by the issuance and enforcement of the writ. Should the damages exceed the amount of the bond, the applicant shall be liable for the payment of the excess.

When a complaint is already filed in court, the motion shall be filed with the same court during the trial or before appeal is perfected or before judgment becomes executory, with due notice to the applicant, setting forth the facts showing the defendant's right to damages and the amount thereof. The award of damages shall be included in the judgment in the main case.

Where no complaint is filed against the expected adverse party, the motion shall be filed with the court which issued the writ. In such a case, the court shall set the motion for summary hearing and immediately determine the expected adverse party's right to damages.

A judgment in favor of the applicant in its principal claim should not necessarily bar the alleged infringing defendant from recovering damages where he suffered losses by reason of the wrongful issuance or enforcement of the writ.

The damages provided for in this section shall be independent from the damages claimed by the defendant in his counterclaim.

But the subject search warrant was not issued under A.M. 02-1-06-SC, which governed the issuance of a writ of search and seizure in a civil action for infringement filed by an intellectual property right owner against the supposed infringer of his trademark or name. Philip Morris, the manufacturer of Marlboro cigarettes, did not go by this route. Philip Morris did not file a civil action for infringement of its trademark against the Del Rosarios before the RTC of Angeles City.

Instead, Philip Morris sought assistance from the NBI for the apprehension and criminal prosecution of those reportedly appropriating its trademark and selling fake Marlboro cigarettes. In turn, the NBI instituted a police action that included applying for a search and seizure warrant under Sections 3, 4, 5 and 6 of Rule 126 of the Rules of Criminal Procedure (not under the provisions of A.M. 02-1-06-SC) against the Del Rosarios upon the belief that they were storing and selling fake Marlboro cigarettes in violation of the penal provisions of the intellectual property law.

The proceeding under Rule 126, a limited criminal one, does not provide for the filing of counterclaims for damages against those who may have improperly sought the issuance of the search warrant. Consequently, the Del Rosarios had the right to seek damages, if the circumstances warranted, by separate civil action for the wrong inflicted on them by an improperly obtained or enforced search warrant. Unfortunately, their complaint, as worded, failed to state a proper cause of action.

Petitioner Arthur del Rosario claims that respondents NBI agents wrongfully included him as respondent in their application for a search warrant since he neither owned the house at 51 New York Street nor resided in it. But the rules do not require respondents in search warrant proceedings to be residents of the premises to be searched. If this were the case, criminals in possession of illegal articles could simply use other people's residence for storing such articles to avoid being raided and searched.

The Del Rosarios raise a number of procedural issues: a) the supposed failure of respondents NBI agents to file their motion for reconsideration of the RTC order denying their motion to dismiss within 15 days of receipt of the order; b) their resort to a special civil action of *certiorari* to challenge the RTC's denial of their motion to dismiss; c) the propriety of their inclusion of a motion to dismiss in their answer; d) the CA's grant to them in 2003 of a 15-day extension to file a petition for *certiorari* after the lapse of 60 days when the Court did not yet come out with a ruling that barred such extension; and e) their being represented by private counsel rather than by the Office of the Solicitor General.

With the Court's rulings in the principal issues raised in this case, it finds no sufficient reason to further dwell on the lesser issues that the Del Rosarios raise above. Besides, the Court finds no error in the CA's disposition of the same.

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the Decision of the Court of Appeals in CA-G.R. SP 79496 dated June 29, 2007 and its Resolution dated November 19, 2007 for the reasons stated in this Decision, with the *MODIFICATION* that Civil Case 10584 is *DISMISSED* without prejudice.

SO ORDERED.

Carpio, Brion, Del Castillo, and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 181913. March 5, 2010]

DANIEL P. JAVELLANA, JR., *petitioner, vs.* **ALBINO BELEN,** *respondent.*

[G.R. No. 182158. March 5, 2010]

ALBINO BELEN, *petitioner, vs.* **DANIEL P. JAVELLANA, JR. and JAVELLANA FARMS, INC.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; BACKWAGES SHALL BE COMPUTED FROM THE TIME OF ILLEGAL DISMISSAL UNTIL THE DATE THE DECISION BECOMES FINAL.— Clearly, the law intends the award of backwages and similar benefits to accumulate past the date of the Labor Arbiter's decision until the dismissed employee is actually reinstated. But if, as in this case, reinstatement is no longer possible, this Court has consistently ruled that backwages shall be computed from the time of illegal dismissal until the date the decision becomes final.

2. ID.; ID.; ID.; SEPARATION PAY; HOW COMPUTED.— Separation pay, on the other hand, is equivalent to one month pay for every year of service, a fraction of six months to be considered as one whole year. Here that would begin from January 31, 1994 when petitioner Belen began his service. Technically the computation of his separation pay would end on the day he was dismissed on August 20, 1999 when he supposedly ceased to render service and his wages ended. But, since Belen was entitled to collect backwages until the judgment for illegal dismissal in his favor became final, here on September 22, 2008, the computation of his separation pay should also end on that date.

3. ID.; ID.; ID.; ID.; 12% INTEREST IS PROPER BECAUSE THE COURT TREATS MONETARY CLAIMS IN LABOR

CASES THE EQUIVALENT OF FORBEARANCE OF CREDIT.— Since the monetary awards remained unpaid even after it became final on September 22, 2008 because of issues raised respecting the correct computation of such awards, it is but fair that respondent Javellana be required to pay 12% interest per annum on those awards from September 22, 2008 until they are paid. The 12% interest is proper because the Court treats monetary claims in labor cases the equivalent of a forbearance of credit. It matters not that the amounts of the claims were still in question on September 22, 2008. What is decisive is that the issue of illegal dismissal from which the order to pay monetary awards to petitioner Belen stemmed had been long terminated.

APPEARANCES OF COUNSEL

Alfonso M. Paredes for Daniel P. Javellana, Jr. and Javellana Farms, Inc.

Hizon and Miranda for Albino Belen.

D E C I S I O N

ABAD, *J.*:

This case is about the proper computation of the monetary awards of an illegally dismissed employee.

The Facts and the Case

On May 9, 2000 petitioner Albino Belen (Belen) filed a complaint[1] against respondents Javellana Farms, Inc. and Daniel Javellana, Jr. (Javellana) for illegal dismissal and underpayment or non-payment of salaries, overtime pay, holiday pay, service incentive leave pay (SILP), 13th month pay, premium pay for holiday, and rest day as well as for moral and exemplary damages and attorney's fees.[2]

[1] Docketed as NLRC-NCR Case 30-05-02039-00.

[2] *Rollo* (G.R. 182158), pp. 47-48.

Petitioner Belen alleged that respondent Javellana hired him as company driver on January 31, 1994[3] and assigned him the tasks of picking up and delivering live hogs, feeds, and lime stones used for cleaning the pigpens.[4] On August 19, 1999 Javellana gave him instructions to (a) pick up lime stones in Tayabas, Quezon; (b) deliver live hogs at Barrio Quiling, Talisay, Batangas; (c) have the delivery truck repaired; and (d) pick up a boar at Joliza Farms in Norzagaray, Bulacan.[5]

Petitioner Belen further alleged that his long and arduous day finally ended at 4:30 a.m. of the following day, August 20, 1999. But after just three hours of sleep, respondent Javellana summoned him to the office. When he arrived at 8:20 a.m., Javellana had left. After being told that the latter would not be back until 4:00 p.m., Belen decided to go home and get some more sleep.[6]

Petitioner Belen was promptly at the office at 4:00 p.m. but respondent Javellana suddenly blurted out that he was firing Belen from work. Deeply worried that he might not soon get another job, Belen asked for a separation pay. When Javellana offered him only ₱5,000.00, he did not accept it.[7]

Respondent Javellana claimed, on the other hand, that he hired petitioner Belen in 1995, not as a company driver, but as family driver.[8] Belen did not do work for his farm on a regular basis, but picked up feeds or delivered livestock only on rare occasions when the farm driver and vehicle were unavailable.[9]

Regarding petitioner Belen's dismissal from work, respondent Javellana insisted that he did it for a reason. Belen intentionally

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[3] *Id.* at 47.

[4] *Id.* at 14-15.

[5] *Id.* at 15-16, 51.

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

[7] *Id.* at 17.

[8] *Rollo* (G.R. 181913), p. 13.

[9] *Rollo* (G.R. 182158), p. 169.

failed to report for work on August 20, 1999 and this warranted his dismissal.[10]

In a decision[11] dated November 25, 2002, the Labor Arbiter found petitioner Belen to be a company driver as evidenced by the pay slips[12] that the farm issued to him. Since his abrupt dismissal from work violated his right to due process, it was illegal.[13] The Labor Arbiter awarded him backwages, separation pay, 13th month pay, SILP, holiday pay, salary differential, and attorney's fees.[14]

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[10] *Rollo* (G.R. 181913), pp. 13-14.

[11] *Rollo* (G.R. 182158), pp. 124-133, docketed as NLRC NCR Case 30-09-04294-01.

[12] *Id.* at 73-111.

[13] *Id.* at 129-130.

[14] *Id.* at 132-133. The monetary awards were computed as follows:

[A.] Backwages:		
1. Basic Salary		
8/20/99-10/30/99 = 2.33	= ₱11,994.84	
₱198.00 x 26 x 2.33		
10/31/99-10/31/00 = 12		
₱223.50 x 26 x 12	= ₱69,732.00	
11/1/00-11/19/00 = 24.63		
₱250 x 26 x 24.63	= ₱160,095.00	₱241,821.84
2.13th Month Pay: ₱241,821.84 / 12		₱20,151.82
3. SILP		
8/20/99-12/31/99		
₱223.50 x 5 x 4.37 / 12	= ₱406.96	
1/1/00-11/19/00		
₱250 x 5 x 34.59 / 12	= ₱3,603.13	₱4,010.09
TOTAL BACKWAGES		₱265,983.75
B. Separation Pay: 1/31/94-11/19/00	= 8 years, 9 months	
₱250 x 26 x 9	= ₱58,500.00	
C. 13th Month Pay: 5/9/97-8/20/99		
5/9/97-12/31/97 = 7.73		
₱185.00 x 26 x 7.73 / 12	= ₱3,098.44	
1/1/98-12/31/98 = 12		
₱198.00 x 26	= ₱5,148.00	
₱198.00 x 26		
1/1/99 7.67		
₱223.50 x 26 x 7.67 / 12	= ₱3,714.20	₱11,960.64

On appeal, the National Labor Relations Commission (NLRC) issued a resolution[15] dated October 23, 2003, modifying the decision of the Labor Arbiter. The NLRC was convinced that respondent Javellana hired petitioner Belen as a family driver but required him to make certain errands that were related to the farm business. Like the Labor Arbiter, the NLRC also found Belen to have been illegally dismissed. But since he was but a family driver, the NLRC deleted the award of backwages and separation pay and instead ordered Javellana to pay him 15 days salary by way of indemnity pursuant to Article 149 of the Labor Code. Belen moved for reconsideration, but the NLRC denied his motion.[16]

Aggrieved, petitioner Belen elevated the matter to the Court of Appeals (CA),[17] which in its Decision[18] dated September 12, 2007, reverted back to the decision of the Labor Arbiter. The CA held that Belen was a company driver since, aside from driving respondent Javellana and his family, he also did jobs that were needed in Javellana's business operations, such as hauling and delivering live hogs, feeds, and lime stones for the pig pens.[19] The CA also said that Javellana's abrupt dismissal

D. SILP:		
5/9/97-12/31/97 = ₱185 x 5 x 7.73/12	= ₱595.85	
1/1/98-12/31/98 = ₱198 x 5	= ₱990.00	
1/1/99-9/20/99 = ₱223.50 x 5 x 7.67/12	= ₱714.27	₱2,300.12
[E.] Holiday Pay:		
5/9/97-8/20/99 = ₱198 x 21		₱4,158.00
[F.] Salary Differential:		
5/9/97-2/5/98 = 8.87		
₱185-100 = ₱85 x 26 x 8.87	= ₱19,602.70	
2/6/98-8/20/99 = 18.47		
₱198-100 = ₱98 x 26 x 18.47	= ₱47,061.56	₱66,664.26
SUB-TOTAL		₱409,566.77
G. Attorney's Fees: ₱409,566.77 x 10%		₱40,956.68
TOTAL		₱450,523.45

[15] *Rollo* (G.R. 182158), pp. 134-141.

[16] Resolution dated December 30, 2003, *id.* at 142-143.

[17] Docketed as CA-G.R. SP 83354.

[18] *Rollo* (G.R. 182158), pp. 34-46. Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Romeo F. Barza, concurring.

[19] *Id.* at 40, 42.

of Belen for an isolated case of neglect of duty was unjustified.[20] The appellate court, however, modified the award of backwages and separation pay, as it found the computation to be erroneous.[21]

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[20] *Id.* at 43.

[21] *Id.* at 44-45. The appellate court computed Belen's monetary awards as follows:

A. Backwages:		
1. Basic Salary		
8/20/99-10/30/99 = 2.33	= ₱11,994.84	
₱198.00 x 26 x 2.33		
10/31/99-10/31/00 = 12		
₱223.50 x 26 x 12	= ₱69,732.00	
11/1/00-11/19/00 = *.63*		
₱250 x 26 x *.63*	= *₱4,095.00*	*-₱85,821.84*
2. 13th Month Pay: *₱85,821.84* / 12		*₱7,151.82*
3. SILP		
8/20/99-12/31/99		
₱223.50 x 5 x 4.37 / 12	= ₱406.96	
1/1/00-11/19/00₱250.00 x 5 x *10.63* / 12		
P250.00 x 5 x10.63/12	= *₱1,107.29*	*₱1,514.25*
TOTAL BACKWAGES		*₱94,487.91*
B. Separation Pay: 1/31/94-11/19/00	*= 6 years, 9 months*	
₱250 x 26 x *7*	*= ₱45,500.00*	
C. 13th Month Pay: 5/9/97-8/20/99		
5/9/97-12/31/97 = 7.73		
₱185.00 x 26 x 7.73 / 12	= ₱3,098.44	
1/1/98-12/31/98 = 12		
₱198.00 x 26	= ₱5,148.00	
₱198.00 x 26		
1/1/99 7.67		
₱223.50 x 26 x 7.67 / 12	= ₱3,714.20	₱11,960.64
D. Service Incentive Leave Pay:		
5/9/97-12/31/97 = ₱185 x 5 x 7.73 / 12	= ₱595.85	
1/1/98-12/31/98 = ₱198 x 5	= ₱990.00	
1/1/99-9/20/99 = ₱223.50 x 5 x 7.67 / 12	= ₱714.27	₱2,300.12
[E.] Holiday Pay:		
5/9/97-8/20/99 = ₱198 x 21		₱4,158.00
[F.] Salary Differential:		
5/9/97-2/5/98 = 8.87		
₱185-100 = ₱85 x 26 x 8.87	= ₱19,602.70	
2/6/98-8/20/99 = 18.47		
₱198-100 = ₱98 x 26 x 18.47	= ₱47,061.56	₱66,664.26
SUB-TOTAL		*₱225,070.93*
G. Attorney's Fees: *₱225,070.93* x 10%		*₱ 22,507.09*
TOTAL		*₱247,578.02*

Both respondent Javellana and petitioner Belen moved for reconsideration of the decision but the CA denied them both on March 3, 2008.[22] Undaunted, they both took recourse to this Court in G.R. 181913 and G.R. 182158, respectively.

The Court consolidated the two cases in its Resolution of July 2, 2008.[23] But on July 16, 2008, having initially examined the petition in G.R. 181913, the Court denied due course to it for respondent Javellana's failure to sufficiently show reversible error in the assailed decision.[24] Javellana moved for reconsideration but the Court denied it with finality on September 22, 2008.[25]

Questions Presented

The questions presented in this case are:

1. Whether or not the Labor Arbiter correctly computed petitioner Belen's backwages and separation pay; and

2. Whether or not the monetary award in his favor should run until the finality of the decision in his case.

The Court's Rulings

One. Petitioner Belen points out that the Labor Arbiter correctly computed his monetary award although he appeared to have been awarded more than what was right because of a typographical error in the statement of the period that his **backwages** covered. The Labor Arbiter's approved computation gave the period as from August 20, 1999 to November 19, **2000** when the proper period was from August 20, 1999, the date he was dismissed from work, to November 25, **2002**, the date the Labor Arbiter rendered his decision in the case.[26]

For the same reason, petitioner Belen claims that his separation pay should be computed from January 31, 1994, when he was

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

[23] *Rollo* (G.R. 181913), p. 41.

[24] *Id.* at 42.

[25] *Rollo* (G.R. 182158), p. 208.

[26] *Id.* at 25-26, 213.

hired, up to November 25, **2002**, when the Labor Arbiter rendered his decision. Belen also insists that the 10% attorney's fees awarded to him be based on the total amount arrived at, not by the appellate court, but by the Labor Arbiter.[27]

After taking such position initially, petitioner Belen claims that the amount awarded to him by the Labor Arbiter merely represents a portion of what he was entitled to. The award of backwages to which he was entitled should continue to run until the decision in his favor has become final.[28]

Respondent Javellana points out, however, that the Labor Arbiter's decision clearly shows that he intended to award backwages and separation pay only until November 19, 2000.[29] Javellana also disagreed that the monetary award should be reckoned until the finality of the decision in petitioner Belen's favor. The Labor Arbiter expressly limited the amount of that award since he granted Belen's request to be given separation pay instead of being reinstated.[30]

It is obvious from a reading of the Labor Arbiter's decision that the date November **19**, **2000** stated in the computation was mere typographical error. Somewhere in the body of the decision is the categorical statement that petitioner Belen "is entitled to backwages from August 20, 1999 **up to the date of this decision**."[31] Since the Labor Arbiter actually rendered his decision on November 25, **2002**,[32] it would be safe to assume that he caused the computation of the amount of backwages close to that date or on November 19, **2002**. The same could be said of the computation of petitioner Belen's separation pay.

Two. This leads us to the question, does the amount that the Labor Arbiter awarded petitioner Belen represent all that

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[27] See: *id.* at 25.

[28] *Id.* at 26-28, 213-214.

[29] *Id.* at 194-197.

[30] *Id.* at 198.

[31] *Id.* at 130-131.

[32] *Id.* at 133.

he will get when the decision in his case becomes final or does it represent only the amount that he was entitled to at the time the Labor Arbiter rendered his decision, leaving room for increase up to the date the decision in the case becomes final?

Article 279 of the Labor Code, as amended by Section 34 of Republic Act 6715 instructs:

Art. 279. *Security of Tenure*. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

Clearly, the law intends the award of backwages and similar benefits to accumulate past the date of the Labor Arbiter's decision until the dismissed employee is actually reinstated.[33] But if, as in this case, reinstatement is no longer possible, this Court has consistently ruled that backwages shall be computed from the time of illegal dismissal until the date the decision becomes final.[34]

As it happens, the parties filed separate petitions before this Court. The petition in G.R. 181913, filed by respondent Javellana, questioned the CA's finding of illegality of dismissal while the petition in G.R. 182158, filed by petitioner Belen, challenged the amounts of money claims awarded to him. The Court denied the first with finality in its resolution of September 22, 2008;[35] the second is the subject of the present

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[33] See: *Cocomangas Hotel Beach Resort v. Visca*, G.R. No. 167045, August 29, 2008, 563 SCRA 705, 721; *Pheschem Industrial Corporation v. Moldez*, 497 Phil. 647, 655 (2005).

[34] See: *Petron Corporation v. National Labor Relations Commission*, G.R. No. 154532, October 27, 2006, 505 SCRA 596, 616; *Philippine Journalists, Inc. v. Mosqueda*, G.R. No. 141430, May 7, 2004, 428 SCRA 369, 376-377; *Buenviaje v. Court of Appeals*, 440 Phil. 84, 92 (2002).

[35] *Rollo* (G.R. 182158), p. 208.

case. Consequently, Belen should be entitled to backwages from August 20, 1999, when he was dismissed, to September 22, 2008, when the judgment for unjust dismissal in G.R. 181913 became final.

Separation pay, on the other hand, is equivalent to one month pay for every year of service, a fraction of six months to be considered as one whole year.[36] Here that would begin from January 31, 1994 when petitioner Belen began his service. Technically the computation of his separation pay would end on the day he was dismissed on August 20, 1999 when he supposedly ceased to render service and his wages ended. But, since Belen was entitled to collect backwages until the judgment for illegal dismissal in his favor became final,[37] here on September 22, 2008, the computation of his separation pay should also end on that date.

Further, since the monetary awards remained unpaid even after it became final on September 22, 2008 because of issues raised respecting the correct computation of such awards, it is but fair that respondent Javellana be required to pay 12% interest per annum on those awards from September 22, 2008 until they are paid. The 12% interest is proper because the Court treats monetary claims in labor cases the equivalent of a forbearance of credit.[38] It matters not that the amounts of the claims were still in question on September 22, 2008. What is decisive is that the issue of illegal dismissal from which the

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[36] See: *Victory Liner, Inc. v. Race*, G.R. No. 164820, December 8, 2008, 573 SCRA 212, 214-215; *De Guzman v. National Labor Relations Commission*, G.R. No. 167701, December 12, 2007, 540 SCRA 21, 34-35; *Farrol v. Court of Appeals*, 382 Phil. 212, 221 (2000); *Litonjua Group of Companies v. Vigan*, 412 Phil. 627, 642 (2001).

[37] *Supra* note 34.

[38] *Suatengco v. Reyes*, G.R. No. 162729, December 17, 2008, 574 SCRA 187, 196; *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78, 97.

order to pay monetary awards to petitioner Belen stemmed had been long terminated.[39]

WHEREFORE, the Court *GRANTS* the petition, *SETS ASIDE* the decision of the Court of Appeals dated September 12, 2007 and its resolution dated March 3, 2008 in CA-G.R. SP 83354, *REINSTATES* the decision of the Labor Arbiter dated November 25, 2002 in NLRC-NCR Case 30-09-04294-01 with the modification that the awards of backwages be computed from August 20, 1999 to September 22, 2008 and the separation pay, from January 31, 1994 to September 22, 2008; the 10% attorney's fees be based on the awards so computed; and that the amounts due be made to bear interest of 12% per annum from September 22, 2008 until fully paid.

Let the records of the case be remanded to the National Labor Relations Commission upon the finality of this judgment for computation of the exact amounts due petitioner Albino Belen from respondents Javellana Farms, Inc. and Daniel Javellana, Jr.

SO ORDERED.

Carpio (Chairperson), Nachura,[*] *Brion,* and *Perez, JJ.,* concur.

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[39] See: *Equitable Banking Corporation v. Sadac,* G.R. No. 164772, June 8, 2006, 490 SCRA 380, 420-421.

[*] Designated as additional member in lieu of Associate Justice Mariano C. Del Castillo, per raffle dated February 24, 2010.

EN BANC

[G.R. No. 182434. March 5, 2010]

SULTAN YAHYA "JERRY" M. TOMAWIS, *petitioner, vs.* **HON. RASAD G. BALINDONG, AMNA A. PUMBAYA, JALILAH A. MANGOMPIA, and RAMLA A. MUSOR,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SHARI'A DISTRICT COURT; JURISDICTION.— Art. 143 of PD 1083 vests SDCs, in certain cases, with exclusive original jurisdiction and with concurrent original jurisdiction over certain causes of action. As far as relevant, Art. 143 reads as follows: ARTICLE 143. Original jurisdiction.— (1) The Shari'a District Court shall have exclusive original jurisdiction over: xxx d) All actions arising from customary contracts in which the parties are Muslims, if they have not specified which law shall govern their relations; and (2) **Concurrently with existing civil courts**, the Shari'a District Court shall have original jurisdiction over: xxx (b) All other personal and **real actions** not mentioned in paragraph 1 (d) **wherein the parties involved are Muslims except those for forcible entry and unlawful detainer**, which shall fall under the exclusive original jurisdiction of the Municipal Circuit Court. As things stood prior to the effectivity date of BP 129, the SDC had, by virtue of PD 1083, original jurisdiction, concurrently with the RTCs and MTCs, over all personal and real actions outside the purview of Art. 143(1)(d) of PD 1083, in which the parties involved were Muslims, except those for ejectment. Personal action is one that is founded on privity of contracts between the parties; and in which the plaintiff usually seeks the recovery of personal property, the enforcement of a contract, or recovery of damages. Real action, on the other hand, is one anchored on the privity of real estate, where the plaintiff seeks the recovery of ownership or possession of real property or interest in it. Jurisdiction over the subject matter of a case is determined from the allegations of the complaint and the character of the relief sought. xxx While we recognize the concurrent jurisdiction of the SDCs and the

RTCs with respect to cases involving only Muslim, the SDC has exclusive original jurisdiction over all actions arising from contracts customary to Muslims to the exclusion of the RTCs, as the exception under PD 1083, while both courts have concurrent original jurisdiction over all other personal actions. Said jurisdictional conferment, found in Art. 143 of PD 1083, is applicable solely when both parties are Muslims and shall not be construed to operate to the prejudice of a non-Muslim, who may be the opposing party against a Muslim.

2. ID.; ID.; PURPOSE OF THE CODIFICATION OF MUSLIM LAWS.— One must bear in mind that even if Shari'a courts are considered regular courts, these are courts of limited jurisdiction. As we have observed in *Rulona-Al Awadhi v. Astih*,[30] the Code of Muslim Personal Laws creating said courts was promulgated to fulfill "the aspiration of the Filipino Muslims to have their system of laws enforced in their communities." It is a special law intended for Filipino Muslims, as clearly stated in the purpose of PD 1083: ARTICLE 2. Purpose of Code. — Pursuant to Section 11 of Article XV of the Constitution of the Philippines, which provides that "The State shall consider the customs, traditions, beliefs and interests of national cultural communities in the formulation and implementation of state policies," this Code: (a) Recognizes the legal system of the Muslims in the Philippines as part of the law of the land and seeks to make Islamic institutions more effective; (b) Codifies Muslim personal laws; and (c) Provides for an effective administration and enforcement of Muslim personal laws among Muslims.

3. ID.; CIVIL PROCEDURE; ACTION FOR RECONVEYANCE OF REAL PROPERTY; TWO FACTS THAT MUST BE ALLEGED IN THE COMPLAINT.— In an action for reconveyance, all that must be alleged in the complaint are two facts that, admitting them to be true, would entitle the plaintiff to recover title to the disputed land, namely: (1) that the plaintiff is the owner of the land or has possessed the land in the concept of owner; and (2) that the defendant has illegally dispossessed the plaintiff of the land. A cursory perusal of private respondents' complaint readily shows that that these requisites have been met: they alleged absolute ownership of the subject parcel of land, and they were illegally dispossessed

of their land by petitioner. The allegations in the complaint, thus, make a case for an action for reconveyance.

4. CIVIL LAW; STATUTES; GENERAL LAW AND SPECIAL LAW ARE IN *PARI MATERIA*; APPLICATION IN CASE AT BAR.— We have held that a general law and a special law on the same subject are statutes in *pari materia* and should be **read together and harmonized**, if possible, with a view to giving effect to both. In the instant case, we apply the principle *generalia specialibus non derogant.* A general law does not nullify a special law. The general law will yield to the special law in the specific and particular subject embraced in the latter. We must read and construe BP 129 and PD 1083 together, then by taking PD 1083 as an exception to the general law to reconcile the two laws. This is so since the legislature has not made any express repeal or modification of PD 1083, and it is well-settled that repeals of statutes by implication are not favored. Implied repeals will not be declared unless the intent of the legislators is manifest. Laws are assumed to be passed only after careful deliberation and with knowledge of all existing ones on the subject, and it follows that the legislature did not intend to interfere with or abrogate a former law relating to the same subject matter.

5. REMEDIAL LAW; APPEALS; GRAVE ABUSE OF DISCRETION; DEFINED AND CONSTRUED.— Grave abuse of discretion is present when there is an arbitrary exercise of power owing from passion, prejudice, or personal hostility; or a whimsical, arbitrary, or capricious exercise of power that amounts to a shirking from or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. The abuse of discretion must be patent and gross for the act to be held as one made with grave abuse of discretion. We find respondent court's issuance of the assailed orders justified and with no abuse of discretion. Its reliance on the provisions of PD 1083 in asserting its jurisdiction was sound and unassailable.

6. ID.; ID.; QUESTION OF JURISDICTION MAY BE RAISED AT ANY TIME EVEN ON APPEAL.— The rule is settled that a question of jurisdiction, as here, may be raised at any time, even on appeal, provided its application does not result in a mockery of the basic tenets of fair play. Petitioner's

action at the later stages of the proceedings below, doubtless taken upon counsel's advice, is less than fair and constitutes censurable conduct. Lawyers and litigants must be brought to account for their improper conduct, which trenches on the efficient dispensation of justice.

APPEARANCES OF COUNSEL

Edgar A. Masorong for petitioner.
Tingcap T. Mortaba for private respondents.

D E C I S I O N

VELASCO, JR., *J.*:

This petition for *certiorari*, prohibition, and *mandamus* under Rule 65 seeks to nullify the Orders dated July 13, 2005, September 6, 2005, and February 6, 2008 issued by respondent Judge Rasad G. Balindong of the Shari'a District Court (SDC), Fourth Judicial District in Marawi City, in Civil Case No. 102-97 entitled *Amna A. Pumbaya, et al. v. Jerry Tomawis, et al.*

The Facts

Private respondents Amna A. Pumbaya, Jalilah A. Mangompia, and Ramla A. Musor are the daughters of the late Acraman Radia. On February 21, 1997, private respondents filed with the SDC an action for quieting of title of a parcel of land located in Banggolo, Marawi City, against petitioner Sultan Jerry Tomawis and one Mangoda Radia. In their complaint, styled as Petition[1] and docketed as Civil Case No. 102-97, private respondents, as plaintiffs *a quo*, alleged the following:

(1) They were the absolute owners of the lot subject of the complaint, being the legal heirs of Acraman Radia, who had always been in peaceful, continuous, and adverse possession of the property; (2) Tomawis assumed ownership of the said property on the claim that he bought the same from Mangoda

[1] *Rollo*, pp. 29-32.

Radia, who, in turn, claimed that he inherited it from his late father; (3) in 1996, they "were informed that their land [was] leveled and the small houses [built] thereon with their permission were removed" upon the orders of Tomawis; and (4) they had been unlawfully deprived of their possession of the land, and Tomawis' actions had cast a cloud of doubt on their title.

In his answer, Tomawis debunked the sisters' claim of ownership and raised, as one of his affirmative defenses treated by the court as a motion to dismiss, SDC's lack of jurisdiction over the subject matter of the case.[2] As argued, the regular civil court, not SDC, had such jurisdiction pursuant to *Batas Pambansa Blg*. (BP) 129 or the *Judiciary Reorganization Act of 1980*.[3]

Following the hearing on the affirmative defenses, respondent Judge Rasad Balindong, by Order of April 1, 2003, denied the motion. Apropos the jurisdiction aspect of the motion, respondent judge asserted the SDC's original jurisdiction over the case, concurrently with the Regional Trial Court (RTC), by force of Article 143, paragraph 2(b) of Presidential Decree No. (PD) 1083 or the *Code of Muslim Personal Laws of the Philippines.*

On June 16, 2005, Tomawis filed an *Urgent Motion to Dismiss with Prayer to Correct the Name of Defendants to Read Sultan Yahya "Jerry" M. Tomawis & Mangoda M. Radia*.[4] In it, he alleged that title to or possession of real property or interest in it was clearly the subject matter of the complaint which, thus, brought it within the original exclusive jurisdiction of the regular

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[2] *Id.* at 35.

[3] Petitioner relies on Sec. 19 of BP 129 providing that the RTC shall exercise 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 exceeds twenty thousand pesos (PhP 20,000) or for civil actions in Metro Manila, except actions for forcibly entry, the original jurisdiction over which is conferred upon the Metropolitan Trial Court, Municipal Trial Courts, and Municipal Circuit Trial Courts.

[4] *Rollo*, p. 44.

courts in consonance with existing law.[5] On July 13, 2005, the SDC denied this motion to dismiss.

Unsatisfied, Tomawis later interposed an *Urgent Motion for Reconsideration with Prayer to Cancel and Reset the Continuation of Trial Until After the Resolution of the Pending Incident*.[6] Per Order[7] dated September 6, 2005, the SDC denied Tomawis' urgent motion for reconsideration and ordered the continuation of trial.

Forthwith, Tomawis repaired to the Court of Appeals (CA), Mindanao Station, on a petition for certiorari, mandamus, and prohibition under Rule 65 to nullify, on jurisdictional grounds, the aforesaid SDC July 13, 2005 and September 6, 2005 Orders.

By Resolution[8] of February 8, 2006, the appellate court dismissed the petition on the ground that the CA was "not empowered to resolve decisions, orders or final judgments of the [SDCs]." Justifying its disposition, the CA held that, pursuant to Art. 145[9] of PD 1083, in relation to Art. VIII, Section 9[10] of

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[5] BP 29, as amended by RA 7691, entitled "An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, Amending for the Purpose [BP 129]."

[6] *Rollo*, p. 59.

[7] *Id.* at 65.

[8] *Id.* at 86-87. Penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Teresita Dy-Liacco Flores (now retired) and Ramon R. Garcia.

[9] PD 1083, Art. 145 provides, The decision of the Shari'a District Courts whether on appeal from the Shari'a Circuit Court or not shall be final. Nothing herein contained shall affect the original and appellate jurisdiction of the Supreme Court as provided in the Constitution.

[10] Sec. 9. Jurisdiction of the Shari'ah Appellate Court. The Shari'ah Appellate Court shall:

(a) Exercise original jurisdiction over petitions for *certiorari*, prohibition, *mandamus*, *habeas corpus* and other auxiliary writs and processes only in aid of its appellate jurisdiction; and,

(b) Exercise exclusive appellate jurisdiction over all cases tried in the Shari'ah district courts as established by law.

Republic Act No. (RA) 9054,[11] the new organic law of the Autonomous Region in Muslim Mindanao, final decisions of the SDC are reviewable by the yet to be established Shari'a Appellate Court. Pending the reorganization of the Shari'a Appellate Court, the CA ruled that such intermediate appellate jurisdiction rests with the Supreme Court.

Undeterred by the foregoing setback before the CA, Tomawis interposed, on January 29, 2008, before the SDC another motion to dismiss on the same grounds as his previous motions to dismiss. The motion was rejected by respondent Judge Balindong per his order of February 6, 2008, denying the motion with finality.

Hence, this recourse on the sole issue of:

WHETHER OR NOT THE PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION IN DENYING PETITIONER'S MOTIONS TO DISMISS ON THE GROUND OF LACK OF JURISDICTION AND IN DENYING PETITIONER'S MOTION SEEKING RECONSIDERATION OF THE ORDER DENYING HIS MOTION TO DISMISS.

Simply put, the issue is whether or not the SDC can validly take cognizance of Civil Case No. 102-97.

The Court's Ruling

Prefatorily, the Court acknowledges the fact that decades after the enactment in 1989 of the law[12] creating the Shari'a Appellate Court and after the Court, per Resolution of June 8, 1999,[13] authorized its creation, the Shari'a Appellate Court has yet to be organized with the appointment of a Presiding Justice and two Associate Justices. **Until such time that the Shari'a Appellate Court shall have been organized, however, appeals**

[11] An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao, Amending for the Purpose Republic Act No. 6734, Entitled An Act Providing for the Autonomous Region in Muslim Mindanao, as Amended.

[12] Autonomous Region in Muslim Mindanao Organic Law (RA 6734), as amended.

[13] A.M. No. 99-4-66.

or petitions from final orders or decisions of the SDC filed with the CA shall be referred to a Special Division to be organized in any of the CA stations preferably composed of Muslim CA Justices.

For cases where only errors or questions of law are raised or involved, the appeal shall be to this Court by a petition for review on *certiorari* under Rule 45 of the Rules of Court pursuant to Art. VIII, Sec. 5 of the Constitution and Sec. 2 of Rule 41 of the Rules.

To be sure, the Court has, on several occasions, passed upon and resolved petitions and cases emanating from Shari'a courts. Among these was one involving the issue of whether or not grave abuse of discretion attended the denial of a motion to implement a writ of execution.[14] Still another involved the Shari'a courts' jurisdiction in custody and guardianship proceedings,[15] nullity of marriage and divorce when the parties were both married in civil and Muslim rites,[16] and settlement of estate proceedings where the deceased was alleged to be not a Muslim,[17] or where the estate covered properties situated in different provinces.[18]

The instant petition, involving only a question of law on the jurisdiction of the SDC over a complaint for quieting of title, was properly instituted before the Court.

Petitioner asserts that Sec. 19(2), in relation to Sec. 33(3) of BP 129, as amended—by vesting original exclusive jurisdiction to the RTCs or Municipal Trial Courts (MTCs), as the case may be, over civil actions that involve the title to, or possession of, real property—effectively removed the concurrent jurisdiction

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[14] *Batugan v. Balindong*, G.R. No. 181384, March 13, 2009, 581 SCRA 473.

[15] *Rulona-Al Awadhi v. Astih*, No. 81969, September 26, 1988, 165 SCRA 771.

[16] *Bondagjy v. Artadi*, G.R. No. 170406, August 11, 2008, 561 SCRA 633.

[17] *Montañer v. Shari'a District Court, Fourth Shari'a Judicial District, Marawi City*, G.R. No. 174975, January 20, 2009, 576 SCRA 746.

[18] *Musa v. Moson*, G.R. No. 95574, August 16, 1991, 200 SCRA 715.

once pertaining to the SDC under Art. 143(2)(b) of PD 1083. In fine, petitioner contends that Art. 143 of PD 1083, insofar as it granted the SDC concurrent jurisdiction over certain real actions, was repealed by the BP 129 provisions adverted to.

Disagreeing as to be expected, private respondents balk at the notion of the implied repeal petitioner espouses, arguing that PD 1083, being a special, albeit a prior, law, has not been repealed by BP 129. Putting private respondents' contention in a narrower perspective, Art. 143(2)(b) of PD 1083 is of specific applicability and, hence, cannot, under the rules of legal hermeneutics, be superseded by laws of general application, absent an express repeal.

Petitioner's claim has no basis.

The allegations, as well as the relief sought by private respondents, the elimination of the "cloud of doubts on the title of ownership"[19] on the subject land, are within the SDC's jurisdiction to grant.

A brief background. The Judiciary Act of 1948 (RA 296) was enacted on June 17, 1948. It vested the Courts of First Instance with original jurisdiction:

> (b) In all civil actions which involve the title to or possession of real property, or any interest therein, or the legality of any tax, impost or assessment, except actions of forcible entry into and detainer on lands or buildings, original jurisdiction of which is conferred by this Act upon city and municipal courts.[20] x x x

Subsequently, PD 1083, dated February 4, 1977, created the Shari'a courts, i.e., the SDC and the Shari'a Circuit Court, both of limited jurisdiction. In *Republic v. Asuncion*,[21] the Court, citing the Administrative Code of 1987,[22] classified Shari'a courts

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[19] *Rollo*, p. 31.

[20] Sec. 44.

[21] G.R. No. 108208, March 11, 1994, 231 SCRA 211.

[22] Sec. 16, Chap. 4, Book 11 of the Code.

as "regular courts," meaning they are part of the judicial department.

Art. 143 of PD 1083 vests SDCs, in certain cases, with exclusive original jurisdiction and with concurrent original jurisdiction over certain causes of action. As far as relevant, Art. 143 reads as follows:

ARTICLE 143. Original jurisdiction.— (1) The Shari'a District Court shall have exclusive original jurisdiction over:

xxx xxx xxx

d) All actions arising from customary contracts in which the parties are Muslims, if they have not specified which law shall govern their relations; and

xxx xxx xxx

(2) **Concurrently with existing civil courts**, the Shari'a District Court shall have original jurisdiction over:

xxx xxx xxx

(b) All other personal and **real actions** not mentioned in paragraph 1 (d) **wherein the parties involved are Muslims except those for forcible entry and unlawful detainer**, which shall fall under the exclusive original jurisdiction of the Municipal Circuit Court. (Emphasis added.)

On August 14, 1981, BP 129 took effect. Sec. 19 of BP 129, as later amended by RA 7691,[23] defining the jurisdiction of the RTCs, provides:

Section 1. Section 19 of Batas Pambansa Blg. 129, otherwise known as the "Judiciary Reorganization Act of 1980", is hereby amended to read as follows:

"Sec. 19. Jurisdiction in civil cases.—Regional Trial Courts shall exercise **exclusive original jurisdiction**:

xxx xxx xxx

[23] Approved on March 25, 1994.

"(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." (Emphasis supplied.)

As things stood prior to the effectivity date of BP 129, the SDC had, by virtue of PD 1083, original jurisdiction, concurrently with the RTCs and MTCs, over all personal and real actions outside the purview of Art. 143(1)(d) of PD 1083, in which the parties involved were Muslims, except those for ejectment. Personal action is one that is founded on privity of contracts between the parties;[24] and in which the plaintiff usually seeks the recovery of personal property, the enforcement of a contract, or recovery of damages.[25] Real action, on the other hand, is one anchored on the privity of real estate,[26] where the plaintiff seeks the recovery of ownership or possession of real property or interest in it.[27]

On the other hand, BP 129, as amended, vests the RTC or the municipal trial court with exclusive original jurisdiction in all civil actions that involve the title to or possession of real property, or any interest in it, and the value of the property subject of the case or the jurisdictional amount, determining whether the case comes within the jurisdictional competence of the RTC or the MTC. *Orbeta v. Orbeta*[28] differentiated personal action from real action in the following wise:

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[24] *PICOP v. Samson*, No. L-30175, November 28, 1975, 68 SCRA 224.

[25] *Hernandez v. Rural Bank of Lucena, Inc.*, No. L-29791, January 10, 1978, 81 SCRA 75.

[26] 1 Paras, *RULES OF COURT ANNOTATED* 37 (2nd ed.); citing *Osborne v. Fall River*, 140 Mass. 508.

[27] *Hernandez v. Rural Bank of Lucena, Inc., supra.*

[28] G.R. No. 166837, November 27, 2006, 508 SCRA 265, 268; citing RULES OF COURT, Rule 4, Sec. 2.

A real action, under Sec. 1, Rule 4 of the Rules of Court, is one that affects title to or possession of real property, or an interest therein. Such actions should be commenced and tried in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated. All other actions are personal and may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff.

Civil Case No. 102-97, judging from the averments in the underlying complaint, is basically a suit for recovery of possession and eventual reconveyance of real property which, under BP 129, as amended, falls within the original jurisdiction of either the RTC or MTC. In an action for reconveyance, all that must be alleged in the complaint are two facts that, admitting them to be true, would entitle the plaintiff to recover title to the disputed land, namely: (1) that the plaintiff is the owner of the land or has possessed the land in the concept of owner; and (2) that the defendant has illegally dispossessed the plaintiff of the land.[29] A cursory perusal of private respondents' complaint readily shows that these requisites have been met: they alleged absolute ownership of the subject parcel of land, and they were illegally dispossessed of their land by petitioner. The allegations in the complaint, thus, make a case for an action for reconveyance.

Given the above perspective, the question that comes to the fore is whether the jurisdiction of the RTC or MTC is to the exclusion of the SDC.

Petitioner's version of the law would effectively remove the concurrent original jurisdiction granted by Art. 143, par. 2(b) of PD 1083 to civil courts and Shari'a courts over, among others:

All other personal and real actions not mentioned in paragraph 1 (d) wherein the parties involved are Muslims except those for forcible entry and unlawful detainer, which shall fall under the exclusive original jurisdiction of the Municipal Circuit Court. x x x

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[29] *Mendizabel v. Apao*, G.R. No. 143185, February 20, 2006, 482 SCRA 587, 604.

Petitioner's interpretation of the law cannot be given serious thought. One must bear in mind that even if Shari'a courts are considered regular courts, these are courts of limited jurisdiction. As we have observed in *Rulona-Al Awadhi v. Astih*,[30] the Code of Muslim Personal Laws creating said courts was promulgated to fulfill "the aspiration of the Filipino Muslims to have their system of laws enforced in their communities." It is a special law intended for Filipino Muslims, as clearly stated in the purpose of PD 1083:

> ARTICLE 2. Purpose of Code. — Pursuant to Section 11 of Article XV of the Constitution of the Philippines, which provides that "The State shall consider the customs, traditions, beliefs and interests of national cultural communities in the formulation and implementation of state policies," this Code:
>
> (a) Recognizes the legal system of the Muslims in the Philippines as part of the law of the land and seeks to make Islamic institutions more effective;
>
> (b) Codifies Muslim personal laws; and
>
> (c) Provides for an effective administration and enforcement of Muslim personal laws among Muslims.

A reading of the pertinent provisions of BP 129 and PD 1083 shows that the former, a law of general application to civil courts, has no application to, and does not repeal, the provisions found in PD 1083, a special law, which only refers to Shari'a courts.

A look at the scope of BP 129 clearly shows that Shari'a courts were not included in the reorganization of courts that were formerly organized under RA 296. The pertinent provision in BP129 states:

> SECTION 2. Scope. — The reorganization herein provided shall include the Court of Appeals, the Court of First Instance, the Circuit Criminal Courts, the Juvenile and Domestic Relations Courts, the

[30] *Supra* note 15; citing Executive Order No. 442 dated December 23, 1974.

Courts of Agrarian Relations, the City Courts, the Municipal Courts, and the Municipal Circuit Courts.

As correctly pointed out by private respondents in their Comment,[31] BP 129 was enacted to reorganize only existing civil courts and is a law of general application to the judiciary. In contrast, PD 1083 is a special law that only applies to Shari'a courts.

We have held that a general law and a special law on the same subject are statutes in *pari materia* and should be **read together and harmonized**, if possible, with a view to giving effect to both.[32] In the instant case, we apply the principle *generalia specialibus non derogant.* A general law does not nullify a special law. The general law will yield to the special law in the specific and particular subject embraced in the latter.[33] We must read and construe BP 129 and PD 1083 together, then by taking PD 1083 as an exception to the general law to reconcile the two laws. This is so since the legislature has not made any express repeal or modification of PD 1083, and it is well-settled that repeals of statutes by implication are not favored.[34] Implied repeals will not be declared unless the intent of the legislators is manifest. Laws are assumed to be passed only after careful deliberation and with knowledge of all existing ones on the subject, and it follows that the legislature did not intend to interfere with or abrogate a former law relating to the same subject matter.[35]

In order to give effect to both laws at hand, we must continue to recognize the concurrent jurisdiction enjoyed by SDCs with that of RTCs under PD 1083.

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[31] *Rollo*, p. 123.

[32] *Vinzons-Chato v. Fortune Tobacco Corporation*, G.R. No. 141309, June 19, 2007, 525 SCRA 11, 20-21.

[33] Agpalo, *STATUTORY CONSTRUCTION* 415 (2003).

[34] *Id.* at 411.

[35] *Social Justice Society v. Atienza, Jr.*, G.R. No. 156052, February 13, 2008, 545 SCRA 92.

Moreover, the jurisdiction of the court below cannot be made to depend upon defenses set up in the answer, in a motion to dismiss, or in a motion for reconsideration, but only upon the allegations of the complaint.[36] Jurisdiction over the subject matter of a case is determined from the allegations of the complaint and the character of the relief sought.[37] In the instant case, private respondents' petition[38] in Civil Case No. 102-97 sufficiently alleged the concurrent original jurisdiction of the SDC.

While we recognize the concurrent jurisdiction of the SDCs and the RTCs with respect to cases involving only Muslims, the SDC has exclusive original jurisdiction over all actions arising from contracts customary to Muslims[39] to the exclusion of the RTCs, as the exception under PD 1083, while both courts have concurrent original jurisdiction over all other personal actions. Said jurisdictional conferment, found in Art. 143 of PD 1083, is applicable solely when both parties are Muslims and shall not be construed to operate to the prejudice of a non-Muslim,[40] who may be the opposing party against a Muslim.

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[36] *Tamano v. Ortiz*, G.R. No. 126603, June 29, 1998, 291 SCRA 584.

[37] *Villena v. Payoyo*, G.R. No. 163021, April 27, 2007, 522 SCRA 592.

[38] *Rollo*, p. 30.

[39] While PD 1083 does not define a customary contract, its Art. 175 of Title III: Customary Contracts states:

Article 175. How construed. Any transaction whereby one person delivers to another any real estate, plantation, orchard or any fruit-bearing property by virtue of *sanda*, *sanla*, *arindao*, or similar customary contract, shall be construed as a mortgage (rihan) in accordance with Muslim law.

[40] PD 1083, Title II, Article 3. *Conflict of provisions.*

(1) In case of conflict between any provision of this Code and laws of general application, the former shall prevail.

(2) Should the conflict be between any provision of this Code and special laws or laws of local application, the latter shall be liberally construed in order to carry out the former.

(3) The provisions of this Code shall be applicable only to Muslims and nothing herein shall be construed to operate to the prejudice of a non-Muslim.

Given petitioner's flawed arguments, we hold that the respondent court did not commit any grave abuse of discretion. Grave abuse of discretion is present when there is an arbitrary exercise of power owing from passion, prejudice, or personal hostility; or a whimsical, arbitrary, or capricious exercise of power that amounts to a shirking from or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. The abuse of discretion must be patent and gross for the act to be held as one made with grave abuse of discretion.[41] We find respondent court's issuance of the assailed orders justified and with no abuse of discretion. Its reliance on the provisions of PD 1083 in asserting its jurisdiction was sound and unassailable.

We close with the observation that what is involved here are not only errors of law, but also the errors of a litigant and his lawyer. As may have been noted, petitioner Tomawis' counsel veritably filed two (2) motions to dismiss, each predicated on the sole issue of jurisdiction. The first may have been understandable. But the second motion was something else, interposed as it was after the CA, by resolution, denied Tomawis' petition for *certiorari* for want of jurisdiction on the part of the appellate court to review judgments or orders of the SDC. The CA stated the observation, however, that Tomawis and his counsel may repair to this Court while the Shari'a Appellate Court has yet to be organized. Petitioner waited two years after the CA issued its denial before filing what virtually turned out to be his second motion to dismiss, coming finally to this Court after the same motion was denied. The Court must express disapproval of the cunning effort of Tomawis and his counsel to use procedural rules to the hilt to prolong the final disposition of this case. From *Alonso v. Villamor*,[42] almost a century-old decision, the Court has left no doubt that it frowns on such unsporting practice. The rule is settled that a question of jurisdiction, as here, may be raised at any time, even on appeal,

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[41] *Badiola v. Court of Appeals*, G.R. No. 170691, April 23, 2008, 552 SCRA 562, 581.

[42] 16 Phil. 315 (1910).

provided its application does not result in a mockery of the basic tenets of fair play.[43] Petitioner's action at the later stages of the proceedings below, doubtless taken upon counsel's advice, is less than fair and constitutes censurable conduct. Lawyers and litigants must be brought to account for their improper conduct, which trenches on the efficient dispensation of justice.

WHEREFORE, the petition is *DISMISSED* for lack of merit. Petitioner Yahya "Jerry" Tomawis and Atty. Edgar A. Masorong are *ADMONISHED* to refrain from engaging in activities tending to frustrate the orderly and speedy administration of justice, with a warning that repetition of the same or similar acts may result in the imposition of a more severe sanction.

No costs.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Nachura, Leonardo-de Castro, Brion, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Peralta, J., on official leave.

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[43] *Jimenez v. Patricia, Inc.*, G.R. No. 134651, September 18, 2000, 340 SCRA 525.

SECOND DIVISION

[G.R. No. 185012. March 5, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **VICTOR VILLARINO *y* MABUTE,** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; SPECIAL COMPLEX CRIME OF RAPE WITH HOMICIDE; ELEMENTS.—** In the special complex crime of rape with homicide, the following elements must concur: (1) the appellant had carnal knowledge of a woman; (2) carnal knowledge of a woman was achieved by means of force, threat or intimidation; and (3) by reason or on occasion of such carnal knowledge by means of force, threat or intimidation, the appellant killed a woman. When the victim is a minor, however, it is sufficient that the evidence proves that the appellant had sexual intercourse or sexual bodily connections with the victim.

2. **ID.; ID.; CONVICTION THROUGH CIRCUMSTANTIAL EVIDENCE; WHEN PROPER.—** [E]ven without his confession, appellant could still be convicted of the complex crime of rape with homicide. The prosecution established his complicity in the crime through circumstantial evidence which were credible and sufficient, and led to the inescapable conclusion that the appellant committed the complex crime of rape with homicide. When considered together, the circumstances point to the appellant as the culprit. The absence of spermatozoa does not necessarily result in the conclusion that rape was not committed. Convictions for rape with homicide have been sustained on purely circumstantial evidence. In those cases, the prosecution presented other tell-tale signs of rape such as the laceration and description of the victim's pieces of clothing, especially her undergarments, the position of the body when found and the like. Here, we reiterate that there is an unbroken chain of circumstantial evidence from which we can infer that the appellant raped "AAA". In a secluded area, her undisturbed corpse was discovered lying face-up and slanting downward with her buttocks on top of a small boulder. Her 10-year old lifeless body was naked from waist down with legs

spread apart and dangling from the rock. Blood oozed from the vaginal orifice. Wrapped around her right hand was the appellant's *sando*. Her shorts were found a few meters away, just like the appellant's pendant and bracelet. Moreover, the appellant confessed to having raped "AAA". These circumstances lead to one fair and reasonable conclusion that appellant raped and murdered "AAA".

3. ID.; ID.; PENALTY.— Article 335 of the Revised Penal Code in relation to RA 7659 provides that when by reason or on the occasion of the rape a homicide is committed, the penalty shall be death. However, in view of the passage on June 24, 2006 of RA 9346, entitled "An Act Prohibiting the Imposition of the Death Penalty in the Philippines" we are mandated to impose on the appellant the penalty of *reclusion perpetua* without eligibility for parole.

4. ID.; ID.; CIVIL INDEMNITY; PROPER DAMAGES IMPOSED.— In line with current jurisprudence, the heirs of the victim are entitled to an award of ₱100,000.00 as civil indemnity, which is commensurate with the gravity of the complex crime committed. As actual damages, the heirs of "AAA" are entitled to an award of ₱6,900.00 only since this was the amount of expenses incurred for "AAA's" burial. Moral damages in the amount of ₱75,000.00 must also be awarded. Lastly, the heirs are entitled to an award of exemplary damages in the sum of ₱50,000.00. Article 229 of the Civil Code allows the award of exemplary damages in order to deter the commission of similar acts and to allow the courts to forestall behavior that would pose grave and deleterious consequences to society.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MINOR INCONSISTENCIES CONFIRM THAT THE WITNESSES HAD NOT BEEN REHEARSED.— An error in the estimation of time does not discredit the testimony of a witness when time is not an essential element. The inconsistencies indicated by the appellant are likewise inconsequential since they do not detract from the fact that "BBB" sent "AAA" on an errand in *Barangay* "D1" where her dead body was later discovered. Far from being badges of fraud and fabrication, the discrepancies in the testimonies of witnesses may be justifiably considered as indicative of the truthfulness on material points of the facts testified to. These minor deviations also confirm that

the witnesses had not been rehearsed. x x x In sum, the inconsistencies raised by the appellant are too inconsequential to warrant a reversal of the trial court's ruling. The decisive factor in the prosecution for rape with homicide is whether the commission of the crime has been sufficiently proven. For a discrepancy or inconsistency in the testimony of a witness to serve as a basis for acquittal, it must establish beyond doubt the innocence of the appellant for the crime charged. As the contradictions alleged by the appellant had nothing to do with the elements of the crime of rape with homicide, they cannot be used as ground for his acquittal.

6. **ID.; ID.; ID.; NOT AFFECTED BY INABILITY TO IMMEDIATELY IDENTIFY OWNERSHIP OF THE JEWELRY FOUND NEAR THE DEAD BODY OF THE VICTIM; RATIONALE.—** The credibility of SPO4 Genoguin is not adversely affected by his inability to immediately identify the ownership of the jewelry found near the dead body of the victim despite his testimony that he saw the appellant wearing the same jewelry on previous occasions. The workings of a human mind placed under emotional stress are unpredictable leading people to act differently. There is simply no standard form of behavioral response that can be expected from anyone when confronted with a startling or frightful occurrence. SPO4 Genoguin, despite being a policeman since 1977, was affected by the gruesome crime. His years in the police service did not prepare him to witness the lifeless body of a 10-year old girl who had been brutally raped and murdered.

7. **ID.; ID.; IMPROPER MOTIVE DESERVES SCANT CONSIDERATION.—** The appellant imputes improper motive to witness Rodrigo who, allegedly, had an axe to grind against him because Rodrigo's fishing venture incurred huge losses after appellant abandoned his job as a cook. Such imputation, however, deserves scant consideration. Other than appellant's self-serving allegation, there is no proof that his sudden departure from work adversely affected the operations of the fishing venture.

8. **ID.; ID.; DENIAL AND ALIBI; INTRINSICALLY WEAK DEFENSES AND MUST BE SUPPORTED BY STRONG EVIDENCE OF NON-CULPABILITY IN ORDER TO BE CREDIBLE.—** Against the prosecution's evidence, the appellant could only offer a mere denial and alibi. However, denial and alibi are intrinsically weak defenses and must be supported by

strong evidence of non-culpability in order to be credible. Courts likewise view the defense of alibi with suspicion and caution, not only because it is inherently weak and unreliable, but also because it can be fabricated easily. Also, the testimonies of appellant's mother and Aurelia Susmena, a close family friend, deserve no probative weight. In *People v. Sumalinog, Jr.*, we held that when a defense witness is a family member, relative or close friend, courts should view such testimony with skepticism. Besides, in order for alibi to prosper, it is not enough to prove that the appellant was somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene. x x x Hence, the appellant's twin defenses of denial and alibi pale in the light of the array of circumstantial evidence presented by the prosecution. The positive assertions of the prosecution witnesses deserve more credence and evidentiary weight than the negative averments of the appellant and his witnesses.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.:*

In this special complex crime of rape with homicide, the unsolicited and spontaneous confession of guilt by the appellant to the police officer is admissible in evidence. The circumstantial evidence is also sufficient to sustain the conviction of the appellant even if no spermatozoa was found in the victim's body during an autopsy.

Factual Antecedents

On August 3, 1995, an Information[1] was filed charging appellant Victor Villarino *y* Mabute with the special complex crime of

[1] Records, p. 1.

rape with homicide. The Information contained the following accusatory allegations:

That on or about the 29th day of April, 1995, at about 5:00 o'clock in the afternoon, at Barangay "D1", Municipality of Almagro, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, with lewd design, by means of force, violence and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge against a minor ten (10) years [sic], "AAA",[2] without the latter's consent and against her will, and thereafter, with deliberate intent to kill, did then and there willfully, unlawfully and feloniously inflict upon the said "AAA" mortal wounds on x x x different parts of her body, which caused her untimely death.

CONTRARY TO LAW.

Appellant pleaded not guilty to the crime charged. After the termination of the pre-trial conference, trial ensued.

The Version of the Prosecution

The case against the appellant, as culled from the evidence presented by the prosecution, is as follows:

On April 28, 1995, "BBB", together with her 10-year old daughter "AAA" and her younger son "CCC" went to the house of their relative in *Barangay* "D" to attend the fiesta to be held the next day.[3]

On even date, from 7:00 o'clock to 9:00 o'clock in the evening, SPO4 Jesus Genoguin (SPO4 Genoguin) was in his house in *Barangay* "D" entertaining his guests, one of whom was appellant. While personally serving food and drinks to appellant, SPO4

[2] Pursuant to Section 44 of Republic Act (RA) No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004, and Section 63, Rule XI of the Rules and Regulations Implementing RA 9262, the real name of the child-victim is withheld to protect his/her privacy. Fictitious initials are used instead to represent him/her. Likewise, the personal circumstances or any other information tending to establish or compromise his/her identity, as well as those of his/her immediate family or household members shall not be disclosed.

[3] TSN, June 19, 1996, pp. 6-7, 9 and 28.

Genoguin noticed that the latter was wearing a bracelet and a necklace with pendant. Appellant even allowed SPO4 Genoguin to put on the bracelet.[4]

On April 29, 1995, at around 9:00 o'clock in the morning, the appellant who was on his way to *Barangay* "D", passed by the house of Rodrigo Olaje (Rodrigo). At that time, Rodrigo noticed appellant wearing a bracelet and a necklace with pendant. He was also wearing a white sleeveless t-shirt (*sando*).[5]

At 11:00 o'clock in the morning, appellant was at the house of "BBB's" aunt. "BBB" offered him food. "BBB" also noticed that he was dressed in a white *sando* and that he wore jewelry consisting of a bracelet and a necklace with pendant.[6] At 1:00 o'clock in the afternoon, he was seen wearing the same *sando* and jewelry while drinking at the basketball court in *Barangay* "D".[7]

At around 3:00 o'clock in the afternoon, "BBB" told "AAA" to go home to *Barangay* "D1" to get a t-shirt for her brother. "AAA" obeyed. However, she no longer returned. While "BBB" was anxiously waiting for "AAA" in the house of her aunt in *Barangay* "D",[8] she received information that a dead child had been found in *Barangay* "D1". She proceeded to the area where she identified the child's body as that of her daughter, "AAA".[9]

At around 4:00 o'clock in the afternoon, Rodrigo, who was the *barangay* captain of *Barangay* "D1" received information that a dead child was found in their *barangay*. He instructed a *barangay tanod* to inform the police about the incident. Thereafter, Rodrigo proceeded to the specified area together with other *barangay tanods*.[10]

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[4] TSN, March 7, 1996, pp. 27-28.

[5] TSN, November 13, 1995, p. 72.

[6] TSN, June 19, 1996, pp. 8-9 and 25-26.

[7] TSN, March 8, 1996, p. 13.

[8] *Id.* at 29-30.

[9] *Id.* at 10-11, 30.

[10] TSN, November 13, 1995, pp. 18, 20-22.

SPO4 Genoguin also went to the crime scene after being informed by his commander.[11] Upon arrival, he saw the corpse of a little girl behind a big boulder that was about 10 meters away from the trail junction of the *barangays*.[12] People had gathered seven to 10 meters away from the dead body, but no one dared to approach.[13]

"AAA's" lifeless body lay face up with her buttocks on top of a small rock. Her body was slanted downward with her legs spread apart and dangling on the sides of the small boulder. She was no longer wearing short pants and panty, and blood oozed from her vagina. Wrapped around her right hand, which was positioned near her right ear, was a white *sando*.[14]

"AAA's" panty was found a meter away from her body, while her short pants was about two meters farther. A bracelet and a pendant were also recovered from the crime scene. Rodrigo and "BBB" identified these pieces of jewelry as those seen on the appellant. They also identified the *sando* on "AAA's" arm as the appellant's.[15] Thus, the hunt for appellant began.[16]

On the same day, the appellant was found in the house of Aurelia Susmena near the seashore of *Barangay* "D1". He was drunk and violent. He resisted arrest and had to be bodily carried to the motorboat that would take him to the municipal building in Almagro, Samar. The arresting team made the appellant take off his clothes since they were wet. When he complied, his briefs revealed bloodstains.[17]

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[11] TSN, March 7, 1996, pp. 26-27.

[12] *Id.* at 27-28; TSN, March 8, 1996, pp. 18-19.

[13] *Id.* at 28 and 34; TSN, March 7, 1996, p. 28.

[14] *Id.* at 34-35; TSN, March 8, 1996, pp. 9-11; TSN, November 13, 1995, pp. 23-24.

[15] TSN, November 13, 1995, pp. 69-72; TSN, June 19, 1996, pp. 10, 14-17; March 7, 1996, pp. 30-32 and 38-39.

[16] TSN, March 7, 1996, pp. 35-36.

[17] TSN, November 13, 1995, pp. 29-30, 36-37.

"AAA's" corpse was taken to Calbayog District Hospital for autopsy. The Medico Legal Necropsy Report indicated the following injuries sustained by "AAA":

- Lacerated wounds:
  - # 1 – 2 cm. in length forehead
  - # 2 – 2 cm. in length globella
  - # 3 – 2.5 cm. in length, left lateral supraorbital region
  - # 4 – 3 cm. in length, left infraorbital region with fracture of underlying bone
  - # 5 – 4 cm. in left occiput with linear fracture of underlying bone
- Hematoma, confluent abrasion, 3 cm. in diameter, sacrum
- Genitalia grossly female, pre-pubertal
- Vaginal orifice admits two fingers with ease
- Laceration, posterior vagina wall 3 cm.
- Laceration, anterior vaginal wall (12 o'clock) 1.5 cm.

CAUSE OF DEATH: Cardiorespiratory Arrest secondary to:

Cerebral hemorrhage and concussion secondary to multiple lacerated wounds to skull fissure

Hypovolomic shock secondary to Massive Hemorrhage, secondary to third degree vaginal laceration.[18]

Dr. Arleen P. Lim, Medical Officer III, testified that four of the five lacerated wounds could have been caused by a hard irregular or blunt object, like a rock or stone.[19] While the fifth lacerated wound could have been the result of a strong force, as when the head is forcibly banged.[20] "AAA's" hematoma was just above her buttocks.[21] She further testified that the ease with which two fingers entered "AAA's" vaginal orifice could

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[18] Records, p. 8.

[19] TSN, November 15, 1995, pp. 9-13.

[20] *Id.* at 13-14.

[21] TSN, November 14, 1995, p. 15.

have been caused by sexual intercourse. The lacerations in her vaginal wall could also have been the result of sexual intercourse or by the forcible entry of an object into the vaginal canal, such as a penis.[22] Dr. Lim confirmed that the cause of death of "AAA" was cardio-respiratory arrest secondary to multiple lacerated wounds and skull fracture.[23]

Due to the death of "AAA", "BBB" incurred (1) ₱2,200.00 for the embalming and for the coffin (2) ₱700.00 for transportation and (3) ₱4,000.00 for the wake and construction of the tomb.

On May 2, 1995, the police brought appellant to Calbayog City for medical examination since he had scratches and abrasions on his body. While waiting for a boat ride at 4:00 o'clock in the morning, the police team took a coffee break. SPO4 Genoguin was momentarily left alone to guard the appellant. During this short period, the appellant voluntarily admitted to SPO4 Genoguin that he committed the crime charged. He also told SPO4 Genoguin that he could keep the pendant and bracelet if he would retrieve the t-shirt and throw it into the sea. SPO4 Genoguin rejected the appellant's offer and reminded him of his right to a counsel and that everything the appellant said could be used against him in court. Unperturbed, the appellant reiterated his offer.[24]

When they boarded the motorboat, the appellant repeatedly offered to give SPO4 Genoguin ₱20,000.00 if he would throw the *sando* into the sea. However, the police officer ignored the offer and instead reported the matter to the Chief of Police of Almagro, SPO4 Basilio M. Yabao.[25] Later, the appellant's mother, Felicidad Mabute *y* Legaspi, asked him not to testify against her son.[26]

At the Calbayog District Hospital, Senior Resident Physician Dr. Jose V. Ong, found that appellant's body had 10 healed

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

[23] *Id.* at 21-22.

[24] TSN, March 7, 1996, pp. 56-61; TSN, March 8, 1996, pp. 7-8.

[25] *Id.*; *id.* at 18-19 and 32-35.

[26] *Id.* at 63-65.

abrasions and two linear abrasions or scratches, particularly, on his breast, knees, as well as right and left ears, that could have been caused by fingernails.[27]

The Version of the Appellant

In the afternoon of April 29, 1995, the appellant and his mother were at the residence of Aurelia Susmena. The appellant was sleeping in a hammock when he was abruptly awakened by Rodrigo, SPO4 Genoguin, and several policemen and *barangay tanods*. They tied his hands and feet with a nylon rope, and dragged him towards the seashore. Rodrigo hit the nape of the appellant with a gun then poked it at the appellant's mother, who wanted to help him. The appellant was then forcibly loaded in a motorboat.[28]

The appellant denied owning the bracelet, the pendant, and the *sando* found at the scene of the crime. He claimed it was impossible for him to buy these pieces of jewelry since he was only a cook in the fishing venture managed by Rodrigo. He maintained that he was not even paid for his services, for which reason he abandoned his work. This resulted in the failure of the fishing venture to operate for a day, which allegedly angered Rodrigo making him testify against him.[29]

The Decision of the Regional Trial Court

On May 19, 1999, the Regional Trial Court of Calbayog City, Branch 32 rendered a Decision[30] finding the appellant guilty beyond reasonable doubt of the complex crime of rape with homicide. It disposed as follows:

WHEREFORE, judgment is hereby rendered, finding the accused, VICTOR VILLARINO *y* Mabute, guilty beyond reasonable doubt of the crime of rape with Homicide of a ten-year old minor, for which

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[27] TSN, June 20, 1996, pp. 2 and 5-20.

[28] TSN, June 2, 1997, pp. 6-10; TSN, June 3, 1997, pp. 9-17; TSN, February 18, 1998, pp. 13-20.

[29] TSN, March 18, 1998, pp. 10-11, 14.

[30] Records, pp. 242-250; penned by Judge Renato G. Navidad.

he is hereby sentenced to suffer the supreme penalty of DEATH, as provided for under R.A. No. 7659, to pay the complainant, BBB, the sum of ₱50,000.00 and ₱6,900.00 for actual expenses, plus all the accessory penalties provided by law, without subsidiary imprisonment in case of insolvency and to pay the costs.

IT IS SO ORDERED.

The Verdict of the Court of Appeals

The Court of Appeals (CA) found the appellant guilty only of homicide. The dispositive portion of its Decision[31] reads as follows:

WHEREFORE, the Decision dated May 19, 1999, of the RTC of Calbayog City, in Criminal Case No. 2069 is MODIFIED. As modified, accused-appellant VICTOR VILLARINO y MABUTE is found GUILTY of HOMICIDE and he is hereby sentenced to suffer an indeterminate penalty ranging from twelve (12) years of *prision mayor* in its maximum period, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal* in its medium period, as maximum. The appealed Decision is AFFIRMED in all other respects.

SO ORDERED.[32]

Still unsatisfied, the appellant comes to us raising the following assignment of errors:

Issues

I

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF RAPE WITH HOMICIDE SOLELY ON THE BASIS OF CIRCUMSTANTIAL EVIDENCE.

II.

THE TRIAL COURT ERRED IN RENDERING A VERDICT OF CONVICTION DESPITE THE FACT THAT THE GUILT OF

[31] *Rollo*, pp. 4-21; penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Pampio A. Abarintos and Amy C. Lazaro-Javier.

[32] *Id.* at 21.

ACCUSED-APPELLANT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[33]

Our Ruling

The appeal lacks merit.

In the special complex crime of rape with homicide, the following elements must concur: (1) the appellant had carnal knowledge of a woman; (2) carnal knowledge of a woman was achieved by means of force, threat or intimidation; and (3) by reason or on occasion of such carnal knowledge by means of force, threat or intimidation, the appellant killed a woman.[34] When the victim is a minor, however, it is sufficient that the evidence proves that the appellant had sexual intercourse or sexual bodily connections with the victim.[35]

In the instant case, appellant voluntarily confessed to raping and killing "AAA" to SPO4 Genoguin. He even offered to give the pieces of jewelry to the latter if his *sando* is thrown into the sea. The appellant did not deny this accusation nor assail its truthfulness.

When appellant confessed to the crime, he was alone with SPO4 Genoguin, and no force or intimidation was employed against him. The confession was spontaneously made and not elicited through questioning. The trial court did not, therefore, err in holding that compliance with the constitutional procedure on custodial interrogation is not applicable in the instant case.[36]

In *People v. Dy*,[37] we held that:

Contrary to the defense contention, the oral confession made by the Accused to Pat. Padilla that "he had shot a tourist" and that the gun he had used in shooting the victim was in his bar which he wanted

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[33] *Id.* at 65.

[34] *People v. Yatar*, G.R. No. 150224, May 19, 2004, 428 SCRA 504, 521.

[35] *People v. Domantay*, 366 Phil. 459, 478 (1999).

[36] *People v. Dy*, 241 Phil. 904, 917 (1988).

[37] *Id.*

surrendered to the Chief of Police (t.s.n., October 17, 1984, pp. 6-9), is competent evidence against him. The declaration of an accused acknowledging his guilt of the offense charged may be given in evidence against him (Sec. 29, Rule 130, Rules of Court). It may in a sense be also regarded as part of the *res gestae*. The rule is that, any person, otherwise competent as a witness, who heard the confession, is competent to testify as to the substance of what he heard if he heard and understood all of it. An oral confession need not be repeated verbatim, but in such a case it must be given in substance (23 C.J.S. 196, cited in *People v. Tawat*, G.R. No. 62871, May 25, 1985, 129 SCRA 431).

What was told by the Accused to Pat. Padilla was a spontaneous statement not elicited through questioning, but given in an ordinary manner. No written confession was sought to be presented in evidence as a result of formal custodial investigation. (*People v. Taylaran*, G.R. No. L-19149, October 31, 1981, 108 SCRA 373). The Trial Court, therefore, cannot be held to have erred in holding that compliance with the constitutional procedure on custodial interrogation is not applicable in the instant case, as the defense alleges in its Error VII.[38]

At any rate, even without his confession, appellant could still be convicted of the complex crime of rape with homicide. The prosecution established his complicity in the crime through circumstantial evidence which were credible and sufficient, and led to the inescapable conclusion that the appellant committed the complex crime of rape with homicide. When considered together, the circumstances point to the appellant as the culprit.

First. Prior to the incident, three witnesses saw the appellant wearing the white sleeveless t-shirt, a necklace with pendant and a bracelet. Rodrigo saw the appellant wearing the same *sando* and pieces of jewelry when the latter was working in his fishing venture. He again saw the appellant wearing the same apparel and jewelry on the day the victim was raped and murdered. SPO4 Genoguin recalled that he saw appellant wearing the necklace with pendant and the bracelet on the eve of the commission of the crime. On that fateful day, he noticed that the appellant was wearing the white sleeveless t-shirt and the

[38] *Id.* at 916-917.

same pieces of jewelry in a drinking spree a kilometer away from the crime scene. "BBB" also testified that on the day of her daughter's death, she saw the appellant wearing a white sleeveless t-shirt, a necklace with pendant, and a bracelet.

Second. The pendant and bracelet were later recovered a few meters away from the lifeless body of "AAA". The white *sando* was also found clasped in the right hand of the victim.

Third. The appellant could no longer produce the *sando* and pieces of jewelry after his arrest.

Fourth. The physical examination on the appellant revealed 10 healed abrasions and two linear abrasions or scratches on his breast, knees and ears which could have been caused by the fingernails of the victim. Appellant offered no plausible explanation on how he sustained said injuries.

Fifth. The victim had blood oozing from her vaginal orifice, while the appellant had human blood-stains on his briefs.

Sixth. The appellant attempted to bribe SPO4 Genoguin and the policemen who were escorting him to Calbayog City, by offering them ₱20,000.00 in exchange for the disposal of his white sleeveless t-shirt found in the crime scene.

Seventh. The appellant's mother requested SPO4 Genoguin not to testify against her son.

The appellant argues that the trial court erred in giving credence to the testimonies of the prosecution witnesses which were replete with contradictions and improbabilities. According to him, Rodrigo's declaration that it was around 2:00 o'clock in the afternoon of April 29, 1995 when he was told of the discovery of a dead body contradicts "BBB's" testimony that she instructed the victim to go home to *Barangay* "D1" at around 3:00 o'clock in the afternoon of the same day. Moreover, Rodrigo's claim that the appellant, a fisherman, always wore the pieces of jewelry in question while at work, is contrary to human experience. Lastly, SPO4 Genoguin's contention that he saw appellant wearing the pieces of jewelry on separate occasions prior to the commission

of the crime is inconsistent with his subsequent testimony that he was not even sure of the ownership of the said jewelry.

Appellant's contentions are not worthy of credence. A perusal of the transcript of stenographic notes reveals that it was Prosecutor Feliciano Aguilar who supplied the time of 2:00 o'clock in the afternoon when Rodrigo was informed that a dead body of a child was found, thus:

Q On April 29, 1995 at around 4:00 o'clock in the afternoon where were you?

A I was in the house.

Q Your house in what *barangay* or what place?

A In Barangay "D1", Almagro, Samar.

Q While you were in your house in Barangay "D1", Almagro, Samar was there any unusual incident that happened that you came to know [of] on April 29, 1995 in the afternoon at around 2:00 o'clock?

A Yes, there was.[39]

Moreover, the time when Rodrigo was informed of the incident and the time stated by "BBB" when she sent "AAA" on an errand to *Barangay* "D1", were mere approximations, which cannot impair their credibility. An error in the estimation of time does not discredit the testimony of a witness when time is not an essential element.[40]

The inconsistencies indicated by the appellant are likewise inconsequential since they do not detract from the fact that "BBB" sent "AAA" on an errand in *Barangay* "D1" where her dead body was later discovered. Far from being badges of fraud and fabrication, the discrepancies in the testimonies of witnesses may be justifiably considered as indicative of the truthfulness on material points of the facts testified to. These minor deviations also confirm that the witnesses had not been rehearsed.[41]

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[39] TSN, November 13, 1995, pp. 20-21.

[40] *People v. Baniego*, 427 Phil. 405, 415 (2002).

[41] *People v. Empleo*, G.R. No. 96009, September 15, 1993, 226 SCRA 454, 470-471.

The credibility of SPO4 Genoguin is not adversely affected by his inability to immediately identify the ownership of the jewelry found near the dead body of the victim despite his testimony that he saw the appellant wearing the same jewelry on previous occasions. The workings of a human mind placed under emotional stress are unpredictable leading people to act differently.[42] There is simply no standard form of behavioral response that can be expected from anyone when confronted with a startling or frightful occurrence.[43] SPO4 Genoguin, despite being a policeman since 1977,[44] was affected by the gruesome crime. His years in the police service did not prepare him to witness the lifeless body of a 10-year old girl who had been brutally raped and murdered.

In sum, the inconsistencies raised by the appellant are too inconsequential to warrant a reversal of the trial court's ruling. The decisive factor in the prosecution for rape with homicide is whether the commission of the crime has been sufficiently proven. For a discrepancy or inconsistency in the testimony of a witness to serve as a basis for acquittal, it must establish beyond doubt the innocence of the appellant for the crime charged.[45] As the contradictions alleged by the appellant had nothing to do with the elements of the crime of rape with homicide, they cannot be used as ground for his acquittal.[46]

The appellant imputes improper motive to witness Rodrigo who, allegedly, had an axe to grind against him because Rodrigo's fishing venture incurred huge losses after appellant abandoned his job as a cook. Such imputation, however, deserves scant

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[42] *People v. Peñero*, 342 Phil. 531, 536 (1997).

[43] *People v. Dulay*, G.R. No. 174775, October 11, 2007, 535 SCRA 656, 661.

[44] TSN, March 7, 1996, p. 22.

[45] *People v. Masapol*, 463 Phil. 25, 33 (2003).

[46] *People v. Bang-ayan*, G.R. No. 172870, September 22, 2006, 502 SCRA 658, 669.

consideration. Other than appellant's self-serving allegation, there is no proof that his sudden departure from work adversely affected the operations of the fishing venture.

Against the prosecution's evidence, the appellant could only offer a mere denial and alibi. However, denial and alibi are intrinsically weak defenses and must be supported by strong evidence of non-culpability in order to be credible. Courts likewise view the defense of alibi with suspicion and caution, not only because it is inherently weak and unreliable, but also because it can be fabricated easily.[47] Also, the testimonies of appellant's mother and Aurelia Susmena, a close family friend, deserve no probative weight. In *People v. Sumalinog, Jr.*,[48] we held that when a defense witness is a family member, relative or close friend, courts should view such testimony with skepticism.

Besides, in order for alibi to prosper, it is not enough to prove that the appellant was somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene.[49] In the case at bench, the appellant was in the house of Aurelia Susmena which is located in the same *barangay* where the body of the victim was discovered. Thus, it was not at all impossible for the appellant to be at the scene of the crime during its commission.

Hence, the appellant's twin defenses of denial and alibi pale in the light of the array of circumstantial evidence presented by the prosecution.[50] The positive assertions of the prosecution witnesses deserve more credence and evidentiary weight than the negative averments of the appellant and his witnesses.

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[47] *People v. Pascual*, G.R. No. 172326, January 19, 2009, 576 SCRA 242, 259.

[48] 466 Phil. 637, 650-651 (2004).

[49] *People v. Espino, Jr.*, G.R. No. 176742, June 17, 2008, 554 SCRA 682, 702.

[50] See *People v. Pascual*, *supra* note 47.

The CA ruled that the evidence adduced by the prosecution are sufficient to produce a conviction for homicide but not for the crime of rape. In so ruling, the CA ratiocinated that while there were lacerations in the vaginal orifice of the victim, the absence of spermatozoa, however, belied that she was raped.

We disagree. The absence of spermatozoa does not necessarily result in the conclusion that rape was not committed.[51] Convictions for rape with homicide have been sustained on purely circumstantial evidence.[52] In those cases, the prosecution presented other tell-tale signs of rape such as the laceration and description of the victim's pieces of clothing, especially her undergarments, the position of the body when found and the like.[53]

Here, we reiterate that there is an unbroken chain of circumstantial evidence from which we can infer that the appellant raped "AAA". In a secluded area, her undisturbed corpse was discovered lying face-up and slanting downward with her buttocks on top of a small boulder. Her 10-year old lifeless body was naked from waist down with legs spread apart and dangling from the rock. Blood oozed from the vaginal orifice. Wrapped around her right hand was the appellant's *sando*. Her shorts were found a few meters away, just like the appellant's pendant and bracelet. Moreover, the appellant confessed to having raped "AAA". These circumstances lead to one fair and reasonable conclusion that appellant raped and murdered "AAA".

The Penalty

Article 335 of the Revised Penal Code in relation to RA 7659[54] provides that when by reason or on the occasion of the rape a homicide is committed, the penalty shall be death. However, in view of the passage on June 24, 2006 of RA 9346, entitled "An Act Prohibiting the Imposition of the Death Penalty

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[51] *People v. Magana*, 328 Phil. 721, 745 (1996).

[52] *People v. Domantay*, 366 Phil. 459, 481-482 (1999).

[53] See *People v. Develles*, G.R. No. 97434, April 10, 1992, 208 SCRA 101; *People v. Magana*, *supra*.

[54] The prevailing law at the time of the commission of the crime in 1995.

in the Philippines" we are mandated to impose on the appellant the penalty of *reclusion perpetua* without eligibility for parole.[55]

The Damages

In line with current jurisprudence,[56] the heirs of the victim are entitled to an award of ₱100,000.00 as civil indemnity, which is commensurate with the gravity of the complex crime committed. As actual damages, the heirs of "AAA" are entitled to an award of ₱6,900.00 only since this was the amount of expenses incurred for "AAA's" burial. Moral damages in the amount of ₱75,000.00 must also be awarded.[57] Lastly, the heirs are entitled to an award of exemplary damages in the sum of ₱50,000.00.[58] Article 229 of the Civil Code allows the award of exemplary damages in order to deter the commission of similar acts and to allow the courts to forestall behavior that would pose grave and deleterious consequences to society.[59]

WHEREFORE, the appeal is *DISMISSED*. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00065 is *MODIFIED*. Appellant Victor Villarino *y* Mabute is found guilty beyond reasonable doubt of the complex crime of rape with homicide and is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and to pay the heirs of "AAA" the amounts of ₱100,000.00 as civil indemnity, ₱6,900.00 as actual damages, ₱75,000.00 as moral damages, and ₱50,000.00 as exemplary damages. No costs.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.,* concur.

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[55] *People v. Pascual*, *supra* note 47 at 260; *People v. Bascugin*, G.R. No. 184704, June 30, 2009.

[56] *Id.* at 261.

[57] *Id.*

[58] *Id.*

EN BANC

[G.R. No. 186359. March 5, 2010]

JESUS O. TYPOCO, *petitioner, vs.* **COMMISSION ON ELECTIONS; THE NEW MUNICIPAL BOARD OF CANVASSERS OF LABO, CAMARINES NORTE, represented by its Chairman, Atty. Raffy Olano; THE NEW PROVINCIAL BOARD OF CANVASSERS OF CAMARINES NORTE, represented by its Chairman, Atty. Allen Francis B. Abaya; and EDGARDO A. TALLADO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHEN PROPER.— In a special civil action for *certiorari*, the burden rests on petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent issuing the impugned order, decision or resolution. "Grave abuse of discretion" is such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction or excess thereof. It 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. **"Grave abuse of discretion" arises when a court or tribunal violates the Constitution, the law or existing jurisprudence**.

2. ID.; APPEALS; FINDINGS OF FACT OF ADMINISTRATIVE BODIES; FINAL AND NON REVIEWABLE BY THE COURTS OF JUSTICE WHEN THE SAME IS SUPPORTED BY SUBSTANTIAL EVIDENCE.— As stated at the outset, the appreciation of election documents involves a question of fact best left to the determination of the COMELEC, a specialized agency tasked with the supervision of elections all over the country. The findings of fact of administrative bodies,

when supported by substantial evidence, are **final and nonreviewable** by courts of justice. This principle is applied with greater force when the case concerns the COMELEC, because the framers of the Constitution intended to place the poll body—created and explicitly made independent by the Constitution itself—on a level higher than statutory administrative organs. To repeat, the Court is not a trier of facts. The Court's function, as mandated by the Constitution, is merely to check whether or not the governmental branch or agency has gone beyond the constitutional limits of its jurisdiction, not that it simply erred or has a different view. Time and again, the Court has held that a petition for *certiorari* against actions of the COMELEC is confined only to instances of grave abuse of discretion amounting to patent and substantial denial of due process, because the COMELEC is presumed to be most competent in matters falling within its domain.

3. POLITICAL LAW; COMMISSION ON ELECTIONS; PRE-PROCLAMATION CONTROVERSY; THE OPENING OF BALLOT BOXES OR THE EXAMINATION AND APPRECIATION OF BALLOTS AND/OR ELECTION RETURNS, NOT INCLUDED.— Let it be noted that the original petition filed before the COMELEC, one for correction of manifest errors, was a pre-proclamation controversy which, ordinarily, does not involve **the opening of ballot boxes or the examination and appreciation of ballots and/or election returns**. Furthermore, the ERs were never introduced in evidence in the proceedings below. Evidently, there is no basis for this Court to conduct a retabulation of ERs. Also, as correctly stated by the Office of the Solicitor General, "the remedy of recanvass of [ERs] is patently illegal, as this would take the form of an election protest, particularly a retabulation of [ERs] under A.M. No. 07-4-15-SC." **If the Court were to tabulate the results reflected in the ERs, it would, in effect, convert itself into a board of canvassers.** This would entail a function which, obviously, this Court, in a petition for *certiorari*, cannot perform.

VELASCO, JR., *J., dissenting opinion*:

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; COMPLAINT; THREE UNDERTAKINGS CERTIFIED TO BY THE PLAINTIFF OR PRINCIPAL PARTY, REQUIRED. — In a complaint or other pleading initiating an action in court, the plaintiff or principal party shall certify as to three undertakings: (1) that he has not commenced any action or filed any claim involving the same issues in any court, tribunal, or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (2) if there is such other pending action or claim, he should make a complete statement of the present status of said action or claim; and (3) if he should thereafter learn that the same or similar action has been filed or is pending in any court, tribunal, or quasi-judicial agency, he shall report that fact within five (5) days therefrom to the court where his complaint or initiatory pleading has been filed.

2. ID.; ID.; ID.; ID.; ID.; EFFECT OF FAILURE.— Failure to comply with these requirements shall be cause for dismissal of the case without prejudice or with prejudice but only upon motion and after hearing. The submission of a false certification or the non-compliance with any of the undertakings therein may subject the party to indirect contempt of court. If the party's or his counsel's acts constitute willful and deliberate forum shopping, the same shall be a ground for summary dismissal of the case with prejudice.

3. ID.; ID.; PLEADINGS; EXISTENCE OF FORUM SHOPPING; TEST FOR DETERMINATION.— The test for determining the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in another. Thus, there is forum shopping when the following elements are present: (1) identity of parties, or at least such parties represent the same interests in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under

consideration. These requisites are also constitutive of the requisites of *auter* action pendant or *lis pendens*.

4. ID.; APPEALS; FINDINGS OF FACTS OF A SPECIALIZED AGENCY; FINAL AND CANNOT BE REVIEWED BY THE COURTS OF JUSTICE; EXCEPTIONS.— [T]he findings of fact of the COMELEC, a specialized agency tasked with the supervision of elections all over the country, when supported by substantial evidence, are final and cannot be reviewed by courts of justice. While such is the general rule, the principle admits of certain exceptions. In *Life Assurance Company Ltd. v. Court of Appeals*, this Court enumerated the exceptions, to wit: It is a settled rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the CA are conclusive and binding on the Court. However, the Court had recognized several exceptions to this rule, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) **when there is grave abuse of discretion**; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; x x x (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record x x x.

5. POLITICAL LAW; COMMISSION ON ELECTIONS; RULES OF PROCEDURES; CERTIFICATION AGAINST FORUM SHOPPING, APPLICABLE.— The COMELEC Rules of Procedure provides that "the Rules of Court in the Philippines shall be applicable by analogy or in suppletory character and effect." Accordingly, the certification against forum shopping is required under Section 5, Rule 7 of the 1997 Rules of Civil Procedure, to wit: Sec. 5. *Certification against forum shopping*. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto

and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed. Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt as well as a cause for administrative sanctions.

6. ID.; ELECTIONS; ELECTION CONTEST; THE BEST AND MOST CONCLUSIVE EVIDENCE WHERE THE CORRECTNESS OF THE NUMBER OF VOTES IS CONCERNED ARE THE BALLOTS ITSELF; SUSTAINED. — In *Garay v. COMELEC*, the Court held that "[a] certificate of votes does not constitute sufficient evidence of the true and genuine results of the election; only election returns are, pursuant to Sections 231, 233-236, and 238 of B.P. Blg. 881." Again in *De Guzman v. COMELEC*, the Court stated that "in an election contest where the correctness of the number of votes is involved, the best and most conclusive evidence are the ballots themselves; where the ballots can not be produced or are not available, the **election returns would be the best evidence.**" Moreover, the *ponencia* pounds on the fact that this Court can only look at records and materials brought to the COMELEC's attention and consideration by the parties. But it neglects to take into account the long standing principle that procedural rules are but tools to accomplish the ends of

justice, and it is always in the power of the Court to suspend its own rules whenever the purposes of justice require. Similarly, it would be wise to remember that election contests involve public interest, and technicalities and procedural barriers should not be allowed to stand in the way if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. In election cases this Court has an imperative duty to ascertain, by all means within its command, who are the real candidates voted by the electorate.

7. ID.; ID.; ID.; WHEN GRAVE ABUSE OF DISCRETION IS PRESENT; CASE AT BAR.— In fine, COMELEC looked at what *Pecson v. Commission on Elections* referred to as the "wrong material considerations" as basis to annul the proclamation of Typoco as governor-elect. *Pecson*, while not on all fours with the present case, teaches that the use by the court or adjudicating body of wrong considerations in arriving at a decision constitutes grave abuse of discretion. Of similar tenor albeit dealing with an entirely different subject, was what the Court said in *Almeida v. Court of Appeals*, thus: "[A] court abuses its discretion when [in granting or denying injunctive relief], it x x x fails to consider and make a record of the factors relevant to its determination, relies on clearly erroneous factual findings, considers clearly irrelevant or improper factors xxx or misapplies its factual or legal conclusions." Considering that the determinative issue in this case revolves around the genuineness of the SOVP copies, it behooves the COMELEC, in line with its duty to ascertain the true will of the electorate––the voting will of the people of Labo, in this instance—to have asked government experts to determine which of the conflicting SOVPs was valid before deciding the Tallado petition. Or at the very least, it should have, given the uncertainties prevailing on the ground, remanded the case to the provincial election officer, with an instruction to look into the relevant election documents to determine who the real winner was. xxx In all then, COMELEC was confronted with enough related substantial evidence, the combined effect of which points to the obvious fact that the SOVPs Tallado adduced were spurious, if not tampered documents. Sadly, the poll body, without so much of an explanation, refused to look at these pieces of evidence, the relevant considerations in this case, in arriving

at its ruling. And with the path it chose to take, COMELEC veritably latched its final determination as to who won the 2007 gubernatorial race in Camarines Norte on spurious election documents. To borrow from *Almeida*, a court grossly abuses its discretion when, for its case disposition, it relies on clearly erroneous factual anchors and/or considers irrelevant factors. The spurious SOVP copy of the ERSD is doubtless an "irrelevant factor" adverted to, a clearly wrong quantity to predicate a ruling on. The COMELEC's reliance thereon as basis for its assailed resolutions cannot but be tagged as a whimsical and capricious exercise of discretion.

APPEARANCES OF COUNSEL

Romulo B. Macalintal for petitioner.
The Solicitor General for public respondents.
Adan Marcelo B. Botor for private respondent.

D E C I S I O N

NACHURA, *J.*:

In *Tan v. Commission on Elections*[1] (COMELEC), this Court emphasized that the factual findings of the poll body, which has the expertise in the enforcement and administration of all election laws and regulations, are binding on this Court and must be respected because this Court is not a trier of facts[2] and is not equipped to receive evidence and determine the truth of factual allegations.[3] While this principle may admit of rare exceptions, it should apply with full force to the instant case.

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[1] G.R. Nos. 166143-47 and 166891, November 20, 2006, 507 SCRA 352, 380.

[2] *Juan v. Commission on Elections*, G.R. No. 166639, April 24, 2007, 522 SCRA 119, 128.

[3] *Ang Bagong Bayani-OFW Labor Party v. COMELEC*, 412 Phil. 308, 341 (2001).

Before the Court is a petition for *certiorari* and prohibition assailing the April 30, 2008 Resolution[4] of the COMELEC First Division and the February 24, 2009 Resolution[5] of the COMELEC *en banc*.

The relevant antecedent facts and proceedings follow.

In the May 14, 2007 National and Local Elections, petitioner and private respondent vied for the position of Governor in Camarines Norte. After the counting and canvassing of votes, petitioner Jesus O. Typoco was proclaimed winner with 80,830 votes, as opposed to respondent Edgardo A. Tallado's 78,287 votes.[6]

Respondent Tallado filed before the COMELEC a petition for correction of manifest error, docketed as SPC No. 07-312. He claimed that, after he reviewed and examined the figures in the Statement of Votes by Precinct (SOVP) *vis-à-vis* the Certificate of Canvass of Votes (COC) in the municipalities in the province, he found that, in the municipalities of Labo and Jose Panganiban, errors were committed in the transposition of votes from the SOVP to the COC. In Labo, the SOVP revealed that respondent Tallado's votes were 13,174 but when the figure was transferred to the COC, it was reduced to 11,490; whereas petitioner Typoco's votes were increased from 11,359 to 12,285. In Jose Panganiban, respondent Tallado's votes, per the SOVP, totaled 6,186; the same, however, was reduced to 5,460 when transposed to the COC. Respondent contended that if the errors were corrected, he would obtain a total of 80,697 votes and petitioner, 79,904 votes; thus, he would be the true winner in the gubernatorial race in the province.[7]

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[4] Penned by Presiding Commissioner Romeo A. Brawner (deceased), with Commissioner Moslemen T. Macarambon, concurring; *rollo,* pp. 33-44.

[5] Penned by Commissioner Nicodemo T. Ferrer, with Chairman Jose A.R. Melo, Commissioners Leonardo L. Leonida, Lucenito N. Tagle, and Armando C. Velasco, concurring; and Commissioner Rene V. Sarmiento, dissenting; *id.* at 45-83.

[6] *Rollo,* p. 40.

[7] *Id.* at 104-112.

In his Answer,[8] petitioner asserted that respondent belatedly filed his petition for correction of manifest error and was guilty of forum shopping. Petitioner further countered that the SOVPs submitted by respondent were fake and obviously manufactured. Petitioner thus sought the dismissal of SPC No. 07-312.

After due proceedings, the COMELEC First Division, on April 30, 2008, rendered the assailed Resolution[9] granting respondent Tallado's petition. It ruled that, based on the COMELEC copies (in the custody of the Election Records and Statistics Division [ERSD] of the Commission) of the concerned SOVPs and COCs, the votes in Labo, as recorded in the said documents, did not correspond; while those in Jose Panganiban actually tallied. Correcting the figures in Labo, while retaining those in the latter municipality, led to the following results: **Tallado, 79,969 votes**; and **Typoco, 79,904 votes**. The First Division then disposed of the case as follows:

> WHEREFORE, premises considered, the Petition is hereby partially GRANTED. The proclamation of private respondent Jesus Typoco as the winning gubernatorial candidate is hereby ANNULLED. Consequently, a New Municipal Board of Canvassers for the Municipality of Labo, Camarines Norte and a New Provincial Board of Canvassers for the Province of Camarines Norte shall hereby be constituted.
>
> The New Municipal Board of Canvassers for the Municipality of Labo, Camarines Norte is hereby DIRECTED to: 1. CONVENE at the Session Hall of the Main Office of the Commission on Elections in Manila; and, 2. CORRECT the manifest error found in the Municipal Certificate of Canvass of Votes of the Municipality of Labo to reflect therein the actual number of votes of petitioner and private respondent as recorded in the Comelec copy of the Statement of Votes by Precinct of the Municipality of Labo, Camarines Norte; 3. SUBMIT to the New Provincial Board of Canvassers the corrected Municipal Certificate of Canvass of Votes for the gubernatorial position, with its corresponding Statement of Votes and Summary Statement of Votes.
>
> The New Provincial Board of Canvassers for the Province of Camarines Norte is also DIRECTED to: 1. CONVENE, at the same

[8] *Id.* at 120-133.

[9] *Supra* note 4.

time as the New MBOC, at the Session Hall of the Main Office of the Commission on Elections in Manila; 2. RECEIVE from the New MBOC of Labo the corrected Municipal Certificate of Canvass of Votes for the gubernatorial position from the Municipality of Labo, Camarines Norte; 3. AMEND the Statement of Votes by City/ Municipality for the Province of Camarines Norte reflecting therein the actual number of votes of the gubernatorial candidates as corrected in the Municipal Certificate of Canvass of Votes for the Municipality of Labo, Camarines Norte; 4. AMEND the Certificate of Canvass of Votes and Proclamation for the Province of Camarines Norte; and 5. PROCLAIM Edgardo A. Tallado as the winning gubernatorial candidate for the Province of Camarines Norte.

The Law Department is also DIRECTED to immediately conduct the investigation of the Chairmen and Members of the Provincial Board of Canvassers of Camarines Norte and the Municipal Board of Canvassers of Labo and Jose Panganiban, Camarines Norte and other individuals of their possible involvement in the commission of electoral sabotage or any other election offense in the handling of the SOVP in the Municipality of Labo and Jose Panganiban, Camarines Norte.

SO ORDERED.[10]

Aggrieved, petitioner moved for reconsideration.[11] The motion was, however, denied by the COMELEC *en banc* in the further assailed February 24, 2009 Resolution.[12]

Consequently, petitioner filed, on **March 2, 2009**, the instant petition for *certiorari* under Rules 64 and 65 of the Rules of Court to annul the aforesaid resolutions of the COMELEC. Apprehensive that the resolutions would be implemented, petitioner prayed for the issuance of an injunctive relief.[13]

On the same date, the COMELEC *en banc* issued an Order,[14] appointing the members of a new municipal board of canvassers in the subject locality and members of a new provincial board

[10] *Rollo*, pp. 42-43.

[11] *Id.* at 84.

[12] *Supra* note 5.

[13] *Rollo*, pp. 26-28.

[14] *Id.* at 253-263.

of canvassers for purposes of, respectively, tabulating the votes for Governor for the municipality of Labo, and proclaiming respondent. The dispositive portion of the March 2, 2009 Order reads:

> WHEREFORE, premises considered, the Commission *en banc* RESOLVED to, as it hereby RESOLVES to, DENY the prayer of Private Respondent Jesus Typoco for admission of exhibits "1" to "8-G" for the specific purposes mentioned in the Memorandum.
>
> Consequently, relative to our February 24, 2009 Resolution, and in order to expedite proceedings with (sic) speedily and judiciously, the Commission *en banc* accordingly names and appoints the following members of the New Municipal Board of Canvassers (NMBOC) for Labo, Camarines Norte: Atty. Raffy Olano (Chairman); Atty. John Rex Laudiangco (Vice Chairman); and Atty. Norie Tangaro-Casingal (Secretary), which must hereafter convene at COMELEC session hall in Intramuros, Manila within three (3) days from receipt of this Order, re-tabulate the votes for the position of Governor of Camarines Norte, prepare a new SVOP and MCOC for the municipality of Labo with the corrections, and thereafter submit the same to the New Provincial Board of Canvassers (NPBOC) of Camarines Norte.
>
> The following are likewise named and appointed to the New Provincial Board of Canvassers of Camarines Norte and performed (sic) duties as follows: Atty. Allen Francis B. Abaya (Chairman); Atty. Manuel Lucero (Vice Chairman); and Fritzie Claire Casino (Secretary). The same NPBOC shall convene at COMELEC session hall in Intramuros, Manila within three (3) days from receipt of this Order, prepare a new Statement of Votes per Municipality (SVOM) and Provincial Canvass of Votes (PCOC) as corrected, and thereafter proclaim Edgardo Tallado as the duly elected governor of the province of Camarines Norte in the May 14, 2007 elections.
>
> Further, the Commission *en banc* hereby endorses this matter to the National Bureau of Investigation (NBI) for proper investigation, the results of which would be material to any further action that may be taken against any such responsible parties who may be found liable for any of the fraudulent acts alleged by the Private Respondent Typoco. For this same purpose, the NBI is hereby directed to coordinate with the COMELEC Law Department and Atty. Romulo B. Macalintal to expedite this investigation.

SO ORDERED.[15]

Significantly, the COMELEC, in the said March 2, 2009 Order, **endorsed the case to the National Bureau of Investigation (NBI) for proper investigation,** in view of petitioner's serious allegations that the pertinent election documents in the custody of the COMELEC were fake and spurious, and that COMELEC records were substituted in connivance with someone from the Commission.[16] The obvious intent of this endorsement was to utilize the NBI findings as basis for appropriate action against those who perpetrated the alleged fraud if, indeed, fraud had been committed. Parenthetically, Commissioner Rene V. Sarmiento dissented from the majority opinion in the March 2, 2009 Order.[17]

On **March 4, 2009**, petitioner filed with this Court his *Urgent Motion Reiterating the Prayer for the Issuance of a Temporary Restraining Order or Status Quo Order and/or Writ of Preliminary Injunction with Motion for Leave of Court to Implead Necessary Parties and to Set for Oral Arguments*,[18] principally to stop the implementation of the aforesaid March 2, 2009 Order, and the earlier assailed resolutions of the COMELEC.

Finding merit in petitioner's urgent motion, the Court, on **March 5, 2009**, issued a temporary restraining order (TRO) for the concerned parties to **cease and desist from implementing the April 30, 2008 Resolution of the COMELEC First Division, the February 24, 2009 Resolution and the March 2, 2009 Order of the COMELEC *en banc***.[19]

On June 9, 2009, petitioner filed his *Motion for Leave of Court to File the Herein Incorporated Supplemental Arguments*,[20]

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[15] *Id.* at 259-260.

[16] *Id.* at 222-223.

[17] *Id.* at 261-263.

[18] *Id.* at 244-252.

[19] *Id.* at 238-240.

[20] *Id.* at 438-442.

attaching thereto a copy of the May 22, 2009 Progress Report[21] of the NBI. Petitioner contends in his motion that the NBI found the SOVPs in the possession of COMELEC to be spurious. On July 20, 2009, petitioner again moved for leave to incorporate his second supplemental arguments, attaching thereto the July 16, 2009 Final Report[22] of the NBI. Apparently, the NBI conducted an investigation pursuant to the March 2, 2009 Order of the COMELEC *en banc*, despite this Court's issuance of a TRO.

Given these antecedents, the Court in the instant *certiorari* petition must resolve whether or not the COMELEC committed grave abuse of discretion in its issuances ordering: (1) the correction of the manifest error in the pertinent election documents; (2) the annulment of the proclamation of petitioner; and (3) the subsequent proclamation of the winning gubernatorial candidate in Camarines Norte.

The Court finds that the COMELEC did not gravely abuse its discretion.

In a special civil action for *certiorari*, the burden rests on petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent issuing the impugned order, decision or resolution.[23] "Grave abuse of discretion" is such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction or excess thereof.[24] It 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.[25] **"Grave**

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[21] *Id.* at 443-459.

[22] *Id.* at 571-627.

[23] *Suliguin v. Commission on Elections*, G.R. No. 166046, March 23, 2006, 485 SCRA 219, 233.

[24] *Guerrero v. COMELEC*, 391 Phil. 344, 352 (2000).

[25] *Sen. Defensor Santiago v. Sen. Guingona, Jr.*, 359 Phil. 276, 304 (1998).

abuse of discretion" arises when a court or tribunal violates the Constitution, the law or existing jurisprudence.[26]

We find that the COMELEC, in ordering the correction of manifest errors in the SOVP and COC, merely exercised its bounden duty to ascertain the true will of the electorate of the province. Proven during the proceedings before it were errors or discrepancies in the recording or transferring of votes from the SOVP of Labo to the COC, such that the votes in the latter document did not reflect the true and correct votes received by the candidates. SOVPs are the basis of COCs;[27] the two must jibe with each other. Certainly, an error in transposing the contents of one to the other only calls for a clerical act of reflecting in the said election documents the true and correct votes received by the candidates.[28] **This does not involve the opening of the ballot boxes, examination and appreciation of ballots and/or election returns**. All that is required is to reconvene the board of canvassers for it to rectify the error it committed in order that the true will of the voters will be given effect.[29] The previous proclamation of petitioner will not be a hindrance to the said correction. The proclamation and assumption of office of petitioner based on a faulty tabulation is flawed right from the very beginning, and may, therefore, be annulled.[30]

These matters considered, the Court agrees with the following discourse of the COMELEC First Division:

After a thorough review of the ERSD copy of the Labo SOVP we have the following findings: the ERSD copy is a carbon copy of the SOVP submitted by Petitioner. In the ERSD copy of the SOVP petitioner received a total of Thirteen Thousand One Hundred Seventy Two (13,172), while private respondent received only Eleven Thousand

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[26] *Cabrera v. Commission on Elections*, G.R. No. 182084, October 6, 2008, 567 SCRA 686, 691.

[27] *Milla v. Balmores-Laxa*, G.R. No. 151216, July 18, 2003, 406 SCRA 679, 684.

[28] *Bince, Jr. v. COMELEC*, 312 Phil. 316, 336 (1995).

[29] *Tatlonghari v. Commission on Elections*, G.R. No. 86645, July 31, 1991, 199 SCRA 849, 856.

[30] *Id.* at 858.

Three Hundred Fifty-Nine (11,359) votes. Curiously, these figures did not find its way to the Summary SOV and the Municipal COC which are attached in the ERSD copy of the SOVP. The Summary SOV and the Municipal COC shows that petitioner's total number of votes in Labo is Eleven Thousand Four Hundred Ninety (11,490) votes while that of private respondent is Twelve Thousand Two Hundred Eighty Five (12,285) votes. Clearly, therefore, even in the ERSD copy of the SOVP there is manifest error in the transposition of the votes of petitioner from the SOVP to the Summary SOV and the Municipal COC. And between the Municipal COC and the SOVP, the SOVP should take precedence since the Municipal COC simply takes its figures from those recorded in the SOVP.

In the case of the Municipality of Jose Panganiban, however, it is the SOVP submitted by private respondent (MBOC copy) which tallied with the figures found in the ERSD copy of the SOVP. Furthermore, the ERSD copy of the SOVP corresponds with the figures as found in the ERSD copy of the Municipal COC. There is, therefore, no manifest error as far as the ERSD copies of the SOVP and Municipal COC are concerned.

There are, however, some discrepancy between the MBOC copy and the ERSD copy. Some of the corrections found in the MBOC copy were made differently in the ERSD copy such as the presence of counter-signatures in one copy and none in the other, as well as the difference in style in the corrections found in the two SOVPs.

However, despite the minor inconsistencies found in the SOVP submitted by private respondent and the ERSD copy, petitioner did not raise any objections as regards these inconsistencies. In his memorandum, petitioner even nonchalantly argued that:

> "In so far as the SOVs of Jose Panganiban which Comelec Manila furnished petitioner, the latter in Jose Panganiban received a vote of 5,460 while respondent Typoco received a vote of 7,741. Reconciling all the votes for Governor in the 12 municipalities of Camarines Norte and without anymore questioning [those] coming from Jose Panganiban as furnished to petitioner by Comelec Manila, it glaringly appears that petitioner Tallado won over res[p]ondent Typoco by a majority of 65 votes as shown by herein tabulation."

Considering that no objections have been raised against the SOVPs submitted to the Commission, under the custody of the ERSD, and

that based on the principle that there is a presumption of regularity in the performance of official duty in the receipt, custody and safekeeping of the SOVP with the ERSD, it is therefore reasonable to consider that the votes of the parties as found in the ERSD copies of the contended SOVPs shall prevail.

Considering the above discussion, we, therefore, deny petitioner's petition to correct manifest error as far as the Municipal COC in the Municipality of Jose Panganiban is concerned. This ruling is justified by the fact that the number of votes found in the Municipal COC matched that of the figures found in the ERSD copy of the SOVP. There is, therefore, no need to disturb the votes of the contending parties as far as their votes from the Municipality of Panganiban is concerned.

We grant, however, petitioner's prayer to correct manifest error found in the Municipal COC in the Municipality of Labo, Camarines Norte as the votes of both petitioner and private respondent as recorded in the SOVP do not correspond with their number of votes in the Municipal COC. Such discrepancy was clearly established in the ERSD copies of the SOVP and the Municipal COC of the Municipality of Labo.

During the proclamation, the number of votes of the contending parties are shown in the table below with private respondent garnering the winning votes with eighty thousand eight hundred and thirty (80,830) votes, while petitioner received only seventy eight thousand two hundred and eighty seven (78,287) votes.

Per Proclamation by the PBOC		
	Tallado	**Typoco**
Municipality		
Basud	5860	6127
Capalonga	3377	5122
Daet	16745	13,286
Jose Panganiban	**5,460**	**7,742**
Labo	**11,490**	**12,285**
Mercedes	7017	7737
Paracale	5788	7776
San Lorenzo Ruiz	2705	1804

San Vicente	2130	2243
Sta. Elena	6811	5780
Talisay	4227	3958
Vinzons	6677	6970
	78,287	**80,830**

While the grant of the petition to correct manifest error in the Municipal COC of the Municipality of Labo and as supported by the figures found in the Comelec/ERSD copy of the SOVP, the votes received by the two contending gubernatorial candidates have changed substantially. These corrected figures are shown in the table below. Please note that the votes from Labo have been corrected while that of Jose Panganiban remains the same.

	Tallado	**Typoco**
Municipality		
Daet	16745	13,286
Talisay	4227	3958
Vinzons	6677	6970
San Vicente	2130	2243
San Lorenzo Ruiz	2705	1804
Basud	5860	6127
Mercedes	7017	7737
Labo	**13,172**	**11,359**
Jose Panganiban	**5,460**	**7,742**
Paracale	5788	7776
Sta. Elena	6811	5780
Capalonga	3377	5122
	79,969	**79,904**

Taking into consideration the corrected figures, it is shown that petitioner Tallado apparently received Seventy Nine Thousand Nine Hundred and Sixty-Nine votes (79,969), while private respondent Typoco garnered a total of Seventy Nine Thousand Nine Hundred

and Four votes (79,904) giving petitioner Tallado a winning margin of Sixty-Five (65) votes.

Correspondingly, we also rule that in the light of the erroneous computation of the votes of petitioner Tallado and private respondent Typoco, the latter was erroneously proclaimed as the winning gubernatorial candidate. Such proclamation is, therefore, null and void. Corollary to this, the present petition for the correction of manifest error falls within the exception that the same can be filed beyond the five (5) day reglamentary period since the proclamation is based on an erroneous tabulation of votes, and therefore, null and void.

Apparently, as far as the Municipality of Labo is concerned, there is a clear manifestation that fake, spurious and manufactured Municipal Certificate of Canvass was used in the canvassing of the gubernatorial votes. A conspiracy has been committed to reduce the votes of Petitioner and to increase the votes of Private Respondent Typoco. This might be a case of electoral sabotage.[31]

Nevertheless, petitioner contends that the COMELEC committed grave abuse of discretion when it decided the controversy based on the ERSD copies of the SOVP. In effect, petitioner argues that the poll body erred in its factual findings.

The Court does not find merit in petitioner's argument. As stated at the outset, the appreciation of election documents involves a question of fact best left to the determination of the COMELEC, a specialized agency tasked with the supervision of elections all over the country. The findings of fact of administrative bodies, when supported by substantial evidence, are **final and nonreviewable** by courts of justice.[32] This principle is applied with greater force when the case concerns the COMELEC, because the framers of the Constitution intended to place the poll body—created and explicitly made independent by the Constitution itself—on a level higher than statutory administrative organs.[33]

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[31] *Rollo,* pp. 38-41.

[32] *Idulza v. Commission on Elections*, G.R. No. 160130, April 14, 2004, 427 SCRA 701, 707-708.

[33] *Japzon v. Commission on Elections*, G.R. No. 180088, January 19, 2009, 576 SCRA 331, 350.

To repeat, the Court is not a trier of facts. The Court's function, as mandated by the Constitution, is merely to check whether or not the governmental branch or agency has gone beyond the constitutional limits of its jurisdiction, not that it simply erred or has a different view.[34] Time and again, the Court has held that a petition for *certiorari* against actions of the COMELEC is confined only to instances of grave abuse of discretion amounting to patent and substantial denial of due process, because the COMELEC is presumed to be most competent in matters falling within its domain.[35]

In this case, the COMELEC's decision to correct the manifest error is supported by substantial evidence. The COMELEC copies of the SOVP (in the custody of the ERSD) revealed discrepancies in the transposition of the votes from the said documents to the COC. It may be noted that the COMELEC used its **own** copies of the SOVP, not the copies provided by the parties. Prudence dictated that COMELEC should utilize its own copies, those in its custody, to dispel any doubt as to the integrity of the election documents.

The decision of the COMELEC—to correct the manifest errors based on its own copies of the election documents involved—cannot be hastily set aside by this Court on petitioner's bare allegation that the COMELEC (ERSD) copies are fake or spurious and have found their way to the COMELEC records anomalously. Let it be remembered that, as posited by petitioner himself, only the COMELEC, not even the NBI, has the competence to determine the authenticity of election documents, because the **COMELEC is the only entity which knows the security features or secret markings of the said documents**.[36] When it decided to use its own copies of the SOVP, therefore, it considered those copies as authentic or genuine, and reflective of the true will of the electorate of Camarines Norte. This act of the COMELEC enjoys the presumption of regularity. Further,

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[34] *V.C. Cadangen v. Commission on Elections*, G.R. No. 177179, June 5, 2009, 588 SCRA 738, 745-746.

[35] *Japzon v. Commission on Elections*, *supra* note 33.

[36] *Rollo*, p. 247.

since the said factual finding was made by an entity having expertise in the field, the same is binding[37] and cannot be peremptorily brushed aside by this Court.

Petitioner asserts that the COMELEC (ERSD) copies of the SOVP were found by the NBI to be spurious. Petitioner thus wants this Court to accept the NBI reports[38] without hesitation and to disregard the COMELEC findings.

The Court finds petitioner's reliance on the NBI reports misplaced. As stated earlier, the COMELEC, not the NBI, is the agency that has the competence to determine the genuineness of election documents. This proposition is supported by no less than petitioner himself. Commissioner Sarmiento also echoed the same sentiment when he expressed his dissent[39] to the referral of the case to the NBI for investigation in the March 2, 2009 Order; thus, he fittingly declared "[t]he issue involves election documents and there is no other body more competent in handling these documents than the COMELEC."

Incidentally, when the COMELEC referred the matter to the NBI, the main issue of manifest error was already resolved. The referral was only for the purpose of "determining criminal acts of falsification or interference with electoral processes"[40] and only in response to petitioner's "damning indictment [of fraud and irregularity] that impinges on the very credibility of the COMELEC."[41] In other words, the referral was not intended to aid the COMELEC, or to be used as conclusive evidence in the resolution of the petition for correction of manifest error, precisely because that issue had already been resolved and because the COMELEC has the sole competence to determine the authenticity of the concerned election documents. In view of

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[37] *Alejandro v. Commission on Elections*, G.R. No. 167101, January 31, 2006, 481 SCRA 427, 445.

[38] *Rollo*, pp. 443-459, 571-627.

[39] *Id.* at 261-263.

[40] *Id.* at 258.

[41] *Id.*

this, the Court cannot use the NBI reports in its determination of whether the COMELEC committed grave abuse of discretion in issuing the assailed resolutions and orders.

Another reason that compels this Court to disregard the NBI report **is the fact that the NBI investigation was undertaken in violation of the Court's order**. The referral to the NBI was made by the COMELEC in its March 2, 2009 Order. The Court, in the March 5, 2009 TRO, expressly ordered the concerned parties to cease and desist from implementing this March 2, 2009 Order. When the case was referred by the COMELEC to the NBI, and when the NBI conducted the investigation, this Court's restraining order was already effective and in force. **Both agencies, therefore, disobeyed the express order of this Court**. Being the product of an act of disobedience to this Court's order, the NBI investigation and the report cannot be made the basis of this Court's resolution of the case.

Finally, the Court does not find merit in petitioner's contention that a recanvass of the **election returns** (ERs) should be undertaken in order to truly determine the mandate of the electorate. Let it be noted that the original petition filed before the COMELEC, one for correction of manifest errors, was a pre-proclamation controversy which, ordinarily, does not involve **the opening of ballot boxes or the examination and appreciation of ballots and/or election returns**. Furthermore, the ERs were never introduced in evidence in the proceedings below. Evidently, there is no basis for this Court to conduct a retabulation of ERs. Also, as correctly stated by the Office of the Solicitor General, "the remedy of recanvass of [ERs] is patently illegal, as this would take the form of an election protest, particularly a retabulation of [ERs] under A.M. No. 07-4-15-SC."[42]

If the Court were to tabulate the results reflected in the ERs, it would, in effect, convert itself into a board of canvassers. This would entail a function which, obviously, this Court, in a petition for *certiorari*, cannot perform.

In sum, the petition must, of necessity, fail.

[42] *Id.* at 332.

WHEREFORE, premises considered, the petition for *certiorari* and prohibition is *DISMISSED*.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Leonardo-De Castro, Brion, Bersamin, Abad, Villarama, Jr., Perez and *Mendoza, JJ.*, concur.

Velasco, Jr., see dissenting opinion.

Del Castillo, joins the dissent of J. Velasco, Jr.

Carpio, J., no part, close relation to a party.

Peralta, J., on official leave.

DISSENTING OPINION

VELASCO, JR., *J.*:

With due respect, I dissent.

A summary of the pertinent facts is as follows:

In the May 14, 2007 elections, both Typoco and Tallado were candidates for the Office of the Governor of the Province of Camarines Norte. Typoco won the election with 80,830 votes, while Tallado garnered 78,287 votes or a margin of 2,543.

Previously, during the canvassing proceedings of the Provincial Board of Canvassers (PBOC) of Camarines Norte, Tallado objected to the inclusion of the Certificate of Canvass (COC) from the Municipalities of Paracale, Jose Panganiban, and Labo on the ground that they were falsified, tampered, and manufactured. The objections were subsequently denied by the PBOC, which prompted Tallado to appeal the rulings of the PBOC to the Commission on Elections (COMELEC). The cases were docketed as SPC Nos. 07-78, 07-79, and 07-80.

On May 25, 2007, the COMELEC Second Division issued an Omnibus Resolution dismissing the appeal. Consequently, on May 29, 2007, the PBOC convened and proclaimed Typoco as the governor-elect of Camarines Norte.

On June 4, 2007, Tallado filed a Motion for Reconsideration of the May 25, 2007 Omnibus Resolution. Likewise, he filed a Petition for Annulment of Proclamation of Typoco, which was docketed as SPC No. 07-243. The petition was, however, subsequently dismissed by the COMELEC Second Division in a Resolution dated August 22, 2007, prompting Tallado to move for its reconsideration on September 3, 2007.

On September 11, 2007, the COMELEC Second Division denied Tallado's Motion for Reconsideration of the May 25, 2007 Omnibus Resolution.

On September 17, 2007, Tallado filed a Petition for Correction of Manifest Error before the COMELEC, docketed as SPC No. 07-312. He contended that the proclamation of Typoco as governor-elect of Camarines Norte was void, since it was predicated on void certificates of canvass coming from the Municipal Board of Canvassers (MBOC) of Labo and Jose Panganiban, Camarines Norte.

Answering, Typoco averred that the petition was filed out of time and Tallado submitted manufactured Statement of Votes by Precinct (SOVP).

On November 28, 2007, the COMELEC First Division conducted a hearing on the petition and, thereafter, ordered the parties to submit their respective memoranda.

In the meantime, the COMELEC *en banc* issued a Resolution dated January 30, 2008 in SPC No. 07-243 dismissing Tallado's Motion for Reconsideration of the August 22, 2007 Resolution, which dismissed the Petition for Annulment of Proclamation of Typoco.

On April 30, 2008, the COMELEC First Division promulgated the assailed Resolution in SPC No. 07-312 granting the petition and annulling the proclamation of Typoco while ordering the proclamation of Tallado as the winner.

On May 8, 2008, Typoco filed a motion for reconsideration contending that he was denied due process, followed by an Urgent Omnibus Motion for Leave of Court to Admit Supplemental

Argument in support of his motion for reconsideration and to set the case for hearing.

On February 16, 2009, the COMELEC *en banc* conducted a hearing regarding Typoco's Omnibus Motion, as well as his motion for reconsideration. The COMELEC *en banc* then directed the parties to submit their respective memoranda.

On February 24, 2009, the COMELEC *en banc* issued a Resolution affirming the findings of the COMELEC First Division denying the Motion for Reconsideration.

Aggrieved, petitioner Typoco filed the instant petition on February 26, 2009.

In the meantime, on March 2, 2009, the COMELEC *en banc* issued an Order denying Typoco's request to admit certain exhibits,[1] including ten (10) representative samples of the election returns, which were submitted to prove that Tallado's SOVPs did not match the results in the election returns. It further appointed new members for the MBOC of the Municipality of Labo, as well as for the PBOC of Camarines Norte, to re-tabulate the votes for the position of Governor of Camarines Norte, to prepare new election documents, and to proclaim Tallado as the winning candidate. Lastly, the COMELEC ordered the National Bureau of Investigation (NBI) to investigate the fraudulent acts alleged by Typoco. The dispositive portion reads:

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[1] Exhibit "1" – Xerox copy of the upper portion of page 1 of the purported FAKE SOVP; Exhibit "2" – Xerox copy of the upper portion of a genuine SOVP for the municipality of Labo; Exhibit "3" – sheet of paper attached and stapled thrice to the Summary Statement of Votes for the Municipality of Labo with the note "PAGE 1 SOVP (FAKE); Exhibit "4" to "4-G" – Eight (8) sheets of SOVPs of Labo filed with the Election Records and Statistics Department (ERSD); Exhibit "5" – Certificate of Canvass of Votes for the Municipality of Labo filed with the ERSD; Exhibits "6" and "7" – the respective affidavits of Provincial Election Supervisor Atty. Said Ali Maganduga and MBOC Chair Rosendo Vales; Exhibits "7" to "7-I" – ten (10) representative samples of the election returns, copy of the dominant majority party; and Exhibits "8" to "8-G" – certified true copy of page 1 of the genuine SOVPs for the Municipality of Labo.

WHEREFORE, premises considered, the Commission *en banc* RESOLVED to, as it hereby RESOLVES to, DENY the prayer of Private Respondent Jesus Typoco for admission of exhibits "1" to "8-G" for the specific purposes mentioned in the Memorandum.

Consequently, relative to our February 24, 2009 Resolution, and in order to expedite proceedings x x x speedily and judiciously, the Commission *en banc* accordingly names and appoints the following members of the New Municipal Board of Canvassers (NMBOC) for Labo, Camarines Norte: x x x which must hereafter convene at COMELEC session hall in Intramuros, Manila within three (3) days from receipt of this Order, re-tabulate the votes for the position of Governor of Camarines Norte, prepare a new SVOP and MCOC for the municipality of Labo with the corrections, and thereafter submit the same to the New Provincial Board of Canvassers (NPBOC) of Camarines Norte.

The following are likewise named and appointed to the New Provincial Board of Canvassers of Camarines Norte and performed duties as follows: x x x The same NPBOC shall convene at COMELEC session hall in Intramuros, Manila, within three (3) days from receipt of this Order, prepare a new Statement of Votes per Municipality (SVOM) and Provincial Canvass of Votes (PCOC) as corrected, and thereafter proclaim Edgardo Tallado as the duly elected governor of the province of Camarines Norte in May 14, 2007 elections.

Further, the Commission *en banc* hereby endorses this matter to the National Bureau of Investigation (NBI) for proper investigation, the results of which would be material to any further action that may be taken against any such responsible parties who may be found liable for any of the fraudulent acts alleged by the Private Respondent Typoco. For this same purpose, the NBI is hereby directed to coordinate with the COMELEC Law Department and Atty. Romulo B. Macalintal to expedite this investigation.

SO ORDERED.[2] (Emphasis supplied.)

Upon endorsement of the said Order from COMELEC, the NBI conducted an investigation of the two sets of SOVPs submitted by both parties. The NBI was able to examine four (4) copies of the SOVPs: the first copy coming from the Office of the

[2] *Rollo*, pp. 317-318.

Provincial Election Supervisor of Camarines Norte; the second, from the Parish Pastoral Council for Responsible Voting, Camarines Norte Chapter; the third (blue carbon copy), from the Election Records and Statistics Department (ERSD); and the fourth, from the MBOC for Labo.

On May 22, 2009, the NBI released a Progress Report[3] with the following findings:

> After the investigation conducted so far, the undersigned Agents of the National Bureau of Investigation (NBI) assisted by other investigators, hereby state their findings, thus:
>
> That the **First Copy** (black copy/original copy) of the Statement of Votes by Precinct (SOVP) Nos. 0006482, 0006483, 0006484, 0006485, 0006486, 0006487, 0006488 and 0006489 for Local Positions from Labo, Camarines Norte during the May 14, 2007 Elections which were turned over by the Office of the Provincial Election Supervisor of Camarines Norte, Provincial Capitol, Daet, Camarines Norte represented by Atty. MAICO JULIA to the NBI for examination are *SPURIOUS*.
>
> That the **Second Copy** (red carbonized impression) of the Statement of Votes by Precinct (SOVP) Nos. 0006482, 0006483. 0006484, 0006485, 0006486, 0006487, 0006488 and 0006489 for Local Positions from Labo, Camarines Norte during the May 14, 2007 Elections which were turned over by the Parish Pastoral Council for Responsible Voting – NAMFREL, Camarines Norte Chapter, Daet, Camarines Norte represented by Fr. NORBERTO EYULI to the NBI for examination are *GENUINE*.
>
> That the **Third Copy** (blue carbonized impression) of the Statement of Votes by Precinct (SOVP) Nos. 0006482, 0006483. 0006484, 0006485, 0006486, 0006487, 0006488 and 0006489 for Local Positions from Labo, Camarines Norte during the May 14, 2007 Elections which were **turned over by the Election Records & Statistics Division**, Comelec, Intramuros, Manila represented by Atty. JUANA S. VALEZA to the NBI for examination are *SPURIOUS*.
>
> That the **Fourth Copy** (green carbonized impression) of the Statement of Votes by Precinct (SOVP) Nos. 0006482, 0006483. 0006484, 0006485, 0006486, 0006487, 0006488 and 0006489 for

[3] *Id.* at 443-463.

Local Positions from Labo, Camarines Norte during the May 14, 2007 Elections which were turned over by the Municipal Board of Canvassers (MBOC) for Labo, Camarines Norte represented by Mr. VIRGILIO VERAS to the NBI for examination are ***GENUINE***.[4] (Emphasis supplied.)

After a careful examination of the facts and law applicable to the case, I submit that the petition should be granted.

Existence of Forum-Shopping

At the outset, it should be pointed out that COMELEC erroneously entertained the Petition for Correction of Manifest Errors filed by Tallado, since such petition already constituted deliberate and willful forum shopping.

The COMELEC Rules of Procedure provides that "the Rules of Court in the Philippines shall be applicable by analogy or in suppletory character and effect."[5]

Accordingly, the certification against forum shopping is required under Section 5, Rule 7 of the 1997 Rules of Civil Procedure, to wit:

Sec. 5. *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory

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[4] *Id.* at 455.

[5] Rule 41, Part IX (1993).

pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt as well as a cause for administrative sanctions.

In a complaint or other pleading initiating an action in court, the plaintiff or principal party shall certify as to three undertakings: (1) that he has not commenced any action or filed any claim involving the same issues in any court, tribunal, or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (2) if there is such other pending action or claim, he should make a complete statement of the present status of said action or claim; and (3) if he should thereafter learn that the same or similar action has been filed or is pending in any court, tribunal, or quasi-judicial agency, he shall report that fact within five (5) days therefrom to the court where his complaint or initiatory pleading has been filed. Failure to comply with these requirements shall be cause for dismissal of the case without prejudice or with prejudice but only upon motion and after hearing. The submission of a false certification or the non-compliance with any of the undertakings therein may subject the party to indirect contempt of court. If the party's or his counsel's acts constitute willful and deliberate forum shopping, the same shall be a ground for summary dismissal of the case with prejudice.

The test for determining the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in another. Thus, there is forum shopping when the following elements are present: (1) identity of parties, or at least such parties represent the same interests in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless

of which party is successful, amount to *res judicata* in the action under consideration. These requisites are also constitutive of the requisites of *auter* action pendant or *lis pendens*.[6]

In the present case, the records reveal that not only did Tallado fail to declare in the certification against forum shopping in his Petition for Correction of Manifest Errors the existence of his Motion for Reconsideration of the dismissal of his Petition for Annulment of Proclamation of Typoco (SPC No. 07-243) then pending before the COMELEC,[7] but he also engaged in willful and deliberate forum shopping.

It would be apropos to review the factual milieu of the case at this juncture. The first cases, docketed as SPC Nos. 07-78, 07-79, and 07-80, filed by Tallado were objections to the inclusion of the COCs from the Municipalities of Paracale, Jose Panganiban, and Labo on the ground that they were falsified, tampered, and manufactured. Thereafter, he filed a second case—a Petition for Annulment of Proclamation of Typoco. Still unsatisfied, he filed the Petition for Correction of Manifest Error, his third case, saying that the proclamation of Typoco is void, since it was based on void COCs from the municipalities aforementioned. **In effect, each of these three cases is anchored on the same ground—void COCs**.

Applying the test to determine the existence of forum shopping to the facts of the case, it is easily decipherable that forum shopping indeed exists. *First*, there is identity of parties. Tallado is the petitioner in all three (3) cases against Typoco as respondent. *Second*, the relief prayed for is founded on the same facts, *i.e.*, void COCs for the Municipalities of Labo, Jose Panganiban, and/or Paracale. And *third*, the resolution of the COMELEC in SPC Nos. 07-78, 07-79, and 07-80 regarding the authenticity of the COCs is a decision on the merits which amounted to *res judicata*. Thus, Tallado could no longer question Typoco's proclamation based on the same COCs in the subsequent

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[6] *Rural Bank of the Seven Lakes (S.P.C.), Inc. v. Dan*, G.R. No. 174109, December 24, 2008, 575 SCRA 476, 485-486.

[7] COMELEC records, Volume I, p. 11.

Petitions for Annulment of Proclamation and Correction of Manifest Error.

Such fact of deliberate and willful forum shopping should have prompted COMELEC to dismiss outright the Petition for Correction of Manifest Error.

Existence of Grave Abuse of Discretion

The *ponencia* finds that the COMELEC did not gravely abuse its discretion in the instant case ratiocinating that the appreciation of election documents involves a question of fact that is best left to the determination of the COMELEC, a specialized agency tasked with the supervision of elections all over the country. Further, it says that the findings of fact of such agency, when supported by substantial evidence, are final and cannot be reviewed by courts of justice. While such is the general rule, the principle admits of certain exceptions. In *Life Assurance Company Ltd. v. Court of Appeals*, this Court enumerated the exceptions, to wit:

> It is a settled rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the CA are conclusive and binding on the Court. However, the Court had recognized several exceptions to this rule, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) **when there is grave abuse of discretion**; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; x x x (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record x x x.[8] (Emphasis supplied.)

In the instant case, there are two conflicting sets of SOVPs, and by deciding the petition of Tallado **solely** on the basis of

[8] G.R. No. 126850, April 28, 2004, 428 SCRA 79, 85-86.

the ERSD copy of the SOVP, such act by the COMELEC constituted grave abuse of discretion.

First, there were glaring discrepancies between the two (2) sets of SOVP submitted by the parties. On the one hand, petitioner Typoco avers that he obtained his copy of the SOVP from the Office of the Election Officers in the municipalities of Labo, while private respondent Tallado claims that he secured his copy of the SOVP from the Office of the Provincial Election Supervisor (OPES), allegedly as certified by the latter.

Tallado alleges that based on his copy of the SOVP, his total number of votes in the Municipality of Labo is 13,172, while Typoco received only 11,359 votes. When the said figures were, however, copied to the Municipal COC, Tallado's votes were reduced to only 11,490 votes, while those of Typoco were increased to 12,285 votes.

But Typoco contends in his petition that the election documents used by respondent COMELEC in issuing the questioned resolutions, which nullified the 2,543 vote-lead of Typoco, and in declaring Tallado as the winner, are fake and spurious. He further asserts that the copies provided by Tallado are also fake and spurious.

Typoco counters that the correct total numbers of votes are those found in the Municipal COC, which shows that Tallado received only 11,490 votes, while Typoco garnered 12,285 votes. Typoco further argues that these figures are supported by the SOVP (MBOC copy), which he obtained from the Offices of the Election Officer of Labo.

In such a scenario, the COMELEC should not have decided based on the ERSD copies of the SOVP alone. It departed from settled jurisprudence when it did not make use of the election returns and simply relied on the SOVP copy of the ERSD. As the *ponencia* stated, "[T]he original petition filed before the COMELEC, one for correction of manifest errors, is a pre-proclamation controversy which, **ordinarily**, does not involve the opening of ballot boxes, examination and appreciation of ballots and/or election returns." In order, however, to determine

the true and genuine results of the elections, this Court has constantly ruled that the best evidence is the election returns themselves, and not the certificate of votes or SOVPs.

In *Garay v. COMELEC*,[9] the Court held that "[a] certificate of votes does not constitute sufficient evidence of the true and genuine results of the election; only election returns are, pursuant to Sections 231, 233-236, and 238 of B.P. Blg. 881."

Again in *De Guzman v. COMELEC*,[10] the Court stated that "in an election contest where the correctness of the number of votes is involved, the best and most conclusive evidence are the ballots themselves; where the ballots can not be produced or are not available, the **election returns would be the best evidence.**" (Emphasis supplied.)

Moreover, the *ponencia* pounds on the fact that this Court can only look at records and materials brought to the COMELEC's attention and consideration by the parties. But it neglects to take into account the long standing principle that procedural rules are but tools to accomplish the ends of justice, and it is always in the power of the Court to suspend its own rules whenever the purposes of justice require.[11] Similarly, it would be wise to remember that election contests involve public interest, and technicalities and procedural barriers should not be allowed to stand in the way if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. In election cases this Court has an imperative duty to ascertain, by all means within its command, who are the real candidates voted by the electorate.[12]

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[9] G.R. No. 121331, August 28, 1996, 261 SCRA 222, 229.

[10] G.R. No. 159713, March 31, 2004, 426 SCRA 698.

[11] *Adams v. Clark*, 61 Cal.2d 775, 394 P.2d 943, 40 Cal.Rptr. 255, August 31, 1964; citing *Pickett v. Wallace*, 54 Cal. 147, 148; *Ansco Const. Co. v. Ocean View Estates*, 169 Cal.App.2d 235, 241, 337 P.2d 146. See *Ginete v. Court of Appeals*, G.R. No. 127596, September 24, 1998, 296 SCRA 38; *De Guzman v. Sandiganbayan*, G.R. No. 103276, April 11, 1996, 256 SCRA 171.

[12] *Tatlong-Hari v. COMELEC*, G.R. No. 86645, July 31, 1991, 199 SCRA 849; citing *Juliano v. Court of Appeals*, No. L-27477, July 28, 1967, 20 SCRA 808.

Thus, in the higher interest of substantial justice, this Court decided to use the election returns in the precinct subject of the petition to finally determine the actual votes cast in favor of the contending parties. Such action has been upheld by the Court in *Mastura v. COMELEC*.[13] In *Mastura*, two (2) congressional candidates were vying for the first district of Maguindanao during the May 8, 1995 elections. One of the candidates, Didagen P. Dilangalen, objected to the inclusion of the COC of the Municipality of Matanog on the ground that the same was allegedly tampered. The Court ruled that **the act of COMELEC in ordering the production and examination of the election returns was proper**. Noteworthy is the fact that *Mastura* involved a pre-proclamation controversy and yet the COMELEC reviewed the election returns. This is contrary to the argument of the Office of the Solicitor General that "the remedy of recanvass of election returns is patently illegal, as this would take the form of an election protest, particularly a retabulation of election returns under A.M. No. 07-4-15-SC."

Although such a task could have very well been delegated to the COMELEC, time constraints strongly argued against a remand and compelled this Court to review the election returns themselves.

Accordingly, by Resolution on July 28, 2009, the Court directed the COMELEC to present for examination the COMELEC copy of all the 163 election returns of Labo, Camarines Norte under the custody of the ERSD. As a measure then to discern the will of the electorate, the Court took it upon itself to make a verification. In compliance with the said resolution, the COMELEC submitted copies of E.R. Nos. 3000501 to 3000663 on August 11, 2009. Upon inspection, the election returns were found to be regular.

Subsequently, on September 29, 2009, the Court issued another resolution requiring the parties to submit their comments on the results of the election returns. Petitioner Typoco confirmed the genuineness and due execution of the election returns in his comment. He further stated that the results also confirmed the

[13] G.R. No. 124521, January 29, 1998, 285 SCRA 493.

findings of the NBI that the SOVPs used by COMELEC in annulling his proclamation were not genuine.

On the other hand, respondent Tallado raises the argument that the review of the election returns is not within the power of the Court. He argues that reviewing the said election returns would transgress the principle that the Court is not a trier of facts. Furthermore, he contends that the findings of fact of the COMELEC are final and non-reviewable. Lastly, he states that any review of "precursor documents" is anathema to the summary nature of pre-proclamation controversies.

Had the majority only looked at the evidence before the Court, the returns would have carried the day for Typoco:

Election Return No.	**Precinct No.**	**GOVERNOR**	
		Tallado, Edgardo A.	**Typoco, Jesus Jr. O.**
3000501	1A	92	43
3000502	2A	104	39
3000503	3A	100	25
3000504	4A & 5A	129	33
3000505	6A	110	18
3000506	7A	98	23
3000507	8A	90	40
3000508	9A	76	46
3000509	10A & 11A	104	89
3000510	12A	50	94
3000511	13A	66	75
3000512	14A	48	61
3000513	15A & 16A	136	86
3000514	17A	56	39
3000515	18A	79	56

3000516	19A	73	43
3000517	20A	67	47
3000518	21A	71	68
3000519	22A & 23A	86	75
3000520	24A	92	53
3000521	25A	56	29
3000522	26A & 27A	101	42
3000523	28A & 29A	90	64
3000524	30A	100	40
3000525	31A	100	46
3000526	32A	85	40
3000527	33A	86	59
3000528	34A	60	73
3000529	35A	63	64
3000530	35B & 36A	95	105
3000531	37A & 38A	43	97
3000532	39A & 40A	53	107
3000533	41A & 42B	117	67
3000534	43A	27	127
3000535	44A & 44B	31	143
3000536	45A & 46A	23	166
3000537	47A & 48A	129	85
3000538	49A & 50A	81	139
3000539	51A	86	63
3000540	52A	100	45
3000541	53A	47	82
3000542	54A & 55A	51	69

3000543	56A & 57A	117	56
3000544	58A & 59A	58	118
3000545	60A	53	71
3000546	61A	42	53
3000547	62A & 63A	74	113
3000548	64A	68	77
3000549	65A	41	55
3000550	66A & B	78	81
3000551	67A	80	54
3000552	68A	67	80
3000553	69A & B	100	87
3000554	70A	97	41
3000555	71A & 72A	69	69
3000556	73A & 74A	82	91
3000557	75A & B	44	104
3000558	76A & 77A	67	104
3000559	78A & 79A	77	113
3000560	80A	78	70
3000561	81A & 82A	107	110
3000562	83A	53	95
3000563	84	39	78
3000564	85A	77	66
3000565	86A	50	39
3000566	87A	45	92
3000567	88A	26	71
3000568	89A & B	73	88
3000569	90A & 91A	82	132

3000570	92A & 93A	115	43
3000571	94A	10	80
3000572	95A & 96A	78	73
3000573	97A	92	43
3000574	98A & 99A	98	72
3000575	100A	40	75
3000576	101A & 102A	60	69
3000577	103A & 104A	61	91
3000578	105A	53	76
3000579	106A & 107A	76	74
3000580	108A & B	73	55
3000581	109A & 110A	91	56
3000582	111A	87	52
3000583	112A & 113A	101	58
3000584	114A & 115A	147	31
3000585	116A & 117A	82	72
3000586	118A & 119A	76	78
3000587	120A & 121A	55	125
3000588	122A	69	85
3000589	123A	73	66
3000590	123B & 124A	80	41
3000591	125A & B	84	82
3000592	126A & B	74	95
3000593	127A	89	61
3000594	128A	61	21
3000595	129A & 130A	84	92
3000596	131A	35	110

3000597	132A	48	101
3000598	133A & B	52	118
3000599	134A & 135A	65	111
3000600	136A & B	85	88
3000601	137A	82	62
3000602	138A & 139A	107	83
3000603	140A	47	103
3000604	141A & 142A	63	105
3000605	143A & 144A	86	120
3000606	145A & B	90	51
3000607	146A	12	84
3000608	147A & 148A	46	120
3000609	149A	62	78
3000610	150A	30	64
3000611	151A	39	105
3000612	152A	20	50
3000613	153A & 154A	71	86
3000614	155A & 156A	67	83
3000615	157A	76	70
3000616	158A & 159A	98	77
3000617	160A	68	72
3000618	161A & 162A	65	89
3000619	163A & B	76	72
3000620	164A	66	63
3000621	165A	38	65
3000622	166A	64	61
3000623	167A	49	44

3000624	168A	71	62
3000625	169A	40	52
3000626	170A	64	66
3000627	171A	61	58
3000628	172A	86	56
3000629	173A & 174A	60	109
3000630	175A & 176A	89	91
3000631	177A	71	60
3000632	178A	34	31
3000633	179A & 180A	58	122
3000634	181A	70	87
3000635	182A	58	96
3000636	183A	39	77
3000637	184A	29	75
3000638	185A	65	93
3000639	186A	27	60
3000640	187A	20	125
3000641	188A & B	24	163
3000642	189A	64	79
3000643	190A	52	84
3000644	191A & 192A	38	158
3000645	193A & 194A	77	87
3000646	195A & 196A	101	79
3000647	197A	77	65
3000648	198A & 199A	100	50
3000649	200A & 201A	78	101
3000650	202A & 203A	98	87

3000651	204A	30	39
3000652	205A & 206A	90	78
3000653	207A & B	75	77
3000654	208A	60	59
3000655	209A	51	58
3000656	210A & 211A	105	91
3000657	212A	88	54
3000658	213A	80	42
3000659	214A	77	72
3000660	215A	51	75
3000661	216A	54	37
3000662	217A & 218A	102	83
3000663	219A & 220A	65	133
		4678	5857

From the table above, it is very clear that the election returns mirror the SOVPs submitted by Typoco, and not the SOVPs submitted by Tallado. As such, Typoco's copies of the SOVPs obtained from the Municipal Election Officer of Labo, Camarines Norte reflect the true will of the electorate in the said municipality.

Second, the COMELEC failed to consider the annexes attached to the Answer of Typoco in SPC No. 07-312, namely: (1) the COC of votes for the Municipality of Labo filed with the ERSD; (2) the respective affidavits of Provincial Election Supervisor (PES) Atty. Said Ali Maganduga and MBOC Chairperson Rosendo Vales; and (3) certified true copies of the genuine SOVPs for the Municipality of Labo. These documents should have been admitted, as these are relevant and material to the determination of the genuineness of the SOVP copy of the ERSD and that of the Labo Municipal Election Officer. If admitted, these documents tend to show that the SOVP copy of the ERSD is spurious and cannot be the sole basis for the resolution of the petition. The February 24, 2009 COMELEC *en banc* Resolution affirming

the findings of the COMELEC First Division relied on the SOVP copy deposited with the ERSD on the ground that said document enjoys the presumption of regularity until proved otherwise. The point is that the disputable presumption has been successfully overturned by the SOVP copy of the Labo Municipal Election Officer. Moreover, the COMELEC should have taken cognizance of the affidavit of PES Atty. Said Ali Maganduga, who attested that the Form 20-A-2 used for the SOVP copy of the ERSD did not conform to the genuine forms printed and distributed by the COMELEC for use in the May 14, 2007 elections, and that the questioned ERSD SOVP was duly certified and issued by an unauthorized employee.

While Tallado claims his copy of the SOVP came from the OPES which allegedly certified the copy, Atty. Maganduga denies having certified such document and even goes so far as to declare that Tallado's SOVP is fake and manufactured. In his affidavit, Atty. Maganduga states:

> 11. The latest petition is clearly unfounded, suffers incurable defects, and lacking the element of Good Faith. It is susceptible to outright dismissal for the following reasons, to wit:
>
> 11.1 The machine copies of Statement of Votes by Precincts being kept by the Office of the Provincial Election Supervisor and duly certified as such to be the true copies of the Original Statement of Votes by Precincts from the Municipalities of Labo and Jose Panganiban, and sets forth in the Petition for Correction of Manifest Error, are not reflective of a genuine or authentic copies of Statement of Votes by Precincts, after having been compared with the Statement of Votes by Precincts, being kept by the Office of the Election Officer of both Municipalities of Labo and Jose Panganiban;
>
> 11.2 **The entries of votes made in the Spurious or fake Statement of Votes by Precincts being kept by the Office of the Provincial Election Supervisor were clearly tampered, falsified, and obviously bloated in favor of Mr. E. Tallado, the herein petitioner**;

11.3 The papers used (Form 20-A-2) did not conform to the genuine Statement of Votes by Precincts printed and distributed by the Commission on Elections to different cities and municipalities all over the Philippines in connection with the May 14, 2007 National and Local Elections;

11.4 The original or genuine copies of the Statement of Votes by Precincts being kept inside the ballot box were all missing and fake or spurious Statement of Votes by Precincts were deliberately mixed with other genuine documents;

11.5 **The substitute spurious or fake Statement of Votes by Precincts were duly certified and issued by unauthorized employee of the Office of the Provincial Election Supervisor thereby making the same appear as genuine or authentic documents**.[14] (Emphasis supplied.)

COMELEC likewise arbitrarily failed to consider the affidavit of Labo MBOC Chairperson Rosendo Vales, who attested that the SOVP copy of the ERSD was tampered and fabricated, thus:

6. As all members of the Tabulating Committee for the Local Position had lately reviewed/recomputed all entries in the SVOP and the CCV copies for the MBOC Labo, Camarines Norte on October 8, 2007, all entries in the SVOP and the CCV copies for the MBOC Labo, Camarines Norte, and compared the findings to the attachments of the petition, [w]e staunchly conclude and assert:

    1. That the petitioner's [Tallado] claim of alleged error commited by the committee/board is an act of dancing with his own shadow.

    2. That the **Statement of Voter per Precincts attached** by the petitioner [Tallado] to his petition **had been cunningly TAMPERED and FABRICATED purposely to attack and destroy the veracity of the Certificate of Canvass of Votes of the municipality**

[14] COMELEC records, pp. 97-98.

> **of Labo** and the province of Camarines Norte eventually, like in his early multifaceted self-serving attempts and complaints; and
>
> 3. Further, petitioner [Tallado] by criminal intent and purpose, had to the extent forged and/or had caused the forging of the signatures of the members and staff of the board in order to give semblance to his attached SVOP as faithful reproduction of the original.[15] (Emphasis supplied.)

Included also in the documents submitted by Vales before the COMELEC was a machine copy of the Summary Statement of Votes with serial number 0991195,[16] showing that Tallado garnered 11,490 votes, while Typoco got 12,285 votes. These figures match the documents submitted by Typoco and the election returns.

Notwithstanding the compelling nature of the pieces of evidence Typoco adduced and the facts they tended to prove or were deducible therefrom, COMELEC simply ignored or considered them without provable value as to be worthy of evaluation. Those pieces of evidence by themselves appear to be compelling as to arouse, at the minimum, reasonable suspicion that the respective copies of the SOVP Tallado presented and in the possession of the ERSD were both spurious and/or tampered. Unfortunately, COMELEC still opted to rely on the results reflected in the ERSD copy of the SOVP. A thorough investigation of conflicting SOVPs and a comprehensive inquiry into the precursor documents of the SOVPs, more particularly the election returns in the poll body's custody, would have been the logical approach to take. In fine, COMELEC looked at what *Pecson v. Commission on Elections*[17] referred to as the "wrong material considerations" as basis to annul the proclamation of Typoco as governor-elect. *Pecson*, while not on all fours with the present case, teaches that the use by the court or adjudicating body of

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

[16] *Id.* at 66-67.

[17] G.R. No. 182865, December 24, 2008, 575 SCRA 634.

wrong considerations in arriving at a decision constitutes grave abuse of discretion.[18] Of similar tenor albeit dealing with an entirely different subject, was what the Court said in *Almeida v. Court of Appeals*, thus: "[A] court abuses its discretion when [in granting or denying injunctive relief], it x x x fails to consider and make a record of the factors relevant to its determination, relies on clearly erroneous factual findings, considers clearly irrelevant or improper factors x x x or misapplies its factual or legal conclusions."[19]

Considering that the determinative issue in this case revolves around the genuineness of the SOVP copies, it behooves the COMELEC, in line with its duty to ascertain the true will of the electorate—the voting will of the people of Labo, in this instance––to have asked government experts to determine which of the conflicting SOVPs was valid before deciding the Tallado petition. Or at the very least, it should have, given the uncertainties prevailing on the ground, remanded the case to the provincial election officer, with an instruction to look into the relevant election documents to determine who the real winner was.

The Court has certainly taken stock of the COMELEC's order to the NBI to investigate the issue of the genuineness of the SOVP copy of the ERSD. But it cannot be overemphasized that the COMELEC took this course of action only after denying Typoco's motion for reconsideration. In net effect, COMELEC merely went through the motion of ordering an investigation as to the authenticity of critical documents, but without intending to use the results of the probe to assist it arrive at a judicious, precise conclusion.

As it were, the results of the examination conducted by experts from the Questioned Documents Division of the NBI buttressed the finding that the SOVPs turned over by the MBOC of Labo were genuine, while the SOVPs yielded by the ERSD of the COMELEC were spurious. The NBI progress report states in part:

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[18] *Id.* at 649; citing *Almeida v. Court of Appeals*, G.R. No. 15914, January 17, 2005, 448 SCRA 681.

[19] *Almeida*, *supra* note 18, at 695; citing 42 Am. Jur. pp. 576-577.

That the **Fourth Copy** (green carbonized impression) of the Statement of Votes by Precinct (SOVP) Nos. 0006482, 0006483, 0006484, 0006485, 0006486, 0006487, 0006488 and 0006489 for Local Positions from Labo, Camarines Norte during the May 14, 2007 Elections which were turned over by the Municipal Board of Canvassers (MBOC) for Labo, Camarines Norte represented by Mr. VIRGILIO VERAS to the NBI for examination are *GENUINE*.[20]

The NBI Report, while not necessarily binding on the COMELEC or the Court, elaborated on the fact that the Labo MBOC SOVPs jibed with the SOVPs submitted by the Parish Pastoral Council for Responsible Voting-NAMFREL, Camarines Norte Chapter; these SOVPs were also found to be genuine. On the other hand, the SOVPs turned over by the Election Records and Statistics Division of COMELEC were found to be spurious.

Furthermore, the testimonies[21] of Labo MBOC Vice-Chairperson Roberto Villaflores, Tabulator Roberto Ramirez, Tabulator Vivencio Maigue, and Chief Assessor Igmedio Estrella gathered by the NBI also confirmed the fake and spurious character of the SOVPs obtained from the ERSD, as well as the SOVP turned over by the OPES.

In all then, COMELEC was confronted with enough related substantial evidence, the combined effect of which points to

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[20] *Rollo*, p. 455.

[21] Mr. Roberto Villaflores (Vice-Chairperson, MBOC, Labo) testified, among others, that "the original copies colored black turned over by the OPES, Camarines Norte and the carbon copy colored blue turned over by the ERSD, Comelec, Manila are both spurious." NBI Progress Report, p. 7; *id.* at 449.

Mr. Roberto A. Ramirez (Tabulator) testified, among others, that the SOVPs emanating from the ERSD and OPES "are fake." NBI Progress Report, pp. 7-8; *id.* at 449-450.

Mr. Igmedio Estrella (Chief Assessor), who signed the eight sets of SOVPs of the Municipality of Labo, said that his "handwritten name" and the "handwriting" on the "blue copies" of the SOVPs (the one in the custody of the ERSD) "are not his handwriting." NBI Progress Report, pp. 8-9; *id.* at 450-451.

Mr. Vivencio Maigue (Tabulator) also testified that his handwriting on the said SOVPs from the ERSD "are not his handwriting." NBI Progress Report, p. 9; *id.* at 451.

the obvious fact that the SOVPs Tallado adduced were spurious, if not tampered documents. Sadly, the poll body, without so much of an explanation, refused to look at these pieces of evidence, the relevant considerations in this case, in arriving at its ruling. And with the path it chose to take, COMELEC veritably latched its final determination as to who won the 2007 gubernatorial race in Camarines Norte on spurious election documents. To borrow from *Almeida*, a court grossly abuses its discretion when, for its case disposition, it relies on clearly erroneous factual anchors and/or considers irrelevant factors. The spurious SOVP copy of the ERSD is doubtless an "irrelevant factor" adverted to, a clearly wrong quantity to predicate a ruling on. The COMELEC's reliance thereon as basis for its assailed resolutions cannot but be tagged as a whimsical and capricious exercise of discretion.

Upon the foregoing considerations, I cannot, with due respect, plausibly sustain the ruling of the COMELEC in annulling the proclamation of Typoco and proclaiming Tallado as the winning gubernatorial candidate based on the SOVPs from the ERSD. I declare that, indeed, petitioner Typoco is the duly elected Governor of Camarines Norte. Accordingly, the proclamation made by the PBOC on May 29, 2007 ought to stand.

In this electoral contest, we are called upon to protect the sovereign will of the people of Camarines Norte and not to stifle or frustrate it. Thus, the Court must employ all means bestowed upon it to safeguard the rule of the majority. If this means going through the motion of mathematically adding the votes, should the situation so demands, so be it. The will of the electorate must be heeded.

Therefore, I vote to grant the petition.

SECOND DIVISION

[G.R. No. 188900. March 5, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **FERNANDO HABANA *y* ORANTE,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; VIOLATION OF REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); THE NON-PRESENTATION OF THE INFORMANT CANNOT PREJUDICE THE PROSECUTION'S THEORY OF THE CASE; RATIONALE.— [N]o rule requires the prosecution to present as witness in a drugs case every person who had something to do with the arrest of the accused and the seizure of prohibited drugs from him. The discretion on which witness to present in every case belongs to the prosecutor. The non-presentation of the informant cannot prejudice the prosecution's theory of the case. His testimony would merely be corroborative since police officers Paras and Tayag who witnessed everything already testified. Besides, as a rule, it is rarely that the prosecutor would present the informant because of the need to hide his identity and preserve his invaluable service to the police.

2. ID.; ID.; THE CHAIN OF CUSTODY RULE REQUIRES THAT TESTIMONY BE PRESENTED ABOUT EVERY LINK IN THE CHAIN FROM THE MOMENT THE ITEM WAS SEIZED UP TO THE TIME IT IS OFFERED IN EVIDENCE; FAILURE IN CASE AT BAR.— In all prosecutions for the violation of The Dangerous Drugs Act, the existence of the prohibited drug has to be proved. The chain of custody rule requires that testimony be presented about every link in the chain, from the moment the item was seized up to the time it is offered in evidence. To this end, the prosecution must ensure that the substance presented in court is the same substance seized from the accused. While this Court recognizes substantial adherence to the requirements of R.A. 9165 and its implementing rules and regulations, not perfect adherence, is what is demanded of police officers attending to drugs cases, still, such officers

must present justifiable reason for their imperfect conduct and show that the integrity and evidentiary value of the seized items had been preserved. Here, however, they failed to meet these conditions. The police officers offered no explanation for their failure to observe the chain of custody rule. The prosecution failed to show how the seized items changed hands, from when the police officers seized them from Habana to the time they were presented in court as evidence.

3. **ID.; ID.; FAILURE TO COMPLY WITH THE PROCEDURE IN THE CUSTODY OF SEIZED DRUGS COMPROMISED THE IDENTITY AND INTEGRITY OF THE ITEM SEIZED; EFFECT.—** If the substance is not in a plastic container, the officer should put it in one and seal the same. In this way the substance would assuredly reach the laboratory in the same condition it was seized from the accused. Further, after the laboratory technician tests and verifies the nature of the substance in the container, he should put his own mark on the plastic container and seal it again with a new seal since the police officer's seal has been broken. At the trial, the technician can then describe the sealed condition of the plastic container when it was handed to him and testify on the procedure he took afterwards to preserve its integrity. If the sealing of the seized substance has not been made, the prosecution would have to present every police officer, messenger, laboratory technician, and storage personnel, the entire chain of custody, no matter how briefly one's possession has been. Each of them has to testify that the substance, although unsealed, has not been tampered with or substituted while in his care. Since the failure in this case to comply with the procedure in the custody of seized drugs compromised the identity and integrity of the items seized, which is the *corpus delicti* of each of the crimes charged against Habana, his acquittal is in order.

APPEARANCES OF COUNSEL

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

D E C I S I O N

ABAD, *J.*:

This case is about whether the forensic examiner and the police investigator are indispensable witnesses in a drugs case to establish the chain of custody over the substance seized from the accused.

The Facts and the Case

On July 21, 2003 the public prosecutor of Caloocan City filed two separate informations[1] against the accused Fernando Habana before the Regional Trial Court (RTC) of that city in Criminal Cases C-68627 and C-68628 for violations of Sections 5 and 11, Article II of Republic Act (R.A.) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

At the trial, the prosecution presented PO1 Fortunato Paras[2] and PO2 Amadeo Tayag.[3] On the other hand, the defense called to the witness stand the accused Habana and one Amelia Sevilla.[4]

The prosecution evidence shows that in the morning of July 17, 2003, members of the Anti-Illegal Drug Task Force Unit of the Caloocan City Police Station met with an informant at Chowking Restaurant in Sangandaan, Caloocan City. The informant told them that a certain *Loloy*, later on identified as the accused Habana, was selling *shabu* on Salmon Street.[5] Acting on this, the group proceeded to the place and staked it out.[6]

After locating accused Habana, PO3 Rizalino Rangel held a short briefing with his unit. They decided to undertake a buy-bust operation with PO1 Paras as poseur-buyer. Rangel told

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[1] Records, pp. 1 and 7.

[2] TSN, August 3, 2005.

[3] TSN, October 26, 2006.

[4] TSN, December 13, 2007.

[5] TSN, August 3, 2005, p. 3.

[6] *Id.* at 4; TSN, October 26, 2006, pp. 6-7.

Paras to scratch his head by way of signal after he had made a purchase of drugs and handed over two pieces of fifty-peso bills that made up the buy-bust money.[7] Paras placed his initials "FP" on the money.[8]

Accompanied by the informant, Paras approached accused Habana who asked them how much they wanted to buy. Paras handed over the money to Habana who pocketed it. In turn, the latter handed over to Paras one plastic sachet that contained what appeared to be *shabu*. After PO1 Paras got the plastic sachet, he executed the pre-arranged signal, introduced himself as a policeman, and arrested Habana.[9]

Tayag rushed to the scene and helped Paras collar Habana. Tayag searched Habana's body and this yielded two more plastic sachets containing what appeared to be *shabu* and the marked bills.[10] The arresting officers handed over custody of his person and the items seized from him to PO3 Fernando Moran, the investigator on duty, who placed his marking on them and submitted the same to the Philippine National Police (PNP) Crime Laboratory for forensic examination.

Forensic Chemist Police Inspector Erickson Calabocal submitted Physical Science Report D-848-03, which revealed that the white crystalline substance contained in the plastic sachets tested positive for Methamphetamine Hydrochloride, otherwise known as "*shabu*."[11]

At the pre-trial,[12] the parties stipulated: 1) that the assigned forensic chemist got the police request for laboratory examination of the specimen involved and, upon examination, found it positive for methamphetamine hydrochloride[13] and 2) that PO3 Fernando

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[7] Records, p. 5.

[8] TSN, August 3, 2005, p. 4.

[9] *Id.* at 5.

[10] TSN, October 26, 2006, pp. 23-25.

[11] TSN, October 7, 2003.

[12] *Id.* at 23-24.

[13] *Id.* at 6, see Physical Science Report D-848-03.

Moran was the investigating officer assigned to the case to whom the arresting officers turned over the accused as well as the three plastic sachets and that it was he who prepared the referral slip,[14] sworn affidavit of the arresting officers,[15] and the request for laboratory examination[16] of the specimen subject of this case.[17]

Accused Habana presented a different version. According to him, on the afternoon of July 17, 2003 he was on his way home when five to seven men in civilian clothes blocked his way. He asked what the matter was and they replied that they had to search him. He resisted because he was not doing anything illegal. Still, the men frisked him and took five hundred pesos from his pocket. They then brought him to the police station where he was detained. When his wife and sister came, the police officers told them to produce ₱20,000.00 for his freedom. When they failed to give the amount, they charged him with illegal possession and sale of *shabu*.[18]

Amelia Sevilla testified that on the date of the incident, at around 6:00 p.m., she was about to close her store when she saw two men suddenly approach and frisk accused Habana who was just standing near her store. Habana raised his hands and said, "*Bakit ano po ang kasalanan ko bakit ninyo ako kinakapkapan?*" After the men frisked him, they got the coins in his short pants pocket and then left with him. On the following day, Sevilla heard from her neighbors that the police had arrested Habana.

On January 21, 2008, the trial court found Habana guilty of both charges and sentenced him to a penalty of life imprisonment plus a fine of ₱500,000.00 in Criminal Case C-68627 and imprisonment for 12 years and 1 day to 14 years and a fine of ₱300,000.00 in Criminal Case C-68628.

[14] *Id.* at 2.

[15] *Id.* at 3.

[16] *Id.* at 4.

[17] *Id.* at 112.

[18] TSN, December 7, 2006, pp. 3-12.

Since one of the penalties imposed was life imprisonment, the case was elevated to the Court of Appeals (CA) for review and disposition pursuant to the ruling in *People v. Mateo*.[19] Upon review, the CA rendered a Decision[20] on June 17, 2009, affirming in full the decision of the trial court. The case is on appeal to this Court.

The Issues Presented

Two issues are presented:

1. Whether or not the prosecution's failure to present the forensic chemist and the police investigator assigned to the case is fatal to its case against accused Habana; and

2. Whether or not the prosecution failed to establish the integrity of the seized substance taken from Habana along the chain of custody.

The Rulings of the Court

One. Habana points out that the prosecution's failure to present at the trial the informant, the investigating officer, and the forensic chemist militates against the trustworthiness of the prosecution's evidence.

But no rule requires the prosecution to present as witness in a drugs case every person who had something to do with the arrest of the accused and the seizure of prohibited drugs from him. The discretion on which witness to present in every case belongs to the prosecutor.[21]

The non-presentation of the informant cannot prejudice the prosecution's theory of the case. His testimony would merely be corroborative since police officers Paras and Tayag who witnessed everything already testified. Besides, as a rule, it is rarely that the prosecutor would present the informant because

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

[20] *Rollo*, pp. 2-19.

[21] *People v. Zeng Hua Dian*, G.R. No. 145348, June 14, 2004, 432 SCRA 25, 32.

of the need to hide his identity and preserve his invaluable service to the police.[22]

The prosecution did not deliberately omit the presentation of the forensic chemist who examined the seized substance or the investigating officer who was assigned to the case. As the trial court said in its decision, the prosecution wanted to present both as witnesses but the parties chose instead to stipulate on the substance of their testimonies.[23]

Accused Habana also insists that the RTC should not have admitted the laboratory report in evidence for failure of the forensic chemist to testify. But, as the Office of the Solicitor General correctly pointed out, the parties agreed at the pre-trial to dispense with such testimony and just stipulate that the police submitted the drug specimens involved in the case to the crime laboratory for analysis; that forensic chemist Calabocal examined it; that the result was positive for methamphetamine hydrochloride; and that this fact was as stated in Calabocal's report. It is too late for Habana to now impugn the veracity of such report.

Two. Accused Habana points out that, since the police officers involved failed to adhere strictly to the requirements of Section 21(1) of R.A. 9165, the evidence of the seized *shabu* cannot be admitted against him.

In all prosecutions for the violation of The Dangerous Drugs Act, the existence of the prohibited drug has to be proved.[24] The chain of custody rule requires that testimony be presented about every link in the chain, from the moment the item was seized up to the time it is offered in evidence. To this end, the prosecution must ensure that the substance presented in court is the same substance seized from the accused.

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[22] *People v. Ganenas*, 417 Phil. 53, 62 (2001); *People v. Chua Uy*, 384 Phil. 70, 87 (2000).

[23] CA *rollo*, pp. 22-24.

[24] *People v. Mendiola*, G.R. No. 110778, August 4, 1994, 235 SCRA 116, 120.

While this Court recognizes substantial adherence to the requirements of R.A. 9165 and its implementing rules and regulations, not perfect adherence, is what is demanded of police officers attending to drugs cases,[25] still, such officers must present justifiable reason for their imperfect conduct and show that the integrity and evidentiary value of the seized items had been preserved. Here, however, they failed to meet these conditions. The police officers offered no explanation for their failure to observe the chain of custody rule.

The prosecution failed to show how the seized items changed hands, from when the police officers seized them from Habana to the time they were presented in court as evidence. PO1 Paras said that he turned over the sachets of *shabu* to the investigator on duty. But the prosecution did not adduce evidence on what the investigator on duty did with the seized articles, how these got to the laboratory technician, and how they were kept before being adduced in evidence at the trial.

Usually, the police officer who seizes the suspected substance turns it over to a supervising officer, who would then send it by courier to the police crime laboratory for testing. Since it is unavoidable that possession of the substance changes hand a number of times, it is imperative for the officer who seized the substance from the suspect to place his marking on its plastic container and seal the same, preferably with adhesive tape that cannot be removed without leaving a tear on the plastic container. At the trial, the officer can then identify the seized substance and the procedure he observed to preserve its integrity until it reaches the crime laboratory.

If the substance is not in a plastic container, the officer should put it in one and seal the same. In this way the substance would assuredly reach the laboratory in the same condition it was seized from the accused. Further, after the laboratory technician tests and verifies the nature of the substance in the container, he should put his own mark on the plastic container and seal it again with a new seal since the police officer's seal has been

[25] *People v. Ara*, G.R. No. 185011, December 23, 2009.

broken. At the trial, the technician can then describe the sealed condition of the plastic container when it was handed to him and testify on the procedure he took afterwards to preserve its integrity.

If the sealing of the seized substance has not been made, the prosecution would have to present every police officer, messenger, laboratory technician, and storage personnel, the entire chain of custody, no matter how briefly one's possession has been. Each of them has to testify that the substance, although unsealed, has not been tampered with or substituted while in his care.

Since the failure in this case to comply with the procedure in the custody of seized drugs compromised the identity and integrity of the items seized, which is the *corpus delicti* of each of the crimes charged against Habana, his acquittal is in order.

WHEREFORE, the Court *GRANTS* the petition, *REVERSES* and *SETS ASIDE* the decision of the Court of Appeals in CA-G.R. CR-H.C. 03165 dated June 17, 2009 as well as the decision of the Regional Trial Court of Caloocan City, Branch 120, in Criminal Cases C-68627 and C-68628, and *ACQUITS* the accused-appellant Fernando Habana *y* Orante on the ground of reasonable doubt.

Let a copy of this Decision be furnished the Director, Bureau of Corrections, Muntinlupa City for immediate implementation. The Director of the Bureau of Corrections is *DIRECTED* to report the action he has taken to this Court within five days from receipt of this Decision.

SO ORDERED.

Carpio, Brion, Del Castillo, and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 190078. March 5, 2010]

SPOUSES NORMAN K. CERTEZA, JR. and MA. ROSANILA V. CERTEZA, and AMADA P. VILLAMAYOR and HERMINIO VILLAMAYOR, JR., *petitioners, vs.* **PHILIPPINE SAVINGS BANK,** *respondent.*

SYLLABUS

1. CIVIL LAW; ACT NO. 3135; THE LAW GOVERNING CASES OF EXTRAJUDICIAL FORECLOSURE OF MORTGAGE. — The law governing cases of extrajudicial foreclosure of mortgage is Act No. 3135. It provides: Section 1. When a sale is made under a special power inserted in or attached to any real estate mortgage hereafter made as security for the payment of money or the fulfillment of any other obligation, the provisions of the following sections shall govern as to the manner in which the sale and redemption shall be effected, whether or not provision for the same is made in the power. x x x Sec. 4. The sale shall be made at public auction, between the hours of nine in the morning and four in the afternoon; and shall be under the direction of the sheriff of the province, the justice or auxiliary justice of peace of the municipality in which such sale has to be made, or a notary public of said municipality, who shall be entitled to collect a fee of five pesos for each day of actual work performed, in addition to his expenses. Sec. 5. At any sale, the creditor, trustee, or other person authorized to act for the creditor, may participate in the bidding and purchase under the same conditions as any other bidder, unless the contrary has been expressly provided in the mortgage or trust deed under which the sale is made. Sec. 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 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.

2. ID.; ID.; ID.; PROVISION FOR TWO PARTICIPATING BIDDERS, NOT PRESENT; RATIONALE.— The requirement for at least two participating bidders provided in the original version of paragraph 5 of A.M. No. 99-10-05-0 is not found in Act No. 3135. Hence, in the Resolution of the Supreme Court *en banc* dated January 30, 2001, we made the following pronouncements: It is contended that this requirement is now found in Act No. 3135 and that it is impractical and burdensome, considering that not all auction sales are commercially attractive to prospective bidders. The observation is well taken. Neither Act No. 3135 nor the previous circulars issued by the Court governing extrajudicial foreclosures provide for a similar requirement. The two-bidder rule is provided under P.D. No. 1594 and its implementing rules with respect to contracts for government infrastructure projects because of the public interest involved. Although there is a public interest in the regularity of extrajudicial foreclosure of mortgages, the private interest is predominant. The reason, therefore, for the requirement that there must be at least two bidders is not as exigent as in the case of contracts for government infrastructure projects. On the other hand, the new requirement will necessitate republication of the notice of auction sale in case only one bidder appears at the scheduled auction sale. This is not only costly but, more importantly, it would render naught the binding effect of the publication of the originally scheduled sale. xxx Thus, as amended by the January 30, 2001 Resolution, paragraph 5 of A.M. No. 99-10-05-0 now reads: 5. The name/s of the bidder/s shall be reported by the sheriff or the notary public who conducted the sale to the Clerk of Court before the issuance of the certificate of sale.

3. ID.; ID.; ID.; CONDUCT OF EXTRA-JUDICIAL FORECLOSURE SALE, CLARIFIED.— Pursuant to A.M. No. 99-10-05-0, as amended by the Resolutions of January 30, 2001 and August 7, 2001, the then Court Administrator (now Associate Justice of this Court) Presbitero J. Velasco, Jr., issued Circular No. 7-2002 dated January 22, 2002 which became effective on April 22, 2002. Section 5(a) of the said

circular states: Sec. 5. Conduct of the extra-judicial foreclosure sale – a. The bidding shall be made through sealed bids which must be submitted to the Sheriff who shall conduct the sale between the hours of 9 a.m. and 4 p.m. of the date of the auction (Act 3135, Sec. 4). The property mortgaged shall be awarded to the party submitting the highest bid and in case of a tie, an open bidding shall be conducted between the highest bidders. Payment of the winning bid shall be made either in cash or in managers check, in Philippine currency, within five (5) days from notice. The use of the word "bids" (in plural form) does not make it a mandatory requirement to have more than one bidder for an auction sale to be valid. A.M. No. 99-10-05-0, as amended, no longer prescribes the requirement of at least two bidders for a valid auction sale. We further held that "Except for errors or omissions in the notice of sale which are calculated to deter or mislead bidders, to depreciate the value of the property, or to prevent it from bringing a fair price, simple mistakes or omissions are not considered fatal to the validity of the notice and the sale made pursuant thereto."

APPEARANCES OF COUNSEL

Donato Zarate & Rodriguez for petitioners.
Salgado Masangya Dagoy and Associates for respondent.

R E S O L U T I O N

DEL CASTILLO, *J.*:

In this Petition for Review on *Certiorari*,[1] petitioners contend that the auction sale conducted by virtue of the extrajudicial foreclosure of the mortgage should be declared null and void for failure to comply with the two-bidder rule.

Factual Antecedents

Petitioners obtained a ₱1,255,000.00 loan from respondent Philippine Savings Bank (PS Bank),[2] secured by two parcels of

[1] *Rollo*, pp. 10-29.

[2] *Id.* at 31-32.

land, with all the buildings and improvements existing thereon, covered by Transfer Certificate of Title Nos. N-208706 and N-208770.[3]

Petitioners failed to pay their outstanding obligation despite demands hence PS Bank instituted on May 8, 2002, an action for Extrajudicial Foreclosure of the Real Estate Mortgage pursuant to Act No. 3135,[4] as amended.

During the auction sale conducted on February 18, 2003, PS Bank emerged as the **sole and highest bidder**.[5] A corresponding Certificate of Sale dated February 20, 2003 was issued in favor of PS Bank, which was registered with the Registry of Deeds of Quezon City on March 25, 2003.[6]

During the period of redemption, on December 1, 2003, PS Bank filed an *Ex-parte* Petition[7] for Writ of Possession with the Regional Trial Court (RTC) of Quezon City, which was granted in an Order[8] dated September 21, 2004, after the period of redemption for the foreclosed property had already expired.

On January 20, 2005, petitioners filed an Omnibus Motion for Leave to Intervene and to Stay Issuance or Implementation of Writ of Possession,[9] attaching therein their Petition-in-Intervention[10] pursuant to Sec. 8 of Act No. 3135. They sought the nullification of the extrajudicial foreclosure sale for allegedly having been conducted in contravention of the procedural requirements prescribed in A.M. No. 99-10-05-0 (Re: Procedure in Extrajudicial Foreclosure of Real Estate Mortgages) and in violation of herein petitioners' right to due process.

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[3] *Id.* at 32.

[4] An Act to Regulate the Sale of Property under Special Powers Inserted In or Annexed To Real Estate Mortgages, (1924).

[5] *Rollo,* p. 34.

[6] *Id.* at 34.

[7] *Id.* at 80-85; docketed as LRC No. Q-17376 (03).

[8] *Id.* at 87-88; penned by Judge Lydia Querubin Layosa.

[9] *Id.* at 89-92.

[10] *Id.* at 93-102.

PS Bank opposed[11] the motion citing *Manalo v. Court of Appeals*[12] where we held that "(T)he issuance of an order granting the writ of possession is in essence a rendition of judgment within the purview of Section 2, Rule 19 of the Rules of Court." PS Bank also argued that with the issuance of the trial court's Order on September 21, 2004, the Motion for Leave to Intervene can no longer be entertained.[13]

The petitioners filed their Reply[14] arguing that the filing of their petition before the court where possession was requested was pursuant to Sec. 8 of Act No. 3135.

Ruling of the Regional Trial Court

On March 3, 2005, the RTC of Quezon City, Branch 217, issued an Order[15] denying the motion for intervention and to stay the implementation of the writ, to wit:[16]

> The issuance of writ of possession being ministerial in character, the implementation of such writ by the sheriff is likewise ministerial. In *PNB vs. Adil*, 118 SCRA 116 (1982), the Supreme Court held that "once the writ of possession has been issued, the trial court has no alternative but to enforce the writ without delay." The Court found it gross error for the judge to have suspended the implementation of the writ of possession on a very dubious ground as "humanitarian reason."
>
> WHEREFORE, premises considered, the motion to intervene and to stay the implementation of the writ of possession is hereby denied.

Petitioners filed a motion for reconsideration[17] but the motion was denied in the Order dated May 9, 2005.

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[11] *Id.* at 103-107.

[12] 419 Phil. 215, 235 (2001).

[13] *Rollo,* p. 104.

[14] *Id.* at 108-112.

[15] *Id.* at 113-115; penned by Judge Lydia Querubin Layosa.

[16] *Id.* at 115.

[17] *Id.* at 116-121.

Ruling of the Court of Appeals

Petitioners filed a Petition for *Certiorari* with the Court of Appeals (CA) on June 8, 2005 imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the trial court in denying their motion to intervene and to stay the implementation of the writ.[18] The CA, in its Decision[19] dated May 8, 2009, found that (1) the issuance of a writ of possession is a ministerial function; (2) there was no irregularity in the foreclosure sale; (3) the denial of the motion to intervene is proper; and (4) *certiorari* is not the proper remedy. The dispositive portion of the said Decision reads:[20]

> IN VIEW OF ALL THE FOREGOING, the petition is ordered DISMISSED. The Orders dated March 3, 2005 and May 9, 2005 in LR Case No. Q-17376 (03) are affirmed.

Petitioners filed a timely Motion for Reconsideration, which was denied by the CA in its Resolution dated October 20, 2009.[21]

Hence, this petition.

Issues

Petitioners advance the following issues:

I. WHETHER X X X THE COURT OF APPEALS ERRED IN RULING THAT *CERTIORARI* IS NOT THE PROPER REMEDY OF A PARTY IN A WRIT OF POSSESSION CASE.

II. WHETHER X X X THE COURT OF APPEALS ERRED IN RULING THAT THE DENIAL OF PETITIONERS' MOTION TO INTERVENE IS PROPER.

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[18] *Id.* at 36.

[19] *Id.* at 30-44; penned by Associate Justice Teresita Dy-Liacco Flores and concurred in by Associate Justices Rosmari D. Carandang and Ramon R. Garcia.

[20] *Id.* at 43-44.

[21] *Id.* at 45-46.

III. WHETHER X X X THE COURT OF APPEALS ERRED IN RULING THAT THERE MAY BE ONLY ONE BIDDER IN A FORECLOSURE SALE.

Petitioners allege that the contents of their Omnibus Motion together with the Petition-in-Intervention, although entitled as such, sought the nullification of the February 18, 2003 extrajudicial foreclosure sale and the cancellation of both the certificate of sale and the writ of possession issued in favor of PS Bank.[22] They further submit that the writ of possession is null and void because of patent irregularities in the conduct of the foreclosure sale.[23] In support of their contention, petitioners argue that A.M. No. 99-10-05-0 which took effect on January 15, 2000, requires that there must be at least two participating bidders in an auction sale.[24] Thus:

> 5. No auction sale shall be held unless there are at least two (2) participating bidders, otherwise the sale shall be postponed to another date. If on the new date set for the sale there shall not be at least two bidders, the sale shall then proceed. The names of the bidders shall be reported by the sheriff or the notary public who conducted the sale to the Clerk of Court before the issuance of the certificate of sale.

Our Ruling

The petition lacks merit.

The law governing cases of extrajudicial foreclosure of mortgage is Act No. 3135. It provides:

> Section 1. When a sale is made under a special power inserted in or attached to any real estate mortgage hereafter made as security for the payment of money or the fulfillment of any other obligation, the provisions of the following sections shall govern as to the manner in which the sale and redemption shall be effected, whether or not provision for the same is made in the power.

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[22] *Id.* at 20.

[23] *Id.* at 9.

[24] *Id.* at 21.

xxx xxx xxx

Sec. 4. The sale shall be made at public auction, between the hours of nine in the morning and four in the afternoon; and shall be under the direction of the sheriff of the province, the justice or auxiliary justice of peace of the municipality in which such sale has to be made, or a notary public of said municipality, who shall be entitled to collect a fee of five pesos for each day of actual work performed, in addition to his expenses.

Sec. 5. At any sale, the creditor, trustee, or other person authorized to act for the creditor, may participate in the bidding and purchase under the same conditions as any other bidder, unless the contrary has been expressly provided in the mortgage or trust deed under which the sale is made.

Sec. 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 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,[25] in so far as these are not inconsistent with the provisions of this Act.

The requirement for at least two participating bidders provided in the original version of paragraph 5 of A.M. No. 99-10-05-0 is not found in Act No. 3135. Hence, in the Resolution[26] of the Supreme Court *en banc* dated January 30, 2001, we made the following pronouncements:

It is contended that this requirement is now found in Act No. 3135 and that it is impractical and burdensome, considering that not all auction sales are commercially attractive to prospective bidders.

The observation is well taken. Neither Act No. 3135 nor the previous circulars issued by the Court governing extrajudicial foreclosures provide for a similar requirement. The two-bidder rule

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[25] RULES OF COURT, now Rule 39, Sections 29, 30 and 34.

[26] A.M. No. 99-10-05-0 dated January 30, 2001, p. 2.

is provided under P.D. No. 1594 and its implementing rules with respect to contracts for government infrastructure projects because of the public interest involved. Although there is a public interest in the regularity of extrajudicial foreclosure of mortgages, the private interest is predominant. The reason, therefore, for the requirement that there must be at least two bidders is not as exigent as in the case of contracts for government infrastructure projects.

On the other hand, the new requirement will necessitate republication of the notice of auction sale in case only one bidder appears at the scheduled auction sale. This is not only costly but, more importantly, it would render naught the binding effect of the publication of the originally scheduled sale. x x x

Thus, as amended by the January 30, 2001 Resolution, paragraph 5 of A.M. No. 99-10-05-0 now reads:

5. The name/s of the bidder/s shall be reported by the sheriff or the notary public who conducted the sale to the Clerk of Court before the issuance of the certificate of sale.[27]

Hence, the CA correctly ruled that it is no longer required to have at least two bidders in an extrajudicial foreclosure of mortgage.[28]

Subsequently, on August 7, 2001, we further resolved other matters relating to A.M. No. 99-10-05-0, specifically on: (1) period of redemption of properties with respect to the change introduced by Republic Act No. 8791 (The General Banking Law of 2000) to Act No. 3135; (2) ceiling on sheriff's fees; and (3) payment of filing fees prescribed in the Rules of Court in addition to sheriff's fees.[29]

Pursuant to A.M. No. 99-10-05-0, as amended by the Resolutions of January 30, 2001 and August 7, 2001, the then Court Administrator (now Associate Justice of this Court)

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[27] A.M. No. 99-10-05-0 (as further amended, August 7, 2001), p. 4. This Resolution took effect on September 1, 2001.

[28] *Rollo*, p. 39.

[29] A.M. No. 99-10-05-0 dated August 7, 2001.

Presbitero J. Velasco, Jr., issued Circular No. 7-2002[30] dated January 22, 2002 which became effective on April 22, 2002.[31] Section 5(a) of the said circular states:

> Sec. 5. Conduct of the extra-judicial foreclosure sale –
>
> a. The bidding shall be made through sealed bids which must be submitted to the Sheriff who shall conduct the sale between the hours of 9 a.m. and 4 p.m. of the date of the auction (Act 3135, Sec. 4). The property mortgaged shall be awarded to the party submitting the highest bid and in case of a tie, an open bidding shall be conducted between the highest bidders. Payment of the winning bid shall be made either in cash or in managers check, in Philippine currency, within five (5) days from notice.

The use of the word "bids" (in plural form) does not make it a mandatory requirement to have more than one bidder for an auction sale to be valid. A.M. No. 99-10-05-0, as amended, no longer prescribes the requirement of at least two bidders for a valid auction sale. We further held that "Except for errors or omissions in the notice of sale which are calculated to deter or mislead bidders, to depreciate the value of the property, or to prevent it from bringing a fair price, simple mistakes or omissions are not considered fatal to the validity of the notice and the sale made pursuant thereto."[32]

In view of the foregoing, the extra-judicial foreclosure sale conducted in this case is regular and valid. Consequently, the subsequent issuance of the writ of possession is likewise regular and valid.

Hence, it is no longer necessary for this Court to rule on the other issues presented by the petitioners, which are also grounded on the supposed irregularity in the auction.

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[30] Guidelines for the Enforcement of Supreme Court Resolution of December 14, 1999 in Administrative Matter No. 99-10-05-0 (Re: Procedure in Extra-judicial Foreclosure of Mortgage), as amended by the Resolutions dated January 30, 2001 and August 7, 2001.

[31] Section 11 of Circular No. 7-2002.

[32] *Supra* note 26.

WHEREFORE, the instant petition is *DENIED.* The assailed Decision of the Court of Appeals dated May 8, 2009 and its Resolution dated October 20, 2009 are hereby *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.*, concur.

EN BANC

[G.R. No. 126890. March 9, 2010]

UNITED PLANTERS SUGAR MILLING CO., INC. (UPSUMCO), *petitioner, vs.* **THE HONORABLE COURT OF APPEALS, PHILIPPINE NATIONAL BANK (PNB) and ASSET PRIVATIZATION TRUST (APT), AS TRUSTEE OF THE REPUBLIC OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; COURT *EN BANC* IS NOT AN APPELLATE COURT TO WHICH DECISIONS OR RESOLUTIONS OF A DIVISION MAY BE APPEALED.— Generally, under Section 3 of the Court's Circular No. 2-89, effective March 1, 1989, the referral to the Court *en banc* of cases assigned to a Division is to be denied on the ground that the Court *en banc* is not an Appellate Court to which decisions or resolutions of a Division may be appealed. Moreover, a second motion for reconsideration of a judgment or final resolution shall not be entertained for being a prohibited pleading under Section 2, Rule 52, in relation to Section 4, Rule 56 of the Rules of Court, except for extraordinarily persuasive reasons and only after an express leave shall have first been obtained. Accordingly,

the Court, in the exercise of its sound discretion, determines the issues which are of transcendental importance, as in the present case, which necessitates it to accept the referral of a Division case before it and the grant of a second motion for reconsideration.

2. CIVIL LAW; CONTRACTS; DEED OF ASSIGNMENT; CONVENTIONAL SUBROGATION IS NOT PRESENT WHEN THE ASSIGNMENT OF LOAN AROSE BY MANDATE OF LAW AND NOT BY THE VOLITION OF THE PARTIES; CASE AT BAR.— The Deed of Assignment expressly stipulated the particular loan agreements which were covered therein. As such, respondent APT was entitled to have the funds from petitioner's savings accounts with respondent PNB transferred to its own account, to the extent of petitioner's remaining obligations under the operational loans, less the amount condoned in the Deed of Assignment and the ₱450,000,000.00 proceeds of the foreclosure. As the *En Banc* Resolution explained, respondent APT had a right to go after the bank deposits of petitioner, in its capacity as the creditor of the latter. Likewise, respondent PNB had the right to apply the proceeds of the sale of petitioner's sugar and molasses, in satisfaction of petitioner's obligations. Respondent PNB never waived these rights and the same were transferred to respondent APT (now PMO) by virtue of the Deed of Transfer executed between them. Moreover, there was no conventional subrogation since such requires the consent of the original parties and of the third persons and there was no evidence that the consent of petitioner (as debtor) was secured when respondent PNB assigned its rights to respondent APT, and that the assignment by respondent PNB to respondent APT arose by mandate of law and not by the volition of the parties. Accordingly, the remand of the case to the RTC for computation of the parties' remaining outstanding balances was proper.

3. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; JUDGMENT; *STARE DECISIS ET NO QUIETA MOVERE*; EFFECT.— The doctrine of *stare decisis et no quieta movere* or principle of adherence to precedents does not apply to the present case so as to bar the Court *en banc* from taking cognizance over the case which rectified the disposition of the case and reversed and set aside the Decision rendered by a Division thereof.

CARPIO, *J., dissenting opinion*:

1. CIVIL LAW; SPECIAL CONTRACTS; MORTGAGE; OPERATING LOANS DISTINGUISHED FROM TAKE-OFF LOANS. – UPSUMCO's "operating loans" (so-called because the proceeds were used to finance its operations) have nothing to do with this case. This case concerns UPSUMCO's post-foreclosure deficiency obligation to APT and **the mortgage over the foreclosed properties secured UPSUMCO's "take-off loans" only** (so-called because the proceeds were used to build UPSUMCO's milling plant). As summed up in the Resolution of 11 July 2007: [P]NB assigned to APT its "take-off loans" to UPSUMCO x x x, including the mortgages on these take-off loans. **PNB did not assign to APT any "operating loans" of UPSUMCO**. x x x On 27 August 1987, **APT foreclosed the mortgages on the take-off loans**. The foreclosure price was ₱450,000,000, leaving a deficiency of ₱1,687,076,433. On 3 September 1987, in consideration of UPSUMCO's assignment to APT of UPSUMCO's right to redeem the foreclosed assets, APT condoned "any deficiency amount" of UPSUMCO after the foreclosure. Indeed, the "operating loans" **remained with PNB** and **contained their own security mechanisms in the form of pledge agreements** obliging UPSUMCO to assign all its produce to PNB which UPSUMCO simultaneously authorized to sell and apply the proceeds to satisfy UPSUMCO's unpaid operating loans. Thus, the issue on UPSUMCO's supposed unpaid "operating loans owing to APT" is not only factually inaccurate but also alien to this litigation on UPSUMCO's post-foreclosure deficiency obligation to APT arising from the "take-off" loans.

2. ID.; OBLIGATIONS; COMPENSATION; NOT APPLICABLE WHEN THE RULES ON PAYMENT BY THIRD PARTIES EXISTS; RATIONALE.— The only way for PNB to justify its unilateral diversion of huge sums of depositor's money (UPSUMCO) is to claim compensation (otherwise, it would expose itself to, at best, suits to recover the illegally applied funds, as here). Unfortunately for PNB, the law on compensation, as a short-cut to the tedious collection process, is stacked with safety features indispensable to a creditor's exercise of this option. Regardless of the type of compensation exercised (that is, whether legal or conventional), the irreducible minimum

requirement is that the **parties must be creditor and debtor of each other**. Otherwise, the remedy for the creditor to satisfy its credit is to initiate collection proceedings. The trouble for PNB is that when it diverted UPSUMCO's deposits starting 27 August 1987 as supposed compensation, **PNB was no longer a creditor of UPSUMCO's "take-off loans,"** having assigned its credit under these loans to APT six months earlier on 27 February 1987. Hence, at the time of the supposed application of payments, PNB had already reverted to its default role as UPSUMCO's **debtor**, in its capacity as holder of UPSUMCO's bank deposits. Further, PNB did not use UPSUMCO funds to apply payments for itself but for APT. Thus, what controls is not the law on compensation but the rules on payment by third parties. As we noted in the Resolution of 11 July 2007: **[P]NB, in setting-off, acted as a third person** using its own funds to pay the debt of UPSUMCO to its creditor APT. PNB can recover from UPSUMCO **to the extent that the payment benefited UPSUMCO**. However, PNB is precluded from invoking this rule because by the time it made the alleged payments to APT (starting 27 August 1987), APT had agreed (in the Deed of Assignment) to wipe-out UPSUMCO's post-foreclosure deficiency obligation (in exchange for UPSUMCO's waiver of its redemption right, allowing APT to immediately sell the foreclosed assets to Universal Robina Sugar Milling Corporation even during the one-year redemption period which UPSUMCO agreed to waive). As there were no more debts to pay, none of the alleged payments PNB made to APT benefited UPSUMCO. Thus, UPSUMCO has every right to recover its wrongfully diverted funds.

3. ID.; ID.; ID.; CONDITIONAL APPLICATION OF "CONVENTIONAL COMPENSATION" IS DEEMED AS A DANGEROUS PRECEDENT; CASE AT BAR.— The 2 April 2009 Resolution spun a tale of a helpless creditor government victimized by a cunning, bullying debtor sugar miller, exacting terms of foreclosure settlement "friendly" to no one but itself, thus justifying the Court's timely succor. This script would have been perfect if it did not mock common sense (government is never bullied), ignore business practice (the creditor always dictates terms of settlement) and discard a fact (UPSUMCO was bankrupt). In truth, APT insisted on the deal with UPSUMCO and achieved its goal of immediately selling the foreclosed

property. APT was satisfied with what it got and treated the matter closed until it was made to answer UPSUMCO's suit which, in the first place, UPSUMCO's former owners would not have filed had they not discovered UPSUMCO's nearly depleted bank deposits with PNB. By subscribing to PNB and APT's hastily crafted, incoherent theory of "conventional compensation *without* mutuality of credits" of undetermined "operating loans *owing to APT*," the 2 April 2009 Resolution sets a dangerous precedent of babying government (and incidentally its assignor bank), achieved through convoluted analysis of facts and untenable application of the law at the expense of a duly substantiated suit, filed decades ago, to recover wrongfully diverted property. That the 2 April 2009 Resolution did so after the Court had rendered judgment for UPSUMCO and denied APT and PNB's plea for reconsideration makes its disposition all the more unprecedented.

APPEARANCES OF COUNSEL

Sabig Vinco & Sabig Law Office and *Lentejas Agravante Domingo and Domingo* for petitioner.

The Solicitor General for respondents.

Reginald T. Bacolor for Privatization & Management Office.

R E S O L U T I O N

PERALTA, *J.*:

For consideration is the Motion for Reconsideration of petitioner United Planters Sugar Milling Company, Inc. (UPSUMCO) seeking to reverse and set aside the Resolution of the Court dated April 2, 2009 which granted both Second Motions for Reconsideration filed by respondents Privatization and Management Office (PMO), formerly Asset Privatization Trust (APT), and Philippine National Bank (PNB), and reinstated the Decision of the Court of Appeals dated February 29, 1996 which, in turn, reversed and set aside the Decision of the Regional Trial Court, Branch 45, Bais, Negros Oriental. The dispositive portion of the CA Decision reads:

WHEREFORE, the appealed decision is hereby set aside and judgment is herein rendered declaring that the subject Deed of Assignment has not condoned all of UPSUMCO's obligations to APT as assignee of PNB.

To determine how much APT is entitled to recover on its counterclaim, it is required to render an accounting before the Regional Trial Court on the total payments made by UPSUMCO on its obligations including the following amounts:

(1) The sum seized from it by APT whether in cash or in kind (from UPSUMCO's bank deposits as well as sugar and molasses proceeds):

(2) The total obligations covered by the following documents:

(a) Credit agreement dated November 05, 1974 (Exh. "1," Record p. 528); and

(b)

(c) The Restructuring Agreements dated (i) June 24, 1982,

(ii) December 10, 1982, and (3) May 9, 1984 and

(3) The ₱450,000,000.00 proceeds of the foreclosure

Should there be any deficiency due APT after deducting the foregoing amounts from UPSUMCO's total obligation in the amount of (₱2,137,076,433.15), the latter is hereby ordered to pay the same. However, if after such deduction there should be any excess payment, the same should be turned over to UPSUMCO.

The Regional Trial Court is hereby directed to receive APT's accounting and thereafter, to render the proper disposal of this case in accordance with the foregoing findings and disposition.

Costs against appellees.

SO ORDERED.

Petitioner prefaces its arguments that it is the aggrieved party, not the government as represented by respondent APT (now the PMO), as its deposits with respondent PNB were taken without its prior knowledge and that it was reluctant to give assent to the desire of the government to forego redemption of its assets by reason of uncontested foreclosure.

Facts showed that in 1974, petitioner, engaged in the business of milling sugar, obtained **"takeoff loans"** from respondent PNB to finance the construction of a sugar milling plant which were covered by a Credit Agreement dated November 5, 1974. The said loans were thrice restructured through Restructuring Agreements dated June 24, 1982, December 10, 1982, and May 9, 1984. The takeoff loans were secured by a real estate mortgage over two parcels of land where the milling plant stood and chattel mortgages over certain machineries and equipment. Also included in the condition for the takeoff loans, petitioner agreed to "open and/or maintain a deposit account with [respondent PNB] and the bank is authorized at its option to apply to the payment of any unpaid obligations of the client any/and all monies, securities which may be in its hands on deposit."

From 1984 to 1987, petitioner contracted another set of loans from respondent PNB, denominated as **"operational loans,"** for the purpose of financing its operations, which also contained setoff clauses relative to the application of payments from petitioner's bank accounts. They were likewise secured by pledge contracts whereby petitioner assigned to respondent PNB all its sugar produce for the latter to sell and apply the proceeds to satisfy the indebtedness arising from the operational loans.

Later, respondent APT and petitioner agreed to an "uncontested" or "friendly foreclosure" of the mortgaged assets, in exchange for petitioner's waiver of its right of redemption. On July 28, 1987, respondent PNB (as mortgagee) and respondent APT (as assignee and transferee of PNB's rights, titles and interests) filed a Petition for Extrajudicial Foreclosure Sale with the *Ex-Officio* Regional Sheriff of Dumaguete City, seeking to foreclose on the real estate and chattel mortgages which were executed to secure the takeoff loans. The foreclosure sale was conducted on August 27, 1987 whereby respondent APT purchased the auctioned properties for ₱450,000,000.00.

Seven (7) days after the foreclosure sale, or on September 3, 1987, petitioner executed a Deed of Assignment assigned to respondent APT its right to redeem the foreclosed properties, in exchange for or in consideration of respondent APT "condoning

any deficiency amount it may be entitled to recover from the Petitioner under the Credit Agreement dated November 5, 1974, and the Restructuring Agreements[s] dated June 24 and December 10, 1982, and May 9, 1984, respectively, executed between [UPSUMCO] and PNB…" On the same day, the Board of Directors of petitioner approved the Board Resolution authorizing Joaquin Montenegro, its President, to enter into said Deed of Assignment.

Despite the Deed of Assignment, petitioner filed a complaint on March 10, 1989 for sum of money and damages against respondents PNB and APT before the Regional Trial Court (RTC) of Bais City alleging therein that respondents had illegally appropriated funds belonging to petitioner, through the following means: (1) withdrawals made from the bank accounts opened by petitioner beginning August 27, 1987 until February 12, 1990; (2) the application of the proceeds from the sale of the sugar of petitioner beginning August 27, 1987 until December 4, 1987; (3) the payment from the funds of petitioner with respondent PNB for the operating expenses of the sugar mill after September 3, 1987, allegedly upon the instruction of respondent APT and with the consent of respondent PNB.

The RTC rendered judgment in favor of the petitioner. On appeal, the CA reversed and set aside the RTC Decision and ruled that only the "takeoff" loans and not the operational loans were condoned by the Deed of Assignment. In a Decision dated November 28, 2006 and Resolution dated July 11, 2007, the Court (Third Division) reversed and set aside the CA Decision. The case was thereafter referred to the Court *en banc* which reversed the ruling of the Third Division.

In its Motion for Reconsideration, petitioner raises the following grounds:

1. The order of the Honorable Court *En Banc* reinstating the decision of the Honorable Court of Appeals would be inconsistent with the facts of the case and the findings of this Honorable Court.

2. There is no valid ground to conclude that APT has still the right to the deposit of UPSUMCO after the August 27, 1987 friendly

foreclosure, and the withdrawal of ₱80,200,806.41 as payment could be applied either as repayment on the Take-off Loans or for the Operational Loans.

3. The findings that the condonation took effect only after the execution of the Deed of Assignment hence upholds the validity of APT's taking of the deposit of ₱80,200,806.41 in UPSUMCO's PNB account as payment of the deficiency is without basis.

4. The admission of the case by Honorable Court *En Banc* after the denial of the Second Division of the Second Motion for Reconsideration and the referral of the case to the Honorable Court *En Banc* appear not to be in accordance with the Rules of Procedure.

5. The basis for admission of the case to the Honorable Court *En Banc* are belated issues which have no other purpose but to give apparent reasons for the elevation of the case.

6. There is no legal basis for the withdrawals of UPSUMCO's deposit on the ground of conventional compensation.

7. Since the amount of ₱17,773,185.24 could not be the subject of conventional compensation, it should be returned to petitioner immediately by respondents.

After a careful review of the arguments in the petitioner's motion for reconsideration, the Court finds the same to be mere rehash of the main points already set forth in the Court's *En Banc* Resolution of April 2, 2009 and, hence, denies the same for lack of merit. The pertinent portions of the decision read as follows:

The rulings of the lower courts, as well as the petition itself, are not clear as to the amount extended by way of takeoff loans by PNB to UPSUMCO. However, the Court of Appeals did enumerate the following transactions consisting of the operational loans, to wit:

(1) Trust Receipts dated August 26, 1987; February 5, 1987; and July 10, 1987;

(2) Deed of Assignment By Way of Payment dated November 16, 1984 (Exh. 3 [PNB]; Exh. 12 [APT]; Record, p. 545);

(3) Two (2) documents of Pledge both dated February 19, 1987;

(4) Sugar Quedans (Exh. 13 to 16; Record, pp. 548 to 551);

(5) Credit Agreements dated February 19, 1987 (Exhs. "2" [PNB] & "4" [APT]; Record, pp. 541-544) and April 29, 1987 (Exh. "11" [APT]; Record, pp. 314-317).

(6) Promissory Notes dated February 20, 1987 (Exh. "17"; Record, p. 573); March 2, 1987 (Exh. "18"; Record, p. 574); March 3, 1987 (Exh. "19"; Record, p. 575); March 27, 1987; (Exh. "20"; Record, p. 576); March 30, 1987(Exh. "21"; Record, p. 577); April 7, 1987 (Exh. "22"; Record, p. 578); May 22, 1987 (Exh. "23"; Record, p. 579); and July 30, 1987 (Exh. "24"; record p. 580).

On 27 February 1987, through a Deed of Transfer, PNB assigned to the Government its "rights" titles and interests over UPSUMCO, among several other assets. The Deed of Transfer acknowledged that said assignment was being undertaken "in compliance with Presidential Proclamation No. 50." The Government subsequently transferred these "rights" titles and interests" over UPSUMCO to respondent Asset and Privatization Trust (APT), [now PMO].

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This much is clear. The Deed of Assignment condoned only the take-off loans, and not the operational loans. The Deed of Assignment in its operative part provides, thus:

> That United Planter[s] Sugar Milling Co., Inc. (the "Corporation") – pursuant to a resolution passed by its board of Directors on September 3, 1087 (sic), and confirmed by the Corporation's stockholders in a stockholders' Meeting held on the same (date), for and in consideration of the Asset Privatization Trust ("APT") **condoning any deficiency amount it may be entitled to recover from the Corporation under the Credit Agreement dated November 5, 1974 and the Restructuring Agreement[s] dated June 24, and December 10, 1982, and May 9, 1984, respectively, executed between the Corporation and the Philippine National Bank ("PNB"),** which financial claims have been assigned to APT, through the National Government, by PNB, **hereby irrevocably sells, assigns and transfer to APT its right to redeem the foreclosed real properties** covered by Transfer Certificates of Titles Nos. T-16700 and T-16701.

IN WITNESS WHEREOF, the Corporation has caused this instrument to be executed on its behalf by Mr. Joaquin S. Montenegro, thereunto duly authorized, this 3rd day of September, 1997.

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This notwithstanding, the RTC Decision was based on the premise that all of UPSUMCO's loans were condoned in the Deed of Assignment. In contrast, the Court of Appeals acknowledged that only the take-off loans were condoned, and thus ruled that APT was entitled to have the funds from UPSUMCOS's accounts transferred to its own account "to the extent of UPSUMCO's remaining obligation, less the amount condoned in the Deed of Assignment and the 450,000,000.00 proceeds of the foreclosure."

The challenged acts of respondents all occurred on or after 27 August 1987, the day of the execution sale. UPSUMCO argues that after that date, respondents no longer had the right to collect monies from the PNB bank accounts which UPSUMCO had opened and maintained as collateral for its operational take-off loans. UPSUMCO is wrong. After 27 August 1987, there were at least two causes for the application of payments from UPSUMCO's PNB accounts. The first was for the repayment of the operational loans, which were never condoned. The second was for the repayment of the take-off loans which APT could obtain until 3 September 1987, the day the condonation took effect.

The error of the Court's earlier rulings, particularly the Resolution dated 11 July 2007, was in assuming that the non-condonation of the operational loans was immaterial to the application of payments made in favor of APT from UPSUMCOS's PNB accounts that occurred after 27 August 1987. For as long as there remained outstanding obligations due to APT (as PNB's successor-in-interest), APT would be entitled to apply payments from the bank accounts of PNB. That right had been granted in favor of PNB, whether on account of the take-off loans or the operational loans.

Petitioner filed with the RTC the complaint which alleged that "among the conditions of the 'friendly foreclosure' are: (A) That all the accounts of [United Planters] are condoned, including the JSS notes at the time of the public bidding." It was incumbent on petitioner, not respondents, to prove that particular allegation in its complaint. Was petitioner able to establish that among the conditions

of the "friendly foreclosure' was that "all its accounts are condoned"? It did not, as it is now agreed by all that only the take-off loans were condoned.

This point is material, since the 2007 Resolution negated the findings that only the take-off loans were condoned by faulting respondents for failing to establish that there remained outstanding operational loans on which APT could apply payments from UPSUMCO's bank accounts. By the very language of the Deed of Assignment, it was evident that UPSUMCO's allegation in its complaint that all of its accounts were condoned was not proven. Even if neither PNB nor APT had filed an answer, there would have been no basis in fact for the trial court to conclude that all of UPSUMCO's loans were condoned (as the RTC in this case did), or issue reliefs as if all the loans were condoned (as the 2007 Resolution did).

As noted earlier, APT had the right to apply payments from UPSUMCO's bank accounts, by virtue of the terms of the operational loan agreements. Considering that UPSUMCO was spectacularly unable to repay the take-off loans it had earlier transacted, it simply beggars belief to assume that it had fully paid its operational loans. Moreover, APT had the right to obtain payment of the operational loans by simply applying payments from UPSUMCO's bank accounts, without need of filing an action for collection with the courts. The bank accounts were established precisely to afford PNB (and later APT) extrajudicial and legal means to obtain repayment of UPSUMCO's outstanding loans without hassle.

B.

There is no question that the Deed of Assignment condoned the outstanding take-off loans of UPSUMCO due then to APT. The Deed of Assignment was executed on 3 September 1987 as was the UPSUMCO Board Resolution authorizing its President to sign the Deed of Assignment. However, despite the absence of any terms to that effect in the Deed of Assignment, it is UPSUMCO's position that the condonation actually had retroacted to 27 August 1987. The previous rulings of the Court unfortunately upheld that position.

It is easy to see why UPSUMCO would pose such an argument. It appears that between 27 August 1987 and 3 September 1987. APT applied payments from UPSOMCO's bank accounts in the amount of around 80 Million Pesos. UPSUMCO obviously desires the return

of the said amount. But again, under the terms of the loan arguments, APT as successor-in-interest of PNB, had the right to seize any amounts deposited in UPSUMCO'S bank accounts as long as UPSUMCO remained indebted under the loan agreements. Since UPSUMCO was released from its take-off loans only on 3 September 1987, as indicated in the Deed of Assignment, then APT's application of payments is perfectly legal.

The earlier rulings of the Court were predicated on a finding that there was a "friendly foreclosure" agreement between APT and UPSUMCO, whereby APT agreed to condone all of UPSUMCO's outstanding obligations in exchange for UPSUMCO's waiver of its right to redeem the foreclosed property. However, no such agreement to the effect was ever committed to writing or presented in evidence. The written agreement actually set forth was not as contended by UPSUMCO. For one, not all of the outstanding loans were condoned by APT since the take-off loans were left extant. For another, the agreement itself did not indicate any date of effectivity other than the date of the execution of the agreement, namely 3 September 1987.

It is argued that the use of the word "any" in "any deficiency amount" sufficiently establishes the retroactive nature of the condonation. The argument hardly convinces. The phrase "any deficiency amount" could refer not only to the remaining deficiency amount after the 27 August foreclosure sale, but also the remaining deficiency amount as of 3 September 1987, when the Deed of Assignment was executed and after APT had exercised its right as creditor to apply payments from petitioner's PNB accounts. The Deed of Assignment was not cast in intractably precise terms, and both interpretations can certainly be accommodated.

It is in that context that the question of parol evidence comes into play. The parol evidence rule states that generally, when the terms of an agreement have been reduced into writing, it is considered as containing all the terms agreed upon and there can be no evidence of such terms other than the contents of the written agreement. Assuming that the Deed of Assignment failed to accurately reflect an intent of the parties to retroact the effect of condonation to the date of the foreclosure sale, none of the parties, particularly UPSUMCO, availed of its right to seek the reformation of the instrument to the end that such true intention may be expressed. As there is nothing in the text of Deed of Assignment that clearly gives

retroactive effect to the condonation, the parol evidence rule generally bars any other evidence of such terms other than the contents of the written agreement, such as evidence that the said Deed had retroactive effect.

It is argued that under Section 9, Rule 130, a party may present evidence to modify, explain or add to the terms of the written agreement if it is put in issue in the pleading, "[t]he failure of the written agreement to express the true intent and the agreement of the parties thereto."

Petitioner did not exactly state in its Amended Complaint that the condonation effected in the Deed of Assignment had retroacted to the date of the foreclosure sale. What petitioner contented in its amended complaint was that the Deed of Assignment "released and discharged plaintiff from any and all obligations due the defendant PNB and defendant APT," that "after the foreclosure by PNB/APT plaintiff is entitled to all the funds it deposited or being held by PNB in all its branches," and that "among the conditions of the 'friendly foreclosure' are that all the accounts of the plaintiff are condoned." It remains unclear whether petitioner had indeed alleged in its Amended Complaint that the Deed of Assignment executed on 3 September1987 had retroacted effect as of the foreclosure sale, or on 27 August 1987. If petitioner were truly mindful to invoke the exception to the parol evidence rule and intent on claiming that the condonation had such retroactive effect, it should have employed more precise language to the effect in their original and amended complaints.

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The right of respondent PNB to set-off payments from UPSUMCO arose from conventional compensation rather than legal compensation, even if all the requisites for legal compensation were present between those two parties. The determinative factor is the mutual agreement between PNB and UPSUMCO to set-off payments. Even without an express agreement stipulating compensation, PNB and UPSUMCO would have been entitled to set-off of payments, as the legal requisites for compensation under Article 1279 were present.

As soon as PNB assigned its credit to APT, the mutual creditor-debtor relation between PNB and UPSUMCO ceased to exist. However, PNB and UPSUMCO had agreed to a conventional compensation, a relationship which does not require the presence

of all the requisites under Article 1279. And PNB too had assigned all its rights as creditor to APT, including its rights under conventional compensation. The absence of the mutual creditor-debtor relation between the new creditor APT and UPSUMCO cannot negate the conventional compensation. Accordingly, APT, as the assignee of credit of PNB, had the right to set-off the outstanding obligations of UPSUMCO on the basis of conventional compensation before the condonation took effect on 3 September 1987.

V.

The conclusions are clear. *First.* Between 27 August to 3 September 1987, APT had the right to apply payments from UPSUMCO's bank accounts maintained with PNB as repayment for the take-off loans and/or the operational loans. Considering that as of 30 June 1987, the total indebtedness of UPSUMCO as to the take-off loans amounted to ₱2,137,076,433.15, and because the foreclosed properties were sold during the execution sale for only 450 Million Pesos, it is safe to conclude that the total amount of ₱80,200,806.41 debited from UPSUMCO's bank accounts from 27 August to 3 September 1987 was very well less than the then outstanding indebtedness for the take-off loans. It was only on 3 September 1987 that the take-off loans were condoned by APT, which lost only on that date too the right to apply payments from UPSUMCO'S bank accounts to pay the take-off loans.

Second. After 3 September 1987, APT retained the right to apply payments from the bank accounts of UPSUMCO with PNB to answer for the outstanding indebtedness under the operational loan agreements. It appears that the amount of ₱17,773,185.24 was debited from UPSUMCO's bank accounts after 3 September. At the same time, it remains unclear what were the amounts of outstanding indebtedness under the operational loans at the various points after 3 September 1987 when the bank accounts of UPSUMCO were debited.

The Court of Appeals ordered the remand of the case to the trial court, on the premise that it was unclear how much APT was entitled to recover by way of counterclaim. It is clear that the amount claimed by APT by way of counterclaim – over 1.6 Billion Pesos – is over and beyond what it can possibly be entitled to, since it is clear that the take-off loans were actually condoned as of 3 September 1987. At the same time, APT was still entitled to repayment of UPSUMCO's

operational loans. It is not clear to what extent, if at all, the amounts debited from UPSUMCO's bank accounts after 3 September 1987 covered UPSUMCO's outstanding indebtedness under the operational loans. Said amounts could be insufficient, just enough, or over and beyond what UPSUMCO actually owed, in which case the petitioner should be entitled to that excess amount debited after 3 September 1987. Because it is not evident from the voluminous records what was the outstanding balance of the operational loans at the various times post-September 3 UPSUMCO's bank accounts were debited, the remand ordered by the Court of Appeal (sic) is ultimately the wisest and fairest recourse.[1]

Petitioner insists that the Court should not have taken cognizance of the respondents' second motions for reconsideration with the prayer that the case be referred to the Court *en banc* as the same appear not to be in accordance with the rules.

Generally, under Section 3 of the Court's Circular No. 2-89, effective March 1, 1989, the referral to the Court *en banc* of cases assigned to a Division is to be denied on the ground that the Court *en banc* is not an Appellate Court to which decisions or resolutions of a Division may be appealed. Moreover, a second motion for reconsideration of a judgment or final resolution shall not be entertained for being a prohibited pleading under Section 2, Rule 52, in relation to Section 4, Rule 56 of the Rules of Court, except for extraordinarily persuasive reasons and only after an express leave shall have first been obtained.[2] Accordingly, the Court, in the exercise of its sound discretion, determines the issues which are of transcendental importance, as in the present case, which necessitates it to accept the referral of a Division case before it and the grant of a second motion for reconsideration.

In sum, the Resolution of the Court *En Banc* reinstating the Decision of the CA categorically ruled that only its takeoff loans, not the operational loans, were condoned by the Deed of Assignment dated September 3, 1987. The Deed of Assignment

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[1] *Rollo*, pp. 1272-1273, 1284, 1286-1291, and 1300-1302.

[2] See *Ortigas and Company Limited Partnership vs. Velasco*, G.R. Nos. 109645 and 112564, March 4, 1996, 254 SCRA 234.

expressly stipulated the particular loan agreements which were covered therein. As such, respondent APT was entitled to have the funds from petitioner's savings accounts with respondent PNB transferred to its own account, to the extent of petitioner's remaining obligations under the operational loans, less the amount condoned in the Deed of Assignment and the ₱450,000,000.00 proceeds of the foreclosure. As the *En Banc* Resolution explained, respondent APT had a right to go after the bank deposits of petitioner, in its capacity as the creditor of the latter. Likewise, respondent PNB had the right to apply the proceeds of the sale of petitioner's sugar and molasses, in satisfaction of petitioner's obligations. Respondent PNB never waived these rights and the same were transferred to respondent APT (now PMO) by virtue of the Deed of Transfer executed between them. Moreover, there was no conventional subrogation since such requires the consent of the original parties and of the third persons and there was no evidence that the consent of petitioner (as debtor) was secured when respondent PNB assigned its rights to respondent APT, and that the assignment by respondent PNB to respondent APT arose by mandate of law and not by the volition of the parties. Accordingly, the remand of the case to the RTC for computation of the parties' remaining outstanding balances was proper.

The doctrine of *stare decisis et no quieta movere*[3] or principle of adherence to precedents does not apply to the present case so as to bar the Court *en banc* from taking cognizance over the case which rectified the disposition of the case and reversed and set aside the Decision rendered by a Division thereof.

WHEREFORE, the Motion for Reconsideration filed by petitioner United Planters Sugar Milling Company, Inc. (UPSUMCO) is *DENIED WITH FINALITY* for lack of merit.

SO ORDERED.

Corona, Velasco, Jr., Leonardo-de Castro, Brion, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

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[3] *Tala Realty Services Corp. v. Banco Filipino Savings and Mortgage Bank*, G.R. No. 132051, June 25, 2001, 359 SCRA 469.

Puno, C.J., joins the dissent of *J.* Carpio.

Carpio, J., dissenting opinion.

Carpio Morales, J., maintains her vote in the original decision, hence, votes to grant the present motion.

Nachura, J., no part. Signed pleading as Solicitor General.

DISSENTING OPINION

CARPIO, *J.*:

I maintain my dissent that the remand of this case for the accounting of petitioner United Planters Sugar Milling Company, Inc.'s (UPSUMCO) supposed outstanding loans to respondent Asset Privatization Trust (APT)[1] is baseless in fact and in law.

Today's ruling reiterates the conclusions of the Resolution dated 2 April 2009[2] that:

(1) UPSUMCO remains indebted to APT (for an undetermined amount) because APT, as assignee of respondent Philippine National Bank (PNB), condoned only *some* but not *all* of UPSUMCO's loans, because (a) by its terms, the contract of condonation (Deed of Assignment dated 3 September 1987) mentioned only the "take-off" loans, leaving out the "operating loans"; and (b) the admission of parole evidence modifying the terms of the Deed of Assignment to cover UPSUMCO's "operating loans" owing to APT is improper and, at any rate, UPSUMCO introduced no parole evidence; and

(2) PNB's post-foreclosure diversion of UPSUMCO's bank deposits to APT without UPSUMCO's knowledge or consent was a valid act of "conventional compensation."

Neither the facts of the case nor the law on compensation bears out these conclusions.

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[1] Per Resolution dated 2 April 2009.

[2] Granting respondent APT and Philippine National Bank's second motion for reconsideration of the Decision dated 28 November 2006 and Resolution dated 11 July 2007.

First. UPSUMCO's "operating loans" (so-called because the proceeds were used to finance its operations) have nothing to do with this case. This case concerns UPSUMCO's post-foreclosure deficiency obligation to APT and **the mortgage over the foreclosed properties secured UPSUMCO's "take-off loans" only** (so-called because the proceeds were used to build UPSUMCO's milling plant). As summed up in the Resolution of 11 July 2007:

> [P]NB assigned to APT its "take-off loans" to UPSUMCO x x x, including the mortgages on these take-off loans. **PNB did not assign to APT any "operating loans" of UPSUMCO**. x x x On 27 August 1987, **APT foreclosed the mortgages on the take-off loans**. The foreclosure price was ₱450,000,000, leaving a deficiency of ₱1,687,076,433. On 3 September 1987, in consideration of UPSUMCO's assignment to APT of UPSUMCO's right to redeem the foreclosed assets, APT condoned "any deficiency amount" of UPSUMCO after the foreclosure.[3] (Emphasis supplied)

Indeed, the "operating loans" **remained with PNB** and **contained their own security mechanisms in the form of pledge agreements** obliging UPSUMCO to assign all its produce to PNB which UPSUMCO simultaneously authorized to sell and apply the proceeds to satisfy UPSUMCO's unpaid operating loans.[4] Thus, the issue on UPSUMCO's supposed unpaid

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[3] *United Planters Sugar Milling Co., Inc.(UPSUMCO) v. Court of Appeals* (Resolution), G.R. No. 126890, 11 July 2007, 527 SCRA 336, 341 [2007].

[4] We held in the Decision of 28 November 2006:

> To finance its operations, UPSUMCO also obtained loans from PNB evidenced by, among others, the Deed of Assignment by Way of Payment, notarized on 16 November 1984 and the Credit Agreements dated 19 February 1987 and 29 April 1987 ("operating loans"). **The Credit Agreements,** which also carried set-off clauses, **were secured by Pledge contracts dated 19 February 1987 and 30 March 1987. By these contracts, UPSUMCO undertook to assign to PNB all its sugar produce for PNB to sell and apply the proceeds to satisfy UPSUMCO's unpaid obligation under the operating loans.** The promissory notes for the funds released under the operating loans also carried set-off clauses. In the Deed of Assignment by Way of Payment, UPSUMCO undertook to assign to PNB its milled sugar and molasses beginning the crop year 1984-1985. To keep track of UPSUMCO's sugar assignments and the payments to UPSUMCO's loans, PNB maintained

"operating loans owing to APT" is not only factually inaccurate but also alien to this litigation on UPSUMCO's post-foreclosure deficiency obligation to APT arising from the "take-off" loans.

The 2 April 2009 Resolution hoists the decision of the Court of Appeals as doctrinal prop for its finding that (1) UPSUMCO owes APT unpaid "operating loans" and (2) this is an issue here. Even a cursory glance at the appealed ruling proves this reliance unfounded. All that the appellate court did to arrive at its ruling (to remand this case for accounting of UPSUMCO's supposed outstanding obligations) was look at the Deed of Assignment, subtract from the mass of UPSUMCO loans the contracts listed in the Deed of Assignment, and hold UPSUMCO liable (for an undetermined amount) for the remaining loans (without specifying whether these were "take-off" or "operating" loans).[5] The maxim *expressio unios est exclusio alterios*, not a considered analysis of which loans were secured by the foreclosed properties, won the day for respondents.

"sugar accounts payable" under UPSUMCO's name. (*United Planters Sugar Milling Co., Inc. (UPSUMCO) v. Court of Appeals* (Decision), G.R. No. 126890, 28 November 2006, 508 SCRA 310, 314-315; emphasis supplied, internal citations omitted).

[5] As held in the Resolution of 11 July 2007:

[T]he Court of Appeals never distinguished UPSUMCO's obligation to APT or PNB in terms of UPSUMCO's operating or take-off loans. Instead, the Court of Appeals relied on a rule of statutory construction [of *expressio unios est exclusio alterios*] in examining the Deed of Assignment. Thus, the appellate court held that since that document only mentioned the Credit Agreement dated 5 November 1974 and the Restructuring Agreements dated 24 June 1982, 10 December 1982, and 9 May 1984, it could not have covered the loans and other security instruments not mentioned in the contract. Accordingly, the Court of Appeals did not determine what loans PNB assigned to APT on 27 February 1987 which is determinative of the extent of APT's interest in the foreclosure proceedings of UPSUMCO's assets and consequently of what APT condoned under the Deed of Assignment of 3 September 1987. (*United Planters Sugar Milling Co., Inc. (UPSUMCO) v. Court of Appeals* (Resolution), G.R. No. 126890, 11 July 2007, 527 SCRA 336, 346 [2007]; emphasis supplied, internal citations omitted).

This hypertextual interpretation of the Deed of Assignment, divorcing it from the foreclosure proceedings and the government's policy of expediting asset disposition does violence to the intent of the parties.

Indeed, the Court of Appeals could not have passed upon respondents' newfangled theory on UPSUMCO's "undetermined liability" for unpaid "operating loans owing to APT," because respondents presented this concoction only with this Court, in their motion for reconsideration of our Decision in 2006 granting UPSUMCO's petition, 18 years after they filed their Answer to UPSUMCO's complaint in the Regional Trial Court of Bais City.[6] This late-game, last ditch contrivance, made part of Philippine jurisprudence courtesy of the 2 April 2009 Resolution, now provides legal cover for PNB's diversion of tens of millions of pesos of UPSUMCO deposits as alleged payments for UPSUMCO's non-existent "operating loans owing to APT."[7]

[6] We observed in the Resolution of 11 July 2007:

> Until it filed its motion for reconsideration, PNB made no mention of any outstanding obligation of UPSUMCO under the operational loans. **In the Answer it filed with the trial court, PNB counterclaimed not for UPSUMCO's alleged unpaid obligation under the operational loans but for moral damages and attorney's fees.** Indeed, at no time during the pendency of this case in the trial court, the Court of Appeals, or this Court did PNB hint of any proof of such alleged debt. (*United Planters Sugar Milling Co., Inc.(UPSUMCO) v. Court of Appeals* (Resolution), G.R. No. 126890, 11 July 2007, 527 SCRA 336, 348 [2007]; internal citations omitted).

The 2 April 2009 Resolution finesses away the devastating implication of respondents' failure to immediately raise the defense of compensation for outstanding operating loans thus:

> [I]t was evident UPSUMCO's allegation in its complaint that all of its account were condoned was not proven. **Even if neither PNB nor APT had filed an answer, there would have been no basis in fact for the trial court to conclude that all of UPSUMCO's loans were condoned** x x x. (*United Planters Sugar Milling Co., Inc.(UPSUMCO) v. Court of Appeals* (Resolution), G.R. No. 126890, 2 April 2009, p. 19; emphasis supplied).

Evidently, the 2 April 2009 Resolution confused proof of **condonation** with proof of **payment** because as found by the trial court and the Decision of 28 November 2006, UPSUMCO's evidence sufficed to prove the cancellation of its deficiency obligation. Tellingly, the 2 April 2009 Resolution kept clear of the import of APT's inaction to collect on UPSUMCO's supposed unpaid operating loans for more than 20 years.

[7] Within a span of seven days from foreclosure (covering the period 27 August 1987 to 3 September 1987), PNB adjusted its books to transfer ₱80,200,806.41 to APT without UPSUMCO's knowledge much less consent. After 3 September 1987, PNB continued to funnel UPSUMCO's deposits to APT totaling ₱17,773,185.24.

Second. Both the text and context of the Deed of Assignment compel the conclusion that UPSUMCO, as debtor-mortgagor, and APT, as creditor-mortgagee, in executing the Deed of Assignment, intended to cancel UPSUMCO's post-foreclosure deficiency obligation in exchange for UPSUMCO's waiver of its redemption right, allowing APT to dispose of the foreclosed assets without waiting for the expiry of the one-year redemption period.[8] Indeed, the Deed of Assignment must not be divorced

[8] For the textual basis, we observed in the Resolution of 11 July 2007:

[T]he Deed of Assignment itself speaks of condonation of "any deficiency amount," an amount that is determined right after the foreclosure. None of the respondents have presented good cause to undermine the reasons for our ruling, namely: (1) the condonation of UPSUMCO's deficiency obligation was, as found by the trial court in the PHILSUCOR case, part of the bundle of incentives APT offered UPSUMCO for the latter to agree to the "friendly foreclosure" of its mortgaged assets and (2) **the Deed of Assignment itself stated that APT condoned "any deficiency amount" of UPSUMCO from the take-off loans after the foreclosure on 27 August 1987**. (*United Planters Sugar Milling Co., Inc. (UPSUMCO) v. Court of Appeals* (Resolution), G.R. No. 126890, 11 July 2007, 527 SCRA 336, 352 [2007]; emphasis supplied, internal citations omitted).

For the contextual grounding, UPSUMCO presented in evidence two Board Resolutions (authorizing its President to sign the Deed of Assignment and seeking APT's assistance to resist a collection case filed by a co-creditor post-foreclosure) uniformly stating its understanding that the Deed of Assignment condoned its post-foreclosure deficiency obligation (see *United Planters Sugar Milling Co., Inc. (UPSUMCO) v. Court of Appeals* (Decision), G.R. No. 126890, 28 November 2006, 508 SCRA 310, 334-339). These pieces of evidence were properly introduced as an exception to the Parole Evidence Rule (under Rule 130, Section 9, par. [b]) after UPSUMCO raised as an issue the failure of the Deed of Assignment to express the true intent of the parties in so far as it gives the impression that its scope is limited to the loan agreements mentioned in the contract. The Resolution of 2 April 2009 finds that these pieces of evidence should be excluded because UPSUMCO's statement in its amended complaint before the trial court that "the Deed of Assignment x x x released and discharged [UPSUMCO] from any and all obligations due to the defendant PNB and defendant APT" does not suffice to raise as an issue the scope of the Deed of Assignment, adding that UPSUMCO "should have employed more precise language to that effect" (*United Planters Sugar Milling Co., Inc. (UPSUMCO) v. Court of Appeals* (Resolution), G.R. No. 126890, 2 April 2009, p. 23-24). This conclusion finds no basis in Rule 130, Section 9 which requires only that a party "**puts in issue** in his pleading x x x the failure of the written agreement to express the true intent

from the negotiated foreclosure which the government pursued following its policy of quickly disposing acquired assets.[9]

The 2 April 2009 Resolution doubts the reality of this negotiated foreclosure (as it should, because the only way to sustain its finding is to treat the Deed of Assignment as an isolated transaction, devoid of contextual meaning). However, the statements in the 2 April 2009 Resolution that –

> The earlier rulings of the Court were predicated on a finding that there was a "friendly foreclosure" agreement between APT and UPSUMCO, whereby APT agreed to condone all of UPSUMCO's outstanding obligations in exchange for UPSUMCO's waiver of its right to redeem the foreclosed property. **However, no such agreement to that effect was ever committed to writing or presented in evidence. The written agreement actually set forth was not as contended by UPSUMCO**.[10] (Emphasis supplied)

would have carried weight if not for the ruling in *United Planters and Sugar Milling Corporation, Inc. v. Philippine Sugar Corporation*[11] that: (1) APT and PNB (representing APT's co-

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and agreement of the parties thereto." That the counsel for UPSUMCO is less of a craftsman than what the 2 April 2009 Resolution expects is no reason to deny his client the benefit of the exception to the Parole Evidence Rule.

[9] Indeed, within **two months** from foreclosure, APT sold the UPSUMCO foreclosed assets to a third party (Universal Robina Sugar Milling Corporation) for ₱500M.

[10] *United Planters Sugar Milling Co., Inc. (UPSUMCO) v. Court of Appeals* (Resolution), G.R. No. 126890, 2 April 2009, pp. 20-21.

[11] The Decision of 28 November 2006 described PHILSUCOR's participation in UPSUMCO's mortgaged assets:

> In the early 1980s, UPSUMCO and other sugar millers, hard hit by a slump in the international sugar market, started to default on their loan payments. To bail out these corporations, then President Ferdinand E. Marcos created the Philippine Sugar Corporation (PHILSUCOR), which was authorized to issue and sell "sugar bonds" to various commercial banks holding non-performing loans of ailing sugar millers. Accordingly, PHILSUCOR issued and sold to PNB ₱3 billion worth of "sugar bonds" on 14 February 1984. PNB partly paid the bonds by assigning to PHILSUCOR 30% of its credit with UPSUMCO, computed as of 14 February 1984. **This made PHILSUCOR UPSUMCO's creditor to that extent. To secure PHILSUCOR's interest in UPSUMCO, PHILSUCOR agreed that PNB will continue to hold UPSUMCO's**

creditor and co-mortgagee PHILSUCOR) conducted a "friendly foreclosure" of UPSUMCO's mortgaged assets; (2) APT condoned UPSUMCO's entire post-foreclosure deficiency obligation under the Deed of Assignment in exchange for UPSUMCO's relinquishment of its redemption right; and (3) because of this full condonation, UPSUMCO is discharged from all claims of its supposed deficiency obligation, including PHILSUCOR's suit.[12] There's no escaping the import of the following findings (quoted in the Decision of 26 November 2006):

> Defendant [PHILSUCOR] ha[d] notice of the ***friendly foreclosure conducted by APT and PNB***. x x x **[UPSUMCO], due to the conduct of the defendant [PHILSUCOR], and the other parties, PNB and APT[,] was made to believe that when it assigned its right of redemption, it was in consideration of the condonation of deficiency claims against it including that which pertains to the defendant [PHILSUCOR]**.
>
> xxx xxx xxx
>
> The doctrine of estoppel x x x, precludes [a party] from repudiating an obligation voluntarily assumed after its having accepted benefits therefrom. x x x
>
> Under the aforesaid principle of estoppel, defendant [PHILSUCOR] in the case at bar, after having made [UPSUMCO] believed [sic] in

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collateral for the take-off loans, for itself and PHILSUCOR, to the extent of their pro-rata interest in the event of a foreclosure.

xxx xxx xxx

To quickly dispose of UPSUMCO's mortgaged assets, APT negotiated with UPSUMCO for the mortgages' uncontested or "friendly" foreclosure and for UPSUMCO's waiver of its right of redemption. UPSUMCO accommodated APT. Hence, APT and **PNB ("respondents"), the latter as PHILSUCOR's representative**, scheduled the foreclosure sale on 27 August 1987. In the notices of foreclosure, PNB placed UPSUMCO's total "mortgage indebtedness" at ₱2,137,076,433.15, as of 30 June 1987. At the foreclosure sale, APT purchased the auctioned properties for ₱450 million.(*United Planters Sugar Milling Co., Inc. (UPSUMCO) v. Court of Appeals* (Decision), G.R. No. 126890, 28 November 2006, 508 SCRA 310, 315-317; emphasis supplied, internal citations omitted)

[12] In Civil Case No. 63-B, rendered by the Regional Trial Court of Bais City, Branch 45, the same court which rendered the ruling in this case.

good faith that the foreclosure proceedings, including[] a part of it, i.e. condonation of deficiency claims against plaintiff, and after having benefited from such conduct, [cannot] undertake an inconsistent claim subsequently and proceed with its concealed intention to collect deficiency claim against [UPSUMCO].

In fact, according to Atty. Buñag, defendant [PHILSUCOR] did not make any reservation to claim for deficiency after having received its share of the auction sale in the amount of ₱58 million from APT. xxx However, **defendant [PHILSUCOR] left the matter of deficiency balance to APT. x x x <u>But, what happened was that APT condoned said deficiency claim against [UPSUMCO]</u>**. xxx

WHEREFORE, premises considered, this Court renders the following judgment:

On Civil Case No. 63-B

1. [UPSUMCO] is hereby ordered <u>released and discharged</u> from any and all claims that the defendant [PHILSUCOR] may have against the former[.] (Emphasis supplied).[13]

The Court of Appeals[14] and this Court[15] affirmed *United Planters and Sugar Milling Corporation, Inc. v. Philippine Sugar Corporation* on successive appeals.

Third. The only way for PNB to justify its unilateral diversion of huge sums of depositor's money (UPSUMCO) is to claim compensation (otherwise, it would expose itself to, at best, suits to recover the illegally applied funds, as here). Unfortunately for PNB, the law on compensation, as a short-cut to the tedious collection process, is stacked with safety features indispensable to a creditor's exercise of this option. Regardless of the type of compensation exercised (that is, whether legal or conventional), the irreducible minimum requirement is that the **parties must**

[13] *United Planters Sugar Milling Co., Inc. (UPSUMCO) v. Court of Appeals* (Decision), G.R. No. 126890, 28 November 2006, 508 SCRA 310, 338-339.

[14] In the Decision dated 15 October 1997 in CA-G.R. CV No. 46957.

[15] In the Resolution dated 30 March 1993 in G.R. No. 132731 (dismissing outright PHILSUCOR's petition).

be creditor and debtor of each other.[16] Otherwise, the remedy for the creditor to satisfy its credit is to initiate collection proceedings.

The trouble for PNB is that when it diverted UPSUMCO's deposits starting 27 August 1987 as supposed compensation, **PNB was no longer a creditor of UPSUMCO's "take-off loans,"** having assigned its credit under these loans to APT six months earlier on 27 February 1987. Hence, at the time of the supposed application of payments, PNB had already reverted to its default role as UPSUMCO's **debtor**, in its capacity as holder of UPSUMCO's bank deposits.[17]

Further, PNB did not use UPSUMCO funds to apply payments for itself but for APT. Thus, what controls is not the law on

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[16] Article 1278 of the Civil Code provides: "Compensation shall take place when two persons, in their own right, **are creditors and debtors of each other**." (Emphasis supplied)

[17] Following the characterization of the relations between depositor and bank as that of creditor and debtor (*Moran v. Court of Appeals*, G.R. No. 105836, 7 March 1994, 230 SCRA 799).

The 2 April 2009 Resolution strained to fit within the "conventional compensation" model PNB's diversion of UPSUMCO funds to APT. The implausibility of this occurrence given the absence of mutuality of credits between PNB and APT, on the one hand, and UPSUMCO, on the other, is evident from the 2 April 2009 Resolution's convoluted and contradictory reasoning:

> [W]e recognize the concept of conventional compensation, defined as occurring "when the parties agree to compensate **their mutual obligations**["] x x x [T]he only requisites of conventional compensation are (1) that each of the parties can dispose of the credit he seeks to compensate, and (2) that they agree to the **mutual extinguishment of their credits**. x x x
>
> **[T]he absence of the mutual creditor-debtor relation between the new creditor APT and UPSUMCO cannot negate the conventional compensation. Accordingly, APT, as the assignee of credit of PNB, had the right to set-off the outstanding obligations of UPSUMCO on the basis of conventional compensation** before the condonation took effect on 3 September 1987. (*United Planters Sugar Milling Co., Inc. (UPSUMCO) v. Court of Appeals* (Resolution), G.R. No. 126890, 2 April 2009, pp. 30-31; (emphasis supplied)

compensation but the rules on payment by third parties.[18] As we noted in the Resolution of 11 July 2007:

> **[P]NB, in setting-off, acted as a third person** using its own funds to pay the debt of UPSUMCO to its creditor APT. PNB can recover from UPSUMCO **to the extent that the payment benefited UPSUMCO**.[19] (Emphasis supplied)

However, PNB is precluded from invoking this rule because by the time it made the alleged payments to APT (starting 27 August 1987), APT had agreed (in the Deed of Assignment) to wipe-out UPSUMCO's post-foreclosure deficiency obligation (in exchange for UPSUMCO's waiver of its redemption right, allowing APT to immediately sell the foreclosed assets to Universal Universal Robina Sugar Milling Corporation even during the one-year redemption period which UPSUMCO agreed to waive).[20] As there were no more debts to pay, none of the alleged payments PNB made to APT benefited UPSUMCO. Thus, UPSUMCO has every right to recover its wrongfully diverted funds.

Lastly, PNB's doom is sealed by its retention of UPSUMCO's operating loans, the final factual tug which pulls PNB's theoretical rug from under its feet. Not having assigned these loans to APT (and were thus excluded from the foreclosure proceedings), PNB's belated submission of applying UPSUMCO deposits as payments for UPSUMCO's **"operating loans owing to APT"** crumbles under the weight of its own inconsistency. The 2 April 2009 Resolution's grounding of "conventional compensation"

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[18] Article 1236 of the Civil Code provides: "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**." (Emphasis supplied)

[19] *United Planters Sugar Milling Co., Inc. (UPSUMCO) v. Court of Appeals* (Resolution), G.R. No. 126890, 11 July 2007, 527 SCRA 336, 341 (2007).

[20] See note 9.

would have been plausible if PNB had claimed to have applied payments under the "operating loans" **for itself**. Of course, this argumentative avenue is closed to PNB because **every cent of UPSUMCO money that PNB held PNB transferred to APT**.

Fourth. The 2 April 2009 Resolution spun a tale of a helpless creditor government victimized by a cunning, bullying debtor sugar miller, exacting terms of foreclosure settlement "friendly" to no one but itself, thus justifying the Court's timely succor. This script would have been perfect if it did not mock common sense (government is never bullied), ignore business practice (the creditor always dictates terms of settlement) and discard a fact (UPSUMCO was bankrupt). In truth, APT insisted on the deal with UPSUMCO and achieved its goal of immediately selling the foreclosed property.[21] APT was satisfied with what it got and treated the matter closed until it was made to answer UPSUMCO's suit which, in the first place, UPSUMCO's former owners would not have filed had they not discovered UPSUMCO's nearly depleted bank deposits with PNB.

By subscribing to PNB and APT's hastily crafted, incoherent theory of "conventional compensation *without* mutuality of credits" of undetermined "operating loans *owing to APT*," the 2 April 2009 Resolution sets a dangerous precedent of babying government (and incidentally its assignor bank), achieved through convoluted analysis of facts and untenable application of the law of the expense of a duly substantiated suit, filed decades ago, to recover wrongfully diverted property. That the 2 April 2009 Resolution did so after the Court had rendered judgment for UPSUMCO and denied APT and PNB's plea for reconsideration makes its disposition all the more unprecedented.

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[21] *Id*.

Accordingly, I vote to **GRANT** the motion for reconsideration of petitioner United Planters Sugar Milling Company, Inc., **SET ASIDE** the Resolution dated 2 April 2009, and **REINSTATE** the Decision dated 28 November 2006 as modified by the Resolution dated 11 July 2007.

FIRST DIVISION

[G.R. No. 142549. March 9, 2010]

FIDELA R. ANGELES, *petitioner, vs.* **THE SECRETARY OF JUSTICE, THE ADMINISTRATOR, LAND REGISTRATION AUTHORITY, THE REGISTER OF DEEDS OF QUEZON CITY, and SENATOR TEOFISTO T. GUINGONA, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; DEFINED AND CONSTRUED.— It is settled that *mandamus* is employed to compel the performance, when refused, of a ministerial duty, but not to compel the performance of a discretionary duty. *Mandamus* will not issue to enforce a right which is in substantial dispute or to which a substantial doubt exists. It is nonetheless likewise available to compel action, when refused, in matters involving judgment and discretion, but not to direct the exercise of judgment or discretion in a particular way or the retraction or reversal of an action already taken in the exercise of either.

2. CIVIL LAW; LAND REGISTRATION; RESOLUTION OF THE CONTROVERSY SURROUNDING THE MAYSILO ESTATE AND THE QUESTIONED EXISTENCE OF ANOTHER O.C.T. NO. 994 WAS FINALLY LAID TO REST

AND ALL OTHER CASES INVOLVING SAID ESTATE ARE BOUND BY THE FINDINGS AND CONCLUSIONS SETFORTH IN THE CASE OF MANOTOK REALTY, INC. VS. CLT REALTY DEVELOPMENT CORPORATION, SUSTAINED.— It is important to emphasize at this point that in the recent case resolved by this Court *En Banc* in 2007, entitled *Manotok Realty, Inc. v. CLT Realty Development Corporation* (the 2007 *Manotok* case), as well as the succeeding resolution in the same case dated March 31, 2009 (the 2009 *Manotok* case), the controversy surrounding the Maysilo Estate and the question of the existence of another OCT No. 994 have been finally laid to rest. All other cases involving said estate and OCT No. 994, such as the case at bar, are bound by the findings and conclusions set forth in said resolutions. As stated earlier, petitioner anchors her claim on previous cases decided by this Court which have held that there are two existing OCT No. 994, dated differently, and the one from which she and her co-plaintiffs (in Civil Case No. C-424) derived their rights was dated earlier, hence, was the superior title. Regrettably, petitioner's claim no longer has a leg to stand on. As we held in the 2007 *Manotok* case: The determinative test to resolve whether the prior decision of this Court should be affirmed or set aside is whether or not the titles invoked by the respondents are valid. If these titles are sourced from the so-called OCT No. 994 dated 17 April 1917, then such titles are void or otherwise should not be recognized by this Court. Since the true basic factual predicate concerning OCT No. 994 which is that there is only one such OCT differs from that expressed in the *MWSS* and *Gonzaga* decisions, said rulings have become virtually *functus officio* except on the basis of the "law of the case" doctrine, and can no longer be relied upon as precedents. Specifically, petitioner cannot anymore insist that OCT No. 994 allegedly issued on April 19, 1917 validly and actually exists, given the following conclusions made by this Court in the 2007 *Manotok* case: ***First,* there is only one OCT No. 994. As it appears on the record, that mother title was received for transcription by the Register of Deeds on 3 May 1917, and that should be the date which should be reckoned as the date of registration of the title**. It may also be acknowledged, as appears on the title, that OCT No. 994 resulted from the issuance of the decree of registration on [19] April 1917, although such

date cannot be considered as the date of the title or the date when the title took effect. ***Second.*** **Any title that traces its source to OCT No. 994 dated [19] April 1917 is void, for such mother title is inexistent**. The fact that the Dimson and CLT titles made specific reference to an OCT No. 994 dated [19] April 1917 casts doubt on the validity of such titles since they refer to an inexistent OCT. x x x. ***Third.*** **The decisions of this Court in *MWSS v. Court of Appeals* and *Gonzaga v. Court of Appeals* cannot apply to the cases at bar, especially in regard to their recognition of an OCT No. 994 dated 19 April 1917, a title which we now acknowledge as inexistent. Neither could the conclusions in *MWSS* or *Gonzaga* with respect to an OCT No. 994 dated 19 April 1917 bind any other case operating under the factual setting the same as or similar to that at bar**.

APPEARANCES OF COUNSEL

Orosa Blanco Dime Law Office and *Nelson A. Clemente* for petitioner.

The Solicitor General for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

The property involved in this case is covered by Original Certificate of Title (OCT) No. 994, which encompasses One Thousand Three Hundred Forty-Two (1,342) hectares of the Maysilo Estate, previously described by this Court *En Banc* as a "vast tract of land [that] stretches over three cities, comprising an area larger than the sovereign states of Monaco and the Vatican."[1] What we have before us now is touted as "one of the biggest and most extensive land-grabbing incidents in recent history."[2]

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[1] *Manotok Realty, Inc. v. CLT Realty Development Corporation,* G.R. No. 123346, December 14, 2007, 540 SCRA 304, 319.

[2] *Rollo,* p. 500.

The existence of several cases already decided by this Court dealing with this infamous estate has made the job of deciding this particular petition easy, on one hand, as there are cases squarely on point and at the outset, applicable; but complicated, on the other hand, as such applicability must be determined with thoroughness and accuracy to come up with a just, equitable, and fair conclusion to a controversy that has now lasted for almost forty-five (45) years.

Submitted for Decision is a **petition for *mandamus*** seeking respondents Secretary of Justice, the Administrator of the Land Registration Authority (LRA), and the Register of Deeds of Quezon City to comply with the **Order**[3] **dated January 8, 1998** issued by the Regional Trial Court (RTC) of Caloocan City in **Civil Case No. C-424**, entitled *Bartolome Rivera, et al. v. Isabel Gil de Sola, et al.* (the RTC Order), which was issued a Certificate of Finality on March 12, 1998.

On May 3, 1965, petitioner, together with other individuals, all of them claiming to be the heirs of a certain Maria de la Concepcion Vidal, and alleging that they are entitled to inherit her proportional share in the parcels of land located in Quezon City and in the municipalities of Caloocan and Malabon, Province of Rizal, commenced a **special civil action for partition and accounting** of the property otherwise known as Maysilo Estate covered by OCT No. 994, allegedly registered on ***April 19, 1917*** with the Registry of Deeds of Caloocan City. This was docketed as **Civil Case No. C-424** in the RTC of Caloocan City, Branch 120.

Some of said alleged heirs were able to procure Transfer Certificates of Title (TCTs) over portions of the Maysilo Estate. They also had led this Court to believe that OCT No. 994 was registered twice, thus, in *Metropolitan Waterworks and Sewerage Systems (MWSS) v. Court of Appeals*,[4] reiterated in *Heirs of Luis J. Gonzaga v. Court of Appeals*,[5] the Court held that OCT

[3] *Id.* at 15-33.

[4] G.R. No. 103558, 17 November 1992, 215 SCRA 783.

[5] 330 Phil. 8 (1996).

No. 994 dated April 19, 1917, and not May 3, 1917, was the valid title by virtue of the prior registration rule.

In the **RTC Order** sought to be implemented, Judge Jaime D. Discaya **granted the partition and accounting** prayed for by plaintiffs in that case; directed the respective Registers of Deeds of Caloocan City and Quezon City to issue transfer certificates of title in the names of all the co-owners, including petitioner, for twelve (12) parcels of land with an aggregate area of One Hundred Five Thousand and Nine Hundred Sixty-Nine square meters (105,969 sq. m.), more or less; and ordered that said parcels of land be sold, subject to the confirmation of the Court, and the proceeds be divided among the plaintiffs in proportion to their respective interests in the property.

The dispositive portion of said Order reads as follows:

> WHEREFORE, premises considered, the recommendation of the Commissioners in their Joint Commissioners' Report dated October 21, 1997 and Supplemental Commissioners' Report dated December 30, 1997 that the following lots with transfer certificates of title to be issued by the Register of Deeds of Caloocan City in the names of all co-owners be sold and the proceeds thereof divided among themselves in proportion to their respective interest in the property, is approved.
>
> The Register of Deeds of Caloocan City and of Quezon City are hereby directed to issue transfer certificates of title in the names of all the co-owners for the following lots, namely:
>
> xxx xxx xxx
>
> Any sale of above-mentioned lots shall be subject to confirmation by this Court pursuant to Section 11, Rule 69 of the Rules of Civil Procedure.[6]

Petitioner alleges that the respective Registers of Deeds of Caloocan City and Quezon City refused to comply with the RTC Order because they were still awaiting word from the LRA Administrator before proceeding. Counsel for petitioner then requested the LRA Administrator to direct said Registers

[6] *Rollo,* pp. 22-33.

of Deeds to comply with the Order.

The LRA Administrator, Mr. Alfredo R. Enriquez, sent counsel for petitioner a **letter-reply**[7] dated March 27, 2000, with two attachments: 1) the 1st Indorsement[8] dated September 22, 1997 (the 1st Indorsement) issued by then Department of Justice (DOJ) Secretary Teofisto T. Guingona, Jr. (respondent Guingona), and 2) LRA Circular No. 97-11[9] issued to all Registers of Deeds. The letter-reply reads in part:

> We regret to inform you that your request cannot be granted in view of the directive of the Department of Justice in its 1st Indorsement dated 22 September 1997, copy enclosed, as a result of the inquiry conducted by the Composite Fact-Finding Committee (created under DOJ Department Order No. 137) finding that **there is only one OCT No. 994 which was issued by the Rizal Register of Deeds on 3 May 1917 (and not on 19 April 1919)** pursuant to Decree No. 36455 in Land Registration Case No. 4429. Pursuant to this DOJ directive, this Authority issued LRA Circular No. 97-11 to all Registers of Deeds, copy attached, stating the following:
>
> xxx xxx xxx
>
> In compliance with the DOJ directive, this Authority, in its 1st Indorsement dated 27 March 1998, x x x had recommended to the Office of the Solicitor General the filing of an appropriate pleading relative to the said Order dated 8 January 1998.
>
> The findings of the DOJ on OCT No. 994 are in fact sustained by the Senate Committee on Justice and Human Rights and Urban Planning in its Senate Committee Report No. 1031 dated 25 May 1998 x x x.[10] (Emphasis ours.)

The LRA Administrator likewise wrote that in Senate Committee Report No. 1031 dated May 25, 1998, the Senate Committees on Justice and Human Rights and Urban Planning came up with the following findings:

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[7] *Id.* at 9-11.

[8] *Id.* at 12-13.

[9] *Id.* at 14.

[10] *Id.* at 9-10.

i. There is only one Original Certificate of Title (OCT) No. 994 and this was issued or registered on May 3, 1917[.]

ii. The [OCT] No. 994 dated April 19, 1917 is non-existent. It was a fabrication perpetrated by Mr. Norberto Vasquez, Jr., former Deputy Registrar of Deeds of Caloocan City.

iii. The alleged surviving heirs could not have been the true and legal heirs of the late Maria de la Concepcion Vidal as government findings showed the physical and genetic impossibility of such relationship[.]

iv. Mr. Norberto Vasquez, Jr., former Deputy Registrar of Deeds of Caloocan City, acted maliciously, fraudulently and in bad faith, by issuing "certifications" and/or written statements to the effect that OCT No. 994 was issued or registered on April 19, 1917 when in truth and in fact it was issued or registered on May 3, 1917.

v. Atty. Yolanda O. Alfonso, Registrar of Deeds of Caloocan City, likewise acted maliciously, fraudulently and in bad faith, when she signed the TCTs issued in the name of Eleuteria Rivera which bear a wrong date of the registration of OCT No. 994. Malice was evident because she had previously issued certificates of title in the names of other individuals which were derived from OCT No. 994 dated May 3, 1917 and she had in fact questioned the falsity of April 19, 1917 as the correct date of the registration of OCT No. 994.[11] (Underscoring in the original.)

The letter-reply further stated that OCT No. 994 was intact and was being kept in the LRA "to prevent its alteration and tampering." We quote the last portion of said letter-reply:

As found by the Senate Committees, the mess caused by the former Register of Deeds and Deputy Register of Deeds in making it appear that OCT No. 994 was issued in 19 April 1917, thus giving the wrong impression that there were two (2) OCT No. 994, resulted in the double, if not multiple, issuance of transfer certificates of title covering the subdivided portions of the Maysilo Estate, including the parcels of land mentioned in the subject Order dated 8 January 1998. Our Authority, as the protector of the integrity of the Torrens title is mandated to prevent anomalous titling of real properties and put a stop to further erode the confidence of the public in the Torrens system of land registration.

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[11] *Id.* at 10.

With due respect, the Order dated 8 January 1998 which directs the issuance of transfer certificates of title as direct transfer from OCT No. 994, suffers from certain deficiencies, to wit: OCT No. 994 had long been cancelled totally by the issuance of various certificates of title in the names of different persons; and that the plan and descriptions of the lands were not based on a subdivision plan duly approved by the proper government agency but merely sketch plans, in violation of Section 50 of PD 1529. Obviously, compliance with the Order will result to duplication of certificates of title covering land previously registered in the names of other persons. Besides, in *MWSS vs. CA*, the Supreme Court did not declare the nullity of the certificates of title which emanated from OCT No. 994 issued on 3 May 1917. It merely invalidates the title of MWSS and recognizes as valid the title of Jose B. Dimson. There was no such declaration as to the various transfer certificates of title emanating from OCT No. 994. Under the law, there must be a separate action in court for the declaration of nullity of certificates of title pursuant to the due process clause of the Constitution.

As observed by the Supreme Court in *Republic vs. Court of Appeals* (94 SCRA 874), "*there are too many fake titles being peddled around and it behooves every official of the government whose functions concern the issuance of legal titles to see to it that this plague that has made a mockery of the Torrens system is eradicated right now through their loyalty, devotion, honesty and integrity, in the interest of our country and people at large.*"[12]

Petitioner avers that respondent Guingona, in issuing the 1st Indorsement,[13] made a substantive modification of the ruling made by this Court in *MWSS v. Court of Appeals* and *Heirs of*

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[12] *Id.* at 10-11.

[13] The 1st Indorsement reads:

Respectfully transmitted x x x the attached report of the fact-finding committee constituted pursuant to Department Order No. 137, to conduct inquiry relative to the irregularly issued transfer certificates of title affecting the Maysilo Estate, calling attention to the committee's recommendations insofar as our office is concerned. In pursuance thereof, you are hereby directed:

1. Consistent with the rationale of Opinion No. 239, s. 1982 to immediately issue a directive instructing the Registry officials concerned, to annotate on

Luis Gonzaga v. Court of Appeals. She further avers that "[n]ot even the Secretary of Justice has the power or authority to set aside or alter an established ruling made by the highest Court of the land." According to petitioner, respondent Guingona claimed to have made his own finding that there is only one OCT No. 994 which was issued by the Register of Deeds of Rizal on May 3, 1917, and not on April 19, 1917, and this finding is a reversal of the decisions of this Court on "what is the valid OCT No. 994." Petitioner contends that "[t]he rule is well settled that once a decision becomes final[,] the Court can no longer amend, modify, much less set aside the same" and that respondent Guingona usurped judicial functions and did a prohibited act which rendered the Order of no effect.[14]

Petitioner claims that respondent Guingona was the one who caused the issuance by the LRA Administrator of Circular No. 97-11 dated October 3, 1997, which had the same legal effect on other cases similarly situated without hearing or notice to the parties-in-interest, and that this was contemptuous and contumacious and calls for "condemnation and reproof of the highest degree."[15]

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the originals of the questioned titles a memorandum to the effect that the Report dated August 28, 1997 of the Composite Fact-Finding Committee created under Department of Justice DO 137, questioning the regularity of the titles has been forwarded to the Office of the Solicitor General for evaluation,

xxx xxx xxx

3. To promulgate the following issuances:

xxx xxx xxx

e. An Administrative Order requiring the Registrars of Deeds to elevate *en consulta* to the Administrator, for possible referral to the Office of the Solicitor General for judicial action, court orders directing the issuance of titles even after the court's attention has been called by the Registrar to an overlapping with an existing one or to any other irregularity in the title ordered to be issued. (*Rollo*, pp. 12-13.)

[14] *Rollo*, pp. 4-5.

[15] *Id.* at 5.

Petitioner alleges that compliance with a final judicial order is a ***purely ministerial duty***, that she and her co-plaintiffs in Civil Case No. C-424 cannot avail of the benefits granted to them by the Order, and that she has no "plain, speedy and adequate remedy in the ordinary course of law, other than this action."

In his **Comment,**[16] respondent Guingona raises the following grounds for denial of the petition:

1. Petitioner has no cause of action against respondent Guingona in that the latter is no longer the Secretary of Justice.
2. The issuance of the 1st Indorsement dated September 22, 1997 was pursuant to the report dated August 27, 1997 made by the committee created by Department Order No. 137 dated April 23, 1997 after conducting an independent fact-finding investigation. It did not in any way alter or modify any judgment of this Honorable Court.
3. Petitioner was not denied due process as her rights, if any, under the Order dated January 18, 1998 were not yet in existence at the time the 1st Indorsement was issued.
4. *Mandamus* is not the appropriate remedy to enforce claims of damages.[17]

Respondent Guingona contends that he was no longer the Secretary of Justice, therefore, he did not anymore possess the mandatory duties being compelled to be performed in this case by way of a writ of *mandamus*; he had no more duty resulting from the said position and could not perform an act that pertained to said duty, even if he wanted to; and since he did not have the powers and duties of the Secretary of Justice, he was therefore not a real party-in-interest in this case.

Respondent Guingona avers that he was prompted to issue DOJ Department Order No. 137 dated April 13, 1997 creating a committee due to several complaints received by the Office

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[16] *Id.* at 39-49.

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

of the Secretary of Justice in February 1997. Among others, the complaints prayed for the investigation of certain actions taken by the LRA officials and personnel in connection with transactions involving the Maysilo Estate. According to him, the committee was tasked for the purpose of initiating a fact-finding inquiry:

> "(1) to ascertain the circumstances surrounding the issuance of original Certificate(s) of Title (OCT) No. 994 of the Registry of Deeds of Rizal purporting to cover a mass of land encompassing Malabon, Caloocan City and Quezon City as well as the issuance and regularity of Transfer Certificates of Titles (TCTs) derived therefrom; (2) in the event of a finding of the irregular issuance of any such [TCTs], (a) to determine the involvement of and to recommend the actions to be taken against person(s) and/or officials and employees of this Department or its agencies who may appear to have participated therein, and (b) to recommend the administrative and/or judicial actions, if any, that may directly be undertaken by this Department, the Office of the Solicitor General, the Land Registration Authority, and other units and attached agencies of this Department, with respect to such irregularly issued Transfer Certificates of Title, taking into account the final decisions of the courts affecting the Maysilo Estate."[18]

Respondent Guingona contends that it can be gleaned from the purpose of the creation of the committee that its fact-finding investigation was merely *administrative* to formulate and recommend policies, procedures and courses of action which the DOJ, the LRA, the Office of the Solicitor General and other agencies of the DOJ can adopt with regard to the problem of the proliferation of fake land titles, including those that relate to the Maysilo Estate. He alleges that based on this committee's report dated August 27, 1997, he issued the subject 1st Indorsement which spelled out the policies, procedures, and courses of action which the LRA, an agency under the DOJ, must follow not only with respect to OCT No. 994 and its derivative titles covering the Maysilo Estate but to all other original or transfer certificates of title as well. He contends that the 1st Indorsement was merely

[18] *Id.* at 54.

an administrative issuance of the DOJ; thus, it could not be said that it altered or supplanted any judgment of this Court.

Respondent Guingona further states that the 1st Indorsement dated September 22, 1997 was issued long before the Order dated January 18, 1998, thus it could not be said that petitioner was denied due process as her rights and interests were non-existent at that time. Furthermore, respondent Guingona alleges that petitioner was accorded due process when the LRA Administrator gave an opportunity to petitioner's counsel to present petitioner's case to the LRA legal staff. Respondent Guingona claims that such opportunity to be heard satisfies the requirements of due process, as the essence of due process is simply the opportunity to be heard.[19]

With regard to the claim for damages, respondent Guingona argues that it is a factual issue which the petitioner must prove in the course of a trial where petitioner's claim for damages can be fully litigated. This Honorable Court, however, is not a trier of facts. Such being the case, it is inappropriate for petitioner to include in her petition for *mandamus* a claim for damages the amount of which she did not even specify. As it is, such claim should be denied by this Honorable Court. There is also no showing that petitioner paid the required docket fees for her claims for damages. On this score alone, such a claim should be outrightly dismissed.[20]

In her **Reply**,[21] petitioner contends that former DOJ Secretary Guingona has to be named as private respondent because he was the cause of public respondents' failure to comply with their ministerial duty. A private respondent is "the person interested in sustaining the proceedings in the court; and it shall be the duty of such private respondent to appear and defend, both in his own behalf and in behalf of the public respondents affected

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[19] *Id.* at 45-46, citing *Conti v. National Labor Relations Commission,* 337 Phil. 560, 566 (1997); *Philippine National Construction Corporation v. Court of Appeals,* 338 Phil. 691, 704 (1997).

[20] *Rollo,* p. 47.

[21] *Id.* at 122-132.

by the proceedings x x x." He is not charged with any improper act, but he is a necessary party as the grant of relief prayed for by petitioner shall require private respondent's active participation.[22]

Anent private respondent's argument that the 1st Indorsement did not in any way alter or modify any judgment of this Honorable Court, petitioner counters that the 1st Indorsement and "pertinent acts of private respondent x x x resulted in the altering or supplanting of a judgment of this Court." The complaints praying that an investigation be conducted on the irregular issuance of titles in the Maysilo Estate were made to the private respondent by parties who held titles derived from OCT No. 994 on May 3, 1917, **after** the Supreme Court had rendered its decision in *MWSS v. Court of Appeals* and *Heirs of Gonzaga v. Court of Appeals*.

Petitioner argues that contrary to private respondent's claim, she is entitled to file a petition for *mandamus* as she and her co-plaintiffs in Civil Case No. C-424 has been suffering from damages and losses incapable of quantification, because of the wrongful act of the respondents. Petitioner cites the following provisions of the Rules of Court in support of her argument:

RULE 65

xxx xxx xxx

SECTION 9. *Service and enforcement of order or judgment.* — A certified copy of the judgment rendered in accordance with the last preceding section shall be served upon the court, quasi-judicial agency, tribunal, corporation, board, officer or person concerned in such manner as the court may direct, and disobedience thereto shall be punished as contempt. An execution may issue for any damages or costs awarded in accordance with Section 1 of Rule 39.

RULE 39

SECTION 1. *Execution upon final judgments or orders.* — Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.

[22] *Id.* at 123-124.

If the appeal has been duly perfected and finally resolved, the execution may forthwith be applied for in the court of origin, on motion of the judgment obligee, submitting therewith certified true copies of the judgment or judgments or final order or orders sought to be enforced and of the entry thereof, with notice to the adverse party.

The appellate court may, on motion in the same case, when the interest of justice so requires, direct the court of origin to issue the writ of execution.

Petitioner avers that private respondent seemed to assume a function that did not belong to the Executive Department, because he had caused the issuance of an LRA Circular that forbade compliance with a court order that had already become final and executory. Petitioner likewise avers that the doctrine of separation of powers called for each branch of government to be left alone to discharge its functions within its jurisdiction, as it saw fit.[23]

Public respondents Secretary of Justice, the Administrator of the Land Registration Authority, and the Register of Deeds of Quezon City filed their **Comment**[24] on November 16, 2000. Public respondents claim that petitioner and her co-plaintiffs are not the rightful owners of the property subject of said complaint for partition. Their allegation in the complaint that they are the heirs and successors-in-interest of the late Maria de la Concepcion Vidal, co-owner of the parcels of land described in OCT No. 994, and are therefore entitled to the proportionate share, ownership, and possession of the parcels of land described in paragraphs XI to XV of the complaint, is an untrue statement made with intent to deceive. This is because the findings embodied in the Report of the Fact Finding Committee created by the DOJ, which are the result of the joint undertaking of the Department proper, the Office of the Solicitor General, and the LRA, support the

[23] *Id.* at 128-129.

[24] *Id.* at 144-165.

conclusion that petitioner and her co-plaintiffs are not entitled to the issuance of new transfer certificates of title in their names.[25]

Public respondents claim the following as facts:

The DOJ Report became the subject of [a] Senate investigation. On May 25, 1998, the Honorable Senate of the Tenth Congress of the Republic of the Philippines reached the conclusion that petitioner and her co-plaintiffs are not and cannot be true heirs of the late Maria de la Concepcion Vidal (par. 3, p. 33, Senate Report). x x x.

As early as 1917, subject property of the instant case had already been partitioned and divided among the true owners, namely, Gonzalo Tuason *y* Patino, Jose Rato *y* Tuason, Luis Vidal *y* Tuason, Concepcion Vidal *y* Tuason, Pedro Baños, Maria de la Concepcion Vidal, Trinidad Jurado, Bernardino Hernandez, Esperanza Tuason Chua Jap, Isabel Tuason Chua, Juan Jose Tuason de la Paz, Maria Teresa Tuason *y* de la Paz, Mariano Severo Tuason *y* de la Paz, Demetrio Asuncion Tuason *y* de la Paz, Augusto Hoberto Tuason *y* de la Paz, Maria Soterrana Tuason *y* de la Paz, Benito Legarda *y* de la Paz, Consuelo Legarda *y* de la Paz, Rita Legarda y de la Paz, Benito Legarda *y* Tuason, Emilia Tuason *y* Patiño, Maria Rocha de Despujols, Sofia O'Farrell *y* Patiño, German Franco *y* Gonzales, Concepcion Franco *y* Gonzales, Domingo Franco *y* Gonzales, Guillerma Ferrer *y* Tuason, Vicente Ferrer *y* Tuason, Josefa Tuason *vda. de* Flores, and heirs of Filemon Tuazon in proportion to their respective shares, as evidenced by the document entitled PROYECTO DE PARTICION DE LA HACIENDA DE MAYSILO (PARTITION PLAN OF HACIENDA MAYSILO) consisting of fifty-two (52) pages which is attached as Annex "D", and its faithful translation into English consisting of forty-nine (49) pages attached as Annex "E", and both made integral parts hereof.

As a result of said partition, transfer certificates of titles covering the same subject parcels of land were legally issued in the names of above-enumerated true owners.

The Register of Deeds of Quezon City and Caloocan City, through the undersigned counsel, filed the aforestated Motion for Reconsideration of the questioned Order of the lower court.

The resolution of said motion and other incidents in related cases pending before the lower court has been held in abeyance to await

[25] *Id.* at 148.

the resolution by higher courts of other cases involving the Maysilo Estate.[26]

We are thus faced with the **issue** of ***whether public respondents unlawfully neglected to perform their duties*** by their refusal to issue the questioned transfer certificates of title to petitioner and her co-plaintiffs (in Civil Case No. C-424) ***or have unlawfully excluded petitioner from the use and enjoyment of whatever claimed right***, as would warrant the issuance of a writ of *mandamus* against said public respondents.

Considering the factual background and recent jurisprudence related to this controversy as will be discussed below, we find that it was not unlawful for public respondents to refuse compliance with the RTC Order, and the act being requested of them is not their ministerial duty; hence, *mandamus* does not lie and the petition must be dismissed.

Rule 65 of the 1997 Rules of Civil Procedure provides:

> SECTION 3. *Petition for mandamus*. — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

It is settled that *mandamus* is employed to compel the performance, when refused, of a ministerial duty, but not to compel the performance of a discretionary duty. *Mandamus* will not issue to enforce a right which is in substantial dispute or to which a substantial doubt exists.[27] It is nonetheless likewise

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[26] *Id.* at 149-150.

[27] *Go v. Court of Appeals*, 322 Phil. 613, 616 (1996).

available to compel action, when refused, in matters involving judgment and discretion, but not to direct the exercise of judgment or discretion in a particular way or the retraction or reversal of an action already taken in the exercise of either.[28]

Therefore, we must look into the alleged right of petitioner and see if compliance with the RTC Order is compellable by *mandamus*; or, in the alternative, find out if substantial doubt exists to justify public respondents' refusal to comply with said Order. Did public respondents have sufficient legal basis to refuse to grant petitioner's request?

In this regard, we find our discussion in *Laburada v. Land Registration Authority*[29] instructive, to wit:

> That the LRA hesitates in issuing a decree of registration is understandable. Rather than a sign of negligence or nonfeasance in the performance of its duty, the LRA's reaction is reasonable, even imperative. **Considering the probable duplication of titles over the same parcel of land, such issuance may contravene the policy and the purpose, and thereby destroy the integrity, of the Torrens system of registration.**
>
> xxx xxx xxx
>
> x x x Likewise, the writ of *mandamus* can be awarded only when the petitioners' legal right to the performance of the particular act which is sought to be compelled is **clear** and **complete**. Under Rule 65 of the Rules of Court, a clear legal right is a right which is indubitably granted by law or is inferable as a matter of law. If the right is clear and the case is meritorious, objections raising merely technical questions will be disregarded. But where the right sought to be enforced is in substantial doubt or dispute, as in this case, *mandamus* cannot issue.[30] (Emphasis ours.)

As can be gleaned from the above discussion, the issuance by the LRA officials of a decree of registration is not a purely

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[28] *Angchangco, Jr. v. Ombudsman*, 335 Phil. 766, 771-772 (1997); citing Martin, *Rules of Court in the Philippines*, Volume III (4th Ed.), p. 233.

[29] 350 Phil. 779, 789-793 (1998).

[30] *Id.* at 792-794.

ministerial duty in cases where they find that such would result to the double titling of the same parcel of land. In the same vein, we find that in this case, which involves the issuance of transfer certificates of title, the Register of Deeds cannot be compelled by *mandamus* to comply with the RTC Order since there were existing transfer certificates of title covering the subject parcels of land and there was reason to question the rights of those requesting for the issuance of the TCTs. Neither could respondent LRA Administrator be mandated by the Court to require the Register of Deeds to comply with said Order, for we find merit in the explanations of respondent LRA Administrator in his letter-reply that cites the 1st Indorsement issued by respondent Guingona, LRA Circular No. 97-11, and Senate Committee Report No. 1031, as reasons for his refusal to grant petitioner's request.[31] There was, therefore, sufficient basis for public respondents to refuse to comply with the RTC Order, given the finding, contained in the cited documents, that OCT No. 994 dated April 19, 1917, on which petitioner and her co-plaintiffs in the civil case clearly anchored their rights, did not exist.

It is important to emphasize at this point that in the recent case resolved by this Court *En Banc* in 2007, entitled *Manotok Realty, Inc. v. CLT Realty Development Corporation*[32] (the 2007 *Manotok* case), as well as the succeeding resolution[33] in the same case dated March 31, 2009 (the 2009 *Manotok* case), the controversy surrounding the Maysilo Estate and the question of the existence of another OCT No. 994 have been finally laid to rest. All other cases involving said estate and OCT No. 994, such as the case at bar, are bound by the findings and conclusions set forth in said resolutions.

As stated earlier, petitioner anchors her claim on previous cases decided by this Court[34] which have held that there are

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[31] *Rollo,* pp. 9-11.

[32] *Supra* note 1.

[33] 582 SCRA 583.

[34] *Metropolitan Waterworks and Sewerage Systems v. Court of Appeals, supra* note 4; *Heirs of Luis J. Gonzaga v. Court of Appeals, supra* note 5.

two existing OCT No. 994, dated differently, and the one from which she and her co-plaintiffs (in Civil Case No. C-424) derived their rights was dated earlier, hence, was the superior title. Regrettably, petitioner's claim no longer has a leg to stand on. As we held in the 2007 *Manotok* case:

> The determinative test to resolve whether the prior decision of this Court should be affirmed or set aside is whether or not the titles invoked by the respondents are valid. If these titles are sourced from the so-called OCT No. 994 dated 17 April 1917, then such titles are void or otherwise should not be recognized by this Court. Since the true basic factual predicate concerning OCT No. 994 which is that there is only one such OCT differs from that expressed in the *MWSS* and *Gonzaga* decisions, said rulings have become virtually *functus officio* except on the basis of the "law of the case" doctrine, and can no longer be relied upon as precedents.[35]

Specifically, petitioner cannot anymore insist that OCT No. 994 allegedly issued on April 19, 1917 validly and actually exists, given the following conclusions made by this Court in the 2007 *Manotok* case:

> ***First*, there is only one OCT No. 994. As it appears on the record, that mother title was received for transcription by the Register of Deeds on 3 May 1917, and that should be the date which should be reckoned as the date of registration of the title.** It may also be acknowledged, as appears on the title, that OCT No. 994 resulted from the issuance of the decree of registration on [19] April 1917, although such date cannot be considered as the date of the title or the date when the title took effect.
>
> ***Second*. Any title that traces its source to OCT No. 994 dated [19] April 1917 is void, for such mother title is inexistent**. The fact that the Dimson and CLT titles made specific reference to an OCT No. 994 dated [19] April 1917 casts doubt on the validity of such titles since they refer to an inexistent OCT. x x x.
>
> ***Third*. The decisions of this Court in *MWSS v. Court of Appeals* and *Gonzaga v. Court of Appeals* cannot apply to the cases at bar, especially in regard to their recognition of an OCT No. 994**

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[35] *Manotok Realty, Inc. v. CLT Realty Development Corporation, supra* note 1 at 341.

dated 19 April 1917, a title which we now acknowledge as inexistent. Neither could the conclusions in *MWSS* or *Gonzaga* with respect to an OCT No. 994 dated 19 April 1917 bind any other case operating under the factual setting the same as or similar to that at bar.[36] (Emphases supplied.)

To be sure, this Court did not merely rely on the DOJ and Senate reports regarding OCT No. 994. In the 2007 *Manotok* case, this Court constituted a Special Division of the Court of Appeals to hear the cases on remand, declaring as follows:

> Since this Court is not a trier of fact[s], we are not prepared to adopt the findings made by the DOJ and the Senate, or even consider whether these are admissible as evidence, though such questions may be considered by the Court of Appeals upon the initiative of the parties. x x x The reports cannot conclusively supersede or overturn judicial decisions, but if admissible they may be taken into account as evidence on the same level as the other pieces of evidence submitted by the parties. The fact that they were rendered by the DOJ and the Senate should not, in itself, persuade the courts to accept them without inquiry. The facts and arguments presented in the reports must still undergo judicial scrutiny and analysis, and certainly the courts will have the discretion to accept or reject them.
>
> There are many factual questions looming over the properties that could only be threshed out in the remand to the Court of Appeals. x x x.
>
> xxx xxx xxx
>
> The Special Division is tasked to hear and receive evidence, conclude the proceedings and submit to this Court a report on its findings and recommended conclusions within three (3) months from finality of this Resolution.[37]

Thus, in the 2009 *Manotok* case, this Court evaluated the evidence engaged in by said Special Division, and adopted the latter's conclusions as to the status of the original title and its subsequent conveyances. This case affirmed the earlier finding that "there is only one OCT No. 994, the registration date of

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[36] *Id.* at 348-349.

[37] *Id.* at 353-355.

which had already been decisively settled as 3 May 1917 and not 19 April 1917" and categorically concluded that "**OCT No. 994 which reflects the date of 19 April 1917 as its registration date is null and void**."

In the case at bar, petitioner is the last surviving co-plaintiff in Civil Case No. C-424 originally filed on May 3, 1965. The records bear several attempts of different individuals to represent her as counsel, a matter that could be attributed to her advanced age and potential access to a vast sum of money, should she get a favorable decision from this case. It appears, however, that the partition and accounting of a portion of the Maysilo Estate that she and her co-plaintiffs prayed for can no longer prosper because of the conclusive findings quoted above that the very basis of their claim, a second, albeit earlier registered, OCT No. 994, *does not exist*.

The requirements under Rule 65 for the issuance of the writ of *mandamus* not having been proven by petitioner to exist, we dismiss the petition for lack of merit.

WHEREFORE, premises considered, the petition is hereby *DISMISSED.*

SO ORDERED.

Puno, C.J. (Chairperson), Carpio Morales, Bersamin, and *Villarama, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 154094. March 9, 2010]

DEPARTMENT OF AGRARIAN REFORM, represented by SECRETARY HERNANI A. BRAGANZA, *petitioner, vs.* **PABLO BERENGUER, BELINDA BERENGUER, CARLO BERENGUER, ROSARIO BERENGUER-LANDERS, and REMEDIOS BERENGUER-LINTAG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; AS A RULE, RECOURSE TO A PETITION FOR *CERTIORARI* UNDER RULE 65 RENDERED PETITION DISMISSIBLE FOR BEING THE WRONG REMEDY; EXCEPTIONS.— In *Department of Education v. Cuanan*, this Court ruled that the petition for *certiorari* filed by therein respondent Cuanan with the CA within the 15-day reglementary period for filing a petition for review could be treated as a petition for review, for that would be in accord with the liberal spirit pervading the *Rules of Court* and in the interest of substantial justice. The Court had occasion to expound on the exceptions to the rule that a recourse to a petition for *certiorari* under Rule 65 rendered the petition dismissible for being the wrong remedy, thus: The remedy of an aggrieved party from a resolution issued by the CSC is to file a petition for review thereof under Rule 43 of the Rules of Court within fifteen days from notice of the resolution. Recourse to a petition for *certiorari* under Rule 65 renders the petition dismissible for being the wrong remedy. Nonetheless, there are exceptions to this rule, to wit: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; **(c) when the writs issued are null and void**; or (d) when the questioned order amounts to an oppressive exercise of judicial authority. As will be shown forthwith, exception (c) applies to the present case. Furthermore, while a motion for reconsideration is a condition precedent to the filing of a petition for *certiorari*, immediate recourse to the extraordinary remedy of *certiorari* is warranted where the order is a patent nullity, as where the court *a quo* has no jurisdiction; where petitioner was

deprived of due process and there is extreme urgency for relief; where the proceedings in the lower court are a nullity for lack of due process; where the proceeding was *ex parte* or one in which the petitioner had no opportunity to object. These exceptions find application to Cuanan's petition for *certiorari* in the CA.

2. POLITICAL LAW; LAND CLASSIFICATION; A LOT INSIDE A POBLACION SHOULD BE PRESUMED RESIDENTIAL, OR COMMERCIAL, OR NON-AGRICULTURAL UNLESS THERE IS A CLEARLY PREPONDERANT EVIDENCE TO SHOW THAT IT IS AGRICULTURAL; SUSTAINED.— Resolution No. 5, passed on March 12, 1981 by the *Sangguniang Bayan* of Sorsogon, Sorsogon, showed that the limits of the *poblacion* area of the municipality *included* Barangay Bibincahan, where the respondents' landholdings were situated. The significance of this fact cannot be overstated, for, thereby, the respondents' landholdings were presumed to be industrial and residential lands. Jurisprudence has been clear about the presumption. In *Hilario v. Intermediate Appellate Court*, the Court said: The presumption assumed by the appellate court that a parcel of land which is located in a *poblacion* is not necessarily devoted to residential purposes is wrong. It should be the other way around. A lot inside the *poblacion* should be presumed residential, or commercial, or non-agricultural unless there is a clearly preponderant evidence to show that it is agricultural. To the same effect was *Natalia Realty Corporation v. DAR,* thus: We now determine whether such lands are covered by the CARL. Section 4 of R.A. 6657 provides that the CARL shall "cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands." As to what constitutes "agricultural land," it is referred to as "land devoted to agricultural activity as defined in this Act and *not classified as mineral, forest, residential, commercial or industrial land*." The deliberations of the Constitutional Commission confirm this limitation. "Agricultural lands" are only those lands which are "arable and suitable agricultural lands" and "*do not include commercial, industrial and residential lands*. There is no dispute that as early as 1981, the respondents' landholdings have been part of the *poblacion* of Sorsogon, Sorsogon. Consistent with *Hilario* and *Natalia*, holding that the respondents' landholdings were non-agricultural, and, consequently, outside the coverage of the CARL, was fully warranted. In fact,

the excerpt from the Comprehensive Development Plan of Sorsogon, Sorsogon showed that Barangay Bibincahan was within the Central Business District of the municipality.

3. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (CARL); QUALIFIED BENEFICIARIES, SPECIFIED; NOT PRESENT IN CASE AT BAR.— In designating Baribag, the DAR did not show how its choice of Baribag as beneficiary, to the exclusion of the actual workers, could have accorded with Section 22 of the CARL, which provides: Section 22. *Qualified Beneficiaries*. — The lands covered by the CARP shall be distributed as much as possible to landless residents of the same *barangay*, or in the absence thereof, landless residents of the same municipality in the following order of priority: (a) agricultural lessees and share tenants; (b) regular farmworkers; (c) seasonal farmworkers; (d) other farmworkers; (e) actual tillers or occupants of public lands; (f) collectives or cooperatives of the above beneficiaries; and (g) others directly working on the land. Provided, however, that the children of landowners who are qualified under Section 6 of this Act shall be given preference in the distribution of the land of their parents: and provided, further, that actual tenant-tillers in the landholdings shall not be ejected or removed therefrom. Beneficiaries under Presidential Decree No. 27 who have culpably sold, disposed of, or abandoned their land are disqualified to become beneficiaries under this Program. A basic qualification of a beneficiary shall be his willingness, aptitude, and ability to cultivate and make the land as productive as possible. The DAR shall adopt a system of monitoring the record or performance of each beneficiary, so that any beneficiary guilty of negligence or misuse of the land or any support extended to him shall forfeit his right to continue as such beneficiary. The DAR shall submit periodic reports on the performance of the beneficiaries to the PARC. If, due to the landowner's retention rights or to the number of tenants, lessees, or workers on the land, there is not enough land to accommodate any or some of them, they may be granted ownership of other lands available for distribution under this Act, at the option of the beneficiaries. Farmers already in place and those not accommodated in the distribution of privately-owned lands will be given preferential rights in the distribution of lands from the public domain. The

only reason given by the DAR for not including the workers of the landholdings as farmer beneficiaries was that "it could be that either they have manifested lack/loss of interest in the property, as it has happened in many other areas placed under CARP coverage, because of their loyalty to the original landowner, like respondents, or because of fear or, simply, they refused to heed/answer the call of our field offices to submit to the screening process." Such reason is unacceptable. The CARL has set forth in mandatory terms in its Section 22, *supra,* who *should be* the qualified beneficiaries, but the DAR did not strictly comply with the law. Instead, the DAR excluded such workers based on its speculation and conjecture on why the actual workers on the landholdings had not shown interest and had not responded to the call of the DAR field officers during the screening process. As such, the DAR did not really determine who were the lawful beneficiaries, failing even to present any documentary proof that showed that the respondents' workers genuinely lacked interest to be considered beneficiaries of the landholdings, or refused to subject themselves to the screening process. There was also no evidence presented to justify that Baribag was a qualified beneficiary within the context of Section 22 of the CARL, and be entitled to be awarded the landholdings.

4. **ID.; ID.; LANDOWNER'S RIGHT OF RETENTION, VIOLATED.—** The DAR also violated the respondents' right of retention under Section 6 of the CARL, which accorded to the respondents as the landowners the right to retain five hectares of their landholdings, and the right to choose the areas to be retained, which should be compact or contiguous. Thus, assuming that the respondents' landholdings were covered by the CARL, and that the DAR was correct in awarding the landholdings to Baribag, the DAR's cancellation of all of the respondents' TCTs effectively nullified the respondents' right of retention, thereby depriving them of their property without due process of law. It must be noted, first of all, that because Baribag was not even a party in relation to the respondents' application for exclusion before Regional Director Dalugdug, RARAD Florin *did not* acquire jurisdiction over Baribag. As such, the legal authority of RARAD Florin to implement the award to Baribag by execution did not exist. Secondly, the denial of the respondents' application for exclusion was still pending

review by the DAR Secretary when RARAD Florin issued the writ of execution to implement Regional Director Dalugdug's order to place Baribag in possession of the respondents' landholdings. Hence, the issuance of the writ of execution was premature and bereft of legal basis. The CA properly acted in reversing and undoing the DAR's several violations of the letter and spirit of the CARL. It is timely to stress that the noble purpose of the CARL to emancipate the tenants from the bondage of the soil and to transfer to them the ownership of the lands they till should not be the guise to trample upon the landowners' rights by including lands that are unquestionably outside the coverage of the CARL. Neither should such noble intention be frustrated by designating beneficiaries who are neither the tenants or tillers of the land, nor otherwise qualified under the law to be the beneficiaries of land reform.

APPEARANCES OF COUNSEL

De Jesus De Jesus & De Jesus Law Office and *Desiree G. De Vera* for respondents.

D E C I S I O N

BERSAMIN, *J.*:

The Department of Agrarian Reform (DAR) appeals the adverse decision dated December 26, 2000[1] and resolution dated June 26, 2002[2] of the Court of Appeals (CA) in C.A.-G.R. SP No. 53174 entitled *Pablo Berenguer, et al. v. Department of Agrarian Reform and Baribag Agrarian Reform Cooperative*.

Antecedents

The respondents were the registered owners of several residential and industrial lands with a total area of 58.0649 hectares located in Barangay Bibincahan, Sorsogon, Sorsogon and covered by the following certificates of title (TCTs), to wit:

[1] *Rollo*, pp. 36-49.

[2] *Id.*, p. 52.

Remedios Berenguer-Lintag —TCT Nos. 49393, 49394, 49395, 49396, 49397, 49398, 49399, 49400, 49401, 49402, 49403, 49404, 49405, 25275, and 25284;

Carlo Berenguer and Belinda Berenguer-Aguirre—TCT Nos. 26085, 26087, 48655, 48656, 48658, 48659, 48660, 48661, 48662, 48663, 48664, 48665, and 48666;

Rosario Berenguer-Landers—TCT No. 28770, 28771, 28772, 28773, 28774, 28775, 28776, 28777, 28778, 28779, 28780, 28781, 28782, 28783, 28784, 28785, and 28786;

Pablo Berenguer—TCT No. 14998

In April 1998, the respondents received from the DAR notices of coverage of their said landholdings by the Government's Comprehensive Agrarian Reform Program (CARP) pursuant to Republic Act No. 6657 (Comprehensive Agrarian Reform Law, or CARL). They protested the notices of coverage, filing on October 5, 1998, in the office of DAR Regional Director Percival Dalugdug (Regional Director Dalugdug) in Legaspi City, their application for exclusion of their landholdings from CARP coverage, and praying for the lifting of the notices of coverage.[3]

In October and November 1998, the DAR Secretary, without acting on the respondents' application for exclusion, cancelled their titles and issued *certificates of land ownership awards* (CLOAs), covering their landholdings, to the members of the Baribag Agrarian Reform Beneficiaries Development Cooperative (Baribag), not to the respondents' workers on the landholdings, although Baribag was not impleaded in the respondents' application for exclusion.

In an order dated February 15, 1999, Regional Director Dalugdug denied the respondents' application for exclusion. Thus, they appealed the denial to the DAR Secretary.[4]

On March 9, 1999, pending resolution of the respondents' appeal to the DAR Secretary, Baribag filed in the office of DAR Regional Agrarian Reform Adjudicator (RARAD) for

[3] *Id.*, pp. 37-38.

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

Legaspi City Isabel Florin (RARAD Florin) a petition seeking to implement the February 15, 1999 order of Regional Director Dalugdug (denying the respondents' application for exclusion), which was docketed as DARAB Case No. V-RC-05-339-99.

On March 15, 1999, RARAD Florin issued an implementing writ placing Baribag in possession of the respondents' landholdings. She denied the respondents' *motion for reconsideration* on March 22, 1999.[5]

On March 24, 1999, the respondents appealed before the Department of Agrarian Reform Adjudication Board by filing a notice of appeal with the office of RARAD Florin.

On April 6, 1999, then Acting DAR Secretary Conrado Navarro denied the respondents' appeal of the order of Regional Director Dalugdug denying their application for exclusion and petition to lift the notice of coverage.[6]

In an order dated April 8, 1999, RARAD Florin noted the respondents' notice of appeal, and issued the writ of possession sought by Baribag.

The respondents filed a petition for *certiorari* before the Court of Appeals (CA), which treated the petition as a petition for review. The respondents' petition maintained that the DAR Secretary had no jurisdiction over their landholdings, which were outside the coverage of the CARL due to their being originally devoted to pasture and livestock raising, and later being already classified as residential and industrial lands; that as early as 1981, the Housing and Land Use Regulatory Board had classified their landholdings as residential and industrial lands; and that pursuant to the decision in *Luz Farms v. The Secretary of DAR*, their landholdings were outside the coverage of the CARL.[7]

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[5] *Id*.

[6] *Id*., p. 39.

[7] *Id*., pp. 40-41.

In support of their claim that their landholdings were already classified as residential and industrial, the respondents submitted the following documents, namely:[8]

a. The certification dated May 18, 1999 issued by HLURB, stating, among others, that the Town Plan/Zoning Ordinance of Sorsogon, Sorsogon (classifying Barangay Bibincahan, where the respondents' properties were located, as a residential and commercial area), was approved by HLURB (then Human Settlements Commission/Human Settlements Regulatory Commission);

b. An excerpt from the Comprehensive Development Plan of the Municipality of Sorsogon, Sorsogon, showing that Barangay Bibincahan was part of the Central Business District; hence, the respondents' landholdings in Bibincahan were classified as residential and industrial;

c. Resolution No. 5 of the Sangguniang Bayan of Sorsogon, series of 1981, expanding the area of the *poblacion* to include Barangay Bibincahan, among others;

d. The certification dated August 27, 1997 issued by the Office of the Zoning Administrator, Office of the Mayor, Sorsogon, Sorsogon, signed by Deputized Zoning Administrator Raul Jalmanzar, declaring that the respondents' landholdings were situated in Barangay Bibincahan within the Poblacion area of the Municipality of Sorsogon; and

e. Department of Justice Opinion No. 44, series of 1990, stating that a parcel of land was considered non-agricultural, and, therefore, beyond the coverage of the CARP, if it had been classified as residential, commercial, or industrial in the City or Municipality Land Use Plan or Zoning Ordinance approved by HLURB before the effectivity of R.A. No. 6657 on June 15, 1988.

In its comment, the DAR asserted that the presence of heads of large cattle in respondents' landholdings of 58.06489 hectares was not a sufficient ground to consider the landholdings as being used for raising livestock.

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[8] *Id*., pp. 41-42.

For its part, Baribag claimed that the DAR Inspection Team had found that the respondents' landholdings were not devoted to cattle raising, and that the respondents' tax declarations stating that the landholdings were pasture lands were "contrived."[9]

The CA granted the petition, and reversed the DAR Secretary's April 6, 1999 order. The CA set aside the writ of execution and writ of possession issued by RARAD Florin; ordered the cancellation of Baribag's CLOAs; and directed the DAR Secretary to restore the respondents in the possession of their landholdings.

Hence, this appeal taken by the DAR.

Issues

The DAR insists that the CA erred:[10]

a) When it ruled that the respondents' landholdings were exempt from the coverage of the CARP for not being agricultural, and were presumed due to their being part of the *poblacion* to have been reclassified into residential/commercial or non-agricultural area pursuant to Resolution No. 5, series of 1981, of the Sangguniang Bayan of Sorsogon, Sorsogon;

b) When it ruled that there was error in the selection and designation of the farmer beneficiaries of the landholdings;

c) When it ruled that because of the presence of cattle in the area, the landholdings were devoted to cattle raising and, therefore, exempt from CARP coverage under *Luz Farms* ruling;

d) When it considered the respondents' petition for *certiorari* as a petition for review over their manifested insistence that their petition was one for *certiorari* under Rule 65, *Rules of Court*, and thereafter passed upon and ruled on the alleged errors of judgment in the decision/order of the DAR denying their petition for exemption from CARP coverage; inasmuch as there was no timely perfection of appeal, said DAR decision/order had become final and executory, and was thus removed from the CA's power of review.

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[9] *Id*., pp. 43-44.

[10] *Id*., pp. 15-16.

Ruling

The appeal has no merit.

A

Procedural Issue: Treatment of Respondents' Petition for *Certiorari* as Petition for Review, Sustainable

The petitioner posits that the CA erred in not dismissing the respondents' erroneously filed petition for *certiorari*, and in treating the petition instead as a petition for review under Rule 43 of the *Rules of Court* and ultimately resolving the petition in the respondents' favor.

We cannot accept the petitioner's position.

The CA did not err in treating the petition for *certiorari* as a petition for review. There are precedents in that regard. In *Department of Education v. Cuanan*,[11] this Court ruled that the petition for *certiorari* filed by therein respondent Cuanan with the CA within the 15-day reglementary period for filing a petition for review could be treated as a petition for review, for that would be in accord with the liberal spirit pervading the *Rules of Court* and in the interest of substantial justice. The Court had occasion to expound on the exceptions to the rule that a recourse to a petition for *certiorari* under Rule 65 rendered the petition dismissible for being the wrong remedy, thus:

> The remedy of an aggrieved party from a resolution issued by the CSC is to file a petition for review thereof under Rule 43 of the Rules of Court within fifteen days from notice of the resolution. Recourse to a petition for *certiorari* under Rule 65 renders the petition dismissible for being the wrong remedy. Nonetheless, there are exceptions to this rule, to wit: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; **(c) when the writs issued are null and void**; or (d) when the questioned order amounts to an oppressive exercise of judicial authority. As will be shown forthwith, exception (c) applies to the present case.

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[11] G.R. No. 169013, December 16, 2008, 574 SCRA 41.

Furthermore, while a motion for reconsideration is a condition precedent to the filing of a petition for *certiorari*, immediate recourse to the extraordinary remedy of *certiorari* is warranted where the order is a patent nullity, as where the court *a quo* has no jurisdiction; where petitioner was deprived of due process and there is extreme urgency for relief; where the proceedings in the lower court are a nullity for lack of due process; where the proceeding was *ex parte* or one in which the petitioner had no opportunity to object. These exceptions find application to Cuanan's petition for *certiorari* in the CA.

At any rate, Cuanan's petition for *certiorari* before the CA could be treated as a petition for review, the petition having been filed on November 22, 2004, or thirteen (13) days from receipt on November 9, 2004 of CSC Resolution No. 041147, clearly within the 15-day reglementary period for the filing of a petition for review. Such move would be in accordance with the liberal spirit pervading the Rules of Court and in the interest of substantial justice.."

As will be demonstrated hereafter, exception (*c*), as recognized in *Department of Education v. Cuanan*, is applicable herein.

B

Substantive Issue: Respondents' landholdings, not subject to CARP

In ruling that the respondents' landholdings were not devoted to cattle raising, the DAR relied on DAR Administrative Order (DAO) No. 9, series of 1993, which required that properties should be considered excluded from the coverage of the CARL only if it was established that as of June 15, 1988, the date of effectivity of the law, there existed the minimum ratio of one head of cattle to one hectare of land, and one head of cattle to 1.7815 hectares of infrastructure.

According to the DAR, only 15 heads of cattle were found within the 58 hectares sought to be excluded based on the semestral survey conducted in Sorsogon by the Bureau of Agricultural Statistics in the period from 1988 to 1992, which was in contravention of DAO No. 9, series of 1993.

The CA found, however, that heads of cattle were really being raised in the landholdings of the respondents. This finding

was not disputed by the DAR. In view of the finding of the CA, we cannot now hold differently, for we are bound by the finding of fact of the CA. Verily, the insufficiency of the number of heads of cattle found during the semestral survey did not automatically mean that the landholdings were not devoted to the raising of livestock. We concur with the CA that there could be several reasons to explain why the number of cattle was below the ratio prescribed under DAO No. 9 at the time of the survey, including pestilence, cattle rustling, or sale of the cattle.

That the Constitutional Commission never intended to include lands used for raising livestock and poultry, and commercial, industrial and residential lands within the coverage of the Agrarian Reform Program of the Government is already settled. In *Luz Farms v. Secretary of the Department of Agrarian Reform*,[12] the Court pointed this out:

> The transcripts of the deliberations of the Constitutional Commission of 1986 on the meaning of the word "agricultural" clearly show that it was never the intention of the framers of the Constitution to include livestock and poultry industry in the coverage of the constitutionally-mandated agrarian reform program of the Government.
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> xxx xxx xxx
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> It is evident from the foregoing discussion that Section II of R.A. 6657 which includes "private agricultural lands devoted to commercial livestock, poultry and swine raising" in the definition of "commercial farms" is invalid, to the extent that the aforecited agro-industrial activities are made to be covered by the agrarian reform program of the State. There is simply no reason to include livestock and poultry lands in the coverage of agrarian reform.

Moreover, the policy objective of DAO No. 9 was to prevent landowners from taking steps to convert their agricultural lands to lands devoted to the raising of livestock, poultry, and swine in order to accord with *Luz Farms.*

Nonetheless, the CA also correctly clarified that the respondents' landholdings, even if they were not devoted to

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[12] G.R. No. 86889, December 4, 1990, 192 SCRA 51.

cattle raising, would still be excluded from the coverage of the CARL, because the DAR failed to establish that the landholdings were agricultural.

Resolution No. 5, passed on March 12, 1981 by the *Sangguniang Bayan* of Sorsogon, Sorsogon, showed that the limits of the *poblacion* area of the municipality *included* Barangay Bibincahan, where the respondents' landholdings were situated. The significance of this fact cannot be overstated, for, thereby, the respondents' landholdings were presumed to be industrial and residential lands. Jurisprudence has been clear about the presumption. In *Hilario v. Intermediate Appellate Court*,[13] the Court said:

> The presumption assumed by the appellate court that a parcel of land which is located in a *poblacion* is not necessarily devoted to residential purposes is wrong. It should be the other way around. A lot inside the *poblacion* should be presumed residential, or commercial, or non-agricultural unless there is a clearly preponderant evidence to show that it is agricultural.

To the same effect was *Natalia Realty Corporation v. DAR*,[14] thus:

> We now determine whether such lands are covered by the CARL. Section 4 of R.A. 6657 provides that the CARL shall "cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands." As to what constitutes "agricultural land," it is referred to as "land devoted to agricultural activity as defined in this Act and *not classified as mineral, forest, residential, commercial or industrial land*." The deliberations of the Constitutional Commission confirm this limitation. "Agricultural lands" are only those lands which are "arable and suitable agricultural lands" and "*do not include commercial, industrial and residential lands*.

There is no dispute that as early as 1981, the respondents' landholdings have been part of the *poblacion* of Sorsogon, Sorsogon. Consistent with *Hilario* and *Natalia*, holding that the respondents' landholdings were non-agricultural, and,

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[13] G.R. No. 70736, March 16, 1987, 148 SCRA 573.

[14] G.R. No. 103302, August 12, 1993, 225 SCRA 278.

consequently, outside the coverage of the CARL, was fully warranted. In fact, the excerpt from the Comprehensive Development Plan of Sorsogon, Sorsogon showed that Barangay Bibincahan was within the Central Business District of the municipality.

Likewise, the CA correctly concluded that the DAR erred in designating Baribag as the beneficiary of the landholdings.

In designating Baribag, the DAR did not show how its choice of Baribag as beneficiary, to the exclusion of the actual workers, could have accorded with Section 22 of the CARL, which provides:

> Section 22. *Qualified Beneficiaries*. — The lands covered by the CARP shall be distributed as much as possible to landless residents of the same *barangay*, or in the absence thereof, landless residents of the same municipality in the following order of priority:
>
> (a) agricultural lessees and share tenants;
>
> (b) regular farmworkers;
>
> (c) seasonal farmworkers;
>
> (d) other farmworkers;
>
> (e) actual tillers or occupants of public lands;
>
> (f) collectives or cooperatives of the above beneficiaries; and
>
> (g) others directly working on the land.
>
> Provided, however, that the children of landowners who are qualified under Section 6 of this Act shall be given preference in the distribution of the land of their parents: and provided, further, that actual tenant-tillers in the landholdings shall not be ejected or removed therefrom.
>
> Beneficiaries under Presidential Decree No. 27 who have culpably sold, disposed of, or abandoned their land are disqualified to become beneficiaries under this Program.
>
> A basic qualification of a beneficiary shall be his willingness, aptitude, and ability to cultivate and make the land as productive as possible. The DAR shall adopt a system of monitoring the record or performance of each beneficiary, so that any beneficiary guilty

of negligence or misuse of the land or any support extended to him shall forfeit his right to continue as such beneficiary. The DAR shall submit periodic reports on the performance of the beneficiaries to the PARC.

If, due to the landowner's retention rights or to the number of tenants, lessees, or workers on the land, there is not enough land to accommodate any or some of them, they may be granted ownership of other lands available for distribution under this Act, at the option of the beneficiaries.

Farmers already in place and those not accommodated in the distribution of privately-owned lands will be given preferential rights in the distribution of lands from the public domain.

The only reason given by the DAR for not including the workers of the landholdings as farmer beneficiaries was that "it could be that either they have manifested lack/loss of interest in the property, as it has happened in many other areas placed under CARP coverage, because of their loyalty to the original landowner, like respondents, or because of fear or, simply, they refused to heed/answer the call of our field offices to submit to the screening process."[15] Such reason is unacceptable. The CARL has set forth in mandatory terms in its Section 22, *supra*, who *should be* the qualified beneficiaries, but the DAR did not strictly comply with the law. Instead, the DAR excluded such workers based on its speculation and conjecture on why the actual workers on the landholdings had not shown interest and had not responded to the call of the DAR field officers during the screening process. As such, the DAR did not really determine who were the lawful beneficiaries, failing even to present any documentary proof that showed that the respondents' workers genuinely lacked interest to be considered beneficiaries of the landholdings, or refused to subject themselves to the screening process.

There was also no evidence presented to justify that Baribag was a qualified beneficiary within the context of Section 22 of the CARL, and be entitled to be awarded the landholdings.

[15] *Rollo*, p. 24.

The highly irregular actuations of the DAR did not end with the unwarranted awarding of the landholdings to Baribag in violation of Section 22 of the CARL. The DAR also violated the respondents' right of retention under Section 6 of the CARL, which accorded to the respondents as the landowners the right to retain five hectares of their landholdings, and the right to choose the areas to be retained, which should be compact or contiguous. Thus, assuming that the respondents' landholdings were covered by the CARL, and that the DAR was correct in awarding the landholdings to Baribag, the DAR's cancellation of all of the respondents' TCTs effectively nullified the respondents' right of retention, thereby depriving them of their property without due process of law.

Lastly, RARAD Florin's issuance of the writ of execution in favor of Baribag was highly irregular. It must be noted, first of all, that because Baribag was not even a party in relation to the respondents' application for exclusion before Regional Director Dalugdug, RARAD Florin *did not* acquire jurisdiction over Baribag. As such, the legal authority of RARAD Florin to implement the award to Baribag by execution did not exist. Secondly, the denial of the respondents' application for exclusion was still pending review by the DAR Secretary when RARAD Florin issued the writ of execution to implement Regional Director Dalugdug's order to place Baribag in possession of the respondents' landholdings. Hence, the issuance of the writ of execution was premature and bereft of legal basis.

In fine, the appeal of the DAR cannot prosper. The CA properly acted in reversing and undoing the DAR's several violations of the letter and spirit of the CARL. It is timely to stress that the noble purpose of the CARL to emancipate the tenants from the bondage of the soil and to transfer to them the ownership of the lands they till should not be the guise to trample upon the landowners' rights by including lands that are unquestionably outside the coverage of the CARL. Neither should such noble intention be frustrated by designating beneficiaries who are neither the tenants or tillers of the land, nor otherwise qualified under the law to be the beneficiaries of land reform.

WHEREFORE, the petition for review on *certiorari* is denied. The decision dated December 26, 2000 and resolution dated June 26, 2002 of the Court of Appeals are affirmed.

The Secretary of the Department of Agrarian Reform is ordered to cancel the *certificate of land ownership awards* issued to Baribag Agrarian Reform Beneficiaries Development Corporative; to reinstate the respective transfer certificates of title of the respondents; and to immediately restore to the respondents the possession of their respective landholdings.

No pronouncement on costs of suit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 154270. March 9, 2010]

TEOFISTO OÑO, PRECY O. NAMBATAC, VICTORIA O. MANUGAS and POLOR O. CONSOLACION, *petitioners, vs.* **VICENTE N. LIM,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; DIRECT ATTACK DISTINGUISHED FROM COLLATERAL ATTACK.— An action or proceeding is deemed an attack on a title when its objective is to nullify the title, thereby challenging the judgment pursuant to which the title was decreed. The attack is direct when the objective is to annul or set aside such judgment, or enjoin its enforcement. On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an

attack on the judgment is nevertheless made as an incident thereof.

2. ID.; ID.; ACTION FOR QUIETING OF TITLE; DEFINED AND CONSTRUED.— Quieting of title is a common law remedy for the removal of any cloud, doubt, or uncertainty affecting title to real property. Whenever there is a cloud on title to real property or any interest in real property by reason of any instrument, record, claim, encumbrance, or proceeding that is apparently valid or effective, but is, in truth and in fact, invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title. In such action, the competent court is tasked to determine the respective rights of the complainant and the other claimants, not only to place things in their proper places, and to make the claimant, who has no rights to said immovable, respect and not disturb the one so entitled, but also for the benefit of both, so that whoever has the right will see every cloud of doubt over the property dissipated, and he can thereafter fearlessly introduce the improvements he may desire, as well as use, and even abuse the property as he deems fit.

3. CIVIL LAW; PROPERTY; OWNERSHIP; PRESCRIPTION AS MODE OF ACQUIRING OWNERSHIP; NOT PRESENT IN CASE AT BAR.— Prescription, in general, is a mode of acquiring or losing ownership and other real rights through the lapse of time in the manner and under the conditions laid down by law. However, prescription was not relevant to the determination of the dispute herein, considering that Lim did not base his right of ownership on an adverse possession over a certain period. He insisted herein, instead, that title to the land had been voluntarily transferred by the registered owners themselves to Luisa, his predecessor-in-interest. Lim showed that his mother had derived a just title to the property by virtue of sale; that from the time Luisa had acquired the property in 1937, she had taken over its possession in the concept of an owner, and had performed her obligation by paying real property taxes on the property, as evidenced by tax declarations issued in her name; and that in view of the delivery of the property, coupled with Luisa's actual occupation of it, all that remained to be done was the issuance of a new transfer certificate of title in her name.

4. REMEDIAL LAW; APPEALS; THE SUPREME COURT IS NOT A TRIER OF FACTS; EXCEPTIONS; NOT PRESENT. – The Court cannot anymore review the evaluation and appreciation of the evidence, because the Court is not a trier of facts. Although this rule admits of certain exceptions, *viz*: (1) when the conclusion is a finding grounded entirely on speculation, surmises, or conjecture; (2) when the inference made is manifestly mistaken; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case, and the findings are contrary to the admissions of both appellant and appellee; (7) when the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without specific evidence on which they are based; (9) when the facts set forth in the petition as well in the petitioners' main and reply briefs are not disputed by the respondents; and, (10) when the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and are contradicted by the evidence on record, it does not appear now that any of the exceptions is present herein. We thus apply the rule without hesitation, and reject the appeal for that reason.

5. ID.; EVIDENCE; PREPONDERANCE OF EVIDENCE; CONSTRUED.— In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. *Preponderance of evidence* is the weight, credit, and value of the aggregate evidence on either side, and is usually considered to be synonymous with the term *greater weight of the evidence* or *greater weight of the credible evidence*. *Preponderance of evidence* is a phrase that means, in the last analysis, probability of the truth. It is evidence that is more convincing to the court as worthy of belief than that which is offered in opposition thereto.

APPEARANCES OF COUNSEL

Paulino B. Labrado for petitioners.

Mercado Cordero Bael Acuña & Sepulveda for respondent.

D E C I S I O N

BERSAMIN, *J.*:

The subject of controversy is Lot No. 943 of the Balamban Cadastre in Cebu City, covered by Original Certificate of Title (OCT) No. RO-9969-(O-20449), over which the contending parties in this action for quieting of title, initiated by respondent Vicente N. Lim (Lim) in the Regional Trial Court (RTC) in Cebu City, assert exclusive ownership, to the exclusion of the other. In its decision dated July 30, 1996,[1] the RTC favored Lim, and ordered the cancellation of OCT No. RO-9969-(O-20449) and the issuance of a new certificate of title in the name of Luisa Narvios-Lim (Luisa), Lim's deceased mother and predecessor-in-interest.

On appeal (CA-GR CV No. 57823), the Court of Appeals (CA) affirmed the RTC on January 28, 2002.[2] It later denied the petitioners' *motion for reconsideration* through the resolution dated June 17, 2002.[3]

Hence, this appeal *via* petition for review on *certiorari*.

Antecedents

On October 23, 1992, Lim filed in the RTC in Cebu City a petition for the reconstitution of the owner's duplicate copy of OCT No. RO-9969-(O-20449), alleging that said OCT had been lost during World War II by his mother, Luisa;[4] that Lot No. 943 of the Balamban Cadastre in Cebu City covered by said OCT had been sold in 1937 to Luisa by Spouses Diego Oño and Estefania Apas (Spouses Oño), the lot's registered owners; and that although the deed evidencing the sale had been lost without being registered, Antonio Oño (Antonio), the only legitimate heir of Spouses Oño, had executed on April 23, 1961 in favor

[1] Original Records, pp. 175-182.

[2] CA *Rollo*, pp. 71-84. Penned by Justice Oswaldo D. Agcaoili, with Justice Jose L. Sabio, Jr. and Justice Sergio L. Pestaño, concurring.

[3] *Id.*, p. 105.

[4] Original Records, p.176.

of Luisa a notarized document denominated as *confirmation of sale*,[5] which was duly filed in the Provincial Assessor's Office of Cebu.

Zosimo Oño and petitioner Teofisto Oño (Oños) opposed Lim's petition, contending that they had the certificate of title in their possession as the successors-in-interest of Spouses Oño.

On account of the Oños' opposition, and upon order of the RTC, Lim converted the petition for reconstitution into a complaint for quieting of title,[6] averring additionally that he and his predecessor-in-interest had been in actual possession of the property since 1937, cultivating and developing it, enjoying its fruits, and paying the taxes corresponding to it. He prayed, *inter alia*, that the Oños be ordered to surrender the reconstituted owner's duplicate copy of OCT No. RO-9969-(O-20449), and that said OCT be cancelled and a new certificate of title be issued in the name of Luisa in lieu of said OCT.

In their answer,[7] the Oños claimed that their predecessors-in-interest, Spouses Oño, never sold Lot No. 943 to Luisa; and that the *confirmation of sale* purportedly executed by Antonio was fabricated, his signature thereon not being authentic.

RTC Ruling

On July 30, 1996, after trial, the RTC rendered its decision,[8] *viz*:

> WHEREFORE, premises considered, judgment is hereby rendered quieting plaintiff's title to Lot No. 943 of the Balamban (Cebu) Cadastre, and directing the Register of Deeds of Cebu —
>
> (1) To register the aforestated April 23, 1961 Confirmation of Sale of Lot No. 943 of the Balamban, Cebu Cadastre by Antonio Oño in favor of Luisa Narvios-Lim;

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[5] *Id.*, pp. 133-136.

[6] *Id.*, pp. 1-18.

[7] *Id.*, pp. 41-48.

[8] *Supra*, Note at 1.

(2) To cancel the original certificate of title covering the said Lot No. 943 of the Balamban, Cebu Cadastre; and,

(3) To issue in the name of Luisa Narvios-Lim, a new duplicate certificate of title No. RO-9969 (O-20449) of the Register of Deeds of Cebu, which shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate of title, and shall in all respects be entitled to like faith and credit as the original certificate, and shall be regarded as such for all purposes of this decree, pursuant to the last paragraph of Section 109, Presidential Decree No. 1529.

Without special pronouncement as to costs.

SO ORDERED.[9]

The RTC found that the Lims had been in peaceful possession of the land since 1937; that their possession had never been disturbed by the Oños, except on two occasions in 1993 when the Oños seized the harvested copra from the Lims' caretaker; that the Lims had since declared the lot in their name for taxation purposes, and had paid the taxes corresponding to the lot; that the signature of Antonio on the *confirmation of sale* was genuine, thereby giving more weight to the testimony of the notary public who had notarized the document and affirmatively testified that Antonio and Luisa had both appeared before him to acknowledge the instrument as true than to the testimony of the expert witness who attested that Antonio's signature was a forgery.

CA Ruling

On appeal, the Oños maintained that the *confirmation of sale* was spurious; that the property, being a titled one, could not be acquired by the Lims through prescription; that their (the Oños) action to claim the property could not be barred by laches; and that the action instituted by the Lims constituted a collateral attack against their registered title.

The CA affirmed the RTC, however, and found that Spouses Oño had sold Lot No. 943 to Luisa; and that such sale had been confirmed by their son Antonio. The CA ruled that the action for quieting of title was not a collateral, but a direct

[9] Original Records, pp. 181-182.

attack on the title; and that the Lims' undisturbed possession had given them a continuing right to seek the aid of the courts to determine the nature of the adverse claim of a third party and its effect on their own title.

Nonetheless, the CA corrected the RTC, by ordering that the Office of the Register of Deeds of Cebu City issue a new duplicate certificate of title in the name of Luisa, considering that the owner's duplicate was still intact in the possession of the Oños.

The decree of the CA decision was as follows:

WHEREFORE, the appeal is DISMISSED for lack of merit. However, the dispositive portion of the decision appealed from is CORRECTED as follows:

(1) Within five (5) days from finality of the decision, defendants-appellants are directed to present the owner's duplicate copy of OCT No. RO-9969 (O-20449) to the Register of Deeds who shall thereupon register the "Confirmation of Sale" of Lot No. 943, Balamban Cadastre, Cebu, executed on April 23, 1961 by Antonio Oño in favor of Luisa Narvios-Lim, and issue a new transfer certificate of title to and in the name of the latter upon cancellation of the outstanding original and owner's duplicate certificate of title.

(2) In the event defendants-appellants neglect or refuse to present the owner's copy of the title to the Register of Deeds as herein directed, the said title, by force of this decision, shall be deemed annulled, and the Register of Deeds shall make a memorandum of such fact in the record and in the new transfer certificate of title to be issued to Luisa Narvios-Lim.

(3) Defendants-appellants shall pay the costs.

SO ORDERED.[10]

The CA denied the Oños' *motion for reconsideration*[11] on June 17, 2002.[12]

Hence, this appeal.

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[10] CA *Rollo*, pp. 83-84.

[11] *Id.*, pp. 85-90.

[12] *Supra*, Note at 3.

Issues

The petitioners raise the following issues:

1. Whether or not the validity of the OCT could be collaterally attacked through an ordinary civil action to quiet title;
2. Whether or not the ownership over registered land could be lost by prescription, laches, or adverse possession;
3. Whether or not there was a deed of sale executed by Spouses Oño in favor of Luisa and whether or not said deed was lost during World War II;
4. Whether or not the *confirmation of sale* executed by Antonio in favor of Luisa existed; and
5. Whether or not the signature purportedly of Antonio in that *confirmation of sale* was genuine.

Ruling of the Court

The petition has no merit.

A.
Action for cancellation of title is not an attack on the title

The petitioners contend that this action for quieting of title should be disallowed because it constituted a collateral attack on OCT No. RO-9969-(O-20449), citing Section 48 of Presidential Decree No. 1529, *viz*:

> Section 48. *Certificate not subject to collateral attack.*– A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

The petitioners' contention is not well taken.

An action or proceeding is deemed an attack on a title when its objective is to nullify the title, thereby challenging the judgment pursuant to which the title was decreed.[13] The attack is direct

[13] *Sarmiento v. Court of Appeals*, G.R. No. 152627, September 16, 2005, 470 SCRA 99, 107-108, citing *Malilin, Jr. v. Castillo*, G.R. No. 136803, June 16, 2000, 333 SCRA 628, 640.

when the objective is to annul or set aside such judgment, or enjoin its enforcement. On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment is nevertheless made as an incident thereof.[14]

Quieting of title is a common law remedy for the removal of any cloud, doubt, or uncertainty affecting title to real property.[15] Whenever there is a cloud on title to real property or any interest in real property by reason of any instrument, record, claim, encumbrance, or proceeding that is apparently valid or effective, but is, in truth and in fact, invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.[16] In such action, the competent court is tasked to determine the respective rights of the complainant and the other claimants, not only to place things in their proper places, and to make the claimant, who has no rights to said immovable, respect and not disturb the one so entitled, but also for the benefit of both, so that whoever has the right will see every cloud of doubt over the property dissipated, and he can thereafter fearlessly introduce the improvements he may desire, as well as use, and even abuse the property as he deems fit.[17]

Lim's complaint pertinently alleged:

> 18. If indeed, the genuine original of the Owner's Duplicate of the Reconstituted Original Certificate of Title No. RO-9699 (O-20449) for Lot 943, Balamban Cadastre xxx is in Defendant's (Oño's) possession, then VNL submits the following PROPOSITIONS:
>
> xxx xxx xxx
>
> 18.2. Therefore, the Original of Owner's Duplicate Certificate (which Respondents [Defendants Oños] claim in their Opposition

[14] *Ibid.*

[15] Vitug, *Compendium of Civil Law and Jurisprudence*, 1993 Rev. Ed., p. 295.

[16] Article 476, *Civil Code*.

[17] *Baricuatro, Jr. v. Court of Appeals*, G.R. No. 105902, February 9, 2000, 325 SCRA 137, 146-147.

is in their possession) must be surrendered to VNL upon order of this Court, after the Court shall have determined VNL's mother's acquisition of the attributes of ownership over said Lot 943, in this action, in accordance with Section 107, P.D. 1529, Property Registration Decree xxx

xxx xxx xxx

[t]hat OCT 20449 be cancelled and new title for Lot 943 be issued directly in favor of LUISA NARVIOS, to complete her title to said Lot;[18]

The averments readily show that the action was neither a direct nor a collateral attack on OCT No. RO-9969-(O-20449), for Lim was asserting only that the existing title registered in the name of the petitioners' predecessors had become inoperative due to the conveyance in favor of Lim's mother, and resultantly should be cancelled. Lim did not thereby assail the validity of OCT No. RO-9969-(O-20449), or challenge the judgment by which the title of the lot involved had been decreed. In other words, the action sought the removal of a cloud from Lim's title, and the confirmation of Lim's ownership over the disputed property as the successor-in-interest of Luisa.

B.
Prescription was not relevant

The petitioners assert that the lot, being titled in the name of their predecessors-in-interest, could not be acquired by prescription or adverse possession.

The assertion is unwarranted.

Prescription, in general, is a mode of acquiring or losing ownership and other real rights through the lapse of time in the manner and under the conditions laid down by law.[19] However, prescription was not relevant to the determination of the dispute herein, considering that Lim did not base his right of ownership on an adverse possession over a certain period. He insisted

[18] Original Records, pp. 8-10.

[19] *Calicdan v. Cendaña*, G.R. No. 155080, February 5, 2004, 422 SCRA 272, 279.

herein, instead, that title to the land had been voluntarily transferred by the registered owners themselves to Luisa, his predecessor-in-interest.

Lim showed that his mother had derived a just title to the property by virtue of sale; that from the time Luisa had acquired the property in 1937, she had taken over its possession in the concept of an owner, and had performed her obligation by paying real property taxes on the property, as evidenced by tax declarations issued in her name;[20] and that in view of the delivery of the property, coupled with Luisa's actual occupation of it, all that remained to be done was the issuance of a new transfer certificate of title in her name.

C.
Forgery, being a question of fact, could not be dealt with now

The petitioners submit that Lim's evidence did not preponderantly show that the ownership of the lot had been transferred to Luisa; and that both the trial and the appellate courts disregarded their showing that Antonio's signature on the *confirmation of sale* was a forgery.

Clearly, the petitioners hereby seek a review of the evaluation and appreciation of the evidence presented by the parties.

The Court cannot anymore review the evaluation and appreciation of the evidence, because the Court is not a trier of facts.[21] Although this rule admits of certain exceptions, *viz*: (1) when the conclusion is a finding grounded entirely on speculation, surmises, or conjecture; (2) when the inference made is manifestly mistaken; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case, and the findings are contrary to the admissions of both

[20] Original Records, pp. 114-131.

[21] *Twin Towers Condominium Corporation v. Court of Appeals*, G.R. No. 123552, February 27, 2003, 398 SCRA 203.

appellant and appellee; (7) when the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without specific evidence on which they are based; (9) when the facts set forth in the petition as well in the petitioners' main and reply briefs are not disputed by the respondents; and, (10) when the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and are contradicted by the evidence on record,[22] it does not appear now that any of the exceptions is present herein. We thus apply the rule without hesitation, and reject the appeal for that reason.

It is emphasized, too, that the CA upheld the conclusion arrived at by the RTC that the signature of Antonio had not been simulated or forged. The CA ruled that the testimony of the notary public who had notarized the *confirmation of sale* to the effect that Antonio and Luisa had appeared before him prevailed over that of the petitioners' expert witness. The concurrence of their conclusion on the genuineness of Antonio's signature now binds the Court.[23]

In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. *Preponderance of evidence* is the weight, credit, and value of the aggregate evidence on either side, and is usually considered to be synonymous with the term *greater weight of the evidence* or *greater weight of the credible evidence*. *Preponderance of evidence* is a phrase that means, in the last analysis, probability of the truth.[24] It is evidence that is more convincing to the court as worthy of belief than that which is offered in opposition thereto.

Lim successfully discharged his burden of proof as the plaintiff. He established by preponderant evidence that he had a superior

[22] *Mamsar Enterprises Agro-Industrial Corporation v. Varley Trading, Inc.*, G.R. No. 142729, November 29, 2005, 476 SCRA 378, 382.

[23] *Naguiat v. Court of Appeals*, G.R. No. 118375, October 3, 2003, 412 SCRA 591, 595-596.

[24] *Encinas v. National Bookstore, Inc.*, G.R. No. 162704, November 19, 2004, 443 SCRA 293.

right and title to the property. In contrast, the petitioners did not present any proof of their better title other than their copy of the reconstituted certificate of title. Such proof was not enough, because the registration of a piece of land under the Torrens system did not create or vest title, such registration not being a mode of acquiring ownership. The petitioners need to be reminded that a certificate of title is merely an evidence of ownership or title over the particular property described therein. Its issuance in favor of a particular person does not foreclose the possibility that the real property may be co-owned with persons not named in the certificate, or that it may be held in trust for another person by the registered owner.[25]

WHEREFORE, the petition for review on *certiorari* is denied, and the decision dated January 28, 2002 is affirmed.

The petitioners are ordered to pay the costs of suit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 157594. March 9, 2010]

TOSHIBA INFORMATION EQUIPMENT (PHILS.), INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

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[25] *Heirs of Clement Ermac v. Heirs of Vicente Ermac*, G.R. No. 149679, May 30, 2003, 403 SCRA 291, 298.

SYLLABUS

1. REMEDIAL LAW; RULES OF COURT; THE LIBERAL INTERPRETATION AND APPLICATION OF RULES APPLY ONLY IN PROPER CASES OF DEMONSTRABLE MERIT AND UNDER JUSTIFIABLE CAUSES AND CIRCUMSTANCES.— It is axiomatic in pleadings and practice that no new issue in a case can be raised in a pleading which by due diligence could have been raised in previous pleadings. The Court cannot simply grant the plea of the CIR that the procedural rules be relaxed based on the general averment of the interest of substantive justice. It should not be forgotten that the first and fundamental concern of the rules of procedure is to secure a just determination of every action. Procedural rules are designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules. While in certain instances, the Court allows a relaxation in the application of the rules, it never intends to forge a weapon for erring litigants to violate the rules with impunity. The liberal interpretation and application of rules apply only in proper cases of demonstrable merit and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. Party litigants and their counsel are well advised to abide by, rather than flaunt, procedural rules for these rules illumine the path of the law and rationalize the pursuit of justice.

2. ID.; CIVIL PROCEDURE; PRE-TRIAL; DEFINED.— Pre-trial is an answer to the clarion call for the speedy disposition of cases. Although it was discretionary under the 1940 Rules of Court, it was made mandatory under the 1964 Rules and the subsequent amendments in 1997. It has been hailed as "the most important procedural innovation in Anglo-Saxon justice in the nineteenth century."

3. ID.; ID.; ID.; NATURE AND PURPOSE THEREOF.—The nature and purpose of a pre-trial have been laid down in Rule 18, Section 2 of the Rules of Court: SECTION 2. *Nature and purpose*. – The pre-trial is mandatory. The court shall consider: (a) The possibility of an amicable settlement or of a submission to alternative modes of dispute resolution; **(b) The simplification**

of the issues; (c) The necessity or desirability of amendments to the pleadings; **(d) The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;** (e) The limitation of the number of witnesses; (f) The advisability of a preliminary reference of issues to a commissioner; (g) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist; (h) The advisability or necessity of suspending the proceedings; and (i) Such other matters as may aid in the prompt disposition of the action.

4. ID.; ID.; ID.; JUDICIAL ADMISSION; CONSTRUED.— The admission having been made in a stipulation of facts at pre-trial by the parties, it must be treated as a judicial admission. Under Section 4, Rule 129 of the Rules of Court, a judicial admission requires no proof. The admission may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made. The Court cannot lightly set aside a judicial admission especially when the opposing party relied upon the same and accordingly dispensed with further proof of the fact already admitted. An admission made by a party in the course of the proceedings does not require proof.

5. TAXATION; VALUE ADDED TAX (VAT); VAT EXEMPTION OF A PERSON DISTINGUISHED FROM VAT EXEMPTION OF A TRANSACTION.— At the outset, the Court establishes that there is a basic distinction in the VAT-exemption of a person and the VAT-exemption of a transaction – It would seem that petitioner CIR failed to differentiate between VAT-exempt transactions from VAT-exempt entities. In the case of *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, this Court already made such distinction – An exempt transaction, on the one hand, involves goods or services which, by their nature, are specifically listed in and expressly exempted from the VAT under the Tax Code, without regard to the tax status – VAT-exempt or not – of the party to the transaction… An exempt party, on the other hand, is a person or entity granted VAT exemption under the Tax Code, a special law or an international agreement to which the Philippines is a signatory, and by virtue of which its taxable transactions become exempt from VAT x x x.

6. ID.; ID.; CROSS BORDER DOCTRINE; NO VAT SHALL BE IMPOSED TO FORM PART OF THE COST OF GOODS DESTINED FOR CONSUMPTION OUTSIDE THE TERRITORIAL BORDER OF THE TAXING AUTHORITY; EXPLAINED.— It is now a settled rule that based on the Cross Border Doctrine, PEZA-registered enterprises, such as Toshiba, are VAT-exempt and no VAT can be passed on to them. The Court explained in the *Toshiba case* that – PEZA-registered enterprise, which would necessarily be located within ECOZONES, are VAT-exempt entities, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory. x x x x The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT. Applying said doctrine to the sale of goods, properties, and services to and from the ECOZONES, the BIR issued Revenue Memorandum Circular (RMC) No. 74-99, on 15 October 1999. Of particular interest to the present Petition is Section 3 thereof, which reads – SECTION 3. **Tax Treatment of Sales Made by a VAT Registered Supplier from the Customs Territory, to a PEZA Registered Enterprise.** – (1) If the Buyer is a PEZA registered enterprise which is subject to the 5% special tax regime, in lieu of all taxes, except real property tax, pursuant to R.A. No. 7916, as amended: (a) **Sale of goods (*i.e.*, merchandise).** – This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916, in relation to ART. 77(2) of the Omnibus Investments Code. (b) **Sale of service.** – This shall be treated subject to zero percent (0%) VAT under the "cross border doctrine" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998. (2) If Buyer is a PEZA registered enterprise which is not embraced by the 5% special tax regime, hence, subject to taxes under the NIRC, *e.g.*, Service Establishments

which are subject to taxes under the NIRC rather than the 5% special tax regime: (a) **Sale of goods (*i.e.*, merchandise).** – This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916 in relation to ART. 77(2) of the Omnibus Investments Code. (b) **Sale of Service.** – This shall be treated subject to zero percent (0%) VAT under the "cross border doctrine" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998. (3) In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to ART. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. No. 7916 and the "Cross Border Doctrine" of the VAT system. This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of the issuance of this Circular. Indubitably, no output VAT may be passed on to an ECOZONE enterprise since it is a VAT-exempt entity. x x x.

7. ID.; ID.; CLAIM FOR TAX CREDIT OR REFUND OF VAT-REGISTERED SELLER WHO MADE ZERO-RATED SALES; EXPLAINED.— A VAT-registered seller of goods and/or services who made zero-rated sales can claim tax credit or refund of the input VAT paid on its purchases of goods, properties, or services relative to such zero-rated sales, in accordance with Section 4.102-2 of Revenue Regulations No. 7-95, which provides – Sec. 4.102-2. *Zero-rating.* – (a) *In general.* - A zero-rated sale by a VAT-registered person, which is a taxable transaction for VAT purposes, shall not result

in any output tax. However, the input tax on his purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these regulations. The BIR, as late as July 15, 2003, when it issued RMC No. 42-2003, accepted applications for credit/ refund of input VAT on purchases prior to RMC No. 74-99, filed by PEZA-registered enterprises which availed themselves of the income tax holiday. The BIR answered Question Q-5(1) of RMC No. 42-2003 in this wise – Q-5: Under Revenue Memorandum Circular (RMC) No. 74-99, purchases by PEZA-registered firms automatically qualify as zero-rated without seeking prior approval from the BIR effective October 1999. 1) Will the OSS-DOF Center **still accept applications from PEZA-registered claimants** who were allegedly billed VAT by their suppliers before and during the effectivity of the RMC by issuing VAT invoices/receipts? x x x A-5(1): If the PEZA-registered enterprise is paying the 5% preferential tax in lieu of all other taxes, the said PEZA-registered taxpayer cannot claim TCC or refund for the VAT paid on purchases. However, **if the taxpayer is availing of the income tax holiday, it can claim VAT credit** provided: a. The taxpayer-claimant is **VAT-registered**; b. Purchases are evidenced by **VAT invoices or receipts**, whichever is applicable, with shifted VAT to the purchaser **prior to the implementation of RMC No. 74-99**; and c. The **supplier issues a sworn statement** under penalties of perjury that it shifted the VAT and declared the sales to the PEZA-registered purchaser as taxable sales in its VAT returns. For invoices/receipts issued upon the effectivity of RMC No. 74-99, the claims for input VAT by PEZA-registered companies, regardless of the type or class of PEZA-registration, should be denied.

8. REMEDIAL LAW; APPEALS; FINDINGS AND CONCLUSIONS OF THE COURT OF TAX APPEALS; ACCORDED HIGHEST RESPECT BY THE SUPREME COURT; EXCEPTION.— The Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its functions, is dedicated exclusively to the resolution of tax problems and has accordingly developed an expertise on the subject unless there has been an abuse or improvident exercise of authority. In *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*,

> this Court more explicitly pronounced – Jurisprudence has consistently shown that this Court accords the findings of fact by the CTA with the highest respect. In *Sea-Land Service Inc. v. Court of Appeals* [G.R. No. 122605, 30 April 2001, 357 SCRA 441, 445-446], this Court recognizes that the Court of Tax Appeals, which by the very nature of its function is dedicated exclusively to the consideration of tax problems, has necessarily developed an expertise on the subject, and its conclusions will not be overturned unless there has been an abuse or improvident exercise of authority. Such findings can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the Tax Court. In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect.

APPEARANCES OF COUNSEL

Agan & Montenegro Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

In this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, petitioner Toshiba Information Equipment (Philippines), Inc. (Toshiba) seeks the reversal and setting aside of (1) the Decision[2] dated August 29, 2002 of the Court of Appeals in CA-G.R. SP No. 63047, which found that Toshiba was not entitled to the credit/refund of its unutilized input Value-Added Tax (VAT) payments attributable to its export sales, because it was a tax-exempt entity and its export sales were VAT-exempt transactions; and (2) the Resolution[3] dated

[1] *Rollo*, pp. 11-32.

[2] Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Buenaventura J. Guerrero and Perlita J. Tria Tirona, concurring; *rollo*, pp. 35-52.

[3] *Id.* at 54-55.

February 19, 2003 of the appellate court in the same case, which denied the Motion for Reconsideration of Toshiba. The herein assailed judgment of the Court of Appeals reversed and set aside the Decision[4] dated October 16, 2000 of the Court of Tax Appeals (CTA) in CTA Case No. 5762 granting the claim for credit/refund of Toshiba in the amount of ₱1,385,282.08.

Toshiba is a domestic corporation principally engaged in the business of manufacturing and exporting of electric machinery, equipment systems, accessories, parts, components, materials and goods of all kinds, including those relating to office automation and information technology and all types of computer hardware and software, such as but not limited to HDD-CD-ROM and personal computer printed circuit board.[5] It is registered with the Philippine Economic Zone Authority (PEZA) as an Economic Zone (ECOZONE) export enterprise in the Laguna Technopark, Inc., as evidenced by Certificate of Registration No. 95-99 dated September 27, 1995.[6] It is also registered with Regional District Office No. 57 of the Bureau of Internal Revenue (BIR) in San Pedro, Laguna, as a VAT-taxpayer with Taxpayer Identification No. (TIN) 004-739-137.[7]

In its VAT returns for the first and second quarters of 1997,[8] filed on April 14, 1997 and July 21, 1997, respectively, Toshiba declared input VAT payments on its domestic purchases of taxable goods and services in the aggregate sum of ₱3,875,139.65,[9] with no zero-rated sales. Toshiba subsequently submitted to the BIR on July 23, 1997 its amended VAT returns for the first and second quarters of 1997,[10] reporting the same amount of

[4] Penned by Associate Judge Amancio Q. Saga with Presiding Judge Ernesto D. Acosta and Associate Judge Ramon O. De Veyra, concurring; *rollo,* pp. 83-92.

[5] *Rollo,* p. 12.

[6] Exhibit "A", Folder of Exhibits "A-I" of Toshiba.

[7] Records, p. 7.

[8] Exhibits "B" and "C", Folder of Exhibits "A-I" of Toshiba.

[9] Toshiba declared ₱3,320,034.44 and ₱555,105.21 of input VAT payments for the first and second quarters or 1997, respectively.

[10] Exhibits "B-1" and "C-1", Folder of Exhibits "A-I" of Toshiba.

input VAT payments but, this time, with zero-rated sales totaling ₱7,494,677,000.00.[11]

On March 30, 1999, Toshiba filed with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (DOF One-Stop Shop) two separate applications for tax credit/refund[12] of its unutilized input VAT payments for the first half of 1997 in the total amount of ₱3,685,446.73.[13]

The next day, on March 31, 1999, Toshiba likewise filed with the CTA a Petition for Review[14] to toll the running of the two-year prescriptive period under Section 230 of the Tax Code of 1977,[15] as amended.[16] In said Petition, docketed as CTA Case No. 5762, Toshiba prayed that –

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[11] Toshiba reported ₱2,083,305,000.00 and ₱5,411,372,000.00 of zero-rated sales for the first and second quarters of 1997, respectively.

[12] Records, pp. 10-13.

[13] Toshiba claimed in its applications for refund/credit ₱3,268,682.34 and ₱416,764.39 of local input VAT for the first and second quarters of 1997, respectively.

[14] Records, pp. 1-5.

[15] Republic Act No. 8424, otherwise known as the Tax Code of 1997, took effect only on January 1, 1998. Prior to said date, Presidential Decree No. 1158, otherwise known as the Tax Code of 1977, as amended, was in effect. According to Section 230 of the Tax Code of 1977, as amended:

Sec. 230. *Recovery of tax erroneously or illegally collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphasis ours.)

[16] As amended by Republic Act No. 7716, bearing the title "An Act Restructuring the Value Added Tax (VAT) System, Widening its Tax Base

[A]fter due hearing, judgment be rendered ordering [herein respondent Commissioner of Internal Revenue (CIR)] to refund or issue to [Toshiba] a tax refund/tax credit certificate in the amount of ₱3,875,139.65 representing unutilized input taxes paid on its purchase of taxable goods and services for the period January 1 to June 30, 1997.[17]

The Commissioner of Internal Revenue (CIR) opposed the claim for tax refund/credit of Toshiba, setting up the following special and affirmative defenses in his Answer[18] –

5. [Toshiba's] alleged claim for refund/tax credit is subject to administrative routinary investigation/examination by [CIR's] Bureau;

6. [Toshiba] failed miserably to show that the total amount of ₱3,875,139.65 claimed as VAT input taxes, were erroneously or illegally collected, or that the same are properly documented;

7. Taxes paid and collected are presumed to have been made in accordance with law; hence, not refundable;

8. In an action for tax refund, the burden is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund;

9. It is incumbent upon [Toshiba] to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code;

10. Well-established is the rule that claims for refund/tax credit are construed in *strictissimi juris* against the taxpayer as it partakes the nature of exemption from tax.[19]

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and Enhancing its Administration and for These Purposes Amending and Repealing the Relevant Provisions of the National Internal Revenue Code, As Amended, and For Other Purposes."

[17] Records, p. 5.

[18] *Id.* at 20-22.

[19] *Id.* at 21.

Upon being advised by the CTA,[20] Toshiba and the CIR filed a Joint Stipulation of Facts and Issues,[21] wherein the opposing parties "agreed and admitted" that –

1. [Toshiba] is a duly registered value-added tax entity in accordance with Section 107 of the Tax Code, as amended.

2. [Toshiba] is subject to zero percent (0%) value-added tax on its export sales in accordance with then Section 100(a)(2)(A) of the Tax Code, as amended.

3. [Toshiba] filed its quarterly VAT returns for the first two quarters of 1997 within the legally prescribed period.

xxx xxx xxx

7. [Toshiba] is subject to zero percent (0%) value-added tax on its export sales.

8. [Toshiba] has duly filed the instant Petition for Review within the two-year prescriptive period prescribed by then Section 230 of the Tax Code.[22]

In the same pleading, Toshiba and the CIR jointly submitted the following issues for determination by the CTA –

Whether or not [Toshiba] has incurred input taxes in the amount of ₱3,875,139.65 for the period January 1 to June 30, 1997 which are directly attributable to its export sales[.]

Whether or not the input taxes incurred by [Toshiba] for the period January 1 to June 30, 1997 have not been carried over to the succeeding quarters[.]

Whether or not input taxes incurred by [Toshiba] for the first two quarters of 1997 have not been offset against any output tax[.]

Whether or not input taxes incurred by [Toshiba] for the first two quarters of 1997 are properly substantiated by official receipts and invoices.[23]

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[20] *Id.* at 33.

[21] *Id.* at 34-35.

[22] *Id.*

[23] *Id.* at 35.

During the trial before the CTA, Toshiba presented documentary evidence in support of its claim for tax credit/ refund, while the CIR did not present any evidence at all.

With both parties waiving the right to submit their respective memoranda, the CTA rendered its Decision in CTA Case No. 5762 on October 16, 2000 favoring Toshiba. According to the CTA, the CIR himself admitted that the export sales of Toshiba were subject to zero percent (0%) VAT based on Section 100(a)(2)(A)(i) of the Tax Code of 1977, as amended. Toshiba could then claim tax credit or refund of input VAT paid on its purchases of goods, properties, or services, directly attributable to such zero-rated sales, in accordance with Section 4.102-2 of Revenue Regulations No. 7-95. The CTA, though, reduced the amount to be credited or refunded to Toshiba to ₱1,385,292.02.

The dispositive portion of the October 16, 2000 Decision of the CTA fully reads –

WHEREFORE, [Toshiba's] claim for refund of unutilized input VAT payments is hereby **GRANTED** but in a reduced amount of ₱1,385,282.08 computed as follows:

	1st Quarter	2nd Quarter	Total
Amount of claimed input taxes filed with the DOF One Stop Shop Center	₱3,268,682.34	₱416,764.39	₱3,685,446.73
Less: 1) Input taxes not properly supported by VAT invoices and official receipts			
a. Per SGV's verification (Exh. I)	₱ 242,491.45	₱154,391.13	₱396,882.58
b. Per this court's further verification (Annex A)	₱1,852,437.65	₱35,108.00	₱1,887,545.65
2) 1998 4th qtr. Output VAT liability applied against the			

claimed input taxes			
Subtotal	15,736.42		15,736.42
Amount Refundable	₱2,110,665.52	₱189,499.13	₱2,300,164.65
	₱1,158,016.82	₱227,265.26	₱1,385,282.08

Respondent Commissioner of Internal Revenue is **ORDERED** to **REFUND** to [Toshiba] or in the alternative, ISSUE a TAX CREDIT CERTIFICATE in the amount of ₱1,385,282.08 representing unutilized input taxes paid by [Toshiba] on its purchases of taxable goods and services for the period January 1 to June 30, 1997.[24]

Both Toshiba and the CIR sought reconsideration of the foregoing CTA Decision.

Toshiba asserted in its Motion for Reconsideration[25] that it had presented proper substantiation for the ₱1,887,545.65 input VAT disallowed by the CTA.

The CIR, on the other hand, argued in his Motion for Reconsideration[26] that Toshiba was not entitled to the credit/refund of its input VAT payments because as a PEZA-registered ECOZONE export enterprise, Toshiba was not subject to VAT. The CIR invoked the following statutory and regulatory provisions—

Section 24 of Republic Act No. 7916[27]

SECTION 24. *Exemption from Taxes Under the National Internal Revenue Code*. – Any provision of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu of paying taxes, five percent (5%) of the gross income earned by all businesses and enterprises within the ECOZONE shall be remitted to the national government. x x x.

Section 103(q) of the Tax Code of 1977, as amended

Sec. 103. *Exempt transactions*. – The following shall be exempt from the value-added tax:

[24] *Id.* at 91-92.

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

[26] *Id.* at 89-95.

[27] Otherwise known as The Special Economic Zone Act of 1995, as amended by Republic Act No. 8748.

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(q) Transactions which are exempt under special laws, except those granted under Presidential Decree Nos. 66, 529, 972, 1491, and 1950, and non-electric cooperatives under Republic Act No. 6938, or international agreements to which the Philippines is a signatory.

Section 4.103-1 of Revenue Regulations No. 7-95

SEC. 4.103-1. *Exemptions.* – (A) *In general.* – An exemption means that the sale of goods or properties and/or services and the use or lease of properties is not subject to VAT (output tax) and the seller is not allowed any tax credit on VAT (input tax) previously paid.

The person making the exempt sale of goods, properties or services shall not bill any output tax to his customers because the said transaction is not subject to VAT. On the other hand, a VAT-registered purchaser of VAT-exempt goods, properties or services which are exempt from VAT is not entitled to any input tax on such purchase despite the issuance of a VAT invoice or receipt.

The CIR contended that under Section 24 of Republic Act No. 7916, a special law, all businesses and establishments within the ECOZONE were to remit to the government five percent (5%) of their gross income earned within the zone, in lieu of all taxes, including VAT. This placed Toshiba within the ambit of Section 103(q) of the Tax Code of 1977, as amended, which exempted from VAT the transactions that were exempted under special laws. Following Section 4.103-1(A) of Revenue Regulations No. 7-95, the VAT-exemption of Toshiba meant that its sale of goods was not subject to output VAT and Toshiba as seller was not allowed any tax credit on the input VAT it had previously paid.

On January 17, 2001, the CTA issued a Resolution[28] denying both Motions for Reconsideration of Toshiba and the CIR.

The CTA took note that the pieces of evidence referred to by Toshiba in its Motion for Reconsideration were insufficient substantiation, being mere schedules of input VAT payments it

[28] Signed by Presiding Judge Ernesto D. Acosta and Associate Judges Amancio Q. Saga and Ramon O. de Veyra. *Rollo,* pp. 103-106.

had purportedly paid for the first and second quarters of 1997. While the CTA gives credence to the report of its commissioned certified public accountant (CPA), it does not render its decision based on the findings of the said CPA alone. The CTA has its own CPA and the tax court itself conducts an investigation/ examination of the documents presented. The CTA stood by its earlier disallowance of the amount of ₱1,887,545.65 as tax credit/refund because it was not supported by VAT invoices and/or official receipts.

The CTA refused to consider the argument that Toshiba was not entitled to a tax credit/refund under Section 24 of Republic Act No. 7916 because it was only raised by the CIR for the first time in his Motion for Reconsideration. Also, contrary to the assertions of the CIR, the CTA held that Section 23, and not Section 24, of Republic Act No. 7916, applied to Toshiba. According to Section 23 of Republic Act No. 7916 –

> SECTION 23. *Fiscal Incentives*. – Business establishments operating within the ECOZONES shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987.
>
> Furthermore, tax credits for exporters using local materials as inputs shall enjoy the benefits provided for in the Export Development Act of 1994.

Among the fiscal incentives granted to PEZA-registered enterprises by the Omnibus Investments Code of 1987 was the income tax holiday, to wit –

> Art. 39. *Incentives to Registered Enterprises*. – All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment:
>
> (a) *Income Tax Holiday*. —
>
> (1) For six (6) years from commercial operation for pioneer firms and four (4) years for non-pioneer firms, new registered firms shall be fully exempt from income taxes levied by the national government. Subject to such guidelines as may be prescribed by the Board, the

income tax exemption will be extended for another year in each of the following cases:

(i) The project meets the prescribed ratio of capital equipment to number of workers set by the Board;

(ii) Utilization of indigenous raw materials at rates set by the Board;

(iii) The net foreign exchange savings or earnings amount to at least US$500,000.00 annually during the first three (3) years of operation.

The preceding paragraph notwithstanding, no registered pioneer firm may avail of this incentive for a period exceeding eight (8) years.

(2) For a period of three (3) years from commercial operation, registered expanding firms shall be entitled to an exemption from income taxes levied by the National Government proportionate to their expansion under such terms and conditions as the Board may determine: *Provided, however,* That during the period within which this incentive is availed of by the expanding firm it shall not be entitled to additional deduction for incremental labor expense.

(3) The provision of Article 7(14) notwithstanding, registered firms shall not be entitled to any extension of this incentive.

The CTA pointed out that Toshiba availed itself of the income tax holiday under the Omnibus Investments Code of 1987, so Toshiba was exempt only from income tax but not from other taxes such as VAT. As a result, Toshiba was liable for output VAT on its export sales, but at zero percent (0%) rate, and entitled to the credit/refund of the input VAT paid on its purchases of goods and services relative to such zero-rated export sales.

Unsatisfied, the CIR filed a Petition for Review[29] with the Court of Appeals, docketed as CA-G.R. SP No. 63047.

In its Decision dated August 29, 2002, the Court of Appeals granted the appeal of the CIR, and reversed and set aside the Decision dated October 16, 2000 and the Resolution dated January 17, 2001 of the CTA. The appellate court ruled that

[29] *Rollo,* pp. 107-118.

Toshiba was not entitled to the refund of its alleged unused input VAT payments because it was a tax-exempt entity under Section 24 of Republic Act No. 7916. As a PEZA-registered corporation, Toshiba was liable for remitting to the national government the five percent (5%) preferential rate on its gross income earned within the ECOZONE, in lieu of all other national and local taxes, including VAT.

The Court of Appeals further adjudged that the export sales of Toshiba were VAT-exempt, not zero-rated, transactions. The appellate court found that the Answer filed by the CIR in CTA Case No. 5762 did not contain any admission that the export sales of Toshiba were zero-rated transactions under Section 100(a)(2)(A) of the Tax Code of 1977, as amended. At the least, what was admitted by the CIR in said Answer was that the Tax Code provisions cited in the Petition for Review of Toshiba in CTA Case No. 5762 were correct. As to the Joint Stipulation of Facts and Issues filed by the parties in CTA Case No. 5762, which stated that Toshiba was subject to zero percent (0%) VAT on its export sales, the appellate court declared that the CIR signed the said pleading through palpable mistake. This palpable mistake in the stipulation of facts should not be taken against the CIR, for to do otherwise would result in suppressing the truth through falsehood. In addition, the State could not be put in estoppel by the mistakes or errors of its officials or agents.

Given that Toshiba was a tax-exempt entity under Republic Act No. 7916, a special law, the Court of Appeals concluded that the export sales of Toshiba were VAT-exempt transactions under Section 109(q) of the Tax Code of 1997, formerly Section 103(q) of the Tax Code of 1977. Therefore, Toshiba could not claim refund of its input VAT payments on its domestic purchases of goods and services.

The Court of Appeals decreed at the end of its August 29, 2002 Decision—

> WHEREFORE, premises considered, the appealed decision of the Court of Tax Appeals in CTA Case No. 5762, is hereby REVERSED and SET ASIDE, and a new one is hereby rendered finding [Toshiba], being a tax exempt entity under R.A. No. 7916, not entitled to refund

the VAT payments made in its domestic purchases of goods and services.[30]

Toshiba filed a Motion for Reconsideration[31] of the aforementioned Decision, anchored on the following arguments: (a) the CIR never raised as an issue before the CTA that Toshiba was tax-exempt under Section 24 of Republic Act No. 7916; (b) Section 24 of Republic Act No. 7916, subjecting the gross income earned by a PEZA-registered enterprise within the ECOZONE to a preferential rate of five percent (5%), in lieu of all taxes, did not apply to Toshiba, which availed itself of the income tax holiday under Section 23 of the same statute; (c) the conclusion of the CTA that the export sales of Toshiba were zero-rated was supported by substantial evidence, other than the admission of the CIR in the Joint Stipulation of Facts and Issues; and (d) the judgment of the CTA granting the refund of the input VAT payments was supported by substantial evidence and should not have been set aside by the Court of Appeals.

In a Resolution dated February 19, 2003, the Court of Appeals denied the Motion for Reconsideration of Toshiba since the arguments presented therein were mere reiterations of those already passed upon and found to be without merit by the appellate court in its earlier Decision. The Court of Appeals, however, mentioned that it was incorrect for Toshiba to say that the issue of the applicability of Section 24 of Republic Act No. 7916 was only raised for the first time on appeal before the appellate court. The said issue was adequately raised by the CIR in his Motion for Reconsideration before the CTA, and was even ruled upon by the tax court.

Hence, Toshiba filed the instant Petition for Review with the following assignment of errors –

5.1 THE HONORABLE COURT OF APPEALS ERRED WHEN IT RULED THAT [TOSHIBA], BEING A PEZA-REGISTERED ENTERPRISE, IS EXEMPT FROM VAT UNDER SECTION 24 OF R.A. 7916, AND FURTHER HOLDING THAT [TOSHIBA'S] EXPORT

[30] *Id.* at 52.

[31] *Id.* at 147-163.

SALES ARE EXEMPT TRANSACTIONS UNDER SECTION 109 OF THE TAX CODE.

5.2 THE HONORABLE COURT OF APPEALS ERRED WHEN IT FAILED TO DISMISS OUTRIGHT AND GAVE DUE COURSE TO [CIR'S] PETITION NOTWITHSTANDING [CIR'S] FAILURE TO ADEQUATELY RAISE IN ISSUE DURING THE TRIAL IN THE COURT OF TAX APPEALS THE APPLICABILITY OF SECTION 24 OF R.A. 7916 TO [TOSHIBA'S] CLAIM FOR REFUND.

5.3 THE HONORABLE COURT OF APPEALS ERRED WHEN [IT] RULED THAT THE COURT OF TAX APPEALS' FINDINGS, WITH REGARD [TOSHIBA'S] EXPORT SALES BEING ZERO RATED SALES FOR VAT PURPOSES, WERE BASED MERELY ON THE ADMISSIONS MADE BY [CIR'S] COUNSEL AND NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

5.4 THE HONORABLE COURT OF APPEALS ERRED WHEN IT REVERSED THE DECISION OF THE COURT OF TAX APPEALS GRANTING [TOSHIBA'S] CLAIM FOR REFUND[;][32]

and the following prayer –

WHEREFORE, premises considered, Petitioner TOSHIBA INFORMATION EQUIPMENT (PHILS.), INC. most respectfully prays that the decision and resolution of the Honorable Court of Appeals, reversing the decision of the CTA in CTA Case No. 5762, be set aside and further prays that a new one be rendered AFFIRMING AND UPHOLDING the Decision of the CTA promulgated on October 16, 2000 in CTA Case No. 5762.

Other reliefs, which the Honorable Court may deem just and equitable under the circumstances, are likewise prayed for.[33]

The Petition is impressed with merit.

The CIR did not timely raise before the CTA the issues on the VAT-exemptions of Toshiba and its export sales.

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[32] *Id.* at 17-18.

[33] *Id.* at 30.

Upon the failure of the CIR to timely plead and prove before the CTA the defenses or objections that Toshiba was VAT-exempt under Section 24 of Republic Act No. 7916, and that its export sales were VAT-exempt transactions under Section 103(q) of the Tax Code of 1977, as amended, the CIR is deemed to have waived the same.

During the pendency of CTA Case No. 5762, the proceedings before the CTA were governed by the Rules of the Court of Tax Appeals,[34] while the Rules of Court were applied suppletorily.[35]

Rule 9, Section 1 of the Rules of Court provides:

SECTION 1. *Defenses and objections not pleaded.* – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the

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[34] The RCTA was promulgated on September 10, 1955, following the enactment on June 16, 1954 of Republic Act No. 1125, otherwise known as An Act Creating the Court of Appeals. Republic Act No. 9282, which was enacted on March 30, 2004, amended Republic Act No. 1125 by expanding the jurisdiction of the CTA, elevating the same to the level of a collegiate court with special jurisdiction, and enlarging its membership. Accordingly, the Court approved on November 25, 2005 the Revised Rules of the Court of Tax Appeals (RRCTA). Thereafter, Republic Act No. 9503, which was enacted on June 12, 2008, further amended Republic Act No. 1125 by enlarging the organization structure of the CTA. As a result, the Court approved on September 16, 2008 the amendments to the 2005 RRCTA.

[35] Rule 16 of the RCTA is reproduced in full below:

RULE 16

APPLICABILITY OF THE RULES OF THE COURT OF FIRST INSTANCE

SECTION 1. The provisions of the Rules of Court applicable to proceedings before the Courts of First Instance shall, insofar as they may not be inconsistent with the provisions of Republic Act No. 1125 and of these rules, be applicable to cases pending before this Court, except that, in any case pending before it, the Court may, in the exercise of its discretion, fix a shorter period for the filing of pleadings and papers.

Under Batas Pambansa Blg. 129, otherwise known as The Judiciary Reorganization Act of 1980, the Court of First Instance became the Regional Trial Court.

pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

The CIR did not argue straight away in his Answer in CTA Case No. 5762 that Toshiba had no right to the credit/refund of its input VAT payments because the latter was VAT-exempt and its export sales were VAT-exempt transactions. The Pre-Trial Brief[36] of the CIR was equally bereft of such allegations or arguments. The CIR passed up the opportunity to prove the supposed VAT-exemptions of Toshiba and its export sales when the CIR chose not to present any evidence at all during the trial before the CTA.[37] He missed another opportunity to present the said issues before the CTA when he waived the submission of a Memorandum.[38] The CIR had waited until the CTA already rendered its Decision dated October 16, 2000 in CTA Case No. 5762, which granted the claim for credit/refund of Toshiba, before asserting in his Motion for Reconsideration that Toshiba was VAT-exempt and its export sales were VAT-exempt transactions.

The CIR did not offer any explanation as to why he did not argue the VAT-exemptions of Toshiba and its export sales before and during the trial held by the CTA, only doing so in his Motion for Reconsideration of the adverse CTA judgment. Surely, said defenses or objections were already available to the CIR when the CIR filed his Answer to the Petition for Review of Toshiba in CTA Case No. 5762.

It is axiomatic in pleadings and practice that no new issue in a case can be raised in a pleading which by due diligence could have been raised in previous pleadings.[39] The Court cannot

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[36] Records, pp. 29-32.

[37] Resolution dated May 10, 2000, signed by Presiding Judge Ernesto D. Acosta and Associate Judges Amancio Q. Saga and Ramon O. de Veyra; *id.* at 72.

[38] *Rollo,* p. 85.

[39] *Director of Lands v. Court of Appeals*, 363 Phil. 117, 128 (1999).

simply grant the plea of the CIR that the procedural rules be relaxed based on the general averment of the interest of substantive justice. It should not be forgotten that the first and fundamental concern of the rules of procedure is to secure a just determination of every action.[40] Procedural rules are designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules. While in certain instances, the Court allows a relaxation in the application of the rules, it never intends to forge a weapon for erring litigants to violate the rules with impunity. The liberal interpretation and application of rules apply only in proper cases of demonstrable merit and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. Party litigants and their counsel are well advised to abide by, rather than flaunt, procedural rules for these rules illumine the path of the law and rationalize the pursuit of justice.[41]

The CIR judicially admitted that Toshiba was VAT-registered and its export sales were subject to VAT at zero percent (0%) rate.

More importantly, the arguments of the CIR that Toshiba was VAT-exempt and the latter's export sales were VAT-exempt transactions are inconsistent with the explicit admissions of the CIR in the Joint Stipulation of Facts and Issues (Joint Stipulation) that Toshiba was a registered VAT entity and that it was subject to zero percent (0%) VAT on its export sales.

The Joint Stipulation was executed and submitted by Toshiba and the CIR upon being advised to do so by the CTA at the end of the pre-trial conference held on June 23, 1999.[42] The approval

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[40] *Commissioner of Internal Revenue v. A. Soriano Corporation*, 334 Phil. 965, 972 (1997).

[41] *Land Bank of the Philippines v. Natividad*, 497 Phil. 738, 744-745 (2005).

[42] Records, p. 33.

of the Joint Stipulation by the CTA, in its Resolution[43] dated July 12, 1999, marked the culmination of the pre-trial process in CTA Case No. 5762.

Pre-trial is an answer to the clarion call for the speedy disposition of cases. Although it was discretionary under the 1940 Rules of Court, it was made mandatory under the 1964 Rules and the subsequent amendments in 1997. It has been hailed as "the most important procedural innovation in Anglo-Saxon justice in the nineteenth century."[44]

The nature and purpose of a pre-trial have been laid down in Rule 18, Section 2 of the Rules of Court:

SECTION 2. *Nature and purpose*. – The pre-trial is mandatory. The court shall consider:

(a) The possibility of an amicable settlement or of a submission to alternative modes of dispute resolution;

(b) The simplification of the issues;

(c) The necessity or desirability of amendments to the pleadings;

(d) The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;

(e) The limitation of the number of witnesses;

(f) The advisability of a preliminary reference of issues to a commissioner;

(g) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist;

(h) The advisability or necessity of suspending the proceedings; and

(i) Such other matters as may aid in the prompt disposition of the action. (Emphasis ours.)

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[43] Signed by Presiding Judge Ernesto D. Acosta and Associate Judges Amancio Q. Saga and Ramon O. De Veyra, *id.* at 36.

[44] *Tiu v. Middleton*, 369 Phil. 829, 835 (1999).

The admission having been made in a stipulation of facts at pre-trial by the parties, it must be treated as a judicial admission.[45] Under Section 4, Rule 129 of the Rules of Court, a judicial admission requires no proof. The admission may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made. The Court cannot lightly set aside a judicial admission especially when the opposing party relied upon the same and accordingly dispensed with further proof of the fact already admitted. An admission made by a party in the course of the proceedings does not require proof.[46]

In the instant case, among the facts expressly admitted by the CIR and Toshiba in their CTA-approved Joint Stipulation are that Toshiba "is a duly registered value-added tax entity in accordance with Section 107 of the Tax Code, as amended[,]"[47] that "is subject to zero percent (0%) value-added tax on its export sales in accordance with then Section 100(a)(2)(A) of the Tax Code, as amended."[48] The CIR was bound by these admissions, which he could not eventually contradict in his Motion for Reconsideration of the CTA Decision dated October 16, 2000, by arguing that Toshiba was actually a VAT-exempt entity and its export sales were VAT-exempt transactions. Obviously, Toshiba could not have been **subject to VAT** and **exempt from VAT** at the same time. Similarly, the export sales of Toshiba could not have been **subject to zero percent (0%) VAT** and **exempt from VAT** as well.

The CIR cannot escape the binding effect of his judicial admissions.

The Court disagrees with the Court of Appeals when it ruled in its Decision dated August 29, 2002 that the CIR could not be bound by his admissions in the Joint Stipulation because (1)

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[45] *SCC Chemicals Corporation v. Court of Appeals*, 405 Phil. 514, 522-523 (2001).

[46] *Garcia v. Court of Appeals*, 327 Phil. 1097, 1113 (1996).

[47] Records, p. 34.

[48] *Id*.

the said admissions were "made through palpable mistake"[49] which, if countenanced, "would result in falsehood, unfairness and injustice";[50] and (2) the State could not be put in estoppel by the mistakes of its officials or agents. This ruling of the Court of Appeals is rooted in its conclusion that a "palpable mistake" had been committed by the CIR in the signing of the Joint Stipulation. However, this Court finds no evidence of the commission of a mistake, much more, of a palpable one.

The CIR does not deny that his counsel, Atty. Joselito F. Biazon, Revenue Attorney II of the BIR, signed the Joint Stipulation, together with the counsel of Toshiba, Atty. Patricia B. Bisda. Considering the presumption of regularity in the performance of official duty,[51] Atty. Biazon is presumed to have read, studied, and understood the contents of the Joint Stipulation before he signed the same. It rests on the CIR to present evidence to the contrary.

Yet, the Court observes that the CIR himself never alleged in his Motion for Reconsideration of the CTA Decision dated October 16, 2000, nor in his Petition for Review before the Court of Appeals, that Atty. Biazon committed a mistake in signing the Joint Stipulation. Since the CIR did not make such an allegation, neither did he present any proof in support thereof. The CIR began to aver the existence of a palpable mistake only after the Court of Appeals made such a declaration in its Decision dated August 29, 2002.

Despite the absence of allegation and evidence by the CIR, the Court of Appeals, on its own, concluded that the admissions of the CIR in the Joint Stipulation were due to a palpable mistake based on the following deduction –

> Scrutinizing the Answer filed by [the CIR], we rule that the Joint Stipulation of Facts and Issues signed by [the CIR] was made through palpable mistake. Quoting paragraph 4 of its Answer, [the CIR] states:

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[49] *Rollo,* p. 49.

[50] *Id.* at 51.

[51] Rule 131, Section 3(m) of the Rules of Court.

"4. He ADMITS the allegations contained in paragraph 5 of the petition only insofar as the cited provisions of Tax Code is concerned, but SPECIFICALLY DENIES the rest of the allegations therein for being mere opinions, arguments or gratuitous assertions on the part of [Toshiba] and/or because they are mere erroneous conclusions or interpretations of the quoted law involved, the truth of the matter being those stated hereunder

xxx xxx xxx"

And paragraph 5 of the petition for review filed by [Toshiba] before the CTA states:

"5. Petitioner is subject to zero percent (0%) value-added tax on its export sales in accordance with then Section 100(a)(2)(A) of the Tax Code x x x.

xxx xxx xxx"

As we see it, nothing in said Answer did [the CIR] admit that the export sales of [Toshiba] were indeed zero-rated transactions. At the least, what was admitted only by [the CIR] concerning paragraph 4 of his Answer, is the fact that the provisions of the Tax Code, as cited by [Toshiba] in its petition for review filed before the CTA were correct.[52]

The Court of Appeals provided no explanation as to why the admissions of the CIR in his Answer in CTA Case No. 5762 deserved more weight and credence than those he made in the Joint Stipulation. The appellate court failed to appreciate that the CIR, through counsel, Atty. Biazon, also signed the Joint Stipulation; and that absent evidence to the contrary, Atty. Biazon is presumed to have signed the Joint Stipulation willingly and knowingly, in the regular performance of his official duties. Additionally, the Joint Stipulation[53] of Toshiba and the CIR was a more recent pleading than the Answer[54] of the CIR. It was submitted by the parties after the pre-trial conference held by the CTA, and subsequently approved by the tax court. If

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[52] *Rollo,* pp. 49-50.

[53] Filed by the parties on July 7, 1999.

[54] Filed by the CIR on May 11, 1999.

there was any discrepancy between the admissions of the CIR in his Answer and in the Joint Stipulation, the more logical and reasonable explanation would be that the CIR changed his mind or conceded some points to Toshiba during the pre-trial conference which immediately preceded the execution of the Joint Stipulation. To automatically construe that the discrepancy was the result of a palpable mistake is a wide leap which this Court is not prepared to take without substantial basis.

The judicial admissions of the CIR in the Joint Stipulation are not intrinsically false, wrong, or illegal, and are consistent with the ruling on the VAT treatment of PEZA-registered enterprises in the previous Toshiba case.

There is no basis for believing that to bind the CIR to his judicial admissions in the Joint Stipulation – that Toshiba was a VAT-registered entity and its export sales were zero-rated VAT transactions – would result in "falsehood, unfairness and injustice." The judicial admissions of the CIR are not intrinsically false, wrong, or illegal. On the contrary, they are consistent with the ruling of this Court in a previous case involving the same parties, *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.) Inc.*[55] (*Toshiba case*), explaining the VAT treatment of PEZA-registered enterprises.

In the *Toshiba case*, Toshiba sought the refund of its unutilized input VAT **on its purchase of capital goods and services** for the first and second quarters of 1996, based on Section 106(b) of the Tax Code of 1977, as amended.[56] In the Petition at bar,

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[55] G.R. No. 150154, August 9, 2005, 466 SCRA 211, 230-231.

[56] SEC. 106. *Refunds or tax credits of creditable input tax.* –

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(b) *Capital goods.* – A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.

Toshiba is claiming refund of its unutilized input VAT **on its local purchase of goods and services which are attributable to its export sales** for the first and second quarters of 1997, pursuant to Section 106(a), in relation to Section 100(a)(1)(A)(i) of the Tax Code of 1977, as amended, which read –

SEC. 106. *Refunds or tax credits of creditable input tax*. – (a) Any VAT-registered person, whose sales are zero-rated or effectively zero-rated, may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 100(a)(2)(A)(i),(ii) and (b) and Section 102(b)(1) and (2), the acceptable foreign currency exchange proceeds thereof has been duly accounted for in accordance with the regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties of services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume sales.

SEC. 100. *Value-added tax on sale of goods or properties*. – (a) *Rate and base of tax*. – x x x

xxx xxx xxx

(2) The following sales by VAT-registered persons shall be subject to 0%:

(A) Export sales. – The term "export sales" means:

(i) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipnas (BSP).

Despite the difference in the legal bases for the claims for credit/refund in the *Toshiba case* and the case at bar, the CIR

raised the very same defense or objection in both – that Toshiba and its transactions were VAT-exempt. Hence, the ruling of the Court in the former case is relevant to the present case.

At the outset, the Court establishes that there is a basic distinction in the VAT-exemption of a person and the VAT-exemption of a transaction —

> It would seem that petitioner CIR failed to differentiate between VAT-exempt transactions from VAT-exempt entities. In the case of *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, this Court already made such distinction —
>
> > An exempt transaction, on the one hand, involves goods or services which, by their nature, are specifically listed in and expressly exempted from the VAT under the Tax Code, without regard to the tax status – VAT-exempt or not – of the party to the transaction…
> >
> > An exempt party, on the other hand, is a person or entity granted VAT exemption under the Tax Code, a special law or an international agreement to which the Philippines is a signatory, and by virtue of which its taxable transactions become exempt from VAT x x x.[57]

In effect, the CIR is opposing the claim for credit/refund of input VAT of Toshiba on two grounds: (1) that Toshiba was a VAT-exempt entity; and (2) that its export sales were VAT-exempt transactions.

It is now a settled rule that based on the Cross Border Doctrine, PEZA-registered enterprises, such as Toshiba, are VAT-exempt and no VAT can be passed on to them. The Court explained in the *Toshiba case* that —

> PEZA-registered enterprise, which would necessarily be located within ECOZONES, are VAT-exempt entities, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, because of Section 8 of

[57] *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.) Inc.*, *supra* note 55 at 222-223, citing *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, 491 Phil. 317, 335 (2005).

the same statute which establishes the fiction that ECOZONES are foreign territory.

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The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT.

Applying said doctrine to the sale of goods, properties, and services to and from the ECOZONES, the BIR issued Revenue Memorandum Circular (RMC) No. 74-99, on 15 October 1999. Of particular interest to the present Petition is Section 3 thereof, which reads –

> SECTION 3. **Tax Treatment of Sales Made by a VAT Registered Supplier from the Customs Territory, to a PEZA Registered Enterprise.** –
>
> (1) If the Buyer is a PEZA registered enterprise which is subject to the 5% special tax regime, in lieu of all taxes, except real property tax, pursuant to R.A. No. 7916, as amended:
>
> (a) **Sale of goods (*i.e.*, merchandise).** – This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916, in relation to ART. 77(2) of the Omnibus Investments Code.
>
> (b) **Sale of service.** – This shall be treated subject to zero percent (0%) VAT under the "cross border doctrine" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.
>
> (2) If Buyer is a PEZA registered enterprise which is not embraced by the 5% special tax regime, hence, subject to taxes under the NIRC, *e.g.*, Service Establishments which are subject to taxes under the NIRC rather than the 5% special tax regime:
>
> (a) **Sale of goods (*i.e.*, merchandise).** – This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec.

23 of R.A. No. 7916 in relation to ART. 77(2) of the Omnibus Investments Code.

(b) **Sale of Service.** – This shall be treated subject to zero percent (0%) VAT under the "cross border doctrine" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.

(3) In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to ART. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. No. 7916 and the "Cross Border Doctrine" of the VAT system.

This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of the issuance of this Circular.

Indubitably, no output VAT may be passed on to an ECOZONE enterprise since it is a VAT-exempt entity. x x x.[58]

The Court, nevertheless, noted in the *Toshiba case* that the rule which considers any sale by a supplier from the Customs Territory to a PEZA-registered enterprise as export sale, which should not be burdened by output VAT, was only clearly established on **October 15, 1999**, upon the issuance by the BIR of **RMC No. 74-99**. Prior to October 15, 1999, whether

[58] *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.) Inc., id.* at 223-226.

a PEZA-registered enterprise was exempt or subject to VAT depended on the type of fiscal incentives availed of by the said enterprise.[59] The old rule, then followed by the BIR, and recognized and affirmed by the CTA, the Court of Appeals, and this Court, was described as follows —

> According to the old rule, Section 23 of Rep. Act No. 7916, as amended, gives the PEZA-registered enterprise the option to choose between two sets of fiscal incentives: (a) The five percent (5%) preferential tax rate on its gross income under Rep. Act No. 7916, as amended; and (b) the income tax holiday provided under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, as amended.
>
> The five percent (5%) preferential tax rate on gross income under Rep. Act No. 7916, as amended, is in lieu of all taxes. Except for real property taxes, no other national or local tax may be imposed on a PEZA-registered enterprise availing of this particular fiscal incentive, not even an indirect tax like VAT.
>
> Alternatively, Book VI of Exec. Order No. 226, as amended, grants income tax holiday to registered pioneer and non-pioneer enterprises for six-year and four-year periods, respectively. Those availing of this incentive are exempt only from income tax, but shall be subject to all other taxes, including the ten percent (10%) VAT.
>
> This old rule clearly did not take into consideration the Cross Border Doctrine essential to the VAT system or the fiction of the ECOZONE as a foreign territory. It relied totally on the choice of fiscal incentives of the PEZA-registered enterprise. Again, for emphasis, the old VAT rule for PEZA-registered enterprises was based on their choice of fiscal incentives: (1) If the PEZA-registered enterprise chose the five percent (5%) preferential tax on its gross income, in lieu of all taxes, as provided by Rep. Act No. 7916, as amended, then it would be VAT-exempt; (2) If the PEZA-registered enterprise availed of the income tax holiday under Exec. Order No. 226, as amended, it shall be subject to VAT at ten percent (10%). Such distinction was abolished by RMC No. 74-99, which categorically declared that all sales of goods, properties, and services made by a VAT-registered supplier from the Customs Territory to an ECOZONE enterprise shall be subject to VAT, at zero percent (0%) rate, regardless of the latter's type or class of PEZA registration;

[59] *Id.* at 229-230.

and, thus, affirming the nature of a PEZA-registered or an ECOZONE enterprise as a VAT-exempt entity.[60]

To recall, Toshiba is herein claiming the refund of unutilized input VAT payments on its local purchases of goods and services attributable to its export sales for the **first and second quarters of 1997**. Such export sales took place **before October 15, 1999**, when the old rule on the VAT treatment of PEZA-registered enterprises still applied. Under this old rule, it was not only possible, but even acceptable, for Toshiba, availing itself of the income tax holiday option under Section 23 of Republic Act No. 7916, in relation to Section 39 of the Omnibus Investments Code of 1987, to be subject to VAT, both indirectly (as purchaser to whom the seller shifts the VAT burden) and directly (as seller whose sales were subject to VAT, either at ten percent [10%] or zero percent [0%]).

A VAT-registered seller of goods and/or services who made zero-rated sales can claim tax credit or refund of the input VAT paid on its purchases of goods, properties, or services relative to such zero-rated sales, in accordance with Section 4.102-2 of Revenue Regulations No. 7-95, which provides —

> Sec. 4.102-2. *Zero-rating*. – (a) *In general*. — A zero-rated sale by a VAT-registered person, which is a taxable transaction for VAT purposes, shall not result in any output tax. However, the input tax on his purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these regulations.

The BIR, as late as July 15, 2003, when it issued RMC No. 42-2003, accepted applications for credit/refund of input VAT on purchases prior to RMC No. 74-99, filed by PEZA-registered enterprises which availed themselves of the income tax holiday. The BIR answered Question Q-5(1) of RMC No. 42-2003 in this wise —

> Q-5: Under Revenue Memorandum Circular (RMC) No. 74-99, purchases by PEZA-registered firms automatically qualify

[60] *Id.* at 230-231.

as zero-rated without seeking prior approval from the BIR effective October 1999.

1) Will the OSS-DOF Center **still accept applications from PEZA-registered claimants** who were allegedly billed VAT by their suppliers before and during the effectivity of the RMC by issuing VAT invoices/receipts?

xxx xxx xxx

A-5(1): If the PEZA-registered enterprise is paying the 5% preferential tax in lieu of all other taxes, the said PEZA-registered taxpayer cannot claim TCC or refund for the VAT paid on purchases. However, **if the taxpayer is availing of the income tax holiday, it can claim VAT credit** provided:

a. The taxpayer-claimant is **VAT-registered**;

b. Purchases are evidenced by **VAT invoices or receipts**, whichever is applicable, with shifted VAT to the purchaser **prior to the implementation of RMC No. 74-99**; and

c. The **supplier issues a sworn statement** under penalties of perjury that it shifted the VAT and declared the sales to the PEZA-registered purchaser as taxable sales in its VAT returns.

For invoices/receipts issued upon the effectivity of RMC No. 74-99, the claims for input VAT by PEZA-registered companies, regardless of the type or class of PEZA-registration, should be denied. (Emphases ours.)

Consequently, the CIR cannot herein insist that all PEZA-registered enterprises are VAT-exempt in every instance. RMC No. 42-2003 contains an express acknowledgement by the BIR that prior to RMC No. 74-99, there were PEZA-registered enterprises liable for VAT and entitled to credit/refund of input VAT paid under certain conditions.

This Court already rejected in the *Toshiba case* the argument that sale transactions of a PEZA-registered enterprise were VAT-exempt under Section 103(q) of the Tax Code of 1977, as amended, ratiocinating that —

Section 103(q) of the Tax Code of 1977, as amended, relied upon by petitioner CIR, relates to VAT-exempt transactions. These are transactions exempted from VAT by special laws or international agreements to which the Philippines is a signatory. Since such transactions are not subject to VAT, the sellers cannot pass on any output VAT to the purchasers of goods, properties, or services, and they may not claim tax credit/refund of the input VAT they had paid thereon.

Section 103(q) of the Tax Code of 1977, as amended, cannot apply to transactions of respondent Toshiba because although the said section recognizes that transactions covered by special laws may be exempt from VAT, the very same section provides that those falling under Presidential Decree No. 66 are not. **Presidential Decree No. 66, creating the Export Processing Zone Authority (EPZA), is the precursor of Rep. Act No. 7916, as amended, under which the EPZA evolved into the PEZA. Consequently, the exception of Presidential Decree No. 66 from Section 103(q) of the Tax Code of 1977, as amended, extends likewise to Rep. Act No. 7916, as amended.**[61] (Emphasis ours.)

In light of the judicial admissions of Toshiba, the CTA correctly confined itself to the other factual issues submitted for resolution by the parties.

In accord with the admitted facts – that Toshiba was a VAT-registered entity and that its export sales were zero-rated transactions – the stated issues in the Joint Stipulation were limited to other factual matters, particularly, on the compliance by Toshiba with the rest of the requirements for credit/refund of input VAT on zero-rated transactions. Thus, during trial, Toshiba concentrated on presenting evidence to establish that it incurred ₱3,875,139.65 of input VAT for the first and second quarters of 1997 which were directly attributable to its export sales; that said amount of input VAT were not carried over to the succeeding quarters; that said amount of input VAT has not been applied or offset against any output VAT liability; and

[61] *Id.* at 223.

that said amount of input VAT was properly substantiated by official receipts and invoices.

After what truly appears to be an exhaustive review of the evidence presented by Toshiba, the CTA made the following findings –

(1) The amended quarterly VAT returns of Toshiba for 1997 showed that it made no other sales, except zero-rated export sales, for the entire year, in the sum of ₱2,083,305,000.00 for the first quarter and ₱5,411,372,000.00 for the second quarter. That being the case, all input VAT allegedly incurred by Toshiba for the first two quarters of 1997, in the amount of ₱3,875,139.65, was directly attributable to its zero-rated sales for the same period.

(2) Toshiba did carry-over the ₱3,875,139.65 input VAT it reportedly incurred during the first two quarters of 1997 to succeeding quarters, until the first quarter of 1999. Despite the carry-over of the subject input VAT of ₱3,875,139.65, the claim of Toshiba was not affected because it later on deducted the said amount as "VAT Refund/TCC Claimed" from its total available input VAT of ₱6,841,468.17 for the first quarter of 1999.

(3) Still, the CTA could not allow the credit/refund of the total input VAT of ₱3,875,139.65 being claimed by Toshiba because not all of said amount was actually incurred by the company and duly substantiated by invoices and official receipts. From the **₱3,875,139.65** claim, the CTA **deducted** the amounts of (a) **₱189,692.92**, which was in excess of the ₱3,685,446.23 input VAT Toshiba originally claimed in its application for credit/refund filed with the DOF One-Stop Shop; (b) **₱396,882.58**, which SGV & Co., the commissioned CPA, disallowed for being improperly substantiated, *i.e.*, supported only by provisional acknowledgement receipts, or by documents other than official receipts, or not supported by TIN or TIN VAT or by any document at all; (c) **₱1,887,545.65**, which the CTA itself verified as not being substantiated in accordance with Section 4.104-5[62] of

[62] SECTION 4.104-5. *Substantiation of claims for input tax credit.* – (a) Input taxes shall be allowed only if the domestic purchase of goods, properties

Revenue Regulations No. 7-95, in relation to Sections 108[63] and 238[64] of the Tax Code of 1977, as amended; and (d)

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or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Sections 108(a) and 237 of the Code. Input tax on purchases of real property should be supported by a copy of the public instrument, *i.e.*, deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with the VAT receipt issued by the seller.

A cash register machine tape issued to a VAT-registered buyer by a VAT-registered seller from a machine duly registered with the BIR in lieu of the regular sales invoice, shall constitute valid proof of substantiation of tax credit only if the name and TIN of the purchaser is indicated in the receipt and authenticated by a duly authorized representative of the seller.

(b) Input tax on importations shall be supported with the import entry or other equivalent document showing actual payment of VAT on the imported goods.

(c) Presumptive input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.

(d) Input tax on "deemed sale" transactions shall be substantiated with the required invoices.

(e) Input tax from payments made to non-residents shall be supported by a copy of the VAT declaration/return filed by the resident licensee/lessee in behalf of the non-resident licensor/lessor evidencing remittance of the VAT due.

[63] SEC. 108. *Invoicing and accounting requirements for VAT-registered persons.* – (a) *Invoicing requirements*. – A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 238, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

(b) *Accounting requirements.* – Notwithstanding the provision of Section 223, all persons subject to the value-added tax under Sections 100 and 102 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance.

[64] SEC. 238. *Issuance of receipts or sales or commercial invoices.* – All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at ₱25.00 or more, issue duly

₱15,736.42, which Toshiba already applied to its output VAT liability for the fourth quarter of 1998.

(4) Ultimately, Toshiba was entitled to the credit/refund of unutilized input VAT payments attributable to its zero-rated sales in the amounts of ₱1,158,016.82 and ₱227,265.26, for the first and second quarters of 1997, respectively, or in the total amount of **₱1,385,282.08**.

Since the aforementioned findings of fact of the CTA are borne by substantial evidence on record, unrefuted by the CIR, and untouched by the Court of Appeals, they are given utmost respect by this Court.

The Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its functions, is dedicated exclusively to the resolution of tax problems and has accordingly developed an expertise on the subject unless there has been an abuse or improvident exercise of authority.[65] In *Barcelon, Roxas*

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registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however*, That in the case of sales, receipts or transfers in the amount of ₱100.00 or more, or, regardless of amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer, or client: *Provided, further*, That where the purchaser is a VAT-registered person, in addition to the information herein required the invoice or receipt shall further show the taxpayer's identification number of the purchaser.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of 3 years from the close of the taxable year in which such invoice or receipt was issued while the duplicate shall be kept and preserved by the issuer, also in his place of business for a like period.

The Commissioner may, in meritorious cases exempt any person subject to an internal revenue tax from compliance with the provisions of this section.

[65] *Commissioner of Internal Revenue v. Cebu Toyo Corporation*, 491 Phil. 625, 640 (2005).

Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue,[66] this Court more explicitly pronounced –

> Jurisprudence has consistently shown that this Court accords the findings of fact by the CTA with the highest respect. In *Sea-Land Service Inc. v. Court of Appeals* [G.R. No. 122605, 30 April 2001, 357 SCRA 441, 445-446], this Court recognizes that the Court of Tax Appeals, which by the very nature of its function is dedicated exclusively to the consideration of tax problems, has necessarily developed an expertise on the subject, and its conclusions will not be overturned unless there has been an abuse or improvident exercise of authority. Such findings can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the Tax Court. In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect.

WHEREFORE, the assailed Decision dated August 29, 2002 and the Resolution dated February 19, 2003 of the Court of Appeals in CA-G.R. SP No. 63047 are *REVERSED* and *SET ASIDE*, and the Decision dated October 16, 2000 of the Court of Tax Appeals in CTA Case No. 5762 is *REINSTATED.* Respondent Commissioner of Internal Revenue is *ORDERED* to *REFUND* or, in the alternative, to *ISSUE* a *TAX CREDIT CERTIFICATE* in favor of petitioner Toshiba Information Equipment (Phils.), Inc. in the amount of ₱1,385,282.08, representing the latter's unutilized input VAT payments for the first and second quarters of 1997. No pronouncement as to costs.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio Morales, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[66] G.R. No. 150764, August 7, 2006, 498 SCRA 126, 135-136.

SECOND DIVISION

[G.R. No. 160506. March 9, 2010]

JOEB M. ALIVIADO, ARTHUR CORPUZ, ERIC ALIVIADO, MONCHITO AMPELOQUIO, ABRAHAM BASMAYOR, JONATHAN MATEO, LORENZO PLATON, JOSE FERNANDO GUTIERREZ, ESTANISLAO BUENAVENTURA, LOPE SALONGA, FRANZ DAVID, NESTOR IGNACIO, JULIO REY, RUBEN MARQUEZ, JR., MAXIMINO PASCUAL, ERNESTO CALANAO, ROLANDO ROMASANTA, RHUEL AGOO, BONIFACIO ORTEGA, ARSENIO SORIANO, JR., ARNEL ENDAYA, ROBERTO ENRIQUEZ, NESTOR BAQUILA, EDGARDO QUIAMBAO, SANTOS BACALSO, SAMSON BASCO, ALADINO GREGORO, JR., EDWIN GARCIA, ARMANDO VILLAR, EMIL TAWAT, MARIO P. LIONGSON, CRESENTE J. GARCIA, FERNANDO MACABENTE, MELECIO CASAPAO, REYNALDO JACABAN, FERDINAND SALVO, ALSTANDO MONTOS, RAINER N. SALVADOR, RAMIL REYES, PEDRO G. ROY, LEONARDO P. TALLEDO, ENRIQUE F. TALLEDO, WILLIE ORTIZ, ERNESTO SOYOSA, ROMEO VASQUEZ, JOEL BILLONES, ALLAN BALTAZAR, NOLI GABUYO, EMMANUEL E. LABAN, RAMIR E. PIAT, RAUL DULAY, TADEO DURAN, JOSEPH BANICO, ALBERT LEYNES, ANTONIO DACUNA, RENATO DELA CRUZ, ROMEO VIERNES, JR., ELAIS BASEO, WILFREDO TORRES, MELCHOR CARDANO, MARIANO NARANIAN, JOHN SUMERGIDO, ROBERTO ROSALES, GERRY C. GATPO, GERMAN N. GUEVARRA, GILBERT Y. MIRANDA, RODOLFO C. TOLEDO, ARNOLD D. LASTONA, PHILIP M. LOZA, MARIO N. CULDAYON, ORLANDO P. JIMENEZ, FRED P. JIMENEZ, RESTITUTO C. PAMINTUAN, JR., ROLANDO J. DE ANDRES, ARTUZ BUSTENERA, ROBERTO B. CRUZ, ROSEDY O. YORDAN, DENNIS

DACASIN, ALEJANDRINO ABATON, and ORLANDO S. BALANGUE, *petitioners, vs.* **PROCTER & GAMBLE PHILS., INC., and PROMM-GEM, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACTS OF THE LOWER COURTS AND QUASI-JUDICIAL AGENCIES; GENERALLY NOT REVIEWED BY THE SUPREME COURT; EXCEPTION.— As a rule, the Court refrains from reviewing factual assessments of lower courts and agencies exercising adjudicative functions, such as the NLRC. Occasionally, however, the Court is constrained to wade into factual matters when there is insufficient or insubstantial evidence on record to support those factual findings; or when too much is concluded, inferred or deduced from the bare or incomplete facts appearing on record.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR-ONLY CONTRACTING, NOT ALLOWED; ELEMENTS.— Clearly, the law and its implementing rules allow contracting arrangements for the performance of specific jobs, works or services. Indeed, it is management prerogative to farm out any of its activities, regardless of whether such activity is peripheral or core in nature. However, in order for such outsourcing to be valid, it must be made to an *independent contractor* because the current labor rules expressly prohibit labor-only contracting. To emphasize, there is labor-only contracting when the contractor or sub-contractor merely recruits, supplies or places workers to perform a job, work or service for a principal and any of the following elements are present: i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or ii) The contractor does not exercise the right to control over the performance of the work of the contractual employee.

3. ID.; ID.; ID.; WHEN PRESENT, THE LABOR CODE ITSELF ESTABLISHES AN EMPLOYER-EMPLOYEE

RELATIONSHIP; RATIONALE.— "Where 'labor-only' contracting exists, the Labor Code itself establishes an employer-employee relationship between the employer and the employees of the 'labor-only' contractor." The statute establishes this relationship for a comprehensive purpose: to prevent a circumvention of labor laws. The contractor is considered merely an agent of the principal employer and the latter is responsible to the employees of the labor-only contractor as if such employees had been directly employed by the principal employer.

4. ID.; ID.; TERMINATION OF EMPLOYMENT BY EMPLOYER; MISCONDUCT AS A GROUND; REQUIREMENTS.— Misconduct has been defined as improper or wrong conduct; the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful in character implying wrongful intent and not mere error of judgment. The misconduct to be serious must be of such grave and aggravated character and not merely trivial and unimportant. To be a just cause for dismissal, such misconduct (a) must be serious; (b) must relate to the performance of the employee's duties; and (c) must show that the employee has become unfit to continue working for the employer. In other words, in order to constitute serious misconduct which will warrant the dismissal of an employee under paragraph (a) of Article 282 of the Labor Code, it is not sufficient that the act or conduct complained of has violated some established rules or policies. It is equally important and required that the act or conduct must have been performed with wrongful intent. In the instant case, petitioners-employees of Promm-Gem may have committed an error of judgment in claiming to be employees of P&G, but it cannot be said that they were motivated by any wrongful intent in doing so. As such, we find them guilty of only simple misconduct for assailing the integrity of Promm-Gem as a legitimate and independent promotion firm. A misconduct which is not serious or grave, as that existing in the instant case, cannot be a valid basis for dismissing an employee.

5. ID.; ID.; ID.; LOST OF TRUST AND CONFIDENCE; DEFINED AND CONSTRUED.— Meanwhile, loss of trust and confidence, as a ground for dismissal, must be based on the willful breach of the trust reposed in the employee by his employer. Ordinary breach will not suffice. A breach of trust

is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. Loss of trust and confidence, as a cause for termination of employment, is premised on the fact that the employee concerned holds a position of responsibility or of trust and confidence. As such, he must be invested with confidence on delicate matters, such as custody, handling or care and protection of the property and assets of the employer. And, in order to constitute a just cause for dismissal, the act complained of must be work-related and must show that the employee is unfit to continue to work for the employer.

6. ID.; ID.; ID.; *THE ONUS PROBANDI* TO PROVE LAWFULNESS OF THE DISMISSAL RESTS WITH THE EMPLOYER.— While Promm-Gem had complied with the procedural aspect of due process in terminating the employment of petitioners-employees, *i.e.*, giving two notices and in between such notices, an opportunity for the employees to answer and rebut the charges against them, it failed to comply with the substantive aspect of due process as the acts complained of neither constitute serious misconduct nor breach of trust. Hence, the dismissal is illegal. x x x Going back to the matter of dismissal, it must be emphasized that the *onus probandi* to prove the lawfulness of the dismissal rests with the employer. In termination cases, the burden of proof rests upon the employer to show that the dismissal is for just and valid cause. In the instant case, P&G failed to discharge the burden of proving the legality and validity of the dismissals of those petitioners who are considered its employees. Hence, the dismissals necessarily were not justified and are therefore illegal.

7. ID.; ID.; ID.; ILLEGAL DISMISSAL; WHEN AWARD OF DAMAGES IS PROPER.— Moral and exemplary damages are recoverable where the dismissal of an employee was attended by bad faith or fraud or constituted an act oppressive to labor or was done in a manner contrary to morals, good customs or public policy. With regard to the employees of Promm-Gem, there being no evidence of bad faith, fraud or any oppressive act on the part of the latter, we find no support for the award of damages. As for P&G, the records show that it dismissed its employees through SAPS in a manner oppressive to labor. The sudden and peremptory barring of the concerned

petitioners from work, and from admission to the work place, after just a one-day verbal notice, *and* for no valid cause bellows oppression and utter disregard of the right to due process of the concerned petitioners. Hence, an award of moral damages is called for.

8. ID.; ID.; ID.; ID.; REINSTATEMENT WITHOUT LOSS OF SENIORITY RIGHTS; WHEN PROPER.— [U]nder Article 279 of the Labor Code, an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges, inclusive of allowances, and other benefits or their monetary equivalent from the time the compensation was withheld up to the time of actual reinstatement. Hence, all the petitioners, having been illegally dismissed are entitled to reinstatement without loss of seniority rights and with full back wages and other benefits from the time of their illegal dismissal up to the time of their actual reinstatement.

APPEARANCES OF COUNSEL

Nenita C. Mahinay for petitioners.

Angara Abello Concepcion Regala and Cruz for Procter & Gamble Phils., Inc.

D E C I S I O N

DEL CASTILLO, *J.*:

Labor laws expressly prohibit "labor-only" contracting. To prevent its circumvention, the Labor Code establishes an employer-employee relationship between the employer and the employees of the 'labor-only' contractor.

The instant petition for review assails the March 21, 2003 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 52082 and its October 20, 2003 Resolution[2] denying the motions for

[1] *Rollo*, pp. 86-95; penned by Associate Justice Edgardo P. Cruz and concurred in by Associate Justices Salvador J. Valdez, Jr. and Mario L. Guariña III.

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

reconsideration separately filed by petitioners and respondent Procter & Gamble Phils. Inc. (P&G). The appellate court affirmed the July 27, 1998 Decision of the National Labor Relations Commission (NLRC), which in turn affirmed the November 29, 1996 Decision[3] of the Labor Arbiter. All these decisions found Promm-Gem, Inc. (Promm-Gem) and Sales and Promotions Services (SAPS) to be legitimate independent contractors and the employers of the petitioners.

Factual Antecedents

Petitioners worked as merchandisers of P&G from various dates, allegedly starting as early as 1982 or as late as June 1991, to either May 5, 1992 or March 11, 1993, more specifically as follows:

Name	Date Employed	Date Dismissed
1. Joeb M. Aliviado	November, 1985	May 5, 1992
2. Arthur Corpuz	1988	March 11, 1993
3. Eric Aliviado	1985	March 11, 1993
4. Monchito Ampeloquio	September, 1988	March 11, 1993
5. Abraham Basmayor[, Jr.]	1987	March 11, 1993
6. Jonathan Mateo	May, 1988	March 11, 1993
7. Lorenzo Platon	1985	March 11, 1993
8. Jose Fernando Gutierrez	1988	May 5, 1992
9. Estanislao Buenaventura	June, 1988	March 11, 1993
10. Lope Salonga	1982	March 11, 1993
11. Franz David	1989	March 11, 1993
12. Nestor Ignacio	1982	March 11, 1993
13. Julio Rey	1989	May 5, 1992
14. Ruben [Vasquez], Jr.	1985	May 5, 1992
15. Maximino Pascual	1990	May 5, 1992
16. Ernesto Calanao[, Jr.]	1987	May 5, 1992
17. Rolando Romasanta	1983	March 11, 1993
18. [Roehl] Agoo	1988	March 11, 1993
19. Bonifacio Ortega	1988	March 11, 1993
20. Arsenio Soriano, Jr.	1985	March 11, 1993
21. Arnel Endaya	1983	March 11, 1993
22. Roberto Enriquez	December, 1988	March 11, 1993

[3] *Id.* at 298-312.

23. Nestor [Es]quila	1983	May 5, 1992
24. Ed[g]ardo Quiambao	1989	March 11, 1993
25. Santos Bacalso	1990	March 11, 1993
26. Samson Basco	1984	March 11, 1993
27. Aladino Gregor[e], Jr.	1980	May 5, 1992
28. Edwin Garcia	1987	May 5, 1992
29. Armando Villar	1990	May 5, 1992
30. Emil Tawat	1988	March 11, 1993
31. Mario P. Liongson	1991	May 5, 1992
32. Cresente J. Garcia	1984	March 11, 1993
33. Fernando Macabent[a]	1990	May 5, 1992
34. Melecio Casapao	1987	March 11, 1993
35. Reynaldo Jacaban	1990	May 5, 1992
36. Ferdinand Salvo	1985	May 5, 1992
37. Alstando Montos	1984	March 11, 1993
38. Rainer N. Salvador	1984	May 5, 1992
39. Ramil Reyes	1984	March 11, 1993
40. Pedro G. Roy	1987	
41. Leonardo [F]. Talledo	1985	March 11, 1993
42. Enrique [F]. Talledo	1988	March 11, 1993
43. Willie Ortiz	1987	May 5, 1992
44. Ernesto Soyosa	1988	May 5, 1992
45. Romeo Vasquez	1985	March 11, 1993
46. Joel Billones	1987	March 11, 1993
47. Allan Baltazar	1989	March 11, 1993
48. Noli Gabuyo	1991	March 11, 1993
49. Emmanuel E. Laban	1987	May 5, 1992
50. Ramir[o] E. [Pita]	1990	May 5, 1992
51. Raul Dulay	1988	May 5, 1992
52. Tadeo Duran[o]	1988	May 5, 1992
53. Joseph Banico	1988	March 11, 1993
54. Albert Leynes	1990	May 5, 1992
55. Antonio Dacu[m]a	1990	May 5, 1992
56. Renato dela Cruz	1982	
57. Romeo Viernes, Jr.	1986	
58. El[ia]s Bas[c]o	1989	
59. Wilfredo Torres	1986	May 5, 1992
60. Melchor Carda[ñ]o	1991	May 5, 1992
61. [Marino] [Maranion]	1989	May 5, 1992
62. John Sumergido	1987	May 5, 1992

63. Roberto Rosales	May,	1987	May 5, 1992
64. Gerry [G]. Gatpo	November,	1990	March 11, 1993
65. German N. Guevara	May,	1990	March 11, 1993
66. Gilbert Y. Miranda	June,	1991	March 11, 1993
67. Rodolfo C. Toledo[, Jr.]	May 14,	1991	March 11, 1993
68. Arnold D. [Laspoña]	June	1991	March 11, 1993
69. Philip M. Loza	March 5,	1992	March 11, 1993
70. Mario N. C[o]ldayon	May 14,	1991	March 11, 1993
71. Orlando P. Jimenez	November 6,	1992	March 11, 1993
72. Fred P. Jimenez	September,	1991	March 11, 1993
73. Restituto C. Pamintuan, Jr.	March 5,	1992	March 11, 1993
74. Rolando J. de Andres	June,	1991	March 11, 1993
75. Artuz Bustenera[, Jr.]	December,	1989	March 11, 1993
76. Roberto B. Cruz	May 4,	1990	March 11, 1993
77. Rosedy O. Yordan	June,	1991	May 5, 1992
78. Dennis Dacasin	May.	1990	May 5, 1992
79. Alejandrino Abaton		1988	May 5, 1992
80. Orlando S. Balangue	March,	1989	March 11, 1993[4]

They all individually signed employment contracts with either Promm-Gem or SAPS for periods of more or less five months at a time.[5] They were assigned at different outlets, supermarkets and stores where they handled all the products of P&G. They received their wages from Promm-Gem or SAPS.[6]

SAPS and Promm-Gem imposed disciplinary measures on erring merchandisers for reasons such as habitual absenteeism, dishonesty or changing day-off without prior notice.[7]

P&G is principally engaged in the manufacture and production of different consumer and health products, which it sells on a wholesale basis to various supermarkets and distributors.[8] To enhance consumer awareness and acceptance of the products,

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[4] *Id.* at 30-31.

[5] *Id.* at 434-435.

[6] *Id.* at 438-440.

[7] *Id.* at 441-442.

[8] *Id.* at 105.

P&G entered into contracts with Promm-Gem and SAPS for the promotion and merchandising of its products.[9]

In December 1991, petitioners filed a complaint[10] against P&G for regularization, service incentive leave pay and other benefits with damages. The complaint was later amended[11] to include the matter of their subsequent dismissal.

Ruling of the Labor Arbiter

On November 29, 1996, the Labor Arbiter dismissed the complaint for lack of merit and ruled that there was no employer-employee relationship between petitioners and P&G. He found that the selection and engagement of the petitioners, the payment of their wages, the power of dismissal and control with respect to the means and methods by which their work was accomplished, were all done and exercised by Promm-Gem/SAPS. He further found that Promm-Gem and SAPS were legitimate independent job contractors. The dispositive portion of his Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered Dismissing the above-entitled cases against respondent Procter & Gamble (Phils.), Inc. for lack of merit.
>
> SO ORDERED.[12]

Ruling of the NLRC

Appealing to the NLRC, petitioners disputed the Labor Arbiter's findings. On July 27, 1998, the NLRC rendered a Decision[13] disposing as follows:

> WHEREFORE, premises considered, the appeal of complainants is hereby DISMISSED and the decision appealed from AFFIRMED.
>
> SO ORDERED.[14]

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[9] *Id.* at 406-414.

[10] *Id.* at 158-164.

[11] Records, Vol. I, pp. 345-346, 373-392; Records, Vol. II, pp. 396-412.

[12] *Rollo*, pp. 112-113.

[13] *Id.* at 115-135.

[14] *Id.* at 135.

Petitioners filed a motion for reconsideration but the motion was denied in the November 19, 1998 Resolution.[15]

Ruling of the Court of Appeals

Petitioners then filed a petition for *certiorari* with the CA, alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Labor Arbiter and the NLRC. However, said petition was also denied by the CA which disposed as follows:

> WHEREFORE, the decision of the National Labor Relations Commission dated July 27, 1998 is AFFIRMED with the MODIFICATION that respondent Procter & Gamble Phils., Inc. is ordered to pay service incentive leave pay to petitioners.
>
> SO ORDERED.[16]

Petitioners filed a motion for reconsideration but the motion was also denied. Hence, this petition.

Issues

Petitioners now come before us raising the following issues:

I.

WHETHER X X X THE HONORABLE COURT OF APPEALS HAS COMMITTED [A] REVERSIBLE ERROR WHEN IT DID NOT FIND THE PUBLIC RESPONDENTS TO HAVE ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN RENDERING THE QUESTIONED JUDGMENT WHEN, OBVIOUSLY, THE PETITIONERS WERE ABLE TO PROVE AND ESTABLISH THAT RESPONDENT PROCTER & GAMBLE PHILS., INC. IS THEIR EMPLOYER AND THAT THEY WERE ILLEGALLY DISMISSED BY THE FORMER.

II.

WHETHER X X X THE HONORABLE COURT OF APPEALS HAS COMMITTED [A] REVERSIBLE ERROR WHEN IT DID NOT

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[15] *Id.* at 137-157.

[16] *Id.* at 94-95.

DECLARE THAT THE PUBLIC RESPONDENTS HAD ACTED WITH GRAVE ABUSE OF DISCRETION WHEN THE LATTER DID NOT FIND THE PRIVATE RESPONDENTS LIABLE TO THE PETITIONERS FOR PAYMENT OF ACTUAL, MORAL AND EXEMPLARY DAMAGES AS WELL AS LITIGATION COSTS AND ATTORNEY'S FEES.[17]

Simply stated, the issues are: (1) whether P&G is the employer of petitioners; (2) whether petitioners were illegally dismissed; and (3) whether petitioners are entitled for payment of actual, moral and exemplary damages as well as litigation costs and attorney's fees.

Petitioners' Arguments

Petitioners insist that they are employees of P&G. They claim that they were recruited by the salesmen of P&G and were engaged to undertake merchandising chores for P&G long before the existence of Promm-Gem and/or SAPS. They further claim that when the latter had its so-called re-alignment program, petitioners were instructed to fill up application forms and report to the agencies which P&G created.[18]

Petitioners further claim that P&G instigated their dismissal from work as can be gleaned from its letter[19] to SAPS dated February 24, 1993, informing the latter that their Merchandising Services Contract will no longer be renewed.

Petitioners further assert that Promm-Gem and SAPS are labor-only contractors providing services of manpower to their client. They claim that the contractors have neither substantial capital nor tools and equipment to undertake independent labor contracting. Petitioners insist that since they had been engaged to perform activities which are necessary or desirable in the usual business or trade of P&G, then they are its regular employees.[20]

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[17] *Id.* at 668.

[18] *Id.* at 679.

[19] *Id.* at 192.

[20] *Id.* at 693-697.

Respondents' Arguments

On the other hand, P&G points out that the instant petition raises only questions of fact and should thus be thrown out as the Court is not a trier of facts. It argues that findings of facts of the NLRC, particularly where the NLRC and the Labor Arbiter are in agreement, are deemed binding and conclusive on the Supreme Court.

P&G further argues that there is no employment relationship between it and petitioners. It was Promm-Gem or SAPS that (1) selected petitioners and engaged their services; (2) paid their salaries; (3) wielded the power of dismissal; and (4) had the power of control over their conduct of work.

P&G also contends that the Labor Code neither defines nor limits which services or activities may be validly outsourced. Thus, an employer can farm out any of its activities to an independent contractor, regardless of whether such activity is peripheral or core in nature. It insists that the determination of whether to engage the services of a job contractor or to engage in direct hiring is within the ambit of management prerogative.

At this juncture, it is worth mentioning that on January 29, 2007, we deemed as waived the filing of the Comment of Promm-Gem on the petition.[21] Also, although SAPS was impleaded as a party in the proceedings before the Labor Arbiter and the NLRC, it was no longer impleaded as a party in the proceedings before the CA.[22] Hence, our pronouncements with regard to SAPS are only for the purpose of determining the obligations of P&G, if any.

Our Ruling

The petition has merit.

As a rule, the Court refrains from reviewing factual assessments of lower courts and agencies exercising adjudicative functions, such as the NLRC. Occasionally, however, the Court

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[21] *Id.* at 652.

[22] *Id.* at 89.

is constrained to wade into factual matters when there is insufficient or insubstantial evidence on record to support those factual findings; or when too much is concluded, inferred or deduced from the bare or incomplete facts appearing on record.[23] In the present case, we find the need to review the records to ascertain the facts.

Labor-only contracting and job contracting

In order to resolve the issue of whether P&G is the employer of petitioners, it is necessary to first determine whether Promm-Gem and SAPS are labor-only contractors or legitimate job contractors.

The pertinent Labor Code provision on the matter states:

> ART. 106. Contractor or subcontractor. – Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.
>
> In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.
>
> *The Secretary of Labor may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.*

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment

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[23] *Pascua v. National Labor Relations Commission* (*Third Division*), 351 Phil. 48, 61 (1998).

in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him. (Emphasis and underscoring supplied.)

Rule VIII-A, Book III of the Omnibus Rules Implementing the Labor Code, as amended by Department Order No. 18-02,[24] distinguishes between legitimate and labor-only contracting:

xxx xxx xxx

Section 3. Trilateral Relationship in Contracting Arrangements. In legitimate contracting, there exists a trilateral relationship under which there is a contract for a specific job, work or service between the principal and the contractor or subcontractor, and a contract of employment between the contractor or subcontractor and its workers. Hence, there are three parties involved in these arrangements, the principal which decides to farm out a job or service to a contractor or subcontractor, the contractor or subcontractor which has the capacity to independently undertake the performance of the job, work or service, and the contractual workers engaged by the contractor or subcontractor to accomplish the job[,] work or service.

xxx xxx xxx

Section 5. Prohibition against labor-only contracting. Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:

i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or

[24] RULES IMPLEMENTING ARTICLES 106 TO 109 of THE LABOR CODE, AS AMENDED, approved February 21, 2002.

ii) [T]he contractor does not exercise the right to control over the performance of the work of the contractual employee.

The foregoing provisions shall be without prejudice to the application of Article 248 (c) of the Labor Code, as amended.

"Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out.

The "right to control" shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.

x x x (Underscoring supplied.)

Clearly, the law and its implementing rules allow contracting arrangements for the performance of specific jobs, works or services. Indeed, it is management prerogative to farm out any of its activities, regardless of whether such activity is peripheral or core in nature. However, in order for such outsourcing to be valid, it must be made to an *independent contractor* because the current labor rules expressly prohibit labor-only contracting.

To emphasize, there is labor-only contracting when the contractor or sub-contractor merely recruits, supplies or places workers to perform a job, work or service for a principal[25] and any of the following elements are present:

i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or

ii) The contractor does not exercise the right to control over the performance of the work of the contractual employee. (Underscoring supplied)

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[25] *Escario v. National Labor Relations Commission*, 388 Phil. 929, 938 (2000).

In the instant case, the financial statements[26] of Promm-Gem show that it has authorized capital stock of ₱1 million and a paid-in capital, or capital available for operations, of ₱500,000.00 as of 1990.[27] It also has long term assets worth ₱432,895.28 and current assets of ₱719,042.32. Promm-Gem has also proven that it maintained its own warehouse and office space with a floor area of 870 square meters.[28] It also had under its name three registered vehicles which were used for its promotional/ merchandising business.[29] Promm-Gem also has other clients[30] aside from P&G.[31] Under the circumstances, we find that Promm-Gem has substantial investment which relates to the work to be performed. These factors negate the existence of the element specified in Section 5(i) of DOLE Department Order No. 18-02.

The records also show that Promm-Gem supplied its complainant-workers with the relevant materials, such as markers, tapes, liners and cutters, necessary for them to perform their work. Promm-Gem also issued uniforms to them. It is also relevant to mention that Promm-Gem already considered the complainants working under it as its regular, not merely contractual or project, employees.[32] This circumstance negates the existence of element (ii) as stated in Section 5 of DOLE Department Order No. 18-02, which speaks of *contractual* employees. This,

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[26] Records, Vol. I, p. 208.

[27] *Id.* at 211.

[28] *Rollo*, p. 453; TSN, February 22, 1994, p. 9.

[29] *Rollo*, pp. 580-582.

[30] a. Adidas Division, Rubberworld Phil., Inc.; b. CFC Corporation; c. Focus Enterprise, Inc., d. Procter & Gamble Phil., Inc., e. Roche Phil., Inc.; f. Sterling Products Int'l., Inc.; g. Southeast Asia Foods, Inc.; h. Pepsi Co., Inc.; i. Kraft General Foods Phil., Inc.; j. Universal Robina Corp.; k. Wrigley Phil., Inc.; l. Asia Brewery, Inc.; m. Ayala Land, Inc.; n. Citibank, N.A.; o. S.C. Johnson, Inc.; p. Glaxo Phil., Inc.; q. Bank of the Phil. Island-Loyola Branch; r. Republic Chemical, Inc.; s. Metrolab, Inc.; and, t. First Pacific Metro Corp. Records, Vol. I, p. 192.

[31] *Id.*

[32] Records, Vol. II, pp. 599-623.

furthermore, negates – on the part of Promm-Gem – bad faith and intent to circumvent labor laws which factors have often been tipping points that lead the Court to strike down the employment practice or agreement concerned as contrary to public policy, morals, good customs or public order.[33]

Under the circumstances, Promm-Gem cannot be considered as a labor-only contractor. We find that it is a legitimate independent contractor.

On the other hand, the Articles of Incorporation of SAPS shows that it has a paid-in capital of only ₱31,250.00. There is no other evidence presented to show how much its working capital and assets are. Furthermore, there is no showing of substantial investment in tools, equipment or other assets.

In *Vinoya v. National Labor Relations Commission*,[34] the Court held that "[w]ith the current economic atmosphere in the country, the paid-in capitalization of PMCI amounting to ₱75,000.00 cannot be considered as substantial capital and, as such, PMCI cannot qualify as an independent contractor."[35] Applying the same rationale to the present case, it is clear that SAPS – having a paid-in capital of only ₱31,250 - has no substantial capital. SAPS' lack of substantial capital is underlined by the records[36] which show that its payroll for its merchandisers alone for one month would already total ₱44,561.00. It had 6-month contracts with P&G.[37] Yet SAPS failed to show that it

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[33] The act of hiring and re-hiring workers over a period of time without considering them as regular employees evinces bad faith on the part of the employer. *San Miguel Corporation v. National Labor Relations Commission*, G.R. No. 147566, December 6, 2006, 510 SCRA 181, 189; *Bustamante v. National Labor Relations Commission*, G.R. No. 111651, March 15, 1996, 255 SCRA 145, 150.

[34] 381 Phil. 460 (2000). This case involved an employee who was dismissed and filed a labor case in 1991, about the same time frame as that involved in this case for purposes of taking judicial notice of the economic atmosphere in the country.

[35] *Id.* at 476.

[36] Records, Vol. I, p. 556.

[37] *Rollo*, p. 412.

could complete the 6-month contracts using its own capital and investment. Its capital is not even sufficient for one month's payroll. SAPS failed to show that its paid-in capital of ₱31,250.00 is sufficient for the period required for it to generate its needed revenue to sustain its operations independently. Substantial capital refers to capitalization used in the *performance or completion* of the job, work or service contracted out. In the present case, SAPS has failed to show substantial capital.

Furthermore, the petitioners have been charged with the merchandising and promotion of the products of P&G, an activity that has already been considered by the Court as doubtlessly directly related to the manufacturing business,[38] which is the principal business of P&G. Considering that SAPS has no substantial capital or investment and the workers it recruited are performing activities which are directly related to the principal business of P&G, we find that the former is engaged in "labor-only contracting."

"Where 'labor-only' contracting exists, the Labor Code itself establishes an employer-employee relationship between the employer and the employees of the 'labor-only' contractor."[39] The statute establishes this relationship for a comprehensive purpose: to prevent a circumvention of labor laws. The contractor is considered merely an agent of the principal employer and the latter is responsible to the employees of the labor-only contractor as if such employees had been directly employed by the principal employer.[40]

Consequently, the following petitioners, having been recruited and supplied by SAPS[41] — which engaged in labor-only

[38] *Tabas v. California Manufacturing Co., Inc.*, 251 Phil. 448, 454 (1989).

[39] *Neri v. National Labor Relations Commission*, G.R. Nos. 97008-09, July 23, 1993, 224 SCRA 717, 720, citing *Philippine Bank of Communications v. National Labor Relations Commission*, 230 Phil. 430, 440 (1986).

[40] *San Miguel Corporation v. Aballa*, G.R. No. 149011, June 28, 2005, 461 SCRA 392, 422.

[41] Records, Vol. I, p. 340. SAPS has admitted that the complainants are its employees.

contracting — are considered as the employees of P&G: Arthur Corpuz, Eric Aliviado, Monchito Ampeloquio, Abraham Basmayor, Jr., Jonathan Mateo, Lorenzo Platon, Estanislao Buenaventura, Lope Salonga, Franz David, Nestor Ignacio, Jr., Rolando Romasanta, Roehl Agoo, Bonifacio Ortega, Arsenio Soriano, Jr., Arnel Endaya, Roberto Enriquez, Edgardo Quiambao, Santos Bacalso, Samson Basco, Alstando Montos, Rainer N. Salvador, Pedro G. Roy, Leonardo F. Talledo, Enrique F. Talledo, Joel Billones, Allan Baltazar, Noli Gabuyo, Gerry Gatpo, German Guevara, Gilbert V. Miranda, Rodolfo C. Toledo, Jr., Arnold D. Laspoña, Philip M. Loza, Mario N. Coldayon, Orlando P. Jimenez, Fred P. Jimenez, Restituto C. Pamintuan, Jr., Rolando J. De Andres, Artuz Bustenera, Jr., Roberto B. Cruz, Rosedy O. Yordan, Orlando S. Balangue, Emil Tawat, Cresente J. Garcia, Melencio Casapao, Romeo Vasquez, Renato dela Cruz, Romeo Viernes, Jr., Elias Basco and Dennis Dacasin.

The following petitioners, having worked under, and been dismissed by Promm-Gem, are considered the employees of Promm-Gem, not of P&G: Wilfredo Torres, John Sumergido, Edwin Garcia, Mario P. Liongson, Jr., Ferdinand Salvo, Alejandrino Abaton, Emmanuel A. Laban, Ernesto Soyosa, Aladino Gregore, Jr., Ramil Reyes, Ruben Vasquez, Jr., Maximino Pascual, Willie Ortiz, Armando Villar, Jose Fernando Gutierrez, Ramiro Pita, Fernando Macabenta, Nestor Esquila, Julio Rey, Albert Leynes, Ernesto Calanao, Roberto Rosales, Antonio Dacuma, Tadeo Durano, Raul Dulay, Marino Maranion, Joseph Banico, Melchor Cardano, Reynaldo Jacaban, and Joeb Aliviado.[42]

Termination of services

We now discuss the issue of whether petitioners were illegally dismissed. In cases of regular employment, the employer shall

[42] Records, Vol. I, p. 193; Vol. II, pp. 666-692.

not terminate the services of an employee except for a just[43] or authorized[44] cause.

In the instant case, the termination letters given by Promm-Gem to its employees uniformly specified the cause of dismissal as grave misconduct and breach of trust, as follows:

xxx xxx xxx

This informs you that effective May 5, 1992, your employment with our company, Promm-Gem, Inc. has been terminated. We find your expressed admission, that you considered yourself as an employee of Procter & Gamble Phils., Inc…. and assailing the integrity of the Company as legitimate and independent promotion firm, is deemed as an act of disloyalty prejudicial to the interests of our Company: serious misconduct and breach of trust reposed upon you as employee of our Company which [co]nstitute just cause for the termination of your employment.

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[43] LABOR CODE OF THE PHILIPPINES,

ART. 282. Termination by employer. — An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

[44] **ART. 283. Closure of establishment and reduction of personnel.** – The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof xxx

ART. 284. Disease as ground for termination. – An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: xxx

xxx xxx xxx[45]

Misconduct has been defined as improper or wrong conduct; the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful in character implying wrongful intent and not mere error of judgment. The misconduct to be serious must be of such grave and aggravated character and not merely trivial and unimportant.[46] To be a just cause for dismissal, such misconduct (a) must be serious; (b) must relate to the performance of the employee's duties; and (c) must show that the employee has become unfit to continue working for the employer.[47]

In other words, in order to constitute serious misconduct which will warrant the dismissal of an employee under paragraph (a) of Article 282 of the Labor Code, it is not sufficient that the act or conduct complained of has violated some established rules or policies. It is equally important and required that the act or conduct must have been performed with wrongful intent.[48] In the instant case, petitioners-employees of Promm-Gem may have committed an error of judgment in claiming to be employees of P&G, but it cannot be said that they were motivated by any wrongful intent in doing so. As such, we find them guilty of only simple misconduct for assailing the integrity of Promm-Gem as a legitimate and independent promotion firm. A misconduct which is not serious or grave, as that existing in the instant case, cannot be a valid basis for dismissing an employee.

Meanwhile, loss of trust and confidence, as a ground for dismissal, must be based on the willful breach of the trust reposed

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[45] Records, Vol. II, p. 447.

[46] *National Labor Relations Commission v. Salgarino*, G.R. No. 164376, July 31, 2006, 497 SCRA 361, 375; *Molina v. Pacific Plans, Inc*., G.R. No.165476, March 10, 2006, 484 SCRA 498, 518; *Samson v. National Labor Relations Commission*, 386 Phil. 669, 682 (2000).

[47] *Bañez v. De La Salle University*, G.R. No. 167177, September 27, 2006, 503 SCRA 691, 700; *Phil. Aeolus Automotive United Corp. v. National Labor Relations Commission*, 387 Phil. 250, 261 (2000).

[48] *National Labor Relations Commission v. Salgarino*, *supra* at 376.

in the employee by his employer. Ordinary breach will not suffice. A breach of trust is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.[49]

Loss of trust and confidence, as a cause for termination of employment, is premised on the fact that the employee concerned holds a position of responsibility or of trust and confidence. As such, he must be invested with confidence on delicate matters, such as custody, handling or care and protection of the property and assets of the employer. And, in order to constitute a just cause for dismissal, the act complained of must be work-related and must show that the employee is unfit to continue to work for the employer.[50] In the instant case, the petitioners-employees of Promm-Gem have not been shown to be occupying positions of responsibility or of trust and confidence. Neither is there any evidence to show that they are unfit to continue to work as merchandisers for Promm-Gem.

All told, we find no valid cause for the dismissal of petitioners-employees of Promm-Gem.

While Promm-Gem had complied with the procedural aspect of due process in terminating the employment of petitioners-employees, *i.e.*, giving two notices and in between such notices, an opportunity for the employees to answer and rebut the charges against them, it failed to comply with the substantive aspect of due process as the acts complained of neither constitute serious misconduct nor breach of trust. Hence, the dismissal is illegal.

With regard to the petitioners placed with P&G by SAPS, they were given no written notice of dismissal. The records show that upon receipt by SAPS of P&G's letter terminating their "Merchandising Services Contact" effective March 11, 1993, they in turn verbally informed the concerned petitioners not to report for work anymore. The concerned petitioners related their dismissal as follows:

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[49] *Velez v. Shangri-La's Edsa Plaza Hotel*, G.R. No. 148261, October 9, 2006, 504 SCRA 13, 25.

[50] *Id.* at 26.

xxx xxx xxx

5. On March 11, 1993, we were called to a meeting at SAPS office. We were told by Mr. Saturnino A. Ponce that we should already stop working immediately because that was the order of Procter and Gamble. According to him he could not do otherwise because Procter and Gamble was the one paying us. To prove that Procter and Gamble was the one responsible in our dismissal, he showed to us the letter[51] dated February 24, 1993, x x x

February 24, 1993

Sales and Promotions Services
Armon's Bldg., 142 Kamias Road,
Quezon City
Attention: Mr. Saturnino A. Ponce
President & General Manager

Gentlemen:

Based on our discussions last 5 and 19 February 1993, this formally informs you that we will not be renewing our Merchandising Services Contract with your agency.

Please immediately undertake efforts to ensure that your services to the Company will terminate effective close of business hours of 11 March 1993.

This is without prejudice to whatever obligations you may have to the company under the abovementioned contract.

Very truly yours,

(Sgd.)
EMMANUEL M. NON
Sales Merchandising III

6. On March 12, 1993, we reported to our respective outlet assignments. But, we were no longer allowed to work and we were refused entrance by the security guards posted. According to the security guards, all merchandisers of Procter and Gamble under S[APS] who filed a case in the Dept. of Labor are already dismissed as per letter of Procter and Gamble dated February 25, 1993. x x x[52]

[51] *Rollo,* p. 192.

[52] Records, Vol. II, p. 413.

Neither SAPS nor P&G dispute the existence of these circumstances. Parenthetically, unlike Promm-Gem which dismissed its employees for grave misconduct and breach of trust due to disloyalty, SAPS dismissed its employees upon the initiation of P&G. It is evident that SAPS does not carry on its own business because the termination of its contract with P&G automatically meant for it also the termination of its employees' services. It is obvious from its act that SAPS had no other clients and had no intention of seeking other clients in order to further its merchandising business. From all indications SAPS, existed to cater solely to the need of P&G for the supply of employees in the latter's merchandising concerns only. Under the circumstances prevailing in the instant case, we cannot consider SAPS as an *independent* contractor.

Going back to the matter of dismissal, it must be emphasized that the *onus probandi* to prove the lawfulness of the dismissal rests with the employer.[53] In termination cases, the burden of proof rests upon the employer to show that the dismissal is for just and valid cause.[54] In the instant case, P&G failed to discharge the burden of proving the legality and validity of the dismissals of those petitioners who are considered its employees. Hence, the dismissals necessarily were not justified and are therefore illegal.

Damages

We now go to the issue of whether petitioners are entitled to damages. Moral and exemplary damages are recoverable where

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[53] *National Labor Relations Commission v. Salgarino*, *supra* note 46 at 383.

[54] *Royal Crown Internationale v. National Labor Relations Commission*, G.R. No. 78085, October 16, 1989, 178 SCRA 569, 578.

Labor Code of the Philippines,

ART. 279. – Security of Tenure.— In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

the dismissal of an employee was attended by bad faith or fraud or constituted an act oppressive to labor or was done in a manner contrary to morals, good customs or public policy.[55]

With regard to the employees of Promm-Gem, there being no evidence of bad faith, fraud or any oppressive act on the part of the latter, we find no support for the award of damages.

As for P&G, the records show that it dismissed its employees through SAPS in a manner oppressive to labor. The sudden and peremptory barring of the concerned petitioners from work, and from admission to the work place, after just a one-day verbal notice, *and* for no valid cause bellows oppression and utter disregard of the right to due process of the concerned petitioners. Hence, an award of moral damages is called for.

Attorney's fees may likewise be awarded to the concerned petitioners who were illegally dismissed in bad faith and were compelled to litigate or incur expenses to protect their rights by reason of the oppressive acts[56] of P&G.

Lastly, under Article 279 of the Labor Code, an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges, inclusive of allowances, and other benefits or their monetary equivalent from the time the compensation was withheld up to the time of actual reinstatement.[57] Hence, all the petitioners, having been illegally dismissed are entitled to reinstatement without loss of seniority rights and with full back wages and other benefits

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[55] *Pascua v. National Labor Relations Commission (Third Division)*, *supra* note 23 at 72; *Acuña v. Court of Appeals*, G.R. No.159832, May 5, 2006, 489 SCRA 658, 668; *Quadra v. Court of Appeals,* G.R. No. 147593, July 31, 2006, 497 SCRA 221, 227.

[56] See *Pascua v. National Labor Relations Commission (Third Division)*, *supra* note 23 at 74. In the instant case, P&G's act of taking an unconscionable and unscrupulous advantage of the utter powerlessness of the individual concerned petitioners to prevent the trampling of their rights to due process and security of tenure constitutes bad faith.

[57] *Premier Development Bank v. Mantal*, G.R. No. 167716, March 23, 2006, 485 SCRA 234, 242-243; *Philippine Amusement and Gaming Corporation v. Angara*, G.R. No. 142937, July 25, 2006, 496 SCRA 453, 457.

from the time of their illegal dismissal up to the time of their actual reinstatement.

WHEREFORE, the petition is *GRANTED*. The Decision dated March 21, 2003 of the Court of Appeals in CA-G.R. SP No. 52082 and the Resolution dated October 20, 2003 are *REVERSED* and *SET ASIDE*. Procter & Gamble Phils., Inc. and Promm-Gem, Inc. are *ORDERED* to reinstate their respective employees immediately without loss of seniority rights and with full backwages and other benefits from the time of their illegal dismissal up to the time of their actual reinstatement. Procter & Gamble Phils., Inc. is further *ORDERED* to pay each of those petitioners considered as its employees, namely Arthur Corpuz, Eric Aliviado, Monchito Ampeloquio, Abraham Basmayor, Jr., Jonathan Mateo, Lorenzo Platon, Estanislao Buenaventura, Lope Salonga, Franz David, Nestor Ignacio, Rolando Romasanta, Roehl Agoo, Bonifacio Ortega, Arsenio Soriano, Jr., Arnel Endaya, Roberto Enriquez, Edgardo Quiambao, Santos Bacalso, Samson Basco, Alstando Montos, Rainer N. Salvador, Pedro G. Roy, Leonardo F. Talledo, Enrique F. Talledo, Joel Billones, Allan Baltazar, Noli Gabuyo, Gerry Gatpo, German Guevara, Gilbert Y. Miranda, Rodolfo C. Toledo, Jr., Arnold D. Laspoña, Philip M. Loza, Mario N. Coldayon, Orlando P. Jimenez, Fred P. Jimenez, Restituto C. Pamintuan, Jr., Rolando J. De Andres, Artuz Bustenera, Jr., Roberto B. Cruz, Rosedy O. Yordan, Orlando S. Balangue, Emil Tawat, Cresente J. Garcia, Melencio Casapao, Romeo Vasquez, Renato dela Cruz, Romeo Viernes, Jr., Elias Basco and Dennis Dacasin, ₱25,000.00 as moral damages plus ten percent of the total sum as and for attorney's fees.

Let this case be *REMANDED* to the Labor Arbiter for the computation, within 30 days from receipt of this Decision, of petitioners' backwages and other benefits; and ten percent of the total sum as and for attorney's fees as stated above; and for immediate execution.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 160545. March 9, 2010]

PRISMA CONSTRUCTION & DEVELOPMENT CORPORATION and ROGELIO S. PANTALEON, *petitioners, vs.* **ARTHUR F. MENCHAVEZ,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; IT IS ONLY WHEN THE CONTRACT IS VAGUE AND AMBIGUOUS THAT COURTS ARE PERMITTED TO RESORT TO THE INTERPRETATION OF ITS TERMS TO DETERMINE THE PARTIES' INTENT.— Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. When the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of its stipulations governs. In such cases, courts have no authority to alter the contract by construction or to make a new contract for the parties; a court's duty is confined to the interpretation of the contract the parties made for themselves without regard to its wisdom or folly, as the court cannot supply material stipulations or read into the contract words the contract does not contain. It is only when the contract is vague and ambiguous that courts are permitted to resort to the interpretation of its terms to determine the parties' intent.

2. ID.; ID.; PAYMENT OF INTEREST IN LOANS AND FORBEARANCE OF MONEY; WHEN ALLOWED.— Article 1956 of the Civil Code specifically mandates that "no interest shall be due unless it has been expressly stipulated in writing." Under this provision, the payment of interest in loans or forbearance of money is allowed only if: (1) there was an express stipulation for the payment of interest; and (2) the agreement for the payment of interest was reduced in writing. The concurrence of the two conditions is required for the payment of interest at a stipulated rate. Thus, we held in *Tan v. Valdehueza* and *Ching v. Nicdao* that collection of interest without any stipulation in writing is prohibited by law.

3. ID.; ID.; ID.; 12% PER ANNUM RATE; WHEN PROPER.— Thereafter, the interest on the loan should be at the legal interest rate of 12% *per annum*, consistent with our ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*: When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. **In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default**, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code."

4. COMMERCIAL LAW; CORPORATION CODE; PIERCING THE CORPORATE VEIL; WHEN APPLICABLE.— The doctrine of piercing the corporate veil applies only in three (3) basic instances, namely: a) when the separate and distinct corporate personality defeats public convenience, as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; b) in fraud cases, or when the corporate entity is used to justify a wrong, protect a fraud, or defend a crime; or c) is used in *alter ego* cases, *i.e.*, where a corporation is essentially a farce, since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation. In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities.

APPEARANCES OF COUNSEL

Cordova Perez and Rigoroso Law Offices for petitioners.
Yulo & Bello Law Offices for respondent.

D E C I S I O N

BRION, *J.*:

We resolve in this Decision the petition for review on *certiorari*[1] filed by petitioners Prisma Construction & Development Corporation (*PRISMA*) and Rogelio S. Pantaleon (*Pantaleon*) (collectively, *petitioners*) who seek to reverse and set aside the Decision[2] dated May 5, 2003 and the Resolution[3] dated October 22, 2003 of the Former Ninth Division of the Court of Appeals (*CA*) in CA-G.R. CV No. 69627. The assailed CA Decision affirmed the Decision of the Regional Trial Court (*RTC*), Branch 73, Antipolo City in Civil Case No. 97-4552 that held the petitioners liable for payment of ₱3,526,117.00 to respondent Arthur F. Menchavez (*respondent*), but modified the interest rate from 4% per month to 12% per annum, computed from the filing of the complaint to full payment. The assailed CA Resolution denied the petitioners' Motion for Reconsideration.

FACTUAL BACKGROUND

The facts of the case, gathered from the records, are briefly summarized below.

On December 8, 1993, Pantaleon, the President and Chairman of the Board of PRISMA, obtained a **₱1,000,000.00**[4] **loan from the respondent, with a monthly interest of ₱40,000.00 payable for six months,** or a total obligation of ₱1,240,000.00 to be paid within six (6) months,[5] under the following schedule of payments:

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[1] Filed under Rule 45 of the 1997 RULES OF CIVIL PROCEDURE.

[2] Penned by Associate Justice Jose L. Sabio, Jr. (retired), with Associate Justice B.A. Adefuin-De La Cruz (retired) and Associate Justice Hakim S. Abdulwahid, concurring. See *rollo*, pp. 29-38.

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

[4] Exhibit "A", Folder II, Exhibits "A" to "E" and Submarkings (for the Plaintiff), p. 1; TSN, Testimony of Arthur F. Menchavez, April 12, 1999, pp. 2-4.

[5] TSN, Testimony of Arthur F. Menchavez, April 12, 1999, pp. 9-10.

January 8, 1994	₱40,000.00
February 8, 1994	₱40,000.00
March 8, 1994	₱40,000.00
April 8, 1994	₱40,000.00
May 8, 1994	₱40,000.00
June 8, 1994	₱1,040,000.00[6]
Total	₱1,240,000.00

To secure the payment of the loan, Pantaleon issued a promissory note[7] that states:

I, Rogelio S. Pantaleon, hereby acknowledge the receipt of ONE MILLION TWO HUNDRED FORTY THOUSAND PESOS (₱1,240,000), Philippine Currency, from Mr. Arthur F. Menchavez, representing a six-month loan payable according to the following schedule:

January 8, 1994	₱40,000.00
February 8, 1994	₱40,000.00
March 8, 1994	₱40,000.00
April 8, 1994	₱40,000.00
May 8, 1994	₱40,000.00
June 8, 1994	₱1,040,000.00

The checks corresponding to the above amounts are hereby acknowledged.[8]

and six (6) postdated checks corresponding to the schedule of payments. Pantaleon signed the promissory note in his personal capacity,[9] and as duly authorized by the Board of Directors of PRISMA.[10] The petitioners failed to completely pay the loan within the stipulated six (6)-month period.

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[6] Original Records, p. 8.

[7] Exhibit "C", Folder II, Exhibits "A" to "E" and Submarkings (for the Plaintiff), p. 5.

[8] Original Records, p. 8.

[9] *Ibid.*

[10] Exhibit "B", Folder II, Exhibits "A" to "E" and Submarkings (for the Plaintiff), p. 2.

From September 8, 1994 to January 4, 1997, the petitioners paid the following amounts to the respondent:

September 8, 1994 ..... ₱320,000.00
October 8, 1995.....₱600,000.00
November 8, 1995.....₱158,772.00
January 4, 1997 ..... ₱30,000.00[11]

As of January 4, 1997, the petitioners had already paid a total of ₱1,108,772.00. However, the respondent found that the petitioners still had an outstanding balance of ₱1,364,151.00 as of January 4, 1997, to which it **applied a 4% monthly interest**.[12] Thus, on August 28, 1997, the respondent filed a complaint for sum of money with the RTC to enforce the unpaid balance, **plus 4% monthly interest**, ₱30,000.00 in attorney's fees, ₱1,000.00 per court appearance and costs of suit.[13]

In their Answer dated October 6, 1998, the petitioners admitted the loan of ₱1,240,000.00, but denied the stipulation on the 4% monthly interest, arguing that the interest was not provided in the promissory note. Pantaleon also denied that he made himself personally liable and that he made representations that the loan would be repaid within six (6) months.[14]

THE RTC RULING

The RTC rendered a Decision on October 27, 2000 finding that the respondent issued a check for ₱1,000,000.00 in favor of the petitioners for a loan that would earn an interest of 4% or ₱40,000.00 per month, or a total of ₱240,000.00 for a 6-month period. It noted that the petitioners made several payments amounting to ₱1,228,772.00, but they were still indebted to the respondent for ₱3,526,117.00 as of February 11,[15] 1999

[11] Exhibit "E", Folder II, Exhibits "A" to "E" and Submarkings (for the Plaintiff), p. 2.

[12] *Ibid.*

[13] Original Records, pp. 1-7.

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

[15] The date of the last payment made by the petitioners should be "February 12, 1999," per Exhibit "E", Folder II, Exhibits "A" to "E" and Submarkings (for the Plaintiff), p. 2.

after considering the 4% monthly interest. The RTC observed that PRISMA was a one-man corporation of Pantaleon and used this circumstance to justify the piercing of the veil of corporate fiction. Thus, the RTC ordered the petitioners to jointly and severally pay the respondent the amount of ₱3,526,117.00 plus 4% per month interest from February 11, 1999 until fully paid.[16]

The petitioners elevated the case to the CA *via* an ordinary appeal under Rule 41 of the Rules of Court, insisting that there was no express stipulation on the 4% monthly interest.

THE CA RULING

The CA decided the appeal on May 5, 2003. The CA found that the parties agreed to a 4% monthly interest principally based on the board resolution that authorized Pantaleon to transact a loan with an approved interest of not more than 4% per month. The appellate court, however, noted that the interest of 4% per month, or 48% per annum, was unreasonable and should be reduced to 12% per annum. The CA affirmed the RTC's finding that PRISMA was a mere instrumentality of Pantaleon that justified the piercing of the veil of corporate fiction. Thus, the CA modified the RTC Decision by imposing a 12% per annum interest, computed from the filing of the complaint until finality of judgment, and thereafter, 12% from finality until fully paid.[17]

After the CA's denial[18] of their motion for reconsideration,[19] the petitioners filed the present petition for review on *certiorari* under Rule 45 of the Rules of Court.

THE PETITION

The petitioners submit that the CA mistakenly relied on their board resolution to conclude that the parties agreed to a 4% monthly interest because the board resolution was not an evidence of a loan or forbearance of money, but merely an authorization for Pantaleon to perform certain acts, including the power to

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[16] *Id.* at 99-106.

[17] *Supra* note 2.

[18] Resolution of October 22, 2003; *rollo*, pp. 52-53.

[19] *Id.* at 43-60.

enter into a contract of loan. The expressed mandate of Article 1956 of the Civil Code is that interest due should be stipulated in writing, and no such stipulation exists. Even assuming that the loan is subject to 4% monthly interest, the interest covers the six (6)-month period only and cannot be interpreted to apply beyond it. The petitioners also point out the glaring inconsistency in the CA Decision, which reduced the interest from 4% per month or 48% per annum to 12% per annum, but failed to consider that the amount of ₱3,526,117.00 that the RTC ordered them to pay includes the compounded 4% monthly interest.

THE CASE FOR THE RESPONDENT

The respondent counters that the CA correctly ruled that the loan is subject to a 4% monthly interest because the board resolution is attached to, and an integral part of, the promissory note based on which the petitioners obtained the loan. The respondent further contends that the petitioners are estopped from assailing the 4% monthly interest, since they agreed to pay the 4% monthly interest on the principal amount under the promissory note and the board resolution.

THE ISSUE

The core issue boils down to whether the parties agreed to the 4% monthly interest on the loan. If so, does the rate of interest apply to the 6-month payment period only or until full payment of the loan?

OUR RULING

We find the petition meritorious.

Interest due should be stipulated in writing; otherwise, 12% per annum

Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.[20] When the terms of a contract are clear and leave no

[20] Article 1159, CIVIL CODE; *Dumlao v. Marlon Realty Corporation*, G.R. No. 131491, August 17, 2007, 530 SCRA 427, 430.

doubt as to the intention of the contracting parties, the literal meaning of its stipulations governs.[21] In such cases, courts have no authority to alter the contract by construction or to make a new contract for the parties; a court's duty is confined to the interpretation of the contract the parties made for themselves without regard to its wisdom or folly, as the court cannot supply material stipulations or read into the contract words the contract does not contain.[22] It is only when the contract is vague and ambiguous that courts are permitted to resort to the interpretation of its terms to determine the parties' intent.

In the present case, the respondent issued a check for ₱1,000,000.00.[23] In turn, Pantaleon, in his personal capacity and as authorized by the Board, executed the promissory note quoted above. Thus, the ₱1,000,000.00 loan shall be payable within six (6) months, or from January 8, 1994 up to June 8, 1994. During this period, the loan shall earn an interest of ₱40,000.00 per month, for a total obligation of ₱1,240,000.00 for the six-month period. **We note that this agreed sum can be computed at 4% interest per month, but no such rate of interest was stipulated in the promissory note; rather a *fixed sum equivalent to this rate* was agreed upon.**

Article 1956 of the Civil Code specifically mandates that "no interest shall be due unless it has been expressly stipulated in writing." Under this provision, the payment of interest in loans or forbearance of money is allowed only if: (1) there was an express stipulation for the payment of interest; and (2) the agreement for the payment of interest was reduced in writing. The concurrence of the two conditions is required for the payment of interest at a stipulated rate. Thus, we held in *Tan v. Valdehueza*[24]

[21] Article 1370, CIVIL CODE.

[22] *Cuison v. Court of Appeals*, G.R. No. 102096, August 22, 1996, 260 SCRA 645, 667.

[23] Exhibit "A", Folder II, Exhibits "A" to "E" and Submarkings (for the Plaintiff), p. 1; TSN, Testimony of Arthur F. Menchavez, April 12, 1999, pp. 2-4.

[24] 160 Phil. 760, 767 (1975).

and *Ching v. Nicdao*[25] that collection of interest without any stipulation in writing is prohibited by law.

Applying this provision, we find that the interest of ₱40,000.00 per month corresponds only to the six (6)-month period of the loan, or from January 8, 1994 to June 8, 1994, as agreed upon by the parties in the promissory note. Thereafter, the interest on the loan should be at the legal interest rate of 12% *per annum*, consistent with our ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*:[26]

> When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. **In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default**, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code." (Emphasis supplied)

We reiterated this ruling in *Security Bank and Trust Co. v. RTC-Makati, Br. 61*,[27] *Sulit v. Court of Appeals*,[28] *Crismina Garments, Inc. v. Court of Appeals*,[29] *Eastern Assurance and Surety Corporation v. Court of Appeals*,[30] *Sps. Catungal v. Hao*,[31] *Yong v. Tiu*,[32] and *Sps. Barrera v. Sps. Lorenzo*.[33] Thus, the RTC and the CA misappreciated the facts of the case; they erred in finding that the parties agreed to a 4% interest, compounded by the application of this interest beyond the

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[25] G.R. No. 141181, April 27, 2007, 522 SCRA 316, 361.

[26] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

[27] 331 Phil. 787 (1996).

[28] 335 Phil. 914 (1997).

[29] 363 Phil. 701 (1999).

[30] 379 Phil. 84 (2000).

[31] 407 Phil. 309 (2001).

[32] 426 Phil. 331 (2002).

[33] 438 Phil. 42 (2002).

promissory note's six (6)-month period. The facts show that the parties agreed to the payment of a ***specific sum of money*** of ₱40,000.00 per month for six months, not to a 4% rate of interest payable within a six (6)-month period.

Medel v. Court of Appeals not applicable

The CA misapplied *Medel v. Court of Appeals*[34] in finding that a 4% interest per month was unconscionable.

In *Medel*, the debtors in a ₱500,000.00 loan were required to pay an interest of 5.5% per month, a service charge of 2% per annum, and a penalty charge of 1% per month, plus attorney's fee equivalent to 25% of the amount due, until the loan is fully paid. Taken in conjunction with the stipulated service charge and penalty, we found the interest rate of 5.5% to be excessive, iniquitous, unconscionable, exorbitant and hence, contrary to morals, thereby rendering the stipulation null and void.

Applying *Medel*, we invalidated and reduced the stipulated interest in *Spouses Solangon v. Salazar*[35] of 6% per month or 72% per annum interest on a ₱60,000.00 loan; in *Ruiz v. Court of Appeals*,[36] of 3% per month or 36% per annum interest on a ₱3,000,000.00 loan; in *Imperial v. Jaucian*,[37] of 16% per month or 192% per annum interest on a ₱320,000.00 loan; in *Arrofo v. Quiño*,[38] of 7% interest per month or 84% per annum interest on a ₱15,000.00 loan; in *Bulos, Jr. v. Yasuma*,[39] of 4% per month or 48% per annum interest on a ₱2,500,000.00 loan; and in *Chua v. Timan*,[40] of 7% and 5% per month for loans totalling ₱964,000.00. We note that in all these cases, the terms of the loans were open-ended; the stipulated interest rates were applied for an indefinite period.

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[34] 359 Phil. 820 (1998).

[35] 412 Phil. 816 (2001).

[36] 449 Phil. 419 (2003).

[37] 471 Phil. 484 (2004).

[38] 490 Phil. 179 (2005).

[39] G.R. No. 139290, May 19, 2006, 490 SCRA 1.

[40] G.R. No. 170452, August 13, 2008.

Medel finds no application in the present case where no other stipulation exists for the payment of any extra amount except a ***specific sum of* ₱40,000.00 per month** on the principal of a loan payable within six months. Additionally, no issue on the excessiveness of the stipulated amount of ₱40,000.00 per month was ever put in issue by the petitioners;[41] they only assailed the application of a 4% interest rate, since it was not agreed upon.

It is a familiar doctrine in obligations and contracts that the parties are bound by the stipulations, clauses, terms and conditions they have agreed to, which is the law between them, the only limitation being that these stipulations, clauses, terms and conditions are not contrary to law, morals, public order or public policy.[42] The payment of the ***specific sum of money*** of ₱40,000.00 per month was voluntarily agreed upon by the petitioners and the respondent. There is nothing from the records and, in fact, there is no allegation showing that petitioners were victims of fraud when they entered into the agreement with the respondent.

Therefore, as agreed by the parties, the loan of ₱1,000,000.00 shall earn ₱40,000.00 per month for a period of six (6) months, or from December 8, 1993 to June 8, 1994, for a total principal and interest amount of ₱1,240,000.00. Thereafter, interest at the rate of 12% per annum shall apply. The amounts already paid by the petitioners during the pendency of the suit, amounting to ₱1,228,772.00 as of February **12**, 1999,[43] should be deducted from the total amount due, computed as indicated above. We remand the case to the trial court for the actual computation of the total amount due.

Doctrine of Estoppel not applicable

The respondent submits that the petitioners are estopped from disputing the 4% monthly interest beyond the six-month stipulated

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[41] See *Sps. Pascual v. Ramos*, 433 Phil. 449 (2002).

[42] *Barredo v.* Leaño, G.R. No. 156627, June 4, 2004, 431 SCRA 106, 113-114; *Odyssey Park, Inc. v. CA*, 345 Phil. 475, 485 (2001).

[43] *Supra* note 14.

period, since they agreed to pay this interest on the principal amount under the promissory note and the board resolution.

We disagree with the respondent's contention.

We cannot apply the doctrine of estoppel in the present case since the facts and circumstances, as established by the record, negate its application. Under the promissory note,[44] what the petitioners agreed to was the payment of a ***specific sum of* ₱40,000.00 per month for six months – *not a 4% rate of interest per month for six (6) months* – on a loan whose principal is ₱1,000,000.00, for the total amount of ₱1,240,000.00**. Thus, no reason exists to place the petitioners in estoppel, barring them from raising their present defenses against a 4% per month interest after the six-month period of the agreement. The board resolution,[45] on the other hand, simply authorizes Pantaleon to contract for a loan with a monthly interest of not more than 4%. This resolution merely embodies the extent of Pantaleon's authority to contract and does not create any right or obligation except as between Pantaleon and the board. Again, no cause exists to place the petitioners in estoppel.

Piercing the corporate veil unfounded

We find it unfounded and unwarranted for the lower courts to pierce the corporate veil of PRISMA.

The doctrine of piercing the corporate veil applies only in three (3) basic instances, namely: a) when the separate and distinct corporate personality defeats public convenience, as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; b) in fraud cases, or when the corporate entity is used to justify a wrong, protect a fraud, or defend a crime; or c) is used in *alter ego* cases, *i.e.*, where a corporation is essentially a farce, since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs so conducted as to make it merely

[44] Original Records, p. 8.

[45] Exhibit "B", Folder II, Exhibits "A" to "E" and Submarkings (for the Plaintiff), p. 2.

an instrumentality, agency, conduit or adjunct of another corporation.[46] In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities.[47]

In the present case, we see no competent and convincing evidence of any wrongful, fraudulent or unlawful act on the part of PRISMA to justify piercing its corporate veil. While Pantaleon denied personal liability in his Answer, he made himself accountable in the promissory note "*in his personal capacity and as authorized by the Board Resolution*" of PRISMA.[48] With this statement of personal liability and in the absence of any representation on the part of PRISMA that the obligation is all its own because of its separate corporate identity, we see no occasion to consider piercing the corporate veil as material to the case.

WHEREFORE, in light of all the foregoing, we hereby *REVERSE* and *SET ASIDE* the Decision dated May 5, 2003 of the Court of Appeals in CA-G.R. CV No. 69627. The petitioners' loan of ₱1,000,000.00 shall bear interest of ₱40,000.00 per month for six (6) months from December 8, 1993 as indicated in the promissory note. Any portion of this loan, unpaid as of the end of the six-month payment period, shall thereafter bear interest at 12% *per annum*. The total amount due and unpaid, including accrued interests, shall bear interest at 12% *per annum* from the finality of this Decision. Let this case be *REMANDED* to the Regional Trial Court, Branch 73, Antipolo City for the proper computation of the amount due as herein directed, with due regard to the payments the petitioners have already remitted. Costs against the respondent.

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[46] *General Credit Corporation v. Alsons Development and Investment Corporation*, G.R. No. 154975, January 29, 2007, 513 SCRA 225, 235, 238, 239; *PNB v. Ritratto Group, Inc.*, 414 Phil. 494, 505 (2001).

[47] *McLeod v. National Labor Relations Commission*, G.R. No. 146667, January 23, 2007, 512 SCRA 222, 253.

[48] Exhibit "C", Folder II, Exhibits "A" to "E" and Submarkings (for the Plaintiff), p. 5.

SO ORDERED.

Nachura,[*] *Del Castillo, Abad,* and *Perez, JJ.,* concur.

EN BANC

[G.R. No. 160756. March 9, 2010]

CHAMBER OF REAL ESTATE AND BUILDERS' ASSOCIATIONS, INC., *petitioner, vs.* **THE HON. EXECUTIVE SECRETARY ALBERTO ROMULO, THE HON. ACTING SECRETARY OF FINANCE JUANITA D. AMATONG, and THE HON. COMMISSIONER OF INTERNAL REVENUE GUILLERMO PARAYNO, JR.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; COURTS; JURISDICTION OVER CONSTITUTIONAL QUESTION; REQUISITES.—** Courts will not assume jurisdiction over a constitutional question unless the following requisites are satisfied: (1) there must be an actual case calling for the exercise of judicial review; (2) the question before the court must be ripe for adjudication; (3) the person challenging the validity of the act must have standing to do so; (4) the question of constitutionality must have been raised at the earliest opportunity and (5) the issue of constitutionality must be the very *lis mota* of the case.

2. **ID.; ID.; ID.; ID.; ID.; ACTUAL CASE OR CONTROVERSY, CONSTRUED.—** An actual case or controversy involves a conflict of legal rights or an assertion of opposite legal claims

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[*] Designated additional Member of the Second Division in lieu of Associate Justice Antonio T. Carpio per Raffle dated March 1, 2010.

which is susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute. On the other hand, a question is considered ripe for adjudication when the act being challenged has a direct adverse effect on the individual challenging it. x x x As we stated in *Didipio Earth-Savers' Multi-Purpose Association, Incorporated (DESAMA) v. Gozun*: By the mere enactment of the questioned law or the approval of the challenged act, the dispute is said to have ripened into a judicial controversy even without any other overt act. Indeed, even a singular violation of the Constitution and/or the law is enough to awaken judicial duty. If the assailed provisions are indeed unconstitutional, there is no better time than the present to settle such question once and for all.

3. ID.; ID.; ID.; ID.; ID.; LEGAL STANDING; DEFINED.— Legal standing or *locus standi* is a party's personal and substantial interest in a case such that it has sustained or will sustain direct injury as a result of the governmental act being challenged. In *Holy Spirit Homeowners Association, Inc. v. Defensor*, we held that the association had legal standing because its members stood to be injured by the enforcement of the assailed provisions: Petitioner association has the legal standing to institute the instant petition x x x. There is no dispute that the individual members of petitioner association are residents of the NGC. As such they are covered and stand to be either benefited or injured by the enforcement of the IRR, particularly as regards the selection process of beneficiaries and lot allocation to qualified beneficiaries. Thus, petitioner association may assail those provisions in the IRR which it believes to be unfavorable to the rights of its members. x x x Certainly, petitioner and its members have sustained direct injury arising from the enforcement of the IRR in that they have been disqualified and eliminated from the selection process.

4. TAXATION; MINIMUM CORPORATE INCOME TAX (MCIT); CONCEPT AND RATIONALE FOR ITS IMPOSITION.— The MCIT on domestic corporations is a new concept introduced by RA 8424 to the Philippine taxation system. It came about as a result of the perceived inadequacy of the self-assessment system in capturing the true income of corporations. It was devised as a relatively simple and effective revenue-raising instrument compared to the normal income tax which is more difficult to control and enforce. It is a means

to ensure that everyone will make some minimum contribution to the support of the public sector. x x x Congress intended to put a stop to the practice of corporations which, while having large turn-overs, report minimal or negative net income resulting in minimal or zero income taxes year in and year out, through under-declaration of income or over-deduction of expenses otherwise called tax shelters. x x x The MCIT serves to put a cap on such tax shelters. As a tax on gross income, it prevents tax evasion and minimizes tax avoidance schemes achieved through sophisticated and artful manipulations of deductions and other stratagems. Since the tax base was broader, the tax rate was lowered.

5. ID.; TAXES, DEFINED.— Taxes are the lifeblood of the government. Without taxes, the government can neither exist nor endure. The exercise of taxing power derives its source from the very existence of the State whose social contract with its citizens obliges it to promote public interest and the common good.

6. POLITICAL LAW; INHERENT POWERS OF THE STATE; TAXATION; A POWER THAT IS PURELY LEGISLATIVE. — Taxation is an inherent attribute of sovereignty. It is a power that is purely legislative. Essentially, this means that in the legislature primarily lies the discretion to determine the nature (kind), object (purpose), extent (rate), coverage (subjects) and situs (place) of taxation. It has the authority to prescribe a certain tax at a specific rate for a particular public purpose on persons or things within its jurisdiction. In other words, the legislature wields the power to define what tax shall be imposed, why it should be imposed, how much tax shall be imposed, against whom (or what) it shall be imposed and where it shall be imposed. As a general rule, the power to tax is plenary and unlimited in its range, acknowledging in its very nature no limits, so that the principal check against its abuse is to be found only in the responsibility of the legislature (which imposes the tax) to its constituency who are to pay it. Nevertheless, it is circumscribed by constitutional limitations. At the same time, like any other statute, tax legislation carries a presumption of constitutionality.

7. ID.; CONSTITUTIONAL LAW; DUE PROCESS, VIOLATION OF; A TAX MEASURE WHICH AMOUNTS TO A

CONFISCATION OF PROPERTY.— The constitutional safeguard of due process is embodied in the fiat "[no] person shall be deprived of life, liberty or property without due process of law." In *Sison, Jr. v. Ancheta, et al.*, we held that the due process clause may properly be invoked to invalidate, in appropriate cases, a revenue measure when it amounts to a confiscation of property. But in the same case, we also explained that we will not strike down a revenue measure as unconstitutional (for being violative of the due process clause) on the mere allegation of arbitrariness by the taxpayer. There must be a factual foundation to such an unconstitutional taint. This merely adheres to the authoritative doctrine that, where the due process clause is invoked, considering that it is not a fixed rule but rather a broad standard, there is a need for proof of such persuasive character.

8. TAXATION; INCOME TAX; INCOME, DEFINED; WHEN TAXABLE; REQUISITES.— Income means all the wealth which flows into the taxpayer other than a mere return on capital. Capital is a fund or property existing at one distinct point in time while income denotes a flow of wealth during a definite period of time. Income is gain derived and severed from capital. For income to be taxable, the following requisites must exist: (1) there must be gain; (2) the gain must be realized or received and (3) the gain must not be excluded by law or treaty from taxation. Certainly, an income tax is arbitrary and confiscatory if it taxes capital because capital is not income. In other words, it is income, not capital, which is subject to income tax. However, the MCIT is not a tax on capital.

9. ID.; MINIMUM CORPORATE INCOME TAX (MCIT); NATURE THEREOF, EXPLAINED.— The MCIT is imposed on gross income which is arrived at by deducting the capital spent by a corporation in the sale of its goods, *i.e.*, the cost of goods and other direct expenses from gross sales. Clearly, the capital is not being taxed. Furthermore, the MCIT is not an additional tax imposition. It is imposed **in lieu of** the normal net income tax, and only if the normal income tax is suspiciously low. The MCIT merely approximates the amount of net income tax due from a corporation, pegging the rate at a very much reduced 2% and uses as the base the corporation's gross income. Besides, there is no legal objection to a broader tax base or taxable income by eliminating all deductible items and at the

same time reducing the applicable tax rate. Statutes taxing the **gross** "receipts," "earnings," or "**income**" **of particular corporations** are found in many jurisdictions. Tax thereon is generally held to be within the power of a state to impose; or constitutional, unless it interferes with interstate commerce or violates the requirement as to uniformity of taxation. xxx Absent any other valid objection, the assignment of gross income, instead of net income, as the tax base of the MCIT, taken with the reduction of the tax rate from 32% to 2%, is not constitutionally objectionable.

10. ID.; WITHHOLDING TAX SYSTEM; CATEGORIZED. – The withholding tax system is a procedure through which taxes (including income taxes) are collected. Under Section 57 of RA 8424, the types of income subject to withholding tax are divided into three categories: (a) withholding of final tax on certain incomes; (b) withholding of creditable tax at source and (c) tax-free covenant bonds. The differences between the two forms of withholding tax, *i.e.*, creditable and final, show that ordinary assets are not treated in the same manner as capital assets. Final withholding tax (FWT) and CWT are distinguished as follows: x x x FWT is imposed on the sale of capital assets. On the other hand, CWT is imposed on the sale of ordinary assets. The inherent and substantial differences between FWT and CWT disprove petitioner's contention that ordinary assets are being lumped together with, and treated similarly as, capital assets in contravention of the pertinent provisions of RA 8424. The fact that the tax is withheld at source does not automatically mean that it is treated exactly the same way as capital gains. As aforementioned, the mechanics of the FWT are distinct from those of the CWT. The withholding agent/buyer's act of collecting the tax at the time of the transaction by withholding the tax due from the income payable is the essence of the withholding tax method of tax collection.

11. ID.; ID.; AUTHORITY OF THE SECRETARY OF FINANCE TO PROMULGATE RULES AND REGULATIONS TO EFFECT LAW ENFORCEMENT.— The Secretary of Finance is granted, under Section 244 of RA 8424, the authority to promulgate the necessary rules and regulations for the effective enforcement of the provisions of the law. Such authority is subject to the limitation that the rules and regulations must not override, but must remain consistent and in harmony with,

the law they seek to apply and implement. It is well-settled that an administrative agency cannot amend an act of Congress. x x x Respondent Secretary has the authority to require the withholding of a tax on items of income payable to any person, national or juridical, residing in the Philippines. Such authority is derived from Section 57(B) of RA 8424 which provides: SEC. 57. *Withholding of Tax at Source*. – x x x (B) *Withholding of Creditable Tax at Source*. The [Secretary] may, upon the recommendation of the [CIR], require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/persons as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year. The questioned provisions of RR 2-98, as amended, are well within the authority given by Section 57(B) to the Secretary, *i.e.*, the graduated rate of 1.5%-5% is between the 1%-32% range; the withholding tax is imposed on the income payable and the tax is creditable against the income tax liability of the taxpayer for the taxable year.

12. ID.; ID.; REASON FOR CREATION.— We have long recognized that the method of withholding tax at source is a procedure of collecting income tax which is sanctioned by our tax laws. The withholding tax system was devised for three primary reasons: first, to provide the taxpayer a convenient manner to meet his probable income tax liability; second, to ensure the collection of income tax which can otherwise be lost or substantially reduced through failure to file the corresponding returns and third, to improve the government's cash flow. This results in administrative savings, prompt and efficient collection of taxes, prevention of delinquencies and reduction of governmental effort to collect taxes through more complicated means and remedies.

13. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; EQUAL PROTECTION CLAUSE; DEFINED AND CONSTRUED.— The equal protection clause under the Constitution means that "no person or class of persons shall be deprived of the same protection of laws which is enjoyed by other persons or other classes in the same place and in like circumstances." Stated differently, all persons belonging to the same class shall be taxed alike. It follows that the guaranty

of the equal protection of the laws is not violated by legislation based on a reasonable classification. Classification, to be valid, must (1) rest on substantial distinctions; (2) be germane to the purpose of the law; (3) not be limited to existing conditions only and (4) apply equally to all members of the same class.

APPEARANCES OF COUNSEL

Isagani A. Cruz for petitioner.
The Solicitor General for respondents.

D E C I S I O N

CORONA, *J.*:

In this original petition for *certiorari* and *mandamus*,[1] petitioner Chamber of Real Estate and Builders' Associations, Inc. is questioning the constitutionality of Section 27 (E) of Republic Act (RA) 8424[2] and the revenue regulations (RRs) issued by the Bureau of Internal Revenue (BIR) to implement said provision and those involving creditable withholding taxes.[3]

Petitioner is an association of real estate developers and builders in the Philippines. It impleaded former Executive Secretary Alberto Romulo, then acting Secretary of Finance Juanita D. Amatong and then Commissioner of Internal Revenue Guillermo Parayno, Jr. as respondents.

Petitioner assails the validity of the imposition of minimum corporate income tax (MCIT) on corporations and creditable withholding tax (CWT) on sales of real properties classified as ordinary assets.

Section 27(E) of RA 8424 provides for MCIT on domestic corporations and is implemented by RR 9-98. Petitioner argues

[1] Under Rule 65 of the Rules of Court.

[2] The National Internal Revenue Code of 1997.

[3] In particular, these are Section 2.27 (E), Section 2.57.2 (J) (as amended by RR 6-2001) and Section 2.58.2 of RR 2-98 and Section 4 (a) (ii) and (c) (ii) of RR-7-2003.

that the MCIT violates the due process clause because it levies income tax even if there is no realized gain.

Petitioner also seeks to nullify Sections 2.57.2(J) (as amended by RR 6-2001) and 2.58.2 of RR 2-98, and Section 4(a)(ii) and (c)(ii) of RR 7-2003, all of which prescribe the rules and procedures for the collection of CWT on the sale of real properties categorized as ordinary assets. Petitioner contends that these revenue regulations are contrary to law for two reasons: *first*, they ignore the different treatment by RA 8424 of ordinary assets and capital assets and *second*, respondent Secretary of Finance has no authority to collect CWT, much less, to base the CWT on the gross selling price or fair market value of the real properties classified as ordinary assets.

Petitioner also asserts that the enumerated provisions of the subject revenue regulations violate the due process clause because, like the MCIT, the government collects income tax even when the net income has not yet been determined. They contravene the equal protection clause as well because the CWT is being levied upon real estate enterprises but not on other business enterprises, more particularly those in the manufacturing sector.

The issues to be resolved are as follows:

(1) whether or not this Court should take cognizance of the present case;

(2) whether or not the imposition of the MCIT on domestic corporations is unconstitutional and

(3) whether or not the imposition of CWT on income from sales of real properties classified as ordinary assets under RRs 2-98, 6-2001 and 7-2003, is unconstitutional.

OVERVIEW OF THE ASSAILED PROVISIONS

Under the MCIT scheme, a corporation, beginning on its fourth year of operation, is assessed an MCIT of 2% of its gross income when such MCIT is greater than the normal corporate income tax imposed under Section 27(A).[4] If the regular

[4] Applying the 32% tax rate to net income.

income tax is higher than the MCIT, the corporation does not pay the MCIT. Any excess of the MCIT over the normal tax shall be carried forward and credited against the normal income tax for the three immediately succeeding taxable years. Section 27(E) of RA 8424 provides:

> Section 27 (E). [MCIT] on Domestic Corporations.—
>
> (1) Imposition of Tax. – A [MCIT] of two percent (2%) of the gross income as of the end of the taxable year, as defined herein, is hereby imposed on a corporation taxable under this Title, beginning on the fourth taxable year immediately following the year in which such corporation commenced its business operations, when the minimum income tax is greater than the tax computed under Subsection (A) of this Section for the taxable year.
>
> (2) Carry Forward of Excess Minimum Tax. – Any excess of the [MCIT] over the normal income tax as computed under Subsection (A) of this Section shall be carried forward and credited against the normal income tax for the three (3) immediately succeeding taxable years.
>
> (3) Relief from the [MCIT] under certain conditions. – The Secretary of Finance is hereby authorized to suspend the imposition of the [MCIT] on any corporation which suffers losses on account of prolonged labor dispute, or because of *force majeure*, or because of legitimate business reverses.
>
> The Secretary of Finance is hereby authorized to promulgate, upon recommendation of the Commissioner, the necessary rules and regulations that shall define the terms and conditions under which he may suspend the imposition of the [MCIT] in a meritorious case.
>
> (4) Gross Income Defined. – For purposes of applying the [MCIT] provided under Subsection (E) hereof, the term 'gross income' shall mean gross sales less sales returns, discounts and allowances and cost of goods sold. "Cost of goods sold" shall include all business expenses directly incurred to produce the merchandise to bring them to their present location and use.
>
> For trading or merchandising concern, "cost of goods sold" shall include the invoice cost of the goods sold, plus

> import duties, freight in transporting the goods to the place where the goods are actually sold including insurance while the goods are in transit.
>
> For a manufacturing concern, "cost of goods manufactured and sold" shall include all costs of production of finished goods, such as raw materials used, direct labor and manufacturing overhead, freight cost, insurance premiums and other costs incurred to bring the raw materials to the factory or warehouse.
>
> In the case of taxpayers engaged in the sale of service, "gross income" means gross receipts less sales returns, allowances, discounts and cost of services. "Cost of services" shall mean all direct costs and expenses necessarily incurred to provide the services required by the customers and clients including (A) salaries and employee benefits of personnel, consultants and specialists directly rendering the service and (B) cost of facilities directly utilized in providing the service such as depreciation or rental of equipment used and cost of supplies: Provided, however, that in the case of banks, "cost of services" shall include interest expense.

On August 25, 1998, respondent Secretary of Finance (Secretary), on the recommendation of the Commissioner of Internal Revenue (CIR), promulgated RR 9-98 implementing Section 27(E).[5] The pertinent portions thereof read:

> Sec. 2.27(E) [MCIT] on Domestic Corporations. –
>
> (1) Imposition of the Tax. – A [MCIT] of two percent (2%) of the gross income as of the end of the taxable year (whether calendar or fiscal year, depending on the accounting period employed) is hereby imposed upon any domestic corporation beginning the fourth (4th) taxable year immediately following the taxable year in which such corporation commenced its business operations. The MCIT shall be imposed whenever such corporation has zero or negative taxable income or whenever the amount of minimum corporate income tax is

[5] Implementing [RA 8424], "An Act Amending the National Internal Revenue Code, as amended" Relative to the Imposition of the [MCIT] on Domestic Corporations and Resident Foreign Corporations.

greater than the normal income tax due from such corporation.

For purposes of these Regulations, the term, "normal income tax" means the income tax rates prescribed under Sec. 27(A) and Sec. 28(A)(1) of the Code xxx at 32% effective January 1, 2000 and thereafter.

xxx xxx xxx

(2) Carry forward of excess [MCIT]. – Any excess of the [MCIT] over the normal income tax as computed under Sec. 27(A) of the Code shall be carried forward on an annual basis and credited against the normal income tax for the three (3) immediately succeeding taxable years.

xxx xxx xxx

Meanwhile, on April 17, 1998, respondent Secretary, upon recommendation of respondent CIR, promulgated RR 2-98 implementing certain provisions of RA 8424 involving the withholding of taxes.[6] Under Section 2.57.2(J) of RR No. 2-98, income payments from the sale, exchange or transfer of real property, other than capital assets, by persons residing in the Philippines and habitually engaged in the real estate business were subjected to CWT:

Sec. 2.57.2. Income payment subject to [CWT] and rates prescribed thereon:

xxx xxx xxx

(J) Gross selling price or total amount of consideration or its equivalent paid to the seller/owner for the sale, exchange or transfer of. – Real property, other than capital assets, sold by an individual, corporation, estate, trust, trust fund or pension fund and the seller/transferor is habitually engaged in the real estate in accordance with the following schedule—

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[6] Implementing [RA 8424] relative to the Withholding on Income subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

Those which are exempt from a withholding tax at source as prescribed in Sec. 2.57.5 of these regulations.	Exempt
With a selling price of five hundred thousand pesos (₱500,000.00) or less.	1.5%
With a selling price of more than five hundred thousand pesos (₱500,000.00) but not more than two million pesos (₱2,000,000.00).	3.0%
With selling price of more than two million pesos (₱2,000,000.00)	5.0%

xxx xxx xxx

Gross selling price shall mean the consideration stated in the sales document or the fair market value determined in accordance with Section 6 (E) of the Code, as amended, whichever is higher. In an exchange, the fair market value of the property received in exchange, as determined in the Income Tax Regulations shall be used.

Where the consideration or part thereof is payable on installment, no withholding tax is required to be made on the periodic installment payments where the buyer is an individual not engaged in trade or business. In such a case, the applicable rate of tax based on the entire consideration shall be withheld on the last installment or installments to be paid to the seller.

However, if the buyer is engaged in trade or business, whether a corporation or otherwise, the tax shall be deducted and withheld by the buyer on every installment.

This provision was amended by RR 6-2001 on July 31, 2001:

Sec. 2.57.2. Income payment subject to [CWT] and rates prescribed thereon:

xxx xxx xxx

(J) Gross selling price or total amount of consideration or its equivalent paid to the seller/owner for the sale, exchange or transfer of real property classified as ordinary asset.— A [CWT] based on the gross selling price/total amount of consideration or the fair market value determined in accordance with Section 6(E) of the Code, whichever is higher, paid to the seller/owner for the sale, transfer or exchange of real property, other than capital asset, shall be imposed upon the withholding agent,/buyer, in accordance with the following schedule:

Where the seller/transferor is exempt from [CWT] in accordance with Sec. 2.57.5 of these regulations.	Exempt
Upon the following values of real property, where the seller/transferor is habitually engaged in the real estate business.	
With a selling price of Five Hundred Thousand Pesos (₱500,000.00) or less.	15%
With a selling price of more than Five Hundred Thousand Pesos (₱500,000.00) but not more than Two Million Pesos (₱2,000,000.00).	3.0%
With a selling price of more than two Million Pesos (₱2,000,000.00).	5.0%

xxx xxx xxx

Gross selling price shall remain the consideration stated in the sales document or the fair market value determined in accordance with Section 6 (E) of the Code, as amended, whichever is higher. In an exchange, the fair market value of the property received in exchange shall be considered as the consideration.

xxx xxx xxx

However, if the buyer is engaged in trade or business, whether a corporation or otherwise, these rules shall apply:

(i) If the sale is a sale of property on the installment plan (that is, payments in the year of sale do not exceed 25% of the selling price), the tax shall be deducted and withheld by the

buyer on every installment.

(ii) If, on the other hand, the sale is on a "cash basis" or is a "deferred-payment sale not on the installment plan" (that is, payments in the year of sale exceed 25% of the selling price), the buyer shall withhold the tax based on the gross selling price or fair market value of the property, whichever is higher, on the first installment.

In any case, no Certificate Authorizing Registration (CAR) shall be issued to the buyer unless the [CWT] due on the sale, transfer or exchange of real property other than capital asset has been fully paid. (Underlined amendments in the original)

Section 2.58.2 of RR 2-98 implementing Section 58(E) of RA 8424 provides that any sale, barter or exchange subject to the CWT will not be recorded by the Registry of Deeds until the CIR has certified that such transfers and conveyances have been reported and the taxes thereof have been duly paid:[7]

Sec. 2.58.2. Registration with the Register of Deeds. – Deeds of conveyances of land or land and building/improvement thereon arising from sales, barters, or exchanges subject to the creditable expanded withholding tax shall not be recorded by the Register of Deeds unless the [CIR] or his duly authorized representative has certified that such transfers and conveyances have been reported and the expanded withholding tax, inclusive of the documentary stamp tax, due thereon have been fully paid xxx.

On February 11, 2003, RR No. 7-2003[8] was promulgated, providing for the guidelines in determining whether a particular real property is a capital or an ordinary asset for purposes of imposing the MCIT, among others. The pertinent portions thereof state:

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[7] This Certificate is commonly known as the "CAR" or the "certificate authorizing registration."

[8] Providing the Guidelines in Determining Whether a Particular Real Property Is a Capital Asset or an Ordinary Asset Pursuant to Section 39(A)(1) of the National Internal Revenue Code of 1997 for Purposes of Imposing the Capital Gains Tax under Sections 24(D), 25(A)(3), 25(B) and 27(D)(5), or the Ordinary Income Tax under Sections 24(A), 25(A) & (B), 27(A), 28(A)(1) and 28(B)(1), or the [MCIT] under Sections 27(E) and 28(A)(2) of the same Code.

Section 4. Applicable taxes on sale, exchange or other disposition of real property. — Gains/Income derived from sale, exchange, or other disposition of real properties shall, unless otherwise exempt, be subject to applicable taxes imposed under the Code, depending on whether the subject properties are classified as capital assets or ordinary assets;

a. In the case of individual citizen (including estates and trusts), resident aliens, and non-resident aliens engaged in trade or business in the Philippines;

xxx xxx xxx

(ii) The sale of real property located in the Philippines, classified as ordinary assets, shall be subject to the [CWT] (expanded) under Sec. 2.57..2(J) of [RR 2-98], as amended, based on the gross selling price or current fair market value as determined in accordance with Section 6(E) of the Code, whichever is higher, and consequently, to the ordinary income tax imposed under Sec. 24(A)(1)(c) or 25(A)(1) of the Code, as the case may be, based on net taxable income.

xxx xxx xxx

c. In the case of domestic corporations. –

xxx xxx xxx

(ii) The sale of land and/or building classified as ordinary asset and other real property (other than land and/or building treated as capital asset), regardless of the classification thereof, all of which are located in the Philippines, shall be subject to the [CWT] (expanded) under Sec. 2.57.2(J) of [RR 2-98], as amended, and consequently, to the ordinary income tax under Sec. 27(A) of the Code. In lieu of the ordinary income tax, however, domestic corporations may become subject to the [MCIT] under Sec. 27(E) of the Code, whichever is applicable.

xxx xxx xxx

We shall now tackle the issues raised.

EXISTENCE OF A JUSTICIABLE CONTROVERSY

Courts will not assume jurisdiction over a constitutional question unless the following requisites are satisfied: (1) there must be an actual case calling for the exercise of judicial review; (2) the question before the court must be ripe for adjudication; (3) the person challenging the validity of the act must have standing to do so; (4) the question of constitutionality must have been raised at the earliest opportunity and (5) the issue of constitutionality must be the very *lis mota* of the case.[9]

Respondents aver that the first three requisites are absent in this case. According to them, there is no actual case calling for the exercise of judicial power and it is not yet ripe for adjudication because

> [petitioner] did not allege that CREBA, as a corporate entity, or any of its members, has been assessed by the BIR for the payment of [MCIT] or [CWT] on sales of real property. Neither did petitioner allege that its members have shut down their businesses as a result of the payment of the MCIT or CWT. Petitioner has raised concerns in mere abstract and hypothetical form without any actual, specific and concrete instances cited that the assailed law and revenue regulations have actually and adversely affected it. Lacking empirical data on which to base any conclusion, any discussion on the constitutionality of the MCIT or CWT on sales of real property is essentially an academic exercise.
>
> Perceived or alleged hardship to taxpayers alone is not an adequate justification for adjudicating abstract issues. Otherwise, adjudication would be no different from the giving of advisory opinion that does not really settle legal issues.[10]

An actual case or controversy involves a conflict of legal rights or an assertion of opposite legal claims which is susceptible of judicial resolution as distinguished from a hypothetical or

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[9] *Jumamil v. Cafe*, G.R. No. 144570, 21 September 2005, 470 SCRA 475, 486-487. Citations omitted.

[10] *Rollo*, pp. 172-173.

abstract difference or dispute.[11] On the other hand, a question is considered ripe for adjudication when the act being challenged has a direct adverse effect on the individual challenging it.[12]

Contrary to respondents' assertion, we do not have to wait until petitioner's members have shut down their operations as a result of the MCIT or CWT. The assailed provisions are already being implemented. As we stated in *Didipio Earth-Savers' Multi-Purpose Association, Incorporated (DESAMA) v. Gozun*:[13]

> By the mere enactment of the questioned law or the approval of the challenged act, the dispute is said to have ripened into a judicial controversy even without any other overt act. Indeed, even a singular violation of the Constitution and/or the law is enough to awaken judicial duty.[14]

If the assailed provisions are indeed unconstitutional, there is no better time than the present to settle such question once and for all.

Respondents next argue that petitioner has no legal standing to sue:

> Petitioner is an association of some of the real estate developers and builders in the Philippines. Petitioners did not allege that [it] itself is in the real estate business. It did not allege any material interest or any wrong that it may suffer from the enforcement of [the assailed provisions].[15]

Legal standing or *locus standi* is a party's personal and substantial interest in a case such that it has sustained or will

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[11] *Didipio Earth-Savers' Multi-Purpose Association, Incorporated (DESAMA) v. Gozun*, G.R. No. 157882, 30 March 2006, 485 SCRA 586, 598-599, citing *Board of Optometry v. Hon. Colet*, 328 Phil. 1187, 1206 (1996).

[12] *Id.*, citing *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 632-633 (2000).

[13] *Id*.

[14] *Id.*, p. 600, citing *Pimentel, Jr. v. Hon. Aguirre*, 391 Phil. 84, 107 (2000).

[15] *Rollo*, pp. 170-171.

sustain direct injury as a result of the governmental act being challenged.[16] In *Holy Spirit Homeowners Association, Inc. v. Defensor*,[17] we held that the association had legal standing because its members stood to be injured by the enforcement of the assailed provisions:

> Petitioner association has the legal standing to institute the instant petition xxx. There is no dispute that the individual members of petitioner association are residents of the NGC. As such they are covered and stand to be either benefited or injured by the enforcement of the IRR, particularly as regards the selection process of beneficiaries and lot allocation to qualified beneficiaries. Thus, petitioner association may assail those provisions in the IRR which it believes to be unfavorable to the rights of its members. xxx Certainly, petitioner and its members have sustained direct injury arising from the enforcement of the IRR in that they have been disqualified and eliminated from the selection process.[18]

In any event, this Court has the discretion to take cognizance of a suit which does not satisfy the requirements of an actual case, ripeness or legal standing when paramount public interest is involved.[19] The questioned MCIT and CWT affect not only petitioners but practically all domestic corporate taxpayers in our country. The transcendental importance of the issues raised and their overreaching significance to society make it proper for us to take cognizance of this petition.[20]

CONCEPT AND RATIONALE OF THE MCIT

The MCIT on domestic corporations is a new concept introduced by RA 8424 to the Philippine taxation system. It came about as a result of the perceived inadequacy of the self-

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[16] *People v. Vera*, 65 Phil. 56, 89 (1937).

[17] G.R. No. 163980, 3 August 2006, 497 SCRA 581.

[18] *Id.*, pp. 591-592.

[19] *Joya v. Presidential Commission on Good Governance*, G.R. No. 96541, 24 August 1993, 225 SCRA 568, 579, citing *Dumlao v. COMELEC*, G.R. No. 50245, 22 January 1980, 95 SCRA 392.

[20] *Supra* note 11, p. 600. *Automotive Industry Workers Alliance (AIWA) v. Romulo*, G.R. No. 157509, 18 January 2005, 449 SCRA 1, 11, citations omitted.

assessment system in capturing the true income of corporations.[21] It was devised as a relatively simple and effective revenue-raising instrument compared to the normal income tax which is more difficult to control and enforce. It is a means to ensure that everyone will make some minimum contribution to the support of the public sector. The congressional deliberations on this are illuminating:

> Senator Enrile. Mr. President, we are not unmindful of the practice of certain corporations of reporting constantly a loss in their operations to avoid the payment of taxes, and thus avoid sharing in the cost of government. In this regard, the Tax Reform Act introduces for the first time a new concept called the [MCIT] so as to minimize tax evasion, tax avoidance, tax manipulation in the country and for administrative convenience. … This will go a long way in ensuring that corporations will pay their just share in supporting our public life and our economic advancement.[22]

Domestic corporations owe their corporate existence and their privilege to do business to the government. They also benefit from the efforts of the government to improve the financial market and to ensure a favorable business climate. It is therefore fair for the government to require them to make a reasonable contribution to the public expenses.

Congress intended to put a stop to the practice of corporations which, while having large turn-overs, report minimal or negative net income resulting in minimal or zero income taxes year in and year out, through under-declaration of income or over-deduction of expenses otherwise called tax shelters.[23]

> Mr. Javier (E.) … [This] is what the Finance Dept. is trying to remedy, that is why they have proposed the [MCIT]. Because from experience too, you have corporations which have been losing year in and year

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[21] R. T. Dascil, *The National Internal Revenue Code 88* (2003).

[22] Senate Deliberations, Sponsorship Speech of Senator Juan Ponce Enrile, July 30, 1997, p. 41.

[23] Transcript, House of Representatives Committee on Ways and Means hearing, April 23, 1997, pp. 53-61; Oct. 9, 1997, pp. 95-99; Oct. 10, 1997, pp. 11-14.

out and paid no tax. So, if the corporation has been losing for the past five years to ten years, then that corporation has no business to be in business. It is dead. Why continue if you are losing year in and year out? So, we have this provision to avoid this type of tax shelters, Your Honor.[24]

The primary purpose of any legitimate business is to earn a profit. Continued and repeated losses after operations of a corporation or consistent reports of minimal net income render its financial statements and its tax payments suspect. For sure, certain tax avoidance schemes resorted to by corporations are allowed in our jurisdiction. The MCIT serves to put a cap on such tax shelters. As a tax on gross income, it prevents tax evasion and minimizes tax avoidance schemes achieved through sophisticated and artful manipulations of deductions and other stratagems. Since the tax base was broader, the tax rate was lowered.

To further emphasize the corrective nature of the MCIT, the following safeguards were incorporated into the law:

First, recognizing the birth pangs of businesses and the reality of the need to recoup initial major capital expenditures, the imposition of the MCIT commences only on the fourth taxable year immediately following the year in which the corporation commenced its operations.[25] This grace period allows a new business to stabilize first and make its ventures viable before it is subjected to the MCIT.[26]

Second, the law allows the carrying forward of any excess of the MCIT paid over the normal income tax which shall be credited against the normal income tax for the three immediately succeeding years.[27]

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[24] *Id.*, April 23, 1997, p. 53.

[25] RA 8424, Section 27(E)(1).

[26] *Manila Banking Corporation v. CIR*, C.T.A. Case No. 6442, 21 April 2003.

[27] RA 8424, Section 27(E)(2).

Third, since certain businesses may be incurring genuine repeated losses, the law authorizes the Secretary of Finance to suspend the imposition of MCIT if a corporation suffers losses due to prolonged labor dispute, *force majeure* and legitimate business reverses.[28]

Even before the legislature introduced the MCIT to the Philippine taxation system, several other countries already had their own system of minimum corporate income taxation. Our lawmakers noted that most developing countries, particularly Latin American and Asian countries, have the same form of safeguards as we do. As pointed out during the committee hearings:

> [Mr. Medalla:] Note that most developing countries where you have of course quite a bit of room for underdeclaration of gross receipts have this same form of safeguards.
>
> In the case of Thailand, half a percent (0.5%), there's a minimum of income tax of half a percent (0.5%) of gross assessable income. In Korea a 25% of taxable income before deductions and exemptions. Of course the different countries have different basis for that minimum income tax.
>
> The other thing you'll notice is the preponderance of Latin American countries that employed this method. Okay, those are additional Latin American countries.[29]

At present, the United States of America, Mexico, Argentina, Tunisia, Panama and Hungary have their own versions of the MCIT.[30]

MCIT IS NOT VIOLATIVE OF DUE PROCESS

Petitioner claims that the MCIT under Section 27(E) of RA 8424 is unconstitutional because it is highly oppressive,

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[28] *Id.*, Section 27(E)(3). The mechanism for the availment of the exemption has been spelled out in Section 2.27(E)(3) in relation to Section 2.27(E)(4)(b)(c) and (d) of RR 9-98.

[29] Transcript of the House Committee Meeting on Ways and Means hearing, Feb. 20, 1996, p. 24.

[30] KPMG's Corporate and Indirect Tax Rate Survey 2009.
<http://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/Documents/KPMG-Corporate-Indirect-Tax-Rate-Survey-2009.pdf> March 1, 2010 [17, 22, 25-26, 29-30].

arbitrary and confiscatory which amounts to deprivation of property without due process of law. It explains that gross income as defined under said provision only considers the cost of goods sold and other direct expenses; other major expenditures, such as administrative and interest expenses which are equally necessary to produce gross income, were not taken into account.[31] Thus, pegging the tax base of the MCIT to a corporation's gross income is tantamount to a confiscation of capital because gross income, unlike net income, is not "realized gain."[32]

We disagree.

Taxes are the lifeblood of the government. Without taxes, the government can neither exist nor endure. The exercise of taxing power derives its source from the very existence of the State whose social contract with its citizens obliges it to promote public interest and the common good.[33]

Taxation is an inherent attribute of sovereignty.[34] It is a power that is purely legislative.[35] Essentially, this means that in the legislature primarily lies the discretion to determine the nature (kind), object (purpose), extent (rate), coverage (subjects) and situs (place) of taxation.[36] It has the authority to prescribe a certain tax at a specific rate for a particular public purpose on persons or things within its jurisdiction. In other words, the legislature wields the power to define what tax shall be imposed, why it should be imposed, how much tax shall be imposed, against whom (or what) it shall be imposed and where it shall be imposed.

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[31] *Rollo*, p. 8.

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

[33] *National Power Corporation v. City of Cabanatuan*, G.R. No. 149110, 9 April 2003, 401 SCRA 259, 270.

[34] *Pepsi Cola Bottling Co. of the Philippines, Inc. v. Municipality of Tanauan, Leyte*, G.R. No. L-31156, 27 February 1976, 69 SCRA 460, 465, citing Cooley, *The Law of Taxation*, Vol. 1, Fourth Edition, 149-150.

[35] *Id*.

[36] *Commissioner of Internal Revenue v. Santos*, G.R. No. 119252, 18 August 1997, 277 SCRA 617, 631.

As a general rule, the power to tax is plenary and unlimited in its range, acknowledging in its very nature no limits, so that the principal check against its abuse is to be found only in the responsibility of the legislature (which imposes the tax) to its constituency who are to pay it.[37] Nevertheless, it is circumscribed by constitutional limitations. At the same time, like any other statute, tax legislation carries a presumption of constitutionality.

The constitutional safeguard of due process is embodied in the fiat "[no] person shall be deprived of life, liberty or property without due process of law." In *Sison, Jr. v. Ancheta, et al.*,[38] we held that the due process clause may properly be invoked to invalidate, in appropriate cases, a revenue measure[39] when it amounts to a confiscation of property.[40] But in the same case, we also explained that we will not strike down a revenue measure as unconstitutional (for being violative of the due process clause) on the mere allegation of arbitrariness by the taxpayer.[41] There must be a factual foundation to such an unconstitutional taint.[42] This merely adheres to the authoritative doctrine that, where the due process clause is invoked, considering that it is not a fixed rule but rather a broad standard, there is a need for proof of such persuasive character.[43]

Petitioner is correct in saying that income is distinct from capital.[44] Income means all the wealth which flows into the taxpayer other than a mere return on capital. Capital is a fund or property existing at one distinct point in time while income denotes a flow of wealth during a definite period of time.[45]

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[37] *MCIAA v. Marcos*, 330 Phil. 392, 404 (1996).

[38] 215 Phil. 582 (1984).

[39] *Id.*, pp. 587-588.

[40] *Id.*, p. 589.

[41] *Id.*, p. 588.

[42] *Id*.

[43] *Id.*, pp. 588-589.

[44] See *Madrigal and Paterno v. Rafferty and Concepcion*, 38 Phil. 414, 418-419 (1918).

[45] *Id*.

Income is gain derived and severed from capital.[46] For income to be taxable, the following requisites must exist:

(1) there must be gain;

(2) the gain must be realized or received and

(3) the gain must not be excluded by law or treaty from taxation.[47]

Certainly, an income tax is arbitrary and confiscatory if it taxes capital because capital is not income. In other words, it is income, not capital, which is subject to income tax. However, the MCIT is not a tax on capital.

The MCIT is imposed on gross income which is arrived at by deducting the capital spent by a corporation in the sale of its goods, *i.e.*, the cost of goods[48] and other direct expenses from gross sales. Clearly, the capital is not being taxed.

Furthermore, the MCIT is not an additional tax imposition. It is imposed **in lieu of** the normal net income tax, and only if the normal income tax is suspiciously low. The MCIT merely approximates the amount of net income tax due from a corporation, pegging the rate at a very much reduced 2% and uses as the base the corporation's gross income.

Besides, there is no legal objection to a broader tax base or taxable income by eliminating all deductible items and at the same time reducing the applicable tax rate.[49]

Statutes taxing the **gross** "receipts," "earnings," or "**income**" **of particular corporations** are found in many jurisdictions. Tax thereon is generally held to be within the power of a state to impose; or

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[46] *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 108576, 20 January 1999, 301 SCRA 152, 173.

[47] *Id.*, p. 181.

[48] Or "cost of goods manufactured and sold" or "cost of services."

[49] *Sison v. Ancheta, et al., supra* note 38, p. 591.

constitutional, unless it interferes with interstate commerce or violates the requirement as to uniformity of taxation.[50]

The United States has a similar alternative minimum tax (AMT) system which is generally characterized by a lower tax rate but a broader tax base.[51] Since our income tax laws are of American origin, interpretations by American courts of our parallel tax laws have persuasive effect on the interpretation of these laws.[52] Although our MCIT is not exactly the same as the AMT, the policy behind them and the procedure of their implementation are comparable. On the question of the AMT's constitutionality, the United States Court of Appeals for the Ninth Circuit stated in *Okin v. Commissioner*:[53]

> In enacting the minimum tax, Congress attempted to remedy general taxpayer distrust of the system growing from large numbers of taxpayers with large incomes who were yet paying no taxes.
>
> xxx xxx xxx
>
> We thus join a number of other courts in upholding the constitutionality of the [AMT]. xxx [It] is a rational means of obtaining a broad-based tax, and therefore is constitutional.[54]

The U.S. Court declared that the congressional intent to ensure that corporate taxpayers would contribute a minimum amount of taxes was a legitimate governmental end to which the AMT bore a reasonable relation.[55]

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[50] *Commissioner of Internal Revenue v. Solidbank Corporation*, G.R. No. 148191, 25 November 2003, 416 SCRA 436, 454-455, citing Cooley, *The Law on Taxation*, Vol. II, 1786-1790 (1924) and *State v. Illinois Cent. R. Co.*, 92 NE 848, 28 October 14910.

[51] *Supra* note 30.

[52] *Bañas v. Court of Appeals*, G.R. No. 102967, 10 February 2000, 325 SCRA 259, 279, citations omitted.

[53] 808 F. 2d 1338 (9th Cir. 1987). See also *Freeman v. Commissioner*, T.C. Memo. 2001-254 (U.S. Tax Court, 2001); *Wyly v. United States*, 662 F. 2d 784 (5th Cir. 1982); *Klaasen v. Commissioner*, No. 98-9035 (10th Cir. 1999).

[54] *Id.*, p. 1342.

[55] *Id*.

American courts have also emphasized that Congress has the power to condition, limit or deny deductions from gross income in order to arrive at the net that it chooses to tax.[56] This is because deductions are a matter of legislative grace.[57]

Absent any other valid objection, the assignment of gross income, instead of net income, as the tax base of the MCIT, taken with the reduction of the tax rate from 32% to 2%, is not constitutionally objectionable.

Moreover, petitioner does not cite any actual, specific and concrete negative experiences of its members nor does it present empirical data to show that the implementation of the MCIT resulted in the confiscation of their property.

In sum, petitioner failed to support, by any factual or legal basis, its allegation that the MCIT is arbitrary and confiscatory. The Court cannot strike down a law as unconstitutional simply because of its yokes.[58] Taxation is necessarily burdensome because, by its nature, it adversely affects property rights.[59] The party alleging the law's unconstitutionality has the burden to demonstrate the supposed violations in understandable terms.[60]

RR 9-98 MERELY CLARIFIES SECTION 27(E) OF RA 8424

Petitioner alleges that RR 9-98 is a deprivation of property without due process of law because the MCIT is being imposed and collected even when there is actually a loss, or a zero or negative taxable income:

Sec. 2.27(E) [MCIT] on Domestic Corporations. —

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[56] *Helvering v. Independent Life Insurance Co.*, 292 U.S. 371, 381 (1934), citing *Burnet v. Thompson Oil & Gas Co.*, 283 U.S. 301; *Stanton v. Baltic Mining Co.*, 240 U.S. 103 and *Brushaber v. Union Pac. R. Co.*, 240 U.S. 1.

[57] *New Colonial Ice v. Helvering*, 292 U.S. 435, 440 (1934).

[58] *Abakada Guro Party List v. Ermita*, G.R. No. 168056, 1 September 2005, 469 SCRA 1, 145.

[59] *Id.*, separate opinion of Justice Tinga, pp. 275-276.

[60] *Id.*, p. 277.

(1) Imposition of the Tax. — xxx The MCIT shall be imposed whenever such corporation has **zero or negative taxable income** or whenever the amount of [MCIT] is greater than the normal income tax due from such corporation. (Emphasis supplied)

RR 9-98, in declaring that MCIT should be imposed whenever such corporation has zero or negative taxable income, merely defines the coverage of Section 27(E). This means that even if a corporation incurs a net loss in its business operations or reports zero income after deducting its expenses, it is still subject to an MCIT of 2% of its gross income. This is consistent with the law which imposes the MCIT on gross income notwithstanding the amount of the net income. But the law also states that the MCIT is to be paid only if it is greater than the normal net income. Obviously, it may well be the case that the MCIT would be less than the net income of the corporation which posts a zero or negative taxable income.

We now proceed to the issues involving the CWT.

The withholding tax system is a procedure through which taxes (including income taxes) are collected.[61] Under Section 57 of RA 8424, the types of income subject to withholding tax are divided into three categories: (a) withholding of final tax on certain incomes; (b) withholding of creditable tax at source and (c) tax-free covenant bonds. Petitioner is concerned with the second category (CWT) and maintains that the revenue regulations on the collection of CWT on sale of real estate categorized as ordinary assets are unconstitutional.

Petitioner, after enumerating the distinctions between capital and ordinary assets under RA 8424, contends that Sections 2.57.2(J) and 2.58.2 of RR 2-98 and Sections 4(a)(ii) and (c)(ii) of RR 7-2003 were promulgated "with grave abuse of discretion amounting to lack of jurisdiction" and "patently in contravention of law"[62] because they ignore such distinctions. Petitioner's conclusion is based on the following premises: (a) the revenue regulations use gross selling price (GSP) or fair market value

[61] BIR Ruling No. 018-03, November 24, 2003.

[62] *Rollo*, p. 13.

(FMV) of the real estate as basis for determining the income tax for the sale of real estate classified as ordinary assets and (b) they mandate the collection of income tax on a per transaction basis, *i.e.*, upon consummation of the sale via the CWT, contrary to RA 8424 which calls for the payment of the net income at the end of the taxable period.[63]

Petitioner theorizes that since RA 8424 treats capital assets and ordinary assets differently, respondents cannot disregard the distinctions set by the legislators as regards the tax base, modes of collection and payment of taxes on income from the sale of capital and ordinary assets.

Petitioner's arguments have no merit.

AUTHORITY OF THE SECRETARY OF FINANCE TO ORDER THE COLLECTION OF CWT ON SALES OF REAL PROPERTY CONSIDERED AS ORDINARY ASSETS

The Secretary of Finance is granted, under Section 244 of RA 8424, the authority to promulgate the necessary rules and regulations for the effective enforcement of the provisions of the law. Such authority is subject to the limitation that the rules and regulations must not override, but must remain consistent and in harmony with, the law they seek to apply and implement.[64] It is well-settled that an administrative agency cannot amend an act of Congress.[65]

We have long recognized that the method of withholding tax at source is a procedure of collecting income tax which is sanctioned by our tax laws.[66] The withholding tax system was

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

[64] *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 108358, 20 January 1995, 240 SCRA 368, 372.

[65] *Echegaray v. Secretary of Justice*, G.R. No. 132601, 12 October 1998, 297 SCRA 754, 791, citations omitted.

[66] *Filipinas Synthetic Fiber Corporation v. Court of Appeals*, G.R. Nos. 118498 & 124377, 12 October 1999, 316 SCRA 480, 485.

devised for three primary reasons: first, to provide the taxpayer a convenient manner to meet his probable income tax liability; second, to ensure the collection of income tax which can otherwise be lost or substantially reduced through failure to file the corresponding returns and third, to improve the government's cash flow.[67] This results in administrative savings, prompt and efficient collection of taxes, prevention of delinquencies and reduction of governmental effort to collect taxes through more complicated means and remedies.[68]

Respondent Secretary has the authority to require the withholding of a tax on items of income payable to any person, national or juridical, residing in the Philippines. Such authority is derived from Section 57(B) of RA 8424 which provides:

> SEC. 57. *Withholding of Tax at Source*. –
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> xxx xxx xxx
>
> *(B) Withholding of Creditable Tax at Source*. The [Secretary] may, upon the recommendation of the [CIR], require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/persons as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year.

The questioned provisions of RR 2-98, as amended, are well within the authority given by Section 57(B) to the Secretary, *i.e.*, the graduated rate of 1.5%-5% is between the 1%-32% range; the withholding tax is imposed on the income payable and the tax is creditable against the income tax liability of the taxpayer for the taxable year.

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[67] *Citibank v. Court of Appeals*, G.R. No. 107434, 10 October 1997, 280 SCRA 459, 467-468, citing Cesar C. Rey, *Tax Code Annotated*, p. 243, in turn citing the explanatory note to H. Bill No. 1127 and *Commissioner of Internal Revenue v. Malayan Ins. Co., Inc.*, G.R. No. L-21913, 18 November 1967, 21 SCRA 944, 949.

[68] *Supra* note 61.

EFFECT OF RRS ON THE TAX BASE FOR THE INCOME TAX OF INDIVIDUALS OR CORPORATIONS ENGAGED IN THE REAL ESTATE BUSINESS

Petitioner maintains that RR 2-98, as amended, arbitrarily shifted the tax base of a real estate business' income tax from net income to GSP or FMV of the property sold.

Petitioner is wrong.

The taxes withheld are in the nature of advance tax payments by a taxpayer in order to extinguish its possible tax obligation.[69] They are installments on the annual tax which may be due at the end of the taxable year.[70]

Under RR 2-98, the tax base of the income tax from the sale of real property classified as ordinary assets remains to be the entity's net income imposed under Section 24 (resident individuals) or Section 27 (domestic corporations) in relation to Section 31 of RA 8424, *i.e.* gross income less allowable deductions. The CWT is to be deducted from the net income tax payable by the taxpayer at the end of the taxable year.[71] Precisely, Section 4(a)(ii) and (c)(ii) of RR 7-2003 reiterate that the tax base for the sale of real property classified as ordinary assets remains to be the net taxable income:

> Section 4. – *Applicable taxes on sale, exchange or other disposition of real property*. — Gains/Income derived from sale, exchange, or other disposition of real properties shall unless otherwise exempt, be subject to applicable taxes imposed under the Code, depending on whether the subject properties are classified as capital assets or ordinary assets;
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> xxx xxx xxx
>
> a. In the case of individual citizens (including estates and trusts), resident aliens, and non-resident aliens engaged in trade or business in the Philippines;

[69] *Supra* note 67, pp. 469-470, citing *Gibbs v. Commissioner of Internal Revenue*, G.R. No. L-17406, 29 November 1965, 15 SCRA 318, 325.

[70] *Id.*, p. 470, citations omitted.

[71] RR 2-98, Section 2.58.1.

xxx xxx xxx

(ii) The sale of real property located in the Philippines, classified as ordinary assets, shall be **subject to** the [CWT] (expanded) under Sec. 2.57.2(j) of [RR 2-98], as amended, based on the [GSP] or current [FMV] as determined in accordance with Section 6(E) of the Code, whichever is higher, and consequently, to **the ordinary income tax imposed under Sec. 24(A)(1)(c) or 25(A)(1) of the Code, as the case may be, based on net taxable income**.

xxx xxx xxx

c. In the case of domestic corporations.

The sale of land and/or building classified as ordinary asset and other real property (other than land and/or building treated as capital asset), regardless of the classification thereof, all of which are located in the Philippines, shall be **subject to** the [CWT] (expanded) under Sec. 2.57.2(J) of [RR 2-98], as amended, and consequently, to **the ordinary income tax under Sec. 27(A)** of the Code. In lieu of the ordinary income tax, however, domestic corporations may become subject to the [MCIT] under Sec. 27(E) of the same Code, whichever is applicable. (Emphasis supplied)

Accordingly, at the end of the year, the taxpayer/seller shall file its income tax return and credit the taxes withheld (by the withholding agent/buyer) against its tax due. If the tax due is greater than the tax withheld, then the taxpayer shall pay the difference. If, on the other hand, the tax due is less than the tax withheld, the taxpayer will be entitled to a refund or tax credit. Undoubtedly, the taxpayer is taxed on its net income.

The use of the GSP/FMV as basis to determine the withholding taxes is evidently for purposes of practicality and convenience. Obviously, the withholding agent/buyer who is obligated to withhold the tax does not know, nor is he privy to, how much the taxpayer/seller will have as its net income at the end of the taxable year. Instead, said withholding agent's knowledge and privity are limited only to the particular transaction in which he is a party. In such a case, his basis can only be the GSP or FMV as these are the only factors reasonably known or knowable by him in connection with the performance of his duties as a withholding agent.

NO BLURRING OF DISTINCTIONS BETWEEN ORDINARY ASSETS AND CAPITAL ASSETS

RR 2-98 imposes a graduated CWT on income based on the GSP or FMV of the real property categorized as ordinary assets. On the other hand, Section 27(D)(5) of RA 8424 imposes a final tax and flat rate of 6% on the gain presumed to be realized from the sale of a capital asset based on its GSP or FMV. This final tax is also withheld at source.[72]

The differences between the two forms of withholding tax, *i.e.*, creditable and final, show that ordinary assets are not treated in the same manner as capital assets. Final withholding tax (FWT) and CWT are distinguished as follows:

FWT	CWT
a) The amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee on the said income.	a) Taxes withheld on certain income payments are intended to equal or at least approximate the tax due of the payee on said income.
b)The liability for payment of the tax rests primarily on the payor as a withholding agent.	b) Payee of income is required to report the income and/or pay the difference between the tax withheld and the tax due on the income. The payee also has the right to ask for a refund if the tax withheld is more than the tax due.
c) The payee is not required to file an income tax return for the particular income.[73]	c) The income recipient is still required to file an income tax return, as prescribed in Sec. 51 and Sec. 52 of the NIRC, as amended.[74]

[72] RA 8424, Section 57(A) and RR 2-98, Section 2.57.1 (A)(6).

[73] RR 2-98, Section 2.57 (A).

[74] *Id.*, Section 2.57 (B).

As previously stated, FWT is imposed on the sale of capital assets. On the other hand, CWT is imposed on the sale of ordinary assets. The inherent and substantial differences between FWT and CWT disprove petitioner's contention that ordinary assets are being lumped together with, and treated similarly as, capital assets in contravention of the pertinent provisions of RA 8424.

Petitioner insists that the levy, collection and payment of CWT at the time of transaction are contrary to the provisions of RA 8424 on the manner and time of filing of the return, payment and assessment of income tax involving ordinary assets.[75]

The fact that the tax is withheld at source does not automatically mean that it is treated exactly the same way as capital gains. As aforementioned, the mechanics of the FWT are distinct from those of the CWT. The withholding agent/buyer's act of collecting the tax at the time of the transaction by withholding the tax due from the income payable is the essence of the withholding tax method of tax collection.

NO RULE THAT ONLY PASSIVE INCOMES CAN BE SUBJECT TO CWT

Petitioner submits that only passive income can be subjected to withholding tax, whether final or creditable. According to petitioner, the whole of Section 57 governs the withholding of income tax on passive income. The enumeration in Section 57(A) refers to passive income being subjected to FWT. It follows that Section 57(B) on CWT should also be limited to passive income:

SEC. 57. Withholding of Tax at Source. —

(A) Withholding of **Final Tax** on Certain Incomes. — Subject to rules and regulations, the [Secretary] may promulgate, upon the recommendation of the [CIR], requiring the filing of income tax return by certain income payees, the **tax imposed or prescribed by Sections 24(B)(1), 24(B)(2), 24(C), 24(D)(1); 25(A)(2), 25(A)(3), 25(B), 25(C), 25(D), 25(E); 27(D)(1), 27(D)(2), 27(D)(3),**

[75] *Rollo*, pp. 11-12.

27(D)(5); 28(A)(4), 28(A)(5), 28(A)(7)(a), 28(A)(7)(b), 28(A)(7)(c), 28(B)(1), 28(B)(2), 28(B)(3), 28(B)(4), 28(B)(5)(a), 28(B)(5)(b), 28(B)(5)(c); 33; and 282 of this Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code.

(B) Withholding of **Creditable Tax** at Source. — The [Secretary] may, upon the recommendation of the [CIR], require the withholding of a **tax on the items of income payable to natural or juridical persons, residing in the Philippines**, by payor-corporation/persons as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year. (Emphasis supplied)

This line of reasoning is *non sequitur*.

Section 57(A) expressly states that final tax can be imposed on certain kinds of income and enumerates these as passive income. The BIR defines passive income by stating what it is not:

…if the income is generated in the active pursuit and performance of the corporation's primary purposes, the same is not passive income…[76]

It is income generated by the taxpayer's assets. These assets can be in the form of real properties that return rental income, shares of stock in a corporation that earn dividends or interest income received from savings.

On the other hand, Section 57(B) provides that the Secretary can require a CWT on "income payable to natural or juridical persons, residing in the Philippines." There is no requirement that this income be passive income. If that were the intent of Congress, it could have easily said so.

Indeed, Section 57(A) and (B) are distinct. Section 57(A) refers to FWT while Section 57(B) pertains to CWT. The former covers the kinds of passive income enumerated therein and the latter encompasses *any income other than those listed in 57(A).*

[76] BIR Ruling No. DA-501-2004, September 24, 2004.

Since the law itself makes distinctions, it is wrong to regard 57(A) and 57(B) in the same way.

To repeat, the assailed provisions of RR 2-98, as amended, do not modify or deviate from the text of Section 57(B). RR 2-98 merely implements the law by specifying what income is subject to CWT. It has been held that, where a statute does not require any particular procedure to be followed by an administrative agency, the agency may adopt any reasonable method to carry out its functions.[77] Similarly, considering that the law uses the general term "income," the Secretary and CIR may specify the kinds of income the rules will apply to based on what is feasible. In addition, administrative rules and regulations ordinarily deserve to be given weight and respect by the courts[78] in view of the rule-making authority given to those who formulate them and their specific expertise in their respective fields.

NO DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS

Petitioner avers that the imposition of CWT on GSP/FMV of real estate classified as ordinary assets deprives its members of their property without due process of law because, in their line of business, gain is never assured by mere receipt of the selling price. As a result, the government is collecting tax from net income not yet gained or earned.

Again, it is stressed that the CWT is creditable against the tax due from the seller of the property at the end of the taxable year. The seller will be able to claim a tax refund if its net income is less than the taxes withheld. Nothing is taken that is

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[77] *Provident Tree Farms, Inc. v. Batario*, G.R. No. 92285, 28 March 1994, 231 SCRA 463, 469, citing 2 Am Jur 2d §340, pp. 155-156, in turn citing *Douglas County v. State Bd. of Equalization and Assessment*, 158 Neb 325, 63 NW 2d 449; *State ex rel. York v. Walla Walla County*, 28 Wash 2d 891, 184 P 2d 577, 172 ALR 1001.

[78] *Compania General De Tabacos De Filipinas v. Court of Appeals*, G.R. No. 147361, 23 March 2004, 426 SCRA 203, 210, citing *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 108358, 20 January 1995, 240 SCRA 368, 372.

not due so there is no confiscation of property repugnant to the constitutional guarantee of due process. More importantly, the due process requirement applies to the power to tax.[79] The CWT does not impose new taxes nor does it increase taxes.[80] It relates entirely to the method and time of payment.

Petitioner protests that the refund remedy does not make the CWT less burdensome because taxpayers have to wait years and may even resort to litigation before they are granted a refund.[81] This argument is misleading. The practical problems encountered in claiming a tax refund do not affect the constitutionality and validity of the CWT as a method of collecting the tax.

Petitioner complains that the amount withheld would have otherwise been used by the enterprise to pay labor wages, materials, cost of money and other expenses which can then save the entity from having to obtain loans entailing considerable interest expense. Petitioner also lists the expenses and pitfalls of the trade which add to the burden of the realty industry: huge investments and borrowings; long gestation period; sudden and unpredictable interest rate surges; continually spiraling development/construction costs; heavy taxes and prohibitive "up-front" regulatory fees from at least 20 government agencies.[82]

Petitioner's lamentations will not support its attack on the constitutionality of the CWT. Petitioner's complaints are essentially matters of policy best addressed to the executive and legislative branches of the government. Besides, the CWT is applied only on the amounts actually received or receivable by the real estate entity. Sales on installment are taxed on a per-installment basis.[83] Petitioner's desire to utilize for its operational and capital expenses money earmarked for the payment of taxes may be a practical business option but it is not a fundamental right which can be demanded from the court or from the government.

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[79] *Chavez v. Ongpin*, G.R. No. 76778, 6 June 1990, 186 SCRA 331, 337.

[80] *Id*.

[81] *Rollo*, p. 278.

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

[83] RR 2-98, Section 2.57.2(J).

NO VIOLATION OF EQUAL PROTECTION

Petitioner claims that the revenue regulations are violative of the equal protection clause because the CWT is being levied only on real estate enterprises. Specifically, petitioner points out that manufacturing enterprises are not similarly imposed a CWT on their sales, even if their manner of doing business is not much different from that of a real estate enterprise. Like a manufacturing concern, a real estate business is involved in a continuous process of production and it incurs costs and expenditures on a regular basis. The only difference is that "goods" produced by the real estate business are house and lot units.[84]

Again, we disagree.

The equal protection clause under the Constitution means that "no person or class of persons shall be deprived of the same protection of laws which is enjoyed by other persons or other classes in the same place and in like circumstances."[85] Stated differently, all persons belonging to the same class shall be taxed alike. It follows that the guaranty of the equal protection of the laws is not violated by legislation based on a reasonable classification. Classification, to be valid, must (1) rest on substantial distinctions; (2) be germane to the purpose of the law; (3) not be limited to existing conditions only and (4) apply equally to all members of the same class.[86]

The taxing power has the authority to make reasonable classifications for purposes of taxation.[87] Inequalities which result

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[84] *Rollo*, p. 284.

[85] *Philippine Rural Electric Cooperatives Association, Inc. (PHILRECA) v. The Secretary, Department of Interior and Local Government*, G.R. No. 143076, 10 June 2003, 403 SCRA 558, 565, citing *Tolentino v. Board of Accountancy*, 90 Phil. 83, 90 (1951).

[86] *Coconut Oil Refiners Association, Inc. v. Torres*, G.R. No. 132527, 29 July 2005, 465 SCRA 47, 76, citing *Tiu v. Court of Appeals*, G.R. No. 127410, 20 January 1999, 301 SCRA 278.

[87] *Sison v. Ancheta, et al.*, *supra* note 38, p. 591, citing *Eastern Theatrical Co. v. Alfonso*, 83 Phil. 852, 862 (1949).

from a singling out of one particular class for taxation, or exemption, infringe no constitutional limitation.[88] The real estate industry is, by itself, a class and can be validly treated differently from other business enterprises.

Petitioner, in insisting that its industry should be treated similarly as manufacturing enterprises, fails to realize that what distinguishes the real estate business from other manufacturing enterprises, for purposes of the imposition of the CWT, is not their production processes but the prices of their goods sold and the number of transactions involved. The income from the sale of a real property is bigger and its frequency of transaction limited, making it less cumbersome for the parties to comply with the withholding tax scheme.

On the other hand, each manufacturing enterprise may have tens of thousands of transactions with several thousand customers every month involving both minimal and substantial amounts. To require the customers of manufacturing enterprises, at present, to withhold the taxes on each of their transactions with their tens or hundreds of suppliers may result in an inefficient and unmanageable system of taxation and may well defeat the purpose of the withholding tax system.

Petitioner counters that there are other businesses wherein expensive items are also sold infrequently, *e.g.* heavy equipment, jewelry, furniture, appliance and other capital goods yet these are not similarly subjected to the CWT.[89] As already discussed, the Secretary may adopt any reasonable method to carry out its functions.[90] Under Section 57(B), it may choose what to subject to CWT.

A reading of Section 2.57.2 (M) of RR 2-98 will also show that petitioner's argument is not accurate. The sales of manufacturers who have clients within the top 5,000 corporations,

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[88] *Id.*, p. 590, citing *Lutz v. Araneta*, 98 Phil. 148, 153 (1955).

[89] *Rollo*, p. 285

[90] *Supra* note 77.

as specified by the BIR, are also subject to CWT for their transactions with said 5,000 corporations.[91]

SECTION 2.58.2 OF RR NO. 2-98 MERELY IMPLEMENTS SECTION 58 OF RA 8424

Lastly, petitioner assails Section 2.58.2 of RR 2-98, which provides that the Registry of Deeds should not effect the registration of any document transferring real property unless a certification is issued by the CIR that the withholding tax has been paid. Petitioner proffers hardly any reason to strike down this rule except to rely on its contention that the CWT is unconstitutional. We have ruled that it is not. Furthermore, this provision uses almost exactly the same wording as Section 58(E) of RA 8424 and is unquestionably in accordance with it:

Sec. 58. *Returns and Payment of Taxes Withheld at Source*.—

(E) *Registration with Register of Deeds*. — **No registration of any document transferring real property shall be effected by the Register of Deeds unless the [CIR] or his duly authorized representative has certified that such transfer has been reported, and the capital gains or [CWT], if any, has been paid**: xxx any violation of this provision by the Register of Deeds shall be subject to the penalties imposed under Section 269 of this Code. (Emphasis supplied)

CONCLUSION

The renowned genius Albert Einstein was once quoted as saying "[the] hardest thing in the world to understand is the income tax."[92] When a party questions the constitutionality of an income tax measure, it has to contend not only with Einstein's observation but also with the vast and well-established jurisprudence in support of the plenary powers of Congress to impose taxes. Petitioner has miserably failed to discharge its

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[91] *Rollo*, p. 40.

[92] *Murphy v. Internal Revenue Service*, D.C. Cir. No. 05-5139, 22 August 2006, citing The Macmillan Book of Business and Economic Quotations, Michael Jackman ed., 195 (1984).

burden of convincing the Court that the imposition of MCIT and CWT is unconstitutional.

WHEREFORE, the petition is hereby *DISMISSED*.

Costs against petitioner.

SO ORDERED.

Puno, C.J., Carpio, Carpio Morales, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez and *Mendoza, JJ.*, concur.

THIRD DIVISION

[G.R. No. 160972. March 9, 2010]

LEIGHTON CONTRACTORS PHILIPPINES, INC., *petitioner, vs.* **CNP INDUSTRIES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PAROL EVIDENCE RULE; EXCEPTIONS TO THE RULE; WHEN THE PARTIES SUBSEQUENTLY MODIFY THE TERMS OF THEIR ORIGINAL AGREEMENT.— The parol evidence rule, embodied in Section 9, Rule 130 of the Rules of Court holds that when the terms of an agreement have been reduced into 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. It, however, admits of exceptions such as when the parties subsequently modify the terms of their original agreement.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACT FOR A PIECE OF WORK; SCOPE OF WORK INCLUDED IN THE SUBCONTRACT WORKS; CASE AT BAR.— The scope of work was defined in the subcontract as the completion of the structural steel works according to the main drawing, technical specifications and the main contract. Thus, to determine whether the roof ridge ventilation and crane beams were included in the scope of work, reference to the main drawing, technical specifications and main contract is necessary. The main contract stated that the structural steel works included Drawing Nos. P302-6200-S-405 and P302-6200-S-402. This, according to petitioner and respondent, referred to the roof ridge ventilation and crane beams. Hence, the said works were clearly included in the sub-contract works.

3. ID.; ID.; ID.; ID; TWO (2) REQUISITES BEFORE A CLAIM FOR THE COST OF ADDITIONAL WORK ARISING FROM CHANGES IN THE SCOPE OF WORK CAN BE ALLOWED; ABSENCE OF ONE CONDITION BARS THE RECOVERY OF ADDITIONAL COSTS.— In contracts for a stipulated price like fixed lump-sum contracts, the recovery of additional costs is governed by Article 1724 of the Civil Code. Settled is the rule that a claim for the cost of additional work arising from changes in the scope of work can only be allowed upon the: (1) written authority from the developer or project owner ordering or allowing the written changes in work and (2) written agreement of parties with regard to the increase in price or cost due to the change in work or design modification. Furthermore, compliance with the two requisites of Article 1724, a specific provision governing additional works, is a condition precedent for the recovery. The absence of one or the other condition bars the recovery of additional costs. Neither the authority for the changes made nor the additional price to be paid therefor may be proved by any other evidence.

4. ID.; ID.; ID.; ID.; ID.; PROJECT OWNER NOT LIABLE FOR ADDITIONAL COSTS INCURRED BY SUBCONTRACTOR IN CASE AT BAR.— Respondent presented the August 12, 1997 progress report signed by Bennett. However, respondent knew that Bennett was not authorized to order any changes in the scope of works or to approve the cost thereof. It addressed all correspondences relating to the project to (petitioner's)

project manager Michael Dent, not Bennett. Moreover, Bennett did not sign the subcontract for and in behalf of respondent but only as a witness. Respondent was therefore aware of Bennett's lack of authority. In this respect, aside from respondent's failure to present the documents required by Article 1724 of the Civil Code, we find that the sub-contract was never modified. Petitioner therefore cannot be liable for the additional costs incurred by respondent.

5. ID.; ID.; ID.; BY ENTERING INTO A FIXED LUMP-SUM CONTRACT, SUBCONTRACTOR UNDERTOOK THE RISK OF INCURRING A LOSS DUE TO ERRORS IN MEASUREMENT.— In a fixed lump-sum contract, the project owner agrees to pay the contractor a specified amount for completing a scope of work involving a variety of unspecified items of work without requiring a cost breakdown. The contractor estimates the project cost based on the scope of work and schedule and considers probable errors in measurement and changes in the price of materials. By entering into a fixed lump-sum contract, respondent undertook the risk of incurring a loss due to errors in measurement. The sub-contract explicitly stated that the stipulated price was not subject to remeasurement. Since the roof ridge ventilation and crane beams were included in the scope of work, respondent was presumed to have estimated the quantity of steel (the minimum and maximum amount) needed on the said portions when it made its formal offer on July 5, 1997. Concomitantly, by the very nature of a fixed lump-sum contract, petitioner was only liable to pay the stipulated subcontract price.

APPEARANCES OF COUNSEL

Quisumbing Torres for petitioner.
Renon V. Cruz for respondent.

D E C I S I O N

CORONA, *J.*:

This petition for review on certiorari[1] assails the May 31, 2000 decision[2] and November 20, 2003 resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 52090.

In 1997, Hardie Jardin, Inc. (HJI) awarded the contract for site preparation, building foundation and structural steel works of its fibre cement plant project in Barangay Tatalon in San Isidro, Cabuyao, Laguna to petitioner Leighton Contractors Philippines, Inc.[4]

On July 5, 1997, respondent CNP Industries, Inc. submitted to petitioner a proposal to undertake, as subcontractor, the construction of the structural steelworks[5] HJI's fibre cement

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

[2] Penned by Justice Ruben T. Reyes (retired) and concurred in by Justices Andres B. Reyes and Jose L. Sabio, Jr. of the Former Special Fifteenth Division of the Court of Appeals. *Rollo*, pp. 108-127.

[3] *Id.*, pp. 129-130.

[4] Contract No. P302-C-001. *Id.*, pp. 363-531.

[5] Contract No. P302-C-001, Part E, par. 5 delineated the scope of the structural steelworks as follows:

5.0. Structural Steelworks.

5.1. Supply, detailing where required, fabrication, surface preparation, painting and shop trial assembly of structural steelwork and light-gauge steelwork associated with the steel building as shown on the drawings such as columns, beams, girders, girts, purlins, crossbracings, fly braces, sag rods, bridgings, base plates, crane railings and like items.

5.2. Supply of all field connection materials such as nuts, bolts, washers, screws, shims, packers, gaskets, back-up bars and the like.

5.3. Non-destructive testing (NDT) of the Works, in accordance with the approved ITP. A minimum of 5% of welds shall be tested using dye penetrant testing.

5.4. Field assembly and installation (including touch-up painting) of structural steelwork and light-gauge steelwork.

5.5. Preparation of concrete surfaces and supply and installation of grouting after levelling, alignment and tensioning of the structures' bolted connections.

5.6. Supply and installation of cladding including gutters, ridge roll, flashings and other accessories and items including but not limited to down pipes, roller doors, personnel doors and vents as shown in drawings.

Contract No. P302-C-001, Part E, par. 14 referred to the following drawings:

P302-6200-S-401	0	FACTORY BUILDING STRUCTURAL STEEL WORKS FRAME ELEVATION AT LINE 2-6
P302-6200-S-402	0	FACTORY BUILDING STRUCTURAL STEEL WORKS FRAME ELEVATION AT LINE 7-17
P302-6200-S-403	0	FACTORY BUILDING STRUCTURAL STEEL WORKS FRAME ELEVATION AT LINE 1, 18-24, A & B
P302-6200-S-404	0	FACTORY BUILDING STRUCTURAL STEEL WORKS ELEVATION AT LINE B, E, F, & G
P302-6200-S-405	**0**	**FACTORY BUILDING STRUCTURAL STEEL WORKS ROOF FRAMING PLAN**
P302-6200-S-406	0	FACTORY BUILDING STRUCTURAL STEEL WORKS ROOF BRACING LAYOUT PLAN
P302-6200-S-407	0	ADMINISTRATION BUILDING *MEZZANINE* FLOOR FRAMING PLAN
P302-6200-S-408	**0**	**FACTORY BUILDING CRANE BEAM LAYOUT PLAN, SECTIONS &DETAILS**
P302-6200-S-409	0	FACTORY BUILDING STRUCTURAL STEEL WORKS ELEVATION AT LINE C & D
P302-6200-S-410	0	FACTORY BUILDING MISCELLANEOUS SECTIONS & DETAILS
P302-6200-S-411	0	FACTORY BUILDING MISCELLANEOUS SECTIONS & DETAILS
P302-6200-S-412	0	FACTORY BUILDING ROOF BEAM ARRANGEMENT LAYOUT & DETAILS

plant project. It estimated the project to require 885,009 kgs. of steel costing ₱44,223,909.[6]

On July 15, 1997, petitioner accepted respondent's proposal specifying that the project cost was for the fixed lump sum price of ₱44,223,909.[7] Respondent agreed and petitioner instructed it to commence work.

Meanwhile, petitioner revised the fabrication drawings of several of the structure's columns necessitating adjustments in the designs of roof ridge ventilation[8] and crane beams.[9] Petitioner communicated the said revisions to respondent on July 16, 1997. Respondent estimated that the said revisions required an additional 8,132 kgs. of steel costing ₱13,442,882. However, it did not re-negotiate the fixed lump-sum price with petitioner.

On July 28, 1997, petitioner and respondent signed a sub-contract[10] providing:

(B) Subcontract works.

To carry out complete **structural steelworks**[11] **outlined in the Sub-contract Lump Sum Price** [**of ₱44,223,909**][12] **in accordance**

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[6] Letter of respondent's application engineer Joel O. Peñalosa to petitioner's project manager Michael Dent. Dated June 5, 1997. Annex "D", *id*., pp. 526-527.

[7] Letter of Dent to respondent's president Oscar A. Mitra.

[8] P302-6200-S-405, *supra* note 5.

[9] P302-6200-S-408, *id*.

[10] Sub-Contract No. 68001 (June 1997). *Id*., pp. 532-551. The subcontract was signed by Dent and Mitra and witnessed by respondent's quantity surveyor Simon Bennett and Peñalosa.

[11] Contract No. P302-C-001, Part E, par. 5, *supra* note 5.

[12] Sub-Contract No. 68001 (June 1997), Third Schedule. *Rollo*, p. 595. The contract price was broken down as follows:

Item No.	Description	Amount
1.0	Structural Steelworks	
1.1	Supply and Fabrication 250 Mpa Steel	₱20,565,575.45

with the Main Drawing[13] **and Technical Specifications**[14] and in accordance with the Main Contract, all of which are available on Site.

(c) Special Conditions of the Sub-Contract.

xxx xxx xxx

2. Notwithstanding the provisions of Clause 11(4)[15] of the General Conditions of the Sub-contract, **this Sub-contract is on a Fixed Lump Sum basis and is not subject to re-measurement**. It is the responsibility of [respondent] to derive his own quantities for the

	350 Mpa Light-Gauge	6,648,451.82
1.2	Painting	
	250 Mpa Steel	4,465,760.00
	350 Mpa Light-Gauge	1,443,694.55
1.3	Delivery	
	250 Mpa Steel	Included
	350 Mpa Steel	Included
1.4	Installation	
	250 Mpa Steel	5,350,400.00
	350 Mpa Light-Gauge	1,729,671.82
	TOTAL	₱40,203,553.64
	Plus 10% Value Added Tax (VAT)	₱44,023,355.36
	SUB-CONTRACT LUMP SUM PRICE	**₱44,223,909.00**

[13] Contract No. P302-C-001, Part E, par. 14, *supra* note 5.

[14] SPEC-P302-S-001/0. *Rollo*, pp. 471-486.

[15] 11. **Valuation of Variations.**

xxx xxx xxx

(2) The value of all the authorized variations shall be ascertained by [respondent] by reference to the rates and prices (if any), specified in this subcontract for the like or analogous works, but if there are no such rates and prices or if they are not applicable then such value shall be ascertained in the same manner as specified in the main contract.

xxx xxx xxx

(4) Save where the quantity is expressly stated in any bill of quantities forming part of the sub-contract, no quantity stated therein shall define or limit the extent of any work to be done by the sub-contractor in the execution and completion of the sub-contract works, but any difference between the quantity so billed and the actual quantity executed shall be ascertained by measurement, valued under this clause as if it were an authorized variation

purpose of the Lump Sum Sub-contract price. No additional payments will be made to [respondent] for any errors in quantities that may be revealed during the Sub-contract period. (emphasis supplied)[16]

xxx xxx xxx

Moreover, the contract required respondent to finish the project within 20 weeks from the time petitioner was allowed access to the site on June 20, 1997,[17] that is, on or before November 6, 1997.

On July 29, 1997, petitioner paid respondent 10% of the project cost amounting to ₱4,422,390.90.[18]

Thereafter, in a letter dated July 31, 1997, respondent informed petitioner that, due to the revisions in the designs of the roof ridge ventilation and crane beams, it incurred "additional costs" amounting to ₱13,442,882.

Respondent submitted its weekly progress report including the progress billing. Petitioner, on the other hand, paid the billings.

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and the necessary addition to or deduction from the [lump sum price of ₱44,223,909] shall be made accordingly.

[16] Part II, Special Conditions of Subcontract, Second Schedule. Id., p. 545.

[17] Part II, Special Conditions of Subcontract, Third Schedule, par. C. *Id*., p. 547. The paragraph provides:

Main Contract Site Access Date (S.A.D.) 19 June 1997

Structural Steelworks

Steel frame Grid 1 to 4	within 11 weeks of S.A.D.
Steel frame Grid 4 to 8	within 15 weeks of S.A.D.
Steel frame, Grid 8 to 12	Within 17 weeks of S.A.D.
Steel frame, Grid 12 to 18	Within 20 weeks of S.A.D.
Steel frame, Grid 18 to 24	Within 20 weeks of S.A.D.

[18] Part II, Special Conditions of Subcontract, Second Schedule, par. C (7). *Id*., p. 546. The paragraph provides:

(6) [Petitioner] shall pay [respondent] a downpayment amounting to 10% of the sub-contract price upon issuance by [respondent] to [petitioner] a performance bond amounting to 10% of the sub-contract price in accordance with Article 15 of the General Conditions of the Contract. The balance amounting to 90% of the sub-contract price shall be paid through monthly progress billings.

In its August 12, 1997 progress report,[19] respondent reiterated that the roof ridge ventilation and crane beams were not included in the scope of work and consequently were not part of the sub-contract price. It likewise presented the cost estimates in the progress report.

Because respondent was unable to meet the project schedule, petitioner took over the project on April 27, 1998. At the time of the takeover, respondent had already accomplished 86% of the project[20] for which petitioner paid ₱42,008,343.69.[21]

Thereafter, respondent again asked petitioner to settle the "outstanding balance" of ₱12,364,993.94, asserting that the roof ridge ventilation and crane beams were excluded from the project cost. Petitioner refused to pay as the July 28, 1997 subcontract clearly stated that the sub-contract price was a fixed lump sum.

The parties submitted the matter to the Construction Industry Arbitration Commission (CIAC) for arbitration.[22] The principal issue submitted thereto was whether the cost of the additional steel used for the roof ridge ventilation and crane beams was included in the fixed lump-sum price.

Respondent argued that the proposal it submitted (accepted by petitioner on July 15, 1997) excluded the roof ridge ventilation and crane beams as the fabrications drawings were "clouded" or had not been finalized when the subcontract was executed on July 28, 1997. Furthermore, respondent claimed that petitioner approved the cost estimates when Simon Bennett, petitioner's

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[19] *Rollo*, p. 691.

[20] Petitioner's liability should be proportionate to cost of the percentage completed in the project. Thus, it is computed as follows:

Petitioner's liability	=	fixed lump sum price x percentage completed
	=	₱44,223,909 x 86%
	=	₱38,032,561.74

[21] Based on the previous computation, petitioner overpaid respondent by ₱397,578.95.

[22] Docketed as CIAC Case No. 25-98.

quantity surveyor, signed the August 12, 1997 progress report. This proved that the said portions were "additional works" excluded from the fixed lump-sum price.

Petitioner, on the other hand, asserted that the subcontract explicitly included the aforementioned works in the scope of work. Furthermore, it was not liable for the "additional costs" incurred by respondent as the subcontract clearly provided that the project was for the fixed lump-sum price of ₱44,223,909. It likewise denied approving respondent's additional cost estimates as Bennett signed the August 12, 1997 progress report only to acknowledge its receipt.

The CIAC found that the subcontract was perfected when petitioner accepted respondent's proposal on July 15, 2009. Thus, because the fabrication drawings for the roof ridge ventilation and crane beams had not yet been finalized then, the same were deemed "additional works" not included in the lump-sum price. In a decision dated March 19, 1999,[23] the CIAC rendered judgment in favor of respondent and ordered petitioner to pay the balance of the contract price plus additional works, the cost of arbitration and attorney's fees.

Aggrieved, petitioner assailed the CIAC decision via a petition for review in the CA.[24] Aside from disputing the CIAC's interpretation of the sub-contract, petitioner likewise argued that the arbitral body disregarded Article 1724 of the Civil Code.[25]

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[23] *Rollo*, pp. 210-246.

[24] Docketed as CA-G.R. SP No. 52090.

[25] CIVIL CODE, Art. 1724 provides:

Article 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the land-owner, can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided:

(1) Such change has been authorized by the proprietor in writing; and

(2) The additional price to be paid to the contractor has been determined in writing by both parties. (1593a)

In a decision dated May 31, 2000, the CA dismissed the petition and affirmed the CIAC decision *in toto*.[26] Petitioner moved for reconsideration but it was denied in resolution dated November 20, 2003.[27]

Hence, this recourse.

Petitioner insists that it was not liable to pay for the increase in cost due to the adjustments in the design of the roof ridge ventilation and crane beams. The subcontract clearly defined the scope of work as the construction of the structural steel works and stated that it was for a fixed lump-sum price. Furthermore, assuming *arguendo* that the said adjustments were indeed additional works, petitioner was not liable to pay for incremental cost since respondent did not observe the procedure mandated by Article 1724 of the Civil Code.

The petition is meritorious.

The parties entered into a contract for a piece of work[28] whereby petitioner engaged respondent as contractor to build and provide the necessary materials for the construction of the structural steel works of HJI's fiber cement plant for a fixed lump-sum price of ₱44,223,909.

The parol evidence rule, embodied in Section 9, Rule 130 of the Rules of Court[29] holds that when the terms of an agreement

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[26] *Supra* note 2.

[27] *Supra* note 3.

[28] CIVIL CODE, Art. 1713 provides:

Article 1713. By the contract for a piece of work the contractor binds himself to execute a piece of work for the employer, in consideration of a certain price or compensation. The contractor may either employ only his labor or skill, or also furnish the material. (emphasis supplied)

[29] RULES OF COURT, Rule 130, Sec. 9 provides:

Section 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.**

have been reduced into 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.[30] It, however, admits of exceptions such as when the parties subsequently modify the terms of their original agreement.

The scope of work was defined in the subcontract as the completion of the structural steel works according to the main drawing, technical specifications and the main contract.[31] Thus, to determine whether the roof ridge ventilation and crane beams were included in the scope of work, reference to the main drawing, technical specifications and main contract is necessary. The main contract[32] stated that the structural steel works included Drawing Nos. P302-6200-S-405 and P302-6200-S-402.[33] This, according to petitioner and respondent,[34] referred to the roof ridge ventilation and crane beams. Hence, the said works were clearly included in the sub-contract works.

Nevertheless, respondent contends that when Bennett signed the August 12, 1997 progress report, petitioner approved the

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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 the 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 terms "agreement" includes wills. (emphasis supplied)

[30] *Roble v. Arbasa*, 414 Phil. 343, 355-356 (2001) and *Sabio v. International Corporate Bank, Inc.*, 416 Phil. 785, 807 (2001).

[31] See note 5 in relation to note 13.

[32] Part II, Special Conditions of Subcontract, Second Schedule, par. C. *Rollo*, p. 545.

[33] See notes 7 and 8 in relation to note 5.

[34] Statement of admitted facts in the March 19, 1999 CIAC decision, par. 3. *Rollo*, p. 211.

additional cost estimates, in effect modifying the original agreement in the subcontract. Respondent therefore claims an exception to the parole evidence rule.

In contracts for a stipulated price like fixed lump-sum contracts, the recovery of additional costs is governed by Article 1724 of the Civil Code.[35] Settled is the rule that a claim for the cost of additional work arising from changes in the scope of work can only be allowed upon the:

(1) written authority from the developer or project owner ordering or allowing the written changes in work and

(2) written agreement of parties with regard to the increase in price or cost due to the change in work or design modification.

Furthermore, compliance with the two requisites of Article 1724, a specific provision governing additional works, is a condition precedent for the recovery. The absence of one or the other condition bars the recovery of additional costs. Neither the authority for the changes made nor the additional price to be paid therefor may be proved by any other evidence.[36]

Respondent, in this instance, presented the August 12, 1997 progress report signed by Bennett. However, respondent knew that Bennett was not authorized to order any changes in the scope of works or to approve the cost thereof. It addressed all correspondences relating to the project to (petitioner's) project manager Michael Dent, not Bennett.[37] Moreover, Bennett did not sign the subcontract for and in behalf of respondent but only as a witness.[38] Respondent was therefore aware of Bennett's lack of authority.

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[35] *Supra* note 25.

[36] *Titan-Ikeda Construction & Development Corporation v. Primetown Properties Group, Inc*., G.R. No. 158768, 12 February 2008, 544 SCRA 466, 489-490 citing *Powton Conglomerate, Inc. v. Agcolicol*, 448 Phil. 643 (2003).

[37] *Supra* note 6.

[38] *Supra* note 9.

In this respect, aside from respondent's failure to present the documents required by Article 1724 of the Civil Code, we find that the sub-contract was never modified. Petitioner therefore cannot be liable for the additional costs incurred by respondent.

In a fixed lump-sum contract, the project owner agrees to pay the contractor a specified amount for completing a scope of work involving a variety of unspecified items of work without requiring a cost breakdown.[39] The contractor estimates the project cost based on the scope of work and schedule and considers probable errors in measurement and changes in the price of materials.[40]

By entering into a fixed lump-sum contract, respondent undertook the risk of incurring a loss due to errors in measurement. The sub-contract explicitly stated that the stipulated price was not subject to remeasurement. Since the roof ridge ventilation and crane beams were included in the scope of work, respondent was presumed to have estimated the quantity of steel (the minimum and maximum amount) needed on the said portions when it made its formal offer on July 5, 1997. Concomitantly, by the very nature of a fixed lump-sum contract, petitioner was only liable to pay the stipulated subcontract price.[41]

WHEREFORE, the May 31, 2000 decision and November 20, 2003 resolution of the Court of Appeals in CA-G.R. SP No. 52090 affirming the March 19, 1999 decision of the Construction and Industry Arbitration Commission are hereby *REVERSED* and *SET ASIDE*. New judgment is hereby entered declaring that

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[39] Available online at http://www.businessdictionary.com/definition/lump-sum-contract.html.

In a unit price contract, on the other hand, project cost depends on the quantity of items needed to carry out the work. The project cost is therefore provisional. See *Hanjin Heavy Industries and Construction Co., Inc. v. Dynamic Planners and Construction Corp*., G.R. Nos. 169408 and 170144, 30 April 2008, 553 SCRA 541, 546.

[40] *Triad Electric and Controls, Inc. v. Power Systems Transport, Inc*., No. 94-20783 (USCA, 5th Cir), 30 June 1997.

[41] See *Uniwide Sales Realty v. Titan-Ikeda Construction and Development Corporation*, G.R. No. 122619, 20 December 2006, 511 SCRA 335.

petitioner Leighton Contractors Philippines, Inc. is not liable for the additional costs incurred by respondent CNP Industries, Inc.

SO ORDERED.

Velasco, Jr., *Nachura*, *Peralta*, and *Mendoza*, *JJ.*, concur.

THIRD DIVISION

[G.R. No. 168203. March 9, 2010]

NATIONAL ELECTRIFICATION ADMINISTRATION, *petitioner, vs.* **VAL L. VILLANUEVA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PRINCIPLE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; NOT COMPLIED WITH IN CASE AT BAR.— With respect to the procedural aspect of the case, respondent should have first exhausted the administrative remedies still available to him by appealing the challenged order of the NEA to the Office of the President, which exercises the power of supervision over it. Section 13, Chapter II of Presidential Decree No. 269 (PD 269), otherwise known as the *National Electrification Administration Decree*. Considering that the President has the power to review on appeal the orders or acts of petitioner NEA, the failure of respondent to undertake such an appeal bars him from resorting to a judicial suit. It is settled that under the doctrine of exhaustion of administrative remedies, recourse through court action cannot prosper until after all such administrative remedies have first been exhausted. If remedy

is available within the administrative machinery, this should be resorted to before recourse can be made to courts. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court. The non-observance of the doctrine of exhaustion of administrative remedies results in lack of cause of action, which is one of the grounds in the Rules of Court justifying the dismissal of the complaint. In the present case, respondent failed to exhaust his administrative remedies when he filed a case with the RTC without appealing the decision of the NEA to the Office of the President. As such, his petition filed with the RTC must necessarily fail.

2. ID.; ID.; ADMINISTRATIVE AGENCIES; NATIONAL; ELECTRIFICATION ADMINISTRATION (NEA); GUIDELINES IN THE CONDUCT OF ELECTRIC COOPERATIVE DISTRICT ELECTIONS; QUALIFICATION FOR BOARD OF DIRECTORS; CANDIDATE OR MEMBER DOES NOT HOLD ELECTIVE OFFICE NOR APPOINTED TO AN ELECTIVE POSITION ABOVE THE LEVEL OF *BARANGAY* CAPTAIN.— The main issue of whether respondent can still continue to be a member of the ANECO BOD after becoming an *ex-officio* member of the *Sangguniang Bayan* of Cabadbaran must be answered in the negative. Section 7 (8), Article II of the Guidelines in the Conduct of Electric Cooperative District Elections issued by the NEA Main Office, through its Board of Administrators, on June 23, 1993, provides: Section 7. *Qualification for Board of Directors*. – *Bona fide* members who possess the following qualifications are eligible to become and/or to remain as member of Board of Directors: 1. He/she is a Filipino citizen x x x 8. He/she does not hold elective office in the government nor appointed to an elective position above the level of a Barangay Captain. x x x In the same manner, the Memorandum dated February 13, 1998 issued by the NEA Main Office states: 2.3.1. Book III, Article Three, Sec. 446 of R.A. 7160 listed the composition of the Sangguniang Bayan which includes, among

others, the President of the Municipal Chapter of the Liga ng mga Barangay x x x. As such, therefore, they are considered as an *ex-officio* member of the Sanggunian, as likewise provided for in Rule XXIX, Article 211 (d) of the Implementing Rules and Regulations of RA 7160. 2.3.2. All coop officials and employees who are subsequently elected to the post of President of the Municipal Chapter of the Liga ng mga *Barangay*, after having won in the barangay elections, shall be considered automatically resigned upon taking his/her oath of office as Liga President.

3. ID.; ID.; ID.; WHEN RESPONDENT WAS DESIGNATED AS MEMBER OF THE *SANGGUNIANG BAYAN*, HE BECAME INELIGIBLE, AND WAS THEREBY DISQUALIFIED AS MEMBER OF THE ELECTRIC COOPERATIVE.— We support in *Salomon v. National Electrification Administration* "a case decided by the Court more than a decade prior to respondent's filing of his petition with the RTC. In the said case, the petitioner, an elected *Barangay* Captain, sought the nullification of a ruling issued by the NEA which disqualified her from further acting as a member of the Board of Directors of La Union Electric Cooperative, Inc. (LUELCO) by reason of the fact that she was appointed as an *ex-officio* member of the *Sangguniang Panlalawigan* of La Union, representing the *barangay* officials of the province. This Court, in upholding the disqualification of therein petitioner as a member of the Board of Directors, held: **The purpose of the disqualification is to prevent incumbents of elective offices from exerting political influence and pressure on the management of the affairs of the cooperative. This purpose cannot be fully achieved if one who is appointed to an elective office is not made subject to the same disqualification. A person appointed to an elective office can exercise all powers and prerogatives attached to said office. Thus, an appointed member of a Sangguniang Panlalawigan, like petitioner, can wield as much pressure and influence on an electric cooperative, as an elected member thereof.** The Court finds that, while the position to which the petitioner in the above-quoted ruling was appointed is different from the position to which herein respondent was named, the rule or principle enunciated above, nonetheless, applies squarely to the present

case. Consequently, and in consonance with the Guidelines and Memorandum issued by the NEA, when respondent was designated as member of the *Sangguniang Bayan* of Cabadbaran, he became ineligible, and was thereby disqualified as member of the ANECO BOD.

4. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; THE RULE AGAINST THE NON-EXTENDIBILITY OF THE TWENTY (20)-DAY LIMITED PERIOD OF EFFECTIVITY OF A TEMPORARY RESTRAINING ORDER IS ABSOLUTE IF ISSUED BY A REGIONAL TRIAL COURT.— As to the issue of whether the temporary restraining order issued by the RTC remained valid even if it was beyond the 20-day period provided under the Rules of Court, it is settled that under Section 5, Rule 58 of the Rules of Court, a judge may issue a temporary restraining order within a limited life of twenty (20) days from date of issue. If before the expiration of the twenty (20)-day period the application for preliminary injunction is denied, the temporary restraining order would be deemed automatically vacated. If no action is taken by the judge on the application for preliminary injunction within the said twenty (20) days, the temporary restraining order would automatically expire on the 20th day by the sheer force of law, no judicial declaration to that effect being necessary and the courts having no discretion to extend the same. The rule against the non-extendibility of the twenty (20)-day limited period of effectivity of a temporary restraining order is absolute if issued by a regional trial court. Hence, the RTC committed error when it ruled that the temporary restraining order it issued on December 2, 2003 was effective until January 5, 2004, a period that was beyond the twenty (20) days allowed under the Rules of Court. This does not mean, however, that the entire TRO was invalidated. The same remained valid and in effect, but only within the 20-day period, after which it automatically expired.

APPEARANCES OF COUNSEL

The Government Corporate Counsel for petitioner.
Rolando F. Carlota 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 seeking to annul and set aside the Decision[1] dated November 12, 2004 and Resolution[2] of April 6, 2005 of the Regional Trial Court (RTC) of Cabadbaran, Agusan del Norte, Branch 34, in SP. Civil Case No. 03-03 entitled *Val L. Villanueva, Petitioner, versus National Electrification Administration and the Agusan del Norte Electric Cooperative, Inc., Respondents.*

The undisputed facts are as follows:

Herein respondent Val L. Villanueva (Villanueva) was an elected member of the Board of Directors (BOD) of Agusan del Norte Electric Cooperative (ANECO) for a term of three years, from 2001 to 2003. However, with the subsequent redistricting of the area he represented, his term was extended until 2006.

In 2002, while serving as a member of the ANECO BOD, he was elected as *Barangay* Chairman of *Barangay* 12, in the Municipality of Cabadbaran, Agusan del Norte. Thereafter, he was also elected as President of what was formerly known as the Association of *Barangay* Captains (ABC), now known as *Liga ng mga Barangay* (Liga), of Cabadbaran. By virtue of his position as Liga President, he sat as *ex-officio* member of the *Sangguniang Bayan* of Cabadbaran.

Subsequently, the General Manager of ANECO sought the opinion of herein petitioner National Electrification Administration (NEA) as to whether or not respondent is still qualified to sit as member of the ANECO BOD.

In response to such query, the NEA Director for Co-Op Operations came out with the opinion, dated December 10,

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[1] Penned by Executive Judge Orlando F. Doyon; *rollo*, pp. 74-104.

[2] *Id.* at 105-107.

2002, that respondent could no longer serve as a member of the ANECO BOD, because he was considered automatically resigned from the said position when he took his oath of office as Liga President. As basis of its opinion, the NEA Director for Co-Op Operations cited as authority the Local Government Code of 1991, NEA Memorandum dated February 13, 1998, and the Guidelines in the Conduct of Electric Cooperative District Elections.[3]

In a letter dated January 3, 2003, respondent sought the opinion of the Provincial Director of the Department of Interior and Local Government (DILG) relative to his disqualification as a member of the ANECO BOD.

In his letter[4] dated January 7, 2003, the DILG Provincial Director gave the view that his office could not issue an official opinion on the matter being sought, considering that another agency had jurisdiction over it. Nonetheless, he stated the view that respondent was not a regular member of the *Sangguniang Bayan*; instead, he occupied the office only in an *ex-officio* capacity, because he was not duly elected thereto by the registered voters of Cabadbaran, but occupied the said position only by reason of his being the president of the Liga.

On January 31, 2003, respondent requested review and reconsideration of the disputed opinion of the NEA Director for Co-Op Operations, but the same was denied in a letter dated February 17, 2003 by the NEA Chief Operating Officer/Deputy Administrator for Co-Op Development.[5]

Aggrieved by such denial, respondent filed with the RTC of Cabadbaran, Agusan del Norte, a petition for *certiorari* with prayer for preliminary injunction against NEA and ANECO.[6] The case was docketed as SP Civil Case No. 03-03.

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[3] *Rollo*, p. 117.

[4] *Id.* at 120.

[5] *Id.* at 121.

[6] *Id.* at 108.

On December 2, 2003, the RTC issued a Temporary Restraining Order enjoining NEA and ANECO and their representatives, attorneys and agents from disqualifying respondent as member of the ANECO BOD or allowing him to continue attending meetings or sessions of the said BOD and granting him back all benefits, emoluments and remunerations due him on account of his disqualification.[7]

NEA and ANECO filed separate motions for reconsideration.

On January 7, 2004, the RTC issued an Order[8] denying the motions for reconsideration of NEA and ANECO and directing the issuance of a preliminary injunction, which enjoined NEA and ANECO from enforcing the disqualification of respondent as member of the ANECO BOD and directing them to put up a bond in the amount of ₱300,000.00.

Consequently, on February 10, 2004, the RTC issued a Writ of Preliminary Injunction.[9]

On November 12, 2004 the RTC rendered its presently assailed Decision, the dispositive portion of which reads, thus:

> WHEREFORE, the petition is hereby granted. The injunction issued against respondent is hereby made permanent.
>
> Respondents are likewise ordered to pay to petitioner the amount of Ph50,000.00 as attorney's fees and Ph50,000.00 as expenses of litigation.
>
> SO ORDERED.[10]

NEA filed a motion for reconsideration, but the RTC denied it in its Resolution[11] dated April 6, 2005.

Hence, the present petition raising the following issues:

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[7] *Id.* at 133.

[8] *Id.* at 154.

[9] *Id.* at 159.

[10] *Id.* at 104.

[11] *Id.* at 105-107.

1. Whether or not the Hon. Orlando F. Doyon, in his capacity as Presiding Judge of the Regional Trial Court of Cabadbaran, Agusan del Norte, Branch 34, exercised grave abuse of discretion which is tantamount to lack or in excess of jurisdiction in deciding the case in an action for *certiorari* with prayer for Preliminary Injunction it resolved to nullify an order issued by an administrative agency without sufficient legal basis;

2. Whether or not the instant case should be dismissed for lack of cause of action on the ground of respondent's failure to exhaust administrative remedies; and

3. Whether or not the law was correctly applied by the trial court in the issuance of the Temporary Restraining Order and Writ of Preliminary Injunction.[12]

Petitioner contends that respondent went to court without first exhausting the administrative remedies available to him making his action premature or his case not ripe for judicial determination and, for that reason, he has no cause of action to ventilate in court.

Petitioner also avers that in coming up with its decision nullifying the order issued by the NEA, the RTC, in effect, deprived the Office of the President of its power to review the disputed order.

Petitioner further argues that the provision under the Guidelines in the Conduct of Electric Cooperative District Elections, which prohibits persons who hold an elective office in the government or appointed to an elective position above the level of *Barangay* Captain from being members of the BOD of an electric cooperative, applies not only to candidates for membership in the BOD but also to incumbent members thereof.

Lastly, petitioner asserts that the temporary restraining order issued by the RTC is invalid, because it was made effective beyond the 20-day period provided under the Rules of Court.

The Court finds the petition meritorious.

With respect to the procedural aspect of the case, respondent should have first exhausted the administrative remedies still

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

available to him by appealing the challenged order of the NEA to the Office of the President, which exercises the power of supervision over it. Section 13, Chapter II of Presidential Decree No. 269 (PD 269), otherwise known as the *National Electrification Administration Decree*, provides that:

> Sec. 13. *Supervision over NEA; Power Development Council.*— The NEA shall be under the supervision of the Office of the President of the Philippines. **All orders, rules and regulations promulgated by the NEA shall be subject to the approval of the Office of the President of the Philippines**. (Emphasis supplied)

Considering that the President has the power to review on appeal the orders or acts of petitioner NEA, the failure of respondent to undertake such an appeal bars him from resorting to a judicial suit.[13] It is settled that under the doctrine of exhaustion of administrative remedies, recourse through court action cannot prosper until after all such administrative remedies have first been exhausted.[14] If remedy is available within the administrative machinery, this should be resorted to before recourse can be made to courts. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court.[15] The non-observance of the doctrine of exhaustion of administrative remedies results in lack of cause of action, which is one of the grounds in the Rules of Court justifying the dismissal of the complaint.[16]

In the present case, respondent failed to exhaust his administrative remedies when he filed a case with the RTC

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[13] *National Electrification Administration v. Judge Mendoza*, 223 Phil. 215, 219 (1985).

[14] *Teotico v. Baer*, G.R. No. 147464, June 8, 2006, 490 SCRA 279, 285.

[15] *Montanez v. Provincial Agrarian Reform Adjudicator*, G.R. No. 183142, September 17, 2009.

[16] *Teotico v. Baer, supra* note 14.

without appealing the decision of the NEA to the Office of the President. As such, his petition filed with the RTC must necessarily fail.

In any case, the main issue of whether respondent can still continue to be a member of the ANECO BOD after becoming an *ex-officio* member of the *Sangguniang Bayan* of Cabadbaran must be answered in the negative.

Section 7 (8), Article II of the Guidelines in the Conduct of Electric Cooperative District Elections issued by the NEA Main Office, through its Board of Administrators, on June 23, 1993, provides:

> Section 7. *Qualification for Board of Directors. – Bona fide* members who possess the following qualifications are eligible to become and/or to remain as member of Board of Directors:
>
> 1. He/she is a Filipino citizen
>
> xxx xxx xxx
>
> 8. He/she does not hold elective office in the government nor appointed to an elective position above the level of a *Barangay* Captain.
>
> xxx xxx xxx[17]

In the same manner, the Memorandum[18] dated February 13, 1998 issued by the NEA Main Office states:

> 2.3.1. Book III, Article Three, Sec. 446 of R.A. 7160 listed the composition of the Sangguniang Bayan which includes, among others, the President of the Municipal Chapter of the Liga ng mga *Barangay* x x x. As such, therefore, they are considered as an *ex-officio* member of the Sanggunian, as likewise provided for in Rule XXIX, Article 211 (d) of the Implementing Rules and Regulations of RA 7160.
>
> 2.3.2. All coop officials and employees who are subsequently elected to the post of President of the Municipal Chapter of the Liga ng mga Barangay, after having won in the *barangay* elections, shall be considered automatically resigned upon taking his/her oath of office as Liga President.

[17] Exhibits "1-A" and "1-B", records, pp. 76-77.

[18] Exhibit "2", *id.* at 91-93.

The above-quoted provisions find support in *Salomon v. National Electrification Administration*[19] "a case decided by the Court more than a decade prior to respondent's filing of his petition with the RTC. In the said case, the petitioner, an elected *Barangay* Captain, sought the nullification of a ruling issued by the NEA which disqualified her from further acting as a member of the Board of Directors of La Union Electric Cooperative, Inc. (LUELCO) by reason of the fact that she was appointed as an *ex-officio* member of the *Sangguniang Panlalawigan* of La Union, representing the *barangay* officials of the province. This Court, in upholding the disqualification of therein petitioner as a member of the Board of Directors, held:

> Although the disqualification mandated by the provisions [of PD 269] pertains to elective officers of the government, except barrio captains and councilors, the same is equally applicable to an appointed member of the Sangguniang Panlalawigan which is an elective office. The prohibition should be construed to refer to a person holding an office, the assumption to which, while generally determined by an election, is not precluded by appointment. **The purpose of the disqualification is to prevent incumbents of elective offices from exerting political influence and pressure on the management of the affairs of the cooperative. This purpose cannot be fully achieved if one who is appointed to an elective office is not made subject to the same disqualification.**
>
> **A person appointed to an elective office can exercise all powers and prerogatives attached to said office. Thus, an appointed member of a Sangguniang Panlalawigan, like petitioner, can wield as much pressure and influence on an electric cooperative, as an elected member thereof.**
>
> Petitioner, having been appointed as member of the Sangguniang Panlalawigan of La Union, a position decidedly above the rank of *Barangay* Captain, cannot remain as Director of LUELCO without violating the spirit and intent of Section 21 P.D. No. 269, as amended x x x.[20]

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[19] 251 Phil. 459 (1989).

[20] *Id.* at 463-464. (Emphasis supplied.)

The Court finds that, while the position to which the petitioner in the above-quoted ruling was appointed is different from the position to which herein respondent was named, the rule or principle enunciated above, nonetheless, applies squarely to the present case. Consequently, and in consonance with the Guidelines and Memorandum issued by the NEA, when respondent was designated as member of the *Sangguniang Bayan* of Cabadbaran, he became ineligible, and was thereby disqualified as member of the ANECO BOD.

As to the issue of whether the temporary restraining order issued by the RTC remained valid even if it was beyond the 20-day period provided under the Rules of Court, it is settled that under Section 5, Rule 58[21] of the Rules of Court, a judge may issue a temporary restraining order within a limited life of twenty (20) days from date of issue. If before the expiration of the twenty (20)-day period the application for preliminary injunction is denied, the temporary restraining order would be deemed automatically vacated. If no action is taken by the judge on the application for preliminary injunction within the said twenty (20) days, the temporary restraining order would automatically expire on the 20th day by the sheer force of law,no judicial declaration to that effect being necessary and the courts having no discretion to extend the same.[22] The rule against the non-extendibility of the twenty (20)-day limited period of

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[21] Sec. 5. *Preliminary injunction not granted without notice; exception*.— No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue *ex parte* a temporary restraining order to be effective only for a period of twenty (20) days from notice to the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

[22] *Mendoza v. Judge Ubiadas*, 462 Phil. 633, 647 (2003). *Golangco v. Judge Villanueva*, 343 Phil. 937, 946 (1997). *Asset Privatization Trust v.*

effectivity of a temporary restraining order is absolute if issued by a regional trial court.[23] Hence, the RTC committed error when it ruled that the temporary restraining order it issued on December 2, 2003 was effective until January 5, 2004, a period that was beyond the twenty (20) days allowed under the Rules of Court. This does not mean, however, that the entire TRO was invalidated. The same remained valid and in effect, but only within the 20-day period, after which it automatically expired.

WHEREFORE, the petition is *GRANTED*. The assailed Decision of the Regional Trial Court of Cabadbaran, Agusan Del Norte, Branch 34, dated November 12, 2004, and its Resolution dated April 6, 2005 in SP. Civil Case No. 03-03, are *REVERSED AND SET ASIDE*. The petition for *certiorari* therein filed is *DISMISSED*.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. Nos. 170339, 170398-403. March 9, 2010]

ROLANDO E. SISON, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

Court of Appeals, G.R. No. 101344, October 1, 1992, 214 SCRA 400, 406; *Golden Gate Realty Corporation v. Intermediate Appellate Court*, 236 Phil. 732, 738 (1987).

[23] *Bacolod City Water District v. Hon. Labayen*, 487 Phil. 335, 348 (2004).

SYLLABUS

1. POLITICAL LAW; RA 7160 (LOCAL GOVERNMENT CODE); PROPERTY AND SUPPLY MANAGEMENT IN THE LOCAL GOVERNMENT UNITS; PUBLIC BIDDING REQUIRED IN PROCUREMENT OF SUPPLIES; EXCEPTIONS TO THE RULE.— RA 7160 explicitly provides that, as a rule, "acquisitions of supplies by local government units shall be through competitive bidding." By way of exception, no bidding is required in the following instances: (1) personal canvass of responsible merchants; (2) emergency purchase; (3) negotiated purchase; (4) direct purchase from manufacturers or exclusive distributors and (5) purchase from other government entities.

2. ID.; ID.; ID.; ID.; ID.; PERSONAL CANVASS OF RESPONSIBLE MERCHANTS; REQUIREMENTS ON RESORTING TO THIS MODE OF PROCUREMENT, NOT COMPLIED WITH IN CASE AT BAR.— Since personal canvass (the method availed of by petitioner) is an exception to the rule requiring public bidding, Section 367 of RA 7160 provides for limitations on the resort to this mode of procurement: xxx Insofar as the purchase of the Toyota Land Cruiser is concerned, the Sandiganbayan found that the personal canvass was effected solely by petitioner, without the participation of the municipal accountant and petitioner's co-accused de Jesus, the municipal treasurer. Worse, there was no showing that the award was decided by the Committee on Awards. Only an abstract of canvass supported the award, signed by petitioner and de Jesus, without the required signatures of the municipal accountant and budget officer. To reiterate, RA 7160 requires that where the head of the office or department requesting the requisition sits in a dual capacity, the participation of a *Sanggunian* member (elected from among the members of the *Sanggunian*) is necessary. Petitioner clearly disregarded this requirement because, in all the purchases made, he signed in a dual capacity—as chairman and member (representing the head of office for whose use the supplies were being procured). That is strictly prohibited. xxx The same flaws attended the procurement of 119 bags of Fortune cement, electric power generator set, various construction materials, two Desert Dueler tires and a computer and its accessories. With the kind of items purchased

by petitioner, he also clearly spent more than ₱20,000—or beyond the threshold amount per month allowed by Section 367 of RA 7160 as far as purchases through personal canvass by fourth-class municipalities (like Calintaan) are concerned.

3. CRIMINAL LAW; R.A. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); CORRUPT PRACTICES OF PUBLIC OFFICERS; ELEMENTS THAT MUST CONCUR TO BE FOUND GUILTY UNDER SECTION 3 (e) OF R.A. 3019.— To be found guilty under Section 3(e) of R.A. 3019 the following elements must concur: (1) the offender is a public officer; (2) the act was done in the discharge of the public officer's official, administrative or judicial functions; (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and (4) the public officer caused any undue injury to any party, including the Government, **or** gave any unwarranted benefits, advantage or preference.

4. ID.; ID.; ID.; ID.; PRESENT IN CASE AT BAR.— It is undisputed that the first two elements are present in the case at bar. The only question left is whether the third and fourth elements are likewise present. We hold that they are. The third element of Section 3 (e) of RA 3019 may be committed in three ways, *i.e.*, through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of *any* of these three in connection with the prohibited acts mentioned in Section 3(e) of RA 3019 is enough to convict. xxx In the instant case, petitioner was grossly negligent in all the purchases that were made under his watch. Petitioner's admission that the canvass sheets sent out by de Jesus to the suppliers already contained his signatures because he pre-signed these forms only proved his utter disregard of the consequences of his actions. Petitioner also admitted that he knew the provisions of RA 7160 on personal canvass but he did not follow the law because he was merely following the practice of his predecessors. This was an admission of a mindless disregard for the law in a tradition of illegality. xxx The fourth element is likewise present. While it is true that the prosecution was not able to prove any undue injury to the government as a result of the purchases, it should be noted that there are two ways by which Section 3(e) of RA 3019 may be violated—the first, by causing undue injury to any part, including the government, or the second, by giving any private party any unwarranted benefit, advantage or

preference. xxx In order to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions. Petitioner did just that. The fact that he repeatedly failed to follow the requirements of RA 7160 on personal canvass proves that unwarranted benefit, advantage or preference was given to the winning suppliers. These suppliers were awarded the procurement contract without the benefit of a fair system in determining the best possible price for the government.

5. ID.; ID.; ID.; ID.; *DURA LEX SED LEX*; PETITIONER SHOULD HAVE COMPLIED WITH THE REQUIREMENTS LAID DOWN BY RA 7160 ON PERSONAL CANVASS, NO MATTER HOW STRICT THEY MAY HAVE BEEN.— Petitioner should have complied with the requirements laid down by RA 7160 on personal canvass, no matter how strict they may have been. *Dura lex sed lex*. The law is difficult but it is the law. These requirements are not empty words but were specifically crafted to ensure transparency in the acquisition of government supplies, especially since no public bidding is involved in personal canvass. Truly, the requirement that the canvass and awarding of supplies be made by a collegial body assures the general public that despotic, irregular or unlawful transactions do not occur. It also guarantees that no personal preference is given to any supplier and that the government is given the best possible price for its procurements.

6. ID.; ID.; ID.; ID.; PROPRIETY OF PENALTY.— Any person guilty of violating Section 3 (e) of RA 3019 is punishable with imprisonment for not less than six years and one month nor more than fifteen years and perpetual disqualification from public office. Thus, the penalty imposed by the Sandiganbayan which is an imprisonment term ranging from six years and one month as minimum to ten years as maximum and perpetual disqualification from holding public office for each count of the offense, is in accord with law.

7. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; FACTUAL FINDINGS OF LOWER COURTS GENERALLY BINDING ON THE SUPREME COURT; EXCEPTION; CASE AT BAR.— This Court is not a trier of facts. The resolution of factual issues is a function exercised by lower

courts, whose findings on these matters are received with respect and are in fact binding on the Court except only where it is shown that the case falls under the accepted exceptions. Petitioner failed to establish that his case falls under those exceptions. Hence, we have no other option but to uphold the Sandiganbayan's factual findings.

APPEARANCES OF COUNSEL

Augusto S. Jimenez for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CORONA, *J.*:

The requirements of the law on government procurements should never be taken for granted because grave consequences await those who violate them.

Petitioner Rolando E. Sison was the municipal mayor of Calintaan, Occidental Mindoro, a fourth-class municipality,[1] from July 1, 1992 to June[2] 30, 1995, while Rigoberto de Jesus was the municipal treasurer. On July 18, 1994, state auditor Elsa E. Pajayon conducted a post-audit investigation which revealed that during petitioner's incumbency, no public bidding was conducted for the purchase of a Toyota Land Cruiser, 119 bags of Fortune cement, an electric generator set, certain construction materials, two Desert Dueler tires, and a computer and its accessories. Pajayon also found out that there were irregularities in the documents supporting the acquisitions.

Thus, on June 4, 1998, petitioner and de Jesus were indicted before the Sandiganbayan in seven separate Informations[3] for

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[1] http://enwikipedia.org/wiki/Calintaan, Occidental Mindoro. (accessed on May 25, 2009).

[2] Erroneously stated in the records as July.

[3] In Criminal Case No. 24666, petitioner and co-accused de Jesus were charged as follows:

seven counts of violation of Section 3(e) of Republic Act (RA) 3019.[4]

On June 24, 1999, petitioner pleaded not guilty to all the Informations. Accused de Jesus has remained at large.

Trial on the merits ensued. Pajayon was the lone witness for the prosecution. She narrated the State's version of the facts as above stated. The prosecution thereafter rested its case and formally offered its exhibits.

When it was the turn of the defense to present evidence, petitioner was called to the witness stand where he admitted that indeed, no public bidding was conducted insofar as the purchases he was being accused of were concerned. When asked how the purchases were made, he answered that they were done through personal canvass. When prodded why personal canvass was the method used, he retorted that no public bidding could be conducted because all the dealers of the items were based in Manila. It was therefore useless to invite bidders since nobody would bid anyway. The defense thereafter rested its case and formally offered its exhibits.

That in or about February to March 1993, or sometime prior or subsequent thereto, in Calintaan, Occidental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, both public officers, then being the Mayor and Treasurer, respectively, of Calintaan, Occidental Mindoro, conspiring and confederating with one another, committing the offense in relation to their office, taking advantage of their positions and acting with manifest partiality, evident bad faith and/or inexcusable negligence did then and there wilfully, unlawfully and criminally cause undue injury to the government and **give unwarranted benefit, advantage or preference to a private supplier** by effecting the purchase and payment of a Toyota Land Cruiser without public bidding and proper documentation and without complying with the legal procedure/steps for effecting purchase of government supplies and equipment.

CONTRARY TO LAW.

Petitioner and co-accused de Jesus were also charged in six other informations similar to the above except as to the item purchased and date of commission of the offense.

[4] Otherwise known as The Anti-Graft and Corrupt Practices Act.

On November 14, 2005, the Sandiganbayan found petitioner guilty as charged.[5] As such, he was meted in each Information an imprisonment term ranging from six years and one month as minimum to ten years as maximum and perpetual disqualification from holding public office. The Sandiganbayan also ordered that an *alias* warrant of arrest be issued against accused de Jesus.

Petitioner appealed[6] to this Court, praying for an acquittal because his guilt was allegedly not proven beyond reasonable doubt.

We dismiss the appeal.

NON-COMPLIANCE WITH THE REQUIREMENTS OF PERSONAL CANVASS

RA 7160[7] explicitly provides that, as a rule, "acquisitions of supplies by local government units shall be through competitive bidding."[8] By way of exception, no bidding is required in the following instances:

(1) personal canvass of responsible merchants;

(2) emergency purchase;

(3) negotiated purchase;

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[5] Decision penned by Justice Efren N. de la Cruz and concurred in by Justices Godofredo L. Legaspi (retired) and Norberto Y. Geraldez. *Rollo*, pp. 28-60.

[6] Under Rule 45 of the Rules of Court. *Id.*, pp. 10-27.

[7] Otherwise known as The Local Government Code of 1991.

[8] Section 356, RA 7160. The term "supplies" as used by the law "includes everything, except real property which may be needed in the transaction of public business or in the pursuit of any undertaking, project or activity, whether in the nature of equipment, furniture, stationary materials for construction or personal property of any sort, including non-personal or contractual services such as the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related services." (Section 357(c), *id.*) Thus, there is no question that the purchases in the instant case are covered by RA 7160.

(4) direct purchase from manufacturers or exclusive distributors and

(5) purchase from other government entities.[9]

Since personal canvass (the method availed of by petitioner) is an exception to the rule requiring public bidding, Section 367 of RA 7160 provides for limitations on the resort to this mode of procurement:

Sec. 367. *Procurement through Personal Canvass*.—Upon approval by the Committee on Awards, procurement of supplies may be affected after personal canvass of at least three (3) responsible suppliers in the locality by a committee of three (3) composed of the local general services officer or the municipal or *barangay* treasurer, as the case may be, the local accountant, and the head of office or department for whose use the supplies are being procured. The award **shall** be decided by the Committee on Awards.

Purchases under this Section **shall** not exceed the amounts specified hereunder for all items in any one (1) month for each local government unit:

xxx xxx xxx

Municipalities:	
First Class	— One hundred fifty thousand pesos (₱150,000.00)
Third Class	— Forty thousand pesos (₱40,000.00)
Fourth Class and Below	**—Twenty thousand pesos (₱20,000.00)** (emphasis supplied)

In relation thereto, Section 364 of RA 7160 mandates:

Section 364. *The Committee on Awards*.—There **shall** be in every province, city or municipality a Committee on Awards to decide the winning bids and questions of awards on procurement and disposal of property.

The Committee on Awards **shall** be composed of the local chief executive as chairman, the local treasurer, the local accountant, the

[9] Section 366, *id*.

local budget officer, the local general services officer, and the head of office or department for whose use the supplies are being procured, as members. **In case a head of office or department would sit in a dual capacity a member of the *sanggunian* elected from among its members shall sit as a member**. The Committee on Awards at the *barangay* level shall be the *sangguniang barangay*. No national official shall sit as member of the Committee on Awards. (emphasis supplied)

Note that the law repeatedly uses the word "shall" to emphasize the mandatory nature of its provisions.

This Court is not a trier of facts. The resolution of factual issues is a function exercised by lower courts, whose findings on these matters are received with respect and are in fact binding on the Court except only where it is shown that the case falls under the accepted exceptions.[10] Petitioner failed to establish that his case falls under those exceptions. Hence, we have no other option but to uphold the Sandiganbayan's factual findings.

Insofar as the purchase of the Toyota Land Cruiser[11] is concerned, the Sandiganbayan found that the personal canvass was effected solely by petitioner, without the participation of the municipal accountant and petitioner's co-accused de Jesus, the municipal treasurer. Worse, there was no showing that the award was decided by the Committee on Awards. Only an abstract of canvass supported the award, signed by petitioner and de Jesus, without the required signatures of the municipal accountant and budget officer.

To reiterate, RA 7160 requires that where the head of the office or department requesting the requisition sits in a dual capacity, the participation of a *Sanggunian* member (elected from among the members of the *Sanggunian*) is necessary. Petitioner clearly disregarded this requirement because, in all the purchases made, he signed in a dual capacity—as chairman and member (representing the head of office for whose use the supplies were being procured). That is strictly prohibited. None

[10] *FNCB Finance v. Estavillo*, G.R. No. 93394, 20 December 1990, 192 SCRA 514, 517.

[11] Subject of Criminal Case No. 24666.

of the regular members of the Committee on Awards may sit in a dual capacity. Where any of the regular members is the requisitioning party, a special member from the *Sanggunian* is required. The prohibition is meant to check or prevent conflict of interest as well as to protect the use of the procurement process and the public funds for irregular or unlawful purchases.

The same flaws attended the procurement of 119 bags of Fortune cement,[12] electric power generator set,[13] various construction materials,[14] two Desert Dueler tires[15] and a computer and its accessories.[16]

With the kind of items purchased by petitioner, he also clearly spent more than ₱20,000—or beyond the threshold amount per month allowed by Section 367 of RA 7160 as far as purchases through personal canvass by fourth-class municipalities (like Calintaan) are concerned.

VIOLATION OF SECTION 3(E) OF RA 3019

Section 3(e) of RA 3019 provides:

> Section 3. *Corrupt practices of public officers.*—In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> xxx xxx xxx
>
> (e) Causing any undue injury to any party, including the Government, **or** giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest impartiality, evident bad faith or gross inexcusable negligence. xxx. (emphasis supplied)

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[12] Subject of Criminal Case No. 24667.

[13] Subject of Criminal Case No. 24668.

[14] Subject of Criminal Case No. 24669 & 246670.

[15] Subject of Criminal Case No. 246671.

[16] Subject of Criminal Case No. 246672.

To be found guilty under said provision, the following elements must concur:

(1) the offender is a public officer;

(2) the act was done in the discharge of the public officer's official, administrative or judicial functions;

(3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and

(4) the public officer caused any undue injury to any party, including the Government, **or** gave any unwarranted benefits, advantage or preference.[17] (emphasis supplied)

It is undisputed that the first two elements are present in the case at bar. The only question left is whether the third and fourth elements are likewise present. We hold that they are.

The third element of Section 3 (e) of RA 3019 may be committed in three ways, *i.e.*, through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of *any* of these three in connection with the prohibited acts mentioned in Section 3(e) of RA 3019 is enough to convict.[18]

Explaining what "partiality," "bad faith" and "gross negligence" mean, we held:

"Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive

[17] *Bautista v. Sandiganbayan*, G.R. No. 136082, 12 May 2000, 332 SCRA 126.

[18] *Fonacier v. Sandiganbayan*, G.R. No. 50691, 5 December 1994, 238 SCRA 655.

and thoughtless men never fail to take on their own property."[19] (citations omitted)

In the instant case, petitioner was grossly negligent in all the purchases that were made under his watch. Petitioner's admission that the canvass sheets sent out by de Jesus to the suppliers already contained his signatures because he pre-signed these forms[20] only proved his utter disregard of the consequences of his actions. Petitioner also admitted that he knew the provisions of RA 7160 on personal canvass but he did not follow the law because he was merely following the practice of his predecessors.[21] This was an admission of a mindless disregard for the law in a tradition of illegality. This is totally unacceptable, considering that as municipal mayor, petitioner ought to implement the law to the letter. As local chief executive, he should have been the first to follow the law and see to it that it was followed by his constituency. Sadly, however, he was the first to break it.

Petitioner should have complied with the requirements laid down by RA 7160 on personal canvass, no matter how strict they may have been. *Dura lex sed lex*. The law is difficult but it is the law. These requirements are not empty words but were specifically crafted to ensure transparency in the acquisition of government supplies, especially since no public bidding is involved in personal canvass. Truly, the requirement that the canvass and awarding of supplies be made by a collegial body assures the general public that despotic, irregular or unlawful transactions do not occur. It also guarantees that no personal preference is given to any supplier and that the government is given the best possible price for its procurements.

The fourth element is likewise present. While it is true that the prosecution was not able to prove any undue injury to the government as a result of the purchases, it should be noted that there are two ways by which Section 3(e) of RA 3019 may be violated—the first, by causing undue injury to any party, including

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[19] *Id.*, pp. 687-688.

[20] TSN, 21 June 2004, p. 32.

[21] *Id.*, p. 34.

the government, or the second, by giving any private party any unwarranted benefit, advantage or preference. Although neither mode constitutes a distinct offense,[22] an accused may be charged under *either mode or both*.[23] The use of the disjunctive "or" connotes that the two modes need not be present at the same time. In other words, the presence of one would suffice for conviction.[24]

Aside from the allegation of undue injury to the government, petitioner was also charged with having given unwarranted benefit, advantage or preference to private suppliers.[25] Under the second mode, damage is not required.

The word "unwarranted" means lacking adequate or official support; unjustified; unauthorized[26] or without justification or adequate reason.[27] "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action.[28] "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another.[29]

In order to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions. Petitioner did just that. The fact that he repeatedly failed to follow the requirements of RA 7160 on personal canvass proves

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

[23] *Cabrera v. Sandiganbayan*, G.R. Nos. 162314-17, 5 October 2004, 441 SCRA 377.

[24] *Quibal v. Sandiganbayan*, G.R. No. 109991, 22 May 1995, 244 SCRA 224.

[25] *See* note 1.

[26] Webster, *Third International Dictionary* (Unabridged), p. 2514.

[27] Words and Phrases (Permanent Edition), Vol. 43-A 1978, Cumulative Annual Pocket Part, p. 19.

[28] Webster, *Third International Dictionary* (Unabridged), p. 30.

[29] *Id.*, p. 1787.

that unwarranted benefit, advantage or preference was given to the winning suppliers. These suppliers were awarded the procurement contract without the benefit of a fair system in determining the best possible price for the government. The private suppliers, which were all personally chosen by respondent, were able to profit from the transactions without showing proof that their prices were the most beneficial to the government. For that, petitioner must now face the consequences of his acts.

PROPRIETY OF THE PENALTY

Any person guilty of violating Section 3 (e) of RA 3019 is punishable with imprisonment for not less than six years and one month nor more than fifteen years and perpetual disqualification from public office.[30] Thus, the penalty imposed by the Sandiganbayan which is an imprisonment term ranging from six years and one month as minimum to ten years as maximum and perpetual disqualification from holding public office for each count of the offense, is in accord with law.

WHEREFORE, the petition is hereby *DENIED*. Petitioner Rolando E. Sison is hereby found guilty of seven counts of violation of Section 3(e) of RA 3019. As such, he is hereby sentenced for each count of the offense with imprisonment of six years and one month as minimum to ten years as maximum and perpetual disqualification from holding public office.

Costs against petitioner.

SO ORDERED.

Velasco, Jr., Nachura, Peralta, and *Mendoza, JJ.*, concur.

[30] *See* Section 9, RA 3019.

FIRST DIVISION

[G.R. No. 172144. March 9, 2010]

PEZA BOARD OF DIRECTORS and LILIA B. DE LIMA, *petitioners, vs.* **GLORIA J. MERCADO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE LAW; SECURITY OF TENURE; FOUR (4) STAGES OF CAREER EXECUTIVE SERVICE (CES) ELIGIBILITY EXAMINATIONS; FOR AN EXAMINEE OR INCUMBENT TO BE A MEMBER OF THE CES, HE/SHE MUST PASS THE CES EXAMINATIONS, BE CONFERRED CES ELIGIBILITY, COMPLY WITH OTHER REQUIREMENTS PRESCRIBED BY THE CES BOARD AND BE APPOINTED A CES RANK BY THE PRESIDENT.— Section 27 (1), of the Civil Service Law provides: (1) Permanent status. – **A permanent appointment shall be issued to a person who meets all the requirements for the position to which he is being appointed, including the appropriate eligibility prescribed**, in accordance with the provisions of law, rules and standards promulgated in pursuance thereof. In the CES under which the position of PEZA Deputy Director General for Policy and Planning is classified, the acquisition of security of tenure which presupposes a permanent appointment is governed by the Rules and Regulations promulgated by the CES Board. As the recent case of *Amores vs. Civil Service Commission* explains: **Security of tenure** in the career executive service, which presupposes a permanent appointment, takes place upon **passing the CES examinations** administered by the CES Board. It is that which entitles the examinee to conferment of CES eligibility and the inclusion of his name in the roster of CES eligibles. Under the rules and regulations promulgated by the CES Board, **conferment of the CES eligibility is done by the CES Board through a formal board resolution after an evaluation has been done of the examinee's performance in the *four stages* of the CES eligibility examinations. Upon conferment of CES eligibility and compliance with the other requirements**

prescribed by the Board, an incumbent of a CES position may qualify for appointment to a CES rank. Appointment to a CES rank is made by the President upon the Board's recommendation. It is this process which completes the official's membership in the CES and confers on him security of tenure in the CES. Petitioner does not seem to have gone through this definitive process. Clearly, for an examinee or an incumbent to be a member of the CES and be entitled to security of tenure, she/he must pass the CES examinations, be conferred CES eligibility, comply with the other requirements prescribed by the CES Board, and be appointed to a CES rank by the President. Admittedly, before and up to the time of the termination of her appointment, respondent did not go through the four stages of CES eligibility examinations.

2. ID.; ID.; ID.; ID.; RESPONDENT'S ATTAINMENT OF A MASTER OF NATIONAL SECURITY ADMINISTRATION (MNSA) DEGREE DOES NOT CONFER ON HER AUTOMATIC CES ELIGIBILITY; RESPONDENT HAD NOT UNDERGONE THE *SECOND, THIRD* AND *FOURTH* STAGES OF THE CES ELIGIBILITY EXAMINATIONS PRIOR TO HER APPOINTMENT OR DURING HER INCUMBENCY AS DEPUTY DIRECTOR GENERAL UP TO TIME HER APPOINTMENT WAS TERMINATED; NOT BEING A CES ELIGIBLE, SHE HAS NO SECURITY OF TENURE.— By respondent's attainment of an MNSA degree, she was not conferred automatic CES eligibility. It was, as above-quoted portions of CESB Resolution No. 204 state, merely accredited as "equivalent to passing the Management Aptitude Test Battery." For respondent to acquire CES eligibility and CES rank, she could "proceed to the second stage of the eligibility examination process . . . and the other stages of the examination . . . in accordance with existing policies and regulations"; and that if respondent as MNSA degree holder passed the three other stages of the CES eligibility examinations and is conferred CES eligibility, she could "qualify for appointment to CES ranks," PROVIDED that she meets and complies "with other requirements of the CES Board and the Office of the President to qualify for rank appointment." Since, it is admitted that respondent, who acquired an MNSA degree in 1993, had not undergone the *second, third* and *fourth* stages

of the CES eligibility examinations prior to her appointment or during her incumbency as Deputy Director General up to the time her appointment was terminated, she was not a CES eligible, as indeed certified to by the CES Board. Not being a CES eligible, she had no security of tenure, hence, the termination by the PEZA Board on June 1, 2000 of her appointment, as well as the appointment in her stead of CES eligible by Ortaliz, were not illegal.

3. ID.; ID.; ID.; ID.; REMOVAL OF THE CES ELIGIBILITY REQUIREMENT OF THE PHILIPPINE ECONOMIC ZONE (PEZA) DEPUTY DIRECTOR GENERAL COULD NOT HAVE BEEN THE INTENTION OF THE FRAMERS OF R.A. 8748; TO REMOVE THE CES ELIGIBILITY WOULD BE ABSURD CONSIDERING THAT THE POSITION IS A HIGH-RANKING ONE WHICH REQUIRES SPECIALIZED KNOWLEDGE AND EXPERIENCE IN CERTAIN AREAS INCLUDING LAW, ECONOMICS, PUBLIC ADMINISTRATION AND SIMILAR FIELDS.— Respecting the contention that the promulgation of R.A. 8748 on June 1, 1999 removed the CES eligibility qualification for the position of Deputy Director General, hence, respondent, albeit not a CES-eligible, could only be terminated for cause, the same is untenable. The relevant portion of said law reads: xxx As correctly held by the trial court, removing the CES eligibility requirement for the Deputy Director General position could not have been the intention of the framers of the law. It bears noting that the position is a high-ranking one which requires specialized knowledge and experience in certain areas including law, economics, public administration and similar fields, hence, to remove it from the CES would be absurd. The Civil Service Commission CESB in fact has certified that the position requires the appropriate CES eligibility. It is settled that the construction given to a statute by an administrative agency charged with the interpretation and application of that statute is entitled to great respect and should be accorded great weight by the courts. Respondent's *subsequent* passing in late 2000 of the CES examinations did not retroact to consider her a CESO at the time her appointment was terminated on June 1, 2000.

APPEARANCES OF COUNSEL

PEZA Legal Services Group for petitioners.
Del Prado Diaz and Associates Law Offices for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Being assailed is the Court of Appeals 1) Decision[1] of December 14, 2005 which reversed[2] that of the Regional Trial Court (RTC) of Pasay City, Branch 108, 2) Amended Decision[3] dated March 31, 2006 by awarding back salaries to Gloria J. Mercado (respondent) computed from the time of her alleged dismissal until her reinstatement as Philippine Economic Zone Authority (PEZA) Deputy Director General for Policy and Planning, and 3) Resolution[4] of March 31, 2006 which denied petitioners' motion for reconsideration of the December 14, 2005 Decision.

The antecedent facts of the present controversy are as follows:

Respondent was appointed as Group Manager for Policy and Planning of PEZA on September 16, 1998. Her appointment was temporary in nature.

On May 16, 1999, respondent was promoted to the position of Deputy Director General for Policy and Planning. Her appointment indicated the same as on permanent basis, but with

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[1] CA *rollo*, pp. 69-124. Penned by Associate Justice Celia Librea-Leagogo and concurred in by Associate Justices Lucas Bersamin (now Associate Justice of this Court) and Renato Dacudao.

[2] Annex "H" of Petition, *rollo,* pp. 150-163. Penned by Judge Priscilla Mijares.

[3] CA *rollo*, pp. 239-244. Penned by Associate Justice Celia Librea-Leagogo and concurred in by Associate Justices Lucas Bersamin (now Associate Justice of this Court) and Renato Dacudao.

[4] *Id*. at 246-247. Penned by Associate Justice Celia Librea-Leagogo and concurred in by Associate Justices Lucas Bersamin (now Associate Justice of this Court) and Renato Dacudao.

the following annotation: NO SECURITY OF TENURE UNLESS HE/SHE OBTAINS CESO OR CSEE ELIGIBILITY. CESO is the acronym for Career Executive Service Officer, while CSEE is the acronym for Career Service Executive Eligibility.

On June 1, 2000, petitioner Lilia B. de Lima, in her capacity as PEZA Director General, by letter of even date, advised respondent of the termination of her appointment effective on the closing hours of the day. On even date, petitioner PEZA Board convened in an executive session and passed a Resolution appointing Wilhelm G. Ortaliz (Ortaliz), a CESO eligible, as Deputy Director General for Policy and Planning effective immediately.

Respondent thereupon filed on June 7, 2000 with the RTC of Pasay City a petition for prohibition, *quo warranto* and damages with preliminary prohibitory/mandatory injunction and/or temporary restraining order against herein petitioners and Ortaliz, docketed as Civil Case No. 00-0172, questioning the June 1, 2000 PEZA Board Resolution appointing Ortaliz as Deputy Director General for Policy and Planning.

In the main, respondent alleged in her complaint that her degree in Master in National Security Administration (MNSA) automatically conferred upon her Career Executive Service (CES) eligibility; that Republic Act No. (R.A.) 8748, which amended R.A. 7916 or the *PEZA Charter*, did away with the CES eligibility requirement for the position of Deputy Director General; and that the termination of her appointment was actuated with bad faith to entitle her to moral and exemplary damages.

Petitioners countered that respondent's MNSA degree at best merely granted her a CESO rank, not eligibility, and since she had not acquired CES eligibility, she had no security of tenure with respect to her position and could, therefore, be replaced at any time by Ortaliz who is a CES eligible.

Respecting respondent's contention that R.A. 8748 removed the CES eligibility requirement, petitioners asserted that based on the records of the deliberations on Senate Bill No. 1136 which eventually became R.A. 8748, the lawmakers never really

intended to do away with the CES eligibility requirement for the position of Deputy Director General; and that assuming *arguendo* that that was the intention, R.A. 8748 took effect only on June 20, 1999 after the appointment of respondent on May 16, 1999.

By Decision of December 4, 2001, the trial court dismissed respondent's petition. It held that the passage of R.A. 8748 notwithstanding, the CES eligibility requirement for the position of Deputy Director General remains, in light of 1) the certification from the CES Board that respondent was not a CES eligible, 2) R.A. 7916 (AN ACT PROVIDING FOR THE LEGAL FRAMEWORK AND MECHANISMS FOR THE CREATION, OPERATION, ADMINISTRATION, AND COORDINATION OF SPECIAL ECONOMIC ZONES IN THE PHILIPPINES, CREATING FOR THIS PURPOSE, THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA), AND FOR OTHER PURPOSES) which provides that appointment to the three PEZA Deputy Director General positions requires CES eligibility, and 3) the Senate deliberations on the bill which eventually became R.A. 8748.

The trial court further held that, contrary to respondent's contention, her MNSA degree did not automatically confer on her CES eligibility for, under Executive Order No. 771 (Amending Executive Order No. 696 Granting Career Executive Service Officer Rank To Graduates Of The National Defense College Of The Philippines And Other Related Purposes), the recommendation of the Ministry or Agency concerned and the evaluation of the Career Executive Service Board (CESB) were still needed; and that absent these additional requirements, what was granted to MNSA degree holders was merely the salary corresponding to the CESO rank and not the rank itself.

The trial court went on to state that per CESB Resolution No. 204 dated December 21, 1998, MNSA graduates are deemed only to have passed the Management Aptitude Test Battery which is merely the first stage in the four-stage CES eligibility conferment process.

The trial court, concluding that since respondent did not have the required eligibility for the position, held that her appointment

was merely temporary and had no security of tenure thereto, and that, therefore, it was deemed to have expired upon the appointment of Ortaliz.

The trial court denied respondent's claim for damages, it finding that she failed to substantiate the same and, in any event, petitioners acted in accordance with law.

Respondent appealed to the Court of Appeals, raising substantially the same arguments she raised before the trial court.

As stated early on, the appellate court, by the assailed Decision of December 14, 2005, *reversed* the trial court's decision. It held that since respondent was promoted to the position of Deputy Director General for Policy and Planning on a permanent status, she cannot be summarily removed; and that respondent's MNSA degree obtained on July 12, 1993 automatically conferred on her a CES eligibility pursuant to Executive Order No. 696, as amended by Executive Order No. 771.

The appellate court went on to hold that even if respondent was not a CES eligible, she is still qualified for the position as the requirement under Sec. 11 of Republic Act No. 7916 that appointees to Deputy Director General positions must "have career executive service eligibility" is no longer found under Sec. 11 of Republic Act No. 8748. It ratiocinated that the deletion of such requirement indicated that the legislature intended to do away with the eligibility requirement.

At all events, the appellate court held that respondent subsequently qualified to the position as she was conferred a CES eligibility by the Civil Service Commission in December 2000.

Albeit the appellate court held that respondent was illegally removed from and ordered her reinstatement to her position, it did not find her entitled to damages as there was no proof that the termination of her services was tainted with bad faith on the part of petitioners. Thus, the appellate court disposed:

WHEREFORE, premises considered, the appeal is **GRANTED**. The Decision dated 04 December 2001 of the Regional Trial Court

of Pasay City, Branch 108 in Civil Case No. 00-172 is **REVERSED** and **SET ASIDE**. PEZA Board Resolution No. 00-187 is declared **NULL** and **VOID;** appellee **WILHELM G. ORTALIZ** is **OUSTED** and altogether **EXCLUDED** from exercising, holding or occupying the position of PEZA Deputy Director General for Policy and Planning; and appellant **GLORIA J. MERCADO** is hereby **REINSTATED** to her position as PEZA Deputy Director General for Policy and Planning. Costs against appellees.

SO ORDERED.[5] (emphasis in the original)

Petitioners moved for reconsideration of the appellate court's decision. Respondent too moved for a partial motion for reconsideration of the decision.

The appellate court, by the Amended Decision of March 31, 2006, acting on respondent's motion for reconsideration, denied her claim for damages and attorney's fees but granted her claim for back salaries, computed from the time of her removal until her reinstatement to the position as PEZA Deputy Director General for Policy and Planning.

By Resolution also dated March 31, 2006, the appellate court denied petitioners' motion for reconsideration, hence, their present recourse, they raising the same defenses and arguments proffered during the proceedings before the trial and appellate courts.

The petition is impressed with merit.

Section 27 (1), of the Civil Service Law provides:

(1) Permanent status. – **A permanent appointment shall be issued to a person who meets all the requirements for the position to which he is being appointed, including the appropriate eligibility prescribed**, in accordance with the provisions of law, rules and standards promulgated in pursuance thereof. (emphasis and underscoring supplied)

In the CES under which the position of PEZA Deputy Director General for Policy and Planning is classified, the acquisition of security of tenure which presupposes a permanent appointment is governed by the Rules and Regulations promulgated by the

[5] *Id*. at 122.

CES Board. As the recent case of *Amores vs. Civil Service Commission* explains:[6]

> **Security of tenure** in the career executive service, which presupposes a permanent appointment, takes place upon **passing the CES examinations** administered by the CES Board. It is that which entitles the examinee to conferment of CES eligibility and the inclusion of his name in the roster of CES eligibles. Under the rules and regulations promulgated by the CES Board, **conferment of the CES eligibility is done by the CES Board through a formal board resolution after an evaluation has been done of the examinee's performance in the *four stages* of the CES eligibility examinations. Upon conferment of CES eligibility and compliance with the other requirements prescribed by the Board, an incumbent of a CES position may qualify for appointment to a CES rank. Appointment to a CES rank is made by the President upon the Board's recommendation. It is this process which completes the official's membership in the CES and confers on him security of tenure in the CES.** Petitioner does not seem to have gone through this definitive process. (emphasis, italics and underscoring supplied)

Clearly, for an examinee or an incumbent to be a member of the CES and be entitled to security of tenure, she/he must pass the CES examinations, be conferred CES eligibility, comply with the other requirements prescribed by the CES Board, and be appointed to a CES rank by the President.

Admittedly, before and up to the time of the termination of her appointment, respondent did not go through the four stages of CES eligibility examinations.

The appellate court's ruling that respondent became CES eligible upon earning the MNSA degree, purportedly in accordance with Executive Order No. 696, as amended by Executive Order No. 771, does not lie.

The pertinent portions of Executive Order No. 696 issued on May 27, 1981 which granted CESO rank to graduates of the National Defense College of the Philippines read:

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[6] G.R. No. 170093, April 29, 2009.

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WHEREAS, Article IV, Chapter I, Part III of the Integrated Reorganization Plan provides for a Career Executive Service to constitute a continuing pool of well-selected and development-oriented career administrators of the government;

WHEREAS, **the pre-qualification requirements for admission at NDCP as well as the training obtained there fully satisfy the training and pre-qualification requirements for appointment to the Career Executive Service**; and

xxx xxx xxx

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by law, do hereby order that:

Sec. 1. **holders of the degree of Master of National Security Administration shall be given preference in promotion to existing vacant positions, as well as assignments to higher responsibility, particularly those involving policy formulation in their respective units, ministries, agencies, offices or entities**.

Sec. 2. Initially, NDCP graduates belonging to the government service **shall be granted the rank of CESO III** with corresponding compensation and other privileges in the Career Executive Service.

x x x (emphasis and underscoring supplied)

Upon the other hand, the pertinent portions of **Executive Order No. 771** issued more than eight months later or on February 4, 1982, which amended Executive Order No. 696, read:

WHEREAS, Section 2 of the Executive Order No. 696 dated May 27, 1981, provides that graduates of the National Defense College of the Philippines belonging to the government service shall be granted the rank of CESO III with corresponding compensation and other privileges in the Career Executive Service;

WHEREAS, graduates of the Career Executive Service Development Program who are equally deserving have not been extended the same or similar benefits;

WHEREAS, the automatic grant of CESO Rank III with corresponding compensation and privileges to NDCP graduates has caused salary inequities in some agencies; and

WHEREAS, there is a need to harmonize the conferment of ranks, compensation and other benefits to graduates of both institutions or programs in order to maintain a high level or morale in the Career Executive Service.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by law, do hereby order that:

Sec. 1. Section 2 of Executive Order No. 696 is hereby amended, to read as follows:

> Sec. 2. **Graduates of the National Defense College of the Philippines belonging to the civil service, and graduates of the Career Executive Service Development Program who have not yet been appointed to a CESO rank shall be granted initially CESO Rank, V, or higher, depending on the recommendation of the Ministry or Agency head concerned and the evaluation of the Career Executive Service Board, with corresponding compensation and other benefits. The Career Executive Service Board, in consultation with the National Defense College of the Philippines shall promulgate rules and regulations to implement this Order.**
>
> x x x (emphasis and underscoring supplied)

Pursuant to this amendatory Executive Order, the CESB issued on December 21, 1998 Resolution No. 204, "ACCREDITING THE MASTER OF NATIONAL SECURITY ADMINISTRATION (MNSA) DEGREE CONFERRED BY THE NATIONAL DEFENSE COLLEGE OF THE PHILIPPINES AND MASTER OF PUBLIC SAFETY ADMINISTRATION (MPSA) DEGREE CONFERRED BY THE PHILIPPINE PUBLIC SAFETY COLLEGE AS EQUIVALENT TO THE MANAGEMENT APTITUDE TEST BATTERY FOR POSSIBLE CONFERMENT OF CES ELIGIBILITY," the pertinent portions of which read:

xxx xxx xxx

WHEREAS, the Board evaluated the curriculum and screening requirements of the two masteral programs and found these to approximate the rigid requirements and standards of the Management Aptitude Test Battery;

NOW THEREFORE, be it **RESOLVED** as it is hereby **RESOLVED** that the Master of National Security Administration (MNSA) degree conferred by NDCP and the Master of Public Safety Administration (MPSA) degree conferred by PPSC be accredited as **equivalent to passing the Management Aptitude Test Battery** (MATB) and that graduates of both programs interested to acquire CES eligibility and CES rank be allowed to **proceed to the second stage of the CES eligibility examination process** which is the Assessment Center **and the other stages of the examination** thereafter in accordance with existing policies and regulations; **PROVIDED**, however, that all expenses that will be incurred in participating in the Assessment Center shall be shouldered by the agency and/or the graduates.

RESOLVED FURTHER that MNSA and MPSA graduates who **pass the three other stages of the CES eligibility examinations *and* are conferred CES eligibility and who are incumbents of CES positions** may qualify for appointment to CES ranks; **PROVIDED** that they meet and **comply with the other requirements prescribed by the CES Board and the Office of the President** to qualify for rank appointment. (emphasis, italics and underscoring supplied)

By respondent's attainment of an MNSA degree, she was not conferred automatic CES eligibility. It was, as above-quoted portions of CESB Resolution No. 204 state, merely accredited as "equivalent to passing the Management Aptitude Test Battery." For respondent to acquire CES eligibility and CES rank, she could "proceed to the second stage of the eligibility examination process . . . and the other stages of the examination . . . in accordance with existing policies and regulations"; and that if respondent as MNSA degree holder passed the three other stages of the CES eligibility examinations and is conferred CES eligibility, she could "qualify for appointment to CES ranks," PROVIDED that she meets and complies "with other requirements of the

CES Board and the Office of the President to qualify for rank appointment."

Since, it is admitted that respondent, who acquired an MNSA degree in 1993, had not undergone the *second, third* and *fourth* stages of the CES eligibility examinations prior to her appointment or during her incumbency as Deputy Director General up to the time her appointment was terminated, she was not a CES eligible, as indeed certified to by the CES Board. Not being a CES eligible, she had no security of tenure, hence, the termination by the PEZA Board on June 1, 2000 of her appointment, as well as the appointment in her stead of CES eligible by Ortaliz, were not illegal.

Respecting the contention that the promulgation of R.A. 8748 on June 1, 1999 removed the CES eligibility qualification for the position of Deputy Director General, hence, respondent, albeit not a CES-eligible, could only be terminated for cause, the same is untenable. The relevant portion of said law reads:

Section 1**.** Chapter II, Section 11 of Republic Act No. 7916 is hereby amended to read as follows:

> Section 11. *The Philippine Economic Zone Authority (PEZA) Board*. — There is hereby created a body corporate to be known as the Philippine Economic Zone Authority (PEZA) attached to the Department of Trade and Industry. The Board shall have a director general with the rank of department undersecretary who shall be appointed by the President. The director general shall be at least forty (40) years of age, of proven probity and integrity, and a degree holder in any of the following fields: economics, business, public administration, law, management or their equivalent, and with at least ten (10) years relevant working experience preferably in the field of management or public administration.
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> **The director general, shall be assisted by three (3) deputy directors general each for policy and planning, administration and operations, who shall be appointed by the PEZA Board, upon the recommendation of the director general. The deputy directors general shall be at least thirty-five (35) years old, with proven probity and integrity and a degree holder in any of the following fields:**

economics, business, public administration, law, management or their equivalent. (emphasis supplied)

As correctly held by the trial court, removing the CES eligibility requirement for the Deputy Director General position could not have been the intention of the framers of the law. It bears noting that the position is a high-ranking one which requires specialized knowledge and experience in certain areas including law, economics, public administration and similar fields, hence, to remove it from the CES would be absurd.

The Civil Service Commission CESB in fact has certified that the position requires the appropriate CES eligibility. It is settled that the construction given to a statute by an administrative agency charged with the interpretation and application of that statute is entitled to great respect and should be accorded great weight by the courts.[7]

Respondent's *subsequent* passing in late 2000 of the CES examinations did not retroact to consider her a CESO at the time her appointment was terminated on June 1, 2000.

WHEREFORE, the petition is *GRANTED*. The Court of Appeals Decision of December 14, 2005, Amended Decision of March 31, 2006 and Resolution of March 31, 2006 are *REVERSED AND SET ASIDE.* The December 4, 2001 Decision of the Regional Trial Court of Pasay City, Branch 108 is *REINSTATED.*

SO ORDERED.

Puno, C.J. (Chairperson), Leonardo-de Castro, Brion,[*] and *Villarama, Jr., JJ.,* concur.

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[7] *Bagatsing v. Committee on Privatization*, G.R. No. 112399, July 14, 1995, 246 SCRA 334; *Nestle Philippines, Inc. v. Court of Appeals,* G.R. No. 86738, November 13, 1991, 203 SCRA 505, 510.

[*] Additional member per Raffle dated March 1, 2010 in lieu of Associate Justice Lucas P. Bersamin.

FIRST DIVISION

[G.R. No. 179230. March 9, 2010]

EUGENE L. LIM, *petitioner, vs.* **BPI AGRICULTURAL DEVELOPMENT BANK,** *respondent.*

SYLLABUS

REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; APPLICANT MUST HAVE A RIGHT *IN ESSE* OR A CLEAR AND UNMISTAKABLE RIGHT TO BE PROTECTED, ONE CLEARLY FOUNDED ON OR GRANTED BY LAW OR IS ENFORCEABLE AS A MATTER OF LAW; PETITIONER HAS NOT LAID OR ESTABLISHED A RIGHT *IN ESSE* TO ENTITLE HIM TO THE WRIT.— One of the requisites for the issuance of a writ of preliminary injunction is that the applicant must have a right *in esse*. A right *in esse* is a clear and unmistakable right to be protected, one clearly founded on or granted by law or is enforceable as a matter of law. The existence of a right to be protected, and the acts against which the writ is to be directed are violative of said right must be established. The complaint filed by petitioner for *injunction with damages* seeks to enjoin the foreclosure of the mortgages. Petitioner admitted having executed Promissory Note No. 1000045-08. During the hearing of his application for a writ of preliminary injunction, the cross-default provision of the note was read to him and he admitted having gone over it before he signed the note. And petitioner admitted that he failed to honor the note on maturity. Petitioner alleged in his complaint, however, that respondent's acceleration of the maturity of his entire obligation is "in gross bad faith" and in "gross abuse of [his] right" as it "subjected the maturity of the loans to its own whims and caprices . . . not to mention that it [was] done in the midst of this present economic crisis . . . ." Respondent's declaration that petitioner's availments under the revolving credit line and medium term loans were immediately due and payable was by virtue of the cross-default provision of Promissory Note No. 1000045-08. Respondent's move to foreclose the mortgages after petitioner defaulted in his obligation under the promissory note was thus in accordance

with said provision which petitioner did not challenge. The trial court thus erred in ordering the issuance of the writ of preliminary injunction on the basis of its finding that "there are legal matters to be looked into with respect to the application of the acceleration clause or default provisions in the promissory note." It need not be underlined that jurisdiction over an issue in a case is determined and conferred by the pleadings filed by the parties, or by their agreement in a pre-trial order or stipulation or, at times by their implied consent as by the failure of a party to object to evidence on an issue not covered by the pleadings, as provided in Section 5, Rule 10 of the Rules of Court. By the above-quoted allegations and prayer in petitioner's complaint, however, which complaint, it bears emphasis, is for injunction and damages, as well as from the transcript of stenographic notes taken during the hearing on petitioner's application for a writ of preliminary injunction, petitioner has not laid or established a right *in esse* to entitle him to the writ.

APPEARANCES OF COUNSEL

Macamay Macamay Macamay & Macamay for petitioner.

Mateo G. Delegencia Law Office and Associates for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

The BPI Agricultural Development Bank (respondent) granted Eugene L. Lim (petitioner) and his wife Constancia a *revolving credit line* in the amount of ₱7,000,000 on account of which they executed two promissory notes: Promissory Note No. 1000045-08 dated January 9, 1998 for ₱2,000,000 which matured on July 8, 1998,[1] and Promissory Note No. 1000045-09 dated April 8, 1998 for ₱5,000,000 which matured on October 5, 1998.[2]

[1] Exhibit "2", records, p. 61.

[2] Exhibits "1"-"3", *id.* at 60.

Respondent also granted petitioner *medium term loans* on account of which he and his wife executed Promissory Note No. 6000201-00 dated September 4, 1997 for ₱3,294,117.63 which matured on August 19, 1999[3] and Promissory Note No. 6000191-00 for ₱2,000,000 dated February 19, 1997 which matured on February 19, 2002.[4]

The first three Promissory Notes, Nos. 1000045-08, 1000045-09, and 6000201-00, carried a cross-default provision reading:

> In case of my/our failure to pay when due and payable any amount which I/we are obligated to pay **under this Note and/or any other obligation** which I/we or any of us **may owe or hereafter owe** to the BANK, or to the Bank of the Philippine Islands (BPI) or to any of BPI Subsidiary or Affiliate, such as but not limited to BPI Family Bank, BPI Credit Corporation, BPI Leasing Corporation, BPI Securities Corporation and BPI Express Card Corporation whether as or in case of conviction for a criminal offense with final judgment carrying with it the penalty of civil interdiction affecting me/us, or any of us, or in any of the cases covered by Article 1198 of the Civil Code of the Philippines, then the entire amount outstanding under this Note shall immediately become due and payable without the necessity of notice or demand which I/we hereby waive. Likewise, I/we hereby jointly and severally promise to pay a late payment charge on any overdue amount under this note at the rate of Two percent (2%) per month over and above and in addition to the interest payable under this note.[5] (emphasis and underscoring supplied)

The fourth Promissory Note, No. 6000191-00, carried a substantially similar provision.[6]

To secure the payment of their loans, petitioner and his wife executed real estate mortgages covering properties in Ozamis City.

Petitioner defaulted on the first Promissory Note. And he had an overdraft of ₱16,000,000 with respondent,[7] drawing

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[3] Exhibit "3", *id.* at 62.

[4] Exhibit "4", *id.* at 63.

[5] Exhibit "3-c", *id.* at 62. *Vide* Exhibits "1-c" and "2-c", *id.* at 60-61.

[6] *Vide* Exhibit "4-c", *id.* at 63.

[7] TSN, May 7, 1999, p. 6.

respondent to send a final demand letter dated July 27, 1998 declaring petitioner's availments under the revolving credit line and medium term loans immediately due and payable[8] and demanding settlement thereof in five days.

Petitioner and his wife failed to settle their obligations, hence, respondent filed an application for extrajudicial foreclosure of the mortgages in September 1999 before the Office of the Sheriff of the Regional Trial Court (RTC) of Ozamis City.[9]

Petitioner thereupon filed on October 15, 1998 before the RTC of Ozamis City a complaint[10] for *injunction with damages* against respondent to enjoin the foreclosure of the mortgages, alleging, *inter alia,* as follows:

> 3. To finance the construction of [its] poultry farm . . . the defendant[-herein respondent] granted the plaintiff a Revolving Credit Line amounting to ₱7 Million, which was availed of by the plaintiff under the following Promissory Note [including Note No. 1000045-08]:
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> xxx xxx xxx
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> 5. x x x [I]t appears indubitably clear, that at the time the defendant[-herein respondent's] lawyer sent a letter to plaintiff dated 27 July 1998, declaring the entire obligation of plaintiff immediately due and demandable [covered by the first Promissory Note], the only loan availment which had already matured was the ₱2 Million in the Revolving Credit Line, but whose interest was fully paid up to 8 July 1998; x x x
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> xxx xxx xxx
>
> 7. Defendant's act of accelerating the maturity of plaintiff's entire obligation would not only be **in gross bad faith**, but also a **gross abuse of right**, as it has subjected the maturity of the loans to its **own whims and caprices**, to the damage and great prejudice of the plaintiff; not to mention the fact that it is done in the midst of this present economic crisis and during these difficult times of high and exorbitant interest rates;

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[8] Records, pp. 8-9.

[9] TSN, April 6, 1999, p. 17.

[10] Records, pp. 2-6.

8. There is no reason for the defendant to hasten the maturity of the loans, as it would not suffer any prejudice, for the loans both under the Credit Line and the Medium Term Loan are secured with collaterals and whatever amount due can very well be taken cared of by the same; on the contrary, it is plaintiff who would suffer the most;

9. Surprisingly, defendant BPI Agribank filed with the office of the RTC Sheriff, Ozamiz City, an application for Extra-judicial foreclosure of the mortgaged properties, which foreclosure will undoubtedly work undeniable injustice and serious irreparable damage to plaintiff. Hence, this instant complaint asking this Honorable Court to maintain the status quo and cease and desist from taking any further action in connection with the application for foreclosure against plaintiff[.][11] (emphasis and underscoring supplied),

and praying that:

1. **Immediately after the filing** of the complaint and before hearing, a writ of preliminary injunction/temporary order be issued ordering the defendant BPI Agribank to maintain the status quo and cease and desist from taking any further action against plaintiff by collecting his loan obligation particularly by foreclosing the mortgaged properties; and furthermore, ordering the defendant *Ex-Officio* Sheriff of Ozamiz City to cease and desist from taking any further action in connection with defendant's application for foreclosure;

2. **After due hearing:**

2.1 Ordering the preliminary injunction permanent;

2.2 Ordering the defendant to pay plaintiff the amount of no less than ₱500,000 as moral damages, ₱100,000 as actual damages; ₱100,000 as exemplary damages and ₱50,000 as attorney's fees.

3. Plaintiff be granted such other and further reliefs as are just and equitable under the premises.[12] (emphasis and underscoring supplied)

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[11] *Id.* at 3-4.

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

By Order of October 23, 1998,[13] Branch 15 of the Ozamis City RTC directed the issuance of a Temporary Restraining Order.

After it conducted a hearing on herein petitioner's application for a writ of preliminary injunction, the trial court, by Order of March 13, 2000,[14] directed the issuance of a writ of preliminary injunction, it finding that "there are legal matters to be looked into with respect to the application of the acceleration clause or default provisions in the promissory note and great and irreparable damage will be suffered by the plaintiff if the mortgage will be foreclosed and the propert[ies] are sold on public auction."[15] Its Motion for Reconsideration[16] having been denied,[17] respondent filed a petition for *certiorari*[18] before the Court of Appeals.

The Court of Appeals, by Decision of June 30, 2006,[19] finding that petitioner has no clear right to an injunctive relief, lifted the preliminary injunction issued by the RTC, hence, the present petition for review on *certiorari*,[20] petitioner alleging that the Court of Appeals gravely erred in:

x x x LIFTING THE WRIT OF PRELIMINARY INJUNCTION ISSUED BY THE TRIAL COURT.

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x x x RULING THAT THE [RTC] MARCH 13, 2000 ORDER FAILED TO DEMONSTRATE THAT PETITIONER HAS ANY RIGHT *IN ESSE* WHICH WOULD BE VIOLATED BY THE RESPONDENT BANK IF FORECLOSURE PROCEEDINGS WERE TO PROCEED.

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[13] *Id.* at 18.

[14] *Id.* at 83-84.

[15] *Id.* at 84.

[16] *Id.* at 85-89.

[17] *Id.* at 95.

[18] CA *rollo*, pp. 2-25.

[19] Decision penned by Court of Appeals Associate Justice Edgardo A. Camello, with the concurrence of Associate Justices Ricardo R. Rosario and Sixto C. Marella, Jr.; *id.* at 138-150.

[20] *Rollo*, pp. 32-54.

x x x NOT RULING THAT THE ISSUE ON THE **VALIDITY OR LEGALITY OF THE DEFAULT PROVISION** ALLEGELDY PROVIDED IN THE PROMISSORY NOTES AND INVOKED [BY] THE RESPONDENT BANK IN DECLARING PETITIONER AS HAVING DEFAULTED IN ALL HIS ACCOUNTS/OBLIGATIONS **CONSTITUTES AS A LEGAL AND FACTUAL BASIS IN THE ISSUANCE OF THE WRIT** OF PRELIMINARY INJUNCTION IN ORDER TO PRESERVE THE STATUS QUO AND TO PREVENT GREAT AND IRREPARABLE DAMAGE AND INJURY TO PETITIONER SHOULD THE FORECLOSURE PROCEED.[21] (emphasis and underscoring supplied)

The petition fails.

One of the requisites for the issuance of a writ of preliminary injunction is that the applicant must have a right *in esse*.[22] A right *in esse* is a clear and unmistakable right to be protected,[23] one clearly founded on or granted by law or is enforceable as a matter of law.[24] The existence of a right to be protected, and the acts against which the writ is to be directed are violative of said right must be established.[25]

The complaint filed by petitioner for *injunction with damages* seeks to enjoin the foreclosure of the mortgages. Petitioner admitted having executed Promissory Note No. 1000045-08. During the hearing of his application for a writ of preliminary injunction, the cross-default provision of the note was read to him and he admitted having gone over[26] it before he signed the note. And petitioner admitted that he failed to honor the note on maturity.

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[21] *Id.* at 44-45.

[22] *Marquez v. Presiding Judge (Hon. Ismael B. Sanchez), RTC Br. 58, Lucena City*, G.R. No. 141849, February 13, 2007, 515 SCRA 577, 588.

[23] *Tecnogas Philippines Manufacturing Corporation v. Philippine National Bank*, G.R. No. 161004, April 14, 2008, 551 SCRA 183, 189.

[24] *Tomawis v. Tabao-Caudang*, G.R. No. 166547, September 12, 2007, 533 SCRA 68, 85.

[25] *Duvaz Corporation v. Export and Industry Bank*, G.R. No. 163011, 523 SCRA 405, 415-416.

Petitioner alleged in his complaint, however, that respondent's acceleration of the maturity of his entire obligation is "in gross bad faith" and in "gross abuse of [his] right" as it "subjected the maturity of the loans to its own whims and caprices . . . not to mention that it [was] done in the midst of this present economic crisis . . . ."

Respondent's declaration that petitioner's availments under the revolving credit line and medium term loans were immediately due and payable was by virtue of the cross-default provision of Promissory Note No. 1000045-08. Respondent's move to foreclose the mortgages after petitioner defaulted in his obligation under the promissory note was thus in accordance with said provision which petitioner did not challenge. The trial court thus erred in ordering the issuance of the writ of preliminary injunction on the basis of its finding that "there are legal matters to be looked into with respect to the application of the acceleration clause or default provisions in the promissory note."

It need not be underlined that jurisdiction over an issue in a case is determined and conferred by the pleadings filed by the parties, or by their agreement in a pre-trial order or stipulation or, at times by their implied consent as by the failure of a party to object to evidence on an issue not covered by the pleadings, as provided in Section 5, Rule 10 of the Rules of Court.[27]

By the above-quoted allegations and prayer in petitioner's complaint, however, which complaint, it bears emphasis, is for injunction and damages, as well as from the transcript of stenographic notes taken during the hearing on petitioner's application for a writ of preliminary injunction, petitioner has not laid or established a right *in esse* to entitle him to the writ.

WHEREFORE, the petition is *DENIED*.

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[26] TSN, March 9, 1999, pp. 17-19.

[27] *De Joya v. Marquez*, G.R. No. 162416, January 31, 2006, 481 SCRA 376, 382. *Vide* FLORENZ REGALADO, *REMEDIAL LAW COMPENDIUM*, Vol. 1, p. 8; *Lazo v. Republic Surety and Insurance Co., Inc.*, G.R. No. L-27365, January 30, 1970, 31 SCRA 329, 334.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 181430. March 9, 2010]

FELIPE RONQUILLO *y* GUILLERMO and GILBERT TORRES *y* NATALIA, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS; UNLAWFUL AGGRESSION; PRESUPPOSES AN ACTUAL AND EMINENT PERIL; VICTIM'S MERE POSSESSION OF A KNIFE WOULD NOT SUFFICE TO IMPUTE UNLAWFUL AGGRESSION ON HIM AS PETITIONERS HAVE NOT EVEN ESTABLISHED THAT THEIR LIVES HAD BEEN ACTUALLY THREATENED ON ACCOUNT THEREOF.— The Court finds that petitioners failed to discharge the burden of proving the circumstances to justify their actions. It is a statutory and doctrinal requirement that the presence of unlawful aggression is a condition *sine qua non* for self-defense to be warranted. The testimony of the lone prosecution witness Rivera that the aggression emanated not from the victim but from petitioner Ronquillo himself impresses the Court. Unlawful aggression presupposes an actual and imminent peril. The victim's mere possession of a knife would not suffice to impute unlawful aggression on him as petitioners have not even established that their lives had been actually threatened on account thereof. The victim in fact drew out his knife after he was twice kicked

by Ronquillo. That the injury Roquillo sustained was not serious or severe dovetails with the narration of prosecution witness Rivera that the victim used his knife to parry the second kick of Ronquillo. In stark contrast, the victim sustained severe head injuries that resulted in hernia and hemorrhage, and a fracture on his humerus or upper arm. The gravity, location, and number of injuries he sustained undoubtedly negate self-defense on petitioners' part. Further denting Roquillo's defense is his admission that he had been harboring a grudge against the victim.

2. ID.; ID.; ID.; ID.; UNLAWFUL AGGRESSION WAS NOT PRESENT ON THE VICTIM'S PART; EVEN ASSUMING *ARGUENDO* THAT UNLAWFUL AGGRESSION INITIALLY CAME FROM THE VICTIM, THE AGGRESSION CEASED WHEN THE VICTIM ALREADY LAY PROSTRATE ON THE GROUND AT WHICH TIME THERE WAS NO LONGER ANY NEED TO FURTHER INFLICT INJURIES ON HIM.— Respecting Torres' claim that he was attacked by the victim, the testimony of the prosecution witness who has not been shown to be a biased witness belies the same. But even assuming *arguendo* that unlawful aggression initially came from the victim, the aggression ceased when the victim already lay prostrate on the ground at which time there was no longer any need to further inflict injuries on him. For there was no longer any imminent risk to petitioners' lives or personal safety. Besides, petitioners had the opportunity to run away from the victim as, by their claim, he was even walking "groggily" due to drunkenness. Particularly with respect to Ronquillo, since he claimed that the victim chased him for about ten minutes around the store and then turned his attention to Torres, he could have run away. But he did not. It bears noting that petitioners enjoyed superiority in number (two) over the victim. And the means they used was out of proportion to the means of defense available to the victim. The Court finds then that unlawful aggression was not present on the victim's part. Discussion of the rest of the elements of self-defense is thus rendered unnecessary.

3. ID.; ID.; ID.; ID.; SINCE PETITIONERS INVOKE JUSTIFYING CIRCUMSTANCES TO EXONERATE THEMSELVES, ANY DISCUSSION ON CONSPIRACY IS EXTRANEOUS AS THESE TWO CONCEPTS ARE INCOMPATIBLE WITH EACH OTHER.— The Court finds well-taken the appellate

court's appreciation of the presence thereof, *viz*: x x x Considering that herein [petitioners] already admitted the killing of Edgar Ronquillo, the issue therefore of conspiracy is irrelevant simply because the participation of the [petitioners] in the killing of Edgar Ronquillo has already been established. For even if conspiracy was not proven, the fact that the two accused each inflicted a serious wound which contributed to the death of the victim makes them co-principals. Finally, since petitioners invoke justifying circumstances to exonerate themselves, any discussion on conspiracy is extraneous as these two concepts are incompatible with each other. For conspiracy presupposes a community of criminal intent, while invocation of justifying circumstances presupposes lack of criminal intent such that there is no crime and no criminal to speak of.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO MORALES, *J.*:

Herein appellants Felipe Ronquillo (Ronquillo) and Gilbert Torres (Torres) were charged before the Regional Trial Court (RTC) of Ballesteros, Cagayan of homicide under an Information reading

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That on or about June 23, 2001 in the [M]unicipality of Ballesteros, [P]rovince of Cagayan and within the jurisdiction of this Honorable Court, the said accused, Felipe Ronquillo *y* Guillermo and Gilber[t] Torres y Natal[i]a, armed with shovel and bamboo, conspiring together and helpin[g] each other, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and hit with the said shovel and bamboo one Edgar Ronquillo *y* Paranaque, inflicting upon him wounds on his head which caused his death.

CONTRARY TO LAW.

xxx xxx xxx[1]

The following facts are established.

On June 23, 2001 at 5:30 p.m., while appellants, together with Alejandro Rivera (Rivera), were drinking near the store of Henry Ugale, Edgar Ronquillo (the victim), a first cousin of appellant Ronquillo, passed by as he repaired to the store to buy cigarettes. As Ronquillo followed the victim at the store, a heated argument ensued between them during which the two boxed each other. Ronquillo thereafter twice kicked the victim who drew out his knife which hit Ronquillo at his left thigh.[2]

Torres joined the fray and struck the victim on the nape with a shovel. As the victim lay unconscious on the ground, Ronquillo repeatedly hit him with a bamboo pole on the head and on different parts of his body.[3] The victim died the following day.[4]

The death certificate[5] of the victim showed the following:

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CAUSES OF DEATH	
Immediate cause	**a. Brain herniation**
Antecedent cause	**b. Intracranial hemorrhage**
Underlying cause	**c. Mauling**
Other significant conditions contributing to death	**Closed fracture M/3rd humerus (L)**

x x x (emphasis and underscoring supplied)

Ronquillo and Torres, interposing self-defense, gave the following version:

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[1] Records, p. 1.

[2] TSN, June 14, 2002, pp. 4-8.

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

[4] *Id.* at 11-12.

[5] Records, p. 6; Exhibit "A".

A heated argument arose when the victim called Ronquillo's father a "wicked witch."[6] With a knife, the victim chased Ronquillo for about ten minutes around the store's premises,[7] after which the victim turned towards Torres to attack him, hence, Torres repaired to a parked truck where he got a shovel which he used to hit the victim on the nape.[8] Unaffected by the blow, the victim again ran after Ronquillo who was trying to pull a bamboo peg beside the road. At that instant, the victim stabbed the left thigh of Ronquillo[9] who retaliated by striking the victim with the bamboo pole.

Ruling out self-defense, the trial court held, quoted *verbatim*:

> The testimony of the two accused is not credible. If the victim chased Gilbert with a knife, [the victim] could have inflicted injuries on [Gilbert]. **If it is true that Gilbert struck [the victim] at the nape…why did the victim still go to Felipe who is away from him and stabbed him on his thigh. [The victim] could have stabbed Gilbert first because he was the one who clubbed him.** The testimony of the accused is unnatural. (emphasis and underscoring supplied)

By Decision of June 30, 2005,[10] the trial court thus convicted petitioners of homicide, disposing as follows:

> WHEREFORE, premises considered[,] the prosecution having proven the guilt of the accused Felipe Ronquillo and Gilbert Torres beyond reasonable doubt of the crime charged, the Court sentences the accused Felipe Ronquillo and Gilbert Torres to suffer a penalty of eight (8) years and four (4) months to fourteen (14) years and eight (8) months and to pay the heirs of the victim solidarily in the amount of Fifty Thousand Pesos (₱50,000.00) as civil [indemnity] due to the death of the victim, Fifty Thousand Pesos (₱50,000.00)

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[6] TSN, November 8, 2004, pp. 4-7.

[7] *Id.* at 4-8.

[8] TSN, May 30, 2005, pp. 10-11.

[9] TSN, November 8, 2004, pp. 9-10.

[10] Records, pp. 173-183. Penned by Judge Eugenio M. Tangonan, Jr.

as moral damages, Fifty Thousand Pesos (₱50,000.00) as actual damages and to pay the cost.

The accused are entitled in full of their preventive imprisonment.

SO ORDERED.

By Decision of July 27, 2007,[11] the Court of Appeals *affirmed* the findings of the trial court but *modified* the penalty and ordered the payment of temperate damages in lieu of actual damages. Thus the appellate court disposed:

> WHEREFORE, premises considered, the appealed Decision of the Regional Trial Court, Branch 33, Ballesteros, Cagayan, in Criminal Case No. 33-483-2001 is hereby AFFIRMED with MODIFICATION. Accused-appellants Felipe Ronquillo *y* Guillermo and Gilbert Torres *y* Natalia are hereby sentenced to suffer **the indeterminate penalty of eight (8) years and one (1) day of *prision mayor* as minimum to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as maximum.** Accused-appellants are also hereby ordered to pay, jointly and severally, the heirs of the victim Edgar Ronquillo, **the amount of ₱25,000.00 as temperate damages** in lieu of actual damages which is hereby DELETED. The appealed Decision is AFFIRMED in all other respects. The damages awarded herein and those affirmed in the appealed judgment are to be paid, jointly and severally, by both accused-appellants.
>
> SO ORDERED. (emphasis and underscoring supplied)

Hence, the present petition for review.

Justifying their actions, petitioners assert that unlawful aggression emanated from the victim who was armed with a knife; that the means adopted by them were reasonably necessary to repel the victim's aggression; and that they did not provoke the victim whom they merely invited for a drink.[12]

And petitioners contend that there was no sufficient, direct and clear evidence to establish conspiracy in the killing of the victim.[13]

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[11] CA *rollo*, pp. 107-114. Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Hakim S. Abdulwahid and Arturo G. Tayag, concurring.

[12] *Rollo*, pp. 9-14.

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

The petition fails.

As did the trial and appellate courts, the Court finds that petitioners failed to discharge the burden of proving the circumstances to justify their actions.

It is a statutory and doctrinal requirement that the presence of unlawful aggression is a condition *sine qua non* for self-defense to be warranted.[14]

The testimony of the lone prosecution witness Rivera that the aggression emanated not from the victim but from petitioner Ronquillo himself impresses the Court. Consider his following testimony, quoted *verbatim*:

Q: Now when **Felipe Ronquillo followed Edgar Ronquillo** infront of the store of Henry Ugale, what happened next, if any?

A: I was surprised, sir because it was the start of their quarrel.

Q: What do you mean quarrel?

A: **They started boxing each other, sir**.

Q: And when they started boxing each other, what happened next if any?

A: **Felipe Ronquillo kicked Edgar Ronquillo.**

Q: And after Felipe Ronquillo kicked Edgar Ronquillo what happened next if any?

A: Edgar Ronquillo drew his knife, sir.

Q: And after Edgar Ronquillo drew his knife what happened next if any?

A: **When Felipe Ronquillo kicked him for the second time, it was then that Edgar Ronquillo used his knife to parry the kick of Felipe Ronquillo who was hurt at the thigh**.

Q: After Felipe Ronquillo was injured because of use of the knife which Edgar Ronquillo used to parry his kick what happened next?

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[14] *Nacario v. People*, G.R. No. 173106, September 30, 2008, 567 SCRA 262.

A: **Edgar Ronquillo went to the edge of the road and Felipe Ronquillo followed him again, sir.**

Q: Now when Edgar Ronquillo went to the side of the street and he was followed by Felipe Ronquillo again what happened next if any?

A: **When they were already face to face it was at that moment . . . Gilbert Torres clubbed Edgar Ronquillo with a shovel, sir.**

Q: Where did Gilbert Torres come from when he struck Edgar Ronquillo with a shovel?

A: **From the back, sir**.

xxx xxx xxx

Q: Now when Gilbert Torres struck Edgar Ronquillo with a shovel what did Felipe Ronquillo do if any?

A: Edgar Ronquillo fell down unconscious and that the time that Felipe Ronquillo used a piece of bamboo to club him many times.[15] (emphasis and underscoring supplied)

Unlawful aggression presupposes an actual and imminent peril.[16] The victim's mere possession of a knife would not suffice to impute unlawful aggression on him as petitioners have not even established that their lives had been actually threatened on account thereof. The victim in fact drew out his knife after he was twice kicked by Ronquillo.

That the injury Ronquillo sustained was not serious or severe dovetails with the narration of prosecution witness Rivera that the victim used his knife to parry the second kick of Ronquillo.

In stark contrast, the victim sustained severe head injuries that resulted in hernia and hemorrhage, and a fracture on his humerus or upper arm. The gravity, location, and number of injuries he sustained undoubtedly negate self-defense on petitioners' part.

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[15] TSN, June 14, 2002, pp. 7-10.

[16] *Palaganas v. People*, G.R. No. 165483, September 12, 2006, 501 SCRA 533, 549-550.

Further denting Ronquillo's defense is his admission that he had been harboring a grudge against the victim.

Q: In what occasion then did Edgar Ronquillo called [*sic*] your father a witch?

A: **The first time he told me that my father is a witch was when we had a drinking spree at the same place [in] Cabaritan, Sir.**

Q: Not on that incident?

A: Yes Sir.

Q: Therefore, when you saw Edgar Ronquillo at the time of the incident, Edgar Ronquillo has already called your father a witch?

A: At that time I asked him why he told me that my father is a witch so we had a heated argument, Sir.

Q: **You are then harboring an ill feeling against Edgar Ronquillo because of his statement?**

A: **Yes Sir, a little.**[17] (emphasis and underscoring supplied)

Respecting Torres' claim that he was attacked by the victim, the testimony of the prosecution witness who has not been shown to be a biased witness belies the same:

Q: And Gilbert Torres only went to get the shovel after he was attacked by Edgar, am I correct?

A: **No sir, Edgar never attacked Gilbert Torres.**

Q: At any rate, Gilbert Torres went to the aid of Felipe Ronquillo[?]

A: Yes sir.[18] (emphasis and underscoring supplied)

But even assuming *arguendo* that unlawful aggression initially came from the victim, the aggression ceased when the victim already lay prostrate on the ground at which time there was no longer any need to further inflict injuries on him. For there was

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[17] TSN, November 8, 2004, pp. 21-22.

[18] TSN, September 12, 2002, pp. 6-7.

no longer any imminent risk to petitioners' lives or personal safety.

Besides, petitioners had the opportunity to run away from the victim as, by their claim, he was even walking "groggily" due to drunkenness.[19] Particularly with respect to Ronquillo, since he claimed that the victim chased him for about ten minutes around the store and then turned his attention to Torres, he could have run away. But he did not.

It bears noting that petitioners enjoyed superiority in number (two) over the victim. And the means they used was out of proportion to the means of defense available to the victim.

The Court finds then that unlawful aggression was not present on the victim's part. Discussion of the rest of the elements of self-defense is thus rendered unnecessary.

On the issue of conspiracy, the Court finds well-taken the appellate court's appreciation of the presence thereof, *viz*:

> x x x Considering that herein [petitioners] already admitted the killing of Edgar Ronquillo, the issue therefore of conspiracy is irrelevant simply because the participation of the [petitioners] in the killing of Edgar Ronquillo has already been established. For even if conspiracy was not proven, the fact that the two accused each inflicted a serious wound which contributed to the death of the victim makes them co-principals.[20] (underscoring supplied)

Finally, since petitioners invoke justifying circumstances to exonerate themselves, any discussion on conspiracy is extraneous as these two concepts are incompatible with each other. For conspiracy presupposes a community of criminal intent,[21] while invocation of justifying circumstances presupposes lack of criminal intent such that there is no crime and no criminal to speak of.

WHEREFORE, the petition for review is *DENIED*.

Costs *de oficio*.

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[19] TSN, May 30, 2005, p. 7.

[20] *Rollo*, p. 106.

[21] *People v. Tilos*, G.R. No. 138385, January 16, 2001, 349 SCRA 281.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 181483. March 9, 2010]

BLAZER CAR MARKETING, INC., and FREDDIE CHUA, *petitioners, vs.* **SPOUSES TOMAS T. BULAUAN and ANALYN A. BRIONES,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; JUST CAUSES; ABANDONMENT; FILING A COMPLAINT FOR ILLEGAL DISMISSAL IS INCONSISTENT WITH THE CHARGE OF ABANDONMENT.— We sustain the CA's finding that respondents were dismissed from employment, and that such dismissal was without just cause. In a number of cases, we have ruled that an employer's claim that an employee was not dismissed but voluntarily left his employment is effectively belied by the filing of a complaint for illegal dismissal. It is settled, after all, that the filing of a complaint for illegal dismissal is inconsistent with the charge of abandonment, for an employee who takes steps to protest his dismissal cannot, by logic, be said to have abandoned his work. It then becomes imperative that the employer affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause.

2. ID.; ID.; ID.; ID.; ID.; RESPONDENT'S ACT OF MAKING ID CARDS FOR HER CO-EMPLOYEES WITHOUT AUTHORITY DOES NOT AMOUNT TO SERIOUS

MISCONDUCT TO JUSTIFY DISMISSAL; MISCONDUCT; DEFINED; REQUISITES.— Even if it were true that respondent Briones made ID cards for petitioners' employees without authority, the act would not amount to serious misconduct as to justify dismissal. Misconduct is defined as improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of judgment. For misconduct to be a just cause for dismissal, (a) it must be serious; (b) it must relate to the performance of the employee's duties; and (c) it must show that the employee has become unfit to continue working for the employer. To be serious within the meaning and intendment of the law, the misconduct must be of such grave and aggravated character and not merely trivial and unimportant. It requires a wrongful intent, which is apparently absent in respondent Briones' case.

3. ID.; ID.; ID.; ID.; ID.; PENALTY SHOULD BE COMMENSURATE TO THE DEGREE OF INFRACTION PURPORTEDLY COMMITTED.— The penalty of dismissal was not commensurate to the degree of the infraction purportedly committed. The Court is wont to reiterate that, while an employer has its own interest to protect, and pursuant thereto, it may terminate an employee for a just cause, such prerogative to dismiss an employee must be exercised without abuse of discretion. It should be tempered with compassion and understanding. An employer should bear in mind that, in the exercise of such right, what is at stake is not the employee's position but her livelihood as well. Where a penalty less punitive would suffice, whatever missteps may have been committed by an employee ought not to be visited with a consequence so severe such as dismissal from employment.

APPEARANCES OF COUNSEL

A. Gerardo B. Collado for petitioners.
De Alban Law Office for respondents.

D E C I S I O N

NACHURA, *J.*:

Dismissal is the severest penalty that can be imposed upon an erring employee; hence, its imposition should not be upheld unless the grounds therefor are supported by substantial evidence. Further, the penalty must be commensurate to the gravity of the infraction committed.

Assailed in this petition are the Court of Appeals (CA) Decision[1] dated August 17, 2007 and Resolution[2] dated January 22, 2008, in CA-G.R. SP No. 93094, which reversed the decision of the National Labor Relations Commission (NLRC).

Respondents, spouses Tomas Bulauan and Analyn Briones, were employees of petitioner Blazer Car Marketing, Inc., which is owned and managed by petitioner Freddie Chua. Briones was hired on April 29, 1998 as secretary/warehouse clerk with a daily compensation of ₱270.00 plus ₱30.00 emergency cost of living allowance (ECOLA). Bulauan, on the other hand, worked as a driver from December 4, 1999 to May 4, 2002, and was rehired on March 24, 2003. He was receiving a daily wage of ₱280.00 (inclusive of ECOLA).

On November 18, 2003, respondent Briones filed against petitioners a complaint for illegal dismissal, non-payment of 13th month pay, and payment of separation pay and attorney's fees. On December 15, 2003, respondent Bulauan filed a similar complaint against petitioners. Upon motion of respondents, the two complaints were consolidated.

In their consolidated position paper, respondent Briones alleged that, on November 16, 2003, she reminded petitioner Chua to remit to the Social Security System (SSS) their premium contributions for 30 months and to issue her an employee's

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[1] Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Remedios A. Salazar-Fernando and Enrico A. Lanzanas, concurring; *rollo*, pp. 43-52.

[2] *Id.* at 54-56.

identification (ID) card, because she had not yet been issued one since she was first employed in 1998. She averred that she told Chua she needed an ID card so that she could apply for a loan from the SSS and the Pag-ibig Fund and so that she could show it to customers when they asked for it. Briones recounted that when Chua affixed his signature to her ID card, she commented, *"Sir, napapansin ko iba ang pirma mo sa certification na ibinigay mo sa asawa ko."* She was referring to the certificate of employment that Chua previously issued to respondent Bulauan. Petitioner Chua allegedly reacted wildly, became furious, and shouted at the top of his voice, *Hoy, wala ka na doon, wala kang pakialam."* Briones claimed that when she reported for work the following day, she was barred by Chua, who told her, *"Pa SSS ka pa diyan. Hoy, tanggal ka sa trabaho."*[3]

For his part, respondent Bulauan recalled that, in the evening of November 17, 2003, after making deliveries, he was instructed to proceed to Chua's residence. There, Chua, who was then holding a golf club, angrily told him, *"Hoy, hiwalayan mo ang asawa mo kung gusto mo tanggapin kita sa trabaho."* The following day, he was barred from reporting for work by Chua, who told him, *"Hoy, tanggal ka na rin sa trabaho*."[4]

According to respondents, the company was raided by the National Bureau of Investigation (NBI) in 2001, based on a charge that Chua was engaged in the illegal manufacture and sale of car parts. Respondents posited that their dismissal was the result of Chua's suspicion that they were the ones who reported his illegal activities to the NBI.

Petitioners had a different version of what transpired on November 17, 2003. Chua claimed that Briones was caught making company ID cards without management authority. He said that they immediately conducted an investigation, and some of the employees attested that Briones had, indeed, made ID cards for them, for a price. Petitioner Chua maintained that Briones was not dismissed from employment, as in fact, during

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[3] *Rollo,* pp. 106-107.

[4] *Id.* at 107.

the mandatory conciliation conference, Briones was told that she had not been dismissed and that she could report back to work. However, Briones manifested that she no longer wished to work for petitioners.[5] Petitioner Chua posited that Briones voluntarily stopped going to work to avoid being investigated, to cover up for her malfeasance, and to avoid being penalized. He claimed that Briones preempted further action on the matter when she no longer reported for work and filed her complaint the following day. As for respondent Bulauan, Chua explained that the former suddenly failed to report for work after learning that his wife was being investigated.

In reply, respondents insisted that they were dismissed by petitioners; they did not voluntarily stop working. They averred that the charge that Briones issued unauthorized or fake ID cards was fabricated, the truth being that all the ID cards were made upon the directive of Chua.[6]

On November 30, 2004, the Labor Arbiter rendered a decision dismissing the complaint, but ordering petitioners to pay prorated 13th month pay, thus:

> WHEREFORE, premises considered, we have no recourse but to dismiss the present complaint against respondents for illegal dismissal, however, respondents are liable to pay Analyn Briones and Tomas Bulauan their pro rata 13th month pay in the sum of SIX THOUSAND FOUR HUNDRED THIRTY-FIVE PESOS (₱6,435.00) and FOUR THOUSAND EIGHT HUNDRED FIFTY-THREE PESOS (₱4,853.00), respectively.
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> All other claims are dismissed for lack of merit.
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> SO ORDERED.[7]

On appeal, the NLRC affirmed the Labor Arbiter's decision.[8] It also denied respondents' motion for reconsideration.[9]

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[5] *Id.* at 116.

[6] *Id.* at 126.

[7] *Id.* at 158-159.

[8] *Id.* at 168.

[9] *Id.* at 169.

Respondents elevated the case to the CA through a petition for *certiorari*. This time, they were able to obtain a favorable ruling. The CA Decision dated August 17, 2007 granted the petition and awarded backwages and separation pay, in lieu of reinstatement, to respondents, thus:

> WHEREFORE, the petition is GRANTED. The assailed decision of the public respondent NLRC dated July 26, 2005 and the subsequent Resolution dated November 29, 2005 denying petitioners' Motion for Reconsideration are hereby REVERSED and SET ASIDE. The Court hereby renders judgment declaring petitioners Tomas Bulauan and Analyn Briones to have been illegally dismissed, and thus, entitled to full backwages and other privileges, and separation pay in lieu of reinstatement at the rate of one month's salary for every year of service with a fraction of at least six months of service considered as one year. Let the records of this case be REMANDED to the National Labor Relations Commission for determination of the backwages and other benefits and separation pay due the petitioners.
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> SO ORDERED.[10]

Petitioners moved for reconsideration of the decision, but the motion was denied for lack of merit, in the CA Resolution dated January 22, 2008.[11] Thus, this petition.

Petitioners remain adamant that respondents were not dismissed from their employment, but that they voluntarily left their jobs after respondent Briones was discovered making ID cards, without management authority, for the other employees of the company.

We are not persuaded.

We sustain the CA's finding that respondents were dismissed from employment, and that such dismissal was without just cause. In a number of cases, we have ruled that an employer's claim that an employee was not dismissed but voluntarily left his employment is effectively belied by the filing of a complaint for illegal dismissal. It is settled, after all, that the filing of a complaint for illegal dismissal is inconsistent with the charge of

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[10] *Id.* at 51-52.

[11] *Id.* at 56.

abandonment, for an employee who takes steps to protest his dismissal cannot, by logic, be said to have abandoned his work.[12] It then becomes imperative that the employer affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause.[13]

The contention that respondent Briones was being investigated for making ID cards for the other employees, without authority, impresses us merely as a contrived excuse resorted to, simply to justify the unlawful dismissal. Its truthfulness is highly suspect. We are more inclined to agree with the CA's observations on this point, *viz.*:

> *First*, although private respondents were able to produce affidavits of two employees that Analyn was manufacturing unauthorized IDs, these affidavits can only be given scant consideration. As gleaned from the imprint of the ID card reproduced in one of the affidavits submitted, the ID card bears the signature of respondent Chua. If the IDs were indeed unauthorized, respondent Chua would simply have refused to sign the same or disowned his signature therein, which he never did. Perusing the allegations of private respondents, **it was never claimed that Analyn forged or tried to forge respondent Chua's signature on the IDs made by her**. Thus, Analyn's version of the facts that she merely took the initiative to make IDs for herself and her co-employees is more consonant with logic than the version of private respondents.
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> *Second*, it does not appear that private respondents pursued the investigation against Analyn. If Analyn was not really dismissed on November 17, 2003, then private respondents should have sent her a notice to explain why she suddenly stopped reporting for work starting November 18, 2003 following his alleged confrontation with her on November 17, 2003.[14]

In addition, we note that, in their affidavits, the witnesses did not mention that the ID cards were made by respondent Briones without petitioners' consent or authority. On the contrary,

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[12] *Samarca v. Arc-Men Industries, Inc.*, 459 Phil. 506, 515 (2003).

[13] *Marival Trading, Inc. v. National Labor Relations Commission*, G.R. No. 169600, June 26, 2007, 525 SCRA 708, 731.

[14] *Rollo*, pp. 49-50.

there were references to the ID cards being made within company premises, then submitted to petitioner Chua for his signature. What is evident from the affidavits is that the ID cards were made primarily at the initiative of respondent Briones and at the expense of the employees. The affidavits, *per se*, cannot be taken as proof that the ID cards were made without petitioners' authority.

Petitioners emphasize the fact that respondent Briones did not give them the chance to evaluate her side of the controversy, because she immediately filed her complaint the day after she was supposedly caught making the ID cards. However, the filing of the complaint should not have prevented petitioners from proceeding with the investigation against Briones and imposing the appropriate penalty upon her, if found guilty. As pointed out by the CA, petitioners should have done so, if, indeed, they had not dismissed Briones.

But even if it were true that respondent Briones made ID cards for petitioners' employees without authority, the act would not amount to serious misconduct as to justify dismissal.

Misconduct is defined as improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of judgment.[15] For misconduct to be a just cause for dismissal, (a) it must be serious; (b) it must relate to the performance of the employee's duties; and (c) it must show that the employee has become unfit to continue working for the employer.[16] To be serious within the meaning and intendment of the law, the misconduct must be of such grave and aggravated character and not merely trivial and unimportant.[17] It requires a wrongful intent,[18] which is apparently absent in respondent Briones' case.

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[15] *Lopez v. National Labor Relations Commission*, G.R. No. 167385, December 13, 2005, 477 SCRA 596, 601.

[16] *Id*.

[17] *Kephilco Malaya Employees Union v. Kepco Philippines Corporation*, G.R. No. 171927, June 29, 2007, 526 SCRA 205, 210.

[18] *McDonald's (Katipunan Branch) v. Alba*, G.R. No. 156382, December 18, 2008, 574 SCRA 427, 435.

In this light, particular attention is given to the fact that petitioners' employees have not been issued company ID cards, and so they could not apply for a loan from the SSS. This was the compelling reason that prompted respondent Briones to make the ID cards for her co-employees. She simply assumed a responsibility that was petitioners' to begin with. Besides, no resultant material damage or prejudice was caused to petitioners as a consequence of respondent's act. The amount of ₱20.00, presumably charged by Briones for her services, is so minimal to be of any real significance, particularly since she was, in fact, doing extra service for her co-employees.

In any case, the penalty of dismissal was not commensurate to the degree of the infraction purportedly committed. The Court is wont to reiterate that, while an employer has its own interest to protect, and pursuant thereto, it may terminate an employee for a just cause, such prerogative to dismiss an employee must be exercised without abuse of discretion. It should be tempered with compassion and understanding.[19] An employer should bear in mind that, in the exercise of such right, what is at stake is not the employee's position but her livelihood as well.[20] Where a penalty less punitive would suffice, whatever missteps may have been committed by an employee ought not to be visited with a consequence so severe such as dismissal from employment.[21]

WHEREFORE, premises considered, the petition is *DENIED*. The Court of Appeals Decision dated August 17, 2007 and Resolution dated January 22, 2008 are *AFFIRMED*.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Peralta, and *Mendoza, JJ.,* concur.

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[19] *Marival Trading, Inc. v. National Labor Relations Commission, supra* note 13, at 730.

[20] *Brew Master International, Inc. v. National Federation of Labor Unions*, 337 Phil. 728, 735-736 (1997).

[21] *Kephilco Malaya Employees Union v. Kepco Philippines Corporation, supra* note 17, at 213.

SECOND DIVISION

[G.R. No. 181851. March 9, 2010]

CAPT. WILFREDO G. ROQUERO, *petitioner, vs.* **THE CHANCELLOR OF UP-MANILA; THE ADMINISTRATIVE DISCIPLINARY TRIBUNAL (ADT) OF UP-MANILA; ATTY. ZALDY B. DOCENA; EDEN PERDIDO; ISABELLA LARA, IN THEIR CAPACITIES AS CHAIRMAN and MEMBERS OF THE ADT; and IMELDA O. ABUTAL,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; DELAY OF ALMOST FIVE YEARS BY THE ADMINISTRATIVE DISCIPLINARY TRIBUNAL (ADT) OF UP-MANILA TO RESOLVE PETITIONER'S MOTION TO DECLARE THE COMPLAINANT TO HAVE WAIVED HER RIGHT TO SUBMIT HER FORMAL OFFER OF EXHIBIT CANNOT BE JUSTIFIED.— While Section 27 of the Uniform Rules on Administrative Cases in Civil Service states **that the failure to submit the formal offer of evidence within the given period shall be considered as waiver thereof,** the ADT in fact allowed the prosecution to present its formal offer almost five (5) years later or on 24 January 2004. Starting on that date, petitioner was presented with the choice to either present his evidence or to, as he did, file a motion to dismiss owing to the extraordinary length of time that ADT failed to rule on his motion. We cannot accept the findings of the Court of Appeals that there was no grave abuse of discretion on the part of the ADT because **"a formal offer of evidence was filed by the prosecution, a copy of which was received by petitioners' counsel."** The admission by ADT on 8 June 2004 of the formal offer of exhibits belatedly filed did not cure the 5-year delay in the resolution of petitioner's 1999 motion to deem as waived such formal offer of evidence. Indeed, the delay of almost five (5) years cannot be justified.

2. ID.; ID.; ID.; ID.;WHILE ADMINISTRATIVE INVESTIGATIONS ARE NOT BOUND BY STRICT ADHERENCE TO THE TECHNICAL RULES OF PROCEDURE AND EVIDENCE APPLICABLE TO JUDICIAL PROCEEDINGS, THE SAME SHOULD NOT VIOLATE THE CONSTITUTIONAL RIGHT OF RESPONDENTS TO A SPEEDY DISPOSITION OF THEIR CASES.— The prosecution tried to explain in its Comment/Opposition dated 26 May 2004, that the resignation of Atty. Paul Flor in August 1999, who had by then already been on leave since mid-July 1999, contributed to the delay of the filing of the formal offer and that the formal offer could not be prepared by another counsel until all the transcripts of stenographic notes had been given to him. Also, it was pointed out that the stenographer, Jaime Limbaga, had been in and out of the hospital due to a serious illness. The ADT admitted this explanation of the prosecutor hook, line and sinker without asking why it took him almost five (5) years to make that explanation. If the excuses were true, the prosecution could have easily manifested with the ADT of its predicament right after Roquero filed his motion to declare the waiver of the formal offer. It is evident too that the prosecution failed to explain why it took them so long a time to find a replacement for the original prosecutor. And, the stenographer who had been in and out of the hospital due to serious illness should have been replaced sooner. While it is true that administrative investigations should not be bound by strict adherence to the technical rules of procedure and evidence applicable to judicial proceedings, the same however should not violate the constitutional right of respondents to a speedy disposition of cases.

3. ID.; ID.; ID.; ID.; THE RIGHT TO A SPEEDY DISPOSITION OF A CASE, LIKE THE RIGHT TO SPEEDY TRIAL IS DEEMED VIOLATED WHEN WITHOUT CAUSE OR JUSTIFIABLE MOTIVE, A LONG PERIOD OF TIME IS ALLOWED TO ELAPSE WITHOUT THE PARTY HAVING HIS CASE TRIED.— The constitutional right to a "speedy disposition of cases" is not limited to the accused in criminal proceedings but extends to all parties in all cases, including civil and administrative cases, and in all proceedings, including judicial and quasi-judicial hearings. Hence, under the Constitution, any party to a case may demand expeditious action by all officials who are tasked with the administration of justice.

The right to a speedy disposition of a case, like the right to a speedy trial, is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured; or **even without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried**. Equally applicable is the balancing test used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant is weighed, and such factors as the length of the delay, the reasons for such delay, the assertion or failure to assert such right by the accused, and the prejudice caused by the delay. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.

4. ID.; ID.; ID.; ID.; DOCTRINAL FACTORS THAT MAY BE CONSIDERED AND BALANCED IN THE DETERMINATION OF WHETHER THE RIGHT TO SPEEDY DISPOSITION OF CASES HAS BEEN VIOLATED; APPLICATION OF THE DOCTRINE IN CASE AT BAR.— The doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay. Applying the doctrinal ruling *vis-a-vis* the factual *milieu* of this case, the violation of the right to a speedy disposition of the case against petitioner is clear for the following reasons: (1) the delay of almost five (5) years on the part of ADT in resolving the motion of petitioner, which resolution petitioner reasonably found necessary before he could present his defense; (2) the unreasonableness of the delay; and (3) the timely assertions by petitioner of the right to an early disposition which he did through a motion to dismiss. Over and above this, the delay was prejudicial to petitioner's cause as he was under preventive suspension for ninety (90) days, and during the *interregnum* of almost five years, the trial of the accusation against him remained stagnant at the prosecution stage. The Constitutional guarantee against unreasonable delay in the disposition of cases was intended to stem the tide of disenchantment among the people in the administration of justice by our judicial and quasi-

judicial tribunals. The adjudication of cases must not only be done in an orderly manner that is in accord with the established rules of procedure but must also be promptly decided to better serve the ends of justice. Excessive delay in the disposition of cases renders the rights of the people guaranteed by the Constitution and by various legislations inutile.

APPEARANCES OF COUNSEL

Joselito R. Rance for petitioner.
Zaldy B. Docena and Vincent S. Tagoc for public respondents.

D E C I S I O N

PEREZ, *J.:*

This is a petition for review on *certiorari* under Rule 45 seeking to set aside the Decision[1] dated 22 March 2007, and the Resolution[2] dated 1 February 2008, of the Court of Appeals in CA-G.R. SP No. 87776 entitled, "*Capt. Wilfredo G. Roquero v. The Chancellor of the University of the Philippine-Manila (UP Manila), et al.*," a petition for *Certiorari* under Rule 65 of the Rules of Civil Procedure with Prayer for the Issuance of a Temporary Restraining Order (TRO), which sought to reverse and set aside the Orders dated 8 June 2004[3] and 9 November 2004[4] of the Administrative Disciplinary Tribunal (ADT) of UP-Manila, chaired by Atty. Zaldy B. Docena with Eden Perdido and Isabella Lara as members.

The undisputed facts of the case as found by the Court of Appeals are as follows:

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[1] Penned by Associate Justice Monina Arevalo Zeñarosa, with Associate Justices Marina L. Buzon and Edgardo F. Sundiam concurring. *Rollo,* pp. 17-27.

[2] *Id.* at 29-30.

[3] CA *rollo,* p. 18.

[4] *Id.* at 21.

Petitioner Wildredo G. Roquero is an employee of UP-Manila assigned at the Philippine General Hospital (PGH) Security Division as Special Police Captain. Private respondent Imelda O. Abutal is a Lady Guard of Ex-Bataan Security Agency who was applying for a position in the security force assigned at UP-PGH.

The instant controversy arose from a complaint by private respondent Abutal with then Chancellor of UP-Manila Perla D. Santos-Ocampo for Grave Misconduct against petitioner Capt. Roquero. The formal charge filed on 1 October 1998 and docketed as **ADM Case No. UPM-AC 97-007** reads as follows:

> After preliminary investigation duly conducted in accordance with the Rules and Regulations on the Discipline of UP Faculty and Employees, a *prima facie* case has been found to exist against you for GRAVE MISCONDUCT punishable under the University Rules and Regulations on the Discipline of UP Faculty and Employees in relation to the Civil Service Law, committed as follows:
>
> > That you, Capt. Wilfredo Roquero of the UP Manila Police Force, sometime in April 1996, while conducting an interview on MS. IMELDA ABUTAL who was then applying for the position of Lady Guard of Ex-Bataan Security Agency to be assigned at UP-PGH, proposed to her that if she agreed to be your mistress, you would facilitate her application and give her a permanent position; that despite the fact the MS. ABUTAL rejected your proposal, you still insisted on demanding said sexual favor from her; that you, therefore, are liable for GRAVE MISCONDUCT under Section 22, paragraph (c) of Rule XIV of the Omnibus Rules Implementing Book V of E.O. 292 on Civil Rules.
>
> xxx xxx xxx.

On 1 October 1998, the petitioner was placed under preventive suspension for ninety (90) days by Chancellor Santos-Ocampo, the material portion of said Order reads:

> Considering the gravity of the offense charged and pursuant to Section 19 of Rules and Regulations on the Discipline of UP Faculty Members and Employees and Sections 26 and 27 Rule XIV of Book V of Executive Order No. 292 and Omnibus

> Rules, you are hereby preventively suspended for ninety (90) days effective upon receipt hereof.
>
> While on preventive suspension, you are hereby required to appear before the Administrative Disciplinary Tribunal (ADT) whenever your presence is necessary.

Thereafter, the Administrative Disciplinary Tribunal (ADT) composed of Atty. Zaldy B. Docena, Eden Perdido and Isabella Lara, was organized to hear the instant case. Atty. Paul A. Flor, as University Prosecutor, represented the prosecution. He was later on replaced by Atty. Asteria Felicen. Petitioner was represented by Atty. Leo G. Lee of the Public Attorneys Office (PAO) who was then replaced by Public Attorney Philger Inovejas.

The Prosecution presented its only witness, private respondent Abutal. After the completion of the cross-examination on the prosecution's only witness, the prosecution agreed to submit its Formal Offer of Evidence on or before 16 July 1999.

xxx xxx xxx

The prosecution, however, failed to submit its formal offer of evidence within the period agreed upon.

Thereafter, on 10 August 1999, when the case was called, only petitioner and his counsel appeared. Atty. Flor merely called by telephone and requested Atty. Docena to reset the case to another date. Atty. Docena then ordered the resetting of the hearing on the following dates: 11 August and 21 August 1999. On 11 August 1999, only petitioner and his counsel came. No representative from the prosecution appeared before the ADT. Atty. Flor again called and asked for the postponement of the hearing. By reason thereof, Atty. Docena issued an Order, which reads as follows:

> The continuation of the hearing of this case is hereby set to September 29, 1999 at 2:00 p.m., with the understanding that if and when the parties fail to appear at said hearing date, this case shall be deemed submitted for resolution based on the evidences already obtaining in the record of the case.
>
> SO ORDERED.
>
> 11 August 1999.

On said date, the representative from the prosecution again failed to appear.

On 22 October 1999, petitioner filed a Motion through counsel praying that complainant (private respondent herein) be declared to have waived her rights to formally offer her exhibits since complainant was not able to file her Formal Offer within the given period of fifteen (15) days from 1 July 1999 or up to 16 July 1999.

The ADT was not able to act on the said Motion for almost five (5) years. Due to the unreasonable delay, petitioner, on 19 May 2004 filed another Motion asking for the dismissal of the administrative case against him. The Motion to Dismiss was anchored on the following reasons: that the prosecution had not formally offered its evidence; that the ADT had failed to act on the motion filed on 22 October 1999; that the unfounded charges in the administrative complaint were filed just to harass him; and that he is entitled to a just and speedy disposition of the case.

On 26 May 2004, the prosecution, represented by Atty. Felicen in view of the resignation of Atty. Flor in August 1999, filed its Comment/Opposition to the Motion to Dismiss. The prosecution alleged that a **Formal Offer of Documentary Exhibits had been filed on 24 January 2004**, of which a copy thereof was received by Atty. Lee, petitioner's counsel, on 30 January 2004, per registry return receipt. However, petitioner has not filed his comment to the said Formal Offer.

Furthermore, the prosecution explained in its Comment/ Opposition that in view of the resignation of Atty. Flor in August 1999 but who had been on leave by mid-July 1999, the Formal Offer could not be prepared by another counsel until all the transcript of stenographic notes have been furnished to the counsel that replaced Atty. Flor. Meanwhile, the stenographer, Jamie Limbaga, had been in and out of the hospital due to a serious illness, thus the delay in the filing of the prosecutor's Formal Offer of Documentary Exhibits.

On 8 June 2004, Atty. Docena issued the assailed Order denying petitioner's motion to dismiss, to wit:

> Acting on respondent's Motion to Dismiss, as well as the University Prosecutor's Comment and/or Opposition to said Motion, and finding that said Motion to Dismiss to be bereft of merit, the same is hereby DENIED.
>
> In view of the failure of the respondent to file his comment on the Prosecution's Formal Offer of Evidence, the Exhibit's

("A" to "G-1") of the Prosecution are hereby ADMITTED for the purpose for which the same have been offered.

The respondent is hereby directed to present his evidence on June 22, 2004 at 10:30 in the morning.

SO ORDERED.

A motion for reconsideration was filed by petitioner but the same was denied in an Order dated 9 November 2004.[5]

Petitioner Captain Wilfredo Roquero then filed with the Court of Appeals a Petition for *Certiorari* under Rule 65, docketed as CA-G.R. SP No. 87776, alleging therein that the ADT committed grave abuse of discretion when it denied the motion to dismiss the administrative case filed against him.

In a Decision dated 22 March 2007, the Honorable Court of Appeals denied the petition with prayer for TRO of Roquero reasoning that the ADT did not commit grave abuse of discretion in issuing the assailed orders.

The Court of Appeals ruled, thus:

The main issue to be resolved is whether the ADT gravely abused its discretion amounting to lack or excess of jurisdiction when it issued the Order denying petitioner's motion to dismiss the administrative case filed against him.

We rule in the negative.

Petitioner argues that the administrative case against him should be dismissed because of the failure of the prosecution to file its Formal Offer of Evidence within the agreed period.

We do not agree.

The appropriate rule in this case is Section 27 of the Uniform Rules on Administrative Cases in the Civil Service, which provides, to wit:

When the presentation of evidence has been concluded, the parties shall formally offer their evidence either orally or in writing and thereafter objections thereto may also be made either orally or in writing. After which, both parties may be

[5] *Id.* at 18-23.

> given time to submit their respective memorandum which in no case shall [be] beyond five (5) days after the termination of the investigation. Failure to submit the same within the given period shall be considered a waiver thereof.

The failure to file a formal offer of evidence amounts to no more than a waiver of the right to file the same. In administrative cases, particularly, where the Uniform Rules on Administrative Cases in the Civil Service applies, the absence of a formal offer of evidence does not bar the adverse party from presenting its evidence.

Section 3 of the Uniform Rules on Administrative Cases in the Civil Service provides:

> Administrative investigations shall be conducted without necessarily adhering strictly to the technical rules of procedure and evidence applicable to judicial proceedings.

While under the Rules of Court, a formal offer may be indispensable because the rules on evidence so require it, the same is not true in administrative cases. There is no provision in the Uniform Rules on Administrative Cases in the Civil Service akin to Section 34, Rule 132 of the Rules of Court.

Furthermore, Section 27 of the Uniform Rules states that the failure to file a formal offer of evidence amounts to a mere waiver thereof, and not a dismissal of the action. As such, petitioner cannot claim a vested right to a dismissal of his case below just because a formal offer was not filed within the agreed period.

In addition thereto, the Uniform Rules give the hearing officer a leeway when it provided that x x x the hearing officer shall accept all evidence deemed material and relevant to the case. In case of doubt, he shall allow the admission of evidence subject to the objection interposed against its admission.

In the case at bar, records show that in fact, a formal offer of evidence was filed by the prosecution, a copy of which was received by petitioner's counsel. The action of the ADT in admitting the prosecution's exhibits was consistent with the above-mentioned Rules. Thus, the tribunal acted within the bounds of its authority.

Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or in other words, where the power is exercised in an arbitrary or despotic

manner by reason of passion, prejudice, or personal hostility, and it must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

To reiterate, the admission of the exhibits for the prosecution is in accordance with Sections 3, 27, and 28 of the Uniform Rules on Administrative Cases in the Civil Service. In admitting the exhibits for the prosecution, petitioner was not denied the opportunity to present his evidence. In fact, he could have presented his evidence as early as 11 August 1999 but he did not do so.

WHEREFORE, for utter lack of merit, the instant petition with prayer for temporary restraining order is hereby DENIED.[6]

Roquero moved for reconsideration of the Decision, but the same was likewise denied by the Court of Appeals in its Resolution promulgated on 1 February 2008.

Roquero is now before us seeking the reversal of the decision and resolution of the Court of Appeals.

The core issue of this case is whether the failure of the ADT to resolve Roquero's Motion (to declare complainant Imelda Abutal to have waived her right to submit her Formal Offer of Exhibit) which he seasonably filed on 22 October 1999 and the assailed Order of the ADT dated 8 June 2004 admitting the Formal Offer of Exhibit of complainant Imelda Abutal despite having filed after almost five years violated the constitutional right of Roquero to a speedy disposition of cases.

We find merit in the petition.

The Court of Appeals faulted petitioner for his failure to present his own evidence which "he could have done as early as 11 August 1999."[7] It must be noted, however, that petitioner's 22 October 1999 motion to declare complainant to have waived her right to submit her Formal Offer of Exhibit remained unresolved. This is reason enough for Roquero to defer presentation of his own evidence.

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[6] *Id.* at 23-26.

[7] *Rollo*, p. 26.

Indeed, while Section 27 of the Uniform Rules on Administrative Cases in Civil Service states **that the failure to submit the formal offer of evidence within the given period shall be considered as waiver thereof,** the ADT in fact allowed the prosecution to present its formal offer almost five (5) years later or on 24 January 2004. Starting on that date, petitioner was presented with the choice to either present his evidence or to, as he did, file a motion to dismiss owing to the extraordinary length of time that ADT failed to rule on his motion.

We cannot accept the finding of the Court of Appeals that there was no grave abuse of discretion on the part of the ADT because **"a formal offer of evidence was filed by the prosecution, a copy of which was received by petitioners' counsel."**[8] The admission by ADT on 8 June 2004 of the formal offer of exhibits belatedly filed did not cure the 5-year delay in the resolution of petitioner's 1999 motion to deem as waived such formal offer of evidence. Indeed, the delay of almost five (5) years cannot be justified.

The prosecution tried to explain in its Comment/Opposition dated 26 May 2004, that the resignation of Atty. Paul Flor in August 1999, who had by then already been on leave since mid-July 1999, contributed to the delay of the filing of the formal offer and that the formal offer could not be prepared by another counsel until all the transcripts of stenographic notes had been given to him. Also, it was pointed out that the stenographer, Jaime Limbaga, had been in and out of the hospital due to a serious illness.[9]

The ADT admitted this explanation of the prosecutor hook, line and sinker without asking why it took him almost five (5) years to make that explanation. If the excuses were true, the prosecution could have easily manifested with the ADT of its predicament right after Roquero filed his motion to declare the waiver of the formal offer. It is evident too that the prosecution failed to explain why it took them so long a time to find a replacement for the original prosecutor. And, the stenographer

[8] *Id.* at 25.

[9] *Id.* at 22.

who had been in and out of the hospital due to serious illness should have been replaced sooner.

While it is true that administrative investigations should not be bound by strict adherence to the technical rules of procedure and evidence applicable to judicial proceedings,[10] the same however should not violate the constitutional right of respondents to a speedy disposition of cases.

Section 16, Article III of the 1987 Constitution provides:

> Section 16. All person shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

The constitutional right to a "speedy disposition of cases" is not limited to the accused in criminal proceedings but extends to all parties in all cases, including civil and administrative cases, and in all proceedings, including judicial and quasi-judicial hearings. Hence, under the Constitution, any party to a case may demand expeditious action by all officials who are tasked with the administration of justice.[11]

The right to a speedy disposition of a case, like the right to a speedy trial, is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured; or **even without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried**. Equally applicable is the balancing test used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant is weighed, and such factors as the length of the delay, the reasons for such delay, the assertion or failure to assert such right by the accused, and the prejudice caused by

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[10] Section 3 of the Uniform Rules on Administrative Cases in Civil Service.

[11] *Lopez, Jr. v. Office of the Ombudsman*, 417 Phil. 39, 49 (2001) citing *Cadalin v. POEA's Administrator*, G.R. No. 104776, 5 December 1994, 238 SCRA 721, 765.

the delay. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.[12]

Hence, the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.[13]

Applying the doctrinal ruling *vis-a-vis* the factual *milieu* of this case, the violation of the right to a speedy disposition of the case against petitioner is clear for the following reasons: (1) the delay of almost five (5) years on the part of ADT in resolving the motion of petitioner, which resolution petitioner reasonably found necessary before he could present his defense; (2) the unreasonableness of the delay; and (3) the timely assertions by petitioner of the right to an early disposition which he did through a motion to dismiss. Over and above this, the delay was prejudicial to petitioner's cause as he was under preventive suspension for ninety (90) days, and during the *interregnum* of almost five years, the trial of the accusation against him remained stagnant at the prosecution stage.

The Constitutional guarantee against unreasonable delay in the disposition of cases was intended to stem the tide of disenchantment among the people in the administration of justice by our judicial and quasi-judicial tribunals.[14] The adjudication of cases must not only be done in an orderly manner that is in accord with the established rules of procedure but must also be promptly decided to better serve the ends of justice. Excessive delay in the disposition of cases renders the rights of the people guaranteed by the Constitution and by various legislations inutile.[15]

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[12] *Binay v. Sandiganbayan*, G.R. Nos. 120681-83, 1 October 1999, 316 SCRA 65, 95.

[13] *Dela Peña v. Sandiganbayan*, 412 Phil. 921, 929 (2001) citing *Alvizo v. Sandiganbayan*, G.R. No. 101689, 17 March 1993, 220 SCRA 55, 63.

[14] CRUZ, Constitutional Law, 2007 Ed., p. 295.

[15] *Matias v. Plan*, A.M. No. MTJ-98-1159, 3 August 1998, 293 SCRA 532, 538-539.

WHEREFORE, the Petition is hereby *GRANTED.* The assailed Decision dated 22 March 2007 and Resolution dated 1 February 2008 of the Court of Appeals in CA-G.R. SP No. 87776 are hereby *REVERSED* and *SET ASIDE*. The Administrative Disciplinary Tribunal (ADT) of the University of the Philippines-Manila, Atty. Zaldy B. Docena, Eden Perdido and Isabella Lara, in their capacities as Chairman and Members of the ADT respectively, are hereby *ORDERED* to *DISMISS* the administrative case against Capt. Wilfredo G. Roquero for violation of his constitutional right to a speedy disposition of cases.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 182403. March 9, 2010]

ATTY. RESTITUTO G. CUDIAMAT, ERLINDA P. CUDIAMAT[1] and CORAZON D. CUDIAMAT, *petitioners, vs.* **BATANGAS SAVINGS AND LOAN BANK, INC., and THE REGISTER OF DEEDS, NASUGBU, BATANGAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; ESTOPPEL BARS RESPONDENT BANK FROM RAISING THE LACK OF JURISDICTION OF THE TRIAL COURT.— Estoppel bars the bank from raising the issue of lack of jurisdiction of the Balayan RTC. In *Lozon v. NLRC,* the Court came up with a

[1] Substituted by her heir, Donald P. Cudiamat per Notice of Party's Death and Request for Substitution, rollo, pp. 1-8.

clear rule on when jurisdiction by estoppel applies and when it does not: The operation of estoppel on the question of jurisdiction seemingly depends on whether the lower court actually had jurisdiction or not. **If it had no jurisdiction**, but the case was tried and decided upon the theory that it had jurisdiction, the parties are not barred, on appeal, from assailing such jurisdiction, for the same "must exist as a matter of law, and may not be conferred by the consent of the parties or *by estoppel*." However, **if the lower court had jurisdiction**, and the case was heard and decided upon a given theory, such, for instance, as that the court had no jurisdiction, **the party who induced it to adopt such theory will not be permitted, on appeal, to assume an inconsistent position** – that the lower court had jurisdiction… The ruling was echoed in *Metromedia Times Corporation v. Pastorin.* In the present case, the Balayan RTC, sitting as a court of general jurisdiction, had jurisdiction over the complaint for quieting of title filed by petitioners on August 9, 1999. The Nasugbu RTC, as a liquidation court, assumed jurisdiction over the claims against the bank only on May 25, 2000, when PDIC's petition for assistance in the liquidation was raffled thereat and given due course. While it is well-settled that lack of jurisdiction on the subject matter can be raised at any time and is not lost by estoppel by laches, the present case is an exception. To compel petitioners to re-file and relitigate their claims before the Nasugbu RTC when the parties had already been given the opportunity to present their respective evidence in a full-blown trial before the Balayan RTC which had, in fact, decided petitioners' complaint (about two years before the appellate court rendered the assailed decision) would be an exercise in futility and would unjustly burden petitioners.

2. ID.; ID.; ID.; GENERAL RULE THAT ALL CLAIMS AGAINST AN INSOLVENT BANK IN A JUDICIAL LIQUIDATION SHALL BE FILED IN THE SAME LIQUIDATION PROCEEDING IS NOT APPLICABLE IN CASE AT BAR; TO COMPEL PETITIONER TO APPEAR AND RE-LITIGATE THE CASE IN THE LIQUIDATION-COURT NASUGBU RTC WHEN THE ISSUES TO BE RAISED BEFORE IT ARE THE SAME AS THOSE ALREADY EXHAUSTIVELY PASSED UPON AND DECIDED BY THE BALAYAN RTC WILL BE SUPERFLUOUS.— The Court,

in *Valenzuela v. Court of Appeals,* held that as a general rule, if there is a judicial liquidation of an insolvent bank, all claims against the bank should be filed in the liquidation proceeding. The Court in *Valenzuela,* however, after considering the circumstances attendant to the case, held that the general rule should not be applied if to order the aggrieved party to refile or relitigate its case before the litigation court would be "an exercise in futility." Among the circumstances the Court considered in that case is the fact that the claimants were poor and the disputed parcel of land was their only property, and the parties' claims and defenses were properly ventilated in and considered by the judicial court. In the present case, the Court finds that analogous considerations exist to warrant the application of *Valenzuela.* Petitioner Restituto was 78 years old at the time the petition was filed in this Court, and his co-petitioner-wife Erlinda died during the pendency of the case. And, except for co-petitioner Corazon, Restituto is a resident of Ozamis City. To compel him to appear and relitigate the case in the liquidation court-Nasugbu RTC when the issues to be raised before it are the same as those already exhaustively passed upon and decided by the Balayan RTC will be superfluous.

APPEARANCES OF COUNSEL

Lainez & Partners Law Offices for petitioners.
Office of the General Counsel for PDIC.
Tacardon & Partners for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioner Atty. Restituto Cudiamat and his brother Perfecto were the registered co-owners of a 320 square meter parcel of land (the property) in Balayan, Batangas, covered by TCT No. T-37889 of the Register of Deeds of Nasugbu, Batangas. Restituto, who resided in Ozamiz City with his wife, entrusted the custody of the title to who was residing in Balayan.

In 1979, Perfecto, without the knowledge and consent of Restituto, obtained a loan from respondent Batangas Savings

and Loan Bank, Inc. (the bank). To secure the payment of the loan, Perfecto mortgaged the property for the purpose of which he presented a Special Power of Attorney (SPA) purportedly executed by Restituto, with the marital consent of his wife-herein co-petitioner Erlinda Cudiamat.

On June 19, 1991, Restituto was informed, via letter[2] dated June 7, 1991 from the bank, that the property was foreclosed. He thus, by letter[3] dated June 25, 1991, informed the bank that he had no participation in the execution of the mortgage and that he never authorized Perfecto for the purpose.

In the meantime, Perfecto died in 1990. In 1998, as Perfecto's widow petitioner Corazon was being evicted from the property, she and her co-petitioner-spouses Restituto and Erlinda filed on August 9, 1999 before the Regional Trial Court (RTC) of Balayan a complaint[4] "for quieting of title with damages" against the bank and the Register of Deeds of Nasugbu, docketed as Civil Case No. 3618, assailing the mortgage as being null and void as they did not authorize the encumbrance of the property.

In its Answer to the complaint, the bank, maintaining the validity of the mortgage, alleged that it had in fact secured a title in its name, TCT No. T-48405, after Perfecto failed to redeem the mortgage; that the Balayan RTC had no jurisdiction over the case as the bank had been placed under receivership and under liquidation by the Philippine Deposit Insurance Corporation (PDIC); that PDIC filed before the RTC of Nasugbu a petition for assistance in the liquidation of the bank which was docketed as SP No. 576; and that jurisdiction to adjudicate disputed claims against it is lodged with the liquidation court-RTC Nasugbu.

By Decision of January 17, 2006,[5] Branch 9 of the Balayan RTC rendered judgment, in the complaint for quieting of title,

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[2] Records Vol. I, p. 6.

[3] *Id.* at 7.

[4] Records Vol. I, pp. 1-4.

[5] Records, Vol. II, pp. 337-350.

in favor of the plaintiffs-herein petitioners. It ordered respondent Register of Deeds of Nasugbu to cancel the encumbrance annotated on TCT No. T-37889, and to cancel TCT No. T-48405 issued in the name of the bank and reinstate the former title. It also directed the bank to return the property to petitioner spouses Restituto and Erlinda and to pay ₱20,000 to all the petitioners to defray the costs of suit.

The bank appealed to the Court of Appeals, contending, *inter alia*, that the Balayan RTC had no jurisdiction over petitioners' complaint for quieting of title.

By the assailed Decision of December 21, 2007,[6] the appellate court, ruling in favor of the bank, dismissed petitioners' complaint for quieting of title, without prejudice to the right of petitioners to take up their claims with the Nasugbu RTC sitting as a liquidation court.

To the appellate court, the Balayan RTC, as a court of general jurisdiction, should have deferred to the Nasugbu RTC which sits as a liquidation court, given that the bank was already under receivership when petitioners filed the complaint for quieting of title.

Petitioners' Motion for Reconsideration having been denied by the appellate court by Resolution of March 27, 2008, they filed the present petition for review on *certiorari*.

Assailing the appellate court's ruling that the Balayan RTC had no jurisdiction over their complaint, petitioners argue that their complaint was filed earlier than PDIC's petition for assistance in the liquidation; and that the bank is now estopped from questioning the jurisdiction of the Balayan RTC because it actively participated in the proceedings thereat.

The petition is impressed with merit.

Estoppel bars the bank from raising the issue of lack of jurisdiction of the Balayan RTC.

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[6] CA *rollo*, 114-122. Penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Vicente S.E. Veloso and Marlene Gonzales-Sison.

In *Lozon v. NLRC*,[7] the Court came up with a clear rule on when jurisdiction by estoppel applies and when it does not:

> The operation of estoppel on the question of jurisdiction seemingly depends on whether the lower court actually had jurisdiction or not. **If it had no jurisdiction**, but the case was tried and decided upon the theory that it had jurisdiction, the parties are not barred, on appeal, from assailing such jurisdiction, for the same "must exist as a matter of law, and may not be conferred by the consent of the parties or *by estoppel*." However, **if the lower court had jurisdiction**, and the case was heard and decided upon a given theory, such, for instance, as that the court had no jurisdiction, **the party who induced it to adopt such theory will not be permitted, on appeal, to assume an inconsistent position** – that the lower court had jurisdiction… (underscoring supplied)

The ruling was echoed in *Metromedia Times Corporation v. Pastorin*.[8]

In the present case, the Balayan RTC, sitting as a court of general jurisdiction, had jurisdiction over the complaint for quieting of title filed by petitioners on August 9, 1999. The Nasugbu RTC, as a liquidation court, assumed jurisdiction over the claims against the bank only on May 25, 2000, when PDIC's petition for assistance in the liquidation was raffled thereat and given due course.

While it is well-settled that lack of jurisdiction on the subject matter can be raised at any time and is not lost by estoppel by laches, the present case is an exception. To compel petitioners to re-file and relitigate their claims before the Nasugbu RTC when the parties had already been given the opportunity to present their respective evidence in a full-blown trial before the Balayan RTC which had, in fact, decided petitioners' complaint (about two years before the appellate court rendered the assailed decision) would be an exercise in futility and would unjustly burden petitioners.

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[7] 310 Phil. 1 (1995).

[8] G.R. No. 154295, 29 July 2005, 465 SCRA 320, 335-336.

The Court, in *Valenzuela v. Court of Appeals*,[9] held that as a general rule, if there is a judicial liquidation of an insolvent bank, all claims against the bank should be filed in the liquidation proceeding. The Court in *Valenzuela*, however, after considering the circumstances attendant to the case, held that the general rule should not be applied if to order the aggrieved party to refile or relitigate its case before the litigation court would be "an exercise in futility." Among the circumstances the Court considered in that case is the fact that the claimants were poor and the disputed parcel of land was their only property, and the parties' claims and defenses were properly ventilated in and considered by the judicial court.

In the present case, the Court finds that analogous considerations exist to warrant the application of *Valenzuela*. Petitioner Restituto was 78 years old at the time the petition was filed in this Court, and his co-petitioner-wife Erlinda died[10] during the pendency of the case. And, except for co-petitioner Corazon, Restituto is a resident of Ozamis City. To compel him to appear and relitigate the case in the liquidation court-Nasugbu RTC when the issues to be raised before it are the same as those already exhaustively passed upon and decided by the Balayan RTC would be superfluous.

WHEREFORE, the petition is *GRANTED*. The Decision of December 21, 2007 and Resolution dated March 27, 2008 of the Court of Appeals are *SET ASIDE*. The Decision dated January 17, 2006 of the Regional Trial Court of Balayan, Batangas, Branch 9 is *REINSTATED*.

SO ORDERED.

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

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[9] G.R. No. 56168, December 22, 1988, 168 SCRA 623.

[10] See Certificate of Death, *rollo*, p. 7.

SECOND DIVISION

[G.R. No. 182460. March 9, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JESSIE VILLEGAS MURCIA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; ARSON; EVIDENCE NECESSARY TO ESTABLISH THE CRIME.— In the prosecution for arson, proof of the crime charged is complete where the evidence establishes: (1) the *corpus delicti*, that is, a fire because of criminal agency; and (2) the identity of the defendant as the one responsible for the crime. In arson, the c*orpus delicti* rule is satisfied by proof of the bare fact of the fire and of it having been intentionally caused. Even the uncorroborated testimony of a single eyewitness, if credible, is enough to prove the *corpus delicti* and to warrant conviction.

2. ID.; ID.; ONLY SIMPLE ARSON WAS COMMITTED IN CASE AT BAR.— The lower courts found appellant liable under Article 320(1) of the Revised Penal Code, as amended by Section 10 of Republic Act No. 7659. It may not be amiss to point out that there are actually two categories of arson, namely: Destructive Arson under Article 320 of the Revised Penal Code and Simple Arson under Presidential Decree No. 1316. Said classification is based on the kind, character and location of the property burned, regardless of the value of the damage caused. Article 320 contemplates the malicious burning of structures, both public and private, hotels, buildings, edifices, trains, vessels, aircraft, factories and other military, government or commercial establishments by any person or group of persons. On the other hand, Presidential Decree No. 1316 covers houses, dwellings, government buildings, farms, mills, plantations, railways, bus stations, airports, wharves and other industrial establishments. A close examination of the records, as well as description of the crime as stated in the information, reveals that the crime committed is in fact simple arson because the burned properties are residential houses. At any rate, the penalty for simple arson resulting to death, under Section 5

of Presidential Decree No. 1613, is *reclusion perpetua* to death. With the repeal of the death penalty law through Republic Act No. 9346, the appellate court correctly imposed the penalty of *reclusion perpetua*.

3. ID.; CIVIL LIABILITY; AMOUNT OF DAMAGES AWARDED BY TRIAL COURT; MODIFIED.— This Court takes exception to the trial court's award of damages. With respect to the heirs of Felicidad, We modify the amount of temperate damages from ₱10,000.00 to ₱ 25,000.00, and accordingly delete the amount of actual damages, in line with the ruling in *People v. Villanueva.* In said case, the Court held that when actual damages proven by receipts during the trial amount to less than ₱25,000.00, the award of temperate damages for ₱25,000.00 is justified in lieu of actual damages of a lesser amount. Anent the actual damages awarded to Eulogio amounting to ₱250,000.00, as indemnification for the burned house, We note that said amount representing the value of the burned house was merely given by Eulogio as an estimate. It was not substantiated by any document or receipt. For one to be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and the best evidence obtainable by the injured party. Instead, We award temperate damages in accordance with Art. 2224 of the Civil Code, providing that temperate damages may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proven with certainty. It is thus reasonable to expect that the value of the house burned down amounted to at least ₱200,000.00.

4. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; CIRCUMSTANTIAL EVIDENCE; MAY BE THE BASIS OF CONVICTION IF THE REQUISITES THEREOF ARE SUFFICIENTLY MET.— The photographs, evidencing the charred remains of the houses, established the occurrence of the fire. In this case, however, there is no direct evidence to establish the culpability of appellant. At any rate, direct evidence is not the sole means of establishing guilt beyond reasonable doubt. Established facts that form a chain of circumstances can lead the mind intuitively or impel a conscious process of reasoning towards a conviction. Indeed, rules on evidence and principles in jurisprudence have long

recognized that the accused may be convicted through circumstantial evidence. Section 4 of Rule 133 of the Rules of Court provides: Section 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 order to justify a conviction upon circumstantial evidence, the combination of circumstances must be such as to leave no reasonable doubt in the mind as to the criminal responsibility of the accused.

5. ID.; ID.; ID.; ID.; CIRCUMSTANCES THAT YIELD TO THE LOGICAL CONCLUSION THAT THE FIRE WAS AUTHORED BY APPELLANT.— The appellate court considered the following circumstances to establish an unbroken chain of events pointing to the logical conclusion that appellant started the fire: First, accused-appellant Murcia returned inside E. Quilates' house after chasing H. Manlupig with a *bolo* and after being pacified by R. Viduya and J. Viduya; Second, during the resumption of their drinking session, R. Viduya and H. Manlupig saw a thick smoke emanating from E. Quilates' house particularly the window of accused-appellant Murcia's room in the ground floor; Third, H. Manlupig peeped through the said window and saw accused-appellant Murcia throwing cartons of clothes into the fire. Meanwhile, E. Quilates, who was then cooking at the second floor, went downstairs and saw the fire coming from the room occupied by accused-appellant Murcia in the ground floor; Fourth, R. Viduya saw accused-appellant Murcia stabbing F. Quilates and A. Manlupig, among other persons. E. Quilates saw his sister F. Quilates with blood oozing from her mouth. Accused-appellant Murcia met him at the ground brandishing a knife at him which prevented him from helping the wounded F. Quilates and forced him to run away for safety. E. Quilates' other sister, A. Manlupig, was also seen wounded and lying unconscious in the canal; and Fifth, the houses of E. Quilates and his neighbors were razed by fire and the commission of the crime of arson resulted in the demise of F. Quilates whose remains were burned beyond recognition. Indeed, appellant was last seen inside the house before the fire started. Eulogio and Ricky saw smoke emanating from the room of appellant. Herminio testified that he saw appellant

burning clothes in his room. Appellant then went on a stabbing rampage while the house was on fire. While nobody directly saw appellant burn the house, these circumstances would yield to a logical conclusion that the fire that gutted eight (8) houses was authored by appellant.

6. ID.; CREDIBILITY OF WITNESSES; NO COGENT REASON TO DEPART FROM THE FINDINGS OF THE LOWER COURTS ON THE CREDIBILITY OF WITNESSES.— The issue narrows down to credibility of the witnesses. Worthy of reiteration is the doctrine that on matters involving the credibility of witnesses, the trial court is in the best position to assess the credibility of witnesses since it has observed firsthand their demeanor, conduct and attitude under grilling examination. Absent any showing of a fact or circumstance of weight and influence which would appear to have been overlooked and, if considered, could affect the outcome of the case, the factual findings and assessment on the credibility of a witness made by the trial court remain binding on an appellate tribunal. In this case, We find no cogent reason to depart from the findings of the lower courts. Appellant imputes ill-motive on the part of Herminio. This Court does not discount the fact that there was a fight between appellant and Herminio which preceded the occurrence of the fire. However, it cannot be presumed that Herminio will automatically give a false testimony against appellant. His testimony, having withstood cross-examination, has passed the scrutiny of the lower courts and was held to be credible.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

The subject of review is the Decision[1] of the Court of Appeals affirming with modification the Decision[2] of the Regional Trial Court (RTC), which found appellant Jessie Villegas Murcia guilty beyond reasonable doubt of the crimes of arson and frustrated homicide.

In an Information dated 6 April 2004, appellant was accused of the crime of arson committed as follows:

> That on or about the 24th day of March, 2004, in the Municipality of Bauang, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by some evil motive, did then and there willfully, unlawfully and feloniously set fire and burn a residential house knowing the same to be inhabited by one FELICIDAD M. QUILATES burning and killing said FELICIDAD M. QUILATES as well as burning and damaging nine (9) other neighboring houses in the process, to the damage and prejudice of said house-owners in the aggregate amount of THREE MILLION PESOS (Php3,000,000.00), Philippines Currency, as well as to the damage and prejudice of the heirs of FELICIDAD QUILATES.
>
> The charge is qualified by the resulting death of Felicidad M. Quilates.
>
> CONTRARY TO LAW.[3]

Appellant was also charged in another Information for frustrated homicide, the accusatory portion reads:

> CRIMINAL CASE NO. 2980-BG
>
> That on or about the 24th day of March, 2004, in the Municipality of Bauang, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Rosalinda Asuncion-Vicente and Enrico A. Lanzanas, concurring. *Rollo,* pp. 2-15.

[2] Presided by Judge Rose Mary R. Molina-Alim. Records, pp. 207-217.

[3] *Id.* at 1.

kill, did then and there willfully, unlawfully and feloniously attack, assault and stab with a knife one, Alicia Q. Manlupig inflicting upon the latter stab wounds, thus performing all the acts of execution which would produce the crime of homicide as a consequence, but nevertheless did not produce it be reason of causes independent of the will; that is, by the timely medical attendance rendered to said Alicia Q. Manlupig which prevented her death, all to the damage and prejudice of said offended party.

CONTARARY (sic) TO LAW.[4]

Upon arraignment, appellant pleaded not guilty to both charges. Trial on the merits ensued.

Based on the narration of prosecution witnesses, the facts follow. Eulogio Quilates (Eulogio) is the owner of a two-storey house in Paringao, Bauang, La Union. Among the occupants of his house were his sister Felicidad Quilates (Felicidad); another sister Alicia Manlupig (Alicia); and nephew Herminio Manlupig (Herminio). Appellant, who is the adopted son of Felicidad, occupied one room in the house. At around 3:30 p.m. of 24 March 2004, appellant was having a drinking spree with his cousin Herminio and brothers-in-law Joey Viduya and Ricky Viduya (Ricky) in front of their house. Appellant and Herminio were arguing over the matter of caring for Felicidad while the latter was confined in the hospital. Ricky tried to mediate between the two. Appellant was then seen going inside the house to get a *bolo*. When he emerged from the house ten (10) minutes later, he ran after Herminio but the latter managed to escape unscathed. Appellant again went back to the house.[5]

Meanwhile, after pacifying appellant and Herminio, Ricky resumed drinking. A few minutes later, he saw smoke coming from the room of appellant. As Ricky was about to enter the house, he met appellant at the door. Appellant apparently tried to stab Ricky but was unsuccessful. Ricky witnessed appellant stab Felicidad and Alicia.[6]

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[4] *Id.* at 207-208.

[5] TSN, 12 July 2004, pp. 3-4.

[6] *Id.* at 6-8.

Herminio, who had since come back to the drinking table, also saw the smoke. He peeped through the small window of the house and witnessed appellant burning some clothes and boxes in the *sala*. Herminio immediately went inside the house to save his personal belongings. Upon emerging from the house, Herminio saw his mother, Alicia, bloodied.[7]

Alicia testifies that she was sitting on a chair near the toilet when she saw smoke coming out of appellant's room. Before she could react, appellant came charging at her and stabbed her. She sustained wounds on her upper thigh, arms, below her breast and on her ear. Alicia was still able to ask for help, and her daughter-in-law brought her to the hospital.[8]

Eulogio heard a commotion while he was cooking in the second floor of the house. When Eulogio went down, he already saw smoke coming from the room of appellant. He then saw Felicidad near the comfort room located outside the house and was bleeding from her mouth. As he was about to help Felicidad, he met appellant who was then holding a knife. Eulogio immediately ran away.[9]

Upon seeing Herminio, appellant immediately attacked him with a knife. However, Herminio and Ricky were able to pin appellant down. Before they could retaliate, the *barangay* captain arrived at the scene.[10] As a result, eight (8) houses were razed.

Inspector Ferdinand Formacion responded to the fire incident and saw four (4) houses were already burned. After putting out the fire, he and the arson investigator conducted an ocular investigation and invited witnesses to the police station to submit their sworn statements. SPO2 Rodolfo Lomboy, chief investigator of Philippine National Police Bauang Police Station, was told by witnesses that appellant intentionally set the boxes on fire inside the house.[11]

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[7] *Id.* at 17-20.

[8] TSN, 27 July 2004, pp. 7-9.

[9] TSN, 14 September 2004, pp. 6-8.

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

[11] TSN, 20 September 2004, p. 10.

Eulogio estimated the value of his house at ₱250,000.00,[12] while another sister of Felicidad, Pacita Quilates, presented a receipt covering the burial expenses for Felicidad, amounting to ₱10,000.00.[13]

An autopsy was performed on Felicidad, and it was disclosed that she died from "cardio-respiratory arrest secondary to third degree burns involving 90% of body surface to include underlying tissues and organs."[14]

Appellant was the lone witness for the defense. He stated that while he was having a drinking spree, he saw Felicidad go inside the house to get a glass of water. He followed her and gave her water. He noticed Felicidad light a gas lamp. He then went back to his friends and resumed drinking. He got into a heated argument with Herminio. The latter struck him in the head. He immediately went inside the house to get a weapon. He was able to get a *bolo*, went back outside and hit Herminio. The latter ran away and appellant chased him. Appellant met Alicia and confronted her about the actuations of Herminio. But Alicia cursed him. Appellant thereafter stabbed her with the knife. Appellant then fell on the ground and lost consciousness because, apparently, he was struck by something in the back.[15] Appellant denied setting the house on fire.[16]

On 30 May 2006, decision was rendered by the RTC, finding appellant guilty beyond reasonable doubt of arson and frustrated homicide, thus:

WHEREFORE, in Crim. Case No. 2979-Bg., the Court FINDS and DECLARES the accused JESSIE VILLEGAS MURCIA, guilty beyond reasonable doubt of the crime of arson as charged and defined under Art. 320 of the Revised Penal Code, as amended by R.A. No. 7659, and he is hereby sentenced to suffer the extreme penalty

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[12] TSN, 14 September 2004, p. 8.

[13] Records, p. 173.

[14] *Id.* at 29.

[15] TSN, 12 July 2005, pp. 4-11.

[16] TSN, 26 July 2005, p. 9.

of death; to indemnify the heirs of the victim Felicidad Quilates, the amount of Php50,000.00 as moral damages; Php50,000.00 as death indemnity; Php10,000.00 as actual damages and another Php10,000.00 as temperate damages.

Further, the accused is ordered to indemnify Eulogio Quilates the amount of ₱250,000.00, representing the value of the burned house.

In Crim. Case No. 2980-Bg., the Court likewise FINDS and DECLARES the accused JESSIE VILLEGAS MURCIA guilty beyond reasonable doubt of the crime of frustrated homicide as charged and he is hereby sentenced to suffer the indeterminate penalty of FOUR (4) YEARS of *prision correccional* as minimum, to TEN (10) YEARS of *prision mayor* as maximum; to pay the victim Alicia Q. Manlupig the amount of Php10,000.00 as temperate damages; and to pay the costs.

In the service of his sentence, the accused shall be credited with his preventive imprisonment under the terms and conditions, provided for by Art. 29 of the Revised Penal Code, as amended.

Let the record of Crim. Case No. 2979-Bg. be sent to the Court of Appeals for automatic review.[17]

The trial court found that the *corpus delicti* in arson, as well as the identity of the perpetrator, were established beyond reasonable doubt by the prosecution. While there was no evidence to directly link appellant to the crime, the trial court relied on circumstantial evidence.

In view of the penalty imposed, the case was forwarded to the Court of Appeals for automatic review and judgment.

The Court of Appeals affirmed the trial court's findings but reduced the penalty from death to *reclusion perpetua.*

Appellant filed a notice of appeal, which was given due course by the Court of Appeals on 22 January 2008. In a Resolution[18] dated 7 July 2008, this Court required the parties to simultaneously submit their respective supplemental briefs. Appellant and the

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[17] CA *rollo,* p. 107.

[18] *Rollo,* p. 22.

Office of the Solicitor General (OSG) both filed their manifestations,[19] stating that they would no longer file any supplemental briefs and instead adopt their respective briefs.

Appellant admitted to the crime of frustrated homicide, hence the review is limited to the crime of arson.

Appellant maintains his innocence of the charge of arson. He questions the credibility of some witnesses and specifically imputes ill-motive on the part of Herminio in testifying against him, especially after their fight.[20] Appellant submits that the testimonies of witnesses, which failed to turn into a coherent whole, did not prove the identity of the perpetrator.[21]

On the other hand, the OSG banks on circumstantial evidence, as relied to by the trial court, to prove the guilt of appellant.[22] The OSG vouches for the credibility of the prosecution witnesses and avers that their testimonies have proven the *corpus delicti* and warrant appellant's conviction.[23]

In the prosecution for arson, proof of the crime charged is complete where the evidence establishes: (1) the *corpus delicti*, that is, a fire because of criminal agency; and (2) the identity of the defendant as the one responsible for the crime. In arson, the c*orpus delicti* rule is satisfied by proof of the bare fact of the fire and of it having been intentionally caused. Even the uncorroborated testimony of a single eyewitness, if credible, is enough to prove the *corpus delicti* and to warrant conviction.[24]

The photographs,[25] evidencing the charred remains of the houses, established the occurrence of the fire. In this case,

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[19] *Id.* at 24-25 and 29-30.

[20] CA *rollo*, pp. 90-91.

[21] *Id.* at 93.

[22] *Id.* at 126-127.

[23] *Id.* at 125.

[24] *People v. De Leon*, G.R. No. 180762, 4 March 2009, 580 SCRA 617, 627; *Gonzales, Jr. v. People*, G.R. No. 159950, 12 February 2007, 515 SCRA 480, 486-487; *People v. Oliva*, 395 Phil. 265, 274-275 (2000).

[25] Records, p. 178.

however, there is no direct evidence to establish the culpability of appellant. At any rate, direct evidence is not the sole means of establishing guilt beyond reasonable doubt. Established facts that form a chain of circumstances can lead the mind intuitively or impel a conscious process of reasoning towards a conviction. Indeed, rules on evidence and principles in jurisprudence have long recognized that the accused may be convicted through circumstantial evidence.[26]

Section 4 of Rule 133 of the Rules of Court provides:

> Section 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 order to justify a conviction upon circumstantial evidence, the combination of circumstances must be such as to leave no reasonable doubt in the mind as to the criminal responsibility of the accused.[27]

The appellate court considered the following circumstances to establish an unbroken chain of events pointing to the logical conclusion that appellant started the fire:

> First, accused-appellant Murcia returned inside E. Quilates' house after chasing H. Manlupig with a *bolo* and after being pacified by R. Viduya and J. Viduya;
>
> Second, during the resumption of their drinking session, R. Viduya and H. Manlupig saw a thick smoke emanating from E. Quilates' house particularly the window of accused-appellant Murcia's room in the ground floor;

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[26] *People v. Gonzales*, G.R. No. 180448, 28 July 2008, 560 SCRA 419, 424.

[27] *People v. Delim*, G.R. No. 175942, 13 September 2007, 533 SCRA 366, 375-376; *People v. Sevilleno*, 469 Phil. 209, 220 (2004); *People v. Acosta*, 382 Phil. 810, 823 (2003).

Third, H. Manlupig peeped through the said window and saw accused-appellant Murcia throwing cartons of clothes into the fire. Meanwhile, E. Quilates, who was then cooking at the second floor, went downstairs and saw the fire coming from the room occupied by accused-appellant Murcia in the ground floor;

Fourth, R. Viduya saw accused-appellant Murcia stabbing F. Quilates and A. Manlupig, among other persons. E. Quilates saw his sister F. Quilates with blood oozing from her mouth. Accused-appellant Murcia met him at the ground brandishing a knife at him which prevented him from helping the wounded F. Quilates and forced him to run away for safety. E. Quilates' other sister, A. Manlupig, was also seen wounded and lying unconscious in the canal; and

Fifth, the houses of E. Quilates and his neighbors were razed by fire and the commission of the crime of arson resulted in the demise of F. Quilates whose remains were burned beyond recognition.[28]

Indeed, appellant was last seen inside the house before the fire started. Eulogio and Ricky saw smoke emanating from the room of appellant. Herminio testified that he saw appellant burning clothes in his room. Appellant then went on a stabbing rampage while the house was on fire. While nobody directly saw appellant burn the house, these circumstances would yield to a logical conclusion that the fire that gutted eight (8) houses was authored by appellant.

Necessarily, the issue narrows down to credibility of the witnesses. Worthy of reiteration is the doctrine that on matters involving the credibility of witnesses, the trial court is in the best position to assess the credibility of witnesses since it has observed firsthand their demeanor, conduct and attitude under grilling examination. Absent any showing of a fact or circumstance of weight and influence which would appear to have been overlooked and, if considered, could affect the outcome of the case, the factual findings and assessment on the credibility of a witness made by the trial court remain binding on an appellate tribunal.[29]

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[28] *Rollo*, pp. 12-13.

[29] *People v. Gonzales*, *supra* note 25 at 424-425; *Bricenio v. People*, G.R. No. 157804, 20 June 2006, 491 SCRA 489, 496.

In this case, We find no cogent reason to depart from the findings of the lower courts.

Appellant imputes ill-motive on the part of Herminio. This Court does not discount the fact that there was a fight between appellant and Herminio which preceded the occurrence of the fire. However, it cannot be presumed that Herminio will automatically give a false testimony against appellant. His testimony, having withstood cross-examination, has passed the scrutiny of the lower courts and was held to be credible.

The lower courts found appellant liable under Article 320(1) of the Revised Penal Code, as amended by Section 10 of Republic Act No. 7659. It may not be amiss to point out that there are actually two categories of arson, namely: Destructive Arson under Article 320 of the Revised Penal Code and Simple Arson under Presidential Decree No. 1316. Said classification is based on the kind, character and location of the property burned, regardless of the value of the damage caused.[30] Article 320 contemplates the malicious burning of structures, both public and private, hotels, buildings, edifices, trains, vessels, aircraft, factories and other military, government or commercial establishments by any person or group of persons. On the other hand, Presidential Decree No. 1316 covers houses, dwellings, government buildings, farms, mills, plantations, railways, bus stations, airports, wharves and other industrial establishments.[31]

A close examination of the records, as well as description of the crime as stated in the information, reveals that the crime committed is in fact simple arson because the burned properties are residential houses.

At any rate, the penalty for simple arson resulting to death, under Section 5 of Presidential Decree No. 1613,[32] is *reclusion*

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[30] *People v. Malngan,* G.R. No. 170470, 26 September 2006, 503 SCRA 294, 327.

[31] *Id.* at 328.

[32] Sec. 5. *Where Death Results from Arson.* – If by reason of or on the occasion of arson death results, the penalty of *reclusion perpetua* to death shall be imposed.

perpetua to death. With the repeal of the death penalty law through Republic Act No. 9346, the appellate court correctly imposed the penalty of *reclusion perpetua*.

This Court, however, takes exception to the trial court's award of damages.

With respect to the heirs of Felicidad, We modify the amount of temperate damages from ₱10,000.00 to ₱ 25,000.00, and accordingly delete the amount of actual damages, in line with the ruling in *People v. Villanueva.*[33] In said case, the Court held that when actual damages proven by receipts during the trial amount to less than ₱25,000.00, the award of temperate damages for ₱25,000.00 is justified in lieu of actual damages of a lesser amount.[34]

Anent the actual damages awarded to Eulogio amounting to ₱250,000.00, as indemnification for the burned house, We note that said amount representing the value of the burned house was merely given by Eulogio as an estimate. It was not substantiated by any document or receipt. For one to be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and the best evidence obtainable by the injured party.[35]

Instead, We award temperate damages in accordance with Art. 2224 of the Civil Code, providing that temperate damages may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proven with certainty.[36] It is thus reasonable to expect that the value of the house burned down amounted to at least ₱200,000.00.

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[33] 456 Phil. 14 (2003).

[34] *Id*. at 29.

[35] *People v. Dela Cruz*, G.R. No. 168173, 24 December 2008, 575 SCRA 412, 446-447.

[36] *People v. Berando*, G.R. No. 177827, 30 March 2009; *People v. Almoguerra*, 461 Phil. 340, 362 (2003).

WHEREFORE, the appealed decision finding appellant JESSIE VILLEGAS MURCIA guilty beyond reasonable doubt of the crime of arson and sentencing him to *reclusion perpetua* is *AFFIRMED* with *MODIFICATIONS*:

1. Appellant is ordered to indemnify the heirs of Felicidad Quilates the amount of ₱50,000.00 as moral damages; ₱50,000.00 as death indemnity; and ₱25,000.00 as temperate damages.
2. The award of ₱10,000.00 as actual damages in favor of the heirs of Felicidad Quilates is deleted.
3. Appellant is ordered to pay Eulogio Quilates the amount of ₱200,000.00 as temperate damages.

The award of ₱250,000.00 as actual damages in favor of Eulogio Quilates is deleted.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 183453. March 9, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **DANILO PACULBA,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; VICTIM'S CREDIBILITY BECOMES THE SINGLE MOST IMPORTANT ISSUE IN A PROSECUTION FOR RAPE; TEST OF CREDIBILITY FOR A RAPE VICTIM WAS MORE THAN SUFFICIENTLY MET IN CASE AT

BAR.— In a prosecution for rape, the victim's credibility becomes the single most important issue. For when a woman says she was raped, she says in effect all that is necessary to show that rape was committed; thus, if her testimony meets the test of credibility, the accused may be convicted on the basis thereof. The rule is settled that the trial court's findings on the credibility of witnesses and of their testimonies are entitled to the highest respect and will not be disturbed on appeal, in the absence of any clear showing that the court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would have affected the result of the case. This is because the trial court, having seen and heard the witnesses themselves, and observed their behavior and manner of testifying, is in a better position to decide the question of credibility. In this case, the test of credibility for a rape victim was more than sufficiently met.

2. ID.; ID.; ID.; DESPITE ITS ALLEGED LACK OF DETAILS, THE VICTIM'S ACCOUNT SUFFICIENTLY ESTABLISHED THE ELEMENTS OF THE CRIME OF QUALIFIED RAPE; RAPE IS A HARROWING EXPERIENCE, THE EXACT DETAILS OF WHICH ARE USUALLY NOT REMEMBERED.— Appellant seeks to destroy AAA's credibility by assailing her testimony for lack of details as to how rape was committed. In *People v. Alipio*, the Court ruled that 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. AAA recounted in simple yet very clear terms the different instances of how she was ravished by appellant. Through her account, the elements of the crime of qualified rape were sufficiently established.

3. ID.; ID.; ALIBI; APPELLANT'S UNCORROBORATED ALIBI CANNOT PROSPER OVER THE VICTIM'S POSITIVE IDENTIFICATION.— Alibi is an inherently weak defense and can easily be fabricated. The settled jurisprudence is that categorical and consistent positive identification, absent any showing of ill motive on the part of the eyewitness testifying thereon, prevails over the defenses of denial and alibi which, if not substantiated by clear and convincing proof, as in the case at bar, constitute self-serving evidence undeserving of

weight in law. Thus, appellant's alibi, more so that it is not corroborated by any witness, cannot prosper over AAA's positive identification.

4. ID.; ID.; ERRORS OR INCONSISTENCIES AS TO THE EXACT TIME OR DATE OR DAY OF THE WEEK WHEN THE RAPE WAS COMMITTED DO NOT IMPAIR THE CREDIBILITY OF A WITNESS, FOR AS LONG AS THERE IS CONSISTENCY IN RELATING THE PRINCIPAL OCCURRENCE AND POSITIVE IDENTIFICATION OF APPELLANT.— Appellant noted a discrepancy on the dates provided in the documentary evidence presented by the prosecution. The alleged date of the last crime of attempted rape was committed on 21 November 2003. On the other hand, AAA underwent medical examination presumably after the attempted rape but the date indicated in the medical report was 3 November 2003. Indeed, there seems to be an error in specifying the dates. At any rate, errors or inconsistencies as to the exact time or date or day of the week when the rape was consummated do not impair the credibility of the complaining witness, for as long as there is consistency in relating the principal occurrence and positive identification of the assailant. Moreover, the exact date is not an essential element of rape. It bears no significance to the actual commission of the crime.

5. CRIMINAL LAW; QUALIFIED RAPE; ELEMENTS THEREOF; ESTABLISHED IN CASE AT BAR.— Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659, provides in the first paragraph as follows: When and how rape is committed. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances: 1. By using force or intimidation; 2. When the woman is deprived of reason or otherwise unconscious; and 3. When the woman is under twelve years of age or is demented. The crime of rape shall be punished by *reclusion perpetua*. First, AAA testified that appellant had sexual intercourse with her. Her testimony was supported by the medical certificate issued and testified on by Dr. Liwanag. Hence, the element of carnal knowledge is present in this case. Second, force or intimidation was employed by appellant and he succeeded in having carnal knowledge of AAA. AAA testified several times that she was afraid of her father. Appellant was able to effectively intimidate and threaten AAA to submit to

his will because he wields moral ascendancy over her. As aptly put by this Court in *People v. Sandico*: x x x force and intimidation necessary in rape is naturally a relative term, depending not only on the age, size and strength of the parties, but also on their relation to each other. Considering that the assailant is no less than complaining witness' own father who wields parental influence over her person, the crime undoubtedly was consummated with facility. The reason is that in rape committed by a father against his own daughter, the former's moral ascendancy over the latter substitutes for violence or intimidation. A rape victim's actions are oftentimes overwhelmed by fear rather than reason. It is this fear, springing from the initial rape, that the perpetrator hopes to build a climate of extreme psychological terror which would, he hopes, numb his victim into silence and submissiveness. Incestuous rape magnifies the terror because the perpetrator is the person normally expected to give solace and protection to the victim. Furthermore, in incest, access to the victim is guaranteed by the blood relationship, proximity magnifying the sense of helplessness and degree of fear.

6. ID.; ID.; MINORITY AND RELATIONSHIP QUALIFY THE CRIME OF RAPE IN CASE AT BAR.— Minority and relationship qualify the crime of rape. These circumstances were properly appreciated by the courts. AAA's birth certificate clearly shows that she was twelve years old at the time of the incident and that appellant is her father. Relationship between father and daughter was already stipulated by the parties during pre-trial. The supposed erasures made on the birth certificate are too trivial to deserve consideration. Nonetheless, the local civil registrar explained that they ran out of forms so they instead used an old form. Verily, the prosecution had sufficiently alleged and duly proved the twin qualifying circumstances of minority and relationship.

7. ID.; ID.; ILL MOTIVES BECOME INCONSEQUENTIAL IF THERE IS AN AFFIRMATIVE AND CREDIBLE DECLARATION FROM THE RAPE VICTIM, WHICH CLEARLY ESTABLISHES THE LIABILITY OF THE ACCUSED.— Appellant imputes ill motive on the part of AAA's relatives in filing the present case against him. Motives such as family feuds, resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a rape

victim. Also, ill motives become inconsequential if there is an affirmative and credible declaration from the rape victim, which clearly establishes the liability of the accused.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

On appeal is the Decision[1] of the Court of Appeals dated 29 April 2008 in CA-G.R. CR-HC No. 00280, affirming with modification the Decision[2] of the Regional Trial Court (RTC) of Kapatagan, Lanao del Norte, Branch 21, finding appellant Danilo Paculba, guilty beyond reasonable doubt of the crime of Qualified Rape and Attempted Rape.

Appellant was charged with four (4) counts of qualified rape in the Informations which read as follows:

Criminal Case No. 21-1220

That sometime in the month of June, 2002 at [xxx,xxx],[3] Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously have carnal knowledge upon one [AAA],[4] a minor 12 years of age and who is accused's own daughter, against her will and consent, which acts of the accused debases, degrades and demeans the intrinsic worth and dignity of said child as a human being.

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[1] Penned by Associate Justice Elihu A. Ybañez with Associate Justices Romulo V. Borja and Mario V. Lopez, concurring. *Rollo,* pp. 3-31.

[2] Presided by Judge Jacob T. Malik. Records, pp. 48-74.

[3] The place of commission is withheld to preserve confidentiality of the identity of the victim. See *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419, 425-426.

[4] Likewise, the victim's real name, as well as the members of her immediate family, is withheld to protect her privacy, also pursuant to *People v. Cabalquinto*.

Contrary to and in VIOLATION OF R.A. 8353 in relation to R.A. 7610.

Criminal Case No. 21-1221

That sometime in the month of August, 2002 at [xxx,xxx], Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously have carnal knowledge upon one [AAA], a minor 12 years of age and who is accused's own daughter, against her will and consent, which acts of the accused debases, degrades and demeans the intrinsic worth and dignity of said child as a human being.

Contrary to and in VIOLATION OF R.A. 8353 in relation to R.A. 7610.

Criminal Case No. 21-1222

That sometime in the month of November, 2002 at [xxx,xxx], Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously have carnal knowledge upon one [AAA], a minor 12 years of age and who is accused's own daughter, against her will and consent, which acts of the accused debases, degrades and demeans the intrinsic worth and dignity of said child as a human being.

Contrary to and in VIOLATION OF R.A. 8353 in relation to R.A. 7610.

Criminal Case No. 21-1223

That sometime in the month of January[,] 2003 at [xxx,xxx], Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously have carnal knowledge upon one [AAA], a minor 12 years of age and who is accused's own daughter, against her will and consent, which acts of the accused debases, degrades and demeans the intrinsic worth and dignity of said child as a human being.

Contrary to and in VIOLATION OF R.A. 8353 in relation to R.A. 7610.

In addition, an Information was filed charging appellant with attempted rape. The accusatory portion reads:

Criminal Case No. 21-1219

That on or about the 21st day of November[,] 2003, at [xxx, xxx], Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously commence the commission of the crime of rape directly by overt acts, to wit: that while complainant [AAA], a minor 12 years of age and who is accused's own daughter, was sleeping inside their house, the said accused removed her short pants and panty, placed himself on top of her without underwear, with the intention of having carnal knowledge of her, but did not perform all the acts of execution which should have produced the crime of rape as a consequence by reason of some cause or accident other than his own spontaneous desistance, that is, the timely awakening of said complainant who was able to push the accused and run away.

CONTRARY to and in VIOLATION OF R.A. 8353 in relation to Article 6 of the Revised Penal Code and R.A. 7610.[5]

Appellant pleaded not guilty to all the charges. Trial on the merits ensued.

Testifying for the prosecution, AAA, who was only twelve (12) years old at the time of the commission of the crimes, recounted all the harrowing details which transpired in June, August, November 2002, January 2003, and 21 November 2003. In the first four (4) occasions, AAA narrated that while she was sleeping inside her grandparents' house during the night, appellant suddenly covered her mouth, removed her pants and panty, and placed his body on top of her. Appellant then allegedly inserted his penis into AAA's vagina and she felt pain. She, however, kept the incidents to herself out of fear.[6] Finally, on 21 November 2003, at around 10:00 p.m., AAA mustered courage to resist appellant's advances. When appellant removed his brief and attempted to place his body on top of AAA's, the latter pushed him away and ran towards the room of her grandmother, BBB.[7] AAA told BBB about how appellant tormented her. BBB went out to look for appellant, who was

[5] Records, pp. 48-50.

[6] TSN, 14 September 2004, pp. 23-28.

[7] *Supra* note 4.

able to escape by jumping out of the window. When appellant returned to the house, CCC,[8] AAA's grandfather, wanted to hack him but the latter threatened to chop CCC into pieces. Thereafter, appellant left the house.[9]

On the following morning, AAA, accompanied by CCC, went to report the incident first to the *barangay* captain and then to the police.

AAA was subjected to a physical examination by Dr. Ava Liwanag on 3 November 2003. Her findings were contained in a medico-legal report which states:

> No hematoma, no abrasion, no contusion seen
> Hymen severely lacerated (old)
> Vaginal rugal slightly exposed.[10]

During the direct examination, Dr. Liwanag concluded that AAA had sexual intercourse on several times.[11]

Mrs. Amparo Baydal, the Municipal Civil Registrar of xxx, Lanao del Norte, testified on the genuineness of the entries in the certified true copy of AAA's birth certificate.

The prosecution presented a certified true copy of AAA's birth certificate to show that she was born on 23 January 1980, and that her father is Danilo Paculba.[12]

On the other hand, appellant interposed alibi as his defense. He claimed that in June 2002, the date when the first rape was apparently committed, he lived in the house of a certain Nadong Tabias situated in Magsaysay, Lanao del Norte. In August 2002, appellant declared that he was in Cebu working as a quack doctor. In November 2002, he stated that he was in Malabang, Lanao del Sur. In January 2003, he purportedly went back to Magsaysay, Lanao del Norte. And on 21 November 2003,

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[8] *Id.*

[9] TSN, 14 September 2004, pp. 29-30.

[10] Records, p. 5.

[11] TSN, 24 August 2004, pp. 3-4.

[12] Records, p. 6.

appellant said that he was living in the house of Baking Dumasig in Tangub, Lanao del Norte. He denied the accusations of AAA and intimated that the relatives of his deceased wife blamed him for the death of his wife, hence these cases were filed against him.[13]

Appellant was found guilty by the RTC of four (4) counts of rape and one (1) count of attempted rape. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered:

a) finding accused DANILO PACULBA guilty beyond reasonable doubt for raping AAA in June, 2002, and the Court hereby sentences him to death by lethal injection and to indemnify AAA in the amount of ₱75,000.00;

b) finding accused DANILO PACULBA guilty beyond reasonable doubt for raping AAA in August, 2002, and the Court hereby sentences him to death by lethal injection and to indemnify AAA in the amount of ₱75,000.00;

c) finding accused DANILO PACULBA guilty beyond reasonable doubt for raping AAA in November, 2002, and the Court hereby sentences him to death by lethal injection and to indemnify AAA in the amount of ₱75,000.00;

d) finding accused DANILO PACULBA guilty beyond reasonable doubt for raping AAA in January, 2003, and the Court hereby sentences him to death by lethal injection and to indemnify AAA in the amount of ₱75,000.00; and

e) finding accused AAA guilty beyond reasonable doubt for attempting to rape AAA on 21 November 2003,and the Court hereby sentences him to suffer an indeterminate prison term of 6 years and 1 day of *prision mayor* as minimum to 12 years and 1 day of *reclusion temporal* as minimum.[14]

The trial court gave full credence to the testimony of AAA and found her answers to be "simple and candid, and were all

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[13] TSN, 5 October 2004, pp. 48-52.

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

reinforced and sufficiently explained by succeeding ones."[15] Appellant's alibi was dismissed for being weak and unsubstantiated.[16]

In view of the penalty imposed, the case was elevated to this Court for review. However, conformably with our decision in *People v. Mateo*,[17] the case was transferred to the Court of Appeals for appropriate action and disposition.[18]

The Court of Appeals affirmed with modification the judgment of the trial court, *viz*:

> WHEREFORE, in light of the foregoing, the Decision dated December 29, 2004 of the Regional Trial Court, 12th Judicial Region, Branch 21, Kapatagan, Lanao del Norte, is hereby AFFIRMED with MODIFICATIONS. Accused-appellant Danilo Paculba is SENTENCED to the penalty of *reclusion perpetua* with no possibility of parole for each of the four (4) counts of qualified rape committed against AAA in Criminal Case Nos. 21-1220, 21-1221, 21-1222 and 21-1223. Accused-appellant is further ORDERED to indemnify AAA for each count of qualified rape, in the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱25,000.00 as exemplary damages.
>
> For the crime of attempted rape committed against AAA in Criminal Case No. 21-1219, accused-appellant is hereby SENTENCED to an indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correccional* as minimum, to eight (8) years and one (1) day of *prision mayor* as maximum. In addition, accused-appellant is ORDERED to indemnify AAA for the crime of attempted rape, in the amounts of ₱30,000.00 as civil indemnity, ₱25,000.00 as moral damages and ₱10,000.00 as exemplary damages. With costs.[19]

The appellate court found AAA's testimony credible and consistent with the medical findings that she was raped.

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[15] Records, p. 37.

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

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

[18] CA *rollo*, p. 54.

[19] *Rollo*, p. 30.

Appellant filed a notice of appeal on 29 May 2008.

In the Resolution of 27 August 2008, this Court gave due course to the appeal and ordered the respective parties to file their supplemental briefs.[20] Both parties manifested that they shall adopt their briefs filed before the appellate court.[21] Thereafter, the case was deemed submitted for decision.

In his brief, appellant essentially questions the credibility of AAA. He argues that AAA's account of each rape was devoid of any distinctive detail which would render her testimony spontaneous and candid.[22] Appellant also points out that the date when the alleged attempted rape was committed, or on 21 November 2003, cannot be reconciled with the date when AAA was examined by the medico-legal expert, which was on 3 November 2003.[23] Moreover, appellant claims that the existence of erasures on entries in AAA's birth certificate renders the document doubtful and, thus, did not sufficiently establish the real age of AAA.[24]

The Office of the Solicitor General, in its brief, vouches for the credibility of AAA. Furthermore, it belies appellant's defense of denial because it was not corroborated by any other witness.[25]

The lone issue to be resolved by this Court is whether appellant's guilt has been proven beyond reasonable doubt.

We completely agree with the findings of the Court of Appeals, particularly on the credibility of the rape victim.

In a prosecution for rape, the victim's credibility becomes the single most important issue. For when a woman says she was raped, she says in effect all that is necessary to show that

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[20] *Id.* at 37.

[21] *Id.* at 45-46 and 51.

[22] CA *rollo,* p. 72.

[23] *Id.* at 73.

[24] *Id.*

[25] *Id.* at 128.

rape was committed; thus, if her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[26]

The rule is settled that the trial court's findings on the credibility of witnesses and of their testimonies are entitled to the highest respect and will not be disturbed on appeal, in the absence of any clear showing that the court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would have affected the result of the case. This is because the trial court, having seen and heard the witnesses themselves, and observed their behavior and manner of testifying, is in a better position to decide the question of credibility.[27]

In this case, the test of credibility for a rape victim was more than sufficiently met.

The lower court lent full credence to AAA's testimony that appellant raped her on four occasions and attempted to rape her on 21 November 2003. AAA testified in a clear, spontaneous and candid manner. AAA categorically testified that her father sexually abused her, thus:

Q: Sometimes *(sic)* on the night of June 2002, what incident have you recalled?

A: He did something to me.

Q: Who is the person who do *(sic)* something to you?

A: Danilo Paculba.

Q: Your father?

A: Yes, sir.

Q: What did he do to you?

A: He cover *(sic)* my mouth and removed my pants and panty and placed his body on top of me.

Q: What else?

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[26] *People v. Mingming*, G.R. No. 174195, 10 December 2008, 573 SCRA 509, 532; *People v. Capareda*, 473 Phil. 301, 330 (2004); *People v. Galido*, G.R. Nos. 148689-92, 30 March 2004, 426 SCRA 502, 516.

[27] *People v. Palgan*, G.R. No. 186234, 21 December 2009.

A: He make (*sic)* a push and pull movement.

Q: Towards whom that he made the push and pull movement?

A: My father made a push and pull movement on me.

Q: What do you mean by this push and pull movement by your father towards you?

A: I feel pain.

Q: What part of your body (*sic)* feel pain?

A: My vagina.

Q: Why, what did your father do to your vagina?

A: He inserted his penis into my vagina.

Q: While he inserted his penis to your vagina, what did you feel?

A: I was afraid.

Q: What else?

A: A heavy pain.[28]

AAA's testimony regarding the subsequent rapes in August and November 2002, and January 2003 was also of the same import.[29]

Appellant seeks to destroy AAA's credibility by assailing her testimony for lack of details as to how rape was committed. In *People v. Alipio*,[30] the Court ruled that 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.[31] AAA recounted in simple yet very clear terms the different instances of how

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[28] TSN, 14 September 2004, p. 5.

[29] *Id.* at 25-27.

[30] G.R. No. 185285, 5 October 2009, citing *People v. Sagun*, 363 Phil. 1 (1999).

[31] *People v. Sagun, id.* at 17.

she was ravished by appellant. Through her account, the elements of the crime of qualified rape were sufficiently established.

Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659, provides in the first paragraph as follows:

> When and how rape is committed. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
>
> 1. By using force or intimidation;
>
> 2. When the woman is deprived of reason or otherwise unconscious; and
>
> 3. When the woman is under twelve years of age or is demented.
>
> The crime of rape shall be punished by *reclusion perpetua*.

First, AAA testified that appellant had sexual intercourse with her. Her testimony was supported by the medical certificate issued and testified on by Dr. Liwanag. Hence, the element of carnal knowledge is present in this case.

Second, force or intimidation was employed by appellant and he succeeded in having carnal knowledge of AAA. AAA testified several times that she was afraid of her father. Appellant was able to effectively intimidate and threaten AAA to submit to his will because he wields moral ascendancy over her. As aptly put by this Court in *People v. Sandico*:[32]

> x x x force and intimidation necessary in rape is naturally a relative term, depending not only on the age, size and strength of the parties, but also on their relation to each other. Considering that the assailant is no less than complaining witness' own father who wields parental influence over her person, the crime undoubtedly was consummated with facility. The reason is that in rape committed by a father against his own daughter, the former's moral ascendancy over the latter substitutes for violence or intimidation. A rape victim's actions are oftentimes overwhelmed by fear rather than reason. It is this fear,

[32] *People v. Sandico*, 366 Phil. 663 (1999), citing *People v. Melivo*, 323 Phil. 412, 421-422 (1996).

springing from the initial rape, that the perpetrator hopes to build a climate of extreme psychological terror which would, he hopes, numb his victim into silence and submissiveness. Incestuous rape magnifies the terror because the perpetrator is the person normally expected to give solace and protection to the victim. Furthermore, in incest, access to the victim is guaranteed by the blood relationship, proximity magnifying the sense of helplessness and degree of fear.[33]

Alibi is an inherently weak defense and can easily be fabricated.[34] The settled jurisprudence is that categorical and consistent positive identification, absent any showing of ill motive on the part of the eyewitness testifying thereon, prevails over the defenses of denial and alibi which, if not substantiated by clear and convincing proof, as in the case at bar, constitute self-serving evidence undeserving of weight in law.[35] Thus, appellant's alibi, more so that it is not corroborated by any witness, cannot prosper over AAA's positive identification.

Appellant noted a discrepancy on the dates provided in the documentary evidence presented by the prosecution. The alleged date of the last crime of attempted rape was committed on 21 November 2003. On the other hand, AAA underwent medical examination presumably after the attempted rape but the date indicated in the medical report was 3 November 2003. Indeed, there seems to be an error in specifying the dates. At any rate, errors or inconsistencies as to the exact time or date or day of the week when the rape was consummated do not impair the credibility of the complaining witness, for as long as there is consistency in relating the principal occurrence and positive identification of the assailant.[36] Moreover, the exact date is not

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[33] *People v. Sandico*, *id.* at 675-676.

[34] *People v. Tamolon*, G.R. No. 180169, 27 February 2009, 580 SCRA 384, 395, citing *People v. Penaso*, 383 Phil. 200, 210 (2000); *People v. Evina*, 453 Phil. 25, 42 (2003), citing *People v. Cabiles*, 348 Phil. 220, 239 (1998).

[35] *People v. Payot, Jr.*, G.R. No. 175479, 23 July 2008, 559 SCRA 609, 621, citing *People v. Moralde*, 443 Phil. 369, 383 (2003).

[36] *People v. San Agustin*, 403 Phil. 93, 104 (2001), citing *People v. Valla*, 380 Phil. 31, 40 (2000).

an essential element of rape.[37] It bears no significance to the actual commission of the crime.

Paragraph 7(1) of Article 335 further provides that:

> The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:
>
> 1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

Minority and relationship qualify the crime of rape. These circumstances were properly appreciated by the courts. AAA's birth certificate clearly shows that she was twelve years old at the time of the incident and that appellant is her father. Relationship between father and daughter was already stipulated by the parties during pre-trial.[38]

The supposed erasures made on the birth certificate are too trivial to deserve consideration. Nonetheless, the local civil registrar explained that they ran out of forms so they instead used an old form.[39] Verily, the prosecution had sufficiently alleged and duly proved the twin qualifying circumstances of minority and relationship.

Finally, appellant imputes ill motive on the part of AAA's relatives in filing the present case against him. Motives such as family feuds, resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a rape victim. Also, ill motives become inconsequential if there is an affirmative and credible declaration from the rape victim, which clearly establishes the liability of the accused.[40]

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[37] *People v. Aboganda*, G.R. No. 183565, 8 April 2009; *People v. Arraz*, G.R. No. 183696, 24 October 2008, 570 SCRA 136, 146; *People v. Ibañez*, G.R. No.174656, 11 May 2007, 523 SCRA 136, 142.

[38] Records, pp. 20-22.

[39] TSN, 7 September 2004, p. 14.

[40] *Dizon v. People*, G.R. No. 170342, 18 September 2009, citing *People v. Audine*, G.R. No. 168649, 6 December 2006, 510 SCRA 531, 549 and *People v. Santos*, G.R. No. 172322, 8 September 2006, 501 SCRA 325, 343.

The Court of Appeals correctly reduced the death penalty to *reclusion perpetua* for each count of rape in Criminal Cases No. 21-1220, No. 21-1221, No. 21-1222, and No. 21-1223. The passage of Republic Act No. 9346, debars the imposition of death penalty without however declassifying the crime of qualified rape as heinous.

Likewise, the Court upholds the appellate court's award of damages.

WHEREFORE, in view of the foregoing, the decision of the Court of Appeals finding appellant DANILO PACULBA guilty of qualified rape in Criminal Cases No. 21-1220, No. 21-1221, No. 21-1222, and No. 21-1223, and attempted rape in Criminal Case No. 21-1219, is *AFFIRMED in toto*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 184600. March 9, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ANACITO DIMANAWA,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; ELEMENT OF FORCE OR INTIMIDATION; MUST BE VIEWED IN THE LIGHT OF THE VICTIM'S PERCEPTION AND JUDGMENT AT THE TIME OF COMMISSION OF THE CRIME.— AAA did not shout or offer resistance to the horrendous experience she

went through in the fiendish hands of her father. However, her failure to shout or tenaciously resist appellant does not mean that AAA voluntarily submitted to the criminal act of appellant. In rape, force and intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime. As already settled in jurisprudence, not all victims react the same way. Some people may cry out; some may faint; some may be shocked into insensibility; others may appear to yield to the intrusion. Some may offer strong resistance, while others may be too intimidated to offer any resistance at all. Besides, resistance is not an element of rape. A rape victim has no burden to prove that she did all within her power to resist the force or intimidation employed upon her. As long as force or intimidation was present, whether it was more or less irresistible, is beside the point.

2. ID.; ID.; ID.; IN RAPE CASES COMMITTED BY A CLOSE KIN, IT IS NOT NECESSARY THAT ACTUAL FORCE OR INTIMIDATION BE EMPLOYED; MORAL INFLUENCE OR ASCENDANCY TAKES THE PLACE OF VIOLENCE OR INTIMIDATION.— The prosecution sufficiently established that appellant employed force and intimidation in satisfying his bestial desire. AAA categorically stated that appellant dragged her to a grassy portion outside their house, and she could not do anything because appellant was carrying a bladed instrument. In *People of the Philippines v. Henry Guerrero y Agripa*, we explained — As an element of rape, force or intimidation need not be irresistible; it may be just enough to bring about the desired result. What is necessary is that the force or intimidation be sufficient to consummate the purpose that the accused had in mind. In *People v. Mateo*, we held: It is a settled rule that the force contemplated by law in the commission of rape is relative, depending on the age, size, or strength of the parties. It is not necessary that the force and intimidation employed in accomplishing it be so great and of such character as could not be resisted; it is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind. Intimidation, more subjective than not, is peculiarly addressed to the mind of the person against whom it may be employed, and its presence is

basically incapable of being tested by any hard and fast rule. Intimidation is normally best viewed in the light of the perception and judgment of the victim at the time and occasion of the crime. Moreover, in rape committed by a close kin, such as one committed by the victim's father stepfather, uncle, or by the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation.

3. ID.; ID.; ID.; HYMENAL LACERATION IS NOT AN ELEMENT OF RAPE.— In the context in which it is used in the Revised Penal Code (RPC), *carnal knowledge*, unlike its ordinary connotation of sexual intercourse, does not necessarily require that the vagina be penetrated or that the hymen be ruptured. The crime of rape is deemed consummated even when the man's penis merely enters the labia or lips of the female organ or, as we had declared in a case, by the *mere touching* of the external genitalia by a penis capable of consummating the sexual act. Where the victim is a child, the fact that there was no deep penetration of her vagina and that her hymen was still intact does not negate the commission of rape. Furthermore, the absence of fresh lacerations in the hymen cannot be a firm indication that she was not raped. Hymenal lacerations are not an element of rape. In this case, therefore, the medical finding that the hymen was still intact cannot affect the fact that sexual molestation took place, taking into account the prosecution's evidence that sufficiently established the commission of sexual abuse.

4. ID.; ID.; QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP WAS DULY ALLEGED AND PROVEN BEYOND REASONABLE DOUBT.— The RTC and the CA correctly appreciated the qualifying circumstances of minority and relationship. These aggravating, nay, qualifying, circumstances have been duly alleged and proven beyond reasonable doubt.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF A CHILD-VICTIM IS ENTITLED TO FULL WEIGHT AND CREDENCE; YOUTH AND IMMATURITY ARE BADGES OF TRUTH AND SINCERITY.— AAA was firm in her assertion that appellant raped her. She narrated

that appellant kissed her neck and breasts, and, thereafter, removed her short pants and underwear. Appellant then mounted her and inserted his penis into her vagina. It is a well-settled doctrine that the testimony of a child-victim is given full weight and credence, considering that when a woman, especially a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are badges of truth and sincerity. We also held in several cases that no young woman, especially one of tender age, would concoct a story of defloration in the hands of her own father, allow an examination of her private parts, and thereafter pervert herself by being subjected to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. It is highly improbable that a girl of tender years, not yet exposed to the ways of the world, would impute to her own father a crime so serious as rape if what she claims is not true. This is all the more true in our society since reverence and respect for the elders is deeply rooted in Filipino children and is even recognized by law. Thus, it is against human nature for a 12-year-old girl to fabricate a story that would expose herself, as well as her family, to a lifetime of shame, especially when her charge could mean the death or lifetime imprisonment of her own father. In fine, our own reading of the records yields no reason to disturb the trial court's finding, upholding the credibility of AAA, which by well-established precedents is given great weight and accorded high respect by the appellate court. The latter, by simply reading the transcripts, cannot be in a better position than the trial court to decide the question of the witnesses' credibility.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

NACHURA, *J.*:

Incestuous rape, especially one committed by a father against his own daughter, is a dastardly and repulsive crime that has no place in our society,[1] and, time and again, has been condemned by this Court. This case is no different.

On appeal is the April 30, 2008 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02722, which affirmed with modifications the January 12, 2007 decision[3] of the Regional Trial Court (RTC) of Sorsogon, Branch 65, in Criminal Case No. 05-722, finding appellant Anacito Dimanawa (appellant) guilty beyond reasonable doubt of rape, and sentencing him to suffer the penalty of *reclusion perpetua*.

In an Information dated January 25, 2005, appellant was indicted before the RTC for rape against his minor daughter AAA.[4] The accusatory portion of the Information reads:

> That on or about the 23rd day of January 2005[,] at more or less 8:00 o'clock in the evening[,] [in] Barangay Nasuje, municipality of Bulan, province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused[,] with lewd designs, by means of force and intimidation and taking advantage of the tender age of the victim, did then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA, a minor, 12 years of age, who cannot take care of herself, without her consent and against her will, which acts likewise constitute child abuse as it debases, demeans and degrades the intrinsic worth and dignity of a child as a human being, to her damage and prejudice.

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[1] *People v. Bawang*, 396 Phil. 311, 314 (2000).

[2] Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Edgardo P. Cruz and Apolinario D. Bruselas, Jr., concurring; *rollo*, pp. 2-14.

[3] CA *rollo*, pp. 58-68.

[4] The real name of the victim is withheld per R.A. No. 7610 and R.A. No. 9262. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

The commission of the crime is qualified by the fact that the victim is only 12 years of age and the offender is the father of the victim.[5]

When arraigned, appellant entered a plea of not guilty. Trial on the merits then ensued.

The People's version of the facts, culled from the testimonies of the victims and other witnesses, is as follows:

Private complainant AAA was born on August 30, 1992. She is the third among the four children of appellant and his wife BBB.

AAA resides with her father and siblings at Nasuje, Bulan, Sorsogon while her mother works in Metro Manila (TSN dated March 13, 2006, p. 4). However, sometime before January 23, 2005, AAA, then 12 years old, stayed in Manila with her mother for more than one month.

In the afternoon of January 23, 2005, AAA arrived at their residence in Nasuje from Manila. After a while, appellant left home and went to Costanera, which was about a half (½) kilometers away from Nasuje (TSN dated May 10, 2005, p. 4). Around 6:00 o' clock in the evening, appellant returned to their house, drunk (TSN dated May 17, 2005, p. 19).

Upon his arrival, appellant asked AAA who brought her to Manila. AAA replied that her mother requested someone to accompany her (TSN dated May 17, [2]005, p. 4). Appellant then chastised her by whipping her back with his shirt (TSN dated May 17, 2005, p. 6 and TSN dated March 13, 2005, p. 5).

After whipping her, appellant dragged her to a grassy portion outside their house. AAA could not do anything because appellant was carrying a bladed instrument (TSN dated May 17, 2005, pp. 14 and 20). At the grassy area, appellant kissed her neck and breast. Thereafter, appellant removed his pants and while AAA was lying down, removed her short pants and underwear (TSN dated Ma[y] 3, 2005, p. 13). Appellant then mounted her and inserted his penis into [her] vagina (TSN dated May 3, 2005, p. 14). After raping her, appellant brought her to Costanera, where they slept at the grassy area (TSN dated May 17, 2005, p. 6).

Meanwhile, around 12:00 o'clock in the morning of January 24, 2005, Brgy. Tanod DDD received a report that appellant was being

[5] Records, p. 1.

chased by some *barangay* tanod for chastising AAA and her brother CCC (TSN dated May 10, 2005, pp. 3-4). Around 4:00 o'clock in the morning of the same day, Brgy. Kagawad EEE woke him up and informed him that he saw appellant sleeping with AAA at Sitio Costanera. (TSN dated May 10, 2005, p. 4). Together with Brgy. Tanods DDD and FFF, EEE immediately proceeded to Sitio Costanera. There, they saw appellant holding AAA by wrapping his right arm around her body (TSN dated May 10, 2005, p. 6). Brgy. Kagawad EEE also talked to appellant and convinced him to go with them to the office of the *Barangay* Captain. Appellant heeded the request and went to the *Barangay* Captain. He was detained at the *barangay* jail (TSN dated July 5, 2005, p. 5).

On the other hand, the Brgy. Tanods DDD and FFF brought AAA to her co-member in Iglesia ni Cristo who lives in Nasuje. Subsequently, her fellow members in Iglesia ni Cristo, a certain GGG and HHH accompanied her to the police station in Poblacion to report the incident. At the police station, they were instructed to go to a doctor for AAA's physical examination (TSN dated May 17, 2005, p. 11).[6]

Dr. Estrella Payoyo, the Municipal Health Officer of Bulan, Sorsogon, conducted a physical examination on AAA, which yielded the following findings:

Multiple abrasions on the neck, on the right linear of the victim and the right face; lateral, confluent;

Lacerations on both sides of the vagina behind the hymen. The hymen was intact. Menarche was still negative because the victim does not menstruate yet.[7]

Appellant's defense consists of denial and alibi. He claimed that it was physically impossible for him to rape AAA on January 23, 2005 because, on that date, AAA was still on her way from Manila to Bulan. AAA arrived in Bulan only on January 24, 2005 at around 5:00 in the morning. His version of the facts is summarized as follows:

On January 24, 2005, at around 5:00 o'clock in the morning, AAA arrived in Bulan alone from Manila. [Appellant] asked her why she was permitted by her mother, who was in Manila working at the (sic)

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[6] CA *rollo*, pp. 134-136.

[7] Exhibit B; records, p. 8.

time, to travel alone. AAA answered that she was sent off by her mother at Philtranco terminal in Manila.

[Appellant] wanted to know from AAA who brought her from Bulan to Manila without his permission. She did not answer, so he whipped her with his shirt three (3) times. She cried out of pain. [Appellant] then tried to pacify AAA by asking her to accompany him to the place of her *kuya* HHH at *Barangay* Costanera, Bulan, Sorsogon. [Appellant] wanted to go fishing with HHH by "*palutang*" or fishnet at about 7:00 o'clock in the morning of January 24, 2005.

[Appellant] wanted to keep an eye on AAA, lest she might leave the house again. So, he ask[ed] her to accompany him. They were sitting along the seashore waiting for HHH, when the group of DDD arrived. The latter informed him [appellant] that he was being invited by the *barangay* captain to his house. AAA was taken away from him by another person. [Appellant] was subsequently detained at the *barangay* jail, where he was told by III, a sister of his wife that a rape charge was filed against him. (TSN, pp. 2-10, March 13, 2006).[8]

The trial court, however, disbelieved appellant's defense and rendered a judgment of conviction, *viz.*:

WHEREFORE, premises considered, accused **ANACITO DIMANAWA'S GUILT** having been established beyond reasonable doubt for the crime of RAPE (Art. 266-A) of the Revised Penal Code, as amended, in relation to Article III, Section 5 of RA 7610, he is hereby sentenced to suffer the indivisible penalty of *RECLUSION PERPETUA.* **To indemnify the offended party AAA** in the amount of Php50,000.00 as civil indemnity and another Php50,000.00 as moral damages. With costs *de oficio*.

The period of detention already served by the accused during his preventive imprisonment shall be credited in the service of his sentence, pursuant to the provision of Article 29 of the Revised Penal Code, as amended.

SO ORDERED.[9]

Appellant filed an appeal before the CA, assigning in his brief the following errors allegedly committed by the trial court:

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[8] CA *rollo*, pp. 44-45.

[9] Records, p. 107.

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE HIGHLY INCREDIBLE TESTIMONY OF THE PRIVATE COMPLAINANT.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

III

THE FINDINGS AS CONTAINED IN THE MEDICO-LEGAL REPORT DOES (sic) NOT SHOW AND/OR IS (sic) NOT CONSISTENT WITH THE OFFENSE OF RAPE, CONTRARY TO THE FINDINGS OF THE TRIAL COURT.[10]

The Office of the Solicitor General (OSG), on behalf of the People, also filed its brief,[11] with a recommendation for the modification of the civil indemnity awarded to AAA. It argued that appellant's guilt for rape was proven beyond reasonable doubt; and thus, the trial court correctly convicted him of the crime charged. The OSG further argued that the civil indemnity awarded was not in accordance with prevailing jurisprudence and recommended the increase of the amount of civil indemnity from ₱50,000.00 to ₱75,000.00.

On April 30, 2008, the CA rendered the assailed Decision, affirming, but with modifications, the RTC decision, *viz.*:

WHEREFORE, the trial court's Decision dated January 12, 2007 finding accused-appellant Anacito Dimanawa guilty beyond reasonable doubt of rape is affirmed, subject to the modification that the awards of civil indemnity and moral damages are increased to ₱75,000.00 each, and accused-appellant is further ordered to pay AAA exemplary damages in the amount of ₱25,000.00.

SO ORDERED.[12]

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[10] CA *rollo,* p. 39.

[11] *Id.* at 78-106.

[12] *Rollo,* p. 13.

Appellant is now before this Court offering the same arguments he submitted before the CA. Through his Manifestation and Motion in Lieu of Supplemental Brief,[13] appellant states that he will not file a Supplemental Brief and, in lieu thereof, he will adopt the Appellant's Brief he filed before the appellate court. On the other hand, the OSG, to this date, has not yet filed its supplemental brief. Thus, for failure to comply with the November 19, 2008 Resolution, the Court dispensed with the filing of the OSG's supplemental brief, and considered the case submitted for resolution.

Appellant insists that both the trial court and the CA erred in convicting him of the crime charged. He contends that the testimony of the victim was highly incredible and contrary to ordinary human experience. Appellant capitalizes on AAA's failure to offer resolute resistance and to shout or make an outcry during the carnal act.

Indeed, AAA did not shout or offer resistance to the horrendous experience she went through in the fiendish hands of her father. However, her failure to shout or tenaciously resist appellant does not mean that AAA voluntarily submitted to the criminal act of appellant. In rape, force and intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime. As already settled in jurisprudence, not all victims react the same way. Some people may cry out; some may faint; some may be shocked into insensibility; others may appear to yield to the intrusion. Some may offer strong resistance, while others may be too intimidated to offer any resistance at all. Besides, resistance is not an element of rape. A rape victim has no burden to prove that she did all within her power to resist the force or intimidation employed upon her. As long as force or intimidation was present, whether it was more or less irresistible, is beside the point.[14]

Appellant next contends that no proof of force or intimidation was offered by the prosecution. He, therefore, insists that the trial court erred in convicting him of rape.

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[13] *Id.* at 21-22.

[14] *People v. Baldo*, G.R. No. 175238, February 24, 2009, 580 SCRA 225, 233.

Contrary to appellant's claim, the prosecution sufficiently established that appellant employed force and intimidation in satisfying his bestial desire. AAA categorically stated that appellant dragged her to a grassy portion outside their house, and she could not do anything because appellant was carrying a bladed instrument.[15]

In *People of the Philippines v. Henry Guerrero y Agripa*,[16] we explained —

As an element of rape, force or intimidation need not be irresistible; it may be just enough to bring about the desired result. What is necessary is that the force or intimidation be sufficient to consummate the purpose that the accused had in mind. In *People v. Mateo*, we held:

> It is a settled rule that the force contemplated by law in the commission of rape is relative, depending on the age, size, or strength of the parties. It is not necessary that the force and intimidation employed in accomplishing it be so great and of such character as could not be resisted; it is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind.
>
> Intimidation, more subjective than not, is peculiarly addressed to the mind of the person against whom it may be employed, and its presence is basically incapable of being tested by any hard and fast rule. Intimidation is normally best viewed in the light of the perception and judgment of the victim at the time and occasion of the crime.

Moreover, in rape committed by a close kin, such as one committed by the victim's father, stepfather, uncle, or by the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation.[17]

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[15] TSN, May 17, 2005, pp. 14, 20.

[16] G.R. No. 170360, March 12, 2009.

[17] *People v. Corpuz*, G.R. No. 175836, January 30, 2009, 577 SCRA 465, 473.

AAA was firm in her assertion that appellant raped her. She narrated that appellant kissed her neck and breasts, and, thereafter, removed her short pants and underwear.[18] Appellant then mounted her and inserted his penis into her vagina.[19]

It is a well-settled doctrine that the testimony of a child-victim is given full weight and credence, considering that when a woman, especially a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are badges of truth and sincerity.[20]

We also held in several cases that no young woman, especially one of tender age, would concoct a story of defloration in the hands of her own father, allow an examination of her private parts, and thereafter pervert herself by being subjected to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. It is highly improbable that a girl of tender years, not yet exposed to the ways of the world, would impute to her own father a crime so serious as rape if what she claims is not true. This is all the more true in our society since reverence and respect for the elders is deeply rooted in Filipino children and is even recognized by law.[21] Thus, it is against human nature for a 12-year-old girl to fabricate a story that would expose herself, as well as her family, to a lifetime of shame, especially when her charge could mean the death or lifetime imprisonment of her own father.

In fine, our own reading of the records yields no reason to disturb the trial court's finding, upholding the credibility of AAA, which by well-established precedents is given great weight and accorded high respect by the appellate court. The latter, by simply reading the transcripts, cannot be in a better position than the trial court to decide the question of the witnesses' credibility.

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[18] TSN, May 3, 2005, p. 13.

[19] *Id.* at 14.

[20] *People v. Bejic*, G.R. No. 174060, June 25, 2007, 525 SCRA 488, 502-503.

[21] *Id.* at 503.

In his last-ditch effort to be exculpated, appellant calls this Court's attention to the medical finding that the hymen was still intact. He intimates that no rape occurred because of the absence of a broken hymen.

The argument is specious.

In the context in which it is used in the Revised Penal Code (RPC), *carnal knowledge*, unlike its ordinary connotation of sexual intercourse, does not necessarily require that the vagina be penetrated or that the hymen be ruptured. The crime of rape is deemed consummated even when the man's penis merely enters the labia or lips of the female organ or, as we had declared in a case, by the *mere touching* of the external genitalia by a penis capable of consummating the sexual act.[22] Where the victim is a child, the fact that there was no deep penetration of her vagina and that her hymen was still intact does not negate the commission of rape. Furthermore, the absence of fresh lacerations in the hymen cannot be a firm indication that she was not raped. Hymenal lacerations are not an element of rape.[23]

In *People v. Opong*,[24] this Court, in rejecting a similar contention, held:

> An intact hymen does not negate a finding that the victim was raped, and a freshly broken hymen is not an essential element of rape.
>
> In *People v. Gabayron,* we sustained the conviction of accused for rape even though the victim's hymen remained intact after the incidents because medical researches show that negative findings of lacerations are of no significance, as the hymen may not be torn despite repeated coitus. It was noted that many cases of pregnancy had been reported about women with unruptured hymens, and that there could still be a finding of rape even if, despite repeated intercourse over a period of years, the victim still retained an intact hymen without signs of injury.

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[22] *People v. Quiñanola*, 366 Phil. 390, 410 (1999).

[23] *People of the Philippines v. Benjie Resurreccion*, G.R. No. 185389, July 7, 2009.

[24] G.R. No. 177822, June 17, 2008, 554 SCRA 706.

In *People v. Capt. Llanto*, citing *People v. Aguinaldo*, we likewise affirmed the conviction of the accused for rape despite the absence of laceration on the victim's hymen since medical findings suggest that it is possible for the victim's hymen to remain intact despite repeated sexual intercourse. We elucidated that the strength and dilatability of the hymen varies from one woman to another, such that it may be so elastic as to stretch without laceration during intercourse; on the other hand, it may be so resistant that its surgical removal is necessary before intercourse can ensue.

In *People v. Palicte* and in *People v. Castro*, the rape victims involved were minors. The medical examination showed that their hymen remained intact even after the rape. Even then, we held that such fact is not proof that rape was not committed.[25]

In this case, therefore, the medical finding that the hymen was still intact cannot affect the fact that sexual molestation took place, taking into account the prosecution's evidence that sufficiently established the commission of sexual abuse.

In sum, we agree with the findings and conclusion of the trial court, as affirmed by the CA, that rape was committed by appellant against AAA.

We also agree with the RTC and the CA in appreciating the qualifying circumstances of minority and relationship. These aggravating, nay, qualifying, circumstances have been duly alleged and proven beyond reasonable doubt. AAA's birth certificate[26] shows that she was born on August 30, 1992, which means that she was 12 years and 5 months old when she was sexually assaulted. Her birth certificate also proves that AAA is the daughter of appellant.

The concurrence of the minority of the rape victim and her relationship to the offender is a special qualifying circumstance that upgrades the penalty.[27] AAA's minority and her relationship to appellant having been duly established, the imposition of the

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[25] *Id.* at 725-726. (Citations omitted.)

[26] Exhibit "A", records, p. 67.

[27] *People of the Philippines v. Ernesto Malibiran*, G.R. No. 173471, March 17, 2009.

death penalty upon appellant would have been the appropriate penalty were if not for the passage of Republic Act (R.A.) No. 9346, or *An Act Prohibiting the Imposition of Death Penalty in the Philippines*, which took effect on June 30, 2006. Section 2 of R.A. 9346 imposes the penalty of *reclusion perpetua* in lieu of death, when the law violated makes use of the nomenclature of the penalties of the RPC, as in this case. The penalty of *reclusion perpetua* imposed by the trial court and affirmed by the CA is, therefore, correct. Furthermore, pursuant to R.A. No. 9346, appellant shall not be eligible for parole.[28]

As regards the civil liability of appellant, we affirm the appellate court's award of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages, without need of proof. Similarly, we sustain the CA's award of exemplary damages to AAA, but we increase the award to ₱30,000.00.

WHEREFORE, the appeal is *DISMISSED*. The assailed Decision of the Court of Appeals in CA-G.R. CR-HC No. 02722 is *AFFIRMED* with *MODIFICATION*. Appellant Anacito Dimanawa is found *GUILTY* beyond reasonable doubt of *RAPE* and is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole, and to pay the victim, AAA, the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

SO ORDERED.

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

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[28] SEC. 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced *to reclusion perpetua,* by reason of the law, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended. (R.A. No. 9346)

[*] Vice Associate Justice Diosdado M. Peralta per Raffle dated April 20, 2009. Justice Peralta inhibited himself from taking part in the deliberation of the case, as his spouse, CA Justice Fernanda Lampas Peralta, is the *ponente* of the assailed Decision.

THIRD DIVISION

[G.R. No. 189279. March 9, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **NELSON PALMA *y* HANGAD,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ISSUE OF LEGALITY OF ARREST MUST BE RAISED BEFORE ARRAIGNMENT; FAILURE TO DO SO IS DEEMED A WAIVER OF THE ALLEGED DEFECT OR GROUND AND ESTOPPED THE ACCUSED FROM FURTHER ASSAILING THE LEGALITY OF HIS ARREST.— As to the regularity of appellant's arrest, we have consistently ruled that an accused is estopped from assailing the legality of his arrest if he fails to raise this issue, or to move for the quashal of the information against him on this ground, before arraignment. Here, appellant was arraigned, entered a plea of not guilty and actively participated in his trial. He raised the issue of the irregularity of his arrest only during his appeal to the CA. He is, therefore, deemed to have waived such alleged defect by submitting himself to the jurisdiction of the court through his counsel-assisted plea during the arraignment, by actively participating in the trial, and by not raising the objection before his arraignment.

2. ID.; CREDIBILITY OF WITNESSES; A MATTER BEST LEFT TO THE TRIAL COURTS.— On the question of the credibility of the prosecution witnesses, it is well-settled that findings of fact of the trial court on the credibility of witnesses and their testimonies are generally accorded great respect by the appellate court. The assessment of the credibility of witnesses is a matter best left to the trial court, because it is in the best position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied the appellate court.

3. ID.; ID.; POSITIVE DECLARATION DURING THE TRIAL THAT THE PERSONS CHARGED WERE THE MALEFACTORS IS NOT CONSIDERED SUGGESTIVE;

A POLICE LINEUP IS NOT REQUIRED FOR THE PROPER AND FAIR IDENTIFICATION OF OFFENDERS.— Neither can we sustain appellant's contention that his identification was marked by suggestiveness, because he was presented to AAA alone and not in a police lineup. As correctly pointed out by the CA, a police lineup is not required for the proper and fair identification of offenders. What is crucial is for the witness to positively declare during trial that the persons charged were the malefactors.

4. CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; NIGHTTIME OR NOCTURNITY; FACILITATED THE COMMISSION OF THE CRIME WITH IMPUNITY IN CASE AT BAR.— The CA did not err in sustaining the appreciation of the aggravating circumstance of nocturnity. As testified to by AAA, she easily recognized appellant as she regularly saw him standing at the C-5 Bridge every morning. In choosing to commit the crime in the evening and in bringing AAA under the bridge, nighttime facilitated the commission of the crime with impurity. As correctly stated by the CA, the cover of darkness aided appellant in order to ensure that the execution of his criminal action would go unnoticed.

5. ID.; ROBBERY WITH RAPE; IMPOSABLE PENALTY; CIVIL LIABILITY OF THE ACCUSED.— As the penalty is composed of two indivisible penalties, and in view of the presence of the aggravating circumstance of nocturnity, the higher penalty, which is death, should be imposed. However, with the effectivity of Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," appellant shall be meted the penalty of *reclusion perpetua* without eligibility for parole. In line with prevailing jurisprudence, the civil indemnity to be awarded should be ₱75,000.00, not ₱50,000.00, since the crime committed is qualified by a circumstance that warrants the imposition of the death penalty. Likewise, consistent with jurisprudence, the amount of moral damages is increased from ₱50,000.00 to ₱75,000.00, without any further need of proof. And while the award of exemplary damages is also called for to deter other individuals with aberrant sexual tendencies, the amount fixed therefor by the RTC, as affirmed by the CA, is reduced from ₱50,000.00 to ₱30,000.00.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

NACHURA, *J.*:

On appeal is the Court of Appeals (CA) Decision[1] dated June 25, 2009, in CA-G.R. CR-HC No. 03299, affirming the Regional Trial Court[2] (RTC) Decision[3] dated October 17, 2007, finding appellant Nelson Palma *y* Hangad guilty beyond reasonable doubt of Robbery with Rape.

The case stemmed from the following facts:

On December 7, 2004, at approximately 7:00 in the evening, AAA, while walking along the C-5 Bridge in Bagong Ilog, Pasig City, noticed that a man had followed her after she passed the *talipapa*. Suddenly, the man placed his arm over her shoulder, poked a sharp object on the left side of her body, then instructed her to go with him. When she turned her head towards the man, she recognized the assailant (although then, she did not know his name) as she regularly saw him at the bridge every time she and her co-workers would pass by.[4] Appellant forcibly brought AAA to a dark place under the bridge, covered by big stones that blocked the view of passersby. There, he asked if she had a cellular phone and some money. She replied in the affirmative. He also asked what AAA's phone model was, and she answered that it was a Nokia 3315.[5]

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[1] Penned by Associate Justice Magdangal M. de Leon, with Associate Justices Remedios A. Salazar-Fernando and Ramon R. Garcia, concurring; *rollo*, pp. 2-22.

[2] Branch 157.

[3] Penned by Judge Esperanza Fabon-Victorino, CA *rollo*, pp. 11-22.

[4] *Rollo*, p. 4.

[5] *Id.*

Then, appellant hit her on the stomach and told her to undress. But she refused. He thus pushed her towards the sofa (found under the bridge), slashed her clothes and underwear and threatened her with the knife.[6] When AAA was already naked, appellant lowered his own short pants and briefs, and forcibly inserted his penis into her vagina and continued pushing it in for about two (2) to three (3) minutes.[7] After satisfying his lust, he withdrew his penis and fixed himself. AAA wanted to run away, but she could not do so as she was then totally naked.[8]

Appellant thereafter grabbed AAA's bag and took her cellular phone and transportation money amounting to ₱40.00. AAA was able to locate only her blouse that she used to cover herself. She came out from under the bridge to seek help. A male passerby helped her by giving her a pair of short pants, and escorted her to Bagong Ilog *Barangay* Hall, where the incident was entered in the police blotter.[9] The following day, AAA underwent medical examination at the Camp Crame Medico-Legal Crime Laboratory.[10]

On December 16, 2004, while conducting their routine patrol, members of the *barangay* security force chanced upon appellant, whom they found sleeping, using several ladies' wallets as pillows, under the C-5 bridge, near the place where AAA was raped. It appearing that appellant was drunk and recalling the rape incident that occurred a few days earlier, the *barangay* security force brought appellant to the *Barangay* Hall for verification.[11] That same day, AAA positively identified appellant as her assailant. Appellant immediately bowed his head and asked AAA for forgiveness.[12]

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[6] *Id.* at 5.

[7] *Id.*

[8] *Id.*

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

[10] *Id.* at 6.

[11] *Id.* at 7.

[12] *Id.* at 7-8.

On December 17, 2004, appellant was charged in an Information for Robbery with Rape.[13] When arraigned, appellant pleaded "not guilty."

Appellant denied liability and insisted that he only saw AAA in the precinct. He claimed that, on December 7, 2004, he was vending cigarettes at the corner of Crossing and Mandaluyong, and that he slept in Mandaluyong afterwards. When questioned by the court, he, however, admitted that he indeed slept under the C-5 bridge on the date AAA was raped. He later on changed his statement by saying that he only slept under the bridge on the night he was apprehended.[14]

On October 17, 2007, the RTC rendered a decision finding appellant guilty beyond reasonable doubt of Robbery with Rape, and sentenced him to suffer the penalty of *reclusion perpetua*. Appellant was, likewise, ordered to pay ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.[15] On appeal, the appellate court affirmed the RTC decision in its entirety.

Hence, this appeal, raising the following issues:

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[13] The accusatory portion reads:

On or about December 7, 2004, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, armed with a knife, and with intent to gain, having made known such intent by inquiring from one AAA what cell phone unit and how much cash money she carried with her which was a Nokia 3315 cell phone worth ₱3,000.00 and cash money worth ₱40.00, all in the total amount of ₱3,040.00, however, before divesting said complainant of her personal belongings, said accused, by means of force, threats and intimidation, willfully, unlawfully and feloniously, at knifepoint, have carnal knowledge with AAA against her will and consent, which is aggravated by the circumstance of nighttime and immediately thereafter, said accused willfully, unlawfully and feloniously take, steel (sic) and carted away with the complainant's aforestated personal belongings, to the damage and prejudice of the said victim.

Contrary to law. (CA *rollo*, pp. 5-6.)

[14] *Rollo*, pp. 8-10.

[15] *Id.* at 22.

I.

THE COURT *A QUO* GRAVELY ERRED IN NOT FINDING THE WARRANTLESS ARREST OF THE ACCUSED-APPELLANT AS ILLEGAL.

II

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE LACK OF POSITIVE IDENTIFICATION.

III.

THE COURT *A QUO* GRAVELY ERRED IN NOT FINDING THAT ACCUSED-APPELLANT'S RIGHTS UNDER REPUBLIC ACT NO. 7438 (AN ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING AND INVESTIGATING OFFICERS, AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF) WERE VIOLATED.

IV.

THE COURT *A QUO* GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE INCONSISTENT, INCREDIBLE AND IMPROBABLE TESTIMONIES OF THE PROSECUTION WITNESSES.

V.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE THE ELEMENTS OF THE CRIME CHARGED.

VI.

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE PRESENCE OF THE AGGRAVATING CIRCUMSTANCE OF NIGHTTIME.[16]

First, appellant insists that his warrantless arrest was unlawful. Second, he questions the credibility of AAA because of allegedly inconsistent statements in her testimony. Third, he assails the validity of his identification, claiming that it was marked by

[16] CA *rollo*, pp. 30-31.

suggestiveness. Lastly, he avers that the aggravating circumstance of nocturnity should not have been appreciated since nighttime was not taken advantage of in order to ensure the commission of the offense.

We find no reason to reverse appellant's conviction. Hence, we affirm the CA Decision, but with modification.

As to the regularity of appellant's arrest, we have consistently ruled that an accused is estopped from assailing the legality of his arrest if he fails to raise this issue, or to move for the quashal of the information against him on this ground, before arraignment.[17] Here, appellant was arraigned, entered a plea of not guilty and actively participated in his trial. He raised the issue of the irregularity of his arrest only during his appeal to the CA. He is, therefore, deemed to have waived such alleged defect by submitting himself to the jurisdiction of the court through his counsel-assisted plea during the arraignment, by actively participating in the trial, and by not raising the objection before his arraignment.[18]

On the question of the credibility of the prosecution witnesses, it is well-settled that findings of fact of the trial court on the credibility of witnesses and their testimonies are generally accorded great respect by the appellate court. The assessment of the credibility of witnesses is a matter best left to the trial court, because it is in the best position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied the appellate court.[19]

Neither can we sustain appellant's contention that his identification was marked by suggestiveness, because he was presented to AAA alone and not in a police lineup. As correctly

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[17] *People v. Alunday*, G.R. No. 181546, September 3, 2008, 564 SCRA 135,149.

[18] *Id.* at 150.

[19] *People v. Temporada*, G.R. No. 173473, December 17, 2008, 574 SCRA 258, 282.

pointed out by the CA, a police lineup is not required for the proper and fair identification of offenders. What is crucial is for the witness to positively declare during trial that the persons charged were the malefactors.[20]

Finally, the CA did not err in sustaining the appreciation of the aggravating circumstance of nocturnity. As testified to by AAA, she easily recognized appellant as she regularly saw him standing at the C-5 Bridge every morning. In choosing to commit the crime in the evening and in bringing AAA under the bridge, nighttime facilitated the commission of the crime with impurity. As correctly stated by the CA, the cover of darkness aided appellant in order to ensure that the execution of his criminal action would go unnoticed.[21]

Article 294 of the Revised Penal Code prescribes the penalty for *Robbery with Rape*, to wit:

> Art. 294. *Robbery with violence against or intimidation of persons*; *Penalties.* – Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:
>
> 1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed; or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

As the penalty is composed of two indivisible penalties, and in view of the presence of the aggravating circumstance of nocturnity, the higher penalty, which is death, should be imposed. However, with the effectivity of Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," appellant shall be meted the penalty of *reclusion perpetua* without eligibility for parole.

In line with prevailing jurisprudence, the civil indemnity to be awarded should be ₱75,000.00, not ₱50,000.00, since the

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[20] *People v. Martin*, G.R. No. 177571, September 29, 2008, 567 SCRA 42, 49.

[21] *Rollo*, p. 21.

crime committed is qualified by a circumstance that warrants the imposition of the death penalty.[22] Likewise, consistent with jurisprudence, the amount of moral damages is increased from ₱50,000.00 to ₱75,000.00, without any further need of proof. And while the award of exemplary damages is also called for to deter other individuals with aberrant sexual tendencies, the amount fixed therefor by the RTC, as affirmed by the CA, is reduced from ₱50,000.00 to ₱30,000.00.[23]

WHEREFORE, premises considered, the Court of Appeals Decision dated June 25, 2009 is *AFFIRMED***,** with the following *MODIFICATIONS*: 1) appellant Nelson Palma *y* Hangad is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole; 2) the award of civil indemnity is *INCREASED* from ₱50,000.00 to ₱75,000.00; 3) the award of moral damages is increased from ₱50,000.00 to ₱75,000.00; and 4) the award of exemplary damages is *REDUCED* from ₱50,000.00 to ₱30,000.00.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Peralta, and *Mendoza, JJ.,* concur.

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[22] *People of the Philippines v. Antonio Ortiz, Charito Chavez, Edwin Dasilio, and Jerry Doe*, G.R. No. 179944, September 4, 2009.

[23] *People of the Philippines v. Domingo Araojo*, G.R. No. 185203, September 17, 2009.

EN BANC

[G.R. No. 190067. March 9, 2010]

REPRESENTATIVE ALVIN S. SANDOVAL (Lone District of Navotas-Malabon), *petitioner, vs.* **HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL, JOSEPHINE VERONIQUE R. LACSON-NOEL, and HON. SPEAKER PROSPERO NOGRALES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTIONS; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL; THE COURT'S JURISDICTION TO REVIEW DECISIONS AND ORDERS OF ELECTORAL TRIBUNALS IS EXERCISED ONLY UPON A SHOWING OF GRAVE ABUSE OF DISCRETION.— It is hornbook principle that this Court's jurisdiction to review decisions and orders of electoral tribunals is exercised only upon a showing of grave abuse of discretion committed by the tribunal. Absent such grave abuse of discretion, this Court shall not interfere with the electoral tribunal's exercise of its discretion or jurisdiction. Grave abuse of discretion has been defined in *Villarosa v. House of Representatives Electoral Tribunal* as follows: Grave abuse of discretion implies such **capricious and whimsical exercise of judgment** as is equivalent to lack of jurisdiction; or, in other words, where **the power is exercised in an arbitrary manner** by reason of passion or personal hostility. **It must be so patent and gross** as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

2. ID.; ID.; ID.; NO DENIAL OF PETITIONER'S RIGHT TO DUE PROCESS; PETITIONER WAS GIVEN ALL THE OPPORTUNITY TO BE HEARD, SO MANY HEARING DATES WERE SET FOR HIS PRESENTATION OF EVIDENCE AND HE WASTED A GOOD NUMBER OF THOSE DAYS; AN EXTENSION OF TIME WAS AGAIN GRANTED SO HE COULD FILE HIS FORMAL OFFER OF EVIDENCE, BUT HE STILL FAILED TO FULFILL

HIS RESPONSIBILITY.— Petitioner commenced presentation of his evidence on September 2, 2008. Further hearings were scheduled for September 15, 18, 23 and 25, 2008. He was able to present evidence on September 15, 18, and 25, 2008, but the hearing set for September 23, 2008 was canceled upon motion of petitioner. On September 29, 2008, the Hearing Commissioner set additional hearings for October 2, 13, 27, 28, 29 and 31, 2008 and November 3, 2008, for reception of petitioner's evidence. However, due to unavailability of petitioner's counsel, **no hearings were held on the dates set for the whole month of October**. Hearings only resumed on November 3 and 11, 2008 and, on the latter date, petitioner moved that he be allowed more time to present additional witnesses. Despite opposition from respondent Lacson-Noel, the Tribunal issued Resolution No. 08-342 dated November 24, 2008, **granting petitioner an additional period of ten (10) days within which to present evidence, with the warning that no further extension shall be given.** The Hearing Commissioner notified the parties that further hearings will be held on December 10 and 11, 2008. Said hearing dates were utilized by petitioner. Nevertheless, in utter disregard of the Tribunal's warning, petitioner again filed on December 18, 2008 a Manifestation and Motion (with Prayer for Suspension of the Period to File Protestee's Formal Offer of Evidence), praying for more time to present more witnesses, and that he be allowed to file his Formal Offer of Evidence upon completion of presentation of his evidence. Respondent Lacson-Noel opposed said motion, pointing out that the additional period of ten (10) days granted to petitioner lapsed on December 24, 2008. Thus, on January 22, 2009, the Tribunal issued Resolution No. 09-009, pointing out that **despite the additional period of ten days granted to him and the lapse of more than three (3) months reckoned from September 2, 2008**, petitioner had not completed the presentation of his evidence. Since the last day of the extension granted to him was on December 23, 2008 and said period lapsed without petitioner completing presentation of his evidence including formal offer thereof, he was deemed to have waived the same. Such action of the HRET was not a denial of petitioner's right to due process. In *Villarosa,* it was held, thus: The essence of due process is the reasonable opportunity to be heard and

submit evidence in support of one's defense. **To be heard does not mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of due process.** It is quite clear from the foregoing narration of how the proceedings were conducted that petitioner was given all the opportunity to be heard. So many hearing dates were set for his presentation of evidence, but he merely wasted a good number of those days. He was granted an extension of time so he could file his formal offer of evidence, but he still failed to fulfill his responsibility.

3. ID.; ID.; ID.; PETITIONER HAD BEEN SUFFICIENTLY WARNED OF THE LAST EXTENSION BUT HE CHOSE NOT TO HEED SUCH WARNING AND FAILED TO USE THE ADDITIONAL TIME WISELY; ONLY PETITIONER DESERVES TO BE BLAMED FOR THE WOES THAT BEFELL HIM.— Note that the 2004 Rules of the House of Representatives Electoral Tribunal provide for a definite period of time within which a party should complete or terminate his presentation of evidence. The rule cannot be any clearer that parties are mandated to complete the presentation of their evidence within a period of two (2) months, which shall begin to run from the first date set for the presentation of the party's evidence. In this case, petitioner's presentation of evidence should have been terminated by November 2, 2008. It was petitioner's and/or his counsel's duty to always have the foregoing rule or time limit in mind in planning and scheduling the presentation of his testimonial and documentary evidence. Petitioner had actually been accorded leniency because on November 24, 2008, which was already beyond the two-month time limit under Rule 59, the Tribunal issued Resolution No. 08-342 granting him an additional ten days for presentation of evidence including a formal offer thereof. Petitioner had been sufficiently warned that that would be the last extension, but he chose not to heed such warning and failed to use the additional time wisely. Only petitioner deserves to be blamed for the woes that befell him.

4. ID.; ID.; ID.; THE TRIBUNAL ACTED IN THE BEST INTEREST OF THE ELECTORATE, ENSURING THE DETERMINATION OF THE LATTER'S WILL WITHIN A

REASONABLE TIME; NOTHING WOULD JUSTIFY A FINDING THAT THE TRIBUNAL GRAVELY ABUSED ITS DISCRETION BY NOT GRANTING PETITIONER ANOTHER EXTENSION OF TIME TO PRESENT ADDITIONAL EVIDENCE AND FORMALLY OFFER THE SAME.— In *Hofer v. House of Representatives Electoral Tribunal*, a case that is closely analogous to the instant petition, the Court emphasized that "*[p]rocedural rules in election cases are designed to achieve not only a correct but also an* ***expeditious*** *determination of the popular will of the electorate.*" Thus, the time limit set by the rules is not something to be taken lightly, for it was stressed in the same case that "the observance of the HRET Rules in conjunction with our own Rules of Court, must be taken seriously." Quoting *Baltazar v. Commission of Elections*, The Court reiterated in *Hofer* that: By their very nature and **given the public interest involved in the determination of the results of an election, the controversies arising from the canvass must be resolved *speedily*, otherwise the will of the electorate would be frustrated.** And the delay brought about by the tactics resorted to by petitioner is precisely the very evil sought to be prevented by election statutes and controlling case law on the matter. From the foregoing, it is quite clear that the Tribunal acted in the best interest of the electorate, ensuring the determination of the latter's will within a reasonable time. In sum, there is absolutely nothing in this case that would justify a finding that the HRET gravely abused its discretion by not granting petitioner an extension of time to present additional evidence and formally offer the same.

APPEARANCES OF COUNSEL

Defensor Lantion Briones Villamor and Tolentino Law Offices for petitioner.

The Solicitor General for public respondent.

Maria Donnah Guia C. Lerona-Camitan for private respondent.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for *Certiorari* under Rule 65 of the Rules of Court, praying that the Decision[1] of the House of Representatives Electoral Tribunal (HRET) dated September 24, 2009 and its Resolution[2] dated November 12, 2009 be declared null and void *ab initio*.

The accurate narration of facts in the HRET Decision is not disputed by the parties. Pertinent portions thereof are reproduced hereunder:

> On 19 May 2007, after the canvass of votes, as evidenced by the *Certificate of Canvass of Votes and Proclamation of the Winning Candidates for the Member of the House of Representatives*, the Board of Canvassers of the Legislative District of Malabon City-Navotas proclaimed protestee Sandoval [herein petitioner] the winning candidate for the Office of the Member of the House of Representatives with ***Seventy-one Thousand Four Hundred Ninety (71,490)*** votes as against protestant Lacson-Noel who obtained the second highest number of votes with ***Seventy Thousand Three Hundred Thirty-One (70,331)*** votes; or a winning margin of ***One Thousand One Hundred Fifty-Nine (1,159)*** votes. Per the Summary Statement of Votes, the distribution of all votes legally cast in the district is as follows:
>
> | | | |
> |---|---|---|
> | SANDOVAL, Alvin S. | - | 71,490 |
> | LACSON-NOEL, Josephine Veronique R. | - | 70,331 |
> | FRANCISCO, Maritoni Z. | - | 35,634 |
> | CINCO, Roberto T. | - | 412 |

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[1] Signed by Associate Justices Consuelo Ynares-Santiago (Chairperson), Renato C. Corona, and Minita V. Chico-Nazario; Representatives Mauricio G. Domogan, Fredenil H. Castro, Roberto C. Cajes, Solomon R. Chungalao, Florencio T. Miraflores and Justin Marc SB. Chipeco; *rollo*, pp. 45-107.

[2] Signed by Associate Justices Minita V. Chico-Nazario (Acting Chairperson) and Antonio Eduardo B. Nachura; Representatives Mauricio G. Domogan, Fredenil H. Castro, Roberto C. Cajes, Solomon R. Chungalao, Florencio T. Miraflores and Justin Marc SB. Chipeco; *id*. at 110-115.

Refusing to concede defeat, protestant Lacson-Noel filed the instant *Petition of Protest* on 29 May 2007, and alleged in substance that "the results [of the election] do not reflect the true will of the voters as they are but products of various fraudulent and illegal acts, schemes and machinations employed by [protestee] Sandoval, his agents and supporters, with the connivance or conspiracy of the Board of Election Inspectors (BEIs), which defrauded and deprived [her] of lawful votes cast at the precinct level." Specifically, protestant Lacson-Noel assails the results of election in **623 precincts (*441 from Malabon City and 182 from Navotas*)** out of the 1,437 total number of precincts in the Lone Legislative District of Malabon City-Navotas on the following grounds:

> a. Misreading, miscounting and/or miscrediting of votes [in favor of protestee Sandoval and/or ballots intended for protestant Lacson-Noel were not counted in her favor] x x x.
>
> b. Misappreciation of ballots in violation of Section 211 of the Omnibus Election Code and case law [such as the non-counting of protestant Lacson-Noel's maiden surname "Lacson" in her favor] x x x.
>
> c. x x x written-by-One ballots, in pairs or in groups of ballots [were counted in favor of protestee].
>
> d. The use of either fake, spurious ballots or genuine but manufactured ballots to increase protestee Sandoval's votes. x x x.
>
> e. The use of manufactured election returns which are prepared x x x prior to the start of voting and/or counting.
>
> f. Manipulation, alteration and falsification of the votes and related data in the election returns and/or vote padding in favor of protestee Sandoval and vote-shaving from protestant Lacson-Noel's votes.

Protestant Lacson-Noel claims that she would have obtained a greater number of votes if not for the fraud and irregularities that marred the election. She posits that "[t]here is a need for a recount, revision and due appreciation of the ballots and examination or scrutiny of election documents in the [623] protested precincts," as the result thereof "will affect the presumptive results of the congressional elections in the Malabon City-Navotas Legislative District in a very substantial degree as to overcome protestee Sandoval's presumptive

lead." Consequently, protestant Lacson-Noel prays that, after the revision and appreciation of ballots and due hearing, judgment be rendered annulling the proclamation of protestee Sandoval; and declaring her the duly elected Representative of the Lone Legislative District of Malabon City-Navotas.

On 25 June 2007, protestee Sandoval filed his Answer (with counter-protest, motion for preliminary hearing on Affirmative Defenses and counter claim) wherein he specifically denied the material allegations of the protest regarding the number of contested precincts, grounds for protest, commission of frauds and irregularities, and the necessity of recount and revision, for being self-serving and unsupported by evidence. By way of *Special and Affirmative Defenses*, protestee Sandoval contends that it is protestant Lacson-Noel who is guilty of violating "election laws, rules and regulations x x x [committed to benefit her], and which, on the other hand, resulted to (sic) the loss of legal and valid votes in [his] favor." He narrates that during the crucial hours of voting, counting, recording of the votes cast and transmittal of the records of the votes cast, most of his poll watchers were unable to effectively keep an eye on the proceedings and secure his votes because the latter were supposedly prevented from entering the Navotas polling precincts unlike protestant Lacson-Noel's poll watchers who were readily accommodated. As a result of the illegal schemes and machinations employed by protestant Lacson-Noel and her supporters, protestee Sandoval maintains that protestant Lacson-Noel "was able to garner a substantial number of illegal and undeserved votes from the Municipality of Navotas." With respect to Malabon City, protestee Sandoval similarly claims that "massive fraud and illegal electoral practices were committed" all through the election process which tarnished the results of several identified precincts in Malabon City.

By way of counter-protest, protestee Sandoval questions the results of the voting in **1,006 precincts (*393 from Malabon City and 613 from Navotas*)** in Malabon City-Navotas on the allegation that, thereat, he was deprived of votes cast in his favor and where protestant Lacson-Noel was illegitimately benefited with votes meant for him. The bases for protestee Sandoval's counter-protest are: (1) the loss of legal votes in his favor; (2) the counting of illegal, marked and stray votes for him in favor of protestant Lacson-Noel; (3) the use of manufactured or falsified election returns to favor protestant Lacson-Noel; (4) the padding of election returns to increase the votes of protestant Lacson-Noel and to reduce his (protestee Sandoval's)

votes; and (5) the commission of electoral fraud and irregularities by protestant Lacson-Noel and supporters in connivance with the Board of Election Inspectors (BEI).

On 29 June 2007, protestee Sandoval filed an *Ex Parte Motion to Withdraw Counterclaim* (for damages representing his attorney's fees and litigation expenses). This was granted by the Tribunal in its Resolution No. 07-074 dated 12 July 2007.

On 31 July 2007, after the issues were joined, the Tribunal ordered the City/Municipal Treasurers and Election Officers of Malabon City and Navotas to release to the duly authorized representatives of the Tribunal the following: (1) protested and counter-protested ballot boxes with their keys; (2) the lists of voters with voting records; (3) books of voters; and (4) other election documents and paraphernalia pertaining to the protested and counter-protested precincts.

The Tribunal set the preliminary conference of the instant election protest case on 23 August 2007.

On 6 September 2007, the Tribunal issued the Preliminary Conference Order x x x.

xxx xxx xxx

And as agreed to by the parties, the issues for resolution are (1) whether or not the recount, revision, and re-appreciation of ballots, including election documents, from the protested and counter-protested precincts will affect the results of the election in the Lone District of Malabon City-Navotas; and (2) whether or not protestant Lacson-Noel and protestee Sandoval each committed electoral frauds and irregularities to cause the nullification of the votes counted in their favor.

On 2 October 2007, the employees of the Tribunal were able to collect the ballot boxes and election documents and paraphernalias of **822 protested and counter-protested precincts** from the City Treasurer of Malabon City. On 11 December 2008, the ballot boxes from **613 protested and counter-protested precincts** in Navotas were collected from the custody of the Regional Trial Court (RTC), Branch 170 of Malabon City-Navotas, as the same had been previously transferred thereto in connection with an election protest concerning the position of Mayor in the Municipality of Navotas.

On 21 February 2008, the Tribunal ordered the revision of ballots from the protested and counter-protested precincts after finally

collecting and taking custody of the concerned ballot boxes.

On 4 March 2008, both parties filed their respective motions to photocopy their objected and claimed ballots, as well as the Minutes of Voting. x x x.

On 11 March 2008, the revision of ballots from the **1,434 protested and/or counter-protested precincts** commenced and continued until terminated on 21 April 2008.

In the interregnum, however, protestee Sandoval moved to photocopy the *front* and *dorsal* portions of all ballots subject of the revision "for purposes of authentication and verification, x x x to check the signatures [of the BEI] appearing at the back of the ballots." He alleged that, "upon examination, of the ballots obtained from the protested precincts (sic) the ballot boxes of which have so far been opened, strong indications exist that the ballots retrieved are not genuine." In an *Order* dated 24 March 2008, the Tribunal partially granted protestee Sandoval's prayer, to wit:

> WHEREFORE, protestee Sandoval's *Motion for the Photocopying of Both the Front and Dorsal Sides of Ballots* is partially GRANTED insofar as the ballots that are not yet revised and photocopied are concerned. With respect to the ballots that were already revised and photocopied, protestee is DIRECTED to specify within five (5) days from receipt of the Order, the ballots containing questionable signatures of the BEI chairpersons, as recorded in the revision reports that should be photocopied on the dorsal sides.
>
> xxx xxx xxx

On 21 April 2008, upon conclusion of the revision of ballots, the physical count thereof yielded the following results: 70,530 ballots were counted for protestant Lacson-Noel, while 69,939 votes cast were for protestee Sandoval.

On 12 May 2008, or twenty-one (21) days after the termination of the revision of ballots, protestee Sandoval filed a *Motion for Technical Examination* of "ballots and election documents obtained from the ballot boxes from no less than twenty-eight (28) precincts in the City of Malabon" where manifest irregularities were noticed. Protestee Sandoval basically contends that the ballot boxes from the identified twenty-eight (28) precincts: (1) are missing padlocks and/or inner/outer metal seals; and (2) contain fake or spurious ballots.

He reports that the examination of the contents of said ballot boxes revealed that there are substantial discrepancies between the number of votes cast and counted as against the number of ballots physically counted during revision.

On 22 May 2008, the Tribunal issued *Resolution No. 08-174* noting the protestee Sandoval's aforestated *Motion for Technical Examination*. In the same resolution, the Tribunal directed protestant Lacson-Noel to comment thereon within five (5) days from notice.

In the meantime, on 27 May 2008, protestant Lacson-Noel started presenting and marking her evidence before the designated hearing commissioner, Atty. Michael D. Villaret.

On 10 June 2008, protestant Lacson-Noel filed her opposition to protestee Sandoval's prayer for technical examination of specific ballots. She contends that the Tribunal is competent to determine the validity of contested ballots, including fake or spurious ones; and that it had already developed an expertise in verifying the claims of alleged tampering of ballots and in identifying valid from invalid ballots.

On 20 June 2008, in *Resolution No. 08-216*, the Tribunal denied protestee Sandoval's *Motion for Technical Examination* of ballots in twenty-eight (28) precincts on the ground that:

> When the matters which the parties seek to be examined are those which are well within the judicial determination of the Tribunal without resorting to technical examination, the Tribunal itself, in the course of the appreciation of ballots and other election documents involved, can determine whether paid or groups of ballots are written by one or two persons.

The Tribunal further noted that Hon. Resureccion Z. Borra, then Acting Chairman of the COMELEC, already testified on the various security features of an official ballot used during the 14 May 2007 synchronized National and Local Elections. Hence, resort to technical examination is no longer necessary to determine the authenticity of ballots.

On 23 June 2008, protestant Lacson-Noel formally offered the following documentary evidence:

xxx xxx xxx

On 8 July 2008, protestee Sandoval filed his *Comment/Opposition* to protestant Lacson-Noel's formal offer of evidence.

On 24 July 2008, in *Resolution No. 08-244*, the Tribunal admitted all documentary exhibits formally offered by protestant Lacson-Noel x x x.

On 14 August 2008, the hearing for the presentation of protestee Sandoval's evidence was set on 2, 15, 18, 23 and 25 September 2008.

On 2 September 2008, protestee Sandoval presented for authentication photocopies of three hundred eleven *Revision Reports* x x x.

On 15 September 2008, protestee Sandoval presented for authentication photocopies of additional *Revision Reports* x x x.

Again, on 18 September 2008, protestee Sandoval presented photocopies of more *Revision Reports* for authentication x x x.

The scheduled hearing on 23 September 2008 was canceled upon the motion of protestee Sandoval.

During the hearing conducted on 25 September 2008, protestee Sandoval presented photocopies of various election documents x x x.

On 29 September 2008, the Hearing Commissioner of the instant case set additional hearing dates for the reception of protestee Sandoval's evidence – 2, 13, 27, 28, 29 and 31 October 2008 and on 3 November 2008.

From the record of the case, though, except for the hearing scheduled on 3 November 2008, it appears that no hearings were held on the dates aforestated in view of the unavailability of the counsel of protestee Sandoval. Particularly, protestee Sandoval asked that the hearing scheduled on 27 and 28 October 2008 be cancelled because of an "apparent conflict in the schedule" of his witnesses (party-revisors) in view of the supposed appearance before the Senate Electoral Tribunal (SET) relative to another case. Again, on 29 October 2008, in a written motion, *Manifestation and Urgent Motion*, protestee Sandoval prayed that the cancellation of the day's hearing for the reason that the same witnesses still remained "unavailable due to an equally urgent engagement as the party-revisors in the electoral protest case in the SET involving Senator Juan Miguel Zubiri. The motion to reset the hearing was denied by the Hearing Officer,

who, instead, ruled that the same shall continue on the next scheduled hearing date on 3 November 2008.

Worth noting at this point is the fact that on the hearing of 29 October 2008, in response to the aforesaid motion, counsel for protestant Lacson-Noel manifested that being one of the counsels of record of the only case before the SET, she knew for a fact that no hearings were scheduled on 27 and 28 October 2008.

On 3 and 11 November 2008, the hearings resumed and protestee Sandoval was able to present fourteen (14) party revisors x x x.

On the last scheduled hearing, or on 11 November 2008, protestee filed another motion – *Motion for Leave (to Present Additional Witnesses) with Request for Subpoena*. Protestee Sandoval wanted to present expert witnesses x x x.

On 12 November 2008, protestant Lacson-Noel opposed the preceding motion on the ground that the same was merely another dilatory move to delay the resolution of the instant election protest case. She argued that per HRET Rules, protestee Sandoval had already used up the time allocated him and that he "squandered the time given him to present his evidence" by presenting party revisors as witnesses whose opinions on the authenticity of the subject ballots allegedly bear no evidentiary weight. Further, she contended that (1) the period of two months to be reckoned from 2 September 2008 within which the presentation of protestee Sandoval's evidence must be concluded, including the filing of his [*Formal Offer of Evidence*], had already expired on 3 November 2008; (2) four of the 13 hearing dates set by the Hearing Commissioner were cancelled upon the instance of protestee Sandoval; and (3) the presentation of additional evidence beyond 3 November 2008 is in direct contravention of Rule 59 of the 2004 HRET Rule of Procedure providing for a period of only two months, from inception, to conclude the presentation of a party's evidence.

Despite the opposition, in *Resolution No. 08-342* issued on 24 November 2008, the Tribunal resolved to grant protestee Sandoval's motion **with the necessary warning that no further extension shall be given**. Accordingly, an additional period of ten (10) days was set within which to present his additional evidence. In granting the prayer for additional time, the Tribunal took into consideration the provision of the HRET Rules where, in the interest of justice and meritorious grounds, it may grant an extension of ten (10) days

for a party to present his evidence. The Tribunal further directed the Hearing Commissioner assigned to the present case to set successive dates, not to exceed ten (10) days, for the presentation of protestee Sandoval's additional evidence and to issue the corresponding subpoena *duces tecum* and *ad testificandum* to the witnesses concerned.

In compliance to the foregoing, on 25 November 2008, the Hearing Commissioner notified the parties herein that further hearings will be conducted on 10 and 11 December 2008.

xxx xxx xxx

On 18 December 2008, despite the warning issued by the Tribunal that "no further extensions will be given," protestee Sandoval once more prayed for leave to present an additional expert witness. x x x

As expected, protestant Lacson-Noel opposed the above; and asked the Tribunal to deny the same x x x.

On 22 January 2009, in *Resolution No. 09-009*, the Tribunal denied protestee Sandoval's motion for suspension of the period to file formal offer of evidence, and considered him to have waived the completion of the presentation of his evidence, to wit:

> WHEREFORE, the Tribunal (1) DENIES protestee's *Manifestation and Motion [With Prayer for Suspension of the Period to File Protestee's Formal Offer of Evidence*]; (2) CONSIDERS protestee to have waived the completion of the presentation of his evidence; and (3) DIRECTS protestant and protestee to submit their respective Memoranda within ten (10) days from notice.
>
> xxx xxx xxx

Protestant Lacson-Noel and protestee Sandoval filed their respective Memoranda on 11 and 16 February 2009, respectively.

On the same day he filed his *Memorandum*, or on 16 February 2009, protestee Sandoval also filed a *Manifestation and Motion for Partial Reconsideration*. Essentially, he moved that he "be allowed to formally offer his documentary pieces of evidence" based on the argument that "to prevent [him] from formally offering his documentary pieces of evidence would be tantamount to depriving him of the right to due process as this would in effect strip him of

all the necessary documentary pieces of evidence, leaving him with nothing to amplify his cause."

xxx xxx xxx

On 13 March 2009, the Tribunal issued *Resolution No. 09-046* dated 26 February 2009, the dispositive of which reads:

> WHEREFORE, the Tribunal DENIES protestee's *Manifestation and Motion for Partial Reconsideration*. (Italics supplied.)[3]

Thereafter, on September 24, 2009, the HRET issued the assailed Decision, the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, the Tribunal hereby DECLARES that protestant Josephine Veronique Lacson-Noel is the duly elected Representative of the Lone District of Malabon City-Navotas in the election held on 14 May 2007, with a winning margin of **Five Hundred Forty-Two (542)** votes, with the right to assume the duties of her office. Consequently, protestee Alvin Sandoval is hereby declared unseated.
>
> As soon as this Decision becomes final, let notices be sent to the President of the Philippines, the House of Representatives through the Speaker, and the Commission on Audit through its Chairman.
>
> SO ORDERED.[4]

Petitioner moved for reconsideration, but the same was denied per Resolution dated November 12, 2009.

Hence, this petition alleging that the HRET committed grave abuse of discretion amounting to lack or excess of jurisdiction by not admitting petitioner's formal offer of evidence, thereby denying him due process.

The petition lacks merit.

It is hornbook principle that this Court's jurisdiction to review decisions and orders of electoral tribunals is exercised only upon a showing of grave abuse of discretion committed by the tribunal.

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[3] *Id*. at 45-66.

[4] *Rollo,* p. 107.

Absent such grave abuse of discretion, this Court shall not interfere with the electoral tribunal's exercise of its discretion or jurisdiction.[5] Grave abuse of discretion has been defined in *Villarosa v. House of Representatives Electoral Tribunal*[6] as follows:

> Grave abuse of discretion implies such **capricious and whimsical exercise of judgment** as is equivalent to lack of jurisdiction; or, in other words, where **the power is exercised in an arbitrary manner** by reason of passion or personal hostility. **It must be so patent and gross** as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[7]

Petitioner mainly assails the Tribunal's denial of his pleas for an additional period of time within which to make his formal offer of evidence. However, a review of the proceedings will reveal that the HRET acted in accordance with its rules of procedure and well within its jurisdiction.

Petitioner commenced presentation of his evidence on September 2, 2008. Further hearings were scheduled for September 15, 18, 23 and 25, 2008. He was able to present evidence on September 15, 18, and 25, 2008, but the hearing set for September 23, 2008 was canceled upon motion of petitioner. On September 29, 2008, the Hearing Commissioner set additional hearings for October 2, 13, 27, 28, 29 and 31, 2008 and November 3, 2008, for reception of petitioner's evidence. However, due to unavailability of petitioner's counsel, **no hearings were held on the dates set for the whole month of October.** Hearings only resumed on November 3 and 11, 2008 and, on the latter date, petitioner moved that he be allowed more time to present additional witnesses. Despite opposition from respondent Lacson-Noel, the Tribunal issued Resolution

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[5] *Abubakar v. House of Representatives Electoral Tribunal*, G.R. Nos. 173310 and 173609, March 7, 2007, 517 SCRA 762, 776*; Torres v. House of Representatives Electoral Tribunal*, G.R. No. 144491, February 6, 2001, 351 SCRA 312, 326-327.

[6] G.R. Nos. 143351 and 144129, September 14, 2000, 340 SCRA 396.

[7] *Id.* at 413. (Emphasis supplied.)

No. 08-342 dated November 24, 2008, **granting petitioner an additional period of ten (10) days within which to present evidence, with the warning that no further extension shall be given**. The Hearing Commissioner notified the parties that further hearings will be held on December 10 and 11, 2008. Said hearing dates were utilized by petitioner.

Nevertheless, in utter disregard of the Tribunal's warning, petitioner again filed on December 18, 2008 a Manifestation and Motion (with Prayer for Suspension of the Period to File Protestee's Formal Offer of Evidence), praying for more time to present more witnesses, and that he be allowed to file his Formal Offer of Evidence upon completion of presentation of his evidence. Respondent Lacson-Noel opposed said motion, pointing out that the additional period of ten (10) days granted to petitioner lapsed on December 24, 2008. Thus, on January 22, 2009, the Tribunal issued Resolution No. 09-009, pointing out that **despite the additional period of ten days granted to him and the lapse of more than three (3) months reckoned from September 2, 2008**, petitioner had not completed the presentation of his evidence. Since the last day of the extension granted to him was on December 23, 2008 and said period lapsed without petitioner completing presentation of his evidence including formal offer thereof, he was deemed to have waived the same.

Such action of the HRET was not a denial of petitioner's right to due process. In *Villarosa*,[8] it was held, thus:

> The essence of due process is the reasonable opportunity to be heard and submit evidence in support of one's defense. **To be heard does not mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of due process.**[9]

It is quite clear from the foregoing narration of how the proceedings were conducted that petitioner was given all the

[8] *Supra* note 6.

[9] *Id.* at 412. (Emphasis supplied.)

opportunity to be heard. So many hearing dates were set for his presentation of evidence, but he merely wasted a good number of those days. He was granted an extension of time so he could file his formal offer of evidence, but he still failed to fulfill his responsibility.

Note that the 2004 Rules of the House of Representatives Electoral Tribunal provide for a definite period of time within which a party should complete or terminate his presentation of evidence, to wit:

> Rule 59. *Time Limit for Presentation of Evidence*. — Each party is given a period of twenty (20) working days, preferably successive, to complete the presentation of his evidence, including the formal offer thereof. Unless provided otherwise, this period is terminated within two (2) months, which shall begin to run from the first date set for the presentation of the party's evidence, either before the Tribunal or before a Hearing Commissioner. Once commenced, presentation of the evidence-in-chief shall continue every working day until completed or until the period granted for such purpose is exhausted. Upon motion based on meritorious grounds, the Tribunal may grant a ten-day extension of the period herein fixed.
>
> The hearing for any particular day or days may be postponed or cancelled upon the request of the party presenting evidence, *provided, however,* that the delay caused by such postponement or cancellation shall be charged to said party's period for presenting evidence.
>
> xxx xxx xxx

The rule cannot be any clearer that parties are mandated to complete the presentation of their evidence within a period of two (2) months, which shall begin to run from the first date set for the presentation of the party's evidence. In this case, petitioner's presentation of evidence should have been terminated by November 2, 2008. It was petitioner's and/or his counsel's duty to always have the foregoing rule or time limit in mind in planning and scheduling the presentation of his testimonial and documentary evidence. Petitioner had actually been accorded leniency because on November 24, 2008, which was already beyond the two-month time limit under Rule 59, the Tribunal issued Resolution No. 08-342 granting him an additional ten

days for presentation of evidence including a formal offer thereof. Petitioner had been sufficiently warned that that would be the last extension, but he chose not to heed such warning and failed to use the additional time wisely. Only petitioner deserves to be blamed for the woes that befell him.

In *Hofer v. House of Representatives Electoral Tribunal*,[10] a case that is closely analogous to the instant petition, the Court emphasized that *"[p]rocedural rules in election cases are designed to achieve not only a correct but also an* ***expeditious*** *determination of the popular will of the electorate."*[11] Thus, the time limit set by the rules is not something to be taken lightly, for it was stressed in the same case that "the observance of the HRET Rules in conjunction with our own Rules of Court, must be taken seriously."[12] Quoting *Baltazar v. Commission of Elections*,[13] The Court reiterated in *Hofer*[14] that:

> By their very nature and **given the public interest involved in the determination of the results of an election, the controversies arising from the canvass must be resolved *speedily*, otherwise the will of the electorate would be frustrated**. And the delay brought about by the tactics resorted to by petitioner is precisely the very evil sought to be prevented by election statutes and controlling case law on the matter.[15]

From the foregoing, it is quite clear that the Tribunal acted in the best interest of the electorate, ensuring the determination of the latter's will within a reasonable time. In sum, there is absolutely nothing in this case that would justify a finding that the HRET gravely abused its discretion by not granting petitioner an extension of time to present additional evidence and formally offer the same.

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[10] G.R. No. 158833, May 12, 2004, 428 SCRA 383.

[11] *Id*.

[12] *Id.* at 386.

[13] G.R. No. 140158, January 29, 2001, 350 SCRA 518.

[14] *Supra* note 10.

[15] *Baltazar v. Commission on Elections*, *supra* note 10, at 387.

IN VIEW OF THE FOREGOING, the instant petition is *DISMISSED.*

SO ORDERED.

Puno, C.J., Carpio Morales, Velasco, Jr., Brion, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Carpio and *Nachura, JJ.,* no part, member of the HRET at that time.

Corona and *Leonardo-de Castro, JJ.,* no part.

EN BANC

[G.R. No. 190382. March 9, 2010]

JOSEPH BERNARDEZ, *petitioner, vs.* **COMMISSION ON ELECTIONS and AVELINO TOLEAN,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTIONS; THE COMMISSION ON ELECTIONS SECOND DIVISION GRAVELY ABUSED ITS DISCRETION WHEN IT GRANTED PRIVATE RESPONDENT'S PETITION FOR INJUNCTION AFTER THE VICTORY OF PETITIONER HAD ALREADY BECOME FINAL.— A careful review of the antecedent facts bears out the fact that, indeed, the COMELEC Second Division granted private respondent Tolean's petition for injunction without considering that it had already dismissed private respondent's Notice of Appeal. It is undisputed that on April 20, 2009, private respondent filed the subject petition for injunction before the COMELEC Second Division, to enjoin the execution of the Decision of the RTC, citing mainly as

ground the fact that the victory of petitioner had not been clearly and sufficiently established due to the pendency of his Notice of Appeal. However, on June 1, 2009, while the petition for injunction was still pending, the COMELEC Second Division dismissed private respondent's Notice of Appeal due to his failure to pay the required appeal fees in violation of COMELEC Resolution No. 8486. With the dismissal by the COMELEC Second Division of private respondent's Notice of Appeal without any showing that he had appealed the dismissal to the COMELEC *en banc*, the decision of the RTC proclaiming petitioner as the duly elected Vice-Mayor of Sabangan, Mountain Province becomes final and executory. Thus, the dismissal of private respondent's Notice of Appeal settles absolutely the victory of petitioner and the defeat of private respondent in the vice-mayoralty race. Considering the foregoing, the COMELEC Second Division gravely abused its discretion when it granted private respondent's petition for injunction on September 22, 2009 after the victory of petitioner Bernardez had already become final. To reiterate, the petition for injunction was filed by private respondent to enjoin the RTC from executing its decision proclaiming petitioner as Vice-Mayor of the Municipality of Sabangan **due to the pendency of the Notice of Appeal.** Since it has been ruled that the Notice of Appeal was rightfully dismissed and the ruling has become final and executory, it follows then that the right sought to be protected and the irreparable injury sought to be prevented by the private respondent through injunction or prohibition has already been rendered *fait accompli.*

2. ID.; ID.; IN DISMISSING PETITIONER'S MOTION FOR RECONSIDERATION DUE TO FAILURE TO PAY APPEAL FEES, THE COMMISSION ON ELECTIONS *EN BANC* GAVE IMPORTANCE TO TECHNICALITY, WHICH COULD HAVE BEEN DISREGARDED AT ITS OWN DISCRETION; SAID ACT IN EFFECT DISREGARDED THE WILL OF THE ELECTORATE IN VOTING PETITIONER AS THE VICE-MAYOR OF THEIR MUNICIPALITY.— Since the COMELEC, Second Division, granted the petition for injunction despite finality of the Decision in the election protest case, petitioner filed with the COMELEC *en banc* a motion for reconsideration of the Resolution of the COMELEC, Second Division, granting the private

respondent's petition for preliminary injunction. The COMELEC *en banc* was, therefore, challenged to weigh an issue of technicality as against the substance of the motion for reconsideration. In dismissing the motion for reconsideration due to failure to pay appeal fees, the COMELEC *en banc* gave importance to technicality, which could have been disregarded at its own discretion, and failed to give weight to the fact that petitioner's proclamation as the duly elected Vice-Mayor of the Municipality of Sabangan, Mountain Province by the RTC had become final with the dismissal by the COMELEC, Second Division of private respondent's appeal in the election protest case. Hence, the Commission failed to protect and uphold the will of the electorate in voting petitioner as the Vice-Mayor of their municipality.

3. ID.; ID.; AN INJUSTICE WAS COMMITTED BY THE COMMISSION ON ELECTIONS *EN BANC* AGAINST PETITIONER IN UNSEATING HIM FROM HIS OFFICE AND SWEARING PRIVATE RESPONDENT INTO OFFICE AS VICE-MAYOR EVEN IF HE LOST TO PETITIONER.— Based on the Resolution dated September 22, 2009 of the COMELEC, Second Division and the Order dated November 4, 2009 of the COMELEC *en banc*, the Commission issued a writ of execution ordering petitioner to cease and desist from discharging the powers and functions of Vice-Mayor of Sabangan, Mountain Province and to relinquish and vacate the same in favor of private respondent. Again, this issuance was made despite the fact that it was the petitioner who won by a margin of 11 votes over private respondent, and that the decision of the RTC became final with the dismissal of private respondent's notice of appeal by the COMELEC, Second Division on June 1, 2009. An injustice was, therefore, committed by the Commission against petitioner in unseating him from his office and in swearing private respondent into office as Vice-Mayor of Sabangan, Mountain Province, even if he lost to petitioner. In fine, the Order of the COMELEC *en banc* dated November 4, 2009 and the Resolution of the COMELEC, Second Division dated September 22, 2009 were issued in grave abuse of discretion and are, therefore, null and void, considering that the RTC Decision dated February 25, 2009 became final and executory with the dismissal of private respondent's appeal by the COMELEC, Second Division on June 1, 2009. The ground

for the petition for preliminary injunction, which was the pendency of the notice of appeal, had no more basis with the dismissal of the appeal; hence, that petition should have been denied.

APPEARANCES OF COUNSEL

Balisong & Partners Law Office for petitioner.
The Solicitor General for public respondent.
Pablo F. Wagtingan, Jr. for private respondent.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for *Certiorari*[1] with Urgent Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction and/or *Status Quo Ante* Order, assailing the Order[2] of the Commission on Elections (COMELEC) *En Banc*, dated November 4, 2009, and the Resolution[3] of the Second Division of the COMELEC dated September 22, 2009, setting aside the Special Order[4] in Election Case No. 1255, dated March 31, 2009, of Branch 36, Regional Trial Court (RTC) of Bontoc, Mountain Province.

The factual background of this case is as follows:

Petitioner Joseph Bernardez and private respondent Avelino Tolean were candidates for Vice-Mayor in the Municipality of Sabangan, Mountain Province during the May 14, 2007 synchronized national and local elections. After the election, petitioner garnered 2,136 votes while private respondent garnered 2,137 votes. The Municipal Board of Canvassers proclaimed private respondent as the duly elected Vice-Mayor after winning by a single vote over the petitioner.

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[1] Under Rule 65 in relation to Rule 64 of the Rules of Court.

[2] Annex "A", *rollo*, pp. 54-55.

[3] Annex "B", *id.* at 58-64.

[4] Annex "J", *id.* at 103-105.

Petitioner filed an election protest on May 24, 2007, docketed as Election Case No. 1255 before the RTC, Branch 36, Bontoc, Mountain Province, contesting the result of the election on the ground of fraud and deceit.

Acting on the said election protest, the RTC promulgated its Decision[5] dated February 25, 2009, finding petitioner as winner by eleven (11) votes during the May 14, 2007 mid-term election. The dispositive portion of the said Decision reads:

> Wherefore, in view of all the foregoing findings, judgment is hereby rendered:
>
> 1) Declaring the proclamation of Avelino Tolean as the Vice Mayor elect of Sabangan, Mountain Province, in the May 14, 2007 national and local elections, null and void; and
>
> 2) Proclaiming Joseph Bernardez, as the duly elected Vice mayor of Sabangan, Mountain Province, by majority of eleven (11) votes, in said election.[6]

On March 5, 2009, petitioner filed a Motion for Writ of Execution Pending Appeal of the decision of the trial court, which was set for hearing on March 9, 2009. On the same day, private respondent's counsel filed a Manifestation and Motion[7] with the RTC stating that he would not be available on the suggested hearing date due to his previous commitment to appear in his other cases of similar importance. Thus, during the hearing, only the petitioner and his counsel appeared and orally argued on his special reasons for an execution pending appeal. Private respondent, on the other hand, did not appear, but filed his Comment and/or Opposition to the Motion.

Meanwhile, on March 6, 2009, private respondent filed a Notice of Appeal of the decision of the trial court. Thereafter, the records of the case were forwarded to the Second Division of the COMELEC.

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[5] Annex "G", *id.* at 77-93.

[6] *Rollo,* pp. 92-93.

[7] Annex "H", *id.* at 94-95.

On March 31, 2009, the RTC issued a Special Order[8] granting petitioner's Motion for Execution Pending Appeal, the dispositive portion of which reads:

> WHEREFORE, the Motion for Execution Pending Appeal is hereby granted.
>
> The Branch Clerk of Court, is hereby ordered to issue a Writ of Execution Pending Appeal, after the lapse of twenty (20) working days, to be counted from the time Protestee's counsel receives a copy of this Special Order, *if no restraining order or status quo order is issued*, pursuant to Sec. 11, 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).[9]

Since no restraining or *status quo* order was issued pursuant to Section 11, Rule 14 of the Rules of Procedure in Election Contests before the Courts involving Elective Municipal and *Barangay* Officials[10] during the twenty-day allowable period, the Special Order above-mentioned became valid and effective; hence, petitioner assumed the Vice-Mayoralty position of Sabangan, Mountain Province.

It was only on April 20, 2009 that private respondent filed his *Petition for Injunction with Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order* before public respondent COMELEC (Second Division) to enjoin the RTC from implementing the latter's Special Order granting the execution of its Decision on account of the pendency of private respondent's Notice of Appeal.

On June 1, 2009, the Second Division of the COMELEC issued an Order[11] dismissing private respondent's appeal for failure to pay the appeal fees, thus:

> It appearing that the appeal fees of three thousand pesos (₱3,000.00), bailiff's fees of one hundred fifty pesos (₱150.00)

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[8] Annex "J", *id.* at 103-105.

[9] *Id.* at 105.

[10] Supreme Court Administrative Order A.M. No. 07-4-15-SC.

[11] Annex "M", *rollo*, pp. 116-118.

and legal research fees of fifty pesos (₱50.00) required by COMELEC Rules were paid only on April 03, 2009, or more than fifteen (15) days from the filing of notice of appeal, hence, not in accordance with COMELEC Resolution No. 8486.

xxx xxx xxx

The Commission (Second Division) resolves to dismiss the instant appeal case.[12]

However, on September 22, 2009, the same division of the COMELEC, which dismissed private respondent's Notice of Appeal, issued the first assailed Resolution[13] reversing the Special Order of the RTC dated March 31, 2009, and granting private respondent's *Petition for Injunction and Prayer for the Issuance of a Status Quo Ante Order* on the grounds that: (1) private respondent was not furnished a Notice of Hearing as required under Section 11, Rule 14 of the New Rules, as a result of which, he was not properly represented in the hearing without his fault; and (2) the RTC neglected to state that the reasons advanced for granting the Motion for Execution Pending Appeal were "superior circumstances demanding urgency that will outweigh the injury or damage should the losing party secure a reversal of the judgment on appeal."

On October 6, 2009, petitioner filed a motion for reconsideration of the resolution of the Second Division of the COMELEC before the COMELEC e*n banc*. On November 4, 2009, the COMELEC e*n banc* issued the second assailed Order[14] in this case, denying petitioner's Motion for Reconsideration for failure to pay the required motion fees. Thus:

xxx xxx xxx

the Commission *En Banc* hereby resolves to deny the same for movant-private respondent's failure to pay the required motion fees in the amount of ₱700.00 as provided under Section 7(f), Rule 40,

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[12] *Id.*

[13] Annex "B", *rollo*, pp. 58-64.

[14] Annex "A", *id.* at 54-55.

COMELEC Rules of Procedure, as amended by COMELEC Minute Resolution No. 02-0130 dated September 18, 2002, within the five-day reglementary period for filing motions for reconsideration enjoined under Section 2, Rule19, same COMELEC Rules.

There being no valid motion for reconsideration to speak of, the provision of Section 13, paragraph (c), Rule 18, COMELEC Rules of Procedure, to wit:

"Sec. 13. Finality of Decisions or Resolutions.

xxx xxx xxx

> (c) Unless a motion for reconsideration is seasonably filed, a decision or resolution of a Division shall become final and executory after the lapse of five (5) days in Special actions and Special cases and after fifteen (15) days in all other actions or proceedings, following its promulgation."

applies, hence, the Resolution of the Commission (Second Division) dated September 22, 2009, a copy of which was received by the private respondent on October 1, 2009, per his admission in his Motion for Reconsideration filed on October 6, 2009, had become final and executory as of October 17, 2009.

ACCORDINGLY, the Clerk of the Commission, Electoral Contests Adjudication Department (ECAD), this Commission, is hereby directed to immediately issue an Entry of Judgment in the above-entitled case.

SO ORDERED.[15]

On November 19, 2009, upon private respondent's urgent motion, the COMELEC issued a Writ of Execution[16] of the Resolution of the Second Division of the COMELEC dated September 22, 2009, and the Order of the COMELEC e*n banc* dated November 4, 2009, the pertinent portion of which states, thus:

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[15] *Id.*

[16] Annex "R", *id.* 147-148.

NOW, THEREFORE, the Provincial Election Supervisor of Mountain Province, Comelec, is hereby directed to immediately implement this Writ of Execution, in coordination with the Department of the Interior and Local Government (DILG) Provincial Operations Officer of Mountain Province and the Provincial Director, PNP, by serving a copy hereof, together with the certified true copies of the Resolution of the Commission (Second Division) dated September 22, 2009 and the Order of the Commission *En Banc* issued on November 4, 2009, upon private respondent JOSEPH BERNARDEZ (1) ordering him to cease and desist from discharging the powers and functions of Vice-Mayor of Sabangan. Mt. Province, and to relinquish and vacate the same in favor of petitioner Avelino Tolean, (2) to cause the peaceful and smooth turn-over of office to aforesaid petitioner, and 3) make a return of your action within five (5) days from receipt hereof.[17]

Thereafter, pursuant to the above-mentioned Writ of Execution, private respondent took his oath and assumed office as the Vice Mayor elect of the Municipality of Sabangan as per Certification[18] issued by the *Sangguniang Bayan* of Sabangan, Mountain Province dated November 27, 2009, and the *Panunumpa ng Katungkulan*[19] dated November 24, 2009.

Hence, this petition.

Petitioner raises the following issues:

I.

THAT COMELEC (2ND DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT PROCEEDED TO DECIDE THE MOTION FOR TRO/*STATUS QUO* ANTE ORDER WITHOUT CONSIDERING THE DISMISSED MAIN APPEAL OF RESPONDENT FOR FAILURE TO PAY FILING FEE NINE (9) MONTHS AFTER THE COMELEC CLARIFICATORY RESOLUTION BECOMES FINAL AND EXECUTORY.

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[17] *Id.* at 148.

[18] Annex "S", *rollo*, p. 149.

[19] Annex "S-1", *id.* at 150.

II.

THAT COMELEC (2ND DIVISION) ERRED WHEN IT RESOLVED TO GRANT THE PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER/STATUS QUO ORDER ALTHOUGH RESPONDENT FAILED TO ESTABLISH THE EXISTENCE OF A CLEAR AND UNMISTAKABLE RIGHT THAT MUST BE PROTECTED, AS WELL AS THE SERIOUS DAMAGE OR IRREPARABLE LOSS THAT RESPONDENT WOULD SUFFER IF THE WRIT IS NOT GRANTED.

III.

THAT COMELEC (2ND DIVISION) AND THE HONORABLE COMELEC COMMISSION *EN BANC* HAD ACTED ARBITRARILY AND IN MANIFEST GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DEVIATED FROM ITS MANDATE TO REASONABLY AND LIBERALLY CONSTRUE ELECTION LAWS TO ACHIEVE THE PURPOSE WHICH IS TO SAFEGUARD THE WILL OF THE ELECTORATE IN THE CHOICE OF THEIR REPRESENTATIVE.

IV.

COMELEC COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT WHIMSICALLY AND CAPRICIOUSLY SET ASIDE THE TIME-HONORED DUE PROCESS. THERE WAS NO PRIOR NOTICE AND HEARING BEFORE IMPLEMENTING THE SAID WRIT OF EXECUTION.[20]

The main issue is whether or not public respondent COMELEC *en banc* committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its Order dated November 4, 2009.

There is grave abuse of discretion where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility which must be so patent and gross as to amount to an invasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[21]

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[20] *Rollo*, pp. 28-29.

[21] *Romulo v. Peralta*, G.R. No. 165665, January 31, 2007, 513 SCRA 612.

Petitioner contends that public respondent COMELEC *en banc* committed grave abuse of discretion when it proceeded to decide and thereby grant private respondent's *Petition for Injunction and Prayer for the Issuance of a Status Quo Ante Order,* without considering the fact of dismissal of private respondent's Notice of Appeal. Petitioner further avers that the allowance by the COMELEC Second Division of private respondent's *Urgent Motion for the Issuance of a Writ of Execution,* notwithstanding the dismissal of private respondent's Notice of Appeal, amounted to the reversal of the decision of the RTC via a mere motion and not via an appeal as inscribed in our Constitution. What the law forbids to be done directly was made possible by private respondent indirectly.

A careful review of the antecedent facts bears out the fact that, indeed, the COMELEC Second Division granted private respondent Tolean's petition for injunction without considering that it had already dismissed private respondent's Notice of Appeal. It is undisputed that on April 20, 2009, private respondent filed the subject petition for injunction before the COMELEC Second Division, to enjoin the execution of the Decision of the RTC, citing mainly as ground the fact that the victory of petitioner had not been clearly and sufficiently established due to the pendency of his Notice of Appeal. However, on June 1, 2009, while the petition for injunction was still pending, the COMELEC Second Division dismissed private respondent's Notice of Appeal due to his failure to pay the required appeal fees in violation of COMELEC Resolution No. 8486,[22] which states, thus:

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

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[22] Entitled "*In the Matter of Clarifying the Implementation of COMELEC Rules Re: Payment of Filing Fees for Appealed Cases Involving Barangay and Municipal Elective Positions from the Municipal Trial Courts, Municipal Circuit Trial Courts, Metropolitan Trial Courts and Regional Trial Courts*."

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 (15) days from the time of the filing of the Notice of Appeal with the lower court. If no payment is made within the prescribed period, the appeal shall be dismissed pursuant to Section 9(a) of Rule 22 of the COMELEC Rules of Procedure, which provides:

> Sec. 9. *Grounds for Dismissal of Appeal.* – The appeal may be dismissed upon motion of either party or at the instance of the Commission on any of the following grounds:
>
> (a.) Failure of the appellant to pay the correct appeal fee; xxx
>
> 2.) That if the appellant failed to pay the ₱1,000.00 — appeal fee with the lower court within the five (5)-day period as prescribed by the Supreme Court New Rules of Procedure but the case was nonetheless elevated to the Commission, the appeal shall be dismissed outright by the Commission, in accordance with the aforestated Section 9(a) of Rule 22 of the Comelec Rules of Procedure.

With the dismissal by the COMELEC Second Division of private respondent's Notice of Appeal without any showing that he had appealed the dismissal to the COMELEC *en banc*, the decision of the RTC proclaiming petitioner as the duly elected Vice-Mayor of Sabangan, Mountain Province becomes final and executory. Thus, the dismissal of private respondent's Notice of Appeal settles absolutely the victory of petitioner and the defeat of private respondent in the vice-mayoralty race.

Considering the foregoing, the COMELEC Second Division gravely abused its discretion when it granted private respondent's petition for injunction on September 22, 2009 after the victory of petitioner Bernardez had already become final. To reiterate, the petition for injunction was filed by private respondent to enjoin the RTC from executing its decision proclaiming petitioner

as Vice-Mayor of the Municipality of Sabangan **due to the pendency of the Notice of Appeal.** Since it has been ruled that the Notice of Appeal was rightfully dismissed and the ruling has become final and executory, it follows then that the right sought to be protected and the irreparable injury sought to be prevented by the private respondent through injunction or prohibition has already been rendered *fait accompli*.

In *Caneland Sugar Corporation v. Alon*,[23] it was settled that injunctive reliefs are preservative remedies for the protection of substantive rights and interests. Injunction is not a cause of action in itself, but merely a provisional remedy, an adjunct to a main suit. When the act sought to be enjoined has become *fait accompli*, the prayer for provisional remedy should be denied.

In *Go v. Looyuko*,[24] the Court ruled that when the events sought to be prevented by injunction or prohibition have already happened, nothing more could be enjoined or prohibited. Indeed, it is a universal principle of law that an injunction will not issue to restrain the performance of an act already done. This is so for the simple reason that nothing more can be done in reference thereto. A writ of injunction becomes moot and academic after the act sought to be enjoined has already been consummated.

Since the COMELEC, Second Division, granted the petition for injunction despite finality of the Decision in the election protest case, petitioner filed with the COMELEC *en banc* a motion for reconsideration of the Resolution of the COMELEC, Second Division, granting the private respondent's petition for preliminary injunction. The COMELEC *en banc* was, therefore, challenged to weigh an issue of technicality as against the substance of the motion for reconsideration. In dismissing the motion for reconsideration due to failure to pay appeal fees, the COMELEC *en banc* gave importance to technicality, which could have been disregarded at its own discretion, and failed to give weight to the fact that petitioner's proclamation as the duly elected Vice-

[23] G.R. No. 142896, September 12, 2007, 533 SCRA 28, 37, citing *Philippine National Bank v. Court of Appeals*, 291 SCRA 271 (1998).

[24] G.R. Nos. 147923, 147962, 154035, October 26, 2007, 537 SCRA 445, 479.

Mayor of the Municipality of Sabangan, Mountain Province by the RTC had become final with the dismissal by the COMELEC, Second Division of private respondent's appeal in the election protest case. Hence, the Commission failed to protect and uphold the will of the electorate in voting petitioner as the Vice-Mayor of their municipality.

Based on the Resolution dated September 22, 2009 of the COMELEC, Second Division and the Order dated November 4, 2009 of the COMELEC *en banc*, the Commission issued a writ of execution ordering petitioner to cease and desist from discharging the powers and functions of Vice-Mayor of Sabangan, Mountain Province and to relinquish and vacate the same in favor of private respondent. Again, this issuance was made despite the fact that it was the petitioner who won by a margin of 11 votes over private respondent, and that the decision of the RTC became final with the dismissal of private respondent's notice of appeal by the COMELEC, Second Division on June 1, 2009. An injustice was, therefore, committed by the Commission against petitioner in unseating him from his office and in swearing private respondent into office as Vice-Mayor of Sabangan, Mountain Province, even if he lost to petitioner.

In fine, the Order of the COMELEC *en banc* dated November 4, 2009 and the Resolution of the COMELEC, Second Division dated September 22, 2009 were issued in grave abuse of discretion and are, therefore, null and void, considering that the RTC Decision dated February 25, 2009 became final and executory with the dismissal of private respondent's appeal by the COMELEC, Second Division on June 1, 2009. The ground for the petition for preliminary injunction, which was the pendency of the notice of appeal, had no more basis with the dismissal of the appeal; hence, that petition should have been denied.

WHEREFORE, the petition is *GRANTED*. The Order dated November 4, 2009 of the COMELEC *en banc* and the Resolution dated September 22, 2009, of the Second Division of the COMELEC are *ANNULLED* and *SET ASIDE*. The Entry of Judgment issued on November 5, 2009 by the Electoral Contests

Adjudication Department, as well as the Writ of Execution issued on November 19, 2009 by the COMELEC are likewise *ANNULLED* and *SET ASIDE.* Private respondent Avelino Tolean is hereby ordered (1) to cease and desist from exercising the power and functions of Vice-Mayor of Sabangan, Mountain Province, and to relinquish and vacate the same in favor of petitioner Joseph Bernardez, and (2) to cause the peaceful and smooth turn-over of office to aforesaid petitioner Joseph Bernardez.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

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