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OF THE

PHILIPPINES

FROM

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MANILA
2014

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.C. No. 8382. April 21, 2010]

ALFREDO B. ROA, *complainant, vs.* **ATTY. JUAN R. MORENO,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; A LAWYER MAY BE DISCIPLINED FOR MISCONDUCT COMMITTED EITHER IN HIS PROFESSIONAL OR PRIVATE CAPACITY; TEST; CASE AT BAR.—** Conduct, as used in the Rule, is not confined to the performance of a lawyer's professional duties. A lawyer may be disciplined for misconduct committed either in his professional or private capacity. The test is whether his conduct shows him to be wanting in moral character, honesty, probity, and good demeanor, or whether it renders him unworthy to continue as an officer of the court. In the present case, respondent acted in his private capacity. He misrepresented that he owned the lot he sold to complainant. He refused to return the amount paid by complainant. As a final blow, he denied having any transaction with complainant. It is crystal-clear in the mind of the Court that he fell short of his duty under Rule 1.01, Canon 1 of the Code of Professional Responsibility. We cannot, and we should not, let respondent's dishonest and deceitful conduct go unpunished.

2. **ID.; ID.; PRACTICE OF LAW; NOT A RIGHT BUT A PRIVILEGE, ENJOYED ONLY BY THOSE WHO CONTINUE TO DISPLAY UNASSAILABLE CHARACTER;**

CASE AT BAR.— Time and again we have said that the practice of law is not a right but a privilege. It is enjoyed only by those who continue to display unassailable character. Thus, lawyers must conduct themselves beyond reproach at all times, not just in their dealings with their clients but also in their dealings with the public at large, and a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty, including suspension and even disbarment. Respondent's refusal to return to complainant the money paid for the lot is unbecoming a member of the bar and an officer of the court. By his conduct, respondent failed to live up to the strict standard of professionalism required by the Code of Professional Responsibility. Respondent's acts violated the trust and respect complainant reposed in him as a member of the Bar and an officer of the court.

3. **ID.; ID.; DISCIPLINARY PROCEEDINGS AGAINST LAWYERS; ONLY ISSUE IS WHETHER THE OFFICER OF THE COURT IS STILL FIT TO BE ALLOWED TO CONTINUE AS A MEMBER OF THE BAR.—** xxx [W]e cannot sustain the IBP's recommendation ordering respondent to return the money paid by complainant. In disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar. Our only concern is the determination of respondent's administrative liability. Our findings have no material bearing on other judicial action which the parties may choose to file against each other.

4. **ID.; ID.; DISHONEST AND DECEITFUL CONDUCT; PENALTY.—** That said, we deem that the penalty of three-month suspension recommended by the IBP is insufficient to atone for respondent's misconduct in this case. We consider a penalty of two-year suspension more appropriate considering the circumstances of this case.

R E S O L U T I O N

CARPIO, *J.*:

<u>The Case</u>

This complaint, filed by Alfredo B. Roa (complainant) against Atty. Juan R. Moreno (respondent), stemmed from a transaction

involving the sale of a parcel of land. Complainant asks that respondent be disciplined and ordered to return the amount of money paid for the sale.

The Antecedent Facts

Sometime in September 1998, respondent sold to complainant a parcel of land located along Starlite Street in Cupang, Antipolo. Complainant paid respondent ₱70,000 in cash as full payment for the lot. Respondent did not issue a deed of sale. Instead, he issued a temporary receipt[1] and a Certificate of Land Occupancy[2] purportedly issued by the general overseer of the estate in which the lot was located. Respondent assured complainant that he could use the lot from then on.

Complainant learned, not long after, that the Certificate of Land Occupancy could not be registered in the Register of Deeds. When complainant went to see respondent, the latter admitted that the real owner of the lot was a certain Rubio. Respondent also said there was a pending legal controversy over the lot. On 25 February 2001, complainant sent a letter[3] to respondent demanding the return of the ₱70,000 paid for the lot.

Complainant then filed a criminal case against respondent in the Municipal Trial Court (Branch 2) of Antipolo City. On 26 September 2003, the trial court rendered a decision[4] convicting respondent of the crime of other forms of swindling under Article 316, paragraph 1 of the Revised Penal Code. The MTC sentenced respondent to suffer the penalty of imprisonment for one month and one day and ordered him to return the amount of ₱70,000 to complainant.

On appeal, the Regional Trial Court (Branch 74) of Antipolo City set aside the lower court's ruling. For lack of evidence establishing respondent's guilt beyond reasonable doubt, the

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[1] *Rollo*, p. 45.

[2] *Id.* at 48.

[3] *Id.* at 7.

[4] *Id.* at 9-13.

RTC acquitted respondent in a decision[5] dated 20 December 2005. The decision further stated that the remedy of complainant was to institute a civil action for the recovery of the amount he paid to respondent.

On 23 February 2006, complainant filed with the Integrated Bar of the Philippines (IBP) an Affidavit-Complaint[6] against respondent.

In his Answer,[7] respondent explained that what he sold to complainant was merely the right over the use of the lot, not the lot itself. Respondent maintained he never met the complainant during the negotiations for the sale of said right. Respondent claimed it was a certain Benjamin Hermida who received the purchase price. Respondent further alleged that it was one Edwin Tan, and not the complainant, who paid the purchase price.

At the hearing set on 14 October 2008, complainant narrated that respondent personally sold to him the lot in question. Complainant stated respondent assured him that the papers would be processed as soon as payment was made. Complainant claimed he duly paid respondent ₱70,000, but when he followed up the sales documents, respondent just dismissed him and denied any transaction between them. For his part, respondent did not appear at the hearing despite receipt of notice.

The IBP's Report and Recommendation

In a Report and Recommendation[8] dated 17 October 2008, the IBP Commissioner on Bar Discipline (IBP-CBD) found respondent guilty of violating Rules 1.01 and 7.03 of the Code of Professional Responsibility.

The IBP-CBD recommended that respondent be suspended from the practice of law for three months and ordered to

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[5] *Id.* at 14-16.

[6] *Id.* at 1-4.

[7] *Id.* at 18-22.

[8] *Id.* at 52-56.

immediately deliver the amount of ₱70,000 to complainant, thus:

> PREMISES CONSIDERED, it is submitted that Respondent is GUILTY of violating Rules 1.01 and 7.03 of the Code of Professional Responsibility and should be given the penalty of THREE (3) MONTHS SUSPENSION.
>
> Respondent is hereby ORDERED to immediately deliver the amount of Seventy Thousand Pesos (₱70,000.00) to herein complainant.[9]

In Resolution No. XVIII-2008-632[10] passed on 11 December 2008, the IBP Board of Governors adopted and approved with modification the recommendation of the Investigating Commissioner. The IBP Board of Governors suspended respondent from the practice of law for three months and ordered him to return the amount of ₱70,000 to complainant <u>within 30 days from receipt of notice</u>. Thus:

> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and finding Respondent guilty of violating Rules 1.01 and 7.03 of the Code of Professional Responsibility, Atty. Juan R. Moreno is hereby SUSPENDED from the practice of law for three (3) months and <u>Ordered to Return the Seventy Thousand Pesos (₱70,000.00) to complainant within thirty (30) days from receipt of notice</u>. (Underscoring supplied)

The IBP Board of Governors forwarded the present case to this Court as provided under Section 12(b), Rule 139-B[11] of the Rules of Court.

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[9] *Id.* at 56.

[10] *Id.* at 51.

[11] Sec. 12(b). If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

The Ruling of this Court

We sustain the findings of the IBP and adopt its recommendation in part.

Complainant and respondent presented two different sets of facts. According to complainant, respondent claimed to be the owner of the lot and even offered to be his lawyer in case of any legal problem that might crop up from the sale of the lot. On the other hand, respondent denied ever meeting complainant, much less selling the lot he insisted he did not even own. In his answer, he presented the affidavits of Benjamin and Cepriano Hermida who claimed that upon receipt of the payment for the right to use the lot, they immediately removed the improvements on the lot. The Hermidas also claimed they received the payment from one Mr. Edwin Tan, not from complainant.

After a careful review of the records of the case, the Court gives credence to complainant's version of the facts.

Respondent's credibility is highly questionable. Records show that respondent even issued a bogus Certificate of Land Occupancy to complainant whose only fault was that he did not know better. The Certificate of Land Occupancy has all the badges of intent to defraud. It purports to be issued by the "Office of the General Overseer." It contains a verification by the "Lead, Record Department" that the lot plan "conforms with the record on file." It is even printed on parchment paper strikingly similar to a certificate of title. To the unlettered, it can easily pass off as a document evidencing title. True enough, complainant actually tried, but failed, to register the Certificate of Land Occupancy in the Register of Deeds. Complainant readily parted with ₱70,000 because of the false assurance afforded by the sham certificate.

The innocent public who deal in good faith with the likes of respondent are not without recourse in law. Section 27, Rule 138 of the Rules of Court states:

SEC. 27. *Disbarment or suspension of attorneys by Supreme Court, grounds therefor.* – **A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court**

for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority to do so. x x x (Emphasis supplied)

Further, Rule 1.01, Canon 1 of the Code of Professional Responsibility provides:

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

Conduct, as used in the Rule, is not confined to the performance of a lawyer's professional duties. A lawyer may be disciplined for misconduct committed either in his professional or private capacity. The test is whether his conduct shows him to be wanting in moral character, honesty, probity, and good demeanor, or whether it renders him unworthy to continue as an officer of the court.[12]

In the present case, respondent acted in his private capacity. He misrepresented that he owned the lot he sold to complainant. He refused to return the amount paid by complainant. As a final blow, he denied having any transaction with complainant. It is crystal-clear in the mind of the Court that he fell short of his duty under Rule 1.01, Canon 1 of the Code of Professional Responsibility. We cannot, and we should not, let respondent's dishonest and deceitful conduct go unpunished.

Time and again we have said that the practice of law is not a right but a privilege. It is enjoyed only by those who continue to display unassailable character. Thus, lawyers must conduct themselves beyond reproach at all times, not just in their dealings with their clients but also in their dealings with the public at large, and a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty, including suspension and even disbarment.[13]

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[12] *Ronquillo v. Cezar*, A.C. No. 6288, 16 June 2006, 491 SCRA 1.

[13] *Id.*

Respondent's refusal to return to complainant the money paid for the lot is unbecoming a member of the bar and an officer of the court. By his conduct, respondent failed to live up to the strict standard of professionalism required by the Code of Professional Responsibility. Respondent's acts violated the trust and respect complainant reposed in him as a member of the Bar and an officer of the court.

However, we cannot sustain the IBP's recommendation ordering respondent to return the money paid by complainant. In disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar. Our only concern is the determination of respondent's administrative liability. Our findings have no material bearing on other judicial action which the parties may choose to file against each other.[14]

That said, we deem that the penalty of three-month suspension recommended by the IBP is insufficient to atone for respondent's misconduct in this case. We consider a penalty of two-year suspension more appropriate considering the circumstances of this case.

WHEREFORE, the Court finds Atty. Juan R. Moreno *GUILTY* of violating Rule 1.01, Canon 1 of the Code of Professional Responsibility. Accordingly, the Court *SUSPENDS* him from the practice of law for a period of two (2) years effective upon finality of this Resolution.

Let copies of this Resolution be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and all courts all over the country. Let a copy of this Resolution be attached to the personal records of respondent.

SO ORDERED.

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

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[14] *Suzuki v. Tiamson*, A.C. No. 6542, 30 September 2005, 471 SCRA 129.

EN BANC

[G.R. No. 178902. April 21, 2010]

MANUEL O. FUENTES and LETICIA L. FUENTES, *petitioners*, *vs.* **CONRADO G. ROCA, ANNABELLE R. JOSON, ROSE MARIE R. CRISTOBAL and PILAR MALCAMPO,** *respondents*.

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; CONSENT; SALE IS VOID ABSENT AN AUTHENTIC CONSENT; CASE AT BAR.—** The Court agrees with the CA's observation that Rosario's signature strokes on the affidavit appears heavy, deliberate, and forced. Her specimen signatures, on the other hand, are consistently of a lighter stroke and more fluid. The way the letters "R" and "s" were written is also remarkably different. The variance is obvious even to the untrained eye. Significantly, Rosario's specimen signatures were made at about the time that she signed the supposed affidavit of consent. They were, therefore, reliable standards for comparison. The Fuentes spouses presented no evidence that Rosario suffered from any illness or disease that accounted for the variance in her signature when she signed the affidavit of consent. Notably, Rosario had been living separately from Tarciano for 30 years since 1958. And she resided so far away in Manila. It would have been quite tempting for Tarciano to just forge her signature and avoid the risk that she would not give her consent to the sale or demand a stiff price for it. What is more, Atty. Plagata admittedly falsified the jurat of the affidavit of consent. That jurat declared that Rosario swore to the document and signed it in Zamboanga City on January 11, 1989 when, as Atty. Plagata testified, she supposedly signed it about four months earlier at her residence in Paco, Manila on September 15, 1988. While a defective notarization will merely strip the document of its public character and reduce it to a private instrument, that falsified jurat, taken together with the marks of forgery in the signature, dooms such document as proof of Rosario's consent to the sale of the land. That the Fuentes spouses honestly relied on the notarized affidavit as

proof of Rosario's consent does not matter. The sale is still void without an authentic consent.

2. **ID.; FAMILY CODE; LAW THAT APPLIES TO CASE AT BAR; EXPLAINED.—** xxx Contrary to the ruling of the Court of Appeals, the law that applies to this case is the Family Code, not the Civil Code. Although Tarciano and Rosario got married in 1950, Tarciano sold the conjugal property to the Fuentes spouses on January 11, 1989, a few months after the Family Code took effect on August 3, 1988. xxx Its Chapter 4 on *Conjugal Partnership of Gains* expressly superseded Title VI, Book I of the Civil Code on *Property Relations Between Husband and Wife*. Further, the Family Code provisions were also made to apply to already existing conjugal partnerships without prejudice to vested rights. Thus: **Art. 105. x x x The provisions of this Chapter shall also apply to conjugal partnerships of gains already established between spouses before the effectivity of this Code, without prejudice to vested rights already acquired in accordance with the Civil Code or other laws, as provided in Article 256. (n)** Consequently, when Tarciano sold the conjugal lot to the Fuentes spouses on January 11, 1989, the law that governed the disposal of that lot was already the Family Code.

3. **ID.; OBLIGATIONS AND CONTRACTS; CONTRACTS; VOID OR INEXISTENT CONTRACTS; SALE OF CONJUGAL PROPERTY WITHOUT THE OTHER SPOUSE'S WRITTEN CONSENT.—** Under the provisions of the Civil Code governing contracts, a void or inexistent contract has no force and effect from the very beginning. And this rule applies to contracts that are declared void by positive provision of law, as in the case of a sale of conjugal property without the other spouse's written consent. A void contract is equivalent to nothing and is absolutely wanting in civil effects. It cannot be validated either by ratification or prescription.

4. **ID.; ID.; ID.; ID.; WHEN ANY OF THE TERMS OF A VOID CONTRACT HAS BEEN PERFORMED, AN ACTION TO DECLARE ITS INEXISTENCE IS NECESSARY TO ALLOW RESTITUTION; ACTION, IMPRESCRIPTIBLE.—** But, although a void contract has no legal effects even if no action is taken to set it aside, when any of its terms have been performed, an action to declare its inexistence is necessary to allow

restitution of what has been given under it. This action, according to Article 1410 of the Civil Code does not prescribe. Thus: **Art. 1410. The action or defense for the declaration of the inexistence of a contract does not prescribe.** Here, the Rocas filed an action against the Fuentes spouses in 1997 for annulment of sale and reconveyance of the real property that Tarciano sold without their mother's (his wife's) written consent. The passage of time did not erode the right to bring such an action.

5. **ID.; PROPERTY; OWNERSHIP; RIGHT TO HAVE THE SALE DECLARED VOID IS WITH THE HEIRS AS LAWFUL OWNERS OF THE PROPERTY.—** xxx The Fuentes spouses point out that it was to Rosario, whose consent was not obtained, that the law gave the right to bring an action to declare void her husband's sale of conjugal land. But here, Rosario died in 1990, the year after the sale. Does this mean that the right to have the sale declared void is forever lost? The answer is no. As stated above, that sale was void from the beginning. Consequently, the land remained the property of Tarciano and Rosario despite that sale. When the two died, they passed on the ownership of the property to their heirs, namely, the Rocas. As lawful owners, the Rocas had the right, under Article 429 of the Civil Code, to exclude any person from its enjoyment and disposal.

6. **ID.; ID.; POSSESSION; POSSESSOR IN GOOD FAITH; DEFINED; RIGHTS.—** In fairness to the Fuentes spouses, however, they should be entitled, among other things, to recover from Tarciano's heirs, the Rocas, the ₱200,000.00 that they paid him, with legal interest until fully paid, chargeable against his estate. Further, the Fuentes spouses appear to have acted in good faith in entering the land and building improvements on it. Atty. Plagata, whom the parties mutually entrusted with closing and documenting the transaction, represented that he got Rosario's signature on the affidavit of consent. The Fuentes spouses had no reason to believe that the lawyer had violated his commission and his oath. They had no way of knowing that Rosario did not come to Zamboanga to give her consent. There is no evidence that they had a premonition that the requirement of consent presented some difficulty. Indeed, they willingly made a 30 percent down payment on the selling price months earlier on the assurance that it was forthcoming. Further, the

notarized document appears to have comforted the Fuentes spouses that everything was already in order when Tarciano executed a deed of absolute sale in their favor on January 11, 1989. In fact, they paid the balance due him. And, acting on the documents submitted to it, the Register of Deeds of Zamboanga City issued a new title in the names of the Fuentes spouses. It was only after all these had passed that the spouses entered the property and built on it. He is deemed a possessor in good faith, said Article 526 of the Civil Code, who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it. As possessor in good faith, the Fuentes spouses were under no obligation to pay for their stay on the property prior to its legal interruption by a final judgment against them. What is more, they are entitled under Article 448 to indemnity for the improvements they introduced into the property with a right of retention until the reimbursement is made. x x x The Rocas shall of course have the option, pursuant to Article 546 of the Civil Code, of indemnifying the Fuentes spouses for the costs of the improvements or paying the increase in value which the property may have acquired by reason of such improvements.

APPEARANCES OF COUNSEL

Law Firm of Lapeña & Associates for petitioners.
Sam Norman G. Fuentes for respondents.

D E C I S I O N

ABAD, *J*.:

This case is about a husband's sale of conjugal real property, employing a challenged affidavit of consent from an estranged wife. The buyers claim valid consent, loss of right to declare nullity of sale, and prescription.

The Facts and the Case

Sabina Tarroza owned a titled 358-square meter lot in Canelar, Zamboanga City. On October 11, 1982 she sold it to her son, Tarciano T. Roca (Tarciano) under a deed of absolute sale.[1]

[1] Records, p. 8.

But Tarciano did not for the meantime have the registered title transferred to his name.

Six years later in 1988, Tarciano offered to sell the lot to petitioners Manuel and Leticia Fuentes (the Fuentes spouses). They arranged to meet at the office of Atty. Romulo D. Plagata whom they asked to prepare the documents of sale. They later signed an agreement to sell that Atty. Plagata prepared[2] dated April 29, 1988, which agreement expressly stated that it was to take effect in six months.

The agreement required the Fuentes spouses to pay Tarciano a down payment of ₱60,000.00 for the transfer of the lot's title to him. And, within six months, Tarciano was to clear the lot of structures and occupants and secure the consent of his estranged wife, Rosario Gabriel Roca (Rosario), to the sale. Upon Tarciano's compliance with these conditions, the Fuentes spouses were to take possession of the lot and pay him an additional ₱140,000.00 or ₱160,000.00, depending on whether or not he succeeded in demolishing the house standing on it. If Tarciano was unable to comply with these conditions, the Fuentes spouses would become owners of the lot without any further formality and payment.

The parties left their signed agreement with Atty. Plagata who then worked on the other requirements of the sale. According to the lawyer, he went to see Rosario in one of his trips to Manila and had her sign an affidavit of consent.[3] As soon as Tarciano met the other conditions, Atty. Plagata notarized Rosario's affidavit in Zamboanga City. On January 11, 1989 Tarciano executed a deed of absolute sale[4] in favor of the Fuentes spouses. They then paid him the additional ₱140,000.00 mentioned in their agreement. A new title was issued in the name of the spouses[5] who immediately constructed a building

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[2] *Id.* at 149.

[3] *Id.* at 10.

[4] *Id.* at 9.

[5] *Id.* at 171.

on the lot. On January 28, 1990 Tarciano passed away, followed by his wife Rosario who died nine months afterwards.

Eight years later in 1997, the children of Tarciano and Rosario, namely, respondents Conrado G. Roca, Annabelle R. Joson, and Rose Marie R. Cristobal, together with Tarciano's sister, Pilar R. Malcampo, represented by her son, John Paul M. Trinidad (collectively, the Rocas), filed an action for annulment of sale and reconveyance of the land against the Fuentes spouses before the Regional Trial Court (RTC) of Zamboanga City in Civil Case 4707. The Rocas claimed that the sale to the spouses was void since Tarciano's wife, Rosario, did not give her consent to it. Her signature on the affidavit of consent had been forged. They thus prayed that the property be reconveyed to them upon reimbursement of the price that the Fuentes spouses paid Tarciano.[6]

The spouses denied the Rocas' allegations. They presented Atty. Plagata who testified that he personally saw Rosario sign the affidavit at her residence in Paco, Manila, on September 15, 1988. He admitted, however, that he notarized the document in Zamboanga City four months later on January 11, 1989.[7] All the same, the Fuentes spouses pointed out that the claim of forgery was personal to Rosario and she alone could invoke it. Besides, the four-year prescriptive period for nullifying the sale on ground of fraud had already lapsed.

Both the Rocas and the Fuentes spouses presented handwriting experts at the trial. Comparing Rosario's standard signature on the affidavit with those on various documents she signed, the Rocas' expert testified that the signatures were not written by the same person. Making the same comparison, the spouses' expert concluded that they were.[8]

On February 1, 2005 the RTC rendered judgment, dismissing the case. It ruled that the action had already prescribed since

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

[7] TSN, April 12, 2000, pp. 16-18.

[8] *Rollo*, p. 42.

the ground cited by the Rocas for annulling the sale, forgery or fraud, already prescribed under Article 1391 of the Civil Code four years after its discovery. In this case, the Rocas may be deemed to have notice of the fraud from the date the deed of sale was registered with the Registry of Deeds and the new title was issued. Here, the Rocas filed their action in 1997, almost nine years after the title was issued to the Fuentes spouses on January 18, 1989.[9]

Moreover, the Rocas failed to present clear and convincing evidence of the fraud. Mere variance in the signatures of Rosario was not conclusive proof of forgery.[10] The RTC ruled that, although the Rocas presented a handwriting expert, the trial court could not be bound by his opinion since the opposing expert witness contradicted the same. Atty. Plagata's testimony remained technically unrebutted.[11]

Finally, the RTC noted that Atty. Plagata's defective notarization of the affidavit of consent did not invalidate the sale. The law does not require spousal consent to be on the deed of sale to be valid. Neither does the irregularity vitiate Rosario's consent. She personally signed the affidavit in the presence of Atty. Plagata.[12]

On appeal, the Court of Appeals (CA) reversed the RTC decision. The CA found sufficient evidence of forgery and did not give credence to Atty. Plagata's testimony that he saw Rosario sign the document in Quezon City. Its jurat said differently. Also, upon comparing the questioned signature with the specimen signatures, the CA noted significant variance between them. That Tarciano and Rosario had been living separately for 30 years since 1958 also reinforced the conclusion that her signature had been forged.

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[9] *Id.* at 72.

[10] *Id.* at 73.

[11] *Id.* at 92.

[12] *Id.* at 95-96.

Since Tarciano and Rosario were married in 1950, the CA concluded that their property relations were governed by the Civil Code under which an action for annulment of sale on the ground of lack of spousal consent may be brought by the wife during the marriage within 10 years from the transaction. Consequently, the action that the Rocas, her heirs, brought in 1997 fell within 10 years of the January 11, 1989 sale.

Considering, however, that the sale between the Fuentes spouses and Tarciano was merely voidable, the CA held that its annulment entitled the spouses to reimbursement of what they paid him plus legal interest computed from the filing of the complaint until actual payment. Since the Fuentes spouses were also builders in good faith, they were entitled under Article 448 of the Civil Code to payment of the value of the improvements they introduced on the lot. The CA did not award damages in favor of the Rocas and deleted the award of attorney's fees to the Fuentes spouses.[13]

Unsatisfied with the CA decision, the Fuentes spouses came to this court by petition for review.[14]

<u>The Issues Presented</u>

The case presents the following issues:

1. Whether or not Rosario's signature on the document of consent to her husband Tarciano's sale of their conjugal land to the Fuentes spouses was forged;

2. Whether or not the Rocas' action for the declaration of nullity of that sale to the spouses already prescribed; and

3. Whether or not only Rosario, the wife whose consent was not had, could bring the action to annul that sale.

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[13] *Id.* at 45-50.

[14] A Division of the Court already denied the petition for having been filed late and on other technical grounds. (*Rollo*, pp. 7 and 110-111). But it was reinstated on second motion for reconsideration and referred to the *En Banc* on a *consulta*. (*Rollo*, pp. 199-200).

The Court's Rulings

First. The key issue in this case is whether or not Rosario's signature on the document of consent had been forged. For, if the signature were genuine, the fact that she gave her consent to her husband's sale of the conjugal land would render the other issues merely academic.

The CA found that Rosario's signature had been forged. The CA observed a marked difference between her signature on the affidavit of consent[15] and her specimen signatures.[16] The CA gave no weight to Atty. Plagata's testimony that he saw Rosario sign the document in Manila on September 15, 1988 since this clashed with his declaration in the *jurat* that Rosario signed the affidavit in Zamboanga City on January 11, 1989.

The Court agrees with the CA's observation that Rosario's signature strokes on the affidavit appears heavy, deliberate, and forced. Her specimen signatures, on the other hand, are consistently of a lighter stroke and more fluid. The way the letters "R" and "s" were written is also remarkably different. The variance is obvious even to the untrained eye.

Significantly, Rosario's specimen signatures were made at about the time that she signed the supposed affidavit of consent. They were, therefore, reliable standards for comparison. The Fuentes spouses presented no evidence that Rosario suffered from any illness or disease that accounted for the variance in her signature when she signed the affidavit of consent. Notably, Rosario had been living separately from Tarciano for 30 years since 1958. And she resided so far away in Manila. It would have been quite tempting for Tarciano to just forge her signature and avoid the risk that she would not give her consent to the sale or demand a stiff price for it.

What is more, Atty. Plagata admittedly falsified the jurat of the affidavit of consent. That jurat declared that Rosario swore

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[15] Records, p. 10.

[16] Exhibits E to E-21 consisting of personal letters and legal documents signed by Rosario relative to a special proceedings case tried by another court.

to the document and signed it in Zamboanga City on January 11, 1989 when, as Atty. Plagata testified, she supposedly signed it about four months earlier at her residence in Paco, Manila on September 15, 1988. While a defective notarization will merely strip the document of its public character and reduce it to a private instrument, that falsified jurat, taken together with the marks of forgery in the signature, dooms such document as proof of Rosario's consent to the sale of the land. That the Fuentes spouses honestly relied on the notarized affidavit as proof of Rosario's consent does not matter. The sale is still void without an authentic consent.

Second. Contrary to the ruling of the Court of Appeals, the law that applies to this case is the Family Code, not the Civil Code. Although Tarciano and Rosario got married in 1950, Tarciano sold the conjugal property to the Fuentes spouses on January 11, 1989, a few months after the Family Code took effect on August 3, 1988.

When Tarciano married Rosario, the Civil Code put in place the system of conjugal partnership of gains on their property relations. While its Article 165 made Tarciano the sole administrator of the conjugal partnership, Article 166[17] prohibited him from selling commonly owned real property without his wife's consent. Still, if he sold the same without his wife's consent, the sale is not void but merely voidable. Article 173 gave Rosario the right to have the sale annulled during the marriage within ten years from the date of the sale. Failing in that, she or her heirs may demand, after dissolution of the marriage, only the value of the property that Tarciano fraudulently sold. Thus:

Art. 173. The wife may, during the marriage, and within ten years from the transaction questioned, ask the courts for the

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[17] Art. 166. Unless the wife has been declared a *non compos mentis* or a spendthrift, or is under civil interdiction or is confined in a leprosarium, the husband cannot alienate or encumber any real property of the conjugal partnership without the wife's consent. If she refuses unreasonably to give her consent, the court may compel her to grant the same.

annulment of any contract of the husband entered into without her consent, when such consent is required, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership property. Should the wife fail to exercise this right, she or her heirs, after the dissolution of the marriage, may demand the value of property fraudulently alienated by the husband.

But, as already stated, the Family Code took effect on August 3, 1988. Its Chapter 4 on *Conjugal Partnership of Gains* expressly superseded Title VI, Book I of the Civil Code on *Property Relations Between Husband and Wife*.[18] Further, the Family Code provisions were also made to apply to already existing conjugal partnerships without prejudice to vested rights.[19] Thus:

Art. 105. x x x The provisions of this Chapter shall also apply to conjugal partnerships of gains already established between spouses before the effectivity of this Code, without prejudice to vested rights already acquired in accordance with the Civil Code or other laws, as provided in Article 256. (n)

Consequently, when Tarciano sold the conjugal lot to the Fuentes spouses on January 11, 1989, the law that governed the disposal of that lot was already the Family Code.

In contrast to Article 173 of the Civil Code, Article 124 of the Family Code does not provide a period within which the wife who gave no consent may assail her husband's sale of the real property. It simply provides that without the other spouse's written consent or a court order allowing the sale, the same would be void. Article 124 thus provides:

Art. 124. x x x In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include the powers of

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[18] Family Code of the Philippines, Art. 254.

[19] *Id.*, Art. 105; see also *Homeowners Savings and Loan Bank v. Miguela C. Dailo*, G.R. No. 153802, March 11, 2005, 453 SCRA 283, 290.

disposition or encumbrance which must have the authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. x x x

Under the provisions of the Civil Code governing contracts, a void or inexistent contract has no force and effect from the very beginning. And this rule applies to contracts that are declared void by positive provision of law,[20] as in the case of a sale of conjugal property without the other spouse's written consent. A void contract is equivalent to nothing and is absolutely wanting in civil effects. It cannot be validated either by ratification or prescription.[21]

But, although a void contract has no legal effects even if no action is taken to set it aside, when any of its terms have been performed, an action to declare its inexistence is necessary to allow restitution of what has been given under it.[22] This action, according to Article 1410 of the Civil Code does not prescribe. Thus:

Art. 1410. The action or defense for the declaration of the inexistence of a contract does not prescribe.

Here, the Rocas filed an action against the Fuentes spouses in 1997 for annulment of sale and reconveyance of the real property that Tarciano sold without their mother's (his wife's) written consent. The passage of time did not erode the right to bring such an action.

Besides, even assuming that it is the Civil Code that applies to the transaction as the CA held, Article 173 provides that the wife may bring an action for annulment of sale on the ground of lack of spousal consent during the marriage within 10 years from the transaction. Consequently, the action that the Rocas, her heirs, brought in 1997 fell within 10 years of the January 11, 1989 sale. It did not yet prescribe.

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[20] Civil Code of the Philippines, Art. 1409.

[21] *Id.*, Vol. IV (1990-1991 Edition) Arturo M. Tolentino, pp. 629 & 631.

[22] *Id.* at 632.

The Fuentes spouses of course argue that the RTC nullified the sale to them based on fraud and that, therefore, the applicable prescriptive period should be that which applies to fraudulent transactions, namely, four years from its discovery. Since notice of the sale may be deemed given to the Rocas when it was registered with the Registry of Deeds in 1989, their right of action already prescribed in 1993.

But, if there had been a victim of fraud in this case, it would be the Fuentes spouses in that they appeared to have agreed to buy the property upon an honest belief that Rosario's written consent to the sale was genuine. They had four years then from the time they learned that her signature had been forged within which to file an action to annul the sale and get back their money plus damages. They never exercised the right.

If, on the other hand, Rosario had agreed to sign the document of consent upon a false representation that the property would go to their children, not to strangers, and it turned out that this was not the case, then she would have four years from the time she discovered the fraud within which to file an action to declare the sale void. But that is not the case here. Rosario was not a victim of fraud or misrepresentation. Her consent was simply not obtained at all. She lost nothing since the sale without her written consent was void. Ultimately, the Rocas' ground for annulment is not forgery but the lack of written consent of their mother to the sale. The forgery is merely evidence of lack of consent.

Third. The Fuentes spouses point out that it was to Rosario, whose consent was not obtained, that the law gave the right to bring an action to declare void her husband's sale of conjugal land. But here, Rosario died in 1990, the year after the sale. Does this mean that the right to have the sale declared void is forever lost?

The answer is no. As stated above, that sale was void from the beginning. Consequently, the land remained the property of Tarciano and Rosario despite that sale. When the two died, they passed on the ownership of the property to their heirs,

namely, the Rocas.[23] As lawful owners, the Rocas had the right, under Article 429 of the Civil Code, to exclude any person from its enjoyment and disposal.

In fairness to the Fuentes spouses, however, they should be entitled, among other things, to recover from Tarciano's heirs, the Rocas, the ₱200,000.00 that they paid him, with legal interest until fully paid, chargeable against his estate.

Further, the Fuentes spouses appear to have acted in good faith in entering the land and building improvements on it. Atty. Plagata, whom the parties mutually entrusted with closing and documenting the transaction, represented that he got Rosario's signature on the affidavit of consent. The Fuentes spouses had no reason to believe that the lawyer had violated his commission and his oath. They had no way of knowing that Rosario did not come to Zamboanga to give her consent. There is no evidence that they had a premonition that the requirement of consent presented some difficulty. Indeed, they willingly made a 30 percent down payment on the selling price months earlier on the assurance that it was forthcoming.

Further, the notarized document appears to have comforted the Fuentes spouses that everything was already in order when Tarciano executed a deed of absolute sale in their favor on January 11, 1989. In fact, they paid the balance due him. And, acting on the documents submitted to it, the Register of Deeds of Zamboanga City issued a new title in the names of the Fuentes spouses. It was only after all these had passed that the spouses entered the property and built on it. He is deemed a possessor in good faith, said Article 526 of the Civil Code, who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.

As possessor in good faith, the Fuentes spouses were under no obligation to pay for their stay on the property prior to its

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[23] *Id.*, Art. 979. Legitimate children and their descendants succeed the parents and other ascendants, without distinction as to sex or age, and even if they should come from different marriages. x x x

legal interruption by a final judgment against them.[24] What is more, they are entitled under Article 448 to indemnity for the improvements they introduced into the property with a right of retention until the reimbursement is made. Thus:

Art. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof. (361a)

The Rocas shall of course have the option, pursuant to Article 546 of the Civil Code,[25] of indemnifying the Fuentes spouses for the costs of the improvements or paying the increase in value which the property may have acquired by reason of such improvements.

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS WITH MODIFICATION* the decision of the Court of Appeals in CA-G.R. CV 00531 dated February 27, 2007 as follows:

1. The deed of sale dated January 11, 1989 that Tarciano T. Roca executed in favor of Manuel O. Fuentes, married to Leticia L. Fuentes, as well as the Transfer Certificate of Title T-90,981 that the Register of Deeds of Zamboanga City issued in the

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[24] *Id.*, Art. 544.

[25] Art. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor. Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof. (453a)

names of the latter spouses pursuant to that deed of sale are *DECLARED* void;

2. The Register of Deeds of Zamboanga City is *DIRECTED* to reinstate Transfer Certificate of Title 3533 in the name of Tarciano T. Roca, married to Rosario Gabriel;

3. Respondents Gonzalo G. Roca, Annabelle R. Joson, Rose Marie R. Cristobal, and Pilar Malcampo are *ORDERED* to pay petitioner spouses Manuel and Leticia Fuentes the ₱200,000.00 that the latter paid Tarciano T. Roca, with legal interest from January 11, 1989 until fully paid, chargeable against his estate;

4. Respondents Gonzalo G. Roca, Annabelle R. Joson, Rose Marie R. Cristobal, and Pilar Malcampo are further *ORDERED*, at their option, to indemnify petitioner spouses Manuel and Leticia Fuentes with their expenses for introducing useful improvements on the subject land or pay the increase in value which it may have acquired by reason of those improvements, with the spouses entitled to the right of retention of the land until the indemnity is made; and

5. The RTC of Zamboanga City from which this case originated is *DIRECTED* to receive evidence and determine the amount of indemnity to which petitioner spouses Manuel and Leticia Fuentes are entitled.

SO ORDERED.

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

EN BANC

[A.C. No. 8159. April 23, 2010]
(Formerly CBD 05-1452)

REYNARIA BARCENAS, *complainant, vs.* **ATTY. ANORLITO A. ALVERO,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; VIOLATED IN CASE AT BAR.—** Undoubtedly, Atty. Alvero breached Rule 1.01 of Canon 1 and Rules 16.01, 16.02 and 16.03 of Canon 16 of the Code of Professional Responsibility xxx. In the instant case, Atty. Alvero admitted to having received the amount of ₱300,000.00 from San Antonio, specifically for the purpose of depositing it in court. However, as found by the IBP-CBD, Atty. Alvero presented no evidence that he had indeed deposited the amount in or consigned it to the court. Neither was there any evidence that he had returned the amount to Barcenas or San Antonio. From the records of the case, there is likewise a clear breach of lawyer-client relations. When a lawyer receives money from a client for a particular purpose, the lawyer is bound to render an accounting to the client showing that the money was spent for a particular purpose. And if he does not use the money for the intended purpose, the lawyer must immediately return the money to his client. These, Atty. Alvero failed to do. Jurisprudence dictates that a lawyer who obtains possession of the funds and properties of his client in the course of his professional employment shall deliver the same to his client (a) when they become due, or (b) upon demand. In the instant case, respondent failed to account for and return the ₱300,000.00 despite complainant's repeated demands.

2. **ID.; ID.; MAY BE REMOVED, OR OTHERWISE DISCIPLINED, NOT ONLY FOR MALPRACTICE AND DISHONESTY IN THE PROFESSION, BUT ALSO FOR GROSS MISCONDUCT NOT CONNECTED WITH HIS PROFESSIONAL DUTIES.—** Atty. Alvero cannot take refuge in his claim that there existed no attorney-client relationship between him and Barcenas. Even if it were true that no attorney-

client relationship existed between them, case law has it that an attorney may be removed, or otherwise disciplined, not only for malpractice and dishonesty in the profession, but also for gross misconduct not connected with his professional duties, making him unfit for the office and unworthy of the privileges which his license and the law confer upon him.

3. **ID.; ID.; DISBARMENT OR SUSPENSION OF ATTORNEYS BY SUPREME COURT, GROUNDS THEREFOR; CASE AT BAR.—** Atty. Alvero's failure to immediately account for and return the money when due and upon demand violated the trust reposed in him, demonstrated his lack of integrity and moral soundness, and warranted the imposition of disciplinary action. It gave rise to the presumption that he converted the money for his own use, and this act constituted a gross violation of professional ethics and a betrayal of public confidence in the legal profession. They constitute gross misconduct and gross unethical behavior for which he may be suspended, following Section 27, Rule 138 of the Rules of Court, which provides: Sec. 27. *Disbarment or suspension of attorneys by Supreme Court, grounds therefor*. - A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a willful disobedience appearing as attorney for a party without authority to do so.

4. **ID.; ID.; CANON 16 OF THE CODE OF PROFESSIONAL RESPONSIBILITY; PENALTY FOR VIOLATION THEREOF.—** In *Small v. Banares,* the respondent was suspended for two years for violating Canon 16 of the Code of Professional Responsibility, particularly for failing to file a case for which the amount of ₱80,000.00 was given him by the client, and for failing to return the said amount upon demand. Considering that similar circumstances are attendant in this case, the Court finds the Resolution of the IBP imposing on respondent a two-year suspension to be in order.

5. **ID.; ID.; PRACTICE OF LAW; NOT A RIGHT BUT A PRIVILEGE.—** As a final note, we reiterate: the practice of law is not a right, but a privilege. It is granted only to those

of good moral character. The Bar must maintain a high standard of honesty and fair dealing. For the practice of law is a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character. Those who are unable or unwilling to comply with the responsibilities and meet the standards of the profession are unworthy of the privilege to practice law.

D E C I S I O N

PERALTA, *J.*:

Before us is a Complaint[1] dated May 17, 2005 for disciplinary action against respondent Atty. Anorlito A. Alvero filed by Reynaria Barcenas with the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD), docketed as CBD Case No. 05-1452, now Administrative Case (A.C.) No. 8159.

The facts as culled from the records are as follows:

On May 7, 2004, Barcenas, through her employee Rodolfo San Antonio (San Antonio), entrusted to Atty. Alvero the amount of ₱300,000.00, which the latter was supposed to give to a certain Amanda Gasta to redeem the rights of his deceased father as tenant of a ricefield located in *Barangay* San Benito, Victoria, Laguna. The receipt of the money was evidenced by an acknowledgment receipt[2] dated May 7, 2004. In the said receipt, Atty. Alvero said that he would deposit the money in court because Amanda Gasta refused to accept the same.[3]

Later, Barcenas found out that Atty. Alvero was losing a lot of money in cockfights. To check if the money they gave Atty. Alvero was still intact, Barcenas pretended to borrow ₱80,000.00 from the ₱300,000.00 and promised to return the amount when needed or as soon as the case was set for hearing. However, Atty. Alvero allegedly replied, "*Akala nyo ba ay madali kunin ang pera pag nasa korte na?*" Subsequently, Barcenas discovered

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

[2] *Id.* at 5.

[3] *Id.*

that Atty. Alvero did not deposit the money in court, but instead converted and used the same for his personal needs.

In his letters dated August 18, 2004[4] and August 25, 2004,[5] Atty. Alvero admitted the receipt of the ₱300,000.00 and promised to return the money. The pertinent portions of said letters are quoted as follows:

Dahil sa kagustuhan ng iyong amo na maibalik ko ang perang tinanggap ko sa iyo, lumakad ako agad at pilit kong kinukuha kahit iyon man lang na hiniram sa akin na ₱80,000.00 *pero hindi karakapraka ang lumikom ng gayong halaga. Pero tiniyak sa akin na sa Martes, ika-24 ng buwan ay ibibigay sa akin.*

Bukas ay tutungo ako sa amin upang lumikom pa ng karagdagang halaga upang maisauli ko ang buong ₱300,000.00. Nakikiusap ako sa iyo dahil sa ikaw ang nagbigay sa akin ng pera na bigyan mo ako ng kaunting panahon upang malikom ko ang pera na ipinagkatiwala mo sa akin, *hanggang ika-25 ng Agosto, 2004*. x x x"[6]

Maya-mayang alas nuwebe (9:00) titingnan ang lupang aking ipinagbibili ng Dalawang Milyon. Gustong-gusto ng bibili gusto lang makita ang lupa dahil malayo, nasa Cavinti. ***Kung ok na sa bibili pinakamatagal na ang Friday ang bayaran.***

Iyong aking sinisingil na isang ₱344,000.00 at isang ₱258,000.00 na utang ng taga-Liliw ay darating sa akin ngayong umaga bago mag alas otso. ***Kung maydala ng pambayad kahit magkano ay ibibigay ko sa iyo ngayong hapon.***

x x x x x x x x x

Lahat ng pagkakaperahan ko ay aking ginagawa, pati anak ko ay tinawagan ko na. Pakihintay muna lang ng kauting panahon pa, hindi matatapos ang linggong ito, tapos ang problema ko sa iyo. *Pasensiya ka na.*"[7]

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[4] *Id.* at 6.

[5] *Id.* at 7.

[6] Letter dated August 18, 2004; *rollo*, p. 6. (Emphasis ours.)

[7] Letter dated August 25, 2004; *id.* at 7. (Emphasis ours.)

However, as of the filing of the instant complaint, despite repeated demands, Atty. Alvero failed to return the same. Thus, Barcenas prayed that Atty. Alvero be disbarred for being a disgrace to the legal profession.

On March 30, 2005, the IBP-CBD ordered Atty. Alvero to submit his Answer to the complaint.[8]

In compliance, in his Answer[9] dated April 18, 2005, Atty. Alvero claimed that he did not know Barcenas prior to the filing of the instant complaint nor did he know that San Antonio was an employee of Barcenas. He alleged that he came to know Barcenas only when the latter went to him to borrow ₱80,000.00 "from the amount entrusted to Rodolfo San Antonio" who entrusted to respondent. At that time, Atty. Alvero claimed that San Antonio was reluctant to grant the request because it might jeopardize the main and principal cause of action of the Department of Agrarian Reform Adjudication Board (DARAB) case. Atty. Alvero, however, admitted that he received an amount of ₱300,000.00 from San Antonio, though he claimed that said money was the principal cause of action in the reconveyance action.[10]

Atty. Alvero stressed that there was no lawyer-client relationship between him and Barcenas. He, however, insisted that the lawyer-client relationship between him and San Antonio still subsisted as his service was never severed by the latter. He further emphasized that he had not breached the trust of his client, since he had, in fact, manifested his willingness to return the said amount as long as his lawyer-client relationship with San Antonio subsisted. Finally, Atty. Alvero prayed that the instant complaint be dismissed.

On June 20, 2005, the IBP-CBD notified the parties to appear for the mandatory conference.[11]

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[8] *Rollo*, p. 8.

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

[10] *Id.* at 10.

[11] *Id.* at 33.

Meanwhile, in a separate Affidavit[12] dated September 19, 2005, San Antonio narrated that he indeed sought Atty. Alvero's professional services concerning an agricultural land dispute. He claimed that Atty. Alvero made him believe that he needed to provide an amount of ₱300,000.00 in order to file his complaint, as the same would be deposited in court. San Antonio quoted Atty. Alvero as saying: *"Hindi pwedeng hindi kasabay ang pera sa pagpa-file ng papel dahil tubusan yan, kung sakaling ipatubos ay nasa korte na ang pera."* Believing that it was the truth, San Antonio was forced to borrow money from Barcenas in the amount of ₱300,000.00. Subsequently, San Antonio gave the said amount to Atty. Alvero, in addition to the professional fees, as shown by an acknowledgment receipt.[13]

San Antonio further corroborated Barcenas' allegation that they tried to borrow ₱80,000.00 from the ₱300,000.00 they gave to Atty. Alvero after they found out that the latter lost a big amount of money in cockfighting. He reiterated that Atty. Alvero declined and stated, "*Akala nyo ba ay madali kunin ang pera pag nasa korte na.*" Later on, they found out that Atty. Alvero lied to them since the money was never deposited in court but was instead used for his personal needs. For several times, Atty. Alvero promised to return the money to them, but consistently failed to do so. San Antonio submitted Atty. Alvero's letters dated August 18, 2004[14] and August 25, 2004[15] showing the latter's promises to return the amount of ₱300,000.00.

During the mandatory conference, Atty. Alvero failed to attend despite notice. Thus, he was deemed to have waived his right to participate in the mandatory conference.

In its Report and Recommendation dated May 21, 2008, the IBP-CBD recommended that Atty. Alvero be suspended from

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[12] *Id.* at 35-36.

[13] *Id.* at 3.

[14] *Id.* at 6.

[15] *Id.* at 7.

the practice of law for a period of one (1) year for gross misconduct. Atty. Alvero was, likewise, ordered to immediately account for and return the amount of ₱300,000.00 to Barcenas and/or Rodolfo San Antonio. The pertinent portion thereof reads:

> ***The record does not show and no evidence was presented by respondent to prove that the amount of ₱300,000 which was entrusted to him was already returned to complainant or Rodolfo San Antonio***, by way of justifying his non-return of the money, respondent claims in his Answer that the ₱300,000 "was the source of the principal cause of action of the petitioner, Rodolfo San Antonio, in the above-cited DARAB Case No. R-0403-0011-04 as shown by a copy of the Amended Petition, copy of which is hereto attached as Annex "1" and made an integral part hereof.
>
> A review of Annex 1, which in the Amended Petition dated October 31, 2004 and filed on November 3, 2004, will show that the Petitioner Rodolfo San Antonio is praying that he be allowed to cultivate the land after the ₱300,000 is consigned by Petitioner to the Honorable Adjudication Board. ***Up to the time of the filing of the instant complaint, no such deposit or consignment took place and no evidence was presented that respondent deposited the amount in court***.
>
> ***The fact is respondent promised to return the amount (Annex "B" and "C" of the Complaint), but he failed to do so. The failure therefore of respondent to account for and return the amount of ₱300,000 entrusted or given to him by his client constitute gross misconduct and would subject him to disciplinary action under the Code***.[16]

In Notice of Resolution No. XVIII-2008-342 dated July 17, 2008, the IBP Board of Governors adopted and approved with modification as to penalty the Report and Recommendation of the IBP-CBD. Instead, it ordered that Atty. Alvero be suspended from the practice of law for two (2) years and, likewise, ordered him to account for and return the amount of ₱300,000.00 to complainants within thirty (30) days from receipt of notice.

The Office of the Bar Confidant redocketed the instant case as a regular administrative complaint against Atty. Alvero and,

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[16] Emphasis ours.

subsequently, recommended that this Court issue an extended resolution for the final disposition of the case.

We sustain the findings and recommendations of the IBP-CBD.

Undoubtedly, Atty. Alvero breached Rule 1.01 of Canon 1 and Rules 16.01, 16.02 and 16.03 of Canon 16 of the Code of Professional Responsibility, which read:

CANON 1.

A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESS.

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

CANON 16.

A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

Rule 16.01. A lawyer shall account for all money or property collected or received for or from the client.

Rule 16.02. A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.

Rule 16.03. A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his unlawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

In the instant case, Atty. Alvero admitted to having received the amount of ₱300,000.00 from San Antonio, specifically for the purpose of depositing it in court. However, as found by the IBP-CBD, Atty. Alvero presented no evidence that he had indeed deposited the amount in or consigned it to the court. Neither

was there any evidence that he had returned the amount to Barcenas or San Antonio.

From the records of the case, there is likewise a clear breach of lawyer-client relations. When a lawyer receives money from a client for a particular purpose, the lawyer is bound to render an accounting to the client showing that the money was spent for a particular purpose. And if he does not use the money for the intended purpose, the lawyer must immediately return the money to his client.[17] These, Atty. Alvero failed to do.

Jurisprudence dictates that a lawyer who obtains possession of the funds and properties of his client in the course of his professional employment shall deliver the same to his client (a) when they become due, or (b) upon demand. In the instant case, respondent failed to account for and return the ₱300,000.00 despite complainant's repeated demands.[18]

Atty. Alvero cannot take refuge in his claim that there existed no attorney-client relationship between him and Barcenas. Even if it were true that no attorney-client relationship existed between them, case law has it that an attorney may be removed, or otherwise disciplined, not only for malpractice and dishonesty in the profession, but also for gross misconduct not connected with his professional duties, making him unfit for the office and unworthy of the privileges which his license and the law confer upon him.[19]

Atty. Alvero's failure to immediately account for and return the money when due and upon demand violated the trust reposed in him, demonstrated his lack of integrity and moral soundness, and warranted the imposition of disciplinary action. It gave rise to the presumption that he converted the money for his own use, and this act constituted a gross violation of professional

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[17] *Celaje v. Soriano*, A.C. No. 7418, October 9, 2007, 535 SCRA 217, 222.

[18] See *Garcia v. Atty. Manuel*, 443 Phil. 479, 487 (2003).

[19] *Barnachea v. Atty. Quiocho*, 447 Phil. 67, 73-74 (2003).

ethics and a betrayal of public confidence in the legal profession.[20] They constitute gross misconduct and gross unethical behavior for which he may be suspended, following Section 27, Rule 138 of the Rules of Court, which provides:

> Sec. 27. *Disbarment or suspension of attorneys by Supreme Court, grounds therefor*. - A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a willful disobedience appearing as attorney for a party without authority to do so.

We come to the penalty imposable in this case.

In *Small v. Banares,*[21] the respondent was suspended for two years for violating Canon 16 of the Code of Professional Responsibility, particularly for failing to file a case for which the amount of ₱80,000.00 was given him by the client, and for failing to return the said amount upon demand. Considering that similar circumstances are attendant in this case, the Court finds the Resolution of the IBP imposing on respondent a two-year suspension to be in order.

As a final note, we reiterate: the practice of law is not a right, but a privilege. It is granted only to those of good moral character. The Bar must maintain a high standard of honesty and fair dealing.[22] For the practice of law is a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character. Those who are unable or unwilling to comply with the responsibilities and meet the standards of the profession are unworthy of the privilege to practice law.[23]

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[20] *Villanueva v. Gonzales*, A.C. No. 7657, February 12, 2008, 544 SCRA 410, 416.

[21] A.C. No. 7021, February 21, 2007, 516 SCRA 323, 329.

[22] *Overgaard v. Valdez*, A.C. No. 7902, September 30, 2008, 567 SCRA 118, 131.

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

WHEREFORE, Notice of Resolution No. XVIII-2008-342 dated July 17, 2008 of the IBP-CBD Board of Governors, which found respondent Atty. Anorlito A. Alvero *GUILTY* of gross misconduct, is *AFFIRMED*. He is hereby *SUSPENDED* for a period of two (2) years from the practice of law, effective upon the receipt of this Decision. He is warned that a repetition of the same or a similar act will be dealt with more severely.

Let a copy of this Decision be furnished to the Office of the Bar Confidant, to be appended to the personal record of Atty. Alvero as a member of the Bar; the Integrated Bar of the Philippines; and the Office of the Court Administrator for circulation to all courts in the country for their information and guidance.

This Decision shall be immediately executory.

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.

EN BANC

[A.M. No. P-05-1935. April 23, 2010]
(Formerly A.M. No. 04-10-599-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **ATTY. FERMIN M. OFILAS and MS. ARANZAZU V. BALTAZAR, Clerk of Court and Clerk IV, respectively, Regional Trial Court, San Mateo, Rizal,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; MANDATED TO FAITHFULLY ADHERE TO THEIR DUTIES AND RESPONSIBILITIES; EXERCISE OF DISCIPLINARY AUTHORITY IS WARRANTED IN CASE.—** No less than the Constitution mandates that "public office is a public trust." Service with loyalty, integrity and efficiency is required of all public officers and employees, who must, at all times, be accountable to the people. In a long line of cases, the Court had untiringly reminded employees involved in the administration of justice to faithfully adhere to their mandated duties and responsibilities. Whether committed by the highest judicial official or by the lowest member of the workforce, any act of impropriety can seriously erode the people's confidence in the Judiciary. "Verily, the image of a court of justice is necessarily mirrored in the conduct of its personnel. It is their sacred duty to maintain the good name and standing of the court as a true temple of justice." xxx The outright admission of Clerk IV Aranzazu Baltazar to committing malversation of funds shows her blatant disregard for these principles she had sworn to uphold and thereby eroding public trust. Her admission however, does not exculpate Clerk of Court Atty. Fermin Ofilas of his own negligence.

2. **ID.; ID.; ID.; ID.; CLERKS OF COURT; LIABLE FOR ANY LOSS, SHORTAGE, DESTRUCTION OR IMPAIRMENT OF COURT FUNDS AND PROPERTY.—** As clerk of court, Atty. Ofilas is one of the ranking officers of the judiciary. Next to the judge, the clerk of court is the chief administrative officer charged with preserving the integrity of court proceedings. A number of non-judicial concerns connected with trial and adjudication of cases is handled by the clerk of court, demanding a dynamic performance of duties, with the prompt and proper administration of justice as the constant objective. The nature of the work and of the office mandates that the clerk of court be an individual of competence, honesty and integrity. xxx That clerks of court perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises can never be overemphasized. They wear many hats – those of treasurer, accountant, guard

and physical plant manager of the court, hence, are entrusted with the primary responsibility of correctly and effectively implementing regulations regarding fiduciary funds. They are, thus, liable for any loss, shortage, destruction or impairment of such funds and property.

3. **ID.; ID.; ID.; ID.; ID.; ID.; INEFFICIENCY CANNOT BE JUSTIFIED BY GOOD FAITH, NAIVETY OR INEXPERIENCE; CASE AT BAR.—** In this case, we find the respondent, Atty. Ofilas, seriously remiss in the performance of his duties. The explanation proffered by him largely involves apology, denial and claims of ignorance. For the remaining shortage of court funds, he shifts the liability to Ms. Baltazar. What he failed to explain to the satisfaction of the Court, however, is the underlying issue of his failure to carry out the primordial responsibilities of his office. Atty. Ofilas utterly failed to perform his duties with the degree of diligence and competence expected of him. Atty. Ofilas played his role in a perfunctory manner, relying heavily on Ms. Baltazar's supposed ability and honesty to handle the finances of the court. This is a reprehensible display of inefficiency which cannot be justified by good faith, naivety or inexperience. xxx. Safekeeping of funds and collections is essential to an orderly administration of justice, and no protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds.

4. **ID.; ID.; ID.; ID.; NEGLIGENCE, INCOMPETENCE AND GROSS INEFFICIENCY; FAILURE TO EXHIBIT ADMINISTRATIVE LEADERSHIP AND ABILITY, A CASE OF; PENALTY OF DISMISSAL, PROPER.—** xxx Atty. Ofilas had clearly failed to live up to the standards of competence and integrity expected of an officer of the court. Mediocrity is not at all fit for a member of a complement tasked to dispense justice. His failure to exhibit administrative leadership and ability renders Atty. Ofilas guilty of negligence, incompetence, and gross inefficiency in the performance of his official duty as the Clerk of Court. Thus, the penalty of dismissal from service is proper considering his failure to exercise supervision on Ms. Baltazar's work and to educate himself on the financial aspects of his office resulting in an improper delegation of his duties. However, in view of Atty. Ofilas' compulsory retirement on August 18, 2007, the imposition of accessory

penalties including the forfeiture of his retirement benefits is justified.

5. **LEGAL ETHICS; JUDGES; THE VICE-EXECUTIVE JUDGE MUST EXERCISE THE DUTIES AND FUNCTIONS OF AN EXECUTIVE JUDGE WITHOUT NEED FOR OFFICIAL DESIGNATION AS SUCH; CASE AT BAR.—** As for Judge Balquin-Reyes, the Court finds it inexcusable that she assumed her functions as an Executive Judge with manifest delay. As the Vice-Executive Judge, she should have exercised the duties and functions of an Executive Judge without need for her official designation as such. This is precisely what a Vice-Executive Judge must do: to take over in the absence of the Executive Judge. Lack of instructions from her predecessor does not justify the great risk she took by leaving the financial matters of the court to be handled without her supervision and monitoring. Simply put, had Judge Balquin-Reyes observed the *Guidelines in Making Withdrawals provided in SC* CIRCULAR NO. 13-92, unauthorized withdrawals of court funds could have been prevented. Judge Balquin-Reyes deserves admonition from the Court to monitor strict compliance of circulars in the proper handling of judiciary funds and to keep herself abreast of the Court's issuances relative to the Office of Executive and Vice-Executive Judges.

6. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; GROSS DISHONESTY, GRAVE MISCONDUCT AND GROSS NEGLECT OF DUTY; DISMISSAL FROM THE SERVICE, WARRANTED; CASE AT BAR.—** With respect to Ms. Baltazar, she was grossly inefficient in handling the finances of the court. Her bare admission that she performed duties relative to the collection and remittance of fees and had indeed allowed other employees to borrow from the court funds, shows her extensive participation in the irregularities reported by the audit team. There is no doubt that these acts constitute a grave offense. Gross dishonesty, grave misconduct and gross neglect of duty, warrant the maximum penalty of dismissal from service as provided in Section 9, Rule XIV of the Civil Service Rules: "The penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of leave credits and retirement benefits, and the disqualification for

reemployment in the government service. Further, it may be imposed without prejudice to criminal or civil liability."

APPEARANCES OF COUNSEL

Regino M. Carillo for Aranzazu V. Baltazar.

RESOLUTION

PER CURIAM:

This administrative matter stemmed from a financial audit conducted by the Office of the Court Administrator (OCA) on the books of accounts of the Office of the Clerk of Court, Regional Trial Court of San Mateo, Rizal. The audit, covering the period from January 1992 to March 4, 2004, bared irregularities in the handling of the financial transactions of the court and a considerable shortage in the financial accountabilities of Atty. Fermin M. Ofilas and Ms. Aranzazu V. Baltazar, then Clerk of Court and Clerk IV, respectively.

FACTUAL AND PROCEDURAL ANTECEDENTS

On September 30, 2004, the OCA Audit Team submitted its preliminary report thru a Memorandum[1] to the then Court Administrator Presbitero J. Velasco Jr., the contents of which are summarized as follows:

1) Monitoring and inventory of cash collections is not properly administered.

2) The Clerk of Court, Atty. Fermin Ofilas, delegated the financial transactions of the court to his two subordinates, namely Clerk IV Aranzazu V. Baltazar, former cash clerk of Atty. Ofilas' predecessor; and Olga A. Sacramento, the incumbent cash clerk at the time of the audit who assumed office on May 2001.

3) Ms. Baltazar was in charge of all funds collected and paid to the court. She issued official receipts for all

[1] *Rollo*, p. 31.

funds collected, prepared the monthly reports of collections, and made bank deposits and withdrawals for submission to the Accounting Division of the OCA. She was practically the custodian of all court financial records and books of accounts.

4) Although she was the then cash clerk, Ms. Sacramento merely assisted in the preparation of monthly reports and only issued official receipts in the absence of Ms. Baltazar.

5) The amount of unremitted cash collections in the possession of Ms. Baltazar did not tally with the amount collected for the respective periods, resulting in an overage of ₱39,152.00 which was due to unaccounted/unremitted collections from past years.

6) Upon discovery of said retained cash, Atty. Ofilas voluntarily executed an affidavit, dated March 11, 2004.[2] He stated that because Executive Judge Elizabeth Balquin-Reyes politely declined to be one of the signatories for the court's bank transactions until the issuance of her official designation, the office adopted the practice of retaining some amount of cash from the collections in order to answer for the refunds of cash bonds of litigants. Thereafter, he relieved Ms. Baltazar of her functions as collecting officer.

7) The court was not in possession of the triplicate copies of official receipts issued from January 1992 to December 1994 for the Judiciary Development (sic) *(JDF),* Clerk of Court General Fund *(CCGF)* and Sheriff's fees.[3]

8) Accountable forms such as triplicate copies, official receipts and official cashbooks were in disarray. Some were detached from their respective booklets. Cancelled/spoiled Official Receipts were not properly marked or identified and

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[2] *Id.* at 49.

[3] *Id.* at 53.

the original and duplicate copies of the cancelled or spoiled receipts were not attached to the triplicates.

9) The official cash books were not properly accomplished and contained illegible entries. Daily collections were not regularly entered therein contrary to AC Nos. 3-2000, 22-94 and 32-93.

10) There were discrepancies and irregularities in the financial transactions as shown in these computations below:

A) Judiciary Development Fund (JDF)

Total collections from Jan. 1992 to Mar. 5, 2004		₱28,498,525.19
Less: Deposits/Remittances for the same period		
Valid Deposits	₱27,778,114.25	
Deposits that require bank confirmation	789,360.70	28,567,474.95
Balance of Accountability (overage)		**(₱68,949.76)**

B) Clerk of Court General Fund (CCGF)

Total collections from Jan. 1992 to Dec. 31, 2003		₱4,139,765.69
Less: Deposits/Remittances for the same period		
Valid Deposits	₱3,544,914.50	
Deposits that require bank confirmation	595,314.57	4,140,229.07
Balance of Accountability (overage)		**(₱463.38)**

C) Sheriff Fees General Fund (SGF)

Total collections from Jan. 1992 to Dec. 31, 2003	₱947,972.43
Less: Total remittances for the same period	939,048.18
Balance of Accountability (overage)	**(₱8,924.25)**

D) Fiduciary Fund (FF)

Beginning Balance	₱233,210.76
Total collections from Jan. 1/92 to 3/5/04	14,152,975.35
Total	₱14,386,186.11
Less: Total withdrawals (properly documented) for the same period	7,868,316.36
Unwithdrawn Fiduciary Fund as of 3/5/04	**₱6,517,869.75**
Balance per bank as of March 5,2004	₱4,253,224.77
Less: Unwithdrawn interest earned (net of withholding tax)	280,784.05
Adjusted bank balance as of March 5, 2004	**₱3,972,476.72**
Unwithdrawn Fiduciary Fund as of 3/5/04	₱6,517,869.75
Adjusted Bank Balance as of 3/5/04	3,972,476.72
Total undeposited collections as of 3/5/04	₱2,545,393.03
Less: Deposits made under LBP CA No. 2722-1006 57 dated 3/9-04	224,317.80
Balance of Accountability (shortage)	**₱2,321,075.23**

Balance of Accountability:

Undocumented withdrawals	₱1,182,330.00
Undeposited collections	1,119,145.23
Double Withdrawals	19,600.00
Total Accountability	**₱2,321,075.23**

11) As to the JDF and CCG, the surplus of ₱68,949.76 and ₱463.38 were provisional because the audit team considered the amounts of ₱789,360.70 and ₱595,314.57 as valid deposits subject to confirmation. Upon failure of Atty. Ofilas and Ms. Baltazar to secure bank confirmation on the validity of deposits, the amounts of ₱789,360.70 and ₱595,314.57 should form part of their accountabilities.

12) As to the Sheriff Fees-General Fund, a balance of accountability amounting to ₱8,924.25 was discovered. This was attributed to improper monitoring of collections, delayed remittances, wrong footings of totals in the cashbook, and undeposited prior years' collections.

13) With respect to the Sheriff's Trust Fund, collections commenced only in October 2000 when the Supreme Court, in a previous case filed by a litigant against Atty. Ofilas,[4] ordered the transfer of redemption money relative to one extra-judicial foreclosure case. Atty. Ofilas was found to have deposited the amount of ₱3,444,070.00 in his personal account because he was allegedly unfamiliar with the Sheriff Trust Fund Account. Atty. Ofilas was reprimanded and sternly warned by the court.

14) The biggest amount of shortage at ₱2,231,075.23 was discovered in the Fiduciary Fund. This amount was inclusive of refunded cash bond without proper documentation amounting to ₱1,182,330. Granting that Atty. Ofilas could present proper documentation therefor, an enormous amount of shortage at ₱1,138,754.23 would still remain.

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[4] *Carlomagno Toribio v. Atty. Fermin M. Ofilas*, A.M. No. P-03-1714, February 13, 2004.

15) When asked to explain, Ms. Baltazar readily confessed her shortage and willingly executed an affidavit, dated April 5, 2004,[5] wherein she admitted that she had committed grave negligence and malversation of funds when she allowed other court employees to borrow from the court funds in her custody, causing the shortage as discovered by the audit team.

16) There were cash bonds found to be withdrawn or refunded twice to party litigants amounting to ₱19,600.00.[6]

17) An aggregate total of ₱279,200.00 confiscated cash bond was disclosed.[7] Cashbonds with order of confiscation since 1992 were not withdrawn and remitted to the National Treasury (up to November 1999) and to the Judiciary Development Fund (from November 1999).

18) Interest earned amounting to ₱280,748.05 from Fiduciary Fund deposits in both the Philippine National Bank and rural bank accounts from April 1992 to December 1998 remained unwithdrawn as of date of audit.

19) As of March 5, 2004, there were cash bonds collections deposited with the Municipal Treasurer's Office which were still unwithdrawn.

20) Marriage certificates on file disclosed unpaid marriage solemnization fees from 1993-1999. According to Atty. Ofilas, it was the presiding judge in Branch 77 of the RTC who was in charge of solemnizing marriage ceremonies.

21) With respect to records of extra-judicial foreclosure of mortgage, the audit team found it difficult to determine payment of the sheriff's commission because the Official Receipts issued in connection with the applications did

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[5] *Supra* note 1 at 78.

[6] *Id.* at 86.

[7] *Id.* at 87-88.

not reflect the case numbers and, worse, the receipts were not attached to the records. Out of 2,650 petitions filed as of March 5, 2004, only 2,491 case folders were presented for audit.

Certificates of sale have not been issued in four (4) cases.[8] There were undated certificates issued in three (3) cases,[9] making it impossible to verify if the sheriff's fees thereon were paid accordingly.

22) In three (3) cases,[10] docket fees were collected based only on the principal amount of indebtedness.

23) Contrary to Administrative Circular 3-93, the docket fees were not collected at all in five (5) extra-judicial foreclosure cases.[11]

In foreclosures conducted by a notary public, the docket fees paid in eleven (11) cases[12] were allocated to the General Fund instead of the entire amount being deposited to the Judiciary Development Fund. Like in the foreclosures conducted by the sheriff, fees for three (3) cases[13] were assessed based on the amount of the principal indebtedness. The collection of ₱300.00 as entry fee and ₱75.00 as advertising fee, as mandated by Administrative Circular 3-2000, were not consistently collected in the other cases.

All the records of extra-judicial foreclosures were not presented to the audit team. Out of the records presented, erroneous collections of foreclosure dues were discovered.

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[8] Civil Cases 057-92, 058-92, 059-92, 062-92, all filed in November 1992.

[9] Civil Cases 037-94, 041-94, 045-94, all filed in 1994.

[10] Civil Cases 215-01, 015-00np, 014-00np.

[11] EF Cases 004-00, 004-00, 005-01, 005-01, 078-03.

[12] *Supra* note 1 at 91.

[13] *Id.* at 41.

A separate bank account with the Rural Bank of San Mateo,[14] under the name of "Clerk of Court of RTC San Mateo," with Atty. Ofilas as the lone signatory was revealed, purposely for all check payments received in foreclosure proceedings.

24) A significant number of check payments were converted to cash instead of being directly deposited to the Judicial Development Fund and the General Fund.

The same report bears the OCA recommendations that were eventually adopted by the Court in a Resolution[15] dated January 10, 2005, ordering, among others,

(a) **DOCKET** the report as a regular administrative matter against Atty. Fermin M. Ofilas and Ms. Aranzazu V. Baltazar;

(b) **DIRECT** Atty. Fermin M. Ofilas to:

[1] **EXPLAIN** in writing within a period of ten (10) days from notice the following: (1.1) his failure to exercise close supervision over the financial transactions of the court; (1.2) his failure to monitor the activity of former Cash Clerk, Ms. Aranzazu Baltazar, relative to the proper handling of collections of legal fees of his court; (1.3) his failure to monitor the remittance of collections on time which resulted in an enormous amount of initial shortage amount to ₱1,147,670.28; (1.4) the opening of a separate account and lone signatory of SA No. 51-28216-7 Rural Bank, San Mateo, Rizal, intended for checks payment received from Extra Judicial Foreclosure (EJF); (1.5) his failure to strictly enforce the proper collection of filing fees and commission cost on the petitions filed on EJF; (1.6) his failure to submit the quarterly report of Extra Judicial Foreclosures on the status of all EJF petitions filed in his court and the activities of all sheriffs under his supervision; and (1.7) the occurrence of double withdrawals of fiduciary collections on the herein attached listings.

[2] **SUBMIT** within fifteen (15) days from receipt of notice the following: [2.1] court orders, copies of surrendered official receipts

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[14] *Id.* at 108.

[15] *Id.* at 116-119.

and acknowledgement receipts to support the undocumented withdrawals under Fiduciary Fund amounting to ₱1,182,330.00, and failure to comply herewith will form part of his accountability aside from the initial shortage found on the Fiduciary Fund account; [2.2] the status of herein attached list (Annex "C") of Extra Judicial foreclosures petitions filed thereat as of March 5, 2004. Said petitions were not presented to the audit team during the entire duration of audit examination; and {2.3] bank confirmation on the invalidated deposit slip for the account of JDF and General Fund respectively, with a copy thereof furnished the Fiscal Monitoring Division, CMO-OCA;

[3] Make a **DEMAND LETTER** from various banking institutions and/or mortgagees concerned relative to the shortages incurred amounting to ₱573,750.51, lists of which are hereto attached, due to deficiencies/under collection of filing fees, commission fees, Certificates of Sale, entry fee and advertising fee relative to the Extra-Judicial Foreclosure collections, within ten (10) days from notice, with a copy thereof furnished the Fiscal Monitoring Division of the amount of payment recovered from the herein attached listings;

[4] **REMIT**, within ten (1) (sic) days from notice, the amount of ₱900.00 representing unpaid marriage solemnization fees, **ISSUE** corresponding official receipts under Fiduciary Development Fund account thereof and **FURNISH** the same copies of validated deposit slips to the FMD, CMO, OCA;

[5] **WITHDRAW** the interest earned amounting to ₱ 286,748.05 from the Fiduciary Fund account covering the period April 1992 to December 1998 and DEPOSIT the same to the account of Special Allowance for Judiciary;

[6] **SECURE** from the Municipal Treasurer's Office (MTO) an ITEMIZED LIST of the Fiduciary Fund deposits of RTC-San Mateo as of March 5, 2004 and CAUSE the same to be TRANSFERRED to the existing LBP CA No. 2722-1006-57 maintained thereat, listing of which should be furnished the Fiscal Monitoring Division, CMO-OCA; and

[7] **WITHDRAW** all cash bonds with order of confiscation as of March 5, 2004, **REMIT** the same to the account of Special Allowance for Judiciary account (confiscation with lawful orders from October 1999 below) and Judiciary Development Fund account (from November 1999 up to the time of audit examination).

(c) **DIRECT** Ms. Aranzazu V. Baltazar to **RESTITUTE** the shortages incurred within a **NON-EXTENDIBLE PERIOD OF FIFTEEN (15) DAYS** from notice on the following accounts:

Sheriff's General Fund	8,924.25
Fiduciary Fund	1,138,745.23
Special Allowance for Judiciary	80
TOTAL	₱1,147,670.28

(d) **WITHHOLD** the salaries of Atty. Fermin M. Ofilas until further orders from the Court;

(e) **ISSUE A HOLD DEPARTURE ORDER** against Ms. Aranzazu V. Baltazar, and DIRECT the Bureau of Immigration and Deportation to ban Ms. Baltazar from leaving the country;

(f) PLACE Ms. Aranzazu V. Baltazar under **PREVENTIVE SUSPENSION** pending the Court's resolution of the administrative case;

(g) **DIRECT** the Clerk of Court to make a representation letter with the LBP, Concepcion, Marikina Branch, for the conversion of the existing LBP CA No. 2722-1006-57 non-interest bearing account into interest bearing account, and to inform the Fiscal Monitoring Division, CMO-OCA on the action taken thereat; and

(h) **REFER** the initial report to the Legal Office, OCA, for filing of the appropriate criminal charges against Atty. Fermin M. Ofilas, Clerk of Court and Ms. Aranzazu V. Baltazar, Clerk IV from OCC, RTC, San Mateo, Rizal.

Compliance of Atty. Fermin M. Ofilas

In his Written Explanation and Report, dated March 15, 2005,[16] Atty. Ofilas refuted the charges against him. He blamed the lack of orientation and proper turnover of responsibilities and accountabilities when he assumed the functions of his office on January 28, 1992. Unaware of the basic procedures of his new office, he decided to let the staff continue what they had been doing, especially Ms. Baltazar who was in charge of the financial transactions of the court from the collection of legal fees, remittance thereof to the depositary bank, safekeeping of

[16] *Id.* at 162-180.

the daily collections, and the preparation of monthly financial reports and books of accounts. With this practice, Atty. Ofilas relied on the regular audit conducted by the Commission on Audit and the submission of monthly financial reports to the Supreme Court.

Although Atty. Ofilas was of the view that the missing funds could not be as huge as reported, he offered no denial therefor. He reiterated the admission made by Ms. Baltazar during the audit and claimed that he was never informed of any concern relating to the court's finances especially the practice of retaining varying amounts of cash from daily collections. Atty. Ofilas maintained that "he did not enjoy nor profit from a single centavo out of the legal fees as he never touched them nor were the fees given to him for safekeeping."[17]

Atty. Ofilas presented a copy of Land Bank Inter-Office Credit Advice dated December 1, 1997 evidencing the deposit made therein under the Judiciary Development Fund account in the amount of ₱12,344.25.[18] However, with respect to undocumented deposits in the bigger amount of ₱779,341.45 in the said fund and unauthorized withdrawals from the Fiduciary Fund in the amount of ₱1,182,330.00, Atty. Ofilas could offer no explanation.

Atty. Ofilas informed the Court that the interest earned by the Fiduciary Fund account amounting to ₱286,745.05 had already been transferred to the Special Allowance for Judiciary account, as directed by the Court.[19]

With respect to his act of opening a separate bank account in the Rural Bank of San Mateo, Atty. Ofilas explained that it was a practical remedy which helped him solve the problem of allocating extra-judicial foreclosure fees. He deposited check payments to the bank, withdrew cash and then allocated the money to the Judicial Development Fund and the General Fund.

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[17] *Id.* at 165.

[18] *Id.* at 217-218.

[19] *Id.* at 222.

He denied ill-motive and gave emphasis to the fact that "the account or passbook was not registered in the name of FERMIN M. OFILAS; it was opened in the name of the "THE CLERK OF COURT, RTC SAN MATEO RIZAL." Although he contended that convenience of the petitioners in the court was the only consideration for the procedure, he apologized for his unintentional breach of an existing circular.

As to his failure to enforce the collection of filing fees and commission fees on extrajudicial foreclosure cases, Atty. Ofilas admitted that *"his focus was never on the correct computation of legal fees"* and he *"relied much on his Cash Clerk's ability to perform correct arithmetical computation."*[20] He claimed that he paid more attention to the substantial aspects of the petitions like publication requirements and bidding procedures. He was unaware of Administrative Circular No. 31-90 which took effect on October 19, 1990 requiring the collection of advertising fees. The required quarterly report on the status of extrajudicial foreclosure petitions and the activities of the sheriffs under his supervision was only made known to him by the SC Financial Audit Team.

As to the directive to send demand letters to the mortgagees/petitioners in extrajudicial foreclosure proceedings to collect deficiencies in filing fees, Atty. Ofilas said that some accounts were already reviewed but other records would have to be thoroughly checked to avoid mistakes and embarrassment. As to the status of the petitions for extra-judicial foreclosure, 159 case records of which have been found but others had yet to be traced. The marriage solemnization fees amounting to ₱900.00 were already collected from Branch 77.[21]

As to over-payment of cash bond, Atty. Ofilas went on to explain that in all five cases,[22] he had no participation in the processing of claims because it was Ms. Baltazar herself who

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[20] *Id.* at 167-168.

[21] *Id.* at 219-221.

[22] Criminal Cases 2237-93; 2498; 2074; 2589; 119-97 and 120-97.

prepared and signed the vouchers in his name. He opined that the persons who received the overpayment must be required to return the money to the court. Otherwise, it should be Ms. Baltazar who must pay, as she alone made the erroneous refund.

As directed by the court, Atty. Ofilas also withdrew the confiscated cash bonds and deposited the same to the JDF account and the Special Allowance for the Judiciary account.

In the meantime, Atty. Ofilas begged the court in a letter dated January 24, 2006,[23] to lift the directive withholding his salary. Attached to this letter was the affidavit executed by Ms. Baltazar wherein she reiterated that Atty. Ofilas had no participation in, or knowledge of, the irregularities found in the financial transactions of the court, and neither did he tolerate them. After several requests for extension and warnings from the Court, Atty. Ofilas, by way of Motion and Compliance dated September 5, 2006,[24] furnished the court with thirty-one (31) orders in civil and criminal cases directing the release of posted bonds, official receipts issued for posted cash bonds, and acknowledgment receipts of the cash bond signed by the accused or complainants. Once again he pleaded for the release of his salaries informing the court of his need of medical treatment for prostate cancer.

On the said letter, the court resolved to direct the immediate release of the salaries of Atty. Ofilas and his re-inclusion in the payroll, in a Resolution dated November 18, 2006. He was, however, still ordered to submit documents to support the unverified withdrawals from the Fiduciary Fund within ten (10) days from notice.

In a Memorandum dated April 2, 2008,[25] the OCA took account the Motion and Compliance filed by Atty. Ofilas and reported that the previous amount of undocumented withdrawals was

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[23] *Supra* note 1 at 250.

[24] *Id.* at 365.

[25] *Id.* at 440-441.

reduced from ₱1,182,330.00 to ₱1,049,930.00. The documentation for ₱132,400.00 was presented by Atty. Ofilas.

In a Resolution dated June 16, 2008,[26] the Court resolved to furnish Atty. Ofilas with an amended itemized list of withdrawn or refunded Fiduciary Fund deposits without proper documentation and directed him to submit the needed documents in order for him to be cleared of his financial accountability. In his Compliance and Further Plea for Mercy dated November 28, 2008,[27] Atty. Ofilas submitted copies of court orders authorizing the release of the cash bonds as attached. In turn, the Fiscal Monitoring Division of the OCA took the documents into account and notified the court, in a Memorandum dated March 26, 2009,[28] that the undocumented withdrawals had been reduced to ₱456,355.00.

Atty. Ofilas, however, failed to present documents relative to the undeposited collections amounting to ₱1,119.145.23 and the unexplained double withdrawals at ₱19,600.00, both with respect to the Fiduciary Fund.

Position of Clerk IV Aranzazu Baltazar

Insofar as Aranzazu Baltazar is concerned, she **admitted** her guilt even prior to the completion of the audit. After she had received the Resolution dated January 10, 2005, she filed a Motion for Reconsideration dated February 21, 2005[29] informing the Court that the amount of ₱8,924.25 corresponding to the shortage in the Sheriff's Fee-General Fund had already been restituted. She manifested her willingness to bear whatever sanction the Court might impose on her because she would "surrender" herself for dismissal from government service.

Explanation of Judge Elizabeth Balquin-Reyes

For her part, Judge Elizabeth Balquin-Reyes alleged in her Explanation[30] that her predecessor as Executive Judge, now

[26] *Id.* at 471.

[27] *Id.* at 486.

[28] *Id.* at 552.

[29] *Id.* at 143-144.

[30] *Id.* at 141-142.

Justice Jose Reyes, Jr., of the Court of Appeals, did not leave any instructions relative to the financial transactions of the court. Out of *delicadeza*, she did not go over the financial records of the Clerk of Court as she still had to await her designation as the Executive Judge.

RECOMMENDATION BY THE OCA

In compliance with the Court's Resolution dated January 19, 2009, the Office of the Court Administrator submitted the following recommendations in a Memorandum to the Chief Justice dated January 19, 2010:

1) Ms. Aranzazu V. Baltazar, Clerk of Court IV, Regional Trial Court, San Mateo, Rizal, be **FOUND GUILTY** of gross inefficiency, gross dishonesty and grave misconducts and that she be **DISMISSED** from the service with accessory penalties of forfeiture of retirement benefits and disqualification for re-employment in any government agency or government-owned/controlled corporation;

2) The Financial Management Office, Office of the Court Administrator, be **DIRECTED** to process the terminal leave pay of Ms. Aranzazu V. Baltazar, dispensing with the usual documentary requirements and to apply the same to the shortage in the Fiduciary Fund of the Regional Trial Court of San Mateo, Rizal;

3) Ms. Aranzazu V. Baltazar be **DIRECTED** to restitute the balance of the shortage in the Fiduciary Fund in the amount of ₱1,496,133.38;

4) Atty. Fermin M. Ofilas, former Clerk of Court, Regional Trial Court, San Mateo, Rizal, be **FOUND GUILTY** of gross inefficiency and that his retirement benefits, except his terminal leave pay, be **FORFEITED** and that he be **DISQUALIFIED** from re-employment in any government agency or government-owned or controlled corporation;

5) Judge Elizabeth Balquin-Reyes, Executive Judge, Regional Trial Court, San Mateo, Rizal be **REMINDED** to keep herself abreast of this Court's issuances regarding Executive and Vice-Executive Judges; and

6) The Legal Office, Office of the Court Administrator, be **DIRECTED** to initiate criminal proceedings against Ms. Aranzazu V. Baltazar.

THE COURT'S RULING

The Court adopts the findings and recommendations of the OCA.

No less than the Constitution mandates that "public office is a public trust." Service with loyalty, integrity and efficiency is required of all public officers and employees, who must, at all times, be accountable to the people. In a long line of cases, the Court had untiringly reminded employees involved in the administration of justice to faithfully adhere to their mandated duties and responsibilities. Whether committed by the highest judicial official or by the lowest member of the workforce, any act of impropriety can seriously erode the people's confidence in the Judiciary. "Verily, the image of a court of justice is necessarily mirrored in the conduct of its personnel. It is their sacred duty to maintain the good name and standing of the court as a true temple of justice."[31] Corollary to this, failure to live up to their avowed duty constitutes a transgression of the trust reposed on them as court officers and inevitably leads to an exercise of disciplinary authority. Thus, the Court "condemns and would never countenance any conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and would diminish or even just tend to diminish the faith of the people in the Judiciary."[32] The Judiciary expects the best from all its

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[31] *Yu-Asensi v. Judge Villanueva, MTC, Branch 36, Q.C.,* A.M. No. MTJ-00-1245, January 19, 2000, 322 SCRA 255.

[32] *Mendoza v. Mabutas,* A.M. No. MTJ-88-142, June 17, 1993, 223 SCRA 411.

employees who must be paradigms in the administration of justice.[33]

The outright admission of Clerk IV Aranzazu Baltazar to committing malversation of funds shows her blatant disregard for these principles she had sworn to uphold and thereby eroding public trust. Her admission however, does not exculpate Clerk of Court Atty. Fermin Ofilas of his own negligence.

As clerk of court, Atty. Ofilas is one of the ranking officers of the judiciary. Next to the judge, the clerk of court is the chief administrative officer charged with preserving the integrity of court proceedings. A number of non-judicial concerns connected with trial and adjudication of cases is handled by the clerk of court, demanding a dynamic performance of duties, with the prompt and proper administration of justice as the constant objective. The nature of the work and of the office mandates that the clerk of court be an individual of competence, honesty and integrity. For "xxx in relation to the judge, a [clerk of court] occupies a position of confidence which should not be betrayed; and that with the prestige of the office goes the corresponding responsibility to safeguard the integrity of the court and its proceedings, to earn respect therefor, to maintain loyalty thereto and to the judge as the superior officer, to maintain the authenticity and correctness of court records, and to uphold the confidence of the public in the administration of justice."[34]

That clerks of court perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises can never be overemphasized. They wear many hats – those of treasurer, accountant, guard and physical plant manager of the court, hence, are entrusted with the primary responsibility of correctly and effectively implementing regulations regarding fiduciary funds. They are, thus, liable for any loss, shortage, destruction or impairment of such funds and property.[35]

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[33] *Atty. Eduardo E. Francisco v. Liza O. Galvez, OIC Clerk of Court*, A.M. No. P-09-2636, December 4, 2009.

[34] *Rudas v. Acedo*, A.M. No. P-93-931, August 14, 1995, 247 SCRA 237.

[35] *OCA v. Marlon Roque and Anita G. Nunag, Clerks of Court Branch 3, OCC, MTCC, Angeles City*, A.M. No. P-06-2200, February 4, 2009.

A previous case shares a similar factual milieu with the case at bench. In *Report on the Financial Audit in RTC v. General Santos City and the RTC and MTC of Polomolok, South Cotabato*,[36] the clerk of court, after an audit, was shocked to learn of the irregularities in the handling of court funds committed by a social worker officer cum cash clerk, to whom he delegated his responsibilities because he "did not know accounting procedures and he did not want to antagonize the members of his staff by changing the system already in place upon his assumption to office." The clerk therein admitted the shortage of funds and that "she loaned money taken from her collection to her co-employees because otherwise they would fall prey to loan sharks or usurers charging interest rate ranging from 10% to 21%."

In this case, we find the respondent, Atty. Ofilas, seriously remiss in the performance of his duties. The explanation proffered by him largely involves apology, denial and claims of ignorance. For the remaining shortage of court funds, he shifts the liability to Ms. Baltazar. What he failed to explain to the satisfaction of the Court, however, is the underlying issue of his failure to carry out the primordial responsibilities of his office.

Atty. Ofilas utterly failed to perform his duties with the degree of diligence and competence expected of him. Atty. Ofilas played his role in a perfunctory manner, relying heavily on Ms. Baltazar's supposed ability and honesty to handle the finances of the court. This is a reprehensible display of inefficiency which cannot be justified by good faith, naivety or inexperience. Atty. Ofilas' lack of orientation or training prior to his assumption of office is no excuse to delegate his essential duties to Ms. Baltazar especially those concerning financial matters.

From 1992 until the arrival of the audit team, Atty. Ofilas had been complacent as he merely allowed another person to perform his tasks, absent the initiative to learn the functions of the office he had sworn to hold and fulfill with zeal. Neither

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[36] A.M. No. 96-1-25-RTC, April 18, 1997.

the records nor Atty. Ofilas' statements provide the slightest indication that he at least exerted efforts to take the reins from Baltazar or to introduce improvements in the conduct of office procedures. Granting there was a lack of orientation or formal turnover of responsibilities, he could have consulted the Manual for Clerks of Court, particularly his duties as provided in Chapter VII, Section B thereof. Unfortunately, Baltazar's substitute performance proved adequate for him that even supervision, which was incumbent upon him to exercise over other court personnel, was lost over time.

His admission or pretension that he had no knowledge of accounting rules and regulations does not justify his dependence on Baltazar. Atty. Ofilas was glaringly unmindful of the ruling in *Office of the Court Administrator v. Sylvia R. Yan*[37] that the collection of legal fees, by its nature, is a delicate function of clerks of court as judicial officers entrusted with the correct and effective implementation of the regulations thereon. Functionally, the work involves the examination and verification of every pleading and document to determine with accuracy the amount of collectible revenues or fees which by law properly belong to the Government. It is likewise incumbent upon him "to personally attend to the collection of the fees, the safekeeping of the money thus collected, the making of the proper entries thereof in the corresponding book of accounts, and the deposit of the same in the offices concerned."[38]

Succinctly put, Atty. Ofilas' performance as an officer of the court is clearly wanting. Throughout this case, he would bank on his alleged ignorance of the irregularities obtaining in the court and pass on the liability to Ms. Baltazar alone. Time and again, the Court has ruled that the clerk of court is primarily accountable for all funds that are collected for the court, whether received by him personally or by a duly appointed cashier who

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[37] A.M. No. P-98-1281, April 27, 2005.

[38] *Office of the Court Administrator v. Atty. Jose R. Bawalan, Clerk of Court, Regional Trial Court, Branch 23, Trece Martires City*, A.M. No. P-93-945, March 24, 1994.

is under his supervision and control. Thus, Atty. Ofilas is liable for any loss, shortage, destruction or impairment of such funds and property.

Atty. Ofilas' failure to enforce the collection of the correct fees cannot be excused by his limited knowledge of arithmetic computation or by his attention on the substantive requirements in extrajudicial foreclosure cases. "To credit such defense would set similarly situated employees to lightly discharge their duty of employing reasonable skill and diligence and thus evade administrative liability xxx.[39] Safekeeping of funds and collections is essential to an orderly administration of justice, and no protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds.[40] Atty. Ofilas'claim that he was not aware of circulars relative to collection of fees is unacceptable.

Anent his excuses for delayed deposit of funds and withdrawal of interest, Atty. Ofilas again failed to convince us with his invocation of good faith. The reasoning of the OCA is well-taken. No amount of convenience or expediency can justify this infraction of the rules. It is the duty of the clerks of court to fully comply with the circulars on deposits of collections.

SC Circular Nos. 13-92 and 5-93, as incorporated into the 2002 Revised Manual for Clerks of Court provide the guidelines for the accounting of court funds. All fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank. In SC Circular No. 5-93, the Land Bank was designated as the authorized government depository. Court personnel tasked with collections of court funds, such as clerk of court and cash clerks, should deposit immediately with authorized government depositories the various funds they have collected because they are not authorized to keep funds in their custody. Delayed

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[39] *Supra* note at 35.

[40] *OCA v. Bernardino,* A.M. No. P-97-1258, January 31, 2005, 450 SCRA 88, 111.

remittance of cash collections constitutes gross neglect of duty because this omission deprives the court of interest that may be earned if the amounts are deposited in a bank. In the same vein, clerks of court are required by SC Circular No. 13-92 to withdraw interest earned on deposits, and to remit the same to the account of the Judiciary Development Fund (JDF) within two (2) weeks after the end of each quarter.[41] Atty. Ofilas did not comply with any of the requirements.

In a line of decisions, the Court ruled that the "failure of a public officer to remit funds upon demand by an authorized officer constitutes *prima facie* evidence that the public officer has put such missing funds or property to personal use."[42] Hence, even when there is restitution of funds, "unwarranted failure to fulfill these responsibilities deserves administrative sanction and not even the full payment of the collection shortages will exempt the accountable officer from liability."[43] There is more room for application of said rules in this case where neither of the respondents was able to offer a plausible explanation of the blatant infractions they had committed.

With respect to the act of opening a bank account with the Rural Bank of San Mateo, Atty. Ofilas can no longer invoke ignorance of existing regulations pertinent to his office. He was previously reminded by the Court to keep abreast of all applicable laws, jurisprudence and administrative circulars pertinent to his office. It is highly regrettable that Atty. Ofilas took this warning lightly and without due importance, resulting in a greater indiscretion. Hence, his excuse of depositing check payments from extra-judicial foreclosure cases to his account because he had no way of allocating the payment between the Judiciary Development Fund and the General Fund is unacceptable. The OCA presented a logical refutation: *"In the first place, the*

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[41] Effective March 1, 1992.

[42] *Re: Financial Report on the Audit Conducted in the MCTC Apalit-San Simon, Pampanga,* A.M. 08-1-30-MCTC, April 10, 2008.

[43] *Judge Misajon, MTC San Jose, Antique vs. Clerk of Court Lagrimas A. Feranil,* A,M. MTJ-02-1565, October 18, 2004.

computation of the docket fee to be paid must already include the respective amounts to be allocated to the JDF and the GF so that the petitioners will know that they have to issue two (2) checks. Second, if payment of the docket fee is made through a single check, the remedy is not to accept the payment."

Based on the foregoing findings, Atty. Ofilas had clearly failed to live up to the standards of competence and integrity expected of an officer of the court. Mediocrity is not at all fit for a member of a complement tasked to dispense justice. His failure to exhibit administrative leadership and ability renders Atty. Ofilas guilty of negligence, incompetence, and gross inefficiency in the performance of his official duty as the Clerk of Court. Thus, the penalty of dismissal from service is proper considering his failure to exercise supervision on Ms. Baltazar's work and to educate himself on the financial aspects of his office resulting in an improper delegation of his duties. However, in view of Atty. Ofilas' compulsory retirement on August 18, 2007, the imposition of accessory penalties including the forfeiture of his retirement benefits is justified.

As for Judge Balquin-Reyes, the Court finds it inexcusable that she assumed her functions as an Executive Judge with manifest delay. As the Vice-Executive Judge, she should have exercised the duties and functions of an Executive Judge without need for her official designation as such. This is precisely what a Vice-Executive Judge must do: to take over in the absence of the Executive Judge. Lack of instructions from her predecessor does not justify the great risk she took by leaving the financial matters of the court to be handled without her supervision and monitoring. Simply put, had Judge Balquin-Reyes observed the *Guidelines in Making Withdrawals* provided in SC CIRCULAR NO. 13-92,[44] unauthorized withdrawals of court funds could have been prevented.

Judge Balquin-Reyes deserves admonition from the Court to monitor strict compliance of circulars in the proper handling of

[44] Withdrawal slips shall be signed by the Executive Judge and countersigned by the Clerk of Court.

judiciary funds and to keep herself abreast of the Court's issuances relative to the Office of Executive and Vice-Executive Judges.

With respect to Ms. Baltazar, she was grossly inefficient in handling the finances of the court. Her bare admission that she performed duties relative to the collection and remittance of fees and had indeed allowed other employees to borrow from the court funds, shows her extensive participation in the irregularities reported by the audit team. There is no doubt that these acts constitute a grave offense.[45] Gross dishonesty, grave misconduct and gross neglect of duty, warrant the maximum penalty of dismissal from service as provided in Section 9, Rule XIV of the Civil Service Rules:

> "The penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of leave credits and retirement benefits, and the disqualification for reemployment in the government service. Further, it may be imposed without prejudice to criminal or civil liability."

Ms. Baltazar's leave credits totaling 215.362 days amounting to a terminal leave pay of ₱98,966.85 (per computation of the Leave Division, Office of Administrative Services) and the salaries which she had earned until her separation from service should be forfeited and be applied to the payment of her liability. Further, the Court agrees that Ms. Baltazar must be prosecuted for *malversation of public funds* under Article 217 of the Revised Penal Code. Her plea for time extensions in order to repay the

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[45] Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service

Classification of Offenses— Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. the following are grave offenses with their corresponding penalties:

1. Dishonesty-1st offense-Dismissal
2. Gross Neglect of Duty-1st offense-Dismissal
3. Grave Misconduct-1st offense-Dismissal

amount of shortage can neither mitigate nor exculpate her from criminal prosecution.

WHEREFORE, Ms. Aranzazu V. Baltazar, Clerk IV of Regional Trial Court, San Mateo, Rizal is hereby found *GUILTY* for gross dishonesty, grave misconduct and conduct prejudicial to the best interest of the public and is hereby *DISMISSED* from the service with forfeiture of all retirement benefits and with prejudice to re-employment in the government, including government-owned or controlled corporations. Further, Ms. Aranzazu V. Baltazar is hereby *ORDERED* to restitute the balance of the shortage and unauthorized withdrawals in the Fiduciary Fund in the amount of ₱1,496,133.38.

The Civil Service Commission is hereby *ORDERED* to cancel the civil service eligibility of Ms. Aranzazu V. Baltazar, if any, in accordance with Section 9, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292.

The Financial Management Office, Office of the Court Administrator, is hereby *DIRECTED* to process the terminal leave pay of Ms. Aranzazu V. Baltazar, dispensing with the usual documentary requirements and to apply the same to the shortage in the Fiduciary Fund of the Regional Trial Court of San Mateo, Rizal;

Atty. Fermin M. Ofilas, former Clerk of Court, Regional Trial Court, San Mateo, Rizal is hereby found *GUILTY* of gross inefficiency with *FORFEITURE* of all his retirement benefits, except his terminal leave pay. Further, he is *DISQUALIFIED* from re-employment in any branch or instrumentality in the government, including government-owned and controlled corporations.

Executive Judge Elizabeth Balquin-Reyes, Regional Trial Court, San Mateo, Rizal is hereby *ADMONISHED* to monitor strict compliance of circulars in the proper handling of judiciary funds and to keep herself abreast of the Court's issuances relative to Executive and Vice-Executive Judges.

The Legal Office, Office of the Court Administrator, is hereby *DIRECTED* to coordinate with the prosecution arm of the government to initiate and ensure the expeditious prosecution of the criminal liability of Ms. Aranzazu V. Baltazar.

SO ORDERED.

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

Velasco, Jr., J., no part due to prior action in OCA.

Perez, J., no part.

SECOND DIVISION

[A.M. No. P-07-2322. April 23, 2010]

DALMACIO Z. TOMBOC, *complainant, vs.* **SHERIFFS LIBORIO M. VELASCO, JR., MEDAR T. PADAO, and STEPHEN R. BENGUA, all of the REGIONAL TRIAL COURT, DIPOLOG CITY,** *respondents.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHERIFFS; BOUND TO USE REASONABLE SKILL AND DILIGENCE IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES, PARTICULARLY WHERE THE RIGHTS OF INDIVIDUALS MIGHT BE JEOPARDIZED BY THEIR NEGLECT; CASE AT BAR; PENALTY.— It is clear that Velasco failed to exercise due diligence in the performance of his duties. The writ of demolition covered only Lot Nos. 80-A and 81-A. He was informed beforehand that complainant's house was constructed on Lot No. 81-B. He relied

on the representative of the plaintiff in Spl. Civil Case No. 645 who told him that complainant's house should be included in the demolition instead of conducting a relocation survey on the areas involved in the case. We reiterate that sheriffs, as public officers, are repositories of public trust and are under obligation to perform the duties of their office honestly, faithfully, and to the best of their abilities. Sheriffs are bound to use reasonable skill and diligence in the performance of their official duties, particularly where the rights of individuals might be jeopardized by their neglect. In this case, Velasco failed to act with caution in the implementation of the writ of demolition, which resulted to damage to complainant. The penalty for inefficiency and incompetence in the performance of official duties is suspension ranging from six months and one day to one year for the first offense. We accordingly modify the penalty recommended by the OCA.

APPEARANCES OF COUNSEL

Wilfredo G. Guantero for respondents.

D E C I S I O N

CARPIO, *J*.:

The Case

Before the Court is an administrative complaint for abuse of authority filed by Dalmacio Z. Tomboc (complainant) against Sheriffs Liborio M. Velasco, Jr., (Velasco), Medar T. Padao (Padao), and Stephen R. Bengua (Bengua)[1] of the Regional Trial Court of Dipolog City.

The Antecedent Facts

Sometime in the last week of May or early part of June 2003, Velasco went to Barangay Silano, Piñan, Zamboanga del Norte to serve a writ of demolition in Spl. Civil Case No. 645. Complainant resides in the place, where he also has his

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[1] Velasco, Jr., Padao, and Bengua are collectively referred to in this case as respondents.

piggery and poultry businesses. The subject property of the writ covered Lot Nos. 80-A and 81-A. Complainant informed Velasco that his house was constructed on Lot No. 81-B which he acquired from Erlinda Naranjo by *pacto de retro* sale. Velasco told complainant that he would bring a surveyor at the time of the demolition proceedings.

On 8 July 2003, complainant received a notice of demolition, signed by Velasco, from the Provincial Sheriff. However, due to lack of time, complainant was not able to take any legal action on the matter.

On 10 July 2003, Velasco and his companions started the demolition of Leonardo Naranjo's house. The following day, Velasco and his companions demolished complainant's house, despite complainant's pleas and insistence that his house was erected on Lot No. 81-B which was not covered by the writ of demolition.

Respondents, in their joint comment, alleged that the complaint resulted from the implementation of the writ of demolition issued by the Municipal Trial Court of Piñon, La Libertad, Zamboanga del Norte in Spl. Civil Action No. P-645. They alleged that the case was decided on 5 August 1995 while complainant came into the picture only sometime in 1999. Respondents further alleged that complainant's allegation that his house erected on Lot No. 81-B should not have been demolished had no basis because Lot No. 81-B was within the 9.4607 hectares of land registered in the name of Rodolfo Galleposo.

In its 1 December 2004 Resolution, this Court assigned the case to Executive Judge Soledad A. Acaylar (Judge Acaylar) of the Regional Trial Court of Dipolog City, Branch 7, for investigation, report and recommendation. However, Judge Acaylar requested to be relieved as investigating judge because Padao was an employee in her sala. The case was assigned to Judge Porferio E. Mah (Judge Mah).

The Findings of the Investigating Judge

During the investigation, Velasco testified that while Padao and Bengua were present during the demolition, they did not

participate in the demolition of complainant's house because the writ of demolition was assigned to him.

In his Report and Recommendation[2] dated 25 April 2006, Judge Mah noted that the writ of demolition covered only houses or structures constructed on Lot Nos. 80-A and 81-A. Judge Mah found that complainant's house was constructed on Lot No. 81-B, as testified to by Geodetic Engineer Willjado Jimeno. Judge Mah stated that Velasco should have been more cautious in the performance of his duties, and he should have required the prevailing parties to conduct a relocation survey of Lot Nos. 80-A and 81-A when complainant argued that his house was built on Lot No. 81-B.

Judge Mah recommended the dismissal of the complaint against Padao and Bengua. Judge Mah further recommended that Velasco be required to restore complainant's house to its previous condition prior to the demolition, and if it could not be done, to pay complainant its equivalent value. Judge Mah further recommended that Velasco be imposed a fine of ₱3,000 with a warning that a repetition of the same or similar act would be dealt with more severely.

The Findings of the OCA

In its 13 September 2006 Resolution, this Court referred Judge Mah's Report and Recommendation to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.

In its Memorandum dated 22 January 2007, the OCA found Velasco guilty of inefficiency and incompetence in the performance of official duties and recommended that he be meted the penalty of suspension for six months with a stern warning that a repetition of the same or similar act in the future will be dealt with more severely. As regards the damages suffered by complainant, the OCA recommended that he be informed that an appropriate remedy is available to him.

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[2] Denominated Resolution.

The Ruling of this Court

The findings and recommendation of the OCA are well-taken, except for the recommended penalty.

It is clear that Velasco failed to exercise due diligence in the performance of his duties. The writ of demolition covered only Lot Nos. 80-A and 81-A. He was informed beforehand that complainant's house was constructed on Lot No. 81-B. He relied on the representative of the plaintiff in Spl. Civil Case No. 645 who told him that complainant's house should be included in the demolition instead of conducting a relocation survey on the areas involved in the case.[3]

We reiterate that sheriffs, as public officers, are repositories of public trust and are under obligation to perform the duties of their office honestly, faithfully, and to the best of their abilities.[4] Sheriffs are bound to use reasonable skill and diligence in the performance of their official duties, particularly where the rights of individuals might be jeopardized by their neglect.[5] In this case, Velasco failed to act with caution in the implementation of the writ of demolition, which resulted to damage to complainant.

The penalty for inefficiency and incompetence in the performance of official duties is suspension ranging from six months and one day to one year for the first offense.[6] We accordingly modify the penalty recommended by the OCA.

As regards the complaint against Padao and Bengua, Velasco himself testified that while they were present during the demolition, they did not participate in the demolition of complainant's house

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[3] TSN, 23 February 2006, p. 21.

[4] *Bernabe v. Eguia*, 458 Phil. 97 (2003).

[5] *Id.*

[6] *Lee v. Dela Cruz*, A.M. No. P-05-1955, 12 November 2007, 537 SCRA 602, citing the Uniform Rules on Administrative Cases in the Civil Service, Resolution No. 991936, 31 August 1999.

because the writ of demolition was assigned to him.[7] Therefore, the complaint against them should be dismissed.

WHEREFORE, we find Sheriff Liborio M. Velasco, Jr. of the Regional Trial Court of Dipolog City *GUILTY* of inefficiency and incompetence in the performance of official duties and orders and *SUSPEND* him from service for six months and one day without pay and other fringe benefits including leave credits, with a stern warning that a repetition of the same or similar act in the future shall be dealt with more severely. We *DISMISS* the complaint against Medar T. Padao and Stephen R. Bengua.

SO ORDERED.

Leonardo-de Castro,[*] *Brion, Del Castillo,* and *Abad, JJ.,* concur.

THIRD DIVISION

[A.M. No. RTJ-09-2190. April 23, 2010]
(Formerly OCA IPI No. 08-2909-RTJ)

HADJA SOHURAH DIPATUAN, *complainant, vs.* **JUDGE MAMINDIARA P. MANGOTARA,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; JUDGES; DISQUALIFICATION OF JUDGES; INHIBITION; DISCRETIONARY OR VOLUNTARY IN CASE AT BAR.—** xxx As correctly observed by the Investigating Justice, complainant indeed failed to specify

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[7] TSN, 23 February 2006, p. 27.

[*] Designated additional member per Raffle dated 6 January 2010.

the degree of relationship of respondent Judge to a party in the subject case. She failed to present any clear and convincing proof that respondent Judge was related within the prohibited degree with the victim. Section 1, Rule 137 of the Revised Rules of Court states: Sec. 1. *Disqualification of Judges.*- No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record. A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above. This being the case, the inhibition was indeed discretionary or voluntary as the same was primarily a matter of conscience and sound discretion on the part of the respondent Judge. When Mangotara chose not to inhibit and proceed with the promulgation of the disputed decision, he cannot be faulted by doing so. Significantly, complainant while asserting that Mangotara should have inhibited in the said case, she nonetheless failed to institute any motion for inhibition.

2. **ID.; ID.; ID.; BIAS AND PREJUDICE; MUST BE SHOWN TO HAVE STEMMED FROM AN EXTRAJUDICIAL SOURCE AND RESULT IN AN OPINION ON THE MERITS ON SOME BASIS OTHER THAN WHAT THE JUDGE LEARNED FROM HIS PARTICIPATION IN THE CASE.—** xxx [C]omplainant failed to cite any specific act that would indicate bias, prejudice or vengeance warranting respondent's voluntary inhibition from the case. Complainant merely pointed on the alleged adverse and erroneous rulings of respondent Judge to their prejudice. By themselves, however, they do not sufficiently prove bias and prejudice. To be disqualifying, the bias and prejudice must be shown to have stemmed from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case. Opinions formed in the course of judicial proceedings, although erroneous, as long as they are based on the evidence presented and conduct observed by the judge, do not prove personal bias

or prejudice on the part of the judge. As a general rule, repeated rulings against a litigant, no matter how erroneous and vigorously and consistently expressed, are not a basis for disqualification of a judge on grounds of bias and prejudice. Extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to the palpable error which may be inferred from the decision or order itself. Although the decision may seem so erroneous as to raise doubts concerning a judge's integrity, absent extrinsic evidence, the decision itself would be insufficient to establish a case against the judge. Mere suspicion of partiality is not enough. There must be sufficient evidence to prove the same, as well as a manifest showing of bias and partiality stemming from an extrajudicial source or some other basis. A judge's conduct must be clearly indicative of arbitrariness and prejudice before it can be stigmatized as biased and partial. As there was no substantial evidence to hold Mangotara liable on this point, the Investigating Justice correctly recommended the dismissal of this charge against him.

3. **ID.; ID.; NOT EVERY ERROR OR MISTAKE THAT A JUDGE COMMITS IN THE PERFORMANCE OF HIS DUTIES RENDERS HIM LIABLE, UNLESS HE IS SHOWN TO HAVE ACTED IN BAD FAITH OR WITH DELIBERATE INTENT TO DO AN INJUSTICE; NO EVIDENCE OF BAD FAITH IS ADDUCED IN CASE AT BAR.—** xxx [W]e likewise found no basis to hold respondent Judge administratively liable anent his issuance of the Decision dated December 28, 2007. As aptly observed by the Investigating Justice, Mangotara acted in good faith when he issued the subject decision, since he received notice of his replacement by Judge Busran, dated December 26, 2007, only on January 26, 2008. It must be stressed that not every error or mistake that a judge commits in the performance of his duties renders him liable, unless he is shown to have acted in bad faith or with deliberate intent to do an injustice. Good faith and absence of malice, corrupt motives or improper considerations are sufficient defenses in which a judge can find refuge. In this case, complainant adduced no evidence that Mangotara was moved by bad faith when he issued the disputed order.

4. **ID.; ID.; GROSS IGNORANCE OF THE LAW; A CASE OF; EXPLAINED.—** The rule is very explicit as to when admission to bail is discretionary on the part of the respondent Judge. It

is imperative that judges be conversant with basic legal principles and possessed sufficient proficiency in the law. In offenses punishable by *reclusion perpetua* or death, the accused has no right to bail when the evidence of guilt is strong. Thus, as the accused in Criminal Case No. 3620-01 had been sentenced to *reclusion perpetua*, the bail should have been cancelled, instead of increasing it as respondent Judge did. While a judge may not be held liable for gross ignorance of the law for every erroneous order that he renders, it is also axiomatic that when the legal principle involved is sufficiently basic, lack of conversance with it constitutes gross ignorance of the law. Indeed, even though a judge may not always be subjected to disciplinary action for every erroneous order or decision he renders, that relative immunity is not a license to be negligent or abusive and arbitrary in performing his adjudicatory prerogatives. It does not mean that a judge need not observe propriety, discreetness and due care in the performance of his official functions. This is because if judges wantonly misuse the powers vested on them by the law, there will not only be confusion in the administration of justice but also oppressive disregard of the basic requirements of due process. Clearly, in the instant case, the act of Mangotara in increasing the bail bond of the accused instead of cancelling it is not a mere deficiency in prudence, discretion and judgment on the part of respondent Judge, but a patent disregard of well-known rules. When an error is so gross and patent, such error produces an inference of bad faith, making the judge liable for gross ignorance of the law. It is a pressing responsibility of judges to keep abreast with the law and changes therein, as well as with the latest decisions of the Supreme Court. One cannot seek refuge in a mere cursory acquaintance with the statute and procedural rules. Ignorance of the law, which everyone is bound to know, excuses no one – not even judges. *IGNORANTIA JURIS QUOD QUISQUE SCIRE TENETUR NON EXCUSAT.*

5. ID.; ID.; DISCIPLINE OF JUDGES; SERIOUS CHARGE; GROSS IGNORANCE OF THE LAW; PENALTY.— Under Section 8, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, gross ignorance of the law or procedure is classified as a serious charge. Under Section 11(A) of the same Rule, as amended, if the respondent is found guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations; Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; 2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or 3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00. In this case, a fine of ₱20,000.00, as recommended by the Investigating Justice, would thus appear to be an appropriate sanction to impose on respondent Judge, considering that this is his first infraction in his 13 years of service; his admission of his mistake; and his prompt correction of such mistake.

D E C I S I O N

PERALTA, *J.*:

Before this Court is an Affidavit-Complaint[1] dated May 12, 2008, filed by complainant Hadja Sohurah Dipatuan against respondent Judge Mamindiara P. Mangotara, Presiding Judge, Regional Trial Court (Regional Trial Court) of Iligan City, Branch 1, for Gross Ignorance of the Law and Grave Abuse of Authority.

The antecedent facts of the case, as culled from the records, are as follows:

On September 5, 2001, a criminal case for murder, docketed as Criminal Case No. 3620-01 was filed against Ishak M. Abdul and Paisal Dipatuan, complainant's husband, before the Regional Trial Court of Marawi City, Branch 10, then presided by Judge Yusoph Pangadapun, for the killing of Elias Ali Taher. Judge Pangadapun died during the pendency of the case. The case was transferred to different judges designated by the Supreme Court to act as Presiding Judge of Branch 10, namely, Judge Amer Ibrahim, Judge Rasad Balindog, Judge Macaundas Hadjirasul,

[1] *Rollo,* pp. 1-5.

Judge Moslemen Macarambon, respondent Judge Mamindiara Mangotara, and Judge Lacsaman Busran.

Before Judge Macarambon could render a decision on the case, he was appointed as COMELEC Commissioner. By virtue of Administrative Order No. 201-2007[2] dated November 16, 2007, the Supreme Court designated respondent Judge Mamindiara Mangotara, Presiding Judge of the RTC of Iligan City, Branch 1, Lanao Del Norte, as Acting Presiding Judge of the RTC of Marawi City, Branch 10. Later on, Mangotara suffered a mild stroke; hence, the Supreme Court, in a Resolution dated December 26, 2007, revoked the earlier designation of Judge Mangotara and designated Judge Lacsaman M. Busran as the new Acting Presiding Judge of Branch 10, by virtue of Administrative Order No. 220-2007.

On December 28, 2007, Mangotara issued the disputed Decision[3] in Criminal Case No. 3620-01 and found both accused Abdul and Dipatuan guilty beyond reasonable doubt of the crime of murder and sentenced them to imprisonment of *reclusion perpetua*. The trial court ruled that the prosecution was able to establish that Abdul and co-accused Dipatuan acted in conspiracy in shooting and killing the victim Elias Ali Taher. The court, likewise, increased the accused's bail bond from ₱75,000.00 to ₱200,000.00.

On January 21, 2008, the accused filed a motion for reconsideration of the Decision. In an Order dated February 1, 2008, Mangotara denied the motion for lack of merit.[4] In another Order of the same date, Mangotara applied the same increased bail bond with regard to accused Ishak M. Abdul.[5] However, again on the same date, Mangotara issued another Order recalling the foregoing Orders.[6]

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[2] *Id.* at 7.

[3] *Id.* at 8-19.

[4] *Id.* at 46.

[5] *Id.* at 47.

[6] *Id.* at 48.

Thus, on May 14, 2008, complainant filed the instant complaint. Complainant alleged that Judge Mangotara displayed bias and prejudice against her husband Dipatuan when he did not inhibit himself from the case, considering that he is a relative by affinity and consanguinity of the victim Elias Ali Taher and that he also came from Maguing, Lanao Del Sur where Taher also used to reside. Complainant also pointed out that despite the designation of Judge Busran as Acting Presiding Judge of Branch 10 on December 26, 2007, Judge Mangotara, acting with grave abuse of authority, illegally and maliciously rendered the December 28, 2007 Decision as well as the two Orders dated February 1, 2008.

On May 26, 2008, the Office of the Court Administrator (OCA) directed Mangotara to file his Comment on the instant complaint.[7]

In his Comment[8] dated June 24, 2008, Mangotara averred that he decided the case on December 28, 2007 as it had been pending for almost seven (7) years. He clarified that his relationship to the victim is distant and not a basis for disqualification of judges under Rule 137 of the Rules of Court. Mangotara explained that he received notice of Judge Busran's designation as the new Presiding Judge only on January 26, 2008 and that when he issued the two Orders dated February 1, 2008, Judge Busran had not yet assumed office; and in the honest belief that Abdul was also entitled to the benefits of the bail bond fixed by the court for Dipatuan. Mangotara added that, upon realizing the irregularity of the two Orders issued on February 1, 2008, he immediately rectified the same and recalled the Orders on the same day. Finally, Mangotara maintained that his decision was supported by the evidence on record and that the instant administrative complaint was only meant to embarrass him and destroy his honor and reputation.

Subsequently, in its Memorandum[9] dated May 18, 2009, the OCA found Mangotara guilty of gross ignorance of the law and

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[7] *Id.* at 49.

[8] *Id.* at 50-53.

[9] *Id.* at 125-130.

abuse of authority. The OCA, likewise, recommended that the instant complaint against Mangotara be re-docketed as a regular administrative matter.

However, in its Resolution[10] dated July 22, 2009, the Court resolved to re-docket the instant complaint as a regular administrative matter and refer the complaint to Court of Appeals Associate Justice Portia Aliño-Hormachuelos for investigation, report and recommendation.

We adopt the recommendation of the Investigating Justice.

On the charge of bias and partiality resulting to grave abuse of authority

We rule in the negative. As correctly observed by the Investigating Justice, complainant indeed failed to specify the degree of relationship of respondent Judge to a party in the subject case. She failed to present any clear and convincing proof that respondent Judge was related within the prohibited degree with the victim. Section 1, Rule 137 of the Revised Rules of Court states:

> Sec. 1. *Disqualification of Judges.* - No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.
>
> A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

This being the case, the inhibition was indeed discretionary or voluntary as the same was primarily a matter of conscience

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

and sound discretion on the part of the respondent Judge. When Mangotara chose not to inhibit and proceed with the promulgation of the disputed decision, he cannot be faulted by doing so. Significantly, complainant while asserting that Mangotara should have inhibited in the said case, she nonetheless failed to institute any motion for inhibition.

Moreover, complainant failed to cite any specific act that would indicate bias, prejudice or vengeance warranting respondent's voluntary inhibition from the case. Complainant merely pointed on the alleged adverse and erroneous rulings of respondent Judge to their prejudice. By themselves, however, they do not sufficiently prove bias and prejudice.

To be disqualifying, the bias and prejudice must be shown to have stemmed from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case. Opinions formed in the course of judicial proceedings, although erroneous, as long as they are based on the evidence presented and conduct observed by the judge, do not prove personal bias or prejudice on the part of the judge. As a general rule, repeated rulings against a litigant, no matter how erroneous and vigorously and consistently expressed, are not a basis for disqualification of a judge on grounds of bias and prejudice. Extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to the palpable error which may be inferred from the decision or order itself. Although the decision may seem so erroneous as to raise doubts concerning a judge's integrity, absent extrinsic evidence, the decision itself would be insufficient to establish a case against the judge.[11]

Mere suspicion of partiality is not enough. There must be sufficient evidence to prove the same, as well as a manifest showing of bias and partiality stemming from an extrajudicial source or some other basis. A judge's conduct must be clearly indicative of arbitrariness and prejudice before it can be stigmatized

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[11] *Webb v. People*, July 24, 1997, G.R. No. 127262, 276 SCRA 243, 253-254.

as biased and partial. As there was no substantial evidence to hold Mangotara liable on this point, the Investigating Justice correctly recommended the dismissal of this charge against him.

Moreover, we likewise found no basis to hold respondent Judge administratively liable anent his issuance of the Decision dated December 28, 2007. As aptly observed by the Investigating Justice, Mangotara acted in good faith when he issued the subject decision, since he received notice of his replacement by Judge Busran, dated December 26, 2007, only on January 26, 2008. It must be stressed that not every error or mistake that a judge commits in the performance of his duties renders him liable, unless he is shown to have acted in bad faith or with deliberate intent to do an injustice. Good faith and absence of malice, corrupt motives or improper considerations are sufficient defenses in which a judge can find refuge. In this case, complainant adduced no evidence that Mangotara was moved by bad faith when he issued the disputed order.

As to the charge of gross ignorance of the law

As to the charge of gross ignorance of the law in so far as his act of increasing the bail bond of the accused instead of cancelling it, Mangotara did not deny his issuance of said Order. However, he claims that the issuance thereof was merely an error of judgment.

Indeed, as a matter of public policy, not every error or mistake of a judge in the performance of his official duties renders him liable. In the absence of fraud, dishonesty or corruption, the acts of a judge in his official capacity do not always constitute misconduct although the same acts may be erroneous. True, a judge may not be disciplined for error of judgment absent proof that such error was made with a conscious and deliberate intent to cause an injustice. This does not mean, however, that a judge need not observe propriety, discreetness and due care in the performance of his official functions.

Section 5, Rule 114 of the Revised Rules on Criminal Procedure is clear on the issue. It provides:

SEC. 5. *Bail, when discretionary*. – Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua* or life imprisonment, admission to bail is discretionary. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.

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The rule is very explicit as to when admission to bail is discretionary on the part of the respondent Judge. It is imperative that judges be conversant with basic legal principles and possessed sufficient proficiency in the law. In offenses punishable by *reclusion perpetua* or death, the accused has no right to bail when the evidence of guilt is strong.[12] Thus, as the accused in Criminal Case No. 3620-01 had been sentenced to *reclusion perpetua*, the bail should have been cancelled, instead of increasing it as respondent Judge did.

While a judge may not be held liable for gross ignorance of the law for every erroneous order that he renders, it is also axiomatic that when the legal principle involved is sufficiently basic, lack of conversance with it constitutes gross ignorance of the law. Indeed, even though a judge may not always be subjected to disciplinary action for every erroneous order or decision he renders, that relative immunity is not a license to be negligent or abusive and arbitrary in performing his adjudicatory prerogatives. It does not mean that a judge need not observe propriety, discreetness and due care in the performance of his official functions. This is because if judges wantonly misuse the powers vested on them by the law, there will not only be confusion in the administration of justice but also oppressive disregard of the basic requirements of due process.[13]

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[12] *Managuelod v. Paclibon, Jr.,* A.M. No. RTJ-02-1726, March 29, 2004, 426 SCRA 377, 381.

[13] *Reyes v. Paderanga*, A.M. No. RTJ-06-1973, March 14, 2008, 548 SCRA 244, 258-259.

Clearly, in the instant case, the act of Mangotara in increasing the bail bond of the accused instead of cancelling it is not a mere deficiency in prudence, discretion and judgment on the part of respondent Judge, but a patent disregard of well-known rules. When an error is so gross and patent, such error produces an inference of bad faith, making the judge liable for gross ignorance of the law.[14] It is a pressing responsibility of judges to keep abreast with the law and changes therein, as well as with the latest decisions of the Supreme Court. One cannot seek refuge in a mere cursory acquaintance with the statute and procedural rules. Ignorance of the law, which everyone is bound to know, excuses no one – not even judges. *IGNORANTIA JURIS QUOD QUISQUE SCIRE TENETUR NON EXCUSAT.*[15]

We come to the imposable penalty.

Under Section 8, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, gross ignorance of the law or procedure is classified as a serious charge. Under Section 11(A) of the same Rule, as amended, if the respondent is found guilty of a serious charge, any of the following sanctions may be imposed:

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

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

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

In this case, a fine of ₱20,000.00, as recommended by the Investigating Justice, would thus appear to be an appropriate sanction to impose on respondent Judge, considering that this is his first infraction in his 13 years of service; his admission of his mistake; and his prompt correction of such mistake.

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[14] *Id.* at 259.

[15] *Rivera v. Mirasol*, A.M. No. RTJ-04-1885, July 14, 2004, 434 SCRA 315, 320.

WHEREFORE, the Court finds **JUDGE MAMINDIARA P. MANGOTARA**, retired Presiding Judge of the Regional Trial Court of Iligan City, Branch 1, *GUILTY of GROSS IGNORANCE OF THE LAW* for which he is *FINED* in the amount of Twenty Thousand Pesos (₱20,000,00), to be deducted from his retirement benefits.

SO ORDERED.

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

EN BANC

[A.M. OCA IPI No. 07-2630-RTJ. April 23, 2010]

FRANCISCO P. OCAMPO, *complainant*, *vs*. **JUDGE EVELYN S. ARCAYA-CHUA, Regional Trial Court, Branch 144, Makati City,** *respondent*.

[A.M. No. RTJ-07-2049. April 23, 2010]

OFFICE OF THE COURT ADMINISTRATOR, *complainant*, *vs*. **JUDGE EVELYN S. ARCAYA-CHUA, Regional Trial Court, Branch 144, Makati City,** *respondent*.

[A.M. No. RTJ-08-2141. April 23, 2010]
(Formerly A.M. No. 07-5-263-RTC/Re: Initial Report on the Judicial Audit Conducted at the Regional Trial Court, Branch 144, Makati City)

OFFICE OF THE COURT ADMINISTRATOR, *complainant*, *vs*. **JUDGE EVELYN S. ARCAYA-CHUA, Regional Trial Court, Branch 144, Makati City, and COURT**

STENOGRAPHER VICTORIA C. JAMORA, Regional Trial Court, Branch 144, Makati City, *respondents.*

[A.M. No. RTJ-07-2093. April 23, 2010]

SYLVIA SANTOS, *complainant, vs.* **JUDGE EVELYN S. ARCAYA-CHUA, Regional Trial Court, Branch 144, Makati City,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; QUANTUM OF PROOF IN ADMINISTRATIVE PROCEEDINGS; SUBSTANTIAL EVIDENCE; ESTABLISHED IN CASE AT BAR.—** It is settled that in administrative proceedings, the quantum of proof required to establish malfeasance is not proof beyond reasonable doubt, but substantial evidence*, i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. In A.M. No. RTJ-08-2141, there is substantial evidence that respondent Judge Arcaya-Chua did not report in her Monthly Reports the actual number of marriages she solemnized during her stint in the MeTC, Makati City, Branch 63 and in the RTC, Makati City, Branch 144, and that the solemnization fees that were paid did not correspond to the number of marriages that were solemnized by her. xxx In the light of the substantial evidence against her, she cannot shift the blame to Noel Umipig absent any proof of weight that he forged her signature in the Monthly Reports.
2. **LEGAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; A TEMPORARY PROTECTIVE ORDER (TPO) CANNOT BE ISSUED IN FAVOR OF A MAN AGAINST HIS WIFE; CASE AT BAR.—** In A.M. No. RTJ-07-2049 (*the Chang Tan/RCBC Case*), the Court upholds the finding of Justice Salvador-Fernando that respondent Judge Arcaya-Chua is guilty of gross ignorance of the law for issuing a TPO in favor of petitioner Albert Chang Tan in SP Case No. M-6373, since a TPO cannot be issued in favor of a man against his wife under R.A. No. 9262, known as the *Anti–Violence Against Women and Their Children Act of 2004*. Indeed, as a family court judge, Judge Arcaya-Chua is expected to know the correct implementation of R.A. No. 9262.

3. **ID.; ID.; HARRASSMENT, GRAVE ABUSE OF AUTHORITY, GROSS IGNORANCE OF THE LAW, GROSS MISCONDUCT, MANIFEST PARTIALITY AND/OR CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; NOT PROVEN BY SUBSTANTIAL EVIDENCE.—** In A.M. OCA IPI No. 07-2630-RTJ (*the Ocampo Case*), the Court sustains the recommendation of Justice Salvador-Fernando that the case be dismissed in the absence of substantial evidence that respondent Judge Arcaya-Chua is liable for the charge of "harassment, grave abuse of authority, gross ignorance of the law, gross misconduct, manifest partiality and/or conduct prejudicial to the best interest of the service."

4. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; A CREDIBLE TESTIMONY OF AN EYEWITNESS IS SUFFICIENT TO PROVE ADMINISTRATIVE LIABILITY.—** Respondent contends that the failure of Santos to present Emerita Muñoz, from whom Santos procured the ₱100,000.00, during the proceedings before Justice Salvador was fatal to Santos' claims against her, and, on that basis alone, provided a reason to dismiss the present case. The Court is not persuaded. Santos was an eyewitness to the procurement of the ₱100,000.00, and her testimony alone, found credible in this case, is sufficient to prove the administrative liability of respondent. xxx [T]estimonies on record are evidence against respondent Judge Arcaya-Chua. The Investigating Justice observed the demeanor of complainant and found her a credible witness. It is settled rule that the findings of investigating magistrates are generally given great weight by the Court by reason of their unmatched opportunity to see the deportment of the witnesses as they testified. The Court found no reason to depart from such rule since Justice Salvador's observations and findings are supported by the records.

5. **LEGAL ETHICS; JUDGES; NEW CODE OF JUDICIAL CONDUCT; PROVISIONS VIOLATED IN CASE AT BAR.—** The conduct of Judge Arcaya-Chua in this case and in A.M. No. RTJ-08-2141 is violative of the provisions of the New Code of Judicial Conduct, thus: Canon 1, Sec. 4. A judge shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of

others, nor convey or permit others to convey the impression that they are in a special position to influence the judge. Canon 2, Sec. 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer. Canon 2, Sec. 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done. Canon 4, Sec. 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

6. ID.; ID.; GROSS MISCONDUCT AND GROSS IGNORANCE OF THE LAW ARE SERIOUS CHARGES; SANCTIONS.— Under Section 8, Rule 140 of the Rules of Court, serious charges include gross misconduct constituting violations of the Code of Judicial Conduct and gross ignorance of the law or procedure. Section 11, Rule 140 of the Rules of Court provides that if the respondent Judge is guilty of a serious charge, any of the following sanctions may be imposed: 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations: *Provided, however*, That the forfeiture of benefits shall in no case include accrued leave credits; 2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or 3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

7. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; GRAVE MISCONDUCT; CLASSIFIED AS A GRAVE OFFENSE AND PUNISHED WITH DISMISSAL FOR THE FIRST OFFENSE.— Under the Omnibus Civil Service Rules and Regulations, grave misconduct is classified as a grave offense and punished with dismissal for the first offense. The Court sustains Justice Salvador-Fernando's finding that respondent Victoria Jamora is guilty of grave misconduct in A.M. No. RTJ-08-2141.

APPEARANCES OF COUNSEL

Perfecto A.S. Laguio, Jr. for Sylvia Santos.
Jose P.O. Aliling for Francisco P. Ocampo.

D E C I S I O N

PER CURIAM:

These consolidated cases[1] stemmed from the administrative complaints filed against respondent Judge Evelyn S. Arcaya-Chua. A decision has been rendered in A.M. No. RTJ-07-2093, entitled *Sylvia Santos v. Judge Evelyn S. Arcaya-Chua*, from which the respondent sought reconsideration. The immediately preceding case was consolidated with the subsequent administrative complaints filed against respondent Judge in a Resolution dated April 14, 2009 of the Court *en banc*.

A.M. OCA IPI No. 07-2630-RTJ

In A.M. OCA IPI No. 07-2630-RTJ (*the Ocampo Case*), Francisco P. Ocampo charged respondent Judge Arcaya-Chua with harassment, grave abuse of authority, gross ignorance of the law, gross misconduct, manifest partiality and/or conduct prejudicial to the best interest of the service.

In his letter-complaint dated April 24, 2007 to the Office of the Court Administrator (OCA), Francisco Ocampo stated that he was the respondent in Special Proceedings (SP) No. M-6375, entitled *Milan Arceo Ocampo v. Francisco P. Ocampo*, which was pending before the sala of respondent Judge Arcaya-Chua.

On November 27, 2006, Francisco Ocampo's wife, Milan Arceo Ocampo, filed a petition claiming the sole custody of their minor daughters, namely, Ma. Francesca P. Ocampo (Francesca), born on June 1, 1994, and Ma. Fatima Patricia A. Ocampo (Fatima), born on October 13, 1995. Summons was served upon Francisco Ocampo on December 12, 2006 and the case was set for hearing the following day, December 13, 2006.

During the hearing, upon agreement of the parties, respondent Judge issued an Order enjoining Francisco Ocampo from taking their minor daughters out of the country without the court's permission and directing him to allow his wife, Milan, visitation

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[1] Resolution dated January 15, 2008 and Resolution dated April 14, 2009.

rights over their minor daughters in their residence in Meycauayan, Bulacan. Since then, Milan exercised visitation rights over the minors and communicated with them through their cellular phones. Francisco Ocampo filed a motion to dismiss on the ground of lack of jurisdiction, alleging that he and Milan were residents and registered voters of Meycauayan, Bulacan. He then served written interrogatories to his wife, and presented testimonial and documentary evidence to prove that his wife was not really a resident of Makati City.

In an Order dated March 22, 2007, respondent Judge denied the motion to dismiss. Francisco Ocampo questioned the dismissal of his motion since Milan never presented any evidence to controvert the evidence which he submitted in support of his motion to dismiss.

Francisco Ocampo, thereafter, filed a motion for reconsideration, which was likewise denied by respondent Judge Arcaya-Chua in an Order dated April 3, 2007. On even date, respondent Judge issued a Temporary Protection Order (TPO), requiring complainant Ocampo to turn over the custody of their minor daughters to his wife, to stay away from his wife's residence at 1211 West Ayala Condominium, 252 Gil Puyat Ave., Makati City, to refrain from committing acts that would harass, intimidate or threaten and create an unreasonable risk to the health, safety or welfare of their minor daughters and his wife, and to provide monthly support of ₱50,000.00 to their minor daughters and his wife, exclusive of expenses for medication and education.

Francisco Ocampo faulted respondent Judge Arcaya-Chua for issuing the TPO as the period to file his answer had not yet expired when respondent Judge issued the said Order. Moreover, he was directed to give monthly support of ₱50,000.00 to his wife and minor daughters, even if his wife alleged that he is not the father of the said minors and in the absence of any factual finding as to the resources of the giver and the necessities of the recipient. In directing the payment of support to his wife, respondent Judge also ignored the factual circumstances relating to the adulterous relations of his wife and the pendency of the

legal separation case based on his wife's sexual infidelity and abandonment.

Francisco Ocampo further alleged that respondent Judge caused the implementation of the TPO as if it was a matter of life and death. When her branch sheriff was not available, respondent Judge dispatched another sheriff to implement the Order. Around 6:00 a.m. on April 5, 2007, a Maundy Thursday, the sheriff dispatched by respondent Judge barged into the home of Francisco Ocampo's parents in Baguio City and woke up all the occupants therein. At that time, Francisco Ocampo, his minor daughters and family were having their Holy Week vacation. The sheriff went inside the house and opened the rooms against the will of the occupants and without regard to their privacy. When the sheriff learned that Francesca and Fatima were still sleeping, he demanded that they be roused from their sleep, even as Ocampo assured him that he will peacefully bring his minor daughters to his wife. The sheriff also insisted that Francisco Ocampo pay the support of ₱50,000.00 right there and then, although he was told by Francisco that he did not have such amount of money. Francesca and Fatima refused to go with the sheriff, but because of the court order, Francisco Ocampo told them to go with him.

Francisco Ocampo then filed a motion for inhibition, as well as an urgent *ex parte* motion to recall or rectify the Order dated April 3, 2007, but both motions were denied by respondent Judge in an Order dated April 13, 2007.

The irregular acts attributed to respondent Judge Arcaya-Chua are as follows: (1) she denied the motion to dismiss filed by Francisco Ocampo, respondent therein, despite overwhelming evidence submitted that therein petitioner was not a resident of Makati City; (2) she scheduled the hearing of the case immediately a day after the summons was served on therein respondent; (3) she issued a TPO despite the fact that therein respondent's period to file an Answer had not yet lapsed; (4) she ordered the payment of support without sufficient basis; and (5) she caused the implementation of the TPO over-zealously, even designating a special sheriff to serve it in Baguio City on a Maundy Thursday.

These, coupled with complainant Ocampo's account that respondent Judge demanded money from his wife, constitute the first set of charges filed against her.

In her Comment,[2] respondent Judge explained that the order setting SP No. M-6375 for hearing on the petitioner's application for a TPO and Hold Departure Order was issued on December 8, 2006, a Friday, and was received for service by the Process Server on the same day. Based on the officer's return, the Order was attempted to be served twice by the Process Server on December 11, 2006, a Monday, at complainant Francisco Ocampo's house, but nobody was there. On December 12, 2006, substituted service was resorted to by the Process Server.

Respondent Judge stated that the hearing could not have been set earlier since the court calendar was full, nor later, because December 13, 2006 was the last hearing date, before the court went on Christmas recess, for cases requiring the presence of the public prosecutor. While Francisco Ocampo may have felt harassed by the suddenness of the court hearing, respondent Judge professed that she did not have such intention. The nature of therein petitioner's prayers required immediate action by the court and the December 8, 2006 Order could have been served on him on December 11, 2006, but, as previously mentioned, was unsuccessful.

Respondent Judge pointed out that had complainant Ocampo really felt harassed by the suddenness of the hearing, he could have complained during the hearing of December 13, 2006. Nonetheless, he never brought such issue to the attention of the court, until the filing of the administrative complaint, or four (4) months after the fact. At any rate, the scheduled hearing on December 13, 2006 did not push through because Francisco Ocampo filed a motion to dismiss on the same day. Francisco Ocampo himself set the hearing of his motion for reconsideration of the Order dated March 22, 2007 Order (which denied the Motion to Dismiss) on April 3, 2007, a Holy Tuesday. For

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[2] *Rollo* (OCA IPI No. 07-2630-RTJ), p. 253.

utter lack of merit, reconsideration was denied and the TPO was issued on the same day.

Respondent Judge stated that the issuance of the TPO was anchored on the provision of Section 5 of Republic Act (R.A.) No. 9262. The Court also took into account the provisions of Articles 176 and 220 of the Family Code, which deal with the right of the mother to exercise parental authority over illegitimate children and her right to keep them in her company. Moreover, Francisco Ocampo's contention in his Answer that he was not contesting his wife's claim that the subject minors were not his children bolstered the propriety of the award of custody over the subject minors to his wife, Milan.

Respondent Judge asserted that she was not over-zealous in causing the implementation of the TPO, as the law itself mandates that the court order the immediate personal service of the TPO on the respondent. The Order that directed the implementation of the TPO was dated April 4, 2007, and it was received by Milan's counsel on the same day. Sheriff Manuel Q. Tangangco was deputized to serve it since the Branch Sheriff was not available. Milan Ocampo herself and her counsel coordinated with the sheriff regarding its service, also on the same day. Respondent Judge Arcaya-Chua explained that had she opted to defer action on Milan's prayer for the issuance of a TPO as well as its implementation, it would have been Milan who would have charged her administratively, considering that the Petition was filed as early as November 23, 2006, but the proceedings on the merits were delayed due to the filing by Francisco Ocampo of a Motion to Dismiss. In fact, therein petitioner, Milan Ocampo, filed on February 1, 2007 an Omnibus Motion (To Resolve Petitioner's Application for a Permanent Protection Order, *etc*.), claiming that Francisco Ocampo's motion to dismiss was purely dilatory.

As regards the date, time and manner the TPO was served by the sheriff, respondent Judge maintained that she was not privy to it, since the said TPO would have been served on April 4, 2007, pursuant to the Order bearing the same date. The sheriff's arrogance, if any, was his personal accountability.

Respondent Judge noted that the Sheriff's Report and handwritten notation on the lower portion of the Order dated April 3, 2007, which was also signed by Kagawad Artemio S. Zaparita of Baguio City and SP04 Arthur A. Curno of the Baguio City Police, stated that respondent Francisco Ocampo voluntarily turned over the custody of subject minors to the petitioner. During the hearing on May 10, 2007, the subject minors themselves belied the claims of Francisco Ocampo regarding the alleged arbitrary manner the TPO was served by the sheriff. Respondent Judge also pointed out that the court did not receive any complaint from Francisco Ocampo or anyone concerned about the manner the TPO was served. It was only in the present administrative complaint that the same was raised, leading to the inference that Francisco Ocampo's claims were concocted.

Respondent Judge maintained that it was irrelevant that the subject minors may not have been in danger, but were safe in the custody of complainant Francisco Ocampo. The court arrived at a preliminary determination that Milan, being the biological mother and the subject minors being her illegitimate children, was entitled to custody over them. Moreover, Milan may have been granted and was exercising visitation rights over subject minors, yet the duration thereof, as stated in the Order dated December 13, 2006, was only until the court resolved complainant Ocampo's Motion to Dismiss, which was resolved with finality on April 3, 2007. Further, there is a whale of a difference between exercise of visitation rights and custody. During the hearing on May 10, 2007, subject minors, who were over seven years old, declared that they preferred to stay with their mother, Milan Ocampo, and likewise confirmed the physical violence committed by complainant Francisco Ocampo against Milan Ocampo.

According to respondent Judge, Milan Ocampo's prayer for the issuance of a TPO and a Permanent Protection Order (PPO) was anchored mainly on R.A. No. 9262. Section 15 of R.A. No. 9262 is explicit that the TPO should be issued by the court on the date of the filing of the application after *ex parte* determination that such order should be issued. Milan's prayer for the issuance of a TPO and a PPO, based on R.A. No. 9262, was incorporated in the Petition that was filed as early as

November 23, 2006. Thus, it was not necessary for the court to await the filing of complainant Ocampo's Answer or the expiry of the period within which to file it before issuing the TPO.

Respondent Judge explained that the award of support was in favor of Milan alone as the legal wife of complainant Ocampo. This was clarified in an Order dated April 16, 2007. Among Milan's prayers in her Petition was for an award of monthly support of not less than ₱150,000.00, but the court awarded only ₱50,000.00, as that was the amount found reasonable by it. At any rate, the support granted by the court was only temporary. Likewise, although complainant Francisco Ocampo had not yet complied with the directive to give support as alleged by Milan, the court did not impose a sanction against him precisely because the court was then completing the hearing for the issuance of a TPO. Moreover, Francisco Ocampo had really no reason to complain about the award of support, because the directive to provide monthly support was already held in abeyance in the Order dated May 2, 2007.

Respondent Judge stated that Francisco Ocampo's allegations regarding Milan's adulterous relationships and the legal separation case do not have any bearing on SP No. M-6375.

She further asserted that, as can be gleaned from the records, the courses of action taken by the counsel of complainant Francisco Ocampo did not conform to normal rules of procedure. One, on April 10, 2007, he filed a Motion for Voluntary Inhibition, but two days later, or on April 12, 2007, he still filed an Urgent *Ex Parte* Motion to Recall or Rectify Order dated April 3, 2007. Two, on April 24, 2007, he filed the instant administrative complaint, but two days later, or on April 26, 2007, he still filed an Opposition to Petitioner's Motion dated April 23, 2007 with *Ex Parte* Motion for Examination of the Minors, and a day later, on April 24, 2007, filed a Second Motion to Inhibit. Respondent Judge Arcaya-Chua asseverated that from all appearances, the administrative complaint was filed for the sole objective of compelling her to inhibit herself from handling SP No. M-6375. Three, on May 11, 2007, he filed a Motion to

Terminate Proceedings, which was an indication that complainant Ocampo did not really have any genuine administrative cause of action against her. As things turned out, all that complainant Ocampo wanted to hear from the subject minors was their declaration that they preferred to stay with their mother.

A.M. No. RTJ-07-2049

In A.M. No. RTJ-07-2049 (*the Chang Tan/RCBC Case*), the OCA, through then Court Administrator Christopher O. Lock, informed the Office of the Chief Justice in a Memorandum dated May 11, 2007 of the reports about the rampant selling of TPOs and PPOs in the Regional Trial Court (RTC) of Makati City, Branch 144, which was the sala presided by respondent Judge Arcaya-Chua.

The said reports were thereafter confirmed by Judges Winlove M. Dumayas, Marissa Macaraig-Guillen, Tranquil P. Salvador and Jenny Lind Aldecoa-Delorino, particularly with respect to SP Case No. M-6373, entitled *Albert K. S. Chang Tan II v. Stephanie Estrella Pulliam*, a child custody case.

In a Resolution[3] dated June 5, 2007, the Court resolved to treat the Memorandum of Court Administrator Christopher O. Lock as a complaint for gross ignorance and gross misconduct against Judge Arcaya-Chua, directed respondent Judge to file a Comment on the complaint within 10 days from receipt of notice, and suspended respondent Judge pending resolution of the administrative case.

It appears that on May 7, 2007, respondent Judge issued a TPO in the said case, granting, among others, the custody of the subject minor, Rafi Pulliam, to therein petitioner, Albert Chang Tan, and directing therein respondent, Stephanie Pulliam, to stay away from the home and office of Chang Tan as well as from the school of the subject minor. Per the sheriff's return dated May 8, 2007, the Order was not fully implemented insofar as the custody of the subject minor was directed to be turned

[3] *Rollo* (RTJ-07-2049), p. 17.

over to Chang Tan. This development irked Chang Tan, resulting in a heated argument between Chang Tan and the Officer-in-Charge (OIC) of Branch 144. Chang Tan insisted that a break open order be issued or that the sheriff be permitted to enter the premises of Pulliam's house to search for the child and then bring her to court. On the same day, May 8, 2007, respondent Judge Arcaya-Chua issued an order authorizing the sheriff "to enter the open premises where subject minor may be found for the purpose of turning over custody to petitioner, but is admonished to maintain peace and order in the conduct thereof."

According to OCA, although it was not shown that Judge Arcaya-Chua received money from Chang Tan in exchange for the issuance of the TPO, the facts clearly indicate that she was remiss in issuing the TPO. Her speedy issuance of the Orders dated May 7, 2007 and May 8, 2007 not only showed her unusual interest in the case, but it also appeared that the Order dated May 8, 2007 was tailor-fitted to suit the wishes of Chang Tan, as expressed in the latter's heated argument with the OIC of Branch 144.

OCA also pointed out that it was not the only case wherein respondent Judge displayed unusual interest. On April 17, 2007, Judge Zenaida Galapate-Laguilles of RTC, Branch 143, Makati City issued an order in Civil Case No. 07-352, entitled *Rizal Commercial Banking Corporation (RCBC) v. Moreno*, setting the application for a writ of preliminary attachment for hearing on May 9, 2007. In view of the leave of absence of Judge Galapate-Laguilles, respondent Judge was later designated as the pairing judge. On April 20, 2007, respondent, as pairing judge, cancelled the previously scheduled May 9, 2007 hearing and re-scheduled the hearing to April 23, 2007, where she ordered the issuance of a writ of preliminary attachment in favor of RCBC. According to OCA, what was highly suspicious in respondent's actuation was that there was really no urgency in the application for a writ of preliminary attachment.

In her Comment[4] dated June 9, 2007, respondent Judge explained that SP No. M-6373, entitled *Albert K. S. Chang*

[4] *Rollo* (OCA IPI No. 07-2630-RTJ), p. 84.

Tan II v. Stephanie Estrella Pulliam, was originally raffled to the RTC of Makati City, Branch 60 under Judge Marissa Macaraig-Guillen. After Judge Macaraig-Guillen recused from the case, it was re-raffled to her branch on April 30, 2007, and the records of the case were transmitted to her on the same day.

Respondent Judge explained that the May 7, 2007 Order is justified under Sections 8 and 15 of R.A. No. 9262, as well as under Circular No. 03-04-04-SC, which specifically applies to a petition for custody of minors. Contrary to OCA's finding that the application filed by petitioner Chang Tan in SP No. M-6373 did not contain the requisite allegation of violence committed by therein respondent Stephanie Pulliam on her minor child, Rafi, paragraph 17 of the Application was explicit that a complaint for child abuse was filed against Stephanie Pulliam, based on, among other evidence, a handwritten letter of Rafi wherein she enumerated the many abuses that her mother had committed upon her. The complaint for child abuse was attached as an annex to the Application as well as to the Petition. Other annexes attached to the Application, mentioning in detail the acts of violence committed by Stephanie Pulliam against Rafi, consisted of the statements of *yaya* Josie Leynes and Rafi herself, as well as the Psychiatric Evaluation Report of Dr. Sonia Rodriguez.

Respondent Judge stated that although Article 176 of the Family Code provides that an illegitimate child shall be under the parental authority of the mother, an exception is when the court orders otherwise. The mother may be divested of her parental authority over her illegitimate child when the court finds compelling reasons to do so. In all cases involving a child, his best interest is of paramount consideration. The court awarded provisional custody over the subject minor and a TPO in favor of therein petitioner Chang Tan, but effective for a period of 30 days only, after a careful consideration of the allegations in the pleadings and the supporting documentary evidence. Rafi was already more than seven years old at the time the Order dated May 7, 2007 was issued, as evidenced by her Certificate of Live Birth.

Respondent Judge countered that the Order dated May 7, 2007 was not speedily issued. As was her standard operating procedure with respect to newly raffled and re-raffled cases, she immediately studied the records of SP No. M-6373. Even before Chang Tan's Application was filed on May 4, 2007, she had already arrived at a preliminary determination that the issuance of a Provisional Order and a TPO was warranted. She also studied Chang Tan's Application on the same day it was filed, a Friday. Her study thereof continued the following day, a Saturday, also in her office. She was then planning to avail of her forfeitable leave of absence of 30 days in June 2007, inasmuch as she did not avail of the same the previous year. To expedite the resolution of motions and preparation of decisions, and to avoid being saddled with much work on her return from her leave, she had been reporting to her office on alternate Saturdays beginning April 2007. SP No. M-6373 was not the only case that she studied on that Saturday, but other cases as well. Her study of SP No. M-6373 resumed on Monday, May 7, 2007, which culminated in the issuance of an Order at almost lunchtime of the same day. Granting that the one week period in which she issued the May 7, 2007 Order may be considered speedy, such circumstance should not be taken against her as she was really a fast worker. She was accustomed to speedy preparation of orders and decisions as a result of her training in the Supreme Court as a Court Attorney for 13 years.

Respondent Judge maintained that it was necessary to implement the Order dated May 7, 2007 at once, because the courts are so mandated to cause the immediate implementation of the TPO under Section 15, R.A. No. 9262.

As regards the alleged heated argument between Chang Tan and the OIC of Branch 144, respondent Judge surmised that the same could be merely concocted, as it was neither reported to her nor brought to her attention. Moreover, the doors of her chambers were always wide open and she could have clearly heard it if it really transpired.

Respondent Judge averred that during the hearing dated May 11, 2007, she gave a directive holding in abeyance further

implementation of the May 7, 2007 Order. Thus, she asserted that if she really received money or anything from Chang Tan or from anybody in his behalf, she would have ensured complete implementation of the Order dated May 7, 2007, instead of holding it in abeyance. Moreover, she should have declared Pulliam and her counsel guilty of the indirect contempt charge against them if it were really true that she received money from Chang Tan.

Respondent Judge stated that if it were true that she had been engaged in rampant selling of TPO/PPO or any order in her branch, she and her family would not have found themselves in such state of financial drain after she had been preventively suspended.

As regards her participation in Civil Case No. 07-352, entitled *Rizal Commercial Banking Corporation v. Moreno*, respondent Judge narrated that an *Ex Parte* Motion for Immediate Resolution of Prayer for the Issuance of Writs of Preliminary Attachment was forwarded to her sala being the Pairing Judge of Branch 143. Immediately after reading the motion, she inquired from the Clerk of Court of Branch 143 about the alleged leave of absence of therein Presiding Judge Zenaida Galapate Laguilles. She learned that Judge Galapate-Laguilles indeed left for the United States on April 19, 2007 to attend a convention on Intellectual Property and would be back on May 7, 2007. She likewise gathered information from the same Branch Clerk of Court that Judge Galapate-Laguilles's trip abroad was the reason behind the Application's setting on May 9, 2007, not because the Presiding Judge did not see any urgency in the Application. The Presiding Judge also lacked ample time to act thereon since she had a previously scheduled leave of absence. Thus, she determined from the allegations in the *ex parte* Motion and the Complaint the urgency to act on the prayer for the issuance of a writ of preliminary attachment. She also took into account the following: (1) the circumstance of prolonged absence of the Presiding Judge of Branch 143; (2) the reason for the setting on May 9, 2007; and (3) the mandatory wordings of Supreme Court Circular No. 19-98, *i.e.*, "the judge of the paired court shall take cognizance of all cases thereat as acting judge therein."

Respondent Judge explained that she granted the Application because the allegations in the complaint were adequately supported by documentary and testimonial evidence. She received the records of the RCBC Case on April 20, 2007, a Friday, and as was her standard practice, immediately studied them. She continued her study of the records, and the records of other cases, on April 21, 2007, a Saturday, and on April 23, 2007, a Monday, which culminated in the preparation of the Order on the same day.

In her Supplemental Comment[5] dated June 22, 2007, respondent Judge added that the manner by which the incidents in the Chang Tan and RCBC cases were resolved must not be taken in isolation, but in relation to the manner all incidents were resolved and all decisions and orders were rendered in her sala, such that she resolved all incidents and rendered all her rulings immediately.

A.M. No. RTJ-08-2141

In A.M. No. RTJ-08-2141 (*the Judicial Audit Case*), a judicial audit was conducted on May 15 to 17, 2007 at the RTC of Makati City, Branch 144, which was the sala presided by respondent Judge Arcaya-Chua, following reports of alleged irregularities committed by respondent.

In a Memorandum dated August 10, 2007 by the OCA to Chief Justice Reynato S. Puno, Court Administrator Christopher O. Lock submitted for the Court's consideration the initial report of the Judicial Audit Team, informing the Court of an incident that happened on May 17, 2007 in Branch 144 of the RTC of Makati City.

The initial audit report stated that as early as May 12, 2007, a Saturday, the Court ordered the padlocking of Branch 144 and assigned guards thereat on a 24-hour basis. Before the audit team began its audit on May 15, 2007, the members made it clear to OIC Victoria C. Jamora and the court personnel present

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[5] *Rollo* (RTJ-07-2049), p. 24.

that actions on the records, including stitching should be held in abeyance and that no records should be brought outside the court until after the audit.

At 8:05 a.m. of May 17, 2007, the guards on duty, Joel Gregorio and Alexander Dayap, noticed Salvador Indicio, Jr., Utility Worker I of Branch 144, disposing a plastic bag. The guards followed Indicio, and retrieved the plastic bag from a trash bin located right outside the court. The plastic bag was surrendered to the audit team and was found to contain copies of marriage certificates of marriages solemnized by Judge Chua numbering to hundreds. When confronted, Indicio stated that he was disposing the documents upon respondent Judge's instruction made several days ago. He could not offer any explanation why he chose to dispose of the documents that morning despite the ongoing audit. He, nonetheless, disclosed that there were other bags for disposal still kept inside the room where the stenographers, particularly OIC Victoria C. Jamora, held office. The bags, when retrieved, turned out to contain more copies of marriage certificates. Jamora explained to the audit team that she was aware of the copies of marriage certificates being kept inside their room. However, she alleged that she had no control over them, because matters pertaining to solemnization of marriages were personally handled by Judge Arcaya-Chua.

In A.M. No. RTJ-08-2141, respondent Judge Arcaya-Chua was charged in connection with the 1,975 copies of marriage certificates for marriages she solemnized for the period covering January 2004 to April 2007 for the following acts: (1) for allegedly ordering Salvador Indicio, Jr., Utility Worker I, to dispose of the said copies of marriage certificates; (2) for the unpaid marriage solemnization fees of one thousand eight hundred nine (1,809) marriages as verified from the Metropolitan Trial Court (MeTC), Office of the Clerk of Court (OCC), Makati City and the RTC, OCC, Makati City, thereby depriving the Court of the said fees in the total amount of Five Hundred Forty-Two Thousand Seven Hundred Pesos (₱542,700.00) at the rate of Three Hundred

Pesos (₱300.00) per marriage; and (3) for failing to reflect said marriages in the Monthly Report of Cases.[6]

In a Resolution[7] dated September 16, 2008, the Court resolved to consider the Memorandum dated August 10, 2007 of the OCA as a formal complaint against respondent Judge; require respondents Judge Arcaya-Chua and Victoria Jamora to comment on the Memorandum within 10 days from notice thereof; and refer A.M. OCA IPI No. 07-2630-RTJ and A.M. No. RTJ-07-2049 to Associate Justice Remedios A. Salazar-Fernando of the Court of Appeals for investigation, report and recommendation.

On February 10, 2009, respondent Judge filed her Affidavit,[8] in lieu of Comment, on the OCA Memorandum dated August 10, 2007.

Re: Ordering Salvador Indicio, Jr. to dispose of the copies of marriage certificates

In regard to the disposal of the marriage certificates, respondent Judge Arcaya-Chua recounted that in the second week of April 2007, she, with the help of Noel Umipig (a City Hall employee detailed to her sala), started to pack her personal belongings in anticipation of the impending transfer of her sala from the *Gusali ng Katarungan* to the Makati City Hall. She asked Umipig to discard her piles of yellowish scratch papers. Umipig put her scratch papers inside big plastic bags and then tied the bags. They also emptied the steel cabinet in her chambers

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[6] Other charges contained in the Memorandum dated August 10, 2007 of the Court Administrator to the Chief Justice, such as the alleged irregularities in *People v. Hiro Nakagawa* (Crim. Case Nos. 06-148 to 154) and *Paul Melvin Robles v. Ida Perez Villanueva* (Sp. Proc. M-6370), as well as respondent Judge Arcaya-Chua's questionable recommendation of one of her staff, Maritess Dorado, were not part of the Investigation per manifestation of the OCA that their evidence was limited to the confiscated marriage certificates and Judge Arcaya-Chua's failure to reflect the marriages she solemnized in her monthly reports.

[7] *Rollo* (A.M. No. RTJ-07-2049), p. 119.

[8] *Rollo* (A.M. No. RTJ-08-2141), p. 319.

which contained, among other things, the files of marriage certificates, as well as official receipts of the marriage solemnization fees. She previously bundled the said marriage certificates according to month and year of solemnization of the weddings, improvising paper bundles for the purpose. Umipig then put all the marriage certificates inside four, more or less, big plastic bags and placed them in the small room that was between her chambers and the stenographers' room. They were kept untied so that it would be easy to add or get a file. Immediately thereafter, Umipig asked permission to go home as he was then getting allergic reactions due to the dust, then took with him the bags of scratch papers out of her chambers to be thrown away. The following morning, she noticed that there were red patches on the face and arms of Umipig so she did not ask him anymore for help. She removed the official receipts of the marriage solemnization fees from the worn-out boxes, wrapped them with approximately six paper bundles then placed them inside the plastic bags containing the marriage certificates.

In the first week of May 2007, she was told by the City Hall Engineer that the transfer to the Makati City Hall would not push through yet because the furnitures were not complete and portions of the holding room were still being painted. She was told to just standby and to wait for an update about the schedule of transfer. With that advice, she did not find it necessary to return the files of marriage certificates and official receipts of the marriage solemnization fees inside the steel cabinet.

About the second week of May 2007, upon learning that the bags of garbage had accumulated, she reminded Salvador Indicio, Jr. to throw them away. On May 15, 2007, she was placed under preventive suspension. On May 18, 2007, Indicio told her, through telephone, that he was caught the previous day throwing marriage certificates that were placed in plastic bags. He explained that he thought those bags contained the garbage that she asked him to throw away the previous week. She was then outraged by the news and scolded Indicio, telling him that under the law, it is her duty to maintain copies of marriage certificates being the solemnizing officer. In fact, Indicio stated

in his affidavit that her specific instruction was "to dispose all the garbage which were stocked" in her sala and "it just turned out that what the plastic bag contained were copies of marriage contracts." Thus, Indicio simply mistook the plastic bags containing the marriage certificates and official receipts of the marriage solemnization fees to be the garbage that she instructed him the previous week to throw away.

Respondent Judge stressed that she did not and would not have ordered Indicio to dispose of the copies of the marriage certificates, citing the haphazard manner in which Indicio disposed of the same, and the fact that she had nothing to hide and that she would gain nothing by the disposal thereof.

Re: Unpaid marriage solemnization fees

Respondent Judge averred that the best proofs of payment of the marriage solemnization fees were the official receipts. She categorically stated that all the official receipts of the marriage solemnization fees were inside the plastic bags, together with the marriage certificates.

She stressed that she could not have allowed non-payment of the marriage solemnization fees, because it is of public knowledge that she had been solemnizing a big number of weddings per day, aside from the fact that she had solemnized weddings of several celebrities, which also included celebrities as sponsors; thus, attracting the attention of many court employees. She was also aware of the consequences of solemnizing a marriage without the solemnization fee so she was very meticulous when it came to checking, among other things, whether there was an official receipt evidencing payment of said fee. She also knew that the Office of the Civil Registrar of Makati City would not allow the registration of a marriage certificate if there was no accompanying official receipt of payment of the marriage solemnization fee. Moreover, considering the pervading financial crisis everywhere, any person would not part with his money without demanding an official receipt. No couple or nobody had ever complained about the absence of the official receipt of the marriage solemnization fee. Further, the Audit Team

found from the Office of the Civil Registrar of Makati City that all the marriage certificates of the weddings that she solemnized were duly registered therein.

Respondent Judge also pointed out that the respective Clerks of Court of the OCC of the MeTC and RTC adopted a wrong and unreliable procedure in verifying from their records whether there was payment of the marriage solemnization fees, simply because most of the dates of the wedding indicated in the marriage certificates were not the same as the dates indicated in the official receipts. She explained that a couple would often pay the solemnization fee at a certain date, but the solemnization of the wedding would take place on another date for one reason or another. Thus, when the Clerks of Court of the Office of the Clerk of Court checked the dates from the copies of their official receipts on file, the dates did not reflect payment of the fees, because payments were made on dates different from the wedding dates.

Re: Failure to reflect the marriages in the Monthly Report of Cases

Respondent Judge related that the Monthly Reports of cases were typed by her staff, namely: Civil-in-Charge Celedonio Hornachos and Criminal-in-Charge Mary Jane Rafael. As regards the number of marriages solemnized, they would inquire from her and she would then give them the figure as stated in her own logbook. When the Reports were turned over to her for signature, she would first verify the entries from her own logbook before affixing her signature. Thus, she was shocked when she learned that the Court's copy of the Reports contained incorrect figures and was different from that which she signed.

She asserted that she could not have failed to reflect the correct number of marriages in the Monthly Reports, because apart from the fact that she was very meticulous in the accuracy of the entries, she had nothing to gain by not reflecting the correct figures of solemnized marriages.

She believed that the blank and incorrect figures appearing in the number of marriages solemnized in the Monthly Reports from January 2004 to March 2007 were the handiwork of Umipig, who most probably tampered the same, because of a serious grudge against her. She added that it was also Umipig who transferred the plastic bags of marriage certificates and official receipts from the small room to the stenographer's room in an attempt to expose the big number of weddings that she had solemnized, which, through his machinations, were not reflected in the Monthly Reports.

Re: Compliance with Article 8 of the Family Code, and violation of Circular No. 9-98[9]

Respondent Judge claimed that she solemnized the marriages inside her chambers or courtroom, and as proof thereof, she pointed to the entry in the marriage certificates reflecting the place of solemnization. On few occasions, she had also solemnized weddings in a house or place designated by both contracting parties, but not without the required affidavit of request. She explained that she was able to solemnize many weddings per day, because the rites took only about 10 minutes and involved a maximum of eight couples per batch.

She stressed that neither did she demand nor receive money for solemnization of marriages, and only the official receipts of the solemnization fees were given to her.

In regard to Victoria Jamora, she explained in her Amended Comment dated October 2, 2008 that she failed to reflect in the Monthly Report of Cases the correct number of marriages solemnized by Judge Arcaya-Chua for the following reasons:

1. She was not instructed by Judge Arcaya-Chua to be present during the marriage ceremony;
2. She had no personal knowledge of the actual number of marriages solemnized by respondent Judge;

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[9] Subject: Observance of the Statutory Requirements for Marriages and the Prescribed Amounts of Fees for the Solemnization of Marriages.

3. She merely relied on the entries in the Monthly Report as to the number of marriages solemnized. The Monthly Report was prepared by Jane Rafael, who was in charge of criminal cases. When she asked Rafael why there were only such number of marriages solemnized from June 2005 to April 2007, Rafael replied that that was the advice of respondent Judge. Besides, Judge Arcaya-Chua signed the reports. As a subordinate designated by respondent Judge as OIC, she was not in a position to question her superior, Judge Arcaya-Chua, and signed in good faith the Monthly Reports in question.

The administrative case was again referred to Associate Justice Remedios A. Salazar-Fernando of the Court of Appeals for investigation, report and recommendation.

The Investigation of the Administrative Complaints

On October 9, 2008, Investigator Justice Salazar-Fernando scheduled the consolidated cases for hearing at 10:00 a.m. on October 23, 2008.

During the hearing on October 23, 2008 of A.M. OCA IPI No. 07-2630-RTJ (*the Ocampo Case*), complainant Francisco Ocampo appeared with his counsel, Atty. Jose Aliling IV, while Atty. James Navarrete and Atty. Fe C. Aguila appeared for OCA. Respondent Judge Arcaya-Chua appeared in her own behalf. During the said hearing, complainant Ocampo submitted a Supplemental Affidavit and additional documentary evidence.[10] Respondent Judge Arcaya-Chua also furnished complainant Ocampo's counsel with a copy of her Affidavit, which incorporated her Comments in the two cases, the Supplemental Comment, the Motion to Recall Preventive Suspension and the Motion to Resolve. Complainant Ocampo testified on direct examination, affirming the truth of the contents of his Complaint and the authenticity of the annexes attached thereto. Respondent Judge Arcaya-Chua cross-examined him, but reserved further cross-examination as to the Supplemental Affidavit. Hearing resumed

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[10] Annexes "L" to "P".

the following day, October 24, 2008, and respondent Judge Arcaya-Chua cross-examined complainant Ocampo specifically on his Supplemental Affidavit. Justice Salazar-Fernando also asked complainant Ocampo questions.

During the hearing on October 29, 2008, complainant Ocampo submitted his Offer of Documentary Evidence. Respondent Judge Arcaya-Chua testified on direct examination, whereby she affirmed the statements in her Affidavit and Supplemental Affidavit, and identified her exhibits, after which, she was cross-examined by complainant Ocampo's counsel. Justice Salazar-Fernando also asked respondent Judge Arcaya-Chua questions. Thereafter, respondent Judge Arcaya-Chua rested her case and formally offered her documentary evidence, insofar as OCA IPI No. 07-2630-RTJ was concerned. For the guidance and information of Justice Salazar-Fernando, the entire original records of SP No. M-6375, entitled *Milan Arceo Ocampo v. Francisco P. Ocampo*, was ordered brought to her office.

On November 3, 2008, OCA started presenting evidence in A.M. No. RTJ-07-2049 (*the Chang Tan/RCBC Case*). Judge Zenaida T. Galapate-Laguilles testified and submitted her Affidavit, and was cross-examined, and was asked questions on redirect-examination. The scheduled hearing for November 4, 2008 was cancelled due to the unavailability of two (2) witnesses, namely, Judges Marissa Macaraig-Guillen and Jenny Lind Aldecoa-Delorino.

Hearing on the case resumed on November 10, 2008. OCA presented Judges Marissa Macaraig-Guillen and Jenny Lind Aldecoa-Delorino, who both submitted their Affidavits, which were considered as their testimony on direct. They were questioned by Justice Salazar-Fernando and cross-examined by respondent Judge Arcaya-Chua. Court records pertaining to SP No. M-6373, entitled *Albert K.S. Chang Tan v. Stephanie N. Estrella Pulliam*, were likewise directed to be brought to the office of Justice Salazar-Fernando for reference and information.

During the hearing on November 11, 2008, the Executive Judge of the RTC of Makati City, Judge Winlove Dumayas, appeared, and questions were propounded to him by Justice

Salazar-Fernando, respondent Judge Arcaya-Chua and Atty. James Navarrete from OCA.

In order to expedite the proceedings, respondent Judge was allowed to present her defense, and marked in evidence several documents,[11] which formed part of her direct testimony. Since the documents submitted by respondent Judge were voluminous, Atty. Navarrete was given until November 20, 2008 to conduct his cross-examination.

On November 25, 2008, Atty. James Navarrete continued with the marking of additional documents and submitted in evidence his exhibits.[12] Respondent Judge Arcaya-Chua was cross-examined by Atty. Navarrete. Respondent Judge was also allowed to ask Atty. Navarrete some questions. Thereafter, respondent Judge submitted her Formal Offer of Evidence. Atty. Navarrete was given until November 27, 2008 to file his Opposition, while respondent Judge was given five days to file her Counter-Manifestation.

On November 26, 2008, Atty. Navarrete filed his Comment, interposing no objection to respondent's Formal Offer of Exhibits.

On December 2, 2008, respondent Judge Arcaya-Chua filed a Counter-Manifestation and Motion to Correct Transcript of Stenographic Notes.

On January 16, 2009, Justice Salazar-Fernando received the *rollo* of A.M. No. RTJ-08-2141 (*Office of the Court Administrator v. Judge Evelyn S. Arcaya-Chua and Court Stenographer Victoria Jamora*, formerly A.M. No. 07-5-263-RTC, *Re: Initial Report on the Judicial Audit Conducted at the Regional Trial Court, Branch 144, Makati City*), which he noted to have been consolidated with A.M. No. RTJ-07-2049 (*Office of the Court Administrator v. Judge Evelyn S. Arcaya-Chua*) per Resolution of the Court *en banc* dated January 15, 2008.

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[11] Exhibits "1" to "39".

[12] Exhibits "A" to "BB".

Since A.M. No. RTJ-08-2141 was not included in the earlier investigation, Justice Salazar-Fernando set A.M. No. RTJ-08-2141 for hearing on February 8, 2009.

Hearing on A.M. No. RTJ-08-2141 started on February 10, 2009, during which the counsels for OCA and respondent stenographer Victoria Jamora appeared. Respondent Judge Arcaya-Chua also attended the hearing.

OCA proposed several stipulations for admission to respondent Judge Arcaya-Chua. She admitted that she solemnized marriages while she was the Judge of the MeTC, Branch 63, Makati City and RTC, Branch 144, Makati City. After going over the certificates of marriage from January 2004 to August 2004, she admitted that she solemnized those marriages. She also admitted that she solemnized marriages in her chambers or inside her courtroom, except for two other marriages that she could not remember, but proper documents were presented to her. She further admitted that payments of solemnizing fees must be paid before conducting or solemnizing the marriage, and as part of her regular duties, she signed the Monthly Reports.

Hearing resumed on February 18, 2009. OCA presented Atty. Fe Corcelles-Aguila, who testified on the incident that occurred on May 17, 2007, which led to the inventory of the certificates of marriage, and the audit conducted on May 15-17, 2007. Atty. Corcelles-Aguila's affidavit[13] formed part of the records of the case.

In the hearing of March 3, 2009, OCA presented Salvador Indicio, Jr., Arnel Magsombol, Lucia Ticman and Joel Gregorio as its witnesses. The witnesses were questioned by OCA, respondent Judge Arcaya-Chua and Justice Salazar-Fernando. Per request of OCA, notice of hearing was sent to German Averia, for him to appear on the next scheduled hearing as the last witness of OCA.

In the hearing of March 23, 2009, German Averia testified in his capacity as Chief Judicial Staff Officer of the Statistical

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[13] *Rollo* (A.M. No. RTJ-08-2141), p. 465.

Records Division, Court Management Office (CMO) of the Supreme Court. He confirmed having issued certifications and inventory on the monthly report of cases submitted by respondent Judge Arcaya-Chua to the CMO in compliance with Administrative Circular No. 4-2004. In the same hearing, the counsel for OCA categorically stated that their evidence in A.M. No. RTJ-08-2141 was limited only to the alleged irregularities in the solemnization of marriage as well as the falsification of the monthly reports.[14]

With the continuance of the investigation on April 8, 2009, OCA presented in evidence the originals of the monthly reports, and the certified true copies of the monthly reports, whose originals were unavailable. OCA, thereafter, rested its case. In the same hearing, respondent Judge Arcaya-Chua started presenting her exhibits.[15] She manifested that her Affidavit and Supplemental Affidavit would serve as her testimony on direct examination.

On April 21, 2009, respondent Judge Arcaya-Chua presented additional exhibits.[16] Her Affidavit and Supplemental Affidavit, as well as the Affidavit of her son, Robert Maurice Chua, formed part of their direct testimonies. Respondent Judge was, thereafter, cross-examined by OCA.

During the hearing on May 5, 2009, respondent Judge Arcaya-Chua offered in evidence her Second Supplemental Affidavit. She also presented additional exhibits.[17] Respondent Judge Arcaya-Chua's daughter, Beau Mairi Chua testified, with her Affidavit constituting her direct testimony. No cross-examination was conducted on her by the opposing counsel. Respondent Jamora also testified as witness for respondent Judge Arcaya-Chua.

At the resumption of the hearing on May 18, 2009, respondent Judge Arcaya-Chua recalled respondent Jamora to the stand and

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[14] TSN, March 23, 2009, pp. 10-17, 60.

[15] Exhibits "1" to "23".

[16] Exhibits "24" to "28".

[17] Exhibits "31" to "85".

propounded additional questions. Respondent Judge Arcaya-Chua rested her case after respondent Jamora's testimony. Respondent Jamora, thereafter, testified in her own behalf, with her Amended Comment constituting her direct testimony. No cross-examination was conducted on her by OCA. Respondent Jamora, thereafter, rested her case.

With the conformity of the parties, Justice Salazar-Fernando directed them to file their respective memorandum. Respondent Judge Arcaya-Chua filed her memorandum on July 21, 2009, while respondent Jamora filed her memorandum on August 3, 2009. OCA did not file a memorandum; hence, Justice Salazar-Fernando deemed that it waived the filing of its memorandum. Per this Court's Resolution dated August 24, 2009, the case was submitted for report and recommendation to the Supreme Court.

Findings of the Investigating Justice

Findings in A.M. OCA IPI No. 07-2630-RTJ (the Ocampo Case)

In regard to the denial of the Motion to Dismiss in the *Ocampo Case,* without necessarily ruling on the correctness of respondent Judge Arcaya-Chua's Order, Justice Salazar-Fernando believed that respondent Judge's disposition thereof fell within the ambit of discretion vested upon her as a judge. Not giving credence to the evidence presented by the movants with respect to the residence of Milan Ocampo was well within her judicial discretion. Assuming the same was erroneous, no administrative liability attached thereon in the absence of sufficient evidence that she ruled in such manner, because of a corrupt or dishonest motive, bad faith, fraud or malice. The evidence presented by complainant Ocampo as to Milan's residence might constitute proof of her "domicile," but such evidence was not necessarily irreconcilable with the fact that Milan might be maintaining residence elsewhere other than Meycauayan, Bulacan, considering her estranged relationship with complainant Ocampo.

As regards the alleged suddenness of the scheduled TPO hearing, Justice Salazar-Fernando found respondent Judge Arcaya-Chua's explanation acceptable. The order setting the case for hearing

on December 13, 2006 was issued on December 8, 2006. Thus, there was an interim of at least five days from the issuance of the order and the date of the scheduled hearing. It did not appear that respondent Judge had any hand in the belated service of the notice to the complainant. Justice Salazar-Fernando held that respondent Judge cannot be faulted as to the alleged suddenness of the said hearing, because a prayer for TPO requires to be acted upon with dispatch. In that respect, no wrong-doing, fraud, bad faith, malice or even arbitrariness can be attributed to respondent Judge.

According to the Investigating Justice, the alleged precipitate issuance of the TPO had no leg to stand on. Respondent Judge Arcaya-Chua correctly stated that the issuance of the TPO can be made upon the filing of the application after *ex parte* determination by the judge that the same be issued. This is in accordance with Sec. 15 of R.A. No. 9262, thus:

> SEC. 15. *Temporary Protection Orders*. – Temporary Protection Orders (TPOs) refer to the protection order issued by the court on the date of filing of the application **after *ex parte* determination** that such order should be issued. A court may grant in a TPO any, some or all of the reliefs mentioned in this Act and shall be effective for thirty (30) days. The court shall schedule a hearing on the issuance of a PPO prior to or on the date of the expiration of the TPO. **The court shall order the immediate personal service of the TPO on the respondent by the court sheriff who may obtain the assistance of law enforcement agents for the service.** The TPO shall include notice of the date of the hearing on the merits of the issuance of a PPO.[18]

Hence, the issuance of the TPO by respondent Judge Arcaya-Chua even before complainant Ocampo could file his answer was neither irregular nor improper.

Justice Salazar-Fernando was convinced by the reasons why respondent Judge issued the TPO. A preliminary determination of the facts of the case justified the issuance of the TPO as it appeared that the subject minors therein were the illegitimate

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[18] Emphasis supplied.

children of the petitioner, Milan Ocampo, having been conceived through artificial insemination without the required written authorization or ratification of the husband, complainant Francisco Ocampo. The pertinent provision of the Family Code states:

> ART. 164. Children conceived or born during the marriage of the parents are legitimate.
>
> Children conceived as a result of artificial insemination of the wife with the sperm of the husband or that of a donor or both are likewise legitimate children of the husband and his wife, provided that both of them authorized or ratified such insemination in a written instrument executed and signed by them before the birth of the child. The instrument shall be recorded in the civil registry together with the birth certificate of the child.

Moreover, Milan Ocampo appended evidence of complainant Ocampo's alleged perversity and violent behavior. A sworn affidavit[19] of Emelita S. Valentino, narrating alleged perverse behavior of complainant Ocampo, as well as the certification[20] from the Philippine National Police of Meycauayan, stating acts of violence committed by complainant Ocampo on Milan, were appended to the Petition. The totality of the evidence thus presented, while not exactly conclusive, justified a *prima facie* determination of the necessity of a TPO.

While Justice Salazar-Fernando found complainant Ocampo's objections to the matter of support apt and plausible, the same could be merely considered as an error of judgment or an abuse of discretion, but respondent Judge Arcaya-Chua cannot be held administratively liable thereon. Considering that the matter of support therein was merely provisional, respondent Judge could not be faulted for readily granting the prayer for support without further evaluating evidence with respect thereto. Justice Salazar-Fernando stated that respondent Judge Arcaya-Chua's error in that respect was not gross, the same having been brought about by an innocuous reliance on the Rule on Provisional Orders,

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[19] Records of SP No. M-6375, pp. 70-72.

[20] *Id.* at 38.

A.M. No. 02-11-12-SC. Under the said rule, provisional orders for protection and **support** may be issued without hearing. However, the said rule specifically applies to petitions for declaration of nullity of marriage, annulment of marriage or legal separation. In this case, the matter of support was among the principal reliefs sought for in the petition for custody.

Justice Salazar-Fernando found that respondent Judge Arcaya-Chua's alleged over-zealousness in causing the immediate implementation of the TPO was without solid basis. A TPO, much like a TRO in civil cases, is required to be served immediately, precisely to serve its purpose as a protective relief. Respondent Judge issued the TPO on April 3, 2007, a Holy Tuesday, right after the hearing on complainant Ocampo's motion for reconsideration of the denial of his motion to dismiss. She clarified that the date of the hearing on the motion for reconsideration on April 3, 2007 was set by complainant Ocampo's counsel himself. The following day, April 4, 2007, a Holy Wednesday, she directed the implementation of the TPO. Hence, Justice Salazar-Fernando found nothing improper or wayward in the dispositions made by respondent Judge in the case. There was no evidence that respondent Judge purposely sought the issuance of the TPO during the Holy Week, as it was complainant Ocampo's counsel himself who, wittingly or unwittingly, chose the hearing date. Considering the urgency and immediacy of a TPO, it was not improper or illegal that respondent Judge caused its immediate implementation.

Justice Salazar-Fernando believed that respondent Judge could not have been privy to the brazen manner in which the TPO was served by the designated sheriff. In the first place, it was only the designated sheriff, Sheriff Tangangco, who was administratively charged by complainant Ocampo for the allegedly offensive manner the TPO was served. As correctly argued by respondent Judge, such was the personal accountability of Sheriff Tangangco.

Further, Justice Salazar-Fernando found complainant Ocampo's allegation of bribery against respondent Judge to be hearsay. During the hearing conducted by Justice Salazar-Fernando on

October 24, 2007, complainant Ocampo confirmed that he had no personal knowledge of the alleged bribery of respondent Judge Arcaya-Chua.

Justice Salazar-Fernando recommended that A.M. OCA IPI No. 07-2630-RTJ (*the Ocampo Case*) should be dismissed. She stated that as a matter of policy, in the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action even though such acts are erroneous.[21] She cited *Español v. Mupas,*[22] which held thus:

x x x While the Court will never tolerate or condone any conduct, act or omission that would violate the norm of public accountability or diminish the people's faith in the judiciary, nonetheless, we have repeatedly stated that the quantum of proof necessary for a finding of guilt in administrative cases is substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. In the absence of contrary evidence, what will prevail is the presumption that the respondent has regularly performed his or her official duties. In administrative proceedings, complainants have the burden of proving by substantial evidence the allegations in their complaints. **Thus, when the complainant relies mainly on second hand information to prove the charges against the respondent, the complaint is reduced into a bare indictment or mere speculation**. The Court cannot give credence to charges based on mere credence or speculation. As we held in a recent case:

> Any administrative complaint leveled against a judge must always be examined with a discriminating eye, for its consequential effects are by their nature highly penal, such that the respondent judge stands to face the sanction of dismissal or disbarment. Mere imputation of judicial misconduct in the absence of sufficient proof to sustain the same will never be countenanced. If a judge should be disciplined for misconduct, the evidence against him should be competent.[23]

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[21] *Daracan v. Natividad*, A.M. No. RTJ-99-1447, September 27, 2000, 341 SCRA 161, 175.

[22] A.M. No. MTJ-01-1348, November 11, 2004, 442 SCRA 13, 37-38. (Emphasis supplied.)

[23] Emphasis supplied.

Findings in A.M. No. RTJ-07-2049 (the Chang Tan/RCBC Case)

Justice Salazar-Fernando stated that in the *Chang Tan Case,* the OCA primarily asserted that the TPO issued by respondent Judge Arcaya-Chua could not be legally justified under R.A. No. 9262, because the said law applies only if the applicant for TPO is a **woman**.

The Investigating Justice partly agreed with the OCA on that score. R.A. No. 9262 is known as the *Anti-Violence Against Women and Their Children Act of 2004.* It is specifically applicable to "women and their children," not to men. Thus, while the TPO may be justified with respect to the protection accorded the minor, the same is not legally tenable with respect to the petitioner, Albert Chang Tan. Under R.A. No. 9262, a TPO cannot be issued in favor of a man against his wife. Certainly, such a TPO would be absurd. Hence, Justice Salazar-Fernando found respondent Judge Arcaya-Chua's error in this regard to be gross ignorance of the law. She cited the Dissenting Opinion of Justice Romeo J. Callejo, Sr. in *Officers and Members of the Integrated Bar of the Philippines, Baguio-Benguet Chapter v. Pamintuan*,[24] which stated, thus:

> When the inefficiency springs from a failure to consider so basic and elementary a rule, a law or a principle in the discharge of his duties, a judge is either too incompetent and undeserving of the position and the title he holds or is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority (*De Guzman, Jr. v. Sison*, A.M. No. RTJ-01-1629, March 26, 2001). When the law is sufficiently basic, a judge owes it to his office to simply apply it; anything less than that would be constitutive of gross ignorance of the law (*Rodriguez v. Bonifacio*, A.M. No. RTJ-99-1510, November 6, 2000).

Justice Salazar-Fernando averred that as a family court judge, respondent Judge Arcaya-Chua should be the last person to err in the application of R.A. No. 9262, and, in this case, issue a

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[24] A.M. No. RTJ-02-1691, November 19, 2004, 443 SCRA 87.

TPO applied for a man, purportedly to protect the latter against his wife. Such is unthinkable under R.A. No. 9262. A careful evaluation of the records in the *Chang Tan Case* showed that there was not even any allegation of violence committed by Stephanie Pulliam against her husband, Chang Tan. Thus, Justice Salazar-Fernando found that the TPO against Stephanie, insofar as it directed the latter to stay away from the home and office of petitioner, to cease and desist from harassing, intimidating or threatening petitioner and to refrain from acts of commission or omission that create an unreasonable risk to the health, safety or welfare of petitioner, was anomalous.

Be that as it may, with respect to the issue of custody, Justice Salazar-Fernando found respondent Judge Arcaya-Chua's reasons for granting custody over subject minor to Albert Chang Tan to be legally tenable. While not exactly conclusive, the evidence relied upon by respondent Judge in granting custody in favor of Chang Tan was substantial enough to warrant a *prima facie* determination that a TPO in favor of the minor was necessary and would serve her paramount interest. Justice Salazar-Fernando found nothing improper in respondent Judge's reliance on the psychological evaluation report of Dr. Sonia Rodriguez and the statements of *yaya* Josie Leynes and the subject minor herself, Rafi Pulliam, which all confirmed that Stephanie has not been a good influence to her daughter, Rafi. As far as the latter's paramount interest was concerned, Stephanie was not the ideal person to whom custody should be awarded. On this premise, respondent Judge Arcaya-Chua's award of temporary custody to the father could be justified. However, Justice Salazar-Fernando stated that she does not necessarily affirm the correctness of the custody award to the father, Chang Tan, since respondent Judge Arcaya-Chua's Order dated May 7, 2007 was annulled and set aside by the Twelfth Division of the Court of Appeals in a Decision dated October 31, 2007.[25]

In regard to the alleged bribery and unusual interest which respondent Judge Arcaya-Chua allegedly displayed in the said

[25] Records (SP No. M-6372), Vol. IV, pp. 1447-1468.

case, Justice Salazar-Fernando found no substantial evidence to support such allegations. The OCA's Memorandum itself admitted that there was no proof that respondent Judge received money from Chang Tan.

Moreover, not one of the witnesses of OCA confirmed having personally witnessed the alleged heated argument between Chang Tan and the OIC of the RTC of Makati City, Branch 144, except for their second-hand accounts that they **heard** that such incident actually transpired. Justice Salazar-Fernando found it speculative to attribute the commission of bribery or wrongdoing to respondent Judge Arcaya-Chua solely on such account. The Investigating Justice stated that respondent Judge appeared to have no personal or actual participation in that incident, because the "heated argument" was allegedly between Chang Tan and the OIC, Victoria Jamora.

As regards respondent Judge Arcaya-Chua's issuance of a writ of preliminary attachment in the *RCBC Case,* Justice Salazar-Fernando found no evidence against respondent of any irregularity or undue interest in the case. Respondent convincingly elaborated the circumstances surrounding her issuance of the writ of preliminary attachment, particularly the manner in which she studied and evaluated the application for the writ. Justice Salazar-Fernando was convinced that while the order granting the writ was indeed speedily issued – the *ex parte* hearing on the application having been held on a Friday, followed immediately by the issuance of the writ on the succeeding business day, a Monday – there was really nothing impossible or irregular in such feat. Per respondent's account, she had been unofficially reporting for work on Saturdays during that time and she did not have to evaluate the totality of the evidence for the purpose of ruling on the propriety of issuing the writ. Further, considering respondent's habit of immediately disposing pending motions before her court, Justice Salazar-Fernando found no sufficient basis to attach a sinister significance to the speedy issuance of the writ of preliminary attachment. The Investigating Justice also found respondent Judge's reasons for issuing the writ of preliminary attachment to be apt.

Justice Salazar-Fernando held that in the absence of evidence that she was motivated by any dishonest or corrupt motive in issuing the writ, respondent Judge Arcaya-Chua is entitled to the presumption that she regularly performed her duties. She cited, thus:

> In administrative proceedings, the complainant bears the *onus* of establishing, by substantial evidence, the averments of his complaint. *Notatu dignum* is the presumption of regularity in the performance of a judge's functions, hence bias, prejudice and even undue interest cannot be presumed, specially weighed against a judge's sacred allegation under oath of office to administer justice without respect to any person and do equal right to the poor and to the rich. In a long line of cases decided by this Court, it was held that bare allegations of bias are not enough in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role to dispense justice according to law and evidence and without fear or favor. In *Sinnott v. Barte,* it was further held, mere suspicion that a judge is partial is not enough. There should be clear and convincing evidence to prove the charge of bias and partiality. Extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to the palpable error that may be inferred from the decision or order itself. Although the decision may seem so erroneous as to raise doubts concerning a judge's integrity, absent extrinsic evidence, the decision itself would be insufficient to establish a case against the judge.[26]

Findings in the Judicial Audit Case (Re: Marriage Certificates and Monthly Reports)

Justice Salazar-Fernando found that there is substantial evidence of an anomaly in respondent Judge Arcaya-Chua's solemnization of marriages in her court and failure to reflect the correct number of marriages in her Monthly Reports.

The Investigating Justice stated that at once, the timing of the disposal of the marriage certificates, which were said to have been contained in four (4) plastic bags, is highly suspect,

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[26] *Mamerto Maniquiz Foundation, Inc. v. Pizarro*, A.M. No. RTJ-03-1750, January 14, 2005, 448 SCRA 140, 155-156. (Emphasis supplied.)

because it occurred during the time the judicial audit was being conducted. Respondent Judge Arcaya-Chua admitted the fact that she ordered Salvador Indicio, Jr., her utility worker, to dispose of some garbage contained in blue plastic bags. However, as regards the timing of disposal, she explained that she ordered Indicio to dispose of her garbage on the second week of May, days before the judicial audit.[27] Such fact was confirmed by Indicio in his testimony.[28] He testified that he was ordered by respondent Judge Arcaya-Chua to dispose of the garbage on May 9, 2007. Indicio stated that the garbage was due for disposal on May 14, 2007, but since it was election day, the disposal of the garbage was postponed until May 17, 2007, at which time, the disposal of the plastic bags caught the attention of the security detail of the Supreme Court.

The Investigating Justice stated that based on the foregoing account, if the order to dispose of the garbage was indeed made on May 9, 2007, it is perplexing why such a simple task of throwing away a garbage of barely four plastic bags, which would take only a couple of minutes to accomplish, could tarry for several days. Why no attempt to dispose of the supposed garbage was made on May 9, 10, and 11 (May 12 & 13 were Saturday and Sunday, respectively, while May 14 was Election Day, and May 15 to 17 was the period of judicial audit) was not sufficiently explained. The logical implication is that the order to dispose could not have been made on May 9, 2007, but more likely later when the judicial audit was already being conducted. Such conclusion jibes with the account of Atty. Fe Corcelles-Aguila, one of the members of the judicial audit team, that upon being immediately confronted why he chose that particular day to dispose of the supposed garbage despite the ongoing audit, Indicio "could not offer any explanation."[29] Indicio could not remember the exact date when the order to dispose of the garbage was made by respondent Judge Arcaya-Chua. He testified, thus:

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[27] Supplemental Affidavit dated April 14, 2009; *rollo* (RTJ-08-2141), p. 497.

[28] TSN, March 3, 2009, pp. 13, 27-30,47.

[29] Affidavit dated February 16, 2009, *rollo* (A.M. No. RTJ-08-2141), p. 465.

CROSS-EXAMINATION

JUDGE CHUA:

You mentioned in your Affidavit and in your testimony this morning that you executed an Affidavit on May 17 and the throwing away of the garbage was also done at 8:00 o'clock in the morning of May 17 upon my instruction. When did I give my instruction to you to throw away the garbage?

MR. INDICIO:

You told me before the audit to throw all your trash.

JUSTICE FERNANDO:

Did you know when that particular day was?

MR. INDICIO:

That was election day, Your Honor.

JUSTICE FERNANDO:

Election day of May, 2007?

MR. INDICIO:

Yes, Your Honor.

JUSTICE FERNANDO:

Was that the exact date when Judge Chua told you to throw the garbage?

MR. INDICIO:

Yes, Your Honor.

JUDGE CHUA:

May I draw your attention to paragraph 2 of your Affidavit. This was subscribed to on May 17. So the last week that you mentioned here was a week before May 17. You mentioned here that last week, I was instructed by the Presiding Judge to dispose of the garbage which were stocked in her branch. Do you confirm the statement in paragraph 2 of your Affidavit?

MR. INDICIO:

Judge Chua told me to throw the garbage because it was election day.

JUDGE CHUA:

I am sorry, Your Honor, but I do not get the fact straight. May I draw your attention now to paragraph 5 of your Affidavit. You said here that the said garbage was scheduled to be disposed last May 14, 2007. However, since it was election day, same was not collected.

MR. INDICIO:

Yes, ma'am, it was scheduled on May 14, but the janitor was busy so it was only on May 17 that he had an opportunity to throw it.

JUDGE CHUA:

To clarify the matter, Mr. Indicio, when did I give the instruction to you to throw away the garbage?

MR. INDICIO:

I was told before the audit.

JUDGE CHUA:

The audit was conducted on May 15 up to May 17. Based on paragraph 2 of your Affidavit, I gave the instruction to you a week before May 17, so I gave the instruction to you probably on May 10, is that what you are saying?

MR. INDICIO:

I do not remember the exact date but I was instructed by Judge Chua.

x x x x x x x x x

JUSTICE FERNANDO:

When you told us that before the audit was conducted, Judge Chua already instructed you to throw those garbage bags placed inside the stenographer's room, how many days after that instruction was given to you did you comply with her instruction?

MR. INDICIO:

Eight (8) days, Your Honor.

JUSTICE FERNANDO:

So if you instructed Beldad to throw those garbage bags on May 17 minus 8 that would be May 9, is that correct?

MR. INDICIO:

Yes, your Honor.[30]

According to Justice Salazar-Fernando, apart from the timing of the disposal, the manner of disposing the plastic bags of marriage certificates was also open to suspicion. Although there were four plastic bags ready for disposal, which according to Indicio himself were really not too heavy,[31] only one was taken out by the janitor to be disposed, leaving three other plastic bags inside the courtroom. Taking out the plastic bags one by one could have been purposely sought to surreptitiously remove the said bags from the courtroom, and avoid detection by the security personnel detailed by the judicial audit team.

Justice Salazar-Fernando noted that despite repeated references to the supposed garbage, which were allegedly contained in similar plastic bags containing the marriage certificates, the whereabouts of the said plastic bags of garbage were never accounted for. If what were mistakenly attempted to be disposed of by Indicio were the plastic bags containing the marriage certificates, the plastic bags containing the garbage could have been found elsewhere in the courtroom. However, as things turned out, there were really no plastic bags of garbage, but only more plastic bags of marriage certificates. Respondent Judge Arcaya-Chua's account of the plastic bags of garbage was unsubstantiated.

The Investigating Justice did not give credence to respondent Judge's theory as to why the plastic bags of marriage certificates

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[30] TSN, March 3, 2009, pp. 27-30, 45.

[31] *Id.* at 47.

were found in the stenographer's room, causing Indicio to mistake it for the garbage which she supposedly ordered him to dispose of. Respondent Judge Arcaya-Chua theorized that a certain Noel Umipig, a casual employee in her staff, who harbored a deep-seated grudge against her for not being able to borrow money from her, could have been responsible in transferring the plastic bags of marriage certificates from the small room in her chambers to the stenographer's room before her courtroom was padlocked. According to her, Umipig could have heard of the impending administrative investigation on her. Hence, to expose the big number of weddings she had been solemnizing, which, purportedly, through Umipig's machinations had not been reflected in her monthly reports, Umipig could have taken out the plastic bags of marriage certificates from the small room in her chambers and transferred them to the stenographer's room, so that once the plastic bags were taken out to the garbage can along the corridor, the documents would be discovered by the audit team.

Justice Salazar-Fernando found respondent Judge's theory difficult to swallow. According to her, it was fantastic that respondent Judge attached too much cunning to Umipig for the latter to have deviously perpetrated all the acts being attributed to him. If the intention was only to expose the big number of weddings, it is hard to understand why Umipig would have to go the difficult way of trespassing on her chambers when all he would have to do was spread rumors about the weddings, as he had been wont to do, per respondent Judge Arcaya-Chua's own account.

In regard to the non-payment of the marriage solemnization fees, the certifications[32] issued by the Clerks of Court of the MeTC and RTC of Makati City attest to the fact that out of the 1,975 marriages solemnized by respondent Judge Arcaya-Chua, only 166 marriages were paid the corresponding solemnization fees. Justice Salazar-Fernando found no reason to doubt the reliability or integrity of the said certifications, the contents of

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[32] Exhibits "H" and "I"; *rollo* (A.M. No. RTJ-08-2141), pp. 216-219.

which were confirmed by Arnel Magsombol and Lucila Ticman, the same persons who personally verified from their records whether or not the solemnization fees of the marriages solemnized by respondent Judge Arcaya-Chua were paid.

Respondent Judge assailed the reliability of the procedure undertaken by Magsombol and Ticman in verifying the payment of solemnization fees, positing that they could have merely relied on the dates of the wedding as stated in the marriage certificates, which were often not the same dates stated in the receipts. She contended that most parties paid their solemnization fee on a date different from their wedding; hence, the dates of the receipts would not be the same date as that of the wedding. Thus, respondent Judge postulated that when Magsombol and Ticman verified payment of the solemnization fees based on the dates of the wedding as stated in the marriage certificates, they would find no receipt to show payment of the solemnization fees, because payment was made on some other date.

Justice Salazar-Fernando did not believe the foregoing postulation of respondent Judge Arcaya-Chua in the light of the categorical declarations of Magsombol and Ticman that they did not merely based their verification on the dates of the wedding, but, specifically, they verified the payment of solemnization fees **based on the <u>names</u> of the contracting parties to the wedding**. Pertinent portions of the testimonies of Magsombol and Ticman state as follows:

<u>DIRECT EXAMINATION</u>

x x x x x x x x x

ATTY. BUGTAS:

So how did you verify these marriages solemnized by respondent Judge Arcaya-Chua?

MR. MAGSOMBOL:

I checked the names that were handed to me one by one.

ATTY. BUGTAS:

Did you check all the records?

MR. MAGSOMBOL:

Yes, I based on the daily cash collection records beginning the first day of January 2004 up to the last day of office of December 2005.

JUSTICE FERNANDO:

Are your daily cash collection records complete from January 2004 to December 2005?

MR. MAGSOMBOL:

Yes, Your Honor.

JUSTICE FERNANDO:

How about the other basis which you said, receipts?

MR. MAGSOMBOL:

In our daily collection report, we indicate the OR number.

JUSTICE FERNANDO:

Did you also check those OR numbers and the receipts?

MR. MAGSOMBOL:

Yes, I matched the daily collection to the receipts which I brought with me, Your Honor.

x x x x x x x x x

JUSTICE FERNANDO:

So in the years 2004 and 2005, marriages solemnized by the MeTC Judge were supposed to be recorded in your daily cash collection book?

MR. MAGSOMBOL:

Yes, Your Honor, the ones that are being paid.

JUSTICE FERNANDO:

So if they are not paid, they do not appear in your book?

MR. MAGSOMBOL:

Yes, we don't know if the marriage happened or not.

x x x x x x x x x

(Direct Examination of Lucila D. Ticman)

JUSTICE FERNANDO:

Did you verify from your records if the solemnization fees of the marriages that were listed in the document were paid?

MS. TICMAN:

Yes, Your Honor.

JUSTICE FERNANDO:

What was the result of your verification?

MS. TICMAN:

Only 20 parties paid the solemnization fees.

JUSTICE FERNANDO:

Only 20? Twenty out of?

ATTY. BUGTAS:

More than a thousand, Your Honor. 1,300 plus.

x x x x x x x x x

JUSTICE FERNANDO:

What was the basis of your findings?

MS. TICMAN:

My basis Your Honor is the one coming from the Supreme Court, and the names supplied us by the Supreme Court were verified by us if they were paid or not.

JUSTICE FERNANDO:

What documents did you check to determine whether the fees were paid or not?

MS. TICMAN:

The Certificates of Marriage.

x x x x x x x x x

ATTY. BUGTAS:

What documents or records did you examine in order to determine the marriages that paid the corresponding fees?

MS. TICMAN:

The logbook of the Accounting Section and official receipts.

x x x x x x x x x

ATTY. BUGTAS:

Based on your records or receipt that you have, you can inform the inquiring party whether that person or party paid the corresponding fees or not?

MS. TICMAN:

Yes, sir.

ATTY. BUGTAS:

In the 3rd paragraph of your Affidavit, based on your records, you enumerated just 20 marriages as appearing to have paid the corresponding fees.

MS. TICMAN:

Yes, sir.

ATTY. BUGTAS:

But based on the records available, the Supreme Court furnished you with a list numbering around 1,344 names of parties for verification but you came out with an Affidavit enumerating only those parties that paid the corresponding fees. Is there a possibility that the contracting parties paid the fees, but your records would not reflect their names?

MS. TICMAN:

No, sir.

ATTY. BUGTAS:

So only those that paid will appear in your records.

MS. TICMAN:

Yes, sir.

ATTY. BUGTAS:

If a party did not pay, his or her name will not appear in your records?

MS. TICMAN:

Yes, sir.

x x x x x x x x x

ATTY. BUGTAS:

In the 3rd paragraph of your Affidavit, you stated that after a thorough examination of the records of this office (referring to your office) has been ascertained that only 20 marriages have been paid in the OCC RTC Makati city, and you enumerated the 20 marriages that paid the corresponding fees based on your records.

When you say you thoroughly examined, can you tell us whether the examination was thorough enough so that your Affidavit is accurate as to its contents?

MS. TICMAN:

We examined our logbook one by one, the names of the parties given by the Supreme Court.[33]

Justice Salazar-Fernando was fully convinced by the findings of Magsombol and Ticman that the solemnization fees of a substantial number of marriages solemnized by respondent Judge Arcaya-Chua were unpaid.

As regards respondent Judge Arcaya-Chua's failure to reflect the marriages in her monthly reports, Justice Salazar-Fernando found respondent Judge's defense of forgery, nay tampering, to be unsubstantiated. She carefully perused respondent Judge's signatures in the monthly reports and compared the same to her signatures in the pleadings, which she submitted during the investigation, as well as in the orders and decisions contained in the records, and found no substantial discrepancies therein or any indication that the same had been forged. According to Justice Salazar-Fernando, while all her signatures did not exactly appear to be 100 percent similar, there was no reason to suppose that her signatures in the monthly reports and other signatures

[33] TSN, March 3, 2009, pp. 103-104, 106-107, 137-138, 141-146.

extant in the records were not signed by one and the same person. Moreover, Justice Salazar-Fernando failed to see any tell-tale signs of tampering, and this could be the reason why respondent Judge herself withdrew such defense.

Justice Salazar-Fernando disbelieved the argument of respondent Judge Arcaya-Chua that the anomaly attributed to her was the work of Umipig. The Investigating Justice found it incredible that since January 2004 up to April 2007 or for a period of more than three years, Umipig had been silently working on his sinister scheme, patiently and clandestinely forging respondent Judge's signatures in her monthly reports as vengeance for not lending him money. Justice Salazar-Fernando found it difficult to imagine how Umipig could have harbored such a deep-seated grudge against respondent Judge just because the latter refused to loan him money for his enrolment in law school, which purportedly was the reason why Umipig failed to become a lawyer.

Respondent Judge Arcaya-Chua presented text messages allegedly coming from Umipig to show the latter's extreme hatred of her. The Investigating Justice stated that apart from the fact that it could not be established that it was indeed Umipig who sent the text messages, the tenor of the text messages did not show that Umipig was the author of all the anomalies relating to the marriage certificates and monthly reports. Respondent Judge quoted Umipig saying, *"Hindi bale, may ebidensya naman ako laban sa inyo,"* which, according to her, could only betray the fact that Umipig had indeed been up to something. According to Justice Salazar-Fernando, Umipig's statement could only confirm the existence of the anomalies in respondent Judge's court, rather than attribute authorship to Umipig for the anomalies pertaining to the marriage certificates and monthly reports.

Further, Justice Salazar-Fernando found respondent Judge Arcaya-Chua's procedure of signing the monthly reports **ahead** of her OIC to be irregular, since it is contrary to prevailing procedure and protocol. Respondent Judge Arcaya-Chua admitted that she signed the monthly reports first before her OIC, Ms.

Mabalot, during her stint in the MeTC, or Ms. Jamora, in the RTC. Respondent Judge testified, thus:

x x x x x x x x x

JUSTICE FERNANDO:

Could you repeat the statement?

JUDGE CHUA:

I signed the monthly reports at 4:00 o'clock in the afternoon, Your Honor, and then the following morning at around 8:00 o' clock, I would see the reports on top of the table of Ornachos or Rafael still unsigned by Mabalot or Jamora. My focus was on the typewritten name of Mabalot or Jamora without their signatures.

JUSTICE FERNANDO:

And you expect the reports to be signed on the same afternoon when you signed?

JUDGE CHUA:

Not necessarily, Your Honor, but my point is I showed to Ornachos or Rafael that I have signed the monthly reports.

JUSTICE FERNANDO:

Do you have to sign first before the clerk of court?

JUDGE CHUA:

With due respect to Mrs. Jamora, Your Honor, because the branch clerk of court of MeTC Branch 63 was not a lawyer because she was assigned on detail to the OCC a few months ago and Mrs. Jamora, likewise, is not a lawyer so I would rather do the checking myself, sign and then require them to affix their signatures.

JUSTICE FERNANDO:

Contrary to the usual procedure that the Judge would sign last?

JUDGE CHUA:

Yes, Your Honor.

JUSTICE FERNANDO:

In your case, you sign first before the OIC?

JUDGE CHUA:

Yes, Your Honor.[34]

Justice Salazar-Fernando disbelieved respondent Judge's justification for signing first before her OIC, reasoning that it does not take a lawyer to know what to indicate in the monthly reports, let alone the mechanical task of indicating how many cases were disposed or how many marriages were solemnized in a month.

As regards respondent Judge Arcaya-Chua's compliance with Article 8 of the Family Code concerning the place of solemnization of the marriage, the Investigating Justice found no evidence that would show that she disregarded the strictures of the said provision. There is also no concrete evidence showing that respondent Judge demanded and/or received money from the contracting parties for solemnizing the marriage. However, it can be inferred that respondent Judge financially benefited from solemnizing the numerous marriages by the fact that these were not correctly reflected in the monthly reports and insufficient solemnizing fees were paid to the court.

Anent respondent Judge Arcaya-Chua's liability in this case, Justice Salazar-Fernando stated:

x x x [T]aken as a whole, the undersigned Investigator respectfully submits that there is convincing and substantial evidence to support a finding that anomalies were committed in respondent Judge Arcaya-Chua's court with respect to the solemnization of marriages. The circumstances magnificently fit together: plastic bags containing about 1,975 marriage certificates were surreptitiously being spirited out of respondent Judge Arcaya-Chua's court during the occasion of the judicial audit; when confronted, the person seen disposing the plastic bags stated that he was acting upon the order of respondent Judge Arcaya-Chua; when verified, the solemnization fees of the

[34] TSN, April 21, 2009, pp. 73-74.

marriages covered by the said marriage certificates were found to have not been paid; despite openly admitting having solemnized all the weddings covered by the said marriage certificates, the monthly reports of respondent Judge Arcaya-Chua reflected only a very minimal number of weddings solemnized. Taken together, the circumstances lead to no other conclusion that irregularities were obviously perpetrated by respondent Judge Arcaya-Chua in solemnizing marriages in her court.

In regard to respondent Court Stenographer Jamora's culpability, Justice Salazar-Fernando found sufficient reasons to hold her accountable for her signatures in the monthly reports. She cannot feign ignorance as to the correct number of weddings solemnized by respondent Judge. Jamora's justification that she could not have questioned respondent Judge Arcaya-Chua even if there were erroneous entries in the monthly reports is in itself pregnant with admission that something anomalous could have indeed been taking place. She testified, thus:

JUSTICE FERNANDO:

So you affixed your signature without knowing whether the report is accurate or not?

MS. JAMORA:

Your Honor, to answer honestly, I was not in the position to question my superior Judge Chua.

JUSTICE FERNANDO:

So, by force of circumstances, you just affixed your signature without any question asked, whether they are correct, inaccurate, incomplete, you just affixed your signature. Is that your job as OIC?

ATTY. VILLANUEVA:

Your Honor, I think she stated her position already in her Comment.

JUSTICE FERNANDO:

That is why I am asking her for confirmation.

MS. JAMORA:

Yes, Your Honor.

ATTY. VILLANUEVA:

More or less, that is the substance of her Comment, Your Honor.

JUSTICE FERNANDO:

So without knowing anything about the figures, you just affixed your signature because you saw already the signature of Rafael and the signature of Judge Chua?

MS. JAMORA:

Yes, Your Honor.[35]

Justice Salazar-Fernando found unacceptable respondent Jamora's pretended ignorance of the incorrectness of the monthly reports she had been signing, let alone the figures relating to the number of marriages solemnized by respondent Judge. He stressed that it does not take a lawyer to count or at least approximate the number of weddings that respondent Judge had been solemnizing in her court, considering the unusually big number of weddings she had solemnized. Knowing the figures stated in the monthly reports to be incorrect, Jamora condoned the wrongdoing, if she was actually not a willing participant, by affixing her signatures therein.

Justice Salazar-Fernando held that the reprehensible act or omission of respondent Jamora constitutes dishonesty amounting to grave misconduct. Moreover, she stated that during the investigation, it was revealed that although Jamora was an OIC Clerk of Court, she had no knowledge of her duties and responsibilities, and had neither control over the employees under her nor did what was expected of her.

Justice Salazar-Fernando stated that respondent Jamora's plea for compassion and understanding, citing the fact that she was not a lawyer and that the position of OIC Clerk of Court was

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[35] TSN, February 18, 2009, pp. 32-33.

merely thrust upon her by respondent Judge Arcaya-Chua, which she reluctantly accepted, was hollow, because her transgression did not have any connection with her status as a non-lawyer or being a reluctant OIC. Her insistence upon her ignorance or lack of knowledge of the incorrectness of the figures stated in the monthly reports, specifically on the number of marriages solemnized, aggravates her offense as it makes a mockery of her oath.

The Ruling of the Court

The Court agrees with the findings of Investigating Justice Salazar-Fernando.

It is settled that in administrative proceedings, the quantum of proof required to establish malfeasance is not proof beyond reasonable doubt, but substantial evidence, *i.e.,* that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[36]

In A.M. No. RTJ-08-2141, there is substantial evidence that respondent Judge Arcaya-Chua did not report in her Monthly Reports[37] the actual number of marriages she solemnized during her stint in the MeTC, Makati City, Branch 63 and in the RTC, Makati City, Branch 144, and that the solemnization fees that were paid did not correspond to the number of marriages that were solemnized by her.

The monthly reports of cases on record showed that Judge Arcaya-Chua reported zero or a lesser number of marriages solemnized by her compared with the marriage certificates that were seized from her office. Just to mention a portion of the evidence submitted against her: In April 2004, she reported[38] that she did not solemnized any marriage, but there were 29

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[36] *Vidallon-Magtolis v. Salud*, A.M. No. CA-05-20-P, September 9, 2005, 469 SCRA 439.

[37] Exhibits "BB", "CC-1" to "CC-5", "DD" to "NN", "XX" to "ZZ", "AAA" to "GGG", "X" to "Z", folder of exhibits.

[38] Exhibit "XX", folder of exhibits.

marriage certificates issued on the said month contained in the plastic bags that were taken from her office.[39] In May 2004, she reported[40] that she did not solemnize any marriage, but 36 marriage certificates issued on the said month were found in the same plastic bags.[41] In June 2004, she likewise reported[42] that she did not solemnize any marriage, but 45 marriage certificates issued on the said month were contained in the plastic bags.[43] From November 2005 to March 2007, her Monthly Reports[44] indicated that she did not solemnize any marriage, but 1,068 marriage certificates issued by her during the said period are in the custody of the Court.[45]

Atty. Neptali D. Abasta, Clerk of Court V, OCC, MeTC, Makati City, in his Certification[46] dated June 8, 2007, stated that only 146 of the marriages solemnized by Judge Arcaya-Chua from January 2004 to June 13, 2005 paid the corresponding marriage fee. Moreover, Atty. Engracio M. Escasinas, Jr., Clerk of Court VII, OCC, RTC, Makati City, declared in his Certification[47] dated June 8, 2007 that from the list furnished by this Court of marriages solemnized by Judge Arcaya-Chua, only 20 marriages were paid to the said office per RTC official receipts covering the period from June 14, 2005 to April 2007. Hence, out of the 1,975 marriage certificates discovered in Branch 144, only a total of 166 marriages were paid.

In the light of the substantial evidence against her, she cannot shift the blame to Noel Umipig absent any proof of weight that he forged her signature in the Monthly Reports.

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[39] TSN, April 8, 2009, p. 19.

[40] Exhibit "YY", folder of exhibits.

[41] TSN, April 8, 2009, p. 20.

[42] Exhibit "ZZ", folder of exhibits.

[43] TSN, April 8, 2009, p. 20.

[44] Exhibits "CC-4" to "CC-5", "DD" to "JJ", "JJ-1" to "JJ-5", "KK" to "MM", folder of exhibits.

[45] TSN, April 8, 2009, p. 39.

[46] Exhibit "H", folder of exhibits.

[47] Exhibit "I-1", folder of exhibits.

In regard to respondent Victoria Jamora, her signature on the Monthly Reports represented that she attested to the correctness thereof; hence, it is presumed that she verified or should have verified the facts stated therein. The Monthly Reports specifically state that the signatories thereto, including Victoria Jamora, "declare under oath that the information in this Monthly Report is true and correct to the best of our knowledge, pursuant to the provisions of existing rules/administrative circulars."

Respondent Jamora admitted that she was designated as OIC of Branch 144 from July 2005 to April 2007.[48] It is incredible that Victoria Jamora, as OIC, was unaware of the big number of weddings solemnized by respondent Judge from November 5 to March 2007, which totaled 1,068 marriages per the confiscated marriage certificates, but she attested in the Monthly Reports for the said period that no marriage was ever solemnized. Thus, the Investigating Justice correctly stated that she knew that the figures stated in the Monthly Reports were incorrect, but she condoned the wrongdoing by affixing her signature therein, if she was not actually a willing participant.

The Court sustains the findings of Justice Salvador-Fernando in A.M. No. RTJ-08-2141 that respondents Judge Arcaya-Chua and Victoria Jamora are guilty of gross misconduct.

In A.M. No. RTJ-07-2049 (*the Chang Tan/RCBC Case*), the Court upholds the finding of Justice Salvador-Fernando that respondent Judge Arcaya-Chua is guilty of gross ignorance of the law for issuing a TPO in favor of petitioner Albert Chang Tan in SP Case No. M-6373, since a TPO cannot be issued in favor of a man against his wife under R.A. No. 9262, known as the *Anti–Violence Against Women and Their Children Act of 2004*. Indeed, as a family court judge, Judge Arcaya-Chua is expected to know the correct implementation of R.A. No. 9262.

In A.M. OCA IPI No. 07-2630-RTJ (*the Ocampo Case*), the Court sustains the recommendation of Justice Salvador-Fernando that the case be dismissed in the absence of substantial evidence

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[48] TSN, February 18, 2009, p. 24.

that respondent Judge Arcaya-Chua is liable for the charge of "harassment, grave abuse of authority, gross ignorance of the law, gross misconduct, manifest partiality and/or conduct prejudicial to the best interest of the service."

We now resolve the motion for reconsideration of respondent Judge Arcaya-Chua in A.M. No. RTJ-07-2093.

A.M. No. RTJ-07-2093

In A.M. RTJ-07-2093, Sylvia Santos filed a Complaint dated July 14, 2005 against Judge Arcaya-Chua for serious misconduct and dishonesty.

Complainant, an aunt of respondent Judge's husband, alleged that in the first week of September 2002, she asked respondent's help regarding the cases of her friend, Emerita Muñoz, pending before the Supreme Court. At that time, respondent was the Presiding Judge of the MeTC of Makati City, Branch 63. Respondent, a former employee of the Supreme Court, said that she could help as she had connections with some Justices of the Court; she just needed ₱100,000.00 which she would give to an employee of the Court for the speedy resolution of the said cases. In the first week of October 2002, complainant gave respondent ₱100,000.00 in the privacy of the latter's chamber. When complainant followed up the cases in February 2003, respondent told her that there was a problem, as the other party was offering ₱10 million to the Justices. Complainant asked respondent to return the ₱100,000.00; however, respondent could no longer be contacted.[49]

In her Comment dated August 19, 2005, respondent denied the charges against her and averred that in the months adverted to by complainant, she (respondent) was facing protests, damaging newspaper reports and administrative cases which caused her hypertension; thus, she could not have agreed to the supposed transaction of complainant. When she became a judge, complainant asked a lot of favors from her, and knowing that

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[49] *Rollo* (A.M. No. RTJ-07-2093), pp. 1-3.

she worked as a Court Attorney of the Supreme Court, complainant asked her to talk to a certain Mario Tolosa of the Third Division, to whom complainant gave ₱50,000.00 for a favorable resolution of Muñoz' cases. Respondent declined. Thereafter, complainant started spreading malicious imputations against her. On April 23, 2005, complainant begged respondent to talk to anyone in the Third Division to recover the money she gave Tolosa. Respondent again refused. Complainant then repeatedly tried to talk to her until April 25, 2005 when complainant threatened to file a case against respondent with the Supreme Court. Complainant sent two demand letters addressed to respondent's court asking for the return of the ₱100,000.00 complainant allegedly gave her, which letters were read by respondent's Clerk of Court. Complainant also told respondent's husband, outside respondent's house, that she (respondent) was corrupt, as she asked for money in order to settle cases in court. Respondent filed cases of Grave Oral Defamation, Intriguing Against Honor and Unjust Vexation against complainant, while complainant filed an estafa case against her.[50]

The Court, in its Resolution dated July 4, 2007, referred this case to Associate Justice Marina L. Buzon of the Court of Appeals for investigation, report and recommendation.

During the preliminary conference held on September 4, 2007, complainant manifested her desire to move for the dismissal of her complaint against respondent.[51] In a Verified Manifestation[52] dated September 6, 2007, complainant stated that in the latter part of August 2007, she and respondent had a long and serious discussion about the dispute and bad feelings between them; that after a sincere exchange of views, it dawned on complainant that her accusation against respondent was brought about by misunderstanding, confusion and misapprehension of facts

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[50] *Id.* at 6-15. (The estafa case filed by complainant against respondent was dismissed by the City Prosecution Office and the petition for review thereon denied by the Department of Justice.)

[51] *Id.* at 61-62.

[52] *Id.* at 270-271.

concerning the incident subject of the present administrative case; that for the sake of unity and harmonious relations in their family, the complainant and respondent had reconciled and restored friendly relations with each other; and that in view of the foregoing, complainant was no longer interested in pursuing her administrative case against respondent.

In her Report dated October 5, 2007, Justice Buzon recommended the dismissal of the administrative case in view of paucity of evidence upon which a conclusion could be drawn, brought about by the withdrawal by Santos of her complaint and her failure and refusal to prove the allegations in her Complaint.

In a Resolution[53] dated December 5, 2007, the Court, adopting the recommendation of Justice Buzon, dismissed the complaint against respondent for lack of evidence. The Court, in the same Resolution, also ordered complainant to show cause why she should not be held in contempt of Court for filing an unfounded verified Complaint dated July 14, 2005 against respondent.

Complainant submitted her Compliance dated January 6, 2008 stating that:

x x x x x x x x x

2. Contrary to the impression of the Honorable Court, her administrative complaint against Judge Evelyn Ar[c]aya-Chua is not unfounded;

3. All the allegations therein are true and based on respondent's personal knowledge;

4. The main reason why respondent did not anymore pursue her complaint was because of the pressure of her family to forgive Judge Chua, for the sake of unity and harmony in the family, given the fact that Judge Chua's husband is her nephew;

5. On several occasions in August 2007, Judge Chua, her husband and their children came to respondent's house and pleaded for forgiveness. Later, respondent's sister, husband

[53] *Id.* at 292.

and children, as well as her close friends persuaded her to forgive Judge Chua and let bygones be bygones, for the sake of peace and unity in the family;

6. It is solely due to the foregoing events as well as for humane reasons that respondent gave up her complaint against Judge Chua.[54]

In its Resolution[55] dated March 3, 2008, the Court found that complainant's compliance was not satisfactory, and that she was trifling with court processes. The Court then resolved to reprimand complainant with a stern warning that a more severe penalty would be imposed on her in the event of a repetition of the same offense; recall the Resolution of the Court dated December 5, 2007; reopen the administrative case against respondent; direct Justice Rebecca D. Salvador[56] to conduct an investigation and submit her report and recommendation; and directed complainant to attend all hearings scheduled by Justice Salvador under pain of contempt of court.

In her Report dated September 23, 2008, Investigating Justice Salvador found sufficient grounds to hold respondent liable for the offenses charged and recommended that respondent be administratively penalized for grave misconduct and dishonesty.

Justice Salvador's findings, as stated in the Resolution dated February 13, 2009, are as follows:

Justice Salvador found that: complainant was able to present substantial evidence in support of her complaint against respondent; while respondent denied that she asked for and received from complainant ₱100,000.00 for the facilitation of a favorable decision on Muñoz' cases, respondent, however, admitted meeting complainant in her office in September 2002, claiming only a different reason for such meeting; that is, complainant was there to console her for the protests against respondent at the time; respondent claims to have incurred complainant's ire for declining complainant's request

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[54] *Id.* at 305. (Emphasis supplied.)

[55] *Id.* at 307.

[56] In lieu of Justice Buzon, who was to retire on March 18, 2008.

for favors in June 2004; however, it was respondent who asserted that the complainant asked her to talk to Mario Tolosa of the Supreme Court; complainant asserted that she had not heard of Tolosa before; however, it was respondent's comment and her husband's affidavit which stated that complainant informed them on April 23, 2005 that Tolosa had gone on absence without leave; it was respondent, as a former employee of the Supreme Court who stood to know who Tolosa was; there was also a strong reason to believe that respondent knew and associated with Muñoz prior to the parties' falling out, since the affidavit of Robert Chua (Robert), respondent's husband, stated that Muñoz was introduced to them by complainant in September 2003, and that they went to Tagaytay with her in 2004; Robert claimed, however, that the topic of case-fixing never cropped up; although respondent filed a complaint for grave oral defamation, intriguing against honor and unjust vexation on June 20, 2005 before complainant filed the instant administrative complaint, it cannot be denied, however, that respondent at the time had already been served complainant's demand letters dated April 28, 2005 and May 27, 2005; respondent's failure, both as a judge and as a lawyer, to reply to complainant's first demand letter, was unusual; considering complainant's advanced age and illnesses, respondent's claim—that complainant's motive for filing the administrative case was respondent's refusal to give in to complainant's request to intercede in the cases of the latter's friend—was too paltry an explanation for complainant's willingness to expend the time, money, effort and aggravation entailed by the administrative case as well as the criminal case filed by and against her; complainant's compliance with the Court's Resolution, which directed her to show cause why she should not be held in contempt for filing an unfounded complaint against respondent, stated that the allegations in her complaint were true and based on personal knowledge, and it was only because of respondent and their family's pleas, as well as for humane reasons, that she gave up her complaint against respondent.[57]

During the hearing conducted on September 3, 2008, Investigating Justice Salvador observed that although complainant appeared weary of the demands entailed by the administrative case, she staunchly stood pat over the veracity of her complaint and the reasons why she decided to withdraw the same. According

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[57] *Rollo* (A.M. No. RTJ-07-2093), pp. 400-401.

to Justice Salvador, respondent had no reason to ask forgiveness from complainant, if indeed complainant falsely instituted the administrative case against her.

Justice Salvador also gave weight to complainant's testimony that the return of the money by respondent, in addition to familial interests, induced her to withdraw the complaint.

The Court sustained the findings and recommendation of Justice Salvador, and rendered decision against respondent Judge Arcaya-Chua, the dispositive portion of which reads:

> WHEREFORE, Judge Evelyn S. Arcaya-Chua of the Regional Trial Court, Branch 144, Makati City is found GUILTY of gross misconduct and is hereby SUSPENDED from office for six (6) months without salary and other benefits. She is WARNED that the commission of the same or a similar act in the future shall merit a more severe penalty.[58]

Respondent filed a motion for reconsideration alleging that:

> (1) The Honorable Supreme Court failed to appreciate the failure of Sylvia Santos to present Emerita Muñoz, from whom Santos procured the ₱100,000.00, in the proceedings before Justice Rebecca De Guia-Salvador;
>
> (2) The Honorable Supreme Court failed to appreciate that one of the bases for the dismissal of the present case of 5 December 2007 was the Affidavit of Retraction filed by Muñoz on 12 January 2006;
>
> (3) The Honorable Supreme Court erred in sustaining the finding of Justice Salvador that [respondent] did not refute Santos' declaration during the clarificatory hearing that [respondent] returned the money to her;
>
> (4) The Honorable Supreme Court erred in sustaining the other findings of Justice Salvador; and
>
> (5) The Honorable Supreme Court erred in not considering [respondent's] testimonial and documentary evidence.[59]

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[58] *Id.* at 407.

[59] *Id.* at 422.

Respondent prayed that Stenographer Diana Tenerife be directed to submit to this Court the fully transcribed stenographic notes of the proceedings held on September 17, 2008 and to submit her tape of the proceedings on the said date, and that her motion for reconsideration be granted and that the instant case be dismissed.

Respondent's prayer for submission to this Court of the fully transcribed stenographic notes of the proceedings held on September 17, 2008 is an attempt to clarify alleged inaccuracies in the said transcript of stenographic notes. The Court notes that respondent Judge had earlier filed a Motion dated October 10, 2008 on this matter, which was already resolved in the Resolution of the Court promulgated on February 13, 2009, thus:

> Respondent filed a Motion dated October 10, 2008, claiming that there were significant omissions of testimonies in the Transcript of Stenographic Notes (TSN) particularly in the statement "*Ibinalik naman ho nila ang pera*"; and that such question was also beyond the scope of clarificatory questions that may be propounded, as nowhere in the previous testimonies of complainant, either in the direct or the cross-examination, did she mention the return of the money, and it was only during the clarifiactory (sic) hearing that it surfaces; thus, she (respondent) was deprived of her right to cross-examine complainant. Respondent prayed that corrections on the TSN be made, or that the testimonies of complainant – that "the money was returned to me" and "*ibinalik naman ho nila and* (sic) *pera*" – be stricken off; and in case the correction of the TSN was no longer proper, her manifestation that the said testimony of complainant was given only during the clarificatory hearing and, in effect, without an opportunity for her to cross-examine the complainant.
>
> **In the Resolution dated November 26, 2008, the Court denied respondent's prayer that the corrections on the TSN be made, and that the subject testimonies of complainant be stricken off. The Court, however, granted her prayer and noted her Manifestation that the subject testimony was given only during the clarificatory hearing and in effect without granting her an opportunity to cross-examine complainant about the same**.[60]

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[60] *Id.* at 402. (Emphasis supplied.)

Respondent contends that the failure of Santos to present Emerita Muñoz, from whom Santos procured the ₱100,000.00, during the proceedings before Justice Salvador was fatal to Santos' claims against her, and, on that basis alone, provided a reason to dismiss the present case.

The Court is not persuaded.

Santos was an eyewitness to the procurement of the ₱100,000.00, and her testimony alone, found credible in this case, is sufficient to prove the administrative liability of respondent.

Contrary to the allegations of respondent, the Court, in sustaining the findings of Investigating Justice Salvador, took into consideration the testimonial and documentary evidence presented by her.

The Court reiterates its statement in the Resolution dated February 13, 2009, thus:

> x x x [M]ost telling of all the circumstances pointing to respondent's guilt is the unwavering stance of complainant that respondent did solicit and receive ₱100,000.00 from her in order to facilitate a favorable ruling in Muñoz' cases.
>
> As aptly observed by Justice Salvador, complainant, when repeatedly asked during the hearing, was consistent in her testimony:
>
> J. DE GUIA-SALVADOR:
>
> At the start of this afternoon's proceedings, you affirmed the truth of the matters stated in your verified complaint?
>
> MS. SANTOS:
>
> *Opo*.
>
> J. DE GUIA-SALVADOR:
>
> And according to you they are based on your personal knowledge?
>
> MS. SANTOS:
>
> My complaint is true. That is all true.
>
> x x x x x x x x x

J. DE GUIA-SALVADOR:

Ano ba ang totoo?

MS. SANTOS:

Ang sabi ko sa kanya, "Evelyn, tulungan mo lang si Emerita kasi napakatagal na ng kaso niya. Hindi niya malaman kung siya ay nanalo o hindi." Ang sabi niya, "Sige, Tita, tutulungan ko."

Evelyn, sasabihin ko and (sic) *totoo ha. Huwag kang magagalit sa akin.*

J. DE GUIA-SALVADOR:

Just tell us what happened.

MS. SANTOS:

Sabi niya, "Tita, sige, bigyan mo ako ng ₱100,000.00 at tutulungan ko. Pagka sa loob ng tatlong buwan walang nangyari ibabalik ko sa iyo ang ₱50,000.00." Which is true ha. Sinabi ko doon sa humihingi ng pabor sa akin. Okay siya. Dumating ang panahon. It took already years walang nangyari. Siyempre ako ngayon ang ginigipit nung tao. Ngayon, kinausap ko siya. Sabi ko, "Evelyn, kahit konti magbigay ka sa akin para maibigay ko kay Emelita (sic)." Unang-una iyang Emelita (sic) may utang sa akin ng ₱20,000.00 sa alahas dahil ako, Justice, nagtitinda ng alahas. Bumili sya.

JUDGE ARCAYA-CHUA:

Your honor, at this point, may I request that the complainant be told not to continue with her testimony because she is already through with her direct examination.

J. DE GUIA-SALVADOR:

Noted. But allow her testimony to remain in the record.

Complainant's testimony during the clarificatory hearing also revealed her true reasons for withdrawing her complaint. As borne out by the records and correctly pointed out by Justice Salvador in her Report:

J. DE GUIA-SALVADOR:

I have another question regarding the verified manifestation counsel.

Alright, we go to the verified manifestation which you filed on September 7, 2007, and which had been marked as Exhibits "1", "1-A", "l-B" and submarkings for respondent. You stated in the verified complaint that the accusation against respondent was brought about due to misunderstanding, misapprehension of facts and confusion. Please clarify what do you mean by "the accusation against respondent was brought about due to misunderstanding, misapprehension of facts and confusion"?

MS. SANTOS:

Para matapos na po ang problemang iyan kaya nagka-intindihan na kami't nagkabatian. Sa totoo lang po Justice, matagal kaming hindi nagkibuan. Ngayon, dahil nakiusap nga po sila sa akin, kaya ako naman ho, sige, pinatawad ko na sila dahil pamilya ko ho sila, ang asawa niya. Kung hindi lang ho anak ng kapatid ko yan, baka ewan ko, baka hindi ko tuluyan iyan.

J. DE GUIA-SALVADOR:

So it is not true that there were facts regarding the incident which you misunderstood or misapprehended?

MS. SANTOS:

Naintindihan ko po iyan, Justice. Kaya nga ho, iyun na nga ho, sa pakiusap po nila na magkasundo na po kami, ibinalik naman ho nila ang pera, kaya ang sabi ko ho, tama na. Iyan po ang buong katotohanan, Justice.[61]

These testimonies on record are evidence against respondent Judge Arcaya-Chua. The Investigating Justice observed the demeanor of complainant and found her a credible witness. It is settled rule that the findings of investigating magistrates are generally given great weight by the Court by reason of their unmatched opportunity to see the deportment of the witnesses as they testified.[62] The Court found no reason to depart from such rule since Justice Salvador's observations and findings are supported by the records.

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[61] *Id.* at 403-405.

[62] *Vidallon-Magtolis v. Salud*, *supra* note 36.

The conduct of Judge Arcaya-Chua in this case and in A.M. No. RTJ-08-2141 is violative of the provisions of the New Code of Judicial Conduct, thus:

Canon 1, Sec. 4. A judge shall not allow family, social, or other relationships to influence judicial conduct or judgment**.** The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.

Canon 2, Sec. 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

Canon 2, Sec. 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

Canon 4, Sec. 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

Administrative Sanctions

Any disciplinary action against respondent Judge Arcaya-Chua will be based on the provisions of Rule 140 of the Rules of Court,[63] while disciplinary action against respondent Victoria Jamora will be based on the Omnibus Civil Service Rules and Regulations.

Under Section 8, Rule 140 of the Rules of Court, serious charges include gross misconduct constituting violations of the Code of Judicial Conduct and gross ignorance of the law or procedure.

Section 11, Rule 140 of the Rules of Court provides that if the respondent Judge is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification

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[63] Rule 140 is entitled *Discipline of Judges of Regular and Special Courts and Justices of the Court of Appeals and the Sandiganbayan.*

from reinstatement or appointment to any public office, including government-owned or controlled corporations: *Provided, however*, That the forfeiture of benefits shall in no case include accrued leave credits;

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

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

Under the Omnibus Civil Service Rules and Regulations, grave misconduct is classified as a grave offense and punished with dismissal for the first offense.

The Court sustains Justice Salvador-Fernando's finding that respondent Victoria Jamora is guilty of grave misconduct in A.M. No. RTJ-08-2141.

The Court also sustains Justice Salvador-Fernando's finding that respondent Judge Arcaya-Chua is guilty of gross ignorance of the law and gross misconduct in A.M. No. RTJ-07-2049 and A.M. No. RTJ-08-2141, respectively. Respondent Judge's motion for reconsideration is denied in A.M. No. RTJ-07-2093.

The Court has held:

All those who don the judicial robe must always instill in their minds the exhortation that the administration of justice is a mission. Judges, from the lowest to the highest levels, are the gems in the vast government bureaucracy, beacon lights looked upon as the embodiments of all what is right, just and proper, the ultimate weapons against injustice and oppression.

Those who cannot meet the exacting standards of judicial conduct and integrity have no place in the judiciary. xxx This Court will not withhold penalty when called for to uphold the people's faith in the judiciary.[64]

WHEREFORE, in view of the foregoing, the Court holds that:

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[64] *Concerned Lawyers of Bulacan v. Victoria Villalon-Pornillos*, A.M. No. RTJ-09-2183, July 7, 2009, 592 SCRA 36, 62-63.

1. in A.M. OCA IPI No. 07-2630-RTJ, the charges against Judge Evelyn S. Arcaya-Chua of the Regional Trial Court of Makati City, Branch 144 is *DISMISSED*.

2. in A.M. No. RTJ-07-2049, Judge Arcaya-Chua is found *GUILTY* of gross ignorance of the law and punished with *SUSPENSION* from office for six (6) months without salary and other benefits.

3. in A.M. No. RTJ-07-2093, the motion for reconsideration of Judge Arcaya-Chua is *DENIED* for lack of merit. The penalty of *SUSPENSION* from office for a period of six (6) months without salary and other benefits imposed upon her is *RETAINED*.

4. in A.M. No. RTJ-08-2141, Judge Arcaya-Chua is found *GUILTY* of gross misconduct and punished with *DISMISSAL* from the service, with forfeiture of all benefits, excluding accrued leave credits, with prejudice to re-employment in any government agency or instrumentality.

5. in A.M. No. RTJ-08-2141, Victoria C. Jamora, Court Stenographer of the Regional Trial Court of Makati City, Branch 144 is found *GUILTY* of grave misconduct and punished with *DISMISSAL* from the service, with forfeiture of retirement benefits, excluding accrued leave credits, with prejudice to re-employment in any government agency or instrumentality.

Immediately upon service on Judge Evelyn S. Arcaya-Chua and Victoria C. Jamora of this decision, they are deemed to have vacated their respective office, and their authority to act as Judge and Court Stenographer, respectively, are considered automatically terminated.

These consolidated administrative cases are referred to the Office of the Bar Confidant for investigation, report and recommendation regarding the possible disbarment of Judge Evelyn S. Arcaya-Chua from the practice of the legal profession.

SO ORDERED.

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

Velasco, Jr., J., no part due to relations to party.

SPECIAL THIRD DIVISION

[G.R. No. 133347. April 23, 2010]

ABS-CBN BROADCASTING CORPORATION, EUGENIO LOPEZ, JR., AUGUSTO ALMEDA-LOPEZ, and OSCAR M. LOPEZ, *petitioners, vs.* **OFFICE OF THE OMBUDSMAN, ROBERTO S. BENEDICTO, EXEQUIEL B. GARCIA, MIGUEL V. GONZALES, and SALVADOR (BUDDY) TAN,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION FOR RECONSIDERATION; DOES NOT CONTAIN A NOVEL QUESTION OF LAW AS WOULD MERIT THE ATTENTION OF THE SUPREME COURT SITTING *EN BANC*.—** Contrary to petitioners' assertion, their motion for reconsideration does not contain a novel question of law as would merit the attention of this Court sitting *en banc*. We also find no cogent reason to reconsider our Decision. First and foremost, there is, as yet, no criminal case against respondents, whether against those who are living or those otherwise dead. The question posed by petitioners on this long-settled procedural issue does not constitute a novel question of law. Nowhere in *People v. Bayotas* does it state that a criminal complaint may continue and be prosecuted as

an independent civil action. In fact, *Bayotas*, once and for all, harmonized the rules on the extinguished and on the subsisting liabilities of an accused who dies. xxx [I]t is quite apparent that Benedicto, Tan, and Gonzales, who all died during the pendency of this case, should be dropped as party respondents. If on this score alone, our ruling does not warrant reconsideration. We need not even delve into the explicit declaration in *Benedicto v. Court of Appeals*.

2. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; ABSENT IN CASE AT BAR; DETERMINATION THEREOF DOES NOT CONSTITUTE A NOVEL QUESTION OF LAW.—** xxx [W]e dismissed the petition for *certiorari* filed by petitioners because they failed to show grave abuse of discretion on the part of the Ombudsman when he dismissed petitioners' criminal complaint against respondents for lack of probable cause. We reiterate that our inquiry was limited to a determination of whether the Ombudsman committed grave abuse of discretion when he found no probable cause to indict respondents for various felonies under the RPC. The invocation of our *certiorari* jurisdiction over the act of a constitutional officer, such as the Ombudsman, must adhere to the strict requirements provided in the Rules of Court and in jurisprudence. The determination of whether there was grave abuse of discretion does not, in any way, constitute a novel question of law. We first pointed out in our Decision that the complaint-affidavits of petitioners, apart from a blanket charge that remaining respondents, Gonzales (who we thought was alive at that time) and Exequiel Garcia, are officers of KBS/RPN and/or alter egos of Benedicto, are bereft of sufficient ground to engender a well-founded belief that crimes have been committed and that respondents, namely, Gonzales and Garcia, are probably guilty thereof and should be held for trial. Certainly, no grave abuse of discretion can be imputed to the Ombudsman that would warrant a reversal of his Resolution. xxx [T]here is no reason for us to depart from our policy of non-interference with the Ombudsman's finding of probable cause or lack thereof. On the strength of these allegations, we simply could not find any rational basis to impute grave abuse of discretion to the Ombudsman's dismissal of the criminal complaints.

3. **CRIMINAL LAW; CRIMES AGAINST PROPERTY; EXECUTION OF DEEDS BY MEANS OF VIOLENCE OR INTIMIDATION; ELEMENTS; INTENT TO DEFRAUD, ABSENT IN CASE AT BAR; CIVIL LAW CONCEPT OF RATIFICATION, APPLICABLE.—** xxx [W]e did not state in the Decision that ratification extinguishes criminal liability. We simply applied ratification in determining the conflicting claims of petitioners regarding the execution of the letter-agreement. Petitioners, desperate to attach criminal liability to respondents' acts, specifically to respondent Benedicto, alleged in their complaint-affidavits that Benedicto forced, coerced and intimidated petitioners into signing the letter-agreement. In other words, petitioners disown this letter-agreement that they were supposedly forced into signing, such that this resulted in a violation of Article 298 of the RPC (Execution of Deeds by means of Violence or Intimidation). However, three elements must concur in order for an offender to be held liable under Article 298: (1) that the offender has *intent to defraud* another. (2) that the offender *compels* him to *sign*, *execute*, or *deliver* any *public* instrument or document. (3) that the compulsion is by means of violence or intimidation. The element of intent to defraud is not present because, even if, initially, as claimed by petitioners, they were forced to sign the letter-agreement, petitioners made claims based thereon and invoked the provisions thereof. In fact, petitioners wanted respondents to **honor the letter-agreement and to pay rentals for the use of the ABS-CBN facilities.** By doing so, petitioners effectively, although they were careful not to articulate this fact, affirmed their signatures in this letter-agreement. True, ratification is primarily a principle in our civil law on contracts. Yet, their subsequent acts in negotiating for the rentals of the facilities — which translate into ratification of the letter-agreement — cannot be disregarded simply because ratification is a civil law concept. The claims of petitioners must be consistent and must, singularly, demonstrate respondents' culpability for the crimes they are charged with. Sadly, petitioners failed in this regard because, to reiterate, they effectively ratified and advanced the validity of this letter-agreement in their claim against the estate of Benedicto.

4. **REMEDIAL LAW; SPECIAL PROCEEDINGS; CLAIMS AGAINST THE ESTATE OF A DECEDENT; ACTION**

AGAINST THE EXECUTOR OR ADMINISTRATOR BASED ON SECTION 1, RULE 87 OF THE RULES OF COURT IS THE PROPER REMEDY IN CASE AT BAR; EXPLAINED.— xxx **[W]e take note of the conflicting claim of petitioners by filing a separate civil action to enforce a claim against the estate of respondent Benedicto.** Petitioners do not even specifically deny this fact and simply sidestep this issue which was squarely raised in the Decision. The Rules of Court has separate provisions for different claims against the estate of a decedent under Section 5 of Rule 86 and Section 1 of Rule 87: RULE 86. **SECTION 5.** *Claims which must be filed under the notice. If not filed, barred; exceptions*. – All claims for money against the decedent, arising from contract, express or implied, whether the same be due, not due, **or contingent,** all claims for funeral expenses and expenses for the last sickness of the decedent, and judgment for money against the decedent, must be filed within the time limited in the notice; otherwise they are barred forever, except that they may be set forth as counter claims in any action that the executor or administrator may bring against the claimants. xxx Claims not yet due, or contingent, may be approved at their present value. RULE 87. **SECTION 1.** *Actions which may and which may not be brought against executor or administrator*. – No action upon a claim for the recovery of money or debt or interest thereon shall be commenced against the executor or administrator; but actions to recover real or personal property, or an interest therein, from the estate, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal, may be commenced against him. If, as insisted by petitioners, respondents committed felonies in forcing them to sign the letter-agreement, petitioners should have filed an action against the executor or administrator of Benedicto's estate based on Section 1, Rule 87 of the Rules of Court. But they did not. Instead they filed a claim against the estate based on contract, the unambiguous letter-agreement, under Section 5, Rule 86 of the Rules of Court. The existence of this claim against the estate of Benedicto as opposed to the filing of an action against the executor or administrator of Benedicto's estate forecloses all issues on the circumstances surrounding the execution of this letter-agreement.

APPEARANCES OF COUNSEL

Chavez Miranda Aseoche Law Office for petitioners.
Office of Legal Affairs (Ombudsman) for public respondent.
Escudero Marasigan Vallente & E. H. Villareal for Salvador Tan.
Gonzalez Sinense Jimenez & Associates Law Offices for Miguel V. Gonzales.
Dominador R. Santiago for the Administration of the Intestate Estate of Roberto S. Benedicto.
Napoleon Gamo for Exequiel Garcia.

R E S O L U T I O N

NACHURA, *J*.:

Before us is a Motion for Reconsideration filed by petitioners Eugenio, Jr., Oscar and Augusto Almeda, all surnamed Lopez, in their capacity as officers and on behalf of petitioner ABS-CBN Broadcasting Corporation (ABS-CBN), of our Decision in G.R. No. 133347, dismissing their petition for *certiorari* because of the absence of grave abuse of discretion in the Ombudsman Resolution which, in turn, found no probable cause to indict respondents for the following violations of the Revised Penal Code (RPC): (1) Article 298 – Execution of Deeds by Means of Violence or Intimidation; (2) Article 315, paragraphs 1[b], 2[a], and 3[a] – Estafa; (3) Article 308 – Theft; (4) Article 302 – Robbery; (5) Article 312 – Occupation of Real Property or Usurpation of Real Rights in Property; and (6) Article 318 – Other Deceits.

The assailed Decision disposed of the case on two (2) points: (1) the dropping of respondents Roberto S. Benedicto and Salvador (Buddy) Tan as respondents in this case due to their death, consistent with our rulings in *People v. Bayotas*[1] and *Benedicto v. Court of Appeals*;[2] and (2) our finding that the Ombudsman did not commit grave abuse of discretion in dismissing petitioners' criminal complaint against respondents.

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[1] G.R. No. 102007, September 2, 1994, 236 SCRA 239, 255-256.

[2] 416 Phil. 722 (2001).

Undaunted, petitioners ask for a reconsideration of our Decision on the following grounds:

I.

WITH DUE RESPECT, THE EXECUTION AND VALIDITY OF THE LETTER-AGREEMENT DATED 8 JUNE 1973 ARE PLAINLY IRRELEVANT TO ASCERTAINING THE CRIMINAL LIABILITY OF THE RESPONDENTS AND, THEREFORE, THE ISSUE AS TO WHETHER SAID AGREEMENT WAS RATIFIED OR NOT IS IMMATERIAL IN THE PRESENT CASE.

II.

WITH DUE RESPECT, RESPONDENTS BENEDICTO AND TAN SHOULD NOT BE DROPPED AS RESPONDENTS SIMPLY BECAUSE THEY MET THEIR UNTIMELY DEMISE DURING THE PENDENCY OF THE CASE.[3]

Before anything else, we note that petitioners filed a Motion to Refer the Case to the Court *en banc*.[4] Petitioners aver that the arguments contained in their Motion for Reconsideration, such as: (1) the irrelevance of the civil law concept of ratification in determining whether a crime was committed; and (2) the continuation of the criminal complaints against respondents Benedicto and Tan who have both died, to prosecute their possible civil liability therefor, present novel questions of law warranting resolution by the Court *en banc*.

In the main, petitioners argue that the Decision is contrary to law because: (1) the ratification of the June 8, 1973 letter-agreement is immaterial to the determination of respondents' criminal liability for the aforestated felonies in the RPC; and (2) the very case cited in our Decision, *i.e. People v. Bayotas*,[5] allows for the continuation of a criminal case to prosecute civil liability based on law and is independent of the civil liability arising from the crime.

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[3] *Rollo*, pp. 823-847.

[4] *Id.* at 852-857.

[5] *Supra* note 1.

We disagree with petitioners. The grounds relied upon by petitioners in both motions, being intertwined, shall be discussed jointly. Before we do so, parenthetically, the counsel for respondent Miguel V. Gonzales belatedly informed this Court of his client's demise on July 20, 2007.[6] Hence, as to Gonzales, the case must also be dismissed.

Contrary to petitioners' assertion, their motion for reconsideration does not contain a novel question of law as would merit the attention of this Court sitting *en banc*. We also find no cogent reason to reconsider our Decision.

First and foremost, there is, as yet, no criminal case against respondents, whether against those who are living or those otherwise dead.

The question posed by petitioners on this long-settled procedural issue does not constitute a novel question of law. Nowhere in *People v. Bayotas*[7] does it state that a criminal complaint may continue and be prosecuted as an independent civil action. In fact, *Bayotas*, once and for all, harmonized the rules on the extinguished and on the subsisting liabilities of an accused who dies. We definitively ruled:

From this lengthy disquisition, we summarize our ruling herein:

1. Death of an accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and *only* the civil liability *directly* arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto* in *senso strictiore*."

2. Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than delict. Article 1157 of the Civil Code enumerates these other sources of obligation from

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[6] *Rollo*, pp. 973-977.

[7] *Supra* note 1, at 255-256.

which the civil liability may arise as a result of the same act or omission:

a) Law
b) Contracts
c) Quasi-contracts
d) xxx xxx xxx
e) Quasi-delicts

3. Where the civil liability survives, as explained in Number 2 above, an action for recovery thereof may be pursued but only by filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible [de]privation of right by prescription.

From the foregoing, it is quite apparent that Benedicto, Tan, and Gonzales, who all died during the pendency of this case, should be dropped as party respondents. If on this score alone, our ruling does not warrant reconsideration. We need not even delve into the explicit declaration in *Benedicto v. Court of Appeals*.[8]

Second, and more importantly, we dismissed the petition for *certiorari* filed by petitioners because they failed to show grave

[8] *Supra* note 2. The Court, taking cognizance of respondent Benedicto's death on May 15, 2000, has ordered that the latter be dropped as a party, and has declared extinguished any criminal liability, as well as civil liability *ex delicto*, that might be attributable to him in Criminal Case Nos. 91-101879 to 91-101883, 91-101884 to 101892, and 92-101959 to 92-101969 pending before the Regional Trial Court of Manila.

abuse of discretion on the part of the Ombudsman when he dismissed petitioners' criminal complaint against respondents for lack of probable cause. We reiterate that our inquiry was limited to a determination of whether the Ombudsman committed grave abuse of discretion when he found no probable cause to indict respondents for various felonies under the RPC. The invocation of our *certiorari* jurisdiction over the act of a constitutional officer, such as the Ombudsman, must adhere to the strict requirements provided in the Rules of Court and in jurisprudence. The determination of whether there was grave abuse of discretion does not, in any way, constitute a novel question of law.

We first pointed out in our Decision that the complaint-affidavits of petitioners, apart from a blanket charge that remaining respondents, Gonzales (who we thought was alive at that time) and Exequiel Garcia, are officers of KBS/RPN and/or alter egos of Benedicto, are bereft of sufficient ground to engender a well-founded belief that crimes have been committed and that respondents, namely, Gonzales and Garcia, are probably guilty thereof and should be held for trial. Certainly, no grave abuse of discretion can be imputed to the Ombudsman that would warrant a reversal of his Resolution.

The charges of individual petitioners Eugenio, Jr., Oscar and Augusto Almeda against respondents, Gonzales and Garcia, contained in their respective complaint-affidavits simply consisted of the following:

1. Complaint-affidavit of Eugenio, Jr.

32.1. I was briefed that Senator Estanislao Fernandez in representation of Benedicto, met with Senator Tañada at the Club Filipino in June 1976. Discussions were had on how to arrive at the "reasonable rental" for the use of ABS-CBN stations and facilities. A second meeting at Club Filipino took place on July 7, 1976 between Senators Tañada and Fernandez, **who brought along Atty. Miguel Gonzales**, a close associate and lawyer of Benedicto and an officer of KBS.

x x x x x x x x x

38.2. The illegal takeover of ABS-CBN stations, studios and facilities, and the loss and/or damages caused to our assets occurred while Benedicto, Exequiel Garcia, Miguel Gonzales, and Salvador Tan were in possession, control and management of our network. Roberto S. Benedicto was the Chairman of the Board of KBS-RPN and its Chief Executive Officer (CEO), to whom most of the KBS-RPN officers reported while he was in Metro Manila. **Miguel Gonzales, the Vice-President of KBS, and Exequiel Garcia, the Treasurer, were the alter egos of Benedicto whenever the latter was out of the country**; x x x.[9]

2. Complaint-affidavit of Oscar

25. All the illegal activities as complained of above, were done upon the orders, instructions and directives of Roberto S. Benedicto, the Chairman of the Board and Chief Executive Officer of the KBS/RPN group; **Miguel Gonzales and Exequiel Garcia, close colleagues and business partners of Benedicto who were either directors/officers KBS/RPN and who acted as Benedicto's alter egos whenever the latter was out of the country**; x x x.

x x x x x x x x x

38. Senator Estanislao Fernandez, in representation of Benedicto, met with Senator Tañada at the Club Filipino on June 1976. Discussions were had on how to arrive at the "reasonable rental" for the use of ABS stations and facilities. A second meeting at Club Filipino took place on July 7, 1976 between Senators Tañada and Fernandez, who brought along **Atty. Mike Gonzales, a close associate and friend of Benedicto and an officer of KBS**.[10]

3. Complaint-affidavit of Augusto Almeda

21.1. Barely two weeks from their entry into the ABS Broadcast Center, KBS personnel started making unauthorized withdrawals from the ABS Stock Room. All these withdrawals of supplies and equipment were made under the orders of Benedicto, Miguel Gonzales, Exequiel Garcia, and Salvador Tan, the Chairman, the Vice-President, Treasurer, and the General Manager of KBS, respectively. No payment was ever made by either Benedicto or KBS

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[9] *Rollo*, pp. 69-70.

[10] *Id.* at 93, 95.

for all the supplies and equipment withdrawn from the ABS Broadcast Center.

x x x x x x x x x

31. Senator Estanislao Fernandez, in representation of Benedicto, met with Senator Tañada at the Club Filipino on June 1976. Discussions were had on how to arrive at the "reasonable rental" for the use of ABS stations and facilities. A second meeting at Club Filipino took place on July 7, 1976 between Senators Tañada and Fernandez, who brought along **Atty. Mike Gonzales, a close associate and friend of Benedicto and an officer of KBS**.[11]

From the foregoing, it is beyond cavil that there is no reason for us to depart from our policy of non-interference with the Ombudsman's finding of probable cause or lack thereof. On the strength of these allegations, we simply could not find any rational basis to impute grave abuse of discretion to the Ombudsman's dismissal of the criminal complaints.

Third, we did not state in the Decision that ratification extinguishes criminal liability. We simply applied ratification in determining the conflicting claims of petitioners regarding the execution of the letter-agreement. Petitioners, desperate to attach criminal liability to respondents' acts, specifically to respondent Benedicto, alleged in their complaint-affidavits that Benedicto forced, coerced and intimidated petitioners into signing the letter-agreement. In other words, petitioners disown this letter-agreement that they were supposedly forced into signing, such that this resulted in a violation of Article 298 of the RPC (Execution of Deeds by means of Violence or Intimidation).

However, three elements must concur in order for an offender to be held liable under Article 298:

(1) that the offender has *intent to defraud* another.

(2) that the offender *compels* him to *sign*, *execute*, or *deliver* any *public* instrument or document.

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[11] *Id.* at 80, 82.

(3) that the compulsion is by means of violence or intimidation.[12]

The element of intent to defraud is not present because, even if, initially, as claimed by petitioners, they were forced to sign the letter-agreement, petitioners made claims based thereon and invoked the provisions thereof. In fact, petitioners wanted respondents to **honor the letter-agreement and to pay rentals for the use of the ABS-CBN facilities.** By doing so, petitioners effectively, although they were careful not to articulate this fact, affirmed their signatures in this letter-agreement.

True, ratification is primarily a principle in our civil law on contracts. Yet, their subsequent acts in negotiating for the rentals of the facilities — which translate into ratification of the letter-agreement—cannot be disregarded simply because ratification is a civil law concept. The claims of petitioners must be consistent and must, singularly, demonstrate respondents' culpability for the crimes they are charged with. Sadly, petitioners failed in this regard because, to reiterate, they effectively ratified and advanced the validity of this letter-agreement in their claim against the estate of Benedicto.

Finally, **we take note of the conflicting claim of petitioners by filing a separate civil action to enforce a claim against the estate of respondent Benedicto.** Petitioners do not even specifically deny this fact and simply sidestep this issue which was squarely raised in the Decision. The Rules of Court has separate provisions for different claims against the estate of a decedent under Section 5 of Rule 86 and Section 1 of Rule 87:

RULE 86.

SECTION 5. *Claims which must be filed under the notice. If not filed, barred; exceptions.* – All claims for money against the decedent, arising from contract, express or implied, whether the same be due, not due, **or contingent**, all claims for funeral expenses and expenses for the last sickness of the decedent, and judgment for money against the decedent, must be filed within the time limited in the notice; otherwise they are barred forever, except that they

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[12] Reyes, *The Revised Penal Code,* Book Two, 14th Ed., p. 657.

may be set forth as counter claims in any action that the executor or administrator may bring against the claimants. xxx Claims not yet due, or contingent, may be approved at their present value.

RULE 87.

SECTION 1. *Actions which may and which may not be brought against executor or administrator*. – No action upon a claim for the recovery of money or debt or interest thereon shall be commenced against the executor or administrator; but actions to recover real or personal property, or an interest therein, from the estate, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal, may be commenced against him.

If, as insisted by petitioners, respondents committed felonies in forcing them to sign the letter-agreement, petitioners should have filed an action against the executor or administrator of Benedicto's estate based on Section 1, Rule 87 of the Rules of Court. But they did not. Instead they filed a claim against the estate based on contract, the unambiguous letter-agreement, under Section 5, Rule 86 of the Rules of Court. The existence of this claim against the estate of Benedicto as opposed to the filing of an action against the executor or administrator of Benedicto's estate forecloses all issues on the circumstances surrounding the execution of this letter- agreement.

We are not oblivious of the fact that, in the milieu prevailing during the Marcos years, incidences involving intimidation of businessmen were not uncommon. Neither are we totally unaware of the reputed closeness of Benedicto to President Marcos. However, given the foregoing options open to them under the Rules of Court, petitioners' choice of remedies by filing their claim under Section 5, Rule 86 — after Marcos had already been ousted and full democratic space restored — works against their contention, challenging the validity of the letter-agreement. Now, petitioners must live with the consequences of their choice.

WHEREFORE, in light of the foregoing, the Motion to Refer the Case to the Court *en banc* and the Motion for Reconsideration are *DENIED*.

SO ORDERED.

Carpio Morales,[*] *Velasco, Jr.,*[**] *Villarama, Jr.,*[***] and *Mendoza,*[****] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 158189. April 23, 2010]

ROBERTO B. KALALO, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN, ERNESTO M. DE CHAVEZ and MARCELO L. AGUSTIN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; EXPLAINED; ABSENT IN CASE AT BAR.— In alleging the existence of grave abuse of discretion, it is well to remember *Sarigumba v. Sandiganbayan*, where this Court ruled that: For grave abuse of discretion to prosper as a ground for *certiorari*, it must first be demonstrated that the lower court or tribunal has exercised its power in an arbitrary and despotic manner, by reason of passion or personal hostility, and it must be patent and gross as would amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law. Grave abuse of discretion is not enough. Excess of

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[*] Additional member per Raffle dated February 25, 2009.

[**] Additional member per Raffle dated May 18, 2009.

[***] Additional member in lieu of Associate Justice Consuelo Ynares-Santiago per Raffle dated November 20, 2009.

[****] Additional member in lieu of Associate Justice Minita V. Chico-Nazario per Memorandum dated January 5, 2010.

jurisdiction signifies that the court, board or office, has jurisdiction over the case but has transcended the same or acted without authority. After considering all the issues and arguments raised by the parties, this Court finds no clear showing of manifest error or grave abuse of discretion committed by the Office of the Ombudsman.

2. **ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; DETERMINATION OF PROBABLE CAUSE, WITHIN THE DISCRETION OF THE OMBUDSMAN; POLICY OF NON-INTERFERENCE.—** As a general rule, courts do not interfere with the discretion of the Ombudsman to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts. This Court has consistently held that the Ombudsman has discretion to determine whether a criminal case, given its facts and circumstances, should be filed or not. It is basically his call. He may dismiss the complaint forthwith should he find it to be insufficient in form and substance, or should he find it otherwise, to continue with the inquiry; or he may proceed with the investigation if, in his view, the complaint is in due and proper form and substance.

3. **ID.; ID.; ID.; ID.; PROBABLE CAUSE; DEFINED; ABSENT IN CASE AT BAR.—** In the present case, the Office of the Ombudsman did not find probable cause that would warrant the filing of Information against respondents. Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondents are probably guilty thereof. The determination of its existence lies within the discretion of the prosecuting officers after conducting a preliminary investigation upon complaint of an offended party. Probable cause is meant such set of facts and circumstances which would lead a reasonably discreet and prudent man to believe that the offense charged in the Information, or any offense included therein, has been committed by the person sought to be arrested. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense.

A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and that it was committed by the accused. Probable cause demands more than bare suspicion; it requires less than evidence which would justify conviction. Unless it is shown that the questioned acts were done in a capricious and whimsical exercise of judgment evidencing a clear case of grave abuse of discretion amounting to lack or excess of jurisdiction, this Court will not interfere in the findings of probable cause determined by the Ombudsman.

4. **ID.; ID.; ID.; ID.; POLICY OF NON-INTERFERENCE; BASIS.—** It is not sound practice to depart from the policy of non-interference in the Ombudsman's exercise of discretion to determine whether or not to file information against an accused. As cited in a long line of cases, this Court has pronounced that it cannot pass upon the sufficiency or insufficiency of evidence to determine the existence of probable cause. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman, but upon practicality as well. If it were otherwise, this Court will be clogged with an innumerable list of cases assailing investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, to determine if there is probable cause.

5. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; QUESTIONS OF FACT CANNOT BE RAISED THEREIN; CASE AT BAR.—** xxx [I]t is not amiss to state that the findings of the Ombudsman are essentially factual in nature. Therefore, when petitioner assailed the findings of the Ombudsman on the guise that the latter committed grave abuse of discretion, questions of fact are inevitably raised. Clearly, petitioner centered his arguments on the Ombudsman's appreciation of facts. It must always be remembered that a petition for *certiorari* admits only of questions of grave abuse of discretion amounting to lack or excess of jurisdiction and never on questions of fact.

6. **POLITICAL LAW; ADMINISTRATIVE LAW; OFFICE OF THE SOLICITOR GENERAL; MANDATED BY LAW TO REPRESENT THE OFFICE OF THE OMBUDSMAN; BASIS.—** Petitioner raises as an incidental issue in his

Memorandum that the Solicitor General cannot act as the counsel of private respondents in the instant criminal case, which is indisputable. However, petitioner failed to understand that the Office of the Solicitor General represents the public respondent — the Office of the Ombudsman — upon which his petition revolves. The Office of the Ombudsman is an instrumentality of the government and, as mandated by law, the Office of the Solicitor General has the authority to represent the said office. *Cooperative Development Authority v. DOLEFIL Agrarian Reform Beneficiaries Cooperative, Inc., et al.,* is instructive as to the jurisdiction of the Office of the Solicitor General, which reads: The authority of the Office of the Solicitor General to represent the Republic of the Philippines, its agencies and instrumentalities, is embodied under Section 35(1), Chapter 12, Title III, Book IV of the Administrative Code of 1987, which provides that: SEC. 35. *Powers and Functions*.—The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and intrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. When authorized by the President or head of the office concerned, it shall also represent government owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of lawyers. It shall have the following specific powers and functions: (1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. The import of the above-quoted provision of the Administrative Code of 1987 is to impose upon the Office of the Solicitor General the duty to appear as counsel for the Government, its agencies and instrumentalities and its officials and agents before the Supreme Court, the Court of Appeals, and all other courts and tribunals in any litigation, proceeding, investigation or matter requiring the services of a lawyer. Its mandatory character was emphasized by this Court in the case of *Gonzales v. Chavez*, thus: It is patent that the intent of the lawmaker was to give the designated official, the Solicitor General, in this case, the unequivocal

mandate to appear for the government in legal proceedings. Spread out in the laws creating the office is the discernible intent which may be gathered from the term "shall," which is invariably employed, from Act No. 136 (1901) to the more recent Executive Order No. 292 (1987). x x x

APPEARANCES OF COUNSEL

Percival M. De Mesa for petitioner.
The Solicitor General for public respondent.
Eduardo B. Padilla for private respondents.

D E C I S I O N

PERALTA, *J*.:

This is a petition for *certiorari* under Rule 65 of the Rules of Court seeking to nullify and/or set aside the Resolution dated May 14, 2002 and the Order dated October 8, 2002 of the Office of the Ombudsman.

The antecedent facts are as follows.

Petitioner Roberto Kalalo, an employee of Pablo Borbon Memorial Institute of Technology (PBMIT), now Batangas State University, filed a Complaint Affidavit[1] with the Office of the Ombudsman against the officials of the same school, namely: Dr. Ernesto M. De Chavez, President; Dr. Virginia M. Baes, Executive Vice-President; Dr. Rolando L. Lontok, Sr., Vice-President for Academic Affairs; Dr. Porfirio C. Ligaya, Vice-President for Extension Campus Operations; Professor Maximo C. Panganiban, Dean and Campus Administrator, Districts 1 and 2; Dr. Amador M. Lualhati, University Secretary; and Marcelo L. Agustin, Researcher, Office of the BSU President.

According to petitioner, the above-named officials committed falsification of public documents and violations of Sections 3 (a) and (e) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act, based on the following incidents:

[1] *Rollo*, pp. 40-61.

The 129th General Meeting of the Board of Trustees of the PBMIT/BSU transpired on January 21, 1997.

In March 2001, petitioner, who was then the Board Secretary, claimed that he found in his table, a final print of the Minutes[2] of the above-mentioned General Meeting which was forwarded by respondent Marcelo Agustin upon the order of respondent De Chavez, in order for the petitioner to certify as to its correctness. The fact that the said copy of the Minutes was given to him after a long period of time and other inconsistencies found in the same document, caused suspicion on the part of the petitioner. After conducting his own investigation, petitioner questioned the following three (3) resolutions, which, according to him, were inserted by De Chavez:

1) Resolution No. 6, s. 1997, which ratified the referendum dated August 4, 1996 approving the adjustment of charges or fees on the following documents issued by the college: 1) Admission and Testing Fee, 2) Transcript of Records, 3) Certification, 4) Honorable Dismissal, 5) Diploma, 6) Fine (late enrollees), 7) Library Card, and 8) second copy of Diploma;

2) Resolution No. 25, which relates to the authorizing of the President of PBMIT/BSU to deposit all the income of the college with government depositary banks in the form of savings, time, money placement and other deposit accounts, and to open a PBMIT testing, admission and placement office account;

3) Resolution No. 26, refers to the resolution approving the construction contracts entered into by PBMIT with C.S. Rayos Construction and General Services for the construction of the DOST/FNRI/PBMIT Regional Nutrition and Food Administration and Training Center and the Physical Education and Multi-Purpose Playground. The contract prices for the approved projects were ₱2,693,642.90 and ₱968,283.63, respectively.

As claimed by petitioner, the authentic minutes had eight (8) pages, while the falsified one had nine (9) pages. Thus, he concluded that Resolution Nos. 25 and 26 were mere intercalations on the minutes of the annual meeting.

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[2] *Id.* at 230-238.

Petitioner also claimed that respondent's deviation from the usual procedure in signing and approving the minutes was highly suspicious. According to petitioner, the usual procedure was for respondent De Chavez, in his capacity as Vice-Chairman, to sign the minutes only after the same has been attested by petitioner as the Board Secretary. However, De Chavez submitted a copy of the minutes to petitioner with his signature already affixed thereon. Thus, petitioner refused to sign the said minutes.

Despite the refusal of petitioner to sign the minutes, Resolution No. 25 was still implemented.

Respondents filed their Joint Counter-Affidavit[3] denying petitioner's allegations and stating that it was ministerial on the part of respondent De Chavez to sign the minutes prepared by petitioner himself in his capacity as Board Secretary. Petitioner, on the other hand, reiterated and stood by his allegations in his Complainant's Reply to Respondents' Joint Counter-Affidavit[4] dated April 1, 2002.

In its Resolution[5] dated May 14, 2002, the Office of the Deputy Ombudsman for Luzon dismissed the complaint of petitioner stating that:

> A careful evaluation of the case records and the evidence submitted reveals that the charge of falsification against respondents has no leg to stand on.
>
> What clearly appears on the records was that complainant had issued certifications as to the correctness of the resolutions in question, namely, Resolution Nos. 6, s. 1997; 25 and 26. Readily, it can be said that said certifications did not only dispute complainant's claim, but casts serious doubt as to the merit of the instant complaint as well.
>
> It must be pointed out that complainant assailed the authenticity of the minutes of the 129th General Assembly meeting of the Board

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[3] *Id.* at 100-118.

[4] *Id.* at 137-158.

[5] *Id.* at 31-34.

of Trustees of PBMIT and accused herein respondent for allegedly inserting/intercalating therein the aforesaid Resolution Nos. 6, 25 and 26.

With the foregoing certifications subscribed by complainant himself confirming the authenticity of the subject resolutions and the contents thereof, we fail to see any grounds for complainant to question the same.

IN THE LIGHT OF THE FOREGOING, it is respectfully recommended that the instant complaint be DISMISSED as it is hereby dismissed.

SO RESOLVED.[6]

Petitioner filed a Motion for Reconsideration[7] dated August 16, 2002, which was denied by the Ombudsman in an Order[8] dated October 8, 2002 for lack of merit.

Hence, the present petition.

Petitioner raises the following arguments:

I

PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN SERIOUSLY MISAPPRECIATING THE FACTS AND ISSUES OF THE INSTANT CASE.

II

PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN ISSUING THE ASSAILED RESOLUTION AND ORDER WITHOUT FACTUAL AND LEGAL BASES.

III

PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN

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[6] *Id.* at 34.

[7] *Id.* at 220-227.

[8] *Id.* at 36-39.

NOT FINDING "PROBABLE CAUSE" AGAINST BOTH PRIVATE RESPONDENTS.[9]

The petition is bereft of merit.

Petitioner extensively and exhaustively discusses in his petition, the differences between what he claimed to be the falsified Minutes and what he presented as the true and authentic Minutes of the general meeting, and by not subscribing to his own findings, he now comes to this Court alleging that the Office of the Ombudsman gravely abused its discretion which amounted to lack and/or excess of jurisdiction.

A careful reading of his arguments shows that the matters he raised were purely factual. He claims that the Office of the Ombudsman grievously erred in finding that petitioner had issued certifications as to the correctness of the resolutions in question, namely Resolution Nos. 6, s. 1997; 25 and 26, when, according to petitioner, he positively asserted that the same were signed by mistake or out of sheer inadvertence. He went on to state that the signature on the questioned Minutes was forged and that the one inadvertently signed was the excerpts, not the Minutes. This line of argument has been repeatedly emphasized along with his own findings of falsification.

In alleging the existence of grave abuse of discretion, it is well to remember *Sarigumba v. Sandiganbayan*,[10] where this Court ruled that:

> For grave abuse of discretion to prosper as a ground for *certiorari*, it must first be demonstrated that the lower court or tribunal has exercised its power in an arbitrary and despotic manner, by reason of passion or personal hostility, and it must be patent and gross as would amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law. Grave abuse of discretion is not enough. Excess of jurisdiction signifies that the court, board or office, has jurisdiction over the case but has transcended the same or acted without authority.

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[9] *Id.* at 7-8.

[10] G.R. Nos. 154239-41, February 16, 2005, 451 SCRA 533.

After considering all the issues and arguments raised by the parties, this Court finds no clear showing of manifest error or grave abuse of discretion committed by the Office of the Ombudsman.

As a general rule, courts do not interfere with the discretion of the Ombudsman to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts.[11]

This Court has consistently held that the Ombudsman has discretion to determine whether a criminal case, given its facts and circumstances, should be filed or not. It is basically his call. He may dismiss the complaint forthwith should he find it to be insufficient in form and substance, or should he find it otherwise, to continue with the inquiry; or he may proceed with the investigation if, in his view, the complaint is in due and proper form and substance.[12]

In the present case, the Office of the Ombudsman did not find probable cause that would warrant the filing of Information against respondents. Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondents are probably guilty thereof. The determination of its existence lies within the discretion of the prosecuting officers after conducting a preliminary investigation upon complaint of an offended party.[13] Probable cause is meant

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[11] *Principio v. Barrientos*, G.R. No. 167025, December 19, 2005, 478 SCRA 639, 650.

[12] *Presidential Ad-Hoc Fact Finding Committee on Behest Loans v. Desierto*, G.R. No. 137777, October 2, 2001, 366 SCRA 428, citing *Espinosa v. Office of the Ombudsman*, 343 SCRA 744 (2000) and *The Presidential Ad-Hoc Fact Finding Committee on Behest Loans v. Hon. Aniano Desierto*, 362 SCRA 730 (2001); see also *Blanco v. Sandiganbayan*, G.R. Nos. 136757-58, November 27, 2000, 346 SCRA 108 (2001).

[13] *Advincula v. Court of Appeals,* G.R. No. 131144, October 18, 2000, 343 SCRA 583, 589-590.

such set of facts and circumstances which would lead a reasonably discreet and prudent man to believe that the offense charged in the Information, or any offense included therein, has been committed by the person sought to be arrested. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and that it was committed by the accused. Probable cause demands more than bare suspicion; it requires less than evidence which would justify conviction.[14] Unless it is shown that the questioned acts were done in a capricious and whimsical exercise of judgment evidencing a clear case of grave abuse of discretion amounting to lack or excess of jurisdiction, this Court will not interfere in the findings of probable cause determined by the Ombudsman.[15]

The findings of the Office of the Ombudsman, as contained in its Order[16] dated October 8, 2002, does not, in any way, indicate the absence of any factual or legal bases, as shown in the following:

> While we do acknowledge that the purpose of a preliminary investigation is to determine the existence of probable cause that which engender a well-founded belief that an offense has been committed and that the accused is probably guilty thereof, we should not, however, lose sight of its other objective. In the case of *Duterte v. Sandiganbayan*, 289 SCRA 721, it is equally intoned that the rationale for conducting a preliminary investigation is "to secure the innocent against hasty, malicious, oppressive prosecution, and to protect him from an open and public accusation of a crime, from the trouble, expenses and anxiety of a public trial." With the questioned minutes bearing the signature of complainant-movant,

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[14] *Okabe v. Hon. Gutierrez, in his capacity as Presiding Judge of RTC, Pasay City, Branch 119, et al.,* 473 Phil. 758, 781 (2004).

[15] *Galario v. Ombudsman*, G.R. No. 166797, July 10, 2007, 527 SCRA 190, 206-207.

[16] *Rollo,* pp. 36-39.

the evidence at hand tends to tilt in favor of the dismissal of the case. This is rightfully so as complainant-movant's signature was never alleged to have been falsified, although he claims to have signed the minutes through inadvertence.

In relation thereto, complainant-movant's assertion that his signature in the disputed minutes was a case of oversight is hardly impressive. It should be noted that the minutes of the 129th Regular Meeting of the then PBMIT Board of Trustees was approved during its 130th Regular Meeting held on November 7, 1997. As the Board Secretary, complainant-movant could have easily detected the alleged insertions especially so when we consider that Board Resolution Nos. 25 and 26, s. of 1997, were those last mentioned as having been approved by the Board. It was quite, therefore, convenient for complainant-movant to blame respondent Marcelo L. Agustin for having signed the questioned minutes when it was his duty as Board Secretary to certify as to the correctness of the minutes.

More telling is the fact that complainant-movant again certified correct the excerpts of the minutes of the 129th Regular Meeting of then PBMIT Board of Trustees pertaining to Resolution No. 6, s. of 1997, approving the adjustment of charges or fees not only to the admission/testing fees but including transcript of records, certification, honorable dismissal, diploma, library card, fine (late enrollees) and second copy of diploma. Given such situation, we could not believe that complainant-movant signed such excerpts of the minutes through the same inadvertence or oversight. A single mistake may be acceptable but to commit the same twice is no longer a case of honest mistake. Corollary thereto, this finding precludes any further discussion that the letter dated August 14, 1996 of respondent Ernesto M. de Chavez to then PBMIT Board of Trustees is conclusive proof that the increase in fees was limited only to the admission/testing fees.[17]

It is not sound practice to depart from the policy of non-interference in the Ombudsman's exercise of discretion to determine whether or not to file information against an accused. As cited in a long line of cases, this Court has pronounced that it cannot pass upon the sufficiency or insufficiency of evidence to determine the existence of probable cause. The rule is based not only upon respect for the investigatory and prosecutory

[17] *Id.* at 37-38.

powers granted by the Constitution to the Office of the Ombudsman, but upon practicality as well. If it were otherwise, this Court will be clogged with an innumerable list of cases assailing investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, to determine if there is probable cause.[18]

Furthermore, it is not amiss to state that the findings of the Ombudsman are essentially factual in nature. Therefore, when petitioner assailed the findings of the Ombudsman on the guise that the latter committed grave abuse of discretion, questions of fact are inevitably raised. Clearly, petitioner centered his arguments on the Ombudsman's appreciation of facts. It must always be remembered that a petition for *certiorari* admits only of questions of grave abuse of discretion amounting to lack or excess of jurisdiction and never on questions of fact.

Petitioner raises as an incidental issue in his Memorandum[19] that the Solicitor General cannot act as the counsel of private respondents in the instant criminal case, which is indisputable. However, petitioner failed to understand that the Office of the Solicitor General represents the public respondent — the Office of the Ombudsman — upon which his petition revolves. The Office of the Ombudsman is an instrumentality of the government and, as mandated by law, the Office of the Solicitor General has the authority to represent the said office. *Cooperative Development Authority v. DOLEFIL Agrarian Reform Beneficiaries Cooperative, Inc., et al.*,[20] is instructive as to the jurisdiction of the Office of the Solicitor General, which reads:

> The authority of the Office of the Solicitor General to represent the Republic of the Philippines, its agencies and instrumentalities, is embodied under Section 35(1), Chapter 12, Title III, Book IV of the Administrative Code of 1987, which provides that:

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[18] *Galario v. Ombudsman*, *supra* note 15, at 206.

[19] *Rollo*, pp. 525-532.

[20] 432 Phil. 290 (2002).

> SEC. 35. *Powers and Functions*.—The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and intrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. When authorized by the President or head of the office concerned, it shall also represent government owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of lawyers. It shall have the following specific powers and functions:
>
> (1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

The import of the above-quoted provision of the Administrative Code of 1987 is to impose upon the Office of the Solicitor General the duty to appear as counsel for the Government, its agencies and instrumentalities and its officials and agents before the Supreme Court, the Court of Appeals, and all other courts and tribunals in any litigation, proceeding, investigation or matter requiring the services of a lawyer. Its mandatory character was emphasized by this Court in the case of *Gonzales v. Chavez*,[21] thus:

> It is patent that the intent of the lawmaker was to give the designated official, the Solicitor General, in this case, the unequivocal mandate to appear for the government in legal proceedings. Spread out in the laws creating the office is the discernible intent which may be gathered from the term "shall," which is invariably employed, from Act No. 136 (1901) to the more recent Executive Order No. 292 (1987).
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> x x x x x x x x x

The decision of this Court as early as 1910 with respect to the duties of the Attorney-General well applies to the Solicitor General under the facts of the present case. The Court then declared:

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[21] G.R. No. 97351, February 4, 1992, 205 SCRA 816, 836-846.

> In this jurisdiction, it is the duty of the Attorney General "to perform the duties imposed upon him by law" and "he shall prosecute all causes, civil and criminal, to which the Government of the Philippine Islands, or any officer thereof, in his official capacity, is a party" xxx.
>
> x x x x x x x x x
>
> The Court is firmly convinced that considering the spirit and the letter of the law, there can be no other logical interpretation of Sec. 35 of the Administrative Code than that it is, indeed, mandatory upon the OSG to "represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer."

WHEREFORE, the petition is *DISMISSED* for lack of merit. The Resolution dated May 14, 2002 and the Order dated October 8, 2002 of the Office of the Ombudsman are hereby *AFFIRMED*.

SO ORDERED.

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

EN BANC

[G.R. No. 158562. April 23, 2010]

RAMON R. YAP, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

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[*] Designated as additional member per Raffle dated August 5, 2009 in lieu of Justice Antonio Eduardo B. Nachura.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PRESIDENTIAL DECREE NO. 1445; BASIC GUIDELINES IN DISBURSEMENT OF PUBLIC FUNDS BY GOVERNMENT AGENCIES.—** xxx The mere act of disbursing public funds to pay the allowances and salaries of government employees does not by itself constitute release of government funds for public purpose as petitioner would want us to believe; otherwise, as petitioner dares to conclude, no salary, benefit or allowance would ever pass the requisite government audit. This is a rather simplistic and narrow view of the nature of government employee compensation. Not unlike other government expenditures, it is necessary that the release of public funds to pay the salaries and allowances of government employees must not contravene the law on disbursement of public funds. Section 4 of Presidential Decree No. 1445 lays out the basic guidelines that government entities must follow in disbursing public funds, to wit: Section 4. *Fundamental principles.* – Financial transactions and operations of any government agency shall be governed by the fundamental principles set forth hereunder, to wit: **(1) No money shall be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific statutory authority. (2) Government funds or property shall be spent or used solely for public purposes.** xxx To summarize, any disbursement of public funds, which includes payment of salaries and benefits to government employees and officials, must (a) be authorized by law, and (b) serve a public purpose.

2. **ID.; ID.; ID.; ID.; PUBLIC PURPOSE IN RELATION TO DISBURSEMENT OF PUBLIC FUNDS, ELUCIDATED.—** xxx [I]t is necessary for this Court to elaborate on the nature and meaning of the term "public purpose," in relation to disbursement of public funds. As understood in the traditional sense, public purpose or public use means any purpose or use directly available to the general public as a matter of right. Thus, it has also been defined as "an activity as will serve as benefit to [the] community as a body and which at the same time is directly related function of government." However, the concept of public use is not limited to traditional purposes. Here as elsewhere, the idea that "public use" is strictly limited

to clear cases of "use by the public" has been discarded. In fact, this Court has already categorically stated that the term "public purpose" is not defined, since it is an elastic concept that can be hammered to fit modern standards. It should be given a broad interpretation; therefore, it does not only pertain to those purposes that which are traditionally viewed as essentially government functions, such as building roads and delivery of basic services, but also includes those purposes designed to promote social justice. Thus, public money may now be used for the relocation of illegal settlers, low-cost housing and urban or agrarian reform. In short, public use is now equated with public interest, and that it is not unconstitutional merely because it incidentally benefits a limited number of persons. To our mind, in view of the public purpose requirement, the disbursement of public funds, salaries and benefits of government officers and employees should be granted to compensate them for valuable public services rendered, and the salaries or benefits paid to such officers or employees must be commensurate with services rendered. In the same vein, additional allowances and benefits must be shown to be necessary or relevant to the fulfillment of the official duties and functions of the government officers and employees. We cannot accept petitioner's theory that the compensation and benefits of public officers are intended purely for the personal benefit of such officers, or that the mere payment of salaries and benefits to a public officer satisfies the public purpose requirement. That theory would lead to the anomalous conclusion that government officers and employees may be paid enormous sums without limit or without any justification necessary other than that such sums are being paid to someone employed by the government. Public funds are the property of the people and must be used prudently at all times with a view to prevent dissipation and waste.

3. ID.; CONSTITUTIONAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); IN RESOLUTION OF CASES ON APPEAL, COA CAN MAKE ITS OWN ASSESSMENT OF THE MERITS OF THE DISALLOWED DISBURSEMENT AND NOT SIMPLY RESTRICT ITSELF TO REVIEWING THE VALIDITY OF THE GROUND RELIED UPON BY THE AUDITOR OF THE GOVERNMENT AGENCY CONCERNED.— xxx The 1987

Constitution has made the COA the guardian of public funds, vesting it with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property including the exclusive authority to define the scope of its audit and examination, establish the techniques and methods for such review, and promulgate accounting and auditing rules and regulations. Section 11, Chapter 4, Subtitle B, Title I, Book V of the Administrative Code of 1987 echoes this constitutional mandate given to COA xxx. In light of these express provisions of law granting respondent COA its power and authority, we have previously ruled that its exercise of its general audit power is among the constitutional mechanisms that give life to the check and balance system inherent in our form of government. Furthermore, we have also declared that COA is endowed with enough latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds. Based on the foregoing discussion and due to the lack or absence of any law or jurisprudence saying otherwise, we rule that, in resolving cases brought before it on appeal, respondent COA is not required to limit its review only to the grounds relied upon by a government agency's auditor with respect to disallowing certain disbursements of public funds. In consonance with its general audit power, respondent COA is not merely legally permitted, but is also duty-bound to make its own assessment of the merits of the disallowed disbursement and not simply restrict itself to reviewing the validity of the ground relied upon by the auditor of the government agency concerned. To hold otherwise would render COA's vital constitutional power unduly limited and thereby useless and ineffective.

4. ID.; ADMINISTRATIVE LAW; PRESIDENTIAL DECREE NO. 1445; DISBURSEMENT OF PUBLIC FUNDS; PUBLIC PURPOSE REQUIREMENT; ALLOWANCES AND BENEFITS GRANTED TO PUBLIC OFFICERS MUST BE SHOWN TO BE AUTHORIZED BY LAW AND THAT THERE IS A DIRECT AND SUBSTANTIAL RELATIONSHIP BETWEEN THE PERFORMANCE OF PUBLIC FUNCTIONS AND THE GRANT OF THE ALLOWANCE; CASE AT BAR.— As a third ground for the petition, petitioner also contends that assuming, without conceding, that the other allowances and benefits do not pass

the “public purpose” test, the rest of the allowances, such as the basic monthly allowances, executive check-up and the gasoline allowances should not be disallowed, as they are normally given to officers of corporations, whether private or government-owned and controlled. We cannot uphold petitioner’s plausible but unsubstantiated argument on this point since, as previously discussed, respondent COA is in the best position to determine which allowances and benefits may be properly allowed under the circumstances, as it is the sole constitutional body mandated to examine, audit and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property owned or held in trust by, or pertaining to, the government, including government-owned or controlled corporations such as the MGC and the NDC in the case at bar. Even if we assume the truth of petitioner’s assertion that the said allowances are “normally given,” this fact alone does not operate to preclude respondent COA from performing its constitutional mandate. That certain allowances are enjoyed by corporate officers in the private sector does not justify the grant of the same benefits to similarly designated public officers, even if they are officers of government-owned and controlled corporations (GOCCs), which perform purely proprietary functions. As aptly observed by the Solicitor General, the funds of GOCCs are still public funds and that is precisely the reason such funds are subject to audit by the COA. Thus, there is a valid distinction between the officers of public corporations and those of private corporations. To reiterate, the public purpose requirement for the disbursement of public funds is a valid limitation on the types of allowances and benefits that may be granted to public officers. It was incumbent upon petitioner to show that his allowances and benefits were authorized by law and that there was a direct and substantial relationship between the performance of his public functions and the grant of the disputed allowances to him. While subscriptions to newspapers and magazines by government offices may be justified, petitioner’s *personal* subscriptions to magazines and the annual fee of his credit card cannot *ipso facto* be considered as part of his remunerations or benefits as a public official. There is likewise no evidence that the purported representation and “fellowship” expenses on weekends are necessary and related to petitioner’s work as Vice-President of Finance and Treasurer of the MGC.

We find no reason to believe that as an MGC officer, his duties include business relations or clientele-building functions, since a finance officer and treasurer, even in the private sector, is ordinarily tasked with accounting, disbursement and custody of corporate funds. Medical expenses, such as those for an executive check-up, may be justified if specifically authorized by the appropriate laws, rules or circulars. However, petitioner failed to point to the existence of such law or regulation applicable to his case. It also appears from the records that petitioner already receives medical benefits from the NDC, and that the ground cited by the MGC Corporate Auditor for the disallowance of his expense for executive check-up was his own failure to submit appropriate supporting documents to claim such benefit. The COA's disallowance of the car maintenance, gasoline allowance and driver's subsidy was likewise in order since petitioner neither alleged nor proved that these benefits were also authorized by law or regulation.

5. CIVIL LAW; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-CONTRACTS; UNJUST ENRICHMENT; DEFINED; ABSENT IN CASE AT BAR.— xxx [P]etitioner claims that respondent COA acted with grave abuse of discretion since, as a result of the disallowances, petitioner in effect rendered his services to MGC for free. This, petitioner points out, would constitute unjust enrichment on the part of MGC. We have ruled before that there is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains the money or property of another against the fundamental principles of justice, equity and good conscience. In the case at bar, the assailed COA Decision No. 2002-213 dated September 24, 2002 and the CAO II's 1st Indorsement dated December 12, 2000 recognized that petitioner's appointment to the Board of Directors of MGC "entitled him to honoraria equivalent to fifty percent (50%) of his basic salary at NDC and various allowances attached to the office." Furthermore, petitioner's own assertion in his Motion for Reconsideration of COA Decision No. 2002-213 belies his claim of being totally uncompensated, since petitioner stated therein that "[a]s the NDC representative in MGC, he was not getting the entire compensation package for such position." Thus, petitioner did not render his services to MGC for free,

because it did not appear that his honoraria were among the expenditures that were disallowed by respondent COA.

6. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; EXPLAINED; ABSENT IN CASE AT BAR.—** We have previously declared that it is the general policy of the Court to sustain the decisions of administrative authorities, especially one that was constitutionally created like herein respondent COA, not only on the basis of the doctrine of separation of powers, but also of their presumed expertise in the laws they are entrusted to enforce. It is, in fact, an oft-repeated rule that findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. Thus, only when the COA acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may this Court entertain a petition for *certiorari* under Rule 65 of the Rules of Court. There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism. In the case at bar, we find no grave abuse of discretion on the part of respondent COA in issuing the assailed Decisions. On the contrary, we hold that respondent COA's pronouncements in both assailed rulings were made in faithful compliance with its mandate and in judicious exercise of its general audit power as conferred on it by the Constitution and the pertinent laws.

APPEARANCES OF COUNSEL

Rhoel Z. Mabazza for petitioner.
The Solicitor General for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a Petition for *Certiorari* and Prohibition, in accordance with Rule 65 of the Rules of Court, with application for temporary restraining order (TRO) and/or preliminary injunction. The said

Petition seeks to annul and set aside the following decisions of respondent Commission on Audit (COA): (1) COA Decision No. 2002-213[1] dated September 24, 2002 on the "Request of Mr. RAMON YAP for reconsideration of the decision of the Director, Corporate Audit Office II (CAO II), affirming the disallowance of various allowances and reimbursements paid to him in his capacity as Vice-President for Finance and Treasurer of the Manila Gas Corporation (MGC)"; and (2) COA Decision No. 2003-087[2] dated June 17, 2003, denying petitioner's motion for reconsideration.

The undisputed facts of this case as gathered from the assailed COA Decision No. 2002-213[3] are as follows:

x x x Ramon R. Yap is holder of a regular position of Department Manager of the National Development Company (NDC), a government-owned and controlled corporation with original charter. He was appointed by the Board of Directors, Manila Gas Corporation (MGC), a subsidiary of NDC as Vice-President for Finance effective June 14, 1991 while remaining as a regular employee of NDC. The additional employment entitled him to honoraria equivalent to fifty percent (50%) of his basic salary at NDC and various allowances attached to the office.

In the course of the regular audit, the Corporate Auditor, MGC issued the following notices of disallowances against Mr. Ramon R. Yap:

Notice of Disallowance	*Date*	*Amount*	*Nature*
ND 99- 03(98)MGC	03/26/99	₱3,330.00	Subscription to National Geographic and Reader's Digest
ND 99-10(98)MGC	04/12/99	2,848.00	Car maintenance allowance
		1,500.00	Annual fee of VISA card
ND 99-12(98)MGC	04/12/99	789.00	Representation expense on a Sunday

[1] Penned by Commission on Audit (COA) Chairman Guillermo N. Carague with Commissioners Raul C. Flores and Emmanuel M. Dalman concurring. *Rollo*, pp. 18-21.

[2] *Id.* at 14-17.

[3] *Supra* note 1.

ND 99-16(98)MGC	09/09/99	4,180.56	Fellowship with other PCA club Members on Sunday
ND 99-07(98)IIGSI	08/28/99	11,500.00	Car maintenance allowance
ND 99-14(98)IIGSI	08/31/99	7,000.00	Executive check-up
ND 99-09(99)MGC	05/26/00	119,508.90	Monthly allowance
ND 2000-01(99)MGC	03/31/00	2,304.32	Car maintenance allowance
ND 2000-08(99)MGC	03/31/00	21,523.00	Monthly allowance
ND 2000-07(99)MGC	03/31/00	445.00	Car maintenance allowance
		1,862.00	Car maintenance allowance
ND 2000-01(99)MGC	5/11/00	35,433.70	Gasoline allowance and driver's subsidy

which were predicated on the ground that appellant's appointment to MGC in addition to his regular position as Department Manager III of NDC and the subsequent receipt of the questioned allowances and reimbursements from the former directly contravened the proscription contained in Section 7 (2) and Section 8, Article IX-b of the Constitution to wit:

"Section 7. x x x

Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries."

"Section 8. x x x

No elective or appointive public officer or employee shall receive additional, double or indirect compensation, unless specifically authorized by law, x x x"

Mr. Yap appealed the Auditor's disallowances primarily contending that the questioned benefits were all approved by the MGC Board of Directors. x x x.

Petitioner's appeal was denied by the CAO II,[4] which affirmed the MGC Corporate Auditor's findings that the allowances and reimbursements at issue were given in violation of Sections 7(2) and 8, Article IX-b of the 1987 Constitution.

Unperturbed, petitioner sought a reconsideration of the CAO II ruling from respondent COA via a Letter[5] addressed to the COA Chairman wherein he argued that his assignment to MGC was required by the primary functions of his office and was also authorized by law, namely Executive Order No. 284 issued on July 25, 1987, the pertinent provision of which provides:

> SECTION 1. Even if allowed by law or by the primary functions of his position, a member of the Cabinet, undersecretary, assistant secretary or **other appointive official** of the Executive Department may, in addition to his primary position, hold not more than two positions in the government and government corporations and receive the corresponding compensation therefore: *Provided*, That this limitation shall not apply to *ad hoc* bodies or committees, or to boards, councils or bodies of which the President is the Chairman. (Emphasis supplied.)

In turn, respondent COA denied petitioner's appeal in herein assailed COA Decision No. 2002-213.[6] It upheld the CAO II's ruling that characterized the disallowed allowances and reimbursements as prohibited by the Constitution. Furthermore, it also ruled that the said allowances and reimbursements claimed by petitioner "failed to pass the test of 'public purpose requirement' of the law" and further emphasized that "it is not enough that payments made to [petitioner] be authorized by the Board of Directors of the MGC but it is likewise necessary that said payments do not contravene the principles provided for under Section 4 of [Presidential Decree No.] 1445 on the use of government funds," more specifically on the public purpose requirement that is provided in Section 4(2) of Presidential Decree

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[4] *Rollo*, pp. 19, 22-23.

[5] *Id.* at 24-27.

[6] *Supra* note 1.

No. 1445, otherwise known as the Government Auditing Code of the Philippines, to wit:

Section 4. *Fundamental Principles*. – Financial transactions and operations of any government agency shall be governed by the fundamental principles set forth hereunder, to wit:

x x x x x x x x x

(2) Government funds or property shall be spent or used solely for public purposes.

In elaborating this point, respondent COA stated that:

x x x [T]his Commission sees no connection to link payments for subscription to the National Geographic and Reader's Digest, car maintenance allowance, annual fee of VISA card, representation on a Sunday, a non-working day, fellowship with PCA club members to social services, promotion of the general welfare, social justice as well as human dignity and respect for human rights, slum clearance, low-cost housing, squatter resettlement, urban and agrarian reform and the like. For it is not enough that payments made to him be authorized by the Board of Directors of the MGC but it is likewise necessary that said payments do not contravene the principles provided for under Section 4 of P.D. 1445 on the use of government funds.

Viewed from all the foregoing premises, it is regretted that the herein request for reconsideration of Mr. Yap is DENIED. Accordingly, the audit disallowances as heretofore mentioned are affirmed *in toto*.[7]

A Motion for Reconsideration[8] was subsequently filed by petitioner, but this was likewise denied by respondent COA in COA Decision No. 2003-087,[9] wherein it ruled that although petitioner was correct in arguing that there was no legal impediment to the validity of petitioner's appointment as Vice-President and Treasurer of MGC and to his entitlement to compensation for the second office, "[s]ince the constitutionality of Executive

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[7] *Rollo*, p. 21.

[8] *Id.* at 28-35.

[9] *Supra* note 2.

Order No. 284 has been upheld by the Court insofar as other appointive officials are concerned x x x[,]" however, "of more important consideration is the condition *sine qua non*, that '*government funds or property shall be spent or used solely for public purpose*' (Section 4(2), PD 1445)." Therefore, respondent COA affirmed its original finding that the disallowed allowances and reimbursements did not satisfy the public purpose requirement. The dispositive portion of the said Decision reads:

WHEREFORE, premises considered, the instant motion for reconsideration is hereby DENIED and the assailed COA Decision No. 2002-213 dated September 24, 2002 is hereby AFFIRMED *in toto*.

Hence, this Petition wherein petitioner puts forth the following grounds in support:

I

RESPONDENT COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT USED AS A BASIS THE "PUBLIC PURPOSE" REQUIREMENT IN AFFIRMING THE QUESTIONED DISALLOWANCES

II

RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT AFFIRMED THE DISALLOWANCES ON A GROUND [different from the ground] RELIED UPON BY THE RESIDENT AUDITOR

III

ASSUMING, WITHOUT CONCEDING, THAT THE PUBLIC PURPOSE REQUIREMENT IS RELEVANT TO THE PRESENT CASE, RESPONDENT COMMISSION ON AUDIT STILL COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT DISALLOWED ALL THE ALLOWANCES RECEIVED BY HEREIN PETITIONER[10]

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

We rule to deny the instant Petition.

As regards the first ground, petitioner puts forward the argument that although it cannot be denied that the MGC, being a government-owned and controlled corporation, is under the jurisdiction of respondent COA, the respondent's act of subjecting the salaries, allowances and benefits of MGC employees to the "public purpose test" is not only wrong, but also an act of grave abuse of discretion since the said salaries, allowances and benefits are intended to compensate MGC employees for services performed on behalf of the corporation. According to petitioner, if the "public purpose requirement" will be applied in auditing these salaries, allowances and benefits being given to government employees, no such compensation could ever pass audit, as, by their very nature, they are solely intended to benefit their recipients, who are the employees of the government department, office, agency or corporation concerned.[11]

We cannot countenance petitioner's misleading assertion on this point. The mere act of disbursing public funds to pay the allowances and salaries of government employees does not by itself constitute release of government funds for public purpose as petitioner would want us to believe; otherwise, as petitioner dares to conclude, no salary, benefit or allowance would ever pass the requisite government audit. This is a rather simplistic and narrow view of the nature of government employee compensation. Not unlike other government expenditures, it is necessary that the release of public funds to pay the salaries and allowances of government employees must not contravene the law on disbursement of public funds. Section 4 of Presidential Decree No. 1445 lays out the basic guidelines that government entities must follow in disbursing public funds, to wit:

Section 4. *Fundamental principles.* – Financial transactions and operations of any government agency shall be governed by the fundamental principles set forth hereunder, to wit:

(1) No money shall be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific statutory authority.

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

(2) Government funds or property shall be spent or used solely for public purposes.

(3) Trust funds shall be available and may be spent only for the specific purpose for which the trust was created or the funds received.

(4) Fiscal responsibility shall, to the greatest extent, be shared by all those exercising authority over the financial affairs, transactions, and operations of the government agency.

(5) Disbursements or disposition of government funds or property shall invariably bear the approval of the proper officials.

(6) Claims against government funds shall be supported with complete documentation.

(7) All laws and regulations applicable to financial transactions shall be faithfully adhered to.

(8) Generally accepted principles and practices of accounting as well as of sound management and fiscal administration shall be observed, provided that they do not contravene existing laws and regulations. (Emphases supplied.)

To summarize, any disbursement of public funds, which includes payment of salaries and benefits to government employees and officials, must (a) be authorized by law, and (b) serve a public purpose.

In this regard, it is necessary for this Court to elaborate on the nature and meaning of the term "public purpose," in relation to disbursement of public funds. As understood in the traditional sense, public purpose or public use means any purpose or use directly available to the general public as a matter of right. Thus, it has also been defined as "an activity as will serve as benefit to [the] community as a body and which at the same time is directly related function of government."[12] However, the concept of public use is not limited to traditional purposes. Here as elsewhere, the idea that "public use" is strictly limited to clear cases of "use by the public" has been discarded.[13] In fact, this Court has already categorically stated that the term

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[12] *Black's Law Dictionary*, p. 1231, (6th ed., 1990), citing *Pack v. Southern Bell Tel. & Tel. Co.*, 215 Tenn. 503, 387 S.W. 2d 789, 794.

[13] *Heirs of Juancho Ardona v. Reyes*, Nos. 60549, 60553-60555, October 26, 1983, 125 SCRA 220, 223.

"public purpose" is not defined, since it is an elastic concept that can be hammered to fit modern standards. It should be given a broad interpretation; therefore, it does not only pertain to those purposes that which are traditionally viewed as essentially government functions, such as building roads and delivery of basic services, but also includes those purposes designed to promote social justice. Thus, public money may now be used for the relocation of illegal settlers, low-cost housing and urban or agrarian reform.[14] In short, public use is now equated with public interest,[15] and that it is not unconstitutional merely because it incidentally benefits a limited number of persons.[16]

To our mind, in view of the public purpose requirement, the disbursement of public funds, salaries and benefits of government officers and employees should be granted to compensate them for valuable public services rendered, and the salaries or benefits paid to such officers or employees must be commensurate with services rendered. In the same vein, additional allowances and benefits must be shown to be necessary or relevant to the fulfillment of the official duties and functions of the government officers and employees. We cannot accept petitioner's theory that the compensation and benefits of public officers are intended purely for the personal benefit of such officers, or that the mere payment of salaries and benefits to a public officer satisfies the public purpose requirement. That theory would lead to the anomalous conclusion that government officers and employees may be paid enormous sums without limit or without any justification necessary other than that such sums are being paid to someone employed by the government. Public funds are the property of the people and must be used prudently at all times with a view to prevent dissipation and waste.

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[14] *Planters Products, Inc. v. Fertiphil Corporation*, G.R. No. 166006, March 14, 2008, 548 SCRA 485, 510-511.

[15] *Bengzon v. Drilon*, G.R. No. 103524, April 15, 1992, 208 SCRA 133, 155.

[16] *Binay v. Domingo*, G.R. No. 92389, September 11, 1991, 201 SCRA 508, 516.

With regard to the second ground, petitioner underscores the fact that respondent COA abandoned the ground of double compensation as a basis for the questioned disallowances and affirmed the same on the new ground that the allowances did not meet the test of "public purpose requirement." Petitioner argues that this was an arbitrary and whimsical action on the part of respondent COA, since petitioner had already legally justified his opposition to the ground originally cited by the MGC Corporate Auditor in support of the questioned disallowances, and yet respondent COA affirmed said disallowances on a new ground – failure to pass the "public purpose requirement" — that was never mentioned in the findings made by the MGC Corporate Auditor and the CAO II ruling that was appealed to respondent COA by the petitioner.[17] In response, respondent COA maintains that there is no provision in the Constitution, the Government Auditing Code or the Administrative Code that restricts its power and authority to examine and audit government expenditures to merely reviewing and deciding on the validity of the findings and conclusions of its auditors.[18]

In resolving this issue, it is imperative that we examine the powers vested in respondent COA by the pertinent laws of the land. The 1987 Constitution has made the COA the guardian of public funds, vesting it with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property including the exclusive authority to define the scope of its audit and examination, establish the techniques and methods for such review, and promulgate accounting and auditing rules and regulations.[19] Section 11, Chapter 4, Subtitle B, Title I, Book V of the Administrative Code of 1987 echoes this constitutional mandate given to COA, to wit:

Section 11. *General Jurisdiction*. – (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle

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[17] *Rollo*, p. 99.

[18] *Id.* at 22.

[19] Sec. 2(1) and (2), Art. IX, 1987 Constitution.

all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.
(2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.

In light of these express provisions of law granting respondent COA its power and authority, we have previously ruled that its exercise of its general audit power is among the constitutional mechanisms that give life to the check and balance system inherent in our form of government.[20] Furthermore, we have also declared that COA is endowed with enough latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds.[21]

Based on the foregoing discussion and due to the lack or absence of any law or jurisprudence saying otherwise, we rule

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[20] *Olaguer v. Domingo*, G.R. No. 109666, June 20, 2001, 359 SCRA 78, 90.

[21] *Sanchez v. Commission on Audit*, G.R. No. 127545, April 23, 2008, 552 SCRA 471, 487.

that, in resolving cases brought before it on appeal, respondent COA is not required to limit its review only to the grounds relied upon by a government agency's auditor with respect to disallowing certain disbursements of public funds. In consonance with its general audit power, respondent COA is not merely legally permitted, but is also duty-bound to make its own assessment of the merits of the disallowed disbursement and not simply restrict itself to reviewing the validity of the ground relied upon by the auditor of the government agency concerned. To hold otherwise would render COA's vital constitutional power unduly limited and thereby useless and ineffective.

As a third ground for the petition, petitioner also contends that assuming, without conceding, that the other allowances and benefits do not pass the "public purpose" test, the rest of the allowances, such as the basic monthly allowances, executive check-up and the gasoline allowances should not be disallowed, as they are normally given to officers of corporations, whether private or government-owned and controlled.[22]

We cannot uphold petitioner's plausible but unsubstantiated argument on this point since, as previously discussed, respondent COA is in the best position to determine which allowances and benefits may be properly allowed under the circumstances, as it is the sole constitutional body mandated to examine, audit and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property owned or held in trust by, or pertaining to, the government, including government-owned or controlled corporations such as the MGC and the NDC in the case at bar. Even if we assume the truth of petitioner's assertion that the said allowances are "normally given," this fact alone does not operate to preclude respondent COA from performing its constitutional mandate.

That certain allowances are enjoyed by corporate officers in the private sector does not justify the grant of the same benefits to similarly designated public officers, even if they are officers

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[22] *Rollo*, p. 100.

of government-owned and controlled corporations (GOCCs), which perform purely proprietary functions. As aptly observed by the Solicitor General, the funds of GOCCs are still public funds and that is precisely the reason such funds are subject to audit by the COA. Thus, there is a valid distinction between the officers of public corporations and those of private corporations.

To reiterate, the public purpose requirement for the disbursement of public funds is a valid limitation on the types of allowances and benefits that may be granted to public officers. It was incumbent upon petitioner to show that his allowances and benefits were authorized by law and that there was a direct and substantial relationship between the performance of his public functions and the grant of the disputed allowances to him.

While subscriptions to newspapers and magazines by government offices may be justified, petitioner's *personal* subscriptions to magazines and the annual fee of his credit card cannot *ipso facto* be considered as part of his remunerations or benefits as a public official.

There is likewise no evidence that the purported representation and "fellowship" expenses on weekends are necessary and related to petitioner's work as Vice-President of Finance and Treasurer of the MGC. We find no reason to believe that as an MGC officer, his duties include business relations or clientele-building functions, since a finance officer and treasurer, even in the private sector, is ordinarily tasked with accounting, disbursement and custody of corporate funds.

Medical expenses, such as those for an executive check-up, may be justified if specifically authorized by the appropriate laws, rules or circulars. However, petitioner failed to point to the existence of such law or regulation applicable to his case. It also appears from the records that petitioner already receives medical benefits from the NDC,[23] and that the ground cited by

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[23] *See* 2nd Indorsement dated October 25, 2000 of the Corporate Auditor, MGC.

the MGC Corporate Auditor for the disallowance of his expense for executive check-up was his own failure to submit appropriate supporting documents to claim such benefit.[24]

The COA's disallowance of the car maintenance, gasoline allowance and driver's subsidy was likewise in order since petitioner neither alleged nor proved that these benefits were also authorized by law or regulation.[25] He did not even allege that the car was an official company vehicle or that the driver was an employee of the MGC. On the contrary, the MGC Corporate Auditor found that the vehicle involved was the *personal* vehicle of petitioner, although it was granted to him under an NDC car plan, and that he was already receiving gasoline and/or transportation allowance from the NDC.[26] It was also found that petitioner reported to the MGC office, at most, once a week to attend meetings; and documents, which required his signature, were often brought to him at the NDC.[27] Since petitioner did not dispute these findings, he failed to show that the grant of similar or additional gasoline and transportation benefits to him by the MGC was warranted.

In order to demonstrate the legality of the grant of his benefits, it was insufficient for the petitioner to assert that the disputed

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[24] *See* Notice of Disallowance dated August 31, 1999 [N.D. No. 99-014 (98)].

[25] Significantly, Section 15(c) in both Republic Act No. 8522 (General Appropriations Act of 1998) and Republic Act No. 8745 (General Appropriations Act of 1999) allows the use of government funds for car fuel, maintenance and parts only for government vehicles that are properly identified as such. The relevant portions of Section 15 reads:

Sec. 15. *Restrictions on the Use of Government Funds.* – No government funds shall be utilized for the following purposes:

x x x x x x x x x

c. To provide fuel, parts, repair and maintenance to any government vehicle which is not permanently marked "For Official Use Only" with the name or logo of the agency, nor otherwise properly identified as a government vehicle and does not carry its official government plate number x x x.

[26] *Supra* note 23.

[27] *Id.*

allowances and benefits were approved by the board of directors of the MGC. Such board action should in itself be authorized by law or regulation or have valid legal basis. Otherwise, it becomes an illegal corporate act that is void and cannot be validated.[28] In this case, the MGC board action that permitted the disallowed disbursements was not shown to have complied with Section 15(d) of both Republic Act No. 8522 and Republic Act No. 8745, otherwise known as the General Appropriations Act of 1998 and the General Appropriations Act of 1999, respectively, which provide:

> Sec. 15. *Restrictions on the Use of Government Funds*. – No government funds shall be utilized for the following purposes:
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> x x x x x x x x x
>
> d. To pay honoraria, allowances or other forms of compensation to any government official or employee, except those specifically authorized by law;
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> x x x x x x x x x
>
> The provisions of this Section shall also apply to government-owned and/or controlled corporations.

On a final note, petitioner claims that respondent COA acted with grave abuse of discretion since, as a result of the disallowances, petitioner in effect rendered his services to MGC for free. This, petitioner points out, would constitute unjust enrichment on the part of MGC.[29]

We have ruled before that there is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains the money or property of another against the fundamental principles of justice, equity and good conscience.[30]

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[28] *Atrium Management Corporation v. Court of Appeals*, G.R. No. 109491, February 28, 2001, 353 SCRA 23, 30.

[29] *Rollo,* p. 101.

[30] *Allied Banking Corporation v. Lim Sio Wan*, G.R. No. 133179, March 27, 2008, 549 SCRA 504, 524 citing *Reyes v. Lim*, 408 SCRA 560, 570.

In the case at bar, the assailed COA Decision No. 2002-213 dated September 24, 2002 and the CAO II's 1st Indorsement dated December 12, 2000 recognized that petitioner's appointment to the Board of Directors of MGC "entitled him to honoraria equivalent to fifty percent (50%) of his basic salary at NDC and various allowances attached to the office."[31] Furthermore, petitioner's own assertion in his Motion for Reconsideration of COA Decision No. 2002-213 belies his claim of being totally uncompensated, since petitioner stated therein that "[a]s the NDC representative in MGC, he was not getting the entire compensation package for such position."[32] Thus, petitioner did not render his services to MGC for free, because it did not appear that his honoraria were among the expenditures that were disallowed by respondent COA.

We have previously declared that it is the general policy of the Court to sustain the decisions of administrative authorities, especially one that was constitutionally created like herein respondent COA, not only on the basis of the doctrine of separation of powers, but also of their presumed expertise in the laws they are entrusted to enforce. It is, in fact, an oft-repeated rule that findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion.[33] Thus, only when the COA acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may this Court entertain a petition for *certiorari* under Rule 65 of the Rules of Court.[34]

There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment

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[31] *Rollo*, pp. 18 and 22.

[32] *Id.* at p. 34.

[33] *Supra* note 20 at 489.

[34] *Reyes v. Commission on Audit*, G.R. No. 125129, March 29, 1999, 305 SCRA 512, 517.

rendered is not based on law and evidence but on caprice, whim and despotism.[35] In the case at bar, we find no grave abuse of discretion on the part of respondent COA in issuing the assailed Decisions. On the contrary, we hold that respondent COA's pronouncements in both assailed rulings were made in faithful compliance with its mandate and in judicious exercise of its general audit power as conferred on it by the Constitution and the pertinent laws.

WHEREFORE, premises considered, the petition is *DISMISSED*. The assailed COA Decision No. 2002-213 dated September 24, 2002 and COA Decision No. 2003-087 dated June 17, 2003 are both *AFFIRMED*.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Velasco, Jr., Nachura, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 160270. April 23, 2010]

SUBIC BAY METROPOLITAN AUTHORITY, *petitioner, vs.* **MERLINO E. RODRIGUEZ and WIRA INTERNATIONAL TRADING CORP., both represented herein by HILDA M. BACANI, as their authorized representative,** *respondents.*

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[35] *Ferrer v. Office of the Ombudsman*, G.R. No. 129036, August 6, 2008, 561 SCRA 51, 65.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; BATAS PAMBANSA BLG. 129 (JUDICIARY REORGANIZATION ACT OF 1980); REGIONAL TRIAL COURT HAS JURISDICTION OVER ACTIONS FOR INJUNCTION AND DAMAGES.—** As a rule, actions for injunction and damages lie within the jurisdiction of the RTC pursuant to Section 19 of Batas Pambansa Blg. 129 (BP 129), otherwise known as the "Judiciary Reorganization Act of 1980," as amended by Republic Act (RA) No. 7691.

2. **ID.; ID.; ACTIONS; ACTION FOR INJUNCTION; DISTINCT FROM THE ANCILLARY REMEDY OF PRELIMINARY INJUNCTION; ELUCIDATED.—** An action for injunction is a suit which has for its purpose the enjoinment of the defendant, perpetually or for a particular time, from the commission or continuance of a specific act, or his compulsion to continue performance of a particular act. It has an independent existence, and is distinct from the ancillary remedy of preliminary injunction which cannot exist except only as a part or an incident of an independent action or proceeding. In an action for injunction, the auxiliary remedy of preliminary injunction, prohibitory or mandatory, may issue.

3. **ID.; ID.; ID.; ID.; TEMPORARY RESTRAINING ORDER; DEFINED.—** Until the propriety of granting an injunction, temporary or perpetual, is determined, the court (*i.e.*, the RTC in this case) may issue a temporary restraining order. A TRO is an interlocutory order or writ issued by the court as a restraint on the defendant until the propriety of granting an injunction can be determined, thus going no further in its operation than to preserve the status quo until that determination. A TRO is not intended to operate as an injunction *pendente lite*, and should not in effect determine the issues involved before the parties can have their day in court.

4. **ID.; ID.; JURISDICTION; TARIFF AND CUSTOMS CODE; EXCLUSIVE JURISDICTION OVER SEIZURE AND FORFEITURE PROCEEDINGS PERTAINS TO THE COLLECTOR OF CUSTOMS.—** It is well settled that the Collector of Customs has exclusive jurisdiction over seizure and forfeiture proceedings, and regular courts cannot interfere

with his exercise thereof or stifle or put it at naught. The Collector of Customs sitting in seizure and forfeiture proceedings has exclusive jurisdiction to hear and determine all questions touching on the seizure and forfeiture of dutiable goods. Regional trial courts are devoid of any competence to pass upon the validity or regularity of seizure and forfeiture proceedings conducted by the BOC and to enjoin or otherwise interfere with these proceedings. Regional trial courts are precluded from assuming cognizance over such matters even through petitions for *certiorari*, prohibition or *mandamus*. Verily, the rule is that from the moment imported goods are actually in the possession or control of the Customs authorities, even if no warrant for seizure or detention had previously been issued by the Collector of Customs in connection with the seizure and forfeiture proceedings, the BOC acquires exclusive jurisdiction over such imported goods for the purpose of enforcing the customs laws, subject to appeal to the Court of Tax Appeals whose decisions are appealable to this Court. As we have clarified in *Commissioner of Customs v. Makasiar*, the rule that RTCs have no review powers over such proceedings is anchored upon the policy of placing no unnecessary hindrance on the government's drive, not only to prevent smuggling and other frauds upon Customs, but more importantly, to render effective and efficient the collection of import and export duties due the State, which enables the government to carry out the functions it has been instituted to perform.

5. **ID.; SPECIAL CIVIL ACTIONS; CONTEMPT; KINDS OF CONTEMPT; DEFINED.—** Contempt constitutes disobedience to the court by setting up an opposition to its authority, justice and dignity. It signifies not only a willful disregard or disobedience of the court's orders but such conduct as tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice. There are two kinds of contempt punishable by law: direct contempt and indirect contempt. Direct contempt is committed when a person is guilty of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to

do so. Indirect contempt or constructive contempt is that which is committed out of the presence of the court.

6. **ID.; ID.; ID.; INDIRECT CONTEMPT; REFUSAL TO FOLLOW THE TEMPORARY RESTRAINING ORDER ISSUED BY THE REGIONAL TRIAL COURT, NOT CONTUMACIOUS.—** When the TRO issued by the RTC was served upon the SBMA officers on 13 June 2002, there was already an existing warrant of seizure and detention (dated 22 May 2002) issued by the BOC against the subject rice shipment. Thus, as far as the SBMA officers were concerned, exclusive jurisdiction over the subject shipment remained with the BOC, and the RTC had no jurisdiction over cases involving said shipment. Consequently, the SBMA officers refused to comply with the TRO issued by the RTC. Considering the foregoing circumstances, we believe that the SBMA officers may be considered to have acted in good faith when they refused to follow the TRO issued by the RTC. The SBMA officers' refusal to follow the court order was not contumacious but due to the honest belief that jurisdiction over the subject shipment remained with the BOC because of the existing warrant of seizure and detention against said shipment. Accordingly, these SBMA officers should not be held accountable for their acts which were done in good faith and not without legal basis. Thus, we hold that the RTC Order dated 21 November 2002 which found the SBMA officers guilty of indirect contempt for not complying with the RTC's TRO should be invalidated.

7. **ID.; CIVIL PROCEDURE; JURISDICTION; TARIFF AND CUSTOMS CODE; EXCLUSIVE JURISDICTION OVER SEIZURE AND FORFEITURE PROCEEDINGS PERTAINS TO THE COLLECTOR OF CUSTOMS; RULE THAT THE REGIONAL TRIAL COURT MUST DEFER THERETO IS ABSOLUTE.—** xxx [T]he RTC stated in its Order dated 27 November 2002 that based on the records, "there is a *pending case with the Bureau of Customs* District XIII, Port of Subic, Olongapo City, identified and docketed as *Seizure Identification No. 2002-10* and involving the same 2,000 bags of imported rice that is also the subject matter of the case herein. The existence and pendency of said case before the Bureau of Customs have in fact been admitted by the parties." The RTC then proceeded to order the suspension of court proceedings, and directed the BOC Subic Port Chief of the Law Division

and Deputy Collector for Administration, Atty. Titus Sangil, to resolve the seizure case and submit to the RTC its resolution within fifteen (15) days from receipt of the court order. xxx We find the issuance of the RTC Order dated 27 November 2002 improper. The pendency of the BOC seizure proceedings which was made known to the RTC through petitioner's consolidated motion to dismiss should have prompted said court to dismiss the case before it. As previously discussed, the BOC has exclusive original jurisdiction over seizure cases under Section 602 of the Tariff and Customs Code. The rule that the RTC must defer to the exclusive original jurisdiction of the BOC in cases involving seizure and forfeiture of goods is absolute. Thus, the RTC had no jurisdiction to issue its Order dated 27 November 2002.

APPEARANCES OF COUNSEL

Francisco A. Abella, Jr., Nelson H. Manalili and Gaviola Law Office for petitioner.

Lacas Lao and Associates for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the Court of Appeals' (CA) Decision[2] dated 20 June 2003 and Resolution dated 8 October 2003 in CA-G.R. SP No. 74989. The CA dismissed the petition for *certiorari* and prohibition[3] with prayer for temporary restraining order, preliminary or permanent injunction filed by Subic Bay Metropolitan Authority (SBMA) against Judge Ramon S. Caguioa of the Regional Trial Court (RTC) of Olongapo City, Branch 74, and Merlino E. Rodriguez and Wira International

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[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

[2] Penned by Associate Justice B.A. Adefuin-De la Cruz, with Associate Justices Jose L. Sabio, Jr. and Hakim S. Abdulwahid, concurring.

[3] Under Rule 65 of the 1997 Revised Rules of Civil Procedure.

Trading Corporation (WIRA), both represented by Hilda Bacani. The CA also affirmed the Orders dated 21 November 2002 and 27 November 2002 issued by the RTC.

The Antecedent Facts

The factual and procedural antecedents of this case, as culled from the records, are as follows:

On 29 September 2001, a cargo shipment described as "agricultural product" and valued at US$6,000 arrived at the Port of Subic, Subic Bay Freeport Zone.[4] On the basis of its declared value, the shipment was assessed customs duties and taxes totaling ₱57,101 which were paid by respondent WIRA, the shipment's consignee.[5]

On 23 October 2001, Raval Manalas, Acting COO III of the Bureau of Customs, Port of Subic (BOC Subic Port), issued a Memorandum addressed to the BOC Subic Port District Collector, stating that upon examination, the subject shipment was found to contain rice. The Memorandum further stated as follows: that the importer claimed there was a misshipment since it also had a pending order for rice; that the "warehousing entry" was amended to reflect the change in description from "agricultural product" to rice; that the shipment, as a warehoused cargo inside the freeport zone, was duty and tax free, and was not recommended for any imposition of penalty and surcharge; that the consumption entry was changed to reflect a shipment of rice; and that the consumption entry, together with supporting documents belatedly received by the importer, was submitted to the bank although not yet filed with the BOC.[6]

On 24 October 2001, Hilda Bacani (respondents' authorized representative) wrote BOC Subic Port District Collector Billy Bibit, claiming that she was the representative of Metro Star Rice Mill (Metro Star), the importer of the subject cargo. She

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[4] *Rollo*, p. 17. See Annex "C" at 86.

[5] Annexes "I", "12" and "13", *rollo*, pp. 92, 667 and 668, respectively.

[6] Annex "15", *id.* at 670.

stated that there was a "misshipment" of cargo which actually contained rice, and that Metro Star is an authorized importer of rice as provided in the permits issued by the National Food Authority (NFA). Bacani requested that the "misshipment" be upgraded from "agricultural product" to a shipment of rice, and at the same time manifested willingness to pay the appropriate duties and taxes.[7] The following day, or on 25 October 2001, the BOC issued Hold Order No. 14/C1/2001 1025-101, directing BOC Subic Port officers to (1) hold the delivery of the shipment, and (2) to cause its transfer to the security warehouse.[8]

On 26 October 2001, respondent WIRA, as the consignee of the shipment, paid the amount of ₱259,874 to the BOC representing additional duties and taxes for the upgraded shipment.[9]

On 30 October 2001, BOC Commissioner Titus Villanueva issued a directive stating as follows:[10]

2nd Indorsement
30 October 2001

Returned to the District Collector of Customs, Port of Subic, the within (sic) Import Entry No. C 2550-01 covering the shipment of 2,000 bags Thai Rice 25% broken consigned to WIRA INT'L TRADING CORPORATION (METRO STAR RICE MILL) ex MV Resolution V0139 with NFA Import Permit IP SN 000032 and IP SN 000033 both dated on 13 September 2001 duly issued by the Administrator, National Food Authority.

Accordingly, the same may be released subject to payment of duties and taxes based on an upgraded value as provided for by the National Food Authority at $153.00/MT and compliance with all existing rules and regulations.

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[7] Annexes "M" and "14", *id.* at 96 and 669, respectively.

[8] Annex "L", *id.* at 95. Document shows illegible handwriting on the space provided for "Specific violations believe to have been committed."

[9] Annex "16", *id.* at 671.

[10] Annex "17", *id.* at 672. Emphasis supplied.

Further, ensure cancellation of NFA Import Permit IP SN 000032 and IP SN 000033, to prevent the same from being recycled.

Report to this office your compliance of herein directives.

Be guided accordingly.

(Sgd.) Titus Villanueva, CESO 1
Commissioner

In accordance with the shipment upgrade, respondent WIRA paid on 28 November 2001 a further amount of ₱206,212 as customs duties and taxes.[11] On 4 December 2001, Fertony G. Marcelo, Officer-in-Charge of the Cash Division of BOC Subic Port issued a certification/letter addressed to Mr. Augusto Canlas, General Manager of the Seaport Department, stating thus:[12]

This is to certify that the undersigned Collecting Officer validate[d] a revenue of Php 523,187.00 from above-mentioned importation[13] covered by O.R. Numbers 8083840 dated October 23, 2001, 8084068 dated October 26, 2001 and 8165208 dated November 28, 2001, respectively. **And a Gate Pass was issued on December 3, 2001 with signature of Mr. Percito V. Lozada, Chief Assessment in behalf of the District Collector Billy C. Bibit**.

(Sgd.) Fertoni G. Marcelo
Officer-in-charge, Cash Division
(Collecting Officer)

Noted:
(Sgd. For) Coll. Billy C. Bibit

Despite the above certification/letter, petitioner SBMA, through Seaport Department General Manager Augusto Canlas, refused to allow the release of the rice shipment. Hence, on 11 June 2002, respondents filed with the RTC of Olongapo City, a complaint for Injunction and Damages with prayer for issuance

[11] See also Annexes “18” and “19”, *id.* at 673-674.

[12] Annex “21”, *id.* at 676. Emphasis supplied.

[13] Described as “5x20’ containers stc. 2,000 bags Thai White Rice Long Grain 25% Broken rate, consigned to Wira Int’l. Trading (Metro Star Rice Hill) Consumption Entry No. 2001-C-2550.

of Writ of Preliminary Prohibitory and Mandatory Injunction and/or Temporary Restraining Order against petitioner SBMA and Augusto L. Canlas, and the case was docketed as Civil Case No. 261-0-2002.

The succeeding events were summarized by the trial court and reproduced by the Court of Appeals, as follows:[14]

1. On June 11, 2002, a complaint for Injunction and Damages with prayer for issuance of Writ of Preliminary Prohibitory and Mandatory Injunction and/or Temporary Restraining Order was filed by the plaintiff/petitioners Mernilo E. Rodriguez, doing business under the name and style "Metro Star Rice Mill," represented by Attorney-in-fact Hilda M. Bacani, and WIRA International Trading, Inc. likewise represented by Hilda M. Bacani as authorized representative, against Subic Bay Metropolitan Authority (SBMA) and Augusto L. Canlas, in his personal and official capacity as General Manager of the Seaport Department of said SBMA. The complaint was docketed as Civil Case No. 261-0-[2002].

2. On June 13, 2002, an Order was issued by the Executive Judge of the Regional Trial Court of Olongapo City, Branch 72, where plaintiffs/petitioners' application for injunctive relief was granted. Said order restrained the defendants/respondents for seventy-two (72) hours, from interfering with plaintiffs/petitioners' right to enter the premises of the CCA compound located within the Bureau of Customs territory and authority within the Subic Bay Freeport Zone (SBFZ), Olongapo City, and to withdraw and release from said CCA warehouse the rice importation of plaintiffs and to take and possess the said imported rice consisting of 2,000 bags; and from interfering in any manner whatsoever with plaintiffs/petitioners' rights and possession over the aforesaid imported rice. On the same day also, June 13, 2002, the raffle of the case was set on June 18, 2002 at 8:30 in the morning.

3. Copy of the complaint with summons together with aforesaid Temporary Restraining Order (TRO) was served by Sheriff Leopoldo Rabanes and Leandro Madarang of the Office of the Clerk of Court of the Regional Trial Court, Olongapo City, upon the defendants/respondents on the same day, June 13, 2002, at around 3:40 in the afternoon as shown by the Sheriff's return of service (Exh. "A-3" and Exh. "B-1") typed and found in the same pleadings.

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[14] *Rollo*, pp. 76-78, 181-183.

4. The following day, on June 14, 2002, the same Sheriffs went back to defendants/respondents' office to determine whether or not the TRO issued by Branch 72 and served by them was followed. They were however, met by defendants/respondents Attys. Abella and Katalbas, in the office of defendant/respondent Canlas, who after much discussion, refused to honor the TRO issued by Branch 72 alleging among other[s], that said Order was illegal and therefore, will not be followed by the defendants/respondents.

5. Unsuccessful in their efforts, the Sheriffs of this Court prepared and filed their report dated June 17, 2002 outlining therein what transpired on June 14, 2002 and the circumstances surrounding the refusal by defendants/respondents to honor the TRO issued by Branch 72-RTC, Olongapo City (Exh. "C"). On the same day also, June 17, 2002, plaintiffs/petitioners-movants filed in the instant case a verified indirect contempt charge alleging therein that because of the defiance exhibited by the defendants/respondents[,] specifically Augusto L. Canlas, Attys. Francisco A. Abella, Jr. and Rizal V. Katalbas. Jr.[,] in not honoring the court's TRO, they prayed that said defendants/respondents, after due notice and hearing, be declared and adjudged guilty of indirect contempt committed against the court for having directly failed and refused to comply with the TRO dated June 13, 2002, and that they be punished with imprisonment and/or fine in accordance with Rule 71 of the 1997 Rules of Civil Procedure.

6. On June 18, 2002, the case was raffled to Branch 74 of herein court.[15]

7. On June 24, 2002, a comment and/or opposition to the verified indirect contempt charge was filed by the defendants/respondents alleging therein that they cannot be cited for contempt of court because they had legal basis to refuse to honor the TRO.

8. Trial was conducted by the court in the indirect contempt charge on July 12, 2002 as per the court's Order of even date. Plaintiffs/petitioners presented Sheriff Leopoldo Rabanes who testified on direct examination. During the August 20, 2002 hearing, Sheriff Rabanes was cross-examined. Thereafter, the testimony of his co-Sheriff Leandro Madarang was stipulated upon the parties

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[15] It appears from the records that both the Complaint for Injunction, docketed as Civil Case No. 261-0-2002, and Petition for Indirect Contempt, docketed as Civil Case No. 262-0-2002, were raffled off to RTC Branch 74.

considering that his testimony would only corroborate in all principal points the testimony of Sheriff Rabanes.

9. On that same hearing also[,] plaintiffs/petitioners formally offered their evidence and rested. Defendants/respondents[,] however, in the meantime had earlier filed a motion on August 1, 2002[,] asking leave of court to file a motion to dismiss with attached "Motion to Dismiss" and in the said August 20, 2002 hearing, defendants/respondents further manifested that they were adopting their legal arguments marshalled in the said motion to dismiss insofar as the indirect contempt charge was concerned.

10. Thereafter, on August 29, 2002, defendants/respondents filed a manifestation with formal offer of evidence in the indirect contempt case essentially alleging that it is the Bureau of Customs that has jurisdiction over this case in view of a Warrant of Seizure and Detention case filed against the plaintiff/petitioners and denominated as Seizure Identification No. 200[2]-10. Therefore, since it is the Bureau of Customs that has jurisdiction, the indirect contempt case has no legal leg to stand on and as such, defendants/respondents had the right to refuse to comply with the subject TRO in this case.

11. With the said formal offer of exhibits filed by the defendants/respondents, the indirect contempt case was considered submitted for decision by this court.

In addition to the foregoing, on 19 July 2002, petitioner SBMA and Augusto Canlas filed their Answer to the Complaint for Injunction and Damages with Counterclaim.[16] On 1 August 2002, petitioner SBMA, Augusto Canlas, Francisco A. Abella, Jr. and Rizal V. Katalbas, Jr. filed a Consolidated Motion to Dismiss which sought the dismissal of (1) Civil Case No. 261-0-2002 (Complaint for Injunction and Damages) and (2) Civil Case No. 262-0-2002 (Petition for Indirect Contempt), alleging the existence of a Warrant of Seizure and Detention, dated 22 May 2002, issued against the subject rice shipment.[17]

On 21 November 2002, the RTC issued an Order on the indirect contempt case, stating thus:

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[16] Annex "W", *id.* at 125.

[17] Annex "Z", *id.* at 152, 155 and 163.

WHEREFORE, foregoing considered, judgment is hereby rendered finding all of the defendants/respondents guilty of indirect contempt of court. Atty. Francisco A. Abella, Jr. is sentenced to suffer the penalty of imprisonment of ten (10) days and fined the amount of ₱10,000.00. Atty. Rizal V. Katalbas, Jr. is sentenced to pay a fine of ₱10,000.00. Augusto L. Canlas is sentenced to pay a fine of ₱5,000.00. Subsidiary imprisonment in case of insolvency for all.

Let a warrant of arrest issue against Atty. Francisco A. Abella, Jr. The Clerk of Court, Atty. John V. Aquino, of the Regional Trial Court, Olongapo City is directed to collect the corresponding fine from each of the respondents immediately upon receipt of this order and to report the same to the court.

SO ORDERED.[18]

On 27 November 2002, the RTC issued another Order considering the pending incidents in the injunction case. The RTC held that there should be prior determination by the BOC on whether the 2,000 bags of imported rice were smuggled, and thus issued the following order:

WHEREFORE, the Bureau of Customs, Customs District XIII, Port of Subic, Olongapo City through Atty. Titus A. Sangil, Chief, Law Division and Deputy Collector for Administration is hereby directed to resolve Seizure Identification Case No. 2002-10 and submit to the court its resolution therewith, within fifteen (15) days from receipt of this order. Meantime, the proceedings in this case are suspended until the court is in receipt of the resolution of the Bureau of Customs.

Furnish a copy of this order to Atty. Titus A. Sangil at his abovecited office address.

SO ORDERED.[19]

The Court of Appeals' Ruling

Petitioner filed with the CA a Petition for *Certiorari* and Prohibition with prayer for Temporary Restraining Order and

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[18] *Id.* at 186.

[19] *Id.* at 187-188.

Preliminary or Permanent Injunction seeking to nullify and set aside the RTC Orders dated 21 November 2002 and 27 November 2002. On 20 June 2003, the CA rendered a Decision dismissing the petition for lack of merit and affirming the Orders issued by the RTC. We quote the dispositive portion of the CA decision below.

WHEREFORE, premises considered, the assailed *Orders dated November 21, 2002 and November 27, 2002 are hereby AFFIRMED in toto and the present petition is hereby DENIED DUE COURSE and accordingly DISMISSED for lack of merit.*

SO ORDERED.[20]

Petitioner's Motion for Reconsideration was denied by the CA in its Resolution of 8 October 2003.[21]

Hence, this appeal.

The Issue

The issue for resolution in this case is whether the CA erred in affirming the RTC Orders dated 21 November 2002 and 27 November 2002.

The Court's Ruling

We find the appeal meritorious.

As a rule, actions for injunction and damages lie within the jurisdiction of the RTC pursuant to Section 19 of Batas Pambansa Blg. 129 (BP 129), otherwise known as the "Judiciary Reorganization Act of 1980," as amended by Republic Act (RA) No. 7691.[22]

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

[21] *Id.* at 85.

[22] Sec. 19 of BP Blg. 129, as amended by RA 7691, provides:

Sec. 19. *Jurisdiction in civil cases.* — Regional Trial Courts shall exercise exclusive original jurisdiction:

(1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation.

An action for injunction is a suit which has for its purpose the enjoinment of the defendant, perpetually or for a particular time, from the commission or continuance of a specific act, or his compulsion to continue performance of a particular act.[23] It has an independent existence, and is distinct from the ancillary remedy of preliminary injunction which cannot exist except only as a part or an incident of an independent action or proceeding.[24] In an action for injunction, the auxiliary remedy of preliminary injunction, prohibitory or mandatory, may issue.[25]

Until the propriety of granting an injunction, temporary or perpetual, is determined, the court (*i.e.*, the RTC in this case) may issue a temporary restraining order.[26] A TRO is an interlocutory order or writ issued by the court as a restraint on the defendant until the propriety of granting an injunction can be determined, thus going no further in its operation than to preserve the status quo until that determination.[27] A TRO is not intended to operate as an injunction *pendente lite*, and should not in effect determine the issues involved before the parties can have their day in court.[28]

Petitioner alleges that the RTC of Olongapo City has no jurisdiction over the action for injunction and damages filed by

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x x x   x x x   x x x

(8) In all other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of the property in controversy exceeds Three hundred thousand pesos (₱300,000.00) or, in such other cases in Metro Manila, where the demand exclusive of the above-mentioned items exceeds Four hundred thousand pesos (₱400,000.00).

[23] *Manila Banking Corporation v. Court of Appeals*, G.R. No. 45961, 3 July 1990, 187 SCRA 138, 144-145.

[24] *Id.* at 145.

[25] *Id.*

[26] See Sections 4 and 5 of Rule 58 of the Revised Rules of Civil Procedure.

[27] *Aquino v. Luntok*, G.R. No. 84324, 5 April 1990, 184 SCRA 177, 183.

[28] *Government Service Insurance System v. Florendo,* G.R. No. 48603, 29 September 1989, 178 SCRA 76, citing 43 C.J.S. 415.

respondents on 11 June 2002 as said action is within the exclusive original jurisdiction of the BOC pursuant to Section 602 of Republic Act No. 1937, otherwise known as the "Tariff and Customs Code of the Philippines," as amended. Section 602 provides, thus:

> Sec. 602. Functions of the Bureau.- The general duties, powers and jurisdiction of the bureau shall include:
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> x x x x x x x x x
>
> g. Exercise exclusive original jurisdiction over seizure and forfeiture cases under the tariff and customs laws.

Petitioner contends that the imported 2,000 bags of rice were in the actual physical control and possession of the BOC as early as 25 October 2001, by virtue of the BOC Subic Port Hold Order of even date, and of the BOC Warrant of Seizure and Detention dated 22 May 2002. As such, the BOC had acquired exclusive original jurisdiction over the subject shipment, to the exclusion of the RTC.

We agree with petitioner.

It is well settled that the Collector of Customs has exclusive jurisdiction over seizure and forfeiture proceedings, and regular courts cannot interfere with his exercise thereof or stifle or put it at naught.[29] The Collector of Customs sitting in seizure and forfeiture proceedings has exclusive jurisdiction to hear and determine all questions touching on the seizure and forfeiture of dutiable goods.[30] Regional trial courts are devoid of any competence to pass upon the validity or regularity of seizure and forfeiture proceedings conducted by the BOC and to enjoin or otherwise interfere with these proceedings.[31] Regional trial courts are precluded from assuming cognizance over such matters even through petitions for *certiorari*, prohibition or *mandamus*.[32]

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[29] *Mison v. Natividad*, G.R. No. 82586, 11 September 1992, 213 SCRA 734, 742.

[30] *Id.*

[31] *Jao v. Court of Appeals*, 319 Phil. 105, 114 (1995).

[32] *Id.*

Verily, the rule is that from the moment imported goods are actually in the possession or control of the Customs authorities, even if no warrant for seizure or detention had previously been issued by the Collector of Customs in connection with the seizure and forfeiture proceedings, the BOC acquires exclusive jurisdiction over such imported goods for the purpose of enforcing the customs laws, subject to appeal to the Court of Tax Appeals whose decisions are appealable to this Court.[33] As we have clarified in *Commissioner of Customs v. Makasiar*, [34] the rule that RTCs have no review powers over such proceedings is anchored upon the policy of placing no unnecessary hindrance on the government's drive, not only to prevent smuggling and other frauds upon Customs, but more importantly, to render effective and efficient the collection of import and export duties due the State, which enables the government to carry out the functions it has been instituted to perform.

Based on the records of this case, the BOC Subic Port issued a Hold Order against the subject rice shipment on 25 October 2001. However, on 30 October 2001, BOC Commissioner Titus Villanueva issued a directive to the BOC District Collector stating that the shipment "may be released subject to payment of duties and taxes based on an upgraded value x x x and compliance with all existing rules and regulations." Accordingly, respondents made additional payments of customs duties and taxes for the upgraded shipment. Consequently, on 4 December 2001, the Officer-in-Charge of the BOC Subic Port Cash Division issued a certification/letter addressed to Augusto Canlas, the General Manager of the Subic Seaport Department, stating that respondents have already paid the customs taxes and duties due on the shipment, and "a Gate Pass was issued on December 3, 2001 with signature of Mr. Percito V. Lozada, Chief Assessment (sic) in behalf of the District Collector Billy C. Bibit."[35] Thus,

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[33] *Señeres v. Frias*, 148-A Phil. 492, 501-502 (1971); VITUG and ACOSTA, *TAX LAW AND JURISPRUDENCE*, 3rd ed. (2006), p. 393.

[34] 257 Phil. 864 (1989).

[35] Annex "21", *rollo*, p. 676.

the Hold Order previously issued by the BOC[36] had been superseded, and made ineffective, by the succeeding BOC issuances.

However, BOC Subic Port District Collector Felipe A. Bartolome subsequently issued a Warrant of Seizure and Detention dated 22 May 2002 against the subject rice shipment. The warrant was issued upon recommendation made by Atty. Baltazar Morales of the Customs Intelligence and Investigation Service (CIIS) on 29 April 2002.[37] With the issuance of the warrant of seizure and detention, exclusive jurisdiction over the subject shipment was regained by the BOC.

We note that the appellate court found suspicious the existence of the warrant of seizure and detention at the time of filing of the injunction and damages case with the RTC by respondents. The CA pointed out that petitioner did not mention the existence of the warrant in its Answer to the Complaint for Injunction and Damages, filed on 19 July 2002, and only mentioned the warrant in its Consolidated Motion to Dismiss [the Complaint for Injunction and Damages, and the Petition for Indirect Contempt], filed on 1 August 2002.[38] We do not agree with the appellate court. Petitioner's apparent neglect to mention the warrant of seizure and detention in its Answer is insufficient to cast doubt on the existence of said warrant.

Respondents filed a case for indirect contempt against Augusto L. Canlas, Atty. Francisco A. Abella, Jr., and Atty. Rizal V. Katalbas, Jr. for allegedly defying the TRO issued by the RTC in connection with the complaint for injunction and damages previously filed by respondents.

Contempt constitutes disobedience to the court by setting up an opposition to its authority, justice and dignity.[39] It signifies

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[36] Signed by the Requesting Officer, Godofredo Olores, BOC Director III. (Illegible scribbled words were written above "Office of the Director.")

[37] *Rollo,* p. 213.

[38] *Id.* at 130.

[39] *Industrial and Transport Equipment, Inc. v. National Labor Relations Commission*, 348 Phil. 158, 163 (1998).

not only a willful disregard or disobedience of the court's orders but such conduct as tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice.[40] There are two kinds of contempt punishable by law: direct contempt and indirect contempt. Direct contempt is committed when a person is guilty of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so.[41] Indirect contempt or constructive contempt is that which is committed out of the presence of the court.[42]

Section 3 of Rule 71 of the Revised Rules of Civil Procedure includes, among the grounds for filing a case for indirect contempt, the following:

Section 3. *Indirect contempt to be punished after charge and hearing*. –

After charge in writing has been filed, and an opportunity given to the accused to be heard by himself or counsel, a person guilty of any of the following acts may be punished for contempt:

x x x x x x x x x

(b) Disobedience of or resistance to a lawful writ, process, order, judgment or command of a court, or injunction granted by a court or judge, x x x

(c) Any abuse of or any unlawful interference with the process or proceedings of a court not constituting direct contempt under Section 1 of this rule;

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct or degrade the administration of justice;

x x x x x x x x x

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40 *Id.*

41 *Barredo Fuentes v. Albarracin*, A.M. No. MTJ-05-1587, 15 April 2005, 456 SCRA 120, 130-131.

42 *Id.*

When the TRO issued by the RTC was served upon the SBMA officers on 13 June 2002, there was already an existing warrant of seizure and detention (dated 22 May 2002) issued by the BOC against the subject rice shipment. Thus, as far as the SBMA officers were concerned, exclusive jurisdiction over the subject shipment remained with the BOC, and the RTC had no jurisdiction over cases involving said shipment. Consequently, the SBMA officers refused to comply with the TRO issued by the RTC.

Considering the foregoing circumstances, we believe that the SBMA officers may be considered to have acted in good faith when they refused to follow the TRO issued by the RTC. The SBMA officers' refusal to follow the court order was not contumacious but due to the honest belief that jurisdiction over the subject shipment remained with the BOC because of the existing warrant of seizure and detention against said shipment. Accordingly, these SBMA officers should not be held accountable for their acts which were done in good faith and not without legal basis. Thus, we hold that the RTC Order dated 21 November 2002 which found the SBMA officers guilty of indirect contempt for not complying with the RTC's TRO should be invalidated.

Finally, the RTC stated in its Order dated 27 November 2002 that based on the records, "there is a *pending case with the Bureau of Customs* District XIII, Port of Subic, Olongapo City, identified and docketed as *Seizure Identification No. 2002-10* and involving the same 2,000 bags of imported rice that is also the subject matter of the case herein. The existence and pendency of said case before the Bureau of Customs have in fact been admitted by the parties."[43]

The RTC then proceeded to order the suspension of court proceedings, and directed the BOC Subic Port Chief of the Law Division and Deputy Collector for Administration, Atty. Titus Sangil, to resolve the seizure case and submit to the RTC its resolution within fifteen (15) days from receipt of the court

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[43] Annex "FF", *rollo*, p. 187. Italics supplied.

order. We quote the dispositive portion of the RTC Order dated 27 November 2002, to wit:

WHEREFORE, the Bureau of Customs, Customs District XIII, Port of Subic, Olongapo City through Atty. Titus A. Sangil, Chief, Law Division and Deputy Collector for Administration is hereby directed to resolve Seizure Identification Case No. 2002-10 and submit to the court its resolution therewith, within fifteen (15) days from receipt of this order. Meantime, the proceedings in this case are suspended until the court is in receipt of the resolution of the Bureau of Customs.

Furnish a copy of this order to Atty. Titus A. Sangil at his abovecited office address.[44]

We find the issuance of the RTC Order dated 27 November 2002 improper. The pendency of the BOC seizure proceedings which was made known to the RTC through petitioner's consolidated motion to dismiss should have prompted said court to dismiss the case before it. As previously discussed, the BOC has exclusive original jurisdiction over seizure cases under Section 602 of the Tariff and Customs Code. The rule that the RTC must defer to the exclusive original jurisdiction of the BOC in cases involving seizure and forfeiture of goods is absolute. Thus, the RTC had no jurisdiction to issue its Order dated 27 November 2002.

WHEREFORE, we *GRANT* the petition. We *REVERSE* the Court of Appeals' Decision dated 20 June 2003 and Resolution dated 8 October 2003 in CA-G.R. SP No. 74989. We declare *VOID* the Regional Trial Court Orders dated 21 November 2002 and 27 November 2002.

SO ORDERED.

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

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[44] *Id.* at 187-188.

[*] Designated additional member per Raffle dated 29 March 2010.

SECOND DIVISION

[G.R. No. 162017. April 23, 2010]

CALTEX (PHILIPPINES), INC., WILLIAM P. TIFFANY, E.C. CAVESTANY, and E.M. CRUZ, *petitioners, vs.* **HERMIE G. AGAD and CALTEX UNITED SUPERVISORS' ASSOCIATION,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; TERMINATION BY EMPLOYER; JUST CAUSES; BURDEN OF PROOF RESTS ON THE EMPLOYER.—** In termination cases, the burden of proof rests on the employer to show that the dismissal is for just cause. When there is no showing of a clear, valid, and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal and the burden is on the employer to prove that the termination was for a valid or authorized cause.

2. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; QUANTUM OF PROOF WHICH THE EMPLOYER MUST DISCHARGE IS SUBSTANTIAL EVIDENCE; SUBSTANTIAL EVIDENCE, DEFINED.—** The quantum of proof which the employer must discharge is substantial evidence. An employee's dismissal due to serious misconduct and loss of trust and confidence must be supported by substantial evidence. Substantial evidence is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.

3. **ID.; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS MAY BE REVIEWED BY THE SUPREME COURT WHEN THEY ARE CONTRARY TO THOSE OF THE NATIONAL LABOR RELATIONS COMMISSION OR OF THE LABOR ARBITER; CASE AT BAR.—** In *R & E Transport, Inc. v. Latag*, we held that factual issues may be reviewed by the CA when the findings of fact of the NLRC conflict with those of the LA. By the same token, this Court may review factual conclusions of the CA when they

are contrary to those of the NLRC or of the LA. In the present case, the evidence of the parties with respect to the crating expense reimbursed by Agad finds discord on the official receipt issued by Delda *vis-a-vis* Delda's sworn testimony denying that he received the amount stated in the receipt or rendered any crating service for Agad. The petitioners presented the affidavits of Asperas and Villalino to corroborate Delda's testimony while Agad relied on the official receipt as the best evidence that he contracted Delda's services and that Delda indeed issued said receipt. The decisions of the CA and NLRC produced different factual conclusions on this issue.

4. ID.; ID.; ID.; ID.; NO COGENT REASON TO DISTURB THE FINDINGS OF THE COURT OF APPEALS IN CASE AT BAR; EXPLAINED.— After a careful review of the records, we find no cogent reason to disturb the findings of the CA. *First*, the official receipt submitted by Agad serves as the best evidence of payment and is presumed regular on its face absent any showing to the contrary. *Second*, records show that the reimbursement of the crating expense was approved by Agad's superior upon presentment of the receipt. At the time, Agad's superior did not mention that the amount of the crating expense incurred was unreasonable. *Third*, Delda, in his affidavit, disclosed that he was forced to issue the receipt in order to get a favorable recommendation from the incoming superintendent who would replace Agad in the Depot. However, in the same affidavit, Delda mentioned that he had been a standby worker at the Depot from 1956 to 1982 and a piece-worker from 1982 up to 1993, the date he executed the affidavit. It appears then that Delda had established a name for himself and his business with Caltex. Any favorable recommendation from Agad, as the outgoing superintendent, would not provide much impact compared to the reputation he had built all those years. *Fourth*, the testimonies of the two corroborating witnesses, Esperas and Villalino, cannot be given credence since Agad was not given an opportunity to cross-examine them. Their testimonies are considered as hearsay evidence. *Last*, petitioners did not present any other evidence to show that Agad violated company policy dealing with crating expenses to be limited to a certain amount. Reasonableness was the only criterion given by the employer. Thus, all these taken into consideration, we conclude that petitioners were not able to fully substantiate

the alleged fictitious reimbursement of the crating expense. Delda's testimony alone, without any corroborating evidence to prove otherwise, is insufficient to overcome the presumption of regularity in the issuance of his own official receipt which he gave to Agad.

5. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; TERMINATION BY EMPLOYER; JUST CAUSES; SERIOUS MISCONDUCT; THEFT OF COMPANY PROPERTY; A CASE OF.—** [I]t is clear that Agad committed a serious infraction amounting to theft of company property. This act is akin to a serious misconduct or willful disobedience by the employee of the lawful orders of his employer in connection with his work, a just cause for termination of employment recognized under Article 282(a) of the Labor Code. Misconduct has been defined as a 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 in judgment. To be serious, the misconduct must be of such grave and aggravated character.

6. **ID.; ID.; ID.; ID.; ID.; WILLFUL BREACH OF TRUST AND CONFIDENCE; EXPLAINED; A CASE OF.—** xxx Agad's conduct constitutes willful breach of the trust reposed in him, another just cause for termination of employment recognized under Article 282(c) of the Labor Code. Loss of trust and confidence, as a just cause for termination of employment, is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence. The employee must be invested with confidence on delicate matters, such as the custody, handling, care and protection of the employer's property and funds. As a superintendent, Agad occupied a position tasked to perform key and sensitive functions which necessarily involved the custody and protection of Caltex's properties. Consequently, Agad comes within the purview of the trust and confidence rule. In *Sagales v. Rustan's Commercial Corporation*, we held that in loss of trust and confidence, as a just cause for dismissal, it is sufficient that there must only be some basis for the loss of trust and confidence or that there is reasonable ground to believe, if not to entertain the moral conviction, that the employee concerned is responsible for

the misconduct and that his participation in the misconduct rendered him absolutely unworthy of trust and confidence.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioners.
Martinez and Perez Law Offices for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated 22 May 2003 and Resolution[3] dated 27 January 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 74199, which reversed the Decision[4] dated 6 June 2001 and Resolution[5] dated 24 September 2002 of the National Labor and Relations Commission (NLRC) in NLRC NCR CA No. 018872-99.

The Facts

On 1 September 1983, petitioner Caltex Philippines, Inc. (Caltex) employed respondent Hermie G. Agad (Agad) as Depot Superintendent-A on a probationary basis for six months. On 28 February 1984, Agad became a regular employee with a monthly salary of ₱2,560 and cost of living assistance of ₱380.

For the next eleven years, Agad obtained various commendations[6] and held the positions of Depot Superintendent-A, Field Engineer,

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[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

[2] *Rollo*, pp. 33-44. Penned by Justice Bienvenido L. Reyes with Justices Salvador J. Valdez, Jr. and Danilo B. Pine, concurring.

[3] *Id.* at 65-66.

[4] CA *rollo*, pp. 45-53. Penned by Commissioner Alberto R. Quimpo with Commissioner Roy V. Señeres, concurring. Commissioner Vicente S.E. Veloso inhibited from the case.

[5] *Id.* at 54-55.

[6] *Id.* at 72-73 and 130-136.

Senior Superintendent, and Bulk Depot Superintendent until his dismissal on 8 August 1994. Agad received a monthly gross salary of ₱31,000, a mid-year bonus equivalent to one month's salary and 13th month pay at the time of his termination.

After Agad had served for two years since 1990 as Superintendent of the Tacloban Bulk Depot (Depot) in Leyte, Caltex transferred Agad to Bauan Bulk Depot in Batangas effective 16 May 1992.[7]

To transfer his belongings from Leyte to Batangas, Agad secured the carpentry services of Alfredo Delda (Delda), the owner of A.A. Delda Engineering Services (Delda Services) for the construction of two crates. Agad paid Delda ₱15,500, evidenced by Official Receipt No. 0970[8] dated 12 May 1992. Agad submitted the receipt sometime in August 1992 and Caltex reimbursed him the said amount.

On 13 April 1993, Caltex conducted its regular audit of employees' account and expenses as of 31 December 1992.[9] The company auditor of Caltex verified the crating expense incurred by Agad with Delda. Delda, through an Affidavit dated 5 May 1993,[10] disclosed that Delda Services did not perform any crating service for Agad or receive the amount of ₱15,500 as stated in the official receipt. Delda alleged that he was forced by Agad to issue the official receipt in order to get a favorable recommendation from the incoming superintendent of the Depot.

Further investigations revealed that Arsenio Asperas (Asperas), a carpenter from Tacloban, was commissioned by Agad to build two wooden crates on 12 May 1992. Asperas attested that Agad paid him the amount of ₱400 and he completed the work in 2 ½ days beside the quarters of Agad inside the Depot.[11] Basilia

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[7] *Id.* at 129.

[8] *Id.* at 114.

[9] *Id.* at 112-113.

[10] *Id.* at 115.

[11] *Rollo*, p. 14.

Villalino (Villalino), a household staff of the Depot Staff House, corroborated Asperas' statement in a Sworn Testimony dated 24 May 1993 that Agad did hire Asperas to make two wooden crates inside the Depot before he left for his next post.[12]

In another audit report dated 12 May 1993,[13] the company auditor declared that 190 pieces of 11 kg. liquefied petroleum gas (LPG) cylinders from the Depot were allegedly withdrawn for scrap and repair purposes without proper documentation on 8 February 1991 when Agad was still depot superintendent. Isidro B. Millanes (Millanes), the depot's LPG cylinder repair/reconditioning contractor and owner of IBM Enterprises, claimed that the LPG cylinders were hauled to his compound and allegedly later sold, upon the express instructions of Agad, to Leyte Development Corporation and Ernesto Mercado, a service station dealer.

On 5 July 1993, petitioner E.C. Cavestany (Cavestany), the Regional Manager of Caltex, issued a Memorandum[14] to Agad directing him to explain the following audit review findings: (1) the questionable reimbursement of crating expense; and (2) the alleged unauthorized withdrawal and sale of 190 pieces of LPG cylinders.

On 29 July 1993, Agad sent his reply[15] answering all the charges against him. Agad stated: (1) that Delda Services constructed the two crates worth ₱15,500 as evidenced by an official receipt issued by Delda; and (2) that the withdrawal of the scrap LPG cylinders formed part of his housekeeping duties as depot superintendent. The scrap materials consisting of tanks, pumps and pipelines of Gebarin, a logging account of Caltex located in Marabut, Samar, were bidded out to a certain Rogelio "Boy" H. Bato on an "as is, where is" basis.[16] However, the

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[12] *Id.* at 15.

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

[14] *Id.* at 144.

[15] *Id.* at 146-147.

[16] *Id.* at 208-209. Deed of Sale with Waiver executed by Caltex and Rogelio Bato on 8 January 1992.

scrap materials went missing and Boy Bato demanded that such be replaced with equivalent materials. The scrap LPG cylinders were released instead after Agad secured the approval of his superiors as evidenced in a Memorandum dated 12 February 1992.[17] After the approval, Boy Bato's buyer, a certain Mr. Ang, allegedly acquired the scrap cylinders from IBM Enterprises.

Caltex created an investigating panel chaired by Cavestany to look into the offenses allegedly committed. On 17 August 1993, the investigating panel held its first formal inquiry.[18] The transcript of the investigation was dated 2 September 1993.[19]

On 29 April 1994, Caltex placed Agad under preventive suspension. On 26 May 1994 or almost 10 months after the first formal inquiry, the investigating panel conducted another hearing.[20] Two other hearings were held on 14 June and 6 July 1994.

In a Confidential Memorandum dated 8 August 1994,[21] Cavestany informed Agad of his dismissal on the grounds of serious misconduct and loss of trust and confidence, both just causes for termination of employment. Agad received the memorandum on 25 August 1994.

On 1 September 1994, respondents Agad and Caltex United Supervisors' Association filed a complaint[22] with the Labor Arbiter (LA) for illegal dismissal, illegal suspension with prayer for full backwages of ₱31,000 per month from 25 August 1994 until reinstatement, moral damages of ₱5,000,000, exemplary damages of ₱5,000,000 and 10% of the total monetary award as attorney's fees against petitioners Caltex and its officers – William P. Tiffany,

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[17] *Id.* at 210.

[18] *Id.* at 75.

[19] *Id.* at 162-166.

[20] *Id.* at 167-173.

[21] *Id.* at 152.

[22] *Id.* at 66-67. Docketed as NLRC NCR Case No. 00-09-06449-94.

President and Chief Executive Officer; E.M. Cruz, General Manager for Distribution; and Cavestany.

On 16 November 1998, the LA rendered a decision in favor of Agad.[23] The LA held that there were no just causes for Agad's termination of employment. On the charge of fraudulent reimbursement of crating expense, the LA found no basis for this since Delda issued an official receipt which served as best evidence that the crating expense was actually incurred. According to the LA, Delda's claim that he was only forced by Agad to issue the receipt for fear of losing his job as a contractor does not appear to be credible. In the administrative inquiry held on 26 May 1994, it was clearly established that Delda held a grudge against Agad since Agad did not recommend him to be a contractor of Caltex for failure to meet the minimum capital required of aspiring contractors. Also, the LA did not give any weight to the testimonies of Asperas and Villalino since they were not presented for cross-examination during the investigation.

As to the charge of unauthorized withdrawal and sale of the LPG cylinders, the LA ruled that Agad was denied the right to present his witnesses and other evidence in support of his defense which constitutes a denial of due process. Thus, the LA ruled that Agad had been illegally dismissed by Caltex. The dispositive portion of the LA's decision states:

> Since there was no just cause for termination of the services of the complainant; and since the complainant was not given due process in the proceedings to terminate his services; and since he was illegally placed under preventive suspension, we therefore rule that the complainant is entitled to the twin remedies of reinstatement, with full backwages, from the time of his dismissal until his reinstatement to his former position as Depot Superintendent of the Bauan Bulk Depot, or to a similar position, without any loss of seniority rights.
>
> By reason of the arbitrary nature of the termination of the service of the complainant, and the denial of due process in the denial of his right to present evidence in his defense in the administrative inquiry prior to the termination of his services, we hold further the

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[23] *Id.* at 57-65.

respondents liable to the complainant for moral damages, in the sum of ₱5,000,000.00; exemplary damages in the sum of ₱5,000,000.00; and attorney's fees in the sum of ten (10%) percent of the total monetary awards.

SO ORDERED.[24]

Caltex filed an appeal with the NLRC.

The Ruling of the NLRC

On 6 June 2001, the NLRC reversed the decision of the LA. The NLRC held that there existed just causes which justified Agad's dismissal. With regard to the first allegation, the NLRC ruled that the amount of crating expense reimbursed by Agad was fictitious. The fact that a receipt was issued by Delda does not conclusively prove that the crating service was performed by Delda. At the most, the existence of the receipt only proves its execution. The NLRC declared that Delda's testimony, made under oath, enjoys the presumption of regularity and good faith. Corroborated by two other witnesses, Asperas and Villalino, Delda's testimony clearly established that Agad was dishonest in his dealings. The NLRC added that even if the amount involved was only worth ₱15,500, the same was of no moment since what was involved was Agad's propensity to commit dishonesty against the company. As a supervisor, a greater degree of diligence, honesty and trust was expected of him. The NLRC further stated that Caltex had no bad motive to pick on Agad and tell lies about him if indeed he was trustworthy since Agad was given awards and commendations before the discovery of the questioned acts.

On the second allegation, the NLRC ruled that Agad had no authority to withdraw the LPG cylinders from the Depot. The NLRC declared that Agad did not observe existing company rules and regulations in procuring the required forms, in the submission of periodic LPG cylinders inventory and in selling the LPG cylinders without the requisite bidding. Thus, the NLRC

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[24] *Id.* at 64.

concluded that Caltex validly dismissed Agad. The dispositive portion of the NLRC's decision states:

> WHEREFORE, finding sufficient reasons/grounds to warrant reversal of the findings of the Arbiter *a quo*, the assailed decision is hereby SET ASIDE and a new one entered ordering the DISMISSAL of the complaint for lack of basis both in fact and in law.
>
> SO ORDERED.[25]

Agad filed a Motion for Reconsideration which was denied in a Resolution dated 24 September 2002.

Agad then filed a petition for *certiorari* under Rule 65 with the CA. Agad sought the nullification of the decision of the NLRC.

The Ruling of the Court of Appeals

On 22 May 2003, the CA modified the judgment of the NLRC and ruled in favor of Agad. On the issue of fraudulent reimbursement of crating expense, the CA concurred with the LA. According to the CA, the regularity of the official receipt remained untarnished since the only other proof relied upon by petitioners, Delda's affidavit, failed to substantiate his allegations. Delda never assailed the due execution of the receipt and even admitted that he actually issued the receipt. The supporting affidavits of Asperas and Villalino, since they were not cross-examined, must be rejected for being hearsay. Thus, no sufficient evidence was presented to prove that the amount in the receipt was fictitious. Further, the CA indicated that Caltex did not make any limitations to the crating expense to be reimbursed such that Agad was entitled to move his personal and household effects at reasonable costs.

On the second issue of unauthorized withdrawal and sale of LPG cylinders, the CA agreed with the NLRC that Agad did not comply with company rules and regulations. Nonetheless,

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[25] *Id.* at 52.

the CA held that the penalty of dismissal imposed upon Agad was too harsh considering that this was his first infraction and that Agad had been awarded several commendations in the past and had worked for Caltex for more than 10 years. The dispositive portion of the CA's decision states:

> WHEREFORE, premises considered, the petition is hereby GRANTED, and the judgment of the NLRC is hereby MODIFIED. Accordingly, finding no just cause for the termination of employment of the petitioner Hermie G. Agad, we therefore rule that the petitioner was illegally dismissed; he should be entitled to ***reinstatement***, with full backwages, from the time of his illegal dismissal until his reinstatement to his former position as Depot Superintendent of the Bauan Bulk Depot, or to a similar position without any loss of seniority rights.
>
> SO ORDERED.[26]

Caltex filed a Motion for Reconsideration which was denied in a Resolution dated 27 January 2004.

Hence, the instant petition.

The Issue

The main issue is whether Caltex legally terminated Agad's employment on just causes: (1) acts tantamount to serious misconduct and willful violation of company rules and regulations; and (2) willful breach of trust and confidence as Depot Superintendent.

The Court's Ruling

Article 282 of the Labor Code states:

> 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;

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[26] *Rollo*, p. 43.

(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.

In termination cases, the burden of proof rests on the employer to show that the dismissal is for just cause. When there is no showing of a clear, valid, and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal and the burden is on the employer to prove that the termination was for a valid or authorized cause.[27]

The quantum of proof which the employer must discharge is substantial evidence. An employee's dismissal due to serious misconduct and loss of trust and confidence must be supported by substantial evidence. Substantial evidence is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[28]

In the present case, petitioners terminated Agad's employment based on these acts: (1) Agad's submission of a fictitious crating expense amounting to ₱15,500; and (2) the unauthorized withdrawal and sale of 190 pieces of 11 kg. LPG cylinders for his personal gain and profit.

Crating expense is reasonable

Petitioners insist that the CA erred in ruling that the crating expense of ₱15,500 was justifiable without however stating the basis for such a ruling. According to petitioners, the records prove that there were more than ample evidence to show that the crating expense was fictitious. Petitioners reiterate the sworn

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[27] *AMA Computer College-East Rizal v. Ignacio*, G.R. No. 178520, 23 June 2009, citing *Cosep v. National Labor Relations Commission,* 353 Phil. 148, 157-158 (1998).

[28] *Id.*, citing *Philippine Commercial Industrial Bank v. Cabrera,* G.R. No. 160368, 30 March 2005, 454 SCRA 792, 803.

testimonies of Delda, Esperas, and Villalino, and that of Augusto Cabugao, the Regional Audit Manager of Caltex, who testified that the crating expense of ₱15,500 was unreasonably high considering that depot houses of Caltex were fully furnished and expenses incurred in transferring personal effects were usually very small.

Respondents, on the other hand, maintain that the crating expense was necessary and reasonable under the circumstances. *First*, Caltex readily approved the reimbursement claim when Agad submitted the official receipt. It was only a year later, during a regular audit, when Caltex sought Delda's affidavit of denial when the company questioned the authenticity and reasonableness of the amount of the crating expense. *Second*, of the first three witnesses for the petitioners, only Delda was presented for cross-examination during the administrative investigation. Thus, the affidavits of Esperas and Villalino remain hearsay and deserve scant consideration. *Last*, George Taberrah, the former Manager for Distribution of Caltex, testified on 26 February 1996 that the amount of ₱15,500 for crating expense was reasonable. Even Roger San Jose, the former auditor of Caltex, testified on the necessity and reasonableness of said amount.

In *R & E Transport, Inc. v. Latag*,[29] we held that factual issues may be reviewed by the CA when the findings of fact of the NLRC conflict with those of the LA. By the same token, this Court may review factual conclusions of the CA when they are contrary to those of the NLRC or of the LA.

In the present case, the evidence of the parties with respect to the crating expense reimbursed by Agad finds discord on the official receipt issued by Delda *vis-a-vis* Delda's sworn testimony denying that he received the amount stated in the receipt or rendered any crating service for Agad. The petitioners presented the affidavits of Asperas and Villalino to corroborate Delda's testimony while Agad relied on the official receipt as the best evidence that he contracted Delda's services and that Delda

[29] 467 Phil. 355 (2004).

indeed issued said receipt. The decisions of the CA and NLRC produced different factual conclusions on this issue.

After a careful review of the records, we find no cogent reason to disturb the findings of the CA.

First, the official receipt submitted by Agad serves as the best evidence of payment and is presumed regular on its face absent any showing to the contrary.

Second, records show that the reimbursement of the crating expense was approved by Agad's superior upon presentment of the receipt. At the time, Agad's superior did not mention that the amount of the crating expense incurred was unreasonable.

Third, Delda, in his affidavit, disclosed that he was forced to issue the receipt in order to get a favorable recommendation from the incoming superintendent who would replace Agad in the Depot. However, in the same affidavit, Delda mentioned that he had been a standby worker at the Depot from 1956 to 1982 and a piece-worker from 1982 up to 1993, the date he executed the affidavit. It appears then that Delda had established a name for himself and his business with Caltex. Any favorable recommendation from Agad, as the outgoing superintendent, would not provide much impact compared to the reputation he had built all those years.

Fourth, the testimonies of the two corroborating witnesses, Esperas and Villalino, cannot be given credence since Agad was not given an opportunity to cross-examine them. Their testimonies are considered as hearsay evidence.

Last, petitioners did not present any other evidence to show that Agad violated company policy dealing with crating expenses to be limited to a certain amount. Reasonableness was the only criterion given by the employer.

Thus, all these taken into consideration, we conclude that petitioners were not able to fully substantiate the alleged fictitious reimbursement of the crating expense. Delda's testimony alone, without any corroborating evidence to prove otherwise, is

insufficient to overcome the presumption of regularity in the issuance of his own official receipt which he gave to Agad.

Withdrawal and sale of 190 pieces of LPG cylinders is unauthorized

Petitioners assert that Agad committed serious violation of internal control procedures and company policies due to the following: (1) no Records of Materials Received/Delivered (RMRD) were issued to cover the withdrawal of the empty cylinders for repair purposes; (2) the testimony of Millanes demonstrates that the cylinders were initially stored at his premises on 8 February 1991 and later sold as good units without bidding, upon the instructions of Agad, to Leyte Development and Ernesto Mercado; (3) no evidence was submitted to show that the sales proceeds were turned over to Caltex and petitioners surmise that the total prevailing price of the LPG cylinders would have been from a low of ₱95,000 to a high of ₱133,000; (4) the periodic report of inventory of the LPG cylinders, considered part of storehouse materials, to Head Office Accounting was not submitted by the depot; and (5) the depot clerk acted beyond his authority when he approved the gate passes for the withdrawal of the cylinders.[30]

Respondents, on the other hand, maintain the following: (1) that as depot superintendent, Agad had the authority to transfer materials, including scrap, from one place to another; (2) Agad had specific authority, per Memorandum dated 12 February 1992, to withdraw the scrap materials as replacement for the missing scrap tanks, pumps and pipelines earlier sold to Boy Bato; (3) the withdrawal of the LPG cylinders was covered by gate passes 8499 and 8500, negating any fraudulent intent on Agad's part; and (4) petitioners' own witness, Millanes, testified that the LPG cylinders withdrawn were actually junk or scrap materials and of no accounting value. In addition, even assuming that the withdrawal of the LPG cylinders was unauthorized, the penalty of dismissal is too harsh a penalty.

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[30] Based on the Audit Review Report dated 12 May 1993. *Supra* note 13.

We agree with petitioners.

The findings of the CA in the present case revealed:

> With regard to the second issue, the petitioner contends that the withdrawal/sale of 190 LPG cylinders in the Tacloban Bulk Depot was well within his authority as a Depot Superintendent and covered by an authority stated in an instrument, as a consequence of a contract of sale with Mr. Bato. Furthermore, such cylinders were already considered as scrap or without monetary value. Therefore, its withdrawal/sale could not constitute just cause for dismissal.
>
> The contention is without merit. Although his position as Depot Superintendent includes such authority, as part of his housekeeping duties, it does not automatically justify his acts which were contrary to company rules and regulations. The company rules required the issuance of RMRDs for any company properties with value to be withdrawn from the Bulk Depot. Petitioner failed to comply with this rule. Furthermore, he ordered the sale of the cylinders without bidding, and there were no evidence that the proceeds of such sale were turned over to the company. Mere existence of authority does not justify his acts, he must show that he properly exercised such authority as contemplated in the company rules and regulations, especially when the act is not within his discretion.
>
> His contention that such withdrawal mas merely a part of a contract of sale between the company and Mr. Bato, is likewise erroneous. The instrument never mentioned of any LPG cylinders, what was mentioned therein was 3,000 B.I. plates. And even if the contract involved LPG cylinders, still, its withdrawal must be accounted for.
>
> The petitioners' assumption that the subject LPG cylinders were merely scrap materials is likewise erroneous. The cylinders, although declared as scraps, still has monetary value because it can still be sold even as scrap materials. Moreover, even if such cylinders were merely scrap, the petitioner cannot just appropriate them without the company's consent. Being company property, its disposal is still within the discretion and prerogative of the company.[31]

In the same manner, the NLRC, in its Decision dated 6 June 2001, held:

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[31] *Rollo*, p. 40.

x x x It was sufficiently established that complainant Agad had no authority to withdraw the LPG cylinders from the Tacloban Bulk Depot. Complainant Agad's claim that he merely withdrew the LPG cylinders in view of the loss of certain scrap materials earlier sold to Mr. Boy Bato is belied by the fact that the alleged loss was not established. On the other hand, the records show that complainant Agad's request for the withdrawal of scrap materials only covered 3,000 kilograms of B.I. plates. This request, however, did not include the LPG cylinders, numbering 190, which were withdrawn from the Tacloban Depot.

Complainant Agad also did not observe the existing company rules and regulations on the withdrawal of LPG cylinders from the Tacloban Bulk Depot. According to the Audit Report, which was not controverted by complainant Agad, no Records of Materials Received/ Delivered were issued to cover the withdrawal of the cylinders. Also, the periodic inventory of the LPG cylinders was not submitted by complainant Agad to the accounting department. Further, the LPG cylinders were not sold through bidding, which was corroborated by the statement of Mr. Isidro B. Millanes, who testified that the subject LPG cylinders were first stored at his premises and later sold without bidding upon the express instructions of complainant Agad.

In this regards, it cannot be validly claimed that the LPG cylinders in question were mere scrap materials, *i.e.*, they had no monetary value anymore and therefore not subject to the strict requirement laid down by the company rules and regulations. As testified to by Mr. Cabugao, and by no less than complainant Agad himself and his own witnesses, Mr. George Taberrah, and Mr. Roger San Jose, Jr., the LPG containers have monetary value as they can still be sold even as scrap.[32]

The findings of the CA and NLRC establish the following: (1) Agad's request for withdrawal of the 190 pieces of LPG cylinders as stated in a Memorandum dated 12 February 1992 cannot be given credence since the Memorandum pertains to the replacement of the scrap materials due to Boy Bato consisting of 3,000 kilograms of black iron plates and not to the subject LPG cylinders; (2) Agad did not observe Caltex's rules and

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[32] CA *rollo*, pp. 49-50.

regulations when he transferred the said cylinders to Millanes' compound without the RMRD form as required under Caltex's Field Accounting Manual; (3) Agad gave specific instructions to Millanes to sell the cylinders without bidding to third parties in violation of company rules; (4) Agad failed to submit the periodic inventory report of the LPG cylinders to the accounting department; (5) Agad did not remit the proceeds of the sale of the LPG cylinders; and (6) even if considered as scrap materials, the LPG cylinders still had monetary value which Agad cannot appropriate for himself without Caltex's consent.

Considering these findings, it is clear that Agad committed a serious infraction amounting to theft of company property. This act is akin to a serious misconduct or willful disobedience by the employee of the lawful orders of his employer in connection with his work, a just cause for termination of employment recognized under Article 282(a) of the Labor Code.

Misconduct has been defined as a 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 in judgment. To be serious, the misconduct must be of such grave and aggravated character.[33]

Further, Agad's conduct constitutes willful breach of the trust reposed in him, another just cause for termination of employment recognized under Article 282(c) of the Labor Code. Loss of trust and confidence, as a just cause for termination of employment, is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence. The employee must be invested with confidence on delicate matters, such as the custody, handling, care and protection of the employer's property and funds.[34]

As a superintendent, Agad occupied a position tasked to perform key and sensitive functions which necessarily involved

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[33] *Colegio de San Juan de Letran-Calamba v. Villas*, 447 Phil. 692 (2003).

[34] *Cruz v. Coca-Cola Bottlers, Phils., Inc.*, G.R. No. 165586, 15 June 2005, 460 SCRA 340.

the custody and protection of Caltex's properties. Consequently, Agad comes within the purview of the trust and confidence rule.

In *Sagales v. Rustan's Commercial Corporation*,[35] we held that in loss of trust and confidence, as a just cause for dismissal, it is sufficient that there must only be some basis for the loss of trust and confidence or that there is reasonable ground to believe, if not to entertain the moral conviction, that the employee concerned is responsible for the misconduct and that his participation in the misconduct rendered him absolutely unworthy of trust and confidence.

In sum, even if Agad did not commit the alleged charge of fictitious reimbursement of crating expense, he was found to have acted without authority, a serious infraction amounting to theft of company property, in the withdrawal and sale of the 190 pieces of LPG cylinders owned by the company. Caltex, as the employer, has discharged the burden of proof necessary in terminating the services of Agad, who was ascertained to have blatantly abused his position and authority. Thus, Agad's dismissal from employment based on (1) acts tantamount to serious misconduct or willful violation of company rules and regulations; and (2) willful breach of trust and confidence as Depot Superintendent was lawful and valid under the circumstances as mandated by Article 282 (a) and (c) of the Labor Code.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the Decision dated 22 May 2003 and Resolution dated 27 January 2004 of the Court of Appeals in CA-G.R. SP No. 74199. We *DECLARE* as valid the termination from employment of respondent Hermie G. Agad for just causes prescribed under the law.

SO ORDERED.

Brion, Del Castillo, Abad, and *Perez, JJ.,* concur.

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[35] G.R. No. 166554, 27 November 2008, 572 SCRA 89, citing *Central Pangasinan Electric Cooperative, Inc. v. Macaraeg,* G.R. No. 145800, 22 January 2003, 395 SCRA 720 and *Gonzales v. NLRC*, G.R. No. 131653, 26 March 2001, 355 SCRA 195.

SECOND DIVISION

[G.R. No. 163554. April 23, 2010]

DANNIE M. PANTOJA, *petitioner, vs.* **SCA HYGIENE PRODUCTS CORPORATION,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; EMPLOYER'S IMPLEMENTATION OF STREAMLINING PLAN WAS DONE IN GOOD FAITH.—** [T]he abolishment of Paper Mill No. 4 was undoubtedly a business judgment arrived at in the face of the low demand for the production of industrial paper at the time. Despite an apparent reason to implement a retrenchment program as a cost-cutting measure, respondent, however, did not outrightly dismiss the workers affected by the closure of Paper Mill No. 4 but gave them an option to be transferred to posts of equal rank and pay. As can be seen, retrenchment was utilized by respondent only as an available option in case the affected employee would not want to be transferred. Respondent did not proceed directly to retrench. This, to our mind, is an indication of good faith on respondent's part as it exhausted other possible measures other than retrenchment. Besides, the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means have been tried and found wanting. Giving the workers an option to be transferred without any diminution in rank and pay specifically belie petitioner's allegation that the alleged streamlining scheme was implemented as a ploy to ease out employees, thus, the absence of bad faith. Apparently, respondent implemented its streamlining or reorganization plan with good faith, not in an arbitrary manner and without prejudicing the tenurial rights of its employees.
2. **ID.; ID.; ID.; EMPLOYEE'S VOLUNTARY SEPARATION FROM EMPLOYMENT RENDERS HIS CLAIM FOR ILLEGAL DISMISSAL UNFOUNDED; QUITCLAIM, HELD VALID.—** We held that work reassignment of an employee as

a genuine business necessity is a valid management prerogative. After being given an option to be transferred, petitioner rejected the offer for reassignment to Paper Mill No. 5 even though such transfer would not involve any diminution of rank and pay. Instead, he opted and preferred to be separated by executing a release and quitclaim in consideration of which he received separation pay in the amount of ₱356,335.20 equal to two months pay for every year of service plus other accrued benefits. Clearly, petitioner freely and voluntarily consented to the execution of the release and quitclaim. Having done so apart from the fact that the consideration for the quitclaim is credible and reasonable, the waiver represents a valid and binding undertaking. As aptly concluded by the CA, the quitclaim was not executed under force or duress and that petitioner was given a separation pay more than what the law requires from respondent.

APPEARANCES OF COUNSEL

Federation of Free Workers (FFW) Legal Center for petitioner.
Platon Martinez Flores San Pedro & Leaño for respondent.

D E C I S I O N

DEL CASTILLO, *J*.:

Once again, we uphold the employer's exercise of its management prerogative because it was done for the advancement of its interest and not for the purpose of defeating the lawful rights of an employee.

This petition for review on *certiorari*[1] assails the Decision[2] dated January 30, 2004 and Resolution[3] dated May 13, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 73076, which

[1] *Rollo*, pp.10-23.

[2] *Id.* at 73-79; penned by Associate Justice Eloy R. Bello, Jr. and concurred in by Associate Justices Amelita G. Tolentino and Arturo D. Brion.

[3] *Id.* at 91.

affirmed the May 30, 2002 Decision[4] of the National Labor Relations Commission (NLRC) and reinstated the Labor Arbiter's dismissal of the illegal dismissal complaint filed by petitioner Dannie M. Pantoja against respondent SCA Hygiene Products Corporation.

Factual Antecedents

Respondent, a corporation engaged in the manufacture, sale and distribution of industrial paper and tissue products, employed petitioner as a utility man on March 15, 1987. Petitioner was eventually assigned at respondent's Paper Mill No. 4, the section which manufactures the company's industrial paper products, as a back tender in charge of the proper operation of the section's machineries.

In a Notice of Transfer dated March 27, 1999,[5] respondent informed petitioner of its reorganization plan and offered him a position at Paper Mill No. 5 under the same terms and conditions of employment in anticipation of the eventual closure and permanent shutdown of Paper Mill No. 4 effective May 5, 1999. The closure and concomitant reorganization is in line with respondent's decision to streamline and phase out the company's industrial paper manufacturing operations due to financial difficulties brought about by the low volume of sales and orders for industrial paper products.

However, petitioner rejected respondent's offer for his transfer. Thus, a notice of termination[6] of employment effective May 5, 1999 was sent to petitioner as his position was declared redundant by the closure of Paper Mill No. 4. He then received his separation pay equivalent to two months pay for every year of service in the amount of ₱356,335.20 and thereafter executed a release and quitclaim[7] in favor of respondent. On April 5, 1999, respondent

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[4] *Id.* at 63-69; penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan.

[5] Annex "1", CA *rollo*, p. 72.

[6] Annex "2", *id.* at 73; Annex "A" of petitioner's position paper, *id.* at 88.

[7] Annex "6", *id.* at 77.

informed the Department of Labor and Employment (DOLE) of its reorganization and partial closure by submitting with the said office an Establishment Termination Report[8] together with the list[9] of 31 terminated employees.

On June 20, 2000, petitioner filed a complaint for illegal dismissal against respondent assailing his termination as without any valid cause. He averred that the alleged redundancy never occurred as there was no permanent shutdown of Paper Mill No. 4 due to its continuous operation since his termination. A co-employee, Nestor Agtang, confirmed this fact and further attested that several contractual workers were employed to operate Paper Mill No. 4.[10] Petitioner also presented in evidence documents pertaining to the actual and continuous operation of Paper Mill No. 4 such as the Paper Mill Personnel Schedule for July 2-8, 2000[11] and 23-29, 2000[12] and Paper Machine No. 4 Production Report and Operating Data dated April 28, 2000[13] and May 18, 2000.[14]

In its defense, respondent refuted petitioner's claim of illegal dismissal. It argued that petitioner has voluntarily separated himself from service by opting to avail of the separation benefits of the company instead of accepting reassignment/transfer to another position of equal rank and pay. According to respondent, petitioner's discussion on the alleged resumption of operation of Paper Mill No. 4 is rendered moot by the fact of petitioner's voluntary separation.

Ruling of the Labor Arbiter

On March 23, 2001, the Labor Arbiter rendered a Decision[15] dismissing petitioner's complaint for lack of merit.

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[8] Annex "4", *id.* at 75.

[9] Annex "5", *id.* at 76.

[10] Agtang's Affidavit, Annex "B", *id.* at 89-90.

[11] Annex "C", *id.* at 91.

[12] Annex "D", *id.* at 92.

[13] Annex "E", *id.* at 93.

[14] Annex "F", *id.* at 94.

[15] *Rollo*, pp. 46-51.

The Labor Arbiter ruled that inasmuch as petitioner rejected the position offered to him, opted to receive separation pay and executed a release and quitclaim releasing the company from any claim or demand in connection with his employment, petitioner's claim that he was illegally dismissed must perforce fail.

Ruling of the National Labor Relations Commission

Upon appeal by petitioner, the NLRC reversed the Labor Arbiter's Decision by finding petitioner's separation from employment illegal. The NLRC gave credence to petitioner's evidence of Paper Mill No. 4's continuous operation and consequently opined that the feigned shutdown of operations renders respondent's redundancy program legally infirm. According to the NLRC, petitioner's refusal to be transferred to an equal post in Paper Mill No. 5 is of no consequence since he would not have had the need to make a choice where the situation, in the first place, never called for it. The NLRC further disregarded the validity of the quitclaim because its execution cannot be considered as having been done voluntarily by petitioner there being fraud and misrepresentation on the part of respondent. The dispositive portion of the NLRC Decision reads:

> WHEREFORE, premises considered, the decision under review is hereby REVERSED and SET ASIDE, and another entered, declaring complainant's dismissal from employment as ILLEGAL.
>
> Accordingly, respondent is ordered to REINSTATE the complainant to his former position without loss of seniority rights and pay him FULL BACKWAGES in the amount corresponding to the period when he was actually dismissed until actual reinstatement, less the sum of THREE HUNDRED FIFTY SIX THOUSAND THREE HUNDRED THIRTY FIVE & 20/100 Pesos (₱356,335.20) representing his separation pay.
>
> Respondent is further ordered to pay the complainant, by way of attorney's fees, ten percent (10%) of the total net amount due as backwages.
>
> SO ORDERED.[16]

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[16] *Id.* at 68-69.

Respondent sought reconsideration of the NLRC's ruling. It denied the fact that Paper Mill No. 4 continued to be fully operational in 1999. Respondent asseverated that when Paper Mill No. 4 was shut down in 1999 due to its low production output as certified in an affidavit[17] executed by SCA's VP-Tissue Manufacturing Director, there was a necessity to occasionally run from time to time the machines in Paper Mill No. 4 only for the purpose of maintaining and preserving the same and does not mean that Paper Mill No. 4 continued to be operational. It was only in 2000 that Paper Mill No. 4 was subsequently reopened due to a more favorable business climate, which decision is recognized as a rightful exercise of management prerogative. Moreover, respondent maintained that this is a case of voluntary separation and not illegal dismissal.

In a Resolution[18] dated August 22, 2002, respondent's motion was denied.

Ruling of the Court of Appeals

Aggrieved, respondent filed a petition for *certiorari* with the CA. On January 30, 2004, the CA reversed the NLRC's Decision and reinstated the Labor Arbiter's Decision dismissing the complaint. It ruled that there was no illegal dismissal as the act of petitioner in rejecting the transfer and accepting the separation pay constitutes a valid basis for the separation from employment. Respondent's Motion to Annul the NLRC's Entry of Judgment was granted by the CA.

Petitioner filed a motion for reconsideration but it was denied.

Issue

The lone issue in this petition for review on *certiorari* is whether or not respondent is guilty of illegal dismissal.

Petitioner contends that respondent's streamlining of operations which resulted in the reduction of personnel was a mere scheme

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[17] Annex "1" of respondent's motion for reconsideration to the NLRC Decision dated May 30, 2002, CA *rollo*, pp. 163-165.

[18] *Rollo*, pp. 70-71.

to get rid of regular employees whose security of tenure is protected by law. As there was evident bad faith in the implementation of a flawed retrenchment program, petitioner argued that his separation from employment due to his decision to accept separation pay is illegal since respondent has no valid basis to give him an option either to be transferred or be separated. Further, neither can the quitclaim he executed stamp legality to his precipitate separation.

Our Ruling

The petition lacks merit.

Respondent's right of management prerogative was exercised in good faith.

Respondent presented evidence of the low volume of sales and orders for the production of industrial paper in 1999 which inevitably resulted to the company's decision to streamline its operations. This fact was corroborated by respondent's VP-Tissue Manufacturing Director and was not disputed by petitioner. Exercising its management prerogative and sound business judgment, respondent decided to cut down on operational costs by shutting down one of its paper mill. As held in *International Harvester Macleod, Inc. v. Intermediate Appellate Court*,[19] the determination of the need to phase out a particular department and consequent reduction of personnel and reorganization as a labor and cost saving device is a recognized management prerogative which the courts will not generally interfere with.

In this case, the abolishment of Paper Mill No. 4 was undoubtedly a business judgment arrived at in the face of the low demand for the production of industrial paper at the time. Despite an apparent reason to implement a retrenchment program as a cost-cutting measure, respondent, however, did not outrightly dismiss the workers affected by the closure of Paper Mill No. 4 but gave them an option to be transferred to posts of

[19] 233 Phil. 655, 665-666 (1987).

equal rank and pay. As can be seen, retrenchment was utilized by respondent only as an available option in case the affected employee would not want to be transferred. Respondent did not proceed directly to retrench. This, to our mind, is an indication of good faith on respondent's part as it exhausted other possible measures other than retrenchment. Besides, the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means have been tried and found wanting. Giving the workers an option to be transferred without any diminution in rank and pay specifically belie petitioner's allegation that the alleged streamlining scheme was implemented as a ploy to ease out employees, thus, the absence of bad faith. Apparently, respondent implemented its streamlining or reorganization plan with good faith, not in an arbitrary manner and without prejudicing the tenurial rights of its employees.

Petitioner harps on the fact that there was no actual shutdown of Paper Mill No. 4 but that it continued to be operational. No evidence, however, was presented to prove that there was continuous operation after the shutdown in the year 1999. What the records reveal is that Paper Mill No. 4 resumed its operation in 2000 due to a more favorable business climate. The resumption of its industrial paper manufacturing operations does not, however, make respondent's streamlining/reorganization plan illegal because, again, the abolishment of Paper Mill No. 4 in 1999 was a business judgment arrived at to prevent a possible financial drain at that time. As long as no arbitrary or malicious action on the part of an employer is shown, the wisdom of a business judgment to implement a cost saving device is beyond this court's determination. After all, the free will of management to conduct its own business affairs to achieve its purpose cannot be denied.[20]

Petitioner's voluntary separation from employment renders his claim of illegal dismissal unfounded and baseless.

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[20] *Maya Farms Employees Organization v. National Labor Relations Commission,* G.R. No. 106256, December 28, 1994, 239 SCRA 508, 514.

Petitioner claims that he had no choice but to resign on the belief that Paper Mill No. 4 will be permanently closed as misrepresented by respondent and thus can invalidate the release and quitclaim executed by him.

We find this contention untenable.

We held that work reassignment of an employee as a genuine business necessity is a valid management prerogative.[21] After being given an option to be transferred, petitioner rejected the offer for reassignment to Paper Mill No. 5 even though such transfer would not involve any diminution of rank and pay. Instead, he opted and preferred to be separated by executing a release and quitclaim in consideration of which he received separation pay in the amount of ₱356,335.20 equal to two months pay for every year of service plus other accrued benefits. Clearly, petitioner freely and voluntarily consented to the execution of the release and quitclaim. Having done so apart from the fact that the consideration for the quitclaim is credible and reasonable, the waiver represents a valid and binding undertaking.[22] As aptly concluded by the CA, the quitclaim was not executed under force or duress and that petitioner was given a separation pay more than what the law requires from respondent.

WHEREFORE, the petition is *DENIED*. The assailed January 30, 2004 Decision of the Court of Appeals in CA-G.R. SP No. 73076 dismissing petitioner Dannie M. Pantoja's complaint for illegal dismissal and the May 13, 2004 Resolution denying the Motion for Reconsideration are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Abad, Perez, and *Mendoza,*[*] *JJ.,* concur.

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[21] *Merck Sharp and Dohme (PHIL.) v. Robles,* G.R. No. 176506, November 25, 2009.

[22] *San Miguel Corp. v. Teodosio,* G.R. No. 163033, October 2, 2009.

[*] In lieu of Justice Arturo D. Brion, per raffle dated April 19, 2010.

SECOND DIVISION

[G.R. No. 165300. April 23, 2010]

ATTY. PEDRO M. FERRER, *petitioner, vs.* **SPOUSES ALFREDO DIAZ and IMELDA DIAZ, REINA COMANDANTE and SPOUSES BIENVENIDO PANGAN and ELIZABETH PANGAN,** *respondents.*

SYLLABUS

1. **CIVIL LAW; CONTRACTS; REQUISITES OF A PROHIBITED CONTRACT UPON FUTURE INHERITANCE, PRESENT.—** A contract may be classified as a contract upon future inheritance, prohibited under the second paragraph of Article 1347, where the following requisites concur: (1) That the succession has not yet been opened. (2) That the object of the contract forms part of the inheritance; and, (3) That the promissor has, with respect to the object, an expectancy of a right which is purely hereditary in nature. In this case, there is no question that at the time of execution of Comandante's Waiver of Hereditary Rights and Interest Over a Real Property (Still Undivided), succession to either of her parent's properties has not yet been opened since both of them are still living. With respect to the other two requisites, both are likewise present considering that the property subject matter of Comandante's waiver concededly forms part of the properties that she expect to inherit from her parents upon their death and, such expectancy of a right, as shown by the facts, is undoubtedly purely hereditary in nature.

2. **ID.; ID.; WAIVER OF HEREDITARY RIGHTS BY A FUTURE HEIR IS INVALID.—** Guided by the [ruling in *Tañedo v. Court of Appeals*], we similarly declare in this case that the Waiver of Hereditary Rights and Interest Over a Real Property (Still Undivided) executed by Comandante in favor of petitioner as not valid and that same cannot be the source of any right or create any obligation between them for being violative of the second paragraph of Article 1347 of the Civil Code.

3. **ID.; LAND REGISTRATION; AN INVALID WAIVER OF HEREDITARY RIGHTS CANNOT BE THE BASIS OF**

REGISTRATION OF AN ADVERSE CLAIM.— Anent the validity and effectivity of petitioner's adverse claim, it is provided in Section 70 of PD 1529, that it is necessary that the claimant has a right or interest in the registered land adverse to the registered owner and that it must arise subsequent to registration. Here, as no right or interest on the subject property flows from Comandante's invalid waiver of hereditary rights upon petitioner, the latter is thus not entitled to the registration of his adverse claim. Therefore, petitioner's adverse claim is without any basis and must consequently be adjudged invalid and ineffective and perforce be cancelled.

4. **REMEDIAL LAW; SUMMARY JUDGMENT; WHEN PROPER.—** [S]ummary judgment is a procedural devise resorted to in order to avoid long drawn out litigations and useless delays. When the pleadings on file show that there are no genuine issues of facts to be tried, the Rules of Court allows a party to obtain immediate relief by way of summary judgment. That is, when the facts are not in dispute, the court is allowed to decide the case summarily by applying the law to the material facts.

5. **ID.; ID.; NOT PROPER IN CASE AT BAR; GENUINE ISSUES THAT REQUIRE THE PRESENTATION OF EVIDENCE, CITED.—** [W]here the pleadings tender a genuine issue, summary judgment is not proper. A genuine issue is such fact which requires the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim. Here, we find the existence of genuine issues which removes the case from the coverage of summary judgment. The variance in the allegations of the parties in their pleadings is evident. x x x [T]here are genuine issues in this case which require the presentation of evidence. For one, it is necessary to ascertain in a full blown trial the validity and due execution of the SPA, the Real Estate Mortgage and the Promissory Notes because the determination of the following equally significant questions depends on them, to wit: (1) Are the Diazes obligated to petitioner or is the obligation a purely personal obligation of Comandante? and, (2) Is the sum of ₱1,118,228.00 as shown in the Real Estate Mortgage and the Promissory Note, the amount which is really due the petitioner? To stress, trial courts have limited authority to render summary judgments and may do so only when there is clearly no genuine issue as to any

material fact. When the facts as pleaded by the parties are disputed or contested, proceedings for summary judgment cannot take the place of trial. From the foregoing, it is apparent that the trial court should have refrained from issuing the summary judgment but instead proceeded to conduct a full blown trial of the case.

APPEARANCES OF COUNSEL

Felix B. Lerio for Spouses Pangan.
J.L. Jorvina, Jr. for Spouses Diaz and R. Comandante.

D E C I S I O N

DEL CASTILLO, *J.*:

The basic questions to be resolved in this case are: *Is a waiver of hereditary rights in favor of another executed by a future heir while the parents are still living valid? Is an adverse claim annotated on the title of a property on the basis of such waiver likewise valid and effective as to bind the subsequent owners and hold them liable to the claimant?*

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the December 12, 2003 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 70888.[3] Said Decision modified the June 14, 2001 Summary Judgment[4] of the Regional Trial Court (RTC) of Quezon City in Civil Case No. Q-99-38876 by holding respondents Spouses Bienvenido and Elizabeth Pangan (the Pangans) not solidarily liable with the other respondents, Spouses Alfredo and Imelda Diaz (the

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[1] *Rollo*, pp. 13-14.

[2] CA *rollo*, pp. 140-149; penned by Associate Justice Arsenio J. Magpale and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Bienvenido L. Reyes.

[3] Entitled *"Atty. Pedro M. Ferrer, plaintiff-appellee, vs. Spouses Alfredo Diaz and Imelda Diaz, Reina Commandante and Spouses Bienvenido Pangan and Elizabeth Pangan."*

[4] Records, pp. 287-291; penned by Judge Emilio L. Leachon, Jr.

Diazes) and Reina Comandante (Comandante), to petitioner Atty. Pedro M. Ferrer (Atty. Ferrer). Likewise assailed is the CA Resolution[5] dated September 10, 2004 which denied petitioner's as well as respondents Spouses Diaz and Comandante's respective motions for reconsideration.

The parties' respective versions of the factual antecedents are as follows:

Version of the Petitioner

Petitioner Atty. Ferrer claimed in his original Complaint[6] that on May 7, 1999, the Diazes, as represented by their daughter Comandante, through a Special Power of Attorney (SPA),[7] obtained from him a loan of ₱1,118,228.00. The loan was secured by a Real Estate Mortgage Contract[8] by way of second mortgage over Transfer Certificate of Title (TCT) No. RT-6604[9] and a Promissory Note[10] payable within six months or up to November 7, 1999. Comandante also issued to petitioner postdated checks to secure payment of said loan.

Petitioner further claimed that prior to this or on May 29, 1998, Comandante, for a valuable consideration of ₱600,000.00, which amount formed part of the abovementioned secured loan, executed in his favor an instrument entitled Waiver of Hereditary Rights and Interests Over a Real Property (Still Undivided),[11] the pertinent portions of which read:

> I, REINA D. COMANDANTE, of legal age, Filipino, married, with residence and postal address at No. 6, Road 20, Project 8, Quezon City, Metro Manila, Philippines, for a valuable consideration of

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[5] CA *rollo*, p. 91.

[6] Records, pp. 3-6.

[7] *Id.* at 7.

[8] *Id.* at 14-17.

[9] *Id.* at 92-95.

[10] *Id.* at 18.

[11] *Id.* at 19-20.

SIX HUNDRED THOUSAND PESOS (₱600,000.00) which constitutes my legal obligation/loan to Pedro M. Ferrer, likewise of legal age, Filipino, married to Erlinda B. Ferrer, with residence and postal address at No. 9, Lot 4, Puerto Rico Street, Loyola Grand Villas, Quezon City, Metro Manila, Philippines, by virtue of these presents, do hereby WAIVE, and/or REPUDIATE all my hereditary rights and interests as a legitimate heir/daughter of Sps. Alfredo T. Diaz and Imelda G. Diaz in favor of said Pedro M. Ferrer, his heirs and assigns over a certain parcel of land together with all the improvements found thereon and which property is more particularly described as follows:

TRANSFER CERTIFICATE OF TITLE
NO. RT-6604 (82020) PR-18887

x x x x x x x x x

and which property is titled and registered in the name of my parents Alfredo T. Diaz and Imelda G. Diaz, as evidenced by Transfer Certificate of Title No. RT 6604 (82020) PR-18887.

(sgd.)
REINA D. COMANDANTE
Affiant

On the basis of said waiver, petitioner executed an Affidavit of Adverse Claim[12] which he caused to be annotated at the back of TCT No. RT-6604 on May 26, 1999.

The Diazes, however, reneged on their obligation as the checks issued by Comandante were dishonored upon presentment. Despite repeated demands, said respondents still failed and refused to settle the loan. Thus, petitioner filed on September 29, 1999 a Complaint[13] for Collection of Sum of Money Secured by Real Estate Mortgage Contract against the Diazes and Comandante docketed as Civil Case No. Q-99-38876 and raffled to Branch 224 of RTC, Quezon City.

Petitioner twice amended his complaint. First, by including as an alternative relief the Judicial Foreclosure of Mortgage[14]

[12] *Id.* at 21.

[13] *Id.* at 3-6.

[14] *Id.* at 48-51 and 69-72.

and, second, by impleading as additional defendants the Pangans as the mortgaged property covered by TCT No. RT-6604 was already transferred under their names in TCT No. N-209049. Petitioner prayed in his second amended complaint that all the respondents be ordered to jointly and solidarily pay him the sum of ₱1,118,228.00, exclusive of interests, and/or for the judicial foreclosure of the property pursuant to the Real Estate Mortgage Contract.

Version of the Respondents

In her Answer[15] to petitioner's original complaint, Comandante alleged that petitioner and his wife were her fellow members in the Couples for Christ Movement. Sometime in 1998, she sought the help of petitioner with regard to the mortgage with a bank of her parents' lot located at No. 6, Rd. 20, Project 8, Quezon City and covered by TCT No. RT-6604. She also sought financial accommodations from the couple on several occasions which totaled ₱500,000.00. Comandante, however, claimed that these loans were secured by chattel mortgages over her taxi units in addition to several postdated checks she issued in favor of petitioner.

As she could not practically comply with her obligation, petitioner and his wife, presented to Comandante sometime in May 1998 a document denominated as Waiver of Hereditary Rights and Interests Over a Real Property (Still Undivided) pertaining to a waiver of her hereditary share over her parents' abovementioned property. Purportedly, the execution of said waiver was to secure Comandante's loan with the couple which at that time had already ballooned to ₱600,000.00 due to interests.

A year later, the couple again required Comandante to sign the following documents: (1) a Real Estate Mortgage Contract over her parents' property; and, (2) an undated Promissory Note, both corresponding to the amount of ₱1,118,228.00, which petitioner claimed to be the total amount of Comandante's monetary obligation to him exclusive of charges and interests.

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[15] *Id.* at 29-33.

Comandante alleged that she reminded petitioner that she was not the registered owner of the subject property and that although her parents granted her SPA, same only pertains to her authority to mortgage the property to banks and other financial institutions and not to individuals. Petitioner nonetheless assured Comandante that the SPA was also applicable to their transaction. As Comandante was still hesitant, petitioner and his wife threatened to foreclose the former's taxi units and present the postdated checks she issued to the bank for payment. For fear of losing her taxi units which were the only source of her livelihood, Comandante was thus constrained to sign the mortgage agreement as well as the promissory note. Petitioner, however, did not furnish her with copies of said documents on the pretext that they still have to be notarized, but, as can be gleaned from the records, the documents were never notarized. Moreover, Comandante claimed that the SPA alluded to by petitioner in his complaint was not the same SPA under which she thought she derived the authority to execute the mortgage contract.

Comandante likewise alleged that on September 29, 1999 at 10:00 o'clock in the morning, she executed an Affidavit of Repudiation/Revocation of Waiver of Hereditary Rights and Interests Over A (Still Undivided) Real Property,[16] which she caused to be annotated on the title of the subject property with the Registry of Deeds of Quezon City on the same day. Interestingly, petitioner filed his complaint later that day too.

By way of special and affirmative defenses, Comandante asserted in her Answer to the amended complaint[17] that said complaint states no cause of action against her because the Real Estate Mortgage Contract and the waiver referred to by petitioner in his complaint were not duly, knowingly and validly executed by her; that the Waiver of Hereditary Rights and Interests Over a Real Property (Still Undivided) is a useless document

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[16] *Id.* at 38.

[17] *Id.* at 208-219.

as its execution is prohibited by Article 1347 of the Civil Code,[18] hence, it cannot be the source of any right or obligation in petitioner's favor; that the Real Estate Mortgage was of doubtful validity as she executed the same without valid authority from her parents; and, that the prayer for collection and/or judicial foreclosure was irregular as petitioner cannot seek said remedies at the same time.

Apart from executing the affidavit of repudiation, Comandante also filed on October 4, 1999 a Petition for Cancellation of Adverse Claim (P.E. 2468) Under The Memorandum of Encumbrances of TCT No. RT-6604 (82020) PR-18887[19] docketed as LRC Case No. Q-12009 (99) and raffled to Branch 220 of RTC, Quezon City. Petitioner who was impleaded as respondent therein moved for the consolidation of said case[20] with Civil Case No. Q-99-38876. On June 24, 2000, Branch 220 of RTC, Quezon City ordered the consolidation of LRC Case No. Q-12009 (99) with Civil Case No. Q-99-38876. Accordingly, the records of the former case was forwarded to Branch 224.

For their part, the Diazes asserted that petitioner has no cause of action against them. They claimed that they do not even know petitioner and that they did not execute any SPA in favor of Comandante authorizing her to mortgage for the second time the subject property. They also contested the due execution of the SPA as it was neither authenticated before the Philippine Consulate in the United States nor notarized before a notary public in the State of New York where the Diazes have been residing for 16 years. They claimed that they do not owe petitioner

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[18] ART. 1347. All things which are not outside the commerce of men, including future things, may be the object of a contract. All rights which are not intransmissible may also be the object of contracts.

No contract may be entered into upon future inheritance except in cases expressly authorized by law.

All services which are not contrary to law, morals, good customs, public order or public policy may likewise be the object of a contract.

[19] Records, p. 1.

[20] *Id.* at 93.

anything. The Diazes also pointed out that the complaint merely refers to Comandante's personal obligation to petitioner with which they had nothing to do. They thus prayed that the complaint against them be dismissed.[21]

At the Pangans' end, they alleged that they acquired the subject property by purchase in good faith and for a consideration of ₱3,000,000.00 on November 11, 1999 from the Diazes through the latter's daughter Comandante who was clothed with SPA acknowledged before the Consul of New York. The Pangans immediately took actual possession of the property without anyone complaining or protesting. Soon thereafter, they were issued TCT No. N-209049 in lieu of TCT No. RT-6604 which was cancelled. [22]

However, on December 21, 1999, they were surprised upon being informed by petitioner that the subject land had been mortgaged to him by the Diazes. Upon inquiry from Comandante, the latter readily admitted that she has a personal loan with petitioner for which the mortgage of the property in petitioner's favor was executed. She admitted, though, that her parents were not aware of such mortgage and that they did not authorize her to enter into such contract. Comandante also informed the Pangans that the signatures of her parents appearing on the SPA are fictitious and that it was petitioner who prepared such document.

As affirmative defense, the Pangans asserted that the annotation of petitioner's adverse claim on TCT No. RT-6604 cannot impair their rights as new owners of the subject property. They claimed that the Waiver of Hereditary Rights and Interests Over a Real Property (Still Undivided) upon which petitioner's adverse claim is anchored cannot be the source of any right or interest over the property considering that it is null and void under paragraph 2 of Article 1347 of the Civil Code.

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[21] See *Answer with Compulsory Counter-Claim* of the Diazes, *id.* at 231-237.

[22] See *Answer with Compulsory Counter-Claim* of the Pangans, *id.* at 172-183.

Moreover, the Pangans asserted that the Real Estate Mortgage Contract cannot bind them nor in any way impair their ownership of subject property because it was not registered before the Register of Deeds.[23]

All the respondents interposed their respective counterclaims and prayed for moral and exemplary damages and attorney's fees in varying amounts.

After the parties have submitted their respective pre-trial briefs, the Diazes filed on March 29, 2001 a Motion for Summary Judgment[24] alleging that: *first*, since the documents alluded to by petitioner in his complaint were defective, he was not entitled to any legal right or relief; and, *second*, it was clear from the pleadings that it is Comandante who has an outstanding obligation with petitioner which the latter never denied. With these, the Diazes believed that there is no genuine issue as to any material fact against them and, hence, they were entitled to summary judgment.

On May 7, 2001, petitioner also filed a Motion for Summary Judgment,[25] claiming that his suit against the respondents is meritorious and well-founded and that same is documented and supported by law and jurisprudence. He averred that his adverse claim annotated at the back of TCT No. RT-6604, which was carried over in TCT No. 209049 under the names of the Pangans, is not merely anchored on the Waiver of Hereditary Rights and Interests Over a Real Property (Still Undivided) executed by Comandante, but also on the Real Estate Mortgage likewise executed by her in representation of her parents and in favor of petitioner. Petitioner insisted that said adverse claim is not frivolous and invalid and is registrable under Section 70 of Presidential Decree (PD) No. 1529. In fact, the Registrar of Deeds of Quezon City had already determined the sufficiency and/or validity of such registration by annotating said claim, and this, respondents

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[23] *Id.*

[24] *Id.* at 246-257.

[25] *Id.* at 262-268.

failed to question. Petitioner further averred that even before the sale and transfer to the Pangans of the subject property, the latter were already aware of the existence of his adverse claim. In view of these, petitioner prayed that his Motion for Summary Judgment be granted.

Ruling of the Regional Trial Court

After the filing of the parties' respective Oppositions to the said motions for summary judgment, the trial court, in an Order dated May 31, 2001,[26] deemed both motions for summary judgment submitted for resolution. Quoting substantially petitioner's allegations in his Motion for Summary Judgment, it thereafter rendered on June 14, 2001 a Summary Judgment[27] in favor of petitioner, the dispositive portion of which reads:

> WHEREFORE, premises considered, summary judgment is hereby rendered in favor of plaintiff and against defendants by:
>
> a) ORDERING all defendants jointly and solidarily to pay plaintiff the sum of ONE MILLION ONE HUNDRED EIGHTEEN THOUSAND TWO HUNDRED TWENTY EIGHT PESOS (₱1,118,228.00) which is blood money of plaintiff;
>
> b) ORDERING the Honorable Registrar of Deeds of Quezon City that the rights and interest of the plaintiff over subject property be annotated at the back of T.C.T. No. N-209049;
>
> c) SENTENCING all defendants to pay plaintiff's expenses of TEN THOUSAND PESOS (₱10,000.00) and to pay the costs of suit.
>
> IT IS SO ORDERED.[28]

The Pangans, the Diazes, and Comandante appealed to the CA.[29] The Pangans faulted the trial court in holding them jointly and severally liable with the Diazes and Comandante for the satisfaction of the latter's personal obligation to petitioner in

[26] *Id.* at 286.

[27] *Id.* at 287-291.

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

[29] *Id.* at 295 and 301.

the total amount of ₱1,118,228.00. The Diazes and Comandante, on the other hand, imputed error upon the trial court in rendering summary judgment in favor of petitioner. They averred that assuming the summary judgment was proper, the trial court should not have considered the Real Estate Mortgage Contract and the Promissory Note as they were defective, as well as petitioner's frivolous and non-registrable adverse claim.

In its Decision[30] dated December 12, 2003, the CA declared Comandante's waiver of hereditary rights null and void. However, it found the Real Estate Mortgage executed by Comandante on behalf of her parents as binding between the parties thereto.

As regards the Pangans, the CA ruled that the mortgage contract was not binding upon them as they were purchasers in good faith and for value. The property was free from the mortgage encumbrance of petitioner when they acquired it as they only came to know of the adverse claim through petitioner's phone call which came right after the former's acquisition of the property. The CA further ruled that as Comandante's waiver of hereditary rights and interests upon which petitioner's adverse claim was based is a nullity, it could not be a source of any right in his favor. Hence, the Pangans were not bound to take notice of such claim and are thus not liable to petitioner.

Noticeably, the appellate court did not rule on the propriety of the issuance of the Summary Judgment as raised by the Diazes and Comandante. In the ultimate, the CA merely modified the assailed Summary Judgment of the trial court by excluding the Pangans among those solidarily liable to petitioner, in effect affirming in all other respects the assailed summary judgment, *viz:*

WHEREFORE, foregoing premises considered, the Decision of the Regional Trial Court of Quezon City, Branch 224 in Civil Case No. Q-99-38876 is hereby MODIFIED, as follows:

1. Ordering defendants-appellants Comandante and Spouses Diaz to jointly and severally pay plaintiff the sum of Php 1,118, 228.00; and

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[30] CA *rollo*, pp. 140-149.

2. Ordering defendants-appellants Comandante and Spouses Diaz to jointly and severally pay plaintiff the amount of Php10,000.00 plus cost of suit.

SO ORDERED.[31]

Petitioner's Motion for Reconsideration[32] having been denied by the CA in its Resolution[33] dated September 10, 2004, he now comes to us through this petition for review on *certiorari* insisting that the Pangans should, together with the other respondents, be held solidarily liable to him for the amount of ₱1,118,228.00.

Our Ruling

The petition lacks merit.

Petitioner merely reiterates his contentions in the Motion for Summary Judgment he filed before the trial court. He insists that his Adverse Claim annotated at the back of TCT No. RT-6604 is not merely anchored on Comandante's Waiver of Hereditary Rights and Interests Over A Real Property (Still Undivided) but also on her being the attorney-in-fact of the Diazes when she executed the mortgage contract in favor of petitioner. He avers that his adverse claim is not frivolous or invalid and is registrable as the Registrar of Deeds of Quezon City even allowed its annotation. He also claims that even prior to the sale of subject property to the Pangans, the latter already knew of his valid and existing adverse claim thereon and are, therefore, not purchasers in good faith. Thus, petitioner maintains that the Pangans should be held, together with the Diazes and Comandante, jointly and severally liable to him in the total amount of ₱1,118,228.00.

Petitioner's contentions are untenable.

The Affidavit of Adverse Claim executed by petitioner reads in part:

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[31] *Id.* at 148.

[32] *Id.* 166-170.

[33] *Id.* at 191.

x x x x x x x x x

1. ***That I am the Recipient/Benefactor of compulsory heir's share over an undivided certain parcel of land together with all the improvements found therein*** x x x ***as evidenced by Waiver of Hereditary Rights and Interests Over A Real Property, executed by REINA D. COMANDANTE (a compulsory/legitimate heir of Sps. Alfredo T. Diaz and Imelda G. Diaz)***, x x x.

2. ***That in order to protect my interest over said property as a Recipient/Benefactor,*** for the registered owners/parents might dispose (of) and/or encumber the same in a fraudulent manner without my knowledge and consent, for the owner's duplicate title was not surrendered to me, it is petitioned that this Affidavit of Adverse Claim be ANNOTATED at the back of the said title particularly on the original copy of Transfer Certificate of Title No. RT-6604 (82020) PR-18887 which is on file with the Register of Deeds of Quezon City.

3. That I am executing this Affidavit in order to attest (to) the truth of the foregoing facts and to petition the Honorable Registrar of Deeds, Quezon City, to annotate this Affidavit of Adverse Claim at the back of the said title particularly the original copy of Transfer Certificate of Title No. RT-6604 (82020) PR-18887 which is on file with the said office, ***so that my interest as Recipient/Benefactor of the said property*** will be protected especially the registered owner/ parents, in a fraudulent manner might dispose (of) and/or encumber the same without my knowledge and consent. (Emphasis ours)

Clearly, petitioner's Affidavit of Adverse Claim was based *solely* on the waiver of hereditary interest executed by Comandante. This fact cannot be any clearer especially so when the inscription of his adverse claim at the back of TCT No. RT-6604 reads as follows:

P.E. 2468/T-(82020)RT-6604 - - AFFIDAVIT OF ADVERSE CLAIM - - Executed under oath by PEDRO M. FERRER, married to Erlinda B. Ferrer, ***claiming among others that they have a claim, the interest over said property as Recipient/Benefactor, by virtue of a waiver of Hereditary Rights and Interest over a real property*** x x x[34] (Emphasis ours)

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[34] Dorsal side of p. 13 of the Records.

Therefore, there is no basis for petitioner's assertion that the adverse claim was also anchored on the mortgage contract allegedly executed by Comandante on behalf of her parents.

The questions next to be resolved are: *Is Comandante's waiver of hereditary rights valid? Is petitioner's adverse claim based on such waiver likewise valid and effective?*

We note at the outset that the validity of petitioner's adverse claim should have been determined by the trial court after the petition for cancellation of petitioner's adverse claim filed by Comandante was consolidated with Civil Case No. Q-99-38876.[35] This is in consonance with Section 70 of PD 1529 which provides:

Section 70. *Adverse Claim.* — Whoever claims any part or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this Decree for registering the same, make a statement in writing setting forth fully his alleged right or interest, and how or under whom acquired, a reference to the number of the certificate of title of the registered owner, the name of the registered owner, and a description of the land in which the right or interest is claimed.

The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim on the certificate of title. The adverse claim shall be effective for a period of thirty days from the date of registration. After the lapse of said period, ***the annotation of adverse claim may be cancelled upon filing of a verified petition therefor by the party in interest***: *Provided, however,* That after cancellation, no second adverse claim based on the same ground shall be registered by the same claimant.

Before the lapse of thirty days aforesaid, ***any party in interest may file a petition in the Court of First Instance where the land is situated for the cancellation of the adverse claim, and the court shall grant a speedy hearing upon the question of validity of such adverse claim, and shall render judgment as may be just and equitable. If the adverse claim is adjudged to be invalid, the***

[35] Records, p. 66.

registration thereof shall be ordered cancelled. If, in any case, the court, after notice and hearing, shall find that the adverse claim thus registered was frivolous, it may fine the claimant in an amount not less than one thousand pesos nor more than five thousand pesos, in its discretion. Before the lapse of thirty days, the claimant may withdraw his adverse claim by filing with the Register of Deeds a sworn petition to that effect. (Emphasis ours)

Pursuant to the third paragraph of the afore-quoted provision, it has been held that the validity or efficaciousness of an adverse claim may only be determined by the Court upon petition by an interested party, in which event, the Court shall order the immediate hearing thereof and make the proper adjudication as justice and equity may warrant. And, it is only when such claim is found unmeritorious that the registration of the adverse claim may be cancelled.[36]

As correctly pointed out by respondents, the records is bereft of any showing that the trial court conducted any hearing on the matter. Instead, what the trial court did was to include this material issue among those for which it has rendered its summary judgment as shown by the following portion of the judgment:

x x x it will be NOTED that subject Adverse Claim annotated at the back of Transfer Certificate of Title No. RT-6604 (82020) PR-18887, and carried over to defendants-Sps. Pangan's Title No. N-20909, is not merely anchored on defendant Reina Comandante's "Waiver of Hereditary Rights and Interest Over a Real Property" but also on her being the Attorney-In-Fact of the previous registered owners/parents/defendants Sps. Alfredo and Imelda Diaz about the Real Estate Mortgage Contract for a loan of ₱1,118,228.00 which is a blood money of the plaintiff. ***Moreover, subject Adverse Claim in LRC Case No. Q-12009 (99) is NOT frivolous and invalid and consequently, REGISTRABLE by virtue of Section 110 of the Land Registration Act (now Section 70 of Presidential Decree No. 1529).*** [37] (Emphasis ours)

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[36] *Sajonas v. Court of Appeals*, 327 Phil. 689, 712 (1996).

[37] Records, p. 290.

It does not escape our attention that the trial court merely echoed the claim of petitioner that his adverse claim subject of LRC Case No. Q-12009 (99) is not frivolous, invalid and is consequently registrable. We likewise lament the apparent lack of effort on the part of said court to make even a short ratiocination as to how it came up with said conclusion. In fact, what followed the above-quoted portion of the summary judgment are mere recitals of the arguments raised by petitioner in his motion for summary judgment. And in the dispositive portion, the trial court merely casually ordered that petitioner's adverse claim be inscribed at the back of the title of the Pangans. What is worse is that despite this glaring defect, the CA manifestly overlooked the matter even if respondents vigorously raised the same before it.

Be that as it may, respondents' efforts of pointing out this flaw, which we find significant, have not gone to naught as will be hereinafter discussed.

All the respondents contend that the Waiver of Hereditary Rights and Interest Over a Real Property (Still Undivided) executed by Comandante is null and void for being violative of Article 1347 of the Civil Code, hence, petitioner's adverse claim which was based upon such waiver is likewise void and cannot confer upon the latter any right or interest over the property.

We agree with the respondents.

Pursuant to the second paragraph of Article 1347 of the Civil Code, no contract may be entered into upon a future inheritance except in cases expressly authorized by law. For the inheritance to be considered "future," the succession must not have been opened at the time of the contract. A contract may be classified as a contract upon future inheritance, prohibited under the second paragraph of Article 1347, where the following requisites concur:

(1) That the succession has not yet been opened.

(2) That the object of the contract forms part of the inheritance; and,

(3) That the promissor has, with respect to the object, an expectancy of a right which is purely hereditary in nature.[38]

In this case, there is no question that at the time of execution of Comandante's Waiver of Hereditary Rights and Interest Over a Real Property (Still Undivided), succession to either of her parent's properties has not yet been opened since both of them are still living. With respect to the other two requisites, both are likewise present considering that the property subject matter of Comandante's waiver concededly forms part of the properties that she expect to inherit from her parents upon their death and, such expectancy of a right, as shown by the facts, is undoubtedly purely hereditary in nature.

From the foregoing, it is clear that Comandante and petitioner entered into a contract involving the former's future inheritance as embodied in the Waiver of Hereditary Rights and Interest Over a Real Property (Still Undivided) executed by her in petitioner's favor.

In *Tañedo v. Court of Appeals,*[39] we invalidated the contract of sale between Lazaro Tañedo and therein private respondents since the subject matter thereof was a *"one hectare of whatever share the former shall have over Lot 191 of the cadastral survey of Gerona, Province of Tarlac and covered by Title T-13829 of the Register of Deeds of Tarlac."* It constitutes a part of Tañedo's future inheritance from his parents, which cannot be the source of any right nor the creator of any obligation between the parties.

Guided by the above discussions, we similarly declare in this case that the Waiver of Hereditary Rights and Interest Over a Real Property (Still Undivided) executed by Comandante in favor of petitioner as not valid and that same cannot be the source of any right or create any obligation between them for being violative of the second paragraph of Article 1347 of the Civil Code.

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[38] *J.L.T. Agro Inc. v. Balansag*, 493 Phil. 365, 378-379 (2005).

[39] 322 Phil. 84 (1996).

Anent the validity and effectivity of petitioner's adverse claim, it is provided in Section 70 of PD 1529, that it is necessary that the claimant has a right or interest in the registered land adverse to the registered owner and that it must arise subsequent to registration. Here, as no right or interest on the subject property flows from Comandante's invalid waiver of hereditary rights upon petitioner, the latter is thus not entitled to the registration of his adverse claim. Therefore, petitioner's adverse claim is without any basis and must consequently be adjudged invalid and ineffective and perforce be cancelled.

Albeit we have already resolved the issues raised by petitioner, we shall not stop here as the Diazes and Comandante in their Comment[40] call our attention to the failure of the CA to pass upon the issue of the propriety of the issuance by the trial court of the Summary Judgment in favor of petitioner despite the fact that they have raised this issue before the appellate court. They argue that summary judgment is proper only when there is clearly no genuine issue as to any material fact in the action. Thus, where the defendant presented defenses tendering factual issue which call for presentation of evidence, as when he specifically denies the material allegations in the complaint, summary judgment cannot be rendered.

The Diazes and Comandante then enumerate the genuine issues in the case which they claim should have precluded the trial court from issuing a summary judgment in petitioner's favor. *First*, the execution of the SPA in favor of Comandante referred to by petitioner in his complaint was never admitted by the Diazes. They assert that as such fact is disputed, trial should have been conducted to determine the truth of the matter, same being a genuine issue. Despite this, the trial court merely took the word of the plaintiff and assumed that said document was indeed executed by them. *Second*, although Comandante acknowledges that she has a personal obligation with petitioner, she nevertheless, did not admit that it was in the amount of ₱1,118,228.00. Instead, she claims only the amount of

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[40] *Rollo*, pp. 192-210.

₱500,000.00 or ₱600,000.00 (if inclusive of interest) as her obligation. Moreover, the Diazes deny borrowing any money from petitioner and neither did the Pangans owe him a single centavo. Thus, the true amount of the obligation due the petitioner and how each of the respondents are responsible for such amount are genuine issues which need formal presentation of evidence. *Lastly*, they aver that the trial court ignored factual and material issues such as the lack of probative value of Comandante's waiver of hereditary rights as well as of the SPA; the fact that Comandante signed the mortgage contract and promissory note in her personal capacity; and, that all such documents were prepared by petitioner who acted as a lawyer and the creditor of Comandante at the same time.

Rule 35 of the Rules of Court provides for summary judgment, the pertinent provisions of which are the following:

> Section 1. *Summary Judgment for claimant.* A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.
>
> Section 2. *Summary Judgment for the defending party.* A party against whom a claim, counterclaim or cross-claim is asserted or a declaratory relief is sought may, at any time, move with supporting affidavits, depositions or admissions for a summary judgment in his favor as to all or any part thereof.
>
> Section 3. *Motion and proceedings thereon.* The motion shall be served at least ten (10) days before the time specified for the hearing. The adverse party may serve opposing affidavits, depositions, or admissions at least three (3) days before the hearing. After the hearing, the judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

As can be deduced from the above provisions, summary judgment is a procedural devise resorted to in order to avoid

long drawn out litigations and useless delays. When the pleadings on file show that there are no genuine issues of facts to be tried, the Rules of Court allows a party to obtain immediate relief by way of summary judgment. That is, when the facts are not in dispute, the court is allowed to decide the case summarily by applying the law to the material facts. Conversely, where the pleadings tender a genuine issue, summary judgment is not proper. A genuine issue is such fact which requires the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim.[41]

Here, we find the existence of genuine issues which removes the case from the coverage of summary judgment. The variance in the allegations of the parties in their pleadings is evident.

Petitioner anchors his complaint for sum of money and/or judicial foreclosure on the alleged real estate mortgage over the subject property allegedly entered into by Comandante in behalf of her parents to secure payment of a loan amounting to ₱1,118,228.00. To support this claim, petitioner attached to his complaint (1) the SPA alleged to have been executed by the Diazes; (2) the Real Estate Mortgage Contract pertaining to the amount of ₱1,118,228.00; and, (3) a Promissory Note.

Comandante, in her Answer to petitioner's Amended Complaint, assailed the validity and due execution of the abovementioned documents. She asserted that the same were not duly, knowingly and validly executed by her and that it was petitioner who prepared all of them. Also, although she admitted owing petitioner, same was not an absolute admission as she limited herself to an obligation amounting only to ₱600,000.00 inclusive of charges and interests. She likewise claimed that such obligation is her personal obligation and not of her parents.

The Diazes, for their part, also denied that they executed the SPA authorizing their daughter to mortgage their property to petitioner as well as having any obligation to the latter.

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[41] *D.M. Consunji, Inc. v. Duvas Corporation*, G.R. No. 155174, August 4, 2009.

Clearly, there are genuine issues in this case which require the presentation of evidence. For one, it is necessary to ascertain in a full blown trial the validity and due execution of the SPA, the Real Estate Mortgage and the Promissory Notes because the determination of the following equally significant questions depends on them, to wit: (1) Are the Diazes obligated to petitioner or is the obligation a purely personal obligation of Comandante? and, (2) Is the sum of ₱1,118,228.00 as shown in the Real Estate Mortgage and the Promissory Note, the amount which is really due the petitioner?

To stress, trial courts have limited authority to render summary judgments and may do so only when there is clearly no genuine issue as to any material fact. When the facts as pleaded by the parties are disputed or contested, proceedings for summary judgment cannot take the place of trial.[42] From the foregoing, it is apparent that the trial court should have refrained from issuing the summary judgment but instead proceeded to conduct a full blown trial of the case. In view of this, the present case should be remanded to the trial court for further proceedings and proper disposition according to the rudiments of a regular trial on the merits and not through an abbreviated termination of the case by summary judgment.

WHEREFORE, the petition is *DENIED*. The assailed Decision of the Court of Appeals dated December 12, 2003 insofar as it excluded the respondents Spouses Bienvenido Pangan and Elizabeth Pangan from among those solidarily liable to petitioner Atty. Pedro M. Ferrer, is *AFFIRMED*. The inscription of the adverse claim of petitioner Atty. Pedro M. Ferrer on T.C.T. No. N-209049 is hereby ordered *CANCELLED*. Insofar as its other aspects are concerned, the assailed Decision is *SET ASIDE and VACATED*. The case is *REMANDED* to the Regional Trial Court of Quezon City, Branch 224 for further proceedings in accordance with this Decision.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.,* concur.

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[42] *Id.*

SECOND DIVISION

[G.R. No. 167237. April 23, 2010]

ASSOCIATED ANGLO-AMERICAN TOBACCO CORPORATION and FLORANTE DY, *petitioners, vs.* **HON. COURT OF APPEALS, HON. CRISPIN C. LARON, in his capacity as PRESIDING JUDGE, REGIONAL TRIAL COURT, REGION 1, BRANCH 44, DAGUPAN CITY, SHERIFF VIRGILIO F. VILLAR, OFFICE OF THE *EX-OFFICIO* SHERIFF OF PASAY CITY, REGISTER OF DEEDS OF LINGAYEN, PANGASINAN and SPOUSES PAUL PELAEZ, JR. and ROCELI MAMISAY PELAEZ,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; THE CASE SHOULD BE DISMISSED OUTRIGHT FOR FAILURE TO ADOPT THE PROPER MODE OF APPEAL; EXCEPTION THERETO, APPLIED.—** Petitioners are questioning a final decision of the CA by resorting to Rule 65, when their remedy should be based on Rule 45. This case would normally have been dismissed outright for failure of the petitioners to adopt the proper remedy. While ordinarily, *certiorari* is unavailing where the appeal period has lapsed, there are exceptions. Among them are (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. In the present case, the CA's act of dismissing petitioners' petition for *certiorari* and in finding the RTC's Decision already final and executory *in its entirety*, despite the filing by the petitioners of a Notice of Appeal within 15 days from their receipt of the February 7, 2001 RTC Order amending the said RTC Decision is an oppressive exercise of judicial authority. Hence, in the interest of substantial justice, we deem it wise to overlook the procedural technicalities.

2. **ID.; ID.; APPEAL OF A MATTER FROM A DECISION IS DEEMED AN APPEAL OF INTER-RELATED MATTERS**

FROM THE WHOLE DECISION.— In the present case, the matter of the release of the mortgaged property is material and intertwined with the issue of the amount of overage as well as the issue on the amount of damages. It is difficult to separate these matters because a determination of the correct amount of overage would require the examination and computation of the *entire* account of deliveries and payments. Necessarily, upon re-examination of the subject account during an appeal, the possibility of finding a shortage instead of an overage is present. And dependent on the result of the re-examination of the entire account is the determination of the correctness of either the foreclosure or release of the mortgaged property. It follows that the ruling on the amount of damages and attorney's fees, if any, may also be affected by a re-examination of the entire account. As the disposition of some inter-related issues in the original RTC Decision were materially amended by the February 7, 2001 RTC Order, these two issuances must be taken in conjunction with each other. Together, these two issuances form one integrated amended decision. Hence, an appeal from the February 7, 2001 RTC Order must be deemed to be an appeal from the whole integrated amended Decision.

3. **ID.; ID.; WHEN APPEAL HAS BEEN DULY PERFECTED, EXECUTION OF THE JUDGMENT WAS A MATTER OF DISCRETION PROVIDED GOOD REASONS THEREFOR EXISTED; APPLICATION.—** When an appeal had been duly perfected, execution of the judgment, whether wholly or partially, was not a matter of right, but of discretion provided good reasons therefor existed. The compelling grounds for the issuance of the writ must be stated in a special order after due hearing. Aside from the existence of good reasons, the rules also require that the motion for partial execution should have been filed while the trial court still had jurisdiction over the case. In the present case, the RTC's May 9, 2002 Order granting the issuance of the writ of execution failed to state good reasons for the issuance of the writ. The RTC mistakenly deemed that the execution should issue as a matter of right because it had held that part of its September 14, 2001 Decision had become final and executory. As previously discussed, the said proposition is erroneous because the Decision in the present case is not properly severable.

4. ID.; ID.; THE COURT HAS NO JURISDICTION TO ACT ON A MOTION FOR PARTIAL EXECUTION FILED AFTER THE APPEAL WAS PERFECTED.— [T]he motion for partial execution was filed only on August 22, 2001, more than four months after the appeal was perfected. "In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties." Each party only has at most 15 days from their receipt of the final order to appeal it. Thus, when respondents filed their motion for partial execution the RTC no longer had jurisdiction over the case and it no longer had jurisdiction to act on the said motion for partial execution.

APPEARANCES OF COUNSEL

Luz Victoria S. Dulatas for petitioners.
Efren Moncupa for private respondents.

D E C I S I O N

DEL CASTILLO, *J*.:

The appeal of a final order substantially amending only some matters in a previously rendered Decision is also an appeal of the other intimately interwoven matters passed upon in the original decision.

In the present Petition for *Certiorari* and Prohibition, petitioners assail the May 31, 2004 Decision[1] and the January 17, 2005[2] Resolution of the Court of Appeals (CA) in CA-G.R. SP. No. 75347. The CA dismissed the Petition for *Certiorari* filed before it assailing the Decision and several Orders of the Regional Trial Court (RTC) of Dagupan City, Branch 44 in Civil Case No. D-8732.

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[1] CA *rollo*, pp. 334-340; penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Presiding Justice Cancio C. Garcia and Associate Justice Lucas P. Bersamin.

[2] *Id.* at 376; penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Rodrigo V. Cosico and Lucas P. Bersamin.

Factual Antecedents

Spouses Paul Pelaez, Jr. (Paul) and Roceli Mamisay Pelaez (Roceli) were employees of petitioner Associated Anglo-American Tobacco Corporation (the Corporation). Paul worked as Sales Supervisor and later as Senior Salesman while Roceli worked as secretary.

As salesman, Paul was required, on April 17, 1986, by the Corporation to post a bond to answer for any amount which he might fail to turnover to the Corporation. He complied by executing a mortgage bond over his family's house and lot in favor of the Corporation. The mortgaged real estate was covered by Transfer Certificate of Title (TCT) No. 155994 of the Registry of Deeds of Pangasinan.

Upon its determination that Paul had defaulted in remitting the sales proceeds, the Corporation initiated the extrajudicial foreclosure of the mortgage bond.

To stop the extrajudicial sale, Paul and Roceli filed on August 21, 1987, a Complaint against the Corporation, Dy and the Sheriff Virgilio S. Villar (Sheriff) before the RTC.

Ruling of the Regional Trial Court

The RTC issued a restraining order and, subsequently, a writ of preliminary injunction to stop the extrajudicial sale. Then, on September 14, 2000, after due hearing, Judge Crispin C. Laron, issued a Decision in favor of the spouses Pelaez, the *fallo* of which reads:

WHEREFORE, judgment is rendered in favor of the plaintiffs and against the defendants, as follows:

1. The defendants Associated Anglo-American Tobacco Corporation and Florante C. Dy are ordered to jointly and severally pay plaintiffs the amount of ₱23,820.16 representing the overage and the account of Plaintiff Paul Pelaez, Jr. and to release the mortgage on the parcel of land covered by, and release to plaintiffs, Transfer Certificate of Title No. 155994;

2. The defendants Associated Anglo-American Tobacco Corporation and Florante C. Dy are ordered to pay the plaintiffs

moral, exemplary damages, attorney's fees and litigation expenses in the amount of ₱50,000.00;

3. The injunction is made permanent.

With costs against defendants.

SO ORDERED.[3]

Upon motion of the spouses Pelaez, the RTC amended its Decision in its February 7, 2001 Order, to wit:

WHEREFORE, the Motion for Partial Reconsideration is granted and the dispositive portion of the Decision dated September 14, 2000 is hereby modified as follows:

The defendants Associated Anglo-American Tobacco Corp. and Florante C. Dy are ordered to jointly and severally pay plaintiffs the amount of ₱843,383.11 representing the overage and the amount of award of moral and exemplary damages and attorney's fees is increased from ₱50,000.00 to ₱2,000,000.00.

Furnish copies of this Order to Atty. Efren Moncupa and Atty. Da Vinci Crisostomo.

SO ORDERED.[4]

On February 20, 2001, petitioners received their copy of the February 7, 2001 Order and on March 6, 2001, they filed a Notice of Appeal of the September 14, 2000 Decision and the February 7, 2001 Order of the RTC. The spouses Pelaez, on the other hand, filed a "Motion to Dismiss the Appeal and Motion for Partial Execution" dated August 22, 2001.

Ruling on the motion, the RTC in its May 9, 2002 Order, found that the petitioners' Notice of Appeal was filed timely "only insofar as the Order of the Court dated February 7, 2001 is concerned." Hence, it disposed as follows:

WHEREFORE, the appeal insofar as to all matters not raised in the plaintiffs' Motion for Partial Reconsideration is DISMISSED.

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[3] *Rollo*, pp. 136-137.

[4] *Id.* at 147.

Let a writ of execution issue for the release of the mortgage on the parcel of land covered by, and release to plaintiffs Transfer Certificate of Title No. 155994 and that the injunction is made permanent.

Furnish copies of this Order to Atty. Rafael Declaro, Jr., Atty. Da Vinci Crisostomo and Mr. Sancho Esquillo.

SO ORDERED.[5]

On June 7, 2002, a Writ of Execution in favor of the spouses Pelaez was issued and on December 12, 2002, the RTC issued two Orders, one denying petitioners' motion for reconsideration of the May 9, 2002 Order; and the other mandating the release of the mortgage under TCT No. 155994 and causing the issuance of a new title in the name of spouses Pelaez free from any liens or encumbrances.

Ruling of the Court of Appeals

Petitioners then filed a Petition for *Certiorari* with the CA. The CA found that the September 14, 2000 Decision of the RTC had become final and executory. It found no cogent reason to disturb the RTC's Decision and its subsequent amendment as embodied in the February 7, 2001 Order. The dispositive portion of the CA Decision states:

WHEREFORE, premises considered, the petition is DISMISSED for lack of merit.

SO ORDERED.[6]

After the denial by the CA of their motion for reconsideration, petitioners filed the present Petition for *Certiorari* and Prohibition.

Issues

Petitioners raise the following issues:

Whether or not the Court of Appeals committed grave abuse of discretion tantamount to lack of jurisdiction in holding the trial court's

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[5] CA *rollo*, pp. 241-242.

[6] *Rollo*, p. 229.

decision to be final and executory notwithstanding that said decision had been modified, superseded and substituted by a subsequent order upon which petitioner had duly perfected an appeal?

Whether or not the Court of Appeals gravely abused its discretion in holding that the petition for *certiorari* is not the right judicial remedy but ordinary appeal notwithstanding the latter course of action had already been availed of to no avail?

Whether or not the Court of Appeals committed grave abuse of discretion when in dismissing the petition for *certiorari* it validated in effect the trial court's order to release the mortgage and declaring the injunction permanent notwithstanding the loss of jurisdiction due to the perfection of an appeal?[7]

Petitioners' Arguments

Petitioners contend that their petition for *certiorari* is the proper remedy and that it was filed on time within 60 days from their receipt of the CA's assailed Resolution.

They contend that the CA gravely abused its discretion when it regarded the September 14, 2000 Decision of the trial court as final and executory even if said Decision was already modified, superseded, vacated and substituted by the subsequent February 7, 2001 Order.

They also contend that it is grossly erroneous for the CA to conclude that the Petition for *Certiorari* and Prohibition is not the right judicial remedy but ordinary appeal, when the latter action had already been taken and perfected by petitioners but the trial court simply refused to elevate the records to the CA.

Respondents' Arguments

Respondents on the other hand contend that petitioners failed to demonstrate patent and gross abuse of discretion on the part of the CA and since all they say is that the CA erred in dismissing their petition, the CA Resolution can only be assailed by means

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[7] *Id.* at 295-296.

of a petition for review, not an original petition for *certiorari*. They also contend that the availability of the remedy of filing a petition for review foreclosed the filing of this original petition for *certiorari* and justifies its dismissal.

Respondents also submit that the February 7, 2001 RTC Order granting the spouses Pelaez' Partial Motion for Reconsideration by increasing the monetary awards only, did not amend the RTC Decision but merely supplemented it. Thus, they contend that the finality of the Decision was therefore not affected.

Our Ruling

The petition has merit.

Mode of Appeal

Petitioners are questioning a final decision of the CA by resorting to Rule 65, when their remedy should be based on Rule 45. This case would normally have been dismissed outright for failure of the petitioners to adopt the proper remedy. While ordinarily, *certiorari* is unavailing where the appeal period has lapsed, there are exceptions. Among them are (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.[8] In the present case, the CA's act of dismissing petitioners' petition for *certiorari* and in finding the RTC's Decision already final and executory *in its entirety*, despite the filing by the petitioners of a Notice of Appeal within 15 days from their receipt of the February 7, 2001 RTC Order amending the said RTC Decision is an oppressive exercise of judicial authority. Hence, in the interest of substantial justice, we deem it wise to overlook the procedural technicalities.

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[8] *Martillano v. Court of Appeals*, G.R. No. 148277, June 29, 2004, 433 SCRA 195, 201; *Sps. Go v. Tong*, 462 Phil. 256, 266 (2003); *Uy Chua v. Court of Appeals*, 398 Phil. 17, 30 (2000).

Trial Court's Decision and Its Modification

Both parties agree that the February 7, 2001 Order increased the monetary awards in the Decision, specifically, the amount of overage from ₱23,820.16 to ₱843,383.11 and the award of moral and exemplary damages and attorney's fees from ₱50,000.00 to ₱2,000,000.00. They however, differ on whether these changes constituted an amendment of the Decision or merely provided a supplement to the Decision. Petitioners argue that the change constituted a substantial amendment, which therefore makes the entire case reviewable on appeal, while respondents argue that the Order merely supplements the Decision which therefore makes only the changes reviewable on appeal. They both cite *Esquivel v. Alegre*[9] which states:

> There is a difference between an amended judgment and a supplemental judgment. In an amended and clarified judgment, the lower court makes a thorough study of the original judgment and renders the amended and clarified judgment only after considering all the factual and legal issues. The amended and clarified decision is an entirely new decision which supersedes the original decision. Following the court's differentiation of a supplemental pleading from an amending pleading, it can be said that a supplemental decision does not take the place or extinguish the existence of the original. As its very name denotes, it only serves to bolster or adds something to the primary decision. A supplement exists side by side with the original. It does not replace that which it supplements.

In the present case, the dispositive portion of the February 7, 2001 Order was crafted in such a way that it initially evades a categorical classification into either of the situations as described in the above-cited case.

Hence, we further take into consideration that what plaintiffs filed was merely a *Partial* Motion for Reconsideration. It is clear they were seeking a *partial* change in the original Decision. It follows that there were some parts of the Decision that they sought to remain unchanged. The RTC, thus made a study of

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[9] 254 Phil. 316, 325-326 (1989).

only a portion of its original Decision and then amended the pertinent portion. The RTC Decision was indeed, only partially amended. The February 7, 2001 Order cannot be considered as a supplemental Decision because it cannot exist side by side with the original pertinent portion on overage, damages and attorney's fees. The former replaced and superceded the latter.

Now what is the effect of this partial amendment? Is the subject RTC Decision divisible, such that a portion may be considered already final and unappealable while another portion may be considered as *not yet* final and unappealable? To answer this question we draw some light from some provisions of the Rules of Court that permit divisions, to wit:

Rule 37, Sec. 7. *Partial new trial or reconsideration*.- If the grounds for a motion under this Rule appear to the court to affect the issues as to only a part, or less than all of the matter in controversy, or only one, or less than all, of the parties to it, the court may order a new trial or grant reconsideration as to such issues ***if severable*** without interfering with the judgment or final order upon the rest. (Italics and emphasis supplied)

Rule 36, Sec. 5. *Separate judgments*.-When more than one claim for relief is presented in an action, the court, at any stage, ***upon a determination of the issues material to a particular claim and all counterclaims arising out of the transaction or occurrence which is the subject matter of the claim***, may render a separate judgment disposing of such claim. The judgment shall terminate the action with respect to the claim so disposed of and the action shall proceed as to the remaining claims.

It can be seen that when matters, issues or claims can properly and conveniently be separately resolved, then division is permitted, otherwise it is not. We see no hindrance in applying this thesis to the current situation.

In the present case, the matter of the release of the mortgaged property is material and intertwined with the issue of the amount of overage as well as the issue on the amount of damages.[10] It

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[10] Cf. *De Leon v. Court of Appeals*, 432 Phil. 775, 786-787 (2002); *Bangkok Bank Public Company Limited v. Lee*, G.R. No. 159806, January 20, 2006, 479 SCRA 267, 273.

is difficult to separate these matters because a determination of the correct amount of overage would require the examination and computation of the *entire* account of deliveries and payments. Necessarily, upon re-examination of the subject account during an appeal, the possibility of finding a shortage instead of an overage is present. And dependent on the result of the re-examination of the entire account is the determination of the correctness of either the foreclosure or release of the mortgaged property. It follows that the ruling on the amount of damages and attorney's fees, if any, may also be affected by a re-examination of the entire account.

As the disposition of some inter-related issues in the original RTC Decision were materially amended by the February 7, 2001 RTC Order, these two issuances must be taken in conjunction with each other. Together, these two issuances form one integrated amended decision.[11] Hence, an appeal from the February 7, 2001 RTC Order must be deemed to be an appeal from the whole integrated amended Decision.

Appeal and Partial Execution

Petitioners received their copy of the February 7, 2001 Order on February 20, 2001. They timely filed a notice of appeal on March 6, 2001, or after 14 days. The appeal was duly perfected.

When an appeal had been duly perfected, execution of the judgment, whether wholly or partially,[12] was not a matter of right, but of discretion provided good reasons therefor existed. The compelling grounds for the issuance of the writ must be stated in a special order after due hearing. Aside from the existence of good reasons, the rules also require that the motion for partial execution should have been filed while the trial court still had jurisdiction over the case.[13]

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[11] Cf. *De Leon v. Court of Appeals*, *id.*

[12] RULES OF COURT, Rule 39, Section 2(b).

[13] RULES OF COURT, Rule 39, Section 2 provides:

Sec. 2. *Discretionary execution*. – (a) Execution of a judgment or a final order pending appeal.- On motion of the prevailing party with notice to

In the present case, the RTC's May 9, 2002 Order granting the issuance of the writ of execution failed to state good reasons for the issuance of the writ. The RTC mistakenly deemed that the execution should issue as a matter of right because it had held that part of its September 14, 2001 Decision had become final and executory. As previously discussed, the said proposition is erroneous because the Decision in the present case is not properly severable.

Furthermore, the motion for partial execution was filed only on August 22, 2001, more than four months after the appeal was perfected. "In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties."[14] Each party only has at most 15 days from their receipt of the final order to appeal it. Thus, when respondents filed their motion for partial execution the RTC no longer had jurisdiction over the case and it no longer had jurisdiction to act on the said motion for partial execution.

Aside from the fact that the appeal was filed on time and should thus not have been dismissed in the assailed May 9,

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the adverse party **filed** in the trial court *while it has jurisdiction over the case* **and** is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.
After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

(b) Execution of several, separate or **partial** judgments. - A several, separate or partial judgment may be executed under the same terms and conditions as execution of a judgment or final order pending appeal.

[14] RULES OF COURT, Rule 41, Section 9: [P]rior to the transmittal of the original record or the record on appeal, the court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with section 2 of Rule 39, and allow withdrawal of the appeal.

2002 Order, the said Order, which also resolved the motion for partial execution, fell short of the requirements of Section 2, Rule 39, as previously discussed. Where the order of execution is not in conformity with the rules, the same is null and void.[15] Therefore, the CA erred in not nullifying the May 9, 2002 Order.

Finally, we address the December 12, 2002 RTC Orders. These Orders proceeded from, and implemented, the May 9, 2002 Order that was null and void. These Orders were also issued more than a year after the RTC had already lost jurisdiction over the case. Clearly, like the May 9, 2002 Order, the December 12, 2002 Orders were also null and void. Thus the CA should have also nullified these Orders instead of dismissing the petition for *certiorari* questioning these Orders before it.

WHEREFORE, the petition is *GRANTED*. The assailed May 31, 2004 Decision and January 17, 2005 Resolution of the Court of Appeals in CA-G.R. SP. No. 75347 are *REVERSED* and *SET ASIDE*. The May 9, 2002 and both December 12, 2002 Orders of the Regional Trial Court in Civil Case No. D-8732 are *DECLARED NULL* and *VOID*. The Regional Trial Court of Dagupan City, Branch 44 is *ORDERED* to *TRANSMIT* forthwith the records of Civil Case No. D-8732 to the Court of Appeals for the appeal.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.,* concur.

EN BANC

[G.R. No. 171434. April 23, 2010]

NATIONAL POWER CORPORATION, *petitioner, vs.* **ALAN A. OLANDESCA,** *respondent.*

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[15] *Bangkok Bank Public Company Limited v. Lee*, *supra* note 10 at 274.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT EMPLOYEE; DISHONESTY, CIRCUMSTANCES NEGATING THE CHARGE OF.—** It is not disputed that respondent took several materials and supplies from petitioner's warehouse without the approved WRS. However, this should not be construed as dishonesty on the part of respondent that would warrant his dismissal from the service for the following reasons: *First*. The withdrawals of the supplies were duly recorded in the security guard's logbook. If respondent intended to defraud petitioner, he could have easily taken items from the warehouse without having them recorded as he was then the Supervising Property Officer who had free access to the supplies. Allowing the recording to be done in the logbook indicates his lack of intent to deceive or defraud petitioner. Any person who intends to deceive or commit any misdeed certainly would not want to leave any trace of his unlawful act. On the contrary, one would do everything necessary to conceal the subject of his wrongful act. *Second*. Right after withdrawing the items, respondent replaced them on his own initiative, without anyone instructing him to do so. This act negates his intent to defraud petitioner. Records show that when the issue of withdrawal of the items was raised in the management team meeting, the team considered the case against him as closed and terminated when it learned that the items had been replaced. x x x *Third.* There is no clear showing that respondent misappropriated or converted the items for his own personal use or benefit. *Fourth.* x x x the Graft Investigation Officer of the Office of the Ombudsman, x x x dismissed a complaint for qualified theft x x x against respondent as there was no competent and sufficient evidence on record to show that there was intent to gain on the part of the respondent, considering that the materials and supplies taken by him were used in fencing the watershed and reservation area of petitioner. Likewise, there was no basis to charge him for malversation of public property as there was no misappropriation of the supplies for his personal use and that the same were for general purpose and not for any specific use. The said Resolution stated that there was no competent and sufficient evidence on record to show that respondent used the materials for his benefit. It also found that respondent acted in good faith and there was

no undue injury to petitioner as the materials and supplies were used in the petitioner's premises. Thus, the company itself benefited from the conduct of the respondent.

2. **ID.; ID.; ID.; VIOLATION OF REASONABLE OFFICE RULES AND REGULATIONS; REPRIMAND, IMPOSED.—** The Machiavellian principle that "the end justifies the means" has no place in government service, which thrives on the rule of law, consistency and stability. Respondent, by taking the said properties without the approved WRS, violated reasonable office rules and regulations as provided in Section 52 (C), (3), Rule IV of Civil Service Commission Memorandum Circular No. 19, series of 1999 (Uniform Rules on Administrative Cases in the Civil Service). Since this is the first offense of respondent in his more than 16 years of service, the appropriate penalty to be imposed against him is reprimand.

3. **ID.; ID.; ID.; AN EMPLOYEE WHO HAS BEEN REPRIMANDED IS ENTITLED TO BACKWAGES.—** Reprimand being the appropriate imposable penalty for respondent's actuations from the very beginning, this Court finds that respondent was unfairly denied from reporting for work and earning his keep, thus, entitling him to the payment of backwages.

4. **ID.; ID.; ID.; PENALTIES OF DISMISSAL OR SUSPENSION AND REPRIMAND AND THEIR EFFECTS ON THE GRANT OF BACKWAGES, DISTINGUISHED.—** [T]his Court deems it proper to distinguish between the penalties of dismissal or suspension and reprimand and their respective effects on the grant or award of backwages. When an employee is dismissed or suspended it is but logical that since he is barred from reporting to work the same negates his right to be paid backwages. He has no opportunity to work during the period he was dismissed or suspended and, therefore, he has no salary to expect. However, the same does not hold true for an employee who is reprimanded. A reprimand usually carries a warning that a repetition of the same or similar act will be dealt with more severely. Under normal circumstances, an employee who is reprimanded is never prevented from reporting to work. He continues to work despite the warning.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Orocio and Associates Law Offices for respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[1] dated February 9, 2006 of the Court of Appeals in CA-G.R. SP No. 54839, entitled *Alan A. Olandesca v. Civil Service Commission and National Power Corporation*, which set aside the Resolution dated August 10, 1999 of the Civil Service Commission and the Decision dated March 9, 1998 of the Regional Board of Inquiry and Discipline of the National Power Corporation.

Petitioner National Power Corporation is a government-owned and controlled corporation created under Republic Act No. 6395, as amended, with the mandate to undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power, on a nationwide basis.[2]

Respondent Alan A. Olandesca was first employed by petitioner as an Extension Aide and was assigned at the Tiwi Watershed. Thereafter, he held various positions in petitioner's corporation, which included the following: Senior Forest Ranger, Extension Services Officer, Watershed Management Officer, Procurement Officer B, Senior Property/Supply Officer, Senior Property Officer. At the time of the alleged commission of acts of dishonesty, respondent held the position of Supervising Property Officer of the Angat River Hydroelectric Plant (HEP), San Lorenzo, Norzagaray, Bulacan.[3]

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[1] Penned by Associate Justice Godardo A. Jacinto, with Associate Justices Juan Q. Enriquez, Jr. and Vicente Q. Roxas, concurring; *rollo,* pp. 6-13.

[2] Republic Act No. 6395, Sec. 2.

[3] CA *rollo*, p. 78.

While an employee of petitioner, respondent was allowed to stay in a house within petitioner's premises. As Supervising Property Officer, respondent had custody of all the materials and supplies stored at the property office of Angat River HEP and was accountable for those properties which were turned over to him under his Property Accountability Report. In addition, respondent was also tasked to monitor the proper documentation of the receipt and release of all items, materials, and supplies in his custody. It was petitioner's policy that the receipt and release of any item from the property office be covered by a Warehouse Requisition Slip (WRS) and duly approved by higher authorities.

On several occasions, from November 17, 1996 to January 25, 1997, respondent withdrew several items from the warehouse/property office, without the required WRS. Among these items were barbed wires, interlink wires, nails, and G.I. wires.

On three occasions, respondent transported the items during nighttime. On some occasions, he even used the petitioner's corporate vehicle to transport the materials he took from the property office. Respondent even used an outsider to withdraw interlink wires from the warehouse.

Upon respondent's directive, all items he withdrew from the property office were duly recorded on the security logbook of the security guard on duty.

Thereafter, respondent used the foregoing items to fence two (2) development areas which are part of the NPC Angat Watershed Areas and Reservations. On January 28, 1997, three days after the last withdrawal, respondent replaced all the said items he took at his own initiative.

The following month, the management team held a meeting, wherein the issue of respondent's withdrawal of items from the property office was raised. However, since the items withdrawn were already replaced, the management team considered the case closed and terminated. Nevertheless, Teodulo V. Largo, Section Chief of the Angat River HEP, filed with the Officer-In-Charge of

the Angat River HEP a Complaint against respondent for acts inimical to the government and for violation of Article VI, Section 3(f) and 3.15 of the NPC Code of Conduct and Discipline.[4] He charged respondent with grave misconduct, and alleged that respondent maliciously withdrew several materials and supplies from the Angat River HEP warehouse without the approved WRS from the Angat HEP Management.

After evaluating the complaint, Lino S. Cruz, petitioner's Vice-President from the Northern Luzon Regional Center, administratively charged respondent with Acts of Dishonesty/Getting Supplies, Materials for Personal Use/Acts Prejudicial to the Interest of the Corporation (Administrative Case No. 97-20). The charge states:

That sometime and during the periods from November 17, 1996 until January 25, 1997, taking advantage of your present position as SUPERVISING PROPERTY OFFICER of Angat Hydro Electric Plant of the National Power Corporation and with intent of gain, have maliciously and personally withdrawn materials and supplies at Angat HE Plant Warehouse without the Approved Warehouse Requisition Slip (WRS), as follows:

DATE/DAY	TIME	QUANTITY	ITEM DESCRIPTION	AMOUNT
11/17/96 Sunday	1645H	3 Rolls	Interlink 8Ft. x 50Ft.	₱ 3,750.00
11/23/96 Sunday	2130H	5 Rolls	Barbed Wire 50 Kgs./Roll	3,900.00
12/12/96 Thursday	2045H	5 Rolls	-do-	3,900.00
01/04/97 Saturday	1425H	3 Rolls	-do-	2,340.00
		1/4 kl.	Nails - 3"	8.75
01/07/1997 Tuesday	0745H	2 Rolls	Barbed Wires - 50 Kgs./Roll	1,560.00
		2 ½ kls.	Nails - 3"	87.50
01/08/1997 Wednesday	1100H	1 Roll	Barbed Wires - 50 Kgs./Roll	780.00
		1 Roll	G.I. Wires	800.00

[4] *Id.* at 65-66.

01/17/97				
Friday	1000H	1 Roll	Interlink 8Ft. x 50Ft.	1,250.00
01/18/97				
Saturday	1845H	3 Rolls	-do-	3,750.00
01/23/97				
Thursday	1130H	4 Rolls	-do-	5,000.00
01/25/97				
Saturday	1155H	2 Rolls	-do-	2,500.00
				₱ 29,626.00

and for which the above supplies/materials withdrawn, carried and taken away from the warehouse were personally used by you in your clearing and planting activities within the Angat Watershed Area covered by Proclamation No. 55 and P.D. No. 599, but to the great damage and prejudice of the Corporation.

CONTRARY TO LAW.[5]

Respondent was directed to submit his answer to the foregoing charges, as well as supporting evidence in his defense.

Petitioner's Regional Board of Inquiry and Discipline (RBID) heard the case. Thereafter, the RBID issued its findings and recommended that respondent suffer the penalty of dismissal with forfeiture of all cash and non-cash benefits due him by virtue of his employment.[6] The recommendation was adopted by the Vice-President of the Northern Luzon Regional Center (NLRC) and petitioner's President.[7]

Respondent moved for the reconsideration of the decision, but the Board denied his motion.[8] His appeal to the Civil Service Commission (CSC) was also denied through Resolution No. 991764[9] dated August 10, 1999.

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[5] CA *rollo,* pp. 67-68.

[6] *Id.* at 38-47.

[7] *Id.* at 37.

[8] *Id.* at 59.

[9] *Id.* at 60-64; Composed of Chairman Corazon Alma G. de Leon and Commissioners Thelma P. Gaminde and Jose F. Erestain, Jr. (did not participate).

Aggrieved, respondent filed a petition for review[10] with the Court of Appeals (CA). The CA granted the petition and ordered respondent's reinstatement. The dispositive portion of the CA's decision provides:

WHEREFORE, under the premises, the petition is GRANTED. The assailed Resolution of the CSC and the March 9, 1998 Decision of the NPC are SET ASIDE and respondent is ordered to REINSTATE petitioner to his former position without loss of seniority rights and PAY him backwages.

SO ORDERED.[11]

Frustrated by this turn of events, petitioner filed herein petition, raising the following issues, to wit:

I

THE COURT OF APPEALS ERRED IN REVERSING THE FACTUAL FINDINGS OF THE CIVIL SERVICE COMMISSION AND NATIONAL POWER CORPORATION ON THE ACTS OF DISHONESTY COMMITTED BY RESPONDENT WHICH ARE SHOWN BY THE UNDISPUTED FACTS.

II

THE COURT OF APPEALS ERRED IN RULING THAT THE FACTS ESTABLISHED DO NOT SHOW INTENT TO CHEAT, DECEIVE OR DEFRAUD NATIONAL POWER CORPORATION.

III

THE PRESENT PETITION FALLS UNDER THE WELL-ESTABLISHED EXCEPTIONS TO THE GENERAL RULE REGARDING RULE 45 OF THE RULES OF COURT.

Petitioner alleges that respondent's act of taking materials without the required WRS during Saturdays and Sundays, and even during nighttime, proved his lack of moral principle and integrity as a public employee. His acts clearly proved his intention to cheat his employer by deliberately and maliciously taking

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[10] *Id.* at 7-35.

[11] *Rollo,* p. 13.

undue advantage of his position as Supervising Property Officer. He took advantage and gravely abused his position of trust by ignoring the usual and normal procedure for taking out properties from the warehouse which amounts to bad faith and malice. According to petitioner, respondent's intent to cheat is manifested by the following acts:

a. The ten separate and distinct acts of taking clearly indicate habituality;

b. The unlawful withdrawals during Saturdays and Sundays and even during nighttime evince taking undue advantage of the absence of other employees;

c. The connivance with an outsider (a certain Canlas) to take some of the items on one occasion makes his intent doubly suspicious;

d. The instruction to the security guard to record the withdrawals in the logbook instead of showing the required WRS or MIV is a clear abuse of authority;

e. The subsequent replacement of the items taken with inferior quality place the NPC at a clear disadvantage; and

f. The subsequent taking of items even after the instruction/advice of his immediate supervisor to stop and desist from making any further withdrawals shows a clear disregard of lawful order.

Petitioner submits that respondent's instruction to the security guard on duty to record all the items he brought out from the warehouse served as a cover up to avoid detection or possible suspicion that the taking was unauthorized.

Petitioner further alleges that the area fenced by respondent was exactly the same area which he occupied for his own personal benefit. He enclosed the said area to protect his own interest. Moreover, by replacing the items he withdrew, respondent, in effect, admitted that the withdrawals were indeed unauthorized. Although the two developmental areas fenced by respondent were part of the Angat Watershed Areas and reservations and, thus, belonging to petitioner, it did not necessarily imply that respondent did not have the intent to enrich himself because he was the occupant and usufructuary thereof.

Respondent, on the other hand, maintains that the various materials he took from the warehouse were used to fence the mango seedlings which were planted on petitioner's watershed areas. Respondent said that he did not realize any personal gain, as it was petitioner who benefited from his initiative. This was admitted by the parties in their stipulation of facts, which provides that the watershed areas fenced by respondent, with the materials taken from petitioner's warehouse, are properties of petitioner. In 1989, respondent, as then Extension Services Officer, planted mango seedlings in the said areas in line with the mango seedlings dispersal program which he initiated. It was also stipulated that the materials were borrowed from petitioner's property warehouse and that the withdrawal was duly recorded in the security logbook by the security guard on duty. Respondent also replaced all the materials taken three days after the last withdrawal even without any demand from any of petitioner's officers or personnel. Due to the foregoing, respondent maintains that there was lack of intent to conceal the truth or to defraud the government in taking the property from the warehouse.

Anent the allegation that respondent purposely selected nighttime and Saturdays and Sundays to conceal his act of taking materials from the warehouse, respondent explained that he was forced to take the properties from the warehouse during nighttime and on weekends because he had to attend to his official duties during office hours. Respondent also alleges that he committed an honest mistake in replacing the materials withdrawn. He claims that he should not have replaced the withdrawn materials, considering that they have never ceased and have continued to remain petitioner's properties, as the same were used for the protection of the mango seedlings found in petitioner's property.

The petition is without merit.

The CA ruled that respondent did not commit dishonesty. It said that respondent acted in complete good faith, and was motivated only by a desire to serve the public beyond the call of duty. The CA justified its ruling when it noted that, while the recording of the withdrawn items in the logbook by the

security guard fell short of the documentary requirement of petitioner, the initiative taken by the respondent to have the withdrawals logged negated any intention to deceive or defraud petitioner. Respondent displayed his honesty when he promptly and voluntarily replaced the items he withdrew. Moreover, respondent did not misappropriate the subject items for his own personal use or benefit. Instead, he used them to fence a project of petitioner which he thought was in peril at that time.

The CA acknowledged that, while respondent initiated the planting of trees in the watershed areas at the time he was still an Extension Services Officer, it was no longer his duty to attend to it when he was promoted as Supervising Property Officer. Despite this, however, petitioner acted according to what he perceived to be proper under the circumstance in order to save the project, even at the risk of being reprimanded for taking shortcuts in the administrative process. To the CA's mind, respondent exhibited qualities that are now so rare in the civil service, such as initiative and innovativeness. For these, he should be rewarded rather than penalized.

The Court agrees with the factual findings of the CA. In *Philippine Amusement and Gaming Corporation v. Rilloroza,*[12] dishonesty is defined as the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.

It is not disputed that respondent took several materials and supplies from petitioner's warehouse without the approved WRS. However, this should not be construed as dishonesty on the part of respondent that would warrant his dismissal from the service for the following reasons:

First. The withdrawals of the supplies were duly recorded in the security guard's logbook. If respondent intended to defraud petitioner, he could have easily taken items from the warehouse

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[12] G.R. No. 141141, June 25, 2001, 359 SCRA 525, citing *BLACK'S LAW DICTIONARY* (1990), Sixth ed., p. 468.

without having them recorded as he was then the Supervising Property Officer who had free access to the supplies. Allowing the recording to be done in the logbook indicates his lack of intent to deceive or defraud petitioner. Any person who intends to deceive or commit any misdeed certainly would not want to leave any trace of his unlawful act. On the contrary, one would do everything necessary to conceal the subject of his wrongful act.

Second. Right after withdrawing the items, respondent replaced them on his own initiative, without anyone instructing him to do so. This act negates his intent to defraud petitioner. Records show that when the issue of withdrawal of the items was raised in the management team meeting, the team considered the case against him as closed and terminated when it learned that the items had been replaced. This would show that per the management team's initial assessment, the taking was not so grave so as to warrant further investigation or the imposition of any sanction against the respondent.

Third. There is no clear showing that respondent misappropriated or converted the items for his own personal use or benefit. Records show that in a Memorandum dated October 8, 1998 to Federico E. Puno, President of petitioner, Atty. Lamberto P. Melencio, Officer-in-Charge of the Office of the Vice-President, General Counsel, acting on respondent's Petition for Reconsideration, found that no dishonesty was committed but only violation of reasonable office rules and regulations because the withdrawal of supplies was not covered by the approved WRS, and recommended that petitioner's Decision be reconsidered and set aside and, considering that this was his first offense, he should be meted only the penalty of reprimand, instead of dismissal from the service.[13] Atty. Melencio even appended a draft of the letter to be sent to respondent, which would adopt and approve his recommendation of merely reprimanding respondent.[14] From the foregoing, it

[13] *Supra* note 3, at 432.

[14] *Id.* at 433.

can be gleaned that early on, even the Office of the General Counsel of petitioner found the penalty of dismissal to be inappropriate.

Fourth. Moreover, the Graft Investigation Officer of the Office of the Ombudsman, in its Resolution[15] dated February 5, 1999, in OMB-1-98-2011, dismissed a complaint for qualified theft filed by Teodulo V. Largo, Section Chief, Power Generation Group of petitioner against respondent as there was no competent and sufficient evidence on record to show that there was intent to gain on the part of the respondent, considering that the materials and supplies taken by him were used in fencing the watershed and reservation area of petitioner. Likewise, there was no basis to charge him for malversation of public property as there was no misappropriation of the supplies for his personal use and that the same were for general purpose and not for any specific use. The said Resolution stated that there was no competent and sufficient evidence on record to show that respondent used the materials for his benefit. It also found that respondent acted in good faith and there was no undue injury to petitioner as the materials and supplies were used in the petitioner's premises. Thus, the company itself benefited from the conduct of the respondent.

Nonetheless, although the respondent did not commit an overt act of dishonesty, he is not exonerated from liability. It was an established company procedure that before the materials can be taken out from the warehouse, the issuance of a WRS is an indispensable requirement. In fact, there was even a warning posted at the door of the property office which states: "*BAWAL MAGLABAS NG GAMIT O MAGKARGA NG GASOLINA NG WALANG APRUBADONG WRS.*" Being the Supervising Property Officer, respondent knows fully well that taking items from the warehouse without the required WRS is against the company rules and regulations. Respondent's paramount duty was to protect the properties in the warehouse and to ensure that none shall be taken away without proper documentation.

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[15] *Id.* at 434-436.

The Machiavellian principle that "the end justifies the means" has no place in government service, which thrives on the rule of law, consistency and stability. Respondent, by taking the said properties without the approved WRS, violated reasonable office rules and regulations as provided in Section 52 (C), (3), Rule IV of Civil Service Commission Memorandum Circular No. 19, series of 1999 (Uniform Rules on Administrative Cases in the Civil Service).[16] Since this is the first offense of respondent in his more than 16 years of service,[17] the appropriate penalty to be imposed against him is reprimand.

Reprimand being the appropriate imposable penalty for respondent's actuations from the very beginning, this Court finds that respondent was unfairly denied from reporting for work and earning his keep, thus, entitling him to the payment of backwages.

This Court is not unmindful of our previous pronouncements in similar cases involving suspension or dismissal from service, wherein the penalty imposed was reduced, but the award of backwages was denied.

In *Re: Initial Reports on the Grenade Incident that Occurred at about 6:40 a.m. on December 6, 1999 Submitted by DCAs Zenaida Elepaño and Reynaldo Suarez*,[18] the Court ruled that a suspended public official is not entitled to any compensation for service that is not actually rendered unless later declared totally innocent of the charges.

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[16] RULE IV. PENALTIES

Section 52. *Classification of Offenses*. — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

C. The following are Light Offenses with corresponding penalties:

3. Violation of reasonable office rules and regulations.

1st offense — Reprimand

x x x x x x x x x

[17] Service Record of respondent, *supra* note 3.

[18] A.M. No. 99-12-03-SC, October 10, 2001, 367 SCRA 1.

In *Sales v. Mathay*,[19] therein petitioner Romulo Sales' penalty of dismissal was reduced by the CSC to six (6) months suspension based on its finding that, at most, petitioner should be found guilty only of gross neglect of duty. His prayer that he be paid back salaries during the period that he was prevented to work as Postal Clerk II in the Pinamalayan Post Office was denied. The Court held that a public official is not entitled to any compensation if he has not rendered any service. The general proposition is that a public official is not entitled to any compensation if he has not rendered any service. As he works, he shall earn.[20]

Given the circumstances of the case, however, where the proper penalty should only be a reprimand, this Court finds the aforementioned cases to be inapplicable herein. On this note, this Court deems it proper to distinguish between the penalties of dismissal or suspension and reprimand and their respective effects on the grant or award of backwages. When an employee is dismissed or suspended it is but logical that since he is barred from reporting to work the same negates his right to be paid backwages. He has no opportunity to work during the period he was dismissed or suspended and, therefore, he has no salary to expect. However, the same does not hold true for an employee who is reprimanded. A reprimand usually carries a warning that a repetition of the same or similar act will be dealt with more severely. Under normal circumstances, an employee who is reprimanded is never prevented from reporting to work. He continues to work despite the warning. Thus, in the case at bar, since respondent's penalty should only be a reprimand, this Court deems it proper and equitable to affirm the CA's award of backwages.

In two instances, this Court granted the award of backwages during the period the employees were prevented from reporting to work despite concluding that the employee concerned violated

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[19] No. L-39557, May 3, 1984, 129 SCRA 180.

[20] *Bangalisan v. Court of Appeals,* G.R. No. 124678, July 31, 1997, 276 SCRA 619, 633.

reasonable office rules and regulations and imposing the penalty of reprimand.

In *Jacinto v. Court of Appeals*,[21] this Court awarded petitioner Jacinto backwages after finding that she was only culpable of violating reasonable office rules and regulations for not having asked permission from school authorities to leave the school premises and seek medical attention and for not filing an application for sick leave for approval by the school authorities.

Also, in *Bangalisan v. Court of Appeals,*[22] after affirming the findings that one of the petitioners, Rodolfo Mariano, is only liable for his violation of reasonable office rules and regulations for attending the wake and internment of his grandmother without the benefit of an approved leave of absence and the imposition of the penalty of reprimand, this Court still granted him backwages.

Therefore, in line with *Bangalisan* and *Jacinto,* the grant of backwages to respondent is but proper. It is to be stressed that in the imposition of the appropriate penalties, it must not only be made within the parameters of the law, but it should also satisfy the basic tenets of equity, justice, and fairplay.

WHEREFORE, the Decision of the Court of Appeals dated February 9, 2006 in CA-G.R. SP No. 54839, is *AFFIRMED with MODIFICATION* that respondent Alan A. Olandesca is found guilty of violation of a reasonable office rule and regulation and is *REPRIMANDED* with a stern warning that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

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

Nachura, J., no part. Signed pleading as Solicitor Gen.

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[21] G.R. No. 124540, November 14, 1997, 281 SCRA 657.

[22] *Supra* note 20.

SECOND DIVISION

[G.R. No. 172036. April 23, 2010]

SPOUSES FAUSTINO AND JOSEFINA GARCIA, SPOUSES MELITON GALVEZ AND HELEN GALVEZ, and CONSTANCIA ARCAIRA represented by their Attorney-in-Fact JULIANA O. MOTAS, *petitioners, vs.* **COURT OF APPEALS, EMERLITA DE LA CRUZ, and DIOGENES G. BARTOLOME,** *respondents.*

SYLLABUS

1. **CIVIL LAW; CONTRACTS; CONTRACT TO SELL; EFFECT OF FAILURE TO PAY THE PURCHASE PRICE IN FULL.—** Contracts are law between the parties, and they are bound by its stipulations. It is clear x x x that the parties intended their agreement to be a Contract to Sell: Dela Cruz retains ownership of the subject lands and does not have the obligation to execute a Deed of Absolute Sale until petitioners' payment of the full purchase price. Payment of the price is a positive suspensive condition, failure of which is not a breach but an event that prevents the obligation of the vendor to convey title from becoming effective. Strictly speaking, there can be no rescission or resolution of an obligation that is still non-existent due to the non-happening of the suspensive condition. Dela Cruz is thus not obliged to execute a Deed of Absolute Sale in petitioners' favor because of petitioners' failure to make full payment on the stipulated date.

2. **ID.; ID.; MACEDA LAW DOES NOT APPLY TO LANDS WHICH DO NOT COMPRISE RESIDENTIAL REAL ESTATE.—** The trial court erred in applying R.A. 6552, or the Maceda Law, to the present case. The Maceda Law applies to contracts of sale of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants. The subject lands, comprising five (5) parcels and aggregating 69,028 square meters, do not comprise residential real estate within the contemplation of the Maceda Law.

APPEARANCES OF COUNSEL

Basco Law Associates for petitioners.
Sergio I. Amonoy for Emerlita De la Cruz.
Pelaez Gregorio Gregorio & Lim for Diogenes G. Bartolome.

D E C I S I O N

CARPIO, *J.*:

G.R. No. 172036 is a petition for review[1] assailing the Decision[2] promulgated on 25 January 2006 as well as the Resolution[3] promulgated on 16 March 2006 of the Court of Appeals (appellate court) in CA-G.R. CV No. 63651. The appellate court reversed and set aside the decision of Branch 23 of the Regional Trial Court of Trece Martires City, Cavite (trial court) in Civil Case No. TM-622. The appellate court ordered Emerlita Dela Cruz (Dela Cruz) to return to spouses Faustino and Josefina Garcia, spouses Meliton and Helen Galvez, and Constancia Arcaira (collectively, petitioners) the amount in excess of one-half percent of ₱1,500,000. Dela Cruz's co-defendant, Diogenes Bartolome (Bartolome), did not incur any liability.

The appellate court narrated the facts as follows:

On May 28, 1993, plaintiffs spouses Faustino and Josefina Garcia and spouses Meliton and Helen Galvez (herein appellees) and defendant Emerlita dela Cruz (herein appellant) entered into a Contract to Sell wherein the latter agreed to sell to the former, for Three Million One Hundred Seventy Thousand Two Hundred Twenty (₱3,170,220.00) Pesos, five (5) parcels of land situated at Tanza,

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 59-69. Penned by Associate Justice Sesinando E. Villon, with Associate Justices Edgardo P. Cruz and Rosalinda Asuncion-Vicente, concurring.

[3] *Id.* at 71-72. Penned by Associate Justice Sesinando E. Villon, with Associate Justices Edgardo P. Cruz and Rosalinda Asuncion-Vicente, concurring.

Cavite particularly known as Lot Nos. 47, 2768, 2776, 2767, 2769 and covered by Transfer Certificate of Title Nos. T-340674, T-340673, T-29028, T-29026, T-29027, respectively. At the time of the execution of the said contract, three of the subject lots, namely, Lot Nos. 2776, 2767, and 2769 were registered in the name of one Angel Abelida from whom defendant allegedly acquired said properties by virtue of a Deed of Absolute Sale dated March 31, 1989.

As agreed upon, plaintiffs shall make a down payment of Five Hundred Thousand (₱500,000.00) Pesos upon signing of the contract. The balance of Two Million Six Hundred Seventy Thousand Two Hundred Twenty (₱2,670,220.00) Pesos shall be paid in three installments, *viz*: Five Hundred Thousand (₱500,000.00) Pesos on June 30, 1993; Five Hundred Thousand (₱500,000.00) Pesos on August 30, 1993; One Million Six Hundred Seventy Thousand Two Hundred Twenty (₱1,670,220.00) Pesos on December 31, 1993.

On its due date, December 31, 1993, plaintiffs failed to pay the last installment in the amount of One Million Six Hundred Seventy Thousand Two Hundred Twenty (₱1,670,220.00) Pesos. Sometime in July 1995, plaintiffs offered to pay the unpaid balance, which had already been delayed by one and [a] half year, which defendant refused to accept. On September 23, 1995, defendant sold the same parcels of land to intervenor Diogenes G. Bartolome for Seven Million Seven Hundred Ninety Three Thousand (₱7,793,000.00) Pesos.

In order to compel defendant to accept plaintiffs' payment in full satisfaction of the purchase price and, thereafter, execute the necessary document of transfer in their favor, plaintiffs filed before the RTC a complaint for specific performance.

In their complaint, plaintiffs alleged that they discovered the infirmity of the Deed of Absolute Sale covering Lot Nos. 2776, 2767 and 2769, between their former owner Angel Abelida and defendant, the same being spurious because the signature of Angel Abelida and his wife were falsified; that at the time of the execution of the said deed, said spouses were in the United States; that due to their apprehension regarding the authenticity of the document, they withheld payment of the last installment which was supposedly due on December 31, 1993; that they tendered payment of the unpaid balance sometime in July 1995, after Angel Abelida ratified the sale made in favor [of] defendant, but defendant refused to accept their payment for no jusitifiable reason.

In her answer, defendant denied the allegation that the Deed of Absolute Sale was spurious and argued that plaintiffs failed to pay in full the agreed purchase price on its due date despite repeated demands; that the Contract to Sell contains a proviso that failure of plaintiffs to pay the purchase price in full shall cause the rescission of the contract and forfeiture of one-half (1/2%) percent of the total amount paid to defendant; that a notarized letter stating the indended (sic) rescission of the contract to sell and forfeiture of payments was sent to plaintiffs at their last known address but it was returned with a notation "insufficient address."

Intervenor Diogenes G. Bartolome filed a complaint in intervention alleging that the Contract to Sell dated May 31, 1993 between plaintiffs and defendant was rescinded and became ineffective due to unwarranted failure of the plaintiffs to pay the unpaid balance of the purchase price on or before the stipulated date; that he became interested in the subject parcels of land because of their clean titles; that he purchased the same from defendant by virtue of an Absolute Deed of Sale executed on September 23, 1995 in consideration of the sum of Seven Million Seven Hundred Ninety Three Thousand (₱7,793,000.00) Pesos.[4]

The Decision of the Trial Court

In its Decision dated 15 April 1999, the trial court ruled that Dela Cruz's rescission of the contract was not valid. The trial court applied Republic Act No. 6552 (Maceda Law) and stated that Dela Cruz is not allowed to unilaterally cancel the Contract to Sell. The trial court found that petitioners are justified in withholding the payment of the balance of the consideration because of the alleged spurious sale between Angel Abelida and Emerlita Dela Cruz. Moreover, intervenor Diogenes Bartolome (Bartolome) is not a purchaser in good faith because he was aware of petitioners' interest in the subject parcels of land.

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

ACCORDINGLY, defendant Emerlita dela Cruz is ordered to accept the balance of the purchase price in the amount of ₱1,670,220.00 within ten (10) days after the judgment of this Court in the above-

[4] *Id.* at 60-62.

entitled case has become final and executory and to execute immediately the final deed of sale in favor of plaintiffs.

Defendant is further directed to pay plaintiffs the amount of ₱400,000.00 as moral damages and ₱100,000.00 as exemplary damages.

The deed of sale executed by defendant Emerlita dela Cruz in favor of Atty. Diogenes Bartolome is declared null and void and the amount of ₱7,793,000.00 which was paid by intervenor Bartolome to Emerlita dela Cruz as the consideration of the sale of the five (5) parcels of land is hereby directed to be returned by Emerlita dela Cruz to Atty. Diogenes Bartolome within ten (10) days from the finality of judgment.

Further, defendant is directed to pay plaintiff the sum of ₱100,000.00 as attorney's fees.

SO ORDERED.[5]

Dela Cruz and Bartolome appealed from the judgment of the trial court.

The Decision of the Appellate Court

The appellate court reversed the trial court's decision and dismissed Civil Case No. TM-622. Dela Cruz's obligation under the Contract to Sell did not arise because of petitioners' undue failure to pay in full the agreed purchase price on the stipulated date. Moreover, judicial action for the rescission of a contract is not necessary where the contract provides that it may be revoked and cancelled for violation of any of its terms and conditions. The dispositive portion of the appellate court's decision reads:

WHEREFORE, in view of all the foregoing, the appealed decision of the Regional Trial Court is hereby REVERSED and SET ASIDE and Civil Case No. TM-622 is, consequently, DISMISSED. Defendant is however ordered to return to plaintiffs the amount in excess of one-half (1/2%) percent of One Million Five Hundred Thousand (₱1,500,000.00) Pesos which was earlier paid by plaintiffs.

SO ORDERED.[6]

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[5] *Id.* at 135.

[6] *Id.* at 69.

The appellate court likewise resolved to deny petitioners' Motion for Reconsideration for lack of merit.[7]

Hence, this petition.

Issues

Petitioners raised the following grounds for the grant of their petition:

I. The Honorable Court of Appeals erred when it failed to consider the provisions of Republic Act 6552, otherwise known as the Maceda Law.

II. The Honorable Court of Appeals erred when it failed to consider that Respondent Dela Cruz could not pass title over the three (3) properties at the time she entered to a Contract to Sell as her purported ownership was tainted with fraud, thereby justifying Petitioners Spouses Garcia, Spouses Galvez and Arcaira's suspension of payment.

III. The Honorable Court of Appeals gravely erred when it failed to consider that Respondent Dela Cruz's "rescission" was done in evident bad faith and malice on account of a second sale she entered with Respondent Bartolome for a much bigger amount.

IV. The Honorable Court of Appeals erred when it failed to declare Respondent Bartolome is not an innocent purchaser for value despite the presence of evidence as to his bad faith.[8]

The Court's Ruling

The petition has no merit.

Both parties admit the following: (1) the contract between petitioners and Dela Cruz was a contract to sell; (2) petitioners failed to pay in full the agreed purchase price of the subject property on the stipulated date; and (3) Dela Cruz did not want to accept petitioners' offer of payment and did not want to execute a document of transfer in petitioners' favor.

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[7] *Id.* at 71-72.

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

The pertinent provisions of the contract, denominated Contract to Sell, between the parties read:

> Failure on the part of the vendees to comply with the herein stipulation as to the terms of payment shall cause the rescission of this contract and the payments made shall be returned to the vendees subject however, to forfeiture in favor of the Vendor equivalent to 1/2% of the total amount paid.
>
> x x x x x x x x x
>
> It is hereby agreed and covenanted that possession shall be retained by the VENDOR until a Deed of Absolute Sale shall be executed by her in favor of the Vendees. Violation of this provision shall authorize/empower the VENDOR [to] demolish any construction/improvement without need of judicial action or court order.
>
> That upon and after the full payment of the balance, a Deed of Absolute Sale shall be executed by the Vendor in favor of the Vendees.
>
> That the duplicate original of the owner's copy of the Transfer Certificate of Title of the above subject parcels of land shall remain in the possession of the Vendor until the execution of the Deed of Absolute Sale.[9]

Contracts are law between the parties, and they are bound by its stipulations. It is clear from the above-quoted provisions that the parties intended their agreement to be a Contract to Sell: Dela Cruz retains ownership of the subject lands and does not have the obligation to execute a Deed of Absolute Sale until petitioners' payment of the full purchase price. Payment of the price is a positive suspensive condition, failure of which is not a breach but an event that prevents the obligation of the vendor to convey title from becoming effective. Strictly speaking, there can be no rescission or resolution of an obligation that is still non-existent due to the non-happening of the suspensive condition.[10] Dela Cruz is thus not obliged to execute a Deed of Absolute Sale in petitioners' favor because of petitioners' failure to make full payment on the stipulated date.

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[9] *Id.* at 94-95.

[10] See *Jacinto v. Kaparaz*, G.R. No. 81158, 22 May 1992, 209 SCRA 246.

We ruled thus in *Pangilinan v. Court of Appeals*:[11]

Article 1592 of the New Civil Code, requiring demand by suit or by notarial act in case the vendor of realty wants to rescind does not apply to a contract to sell but only to contract of sale. In contracts to sell, where ownership is retained by the seller and is not to pass until the full payment, such payment, as we said, is a positive suspensive condition, the failure of which is not a breach, casual or serious, but simply an event that prevented the obligation of the vendor to convey title from acquiring binding force. To argue that there was only a casual breach is to proceed from the assumption that the contract is one of absolute sale, where non-payment is a resolutory condition, which is not the case.

The applicable provision of law in instant case is Article 1191 of the New Civil Code which provides as follows:

> Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.
>
> The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.
>
> The Court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.
>
> This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law. (1124)

Pursuant to the above, the law makes it available to the injured party alternative remedies such as the power to rescind or enforce fulfillment of the contract, with damages in either case if the obligor does not comply with what is incumbent upon him. There is nothing in this law which prohibits the parties from entering into an agreement that a violation of the terms of the contract would cause its cancellation even without court intervention. The rationale for the foregoing is that in contracts providing for automatic revocation, judicial intervention is necessary not for purposes of obtaining a judicial

[11] 345 Phil. 93, 99-101 (1997).

declaration rescinding a contract already deemed rescinded by virtue of an agreement providing for rescission even without judicial intervention, but in order to determine whether or not the rescission was proper. Where such propriety is sustained, the decision of the court will be merely declaratory of the revocation, but it is not in itself the revocatory act. Moreover, the vendor's right in contracts to sell with reserved title to extrajudicially cancel the sale upon failure of the vendee to pay the stipulated installments and retain the sums and installments already received has long been recognized by the well-established doctrine of 39 years standing. The validity of the stipulation in the contract providing for automatic rescission upon non-payment cannot be doubted. It is in the nature of an agreement granting a party the right to rescind a contract unilaterally in case of breach without need of going to court. Thus, rescission under Article 1191 was inevitable due to petitioners' failure to pay the stipulated price within the original period fixed in the agreement.

Petitioners justify the delay in payment by stating that they had notice that Dela Cruz is not the owner of the subject land, and that they took pains to rectify the alleged defect in Dela Cruz's title. Be that as it may, Angel Abelida's (Abelida) affidavit[12] confirming the sale to Dela Cruz only serves to strengthen Dela Cruz's claim that she is the absolute owner of the subject lands at the time the Contract to Sell between herself and petitioners was executed. **Dela Cruz did not conceal from petitioners that the title to Lot Nos. 2776, 2767 and 2769 still remained under Abelida's name, and the Contract to Sell**[13] **even provided that petitioners should shoulder the attendant expenses for the transfer of ownership from Abelida to Dela Cruz.**

The trial court erred in applying R.A. 6552,[14] or the Maceda Law, to the present case. The Maceda Law applies to contracts

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[12] *Rollo*, p. 87.

[13] *Id.* at 82. The pertinent provision in the Contract to Sell reads: All expenses, such as notarial fees, 5% commission of the agents, capital gains tax, documentary stamps tax, registration fees and transfer tax and others shall be for the account of the vendees, **including the transfer of ownership from Angel Abelida to Emerlita Dela Cruz** (emphasis added).

[14] An Act to Provide Protection to Buyers of Real Estate on Installment Payments.

of sale of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants. The subject lands, comprising five (5) parcels and aggregating 69,028 square meters, do not comprise residential real estate within the contemplation of the Maceda Law.[15] Moreover, even if we apply the Maceda Law to the present case, petitioners' offer of payment to Dela Cruz was made a year and a half after the stipulated date. This is beyond the sixty-day grace period under Section 4 of the Maceda Law.[16] Petitioners still cannot use the second sentence of Section 4 of the Maceda Law against Dela Cruz for Dela Cruz's alleged failure to give an effective notice of cancellation or demand for rescission because Dela Cruz merely sent the notice to the address supplied by petitioners in the Contract to Sell.

It is undeniable that petitioners failed to pay the balance of the purchase price on the stipulated date of the Contract to Sell. Thus, Dela Cruz is within her rights to sell the subject lands to Bartolome. Neither Dela Cruz nor Bartolome can be said to be in bad faith.

WHEREFORE, we *DENY* the petition. We *AFFIRM in toto* the Court of Appeals' Decision promulgated on 25 January 2006 as well as the Resolution promulgated on 16 March 2006 in CA-G.R. CV No. 63651.

Costs against petitioners.

SO ORDERED.

Brion, Del Castillo, Abad, and *Perez, JJ.,* concur.

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[15] *Spouses Dela Cruz v. Court of Appeals*, 485 Phil. 168 (2004); See also *Active Realty & Development Corp. v. Daroya*, 431 Phil. 753 (2002).

[16] SEC. 4. In case where less than two years of installments were paid, the seller shall give the buyer a grace period of not less than sixty days from the date the installment became due. If the buyer fails to pay the installments due at the expiration of the grace period, the seller may cancel the contract after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act.

THIRD DIVISION

[G.R. No. 173905. April 23, 2010]

ANTHONY L. NG, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; *ESTAFA*; ELEMENTS.— [T]he essential elements of *Estafa* are: (1) that money, goods or other personal property is received by the offender in trust or on commission, or for administration, or under any obligation involving the duty to make delivery of or to return it; (2) that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt; (3) that such misappropriation or conversion or denial is to the prejudice of another; and (4) there is demand by the offended party to the offender.

2. ID.; *ESTAFA* UNDER ARTICLE 315, PARAGRAPH 1(B) OF THE REVISED PENAL CODE IN RELATION TO PRESIDENTIAL DECREE NO. (PD) 115 OR THE TRUST RECEIPTS LAW; HOW COMMITTED.— *Estafa* can also be committed in what is called a "trust receipt transaction" under PD 115. x x x [A] trust receipt transaction is one where the entrustee has the obligation to deliver to the entruster the price of the sale, or if the merchandise is not sold, to return the merchandise to the entruster. There are, therefore, two obligations in a trust receipt transaction: the first refers to money received under the obligation involving the duty to turn it over (*entregarla*) to the owner of the merchandise sold, while the second refers to the merchandise received under the obligation to "return" it (*devolvera*) to the owner. A violation of any of these undertakings constitutes *Estafa* defined under Art. 315, par. 1(b) of the RPC, as provided in Sec. 13 of PD 115.

3. ID.; ID.; WHEN PD 115 DOES NOT APPLY.— Considering that the goods in this case were never intended for sale but for use in the fabrication of steel communication towers, the trial court erred in ruling that the agreement is a trust receipt transaction. In applying the provisions of PD 115, the trial court relied on the Memorandum of Asiatrust's appraiser, Linga,

who stated that the goods have been sold by petitioner and that only 3% of the goods remained in the warehouse where it was previously stored. But for reasons known only to the trial court, the latter did not give weight to the testimony of Linga when he testified that he **merely presumed** that the goods were sold. x x x Undoubtedly, in his testimony, Linga showed that he had no real personal knowledge or proof of the fact that the goods were indeed sold. He did not notify petitioner about the inspection nor did he talk to or inquire with petitioner regarding the whereabouts of the subject goods. Neither did he confirm with petitioner if the subject goods were in fact sold. Therefore, the Memorandum of Linga, which was based only on his presumption and not any actual personal knowledge, should not have been used by the trial court to prove that the goods have in fact been sold. At the very least, it could only show that the goods were not in the warehouse. Having established the inapplicability of PD 115, this Court finds that petitioner's liability is only limited to the satisfaction of his obligation from the loan. The real intent of the parties was simply to enter into a simple loan agreement. To emphasize, the Trust Receipts Law was created to "**to aid in financing importers and retail dealers who do not have sufficient funds or resources to finance the importation or purchase of merchandise, and who may not be able to acquire credit except through utilization, as collateral, of the merchandise imported or purchased**." Since Asiatrust knew that petitioner was neither an importer nor retail dealer, it should have known that the said agreement could not possibly apply to petitioner.

4. ID.; ID.; WHEN THE GOODS WERE NOT RECEIVED IN TRUST, ACCUSED CANNOT BE HELD LIABLE FOR *ESTAFA*.— The first element of *Estafa* under Art. 315, par. 1(b) of the RPC requires that the money, goods or other personal property must be received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return it. But as we already discussed, the goods received by petitioner were not held in trust. They were also not intended for sale and neither did petitioner have the duty to return them. They were only intended for use in the fabrication of steel communication towers.

5. ID.; ID.; THERE IS NO LIABILITY FOR *ESTAFA* WHEN THERE WAS NO MISAPPROPRIATION OF GOODS OR

PROCEEDS OF THE SALE.— The second element of *Estafa* requires that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt. This is the very essence of *Estafa* under Art. 315, par. 1(b). The words "convert" and "misappropriated" connote an act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without a right. Petitioner argues that there was no misappropriation or conversion on his part, because his liability for the amount of the goods subject of the trust receipts arises and becomes due **only** upon receipt of the proceeds of the sale and not prior to the receipt of the full price of the goods. Petitioner is correct. Thus, assuming *arguendo* that the provisions of PD 115 apply, petitioner is not liable for *Estafa* because Sec. 13 of PD 115 provides that an entrustee is only liable for *Estafa* when he fails "to turn over the proceeds of the sale of the goods x x x covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt x x x **in accordance with the terms of the trust receipt**." x x x [Under] [t]he trust receipt entered into between Asiatrust and petitioner x x x petitioner was only obligated to turn over the proceeds as soon as he received payment. x x x Thus, absent proof that the proceeds have been actually and fully received by petitioner, his obligation to turn over the same to Asiatrust never arose. x x x Moreover, Asiatrust was aware that petitioner was not engaged in selling the subject goods and that petitioner will use them for the fabrication and installation of communication towers. Before granting petitioner the credit line, as aforementioned, Asiatrust conducted an investigation, which showed that petitioner fabricated and installed communication towers for well-known communication companies to be installed at designated project sites. In fine, there was no abuse of confidence to speak of nor was there any intention to convert the subject goods for another purpose, since petitioner did not withhold the fact that they were to be used to fabricate steel communication towers to Asiatrust. Hence, no malice or abuse of confidence and misappropriation occurred in this instance due to Asiatrust's knowledge of the facts. Furthermore, Asiatrust was informed at the time of

petitioner's application for the loan that the payment for the loan would be derived from the collectibles of his clients. Petitioner informed Asiatrust that he was having extreme difficulties in collecting from Islacom the full contracted price of the towers. Thus, the duty of petitioner to remit the proceeds of the goods has not yet arisen since he has yet to receive proceeds of the goods. Again, petitioner could not be said to have misappropriated or converted the proceeds of the transaction since he has not yet received the proceeds from his client, Islacom.

6. **REMEDIAL LAW; EVIDENCE; PROOF BEYOND REASONABLE DOUBT, NOT ESTABLISHED.—** [T]he prosecution failed to prove beyond reasonable doubt that petitioner was guilty of *Estafa* under Art. 315, par. 1(b) of the RPC in relation to the pertinent provision of PD 115 or the Trust Receipts Law; thus, his liability should only be civil in nature. While petitioner admits to his civil liability to Asiatrust, he nevertheless does not have criminal liability. It is a well-established principle that person is presumed innocent until proved guilty. To overcome the presumption, his guilt must be shown by proof beyond reasonable doubt. x x x The prosecution, in this instant case, failed to rebut the constitutional innocence of petitioner and thus the latter should be acquitted.

APPEARANCES OF COUNSEL

Ibuyan Garcia Ibuyan Law Office and *Girlie I. Salarda* for petitioner.

The Solicitor General for respondent.

Ma. Neriza C. San Juan for Asiatrust Development Bank.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is a Petition for Review on *Certiorari* under Rule 45 seeking to reverse and set aside the August 29, 2003 Decision[1]

[1] Penned by Associate Justice Elvi John S. Asuncion and concurred in by Associate Justices Eugenio S. Labitoria and Lucas P. Bersamin (now member of the Court).

and July 25, 2006 Resolution of the Court of Appeals (CA) in CA-G.R. CR No. 25525, which affirmed the Decision[2] of the Regional Trial Court (RTC), Branch 95 in Quezon City, in Criminal Case No. Q-99-85133 for *Estafa* under Article 315, paragraph 1(b) of the Revised Penal Code (RPC) in relation to Section 3 of Presidential Decree No. (PD) 115 or the Trust Receipts Law.

The Facts

Sometime in the early part of 1997, petitioner Anthony Ng, then engaged in the business of building and fabricating telecommunication towers under the trade name "Capitol Blacksmith and Builders," applied for a credit line of PhP 3,000,000 with Asiatrust Development Bank, Inc. (Asiatrust). In support of Asiatrust's credit investigation, petitioner voluntarily submitted the following documents: (1) the contracts he had with Islacom, Smart, and Infocom; (2) the list of projects wherein he was commissioned by the said telecommunication companies to build several steel towers; and (3) the collectible amounts he has with the said companies.[3]

On May 30, 1997, Asiatrust approved petitioner's loan application. Petitioner was then required to sign several documents, among which are the Credit Line Agreement, Application and Agreement for Irrevocable L/C, Trust Receipt Agreements,[4] and Promissory Notes. Though the Promissory Notes matured on September 18, 1997, the two (2) aforementioned Trust Receipt Agreements did not bear any maturity dates as they were left unfilled or in blank by Asiatrust.[5]

After petitioner received the goods, consisting of chemicals and metal plates from his suppliers, he utilized them to fabricate

[2] Penned by then Presiding Judge Diosdado Madarang Peralta (now member of the Court).

[3] *Rollo*, pp. 61-69.

[4] Trust Receipt Agreements under Letter of Credit Nos. 1963 and 1964.

[5] *Rollo*, pp. 58 & 60.

the communication towers ordered from him by his clients which were installed in three project sites, namely: Isabel, Leyte; Panabo, Davao; and Tongonan.

As petitioner realized difficulty in collecting from his client Islacom, he failed to pay his loan to Asiatrust. Asiatrust then conducted a surprise ocular inspection of petitioner's business through Villarva S. Linga, Asiatrust's representative appraiser. Linga thereafter reported to Asiatrust that he found that approximately 97% of the subject goods of the Trust Receipts were "sold-out and that only 3 % of the goods pertaining to PN No. 1963 remained." Asiatrust then endorsed petitioner's account to its Account Management Division for the possible restructuring of his loan. The parties thereafter held a series of conferences to work out the problem and to determine a way for petitioner to pay his debts. However, efforts towards a settlement failed to be reached.

On March 16, 1999, Remedial Account Officer Ma. Girlie C. Bernardez filed a *Complaint-Affidavit* before the Office of the City Prosecutor of Quezon City. Consequently, on September 12, 1999, an Information for *Estafa*, as defined and penalized under Art. 315, par. 1(b) of the RPC in relation to Sec. 3, PD 115 or the Trust Receipts Law, was filed with the RTC. The said Information reads:

> That on or about the 30th day of May 1997, in Quezon City, Philippines, the above-named petitioner, did then and there willfully, unlawfully, and feloniously defraud Ma. Girlie C. Bernardez by entering into a Trust Receipt Agreement with said complainant whereby said petitioner as entrustee received in trust from the said complainant various chemicals in the total sum of ₱4.5 million with the obligation to hold the said chemicals in trust as property of the entruster with the right to sell the same for cash and to remit the proceeds thereof to the entruster, or to return the said chemicals if unsold; but said petitioner once in possession of the same, contrary to his aforesaid obligation under the trust receipt agreement with intent to defraud did then and there misappropriated, misapplied and converted the said amount to his own personal use and benefit and despite repeated demands made upon him, said petitioner refused and failed and still refuses and fails to make good of his obligation, to the damage and

prejudice of the said Ma. Girlie C. Bernardez in the amount of ₱2,971,650.00, Philippine Currency.

CONTRARY TO LAW.

Upon arraignment, petitioner pleaded not guilty to the charges. Thereafter, a full-blown trial ensued.

During the pendency of the abovementioned case, conferences between petitioner and Asiatrust's Remedial Account Officer, Daniel Yap, were held. Afterward, a Compromise Agreement was drafted by Asiatrust. One of the requirements of the Compromise Agreement was for petitioner to issue six (6) postdated checks. Petitioner, in good faith, tried to comply by issuing two or three checks, which were deposited and made good. The remaining checks, however, were not deposited as the Compromise Agreement did not push through.

For his defense, petitioner argued that: (1) the loan was granted as his working capital and that the Trust Receipt Agreements he signed with Asiatrust were merely preconditions for the grant and approval of his loan; (2) the Trust Receipt Agreement corresponding to Letter of Credit No. 1963 and the Trust Receipt Agreement corresponding to Letter of Credit No. 1964 were both contracts of adhesion, since the stipulations found in the documents were prepared by Asiatrust in fine print; (3) unfortunately for petitioner, his contract worth PhP 18,000,000 with Islacom was not yet paid since there was a squabble as to the real ownership of the latter's company, but Asiatrust was aware of petitioner's receivables which were more than sufficient to cover the obligation as shown in the various Project Listings with Islacom, Smart Communications, and Infocom; (4) prior to the Islacom problem, he had been faithfully paying his obligation to Asiatrust as shown in Official Receipt Nos. 549001, 549002, 565558, 577198, 577199, and 594986,[6] thus debunking Asiatrust's claim of fraud and bad faith against him; (5) during the pendency of this case, petitioner even attempted to settle his obligations

[6] Exhibits "1" & "1-A".

as evidenced by the two United Coconut Planters Bank Checks[7] he issued in favor of Asiatrust; and (6) he had already paid PhP 1.8 million out of the PhP 2.971 million he owed as per Statement of Account dated January 26, 2000.

Ruling of the Trial Court

After trial on the merits, the RTC, on May 29, 2001, rendered a Decision, finding petitioner guilty of the crime of *Estafa*. The *fallo* of the Decision reads as follows:

> WHEREFORE, judgment is hereby rendered finding the petitioner, Anthony L. Ng GUILTY beyond reasonable doubt for the crime of Estafa defined in and penalized by Article 315, paragraph 1(b) of the Revised Penal Code in relation to Section 3 of Presidential Decree 115, otherwise known as the Trust Receipts Law, and is hereby sentenced to suffer the indeterminate penalty of from six (6) years, eight (8) months, and twenty one (21) days of *prision mayor*, minimum, as the minimum penalty, to twenty (20) years of reclusion temporal maximum, as the maximum penalty.
>
> The petitioner is further ordered to return to the Asiatrust Development Bank Inc. the amount of Two Million, Nine Hundred Seventy One and Six Hundred Fifty Pesos (₱2,971,650.00) with legal rate of interest computed from the filing of the information on September 21,1999 until the amount is fully paid.
>
> IT IS SO ORDERED.

In rendering its Decision, the trial court held that petitioner could not simply argue that the contracts he had entered into with Asiatrust were void as they were contracts of adhesion. It reasoned that petitioner is presumed to have read and understood and is, therefore, bound by the provisions of the Letters of Credit and Trust Receipts. It said that it was clear that Asiatrust had furnished petitioner with a Statement of Account enumerating therein the precise figures of the outstanding balance, which he failed to pay along with the computation of other fees and charges; thus, Asiatrust did not violate Republic Act No. 3765 (Truth in

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[7] Check Nos. 5094129 and 5094133 dated January 31, 2000 and May 31, 2000, respectively.

Lending Act). Finally, the trial court declared that petitioner, being the entrustee stated in the Trust Receipts issued by Asiatrust, is thus obliged to hold the goods in trust for the entruster and shall dispose of them strictly in accordance with the terms and conditions of the trust receipts; otherwise, he is obliged to return the goods in the event of non-sale or upon demand of the entruster, failing thus, he evidently violated the Trust Receipts Law.

Ruling of the Appellate Court

Petitioner then elevated the case to the CA by filing a Notice of Appeal on August 6, 2001. In his Appellant's Brief dated March 25, 2002, petitioner argued that the court *a quo* erred: (1) in changing the name of the offended party without the benefit of an amendment of the Information which violates his right to be informed of the nature and cause of accusation against him; (2) in making a finding of facts not in accord with that actually proved in the trial and/or by the evidence provided; (3) in not considering the material facts which if taken into account would have resulted in his acquittal; (4) in being biased, hostile, and prejudiced against him; and (5) in considering the prosecution's evidence which did not prove the guilt of petitioner beyond reasonable doubt.

On August 29, 2003, the CA rendered a Decision affirming that of the RTC, the *fallo* of which reads:

> WHEREFORE, the foregoing considered, the instant appeal is DENIED. The decision of the Regional Trial Court of Quezon City, Branch 95 dated May 29, 2001 is AFFIRMED.
>
> SO ORDERED.

The CA held that during the course of the trial, petitioner knew that the complainant Bernardez and the other co-witnesses are all employees of Asiatrust and that she is suing in behalf of the bank. Since petitioner transacted with the same employees for the issuance of the subject Trust Receipts, he cannot feign ignorance that Asiatrust is not the offended party in the instant case. The CA further stated that the change in the name of the complainant will not prejudice and alter the fact that petitioner

was being charged with the crime of *Estafa* in relation to the Trust Receipts Law, since the information clearly set forth the essential elements of the crime charged, and the constitutional right of petitioner to be informed of the nature and cause of his accusations is not violated.[8]

As to the alleged error in the appreciation of facts by the trial court, the CA stated that it was undisputed that petitioner entered into a trust receipt agreement with Asiatrust and he failed to pay the bank his obligation when it became due. According to the CA, the fact that petitioner acted without malice or fraud in entering into the transactions has no bearing, since the offense is punished as *malum prohibitum* regardless of the existence of intent or malice; the mere failure to deliver the proceeds of the sale or the goods if not sold constitutes the criminal offense.

With regard to the failure of the RTC to consider the fact that petitioner's outstanding receivables are sufficient to cover his indebtedness and that no written demand was made upon him hence his obligation has not yet become due and demandable, the CA stated that the mere query as to the whereabouts of the goods and/or money is tantamount to a demand.[9]

Concerning the alleged bias, hostility, and prejudice of the RTC against petitioner, the CA said that petitioner failed to present any substantial proof to support the aforementioned allegations against the RTC.

After the receipt of the CA Decision, petitioner moved for its reconsideration, which was denied by the CA in its Resolution dated July 25, 2006. Thereafter, petitioner filed this Petition for Review on *Certiorari*. In his Memorandum, he raised the following issues:

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[8] *Abaca v. Court of Appeals*, G.R. No. 127162, June 5, 1998, 290 SCRA 657.

[9] *Barrameda v. Court of Appeals*, G.R. No. 96428, September 2, 1999, 313 SCRA 477.

Issues:

1. The prosecution failed to adduce evidence beyond a reasonable doubt to satisfy the 2nd essential element that there was misappropriation or conversion of subject money or property by petitioner.

2. The state was unable to prove the 3rd essential element of the crime that the alleged misappropriation or conversion is to the prejudice of the real offended property.

3. The absence of a demand (4th essential element) on petitioner necessarily results to the dismissal of the criminal case.

The Court's Ruling

We find the petition to be meritorious.

Essentially, the issues raised by petitioner can be summed up into one—whether or not petitioner is liable for *Estafa* under Art. 315, par. 1(b) of the RPC in relation to PD 115.

It is a well-recognized principle that factual findings of the trial court are entitled to great weight and respect by this Court, more so when they are affirmed by the appellate court. However, the rule is not without exceptions, such as: (1) when the conclusion is a finding grounded entirely on speculations, surmises, and conjectures; (2) the inferences made are manifestly mistaken; (3) there is grave abuse of discretion; and (4) the judgment is based on misapprehension of facts or premised on the absence of evidence on record.[10] Especially in criminal cases where the accused stands to lose his liberty by virtue of his conviction, the Court must be satisfied that the factual findings and conclusions of the lower courts leading to his conviction must satisfy the standard of proof beyond reasonable doubt.

In the case at bar, petitioner was charged with *Estafa* under Art. 315, par. 1(b) of the RPC in relation to PD 115. The RPC defines *Estafa* as:

ART. 315. *Swindling (estafa)*.—Any person who shall defraud another by any of the means mentioned hereinbelow x x x

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[10] *Cosep v. People*, G.R. No. 110353, May 21, 1998, 290 SCRA 378.

1. With unfaithfulness or abuse of confidence, namely:

a. x x x

b. By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property x x x.[11]

Based on the definition above, the essential elements of *Estafa* are: (1) that money, goods or other personal property is received by the offender in trust or on commission, or for administration, or under any obligation involving the duty to make delivery of or to return it; (2) that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt; (3) that such misappropriation or conversion or denial is to the prejudice of another; and (4) there is demand by the offended party to the offender.[12]

Likewise, *Estafa* can also be committed in what is called a "trust receipt transaction" under PD 115, which is defined as:

Section 4. ***What constitutes a trust receipts transaction.***—A trust receipt transaction, within the meaning of this Decree, is any transaction by and between a person referred to in this Decree as the entruster, and another person referred to in this Decree as entrustee, whereby the entruster, who owns or holds absolute title or security interests over certain specified goods, documents or instruments, releases the same to the possession of the entrustee upon the latter's execution and delivery to the entruster of a signed document called a "trust receipt" wherein the entrustee binds himself to hold the designated goods, documents or instruments in trust for the entruster and to sell or otherwise dispose of the goods, documents or instruments with the obligation to turn over to the entruster the proceeds thereof to the extent of the amount owing to the entruster

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[11] *Murao v. People*, G.R. No. 141485, June 30, 2005, 462 SCRA 366.

[12] *Salazar v. People*, G.R. No. 149472, August 18, 2004, 437 SCRA 41, 46.

or as appears in the trust receipt or the goods, documents or instruments themselves if they are unsold or not otherwise disposed of, in accordance with the terms and conditions specified in the trust receipt, or for other purposes substantially equivalent to any of the following:

1. In the case of goods or documents: (a) to sell the goods or procure their sale; or (b) to manufacture or process the goods with the purpose of ultimate sale: *Provided*, That, in the case of goods delivered under trust receipt for the purpose of manufacturing or processing before its ultimate sale, the entruster shall retain its title over the goods whether in its original or processed form until the entrustee has complied full with his obligation under the trust receipt; or (c) to load, unload, ship or transship or otherwise deal with them in a manner preliminary or necessary to their sale; or

2. In the case of instruments: (a) to sell or procure their sale or exchange; or (b) to deliver them to a principal; or (c) to effect the consummation of some transactions involving delivery to a depository or register; or (d) to effect their presentation, collection or renewal.

The sale of good, documents or instruments by a person in the business of selling goods, documents or instruments for profit who, at the outset of transaction, has, as against the buyer, general property rights in such goods, documents or instruments, or who sells the same to the buyer on credit, retaining title or other interest as security for the payment of the purchase price, does not constitute a trust receipt transaction and is outside the purview and coverage of this Decree.

In other words, a trust receipt transaction is one where the entrustee has the obligation to deliver to the entruster the price of the sale, or if the merchandise is not sold, to return the merchandise to the entruster. There are, therefore, two obligations in a trust receipt transaction: the first refers to money received under the obligation involving the duty to turn it over (*entregarla*) to the owner of the merchandise sold, while the second refers to the merchandise received under the obligation to "return" it (*devolvera*) to the owner.[13] A violation of any of these

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[13] *People v. Cuevo*, 191 Phil. 622 (1981).

undertakings constitutes *Estafa* defined under Art. 315, par. 1(b) of the RPC, as provided in Sec. 13 of PD 115, *viz*:

> Section 13. ***Penalty Clause.***—The failure of an entrustee to **turn over the proceeds of the sale of the goods**, documents or instruments covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt or to return said goods, documents or instruments if they were not sold or disposed of **in accordance with the terms of the trust receipt** shall constitute the crime of estafa, punishable under the provisions of Article Three hundred fifteen, paragraph one (b) of Act Numbered Three thousand eight hundred and fifteen, as amended, otherwise known as the Revised Penal Code. x x x (Emphasis supplied.)

A thorough examination of the facts obtaining in the instant case, however, reveals that the transaction between petitioner and Asiatrust is not a trust receipt transaction but one of simple loan.

PD 115 Does Not Apply

It must be remembered that petitioner was transparent to Asiatrust from the very beginning that the subject goods were not being held for sale but were to be used for the fabrication of steel communication towers in accordance with his contracts with Islacom, Smart, and Infocom. **In these contracts, he was commissioned to build, out of the materials received, steel communication towers, not to sell them.**

The true nature of a trust receipt transaction can be found in the "whereas" clause of PD 115 which states that a trust receipt is to be utilized "as a convenient business device to assist importers and merchants solve their financing problems." Obviously, the State, in enacting the law, sought to find a way to assist importers and merchants in their financing in order to encourage commerce in the Philippines.

As stressed in *Samo v. People*,[14] a trust receipt is considered a security transaction intended to aid in financing importers

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[14] Nos. L-17603-04, May 31, 1962, 5 SCRA 354.

and retail dealers who do not have sufficient funds or resources to finance the importation or purchase of merchandise, and who may not be able to acquire credit except through utilization, as collateral, of the merchandise imported or purchased. Similarly, American Jurisprudence demonstrates that trust receipt transactions always refer to a method of "financing importations or financing sales."[15] The principle is of course not limited in its application to financing importations, since the principle is equally applicable to domestic transactions.[16] Regardless of whether the transaction is foreign or domestic, it is important to note that the transactions discussed in relation to trust receipts mainly involved sales.

Following the precept of the law, such transactions affect situations wherein the entruster, who owns or holds absolute title or security interests over specified goods, documents or instruments, releases the subject goods to the possession of the entrustee. The release of such goods to the entrustee is conditioned upon his execution and delivery to the entruster of a trust receipt wherein the former binds himself to hold the specific goods, documents or instruments in trust for the entruster and **to sell** or otherwise dispose of the goods, documents or instruments with the obligation to turn over to the entruster the **proceeds** to the extent of the amount owing to the entruster or the goods, documents or instruments themselves if they are **unsold**. Similarly, we held in *State Investment House v. CA*, *et al*. that the entruster is entitled "only to the proceeds derived from the sale of goods released under a trust receipt to the entrustee."[17]

Considering that the goods in this case were never intended for sale but for use in the fabrication of steel communication towers, the trial court erred in ruling that the agreement is a trust receipt transaction.

In applying the provisions of PD 115, the trial court relied on the Memorandum of Asiatrust's appraiser, Linga, who stated

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[15] 49 A.L.R. 282.

[16] *Id.*

[17] G.R. No. 130365, July 14, 2000, 335 SCRA 703.

that the goods have been sold by petitioner and that only 3% of the goods remained in the warehouse where it was previously stored. But for reasons known only to the trial court, the latter did not give weight to the testimony of Linga when he testified that he **merely presumed** that the goods were sold, *viz*:

COURT (to the witness)

Q So, in other words, when the goods were not there anymore. You presumed that, that is already sold?

A Yes, your Honor.

Undoubtedly, in his testimony, Linga showed that he had no real personal knowledge or proof of the fact that the goods were indeed sold. He did not notify petitioner about the inspection nor did he talk to or inquire with petitioner regarding the whereabouts of the subject goods. Neither did he confirm with petitioner if the subject goods were in fact sold. Therefore, the Memorandum of Linga, which was based only on his presumption and not any actual personal knowledge, should not have been used by the trial court to prove that the goods have in fact been sold. At the very least, it could only show that the goods were not in the warehouse.

Having established the inapplicability of PD 115, this Court finds that petitioner's liability is only limited to the satisfaction of his obligation from the loan. The real intent of the parties was simply to enter into a simple loan agreement.

To emphasize, the Trust Receipts Law was created to "**to aid in financing importers and retail dealers who do not have sufficient funds or resources to finance the importation or purchase of merchandise, and who may not be able to acquire credit except through utilization, as collateral, of the merchandise imported or purchased**." Since Asiatrust knew that petitioner was neither an importer nor retail dealer, it should have known that the said agreement could not possibly apply to petitioner.

Moreover, this Court finds that petitioner is not liable for *Estafa* both under the RPC and PD 115.

Goods Were Not Received in Trust

The first element of *Estafa* under Art. 315, par. 1(b) of the RPC requires that the money, goods or other personal property must be received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return it. But as we already discussed, the goods received by petitioner were not held in trust. They were also not intended for sale and neither did petitioner have the duty to return them. They were only intended for use in the fabrication of steel communication towers.

No Misappropriation of Goods or Proceeds

The second element of *Estafa* requires that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt.

This is the very essence of *Estafa* under Art. 315, par. 1(b). The words "convert" and "misappropriated" connote an act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without a right.[18]

Petitioner argues that there was no misappropriation or conversion on his part, because his liability for the amount of the goods subject of the trust receipts arises and becomes due **only** upon receipt of the proceeds of the sale and not prior to the receipt of the full price of the goods.

Petitioner is correct. Thus, assuming *arguendo* that the provisions of PD 115 apply, petitioner is not liable for *Estafa* because Sec. 13 of PD 115 provides that an entrustee is only liable for *Estafa* when he fails "to turn over the proceeds of the sale of the goods x x x covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt x x x **in accordance with the terms of the trust receipt**."

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[18] *Luces v. Damole*, G.R. No. 150900, March 14, 2008, 548 SCRA 373.

The trust receipt entered into between Asiatrust and petitioner states:

> In case of sale I/we agree to hand the proceeds **as soon as received** to the BANK to apply against the relative acceptance (as described above) and for the payment of any other indebtedness of mine/ours to ASIATRUST DEVELOPMENT BANK.[19] (Emphasis supplied.)

Clearly, petitioner was only obligated to turn over the proceeds as soon as he received payment. However, the evidence reveals that petitioner experienced difficulties in collecting payments from his clients for the communication towers. Despite this fact, petitioner endeavored to pay his indebtedness to Asiatrust, which payments during the period from September 1997 to July 1998 total approximately PhP 1,500,000. Thus, absent proof that the proceeds have been actually and fully received by petitioner, his obligation to turn over the same to Asiatrust never arose.

What is more, under the Trust Receipt Agreement itself, no date of maturity was stipulated. The provision left blank by Asiatrust is as follows:

> x x x and in consideration thereof, I/we hereby agree to hold said goods in Trust for the said Bank and as its property with liberty to sell the same for its account within ________ days from the date of execution of the Trust Receipt x x x[20]

In fact, Asiatrust purposely left the space designated for the date blank, an action which in ordinary banking transactions would be noted as highly irregular. Hence, the only way for the obligation to mature was for Asiatrust to demand from petitioner to pay the obligation, which it never did.

Again, it also makes the Court wonder as to why Asiatrust decided to leave the provisions for the maturity dates in the Trust Receipt agreements in blank, since those dates are elemental

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[19] *Rollo*, p. 60.

[20] *Id.* at 58.

part of the loan. But then, as can be gleaned from the records of this case, Asiatrust also knew that the capacity of petitioner to pay for his loan also hinges upon the latter's receivables from Islacom, Smart, and Infocom where he had ongoing and future projects for fabrication and installation of steel communication towers and not from the sale of said goods. Being a bank, Asiatrust acted inappropriately when it left such a sensitive bank instrument with a void circumstance on an elementary but vital feature of each and every loan transaction, that is, the maturity dates. Without stating the maturity dates, it was impossible for petitioner to determine when the loan will be due.

Moreover, Asiatrust was aware that petitioner was not engaged in selling the subject goods and that petitioner will use them for the fabrication and installation of communication towers. Before granting petitioner the credit line, as aforementioned, Asiatrust conducted an investigation, which showed that petitioner fabricated and installed communication towers for well-known communication companies to be installed at designated project sites. In fine, there was no abuse of confidence to speak of nor was there any intention to convert the subject goods for another purpose, since petitioner did not withhold the fact that they were to be used to fabricate steel communication towers to Asiatrust. Hence, no malice or abuse of confidence and misappropriation occurred in this instance due to Asiatrust's knowledge of the facts.

Furthermore, Asiatrust was informed at the time of petitioner's application for the loan that the payment for the loan would be derived from the collectibles of his clients. Petitioner informed Asiatrust that he was having extreme difficulties in collecting from Islacom the full contracted price of the towers. Thus, the duty of petitioner to remit the proceeds of the goods has not yet arisen since he has yet to receive proceeds of the goods. Again, petitioner could not be said to have misappropriated or converted the proceeds of the transaction since he has not yet received the proceeds from his client, Islacom.

This Court also takes judicial notice of the fact that petitioner has fully paid his obligation to Asiatrust, making the claim for damage and prejudice of Asiatrust baseless and unfounded. Given that the acceptance of payment by Asiatrust necessarily extinguished petitioner's obligation, then there is no longer any obligation on petitioner's part to speak of, thus precluding Asiatrust from claiming any damage. This is evidenced by Asiatrust's *Affidavit of Desistance*[21] acknowledging full payment of the loan.

Reasonable Doubt Exists

In the final analysis, the prosecution failed to prove beyond reasonable doubt that petitioner was guilty of *Estafa* under Art. 315, par. 1(b) of the RPC in relation to the pertinent provision of PD 115 or the Trust Receipts Law; thus, his liability should only be civil in nature.

While petitioner admits to his civil liability to Asiatrust, he nevertheless does not have criminal liability. It is a well-established principle that person is presumed innocent until proved guilty. To overcome the presumption, his guilt must be shown by proof beyond reasonable doubt. Thus, we held in *People v. Mariano*[22] that while the principle does not connote absolute certainty, it means the degree of proof which produces moral certainty in an unprejudiced mind of the culpability of the accused. Such proof should convince and satisfy the reason and conscience of those who are to act upon it that the accused is in fact guilty. The prosecution, in this instant case, failed to rebut the constitutional innocence of petitioner and thus the latter should be acquitted.

At this point, the ruling of this Court in *Colinares v. Court of Appeals* is very apt, thus:

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[21] Joint Motion for Leave to File and Admit Attached Affidavit of Desistance, March 30, 2009, Annex "A"; Corporate Resolution No. 4155 (s. 2009)—"Authorized signatory for the Affidavit of Desistance pertaining to the Settlement Agreement for the account of Anthony Ng/Capitol Blacksmith," March 26, 2009.

[22] G.R. No. 134309, November 17, 2000, 345 SCRA 1.

The practice of banks of making borrowers sign trust receipts to facilitate collection of loans and place them under the threats of criminal prosecution should they be unable to pay it may be unjust and inequitable, if not reprehensible. Such agreements are contracts of adhesion which borrowers have no option but to sign lest their loan be disapproved. The resort to this scheme leaves poor and hapless borrowers at the mercy of banks, and is prone to misinterpretation x x x.[23]

Such is the situation in this case.

Asiatrust's intention became more evident when, on March 30, 2009, it, along with petitioner, filed their Joint Motion for Leave to File and Admit Attached Affidavit of Desistance to qualify the Affidavit of Desistance executed by Felino H. Esquivas, Jr., attorney-in-fact of the Board of Asiatrust, which acknowledged the full payment of the obligation of the petitioner and the successful mediation between the parties.

From the foregoing considerations, we deem it unnecessary to discuss and rule upon the other issues raised in the appeal.

WHEREFORE, the CA Decision dated August 29, 2003 affirming the RTC Decision dated May 29, 2001 is *SET ASIDE*. Petitioner ANTHONY L. NG is hereby *ACQUITTED* of the charge of violation of Art. 315, par. 1(b) of the RPC in relation to the pertinent provision of PD 115.

SO ORDERED.

Corona (Chairperson), Abad,[*] and *Perez,*[**] *JJ.,* concur.

Mendoza, J., in the result.

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[23] G.R. No. 90828, September 5, 2000, 339 SCRA 609.

[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per raffle dated March 29, 2010.

[**] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per raffle dated April 7, 2010.

EN BANC

[G.R. No. 180917. April 23, 2010]

ATTY. VICENTE E. SALUMBIDES, JR., and GLENDA ARAÑA, *petitioners, vs.* **OFFICE OF THE OMBUDSMAN, RICARDO AGON, RAMON VILLASANTA, ELMER DIZON, SALVADOR ADUL, and AGNES FABIAN,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; EFFECTS OF NON-COMPLIANCE WITH THE REQUIREMENT OF VERIFICATION AND THAT OF CERTIFICATION AGAINST FORUM SHOPPING.—** The verification portion of the petition does not carry a certification against forum shopping. For non-compliance with the rule on certification against forum shopping, the petition merits outright dismissal. The Court has distinguished the effects of non-compliance with the requirement of verification and that of certification against forum shopping. A *defective verification* shall be treated as an unsigned pleading and thus produces no legal effect, subject to the discretion of the court to allow the deficiency to be remedied, while *the failure to certify against forum shopping* shall be cause for dismissal without prejudice, unless otherwise provided, and is not curable by amendment of the initiatory pleading.
2. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; DOCTRINE OF CONDONATION CANNOT BE APPLIED TO REAPPOINTED COTERMINOUS EMPLOYEES; RATIONALE.—** The electorate's condonation of the previous administrative infractions of the reelected official cannot be extended to that of the reappointed coterminous employees, the underlying basis of the rule being to uphold the will of the people expressed through the ballot. In other words, there is neither subversion of the sovereign will nor disenfranchisement of the electorate to speak of, in the case of reappointed coterminous employees. It is the will of the populace, not the whim of one person who happens to be the appointing authority, that could extinguish an administrative liability. Since petitioners hold appointive

positions, they cannot claim the mandate of the electorate. The people cannot be charged with the presumption of full knowledge of the life and character of each and every probable appointee of the elective official ahead of the latter's actual reelection.

3. **REMEDIAL LAW; APPEALS; IN A RULE 45 PETITION, FACTUAL QUESTIONS ARE BEYOND THE PROVINCE OF THE SUPREME COURT.—** Under Rule 45 of the Rules of Court, only questions of law may be raised, since the Court is not a trier of facts. As a rule, the Court is not to review evidence on record and assess the probative weight thereof. In the present case, the appellate court affirmed the factual findings of the Office of the Ombudsman, which rendered the factual questions beyond the province of the Court.

4. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; SIMPLE NEGLECT OF DUTY; THERE CAN HARDLY BE CONSPIRACY TO COMMIT NEGLIGENCE.—** [A]s correctly observed by respondents, the lack of conspiracy cannot be appreciated in favor of petitioners who were found guilty of simple neglect of duty, for if they conspired to act negligently, their infraction becomes intentional. There can hardly be conspiracy to commit negligence.

5. **ID.; ID.; ID.; ID.; FAILURE OF A MUNICIPAL LEGAL OFFICER TO GIVE SOUND LEGAL ADVICE AND SUPPORT TO THE MAYOR CONSTITUTES SIMPLE NEGLECT OF DUTY.—** The appellate court correctly ruled that as municipal legal officer, petitioner Salumbides "failed to uphold the law and provide a sound legal assistance and support to the mayor in carrying out the delivery of basic services and provisions of adequate facilities when he advised [the mayor] to proceed with the construction of the subject projects without prior competitive bidding." As pointed out by the Office of the Solicitor General, to absolve Salumbides is tantamount to allowing with impunity the giving of erroneous or illegal advice, when by law he is precisely tasked to advise the mayor on "matters related to upholding the rule of law." Indeed, a legal officer who renders a legal opinion on a course of action without any legal basis becomes no different from a lay person who may approve the same because it appears justified.

6. **ID.; ID.; ID.; ID.; A MUNICIPAL BUDGET OFFICER IS GUILTY OF SIMPLE NEGLECT OF DUTY BY**

WILLINGLY COOPERATING IN THE IMPROPER USE OF PUBLIC FUNDS.— As regards petitioner Glenda, the appellate court held that the improper use of government funds upon the direction of the mayor and prior advice by the municipal legal officer did not relieve her of liability for willingly cooperating rather than registering her written objection as municipal budget officer.

7. **ID.; ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY, DEFINED; PENALTY.—** Simple neglect of duty is defined as the failure to give proper attention to a task expected from an employee resulting from either carelessness or indifference. x x x Simple neglect of duty is classified as a less grave offense punishable by suspension without pay for one month and one day to six months. Finding no alleged or established circumstance to warrant the imposition of the maximum penalty of six months, the Court finds the imposition of suspension without pay for three months justified.

APPEARANCES OF COUNSEL

Escobido and Pulgar Law Offices for petitioners.
Herrera Batacan & Associates Law Firm for private respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioners Vicente Salumbides, Jr. (Salumbides) and Glenda Araña (Glenda) challenge the October 11, 2007 Decision and the December 13, 2007 Resolution of the Court of Appeals[1] in CA-G.R. SP No. 96889 affirming the Office of the Ombudsman's decision finding them guilty of Simple Neglect of Duty.

Salumbides and Glenda were appointed in July 2001 as Municipal Legal Officer/Administrator and Municipal Budget Officer, respectively, of Tagkawayan, Quezon.

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[1] Seventh Division then composed of Justice Remedios A. Salazar-Fernando, chairperson and *ponente*, and Justices Rosalinda Asuncion-Vicente and Enrico A. Lanzanas as members.

Towards the end of 2001, Mayor Vicente Salumbides III (the mayor) saw the urgent need to construct a two-classroom building with fence (the projects) for the Tagkawayan Municipal High School[2] (TMHS) since the public school in the poblacion area would no longer admit high school freshmen starting school year 2002-2003. On how to solve the classroom shortage, the mayor consulted Salumbides who suggested that the construction of the two-classroom building be charged to the account of the Maintenance and Other Operating Expenses/Repair and Maintenance of Facilities (MOOE/RMF) and implemented "by administration," as had been done in a previous classroom building project of the former mayor.

Upon consultation, Glenda advised Salumbides in December 2001, that there were no more available funds that could be taken from the MOOE/RMF, but the savings of the municipal government were adequate to fund the projects. She added, however, that the approval by the *Sangguniang Bayan* of a proposed supplemental budget must be secured.

The members of the *Sangguniang Bayan* having already gone on recess for the Christmas holidays, Glenda and Salumbides advised the mayor to source the funds from the ₱1,000,000 MOOE/RMF allocation in the approved Municipal Annual Budget for 2002.[3]

The mayor thus ordered on Municipal Engineer Jose Aquino (Aquino) to proceed with the construction of the projects based on the program of work and bill of materials he (Aquino) prepared with a total cost estimate of ₱222,000.

Upon advice of Municipal Planning and Development Officer Hernan Jason (Jason), the mayor included the projects in the list of local government projects scheduled for bidding on January 25, 2002 which, together with the January 31, 2002 public bidding, failed.

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[2] TMHS was being subsidized by the municipal government of Tagkawayan as it had not yet been included in the regular budget of the Department of Education.

[3] *Rollo*, pp. 248-249.

The mayor was to admit later his expectation or assumption of risk on reimbursement:

> x x x It was my thinking that even if a bidder emerges and gets these 2 projects which were at the time on-going (although it was also my thinking then that no bidder would possibly bid for these 2 projects as these were cost-estimated very low-₱150,000 for the 2-room school building ₱72,000 for the fencing) he (bidder) would be reasonable enough to reimburse what I had so far spen[t] for the project. I said "I" because up to the time of the failed 2 biddings I have shouldered the "vale" of the laborers and I requisitioned some materials on credit on my own personal account, and not a single centavo was at the time disbursed by our municipal treasury until all requirements for negotiated purchase of the materials for the project had been accomplished. As a matter of fact, payments for the expenses on these 2 projects have been made only starting 19 March 2002. x x x[4] (underscoring supplied)

The construction of the projects commenced without any approved appropriation and ahead of the public bidding. Salumbides was of the opinion that the projects were regular and legal, based on an earlier project that was "implemented in the same manner, using the same source of fund and for the same reason of urgency" which was allowed "because the building was considered merely temporary as the TMHS is set to be transferred to an 8-hectare lot which the municipal government is presently negotiating to buy."[5]

Meanwhile, Aquino suggested to the *Sangguniang Bayan* the adoption of "model guidelines" in the implementation of infrastructure projects to be executed "by administration," while Councilor Coleta Sandro (Coleta) sponsored a Resolution to ratify the projects and to authorize the mayor to enter into a negotiated procurement. Both actions did not merit the approval of the *Sangguniang Bayan*.

On May 13, 2002, herein respondents Ricardo Agon, Ramon Villasanta, Elmer Dizon, Salvador Adul and Agnes Fabian, all

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[4] Counter Affidavit, *id.* at 238.

[5] *Id.* at 243.

members of the *Sangguniang Bayan* of Tagkawayan, filed with the Office of the Ombudsman a complaint[6] against Salumbides and Glenda (hereafter petitioners), the mayor, Coleta, Jason and Aquino.

The administrative aspect of the case, docketed as Case No. OMB-L-A-02-0276-E, charged petitioners *et al*. with Dishonesty, Grave Misconduct, Gross Neglect of Duty, Conduct Prejudicial to the Best Interest of the Service, and violation of the Commission on Audit (COA) Rules and the Local Government Code.

By Order of June 14, 2002, the Office of the Ombudsman, denied the prayer to place petitioners *et al*. under preventive suspension pending investigation. By Order dated February 1, 2005, approved on April 11, 2005, it denied the motion for reconsideration but dropped the mayor and Coleta, both elective officials, as respondents in the administrative case, the 2004 elections having mooted the case. The parties were thereupon directed to submit their respective verified position papers to which petitioners, Jason and Aquino complied by submitting a consolidated position paper on May 19, 2005.

Meanwhile, in response to the subpoena *duces tecum* issued by the Office of the Ombudsman on February 18, 2005 requiring the regional officer of the COA to submit the post-audit report on the projects, Celerino Alviar, COA State Auditor II claimed by Affidavit of May 23, 2005 that the required documents were among those razed by fire on April 14, 2004 that hit the Office of the Municipal Accountant where they were temporarily stored due to lack of space at the Provincial Auditor's Office.

On October 17, 2005, the Office of the Ombudsman approved the September 9, 2005 Memorandum absolving Jason and Aquino,

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[6] The criminal aspect of the case docketed as Case No. OMB-L-C-02-0426-E deals with violations of paragraphs (a), (e), (g) and (i) of Section 3 of Republic Act No. 3019 (1960) or the Anti-Graft and Corrupt Practices Act; paragraph (c) of Sections 366 and 369, paragraph (d) of Sections 534, 355 and 356 of Republic Act No. 7160 (1991) or the Local Government Code; and Article 220 of the Revised Penal Code.

and finding petitioners guilty of Simple Neglect of Duty, for which they were meted the penalty of suspension from office for a maximum period of six months with a stern warning against a similar repetition. It also approved on November 2, 2006 the March 27, 2006 Order[7] denying the motion for reconsideration.

Their recourse to the appellate court having failed, petitioners come before this Court via Rule 45 of the Rules of Court.

The verification portion of the petition does not carry a certification against forum shopping.[8] For non-compliance with the rule on certification against forum shopping, the petition merits outright dismissal.

The Court has distinguished the effects of non-compliance with the requirement of verification and that of certification against forum shopping. A *defective verification* shall be treated as an unsigned pleading and thus produces no legal effect, subject to the discretion of the court to allow the deficiency to be remedied, while *the failure to certify against forum shopping* shall be cause for dismissal without prejudice, unless otherwise provided, and is not curable by amendment of the initiatory pleading.[9]

Petitioners' disregard of the rules was not the first. Their motion for extension of time to file petition was previously denied by Resolution of January 15, 2008[10] for non-compliance with the required showing of competent proof of identity in the Affidavit of Service. The Court, by Resolution of March 4, 2008,[11] later granted their motion for reconsideration with motion

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[7] Upon the recommendation of Graft Investigator and Prosecution Officer I (GIPO) Ma. Theresa D. Wu, the Office of the Ombudsman modified the earlier recommendation of GIPO Mary Ayn T. Punzalan to absolve Glenda and reprimand Salumbides.

[8] *Vide rollo*, p. 53.

[9] *Negros Oriental Planters Association, Inc. (NOPA) v. Presiding Judge of RTC-Negros Occidental, Br. 52, Bacolod City*, G.R. No. 179878, December 24, 2008, 575 SCRA 575, 583-584.

[10] *Rollo*, p. 24.

[11] *Id.* at 277.

to admit appeal (Motion with Appeal) that was filed on February 18, 2008 or the last day of filing within the extended period.

Moreover, in their Manifestation/Motion[12] filed a day later, petitioners prayed only for the admission of nine additional copies of the Motion with Appeal "due to honest inadvertence" in earlier filing an insufficient number of copies. Petitioners were less than candid when they surreptitiously submitted a Motion with Appeal which is different from the first set they had submitted. The second set of Appeal includes specific Assignment of Errors[13] and already contains a certification against forum shopping[14] embedded in the Verification. The two different Verifications were notarized by the same notary public and bear the same date and document number.[15] The rectified verification with certification, however, was filed beyond the reglementary period.

Its lapses aside, the petition just the same merits denial.

Petitioners urge this Court to expand the settled doctrine of condonation[16] to cover coterminous appointive officials who

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[12] *Id.* at 154-155.

[13] *Vide* RULES OF COURT, Rule 45, Sec. 4. Petitioners offer the following assignment of errors:

1. It was error for the Honorable Court of Appeals to deny the petitioners the benefit of the case of *Arturo B. Pascual v. Prov. Board of Nueva Ecija*;
2. It was error on the Honorable Court of Appeals when it ruled that the petitioners including Mayor Vicente E. Salumbides III were all guilty of conspiracy; [and]
3. It was error on the part of the Honorable Court of Appeals when it affirmed the ruling of the Honorable Ombudsman finding petitioners guilty of simple neglect of duty[,] for which they [were] meted the penalty of suspension from office of a maximum period of six (6) months. (italics supplied) *Rollo*, pp. 173-174.

[14] *Vide rollo*, 184-185.

[15] Compare *supra* notes 8 and 14.

[16] *Conducto v. Monzon*, A.M. No. MTJ-98-1147, July 2, 1998, 291 SCRA 619, 634 even declared that no ruling to the contrary had even rippled this doctrine.

were administratively charged along with the reelected official/appointing authority with infractions allegedly committed during their preceding term.

The Court rejects petitioners' thesis.

More than 60 years ago, the Court in *Pascual v. Hon. Provincial Board of Nueva Ecija*[17] issued the landmark ruling that prohibits the disciplining of an elective official for a wrongful act committed during his immediately preceding term of office. The Court explained that "[t]he underlying theory is that each term is separate from other terms, and that the reelection to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor."[18]

> The Court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to elect their officers. When the people elect[e]d a man to office, it must be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. It is not for the court, by reason of such faults or misconduct[,] to practically overrule the will of the people.[19] (underscoring supplied)

Lizares v. Hechanova, et al.[20] replicated the doctrine. The Court dismissed the petition in that case for being moot, the therein petitioner "having been duly reelected, hence no longer amenable to administrative sanctions."[21]

Ingco v. Sanchez, et al.[22] clarified that the condonation doctrine does not apply to a *criminal* case.[23] *Luciano v. The Provincial*

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[17] 106 Phil. 406 (1959).

[18] *Id.* at 471.

[19] *Id.* at 472.

[20] 123 Phil. 916 (1966).

[21] *Id.* at 919.

[22] 129 Phil. 553 (1967).

[23] *Id.* at 556. It was held that "a crime is a public wrong more atrocious in character than mere misfeasance or malfeasance committed by a public

Governor, et al.,[24] *Olivarez v. Judge Villaluz,*[25] and *Aguinaldo v. Santos*[26] echoed the qualified rule that reelection of a public official does not bar prosecution for crimes committed by him prior thereto.

Consistently, the Court has reiterated the doctrine in a string of recent jurisprudence including two cases involving a Senator and a Member of the House of Representatives.[27]

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officer in the discharge of his duties, and is injurious not only to a person or group of persons but to the State as a whole. This must be the reason why Article 89 of the Revised Penal Code, which enumerates the grounds for extinction of criminal liability, does not include reelection to office as one of them, at least insofar as a pubic officer is concerned. Also, under our Constitution, it is only the President who may grant the pardon of a criminal offense."

[24] 138 Phil. 546 (1969). Aside from the lack of distinction as to time of commission under the Anti-Graft and Corrupt Practices Act, the Court pointed out that one of the imposable penalties was perpetual disqualification from public office, which extends beyond a particular term of office. It remarked that an official may amass wealth through graft and corrupt practices and thereafter use the same to purchase reelection and thereby launder his evil acts. The Court further ruled that the suspension under said statute is not self-operative as it needs to be ordered by the court in which the criminal case is filed.

[25] 156 Phil. 137 (1974). It was held that since the criminal prosecution is not abated by the fact of reelection, the pendency of a criminal case under a valid Information under the Anti-Graft and Corrupt Practices Act supplies the legal basis for the suspension from office in the subsequent term in the event of reelection. It added, however, that the suspension order issued during one term does not automatically apply or extend to the new term to which the suspended official had been reelected, in which case the trial court needs to issue anew a supplemental order of suspension.

[26] G.R. No. 94115, August 21, 1992, 212 SCRA 768.

[27] *Vide* *Office of the Ombudsman v. Evangelista*, G.R. No. 177211, March 13, 2009, 581 SCRA 350, 361; *Trillanes IV v. Pimentel, Sr.*, G.R. No. 179817, June 27, 2008, 556 SCRA 471, 488; *Cabrera v. Marcelo*, G.R. Nos. 157419-20, December 13, 2004, 446 SCRA 207, 216-217; *People v. Judge Toledano*, 387 Phil. 957, 964 (2000); *People v. Jalosjos*, 381 Phil. 690, 702-703 (2000).

Salalima v. Guingona, Jr.[28] and *Mayor Garcia v. Hon. Mojica*[29] reinforced the doctrine. The condonation rule was applied even if the administrative complaint was not filed before the reelection of the public official, and even if the alleged misconduct occurred four days before the elections, respectively. *Salalima* did not distinguish as to the date of filing of the administrative complaint, as long as the alleged misconduct was committed during the prior term, the precise timing or period of which *Garcia* did not further distinguish, as long as the wrongdoing that gave rise to the public official's culpability was committed prior to the date of reelection.

Petitioners' theory is not novel.

A parallel question was involved in *Civil Service Commission v. Sojor*[30] where the Court found no basis to broaden the scope of the doctrine of condonation:

> Lastly, We do not agree with respondent's contention that his appointment to the position of president of NORSU, despite the pending administrative cases against him, served as a condonation by the BOR of the alleged acts imputed to him. The doctrine this Court laid down in *Salalima v. Guingona, Jr.* and *Aguinaldo v. Santos* are inapplicable to the present circumstances. Respondents in the mentioned cases are elective officials, unlike respondent here who is an appointed official. Indeed, election expresses the sovereign will of the people. Under the principle of *vox populi est suprema lex,* **the re-election of a public official may, indeed, supersede**

[28] 326 Phil. 847 (1996). Citing sound public policy, the Court added that to rule otherwise would open the floodgates to exacerbating endless partisan contests between the reelected official and his political enemies, who may not stop to hound the former during his new term with administrative cases for acts allegedly committed during his prior term, such that his second term may thus be devoted to defending himself in those cases to the detriment of public service.

[29] 372 Phil. 892 (1999). The Court stated that there is the presumption that the people voted for an official with knowledge of his character, precisely to eliminate the need to determine in factual terms the extent of this knowledge, which is an obviously impossible undertaking.

[30] G.R. No. 168766, May 22, 2008, 554 SCRA 160.

a pending administrative case. The same cannot be said of a re-appointment to a non-career position. There is no sovereign will of the people to speak of when the BOR re-appointed respondent Sojor to the post of university president.[31] (emphasis and underscoring supplied)

Contrary to petitioners' asseveration, the non-application of the condonation doctrine to *appointive* officials does not violate the right to equal protection of the law.

In the recent case of *Quinto v. Commission on Elections*,[32] the Court applied the four-fold test in an equal protection challenge[33] against the resign-to-run provision, wherein it discussed the material and substantive distinctions between elective and appointive officials that could well apply to the doctrine of condonation:

The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation which is limited either in the object to which it is directed or by territory within which it is to operate. It does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced. The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within such class and those who do not.

Substantial distinctions clearly exist between elective officials and appointive officials. The former occupy their office by virtue of the mandate of the electorate. They are elected to an

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

[32] G.R. No. 189698, February 22, 2010.

[33] *Id.*, citing *People v. Cayat*, 68 Phil. 12, 18 (1939). The test has four requisites: (1) the classification rests on substantial distinctions; (2) it is germane to the purposes of the law; (3) it is not limited to existing conditions only; and (4) it applies equally to all members of the same class.

office for a definite term and may be removed therefrom only upon stringent conditions. On the other hand, appointive officials hold their office by virtue of their designation thereto by an appointing authority. Some appointive officials hold their office in a permanent capacity and are entitled to security of tenure while others serve at the pleasure of the appointing authority.

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An election is the embodiment of the popular will, perhaps the purest expression of the sovereign power of the people. It involves the choice or selection of candidates to public office by popular vote. Considering that elected officials are put in office by their constituents for a definite term, x x x complete deference is accorded to the will of the electorate that they be served by such officials until the end of the term for which they were elected. In contrast, there is no such expectation insofar as appointed officials are concerned. (emphasis and underscoring supplied)

The electorate's condonation of the previous administrative infractions of the reelected official cannot be extended to that of the reappointed coterminous employees, the underlying basis of the rule being to uphold the will of the people expressed through the ballot. In other words, there is neither subversion of the sovereign will nor disenfranchisement of the electorate to speak of, in the case of reappointed coterminous employees.

It is the will of the populace, not the whim of one person who happens to be the appointing authority, that could extinguish an administrative liability. Since petitioners hold appointive positions, they cannot claim the mandate of the electorate. The people cannot be charged with the presumption of full knowledge of the life and character of each and every probable appointee of the elective official ahead of the latter's actual reelection.

Moreover, the unwarranted expansion of the *Pascual* doctrine would set a dangerous precedent as it would, as respondents posit, provide civil servants, particularly local government employees, with blanket immunity from administrative liability that would spawn and breed abuse in the bureaucracy.

Asserting want of conspiracy, petitioners implore this Court to sift through the evidence and re-assess the factual findings. This the Court cannot do, for being improper and immaterial.

Under Rule 45 of the Rules of Court, only questions of law may be raised, since the Court is not a trier of facts.[34] As a rule, the Court is not to review evidence on record and assess the probative weight thereof. In the present case, the appellate court affirmed the factual findings of the Office of the Ombudsman, which rendered the factual questions beyond the province of the Court.

Moreover, as correctly observed by respondents, the lack of conspiracy cannot be appreciated in favor of petitioners who were found guilty of simple neglect of duty, for if they conspired to act negligently, their infraction becomes intentional.[35] There can hardly be conspiracy to commit negligence.[36]

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[34] *Office of the Ombudsman v. Lazaro-Baldazo*, G.R. No. 170815, February 2, 2007, 514 SCRA 141.

[35] Compare with gross neglect of duty (*vide Hao v. Andres*, A.M. No. P-07-2384, June 18, 2008, 555 SCRA 8). In *Civil Service Commission v. Rabang*, (G.R. No. 167763, March 14, 2008, 548 SCRA 540, 547), gross neglect of duty or gross negligence refers to "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 willfully and intentionally, with a conscious indifference to consequences, insofar as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to give to their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable." In *Report on the Alleged Spurious Bailbonds and Release Orders Issued by the RTC, Br. 27, Sta. Cruz, Laguna*, A.M. No. 04-6-332-RTC, April 5, 2006, 486 SCRA 500, 518, the Court ruled that "[n]eglect of duty is the failure of an employee to give one's attention to a task expected of him. Gross neglect, on the other hand, is such neglect from the gravity of the case, or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare. The term does not necessarily include willful neglect or intentional official wrongdoing."

[36] *Vide U.S. v. Mitlof* [165 F. Supp. 2d 558 (Dist. Court, S.D.N.Y. 2001)] observes that US federal courts have dismissed as a logical impossibility the idea that one can conspire to act unintentionally; *Sackman v. Liggett Group Inc.,* 965 F. Supp. 391, 394 (Dist. Court E.D.N.Y. 1997) states that there

Simple neglect of duty is defined as the failure to give proper attention to a task expected from an employee resulting from either carelessness or indifference.[37] In the present case, petitioners fell short of the reasonable diligence required of them, for failing to exercise due care and prudence in ascertaining the legal requirements and fiscal soundness of the projects before stamping their imprimatur and giving their advice to their superior.

The appellate court correctly ruled that as municipal legal officer, petitioner Salumbides "failed to uphold the law and provide a sound legal assistance and support to the mayor in carrying out the delivery of basic services and provisions of adequate facilities when he advised [the mayor] to proceed with the construction of the subject projects without prior competitive bidding."[38] As pointed out by the Office of the Solicitor General, to absolve Salumbides is tantamount to allowing with impunity the giving of erroneous or illegal advice, when by law he is precisely tasked to advise the mayor on "matters related to upholding the rule of law."[39] Indeed, a legal officer who renders a legal opinion on a course of action without any legal basis becomes no different from a lay person who may approve the same because it appears justified.

As regards petitioner Glenda, the appellate court held that the improper use of government funds upon the direction of the mayor and prior advice by the municipal legal officer did not relieve her of liability for willingly cooperating, instead of registering her written objection[40] as municipal budget officer.

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can be no conspiracy to be negligent– that is, to intend to act negligently; *Sonnenreich v. Philip Morris Inc.* [929 F. Supp. 416, 419 (S.D. Fla. 1996)] recognizes that a conspiracy to commit negligence is a non sequitur; *Rogers v. Furlow* [699 F. Supp. 672, 675 (N.D. Ill. 1988)] declares that a conspiracy to commit negligence is a paradox at best.

[37] *Galero v. Court of Appeals*, G.R. No. 151121, July 21, 2008, 559 SCRA 11.

[38] *Rollo*, p. 66.

[39] REPUBLIC ACT No. 7610, Sec. 481(b)(4).

[40] REPUBLIC ACT No. 7160, Sec. 342. Liability for Acts Done Upon Direction of Superior Officer, or Upon Participation of Other Department

Aside from the lack of competitive bidding, the appellate court, pointing to the improper itemization of the expense, held that the funding for the projects should have been taken from the "capital outlays" that refer to the appropriations for the purchase of goods and services, the benefits of which extend beyond the fiscal year and which add to the assets of the local government unit. It added that current operating expenditures like MOOE/RMF refer to appropriations for the purchase of goods and services for the conduct of normal local government operations within the fiscal year.[41]

In *Office of the Ombudsman v. Tongson*,[42] the Court reminded the therein respondents, who were guilty of simple neglect of duty, that government funds must be disbursed only upon compliance with the requirements provided by law and pertinent rules.

Simple neglect of duty is classified as a less grave offense punishable by suspension without pay for one month and one day to six months. Finding no alleged or established circumstance to warrant the imposition of the maximum penalty of six months, the Court finds the imposition of suspension without pay for three months justified.

When a public officer takes an oath of office, he or she binds himself or herself to faithfully perform the duties of the

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Heads or Officers of Equivalent Rank. - Unless he registers his objection in writing, the local treasurer, accountant, budget officer, or other accountable officer shall not be relieved of liability for illegal or improper use or application or deposit of government funds or property by reason of his having acted upon the direction of a superior officer, elective or appointive, or upon participation of other department heads or officers of equivalent rank. The superior officer directing, or the department head participating in such illegal or improper use or application or deposit of government funds or property, shall be jointly and severally liable with the local treasurer, accountant, budget officer, or other accountable officer for the sum or property so illegally or improperly used, applied or deposited. (underscoring supplied); cf. *Frias, Sr. v. People*, G.R. No. 171437, October 4, 2007, 534 SCRA 654, as applied in criminal cases.

[41] *Rollo*, p. 67, citing REPUBLIC ACT No. 7160, Sec. 306 (d) & (f).

[42] G.R. No. 169029, August 22, 2006, 499 SCRA 567.

office and use reasonable skill and diligence, and to act primarily for the benefit of the public. Thus, in the discharge of duties, a public officer is to use that prudence, caution, and attention which careful persons use in the management of their affairs.[43]

Public service requires integrity and discipline. For this reason, public servants must exhibit at all times the highest sense of honesty and dedication to duty. By the very nature of their duties and responsibilities, public officers and employees must faithfully adhere to hold sacred and render inviolate the constitutional principle that a public office is a public trust; and must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency.[44]

WHEREFORE, the assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 96889 are *AFFIRMED* with *MODIFICATION*, in that petitioners, Vicente Salumbides, Jr. and Glenda Araña, are suspended from office for three (3) months without pay.

SO ORDERED.

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

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[43] *Vide Farolan v. Solmac Marketing Corporation*, G.R. No. 83589, March 13, 1991, 195 SCRA 168, 177-178.

[44] *Galero v. Court of Appeals*, *supra* at 24.

SECOND DIVISION

[G.R. No. 182341. April 23, 2010]

TRINIDAD GO, joined by her husband, GONZALO GO, SR., *petitioners, vs.* **VICENTE VELEZ CHAVES,*** *respondent,* **ALICE CHAVES,** *respondent-intervenor,* **MEGA-INTEGRATED AGRO LIVESTOCK FARMS, INC.,** *respondent-intervenor.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FAILURE TO SERVE THE ADVERSE PARTIES A COPY OF THE APPEAL BRIEF AND TO APPEND A COPY OF THE ASSAILED JUDGMENT DO NOT WARRANT DISMISSAL OF THE APPEAL.—** [W]e find that the failure to serve a copy of the appellant's brief to two of the adverse parties was a mere oversight, constituting excusable neglect. A litigant's failure to furnish his opponent with a copy of his appeal brief does not suffice to warrant dismissal of that appeal. In such an instance, all that is needed is for the court to order the litigant to furnish his opponent with a copy of his brief. Anent the failure to append a copy of the assailed judgment, instead of dismissing the appeal on that basis, it is more in keeping with equity to simply require the appellants to immediately submit a copy of the Decision of the lower court rather than punish litigants for the reckless inattention of their lawyers.
2. **ID.; ID.; THE BELATED SUBMISSION OF THE SUBJECT INDEX OF THE APPEAL BRIEF IS CONSIDERED EXCUSABLE.—** The purpose of a subject index in an appellant's/ appellee's brief obviates the court to thumb through a possibly lengthy brief page after page to locate whatever else needs to be found and considered, such as arguments and citations. In the case at bar, notably, the appeal brief submitted to the CA consists only of 17 pages which the appellate court may easily peruse to apprise it of what the case is all about and of the relief sought. Thus, the belated submission of the subject index may be considered excusable.

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* Substituted by Ronaldo Chaves, Lino Chaves, Carlos Chaves and Tessie C. Aldana, per Order dated January 18, 2000 of the Regional Trial Court of Cagayan de Oro City, Branch 24, records, p. 563.

APPEARANCES OF COUNSEL

Dela Serna Beja & Associates Law Offices for petitioner.
Carrasco & Carrasco Law Office for Heirs of Vicente Velez Chaves.
Antonio V. Resma for respondent-intervenor Mega-Integrated Agro Livestock Farms, Inc.
Erlington E. Pimentel for respondent-intervenor Alice Chaves.

D E C I S I O N

DEL CASTILLO, *J*.:

Equity regards substance rather than form, it abhors forfeiture.

On purely technical grounds, the Court of Appeals (CA) dismissed petitioners' appeal and denied their plea for reconsideration. Hence, petitioners come to this Court *via* this Petition for Review on *Certiorari* to assail the Resolutions dated October 10, 2007[1] and March 11, 2008[2] of the appellate court in CA-G.R. CV No. 00257.

Factual Antecedents

On January 29, 1997, Vicente Chaves (Vicente) filed a Complaint[3] against spouses Trinidad Go and Gonzalo Go (Go spouses, herein petitioners) before the Regional Trial Court (RTC) of Cagayan de Oro City for the removal of clouds on his transfer certificates of title. The case was docketed as Civil Case No. 97-065 and was raffled to Branch 38 (later re-raffled to Branch 24) of said court. Vicente alleged that in April 1996 Paquito Francisco Yap and Evelyn Nellie Chaves-Yap (the Yap

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[1] *Rollo*, pp. 204-209, penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Jane Aurora C. Lantion and Elihu A. Ybañez.

[2] *Id.* at 226-228.

[3] *Id.* at 62-75.

spouses), his son-in-law and daughter respectively, obtained a loan in the amount of ₱23.2 million from Trinidad Go (Trinidad), using his and his wife's real properties as collaterals. The Yap spouses were able to do this by presenting a forged Special Power of Attorney (SPA)[4] purporting to authorize the Yap spouses to obtain a loan using Transfer Certificates of Title (TCT) Nos. T-60898 and T-60899 registered in the names of Vicente and his wife Alice Chaves (Alice) as collaterals.[5]

Because some portions of said lots were disposed of, Vicente consolidated and subdivided the remaining lots (which included the mortgaged properties to Trinidad), bringing about three derivative titles still under the names of the Chaves spouses: TCT Nos. T-114415,[6] T-114416,[7] and T-114417.[8] The Go spouses considered this move a machination in order to prevent them from annotating their right on the collaterals. Hence, to protect their right, they got hold of the derivative titles and caused the annotation of the SPA and their mortgage rights on each certificates of title.[9]

Vicente prayed that the SPA and mortgage to petitioners be invalidated, and that the Go spouses be directed to surrender the owner's duplicate certificates of title over the subject properties.

Subsequently, the trial court allowed two parties to intervene in the case: a) Alice, who alleged that her rights to the share of the conjugal partnership are being trampled upon and who, like her husband, averred that she had never authorized the Yap

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[4] *Id.* at 112.

[5] *Id.* at 113-114. The mortgage to Trinidad Go is a 2nd mortgage by the Yaps over the subject properties, the first one being with Metrobank, which was subsequently released. Vicente is only assailing this mortgage with Trinidad Go.

[6] *Id.* at 115-116.

[7] *Id.* at 117-118.

[8] *Id.* at 119-120.

[9] *Id.* at 116, 118 and 120.

spouses to mortgage the conjugal properties[10] and; b) Mega Integrated Agro-Livestock Farms, Inc. (Mega), which claimed that it had purchased from Vicente in December 1996 a portion of the property covered by TCT No. T-114415, and that it could not effect the transfer of said title in its name because the Go spouses are in possession of the owner's copy of TCT No. T-114415.[11]

Ruling of the Regional Trial Court

After due hearing, the RTC rendered a Decision[12] dated March 19, 2004, the dispositive portion of which stated:

WHEREFORE, premises considered, judgment is hereby rendered:

1. DECLARING, as between plaintiff, intervenor Alice C. Chaves and defendants, the Special Power of Attorney (Exh. 1-Go and Exh. "A") allegedly executed by plaintiff and intervenor Alice C. Chaves as well as the second mortgage (Exh. 2-Go) as INEFFECTIVE, INVALID, AND UNENFORCEABLE as against plaintiff and intervenor ALICE CHAVES as they did not sign said special power of attorney and second mortgage. Consequently, the adverse claim, notice of *lis pendens* and the annotation of the second mortgage on TCT No. T-114415, TCT No. T-114416 and TCT No. T-114417 must be cancelled and or removed they being clouds to said titles. For said purpose, the Register of Deeds of the City of Cagayan de Oro is hereby ordered to cancel them;

2. DECLARING plaintiff and intervenor Alice C. Chaves as not bound by the effects of the second mortgage they having not signed the Special Power of Attorney and said second mortgage. What defendants should do is to demand the amount mentioned in the second mortgage from Paquito S. Yap and Evelyn Nellie Chaves Yap;

3. ORDERING defendant TRINIDAD GO to surrender to MEGA INTERGRATED AGRO-LIVESTOCK INDUSTRIAL FARMS, INC. the owner's copy of TCT No. T-114415 and to intervenor ALICE C. CHAVES the owner's copy of TCT No. T-114416 and T-114417;

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[10] *Id.* at 296-298.

[11] *Id.* at 100-105.

[12] *Id.* at 129-143; penned by Presiding Judge Leonardo N. Demecillo.

4. Ordering MEGA INTEGRATED AGRO-LIVESTOCK INDUSTRIAL FARMS, INC. thru [sic] See Hong to pay intervenor Alice C. Chaves the balance of ₱15,074,000.00 as her share in the conjugal partnership but only after the land sold consisting of Lot Nos. 1 and 2 covered by TCT No. 114414 and TCT No. 114415 shall have been cleared of squatters by intervenor Alice Chaves.

5. DENYING the prayer for attorney's fees and moral damages there being no proof shown that in annotating the second mortgage on TCT No. T-114415, TCT No. T-114416, and TCT No. T-114417, all of the Registry of Deeds of Cagayan de Oro City, defendants were motivated by evident bad faith;

6. DENYING defendants' counterclaim for lack of merit it not being shown that in filing the case, plaintiff was motivated by malice and evident bad faith.[13]

The Procedural Blunders that Prodded the CA to Dismiss Petitioners' Appeal

The Go spouses appealed to the CA Cagayan de Oro. They filed their brief and furnished Vicente with a copy thereof before the June 12, 2007 deadline. However, all the other adverse parties moved before the CA to have the appeal dismissed:

a) Mega argued in its Motion to Dismiss[14] that Go spouses failed to file their brief on time. It appears that Go spouses failed to furnish Mega with a copy of their brief. Their counsel, Atty. Kathryn Dela Serna, claimed inadvertence for the mistake.[15] Nonetheless, when Go spouses received Mega's Motion to Dismiss on June 14, 2007, they personally served Mega a copy of the brief that same day;[16]

b) Vicente (now substituted by his children in view of his death) on the other hand, complained about the form of

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[13] *Id.* at 142-143.

[14] *Id.* at 164-167.

[15] *Id.* at 168-171.

[16] *Id.* at 172.

the appellants' brief he received, pointing to want of the following requirements under Rule 44 of the Rules of Court: 1) subject index, page references, and legal citations as required under Section 13; and 2) certified true copy of the assailed RTC Decision as required in Section 13(f) [should be (h)]. Petitioners' counsel again professed inadvertence and good faith, reasoning that the errors cannot be considered fatal, for the body/contents of the appellants' brief have substantially complied with the provisions of Rule 44. Nevertheless, she submitted the subject index/table of contents of the brief;[17]

c) More than two months after the filing of the appellant's brief, Alice still had not received a copy of said brief. She thus joined Mega in asking the appellate court for the dismissal of Go spouses' appeal.[18] Upon learning that Alice was likewise not provided with the appellants' brief, petitioners then furnished her with a copy thereof on August 30, 2007.[19] In their Comment,[20] petitioners' counsel, Atty. Emmy Lou Lomboy (working for Atty. Dela Serna's law firm), justified the oversight by explaining that she only inherited the case from the former counsel of record, and that she merely relied on the list of parties indicated on the CA Resolutions/Notices[21] who must be furnished with copies of the appellants' brief. It appears, however, that Atty. Erlington Pimentel, is not included therein.

Ruling of the Court of Appeals

Acceding to all the appellees' objections and opining that an utter and flagrant disregard of the rules of procedure is inexcusable,

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[17] *Id.* at 178-188.

[18] CA *rollo*, pp. 112-113.

[19] *Id.* at 118.

[20] *Id.* at 114-117.

[21] *Id.* at 119-122; dated February 28, 2006, June 20, 2006, March 7, 2007, and March 16, 2007.

the CA dismissed the appeal of the Go spouses on the following grounds: *First*, that Go spouses failed to serve a copy of their appellants' brief upon the intervenors on time,[22] and, *second*, that their appellants' brief does not contain a subject index and that no copy of the assailed Decision was appended thereto, in violation of Section 44, Section 13 (a) and (h) in relation to Rule 50, Section 1(f).[23]

It reasoned:

In the case at bench, appellants [Go spouses] even admitted that they failed to serve a copy of their brief to Mega Farms as well as to Alice Chaves on the same day they filed the brief with this Court. Belated compliance with this requirement does not suffice. Proper procedure dictates that a copy of the pleading be first furnished the opposing party so that proof of such service may be duly indicated on the original of the pleading to be filed shortly afterward in court, such indication being either a handwritten acknowledgment by the adverse party or the registry receipt of the copy mailed to the adverse

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[22] Rule 44, Sec. 7. *Appellant's brief.* – It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

[23] Rule 44, Sec. 13. *Contents of appellant's brief.* – The appellant's brief shall contain, in the order herein indicated, the following:

(a) A subject index of the matter in the brief with a digest of the arguments and page references, and a table of cases alphabetically arranged, textbooks and statutes cited with references to the pages where they are cited;

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(h) In cases not brought up by record on appeal, the appellant's brief shall contain, as an appendix, a copy of the judgment or final order appealed from.

Rule 50, Sec. 1. *Grounds for dismissal of appeal.* – An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

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(f) Absence of specific assignment of errors in the appellant's brief, or of page references to the record as required in Section 13, paragraphs (a), (c), (d) and (f) of Rule 44;

party. Service precedes filing; both within the time allowed by the Rules.

Second. It is a matter of fact that the appellants' brief does not contain a subject index nor does it have as an appendix the copy of the assailed decision. x x x

The first requirement of an appellant's brief is a subject index. The index is intended to facilitate the review of appeals by providing ready reference, functioning much like a table of contents. This jurisdiction prescribes no limit on the length of appeal briefs or appeal memoranda filed before appellate courts. The downside of this liberal rule is, of course, the very real possibility that the reviewing tribunal will be swamped with voluminous documents. This occurs even though the rules consistently urge the parties to be "brief" or "concise" in the drafting of pleadings, briefs, and other papers to be filed in court. Herein lies the reason and the need for a subject index. The subject index makes readily available at one's fingertips the subject of the contents of the brief so that the need to thumb through the brief page after page to locate a party's arguments, or a particular citation, or whatever else needs to be found and considered, is obviated.

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Although appellants may have subsequently rectified those deficiencies, the belated compliance, however, is not by itself sufficient to warrant suspension of the strict requirements of the rules, absent any showing that the initial non-compliance was not in any way attributable to negligence, or that there are highly justifying equitable reasons for this Court to make an extraordinary disposition in the interest of justice.

It has long been recognized that strict compliance with the rules is indispensable for the prevention of needless delays and for the orderly and expeditious dispatch of judicial business. Utter disregard of the rules cannot just be rationalized by harking on the policy of liberal construction. While courts should, in all cases, endeavor to do substantial justice without undue subservience to technicalities, the mere invocation by the parties of liberality and substantial justice does not automatically do away with the rules laid down for the orderly administration of justice.[24]

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[24] CA *rollo*, pp. 206-208.

Issue

Stated simply, the lone issue for our consideration is whether the appellate court erred in dismissing the appeal.

Our Ruling

Facing up to all these objections and admitting the mistakes committed, the Gos beseech liberality in the application of the rules. Even if clearly their counsel committed a number of palpable mistakes which, as a general rule should bind the client, we shall grant the petition in the interest of justice.[25]

Our rules of procedure are designed to facilitate the orderly disposition of cases and permit the prompt disposition of unmeritorious cases which clog the court dockets and do little more than waste the courts' time.[26] These technical and procedural rules, however, are intended to ensure, rather than suppress, substantial justice.[27] A deviation from their rigid enforcement may thus be allowed, as petitioners should be given the fullest opportunity to establish the merits of their case, rather than lose their property on mere technicalities.[28] We held in *Ong Lim Sing, Jr. v. FEB Leasing and Finance Corporation*[29] that:

> Courts have the prerogative to relax procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily put an end to litigation and the parties' right to due process. In numerous cases, this Court has allowed liberal construction of the rules when to do so would serve the demands of substantial justice and equity.

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[25] *Friend v. Unionbank*, G.R. No. 165767, November 29, 2005, 476 SCRA 453, 457-458.

[26] *Sps. Del Rosario v. Court of Appeals*, 311 Phil. 630, 636 (1995).

[27] *Bigornia v. Court of Appeals*, G.R. No. 173017, March 17, 2009.

[28] *Sangalang v. Barangay Maguihan*, G.R. No. 159792, December 23, 2009; *Acme Shoe, Rubber & Plastic Corp. v. Court of Appeals*, 329 Phil. 531, 538 (1996).

[29] G.R. No. 168115, June 8, 2007, 524 SCRA 333, 343.

We agree that the CA had the discretion to dismiss petitioners' appeal. The discretion, however, must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case.[30]

Here, we find that the failure to serve a copy of the appellant's brief to two of the adverse parties was a mere oversight, constituting excusable neglect.[31] A litigant's failure to furnish his opponent with a copy of his appeal brief does not suffice to warrant dismissal of that appeal. In such an instance, all that is needed is for the court to order the litigant to furnish his opponent with a copy of his brief.[32] Anent the failure to append a copy of the assailed judgment, instead of dismissing the appeal on that basis, it is more in keeping with equity to simply require the appellants to immediately submit a copy of the Decision of the lower court rather than punish litigants for the reckless inattention of their lawyers.

The purpose of a subject index in an appellant's/appellee's brief obviates the court to thumb through a possibly lengthy brief page after page to locate whatever else needs to be found and considered, such as arguments and citations.[33] In the case at bar, notably, the appeal brief submitted to the CA consists only of 17 pages which the appellate court may easily peruse to apprise it of what the case is all about and of the relief sought. Thus, the belated submission of the subject index may be considered excusable. Our discussion in *Philippine Coconut Authority v. Corona International, Inc*.[34] is *apropos*:

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[30] *Aguam v. Court of Appeals*, 388 Phil. 587, 593 (2000).

[31] *Sunrise Manning Agency, Inc. v. National Labor Relations Commission*, 485 Phil. 426, 430-431 (2004); *Carnation Philippines Employees Labor Union-FFW v. National Labor Relations Commission,* 210 Phil. 30, 31 (1983).

[32] *Perez v. Court of Appeals*, 374 Phil. 388, 408 (1999), citing *Precision Electronics Corporation v. National Labor Relations Commission*, G.R. No. 86657, October 23, 1989, 178 SCRA 667, 670.

[33] *De Liano v. Court of Appeals*, 421 Phil. 1033, 1042 (2001).

[34] 395 Phil. 742, 750 (2000). Citations omitted.

x x x the purpose of the brief is to present the court in coherent and concise form the point and questions in controversy, and by fair argument on the facts and law of the case, to assist the court in arriving at a just and proper conclusion. A haphazard and pellmell presentation will not do for the brief should be so prepared as to minimize the labor of the court in examination of the record upon which the appeal is heard and determined. It is certainly, 'the vehicle of counsel to convey to the court the essential facts of his client's case, a statement of the questions of law involved, the law he should have applied, and the application he desires of it by the court.' There should be an honest compliance with the requirements regarding contents of appellant's brief, and among which is that it should contain "a subject index of the matter in the brief with a digest of the argument and page references."

We do not disagree with the appellate court's above exposition. The requirements laid down in Section 13, Rule 43 are intended to aid the appellate court in arriving at a just and proper conclusion of the case. However, we are of the opinion that despite its deficiencies petitioner's appellant's brief is sufficient in form and substance as to apprise the appellate court of the essential facts and nature of the case as well as the issues raised and the laws necessary for the disposition of the same.

This case involves voluminous records meriting a review on the merits by the CA. Otherwise, the efforts of the petitioners to protect their collateral in their judicial battle will lead to naught once they lose their remedy of an appeal just because of procedural niceties. Adherence to legal technicalities allows individual error to be suffered in order that justice in the maximum may be preserved. Nonetheless, "we should indeed welcome," as Judge Learned Hand once wrote, "any efforts that help disentangle us from the archaisms that still impede our pursuit of truth."[35] Our ruling in *Aguam v. Court of Appeals*[36] also bears recalling:

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[35] *United States v. Allied Stevedoring Corp*., 241 F.2d 925, 934 (2 Cir.), cert. denied, 353 U.S. 984, 77 S.Ct. 1282, 1 L.Ed.2d 1143 (1957).

[36] 388 Phil. 587, 594 (2000). See also *American Express International, Inc. v. Intermediate Appellate Court*, G.R. No. 70766, November 9, 1988, 167 SCRA 209, 221; *Tan Boon Bee & Co., Inc. v. Judge Jarencio*, G.R. No. 413337, June 30, 1988, 163 SCRA 205, 213; *De las Alas v. Court of Appeals*, 172 Phil. 559, 575 (1978); *Nerves v. Civil Service Commission*, 342 Phil. 578, 585 (1997).

Every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.

WHEREFORE, the petition is *GRANTED*. The Resolutions dated October 10, 2007 and March 11, 2008 of the Court of Appeals in CA-G.R. CV No. 00257 are *SET ASIDE*; petitioners' appeal is *REINSTATED*; and the instant case is *REMANDED* to the Court of Appeals for further proceedings.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.,* concur.

EN BANC

[G.R. No. 183337. April 23, 2010]

CIVIL SERVICE COMMISSION, *petitioner, vs.* **GREGORIO MAGNAYE, JR.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CIVIL SERVICE; THE CONSTITUTIONAL AND STATUTORY GUARANTEE OF SECURITY OF TENURE APPLIES TO PROBATIONARY EMPLOYEES

AND TO THOSE IN THE CAREER AND NON-CAREER POSITIONS.— Our Constitution, in using the expressions "all workers" and "no officer or employee," puts no distinction between a probationary and a permanent or regular employee which means that both probationary and permanent employees enjoy security of tenure. Probationary employees enjoy security of tenure in the sense that during their probationary employment, they cannot be dismissed except for cause or for failure to qualify as regular employees. x x x The constitutional and statutory guarantee of security of tenure is extended to both those in the career and non-career service positions, and the cause under which an employee may be removed or suspended must naturally have some relation to the character or fitness of the officer or employee, for the discharge of the functions of his office, or expiration of the project for which the employment was extended.

2. **ID.; ADMINISTRATIVE LAW; GOVERNMENT EMPLOYEE; UNSATISFACTORY CONDUCT AND WANT OF CAPACITY MUST BE SPECIFICALLY ALLEGED TO BE A VALID CAUSE FOR DISMISSAL.—** While unsatisfactory conduct and want of capacity are valid causes that may be invoked for dismissal from the service, the CA observed that the Memorandum issued by Mayor Bendaña terminating Magnaye's employment did not specify the acts constituting his want of capacity and unsatisfactory conduct. It merely stated that the character investigation conducted during his probationary period showed that his employment "need not be necessary to be permanent in status." x x x Th[e] notice indisputably lacks the details of Magnaye's unsatisfactory conduct or want of capacity.

3. **ID.; ID.; ID.; AN EVALUATION REPORT OR ASSESSMENT COVERING SHORT PERIOD OF TIME CANNOT BE THE BASIS FOR TERMINATION.—** Magnaye asserts that no performance evaluation was made between March 2001 when he was hired by Mayor Rosales until August 14, 2001 when his services were terminated by Mayor Bendaña. It was only on July 29, **2003**, at Mayor Bendaña's behest, that his two supervisors prepared and submitted the evaluation report after the CSCRO-IV directed him to file an answer to Magnaye's appeal. This has not been rebutted. It being not disputed, it was an error on the part of the CSCRO-IV to rely on such belated performance appraisal. Common sense dictates that the

evaluation report, submitted only in 2003, could not have been the basis for Magnaye's termination. Besides, Mayor Bendaña's own assessment of Magnaye's performance could not have served as a sufficient basis to dismiss him because said mayor was not his immediate superior and did not have daily contacts with him. Additionally, Mayor Bendaña terminated his employment less than one and one-half months after his assumption to office.

4. **ID.; ID.; ID.; DENIAL OF DUE PROCESS IN THE DISMISSAL OF EMPLOYEE, COMMITTED.—** Magnaye was denied *procedural* due process when he received his notice of termination only a day before he was dismissed from the service. Evidently, he was effectively deprived of the opportunity to defend himself from the charge that he lacked the capacity to do his work and that his conduct was unsatisfactory. As well, during his appeal to the CSCRO-IV, he was not furnished with the submissions of Mayor Bendaña that he could have opposed. He was also denied *substantive* due process because he was dismissed from the service without a valid cause for lack of any factual or legal basis for his want of capacity and unsatisfactory conduct.

5. **ID.; ID.; ID.; ID.; A VIOLATION OF DUE PROCESS IS AN EXCEPTION TO THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; APPLICATION.—** [W]e reject petitioner's argument that the CA erred when it acted upon the erroneous remedy availed of by respondent when he filed a petition for review considering that the assailed decision is not in the nature of "awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions" as prescribed under Rule 43 of the Rules of Court. While Sections 71 and 72 of Rule V (B) of the Uniform Rules on Administrative Cases in the Civil Service provide for the remedy of an appeal from decisions of its regional offices to the Commission proper, Magnaye's petition to the CA comes under the exceptions to the doctrine of exhaustion of administrative remedies. The CA correctly cited *Republic v. Lacap,* where a violation of due process is listed to be among the noted exceptions to the rule. As discussed above, Magnaye's dismissal was tainted with irregularity because the notice given to him comes short of the notice contemplated by law and jurisprudence. The CA

correctly exercised jurisdiction over this case where standards of due process had been patently breached.

6. **ID.; ID.; ID.; AN ILLEGALLY DISMISSED GOVERNMENT EMPLOYEE IS ENTITLED TO REINSTATEMENT, BACKWAGES AND OTHER BENEFITS.—** Having been illegally dismissed, Magnaye should be reinstated to his former position without loss of seniority and paid backwages and other monetary benefits from the time of his dismissal up to the time of his reinstatement. In our decision in *Civil Service Commission v. Gentallan,* we ruled that for reasons of justice and fairness, an illegally dismissed government employee who is later ordered reinstated is entitled to backwages and other monetary benefits from the time of his illegal dismissal until his reinstatement because he is considered as not having left his office.

APPEARANCES OF COUNSEL

Office of the Legal Affairs (CSC) for petitioner.

D E C I S I O N

MENDOZA, *J*.:

The Civil Service Commission (*CSC*) assails in this petition for review on *certiorari*,[1] the February 20, 2008 Decision[2] and the June 11, 2008 resolution of the Court of Appeals (*CA*) in CA-G.R. SP No. 85508. The CA reversed the July 20, 2004 Decision of the Civil Service Commission Regional Office No. IV *(CSCRO-IV)* and ordered the reinstatement of respondent Gregorio Magnaye, Jr. *(Magnaye)* with payment of backwages and other monetary benefits.

THE FACTS

In March 2001, Mayor Roman H. Rosales of Lemery, Batangas, appointed Magnaye as Utility Worker I at the Office

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

[2] Penned by Associate Justice Noel G. Tijam, concurred in by Justices Martin S. Villarama and Sesinando E. Villon.

of Economic Enterprise [Operation of Market] (*OEE*). After a few days, Mayor Rosales detailed him to the Municipal Planning and Development Office.

In the May elections of that year, Mayor Rosales was defeated by Raul L. Bendaña, who assumed office on June 30, 2001. Thereafter, Magnaye was returned to his original assignment at the OEE. On July 11, 2001, Bendaña also placed him on detail at the Municipal Planning and Development Office to assist in the implementation of a Survey on the Integrated Rural Accessibility Planning Project.

On August 13, 2001, the new mayor served him a notice of termination from employment effective the following day for unsatisfactory conduct and want of capacity.

Magnaye questioned his termination before the CSC head office on the ground that Mayor Bendaña was not in a position to effectively evaluate his performance because it was made less than one and one-half months after his (Mayor Bendaña's) assumption to office. He added that his termination was without basis and was politically motivated.

The CSC head office dismissed, without prejudice, Magnaye's complaint because he failed to attach a certificate of non-forum shopping. Thereafter, Magnaye filed a complaint with the regional office of the Civil Service *(CSCRO-IV).*

The CSCRO-IV dismissed Magnaye's complaint for lack of merit. It upheld his dismissal from the service on the ground that Mayor Bendaña's own assessment, together with the evaluation made by his supervisors, constituted sufficient and reasonable grounds for his termination.

Magnaye sought recourse through a petition for review with the Court of Appeals, citing CSCRO-IV's alleged errors of fact and of law, non-observance of due process, and grave abuse of discretion amounting to lack or excess of jurisdiction. Adopting the stance of the Office of the Solicitor General, the CA ruled in Magnaye's favor, mainly on the ground that he was denied due process since he was not informed of what constituted the

alleged unsatisfactory conduct and want of capacity that led to his termination. It summarized the positions of the OSG as follows:

On January 18, 2005, the Office of the Solicitor General (OSG) filed its manifestation and motion, in lieu of comment, praying that the assailed decision be set aside. ***The OSG argued that Petitioner's termination was illegal.*** The notice of termination did not cite the specific instances indicating Petitioner's alleged unsatisfactory conduct or want of capacity. It was only on July 29, 2003, or almost two years after Petitioner's dismissal on August 13, 2001 that his former Department Heads, Engr. Magsino and Engr. Masongsong, submitted an assessment and evaluation report to Mayor Bendaña, which the latter belatedly solicited when the Petitioner appealed to the CSC Regional Office. Hence, the circumstances behind Petitioner's dismissal became questionable.

The OSG also found no evidence at the CSC Regional Office level that Petitioner was informed of his alleged poor performance. There was no evidence that Petitioner was furnished copies of 1) Mayor Bendaña's letter, dated July 29, 2003, addressed to CSC Regional Office praying that Petitioner's termination be sustained; and 2) the performance evaluation report, dated July 29, 2003, prepared by Engr. Magsino and Engr. Masongsong. ***The OSG claimed that Petitioner was denied due process*** because his dismissal took effect a day after he received the notice of termination. No hearing was conducted to give Petitioner the opportunity to refute the alleged causes of his dismissal. The OSG agreed with Petitioner's claim that there was insufficient time for Mayor Bendaña to determine his fitness or unfitness for the position.[3] [Emphasis supplied]

Thus, the *fallo* of the CA Decision[4] reads:

"WHEREFORE, the petition is **Granted**. The Civil Service Commission Regional Office No. 4's Decision, dated July 20, 2004 is hereby **Set Aside**. Accordingly, Petitioner is ORDERED REINSTATED with full payment of backwages and other monetary benefits. This case is hereby REMANDED to the Civil Service Commission for reception of such evidence necessary for purposes

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[3] *Rollo*, pp. 29-30.

[4] *Id.* at 26-36.

of determining the amount of backwages and other monetary benefits to which Petitioner is entitled.

SO ORDERED."

THE ISSUES

In this petition, the Civil Service Commission submits the following for our consideration:

"I. The dropping of respondent from the rolls of the local government unit of Lemery, Batangas was in accord with Civil Service Law, rules and jurisprudence.

II. The respondent resorted to a wrong mode of appeal and violated the rule on exhaustion of administrative remedies and the corollary doctrine of primary jurisdiction."

The principal issue, therefore, is whether or not the termination of Magnaye was in accordance with the pertinent laws and the rules.

The eligibility of respondent Magnaye has not been put in issue.

THE COURT'S RULING

The Court upholds the decision of the Court of Appeals.

The CSC, in arguing that Magnaye's termination was in accord with the Civil Service law, cited Section 4(a), Rule II of the 1998 CSC Omnibus Rules on Appointments and Other Personnel Actions which provides that:

Sec. 4. Nature of appointment. The nature of appointment shall be as follows:

a. Original – refers to the initial entry into the career service of persons who meet all the requirements of the position. xxx

It is understood that the first six months of the service following an original appointment will be probationary in nature and the appointee shall undergo a thorough character investigation. A probationer may be dropped from the service for unsatisfactory conduct or want of capacity anytime before the expiration of the probationary period. Provided that such action is appealable to the Commission.

However, if no notice of termination for unsatisfactory conduct is given by the appointing authority to the employee before the expiration of the six-month probationary period, the appointment automatically becomes permanent.

Under Civil Service rules, the first six months of service following a permanent appointment shall be probationary in nature, and the probationer may be dropped from the service for unsatisfactory conduct or want of capacity anytime before the expiration of the probationary period.[5]

The CSC is of the position that a civil service employee does not enjoy security of tenure during his 6-month probationary period. It submits that an employee's security of tenure starts only after the probationary period. Specifically, it argued that "an appointee under an original appointment cannot lawfully invoke right to security of tenure until after the expiration of such period and provided that the appointee has not been notified of the termination of service or found unsatisfactory conduct before the expiration of the same."[6]

The CSC position is contrary to the Constitution and the Civil Service Law itself. Section 3 (2) Article 13 of the Constitution guarantees the rights of ***all workers*** not just in terms of self-organization, collective bargaining, peaceful concerted activities, the right to strike with qualifications, humane conditions of work and a living wage but also to ***security of tenure***, and Section 2(3), Article IX-B is emphatic in saying that, ***"no officer or employee of the civil service shall be removed or suspended except for cause as provided by law."***

Consistently, Section 46 (a) of the Civil Service Law provides that ***"no officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law after due process."***

Our Constitution, in using the expressions "all workers" and "no officer or employee," puts no distinction between a

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[5] Section 4(a), Rule III of CSC Memorandum Circular No. 15, series of 1999.

[6] Petition, p. 8; *rollo,* p. 16.

probationary and a permanent or regular employee which means that both probationary and permanent employees enjoy security of tenure. Probationary employees enjoy security of tenure in the sense that during their probationary employment, they cannot be dismissed except for cause or for failure to qualify as regular employees. This was clearly stressed in the case of *Land Bank of the Philippines v. Rowena Paden,*[7] where it was written:

> To put the case in its proper perspective, we begin with a discussion on the respondent's right to security of tenure. Article IX (B), Section 2(3) of the 1987 Constitution expressly provides that "[n]o officer or employee of the civil service shall be removed or suspended except for cause provided by law." At the outset, we emphasize that the aforementioned ***constitutional provision <u>does not distinguish</u> between a <u>regular employee</u> and <u>a probationary employee</u>***. In the recent case of *Daza v. Lugo*[8] we ruled that:
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>> The Constitution provides that "[N]o officer or employee of the civil service shall be removed or suspended except for cause provided by law." Sec. 26, par. 1, Chapter 5, Book V, Title I-A of the Revised Administrative Code of 1987 states:
>>
>> All such persons (appointees who meet all the requirements of the position) must serve a probationary period of six months following their original appointment and shall undergo a thorough character investigation in order to acquire permanent civil service status. A probationer may be dropped from the service for unsatisfactory conduct or want of capacity any time before the expiration of the probationary period; Provided, That such action is appealable to the Commission.
>>
>> Thus, the services of respondent as **a probationary employee** may only be **terminated** for **a just cause**, that is, unsatisfactory conduct or want of capacity. [Emphasis supplied]
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>> x x x x x x x x x.
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> x x x the **only difference** between regular and probationary employees from the perspective of due process is that the latter's termination can be based on the wider ground of failure to comply

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[7] G.R. No. 157607, July 7, 2009.

[8] G.R. No. 168999, April 30, 2008, 553 SCRA 532, 537-538.

with standards made known to them when they became probationary employees.

The constitutional and statutory guarantee of security of tenure is extended to both those in the career and non-career service positions, and the cause under which an employee may be removed or suspended must naturally have some relation to the character or fitness of the officer or employee, for the discharge of the functions of his office, or expiration of the project for which the employment was extended.[9] Further, well-entrenched is the rule on security of tenure that such an appointment is issued and the moment the appointee assumes a position in the civil service under a completed appointment, he acquires a legal, not merely equitable right (to the position), which is protected not only by statute, but also by the Constitution [Article IX-B, Section 2, paragraph (3)] and cannot be taken away from him either by revocation of the appointment, or by removal, except for cause, and with previous notice and hearing.[10]

While the CSC contends that a probationary employee does not enjoy security of tenure, its Omnibus Rules recognizes that such an employee cannot be terminated except for cause. Note that in the Omnibus Rules it cited,[11] a decision or order dropping a probationer from the service for unsatisfactory conduct or want of capacity anytime before the expiration of the probationary period *"is appealable to the Commission."* This can only mean that a probationary employee cannot be fired at will.

Notably, jurisprudence has it that the right to security of tenure is unavailing in certain instances. In *Orcullo Jr. v. Civil Service Commission,*[12] it was ruled that the right is not available

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[9] *Jocom v. Regalado*, G.R. No. 77373, August 22, 1991, 201 SCRA 73, 81-82.

[10] *Aquino v. Civil Service Commission*, G. R. No. 92403, April 22, 1992, 208 SCRA 240, 247.

[11] Section 4(a), Rule II of the 1998 CSC Omnibus Rules on Appointments and Other Personnel Actions.

[12] G.R. No. 138780, May 22, 2001, 358 SCRA 115.

to those employees whose appointments are contractual and co-terminous in nature. Such employment is characterized by "a tenure which is limited to a period specified by law, or that which is coterminous with the appointing authority or subject to his pleasure, or which is limited to the duration of a particular project for which purpose employment was made."[13] In *Amores M.D. v. Civil Service Commission,*[14] it was held that a civil executive service appointee who meets all the requirements for the position, except only the appropriate civil service eligibility, holds the office in a temporary capacity and is, thus, not entitled to a security of tenure enjoyed by permanent appointees.

Clearly, Magnaye's appointment is entirely different from those situations. From the records, his appointment was never classified as co-terminous or contractual. Neither was his eligibility as a Utility Worker I challenged by anyone.

In support of its position that an appointee cannot lawfully invoke the right to a security of tenure during the probationary period, petitioner CSC banked on the case of *Lucero v. Court of Appeals and Philippine National Bank.*[15] This case is, however, not applicable because it refers to a private entity where the rules of employment are not exactly similar to those in the government service.

Mayor Bendaña dismissed Magnaye for lack of capacity and unsatisfactory conduct. Section 26, paragraph 1, Chapter 5, Book V, Title I-A of the Revised Administrative Code of 1987 states:

> (1) Appointment through certification.—An appointment through certification to a position in the civil service, except as herein otherwise provided, shall be issued to a person who has been selected from a list of qualified persons certified by the Commission from an appropriate register of eligibles, and who meets all the other requirements of the position.

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[13] Section 9, Revised Administrative Code.

[14] G.R. No. 170093, April 29, 2009.

[15] G.R. No. 152032, July 3, 2003, 405 SCRA 351.

All such persons must serve a probationary period of six months following their original appointment and shall undergo a thorough character investigation in order to acquire permanent civil service status. A probationer may be dropped from the service for unsatisfactory conduct or want of capacity any time before the expiration of the probationary period: Provided, That such action is appealable to the Commission.

While unsatisfactory conduct and want of capacity are valid causes that may be invoked for dismissal from the service,[16] the CA observed that the Memorandum issued by Mayor Bendaña terminating Magnaye's employment did not specify the acts constituting his want of capacity and unsatisfactory conduct. It merely stated that the character investigation conducted during his probationary period showed that his employment "need not be necessary to be permanent in status."[17] Specifically, the notice of termination partly reads:

You are hereby notified that your service as Utility Worker I, this municipality under six (6) month probationary period, is considered terminated for unsatisfactory conduct or want of capacity, effective August 14, 2001.

You are further notified that after a thorough character investigation made during your such probationary period under my administration, your appointment for employment *need not be necessary to be automatically permanent in status*.[18]

This notice indisputably lacks the details of Magnaye's unsatisfactory conduct or want of capacity. Section VI, 2.2(b) of the Omnibus Guidelines on Appointments and other Personnel

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[16] Sec. 26, par. 1, Chapter 5, Book V, Title I-A of the Revised Administrative Code of 1987 states:

All such persons must serve a probationary period of six months following their original appointment and shall undergo a thorough character investigation in order to acquire permanent civil service status. A probationer may be dropped from the service for unsatisfactory conduct or want of capacity any time before the expiration of the probationary period; Provided, That such action is appealable to the Commission.

[17] *Rollo*, p. 32.

[18] *Rollo*, p. 27.

Actions (CSC Memorandum Circular No. 38, Series of 1993, as amended by CSC Memorandum Circular No. 12, Series of 1994), provides:

2.2. Unsatisfactory or Poor Performance

x x x x x x x x x

b. An official who, for one evaluation period, is rated poor in performance, may be dropped from the rolls **after due notice.** Due notice shall mean that the officer or employee is informed in writing of the status of his performance not later than the fourth month of that rating period with sufficient warning that failure to improve his performance within the remaining period of the semester shall warrant his separation from the service. Such **notice shall also contain** **sufficient information which shall enable the employee to prepare an explanation**. [Emphasis and underscoring supplied]

Magnaye asserts that no performance evaluation was made between March 2001 when he was hired by Mayor Rosales until August 14, 2001 when his services were terminated by Mayor Bendaña.[19] It was only on July 29, **2003**, at Mayor Bendaña's behest, that his two supervisors prepared and submitted the evaluation report after the CSCRO-IV directed him to file an answer to Magnaye's appeal.[20]

This has not been rebutted. It being not disputed, it was an error on the part of the CSCRO-IV to rely on such belated performance appraisal. Common sense dictates that the evaluation report, submitted only in 2003, could not have been the basis for Magnaye's termination.

Besides, Mayor Bendaña's own assessment of Magnaye's performance could not have served as a sufficient basis to dismiss him because said mayor was not his immediate superior and did not have daily contacts with him. Additionally, Mayor Bendaña terminated his employment less than one and one-half months after his assumption to office. This is clearly a short period

[19] *Id.* at 28-29.

[20] *Id.* at 33.

within which to assess his performance. In the case of *Miranda v. Carreon,*[21] it was stated:

> The 1987 Constitution provides that "no officer or employee of the civil service shall be removed or suspended except for cause provided by law." Under the Revised Administrative Code of 1987, a government officer or employee may be removed from the service on two (2) grounds: (1) unsatisfactory conduct and (2) want of capacity. While the Code does not define and delineate the concepts of these two grounds, however, the Civil Service Law (Presidential Decree No. 807, as amended) provides specific grounds for dismissing a government officer or employee from the service. Among these grounds are inefficiency and incompetence in the performance of official duties. In the case at bar, respondents were dismissed on the ground of poor performance. Poor performance falls within the concept of inefficiency and incompetence in the performance of official duties which, as earlier mentioned, are grounds for dismissing a government official or employee from the service.
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> But **inefficiency or incompetence can only be determined after the passage of sufficient time**, hence, the probationary period of six (6) months for the respondents. Indeed, **to be able to gauge whether a subordinate is inefficient or incompetent requires enough time on the part of his immediate superior within which to observe his performance.** This condition, however, was not observed in this case. x x x. [Emphasis and underscoring supplied]

The CSC is the central personnel agency of the government exercising quasi-judicial functions.[22] "In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[23] The standard of substantial evidence is satisfied when, on the basis of the evidence on record, there is reasonable ground to believe that the person terminated was evidently wanting in capacity and had unsatisfactory conduct. In this case, the evidence against Magnaye was woefully inadequate.

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[21] G.R. No. 143540, April 11, 2003; 401 SCRA 303 (2003).

[22] Sec. 1, Rule 43 of the Rules of Court.

[23] Section 5, Rule 133 of the Rules of Court.

Moreover, Magnaye was denied due process. We ruled in *Tria v. Chairman Patricia Sto. Tomas*[24] that the prohibition in Article IX (B) (2) (3) of the Constitution against dismissal of a civil service officer or employee "except for cause provided by law" is a guaranty of both procedural and substantive due process. *Procedural* due process requires that the dismissal comes only after notice and hearing,[25] while *substantive* due process requires that the dismissal be "for cause."[26]

Magnaye was denied *procedural* due process when he received his notice of termination only a day before he was dismissed from the service. Evidently, he was effectively deprived of the opportunity to defend himself from the charge that he lacked the capacity to do his work and that his conduct was unsatisfactory. As well, during his appeal to the CSCRO-IV, he was not furnished with the submissions of Mayor Bendaña that he could have opposed. He was also denied *substantive* due process because he was dismissed from the service without a valid cause for lack of any factual or legal basis for his want of capacity and unsatisfactory conduct.

Thus, we reject petitioner's argument that the CA erred when it acted upon the erroneous remedy availed of by respondent when he filed a petition for review considering that the assailed decision is not in the nature of "awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions" as prescribed under Rule 43 of the Rules of Court. While Sections 71 and 72 of Rule V (B) of the Uniform Rules on Administrative Cases in the Civil Service[27] provide for the remedy of an appeal from decisions of its regional offices to the Commission proper, Magnaye's petition to the CA comes under the exceptions to the doctrine of exhaustion of administrative remedies. The CA

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[24] G.R. No. 85670, July 31, 1991, 199 SCRA 833.

[25] *Reyes v. Subido*, 66 SCRA 203 (1975).

[26] *Dario v. Mison*, G.R. No. 81954, August 8, 1989, 176 SCRA 84.

[27] Section 71. Complaint or Appeal to the Commission.–Other personnel actions, such as but not limited, to separation from the service due to unsatisfactory

correctly cited *Republic v. Lacap,*[28] where a violation of due process is listed to be among the noted exceptions to the rule. As discussed above, Magnaye's dismissal was tainted with irregularity because the notice given to him comes short of the notice contemplated by law and jurisprudence. The CA correctly exercised jurisdiction over this case where standards of due process had been patently breached.

Having been illegally dismissed, Magnaye should be reinstated to his former position without loss of seniority and paid backwages and other monetary benefits from the time of his dismissal up to the time of his reinstatement. In our decision in *Civil Service Commission v. Gentallan,*[29] we ruled that for reasons of justice and fairness, an illegally dismissed government employee who is later ordered reinstated is entitled to backwages and other monetary benefits from the time of his illegal dismissal until his reinstatement because he is considered as not having left his office.

WHEREFORE, the petition is *DENIED*. The February 20, 2008 Decision of the Court of Appeals and its June 11, 2008 Resolution denying the motion for reconsideration in CA-G.R. No. SP No. 85508 are *AFFIRMED*.

SO ORDERED.

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

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conduct or want of capacity during the probationary period, dropping from the rolls due to Absence Without Official Leave (AWOL), physically and mentally unfit and unsatisfactory or poor performance, action on appointments (disapproval, invalidation, recall and revocation), reassignment, transfer, detail, secondment, demotion, or termination from the services, may be brought to the Commission, by way of an appeal.

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.

A motion for reconsideration may be filed with the same office which rendered the decision or ruling within fifteen (15) days from receipt thereof.

[28] G.R. No. 158253, March 2, 2007, 517 SCRA 255.

[29] G.R. Nos. 152833 & 154961, May 9, 2005, 458 SCRA 278.

THIRD DIVISION

[G.R. No. 184537. April 23, 2010]

QUINTIN B. SALUDAGA and SPO2 FIEL E. GENIO, *petitioners, vs.* **THE HONORABLE SANDIGANBAYAN, 4TH DIVISION and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT (RA) NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); WHILE THERE ARE TWO MODES OF COMMITTING THE OFFENSE UNDER SECTION 3(E) THEREOF, IT DOES NOT MEAN THAT EACH MODE CONSTITUTES A DISTINCT OFFENSE.—** Contrary to the argument of petitioners, there is no substituted information. The Information dated August 17, 2007 filed in Criminal Case No. SB-08 CRM 0263 charged the same offense, that is, violation of Section 3(e) of Republic Act No. 3019. Only the mode of commission was modified. While jurisprudence, the most recent being *Talaga, Jr. v. Sandiganbayan*, provides that there are two (2) acts or modes of committing the offense, thus: a) by causing any undue injury to any party, including the government; or b) by giving any private party any unwarranted benefit, advantage or preference, it does not mean that each act or mode constitutes a distinct offense. An accused may be charged under either mode or under both should both modes concur.

2. **ID.; ID.; ID.; SHIFT FROM ONE MODE TO ANOTHER DOES NOT AMOUNT TO SUBSTANTIAL AMENDMENT OF THE INFORMATION; REINVESTIGATION IS UNNECESSARY.—** Petitioners erroneously concluded that *giving undue injury,* as alleged in the first Information, and *conferring unwarranted benefits*, alleged in the second Information, are two distinct violations of, or two distinct ways of violating Section 3(e) of Republic Act No. 3019, and that such shift from *giving undue injury* to *conferring unwarranted benefit* constituted, at the very least, a substantial amendment. It should be noted that the Information is founded on the same transaction as the first Information, that of entering into a *Pakyaw* Contract for

the construction of *barangay* day care centers for Barangays MacArthur and Urdaneta, Lavezares, Northern Samar. Thus, the evidentiary requirements for the prosecution and defense remain the same. x x x [B]ecause there was no modification in the nature of the charged offense, x x x a new preliminary investigation is unnecessary and cannot be demanded by the petitioners.

3. **REMEDIAL LAW; EVIDENCE; NEWLY DISCOVERED EVIDENCE; REQUISITES, NOT PRESENT IN CASE AT BAR.—** Under Section 2, Rule 121 of the Rules of Court, the requisites for newly discovered evidence are: (a) the evidence was discovered after trial (in this case, after investigation); (b) such evidence could not have been discovered and produced at the trial with reasonable diligence; and (c) that it is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted, will probably change the judgment. The Pornelos affidavit, x x x cannot be considered as newly found evidence because it was already in existence prior to the re-filing of the case. In fact, such sworn affidavit was among the documents considered during the preliminary investigation.

4. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION, EXPLAINED.—** Grave abuse of discretion is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism. The special civil action for *certiorari* under Rule 65 of the Rules of Court is intended to correct errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. The writ of *certiorari* is directed against a tribunal, board or officer exercising judicial or quasi-judicial function that acted without or in excess of its or his jurisdiction or with grave abuse of discretion. Grave abuse of discretion means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify the issuance of the writ of *certiorari*, the abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.

5. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION, NOT A CASE OF.— The case at bench discloses no evident indication that respondent Sandiganbayan acted with arbitrariness, whim or caprice. It committed no error in refusing to order the conduct of another preliminary investigation. As sufficiently explained by the prosecution, a new preliminary investigation is not necessary as there was neither a modification of the nature of the offense charged nor a new allegation. Such conduct of preliminary investigation anew will only delay the resolution of the case and would be an exercise in futility in as much as there was a complete preliminary investigation actively participated by both petitioners.

APPEARANCES OF COUNSEL

Abayon Silva Salanatin & Associates for petitioners.
The Solicitor General for respondents.

D E C I S I O N

MENDOZA, *J*.:

This is a petition for *certiorari*, prohibition and *mandamus* under Rule 65 of the 1997 Rules on Civil Procedure with a prayer for the issuance of a writ of preliminary injunction and temporary restraining order assailing the July 14, 2008 Resolution[1] of the Sandiganbayan in Criminal Case No. SB-08 CRM 0263, denying the Motion for Preliminary Investigation filed by the petitioners who were charged with a violation of Section 3(e) of Republic Act No. 3019, and the denial of their Motion for Reconsideration done in open court on August 13, 2008.

An Information[2] dated September 13, 2000 charging both petitioners with having violated Section 3(e) of Republic Act No. 3019, *by causing undue injury to the government*, reads:

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[1] Penned by Associate Justice Gregory S. Ong, with Associate Justices Jose R. Hernandez and Samuel R. Martires (sitting as Special Member per Administrative Order No. 154-2007 dated December 21, 2007), concurring.

[2] Annex B, Petition; *Rollo*, pp. 33-34.

The undersigned Graft Investigation Officer of the Office of the Ombudsman-Visayas, accuses QUINTIN B. SALUDAGA and SPO2 FIEL E. GENIO, for VIOLATION OF SECTION 3(e) OF REPUBLIC ACT NO. 3019, AS AMENDED (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT), committed as follows:

> That in or about the months of November and December, 1997, at the Municipality of Lavezares, Province of Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, public officials, being the Municipal Mayor and PNP Member of Lavezares, Northern Samar in such capacity and committing the offense in relation to office, conniving, confederating and mutually helping with one another, and with the late Limpio Legua, a private individual, with deliberate intent, with evident bad faith and manifest partiality, did then and there willfully, unlawfully and feloniously enter into a *Pakyaw* Contract for the Construction of *Barangay* Day Care Centers for Barangays Mac-arthur and Urdaneta, Lavezares, Northern Samar, each in the amount of FORTY-EIGHT THOUSAND FIVE HUNDRED PESOS (₱48,500.00), Philippine Currency, or a total amount of NINETY-SEVEN THOUSAND PESOS (₱97,000.00), Philippine Currency, without conducting a competitive public bidding, thus depriving the government the chance to obtain the best, if not, the most reasonable price, and thereby awarding said contracts to Olimpio Legua, a non-license contractor and non-accredited NGO, in violation of Sec. 356 of Republic Act No. 7160 (The Local Government Code) and COA Circular No. 91-368, to the damage and prejudice of the government.
>
> CONTRARY TO LAW.

This case was initially raffled to the Third Division of Sandiganbayan and was docketed as Criminal Case No. 26319.

In a Resolution[3] promulgated on June 14, 2002, the Third Division granted petitioners' Motion to Quash and dismissed the information "for failure of the prosecution to allege and prove the amount of actual damages caused the government, an essential element of the crime charged."

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[3] Annex C, *id.* at 35-37.

In a Memorandum[4] dated July 1, 2003, the Ombudsman directed the Office of the Special Prosecutor *(OSP)* to study the possibility of having the information amended and re-filed with the Sandiganbayan.

Thus, the OSP re-filed the Information[5] dated August 17, 2007, this time, docketed as Criminal Case No. SB-08 CRM 0263, with the Fourth Division of the Sandiganbayan, charging the petitioners for violation of Section 3(e) of R.A. No. 3019, *by giving unwarranted benefit to a private person, to the prejudice of the government*.

The information, subject of the petition, now reads:

The undersigned Prosecutor of the Office of the Special Prosecutor/Office of the Ombudsman, hereby accuses, MAYOR QUINTIN B. SALUDAGA and SPO2 FIEL E. GENIO, for the violation of Section 3(e) of Republic Act 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, committed as follows:

> That in or about the months of November and December, 1997 at the Municipality of Lavezares, Province of Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, accused **QUINTIN B. SALUDAGA**, a high ranking public official being then the Mayor of Lavezares, Northern Samar, and committing the crime herein charged while in the discharge of his official administrative function, conspiring and conniving with accused **SPO2 FIEL B. GENIO**, a member of Lavezares Police Force (PNP) and with the late **OLIMPIO LEGUA**, a private individual, with deliberate intent, did then and there willfully, unlawfully and criminally give unwarranted benefit or advantage to the late Olimpio Legua, a non-license contractor and non-accredited NGO, through evident bad faith and manifest partiality by then and there entering into a Pakyaw Contract with the latter for the Construction of *Barangay* Day Care Centers for Barangays Mac-Arthur and Urdaneta, Lavezares, Northern Samar, in the amount of FORTY EIGHT THOUSAND FIVE HUNDRED PESOS (₱48,500.00) each or a total of

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[4] Annex 5 of the Comment; *id.* at 112.

[5] Annex D, Petition; *id.* at 38-39.

> NINETY SEVEN THOUSAND PESOS (₱97,000.00) Philippine Currency, without the benefit of a competitive public bidding to the prejudice of the Government and public interest.
>
> CONTRARY TO LAW.

Petitioners filed a Motion for Preliminary Investigation[6] dated June 4, 2008 which was strongly opposed by the prosecution in its Opposition[7] dated June 18, 2008.

Petitioners contend that the failure of the prosecution to conduct a new preliminary investigation before the filing of the second Information constituted a violation of the law because the latter charged a different offense–that is, violation of Section 3(e) by giving unwarranted benefit to private parties. Hence, there was a substitution of the first Information. They argue that assuming that no substitution took place, at the very least, there was a substantial amendment in the new information and that its submission should have been preceded by a new preliminary investigation. Further, they claim that newly discovered evidence mandates re-examination of the finding of a *prima facie* cause to file the case.

On July 14, 2008, the Sandiganbayan Fourth Division issued the assailed Resolution denying the petitioners' motion for preliminary investigation. The graft court found that there is no substituted information or substantial amendment that would warrant the conduct of a new preliminary investigation. It gave the following ratiocination:

> The re-filed information did not change the nature of the offense charged, but merely modified the mode by which accused committed the offense. The substance of such modification is not such as to necessitate the conduct of another preliminary investigation.
>
> Moreover, no new allegations were made, nor was the criminal liability of the accused upgraded in the re-filed information. Thus, new preliminary investigation is not in order.

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[6] Annex E, *id.* at 41-52.

[7] Annex 8 of the Comment, *id.* at 139-144.

The dispositive portion of the Resolution states:

Finding the arguments of accused-movants indefensible, the sufficiency of the information must be sustained.

WHEREFORE, having established the sufficiency of the Information, the motion under consideration is hereby DENIED for lack of merit. Accordingly, the arraignment of both accused shall proceed as scheduled.[8]

Petitioners filed a Motion for Reconsideration[9] dated August 6, 2008, submitting that the two Informations substantially charged different offenses, such that the present information constituted a substitution that should have been preceded by a new preliminary investigation.

On August 13, 2008, in a hearing for the arraignment of petitioners, the Sandiganbayan denied the Motion[10] in open court.

Hence, petitioners interpose the present petition for *certiorari*, prohibition and *mandamus* with prayer for the issuance of a writ of preliminary injunction and temporary restraining order under Rule 65 of the Rules of Court anchored on the following grounds:

I

THE HONORABLE SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT REFUSED TO ORDER THE PRELIMINARY INVESTIGATION OF THE CASE *A QUO*, WHEN THE SECOND INFORMATION IN THE INSTANT CASE CONSTITUTED SUBSTITUTED INFORMATION WHOSE SUBMISSION REQUIRED THE CONDUCT OF PRELIMINARY INVESTIGATION.

II

THE HONORABLE SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS

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[8] Annex F, Petition, *id.* at 55-56.

[9] Annex G, *id.* at 58-64.

[10] Annex A, *id.* at 24-31.

OF JURISDICTION WHEN IT REFUSED TO ORDER THE CONDUCT OF A PRELIMINARY INVESTIGATION OF THE CASE *A QUO,* SINCE THE SECOND INFORMATION THEREIN CONTAINED SUBSTANTIAL AMENDMENTS WHOSE SUBMISSION REQUIRED THE CONDUCT OF PRELIMINARY INVESTIGATION.

III

THE HONORABLE SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT REFUSED TO ORDER THE PRELIMINARY INVESTIGATION OF THE CASE *A QUO*, ALTHOUGH THE NEWLY DISCOVERED EVIDENCE MANDATES DUE RE-EXAMINATION OF THE FINDING THAT *PRIMA FACIE* CAUSE EXISTED TO FILE THE CASE *A QUO*.[11]

From the arguments raised by petitioners, the core issue is whether or not the two (2) ways of violating section 3(e) of Republic Act 3019, namely: (a) by causing undue injury to any party, including the Government; or (b) by giving any private party any unwarranted benefit, advantage or preference constitute two distinct and separate offenses that would warrant a new or another preliminary investigation.

In its Comment[12] dated January 12, 2009, respondent People of the Philippines, represented by the Office of the Special Prosecutor, counters that there is no substituted information in contemplation of law and jurisprudence that would require the conduct of another preliminary investigation. There is no newly-discovered evidence that would lead to a different determination should there be another preliminary investigation conducted.

In their Reply,[13] dated April 24, 2009, petitioners insist that the offenses charged in the first and second Information are not the same, and what transpired was a substitution of Information that required prior conduct of preliminary investigation. Even

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[11] *Rollo*, p. 8.

[12] *Id.* at 84.

[13] *Id.* at 226-231.

assuming there was no substitution, substantial amendments were made in the second Information, and that its submission should have been preceded by a new preliminary investigation.

We find no merit in this petition.

Petitioners were charged with a violation of Section 3(e) of R.A. No. 3019 or the Anti-Graft and Corrupt Practices Act which reads:

> Section 3. *Corrupt practices of public officers*.- In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> x x x x x x x x x
>
> (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 charged with the grant of licenses or permits or other concessions.

The essential elements of the offense are as follows:

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and
3. That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.[14]

In a string of decisions, the Court has consistently ruled:

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[14] *Albert v. Sandiganbayan*, G.R. No. 164015, February 26, 2009; *Collantes v. Marcelo*, G.R. Nos. 167006-07, August 14, 2007, 530 SCRA 142; *Cabrera v. Sandiganbayan*, G.R. No. 162314, October 25, 2004, 441 SCRA 377 citing *Jacinto v. Sandiganbayan*, G.R. No. 84571, October 2, 1989, 178 SCRA 254.

R.A. 3019, Section 3, paragraph (e), as amended, provides as one of its elements that the public officer should have acted by causing any undue injury to any party, including the Government, or by giving any private party unwarranted benefits, advantage or preference in the discharge of his functions. The use of the disjunctive term "or" connotes that either act qualifies as a violation of Section 3 paragraph (e), or as aptly held in *Santiago*, as two (2) different modes of committing the offense. **This does not however indicate that each mode constitutes a distinct offense, but rather, that an accused may be charged under either mode or under both**.[15]

The afore-stated ruling is consistent with the well-entrenched principle of statutory construction that "The word *or* is a disjunctive term signifying disassociation and independence of one thing from the other things enumerated; it should, as a rule, be construed in the sense in which it ordinarily implies, as a disjunctive word."[16]

Contrary to the argument of petitioners, there is no substituted information. The Information dated August 17, 2007 filed in Criminal Case No. SB-08 CRM 0263 charged the same offense, that is, violation of Section 3(e) of Republic Act No. 3019. Only the mode of commission was modified. While jurisprudence, the most recent being *Talaga, Jr. v. Sandiganbayan*,[17] provides that there are two (2) acts or modes of committing the offense, thus: a) by causing any undue injury to any party, including the government; or b) by giving any private party any unwarranted benefit, advantage or preference, it does not mean that each act or mode constitutes a distinct offense. An accused may be

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[15] *Santiago v. Garchitorena*, G.R. No. 109266, December 2, 1993, 228 SCRA 214; *Bautista v. Sandiganbayan*, G.R. No. 136082, May 12, 2000, 332 SCRA 126; *Evangelista v. People*, G.R. Nos. 108135-36, August 14, 2000, 337 SCRA 671; *Cabrera v. Sandiganbayan*, G.R. Nos. 162314-17, October 25, 2004, 441 SCRA 377.

[16] AGPALO, *STATUTORY CONSTRUCTION*, 2003, p. 204; see also *The Heirs of George Poe v. Malayan Insurance Company, Inc.,* G.R. No. 156302, April 7, 2009.

[17] G.R. No. 169888, November 11, 2008, 570 SCRA 622.

charged under either mode[18] or under both should both modes concur.[19]

Petitioners' reliance on the *Teehankee v. Madayag*,[20] ruling that, "in substitution of information another preliminary investigation is entailed and that the accused has to plead anew to the new information" is not applicable to the present case because, as already stated, there is no substitution of information there being no change in the nature of the offense charged.

Consequently, petitioners cannot invoke the principle enunciated in *Villaflor v. Vivar,*[21] that failure to conduct a new preliminary investigation is tantamount to a violation of their rights. While it is true that preliminary investigation is a statutory and substantive right accorded to the accused before trial, the denial of petitioners' claim for a new investigation, however, did not deprive them of their right to due process. An examination of the records of the case discloses that there was a full-blown preliminary investigation wherein both petitioners actively participated.

Anent the contention of petitioners that the information contained substantial amendments warranting a new preliminary investigation, the same must likewise fail.

Petitioners erroneously concluded that *giving undue injury,* as alleged in the first Information, and *conferring unwarranted benefits*, alleged in the second Information, are two distinct violations of, or two distinct ways of violating Section 3(e) of Republic Act No. 3019, and that such shift from *giving undue injury* to *conferring unwarranted benefit* constituted, at the

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[18] *Constantino v. Sandiganbayan*, G.R. No. 140656, September 13, 2007, 533 SCRA 205 citing *Pilapil v. Sandiganbayan*, G.R. No. 101978, April 7, 1993, 221 SCRA 349.

[19] *Constantino v. Sandiganbayan,* G.R. No. 140656, September 13, 2007, 533 SCRA 205 citing *Pareño v. Sandiganbayan*, G.R. Nos. 107110-20, April 17, 1996, 256 SCRA 242.

[20] G.R. No. 103102, March 6, 1992, 207 SCRA 134.

[21] G.R. No. 134744, January 16, 2001, 349 SCRA 194.

very least, a substantial amendment. It should be noted that the Information is founded on the same transaction as the first Information, that of entering into a Pakyaw Contract for the construction of *barangay* day care centers for barangays MacArthur and Urdaneta, Lavezares, Northern Samar. Thus, the evidentiary requirements for the prosecution and defense remain the same.

To bolster their claim for a reinvestigation of the offense, petitioners cited the case of *Matalam v. Sandiganbayan.*[22] The same is inapplicable to petitioners' case. In *Matalam,* there was indeed a substantial amendment which entitled the accused to another preliminary investigation. The recital of facts constituting the offense charged therein was definitely altered. In the original information, the prohibited act allegedly committed by the petitioner was the illegal and unjustifiable refusal to pay the monetary claims of the private complainants, whereas in the amended information, it is the illegal dismissal from the service of the private complainants. In the case at bar, there is no substantial amendment to speak of. As discussed previously, the Information in Criminal Case No. 26319 was already dismissed by the Third Division of the Sandiganbayan in view of the petitioners' Motion to Quash. As such, there is nothing more to be amended.

The Court is not unaware of the case of *People v. Lacson*,[23] where it was written:

> The case may be revived by the State within the time-bar either by the refiling of the Information or by the filing of a new Information for the same offense or an offense necessarily included therein. There would be no need of a new preliminary investigation. However, in a case wherein after the provisional dismissal of a criminal case, the original witnesses of the prosecution or some of them may have recanted their testimonies or may have died or may no longer be available and new witnesses for the State have emerged, a new preliminary investigation must be conducted before an Information

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[22] G.R. No. 165751, April 12, 2005, 455 SCRA 736.

[23] G.R. No. 149453, April 1, 2003, 400 SCRA 267.

is refiled or a new Information is filed. A new preliminary investigation is also required if aside from the original accused, other persons are charged under a new criminal complaint for the same offense or necessarily included therein; or if under a new criminal complaint, the original charge has been upgraded; or if under a new criminal complaint, the criminal liability of the accused is upgraded from that as an accessory to that as a principal. The accused must be accorded the right to submit counter-affidavits and evidence.

No such circumstance is obtaining in this case, because there was no modification in the nature of the charged offense. Consequently, a new preliminary investigation is unnecessary and cannot be demanded by the petitioners.

Finally, the third assigned error, that newly discovered evidence mandates due re-examination of the finding of *prima facie* cause to file the case, deserves scant consideration. For petitioners, it is necessary that a new investigation be conducted to consider newly discovered evidence, in particular, the Affidavit of COA Auditor Carlos G. Pornelos, author of the audit report. We are not convinced.

Under Section 2, Rule 121 of the Rules of Court, the requisites for newly discovered evidence are: (a) the evidence was discovered after trial (in this case, after investigation); (b) such evidence could not have been discovered and produced at the trial with reasonable diligence; and (c) that it is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted, will probably change the judgment.[24]

The Pornelos affidavit, which petitioners claim as newly-discovered, was executed by affiant way back in November 29, 2000, as correctly found by the Sandiganbayan. Clearly, it cannot be considered as newly found evidence because it was already in existence prior to the re-filing of the case. In fact, such sworn affidavit was among the documents considered

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[24] *Amarillo, et al. v. Sandiganbayan*, G.R. Nos. 145007-08, January 28, 2003, 396 SCRA 434 citing *Amper v. Sandiganbayan*, G.R. No. 120391, September 24,1997, 279 SCRA 434.

during the preliminary investigation. It was the sole annexed document to petitioners' *Supplement to Motion for Reinvestigation*,[25] offered to dispute the charge that no public bidding was conducted prior to the execution of the subject project.

More important is the prosecution's statement in its Memorandum that, "after a careful re-evaluation of the documentary evidence available to the prosecution at the time of the filing of the initial Information, and at the time of the re-filing of the Information, the prosecution insists on the finding of probable cause, an exercise within the exclusive province of the Office of the Ombudsman."[26]

Worthy of note is the case of *Soriano v. Marcelo*,[27] *viz*:

> Case law has it that the determination of probable cause against those in public office during a preliminary investigation is a function that belongs to the Office of the Ombudsman. The Ombudsman has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not. It is basically his call.

Without good and compelling reasons, the Court cannot interfere in the exercise by the Office of the Ombudsman of its investigatory and prosecutory powers.[28] The only ground upon which it may entertain a review of the Office of the Ombudsman's action is grave abuse of discretion.[29]

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[25] Annex 15 of Comment, *Rollo* pp. 181-183.

[26] Respondent's Memorandum dated September 22, 2009, *id.* at 325.

[27] G.R. No. 160772, July 13, 2009 citing *Presidential Commission on Good Government v. Desierto,* G.R. No. 139296, November 23, 2007, 538 SCRA 207.

[28] *Peralta v. Desierto*, G.R. No. 153152, October 19, 2005, 473 SCRA 322 citing *Knecht v. Desierto*, G.R. No. 121916, June 26, 1998, 291 SCRA 292; *Tirol, Jr. v. COA*, G.R. No. 133954, August 3, 2000, 337 SCRA 198.

[29] *Peralta v. Desierto*, G.R. No. 153152, October 19, 2005, 473 SCRA 322 citing *PCGG v. Desierto*, G.R. No. 132120, February 10, 2003, 397 SCRA 171.

Grave abuse of discretion is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism.[30]

The special civil action for *certiorari* under Rule 65 of the Rules of Court is intended to correct errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. The writ of *certiorari* is directed against a tribunal, board or officer exercising judicial or quasi-judicial function that acted without or in excess of its or his jurisdiction or with grave abuse of discretion. Grave abuse of discretion means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify the issuance of the writ of *certiorari*, the abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.[31]

The case at bench discloses no evident indication that respondent Sandiganbayan acted with arbitrariness, whim or caprice. It committed no error in refusing to order the conduct of another preliminary investigation. As sufficiently explained by the prosecution, a new preliminary investigation is not necessary as there was neither a modification of the nature of the offense charged nor a new allegation. Such conduct of preliminary investigation anew will only delay the resolution of the case and would be an exercise in futility in as much as there was a complete preliminary investigation actively participated by both petitioners.

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[30] *Ferrer v. Office of the Ombudsman, et al.*, G.R. No. 129036, August 6, 2008, 561 SCRA 51 citing *Galvante v. Casimiro, et al.*, G.R. No. 162808, April 22, 2008, 552 SCRA 304.

[31] *Julie's Franchise Corp. et al. v. Ruiz, et al.*, G.R. No. 180988, August 28, 2009.

In view of the foregoing, we hold that the public respondent committed no grave abuse of discretion in issuing its Resolution of July 14, 2008, denying petitioners' motion for preliminary investigation in Criminal Case No. SB-08 CRM 0263.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 184542. April 23, 2010]

ALMA B. RUSSEL, *petitioner, vs.* **TEOFISTA EBASAN and AGAPITO AUSTRIA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PERIOD; COMPUTATION OF THE PERIOD FOR FILING PETITIONS, SHOWN.—** Petitioner's petition for review (under Rule 42) and motion for reconsideration before the appellate court were filed well within the reglementary period for the filing thereof. It must be noted that petitioner received her copy of the RTC decision on April 13, 2007. Following the Rules of Court, she had 15 days or until April 28, 2007 to file her petition for review before the CA. x x x On April 20, 2007, petitioner filed before the CA, *via* registered mail, her motion for extension of time to file the petition for review. She pleaded in her motion that she be granted an additional 15 days, counted from the expiry of the reglementary period. Petitioner likewise attached to her motion postal money orders representing the docket fees. Fifteen days from April 28, 2007 would be May 13, 2007.

This was, however, a Sunday. May 14, 2007, the following day, was a legal holiday—the holding of the national and local elections. x x x Therefore, when petitioner filed her petition for review with the appellate court on May 15, 2007, the same was well within the extended period for the filing thereof.

2. **ID.; MOTION FOR RECONSIDERATION; THE REGLEMENTARY PERIOD FOR THE FILING THEREOF SHALL BE COUNTED FROM THE DATE OF MAILING.—** Petitioner filed by registered mail her motion for reconsideration on July 27, 2007. The fact of mailing on the said date is proven by the registry return receipt, the affidavit of service, and the certification of the Office of the Postmaster of Iligan City. Section 3, Rule 13 of the Rules of Court provides that if a pleading is filed by registered mail, then the date of mailing shall be considered as the date of filing. It does not matter when the court actually receives the mailed pleading. Thus, in this case, as the pleading was filed by registered mail on July 27, 2007, within the reglementary period, it is inconsequential that the CA actually received the motion in October of that year.

3. **ID.; PLEADINGS; SERVICE; WHEN THE WRITTEN EXPLANATION WHY SERVICE HAD NOT BEEN DONE PERSONALLY IS CONSIDERED AS SUPERFLUOUS.—** As to the CA's dismissal of the petition for review on the ground that petitioner failed to attach a written explanation for non-personal filing, the Court finds the same improper. Iligan City, where petitioner resides and where her counsel holds office, and Cagayan de Oro City, where the concerned division of the CA is stationed, are separated by a considerable distance. The CA, in the exercise of its discretion, should have realized that it was indeed impracticable for petitioner to personally file the petition for review in Cagayan De Oro City. Given the obvious time, effort and expense that would have been spent in the personal filing of the pleadings in this case, the written explanation why service had not been done personally, as required by Section 11 of Rule 13, may be considered as superfluous.

4. **ID.; CIVIL PROCEDURE; LIBERALITY IN THE VERIFICATION REQUIREMENT AND IN THE PETITIONER'S FAILURE TO ATTACH A COPY OF THE**

COMPLAINT AND ANSWER IN A PETITION FOR REVIEW, APPLIED.— Relative to the defective verification, the Court excuses the same. The purpose of the verification is to secure an assurance that the allegations in the petition have been made in good faith, or are true and correct and not merely speculative. The requirement is simply a condition affecting the form of pleadings and non-compliance therewith is neither jurisdictional nor does it render the pleading fatally defective. Here, the perceived defect is excusable and does not justify a dismissal of the petition. In any case, petitioner, in her subsequent pleading, submitted a corrected verification. The same degree of liberality should apply to petitioner's failure to attach a copy of the complaint and answer filed before the MTCC in her petition for review. After all, petitioner substantially complied with the requirement when she filed her amended petition.

APPEARANCES OF COUNSEL

Mejorada Plando Barredo Prospero Guiuo-Diaz Law Offices for petitioner.

Berna Gift C. Gonzaga-Dimacaling for respondents.

R E S O L U T I O N

NACHURA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, questioning the June 18, 2007[1] and the August 26, 2008[2] Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 01675.

The petition stems from a complaint for forcible entry filed by petitioner Alma B. Russel against respondents Teofista Ebasan and Agapito Austria. The Municipal Trial Court in Cities (MTCC) of Iligan City heard the ejectment proceedings and rendered

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[1] Penned by Associate Justice Michael P. Elbinias, with Associate Justices Romulo V. Borja and Mario V. Lopez, concurring; CA *rollo*, pp. 101-102.

[2] *Id.* at 143-144.

judgment on November 23, 2006 in favor of petitioner.[3] The trial court ordered respondents to vacate the property involved and to pay attorney's fees and costs.[4]

Prejudiced by the ruling, respondents appealed to the Regional Trial Court (RTC). The RTC, in its March 28, 2007 Decision,[5] reversed the ruling of the MTCC and ordered the dismissal of the complaint.

Petitioner received her copy of the RTC decision on April 13, 2007.[6] Inclined to appeal the adverse ruling to the CA, petitioner, on April 20, 2007, filed a motion for an extension of 15 days from the expiry of the reglementary period for the filing of a petition for review. Petitioner attached to her motion postal money orders representing the filing and docket fees.[7] She consequently filed *via* registered mail her petition for review with the appellate court on May 15, 2007.[8]

In the assailed June 18, 2007 Resolution,[9] the CA dismissed the appeal on the following grounds:

1. The petition is filed out of time, in violation of Sec. 1, Rule 42. Even if petitioner's Motion for Extension of Time to File Petition for Review were granted, the Petition would have still been filed six (6) days late from the requested extension of time.
2. There is no Written Explanation why the Petition was filed by mail instead of the preferred mode of personal filing, as is required under Sec. 11, Rule 13.
3. The Verification and Certification page is defective, since there is no statement and therefore no assurance that the

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[3] *Rollo*, pp. 44-56.

[4] *Id.* at 56.

[5] *Id.* at 58-62.

[6] *Id.* at 8.

[7] *Id.* at 2-4.

[8] *Id.* at 6-26.

[9] *Supra* note 1.

allegations in the Petition are based on authentic records, in violation of Sec. 4, Rule 7.

4. Pertinent documents such as the Complaint and Answer filed before the MTCC, which are material portions of the record referred to in the Petition are not attached, in violation of Sec. 2(d), Rule 42.[10]

Petitioner received her copy of the June 18, 2007 Resolution on July 18, 2007.[11] On July 27, 2007, petitioner filed by registered mail her motion for reconsideration and admission of her amended petition. She pointed out in her motion that the petition was filed within the extended reglementary period. She also explained that her office clerk inadvertently failed to attach the page containing the explanation why filing by registered mail was resorted to. Petitioner also begged the appellate court's indulgence to accept the verification because only the phrase "based on authentic records" was missing in the same. She claimed that this was merely a formal requisite which does not affect the validity or efficacy of the pleading. She then pleaded for liberality in the application of the rules of procedure and for the consequent admission of her amended petition containing the written explanation, the corrected verification, and the certified true copies of the complaint and the answer filed before the trial court.[12]

The appellate court, however, in the assailed August 26, 2008 Resolution,[13] denied petitioner's motion. It ruled that the motion for reconsideration was filed only on October 4, 2007, or 63 days after the expiry of the reglementary period for the filing thereof.

Aggrieved, petitioner elevated the matter to this Court *via* the instant petition for review on *certiorari*.

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[10] *Id.*

[11] CA *rollo*, p. 103.

[12] *Id.* at 103-110.

[13] *Supra* note 2.

The Court grants the petition and remands the case to the appellate court for disposition on the merits.

Petitioner's petition for review (under Rule 42) and motion for reconsideration before the appellate court were filed well within the reglementary period for the filing thereof.

It must be noted that petitioner received her copy of the RTC decision on April 13, 2007. Following the Rules of Court, she had 15 days or until April 28, 2007 to file her petition for review before the CA. Section 1 of Rule 42 provides:

> Sec. 1. *How appeal taken; time for filing*.—A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of ₱500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

On April 20, 2007, petitioner filed before the CA, *via* registered mail, her motion for extension of time to file the petition for review. She pleaded in her motion that she be granted an additional 15 days, counted from the expiry of the reglementary period. Petitioner likewise attached to her motion postal money orders representing the docket fees.

Fifteen days from April 28, 2007 would be May 13, 2007. This was, however, a Sunday. May 14, 2007, the following day, was a legal holiday—the holding of the national and local elections. Section 1 of Rule 22 states:

Sec. 1. *How to compute time*.—In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

Therefore, when petitioner filed her petition for review with the appellate court on May 15, 2007, the same was well within the extended period for the filing thereof.

Petitioner's motion for reconsideration was likewise filed on time. She received a copy of the June 18, 2007 CA Resolution on July 18, 2007. Under Section 1 of Rule 52, she had 15 days from notice, or until August 2, 2007, to file a motion for reconsideration.[14] Petitioner filed by registered mail her motion for reconsideration on July 27, 2007. The fact of mailing on the said date is proven by the registry return receipt,[15] the affidavit of service,[16] and the certification of the Office of the Postmaster of Iligan City.[17] Section 3, Rule 13 of the Rules of Court[18]

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[14] Section 1 of Rule 52 reads in full:

Sec. 1. *Period for filing*.—A party may file a motion for reconsideration of a judgment or final resolution within fifteen (15) days from notice thereof, with proof of service on the adverse party.

[15] *Rollo*, p. 70.

[16] CA *rollo*, p. 111.

[17] *Rollo*, p. 74.

[18] Section 3 of Rule 13 reads in full:

Sec. 3. *Manner of filing*.—The filing of pleadings, appearances, motions, notices, orders, judgments and all other papers shall be made by presenting the original copies thereof, plainly indicated as such, personally to the clerk of court or by sending them by registered mail. In the first case, the clerk of court shall endorse on the pleading the date and hour of filing. In the second case, the date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment, or deposit in court. The envelope shall be attached to the record of the case.

provides that if a pleading is filed by registered mail, then the date of mailing shall be considered as the date of filing. It does not matter when the court actually receives the mailed pleading. Thus, in this case, as the pleading was filed by registered mail on July 27, 2007, within the reglementary period, it is inconsequential that the CA actually received the motion in October of that year.

As to the CA's dismissal of the petition for review on the ground that petitioner failed to attach a written explanation for non-personal filing, the Court finds the same improper. Iligan City, where petitioner resides and where her counsel holds office, and Cagayan de Oro City, where the concerned division of the CA is stationed, are separated by a considerable distance. The CA, in the exercise of its discretion, should have realized that it was indeed impracticable for petitioner to personally file the petition for review in Cagayan De Oro City. Given the obvious time, effort and expense that would have been spent in the personal filing of the pleadings in this case, the written explanation why service had not been done personally, as required by Section 11 of Rule 13, may be considered as superfluous.[19]

Relative to the defective verification, the Court excuses the same. The purpose of the verification is to secure an assurance that the allegations in the petition have been made in good faith, or are true and correct and not merely speculative. The requirement is simply a condition affecting the form of pleadings and non-compliance therewith is neither jurisdictional nor does it render the pleading fatally defective.[20] Here, the perceived defect is excusable and does not justify a dismissal of the petition. In any case, petitioner, in her subsequent pleading, submitted a corrected verification. The same degree of liberality should apply to petitioner's failure to attach a copy of the complaint and answer filed before the MTCC in her petition for review. After

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[19] *Sheker v. Estate of Alice O. Sheker*, G.R. No. 157912, December 13, 2007, 540 SCRA 111, 122.

[20] *Guy v. Asia United Bank*, G.R. No. 174874, October 4, 2007, 534 SCRA 703, 716.

all, petitioner substantially complied with the requirement when she filed her amended petition.

In sum, the Court finds that the CA erred in dismissing petitioner's appeal. The appellate court should have been more prudent in computing the reglementary period for the filing of petitions. The CA could have been more liberal in the application of the Rules considering that, in this case, the MTCC and the RTC arrived at conflicting rulings, necessitating a thorough review of the merits of the case. This is in keeping with the principle that rules of procedure are mere tools designed to facilitate the attainment of justice and that strict and rigid application of rules which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided. It is a far better and wiser course of action for the Court to excuse a technical lapse and afford the parties a conscientious review of the case in order to attain the ends of justice, rather than dispose of it on a technicality and cause grave injustice to the parties, giving a false impression of speedy disposal of cases which actually results in more delay, if not in an outright miscarriage of justice.[21]

WHEREFORE, premises considered, the petition is *GRANTED*. The instant case is *REMANDED* to the Court of Appeals for disposition on the merits.

SO ORDERED.

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

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[21] *Tanenglian v. Lorenzo*, G.R. No. 173415, March 28, 2008, 550 SCRA 348, 368.

SECOND DIVISION

[G.R. No. 184760. April 23, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PATERNO LORENZO *y* CASAS,** *defendant-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DRUGS; ELEMENTS; EVIDENCE OF *CORPUS DELICTI*, REQUIRED.—** In order to successfully prosecute an accused for illegal sale of drugs, the prosecution must be able to prove the following elements: (1) identities of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. Material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale had actually taken place, coupled with the presentation in court of evidence of *corpus delicti*. The term *corpus delicti* means the actual commission by someone of the particular crime charged.

2. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** [I]n illegal possession of dangerous drugs, the elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. Similarly, in this case, the evidence of the *corpus delicti* must be established beyond doubt.

3. **ID.; ID.; IN BOTH ILLEGAL SALE AND ILLEGAL POSSESSION, THE IDENTITY OF THE PROHIBITED DRUGS MUST BE ESTABLISHED WITH MORAL CERTAINTY.—** In both illegal sale and illegal possession of prohibited drugs, conviction cannot be sustained if there is a persistent doubt on the identity of the drug. The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court

as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.

4. **ID.; ID.; NON-COMPLIANCE BY THE POLICE OPERATIVES WITH THE REQUIREMENTS OF SECTION 21 (a) IS FATAL.—** Accused-appellant claims that no physical inventory and no photographing of the drugs took place. Non-compliance by the police operatives with the foregoing requirements in the instant case is fatal to the prosecution's case. Although the prosecution recognized its failure to coordinate with the PDEA because of the urgency of the situation, it ignored the issue of specifically identifying the prohibited drug at the point of confiscation. There is absolutely nothing in the records to show that the inventory and photography requirements, or their credible substitute to prove integrity and evidentiary value, were ever followed. x x x PO1 Pineda testified that it was their confidential agent who purchased the *shabu* from accused-appellant and that he only retrieved it from said informant. He further testified that he marked the retrieved sachet of *shabu* together with the two other sachets of *shabu* that were allegedly seized from the accused, but it was not certain when and where the said marking was done nor who had specifically received and had custody of the specimens thereafter. The Court also observes that the prosecution did not present the poseur-buyer who had personal knowledge of the transaction. The lone prosecution witness was at least four meters away from where accused-appellant and the poseur-buyer were. From this distance, it was impossible for him to hear the conversation between accused-appellant and the poseur-buyer. The foregoing facts and circumstances create doubt as to whether the sachets of *shabu* allegedly seized from accused-appellant were the same ones that were released to Camp Crame and submitted for laboratory examination. We therefore find that this failure to establish the evidence's chain of custody is damaging to the prosecution's case.

APPEARANCES OF COUNSEL

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

DECISION

PEREZ, *J*.:

Assailed in this appeal via Notice of Appeal is the 14 June 2007 Decision[1] of the Court of Appeals in CA-GR HC No. 02184 which affirmed the 05 October 2005 Decision[2] promulgated by the Regional Trial Court (RTC) of San Mateo, Rizal, in Criminal Case Nos. 6991-93, finding accused-appellant Paterno Lorenzo *y* Casas guilty beyond reasonable doubt of violating Sections 5 and 11, Article II, of Republic Act No. 9165, otherwise known as the Dangerous Drugs Act of 2002.[3]

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[1] *Rollo*, pp. 2-18; Penned by Associate Justice Vicente Q. Roxas, with the concurrence of Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia.

[2] CA *Rollo*, pp. 52-64; Penned by Judge Josephine Fernandez.

[3] **Section 5.** *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.xxx

Section 11. *Possession of Dangerous Drugs*. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

xxx Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana x x x

Accused-appellant was arrested and charged following a buy-bust operation.

On 12 September 2003, two (2) Informations were filed against accused-appellant Paterno Lorenzo *y* Casas (Lorenzo) charging him with violating Sections 5 and 11, Article II of Republic Act No. 9165, the accusatory portions thereof reading.

Criminal Case No. 6992

That on or about the 10th day of September 2003 in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and knowingly have in his possession, direct custody and control a total of 2.04 grams of white crystalline substance contained in two (2) heat-sealed transparent plastic sachets which gave positive result to the test for Methylamphetamine Hydrochloride, a dangerous drug.[4]

Criminal Case No. 6993

That on or about the 10th day of September 2003, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to another 0.20 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet which gave positive result to the test for Metamphetamine Hydrochloride, a dangerous drug.[5]

The cases were raffled to Branch 76 of the RTC of San Mateo, Rizal and docketed as Criminal Case Nos. 6992-93.

One Conrado Estanislao *y* Javier (Estanislao) was similarly charged in a different Information, which case was docketed as Criminal Case No. 6991. Estanislao was accused of possessing illegal drugs in violation of the provisions of Section 11, Article II of Republic Act No. 9165, the Information containing the following averments:

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[4] Records, p. 1.

[5] *Id.*

Criminal Case No. 6994

That on or about the 10th day of September 2003, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and knowingly have in his possession, direct custody and control of 0.05 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet which gave positive result to the test for Methylamphetamine Hydrochloride, a dangerous drug.

On arraignment, both accused, with the assistance of counsel, entered 'NOT GUILTY' pleas.

The three (3) cases having been consolidated, joint trial on the merits ensued.

The prosecution presented as its lone witness, Police Officer 1 (PO1) Noel P. Pineda, who was a member of the buy-bust team.

The evidence for the prosecution sought to establish that on 9 September 2003, upon a series of reports relayed by a confidential informant that a certain Paterno Lorenzo was peddling *shabu* in the Barangay Dulongbayan area, the team of PO3 Pineda embarked on a buy-bust operation against said drug peddler. Anticipating the operation, PO3 Pineda prepared two (2) pieces of marked ₱100.00 bills to be used as buy-bust money. At around 10:00 o'clock in the evening of the same day, PO3 Pineda, along with SPO1 Arellano and PO3 Tougan, proceeded to Barangay Dulongbayan and secretly met with their confidential informant. According to the confidential informant, he had not seen Lorenzo and raised the possibility that he was not in the area at the time. Assessing the situation, the police officers instructed the confidential informant to continue with his surveillance of the area and to inform them immediately if he comes across Lorenzo.

At around 1:00 o'clock in the morning of 10 September 2003, while PO1 Pineda and his companions were waiting at Gen. Luna Street, the confidential informant reported that Lorenzo was already at the Daangbakal, Dulongbayan I area and was

selling prohibited drugs. Riding an unmarked vehicle, the team proceeded to where Lorenzo was. On their arrival, Lorenzo was talking to a man at the corner of Pulong Diablo and Daangbakal. PO3 Tougan stepped out of their vehicle and hid in a place where he was not visible to Lorenzo. PO3 Pineda stayed close to SPO1 Arellano, who was then hiding inside a tricycle near Lorenzo. While this was happening, the confidential informant approached Lorenzo for the transaction. Lorenzo and the confidential informant were approximately four (4) meters away from PO3 Pineda. Because PO3 Pineda knew who Lorenzo was and considering the place was illuminated, PO3 Pineda recognized the suspect. The confidential informant and Lorenzo were talking for about one minute, after which the informant gave the marked money to Lorenzo. After taking the marked money, Lorenzo handed the *shabu* to the informant. PO3 Pineda and SPO1 Arellano alighted from the tricycle and approached Lorenzo, and introduced themselves as police officers. They arrested Lorenzo.

Upon being arrested, Lorenzo was bodily searched and PO1 Pineda was able to retrieve the marked money and 2 other sachets of *shabu* from him. Seeing what had happened to Lorenzo, the man he was talking to and later on identified as a certain Estanislao, attempted to escape the police officers and ran, but he was soon accosted by PO3 Tougan. A search of his pockets yielded one (1) sachet of s*habu*.

After the buy-bust operation, Lorenzo and Estanislao were taken to the police station where the incident was recorded in the police blotter. The plastic sachets containing 2.04 and 0.20 grams of white crystalline substance bought from Lorenzo was sent to the PNP Crime Laboratory for laboratory examination. The results as contained in Chemistry Report no. D-1741-03E showed that the substance sold by Lorenzo was positive for Methylamphetamine Hydrochloride or *shabu*.[6]

Interposing the twin defenses of denial and frame-up, accused-appellant Lorenzo and Estanislao stood before the witness stand and presented their version of the facts.

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[6] Exhibit E, Records, p. 95.

Lorenzo was in his mountain bike on the way home to Dulongbayan sometime between 12:00 o'clock in the evening and 1:00 o'clock in the morning of 10 September 2003. Estanislao, who was also with him at the time, was riding in his motor cross style bike and was supposed to buy food at said place after playing *'tong-its.'*

While the two (2) were traversing Daangbakal and Delos Angeles Street, the chain on Estanislao's bike went loose. During the time Estanislao was repairing his bike, PO3 Tougan, PO3 Pineda, and SPO1 Arellano, who were then on board an owner type jeepney, arrived and arrested Lorenzo and Estanislao. According to the police officers, they were to be brought to the Municipal Hall. The two (2) suspects protested, claiming not having done anything wrong but the police officers continued with the arrest. It was later that they were informed that the arrest was for illegal drugs.

On 5 October 2005, the RTC rendered a Decision convicting Lorenzo for illegal possession and sale of dangerous drugs, but acquitting Estanislao, disposing as follows:

> WHEREFORE, judgment is hereby rendered:
>
> (a) Finding accused Paterno Lorenzo *y* Casas guilty beyond reasonable doubt for violation of Section 5, first paragraph, Article II of Republic Act No. 9165 (Criminal Case No. 6993) or illegal selling of 0.20 gram of methylamphetamine hydrochloride (*shabu*), a dangerous drug, and is sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).
>
> (b) Finding accused Paterno Lorenzo *y* Casas guilty beyond reasonable doubt for Violation of Section 11, second paragraph, No. 3, Article II of Republic Act No. 9165 (Criminal Case No. 6992) or illegal possession of 2.04 gram of methylamphetamine hydrochloride (*shabu*), a dangerous drug, and is sentenced to suffer imprisonment of Twelve (12) years and one (1) day as minimum to Twelve years and six (months) as maximum and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00).

(c) Finding accused Conrado Estanislao *y* Javier, for violation of Section 11, second paragraph, sub paragraph 3, Article II of Republic Act No. 9165, NOT GUILTY for failure of the prosecution to prove his guilt beyond reasonable doubt.

Detained accused Conrado Estanislao *y* Javier is ordered released from detention at the San Mateo Jail unless detained for some other lawful cause.

The plastic sachets of *shabu* subject matter of the instant cases are ordered forfeited in favor of the government and the Officer-In-Charge of the Court is hereby ordered to safely deliver or cause the safe delivery of the same to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.[7]

Weighing the testimonies of the prosecution and defense witnesses, as well as the other evidence presented during trial, the trial court gave more veracity to the prosecution's version that Lorenzo was caught *in flagrante delicto* selling illegal drugs to a poseur-buyer during a buy-bust operation. The trial court gave credence to the prosecution's evidence in accordance with the presumption of regularity in the performance of official functions accorded to police officers. According to the trial court, the prosecution proved beyond reasonable doubt the identity of the buyer in the buy-bust operation and the seller, object and consideration, including the delivery of the *shabu* sold by Lorenzo and the payment of the buy-bust money.

Invoking his innocence, Lorenzo appealed his conviction to the Court of Appeals, questioning the procedure followed by the police operatives in the seizure and custody of the evidence against him.

On 14 June 2007, the Court of Appeals affirmed the judgment of conviction rendered by the RTC, disposing to wit:

WHEREFORE, premises considered, appeal is hereby dismissed and the assailed October 5, 2005 Decision of the Regional Trial Court of San Mateo Rizal, Branch 76, in Criminal Case Nos. 6991-93, is hereby AFFIRMED.

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[7] CA *Rollo*, pp. 52-64.

Pursuant to Section 13 (C), Rule 124 of the 2000 Rules of Criminal Procedure, as amended by AM No. 00-5-03-SC dated September 28, 2004, which became effective on October 15, 2004. This judgment of the Court of Appeals may be appealed to the Supreme Court by notice of appeal filed with the Clerk of Court of the Court of Appeals.

SO ORDERED.

Unyielding, Lorenzo appealed before this Court on Notice of Appeal,[8] adopting the same arguments raised before the Court of Appeals:

I.

THE COURT *A QUO* ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF VIOLATION OF SECTIONS 5 AND 11, REPUBLIC ACT NO. 9165; AND

II.

THE COURT *A QUO* GRAVELY ERRED IN NOT GIVING WEIGHT AND CREDENCE TO ACCUSED-APPELLANT'S DEFENSE OF DENIAL.

The presumption of innocence of an accused in a criminal case is a basic constitutional principle, fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. Corollary thereto, conviction must rest on the strength of the prosecution's evidence and not on the weakness of the defense.

In fact, if the prosecution fails to meet the required quantum of evidence, the defense may logically not even present evidence on its behalf. In which case, the presumption of innocence shall prevail and, hence, the accused shall be acquitted. However, once the presumption of innocence is overcome, the defense bears the burden of evidence to show reasonable doubt as to the guilt of the accused.

Whether the degree of proof has been met is largely left for the trial courts to be determined. Consistent with the rulings of

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[8] *Rollo*, p. 19.

this Court, it is but a fundamental and settled rule that factual findings of the trial court and 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 Court of Appeals. 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. Considering that what is at stake here is the liberty of accused-appellant, we have carefully reviewed and evaluated the records of the case and find it necessary to reverse the appellate court's decision convicting accused-appellant.

Essentially, Lorenzo questions his conviction on the basis of reasonable doubt. The defense anchors its claim on the failure of the prosecution to adopt the required procedure under Section 21, Article II, Republic Act No. 9165, on the custody and disposition of confiscated, seized, or surrendered dangerous drugs. According to the defense, this alleged failure to follow proper procedure, *i.e.* inventory and photographing of the retrieved evidence, raises doubts as to whether the specimen examined by the forensic chemist and presented in court were indeed retrieved from accused-appellant. The defense also faults the police operatives for not having coordinated with the PDEA regarding the buy-bust.

Thus, for resolution by this Court is the sole issue of whether the prosecution discharged its burden of proving Lorenzo's guilt beyond reasonable doubt for the crime charged.

We rule in the negative. The prosecution's case fails for failure to establish the identity of the prohibited drug with moral certainty.

In order to successfully prosecute an accused for illegal sale of drugs, the prosecution must be able to prove the following elements: (1) identities of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[9] Material to the prosecution for illegal sale

[9] *People v. Villanueva*, G.R. No. 172116, October 30, 2006, 506 SCRA 280.

of dangerous drugs is the proof that the transaction or sale had actually taken place, coupled with the presentation in court of evidence of *corpus delicti*.[10] The term *corpus delicti* means the actual commission by someone of the particular crime charged.

On the other hand, in illegal possession of dangerous drugs, the elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. Similarly, in this case, the evidence of the *corpus delicti* must be established beyond doubt.

In both illegal sale and illegal possession of prohibited drugs, conviction cannot be sustained if there is a persistent doubt on the identity of the drug. The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.

While buy-bust operations have been proven to be an effective way to flush out illegal transactions that are otherwise conducted covertly and in secrecy, a buy-bust operation is susceptible to police abuse. Thus, courts have been mandated to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses.

Taking the aforementioned into consideration, specific procedures relating to the seizure and custody of drugs have been laid down under the Implementing Rules and Regulations (IRR) for Republic Act No. 9165 and it is the prosecution's burden to adduce evidence that these procedures have been complied with in proving the elements of the offense.

The procedure for the custody and disposition of confiscated, seized and/or surrendered dangerous drugs, among others, is

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[10] *Valdez v. People*, G.R. No. 170180, November 23, 2007, 538 SCRA, 629.

provided under Section 21 (a), paragraph 1 of Article II of Republic Act No. 9165, to wit:

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

Section 21 (a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, which implements said provision, reads:

> (a) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officers/team, shall not render void and invalid such seizures of and custody over said items.

Section 21(a), Article II of the IRR offers some flexibility in complying with the express requirements. Indeed, the evident purpose of the procedure is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt of or innocence of the accused. Thus, the proviso stating that *non-compliance with the stipulated procedure, under justifiable grounds, shall not*

render void and invalid such seizures of and custody over said items, for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers.

In *People v. Sanchez*,[11] we clarified that this saving clause applies only where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds.

Accused-appellant claims that no physical inventory and no photographing of the drugs took place. Non-compliance by the police operatives with the foregoing requirements in the instant case is fatal to the prosecution's case. Although the prosecution recognized its failure to coordinate with the PDEA because of the urgency of the situation, it ignored the issue of specifically identifying the prohibited drug at the point of confiscation. There is absolutely nothing in the records to show that the inventory and photography requirements, or their credible substitute to prove integrity and evidentiary value, were ever followed.

In *People v. Lim*,[12] this Court held:

> xxx any apprehending team having initial custody and control of said drugs and/or paraphernalia, should immediately after seizure and confiscation, have the same physically inventoried and photographed in the presence of the accused, if there be any, and or his representative, who shall be required to sign the copies of the inventory and be given a copy thereof. The failure of the agents to comply with such a requirement raises a doubt whether what was submitted for laboratory examination and presented in court was actually recovered from the appellants. It negates the presumption that official duties have been regularly performed by the PAOC-TF agents.

In *Bondad, Jr. v. People*,[13] where the prosecution did not inventory and photograph the confiscated evidence, this Court

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[11] *People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 194.

[12] *People v. Lim*, G.R. No. 141699, August 7, 2002, 386 SCRA 581.

[13] *Bondad, Jr., v. People,* G.R. No. 173804, December 10, 2008, 573 SCRA 497.

acquitted therein accused reasoning that failure to comply with the aforesaid requirements of the law compromised the identity of the items seized.

In *People v. Ruiz Garcia*,[14] this Court acquitted accused due to the failure of the prosecution to comply with the procedures under Republic Act No. 9165 and its IRR as no physical inventory was ever made, and no photograph of the seized items was taken under the circumstances required.

In *People v. Orteza*,[15] the Court explained the implications of the failure to comply with Paragraph 1, Section 21, Article II of Republic Act No. 9165, to wit:

> In *People v. Laxa*, where the buy-bust team failed to mark the confiscated marijuana immediately after the apprehension of the accused, the Court held that the deviation from the standard procedure in anti-narcotics operations produced doubts as to the origins of the marijuana. Consequently, the Court concluded that the prosecution failed to establish the identity of the *corpus delicti*.
>
> The Court made a similar ruling in *People v. Kimura*, where the Narcom operatives failed to place markings on the seized marijuana at the time the accused was arrested and to observe the procedure and take custody of the drug.
>
> More recently, in *Zarraga v. People*, the Court held that the material inconsistencies with regard to when and where the markings on the *shabu* were made and the lack of inventory on the seized drugs created reasonable doubt as to the identity of the *corpus delicti*. The Court thus acquitted the accused due to the prosecution's failure to indubitably show the identity of the *shabu*.

To reiterate, the flexibility offered by the IRR of Republic Act No. 9165 is coupled with the proviso that the integrity and evidentiary value of the seized items must be preserved.

Thus, in *Malillin v. People*,[16] the Court explained that the "chain of custody" requirement performs this function in that

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[14] *People v. Ruiz Garcia,* G.R. No. 173480, February 25, 2009, 580 SCRA 750.

[15] *People v. Orteza*, G.R. No. 173051, July 31, 2007, 528 SCRA 750.

[16] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619.

it ensures that unnecessary doubts concerning the identity of the evidence are removed. The chain of evidence is constructed by proper exhibit handling, storage, labeling and recording, and must exist from the time the evidence is found until the time it is offered in evidence.[17] Failure to prove that the specimen submitted for laboratory examination was the same one allegedly seized from accused is fatal to the prosecution's case. There can be no crime of illegal possession or illegal sale of a prohibited drug when nagging doubts persist on whether the item confiscated was the same specimen examined and established to be the prohibited drug.[18]

PO1 Pineda testified that it was their confidential agent who purchased the *shabu* from accused-appellant and that he only retrieved it from said informant. He further testified that he marked the retrieved sachet of *shabu* together with the two other sachets of *shabu* that were allegedly seized from the accused, but it was not certain when and where the said marking was done nor who had specifically received and had custody of the specimens thereafter.

The Court also observes that the prosecution did not present the poseur-buyer who had personal knowledge of the transaction. The lone prosecution witness was at least four meters away from where accused-appellant and the poseur-buyer were. From this distance, it was impossible for him to hear the conversation between accused-appellant and the poseur-buyer.

The foregoing facts and circumstances create doubt as to whether the sachets of *shabu* allegedly seized from accused-appellant were the same ones that were released to Camp Crame and submitted for laboratory examination. We therefore find that this failure to establish the evidence's chain of custody is damaging to the prosecution's case.[19]

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[17] *Supra*, note 11 at 10.

[18] *Id.*

[19] *People v. Dismuke,* G.R. No. 108453, July 11, 1994, 234 SCRA 51.

In sum, the totality of the evidence presented in the instant case failed to support accused-appellant's conviction for violation of Sections 5 and 11, Article II, Republic Act No. 9165, since the prosecution failed to prove beyond reasonable doubt all the elements of the offense.

Accordingly, the presumption of innocence should prevail.

WHEREFORE, the assailed Court of Appeals Decision dated 14 June 2007 in CA-G.R. CR-H.C. No. 02184, is hereby *REVERSED* and *SET ASIDE*. Accused-appellant PATERNO LORENZO *y* CASAS is hereby *ACQUITTED* for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately *RELEASED* from detention, unless he is confined for any other lawful cause.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court within five days from receipt of this Decision the action he has taken. Copies shall also be furnished the Director General, Philippine National Police, and the Director General, Philippine Drugs Enforcement Agency, for their information.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 186419. April 23, 2010]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DARLENE QUIGOD *y* MIRANDA,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT; ESPECIALLY WHEN AFFIRMED BY THE CA, ARE GENERALLY BINDING AND CONCLUSIVE UPON THIS COURT.—** [T]he Court once again reiterates the legal aphorism that factual findings of the CA affirming those of the trial court are binding on this Court unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness or palpable error.

2. **ID.; ID.; ID.; GIVEN HIGH RESPECT IF NOT CONCLUSIVE EFFECT.—** Furthermore, it is an oft-stated doctrine that factual findings of the trial court, its calibration of the testimonies of the witnesses and its assessment of their probative weight is given high respect if not conclusive effect, unless the trial court ignored, misconstrued, misunderstood or misinterpreted cogent facts and circumstances of substance, which, if considered, will alter the outcome of the case.

3. **CRIMINAL LAW; GENERAL PROVISIONS; ENTRAPMENT; BUY-BUST OPERATION, A FORM OF ENTRAPMENT, IS A LEGITIMATE MODE OF APPREHENDING DRUG PUSHERS.—** A buy-bust operation is a form of entrapment whereby ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan. In this jurisdiction, the operation is legal and has been proven to be an effective method of apprehending drug peddlers, provided due regard to constitutional and legal safeguards is undertaken.

4. **ID.; ID.; ID.; ID.; CASE AT BAR.—** In the case at bar, the evidence clearly shows that the buy-bust operation conducted by the police officers, who made use of entrapment to capture accused-appellant in the act of selling a dangerous drug, was valid. It has been established that it was the police informant who made the initial contact with accused-appellant when he introduced SPO2 Jamila as a buyer for *shabu*. SPO2 Jamila then ordered two (2) sachets of *shabu* which accused-appellant agreed to sell at PhP 1,000 per sachet. Accused-appellant left for a while and shortly thereafter, she came back with the two (2) sachets containing a white crystalline substance which was later identified as *shabu* and gave them to SPO2 Jamila. The

latter then paid her with the previously marked money he brought with him. Subsequently, upon giving the pre-arranged signal, the accused-appellant was arrested. Evidently, the facts themselves demonstrate a valid buy-bust operation that is within the bounds of a fair and reasonable administration of justice.

5. **CRIMINAL LAW; SPECIAL OFFENSES; VIOLATION OF DANGEROUS DRUGS ACT OF 2002; ILLEGAL SALE OF PROHIBITED DRUGS; ELEMENTS.—** In the prosecution for the illegal sale of prohibited drugs, the Court has reiterated the essential elements in *People v. Pendatun*, to wit: (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.

6. **ID.; ID.; ID.; ID.; ID.; CASE AT BAR.—** [A]ll these elements were ably proven by the prosecution in the instant case. The accused-appellant sold and delivered the *shabu* for PhP2,000 to SPO2 Jamila 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, the accused-appellant was fully aware that she was selling and delivering a prohibited drug. Clearly, all the elements for the crime of illegal sale of prohibited drugs were proven in the instant case. The testimony of SPO2 Jamila plainly showed that a sale occurred between the accused-appellant, as the seller, and himself, as the buyer, for PhP2,000 worth of *shabu*.

7. **CRIMINAL LAW; REVISED PENAL CODE; *CORPUS DELICTI*; BODY OF THE CRIME WHICH ESTABLISHES THE FACT THAT A CRIME HAS ACTUALLY BEEN COMMITTED.—** [*C*]*orpus delicti* is the body or substance of the crime, and establishes the fact that a crime has actually been committed.

8. **ID.; SPECIAL OFFENSES; VIOLATION OF DANGEROUS DRUGS ACT OF 2002; CHAIN OF CUSTODY REQUIREMENT; ENSURES THAT UNNECESSARY DOUBTS CONCERNING THE IDENTITY OF THE EVIDENCE ARE REMOVED.—** In every prosecution for the illegal sale of prohibited drugs, the presentation of the drug, *i.e.*, as part of the *corpus delicti*, as evidence in court is also material. [I]t is, therefore, essential that the identity of the

prohibited drug be established beyond doubt. Even more than this, what must also be established is the fact that the substance bought during the buy-bust operation is the same substance offered in court as exhibit. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.

9. **ID.; ID.; ID.; ID.; DEFINED IN SECTION 21 OF THE IMPLEMENTING RULES AND REGULATIONS OF R.A. 9165.—** For the purpose of ensuring that the chain of custody is established, the Implementing Rules and Regulations of R.A. 9165 provide: SEC. 21. ***Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.—*** The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner: (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; ***Provided*****, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures**; ***Provided, further*****, that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items**; x x x

10. **ID.; ID.; ID.; ID.; ID.; IN THE INSTANT CASE, THERE WAS SUBSTANTIAL COMPLIANCE WITH THE LAW.—** In the instant case, there was substantial compliance with the law,

and the integrity of the drugs seized from the accused-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 SPO2 Jamila seized and confiscated the dangerous drugs, as well as the marked money, the accused-appellant was immediately arrested and brought to the police station for investigation. Immediately thereafter, the confiscated substance marked as "RPM1" and "RPM2," respectively, together with a letter of request for examination, was submitted by SPO2 Jamila to the PNP Crime Laboratory for laboratory examination to determine the presence of any dangerous drug. Notably, PO1 Morales and accused-appellant herself were with SPO2 Jamila when he delivered the same to the laboratory. Also, it was P/Insp. Banogon himself who received the specimen from SPO2 Jamila. As mentioned above, P/Insp. Banogon is the Forensic Chemical Officer of the PNP Crime Laboratory who conducted the laboratory examination on the specimen, and based on Chemistry Report No. D-126-2002, the specimen submitted indeed contained Methamphetamine Hydrochloride, a dangerous drug. Based on the foregoing, it is evident that there was an unbroken chain in the custody of the prohibited drug purchased from accused-appellant.

11. **ID.; ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH SECTION 21 DOES NOT RENDER AN ACCUSED'S ARREST ILLEGAL OR THE ITEMS SEIZED/CONFISCATED FROM HIM INADMISSIBLE.—** Significantly, non-compliance with Section 21 does not render an accused's arrest illegal or the items seized/confiscated from 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."

12. **REMEDIAL LAW; EVIDENCE; TESTIMONY; POSITIVE TESTIMONY PREVAILS OVER DENIAL OF THE ACCUSED; CASE AT BAR.—** In the face of SPO2 Jamila's positive testimony, accused-appellant's denial is self-serving and has little weight in law. A bare denial is an inherently weak defense and has been invariably viewed by this Court with disfavor for it can be easily concocted but difficult to prove, and is a common standard line of defense in most prosecutions arising from violations of RA 9165. Time and again, We have held that "denials unsubstantiated by convincing evidence are

not enough to engender reasonable doubt, particularly where the prosecution presents sufficiently telling proof of guilt."

13. **ID.; ID.; PRESUMPTIONS; REGULARITY IN THE PERFORMANCE OF DUTY; IN THE ABSENCE OF ANY INTENT ON THE PART OF POLICE AUTHORITIES TO FALSELY IMPUTE SUCH CRIME AGAINST AN ACCUSED, THE PRESUMPTION STANDS; CASE AT BAR.—** Also, in the absence of any intent on the part of the police authorities to falsely impute such crime against the accused-appellant, the presumption of regularity in the performance of duty stands. More so in the instant case, where an assiduous analysis of SPO2 Jamila's testimony does not indicate any inconsistency, contradiction or fabrication. In addition, SPO2 Jamila testified that prior to the incident, he does not know accused-appellant. All told, we uphold the presumption of regularity in the performance of official duty and find that the prosecution has discharged its burden of proving the guilt of accused-appellant beyond reasonable doubt.

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 October 13, 2008 Decision of the Court of Appeals (CA) in CA G.R. CR-H.C. No. 00279-MIN entitled *People of the Philippines v. Darlene Quigod y Miranda* which affirmed the August 6, 2004 Decision of the Regional Trial Court (RTC), Branch 4 in Butuan City in Criminal Case No. 9584 for Violation of Section 5, Article II of Republic Act No. 9165 (RA 9165), otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

The charge against accused-appellant stemmed from the following Information:

The undersigned accuses DARLENE QUIGOD *y* MIRANDA of the crime of Violation of Sec. 5, Article II of R.A. 9165, committed as follows:

That on or about 4:30 o'clock in the afternoon of September 6, 2002 at Ong Yiu, Butuan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously sell, deliver two (2) sachets of methamphetamine hydrochloride, otherwise known as *shabu*, weighing zero point four six seven zero (0.4670) grams, to SPO2 Antonio Paloma Jamila (acting as poseur-buyer), which is a dangerous drug.

CONTRARY TO LAW: (Violation of Sec. 5, Art. II of R.A. No. 9165)

Butuan City, Philippines, September 7, 2002.[1]

On January 3, 2003, the accused-appellant pleaded not guilty to the charge. After the pre-trial conference, trial on the merits ensued.

During the trial, the prosecution presented as their witnesses, SPO2 Antonio Jamila (SPO2 Jamila) and Police Inspector Cramwell Tanquiamco Banogon (P/Insp. Banogon). On the other hand, the defense presented as its witnesses, Darlene Quigod, the accused-appellant herself, and Manuel Vergara, Jr.

Version of the Prosecution

The facts, according to the prosecution, are as follows:

In the morning of September 6, 2002, the Philippine Drug Enforcement Agency (PDEA) Office, Region 13 received confidential information from a police informant that accused-appellant was selling "*shabu*" at Purok 7, Ong Yiu, Butuan City.[2] Acting on the said information, a team, composed

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

[2] TSN, June 6, 2003, p. 5.

of SPO2 Jamila, PO1 Ronnie Morales (PO1 Morales) and the police informant, was formed to conduct a buy-bust operation. SPO2 Jamila was to act as the poseur-buyer.

At around 4:30 p.m., the team was dispatched to the designated area, particularly the area near the basketball court of Purok 7, Ong Yiu, Butuan City.[3] Thereafter, the police informant contacted accused-appellant upon instruction of SPO2 Jamila, and introduced the latter as a buyer of *shabu*. After agreeing to the price of *shabu* at PhP 1,000 per sachet, SPO2 Jamila ordered two (2) sachets. Accused-appellant left to get the *shabu* and asked them to wait for her.[4]

Shortly thereafter, accused-appellant came back with the two (2) sachets of *shabu* and demanded immediate payment for them from SPO2 Jamila who, in turn, carefully examined the articles. When he already had the two (2) sachets of *shabu*, SPO2 Jamila gave the pre-arranged signal to PO1 Morales, who was only about 10 to 15 meters away. The latter, along with other police officers, rushed towards accused-appellant, identified themselves as PDEA agents, and arrested her.[5]

The team, together with accused-appellant, immediately proceeded to their office for booking, documentation and filing of the case against her.[6] The 2 articles seized, respectively marked as RPM1 and RPM2, were under the initial custody of SPO2 Jamila.[7]

At about 6:35 p.m., SPO2 Jamila, together with PO1 Morales and accused-appellant, submitted the seized articles to the PNP Regional Crime Laboratory, Camp Rafael Rodriguez, Libertad, Butuan City, for qualitative examination.[8]

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[3] *Rollo*, p. 8.

[4] TSN, June 6, 2003, p. 7.

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

[6] *Id.* at 9.

[7] *Rollo,* p. 8.

[8] *Id.*

P/Insp. Banogon, a forensic chemist, conducted a qualitative examination on the specimen weighing 0.1821 gram (RPM1) and 0.2849 gram (RPM2), respectively. The specimen gave positive result to the tests for Methamphetamine Hydrochloride, a dangerous drug. This was indicated in Chemistry Report No. D-126-2002[9] issued by P/Insp. Banogon after conducting the afore-mentioned qualitative examination. The urine sample taken from accused-appellant also gave a "positive" result for the presence of the same drug,[10] as indicated in Chemistry Report No. and DT-070-2002.[11]

Version of the Defense

On the other hand, accused-appellant interposed the defense of denial.

She testified that she was a fish vendor who looked after her family's *carenderia* before she got arrested. She resided at Mangachupoy St., Bayugan, Agusan del Sur, but later moved to Doongan, Butuan City, particularly in the house of a certain Toto Maravilla, a policeman. Accused-appellant identified herself as a police asset whose task is to conduct surveillance on persons suspected of selling illegal drugs in Ong Yiu, Butuan. According to her, she has worked with Toto Maravilla as a police asset since 2001. [12]

Accused-appellant recounted that on September 6, 2002, she was instructed to conduct surveillance on a certain Jamil Osman Manua, who was suspected of engaging in illegal drug trade activities, at Purok 7, Ong Yiu. In the course of the surveillance, SPO2 Jamila arrested accused-appellant and brought her to the PDEA Office for investigation. When accused-appellant identified herself as a police asset, SPO2 Jamila did not believe her.[13]

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[9] Records, p. 54.

[10] *Rollo*, p. 9.

[11] Records, p. 56.

[12] TSN, July 7, 2004, pp. 3-4.

[13] *Id.* at 8.

Accused-appellant vehemently denied that she was selling *shabu* and was caught in a buy-bust operation. Also, she claimed that no marked money was given to her during the alleged buy-bust operation.[14]

Manuel Vergara, Jr., the second witness for the defense, testified that accused-appellant was indeed a police asset of a certain Toto Maravilla. He stated that he knew this because he allegedly was also a police asset and they had worked together in 2000 during buy-bust operations conducted in Bayugan and in RTR, Agusan del Norte.[15] However, he did not know of the incident that transpired on September 6, 2002, which led to accused-appellant's arrest.

Ruling of the Trial Court

After trial, the RTC of Butuan City convicted accused-appellant. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, the Court finds accused Darlene Quigod *y* Miranda guilty beyond reasonable doubt for violation of Section 5, Art. II of Republic Act 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and hereby imposes upon her the penalty of life imprisonment and fine of Five Hundred Thousand (₱500,000.00) Pesos.
>
> The confiscated *shabu* is hereby ordered destroyed in accordance with the provisions of Section 21 of Republic Act 9165.
>
> The accused shall serve her sentence at the Correctional Institute for Women at Mandaluyong, Metro Manila. She shall be entitled to the full benefits of her preventive imprisonment which shall be credited in the service of her sentence according to the provision of Article 29 of the Revised Penal Code, as amended.
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> SO ORDERED.[16]

On appeal to the CA, accused-appellant questioned the lower court's decision in convicting her despite the failure of the

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

[15] *Rollo*, p. 10.

[16] CA *rollo*, pp. 57-58.

prosecution to prove her guilt beyond reasonable doubt. She raised the issue of whether the chain of custody of the *shabu* allegedly recovered from her was properly established. She argued that SPO2 Jamila failed to properly identify the prohibited drug and that the prosecution was unable to prove that the drugs presented in court were the same drugs seized from her.

Ruling of the Appellate Court

On October 13, 2008, the CA affirmed the judgment of the lower court. It ruled that all the elements necessary to establish the fact of sale or delivery of illegal drugs were aptly established by the prosecution, including the chain of custody, *to wit:*

During the trial, the prosecution through SPO2 Jamila (as poseur-buyer) was able to establish the consummation of the sale by agreeing to purchase sachets of *shabu* at ₱1,000.00 each from appellant, which the latter had voluntarily delivered at the total price of ₱2,000.00 for two (2) sachets of *shabu*. SPO2 Jamila personally identified appellant in court as the same person who sold to him the *shabu*. The two (2) sachets of *shabu* confiscated from appellant, properly marked as Exhibits "RPM1 and RPM2," were immediately brought to the laboratory for qualitative examination. The result of tests conducted confirmed that the specimen submitted were positive for Methamphetamine Hydrochloride. More so, appellant's urine specimen that was taken by the authorities was found with traces of Methamphetamine Hydrochloride, thus indicating that she had recently "used" *shabu*.

Tested against the elements necessary to establish the fact of sale or delivery of illegal drugs, *i.e*., (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefore, the prosecution was able to establish that appellant is guilty of the crime with which she was charged.[17]

The CA also held that in the face of SPO2 Jamila's positive testimony, accused-appellant's denial is self-serving and has little weight in law.

The dispositive portion of the Decision of the CA reads:

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[17] *Rollo*, pp. 12-13.

WHEREFORE, in view of the foregoing, the Decision dated August 16, 2004 (sic) of the trial court appealed from is hereby **AFFIRMED *IN TOTO***.

SO ORDERED.[18]

On November 5, 2008, accused-appellant filed her Notice of Appeal of the Decision dated October 13, 2008 rendered by the CA.[19]

In Our Resolution dated March 30, 2009,[20] We notified the parties that they may file their respective supplemental briefs, if they so desire, within thirty (30) days from notice. On June 16, 2009, the People of the Philippines manifested that it is no longer filing a supplemental brief as it believes that the Brief for the Appellee dated October 16, 2006 has adequately addressed the issues and arguments in the instant case.[21] Accused-appellant, on the other hand, filed her Supplemental Brief on July 14, 2009.[22]

The Issues

Accused-appellant contends in both her *Brief for Accused-Appellant*[23] and *Supplemental Brief*[24] that:

I.

THE COURT OF APPEALS ERRED IN CONVICTING ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HER GUILT BEYOND REASONABLE DOUBT.

II.

THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN CONVICTING ACCUSED-APPELLANT DESPITE NON-

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[18] *Id.* at 14.

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

[20] *Id.* at 21.

[21] *Id.* at 19-20.

[22] *Id.* at 22-24.

[23] CA *rollo*, pp. 37-47.

[24] *Rollo*, pp. 44-53.

COMPLIANCE WITH THE REQUIREMENTS FOR THE PROPER CUSTODY OF SEIZED DANGEROUS DRUGS UNDER R.A. NO. 9165.

III.

THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION'S EVIDENCE NOTWITHSTANDING ITS FAILURE TO PROVE THE INTEGRITY OF THE SEIZED DRUG.

Our Ruling

We sustain accused-appellant's conviction.

Factual finding of the trial court, especially when affirmed by the CA, are generally binding and conclusive upon this Court

After a careful examination of the records of this case, We are satisfied that the prosecution's evidence established the guilt of accused-appellant beyond reasonable doubt.

In deciding this appeal, the Court once again reiterates the legal aphorism that factual findings of the CA affirming those of the trial court are binding on this Court unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness or palpable error.[25] Unfortunately, however, accused-appellant failed to show any of these as to warrant a review of the findings of fact of the lower courts.

Furthermore, it is an oft-stated doctrine that factual findings of the trial court, its calibration of the testimonies of the witnesses and its assessment of their probative weight is given high respect if not conclusive effect, unless the trial court ignored, misconstrued, misunderstood or misinterpreted cogent facts and circumstances of substance, which, if considered, will alter the outcome of the case.[26] In the instant case, a meticulous review

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[25] *Fuentes v. Court of Appeals*, G.R. No. 109849, February 26, 1997, 268 SCRA 703.

[26] *Mendoza v. People*, G.R. No. 165820, December 8, 2004; citing *People v. Cajurao*, G.R. No. 122767, January 20, 2004.

of the records gave us no reason to deviate from the factual findings of the trial court.

Buy-Bust Operation is a Legitimate Mode of Apprehending Drug Pushers

A buy-bust operation is a form of entrapment whereby ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan.[27] In this jurisdiction, the operation is legal and has been proven to be an effective method of apprehending drug peddlers, provided due regard to constitutional and legal safeguards is undertaken.[28]

In the case at bar, the evidence clearly shows that the buy-bust operation conducted by the police officers, who made use of entrapment to capture accused-appellant in the act of selling a dangerous drug, was valid. It has been established that it was the police informant who made the initial contact with accused-appellant when he introduced SPO2 Jamila as a buyer for *shabu*. SPO2 Jamila then ordered two (2) sachets of *shabu* which accused-appellant agreed to sell at PhP 1,000 per sachet. Accused-appellant left for a while and shortly thereafter, she came back with the two (2) sachets containing a white crystalline substance which was later identified as *shabu* and gave them to SPO2 Jamila. The latter then paid her with the previously marked money he brought with him. Subsequently, upon giving the pre-arranged signal, the accused-appellant was arrested. Evidently, the facts themselves demonstrate a valid buy-bust operation that is within the bounds of a fair and reasonable administration of justice.

Chain of Custody was Properly Established

Accused-appellant contends in both her *Brief for Accused-Appellant*[29] and *Supplemental Brief*[30] that there was failure on

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[27] *People v. De Leon*, G.R. No. 186471, January 25, 2010; citing *Cruz v. People*, G.R. No. 164580, February 6, 2009, 578 SCRA 147 and *People v. Del Mundo*, G.R. No. 169141, December 6, 2006, 510 SCRA 554.

[28] *People vs. De Leon*, G.R. No. 186471, January 25, 2010.

[29] CA *rollo*, pp. 37-47.

[30] *Rollo*, pp. 44-53.

the part of the police officers who allegedly conducted the buy-bust operation to properly make an inventory of the *shabu* allegedly recovered from her. She further argues that the police officers also failed to photograph and mark the *shabu* immediately after the alleged buy-bust operation. In other words, she claims that there is clear doubt on the identity of the *shabu* that was allegedly recovered from the accused-appellant because the prosecution failed to establish the chain of custody of the prohibited drug.

We do not agree.

In the prosecution for the illegal sale of prohibited drugs, the Court has reiterated the essential elements in *People v. Pendatun*, to wit: (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.[31] All these elements were ably proven by the prosecution in the instant case. The accused-appellant sold and delivered the *shabu* for PhP 2,000 to SPO2 Jamila 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, the accused-appellant was fully aware that she was selling and delivering a prohibited drug. As testified by SPO2 Jamila:

Q: Now, at about 4:30 o'clock in the afternoon of September 6, 2002, where were you at that time, Mr. Witness?
A: We were at the vicinity of Purok Ong Yiu, Butuan City, Sir.
Q: What particular purok, if you can remember?
A: At Purok 7, near the basketball court.
Q: Who were your companions at that time?
A: One PO1 Morales and our confidential agent, Sir.
Q: When you arrived at the place as you already mentioned a while ago, what else transpired?
A: Our confidential agent tried to contact one *alias* Darlene Quigod.

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[31] G.R. No. 148822, July 12, 2004, 434 SCRA 148, 155-156; citing *People v. Cercado*, G.R. No. 144494, July 26, 2002, 385 SCRA 277; *People v. Pacis*, G.R. No. 146309, July 18, 2002, 384 SCRA 684.

Q: And under whose instruction was that?
A: By myself, Sir.
Q: Your instruction?
A: Yes, Sir.
Q: Was that confidential agent, a boy or a girl?
A: A boy, Sir.
Q: Was that confidential agent able to contact a certain Darlene?
A: Yes, Sir.
Q: And, what transpired next after he was able to contact Darlene?
A: I was introduced to one Darlene that I am the buyer of *shabu*, and we agreed that she will sell the *shabu* at ₱1,000.00 per sachet.
Q: Did you agree to the proposal?
A: Yes, Sir, I ordered two (2) sachets.
Q: So, at that time Darlene was there in your presence.
A: Yes, Sir.
Q: What transpired next after that?
A: She asked permission that she will get the stuff and for us to wait and so we waited for her near the basketball court.
Q: Did she arrive?
A: After several minutes, she arrived, Sir.
Q: Who was with her, if there was any?
A: She was alone, Sir.
Q: What transpired when she arrived?
A: She handed to me the two (2) sachets and demanded the money, and I told her that I will first see the stuff whether it is a real one.
Q: How much amount was she demanding as purchase price?
A: It was ₱2,000, Sir.
Q: Why is that ₱2,000?
A: Because that is what we agreed that the price would be ₱1,000 per sachet.
Q: Did she give you the alleged *shabu*?
A: Yes, Sir.
Q: And, what did you do when you were already in the possession of the two (2) sachets of *shabu* which is, according to you, worth ₱2,000 as per sachet is ₱1,000?
A: I gave the pre-arranged signal to PO1 Morales and then he rushed up and introduced ourselves as PDEA agents and made the arrest. After which we informed of her constitutional rights.

Q: By the way, at the time when the sachets of *shabu* were handed to you by Darlene, where was Morales situated?

A: In a distance of about ten (10) to fifteen (15) meters, more or less, where the suspect could not detect him.[32]

Clearly, all the elements for the crime of illegal sale of prohibited drugs were proven in the instant case. The testimony of SPO2 Jamila plainly showed that a sale occurred between the accused-appellant, as the seller, and himself, as the buyer, for PhP 2,000 worth of *shabu*.

Further, it is worth noting that the chain of custody was also clearly established. In every prosecution for the illegal sale of prohibited drugs, the presentation of the drug, *i.e.*, as part of the *corpus delicti*, as evidence in court is also material.[33] *Corpus delicti* is the body or substance of the crime, and establishes the fact that a crime has actually been committed.[34]

In the instant case, the existence of the dangerous drug is vital to a judgment of conviction. It is, therefore, essential that the identity of the prohibited drug be established beyond doubt. Even more than this, what must also be established is the fact that the substance bought during the buy-bust operation is the same substance offered in court as exhibit. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.[35]

For the purpose of ensuring that the chain of custody is established, the Implementing Rules and Regulations of R.A. 9165 provide:

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[32] TSN, June 6, 2003, pp. 6-8.

[33] *People v. Doria*, G.R. No. 125299, January 22, 1999, 301 SCRA 668, 718; citing *People v. Zervoulakos*, 241 SCRA 625 (1995) and *People v. Rigodon*, 238 SCRA 271 (1994).

[34] *People v. Del Mundo*, G.R. No. 169141, December 6, 2006, 510 SCRA 554.

[35] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.

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 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[36] (Emphasis and underscoring supplied.)

Significantly, non-compliance with Section 21 does not render an accused's arrest illegal or the items seized/confiscated from him inadmissible.[37] 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."[38]

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[36] Implementing Rules and Regulations of Republic Act No. 9165, Section 21.

[37] *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.

[38] *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 448; citing *People v. Concepcion,* G.R. No. 178876, June 27, 2008, 556 SCRA 421.

In the instant case, there was substantial compliance with the law, and the integrity of the drugs seized from the accused-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 SPO2 Jamila seized and confiscated the dangerous drugs, as well as the marked money, the accused-appellant was immediately arrested and brought to the police station for investigation.

Immediately thereafter, the confiscated substance marked as "RPM1" and "RPM2," respectively, together with a letter of request for examination, was submitted by SPO2 Jamila to the PNP Crime Laboratory for laboratory examination to determine the presence of any dangerous drug. Notably, PO1 Morales and accused-appellant herself were with SPO2 Jamila when he delivered the same to the laboratory.

Also, it was P/Insp. Banogon himself who received the specimen from SPO2 Jamila. As mentioned above, P/Insp. Banogon is the Forensic Chemical Officer of the PNP Crime Laboratory who conducted the laboratory examination on the specimen, and based on Chemistry Report No. D-126-2002, the specimen submitted indeed contained Methamphetamine Hydrochloride, a dangerous drug. As testified by P/Insp. Banogon:

PROSECUTOR GUIRITAN:

Q: Now, insofar as this Exh. 'A' which is the written request for laboratory examination, based on this written request, please tell the court as to when it was actually received by your office?

A: It was received, sir, at around 1835 Hours or 6:30 in the evening on 06 September 2002.

Q: And who actually delivered the specimen to your office?

A: It was delivered by a certain SPO2 Jamila.

PROSECUTOR GUIRITAN:

Q: And who actually received the specimen in your office?

A: It was me who received the specimen, sir.

PROSECUTOR GUIRITAN:

For identification purposes, Your Honor, may we request the office stamp mark – it's already marked as Exh. 'A' for the prosecution, Your Honor.

Q: Now, what was the result? Who actually did? The examination of this specimen?
A: It was me, sir, the forensic examiner, the forensic chemist of the Regional Crime Laboratory who did the actual laboratory examination wherein both of the specimen tested positive for the presence of methamphetamine hydrochloride, otherwise known as *shabu*.
Q: You mean the two (2) sachets of alleged *shabu* were?
A: All positive, sir.
Q: All positive. And what is your basis in saying that? Was that report of findings of yours reduced into writing, Mr. Witness?
A: Yes, sir. I immediately consolidated my results into an official chemistry report which is now in your possession having the Chemistry Report No. of D-126-2002.[39]

Based on the foregoing, it is evident that there was an unbroken chain in the custody of the prohibited drug purchased from accused-appellant.

Defense of Denial is Inherently Weak

In the face of SPO2 Jamila's positive testimony, accused-appellant's denial is self-serving and has little weight in law. A bare denial is an inherently weak defense[40] and has been invariably viewed by this Court with disfavor for it can be easily concocted but difficult to prove, and is a common standard line of defense in most prosecutions arising from violations of RA 9165.[41] Time and again, We have held that "denials unsubstantiated by convincing evidence are not enough to engender reasonable doubt, particularly where the prosecution presents sufficiently telling proof of guilt."[42]

Also, in the absence of any intent on the part of the police authorities to falsely impute such crime against the accused-appellant, the presumption of regularity in the performance of

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[39] TSN, July 31, 2003, pp. 10-11.

[40] *People v. Dulay*, G.R. No. 150624, February 24, 2004, 423 SCRA 652, 662; citing *People v. Arlee,* 323 SCRA 201, 214 (2000).

[41] *People v. Barita*, 325 SCRA 22, 38 (2000).

[42] *People v. Eugenio*, G.R. No. 146805, January 16, 2003, 395 SCRA 317; citing *People v. Del Mundo*, G.R. No. 138929, October 2, 2001, 366 SCRA 471.

duty stands.[43] More so in the instant case, where an assiduous analysis of SPO2 Jamila's testimony does not indicate any inconsistency, contradiction or fabrication. In addition, SPO2 Jamila testified that prior to the incident, he does not know accused-appellant.

All told, we uphold the presumption of regularity in the performance of official duty and find that the prosecution has discharged its burden of proving the guilt of accused-appellant beyond reasonable doubt.

WHEREFORE, the appeal is *DENIED*. The Decision of the CA in CA-G.R. CR-H.C. No. 00279-MIN finding accused-appellant Darlene Quigod guilty of the crime charged is *AFFIRMED*.

SO ORDERED.

Corona (Chairperson), Leonardo-de Castro,[*] *Peralta,* and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 187154. April 23, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **EDWIN DALIPE *y* PEREZ,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE IN DETERMINING GUILT OR INNOCENCE OF AN ACCUSED IN REVIEWING

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[43] *People v. Cruz*, G.R. No. 185381, December 16, 2009.

[*] Additional member per August 12, 2009 raffle.

CONVICTIONS FOR RAPE CASES.— Determining the guilt or innocence of an accused, based solely on the victim's testimony, is not an easy task in reviewing convictions for rape and sexual abuse cases. For one, these crimes are usually committed in private so that only the two direct parties can attest to what actually happened. Thus, the testimonies are largely uncorroborated as to the exact details of the rape, and are usually in conflict with one another. With this in mind, we exercise utmost care in scrutinizing the parties' testimonies to determine who of them should be believed. Oftentimes, we rely on the surrounding circumstances as shown by the evidence and on common human experience.

2. **ID.; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT OF THE TRIAL COURT THEREON IS GENERALLY GIVEN HIGHEST DEGREE OF RESPECT, IF NOT FINALITY, ON APPEAL.—** Time and again, this Court has emphasized that the manner of assigning values to declarations of witnesses on the witness stand is best and most competently performed by the trial judge who has the unique and unmatched opportunity to observe the demeanor of witnesses and assess their credibility. In essence, when the question arises as to which of the conflicting versions of the prosecution and the defense is worthy of belief, the assessment of the trial court is generally given the highest degree of respect, if not finality.

3. **ID.; ID.; ID.; ID.; EVEN MORE ENHANCED WHEN THE COURT OF APPEALS AFFIRMS THE SAME.—** The assessment made by the trial court is even more enhanced when the Court of Appeals affirms the same, as in this case. x x x Both the trial court and the Court of Appeals found AAA's testimony to be positive, direct and categorical.

4. **CRIMINAL LAW; REVISED PENAL CODE; CRIMES; RAPE; MAY BE COMMITTED EVEN WHEN THE RAPIST AND THE VICTIM ARE NOT ALONE.—** It cannot be said that just because the brothers of AAA were present in the same room, the accused could not have perpetrated the bestial acts. Lust is not a respecter of time and place. This Court has repeatedly held that rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, and even inside a house where there are other occupants or where other members of the family are also

sleeping. Thus, it is an accepted rule in criminal law that rape may be committed even when the rapist and the victim are not alone. The fact is that rape may even be committed in the same room while the rapist's spouse is asleep, or in a small room where other family members also sleep.

5. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MINOR INCONSISTENCIES DO NOT IMPAIR THE ESSENTIAL INTEGRITY OF THE PROSECUTION'S EVIDENCE AS A WHOLE OR REFLECT ON THE WITNESSES' HONESTY.—** We find the alleged inconsistencies to be minor and inconsequential. As correctly held by the Court of Appeals, the inconsistency does not refer to any of the material ingredients of rape as would affect the criminal liability of the accused. In *Merencillo v. People*, we wrote: "Minor discrepancies or inconsistencies do not impair the essential integrity of the prosecution's evidence as a whole or reflect on the witnesses' honesty. The test is whether the testimonies agree on essential facts and whether the respective versions corroborate and substantially coincide with each other so as to make a consistent and coherent whole." Besides, as noted by the Court of Appeals, the 83-year-old grandmother of AAA was oftentimes forgetful, as testified to by CCC, and displayed utter reluctance in testifying as a hostile witness for the defense.

6. **ID.; ID.; WEIGHT AND SUFFICIENCY; POSITIVE ASSERTIONS OF PROSECUTION WITNESSES CANNOT BE OVERCOME BY MERE DENIAL OR ALIBI.—** Time-tested is the rule that between the positive assertions of prosecution witnesses and the negative averments of an accused, the former undisputedly deserves more credence and is entitled to greater evidentiary value. Thus, the positive assertions of the prosecution witnesses cannot be overcome by mere denial or alibi.

7. **ID.; ID.; ALIBI; ACCUSED MUST PROVE THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO BE AT THE CRIME SCENE AT THE TIME OF THE COMMISSION OF THE CRIME.—** For alibi to prosper, not only must an accused prove that he was at another place at the time of the commission of the crime, but also that it was physically impossible for him to be at the crime scene at that time.

8. **ID.; ID.; CREDIBILITY OF WITNESSES; CORROBORATIVE TESTIMONIES OF RELATIVES AND FRIENDS ARE VIEWED WITH SUSPICION AND SKEPTICISM BY THE COURT.**— The alibi of the accused, which was supported by the testimony of Baltazar Sabanal, cannot overcome the convincing positive evidence adduced by the prosecution. Such corroborative testimonies of relatives and friends are viewed with suspicion and skepticism by the Court.

9. **ID.; ID.; ID.; DELAY IN REPORTING OF RAPE CHARGE; DOES NOT IMPLY THAT THE CHARGE IS NOT TRUE; CASE AT BAR.**— The accused also points out that the delay in the reporting of the charges casts doubt on the veracity thereof. This argument deserves scant consideration. Indeed, the rule is that delay in the reporting of sexual abuse does not imply that the charge is not true, as the victim prefers to bear the ignominy of pain silently rather than reveal her harrowing experience and expose her shame to the world. Such delay is not unusual, especially when the victim is a minor. It bears emphasis that AAA had, in fact, immediately reported the crimes to her mother and to her grandmother. It is deplorable that neither of them did not do anything about it.

10. **ID.; ID.; ID.; WHEN A WOMAN OR A GIRL-CHILD SAYS THAT SHE HAS BEEN RAPED, SHE SAYS IN EFFECT ALL THAT IS NECESSARY TO SHOW THAT RAPE HAS INDEED BEEN COMMITTED; CASE AT BAR.**— We have ruled that a young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction. When a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape has indeed been committed. Considering the age of the complainant, who was ten years old when the crime was committed, the Court finds it improbable for a girl of her age to fabricate a charge so humiliating to herself and her family had she not been truly subjected to the painful experience of sexual abuse.

11. **CRIMINAL LAW; REVISED PENAL CODE; PENALTIES; DEATH PENALTY REDUCED TO *RECLUSION PERPETUA* SHOULD BE WITHOUT ELIGIBILITY FOR PAROLE.**—

In fine, there is no iota of doubt in our mind that the accused is guilty of the crime of rape. In reducing the penalty from death to *reclusion perpetua*, the Court of Appeals failed to state that the reduction is without eligibility for parole as held in the case of *People v. Antonio Ortiz.* This should be rectified.

12. **ID.; SPECIAL OFFENSES; R.A. NO. 7610 (SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT); CHILD PROSTITUTION AND OTHER SEXUAL ABUSE UNDER SECTION 5(B) THEREOF; ESSENTIAL ELEMENTS.—** The essential elements of this provision are: "1. The accused commits the act of sexual intercourse or *lascivious conduct.* 2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse. 3. The child whether male or female, is below 18 years of age."

13. **ID.; ID.; ID.; ID.; LASCIVIOUS CONDUCT AS DEFINED UNDER SECTION 32 ARTICLE XIII OF THE IMPLEMENTING RULES AND REGULATIONS OF R.A. No. 7610.—** 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.

14. **ID.; ID.; ID.; ID.; ID.; PROPER PENALTY THEREFOR; CASE AT BAR.—** The Court of Appeals modified the trial court's decision with respect to the acts of lasciviousness and convicted the accused under Sec. 5(b) of R.A. No. 7610. x x x The first element obtains in this case. It was clearly shown beyond reasonable doubt that the accused inserted his finger into her vagina with lewd designs as inferred from the nature of the acts themselves. The second element requires that the lascivious conduct be committed on a child who is either exploited in prostitution or subjected to other sexual abuse. In this case, AAA was sexually abused because she was coerced or intimidated by the accused. AAA tried to remove the hands of the accused when he was touching her vagina, but to no avail.

15. ID.; REVISED PENAL CODE; RAPE; CIVIL LIABILITY; DAMAGES; CASE AT BAR.— As regards the civil liability of the accused, we affirm the award of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages, without need of proof. To conform with existing jurisprudence, the amount of exemplary damages should be increased from ₱25,000.00 to ₱30,000.00 for each count of rape.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MENDOZA, *J*.:

This is an appeal from the August 29, 2008 Decision[1] of the Court of Appeals, in CA-G.R. CR H.C. No. 01801, affirming with modification the Decision[2] of the Regional Trial Court of Quezon City, Branch 79, which found the accused, Edwin Dalipe *y* Perez, guilty beyond reasonable doubt of having committed three (3) counts of statutory rape[3] and two (2) counts of acts of lasciviousness[4] against his stepdaughter AAA.[5]

The Information[6] in Criminal Case No. Q-95-63737 indicting the accused reads:

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[1] Penned by Associate Justice Edgardo P. Cruz, with Associate Justices Fernanda Lampas Peralta and Normandie B. Pizzaro concurring; *Rollo*, pp. 3-19.

[2] CA *rollo*, pp. 35-53.

[3] Docketed as Criminal Cases Nos. Q-95-63737, Q-95-63738 and Q-95-63739; *id.* at 3-7.

[4] Docketed as Criminal Cases Nos. Q-95-63740 and Q-95-63741; *id.* at 8-11.

[5] Conformably with Our ruling in *People v. Cabalquinto* (G.R. No. 167693, September 19, 2006) and subsequent cases, the identities of the offended party and her immediate family and household members, including identifying information, are withheld.

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

The undersigned Public Prosecutor, upon complaint filed by AAA, accuses EDWIN P. DALIPE of the crime of RAPE (3 counts) penalized under Article 335 of the Revised Penal Code as amended by R.A. 7659, committed as follows:

That on or about the first Friday of May 1992, or immediately prior and subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused through abuse of moral ascendancy and influence over AAA, his stepdaughter, then under eighteen (18) years of age, did then and there willfully, unlawfully and feloniously lie and have carnal knowledge of said AAA, against her will or consent, to her damage and prejudice.

CONTRARY TO LAW.

The allegations in the Informations in Criminal Cases Nos. Q-95-63738[7] and Q-95-63739[8] are the same, except as to the dates of commission of the rape charges which are "Friday of the second week of July 1992" and "July 29, 1995," respectively.

The information in Criminal Case No. Q-95-63740 reads:

The undersigned Public Prosecutor, upon prior sworn complaint of AAA, assisted by Ma. Fatima Niñon, a Social Worker from the Department of Social Welfare and Development, accuses EDWIN P. DALIPE of the crime of ACTS OF LASCIVIOUSNESS penalized under Section 5, paragraph (b) of R.A. 7610, otherwise known as the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, committed as follows:

That on February 17, 1994, Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, did then and there willfully unlawfully and feloniously touch, hold, fondle the breasts and insert his finger inside the private parts of AAA, a victim of child abuse, against her will or consent, accused being the stepfather of said victim, to her damage and prejudice.

CONTRARY TO LAW.

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[7] *Id.* at 4.

[8] *Id.* at 6.

The information in Criminal Case No. Q-95-63741[9] is the same, except as to the date of commission of the charge of acts of lasciviousness which is "on or about the first week of June 1994."[10]

During the trial, the prosecution presented, as witnesses, AAA herself; Karen Sangalang, her classmate; and Dr. Floresco P. Arizala, the NBI Medico Legal Officer. The thrust of the evidence of the prosecution, as summarized in the Appellee's Brief,[11] is as follows:

> Private complainant AAA was born on December 28, 1983 (Exh. A, Record, p. 133). Her parents GGG and FFF were married only on August 10, 1984, after the birth of AAA (Exh. C, Record, p. 135). It appears, however, that FFF separated from her husband GGG and thereafter lived with appellant Edwin Dalipe. AAA thus grew up recognizing Dalipe as the "husband" of her mother and called the latter her "papa." AAA said that appellant mauled her and her two brothers, DDD and EEE. (TSN, dated March 18, 1996, pp. 12-13, 15).
>
> AAA was raped by appellant for the first time on May 19, 1992 in their house located at No. 22 Salvador Street, Loyola Heights, Quezon City. She testified that she had been watching television with her two brothers in their room when appellant entered and sent her two brothers outside. With the two boys gone, appellant locked the door and dragged AAA to her bed. He held her two hands and removed her shorts. Appellant took off his shorts, went on top of AAA, and forced his penis into her private parts. She tried to push appellant away, but the latter only tightened his grip on AAA. He then proceeded to have sexual intercourse with AAA, who felt pain ("*masakit*" and "*mahapdi*") in her private parts. After around three minutes, AAA felt a hot and sticky fluid come out of appellant's penis, after which appellant stood up. Appellant put his clothes on and went out of the room (TSN, dated March 18, 1996, pp. 14-21).
>
> AAA also left her room and went to the room of her *Lola* BBB to tell the latter what appellant had done to her. Her grandmother

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[9] *Id.* at 10.

[10] *Id.* at 15.

[11] Counter statement of Facts, *id.* at 256-302.

only replied that she had known that appellant had been abusing her. After reporting to her grandmother, AAA went to her *Lola* BBB's store, located at the ground floor of the house, and hid herself out of fear that appellant would repeat his dastardly deed. Later on, she played with her two brothers on the ground floor of the house. Upon the return of her mother, who had been selling goods at Shoppersville, AAA reported to her that appellant had raped her. But, her mother only became angry with her. AAA could only cry as her mother told her that she had been learning too much foolishness in school (TSN, dated March 18, 1996, pp. 22-27).

That night, nevertheless, AAA slept in her bed in their room together with appellant and her mother in one bed and her two brothers in their respective beds (TSN, dated March 18, 1996, pp. 24-25).

AAA was raped for the second time by appellant on the second Friday of July 1992. Around 8 o'clock that evening, AAA and her two brothers were sleeping in their room when AAA was awakened. As the room was dark, she could only see the silhouette of appellant as he inserted his finger into her private parts. AAA took his hands off her and pushed appellant causing him to fall down. In response, appellant used one hand to grab both hands of AAA and used his other hand to remove her clothes. Appellant took his clothes off, went on top of AAA, and forcibly inserted his penis into her private parts. When he finished with her, appellant stood up, put his clothes on, and went back to bed. Before leaving AAA, however, appellant told her not to report what had happened to her mother because the latter would only become angry with her and drive her away (TSN, dated March 26, 1997, pp. 5-12).

AAA went to the room of her *Lola* BBB and told the latter that appellant had again molested her. Her *Lola* BBB became mad at appellant and called him a bad person and shameless ("*salbahe*" and "*walanghiya*"). AAA stayed in her grandmother's room for a long time. Later that night, AAA returned to their room to report the incident to her mother. When AAA told her what had befallen her at the hands of appellant, FFF became angry with her daughter and called her a liar. At that time, appellant was also in the room and could hear what was taking place. Afterwards, AAA went to where her two brothers had been playing and joined them, after which she fell asleep (TSN, dated March 26, 1996, pp. 12-16).

AAA also testified with regard to the acts of lasciviousness committed by appellant against her. She said that around midnight

of February 17, 1994, she was sleeping in their room when she was awakened by appellant, who had inserted his finger into her private parts. AAA then took his hand off her private parts. Realizing that AAA was already awake, appellant returned to the bed he shared with FFF. At that time, AAA's two brothers were also sleeping inside the room. On the other hand, FFF was lying on bed, but she was not asleep. AAA overheard FFF telling appellant, "*Bakit pati bata pinapatulan mo*?" ("Why do you have to make advances even to a child?"). AAA did not hear what appellant had said to her mother, but she listened to them talking for a long time. AAA no longer went back to sleep that night (TSN, dated March 26, 1996, pp. 16-20).

AAA later told her mother that appellant had inserted his finger into her private parts. But her mother only called her a liar and did not believe her. (TSN, dated March 26, 1996, pp. 20-22).

The second acts of lasciviousness committed by appellant against AAA took place on the first week of June 1994. Around 8 o'clock in the morning, AAA was awakened when she caught appellant inserting his finger into her private parts. AAA removed his hand, but appellant grabbed both her hands even as he inserted his other hand into her private parts. Appellant only stopped when he had seen that AAA was crying. He left AAA while she continued to cry inside her room (TSN, dated March 16, 1996, 23-26).

Appellant raped AAA for the last time in the evening of July 29, 1995. At past 9 o'clock of that night, AAA and her two brothers were sleeping in their room. FFF had not yet come home. AAA was awakened when she felt appellant's hand inside her shorts and underwear. She saw that appellant had inserted his finger into her private parts. AAA tried to remove appellant's hand, but appellant held both her hands. She then attempted to push appellant. However, appellant ignored her and proceeded to remove her clothes, after which he took off his shorts and underwear. He then put himself on top of AAA, sucked her breasts, and inserted his penis into her private parts. After appellant had consummated the sexual act, he stood up, put on his clothes, and returned to the bed he shared with FFF (TSN, dated March 27, 1996, pp. 3-8).

AAA again went to the room of her *Lola* BBB to report to the latter that appellant had again raped her. Her Lola BBB then confronted appellant, who denied what AAA had said and called the latter a liar. When FFF returned, AAA also told her mother what appellant had done to her. Again, FFF did not believe AAA and said

that the latter had been making up lies about appellant. Afterwards, AAA went beside one of her brothers, afraid that appellant would come back to her (TSN, dated March 27, 1996, pp. 8-14).

In August 1995, AAA told her classmate, Karen Sangalang (hereafter, Karen), about the rapes committed against her by appellant. Karen, in turn, informed her teachers, Mrs. Villamin and Ms. Manzano, about AAA's plight. When her teachers asked her, AAA confirmed that she had been raped by appellant. Her teachers thus took AAA to the DSWD office and, later on, to the NBI office, where she executed a statement, dated August 3, 1995, regarding the rapes and acts of lasciviousness committed by appellant against her. AAA was then brought by a social worker, Fatima Ninon, to CHIME in Alabang, Muntinlupa, where she was given food and clothing. Placed under the custody of the DSWD, AAA stayed in a housing facility called Cottage VI located in Alabang, Muntinlupa, where she remained until November 1995 when she began living with her real father, GGG (TSN, dated March 27, 1996, pp. 14-35; Exhibit "D", Record, pp. 136-141).

Karen Sangalang testified that around 2 o'clock in the afternoon of August 1, 1995, she, AAA, and other students had been waiting in school for the people tasked to fetch them when she noticed that AAA looked sad and teary-eyed. Karen asked AAA what had been troubling her, to which the latter replied that she had a problem that she could not tell anybody about. When Karen offered to help her, AAA confided to her that appellant had been molesting her ("*ginagalaw siya ng stepfather niya*"). AAA also told Karen that her mother did not believe her when she reported to the latter what had been done to her by appellant. The following day, August 2, Karen accompanied AAA to their adviser, Mrs. Villamin, to tell the latter about AAA's plight. Mrs. Villamin then took Karen [AAA] to the guidance counselor to report the rapes committed against Karen [AAA]. Later on, AAA was brought to the DSWD (TSN, dated August 27, 1996, pp. 3-7).

Dr. Floresto P. Arizala was the NBI medico-legal officer who conducted the physical examination of AAA. His findings are as follows:

> GENERAL PHYSICAL EXAMINATION:
>
> Height: 148.0 cm. Weight: 84 lbs.
>
> Normally developed, fairly nourished, conscious, coherent, cooperative, ambulatory subject

Breast, developing, Areolae, light brown, 3.5 cm. in diameter.

No extragenital physical injuries noted.

GENITAL EXAMINATION:

Pubic hair, fully grown, moderate. Labia majora and labia minora, coaptated. Fourchette, tense. Vestibular mucosa, pinkish. Hymen, originally annular, tall, thick with an old healed superficial laceration at 5:00 o'clock position corresponding to a face of a watch, edges of which are rounded, non-coaptable. Hymenal orifice, admits a tube 2.0 cm. in diameter. Vaginal walls, tight. Rugosities, prominent.

CONCLUSIONS:

1. No evident sign of extragenital physical injuries noted on the body of the subject at the time of the examination.
2. Old healed superficial hymenal laceration, present.

(Exhibit "F", Record, p. 146)

Dr. Arizala explained that he first recorded the external injuries on the body of AAA and afterwards proceeded with the actual genital examination. As regards the physical examination of AAA, Dr. Arizala found no external injury on her body. With respect to the genital examination, he found superficial lacerations on AAA's hymen. He opined that these lacerations could have been produced by the insertion of a blunt object in the body of the victim, such as a male penis or a finger. Considering that the lacerations were already healed, he concluded that these were inflicted on the victim at least three (3) months and even up to one (1) year prior to the examination. Dr. Arizala also testified that the hymenal orifice of the victim in this case could admit a tube measuring two (2) centimeters in diameter (TSN, dated August 28, 1996, pp. 2-8).

Those who testified for the defense were the accused, Edwin P. Dalipe; BBB, the grandmother of AAA; CCC, an uncle of AAA; and Baltazar Sabanal. The defense of the accused, as summarized by the accused in his Appellant's Brief,[12] is as follows:

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[12] *Id.* at 95-113.

On the first day of May 1992, he was playing billiards with his friends namely, Jude, Carlo, Andoy and others from 2:00 in the afternoon up to 10:00 in the evening. After the game, they went directly to Farmer's Plaza and went home the following day.

On the second Friday of July 1992 at around 8:00 p.m., he said he was not in the house since he was always out to playing billiards on Fridays. He likewise denied the accusation that he committed acts of lasciviousness against the complainant on February 19, 1994 and on an unspecified date in June 1994.

He further denied raping the complainant on July 29, 1995 at about 9:00 in the evening. He claimed that he and Nonoy Sabanal left the house at about 8:00 pm and fetched Comato Morales at Project 8, Quezon City, then they proceeded to Kampo Disco at West Avenue, Quezon City and played billiards for four (4) hours. They went home at 3:30 in the morning of the following day.

He said that his wife, mother-in-law, and brother-in-law never confronted him regarding the alleged acts committed on AAA. He said further that this is the first time that he was charged with an offense. He and FFF started living together with the De Santoses (FFF's family) at No. 22 Salvador St., Loyola Heights, Quezon City in 1984 when AAA was only one (1) year [old], but they were driven away by BBB and CCC because they (FFF's family) do [did] not approve of his relationship with FFF. Edwin and his family moved out and transferred residence from time to time until in 1989 when FFF's brothers, WWW and XXX, prevailed upon them to return and live at the De Santos residence again to watch over the mother of FFF, who was then living alone. They moved in and stayed again with FFF's mother, where he, FFF and the kids occupied a room in the second floor of the house, adjacent to the room of his mother-in-law.

He said he treated the mother of FFF as his real mother but the latter treated him and the kids indifferently. He claimed that CCC and BBB were against him because they thought he was to share in the inheritance given to his wife FFF, consisting of a portion of the house at No. 22 Salvador, Loyola Heights which is registered under FFF's name.

While he was already under detention for two (2) months for the crimes charged, Tito Santos offered him to sign an agreement, in which the De Santos family offered to settle the instant cases with

the assurance that his family will be taken care of, provided that he (Edwin) would not return anymore to the De Santos residence. (TSN, Oct. 14, 1996, pp. 16-13, October 21, 1996, pp. 2-4).

On cross-examination, he testified that when he got married to FFF in 1991, he had no knowledge that she was previously married. He also testified that AAA was enticed by her Lola BBB to file these cases against him because of the animosity existing between him and BBB. (TSN, October 21, 1996, pp. 9-29).

BBB, is the grandmother of private complainant AAA. As the defense, hostile witness, she testified that her granddaughter was crying when she complained to her that her stomach was painful because she was "*sinalbahe*" by the accused. She cannot remember the date and year when AAA reported [the incident] to her. She admitted that she did not confront the accused regarding the report of AAA. She averred further that the accused is not her son-in-law. He is just the live-in partner of her daughter FFF. (TSN, October 29, 1996, pp. 2-20).

CCC, brother of FFF testified that he (CCC) is a resident of said house since 1991. He first saw the accused for the first time ten (10) years ago. The second time he saw the accused was when the latter was already living at No. 22 Salvador St., Loyola Heights, Quezon City.

He said he did not confront the accused nor FFF about the report relayed by AAA to her [grand]mother (BBB). But he called up his elder sister YYY who was then living in Novaliches and asked her to take AAA away from the house of Loyola Heights, Quezon City. He never thought of reporting the matter to the *barangay* or [to the] police, neither did he inquire personally from AAA about the alleged incident because he was afraid of FFF and the accused. He wanted to protect his family so he just called up YYY who could decide on this matter. He admitted that he was not happy with his sister's first marriage, much more when she was living with the accused. (TSN, November 13, 1996, pp. 3-28)

Baltazar Sabanal testified that at about 8:00 in the evening of July 29, 1995, Romulo fetched him. The accused and the three of them went to play billiards in Project 8, Quezon City until 2:00 a.m. of the following day.

On cross-examination, he testified that the accused hired him in January 1995 to work in the latter's canteen. On July 29, 1995, they

played billiards at Kampo Pub-House in Project 8, Quezon City. He left the residence of the accused after he executed his sworn statement (TSN, February 3, 1997, pp. 2-23).

In its July 30, 1997 Decision, the trial court convicted the accused of three (3) counts of statutory rape and two (2) counts of acts of lasciviousness. Thus, the trial court disposed:

WHEREFORE, judgment is hereby rendered finding the accused Edwin Dalipe *y* Perez guilty beyond reasonable doubt of the crime of statutory rape (3 counts).

In Criminal Case Nos. Q-95-63737-38, the Court sentences him to suffer the penalty of *reclusion perpetua* for each count, as penalized under Art. 335 of the Revised Penal Code, as amended by RA 7659, and to indemnify the victim in the amount of ₱50,000.00 and ₱25,000.00 for each count, as moral and exemplary damages, respectively.

In Criminal Case Nos. Q-63739, the accused is hereby sentenced to suffer the maximum penalty of DEATH, as penalized by Sec. 11, of RA 7659, and to indemnify the victim, the amount of ₱50,000.00 and ₱25,000.00 as moral and exemplary damages, respectively.

In Criminal Case Nos. Q-95-637340-41, judgment is likewise rendered finding the said accused guilty beyond reasonable doubt of the crime of acts of lasciviousness (2 counts) penalized under Sec. 5, paragraph b) of RA 7610, and he is hereby sentenced to suffer the indeterminate sentence of 9 years and 1 day of *prision mayor* as minimum to 15 years, 8 months and 20 days of *reclusion temporal,* as maximum, for each count.

SO ORDERED.[13]

On August 18, 2008, the Court of Appeals rendered the subject decision, affirming with modification the judgment of conviction of the Regional Trial Court. The dispositive portion of the decision of the Court of Appeals reads:

WHEREFORE, the appealed decision of the Regional Trial Court of Quezon City (Branch 79) is AFFIRMED with MODIFICATIONS

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[13] *Id.* at 53.

in that (i) the sentence imposed on accused appellant Edwin Dalipe *y* Perez in Crim. Case. No. Q-95-6739 is REDUCED to *reclusion perpetua*; (ii) he is ordered to pay the offended party, AAA, the sums of ₱225,000.00, ₱225,000.00 and ₱75,000.00, or the total amount of ₱525,000.00, as civil indemnity, moral damages and exemplary damages, respectively, for the three counts of rape in Crim. Case Nos. Q-95-63737, Q-95-63738 and Q-95-63739; and (iii) he is sentenced to suffer the indeterminate penalty of twelve (12) years and one (1) day of *reclusion temporal*, as a minimum, to seventeen (17) years of *reclusion temporal*, as maximum, for each count of acts of lasciviousness subject of Crim. Cases Nos. Q-95-63740 and Q-95-63741.

SO ORDERED.[14]

The Court of Appeals was of the considered view that the trial court erred in meting the accused the death penalty in Criminal Case No. Q-95-63739. In its Decision, said appellate court reasoned:

Although it was stipulated during the pre-trial and admitted by appellant that he is the stepfather of AAA, as alleged in the information, serious doubts have been cast on such admission, considering BBB's testimony that appellant was only a live-in partner of her daughter FFF. Besides, no marriage certificate was produced to prove that appellant was married to FFF. Neither has it been shown that FFF's marriage to GGG, AAA's biological father, and who is still alive, has been legally dissolved or annulled.

Circumstances that qualify a crime and increase its penalty to death cannot be subject of stipulation. The accused cannot be condemned to suffer the extreme penalty of death on the basis of stipulations or admissions. This strict rule is warranted by the gravity and irreversibility of capital punishment (*People v. Ibarrientos*, 432 SCRA 424). To justify the death penalty, the prosecution must specifically allege in the information and prove during the trial the qualifying circumstances of minority of the victim and her relationship to the offender (*People v. Escultor, supra).* At any rate, death penalty has been abolished pursuant to Rep. Act No. 9346.[15]

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[14] *Rollo*, p. 18.

[15] *Id.* at 17.

On the penalty imposed for acts of lasciviousness, the Court of Appeals ruled that the accused should have been punished pursuant to the provisions of Sec. 5(b) of R.A. No. 7610[16] (Child Abuse Act) which provides that "the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period."

In his defense, the accused argues that the prosecution's version is full of incredible and inconsistent statements, thus, creating serious doubts as to the crimes imputed to him. He emphasizes that, on the basis of the following testimony of AAA, it was impossible for him to have committed the offenses charged.

Q But you never bothered to shout and call the attention of your two kid brothers and your Lola?
A I did not shout, sir.

Q All the time that he was doing the push-up motion on top of you, one of his hand was holding your two hands and the other hand was covering your mouth, that is what you want the court to understand, correct?
A Yes, sir.

Q There was never an instance during that occasion that he released your hands with his one hand and also removed his other hand that was covering your mouth?
A He released my two hands and used his knees in pinning me down, sir.

Q When you had already your hands freed from his hold, you did not push him and shout?
A I pushed him, sir.

Q You did not shout?
A No, sir.

Q While the accused as you said was pinning you down, your two hands with his knees, his two hands were stucked [*sic*]

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[16] AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES.

on the bed to support his weight while he was doing the push up motion?

A No, sir.

Q Will you demonstrate to the Court how exactly the two hands of the accused were doing while he was making the push-up motion?

A One of his hands was holding my hands and the other was fondling my breast, sir.

x x x x x x x x x

Court:

> She clarified that in her statement at paragraph 23 because there are two (2) statements, one, before the penis was inserted and there was a change of position — *tapos po ipinasok na niya ang pek-pek ko at habang ginagawa niya iyon ay dinaganan niya ng tuhod ang dalawang kamay ko habang tutop pa rin ng kaliwang kamay niya and [sic] bibig ko at ang kanang kamay niya ang humipo sa bust ko.* (TSN, June 18, 1996, pp. 13-14).

The accused posits that, from the scenario given by the victim, he could not have possibly committed the bestial acts on her.

Determining the guilt or innocence of an accused, based solely on the victim's testimony, is not an easy task in reviewing convictions for rape and sexual abuse cases. For one, these crimes are usually committed in private so that only the two direct parties can attest to what actually happened. Thus, the testimonies are largely uncorroborated as to the exact details of the rape, and are usually in conflict with one another. With this in mind, we exercise utmost care in scrutinizing the parties' testimonies to determine who of them should be believed. Oftentimes, we rely on the surrounding circumstances as shown by the evidence and on common human experience.

After due consideration, we find no reason to doubt the veracity of AAA's testimony and her version of the events that led to the filing of the present charges.

Both the trial court and the Court of Appeals found AAA's testimony to be positive, direct and categorical.

Time and again, this Court has emphasized that the manner of assigning values to declarations of witnesses on the witness stand is best and most competently performed by the trial judge who has the unique and unmatched opportunity to observe the demeanor of witnesses and assess their credibility. In essence, when the question arises as to which of the conflicting versions of the prosecution and the defense is worthy of belief, the assessment of the trial court is generally given the highest degree of respect, if not finality. The assessment made by the trial court is even more enhanced when the Court of Appeals affirms the same, as in this case.

It cannot be said that just because the brothers of AAA were present in the same room, the accused could not have perpetrated the bestial acts. Lust is not a respecter of time and place. This Court has repeatedly held that rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, and even inside a house where there are other occupants or where other members of the family are also sleeping. Thus, it is an accepted rule in criminal law that rape may be committed even when the rapist and the victim are not alone. The fact is that rape may even be committed in the same room while the rapist's spouse is asleep, or in a small room where other family members also sleep.[17]

The accused also points to the apparent inconsistencies between the testimonies of AAA and that of her grandmother. In her testimony, AAA said that she reported every incident of rape and sexual molestation to her grandmother, while the latter testified that AAA complained to her only once.

We find the alleged inconsistencies to be minor and inconsequential. As correctly held by the Court of Appeals, the inconsistency does not refer to any of the material ingredients of rape as would affect the criminal liability of the accused. In *Merencillo v. People,*[18] we wrote:

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[17] *People v. Castel*, G.R. No. 171164, November 18, 2008 and *People v. Mejia,* G.R. No. 185723, August 4, 2009.

[18] G.R. Nos. 142369-70, April 13, 2007, 521 SCRA 31, 43.

Minor discrepancies or inconsistencies do not impair the essential integrity of the prosecution's evidence as a whole or reflect on the witnesses' honesty. The test is whether the testimonies agree on essential facts and whether the respective versions corroborate and substantially coincide with each other so as to make a consistent and coherent whole.

Besides, as noted by the Court of Appeals, the 83-year-old grandmother of AAA was oftentimes forgetful, as testified to by CCC,[19] and displayed utter reluctance in testifying as a hostile witness for the defense.

The accused adds that he could not have committed the acts ascribed to him because during those dates enumerated by the victim, he was not in the house, an alibi corroborated by his friend, Baltazar Sabanal.

We are not swayed. Time-tested is the rule that between the positive assertions of prosecution witnesses and the negative averments of an accused, the former undisputedly deserves more credence and is entitled to greater evidentiary value.[20] Thus, the positive assertions of the prosecution witnesses cannot be overcome by mere denial or alibi. For alibi to prosper, not only must an accused prove that he was at another place at the time of the commission of the crime, but also that it was physically impossible for him to be at the crime scene at that time.[21] The alibi of the accused, which was supported by the testimony of Baltazar Sabanal, cannot overcome the convincing positive evidence adduced by the prosecution. Such corroborative testimonies of relatives and friends are viewed with suspicion and skepticism by the court.[22]

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[19] TSN, November 13, 1996, p. 15.

[20] *People v. Monteron*, G.R. No. 130709, March 6, 2002, 340 SCRA 2002; *Tecson v. Sandiganbayan*, F.E. No. 123045, November 16, 1999; 318 SCRA 80 and *People v. Bustamante,* G.R. 140724-26, February 12, 2003, 397 SCRA 326.

[21] *People v. Alvarado*, G. R. No. 145730, March 19, 2002 , 379 SCRA 475.

[22] *People v. Alvero*, G.R. Nos. 134536-38*,* 5 April 2000, 329 SCRA 737, 753.

The accused also points out that the delay in the reporting of the charges casts doubt on the veracity thereof. This argument deserves scant consideration. Indeed, the rule is that delay in the reporting of sexual abuse does not imply that the charge is not true, as the victim prefers to bear the ignominy of pain silently rather than reveal her harrowing experience and expose her shame to the world. Such delay is not unusual, especially when the victim is a minor.[23] It bears emphasis that AAA had, in fact, immediately reported the crimes to her mother and to her grandmother. It is deplorable that neither of them did not do anything about it.

In a desperate and futile attempt to escape liability, the accused claims that the complainant's family merely concocted the charges against him, because they did not like him. The contention is far from persuasive. We have ruled that a young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.[24] When a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape has indeed been committed.[25] Considering the age of the complainant, who was ten years old when the crime was committed, the Court finds it improbable for a girl of her age to fabricate a charge so humiliating to herself and her family had she not been truly subjected to the painful experience of sexual abuse.

In fine, there is no iota of doubt in our mind that the accused is guilty of the crime of rape. In reducing the penalty from

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[23] *People v. Andrade,* G.R. No. 148902, September 29, 2003, 412 SCRA 243.

[24] *People v. Cabillan*, 267 SCRA 258 (1997); *People v. Gaban*, 262 SCRA 593 (1996); *People v. Derpo*, 168 SCRA 447 (1988); and *People v. Molas,* G.R. Nos. 88006-08, March 2, 1998.

[25] *People v. Diaz*, 338 Phil. 219, 230 (1997).

death to *reclusion perpetua*, the Court of Appeals failed to state that the reduction is without eligibility for parole as held in the case of *People v. Antonio Ortiz.*[26] This should be rectified.

As previously stated above, the Court of Appeals modified the trial court's decision with respect to the acts of lasciviousness and convicted the accused under Sec. 5(b) of R.A. No. 7610. Section 5(b), Article III of R.A. No. 7610, defines and penalizes acts of lasciviousness committed against a child as follows:

Section 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.

x x x x x x x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims 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; and

The essential elements of this provision are:

1. The accused commits the act of sexual intercourse or *lascivious conduct.*
2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.
3. The child whether male or female, is below 18 years of age.[27]

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[26] G. R. No. 179944, September 4, 2009.

[27] *People v. Larin,* G. R. No. 128777, October 7, 1998, 297 SCRA 309, 318; *Amployo v. People*, G. R. No. 157718, April 26, 2005, 457 SCRA 282,

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.[28] (emphasis supplied)

The first element obtains in this case. It was clearly shown beyond reasonable doubt that the accused inserted his finger into her vagina with lewd designs as inferred from the nature of the acts themselves.

The second element requires that the lascivious conduct be committed on a child who is either exploited in prostitution or subjected to other sexual abuse. [29] In this case, AAA was sexually abused because she was coerced or intimidated by the accused. AAA tried to remove the hands of the accused when he was touching her vagina, but to no avail.

As regards the civil liability of the accused, we affirm the award of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages, without need of proof. To conform with existing jurisprudence,[30] the amount of exemplary damages should be

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295; *Olivarez v. Court of Appeals*, G. R. No. 163866, July 29, 2005, 465 SCRA 465, 473; *Malto v. People*, G. R. No. 164733, September 21, 2007, 533 SCRA 643; and *People v. Abello,* G. R. No. 151952, March 25, 2009.

[28] *People v. Bon*, G. R. No. 149199, January 28, 2003, 396 SCRA 506, 514-515; *Amployo v. People*, *supra*; and *People v. Abello, supra* note 27.

[29] *People v. Abello, supra* note 27.

[30] *People v. Elmer Peralta y Hidalgo,* G. R. No. 187531, October 16, 2009; and *People v. Antonio Dalisay y Destresa,* G.R. No. 188100, November 25, 2009.

increased from ₱25,000.00 to ₱30,000.00 for each count of rape.

WHEREFORE, the August 18, 2008 Decision of the Court of Appeals in CA-G.R. CR H.C. No. 018001 finding accused Edwin Dalipe *y* Perez guilty of three (3) counts of rape and two (2) counts of acts of lasciviousness is *AFFIRMED WITH MODIFICATIONS*. The penalty of *reclusion perpetua* should be *without eligibility for parole* and that the award for exemplary damages is *increased* from ₱25,000.00 to ₱30,000.00 for each count of rape.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Leonardo-de Castro,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 188104. April 23, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **BENANCIO MORTERA *y* BELARMINO,** *appellant.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; RIGHTS OF THE ACCUSED; RIGHT TO DUE PROCESS AND RIGHT TO AN IMPARTIAL TRIAL; NOT VIOLATED BY IMPROPER REMARKS MADE BY JUDGE DURING TRIAL; CASE AT BAR.— As correctly pointed out by the Court of Appeals, although the trial judge might have made

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[*] In lieu of Associate Justice Conchita Carpio Morales per Special Order No. 837, dated April 12, 2010.

improper remarks and comments, it did not amount to a denial of his right to due process or his right to an impartial trial. Upon perusal of the transcript as a whole, it cannot be said that the remarks were reflective of his partiality. They were not out of context. Not only did the accused mislead the court by initially invoking a negative defense only to claim otherwise during trial, he was also not candid to his own lawyer, who was kept in the dark as to his intended defense. The accused having admitted the killing, a reverse order of trial could have proceeded. As it turned out, the prosecution undertook to discharge the burden of proving his guilt, when the burden of proof to establish that the killing was justified should have been his. Most probably, the trial judge was peeved at the strategy he adopted. The trial judge cannot be faulted for having made those remarks, notwithstanding the sarcastic tone impressed upon it. The sarcasm alone cannot lead us to conclude that the trial judge "had taken the cudgels for the prosecution." The invocation of *Opida*, fails to persuade us either. The facts therein are not at all fours with the case at bench. In *Opida*, we did not fail to notice the "malicious," "sadistic" and "adversarial" manner of questioning by the trial judge of the accused therein, including their defense witness. In *Opida*, the accused never admitted the commission of the crime, and so the burden of proof remained with the prosecution.

2. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; WHERE SELF-DEFENSE IS INVOKED, BURDEN SHIFTS TO ACCUSED TO PROVE THAT HE INDEED ACTED IN SELF DEFENSE; CASE AT BAR.—** In his second assigned error, the accused invokes self-defense. By asserting it, however, it became incumbent upon him to prove by clear and convincing evidence that he indeed had acted in defense of himself.

3. **CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; REQUISITES.—** The requisites of self-defense are: (1) unlawful aggression; (2) reasonable necessity of the means employed to repel or prevent it; and (3) lack of sufficient provocation on the part of the person defending himself.

4. **REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF THE TRIAL COURT COMMAND GREAT WEIGHT AND**

RESPECT ON APPEAL.— The issue of whether or not the accused acted in self-defense is undoubtedly a question of fact, and it is well entrenched in jurisprudence that findings of fact of the trial court command great weight and respect unless patent inconsistencies are ignored or where the conclusions reached are clearly unsupported by evidence.

5. **ID.; ID.; ID.; PLEA OF SELF-DEFENSE NOT PLAUSIBLE IN CASE AT BAR.—** In the present case, we find no cogent reason to disturb the decision of the trial court, as modified by the CA. In debunking his claim, we quote with approval the ruling of the CA. In the instant case, accused-appellant claims that there was unlawful aggression on the part Robelyn Rojas when the latter allegedly hit him with a spray gun. However, except this self-serving statement, no other evidence was presented to prove that indeed he was hit by Robelyn. Accused-appellant failed to show where he was hit and what injuries he sustained, if any. Moreover, his own defense witness Roden Macasantos did not see him being hit by a spray gun. On the contrary, the prosecution has clearly shown that before Robelyn was stabbed, the two even discussed with each other and accused-appellant even shook hands with him. Moreover, if indeed it was true that Robelyn was carrying a spray gun and tried to hit him, accused-appellant, while he was in a supine position, could have easily just flaunted his knife to scare his alleged attackers away. On the other hand, even if we assume to be true that he was in a supine position when he thrust the knife at his attacker, it is however impossible that the back of Robelyn would be hit, unless the latter could also fell (sic) on his back, which is again far from reality. In a myriad of cases, it has been ruled that the location, number or seriousness of the stab or hack wounds inflicted on the victim are important indicia which may disprove accused's plea of self defense. In the instant case, it is clear that the victim was stabbed at the back negating any indication that accused-appellant acted in self defense.

6. **CRIMINAL LAW; REVISED PENAL CODE; MITIGATING CIRCUMSTANCES; INCOMPLETE SELF-DEFENSE; NOT APPRECIATED WHERE PRIMORDIAL REQUISITE OF UNLAWFUL AGGRESSION IS WANTING; CASE AT BAR.—** Finding the primordial requisite of unlawful aggression wanting, the Court cannot appreciate the mitigating circumstance of incomplete self-defense.

7. ID.; ID.; MURDER; DAMAGES AWARDED IN CASE AT BAR.— As regards damages, we affirm the modification made by the Court of Appeals. Considering that only ₱14,653.50 of the ₱38,653.00 actual damages awarded by the trial court is supported by receipts, the award of ₱25,000.00 as temperate damages is proper. We, however, reinstate the amount of exemplary damages to ₱30,000.00 to be in accord with current jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MENDOZA, *J.*:

This is an appeal from the January 23, 2009 Decision[1] of the Court of Appeals which affirmed with modification the Decision[2] of the Regional Trial Court, Branch 16, Zamboanga City *(RTC),* in Criminal Case No. 19311, which found accused Benancio[3] Belarmino guilty beyond reasonable doubt of the crime of murder for the killing of one Robelyn Rojas.

The accusatory portion of the Amended Information[4] charging the accused with murder reads:

That on or about August 25, 2002, in the City of Zamboanga, Philippines and within the jurisdiction of this Honorable Court, the above named accused, armed with a knife, by means of treachery and with intent to kill, did then and there willfully, unlawfully and feloniously, assault, attack and stab from behind with the use of

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[1] Penned by Justice Rodrigo F. Lim Jr. and concurred in by Justices Michael P. Elbinias and Ruben C. Ayson, CA *rollo*, pp. 126-146.

[2] Penned by Judge Jesus C. Carbon, Jr.

[3] Appellant's Brief, CA *rollo*, p. 1, *supra* note 1.

[4] Records, p. 1.

said weapon that he was then armed with, at the person of ROBELYN ROJAS *y* MALLARI, employing means, manner and form which tended directly and specially to insure its execution without any danger to the person of the accused, and as a result of which attack, the said Robelyn Rojas *y* Mallari sustained stabbed wound on the fatal part of the latter's body which directly caused his death to the damage and prejudice of the heirs of said victim.

CONTRARY TO LAW.

Upon arraignment on February 6, 2004, the accused pleaded "Not Guilty."[5]

At the trial, the prosecution presented the following witnesses: (1) Ramil Gregorio, an eyewitness; (2) Jovel Veñales, another eyewitness; (3) Dr. Jamella Marbella, examining physician; (4) Leticia Rojas, mother of Robelyn; and (5) PO1 Yaser Hakim.

The prosecution's version of the incident, as found by the trial court and adopted by the Office of the Solicitor General, appears in the Appellee's Brief[6] as follows:

Robelyn Mallari Rojas, 23 years old, single, was stabbed and killed on August 25, 2002 at Cabato Lane, Gov. Camins, Zamboanga City. Post mortem examination conducted by Dr. Jamella Marbella, Medical Officer V of Zamboanga City Health Office showed that Robelyn Rojas sustained the following injuries:

1. Penetrating wound, clean edges, 2-5 cm width 1.5 cm. gaping located at 5 cm. from spine below the left sub-scapular region. 19 cm. deep upward towards axilla, and 11 cm. deep downward towards left flank region.

2. Linear abrasion 5.5 cm. in length at the left lateral aspect of left arm (Ex. "B").

The cause of his death was cardio pulmonary arrest probably secondary to hemorrhagic shock secondary to stab wound, penetrating left back (Exh. "A-1").

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[5] *Id.* at 19.

[6] CA *rollo*, pp. 55-57.

Prosecution witness Ramil Gregorio *y* Toribio, 24 years old, single, testified that on August 25, 2002, at about 3:00 o'clock in the afternoon, he together with Jovel Veñales, Archie Saavedra, John Carpio, Plong Siano and Alberto Rojas were drinking *tuba* at Cabato Lane, near Acapulco Drive, Governor Camins, Zamboanga City. Four of them were sitting on a chair leaning on a concrete wall while two of their companions sat on the ground. They have just started drinking when Benancio Mortera, Jr. arrived. He wanted to hit Alberto Rojas with a Nescafe glass. Alberto Rojas ran away. Mortera said, "*Sayang*." He listened while the group of Ramil Gregorio were (sic) singing accompanied by a guitar. Jomer Diaz, brother-in-law of Alberto Diaz, arrived. He bought something from a store five meters away from the place where Gregorio and his companions were drinking. Mortera said, "Here comes another Rojas." Gregorio and his companions told Jomer Diaz to run away. Mortera hurled a stone at Diaz but the latter was not hit. Mortera left but he said that he will return. After a few minutes, Mortera came back. When Jomer Diaz ran, Robelyn Rojas, brother of Alberto Rojas went to Jomer. Mortera met Robelyn at a distance of about seven meters from the place where Ramil Gregorio and his companions were drinking. Mortera and Robelyn discussed with each other. After their discussion, Mortera and Robelyn shook hands. Robelyn turned his face and walked three steps. Mortera suddenly stabbed Robelyn Rojas at the back with a knife about 9 inches long. Robelyn was hit at the back. After stabbing Robelyn, Mortera ran away. Robelyn Rojas tried to chase Mortera but he was not able to catch up with the latter. Robelyn fell down mortally wounded. He was brought to the hospital by his brother Ricky but he was [pronounced] dead on arrival at the hospital (Exh. "A").

Jovel Veñales *y* Bandian, 23 years old, who was drinking together with Ramil Gregorio, Archie Saavedra, John Carpio, Plong Siano and Alberto Rojas, in the afternoon of August 25, 2002 corroborated Ramil Gregorio's testimony.

Mrs. Leticia Rojas *y* Mallari, 48 years old, married, is the mother of Robelyn Rojas *y* Mallari. She testified that Robelyn is one of her eight children. xxx She was at work at Zamboanga Puericulture Lying-in Maternity Hospital as laundry woman when her daughter Marilyn called her by telephone informing her that Robelyn was stabbed. She went to Western Mindanao Medical Center where she saw Robelyn already dead with stab wound at the back. At past 6:00 o'clock in the evening, Robelyn's body was brought to Remedios Funeral Parlor. Mrs. Rojas testified that she spent a total of

Php38,653.00 in connection with her son's death (Exh. "J"; "J-1", "J-1-A" to "J-1-V").

Although the accused pleaded not guilty when arraigned,[7] during the trial, he admitted having stabbed the victim whom he referred to as Tonying, but claimed self-defense.[8] By his account, after leaving his uncle's house at Gov. Camins, he passed by a corner and saw a group of people drinking. They were Ramil Gregorio, Jonel Veñales and Tonying. Upon seeing him, Tonying ran away and called his brother, Alberto Rojas. When the accused was about to reach the main road, Alberto Rojas, Tonying and a certain "Duk" (brother-in-law of Tonying) accosted him and asked him for liquor money. When he refused, the three men got angry. After telling them that he had to go, Tonying hit him with a spray gun (for painting), causing him to fall down. While he was in a supine position, Tonying attempted to hit him again. It was at that point that he was able to get hold of his knife and thrust it forward and hit someone. He did not know who got stabbed. He then immediately fled to Ayala and later to Lintangan, Zamboanga del Norte.[9]

The defense witness, Roden Macasantos, claimed that he was drinking with the group of Alberto Rojas when he saw the accused having an argument with Jomer Diaz. After they had pacified the two, he saw Diaz run away. Later, he returned with Robelyn Rojas. Robelyn also argued with the accused, and they were likewise pacified by the others in the group. The dispute apparently settled, the group left Robelyn and the accused alone. After about five minutes, they heard women shouting. When they went to find out what it was all about, they saw Robelyn wounded. He, however, did not see the person who stabbed him.[10]

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[7] Records, p. 20.

[8] TSN, February 17, 2005, p. 14.

[9] *Id.* at 4-9.

[10] TSN, November 25, 2004, pp. 2-10.

On January 23, 2007, the RTC rendered judgment finding the accused guilty of murder. The trial court disposed of the case as follows:

WHEREFORE, the Court finds the accused BENANCIO MORTERA, JR. *Y* BELARMINO GUILTY BEYOND REASONABLE DOUBT of the crime of murder, as principal, for the unjustified killing of Robelyn Rojas *y* Mallari and SENTENCES said accused to suffer the penalty of *RECLUSION PERPETUA* and its accessory penalties, to pay the heirs of the victim Php50,000.00 as indemnity for his death; Php50,000.00 as moral damages; Php30,000.00 as exemplary damages; Php38,653.00 as actual damages; and to pay the costs.

SO ORDERED.

In rejecting the claim of self-defense, the trial court stated that it was not worthy of belief as it was belied by the credible testimonies of the prosecution witnesses.[11]

The accused appealed to the Court of Appeals raising the issues of denial of due process of law and his right to an impartial trial. He claimed that the trial court judge, Judge Jesus Carbon, was hostile towards him and prejudged his guilt as could be inferred from his "prosecutor-like" conduct. The accused likewise reiterated his claim of self-defense.

In its decision, the Court of Appeals affirmed the decision of the RTC with modification as to the civil liability of the accused. The CA ruled that the trial judge did not transgress the standard of "cold neutrality" required of a magistrate and added that the questions he propounded were "substantially clarificatory." The claim of self-defense was rejected for failure to prove the element of unlawful aggression by clear and convincing evidence. With respect to his civil liability, temperate damages in the amount of ₱25,000.00 was awarded, in lieu of the actual damages awarded by the trial court, for failure of Leticia Rojas to substantiate her claim with official receipts. The amount of exemplary damages

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[11] Records, pp. 107-108.

was likewise reduced to ₱25,000.00. Specifically, the dispositive portion of the decision of the Court of Appeals reads:

> WHEREFORE, in view of the foregoing, the Decision dated January 16, 2007 in Criminal Case No. 19311 finding accused-appellant guilty beyond reasonable doubt of the crime of Murder and sentencing him to suffer the penalty of *reclusion perpetua* and its accessory penalties is hereby AFFIRMED WITH MODIFICATION that accused-appellant is ORDERED to pay the heirs of victim Robelyn Rojas the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages in lieu of actual damages, and ₱25,000 as exemplary damages; and costs.
>
> SO ORDERED.

Still not satisfied, the accused now comes before this Court.[12] In seeking his acquittal, he has assigned three errors for the court's resolution, to wit: (i) there was a denial of his right to due process and of his right to have an impartial trial; (ii) there was no appreciation of the justifying circumstance of self defense; and (iii) assuming that not all the requirements of self-defense were present, there was no appreciation of the special mitigating circumstance of incomplete self-defense.

After an assiduous assessment of the records, the Court finds no reason to reverse the judgment of conviction or even appreciate the special mitigating circumstance of incomplete self-defense. We, thus, affirm.

For a better grasp of the assertion of the defense that he was denied his right to due process of law and his right to an impartial trial, we quote at length the transcript of stenographic notes. Thus:

DIRECT EXAMINATION ON THE WITNESS VENANCIO MORTERA, JR.

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[12] Both the accused and the OSG manifested that they were dispensing with the filing of supplemental briefs and submitting the case for decision based on the briefs they had filed with the CA.

COURT:

Q: During the arraignment you said you did not kill this Robelyn Rojas. Did you say that?
A: Yes, Your Honor.

COURT:

And, it's here where the accused interposed a negative defense because, you said you have nothing to do with the death of Robelyn Rojas.

WITNESS:

As far as I could remember Your Honor, he hit me then I fell down then he still approached me so what I did, I was able to thrust my knife.

COURT:

Q: You were suggesting that you might have killed him in self-defense?
A: Yes, Your Honor.

Q: As if there is something wrong to your story last February 6, 2004, you invoked a negative defense?
A: Not intentional.

Q: So, you are changing your story now? … From a negative defense you are now asserting affirmative defense?
A: He hit me first then I fell down just the same he continued approaching me so I was able to do it?

COURT:

In effect, while you were in the middle of the river you are changing boat and when you change boat in the middle of the river, sometimes you get drowned. Because you told even your own lawyer Atty. Mendoza, said that you interpose a negative defense that is why we did not have reverse trial. You were not even telling the truth to Atty. Mendoza. Because had you told him the truth, it could have been...

Q: Why did Atty. Mendoza, invoke negative defense?
A: Yes, Your Honor.

ATTY. MENDOZA:

Yes, Your Honor, I insisted that, in fact, he told me that he don't [*sic*] know that person by that name…

COURT:

Well, if he had nothing to do with the death of said person, negative defense. So, if you are not telling the truth to your lawyer, how would I know now that you are telling the truth?... Anyway if you killed a person you will have to pay for it Mr. Mortera, do you agree also?

WITNESS:

Yes, Your Honor.

COURT:

So, cross-examination.

PROSECUTOR LEDESMA: CROSS EXAMINATION ON THE WITNESS VENANCIO MORTERA, Jr.

Prosecutor Ledesma:

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Q: And you said earlier that it was this Tingay [deceased] who attacked you with this spray gun then you fell down?
A: Yes. Then he still approached me and at the same time asked money and I asked "for what?" … Then he said, for their vices.

Q: You were having this conversation while you were down?
A: Not yet.

Q: He was holding the spray gun on his hand, correct?
A: Yes.

Q: Then you said while you were down you were able to thrust your knife upward, correct?
A: Well, after hitting me, when I was already down he was still approaching me and wanted to hit me again.

Q: Yes, approaching you and in the process of hitting you, that was the time that you thrusted [*sic*] the knife, correct?
A: Yes.

Q: And it was you, who advanced personally that you were able to hit him, correct?
A: Yes.

COURT:

Q: You felt the blade of the knife slicing a person?
A: Yes, Your Honor.

Q: As if the knife hit a pig you were used to selling?
A: That knife is stainless used in cutting rope.

Q: It's a long white knife?
A: Not so long Your Honor.

Q: But, enough to kill a person?
A: Somewhat like that Your Honor.

Q: But, not enough to kill a pig?
A: No, Your Honor. That is only used in cutting rope.

Q: Where is that evil knife?
A: Well, it is in the place at Bagsakan where we are having a place.

COURT:

You tell them to throw it away or bury that knife because that is a bad knife. So long as that knife is there the one in possession of that will always have bad luck. It is cursed. Eventually, Tingay is already dead.

Q: Did your uncle also tell you that Tingay, sustained a single wound at his back?
A: Yes.

COURT:

Q: *So, when you stabbed him he was trying to hit you with a very small spray gun. How was it that he was hit at the back?*
A: Well, when he was in the act of hitting me again, I thrusted [*sic*] *the knife to... shall we say towards him Your Honor.*

Q: *That is why, it is impossible because if he was trying to hit you with a spray gun, you thrusted* [*sic*] *the knife towards him, how was it that he was hit at the back?*
A: He was hit Your Honor, when he was in the act of hitting me again.

COURT:

Proceed, Atty. Ledesma.

x x x x x x x x x

COURT:

Robelyn Rojas, was 23 years old when you killed him.

WITNESS:

I do not know the age.

COURT:

Of course, you do not know. The life span of a Filipino now is about 70 years old, Fiscal? .. Because we expect that long. So, if you did not kill him he will still have 47 years to live.

PROSECUTOR LEDESMA:

I believed [*sic*] 80 years Your Honor.

COURT:

80 for purposes of compensation.

PROSECUTOR LEDESMA:

Yes.

COURT:

He has 57 years more to live. That is the trouble of killing people because you are depriving the person of his right to live and even if what you are saying is true, you could not have been killed with that small spray gun… *You have no right to stab him. Besides, that is not what your witness said even your own witness here is not supporting your story.* Who is that witness?

WITNESS:

Denden Macasantos…

COURT:

Yes, Denden Macasantos. He did not declare what you are saying now. You are just making a story.

Q: So, even the story of your witness who I think was telling the truth, don't [*sic*] support your story Mr. Mortera… Your story now is different… Did you hear Denden?
A: Yes.

Q: They did not tell the same story as you are saying now about the spray gun being used to hit you?
A: I do not know with them Your Honor, but in my case I was really hit with that spray gun.

Q: Were you injured?
A: No.

Q: That's the whole trouble. Why will you have injury when you were not hit?
A: I was hit Your Honor.

Q: You were hit?
A: Yes, I fell down and he continued approaching me.

COURT:

You did more than what Robelyn, did to you. You killed him. Proceed.

PROSECUTOR LEDESMA:

Q: You did not report to the police that incident involving Tingay and his group, correct?
A: Yes, I did not.

Q: Instead, you immediately left for Ayala?
A: Well, after the incident I ran away towards Ayala.

COURT:

Q: By your running away because you were afraid, you were committing something wrong?
A: That is why, I ran away I have done something I was able to kill somebody.

Q: Why did you run to Ayala then run to Lintangan then return to Acapulco Drive, knowing that you have a Warrant of Arrest, you went back to Lintangan? … Because you felt guilty?
A: Yes, Your Honor.

Q: Robelyn, has seven brothers and sisters? … So, maybe you should have some vacation in Jail you are supposed to serve?

A: Yes. (Italics supplied)

Citing the foregoing as basis, the accused argues that Judge Jesus Carbon, Jr. displayed his hostility towards him and condemned him even before the defense could rest its presentation of evidence. By saying that he was "just making a story," the judge already concluded his guilt during trial.

The Court is not unaware of the case of *Tabuena v. Sandiganbayan,*[13] where it was written:

The Court has acknowledged the right of a trial judge to question witnesses with a view to satisfying his mind upon any material point which presents itself during the trial of a case over which he presides. But not only should his examination be limited to asking clarificatory questions, the right should be sparingly and judiciously used; for the rule is that the court should stay out of it as much as possible, neither interfering nor intervening in the conduct of trial… hardly in fact can one avoid the impression that the Sandiganbayan had allied itself with, or to be more precise, had taken the cudgels for the prosecution in proving the case against Tabuena and Peralta…. *The "cold neutrality of an impartial judge" requirement of due process was certainly denied Tabuena and Peralta when the court, with its overzealousness, assumed the dual role of magistrate and advocate...* A substantial portion of the TSN was incorporated in the majority opinion not to focus on "numbers" alone, but more importantly to show that the court questions were in the interest of the prosecution and which thus depart from the common standard of fairness and impartiality. (emphasis added)

The situation in the case at bench is, however, different.

As correctly pointed out by the Court of Appeals, although the trial judge might have made improper remarks and comments, it did not amount to a denial of his right to due process or his right to an impartial trial. Upon perusal of the transcript as a whole, it cannot be said that the remarks were reflective of his

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[13] G.R. Nos. 103501-03, G.R. No. 103507, February 17, 1997, 268 SCRA 332.

partiality. They were not out of context. Not only did the accused mislead the court by initially invoking a negative defense only to claim otherwise during trial, he was also not candid to his own lawyer, who was kept in the dark as to his intended defense.

The accused having admitted the killing, a reverse order of trial could have proceeded.[14] As it turned out, the prosecution undertook to discharge the burden of proving his guilt, when the burden of proof to establish that the killing was justified should have been his.[15]

Most probably, the trial judge was peeved at the strategy he adopted. The trial judge cannot be faulted for having made those remarks, notwithstanding the sarcastic tone impressed upon it. The sarcasm alone cannot lead us to conclude that the trial judge "had taken the cudgels for the prosecution."

The invocation of *Opida*[16] fails to persuade us either. The facts therein are not at all fours with the case at bench. In *Opida*, we did not fail to notice the "malicious," "sadistic" and "adversarial" manner of questioning by the trial judge of the accused therein, including their defense witness. In *Opida*, the accused never admitted the commission of the crime, and so the burden of proof remained with the prosecution.

In his second assigned error, the accused invokes self-defense. By asserting it, however, it became incumbent upon him to prove by clear and convincing evidence that he indeed had acted in defense of himself. The requisites of self-defense are: (1) unlawful aggression; (2) reasonable necessity of the means employed to repel or prevent it; and (3) lack of sufficient provocation on the part of the person defending himself.[17]

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[14] Rule 119, Section 11. The trial shall proceed in the following order:

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(e) When the accused admits the act or omission charged in the complaint or information but interposes a lawful defense, the order of trial may be modified.

[15] *People v. Unarce*, G.R. No. 120549, April 4, 1997, 270 SCRA 756.

[16] G.R. No. L-46272, June 13, 1986, 142 SCRA 295.

[17] *Novicio v. People*, G.R. No. 163331, August 29, 2008, 563 SCRA 680.

The issue of whether or not the accused acted in self-defense is undoubtedly a question of fact, and it is well entrenched in jurisprudence that findings of fact of the trial court command great weight and respect unless patent inconsistencies are ignored or where the conclusions reached are clearly unsupported by evidence.[18] In the present case, we find no cogent reason to disturb the decision of the trial court, as modified by the CA. In debunking his claim, we quote with approval the ruling of the CA.

> In the instant case, accused-appellant claims that there was unlawful aggression on the part Robelyn Rojas when the latter allegedly hit him with a spray gun. However, except this self-serving statement, no other evidence was presented to prove that indeed he was hit by Robelyn. Accused-appellant failed to show where he was hit and what injuries he sustained, if any. Moreover, his own defense witness Roden Macasantos did not see him being hit by a spray gun. On the contrary, the prosecution has clearly shown that before Robelyn was stabbed, the two even discussed with each other and accused-appellant even shook hands with him. Moreover, if indeed it was true that Robelyn was carrying a spray gun and tried to hit him, accused-appellant, while he was in a supine position, could have easily just flaunted his knife to scare his alleged attackers away. On the other hand, even if we assume to be true that he was in a supine position when he thrust the knife at his attacker, it is however impossible that the back of Robelyn would be hit, unless the latter could also fell (sic) on his back, which is again far from reality. In a myriad of cases, it has been ruled that the location, number or seriousness of the stab or hack wounds inflicted on the victim are important indicia which may disprove accused's plea of self defense. In the instant case, it is clear that the victim was stabbed at the back negating any indication that accused-appellant acted in self defense.

Finding the primordial requisite of unlawful aggression wanting, the Court cannot appreciate the mitigating circumstance of incomplete self-defense.

As regards damages, we affirm the modification made by the Court of Appeals. Considering that only ₱14,653.50 of the

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[18] *People v. Barriga*, G.R. No. 178545, September 29, 2008, 567 SCRA 65.

₱38,653.00 actual damages awarded by the trial court is supported by receipts, the award of ₱25,000.00 as temperate damages is proper.[19] We, however, reinstate the amount of exemplary damages to ₱30,000.00 to be in accord with current jurisprudence.[20]

WHEREFORE, the January 23, 2009 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00518-MIN is *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 188105. April 23, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MONICO DE CHAVEZ *y* PERLAS, JUANITO MIÑON *y* RODRIGUEZ, and ASUNCION MERCADO *y* MARCIANO,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FINDINGS OF FACT OF THE TRIAL COURT WHEN AFFIRMED BY THE APPELLATE COURT, ARE GENERALLY BINDING UPON THE SUPREME COURT;

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[19] *People v. Se,* G.R. No. 152966, March 17, 2004, 425 SCRA 725.

[20] *People v. Elmer Peralta y Hidalgo,* G. R. No. 187531, October 16, 2009; and *People v. Antonio Dalisay y Destresa,* G.R. No. 188100, November 25, 2009.

CASE AT BAR.— Prefatorily, we reiterate the rule that the findings of the trial court on the credibility of witnesses are entitled to great respect, because trial courts have the advantage of observing the demeanor of the witnesses as they testify. This is more true if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court. Both the trial court and the appellate court found the testimonies of the victim, Paolo, his grandparents, Dominador and Corazon, to be categorical and credible. The defense did not sufficiently rebut their testimonies.

2. **CRIMINAL LAW; CONSPIRACY; PRESENT WHERE TWO OR MORE PERSONS AGREE TO COMMIT A CRIME AND DECIDE TO COMMIT IT.—** There is conspiracy when two or more persons come to an agreement concerning the commission of a crime and decide to commit it. x x x In a conspiracy, every act of one of the conspirators in furtherance of a common design or purpose of such a conspiracy is the act of all. x x x Proof of the agreement need not rest on direct evidence, as the same may be inferred from the conduct of the parties indicating a common understanding among them with respect to the commission of the offense. Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident, and all the perpetrators will be liable as principals.

3. **REMEDIAL LAW; EVIDENCE; CONSPIRACY; MUST BE ESTABLISHED BY PROOF BEYOND REASONABLE DOUBT; CASE AT BAR.—** Conspiracy requires the same degree of proof required to establish the crime—proof beyond reasonable doubt; as mere presence at the scene of the crime at the time of its commission without proof of cooperation or agreement to cooperate is not enough to constitute one a party to a conspiracy. In the case at bar, the ascertained facts of the kidnapping and the proven demand for ransom of PhP 4M established beyond reasonable doubt the commission of the crime of kidnapping for ransom. Monico's guilt has been proven beyond reasonable doubt. As co-accused and co-conspirators of Monico, Asuncion and Juanito are equally guilty x x x It must be recalled that Paolo testified on the circumstances of

his kidnapping. He was lured into going with Asuncion by the ruse that his grandfather, Dominador, met an accident and wanted to talk to him. In fact, Paolo's science teacher, Ms. Tess Izon, allowed him to talk to Asuncion. When he boarded the waiting vehicle, he saw three other men, two of whom he identified as Monico and Juanito. Thus, it is established that upon his kidnapping, Monico, Juanito and Asuncion were there. When Paolo's hands and feet were tied by Monico, Juanito was the one who blindfolded him. Evidently, Juanito and Asuncion acted in concert with Monico on a common plan to kidnap Paolo and hold him for ransom. Asuncion lured Paolo to accompany her. Juanito blindfolded Paolo when they were transporting him to Nasugbu, Batangas. Moreover, for 11 days, Juanito and Asuncion guarded Paolo inside the small house at 114 Brias St., Brgy. 2, Nasugbu, Batangas. Foregoing facts taken together, without a doubt, shows conspiracy between Monico, Juanito and Asuncion in committing kidnapping for ransom.

4. **CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; COMPULSION EITHER BY "IRRESISTIBLE FORCE" OR BY "UNCONTROLLABLE FEAR"; NOT PRESENT IN CASE AT BAR.—** In full agreement with the courts *a quo*, we likewise fail to appreciate any exempting or justifying circumstance in appellants' favor anchored as it were on their mere testimonies. x x x Their testimonies and protestations, without more, that they were only compelled by threat of bodily harm by Monico is not proof of an exempting or justifying circumstance. Firstly, no other corroborative evidence was shown to prove the existence of either circumstance. While it is true that the prosecution evidence must stand on its weight and not in the weakness of appellants' defense, yet, as discussed above, the prosecution has proven beyond reasonable doubt on the active participation of Asuncion and Juanito in the kidnapping of Paolo. x x x Secondly, appellants have not shown that the house where they kept Paolo was well guarded or that an armed person was posted therein aside from their mere testimony that there were people outside the house with Monico. This belies their theory of compulsion by an exempting circumstance either of "irresistible force" or "uncontrollable fear" under Art. 12, par. 5 and 6 of the RPC sufficient to exculpate them. If they indeed labored

under such compulsion, there was nothing keeping them from running to the authorities or escaping with Paolo; but they did not. A review of the records would indicate that neither Monico nor Joselito was constantly guarding the house. As attested to by defense witnesses, Monico and Joselito were in Brgy. Tuntungin, Los Baños, Laguna on August 22, 1998 during the period of Paolo's custody. In fact, when arrested separately, Monico and Joselito were in Los Baños, Laguna and not in the house in Nasugbu, Batangas. Moreover, during the PAOCTF rescue operation at dawn of August 25, 1998, only Juanito and Asuncion were guarding Paolo in the house in Nasugbu, Batangas. The lack of the alleged compulsion is thus clear, and that Asuncion and Juanito indeed actively participated in the commission of the crime charged.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J*.:

The Case

This is an appeal[1] by accused-appellants Juanito Miñon *y* Rodriguez and Asuncion Mercado *y* Marciano seeking their acquittal by a reversal of the November 27, 2008 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 002212 which affirmed with modification their earlier conviction by the Regional Trial Court (RTC), Branch 34 in Calamba, Laguna, of the crime of Kidnapping as defined and penalized under

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[1] CA *Rollo*, pp. 497-498, Notice of Appeal [of Juanito Miñon], dated December 15, 2008; *id.* at 503-504, Notice of Appeal [of Asuncion Mercado], dated December 15, 2008.

[2] *Rollo*, pp. 4-21. Penned by Associate Justice Isaias Dicdican and concurred in by Associate Justices Juan Q. Enriquez, Jr. (Chairperson) and Marlene Gonzales-Sison.

Art. 267 of the Revised Penal Code, as amended, in Criminal Case No. 6073-98-C.

The Facts

Criminal Case No. 6073-98-C of the court of origin traces its formal beginning in an Information[3] charging accused-appellants Juanito Miñon *y* Rodriguez (Juanito) and Asuncion Mercado *y* Marciano (Asuncion) together with Monico De Chavez *y* Perlas (Monico) and Joselito Lanip *y* Genebraldo (Joselito) with the crime of *Kidnapping for Ransom* as defined and penalized under Art. 267 of the Revised Penal Code (RPC), as amended, which reads as follows:

That on or about August 14, 1998 at the Christian School International at U.P. Los Banos, and within the jurisdiction of this Honorable Court, the above-named Accused, conspiring, confederating and mutually helping one another and grouping themselves together, did then and there, by force and intimidation, willfully, unlawfully and feloniously take, carry away and deprive PAOLO EARVIN ALONZO *y* CLAUD of his liberty against his will for the purpose of extorting ransom and in fact a demand for ransom was made as a condition for his release in the amount of FOUR MILLION PESOS [₱4,000,000] to the damage and prejudice of PAOLO EARVIN ALONZO *y* CLAUD in such amount and such other amounts as may be awarded to him under the provisions of the New Civil Code.

CONTRARY TO LAW.[4]

Upon arraignment on October 5, 1998, Juanito, Asuncion, Monico and Joselito, assisted by their respective counsels, uniformly entered a plea of "Not Guilty." After the termination of the pre-trial conference on October 19, 1998, trial ensued.

Version of the Prosecution

To bolster its case against the four accused, the prosecution presented the testimonies of: (1) Paolo Earvin C. Alonzo (Paolo),

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[3] CA *Rollo*, pp. 24-26.

[4] *Id.*

the victim of the kidnapping; (2) Corazon Marquez Alonzo (Corazon), the grandmother of Paolo; (3) Dominador Alonzo (Dominador), the grandfather of Paolo; (4) Chief Inspector Asprinio Cabula (Chf. Insp. Cabula) of the Presidential Anti-Organized Crime Task Force (PAOCTF); and (4) Daisy Janope, an employee of Smart Telephone Co.

Paolo testified that on August 14, 1998 at around 3 p.m., he was at his school (Christian School International) in Los Baños when he was called to the door of his classroom where Asuncion, claiming to be someone from Zamboanga, told him that his grandfather had met an accident and wanted to talk to him. Paolo voluntarily went with the woman who brought him to a Ford Fiera where he saw three men, two of whom were Monico and Juanito. From Los Baños, they proceeded to the Jamboree site towards Calamba, then passed through the South Expressway and took the Calamba exit. Afterwards they stopped at a vacant lot where Monico bound him hand and foot and threatened him not to move; he was likewise blindfolded. He was placed at the front between the driver and another man. After several hours of travel, he was brought inside a house. He was able to talk to his grandmother, Corazon, three times telling her what his captors told him to say. He was held captive for 11 days until he was rescued at dawn on August 25, 1998.

Corazon testified that one of Paolo's captors called her in the evening of August 14, 1998 informing her that they have Paolo in custody. The next day, the man demanded a ransom of PhP 4M for Paolo. From August 15, 1998 until Paolo's rescue, the man called her house about a dozen times. At around 4 a.m. on August 25, 1998, they were informed by one Col. Gamban that Paolo has been rescued and that they should proceed to Camp Crame. At Camp Crame at around 6:30 a.m., in the office of then PAOCTF Chief Gen. Lacson, they saw Paolo and the kidnappers. She recognized Monico, who is the husband of her niece, Julie Marquez de Chavez. She talked to Monico who answered that they [Alonzo's] are the only ones who could help him as he was heavily indebted in the amount of PhP 800,000.

Dominador corroborated the testimony of Corazon, adding that Paolo was rescued in Nasugbu, Batangas; that previously, when asked by the police, he denied knowing a person named Myrna Mendoza of the Laguna Lake Development Authority (LLDA) since the cellphone used in calling their house was in her name. But when asked if he knows Monico, he told the police that Monico is the husband of his wife's niece who used to work for LLDA. He was also shown a cartographic sketch of a person he failed to identify. Finally, on November 11, 1998, while he was in his office at the Forest Products Research and Development Institute, Rex de Chavez, the eldest son of Monico, and Julie Marquez de Chavez came to see him and handed him a letter, and Rex asked for forgiveness on behalf of his father.

Chf. Insp. Cabula testified as to what happened from August 14, 1998 onwards on how the PAOCTF coordinated with the Los Baños police; meeting the grandparents of Paolo and how the team conducted surveillance activities; on how they tailed Joselito to a small house at 114 Brias St., Brgy. 2, Nasugbu, Batangas where they rescued Paolo at dawn on August 25, 1998; and the arrest of Monico and Joselito.

Upon cross-examination, however, Chf. Insp. Cabula was caught with glaring inconsistencies in his testimony and was shown not to have been in the places where he claimed to be during the alleged surveillance of Joselito and Monico and the eventual rescue of Paolo.

Finally, Daisy Janope, employee of Smart Telephone Co., testified that cellphone No. 0918-863-4179 is registered in the name of Myrna T. Mendoza and that in the billing statement for the period covering August 4 to September 3, 1998, it was used several times in calling telephone No. (049)-536-3351 with the calls originating from Batangas. The telephone No. (049)-536-3351 is that of the house of Dominador and Corazon Alonzo, grandparents of Paolo.

Version of the Defense

For its part, the defense presented the testimonies of 13 individuals, *i.e.*, the four accused and that of Priscilla B. Cuevas,

Danilo de Mesa Valencia, Sonny Atole, Marcelo Villegas, Gloria Penales, Benedicto Alborida, Apolinario Mamiit, Elmer Villanueva and Atty. Conrado Manicad, the counsel of Monico and Joselito.

Both Asuncion and Juanito, corroborating each other, attested that they have been misled and intimidated into committing the crime by Monico, who they similarly pointed to as the mastermind of the kidnapping; and that they were merely prevailed upon and compelled to follow Monico under pain of death.

To rebut and discredit the alleged surveillance conducted by the PAOCTF operatives on August 22, 1998, when Monico and Joselito allegedly went to the house at 114 Brias St., Brgy. 2, Nasugbu, Batangas from Brgy. Putho, Tuntungin, Los Baños, Laguna, the defense presented the testimonies of Priscilla B. Cuevas, Danilo de Mesa Valencia, Sonny Atole and Gloria Penales.

Priscilla B. Cuevas, Records Officer of the Land Transportation and Franchising Regulatory Board (LTFRB) testified on the certification that, as per their records, there are no franchises granted on the route Calamba-Nasugbu as of March 7, 2000.

Danilo de Mesa Valencia attested that he was together with Joselito and Monico in the afternoon of August 22, 1998 when they attended a meeting of the *Samahang Pantubig* in Purok 3 of Brgy. Putho, Tuntungin, Los Baños, Laguna. Sonny Atole testified playing cards with Monico at the store of Gloria Penales the whole day of August 22, 1998 except the period when Monico went with Joselito and Danilo de Mesa for the meeting. Gloria Penales, storekeeper, corroborated Sonny Atole, that Monico was playing with Sonny Atole in her store practically the whole day of August 22, 1998.

The defense also presented Marcelo Villegas, the *Barangay* Chairman of *Barangay* III, Nasugbu, Batangas, who testified being awakened at around 2 a.m. on August 25, 1998 by operatives of the PAOCTF to witness the rescue operation. The officers who talked to him were one Capt. Dandan and one Col. Aquino. He attested that Chf. Insp. Cabula was not one of the officers who conducted the rescue operation and that during the ocular

inspection conducted by the trial court on May 17, 1999, he was about two meters from Chf. Insp. Cabula but the latter could not identify him as the barangay chairman.

Joselito testified on how he was arrested at around 9 p.m. of August 24, 1998. Benedicto Alborida averred that in the evening of August 24, 1998, he was with Joselito in a birthday celebration. Apolinario Mamiit corroborated Joselito and Benedicto Alborida as it was his child's birthday celebration in the evening of August 24, 1998 that the latter attended.

Monico for his part merely testified that after his arrest, he met Paolo about eight times.

Defense counsel Atty. Conrado Manicad testified that it was impossible for Chf. Insp. Cabula to tail Joselito from the latter's residence to the residence of Monico using 16 men, eight cars and four motorcycles for the width of the alley they have to traverse can only accommodate one person at a time. This was corroborated by Elmer Villanueva, a pre-school teacher of Brgy. Tuntungin, Los Baños, Laguna.

The RTC Conviction

On May 7, 2001, RTC rendered a Decision[5] convicting Monico, Asuncion and Juanito while acquitting Joselito, the *fallo* reads:

> ACCORDINGLY, this Court finds accused MONICO DECHAVEZ *y* PERLAS, JUANITO MIÑON y RODRIGUEZ and ASUNCION MERCADO *y* MARCIANO **GUILTY** beyond reasonable doubt of the crime of Kidnapping as defined and penalized under Article 267 of the Revised Penal Code, as amended, and hereby sentences each one of them to suffer the penalty of **DEATH**.
>
> For failure of the prosecution to prove the guilt of the accused JOSELITO LANIP *y* GENEBRALDO beyond reasonable doubt, said accused is hereby ordered **ACQUITTED**.
>
> The Provincial Jail Warden of the Province of Laguna is hereby directed to release from detention accused Joselito Lanip *y* Genebraldo unless detained for some other valid cause.

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[5] *Id.* at 290-313. Penned by Judge Antonio M. Eugenio, Jr.

With costs against the convicted accused.

SO ORDERED.[6]

The RTC noted that Monico merely used alibi for August 22, 1998 but could not and did not account for his whereabouts on August 14, 1998 when the kidnapping was committed. Besides, he did not explain his virtual confession, in the morning of August 25, 1998, to his auntie-in-law, Corazon.

On the theory of exempting or justifying circumstance raised by Juanito and Asuncion, *i.e.*, they acted under the impulse of an uncontrollable fear of an equal or greater injury or they caused damage to another in order to avoid an evil or injury, the RTC viewed it with incredulity considering the many inconsistencies in their respective testimonies. However, the fiasco of the testimony of Chf. Insp. Cabula, destroyed the case against Joselito, which the RTC acquitted.

Pursuant to the above RTC decision of conviction, Monico, Asuncion and Juanito, who were in custody in Laguna, were committed for confinement to the New Bilibid Prison in Muntinlupa City and to the Correctional Institute for Women in Mandaluyong.[7]

The case was elevated to this court for automatic review, docketed as **G.R. No. 150387**. The three accused filed their respective briefs.[8] However, in conformity with *People v. Mateo*,[9]

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[6] *Id.* at 313.

[7] *Rollo*, p. 30, commitment of Juanito Miñon to Muntinlupa correctional facility on May 25, 2001; *id.* at 32, commitment of Asuncion Mercado to Mandaluyong Correctional Institute for Women on May 18, 2001; CA *rollo*, p. 98, confirmation of commitment from the Bureau of Corrections, dated July 11, 2003, stating that Monico de Chavez was committed to the Muntinlupa correctional facility on May 18, 2001.

[8] CA *rollo*, pp. 166-219, Brief for Accused-Appellant [Monico de Chavez], dated October 7, 2003; *id.* at 266-289, Brief for the Appellant Juanito Miñon, dated December 30, 2003; *id.* at 103-130, Brief for Appellant Asuncion M. Mercado, dated August 4, 2003.

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

we transferred this case to the CA on March 7, 2006,[10] for appropriate action and disposition.

Affirmance of Conviction by the CA

As stated at the threshold hereof, the CA, in the herein assailed September 15, 2005 Decision,[11] affirmed the judgment of conviction of the trial court but lowered the penalty to *reclusion perpetua* pursuant to RA 9346, thus:

> WHEREFORE, in view of the foregoing premises, the instant appeal is hereby DENIED and, consequently, DISMISSED. The assailed decision dated May 7, 2001, is hereby AFFIRMED with MODIFICATION. Monico De Chavez *y* Perlas, Juanito Miñon *y* Rodriguez and Asuncion Mercado *y* Marciano shall suffer the penalty of *Reclusion Perpetua*, taking into consideration the enactment of Republic Act 9346, instead of death.
>
> SO ORDERED.[12]

The CA found that all the elements of kidnapping under Art. 267 of RPC were duly proven beyond reasonable doubt. The categorical testimony of Paolo was the lynchpin in the prosecution's case, and his positive identification of Monico, Asuncion and Juanito damning to the defense. Likewise, it ruled that the demand for ransom was duly proven. Besides, as to Asuncion and Juanito, it ratiocinated that aside from their bare testimonies no other evidence was presented to prove or corroborate them, more so when their bare assertions ran counter to the categorical and credible testimony of Paolo.

Aggrieved, Juanito and Asuncion filed their respective Notices of Appeal[13] while Monico filed a Motion for Extension of Time[14] of 30 days to file a motion for reconsideration. The CA, per a

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[10] CA *rollo*, pp. 390-391, SC Resolution dated March 7, 2006.

[11] *Supra* note 2.

[12] *Id.* at 21.

[13] *Supra* note 1.

[14] CA *rollo*, pp. 500-501, dated December 22, 2008.

February 6, 2009 Resolution[15] gave due course to the appeals filed by Juanito and Asuncion while it denied Monico's motion.

The Issues

Aggrieved, Juanito and Asuncion are now with this Court via the present appeal, substantially raising the same assignment of errors raised in **G.R. No. 150387**, which were duly considered and passed upon by the appellate court.

In his appellant's brief,[16] filed in **G.R. No. 150387**, Juanito raises the following assignment of errors:

1) The trial court erred in finding insofar as accused-appellant Juanito Miñon that the alleged Kidnapping was made for the purpose of extorting ransom

2) The trial court erred in finding that accused-appellant Juanito Miñon conspired with accused Monico de Chavez in kidnapping Paolo Earvin Alonzo

3) The trial court erred in not finding that accused-appellant Juanito Miñon is entitled to the exempting circumstances of compulsion of an uncontrollable fear of an equal or greater injury (Article 12, paragraph 6 of the Revised Penal Code)

4) The trial court erred in not finding that accused-appellant Juanito Miñon was entitled to the justifying circumstance of state of necessity (Article 11, paragraph 4, Revised Penal Code).

While in her appellant's brief,[17] likewise filed in **G.R. No. 150387**, Asuncion raises the following assignment of errors:

1) The Court *a quo* erred when it did not consider that appellant Mercado did not conspire with the other appellants in this case.

2) The Court *a quo* erred when it did not consider that accused Mercado could not escape from the other appellants during

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[15] *Id.* at 506-507.

[16] *Supra* note 8.

[17] *Id.*

the incident in question because she would be definitely killed if she did so until she was arrested by the military officers concerned while she was with appellant Miñon and the victim on August 25, 1998 and, therefore, her acts thereon were justified.

3) The Court *a quo* erred when it did not acquit appellant Asuncion Mercado in this case.

In Juanito and Asuncion's supplemental brief,[18] they raise the additional assignment of error that: the CA gravely erred in finding that accused-appellants Miñon and Mercado conspired with de Chavez in the commission of the crime charged.[19]

The undisputed facts show that Paolo was indeed kidnapped and held for ransom. The trial court and the appellate court *a quo* unanimously found beyond reasonable doubt that Monico, Asuncion and Juanito committed the crime of kidnapping for ransom. In fact, in the instant appeal, Asuncion and Juanito do not dispute the commission of the crime. What they are however raising is the application of an exempting or justifying circumstance in their favor.

Thus, the assignment of errors raised by appellants Juanito and Asuncion can be summarized into two issues: *first*, whether they conspired with Monico in the perpetration of the crime; and, *second*, whether an exempting or justifying circumstance is present and applicable in their favor.

The People of the Philippines represented by the Office of the Solicitor General (OSG) chose not to file any supplemental brief confining its position and arguments in the earlier filed Brief for the Appellee.[20]

The Court's Ruling

The appeal is unmeritorious.

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[18] *Rollo*, pp. 42-46, Supplemental Brief for Accused-Appellants Juanito Miñon and Asuncion Mercado, dated October 29, 2009.

[19] *Id.* at 42.

[20] CA *Rollo*, pp. 83-103, dated January 5, 2005.

A close scrutiny of the records of the case and the clear and unanimous findings of the courts' *a quo* compel this Court to affirm accused-appellants conviction.

First Core Issue: Conspiracy Proven

Accused-appellants strongly argue that they never conspired with Monico in the kidnapping of Paolo. They maintain that even if present during the kidnapping incident, they were simply compelled by Monico, under threat of physical harm to follow the latter's orders. They argue that fact that their testimonies were uncorroborated should not be taken against them for the case of the prosecution must stand on the weight of its own evidence and not in the weakness of their defense. Besides, they contend that the testimony of Paolo does not run counter to the exempting or justifying circumstance in their favor as Paolo's testimony merely affirmed their presence in the commission of the crime.

We are not persuaded.

Prefatorily, we reiterate the rule that the findings of the trial court on the credibility of witnesses are entitled to great respect, because trial courts have the advantage of observing the demeanor of the witnesses as they testify. This is more true if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court.[21] Both the trial court and the appellate court found the testimonies of the victim, Paolo, his grandparents, Dominador and Corazon, to be categorical and credible. The defense did not sufficiently rebut their testimonies.

There is conspiracy when two or more persons come to an agreement concerning the commission of a crime and decide to

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[21] *People v. Hernandez*, G.R. No. 184804, June 18, 2009, 589 SCRA 628, 642, citing *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 444; *People v. Concepcion*, G.R. No. 178876, June 27, 2008, 556 SCRA 421, 440; *People v. Santiago*, G.R. No. 175326, November 28, 2007, 539 SCRA 198, 217.

commit it.[22] Conspiracy requires the same degree of proof required to establish the crime—proof beyond reasonable doubt;[23] as mere presence at the scene of the crime at the time of its commission without proof of cooperation or agreement to cooperate is not enough to constitute one a party to a conspiracy.[24]

In the case at bar, the ascertained facts of the kidnapping and the proven demand for ransom of PhP 4M established beyond reasonable doubt the commission of the crime of kidnapping for ransom. Monico's guilt has been proven beyond reasonable doubt. As co-accused and co-conspirators of Monico, Asuncion and Juanito are equally guilty, for in a conspiracy, every act of one of the conspirators in furtherance of a common design or purpose of such a conspiracy is the act of all.[25]

In the instant appeal, Juanito and Asuncion do not question the fact of the commission of the crime of kidnapping for ransom as they merely raise the issue of lack of conspiracy and an exempting or justifying circumstance in their favor to exonerate them from criminal liability.

It must be recalled that Paolo testified on the circumstances of his kidnapping. He was lured into going with Asuncion by the ruse that his grandfather, Dominador, met an accident and wanted to talk to him. In fact, Paolo's science teacher, Ms. Tess Izon, allowed him to talk to Asuncion. When he boarded

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[22] *Mangangey v. Sandiganbayan*, G.R. Nos. 147773-74, February 18, 2008, 546 SCRA 51, 66, citing *Talay v. Court of Appeals*, G.R. No. 119477, February 27, 2003, 398 SCRA 185, 201.

[23] *People v. Malolot*, G.R. No. 174063, March 14, 2008, 548 SCRA 676, 689, citing *People v. Lacao, Sr.*, G.R. No. 95320, September 14, 1991, 201 SCRA 317, 329.

[24] *Id.*, citing *People v. Gonzales*, G.R. No. 128282, April 30, 2001, 357 SCRA 460, 474.

[25] *People v. Liquiran*, G.R. No. 105693, November 19, 1993, 228 SCRA 62, 74; *People v. Rostata*, G.R. No. 91482, February 9, 1993, 218 SCRA 657, 678; *People v. Pama*, G.R. Nos. 90297-98, December 11, 1992, 216 SCRA 385, 401.

the waiting vehicle, he saw three other men, two of whom he identified as Monico and Juanito.[26]

Thus, it is established that upon his kidnapping, Monico, Juanito and Asuncion were there. When Paolo's hands and feet were tied by Monico, Juanito was the one who blindfolded him.[27]

Evidently, Juanito and Asuncion acted in concert with Monico on a common plan to kidnap Paolo and hold him for ransom. Asuncion lured Paolo to accompany her. Juanito blindfolded Paolo when they were transporting him to Nasugbu, Batangas. Moreover, for 11 days, Juanito and Asuncion guarded Paolo inside the small house at 114 Brias St., Brgy. 2, Nasugbu, Batangas. Foregoing facts taken together, without a doubt, shows conspiracy between Monico, Juanito and Asuncion in committing kidnapping for ransom.

Proof of the agreement need not rest on direct evidence, as the same may be inferred from the conduct of the parties indicating a common understanding among them with respect to the commission of the offense.[28] Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident, and all the perpetrators will be liable as principals.[29]

Second Core Issue: Neither an Exempting or Justifying Circumstance Proven

Granting for the sake of argument that there was no conspiracy, still appellants are guilty of the crime charged. For the presence

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[26] TSN, November 9, 1998, pp. 5-8.

[27] *Id.* at 11-16.

[28] *Buebos v. People*, G.R. No. 163938, March 28, 2008, 550 SCRA 210, 224, citing *People v. Quinao*, G.R. No. 108454, March 13, 1997, 269 SCRA 495, *People v. Saul*, G.R. No. 124809, December 19, 2001, 372 SCRA 636, and *People v. Mozar*, No. L-33544, July 25, 1984, 130 SCRA 568.

[29] *David, Jr. v. People*, G.R. No. 136037, August 13, 2008, 562 SCRA 22, 35-36, citing *People v. Reyes*, G.R. No. 135682, March 26, 2003, 399 SCRA 528.

of an exempting or justifying circumstance applicable in their favor was not adequately proven. When they actively participated in the kidnapping and in holding Paolo inside the house in Nasugbu, Batangas for 11 days, Juanito and Asuncion are liable as principals for the crime of kidnapping for ransom.

In full agreement with the courts *a quo*, we likewise fail to appreciate any exempting or justifying circumstance in appellants' favor anchored as it were on their mere testimonies. This Court will not disturb the judgment of the trial court in assessing the credibility of witnesses, unless there appears in the records some facts or circumstances of weight and influence which have been overlooked or the significance of which has been misinterpreted by the trial court.[30] In the instant case, we find nothing which have been overlooked by the courts *a quo* which, if considered, would alter the outcome in so far as appellants are concerned.

Their testimonies and protestations, without more, that they were only compelled by threat of bodily harm by Monico is not proof of an exempting or justifying circumstance. Firstly, no other corroborative evidence was shown to prove the existence of either circumstance. While it is true that the prosecution evidence must stand on its weight and not in the weakness of appellants' defense, yet, as discussed above, the prosecution has proven beyond reasonable doubt on the active participation of Asuncion and Juanito in the kidnapping of Paolo. The testimony of Paolo indubitably points to the fact that Asuncion and Juanito, aside from actively participating in his kidnapping, willfully and voluntarily guarded him for 11 straight days. They may not have been the ones who threatened Paolo or dictated to him what to say to his grandparents. Yet they were the ones who were keeping him in custody.

Secondly, appellants have not shown that the house where they kept Paolo was well guarded or that an armed person was posted therein aside from their mere testimony that there were people

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[30] *Dacles v. People*, G.R. No. 171487, March 14, 2008, 548 SCRA 643, 653-654.

outside the house with Monico. This belies their theory of compulsion by an exempting circumstance either of "irresistible force" or "uncontrollable fear" under Art. 12, par. 5 and 6 of the RPC sufficient to exculpate them. If they indeed labored under such compulsion, there was nothing keeping them from running to the authorities or escaping with Paolo; but they did not. A review of the records would indicate that neither Monico nor Joselito was constantly guarding the house. As attested to by defense witnesses, Monico and Joselito were in Brgy. Tuntungin, Los Baños, Laguna on August 22, 1998 during the period of Paolo's custody. In fact, when arrested separately, Monico and Joselito were in Los Baños, Laguna and not in the house in Nasugbu, Batangas. Moreover, during the PAOCTF rescue operation at dawn of August 25, 1998, only Juanito and Asuncion were guarding Paolo in the house in Nasugbu, Batangas. The lack of the alleged compulsion is thus clear, and that Asuncion and Juanito indeed actively participated in the commission of the crime charged.

WHEREFORE, the appeal of Juanito Miñon *y* Rodriguez and Asuncion Mercado *y* Marciano is hereby *DENIED*, and the assailed November 27, 2008 of the CA in CA-G.R. CR-H.C. No. 02212 is *AFFIRMED IN TOTO*. Costs against appellants.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 189093. April 23, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CHRISTOPHER BRINGAS *y* GARCIA, BRYAN BRINGAS *y* GARCIA, JOHN ROBERT NAVARRO *y* CRUZ, ERICKSON PAJARILLO *y* BASER (deceased), and EDEN SY CHUNG,** *accused-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ABSENT ANY MOTIVE TO PERJURE, THE STRAIGHTFORWARD, COHESIVE AND POSITIVE TESTIMONIES OF PROSECUTION WITNESSES ARE WORTHY OF FULL FAITH AND CREDIT; CASE AT BAR.—** The testimonies of prosecution witnesses Maricel Hipos and Eric Teng were straightforward, cohesive, positive and credible. More so when they are corroborated on material points by the testimonies of both prosecution and defense witnesses. Besides, there is no showing that Maricel Hipos and Eric Teng had any motive to falsely testify against accused. As a rule, absent any evidence showing any reason or motive for prosecution witnesses to perjure, the logical conclusion is that no such improper motive exists, and their testimonies are thus worthy of full faith and credit. x x x The testimony of Maricel on what occurred is corroborated by the testimony of the accused that the gift Calaguas was holding did not fit the aperture in the gate. Maricel never intended them to enter the Teng's premises but was merely constrained to open the gate due to the ruse adopted by the accused. x x x As to the use of violence and intimidation, it is abundantly clear from Maricel's testimony that the accused indeed used guns to threaten and intimidate them. At the very least, Maricel positively identified Calaguas as the one holding the gift and poking her with a gun when she opened the gate, and her being herded together with Sweeney and the other house helpers to the children's room at the second floor. The use of guns to threaten and intimidate is not only plausible but well nigh credible considering the crime involved. x x x Both courts *a quo* found her testimony

credible, cohesive and straightforward. We find no cogent reason to substitute the findings of the trial court as affirmed by the appellate court. x x x The testimony of Eric supplies what transpired after he received the call from his brother Kimbol on December 14, 1994 until the morning of December 17, 1994 when the PACC held a press conference presenting the alleged kidnappers and his being able to tape segments of the evening news showing footages of the press conference. His testimony is likewise straightforward, cohesive and credible, which was not at all rebutted by the defense. x x x The testimony of state witness Rosales was likewise straightforward, cohesive and credible. And it was likewise corroborated on some material points by the officers of the PACC Task Force Habagat. Rosales was among the six arrested on December 16, 1994 in Pampanga. Jimboy Bringas pinpointed them to PACC operatives led by Police Chief Inspector Tucay. He was not included in the two Informations since he was utilized as a state witness and placed under the witness protection program of the government.

2. **ID.; ID.; ID.; TRIAL COURT'S ASSESSMENT THEREON IS GENERALLY ACCORDED GREAT WEIGHT ON APPEAL; EXCEPTION; CASE AT BAR.—** It bears stressing that prosecution witnesses Maricel Hipos, Eric Teng and state witness Jason Rosales never wavered in their testimonies under rigorous cross-examination by the various counsels representing the accused during trial. The same holds true with the testimonies of the PACC police officers. x x x The trial court is in the best position to assess the credibility of witnesses and their testimonies because of their unique opportunity to observe the witnesses firsthand, and to note their demeanor, conduct and attitude under grueling examination — significant factors in evaluating the sincerity of witnesses, in the process of unearthing the truth. x x x In fine, when the credibility of witnesses is in issue, the trial court's assessment is accorded great weight unless it is shown that it has overlooked a certain fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the results of the case. In the instant case, we find no fact or circumstance of substance overlooked, misunderstood or misappreciated by the courts *a quo*, except as to that of Bobby Bringas.

3. ID.; ID.; ID.; TESTIMONY OF ACCUSED DISCHARGED AS A STATE WITNESS NOT RENDERED INCREDIBLE NOR ITS PROBATIVE WEIGHT LESSENED; CASE AT BAR.— It must be noted that prosecutorial powers include the discretion of granting immunity to an accused in exchange for testimony against another. And the fact that an individual had not been previously charged or included in an Information does not prevent the prosecution from utilizing said person as a witness. In *People v. Bohol*, the Court held that the fact that an accused has been "discharged as a state witness and was no longer prosecuted for the crime charged does not render his testimony incredible or lessen its probative weight." The testimony of Rosales (who was utilized as a state witness) was not rebutted by the accused. His narration of the events transpiring from December 7 to 13, 1994 leading up to the actual kidnapping on December 14, 1994 cohesively showed the specific roles of the other accused relative to the instant crime. Although the Court believes that he had a greater role than what he testified to as being merely coerced. Be that as it may, it would not change the fact that in his participation of the crime, he knew and clearly pointed out the specific roles of the accused in the conspiracy and actual execution of the kidnapping and the carnapping.

4. CRIMINAL LAW; REVISED PENAL CODE; KIDNAPPING AND SERIOUS ILLEGAL DETENTION UNDER ARTICLE 276 THEREOF.— The crime of *Kidnapping and serious illegal detention,* under Art. 267 of the RPC, has the following elements: (1) the offender is a private individual; not either of the parents of the victim or a public officer who has a duty under the law to detain a person; (2) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (3) the act of detention or kidnapping must be illegal; and (4) in the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three days.

5. ID.; ID.; ID.; ALL THE ELEMENTS THEREOF HAVE BEEN PROVEN IN CASE AT BAR.— The essence of the crime of kidnapping is the actual deprivation of the victim's liberty, coupled with indubitable proof of intent of the accused to effect the same. Moreover, if the victim is a minor, or the victim is kidnapped and illegally detained for the purpose

of extorting ransom, the duration of his detention becomes inconsequential. Ransom means money, price or consideration paid or demanded for the redemption of a captured person that will release him from captivity. In the instant case, all the elements of the crime of kidnapping for ransom have been proven beyond reasonable doubt. The accused are all private individuals. The kidnapping of Patrick Teng, then three years old, a minor is undisputed. That ransom was demanded and paid is established.

6. **REMEDIAL LAW; EVIDENCE; CONSPIRACY; MAY BE PROVEN BY DIRECT OR CIRCUMSTANTIAL EVIDENCE.—** Conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it. It may be proved by direct or circumstantial evidence consisting of acts, words or conduct of the alleged conspirators before, during and after the commission of the felony to achieve a common design or purpose. Proof of the agreement need not rest on direct evidence, as the same may be inferred from the conduct of the parties indicating a common understanding among them with respect to the commission of the offense. Corollarily, it is not necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or the details by which an illegal objective is to be carried out.

7. **ID.; ID.; ID.; MUST BE PROVED WITH THE SAME DEGREE OF PROOF NECESSARY TO PROVE THE CRIME.—** To be held guilty as a co-principal by reason of conspiracy, the accused must be shown to have performed an overt act in pursuance or furtherance of the complicity — mere presence when the transaction was made does not necessarily lead to an inference of concurrence with the criminal design to commit the crime. Moreover, the same degree of proof necessary to prove the crime is required to support a finding of criminal conspiracy.

8. **ID.; ID.; ID.; ID.; CONSPIRACY DULY PROVEN BY TESTIMONY OF STATE WITNESS ROSALES IN CASE AT BAR.—** The testimony of state witness Rosales is the lynchpin by which the conspiracy is proven. Jimboy Bringas brought together Rosales, Calaguas and Sulayao from Pampanga, while

Rosales brought in Ross and Pajarillo from Laguna. They thus formed the team, although Jimboy Bringas did not join the team but was in on the sharing of the ransom. Together with Chung, Navarro and two others (Glenn Sangalang and Ricky Castillo), they proceeded to Eric's house on December 14, 1994 and kidnapped Patrick. Verily, a conspiracy is more readily proved by the acts of a fellow criminal than by any other method. Together with Ricky Castillo and Rosales, accused Ross, Pajarillo, Sulayao and Calaguas actively participated in the kidnapping. Ross drove one of the cars. Pajarillo, Sulayao and Calaguas entered the house with Rosales. Calaguas poked a gun at Maricel. Pajarillo gagged and bound Maricel. The others herded the house helpers, the kids and Sweeney to the second floor. They took Patrick after binding everyone except Mikee Teng. Then they brought Patrick to Pampanga. In all, they carried out a concerted plan of kidnapping and detaining Patrick until they were given word to bring back the child to Manila which they did the very next day shortly before midnight at the Philippine Westin Plaza. Then they went back to Pampanga, apparently to await their share of the ransom money.

9. ID.; ID.; ID.; ID.; PRESENCE OF REASONABLE DOUBT AS TO THE EXISTENCE OF CONSPIRACY SUFFICES TO NEGATE THE CRIMINAL LIABILITY OF THE ACCUSED; CASE AT BAR.— As to Bobby Bringas, it is undisputed that he did not participate in the actual kidnapping. He was in Pampanga from December 10, 1994 until he was arrested together with the others on December 16, 1994. It may be true that the other accused brought Patrick to Bobby Bringas' place but it was not shown that Bobby Bringas took care of Patrick as the group moved to different places. It was neither clearly shown that Bobby Bringas recruited the other accused to carry out the kidnapping. x x x In the absence of evidence showing the direct participation of the accused in the commission of the crime, conspiracy must be established by clear and convincing evidence in order to convict the accused. Given our observation that the involvement of Rosales was not merely of a person under coercion, there is reasonable doubt as to Bobby Bringas' involvement for it was Jimboy Bringas who brought or recruited Sulayao and Calaguas from Pampanga. There is therefore a palpable reasonable doubt of the existence of conspiracy on the part of Bobby Bringas. The

presence of reasonable doubt as to the existence of conspiracy suffices to negate not only the participation of the accused in the commission of the offense as principal but also, in the absence of proof implicating the accused as accessory or accomplice, the criminal liability of the accused. Consequently, Bobby Bringas must be acquitted from the crime of kidnapping for ransom.

10. **CRIMINAL LAW; REVISED PENAL CODE; KIDNAPPING FOR RANSOM UNDER ART. 267 THEREOF; PROPER PENALTY; CASE AT BAR.—** The penalty for kidnapping for ransom under Art. 267 of the RPC, as amended, would have been the supreme penalty of death. However, the passage of RA 9346 or the Act Prohibiting the Imposition of Death Penalty has banned the death penalty and reduced all death sentences to *reclusion perpetua* without eligibility for parole. Anent the award of damages, we find proper the award of actual damages against Navarro in the amount of PhP100,000 with legal interest of 12% from December 15, 1994 until fully paid. We, however, find the award of PhP 5 million as moral damages and PhP 2 million as exemplary damages to be exorbitant and not in accord with jurisprudence. In line with current jurisprudence, an award of PhP50,000 as civil indemnity is proper. An award of PhP 200,000 as moral damages is likewise proper considering the minority of Patrick. Moreover, when the crime of kidnapping is attended by a demand for ransom, by way of example or correction, PhP 100,000 exemplary damages is also proper. With the affirmance of the conviction of accused appellants Jimboy Bringas, Navarro and Chung, they are jointly and severally liable together with Ross, Pajarillo, Sulayao and Calaguas for the payment of the damages awarded.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

Public Attorney's Office for Christopher Bringas and Bryan Bringas.

Elene P. Tec-Rodriguez for Erickson Pajarillo.

Law Firm of Coluso Chica & Associates for John Robert Navarro.

Esteban T. Fadullon, Jr. for Aruel Ross.

Romeo N. Bartolome for Eden Sy Chung.

DECISION

VELASCO, JR., *J.*:

The Case

In the instant appeal,[1] accused-appellants John Robert Navarro *y* Cruz, Christopher Bringas *y* Garcia, Bryan Bringas *y* Garcia, and Eden Sy Chung seek their acquittal by a reversal of the January 3, 2006 Decision[2] and June 6, 2007 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00911, which affirmed their earlier conviction by the Regional Trial Court (RTC), Branch 258 in Parañaque City for violation of Republic Act No. (RA) 6539 (Carnapping) and for violation of Article 267 of the Revised Penal Code (RPC) (Kidnapping for Ransom) in Criminal Case Nos. 95-136 and 95-137, respectively.

The Facts

On April 28, 1995, accused-appellants Christopher Bringas *y* Garcia *alias* "Jimboy", John Robert Navarro *y* Cruz *alias* "Jun", Dennis Ticsay *y* Peña *alias* "Peng", Aruel Ross *y* Picardo, Bryan Bringas *y* Garcia *alias* "Bobby", Roger Calaguas *y* Jimenez *alias* "Bronson", Ericson Pajarillo[4] *y* Baser *alias* "Erick", Edgardo Sulayao *y* Petilla *alias* "Eddie", Eden Sy Chung *alias* "Kim", Glen Sangalang, and Ricky Castillo were indicted for Carnapping or violation of RA 6539. The Information[5] in Criminal Case No. 95-136 reads:

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[1] *Rollo*, pp. 83-84, Notice of Appeal [of John Robert Navarro], dated June 29, 2007; *id.* at 87-88, Notice of Appeal [of Christopher and Bryan Bringas], dated June 25, 2007; *id.* at 89-91, Notice of Appeal [of Eden Sy Chung], dated June 29, 2007.

[2] *Id.* at 3-82. Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Elvi John S. Asuncion and Noel G. Tijam.

[3] CA *rollo*, pp. 2246-2451.

[4] Also referred to as Erickson Paharillo in other parts of the records.

[5] CA *rollo*, pp. 10-12, dated April 24, 1998.

That at about 1:30 in the afternoon of December 14, 1994 at Marina Subdivision, Municipality of Parañaque and within the jurisdiction of this Honorable Court the above-named accused, conspiring, confederating and mutually helping one another, while in the process of executing their criminal design to kidnap for ransom a minor child named PATRICK TENG, with intent to gain and with violence and intimidation, did then and there, take a motor vehicle, Toyota Corolla, with Plate No. TNK-782, owned by Erick Teng.

CONTRARY TO LAW.

The same accused were likewise indicted for Kidnapping for Ransom or violation of Art. 267 of the RPC. The Information[6] in Criminal Case No. 95-137 reads:

That at about 1:30 in the afternoon of December 14, 1994 at Marina Subdivision, Municipality of Parañaque and within the jurisdiction of this Honorable Court the above-named accused, conspiring, confederating and mutually helping one another, did then and there take, carry away and kidnap a minor, PATRICK TENG, against his will and detained him for the purpose of extorting ransom for his release which was effected after payment by his parents of the amount of TWO MILLION FIVE HUNDRED THOUSAND PESOS (₱2.5 Million) to the damage and prejudice of aforementioned victim and his parents.

CONTRARY TO LAW.

Jason Rosales, a member of the group, was not included in both indictments as he was utilized as state witness and placed under the Witness Protection Program of the Government.

Except for Glen Sangalang and Ricky Castillo who remain at large, the rest of the accused were apprehended. When arraigned on September 28, 1995, the apprehended accused, assisted by their respective counsels, uniformly entered a plea of "not guilty."

To substantiate the accusations, the prosecution presented the testimonies of: (1) Rosales (state witness); (2) Maricel Hipos, house-helper of Eric Teng; (3) Police Chief Inspector Gilbert C.

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[6] *Id.* at 13-15, dated April 24, 1998.

Cruz of the Philippine Anti-Crime Commission (PACC); (4) Police Chief Inspector Michael Ray Aquino of Task Force Habagat; (5) Police Chief Inspector Paul Tucay of Task Force Habagat; (6) Eric, the father of the minor kidnap victim Patrick Teng; and (7) Antonio Nebrida (Tony) of PTV 4.

Version of the Prosecution

Culled from the records, the People's version of the incident is synthesized as follows:

That sometime around 11:30 a.m. on December 14, 1994, Eric's house helper Maricel received a phone call purportedly from Eric's brother-in-law, Johnson, informing that a gift will be delivered for Patrick, and she was instructed to wait for the driver who will be arriving soon.[7] At around 1:30 p.m., the doorbell rang and Maricel went to check the gate.[8] When she asked who it was, the men outside answered that they were delivering the gift for Patrick from Johnson.[9] Peering through the gate she saw two men,[10] whom she came to know later on to be Rosales and Calaguas with the latter holding a large gift in Christmas wrapper.[11] Since the gift could not fit the aperture in the gate, Maricel opened the gate.[12]

Calaguas then poked a gun at Maricel and pulled her towards Eric's house.[13] She was made to knock at the front door which was opened by Sweeney, the sister of Eric.[14] Maricel, Sweeney, and the other house helpers, Dina and Melanie, were herded by Calaguas to the children's room at the second floor together

[7] Records, pp. 600-604, TSN December 13, 1995.

[8] *Id.* at 604-605.

[9] *Id.* at 606.

[10] *Id.*

[11] *Id.* at 609-611.

[12] *Id.* at 612.

[13] *Id.* at 613-614.

[14] *Id.* at 615-616, 748, TSN January 24, 1996.

with Eric's children, Patrick and Mikee.[15] While on the stairway, Rosales asked for the key to Eric's car.[16] Maricel was then gagged with packing tape by Pajarillo,[17] and the three of them went down.[18] Maricel pointed to the car key in the kitchen.[19] Thereafter, Maricel was brought upstairs to the children's room by Pajarillo.[20] Already inside the children's room were Sulayao and Calaguas.[21] Pajarillo then tied the hands and feet of Maricel,[22] while the others did the same to Sweeney, Dina and Melanie.[23] However, Dina's feet were not tied.[24] One of the men said "*kunin na ninyo ang bata*."[25] Maricel identified Ross as among those who took Patrick.[26] The kidnappers also took Eric's red Toyota Corolla (Model GLI 1994).[27]

After the kidnappers left, Dina looked for a pair of scissors.[28] After the girls extricated themselves from their bindings, they immediately called Kim Teng (Kimbol), the brother of Eric, who rushed to Eric's house.[29] Shortly thereafter, at around 2:30 p.m., Kimbol called Eric to tell him about the kidnapping of his son, Patrick.[30] Eric rushed home.[31] At around 3:10 p.m., Eric

[15] *Id.* at 618-621.

[16] *Id.* at 621-623.

[17] *Id.* at 625-626.

[18] *Id.* at 623.

[19] *Id.* at 627.

[20] *Id.* at 628.

[21] *Id.* at 629-630.

[22] *Id.* at 631.

[23] *Id.* at 631-632.

[24] *Id.* at 643.

[25] *Id.* at 635.

[26] *Id.* at 641.

[27] *Id.* at 645-646.

[28] *Id.* at 643.

[29] *Id.* at 647, 761, TSN January 24, 1996.

[30] *Id.* at 1577, TSN July 31, 1996.

[31] *Id.* at 1585.

received the first call from one of the kidnappers (negotiator) demanding a ransom of PhP 10 million for his son and ordered him not to report the matter to the police else Patrick will be harmed.[32] A friend of the grandparents of Patrick, however, reported the kidnapping to the PACC Special Operations Task Force Habagat.[33]

While Eric was trying to pool resources from friends and relatives, he continued receiving calls from the same negotiator urging him to cooperate.[34] At about 4:00 p.m., Eric received a call from Gen. Panfilo Lacson, then head of the PACC Special Operations Task Force Habagat.[35] Eric was only able to raise PhP 200,000 that afternoon.[36]

Through another call, the negotiator instructed Eric to produce six individuals for them to interview and choose from to deliver the money, the qualifications given was "*kailangang matalik ninyong kaibigan na mapapagkatiwalan ng pera, hindi ninyo kamag-anak, mukhang intsik at marunung managalog*."[37] The negotiator gave his name as Eric.[38] They then called Racquel Chung, the wife of Eden Sy Chung (Chung), asking if Chung could help.[39] Imelda, Eric's wife, was able to talk to Chung who was willing to help deliver the money if selected.[40] At around 10:00 p.m., Eric again received a call from the negotiator which was followed by another call, this time by a different person.[41]

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[32] *Id.* at 1587-1589.

[33] *Id.* at 1698.

[34] *Id.* at 1589-1591.

[35] *Id.* at 1592.

[36] *Id.* at 1594; 1700.

[37] *Id.* at 1595-1596.

[38] *Id.* at 1617.

[39] *Id.* at 1597.

[40] *Id.* at 1599-1600.

[41] *Id.* at 1601-1603.

The next day, December 15, 1994, at 8:00 a.m., Chung arrived.[42] Chung encouraged Eric to pay the ransom as soon as possible.[43] Thereafter, Eric received so many calls but was able to identify the negotiator's voice. Upon query on the six individuals, he informed the negotiator that they could only come up with two: Chung and John Tuang.[44] The negotiator interviewed both Chung and John Tuang on the phone.[45] By lunchtime, the ransom was reduced to PhP 8 million,[46] which was further reduced to PhP 5 million at 4:00 p.m.[47] But Eric still could not raise the amount. After dinner, the negotiator instructed Chung and John Tuang to go home.[48] Chung borrowed Eric's car.[49] Thereafter, they received another call threatening, "*puputulin ko ang daliri ng anak mo, puputulin ko ang bayag ng anak mo papatayin ko kayo*."[50]

After a while, the negotiator called again demanding for Chung to come back, and Chung came back to the Teng's residence at around 8:00 p.m.[51] Eric was then instructed to have the ransom money delivered, which at that time was significantly reduced to PhP 2.5 million and which he was able to raise that day.[52] It was to be placed in a box and gift wrapped.[53] Chung was instructed by the negotiator to deliver the ransom money at the

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[42] *Id.* at 1604.

[43] *Id.* at 1706.

[44] *Id.* at 1605-1607.

[45] *Id.* at 1607-1608.

[46] *Id.* at 1608.

[47] *Id.* at 1609.

[48] *Id.* at 1610-1611.

[49] *Id.* at 1611.

[50] *Id.* at 1612.

[51] *Id.* at 1612-1613.

[52] *Id.* at 1613-1614.

[53] *Id.* at 1614-1616.

Quezon Memorial Circle near GSIS.[54] Chung then took Eric's two-door Honda Civic with Plate No. TGH 439.[55]

On the way, Chung called Eric telling him that he was intercepted by two cars which he had to follow.[56] The PACC operatives tailing Chung who were on radio contact with the PACC, however, belied Chung's allegation of interception.[57] The PACC then suspected Chung to be in cahoots with the kidnappers.[58] Gen. Lacson thereafter instructed Eric to delay Chung upon his return.[59] Eventually, Chung, bringing Patrick, arrived at Eric's place past midnight.[60] Chung reported to Eric that "*hinarang ako inipit ako sa dalawang kotse at nakita ko si Johnson sa isa sa mga sasakyan*."[61] Five minutes after Chung's arrival, Gen. Lacson and his men arrived and arrested Chung.[62]

A few hours thereafter, at around 4:00 a.m. of December 16, 1994, Eric received a call from Gen. Lacson informing him that the ransom money was recovered except for PhP 100,000 which was given by Chung to Navarro.[63] At around noon of December 16, 1994, Eric again received a call from the PACC informing him that Chung wanted to talk to him.[64] Chung apologized to Eric saying, "Sorry, *ginawa ko sa inyo ito, napipilitan lang ako*" and "[*T*]*utulong naman ako sa PACC ibinigay ko na yung dalawang pangalan*."[65] Chung named

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[54] *Id.* at 1619-1621.

[55] *Id.* at 1621-1622.

[56] *Id.* at 1622-1623.

[57] *Id.* at 1623-1624.

[58] *Id.* at 1625.

[59] *Id.* at 1628.

[60] *Id.* at 1629-1630.

[61] *Id.* at 1629.

[62] *Id.* at 1629-1630.

[63] *Id.* at 1630-1632.

[64] *Id.* at 1632-1633.

[65] *Id.* at 1633-1634.

Navarro and Jimboy Bringas.[66] At 4:00 p.m. of December 16, 1994, Eric again received a call from the PACC confirming the arrest of both Navarro and Jimboy Bringas.[67] And, later, at 9:00 p.m., the PACC further informed Eric that they have arrested the other kidnappers who were pointed out by Jimboy Bringas.[68] Moreover, Eric's red Toyota Corolla was likewise recovered.[69]

During the December 17, 1994 press conference at the PACC Headquarters in Camp Crame, Eric recognized the voice of the negotiator among the kidnappers whom he identified later on to be that of Navarro.[70] In the same press conference, Navarro admitted to the media that he made three calls to the Teng family regarding the ransom and that Pajarillo likewise admitted to the media that Chung supplied them with handguns except the ammunition.[71] Eric Teng was able to tape segments of the news aired over Channels 2 and 4 covering the admissions of Navarro and Pajarillo.[72]

Tony of PTV 4 testified[73] that he was the newscaster of PTV 4 of the December 17, 1994 evening news edition that what was taped by Eric Teng.

Police Chief Inspector Aquino was the Operations Chief of the PACC Task Force Habagat who coordinated the operation, monitoring and response to the kidnapping of Patrick Teng; he assigned Police Senior Inspector Rolando Mendoza to secure

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[66] *Id.* at 1634.

[67] *Id.* at 1635.

[68] *Id.* at 1635-1636.

[69] *Id.* at 1636-1637.

[70] *Id.* at 1643-1648.

[71] *Id.* at 2177-2212, TSN December 4, 1996; 2284-2306, TSN December 11, 1996.

[72] *Id.* at 4085-4095, TSN of the Press Conference held at Camp Crame, Quezon City on December 17, 1994, taken from VHS-Tape of the news coverage by PTV-4 and ABS-CBN.

[73] *Id.* at 2307-2329, TSN December 11, 1996.

the house of Eric Teng and monitor the communications with the negotiator of the kidnappers.[74] Police Chief Inspector Cruz was the one who led a team in arresting Navarro and Jimboy Bringas at around half past 1:00 p.m. on December 16, 1994 in the vicinity of Malate.[75] And Police Chief Inspector Tucay was the team leader who led the team which tailed Chung in the evening of December 15, 1994 to the house of Chung's mother, the Bowling Inn and Philippine Westin Plaza; and also led the team in the afternoon and evening of December 16, 1994 in arresting Calaguas, Sulayao, Ross, Pajarillo, Bobby Bringas and Dennis Ticsay in Pampanga and in recovering Eric Teng's red Toyota Corolla.[76]

Version of the Defense

The fractious defense offered in evidence the testimonies of: (1) John Robert Navarro; (2) Sr. Police Inspector Michael Ray Aquino; (3) Eden Sy Chung (Chung); (4) Christopher Bringas (Jimboy Bringas); (5) Roger Calaguas (Calaguas); (6) Lourdes Bringas, mother of Christopher and Bryan; (7) Bryan Bringas (Bobby Bringas); (8) Edgardo Sulayao (Sulayao), also known as Kosa; (9) Ericson Pajarillo (Pajarillo); and, (10) Aruel Ross (Ross).

The accused's divergent defenses uniformly assailed the credibility of Maricel Hipos and state witness Rosales, and in assiduously declaring their innocence they pointed to each other as the perpetrator or mastermind of the kidnapping for ransom.

From their testimonies, Navarro[77] and Chung[78] similarly asserted being implicated by the other in the crime and pointed

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[74] *Id.* at 1410-1448, TSN July 3, 1996; 1456-1486, TSN July 17, 1996.

[75] *Id.* at 1343-1410, TSN July 3, 1996.

[76] *Id.* at 1486-1507, TSN July 17, 1996; 1516-1573, TSN July 31, 1996.

[77] *Id.* at 1784-1822, TSN September 11, 1996; 1866-2029, TSN November 6, 1996.

[78] *Id.* at 2067-2075, 2076-2120, 2127-2159, TSN November 20, 1996; 2683-2773, TSN July 16, 1997; 2806-2828, TSN July 30, 1997.

at each other as the mastermind thereof. Calaguas,[79] Sulayao,[80] Pajarillo[81] and Ross[82] uniformly point to Chung and Navarro as the brains behind the kidnapping who were assisted by Rosales and Jimboy Bringas, and that they were merely implicated for they were merely hired as factory workers [Calaguas and Sulayao], for a driving job [Ross] or was only doing a favor for Rosales [Pajarillo]. They admitted the taking of Patrick Teng but denied doing any violence and the use of handguns. Calaguas and Sulayao repudiated their joint August 21, 1995 *Pinagsanib na Salaysay ng Pagpapabulaan*[83] sworn to before the state prosecutor for allegedly not being true as their former counsel, Atty. Gasmen, did not put therein what they actually narrated to him.

Jimboy Bringas maintained that he was only implicated by Chung and Navarro for he was neither involved with the crime nor participated in its commission as he was only tasked to look for factory workers by Chung and for tourist guides by Navarro.[84]

It must be noted that, while all the accused pinpointed and identified Navarro as one of the masterminds, only Pajarillo testified otherwise that John Robert Navarro is not the same person as John or Jun Navarro who was with him and Rosales in the evening of December 13, 1994 in Tradewinds Hotel, and on December 14, 1994 when they delivered gifts and the kidnapping of Patrick was committed.

Bobby Bringas strongly protested his innocence as he was in Pampanga on the days material and was never involved in the

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[79] *Id.* at 2969-3020, TSN October 8, 1997; 3037-3128, TSN October 22, 1997; 3165-3186, TSN November 12, 1997.

[80] *Id.* at 3380-3446, TSN January 21, 1998.

[81] *Id.* at 3486-3568, TSN March 18, 1998; 3590-3610, TSN May 20, 1998; 3625-3693, TSN June 3, 1998.

[82] *Id.* at 3716-3767, TSN June 10, 1998.

[83] *Id.* at 3788-3789, dated August 21, 1995.

[84] *Id.* at 2093-2964, TSN September 24, 1997.

crime but was merely implicated by Rosales. His testimony[85] and that of his mother, Lourdes Bringas,[86] were dispensed with upon the prosecution's stipulation that he was in Pampanga from December 14, 1994 until his arrest by PACC operatives on December 16, 1994.

Acquittal of Dennis Ticsay

On July 30, 1997, accused Dennis Ticsay (Ticsay) filed a Motion for Leave of Court to File Demurrer to Evidence[87] which was unopposed and granted by the trial court.[88] Accordingly, on August 22, 1997, Ticsay filed his Demurrer to Evidence.[89] On December 3, 1997, the trial court granted the demurrer and acquitted Ticsay.[90]

Subsequently, on June 10, 1998, the motions to grant bail filed by the other accused were denied by the trial court.[91]

The Ruling of the RTC and CA

The RTC, finding the testimonies of prosecution witnesses more credible, rendered, on March 26, 1999, its Joint Decision[92] finding accused-appellants and the other accused guilty beyond reasonable doubt of the crimes charged. The *fallo* reads:

WHEREFORE, viewed in the light of the foregoing, judgment is hereby rendered:

In Criminal Case No. 95-136 for CARNAPPING, defined and penalized under Republic Act No. 6539, finding accused CHRISTOPHER BRINGAS *y* Garcia; JOHN ROBERT NAVARRO *y*

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[85] *Id.* at 3339-3341, TSN December 10, 1997.

[86] *Id.* at 3334-3339, TSN December 10, 1997.

[87] *Id.* at 2774-2775, dated July 29, 1997.

[88] *Id.* at 2779, Order dated July 30, 1997.

[89] *Id.* at 2863-2867, dated August 18, 1997.

[90] *Id.* at 3211-3215, Decision dated December 3, 1997.

[91] *Id.* at 3708-3709, Order dated June 10, 1998.

[92] *Id.* at 3985-4031.

Cruz; ARUEL ROSS y Picardo; ROGER CALAGUAS *y* Jimenez; ERICKSON PAHARILLO *y* Baser; EDGARDO SULAYAO y Petilla and EDEN SY CHUNG GUILTY beyond reasonable doubt, they are hereby sentenced to suffer the indeterminate penalty of imprisonment of nineteen (19) years as minimum to twenty-seven (27) years, as maximum.

For failure of the prosecution to prove the guilt of BRYAN BRINGAS *y* GARCIA, he is hereby ACQUITTED.

In Criminal Case No. 95-137, for KIDNAPPING FOR RANSOM, defined and penalized under Article 267 of the Revised Penal Code, as amended by Republic Act no. 7659, finding accused CHRISTOPHER BRINGAS *y* Garcia; JOHN ROBERT NAVARRO *y* Cruz; ARUEL ROSS y Picardo; BRYAN BRINGAS y Garcia; ROGER CALAGUAS *y* Jimenez; ERICKSON PAHARILLO *y* Baser; EDGARDO SULAYAO *y* Petilla; and EDEN SY CHUNG guilty beyond reasonable doubt, they are hereby sentenced to suffer the supreme penalty of DEATH.

Likewise, accused JOHN ROBERT NAVARRO y Cruz is hereby directed to pay Eric Teng the sum of PhP100,000.00 as actual damages with interest thereon at the legal rate from December 15, 1994 until fully paid and all the accused are directed to pay Eric Teng jointly and severally the amount of PhP5,000,000.00 as moral damages; PhP2,000,000.00 as exemplary damages and to pay the costs.

Let *Alias* Warrants of Arrest issued against GLEN SANGALANG and RICKY CASTILLO for their immediate apprehension which need not be returned until after they have been arrested.

SO ORDERED.[93]

Thru its Order of Commitment (Mittimus),[94] the RTC sent the accused to the Bureau of Corrections in Muntinlupa City.[95]

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[93] *Id.* at 4031.

[94] CA *rollo*, pp. 96-97, dated March 26, 1999.

[95] *Rollo*, p. 118, per letter of confirmation dated November 6, 2009 from Julio A. Arciaga, Assistant Director for Prisons and Security, Bureau of Corrections, Muntinlupa City.

The RTC also elevated the records of the case to this Court for automatic review, docketed under **G.R. Nos. 139115-16**.

In accordance, however, with *People v. Mateo*,[96] the Court, per its September 7, 2004 Resolution,[97] transferred the case to the CA for intermediate review, docketed thereat as CA-G.R. CR-H.C. No. 00911.

Eventually, the CA rendered the assailed Decision dated January 3, 2006, affirming the trial court. The dispositive portion reads:

WHEREFORE, premises considered, the March 26, 1999 Joint Decision of the Regional Trial Court or Parañaque City, Branch 258, is hereby AFFIRMED. However, considering that the death penalty was imposed, instead of entering judgment, We hereby CERTIFY the case and elevate its entire record to the Supreme Court for review and final disposition, pursuant to Section 13 (a & b), Rule 124 of the Rules of Criminal Procedure.

SO ORDERED.[98]

Navarro, Pajarillo and Chung filed their respective motions for reconsideration[99] of the assailed decision. As stated at the threshold hereof, the CA, in the herein equally assailed Resolution[100] dated June 6, 2007, denied the motions, but, noting the passage of RA 9346[101] lifting the death penalty, accordingly reduced the penalty to *reclusion perpetua*. In the same assailed

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

[97] CA *rollo*, p. 1025.

[98] *Supra* note 2 at 81.

[99] CA *rollo*, pp. 2216-2242, Motion for Reconsideration [of John Robert C. Navarro], dated January 18, 2006; *Id.* at 2242-2243, Motion for Reconsideration (of the Decision Promulgated January 3, 2006) [of Ericson Pajarillo], dated January 11, 2006; *Id.* at 2259-2294, Motion for Reconsideration [of Eden Sy Chung], dated January 26, 2006.

[100] *Supra* note 2.

[101] An Act Prohibiting The Imposition Of Death Penalty In The Philippines, promulgated on June 24, 2006 and took effect on June 30, 2006.

Resolution, however, the CA further noted that the accused failed to file their motions for reconsideration or notices of appeal as regards Criminal Case No. 95-136 for Carnapping, the lesser offense, and, citing Sec. 13(b) of Rule 124 of the Revised Rules of Criminal Procedure, it pronounced finality of the affirmed RTC decision as regards Criminal Case No. 95-136.

Subsequently, on July 16, 2007, the CA issued a Resolution[102] for the issuance of a Partial Entry of Judgment[103] in Criminal Case No. 95-136 as to Ross, Jimboy Bringas, Calaguas and Sulayao. Undaunted, accused-appellants Navarro, Jimboy Bringas, Bobby Bringas and Chung filed their respective notices of appeal[104] pursuant to Sec. 13 (b), Rule 124 of the Revised Rules on Criminal Procedure.

In the meantime, on April 8, 2006, Pajarillo died from aspiration pneumonia secondary to PTB,[105] while Sulayao died on March 10, 2007.[106]

On June 23, 2009, the CA issued a Resolution[107] giving due course to the notices of appeal filed by accused-appellants and ordered the issuance of a (Partial) Entry of Judgment[108] against Ross who opted not to take any further appeal to this Court, and dismissed the instant criminal case as to Sulayao on account of his death on March 10, 2007 without prejudice to his civil liability.

We take notice, however, that the CA failed to note the May 4, 2009 letter[109] from the Bureau of Corrections in Muntinlupa

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[102] CA *rollo*, pp. 2459-2460.

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

[104] *Supra* note 1.

[105] *Rollo*, p. 103.

[106] *Id.* at 111, his body was set for an autopsy to determine cause of death.

[107] CA *rollo*, pp. 2530-2531.

[108] *Id.* at 2532.

[109] *Id.* at 2534.

City belatedly informing it, on May 6, 2009, of the death of Pajarillo way back on April 8, 2006. Consequently, the appeal[110] of Pajarillo filed by his counsel on July 4, 2007 is rendered moot and academic. Moreover, we further note that the CA failed to pronounce an entry of judgment as regards Calaguas who failed to file either a motion for reconsideration or to take a further appeal of the January 3, 2006 CA Decision. Consequently, for his failure to file an appeal as required by the rules, the instant case has become final as to Calaguas.

Thus, the instant appeals before us from accused-appellants Navarro, Jimboy Bringas, Bobby Bringas and Chung who prayed for their respective acquittal from the crime of kidnapping for ransom.

The Issues/Assignment of Errors

The People of the Philippines, represented by the OSG, and accused-appellants Navarro and Chung chose not to file any supplemental briefs, maintaining their respective positions, assignment of errors and arguments in their respective briefs earlier filed in **G.R. Nos. 139115-16**.

In his appellant's brief,[111] Chung raises the following assignment of errors:

I

THE LOWER COURT ERRED IN FINDING THAT APPELLANT CHUNG HAD CONSPIRED WITH THE OTHER APPELLANTS CONSIDERING THAT:

A. There is no clear and sufficient evidence to establish that Appellant Chung participated in the planning of the crime;

B. The evidence of conspiracy against Appellant fails to establish his participation in the planning of the offense beyond reasonable doubt;

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[110] *Id.* at 2456-2457, Notice of Appeal dated June 18, 2007.

[111] *Id.* at 193-259, Brief for the Accused Appellant Eden Sy Chung, dated April 13, 2000.

C. There are no overt acts attributable to Appellant Chung which would establish that he intended to, or did actually carry out the alleged conspiracy;

D. There is no evidence which would establish Appellant Chung's presence at the scene of the crime, or his alleged participation in aiding his co-appellants in the commission thereof.

II

THE LOWER COURT ERRED IN RELYING ON THE ALLEGED WEAKNESS OF THE DEFENSE'S EVIDENCE RATHER THAN ON THE DOUBTFUL STRENGHT (sic) OF THE EVIDENCE FOR THE PROSECUTION.

III

THE LOWER COURT GRAVELY ERRED IN FINDING, WITHOUT ANY BASIS WHATSOEVER, THAT APPELLANT CHUNG IS THE MASTERMIND OF THE CONSPIRACY.

IV

THE LOWER COURT ERRED IN GIVING FULL CREDENCE TO THE TESTIMONY OF JASON ROSALES, AN ADMITTED CO-CONSPIRATOR IN THE PLANNING AND COMMISSION OF THE OFFENSE.

V

THE LOWER COURT FAILED TO PERFORM ITS DUTY OF RESOLVING ALL DOUBTS IN THE INTERPRETATION OF EVIDENCE IN FAVOR OF APPELLANT CHUNG.[112]

Navarro, on the other hand, raises in his Appellant's Brief[113] the sole assignment of error that: The Court *a quo* committed serious error when it convicted him on the basis of what may at best be considered circumstantial evidence despite clear and direct testimonies of law enforcers and the other accused that proved his absence of involvement in the crimes charged.[114]

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[112] *Id.* at 2210-212.

[113] *Id.* at 465-513, dated January 3, 2001.

[114] *Id.* at 466.

In their Accused-Appellants' Brief,[115] Jimboy and Bobby Bringas raise the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT DESPITE FAILURE OF THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY AS PRINCIPALS OF THE CRIMES CHARGED.[116]

Moreover, in their supplemental brief,[117] Jimboy and Bobby Bringas additionally raise the assignment of errors that: (a) The Court of Appeals gravely erred in finding them guilty despite the prosecution's failure to prove it beyond reasonable doubt; and, (b) that they conspired with the other perpetrators.[118]

The foregoing issues or assignment of errors can actually be reduced and summarized as follows: *first*, on the credibility of the testimonies of the prosecution witnesses in general and, in particular, of Maricel Hipos and of the state witness Rosales; and, *second*, on the finding of conspiracy.

The Court's Ruling

The appeal is bereft of merit.

First Core Issue: Credibility of Prosecution Witnesses

Accused-appellants strongly assert that Maricel Hipos and state witness Rosales only made up their respective testimonies relative to how the kidnapping transpired.

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[115] *Id.* at 755-789, dated November 21, 2003.

[116] *Id.* at 758.

[117] Supplemental Brief for the Accused-Appellants, dated December 11, 2009.

[118] *Id.*

There is no dispute that Patrick Teng was kidnapped. It is admitted by the accused that Patrick Teng was brought to Pampanga on the day he was abducted and was released shortly before midnight the next day or on December 15, 1994. There is likewise no dispute that a PhP 2.5 million ransom was raised by the Teng family on December 15, 1994 and was handed to Chung in the evening of the same day for the payment and release of Patrick Teng as instructed by the negotiator. The undisputed facts also show that Chung was apprehended by the PACC shortly after midnight or very early on December 16, 1994; while Jimboy Bringas and Navarro were apprehended at past 1:00 p.m. on December 16, 1994; and the other accused were apprehended in Pampanga late afternoon and early evening on December 16, 1994.

Both courts *a quo* found all accused guilty beyond reasonable doubt for the crime of carnapping and kidnapping. With the instant appeal, what remains to be resolved is the respective criminal liability or lack thereof of accused-appellants Navarro, Chung, Jimboy and Bobby Bringas. An assiduous review of the records at hand, particularly the testimonies of both prosecution and defense witnesses, however, constrains this Court to affirm the appellate court's decision and resolution affirming their conviction except that of Bobby Bringas.

Prosecution Witnesses More Credible

First. The testimonies of prosecution witnesses Maricel Hipos and Eric Teng were straightforward, cohesive, positive and credible. More so when they are corroborated on material points by the testimonies of both prosecution and defense witnesses. Besides, there is no showing that Maricel Hipos and Eric Teng had any motive to falsely testify against the accused. As a rule, absent any evidence showing any reason or motive for prosecution witnesses to perjure, the logical conclusion is that no such improper motive exists, and their testimonies are thus worthy of full faith and credit.[119]

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[119] *People v. Ballesta*, G.R. No. 181632, September 25, 2008, 566 SCRA 400, 416, citing *People v. Rendoque*, G.R. No. 106282, January 20, 2000, 322 SCRA 622, 634.

The testimony of Maricel was initially assailed by accused-appellant Sulayao who testified that when the kidnapping was carried out they did not use any weapon or handgun, that they were let into the house voluntarily by Maricel and that it was Rosales who took Patrick Teng without a struggle. This assertion was uniformly shared by Pajarillo, Calaguas and Ross. However, aside from their mere assertion, they did not present any evidence supporting such contention.

The testimony of Maricel on what occurred is corroborated by the testimony of the accused that the gift Calaguas was holding did not fit the aperture in the gate. Maricel never intended them to enter the Teng's premises but was merely constrained to open the gate due to the ruse adopted by the accused.

Very telling are the testimonies of Pajarillo, Sulayao and Ross asserting that they did not see Maricel. This is incredulous for Maricel positively identified them as among the companions of Rosales during the extra-judicial line-up conducted by the PACC in Camp Crame. Aside from Calaguas, Maricel picked out Pajarillo, Sulayao and Ross from a line-up of about 15 men. During her testimony in open court, she again positively identified them. If indeed they did not meet her, Maricel could not have identified them as among the companions of Rosales and Calaguas.

Moreover, the mere denials of Calaguas, Pajarillo, Sulayao and Ross cannot prevail over the positive assertion of Maricel that she was with Sweeney, the sister of Eric Teng, and two other helpers, Dina and Melanie, who were the "*yayas*" of Patrick and Mikee. Pajarillo, Sulayao, Calaguas and Ross want the Court to believe that it was only Maricel who was in the house of Eric Teng or that aside from her there was nobody in the first floor of Eric Teng's house when Rosales supposedly brought down Patrick Teng.

Further, the testimony of Maricel is not only credible but cohesive as well considering the events that transpired from the phone call received at around 11:30 a.m. to the arrival of the kidnappers at 1:30 p.m., the time Dina was able to find scissors to cut their bindings and being freed therefrom and

calling Kimbol, who rushed to Eric's place; then Kimbol calling Eric at around 2:30 p.m. with the latter rushing home. The testimony of Eric would show how he received the call from his brother, his rushing home and receiving the first call from the negotiator [kidnappers] at around 3:10 p.m.

As to the use of violence and intimidation, it is abundantly clear from Maricel's testimony that the accused indeed used guns to threaten and intimidate them. At the very least, Maricel positively identified Calaguas as the one holding the gift and poking her with a gun when she opened the gate, and her being herded together with Sweeney and the other house helpers to the children's room at the second floor. The use of guns to threaten and intimidate is not only plausible but well nigh credible considering the crime involved. Besides, it must be noted that during the press conference on December 17, 1994, caught on camera and shown during the evening news on the same day was Pajarillo uttering words to the effect that Chung provided them with a .45 caliber and a .38 caliber handguns.

It must be noted that there is no showing that Maricel simply made up the details of her testimony or that she was coached. Both courts *a quo* found her testimony credible, cohesive and straightforward. We find no cogent reason to substitute the findings of the trial court as affirmed by the appellate court. Besides, the trial court is in the best position to assess the credibility of witnesses and their testimonies because of their unique opportunity to observe the witnesses firsthand, and to note their demeanor, conduct and attitude under grueling examination—significant factors in evaluating the sincerity of witnesses, in the process of unearthing the truth.[120]

Furthermore, the testimony of Eric supplies what transpired after he received the call from his brother Kimbol on December 14, 1994 until the morning of December 17, 1994 when the PACC held a press conference presenting the alleged

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[120] *Id.* at 415-416, citing *People v. Benito*, G.R. No. 128072, February 19, 1999, 303 SCRA 468, 476.

kidnappers and his being able to tape segments of the evening news showing footages of the press conference. His testimony is likewise straightforward, cohesive and credible, which was not at all rebutted by the defense.

Second. The testimony of state witness Rosales was likewise straightforward, cohesive and credible. And it was likewise corroborated on some material points by the officers of the PACC Task Force Habagat.

Rosales was among the six arrested on December 16, 1994 in Pampanga. Jimboy Bringas pinpointed them to PACC operatives led by Police Chief Inspector Tucay. He was not included in the two Informations since he was utilized as a state witness and placed under the witness protection program of the government. It must be noted that prosecutorial powers include the discretion of granting immunity to an accused in exchange for testimony against another.[121] And the fact that an individual had not been previously charged or included in an Information does not prevent the prosecution from utilizing said person as a witness.[122]

In *People v. Bohol*, the Court held that the fact that an accused has been "discharged as a state witness and was no longer prosecuted for the crime charged does not render his testimony incredible or lessen its probative weight."[123]

The testimony of Rosales was not rebutted by the accused. His narration of the events transpiring from December 7 to 13, 1994 leading up to the actual kidnapping on December 14, 1994

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[121] *Pontejos v. Office of the Ombudsman*, G.R. Nos. 158613-14, February 22, 2006, 483 SCRA 83, 96.

[122] *Id.* at 100, citing *People v. Peralta*, G.R. No. 133267, August 8, 2002, 387 SCRA 45; *Guingona v. Court of Appeals*, G.R. No.125532, July 10, 1998, 292 SCRA 402; *Webb v. De Leon*, G.R. No. 121234, August 23, 1995, 247 SCRA 652.

[123] G.R. No. 178198, December 10, 2008, 573 SCRA 557, 566, citing *People v. Bocalan*, G.R. No. 141527, September 4, 2003, 410 SCRA 373, 381.

cohesively showed the specific roles of the other accused relative to the instant crime. Although the Court believes that he had a greater role than what he testified to as being merely coerced. Be that as it may, it would not change the fact that in his participation of the crime, he knew and clearly pointed out the specific roles of the accused in the conspiracy and actual execution of the kidnapping and the carnapping.

The testimonies of police officers from the PACC corroborated the transfer of Patrick to Chung at around or shortly before midnight of December 15, 1994 in the parking lot of Philippine Westin Plaza.

It bears stressing that prosecution witnesses Maricel Hipos, Eric Teng and state witness Jason Rosales never wavered in their testimonies under rigorous cross-examination by the various counsels representing the accused during trial. The same holds true with the testimonies of the PACC police officers.

In fine, when the credibility of witnesses is in issue, the trial court's assessment is accorded great weight unless it is shown that it has overlooked a certain fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the results of the case.[124] In the instant case, we find no fact or circumstance of substance overlooked, misunderstood or misappreciated by the courts *a quo*, except as to that of Bobby Bringas.

Third. The prosecution witnesses PACC police officers gave clear, credible and straightforward testimonies on what transpired on their end regarding the kidnapping: their monitoring of the negotiation, the surveillance of Chung and the arrest of the accused. Their testimonies were not at all rebutted. In fact, as aptly narrated by Police Chief Inspector Tucay, accused-appellants Chung and Navarro could not deny seeing each other in the

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[124] *People v. Mateo*, G.R. No. 170569, September 30, 2008, 567 SCRA 244, 254, citing *People v. Madronio*, G.R. Nos. 137587 and 138329, July 29, 2003, 407 SCRA 337, 347.

evening of December 15, 1994 in the vicinity of their houses in Paco, their subsequent meeting at the Bowling Inn and at the Philippine Westin Plaza. After his arrest in the house of Eric Teng, Chung supplied to the PACC the names and identities of Jimboy Bringas and Navarro which led to their arrest at past 1 p.m. on December 16, 1994 in Malate. And, after his arrest, Jimboy Bringas in turn pinpointed to the PACC operatives led by Police Chief Inspector Tucay the other accused who were arrested in Pampanga late in the afternoon and early evening of December 16, 1994.

Fourth. From the defense testimonies of Jimboy Bringas, Ross, Pajarillo, Sulayao and Calaguas—upon the backdrop of the testimonies of prosecution witnesses—they collectively point to Chung and Navarro as the brains of the kidnapping. Pajarillo, however, asserted that his co-accused Navarro is not the same person as the mastermind Navarro. This assertion, however, fails *vis-à-vis* the testimony of Rosales and other accused who testified that Navarro worked closely with Chung.

Second Core Issue: Presence of Conspiracy

Kidnapping for ransom proven beyond reasonable doubt

The crime of *Kidnapping and serious illegal detention*, under Art. 267[125] of the RPC, has the following elements:

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[125] ART. 267. *Kidnapping and serious illegal detention*. — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death.

1. If the kidnapping or detention shall have lasted more than three days.

2. If it shall have been committed simulating public authority.

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.

4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

(1) the offender is a private individual; not either of the parents of the victim or a public officer who has a duty under the law to detain a person;

(2) he kidnaps or detains another, or in any manner deprives the latter of his liberty;

(3) the act of detention or kidnapping must be illegal; and

(4) in the commission of the offense, any of the following circumstances is present:

(a) the kidnapping or detention lasts for more than three days;
(b) it is committed by simulating public authority;
(c) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made or
(d) the person kidnapped or detained is a minor, female or a public official.[126]

It must be noted that when the victim is a minor and the accused is any of the parents, the crime is *Inducing a minor to abandon his home* defined and penalized under the second paragraph of Art. 271 of the RPC. While if it is a public officer who has a duty under the law to detain a person but detains said person without any legal ground is liable for *Arbitrary detention* defined and penalized under Art. 124 of the RPC.

The essence of the crime of kidnapping is the actual deprivation of the victim's liberty, coupled with indubitable proof of intent of the accused to effect the same.[127] Moreover, if the victim is

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When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed. (*As amended by R.A. No. 7659*)

[126] *People v. Mamantak*, G.R. No. 174659, July 28, 2008, 560 SCRA 298, 306-307.

[127] *People v. Muit*, G.R. No. 181043, October 8, 2008, 568 SCRA 251, 264-265, citing *People v. Borromeo*, G.R. No. 130843, January 27, 2000, 323 SCRA 547.

a minor, or the victim is kidnapped and illegally detained for the purpose of extorting ransom, the duration of his detention becomes inconsequential.[128] Ransom means money, price or consideration paid or demanded for the redemption of a captured person that will release him from captivity.[129]

In the instant case, all the elements of the crime of kidnapping for ransom have been proven beyond reasonable doubt. The accused are all private individuals. The kidnapping of Patrick Teng, then three years old, a minor is undisputed. That ransom was demanded and paid is established. The only issue to be resolved is whether the accused are equally guilty of kidnapping for ransom having conspired with each other.

Duly-Proven Conspiracy

Accused-appellants uniformly assail the court *a quo*'s findings of conspiracy in the commission of the kidnapping for ransom of Patrick Teng. Our assiduous review of the records of the case shows the presence of conspiracy. However, we fail to appreciate the direct participation of Bobby Bringas in the conspiracy. Thus, accused-appellants Jimboy Bringas, Chung and Navarro together with the other accused Pajarillo, Sulayao, Ross and Calaguas are equally guilty and liable for the crime charged for having conspired to commit and did commit kidnapping for ransom of Patrick.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it. It may be proved by direct or circumstantial evidence consisting of acts, words or conduct of the alleged conspirators before, during and after the commission of the felony to achieve a common design or purpose.[130]

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[128] *See*: *People v. Mamantak*, *supra* note 126 at 307.

[129] *Id.* at 309, citing *People v. Jatulan*, G.R. No. 171653, April 24, 2007, 522 SCRA 174.

[130] *People v. Tan*, G.R. No. 177566, March 26, 2008, 549 SCRA 489, 502, citing *People v. Baldogo*, G.R. Nos. 128106-07, January 24, 2003,

Proof of the agreement need not rest on direct evidence, as the same may be inferred from the conduct of the parties indicating a common understanding among them with respect to the commission of the offense. Corollarily, it is not necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or the details by which an illegal objective is to be carried out.[131]

To be held guilty as a co-principal by reason of conspiracy, the accused must be shown to have performed an overt act in pursuance or furtherance of the complicity—mere presence when the transaction was made does not necessarily lead to an inference of concurrence with the criminal design to commit the crime.[132] Moreover, the same degree of proof necessary to prove the crime is required to support a finding of criminal conspiracy.[133]

The testimony of state witness Rosales is the lynchpin by which the conspiracy is proven. Jimboy Bringas brought together Rosales, Calaguas and Sulayao from Pampanga, while Rosales brought in Ross and Pajarillo from Laguna. They thus formed the team, although Jimboy Bringas did not join the team but was in on the sharing of the ransom. Together with Chung, Navarro and two others (Glenn Sangalang and Ricky Castillo), they proceeded to Eric's house on December 14, 1994 and

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396 SCRA 31; *People v. Pajaro*, G.R. Nos. 167860-65, June 17, 2008, 554 SCRA 572, 586; *Aquino v. Paiste*, G.R. No. 147782, June 25, 2008, 555 SCRA 255, 271, citing *People v. Quirol*, G.R. No. 149259, October 20, 2005, 473 SCRA 509, 517; *People v. De la Cruz*, G.R. No. 173308, June 25, 2008, 555 SCRA 329, 342, citing *People v. Barcenal*, G.R. No. 175925, August 17, 2007, 530 SCRA 706, 726; *People v. Santos*, G.R. No. 176735, June 26, 2008, 555 SCRA 578, 602; *People v. Bohol*, *supra* note 123 at 568, citing *People v. Barcenal*, *supra*.

[131] *Buebos v. People*, G.R. No. 163938, March 28, 2008, 550 SCRA 210, 224, citing *People v. Quinao*, G.R. No. 108454, March 13, 1997, 269 SCRA 495 and *People v. Saul*, G.R. No. 124809, December 19, 2001, 372 SCRA 636.

[132] *Aquino v. Paiste*, *supra* note 130 at 272.

[133] *People v. Buduhan*, G.R. No. 178196, August 6, 2008, 561 SCRA 337, 364.

kidnapped Patrick. Verily, a conspiracy is more readily proved by the acts of a fellow criminal than by any other method.[134]

Together with Ricky Castillo and Rosales, accused Ross, Pajarillo, Sulayao and Calaguas actively participated in the kidnapping. Ross drove one of the cars. Pajarillo, Sulayao and Calaguas entered the house with Rosales. Calaguas poked a gun at Maricel. Pajarillo gagged and bound Maricel. The others herded the house helpers, the kids and Sweeney to the second floor. They took Patrick after binding everyone except Mikee Teng. Then they brought Patrick to Pampanga. In all, they carried out a concerted plan of kidnapping and detaining Patrick until they were given word to bring back the child to Manila which they did the very next day shortly before midnight at the Philippine Westin Plaza.

Then they went back to Pampanga, apparently to await their share of the ransom money. Clearly, Ross' testimony that he is employed as a driver who can earn so much as PhP5,000 in a day and can ill afford to be absent is belied by his accompanying the others to Pampanga after they delivered Patrick Teng to Chung on December 15, 1994 shortly before midnight. And he continued to stay in Pampanga with the others until his arrest on December 16, 1994 while on a drinking spree. In all, he was absent from work from the 14th until the 16th of December 1994.

Jimboy Bringas evidently participated in the planning and the subsequent execution of the conspiracy by bringing in Calaguas and Sulayao from Pampanga. Together with them, he met with Chung and Navarro. And together with Rosales he went to Laguna to fetch Pajarillo and Ross. In effect, he recruited or brought in the team that would carry out the kidnapping. He knows the other accused and was the one who went with the PACC team led by Police Chief Inspector Tucay to Pampanga in the late afternoon of December 16, 1994 and identified them to be arrested.

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[134] *Salvanera v. People*, G.R. No. 143093, May 21, 2007, 523 SCRA 147, 153, citing *U.S. v. Remigio*, 37 Phil. 599, 612 (1918).

Rosales' actuations, first in ringing the doorbell at the gate and urging Maricel to open it and in asking for the car key and taking the Toyota Corolla of Eric do not tend to show that he was merely coerced. This is, however, academic considering his turning state witness.

Accused-appellant Navarro's assertion that he was only implicated fails to persuade. His direct involvement in the conspiracy is clearly shown in that: (1) the testimony of Rosales shows Navarro's involvement with Chung; (2) the unanimous testimonies of Calaguas, Pajarillo, Sulayao and Ross to the effect that Navarro was together with Chung in their meetings before the kidnapping and Navarro was with them when they went to Eric Teng's place on December 14, 1994; (3) Navarro's admission caught on camera during the December 17, 1994 press conference that he made calls to negotiate the ransom which bolsters Eric's testimony that he recognized the voice of Navarro as the negotiator calling his residence; (4) Navarro received PhP100,000 from Chung in the evening of December 15, 1994 at the Bowling Inn; (5) Navarro was with Chung when Patrick Teng was delivered by the other accused in the parking lot of Philippine Westin Plaza.

Similarly, accused-appellant Chung's assertion that he was only implicated flies from logic given that not only Rosales pinned him as the mastermind but that the other accused testified to the effect that together with Navarro he orchestrated the kidnapping. The foregoing clearly shows his involvement: (1) per Pajarillo's admission during the December 17, 1994 press conference, Chung provided the guns; (2) Chung's admission to Eric through a phone call he made at noon on December 16, 1994 asking pardon and forgiveness; (3) Chung gave misleading information to Eric about his being intercepted when he was supposed to deliver the ransom money; (4) Chung proceeded to his parents' place in Paco and gave PhP50,000 from the ransom money to his mother; (5) Chung left the remaining PhP2.35 million in his parents' place without telling Eric about it; (6) Chung took Patrick from the other accused at the parking lot of Philippine Westin Plaza shortly before midnight of December 15, 1994 without paying the ransom; (7) Chung

brought Patrick back home without telling Eric upon their arrival about the ransom money.

Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident, and all the perpetrators will be liable as principals.[135]

Bobby Bringas' participation either as accomplice or as co-conspirator not established

As to Bobby Bringas, it is undisputed that he did not participate in the actual kidnapping. He was in Pampanga from December 10, 1994 until he was arrested together with the others on December 16, 1994. It may be true that the other accused brought Patrick to Bobby Bringas' place but it was not shown that Bobby Bringas took care of Patrick as the group moved to different places. It was neither clearly shown that Bobby Bringas recruited the other accused to carry out the kidnapping. It was only Rosales' testimony that Bobby Bringas asked him to drive. Aside from that, the fact alone that the other accused went to his place does not point to his direct involvement in the conspiracy considering that he knows them. He worked as driver for the mother of Rosales and Pajarillo is his *kumpare*. There is therefore no clear and convincing evidence of Bobby Bringas' direct involvement either in the kidnapping of Patrick or in the conspiracy to its commission.

In the absence of evidence showing the direct participation of the accused in the commission of the crime, conspiracy must be established by clear and convincing evidence in order to convict the accused.[136] Given our observation that the involvement

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[135] *David, Jr. v. People*, G.R. No. 136037, August 13, 2008, 562 SCRA 22, 35-36, citing *People v. Reyes*, G.R. No. 135682, March 26, 2003, 399 SCRA 528.

[136] *People v. Gaffud, Jr.*, G.R. No. 168050, September 19, 2008, 566 SCRA 76, 84, citing *People v. Agda*, G.R. No. L-36377, January 30, 1982, 111 SCRA 330 and *People v. Taaca*, G.R. No. L-35652, September 29, 1982, 178 SCRA 56.

of Rosales was not merely of a person under coercion, there is reasonable doubt as to Bobby Bringas' involvement for it was Jimboy Bringas who brought or recruited Sulayao and Calaguas from Pampanga. There is therefore a palpable reasonable doubt of the existence of conspiracy on the part of Bobby Bringas. The presence of reasonable doubt as to the existence of conspiracy suffices to negate not only the participation of the accused in the commission of the offense as principal but also, in the absence of proof implicating the accused as accessory or accomplice, the criminal liability of the accused.[137] Consequently, Bobby Bringas must be acquitted from the crime of kidnapping for ransom.

The penalty for kidnapping for ransom under Art. 267 of the RPC, as amended, would have been the supreme penalty of death. However, the passage of RA 9346 or the Act Prohibiting the Imposition of Death Penalty has banned the death penalty and reduced all death sentences to *reclusion perpetua* without eligibility for parole.[138]

Award of damages modified

Anent the award of damages, we find proper the award of actual damages against Navarro in the amount of PhP 100,000 with legal interest of 12% from December 15, 1994 until fully paid. We, however, find the award of PhP 5 million as moral damages and PhP 2 million as exemplary damages to be exorbitant and not in accord with jurisprudence.

In line with current jurisprudence,[139] an award of PhP 50,000 as civil indemnity is proper. An award of PhP 200,000 as moral

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[137] *Eugenio v. People*, G.R. No. 168163, March 26, 2008, 549 SCRA 433, 447-448, citing *People v. Quinao*, G.R. No. 108454, March 13, 1997, 269 SCRA 495.

[138] *See*: *People v. Jatulan*, G.R. No. 171653, 24 April 2007, 522 SCRA 174, 188, citing *People v. Nabong*, G.R. No. 172324, April 3, 2007, 520 SCRA 437.

[139] *People v. Mamantak*; *supra* note 126 at 310; *People v. Solangon*, G.R. No. 172693, November 21, 2007, 537 SCRA 746; *People v. Yambot*, G.R. No. 120350, October 13, 2000, 343 SCRA 20.

damages is likewise proper considering the minority of Patrick.[140] Moreover, when the crime of kidnapping is attended by a demand for ransom, by way of example or correction, PhP 100,000 exemplary damages is also proper.[141]

With the affirmance of the conviction of accused appellants Jimboy Bringas, Navarro and Chung, they are jointly and severally liable together with Ross, Pajarillo, Sulayao and Calaguas for the payment of the damages awarded.

IN VIEW WHEREOF, the appeals of accused-appellants Christopher Bringas, John Robert Navarro and Eden Sy Chung are *DENIED*; while the appeal of accused-appellant Bryan Bringas is *GRANTED*. Accordingly, the January 3, 2006 Decision and June 6, 2007 Resolution of the Court of Appeals in CA-G.R. CR-H.C. No. 00911 are hereby *AFFIRMED* with *MODIFICATION* insofar as the amount of the damages awarded and the acquittal of Bryan Bringas. As modified, the dispositive portion of the March 26, 1999 Joint Decision of the Regional Trial Court, Branch 258 in Parañaque City, pertaining to Criminal Case No. 95-137, for *Kidnapping for Ransom*, shall read:

In Criminal Case No. 95-137, for KIDNAPPING FOR RANSOM, defined and penalized under Article 267 of the Revised Penal Code, as amended by Republic Act No. 7659, finding accused CHRISTOPHER BRINGAS *y* Garcia; JOHN ROBERT NAVARRO *y* Cruz; ARUEL ROSS *y* Picardo; ROGER CALAGUAS *y* Jimenez; and EDEN SY CHUNG guilty beyond reasonable doubt, they are hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole pursuant to Republic Act No. 9346.

The instant criminal charge is DISMISSED as to accused ERICSON PAJARILLO *y* Baser and EDGARDO SULAYAO *y* Petilla on account of their death pursuant to Article 89, 1 of the Revised Penal Code.

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[140] *People v. Mamantak*; *supra* note 126 at 310; *People v. Solangon*, *supra* note 139 at 757; *People v. Baldogo*, G.R. Nos. 128106-07, January 24, 2003, 396 SCRA 31; *People v. Garcia*, G.R. Nos. 133489 and 143970, January 15, 2002, 373 SCRA 134.

[141] *Id.*

The accused JOHN ROBERT NAVARRO *y* Cruz is hereby directed to pay Eric Teng the sum of PhP100,000.00 as actual damages with interest thereon at the legal rate of 12% from December 15, 1994 until fully paid.

The accused CHRISTOPHER BRINGAS *y* Garcia; JOHN ROBERT NAVARRO *y* Cruz; ARUEL ROSS *y* Picardo; ROGER CALAGUAS *y* Jimenez; ERICSON PAJARILLO *y* Baser; EDGARDO SULAYAO *y* Petilla and EDEN SY CHUNG are directed to pay Eric Teng jointly and severally the amount of PhP50,000.00 as civil indemnity, PhP200,000.00 as moral damages; and PhP100,000.00 as exemplary damages and to pay the costs.

Accused BRYAN BRINGAS *y* GARCIA is hereby *ACQUITTED* for reasonable doubt as to his involvement.

No pronouncement as to costs.

SO ORDERED.

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

EN BANC

[G.R. No. 191124. April 27, 2010]

LUIS A. ASISTIO, *petitioner, vs.* **HON. THELMA CANLAS TRINIDAD-PE AGUIRRE, Presiding Judge, Regional Trial Court, Caloocan City, Branch 129; HON. ARTHUR O. MALABAGUIO, Presiding Judge, Metropolitan Trial Court, Caloocan City, Branch 52; ENRICO R. ECHIVERRI, Board of Election Inspectors of Precinct 1811A, Barangay 15, Caloocan City; and the CITY ELECTION OFFICER, Caloocan City,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PAYMENT OF DOCKET FEES; SUBSTANTIAL COMPLIANCE; CASE AT BAR.—** This Court observes, that while Judge Aguirre declares in her Order that the appellate docket fees were paid on February 11, 2010, she conveniently omits to mention that the postal money orders obtained by Asistio for the purpose were purchased on February 10, 2010. It is noteworthy that, as early as February 4, 2010, Asistio already manifested that he could not properly file his memorandum with the MeTC due to the non-availability of the TSNs. Obviously, these TSNs were needed in order to prepare an intelligent appeal from the questioned February 5, 2010 MeTC Order. Asistio was able to get copies of the TSNs only on February 10, 2010, the last day to file his appeal, and, naturally, it would take some time for him to review and incorporate them in his arguments on appeal. Understandably, Asistio filed his notice of appeal and appeal, and purchased the postal money orders in payment of the appeal fees on the same day. To our mind, Asistio, by purchasing the postal money orders for the purpose of paying the appellate docket fees on February 10, 2010, although they were tendered to the MeTC only on February 11, 2010, had already substantially complied with the procedural requirements in filing his appeal.

2. **POLITICAL LAW; ELECTIONS; RIGHT TO VOTE; ONLY ON THE MOST SERIOUS GROUNDS, AND UPON CLEAR AND CONVINCING PROOF, MAY A CITIZEN BE DEEMED TO HAVE FORFEITED THIS PRECIOUS HERITAGE OF FREEDOM.—** The right to vote is a most precious political right, as well as a bounden duty of every citizen, enabling and requiring him to participate in the process of government to ensure that it can truly be said to derive its power solely from the consent of its constituents. Time and again, it has been said that every Filipino's right to vote shall be respected, upheld, and given full effect. A citizen cannot be disenfranchised for the flimsiest of reasons. Only on the most serious grounds, and upon clear and convincing proof, may a citizen be deemed to have forfeited this precious heritage of freedom.

3. **ID.; ID.; ID.; ID.; BLIND ADHERENCE TO A TECHNICALITY, WITH THE INEVITABLE RESULT OF FRUSTRATING AND NULLIFYING THE CONSTITUTIONALLY GUARANTEED RIGHT OF SUFFRAGE, CANNOT BE COUNTENANCED; CASE AT BAR.—** In this case, even if we assume for the sake of argument, that the appellate docket fees were not filed on time, this incident alone should not thwart the proper determination and resolution of the instant case on substantial grounds. Blind adherence to a technicality, with the inevitable result of frustrating and nullifying the constitutionally guaranteed right of suffrage, cannot be countenanced.

4. **REMEDIAL LAW; LIBERAL CONSTRUCTION OF PROCEDURAL RULES TO SERVE SUBSTANTIAL JUSTICE.—** On more than one occasion, this Court has recognized the emerging trend towards a liberal construction of procedural rules to serve substantial justice. Courts have the prerogative to relax rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily end litigation and the parties' right to due process. It is true that, faced with an appeal, the court has the discretion whether to dismiss it or not. However, this discretion must be sound; it is to be exercised pursuant to the tenets of justice, fair play and equity, in consideration of the circumstances obtaining in each case. Thus, dismissal of appeals on purely technical grounds is frowned upon as the policy of the Court is to encourage resolution of cases on their merits over the very rigid and technical application of rules of procedure used only to help secure, not override, substantial justice. Verily, it is far better and more prudent for the court to excuse a technical lapse and afford the parties a review of the case on appeal rather than dispose of it on a technicality that would cause grave injustice to the parties.

5. **POLITICAL LAW; ELECTIONS; VOTERS; RESIDENCY REQUIREMENT OF A VOTER.—** The primodial issue in this case is whether Asistio should be excluded from the permanent list of voters of [Precinct 1811A] of Caloocan City for failure to comply with the residency required by law. From the provisions of Section 117 of the Omnibus Election Code (*Batas Pambansang Bilang* 881) and of Section 9 of the Voters Registration Act of 1996 (Republic Act No. 8189), the residency

requirement of a voter is at least one (1) year residence in the Philippines and at least six (6) months in the place where the person proposes or intends to vote. "Residence," as used in the law prescribing the qualifications for suffrage and for elective office, is doctrinally settled to mean "domicile," importing not only an intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention inferable from a person's acts, activities, and utterances.

6. ID.; ID.; ID.; ID.; TERM "DOMICILE," ELUCIDATED.— "Domicile" denotes a fixed permanent residence where, when absent for business or pleasure, or for like reasons, one intends to return. In the consideration of circumstances obtaining in each particular case, three rules must be borne in mind, namely: (1) that a person must have a residence or domicile somewhere; (2) once established, it remains until a new one is acquired; and (3) that a person can have but one residence or domicile at a time.

7. ID.; ID.; ID.; ID.; ID.; REQUISITES FOR A CHANGE IN DOMICILE.— Domicile is not easily lost. To successfully effect a transfer thereof, one must demonstrate: (1) an actual removal or change of domicile; (2) a *bona fide* intention of abandoning the former place of residence and establishing a new one; and (3) acts which correspond with that purpose. There must be *animus manendi* coupled with *animus non revertendi*. The purpose to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence must be voluntary; and the residence at the place chosen for the new domicile must be actual.

8. ID.; ID.; ID.; ID.; ID.; ID.; NO SHOWING THAT ASISTIO HAD ESTABLISHED DOMICILE ELSEWHERE, OR THAT HE HAD CONSCIOUSLY AND VOLUNTARILY ABANDONED HIS RESIDENCE IN CALOOCAN CITY.— Asistio has always been a resident of Caloocan City since his birth or for more than 72 years. His family is known to be among the prominent political families in Caloocan City. In fact, Asistio served in public office as Caloocan City Second District representative in the House of Representatives, having been elected as such in the 1992, 1995, 1998, and 2004 elections. In 2007, he also sought election as City Mayor. In

all of these occasions, Asistio cast his vote in the same city. Taking these circumstances into consideration, gauged in the light of the doctrines above enunciated, it cannot be denied that Asistio has qualified, and continues to qualify, as a voter of Caloocan City. There is no showing that he has established domicile elsewhere, or that he had consciously and voluntarily abandoned his residence in Caloocan City. He should, therefore, remain in the list of permanent registered voters of Precinct No. 1811A, *Barangay* 15, Caloocan City.

9. **ID.; ID.; ID.; ID.; ID.; ID.; PURPORTED MISREPRESENTATIONS IN ASISTIO'S COC, IF TRUE, DO NOT SERVE AS PROOF THAT ASISTIO HAS ABANDONED HIS DOMICILE IN CALOOCAN CITY.—** That Asistio allegedly indicated in his Certificate of Candidacy for Mayor, both for the 2007 and 2010 elections, a non-existent or false address, or that he could not be physically found in the address he indicated when he registered as a voter, should not operate to exclude him as a voter of Caloocan City. These purported misrepresentations in Asistio's COC, if true, might serve as basis for an election offense under the Omnibus Election Code (OEC), or an action to deny due course to the COC. But to our mind, they do not serve as proof that Asistio has abandoned his domicile in Caloocan City, or that he has established residence outside of Caloocan City.

APPEARANCES OF COUNSEL

Maria Bernadette V. Sardillo for petitioner.
The Solicitor General for public respondents.
Melita D. Go for private respondent.

R E S O L U T I O N

NACHURA, *J*.:

This is a petition[1] for *certiorari,* with prayer for the issuance of a status *quo ante* order, under Rule 65 of the Rules of Court, assailing the Order[2] dated February 15, 2010 issued, allegedly with

[1] *Rollo*, pp. 3-64.

[2] *Id.* at 65-66.

grave abuse of discretion amounting to lack or excess of jurisdiction, by public respondent Judge Thelma Canlas Trinidad-Pe Aguirre (Judge Aguirre) of the Regional Trial Court (RTC), Branch 129, Caloocan City in SCA No. 997. The petition likewise ascribes error in, and seeks to nullify, the decision dated February 5, 2010, promulgated by the Metropolitan Trial Court (MeTC), Branch 52, Caloocan City in SCA No. 10-582.

The Antecedents

On January 26, 2010, private respondent Enrico R. Echiverri (Echiverri) filed against petitioner Luis A. Asistio (Asistio) a Petition[3] for Exclusion of Voter from the Permanent List of Voters of Caloocan City (Petition for Exclusion) before the MeTC, Branch 52, Caloocan City. Public respondent Judge Arthur O. Malabaguio (Judge Malabaguio) presides over MeTC Branch 52. The petition was docketed as SCA No. 10-582, entitled "*Atty. Enrico R. Echiverri v. Luis Aquino Asistio, the Board of Election Inspectors of Precinct No. 1811A, Barangay 15, Caloocan City and the City Election Officer of Caloocan.*"

In his petition, Echiverri alleged that Asistio is not a resident of Caloocan City, specifically not of 123 Interior P. Zamora St., *Barangay* 15, Caloocan City, the address stated in his Certificate of Candidacy (COC) for Mayor in the 2010 Automated National and Local Elections. Echiverri, also a candidate for Mayor of Caloocan City, was the respondent in a Petition to Deny Due Course and/or Cancellation of the Certificate of Candidacy filed by Asistio. According to Echiverri, when he was about to furnish Asistio a copy of his Answer to the latter's petition, he found out that Asistio's address is non-existent. To support this, Echiverri attached to his petition a Certification[4] dated December 29, 2009 issued by the *Tanggapan ng Punong Barangay* of *Barangay* 15 – Central, Zone 2, District II of Caloocan City. He mentioned that, upon verification of the 2009 Computerized Voters' List (CVL) for *Barangay* 15, Asistio's

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[3] *Id.* at 67-72.

[4] *Id.* at 75.

name appeared under voter number 8, with address at 109 Libis Gochuico, *Barangay* 15, Caloocan City.[5]

Echiverri also claimed that Asistio was no longer residing in this address, since what appeared in the latter's COC for Mayor[6] in the 2007 elections was No. 110 Unit 1, P. Zamora St., *Barangay* 15, Caloocan City,[7] but that the address used in Asistio's current COC is situated in *Barangay* 17. He said that, per his verification, the voters[8] duly registered in the 2009 CVL using the address No. 123 P. Zamora St., *Barangay* 17, Caloocan City did not include Asistio.[9]

On January 28, 2010, the MeTC issued a Notice of Hearing[10] notifying Asistio, through Atty. Carlos M. Caliwara, his counsel of record in SPA No. 09-151 (DC), entitled "*Asistio v. Echiverri,*" before the Commission on Elections (COMELEC), of the scheduled hearings of the case on February 1, 2 and 3, 2010.

On February 2, 2010, Asistio filed his Answer *Ex Abundante Ad Cautelam* with Affirmative Defenses.[11] Asistio alleged that he is a resident of No. 116, P. Zamora St., Caloocan City, and a registered voter of Precinct No. 1811A because he mistakenly relied on the address stated in the contract of lease with Angelina dela Torre Tengco (Tengco), which was 123 Interior P. Zamora St., *Barangay* 15, Caloocan City.[12]

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[5] *Id.* at 81.

[6] *Id.* at 79.

[7] *Id.* at 68.

[8] The voters listed as residing in 123 P. Zamora St., *Barangay* 17, Caloocan City are: Garcia, Romana de Vera; Ramos, Adoracion Pajarillo; Ramos, Daisy Nuarin; Ramos, Sonio Jr. Pajarillo; Nuarin, Marilou Lubiano; and Nuarin, Joseph dela Cruz.

[9] *Rollo*, pp. 76-78.

[10] *Id.* at 82.

[11] *Id.* at 88.

[12] Per the Sworn Statement of Tengco dated January 8, 2010; *id.* at 104-105.

Trial on the merits ensued, after which Judge Malabaguio directed the parties to file their respective position papers on or before February 4, 2010.

Echiverri filed his Memorandum[13] on February 4, 2010. Asistio, on the other hand, failed to file his memorandum since the complete transcripts of stenographic notes (TSN) were not yet available.[14]

On February 5, 2010, Judge Malabaguio rendered a decision,[15] disposing, as follows —

WHEREFORE, premises considered, the Election Registration Board, Caloocan City is hereby directed to remove the name of LUIS AQUINO ASISTIO from the list of permanent voters of Caloocan City.

SO ORDERED.[16]

Meanwhile, on January 26, 2010, Echiverri filed with the COMELEC a Petition for Disqualification,[17] which was docketed as SPA No. 10-013 (DC). The Petition was anchored on the grounds that Asistio is not a resident of Caloocan City and that he had been previously convicted of a crime involving moral turpitude. Asistio, in his Answer with Special and Affirmative Defenses (Com Memorandum),[18] raised the same arguments with respect to his residency and also argued that the President of the Philippines granted him an absolute pardon.

On February 10, 2010, Asistio filed his Notice of Appeal[19] and his Appeal (from the Decision dated February 5, 2010)[20] and paid the required appeal fees through postal money orders.[21]

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[13] *Rollo*, pp. 111-124.

[14] Per the Manifestation of Asistio dated February 4, 2010; *id.* at 107-110.

[15] *Rollo*, pp. 125-138.

[16] *Id.* at 138.

[17] *Id.* at 140-145.

[18] *Id.* at 157-174.

[19] *Id.* at 190-192.

[20] *Id.* at 193-244.

[21] *Id.* at 245.

On February 11, 2010, Echiverri filed a Motion[22] to Dismiss Appeal, arguing that the RTC did not acquire jurisdiction over the Appeal on the ground of failure to file the required appeal fees.

On the scheduled hearing of February 15, 2010, Asistio opposed the Motion and manifested his intention to file a written comment or opposition thereto. Judge Aguirre directed Echiverri's counsel to file the appropriate responsive pleading to Asistio's appeal in her Order[23] of same date given in open court.

Judge Aguirre, however, cancelled her February 15, 2010 Order, and issued an Amended Order[24] on that date holding in abeyance the filing of the responsive pleading of Echiverri's counsel and submitting the Motion for resolution.

In another Order also dated February 15, 2010, Judge Aguirre granted the Motion on the ground of non-payment of docket fees essential for the RTC to acquire jurisdiction over the appeal. It stated that Asistio paid his docket fee only on February 11, 2010 per the Official Receipt of the MeTC, Office of the Clerk of Court.

Hence, this petition.

Per Resolution[25] dated February 23, 2010, this Court required the respondents to comment on the petition, and issued the Status *Quo Ante* Order prayed for.

On March, 8, 2010, Echiverri filed his Comment to the Petition (with Motion to Quash Status *Quo Ante* Order). Departing from Echiverri's position against the Petition, the Office of the Solicitor General (OSG), on March 30, 2010, filed its Comment *via* registered mail. The OSG points out that Asistio's family is "known to be one of the prominent political families in Caloocan

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[22] *Id.* at 248-252.

[23] *Id.* at 254.

[24] *Id.* at 255.

[25] *Id.* at 264.

City, and that there is no indication whatsoever that [Asistio] has ever intended to abandon his domicile, Caloocan City." Further, the OSG proposes that the issue at hand is better resolved by the people of Caloocan City. In all, the OSG propounds that technicalities and procedural niceties should bow to the sovereign will of the people of Caloocan City.

Our Ruling

In her assailed Order, Judge Aguirre found —

> The payment of docket fees is an essential requirement for the perfection of an appeal.
>
> The record shows that Respondent-Appellant paid his docket fee only on February 11, 2010, evidenced by O.R. No. 05247240 for Php1,510.00 at the Metropolitan Trial Court, Office of the Clerk of Court, yet the Notice of Appeal was filed on February 10, 2010, at 5:30 p.m., which is way beyond the official office hours, and a copy thereof was filed at the Office of the Clerk of Court, Metropolitan Trial Court at 5:00 p.m. of February 10, 2010. Thus, it is clear that the docket fee was not paid simultaneously with the filing of the Notice of Appeal.
>
> It taxes the credulity of the Court why the Notice of Appeal was filed beyond the regular office hours, and why did respondent-appellant had to resort to paying the docket fee at the Mall of Asia when he can conveniently pay it at the Office of the Clerk of Court, Metropolitan Trial Court along with the filing of the Notice of Appeal on February 10, 2010 at 5:30 p.m. at the Metropolitan Trial Court, which is passed [sic] the regular office hours.
>
> The conclusion is then inescapable that for failure to pay the appellate docket fee, the Court did not acquire jurisdiction over the case.[26]

This Court observes, that while Judge Aguirre declares in her Order that the appellate docket fees were paid on February 11, 2010, she conveniently omits to mention that the postal money orders obtained by Asistio for the purpose were purchased on February 10, 2010.[27] It is noteworthy that, as early as February 4,

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[26] *Id.* at 66.

[27] *Id.* at 245.

2010, Asistio already manifested that he could not properly file his memorandum with the MeTC due to the non-availability of the TSNs. Obviously, these TSNs were needed in order to prepare an intelligent appeal from the questioned February 5, 2010 MeTC Order. Asistio was able to get copies of the TSNs only on February 10, 2010, the last day to file his appeal, and, naturally, it would take some time for him to review and incorporate them in his arguments on appeal. Understandably, Asistio filed his notice of appeal and appeal, and purchased the postal money orders in payment of the appeal fees on the same day. To our mind, Asistio, by purchasing the postal money orders for the purpose of paying the appellate docket fees on February 10, 2010, although they were tendered to the MeTC only on February 11, 2010, had already substantially complied with the procedural requirements in filing his appeal.

This appeal to the RTC assails the February 5, 2010 MeTC Order directing Asistio's name to be removed from the permanent list of voters [in Precinct 1811A] of Caloocan City. The Order, if implemented, would deprive Asistio of his right to vote.

The right to vote is a most precious political right, as well as a bounden duty of every citizen, enabling and requiring him to participate in the process of government to ensure that it can truly be said to derive its power solely from the consent of its constituents.[28] Time and again, it has been said that every Filipino's right to vote shall be respected, upheld, and given full effect.[29] A citizen cannot be disenfranchised for the flimsiest of reasons. Only on the most serious grounds, and upon clear and convincing proof, may a citizen be deemed to have forfeited this precious heritage of freedom.

In this case, even if we assume for the sake of argument, that the appellate docket fees were not filed on time, this incident alone should not thwart the proper determination and resolution

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[28] *Romualdez v. RTC, Branch 7, Tacloban City*, G.R. No. 104960, September 14, 1993, 226 SCRA 408.

[29] *Akbayan-Youth v. Commission on Elections*, G.R. Nos. 147066 & 147179, March 26, 2001, 355 SCRA 318.

of the instant case on substantial grounds. Blind adherence to a technicality, with the inevitable result of frustrating and nullifying the constitutionally guaranteed right of suffrage, cannot be countenanced.[30]

On more than one occasion, this Court has recognized the emerging trend towards a liberal construction of procedural rules to serve substantial justice. Courts have the prerogative to relax rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily end litigation and the parties' right to due process.

It is true that, faced with an appeal, the court has the discretion whether to dismiss it or not. However, this discretion must be sound; it is to be exercised pursuant to the tenets of justice, fair play and equity, in consideration of the circumstances obtaining in each case. Thus, dismissal of appeals on purely technical grounds is frowned upon as the policy of the Court is to encourage resolution of cases on their merits over the very rigid and technical application of rules of procedure used only to help secure, not override, substantial justice. Verily, it is far better and more prudent for the court to excuse a technical lapse and afford the parties a review of the case on appeal rather than dispose of it on a technicality that would cause grave injustice to the parties.[31]

The primordial issue in this case is whether Asistio should be excluded from the permanent list of voters of [Precinct 1811A] of Caloocan City for failure to comply with the residency required by law.

Section 117 of The Omnibus Election Code (*Batas Pambansa Bilang* 881) states:

SECTION 117. *Qualifications of a voter*.—Every citizen of the Philippines, not otherwise disqualified by law, eighteen years of

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[30] *Bince, Jr. v. Comelec*, 312 Phil. 316 (1995).

[31] *Barangay Sangalang v. Barangay Maguihan,* G.R. No. 1579792, December 23, 2009, citing *Ong Lim Sing, Jr. v. FEB Leasing and Finance Corporation*, 524 SCRA 333, 343-344 (2007).

age or over, who shall have resided in the Philippines for one year and in the city or municipality wherein he proposes to vote for at least six months immediately preceding the election, may be registered as a voter.

Any person who transfers residence to another city, municipality or country solely by reason of his occupation; profession; employment in private or public service; educational activities; work in military or naval reservations; service in the army, navy or air force; the constabulary or national police force; or confinement or detention in government institutions in accordance with law, shall be deemed not to have lost his original residence.

This provision is echoed in Section 9 of The Voters Registration Act of 1996 (Republic Act No. 8189), to wit:

SEC. 9. *Who May Register.*—All citizens of the Philippines not otherwise disqualified by law who are at least eighteen (18) years of age and who shall have resided in the Philippines for at least one (1) year and in the place wherein they propose to vote for at least six (6) months immediately preceding the election, may register as a voter.

Any person who temporarily resides in another city, municipality or country solely by reason of his occupation, profession, employment in private or public service, educational activities, work in the military or naval reservations within the Philippines, service in the Armed Forces of the Philippines, the National Police Force, or confinement or detention in government institutions in accordance with law, shall not be deemed to have lost his original residence.

Any person who, on the day of registration may not have reached the required age or period of residence but who, on the day of election shall possess such qualifications, may register as a voter.

From these provisions, the residency requirement of a voter is at least one (1) year residence in the Philippines and at least six (6) months in the place where the person proposes or intends to vote. "Residence," as used in the law prescribing the qualifications for suffrage and for elective office, is doctrinally settled to mean "domicile," importing not only an intention to reside in a fixed place but also personal presence in that place,

coupled with conduct indicative of such intention[32] inferable from a person's acts, activities, and utterances.[33] "Domicile" denotes a fixed permanent residence where, when absent for business or pleasure, or for like reasons, one intends to return.[34] In the consideration of circumstances obtaining in each particular case, three rules must be borne in mind, namely: (1) that a person must have a residence or domicile somewhere; (2) once established, it remains until a new one is acquired; and (3) that a person can have but one residence or domicile at a time.[35]

Domicile is not easily lost. To successfully effect a transfer thereof, one must demonstrate: (1) an actual removal or change of domicile; (2) a *bona fide* intention of abandoning the former place of residence and establishing a new one; and (3) acts which correspond with that purpose.[36] There must be *animus manendi* coupled with *animus non revertendi*. The purpose to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence must be voluntary; and the residence at the place chosen for the new domicile must be actual.[37]

Asistio has always been a resident of Caloocan City since his birth or for more than 72 years. His family is known to be among the prominent political families in Caloocan City. In fact,

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[32] *Domino v. COMELEC*, 369 Phil. 798 (1999); *Romualdez v. RTC, Branch 7, Tacloban City*, *supra* note 28, at 415; *Nuval v. Guray*, 52 Phil. 645 (1928).

[33] *Abella v. Commission on Elections*, G.R. Nos. 100710 & 100739, September 3, 1991, 201 SCRA 253.

[34] *Romualdez v. RTC, Branch 7, Tacloban City*, *supra* note 28; *Ong Huan Tin v. Republic*, No. L-20997, April 27, 1967, 19 SCRA 966.

[35] *Domino v. COMELEC*, *supra* note 32; *Alcantara v. Secretary of the Interior*, 61 Phil. 459, 465 (1935).

[36] *Romualdez-Marcos v. Commission on Elections*, G.R. No. 119976, September 18, 1995, 248 SCRA 300, 331.

[37] *Papandayan, Jr. v. Commission on Elections*, 430 Phil. 754 (2002); *Romualdez v. RTC, Branch 7, Tacloban City*, *supra* note 28.

Asistio served in public office as Caloocan City Second District representative in the House of Representatives, having been elected as such in the 1992, 1995, 1998, and 2004 elections. In 2007, he also sought election as City Mayor. In all of these occasions, Asistio cast his vote in the same city. Taking these circumstances into consideration, gauged in the light of the doctrines above enunciated, it cannot be denied that Asistio has qualified, and continues to qualify, as a voter of Caloocan City. There is no showing that he has established domicile elsewhere, or that he had consciously and voluntarily abandoned his residence in Caloocan City. He should, therefore, remain in the list of permanent registered voters of Precinct No. 1811A, *Barangay* 15, Caloocan City.

That Asistio allegedly indicated in his Certificate of Candidacy for Mayor, both for the 2007 and 2010 elections, a non-existent or false address, or that he could not be physically found in the address he indicated when he registered as a voter, should not operate to exclude him as a voter of Caloocan City. These purported misrepresentations in Asistio's COC, if true, might serve as basis for an election offense under the Omnibus Election Code (OEC),[38] or an action to deny due course to the COC.[39] But to our mind, they do not serve as proof that Asistio has abandoned his domicile in Caloocan City, or that he has established residence outside of Caloocan City.

With this disquisition, we find no necessity to discuss the other issues raised in the petition.

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[38] *See* Section 74, in relation to Section 262 of the Omnibus Election Code.

[39] *See* Section 78 of the Omnibus Election Code. Echiverri filed with the COMELEC a Petition for Disqualification against Asistio grounded on the latter's previous conviction by final judgment of an offense involving moral turpitude, and his lack of residency in Caloocan City. However, the COMELEC (First Division) dismissed the Petition for lack of merit. To date, Echiverri has filed a Manifestation dated April 8, 2010 asking the Court to note that his Motion for Reconsideration of the Resolution of the COMELEC (First Division) is now pending with the COMELEC *en banc*.

WHEREFORE, the petition is *GRANTED*. The assailed Order dated February 15, 2010 of the Regional Trial Court, Branch 129, Caloocan City in SCA No. 997 and the decision dated February 5, 2010 of the Metropolitan Trial Court, Branch 52, Caloocan City in SCA No. 10-582 are *REVERSED* and *SET ASIDE*. Petitioner Luis A. Asistio remains a registered voter of Precinct No. 1811A, *Barangay* 15, Caloocan City. The Status *Quo Ante* Order issued by this Court on February 23, 2010 is *MADE PERMANENT*.

SO ORDERED.

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

Bersamin, J., no part. Relation to a party.

EN BANC

[G.R. No. 162230. April 28, 2010]

ISABELITA C. VINUYA, VICTORIA C. DELA PEÑA, HERMINIHILDA MANIMBO, LEONOR H. SUMAWANG, CANDELARIA L. SOLIMAN, MARIA L. QUILANTANG, MARIA L. MAGISA, NATALIA M. ALONZO, LOURDES M. NAVARO, FRANCISCA M. ATENCIO, ERLINDA MANALASTAS, TARCILA M. SAMPANG, ESTER M. PALACIO, MAXIMA R. DELA CRUZ, BELEN A. SAGUM, FELICIDAD TURLA, FLORENCIA M. DELA PEÑA, EUGENIA M. LALU, JULIANA G. MAGAT, CECILIA SANGUYO, ANA ALONZO, RUFINA P. MALLARI, ROSARIO M. ALARCON, RUFINA C. GULAPA, ZOILA B.

MANALUS, CORAZON C. CALMA, MARTA A. GULAPA, TEODORA M. HERNANDEZ, FERMIN B. DELA PEÑA, MARIA DELA PAZ B. CULALA, ESPERANZA MANAPOL, JUANITA M. BRIONES, VERGINIA M. GUEVARRA, MAXIMA ANGULO, EMILIA SANGIL, TEOFILA R. PUNZALAN, JANUARIA G. GARCIA, PERLA B. BALINGIT, BELEN A. CULALA, PILAR Q. GALANG, ROSARIO C. BUCO, GAUDENCIA C. DELA PEÑA, RUFINA Q. CATACUTAN, FRANCIA A. BUCO, PASTORA C. GUEVARRA, VICTORIA M. DELA CRUZ, PETRONILA O. DELA CRUZ, ZENAIDA P. DELA CRUZ, CORAZON M. SUBA, EMERINCIANA A. VINUYA, LYDIA A. SANCHEZ, ROSALINA M. BUCO, PATRICIA A. BERNARDO, LUCILA H. PAYAWAL, MAGDALENA LIWAG, ESTER C. BALINGIT, JOVITA A. DAVID, EMILIA C. MANGILIT, VERGINIA M. BANGIT, GUILLERMA S. BALINGIT, TERECITA PANGILINAN, MAMERTA C. PUNO, CRISENCIANA C. GULAPA, SEFERINA S. TURLA, MAXIMA B. TURLA, LEONICIA G. GUEVARRA, ROSALINA M. CULALA, CATALINA Y. MANIO, MAMERTA T. SAGUM, CARIDAD L. TURLA, *et al*. In their capacity and as members of the "Malaya Lolas Organization," *petitioners, vs.* **THE HONORABLE EXECUTIVE SECRETARY ALBERTO G. ROMULO, THE HONORABLE SECRETARY OF FOREIGN AFFAIRS DELIA DOMINGO-ALBERT, THE HONORABLE SECRETARY OF JUSTICE MERCEDITAS N. GUTIERREZ, and THE HONORABLE SOLICITOR GENERAL ALFREDO L. BENIPAYO,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; POLITICAL QUESTIONS; THOSE QUESTIONS WHICH ARE TO BE DECIDED BY THE PEOPLE IN THEIR SOVEREIGN CAPACITY.—** In *Tañada v. Cuenco*, we held that political questions refer "to those questions which, under the Constitution,

are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government. It is concerned with issues dependent upon the wisdom, not legality of a particular measure."

2. **ID.; ID.; ID.; QUESTIONS OF FOREIGN RELATIONS; CONDUCT OF FOREIGN RELATIONS; EXERCISE OF THIS POLITICAL POWER IS NOT SUBJECT TO JUDICIAL INQUIRY OR DECISION.—** Certain types of cases often have been found to present political questions. One such category involves questions of foreign relations. It is well-established that "[t]he conduct of the foreign relations of our government is committed by the Constitution to the executive and legislative — 'the political' — departments of the government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision." The US Supreme Court has further cautioned that decisions relating to foreign policy are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which the Judiciary has neither aptitude, facilities nor responsibility.

3. **ID.; ID.; ID.; STARTING POINT FOR ANALYSIS.—** *Baker v. Carr* remains the starting point for analysis under the political question doctrine. There the US Supreme Court explained that: x x x Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department or a lack of judicially discoverable and manageable standards for resolving it, or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on question.

4. **ID.; ID.; ID.; THE QUESTION WHETHER THE PHILIPPINE GOVERNMENT SHOULD ESPOUSE CLAIMS OF ITS**

NATIONALS AGAINST A FOREIGN GOVERNMENT IS A FOREIGN RELATIONS MATTER; CASE AT BAR.— To be sure, not all cases implicating foreign relations present political questions, and courts certainly possess the authority to construe or invalidate treaties and executive agreements. However, the question whether the Philippine government should espouse claims of its nationals against a foreign government is a foreign relations matter, the authority for which is demonstrably committed by our Constitution not to the courts but to the political branches. In this case, the Executive Department has already decided that it is to the best interest of the country to waive all claims of its nationals for reparations against Japan in the Treaty of Peace of 1951. The wisdom of such decision is not for the courts to question. Neither could petitioners herein assail the said determination by the Executive Department *via* the instant petition for *certiorari*.

5. **ID.; ID.; ID.; ID.; THE PRESIDENT'S ROLE IN FOREIGN AFFAIRS IS DOMINANT AND HE IS TRADITIONALLY ACCORDED A WIDER DEGREE OF DISCRETION IN THE CONDUCT OF FOREIGN AFFAIRS.—** In the seminal case of *US v. Curtiss-Wright Export Corp*., the US Supreme Court held that "[t]he President is the sole organ of the nation in its external relations, and its sole representative with foreign relations." x x x This ruling has been incorporated in our jurisprudence through *Bayan v. Executive Secretary* and *Pimentel v. Executive Secretary*, its overreaching principle was, perhaps, best articulated in (now Chief) Justice Puno's dissent in *Secretary of Justice v. Lantion*: x x x The conduct of foreign relations is full of complexities and consequences, sometimes with life and death significance to the nation especially in times of war. It can only be entrusted to that department of government which can act on the basis of the best available information and can decide with decisiveness. x x x It is also the President who possesses the most comprehensive and the most confidential information about foreign countries for our diplomatic and consular officials regularly brief him on meaningful events all over the world. He has also unlimited access to ultra-sensitive military intelligence data. In fine, the presidential role in foreign affairs is dominant and the President is traditionally accorded a wider degree of discretion in the conduct of foreign affairs. The regularity, nay, validity of his

actions are adjudged under less stringent standards, lest their judicial repudiation lead to breach of an international obligation, rupture of state relations, forfeiture of confidence, national embarrassment and a plethora of other problems with equally undesirable consequences.

6. **ID.; ID.; ID.; ID.; ID.; THE EXECUTIVE DEPARTMENT HAS DETERMINED THAT TAKING UP PETITIONERS' CAUSE WOULD BE INIMICAL TO OUR COUNTRY'S FOREIGN POLICY INTERESTS, AND COULD DISRUPT OUR RELATIONS WITH JAPAN.—** The Executive Department has determined that taking up petitioners' cause would be inimical to our country's foreign policy interests, and could disrupt our relations with Japan, thereby creating serious implications for stability in this region. x x x In any event, it cannot reasonably be maintained that the Philippine government was without authority to negotiate the Treaty of Peace with Japan.

7. **ID.; PUBLIC INTERNATIONAL LAW; INTERNATIONAL CLAIMS; PRIVATE CLAIMS; INTERNATIONAL SETTLEMENTS GENERALLY WIPE OUT UNDERLYING PRIVATE CLAIMS.—** And it is equally true that, since time immemorial, when negotiating peace accords and settling international claims: x x x [g]overnments have dealt with x x x private claims as their own, treating them as national assets, and as counters, 'chips', in international bargaining. Settlement agreements have lumped, or linked, claims deriving from private debts with others that were intergovernmental in origin, and concessions in regard to one category of claims might be set off against concessions in the other, or against larger political considerations unrelated to debts. Indeed, except as an agreement might otherwise provide, international settlements generally wipe out the underlying private claims, thereby terminating any recourse under domestic law. In *Ware v. Hylton*, a case brought by a British subject to recover a debt confiscated by the Commonwealth of Virginia during the war, Justice Chase wrote: I apprehend that the treaty of peace abolishes the subject of the war, and that after peace is concluded, neither the matter in dispute, nor the conduct of either party, during the war, can ever be revived, or brought into contest again. All violences, injuries, or damages sustained by the government, or people of either, during the war, are buried in oblivion; and all those things are implied by the very treaty of peace; and therefore

not necessary to be expressed. Hence it follows, that the restitution of, or compensation for, British property confiscated, or extinguished, during the war, by any of the United States, could only be provided for by the treaty of peace; and *if there had been no provision, respecting these subjects, in the treaty,* they could not be agitated after the treaty, by the British government, much less by her subjects in courts of justice.

8. ID.; ID.; ID.; ID.; ID.; ALLIED POWERS CONCLUDED THE PEACE TREATY WITH JAPAN TO PREVENT THE SPREAD OF COMMUNISM IN JAPAN, WHICH OCCUPIED A STRATEGIC POSITION IN THE FAR EAST.— Respondents explain that the Allied Powers concluded the Peace Treaty with Japan not necessarily for the complete atonement of the suffering caused by Japanese aggression during the war, not for the payment of adequate reparations, but for security purposes. The treaty sought to prevent the spread of communism in Japan, which occupied a strategic position in the Far East. Thus, the Peace Treaty compromised individual claims in the collective interest of the free world. This was also the finding in a similar case involving American victims of Japanese slave labor during the war. In a consolidated case in the Northern District of California the court dismissed the lawsuits filed, relying on the 1951 peace treaty with Japan, because of the following policy considerations: The official record of treaty negotiations establishes that a fundamental goal of the agreement was to settle the reparations issue once and for all. As the statement of the chief United States negotiator, John Foster Dulles, makes clear, it was well understood that **leaving open the possibility of future claims would be an unacceptable impediment to a lasting peace** x x x **It soon became clear that Japan's financial condition would render any aggressive reparations plan an exercise in futility. Meanwhile, the importance of a stable, democratic Japan as a bulwark to communism in the region increased.** x x x That this policy was embodied in the treaty is clear not only from the negotiations history but also from the Senate Foreign Relations Committee report recommending approval of the treaty by the Senate. The committee noted, for example: Obviously insistence upon the payment of reparations in any proportion commensurate with the claims of the injured countries and their nationals would wreck Japan's economy,

dissipate any credit that it may possess at present, destroy the initiative of its people, and create misery and chaos in which the seeds of discontent and communism would flourish. In short, [it] would be contrary to the basic purposes and policy of x x x the United States x x x.

9. **POLITICAL LAW; PUBLIC INTERNATIONAL LAW; INTERNATIONAL CLAIMS; INDIVIDUAL CLAIMS; WHERE A STATE HAS TAKEN UP A CASE ON BEHALF OF ONE OF ITS SUBJECTS BEFORE AN INTERNATIONAL TRIBUNAL, IN THE EYES OF THE LATTER, THE STATE IS SOLE CLAIMANT.—** In the international sphere, traditionally, the only means available for individuals to bring a claim within the international legal system has been when the individual is able to persuade a government to bring a claim on the individual's behalf. Even then, it is not the individual's rights that are being asserted, but rather, the state's own rights. Nowhere is this position more clearly reflected than in the dictum of the Permanent Court of International Justice (PCIJ) in the 1924 *Mavrommatis Palestine Concessions Case*: By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its *own right* to ensure, in the person of its subjects, respect for the rules of international law. The question, therefore, whether the present dispute originates in an injury to a private interest, which in point of fact is the case in many international disputes, is irrelevant from this standpoint. Once a State has taken up a case on behalf of one of its subjects before an international tribunal, in the eyes of the latter the State is sole claimant.

10. **ID.; ID.; ID.; ID.; ID.; THE STATE'S ACTIONS MAY BE DETERMINED BY CONSIDERATIONS OF A POLITICAL OR OTHER NATURE, UNRELATED TO THE PARTICULAR CASE.—** Since the exercise of diplomatic protection is the right of the State, reliance on the right is within the absolute discretion of states, and the decision whether to exercise the discretion may invariably be influenced by political considerations other than the legal merits of the particular claim. As clearly stated by the ICJ in *Barcelona Traction:* The Court would here observe that, within the limits prescribed by international law, a State may exercise diplomatic

protection **by whatever means and to whatever extent it thinks fit, for it is its own right that the State is asserting. Should the natural or legal person on whose behalf it is acting consider that their rights are not adequately protected, they have no remedy in international law.** All they can do is resort to national law, if means are available, with a view to furthering their cause or obtaining redress. The municipal legislator may lay upon the State an obligation to protect its citizens abroad, and may also confer upon the national a right to demand the performance of that obligation, and clothe the right with corresponding sanctions. However, all these questions remain within the province of municipal law and do not affect the position internationally. The State, therefore, is the sole judge to decide whether its protection will be granted, to what extent it is granted, and when will it cease. It retains, in this respect, a discretionary power the exercise of which may be determined by considerations of a political or other nature, unrelated to the particular case.

11. ID.; ID.; DUTY OF A STATE TO PROTECT ITS NATIONALS; ONLY A MORAL DUTY AND NOT A LEGAL DUTY, WITH NO MEANS OF ENFORCING ITS FULFILLMENT.— It has been argued, as petitioners argue now, that the State has a *duty* to protect its nationals and act on his/her behalf when rights are injured. However, at present, there is no sufficient evidence to establish a general international obligation for States to exercise diplomatic protection of their own nationals abroad. Though, perhaps desirable, neither state practice nor *opinio juris* has evolved in such a direction. If it is a duty internationally, it is only a moral and not a legal duty, and there is no means of enforcing its fulfillment.

12. ID.; ID.; CRIMES AGAINST HUMANITY; OBLIGATIONS OWED BY STATES TOWARDS THE COMMUNITY OF STATES AS A WHOLE.— The term *erga omnes* (Latin: *in relation to everyone*) in international law has been used as a legal term describing obligations owed by States towards the community of states as a whole. The concept was recognized by the ICJ in *Barcelona Traction:* x x x an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature, the former are the concern of all States.

In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*. Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination. Some of the corresponding rights of protection have entered into the body of general international law … others are conferred by international instruments of a universal or quasi-universal character. The Latin phrase, '*erga omnes*,' has since become one of the rallying cries of those sharing a belief in the emergence of a value-based international public order. However, as is so often the case, the reality is neither so clear nor so bright. Whatever the relevance of obligations *erga omnes* as a legal concept, its full potential remains to be realized in practice.

13. ID.; ID.; ID.; *JUS COGENS* (COMPELLING LAW).— The term is closely connected with the international law concept of *jus cogens*. In international law, the term "*jus cogens*" (literally, "compelling law") refers to norms that command peremptory authority, superseding conflicting treaties and custom. *Jus cogens* norms are considered peremptory in the sense that they are mandatory, do not admit derogation, and can be modified only by general international norms of equivalent authority. x x x After an extended debate over these and other theories of *jus cogens*, the ILC concluded ruefully in 1963 that "there is not as yet any generally accepted criterion by which to identify a general rule of international law as having the character of *jus cogens*." In a commentary accompanying the draft convention, the ILC indicated that "the prudent course seems to be to x x x leave the full content of this rule to be worked out in State practice and in the jurisprudence of international tribunals." Thus, while the existence of *jus cogens* in international law is undisputed, no consensus exists on its substance, beyond a tiny core of principles and rules.

14. ID.; ID.; ID.; STATES' RELUCTANCE TO PROSECUTE CLAIMS; PRESENT STATE PRACTICE IS GRANTING AMNESTIES, IMMUNITY, SELECTIVE PROSECUTION, OR *DE FACTO* IMPUNITY TO THOSE WHO COMMIT CRIMES AGAINST HUMANITY.— We fully agree that rape,

sexual slavery, torture, and sexual violence are morally reprehensible as well as legally prohibited under contemporary international law. x x x Indeed, precisely because of states' reluctance to directly prosecute claims against another state, recent developments support the modern trend to empower individuals to directly participate in suits against perpetrators of international crimes. Nonetheless, notwithstanding an array of General Assembly resolutions calling for the prosecution of crimes against humanity and the strong policy arguments warranting such a rule, the practice of states does not yet support the present existence of an obligation to prosecute international crimes. Of course a customary duty of prosecution is ideal, but we cannot find enough evidence to reasonably assert its existence. To the extent that any state practice in this area is widespread, it is in the practice of granting amnesties, immunity, selective prosecution, or *de facto* impunity to those who commit crimes against humanity.

15. **ID.; ID.; ID.; ID.; THERE IS NO NON-DEROGABLE DUTY TO INSTITUTE PROCEEDINGS AGAINST JAPAN.—** However, petitioners take quite a theoretical leap in claiming that these proscriptions automatically imply that the Philippines is under a non-derogable obligation to prosecute international crimes, particularly since petitioners do not demand the imputation of individual criminal liability, but seek to recover monetary reparations from the state of Japan. Absent the consent of states, an applicable treaty regime, or a directive by the Security Council, there is no non-derogable duty to institute proceedings against Japan.

16. **ID.; CONSTITUTIONAL LAW; SEPARATION OF POWERS; POLITICAL QUESTION; "COMFORT WOMEN STATIONS"; COURT HAS ONLY THE POWER TO *URGE* AND *EXHORT* THE EXECUTIVE DEPARTMENT TO TAKE UP PETITIONERS' CAUSE.—** Of course, we greatly sympathize with the cause of petitioners, and we cannot begin to comprehend the unimaginable horror they underwent at the hands of the Japanese soldiers. We are also deeply concerned that, in apparent contravention of fundamental principles of law, the petitioners appear to be without a remedy to challenge those that have offended them before appropriate fora. Needless to say, our government should take the lead in protecting its citizens against violation of their fundamental human rights.

Regrettably, it is not within our power to ***order*** the Executive Department to take up the petitioners' cause. x x x For us to overturn the Executive Department's determination would mean an assessment of the foreign policy judgments by a coordinate political branch to which authority to make that judgment has been constitutionally committed. x x x Ours is only the power to ***urge*** and ***exhort*** the Executive Department to take up petitioners' cause. x x x As a general principle – and particularly here, where such an extraordinary length of time has lapsed between the treaty's conclusion and our consideration – the Executive must be given ample discretion to assess the foreign policy considerations of espousing a claim against Japan, from the standpoint of both the interests of the petitioners and those of the Republic, and decide on that basis if apologies are sufficient, and whether further steps are appropriate or necessary.

NACHURA, *J., separate concurring opinion:*

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT; PETITION MUST CONCERN AN ISSUANCE OF GOVERNMENT AGENCIES IN THE EXERCISE OF JUDICIAL OR QUASI-JUDICIAL FUNCTIONS; CASE AT BAR.—** Pursuant to Rule 65, Section 1 of The Rules of Court, the Court cannot issue a writ of *certiorari* because the subject of the petition does not concern an issuance of the respondent government agencies in the exercise of a judicial or quasi-judicial function.
2. **ID.; PROVISIONAL REMEDIES; PRELIMINARY MANDATORY INJUNCTION; PURPOSE; WRIT THEREOF NOT ISSUED WITH THE DISMISSAL OF THE *CERTIORARI* PROCEEDING; CASE AT BAR.—** This Court cannot also issue the writ of preliminary mandatory injunction prayed for by petitioners. With the dismissal of the *certiorari* proceeding, this ancillary remedy has no more leg to stand on. Further, the purpose of injunction is to prevent threatened or continuous irremediable injury to some of the parties before their case can be thoroughly studied and educated. Its sole aim is to preserve the *status quo* until the merits of the case shall have been heard fully. Here, the *status quo* remains the same with or without the complained omission of the respondents. There is thus nothing for the Court to restore.

3. ID.; SPECIAL CIVIL ACTIONS; *MANDAMUS*; EMPLOYED TO COMPEL THE PERFORMANCE, WHEN REFUSED, OF A MINISTERIAL DUTY.— The remedy of *mandamus* is employed only to compel the performance, when refused, of a ministerial duty, not to require anyone to fulfill a discretionary power. The writ is simply to command to exercise a power already possessed and to perform a duty already imposed.

4. ID.; ID.; ID.; ID.; ACT OF STATE IN BRINGING COMFORT WOMEN'S CAUSE TO THE INTERNATIONAL COMMUNITY NOT A MINISTERIAL DUTY; CASE AT BAR.— If at all, petitioners' application for a preliminary mandatory injunction comes in the nature of a petition for *mandamus*. Petitioners ultimately pray that the Court compel respondents to perform a specific act — to assist the petitioners in bringing their cause to the international community. Even if this Court, remotely, considers the petition as one for *mandamus*, the same would still fail. In this case, we find no valid basis for issuance of a writ of mandamus.

APPEARANCES OF COUNSEL

Roque & Butuyan Law Offices for petitioners.
The Solicitor General for respondents.

D E C I S I O N

DEL CASTILLO, *J*.:

> The Treaty of Peace with Japan, insofar as it barred future claims such as those asserted by plaintiffs in these actions, exchanged full compensation of plaintiffs for a future peace. History has vindicated the wisdom of that bargain. And while full compensation for plaintiffs' hardships, in the purely economic sense, has been denied these former prisoners and countless other survivors of the war, the immeasurable bounty of life for themselves and their posterity in a free society and in a more peaceful world services the debt.[1]

There is a broad range of vitally important areas that must be regularly decided by the Executive Department without either

[1] *In Re World War II Era Japanese Forced Labor Litigation*, 114 F. Supp. 2d 939 (N.D. Cal. 2000).

challenge or interference by the Judiciary. One such area involves the delicate arena of foreign relations. It would be strange indeed if the courts and the executive spoke with different voices in the realm of foreign policy. Precisely because of the nature of the questions presented, and the lapse of more than 60 years since the conduct complained of, we make no attempt to lay down general guidelines covering other situations not involved here, and confine the opinion only to the very questions necessary to reach a decision on this matter.

Factual Antecedents

This is an original Petition for *Certiorari* under Rule 65 of the Rules of Court with an application for the issuance of a writ of preliminary mandatory injunction against the Office of the Executive Secretary, the Secretary of the Department of Foreign Affairs (DFA), the Secretary of the Department of Justice (DOJ), and the Office of the Solicitor General (OSG).

Petitioners are all members of the MALAYA LOLAS, a non-stock, non-profit organization registered with the Securities and Exchange Commission, established for the purpose of providing aid to the victims of rape by Japanese military forces in the Philippines during the Second World War.

Petitioners narrate that during the Second World War, the Japanese army attacked villages and systematically raped the women as part of the destruction of the village. Their communities were bombed, houses were looted and burned, and civilians were publicly tortured, mutilated, and slaughtered. Japanese soldiers forcibly seized the women and held them in houses or cells, where they were repeatedly raped, beaten, and abused by Japanese soldiers. As a result of the actions of their Japanese tormentors, the petitioners have spent their lives in misery, having endured physical injuries, pain and disability, and mental and emotional suffering.[2]

[2] U.N. Doc. E/CN.4/1996/53/Add.1 (January 4, 1996), Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1994/45.

Petitioners claim that since 1998, they have approached the Executive Department through the DOJ, DFA, and OSG, requesting assistance in filing a claim against the Japanese officials and military officers who ordered the establishment of the "comfort women" stations in the Philippines. However, officials of the Executive Department declined to assist the petitioners, and took the position that the individual claims of the comfort women for compensation had already been fully satisfied by Japan's compliance with the Peace Treaty between the Philippines and Japan.

Issues

Hence, this petition where petitioners pray for this court to (a) declare that respondents committed grave abuse of discretion amounting to lack or excess of discretion in refusing to espouse their claims for the crimes against humanity and war crimes committed against them; and (b) compel the respondents to espouse their claims for official apology and other forms of reparations against Japan before the International Court of Justice (ICJ) and other international tribunals.

Petitioners' arguments

Petitioners argue that the general waiver of claims made by the Philippine government in the Treaty of Peace with Japan is void. They claim that the comfort women system established by Japan, and the brutal rape and enslavement of petitioners constituted a crime against humanity,[3] sexual slavery,[4] and

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[3] Treaty and customary law both provide that when rape is committed as part of a widespread or systematic attack directed at any civilian population, regardless of its international or internal character, then it constitutes one of the gravest crimes against humanity. This principle is codified under Article 6(c) of the 1945 Nuremberg Charter as well as Article 5(c) of the Tokyo Charter, which enumerated "murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian populations, before or during the war" as crimes against humanity, and extended in scope to include imprisonment, torture and rape by Control Council Law No. 10.

[4] Article 1 of the Slavery Convention provides:

For the purpose of the present Convention, the following definitions are agreed upon:

torture.[5] They allege that the prohibition against these international crimes is *jus cogens* norms from which no derogation is possible; as such, in waiving the claims of Filipina comfort women and failing to espouse their complaints against Japan, the Philippine government is in breach of its legal obligation not to afford impunity for crimes against humanity. Finally, petitioners assert that the Philippine government's acceptance of the "apologies" made by Japan as well as funds from the Asian Women's Fund (AWF) were contrary to international law.

Respondents' Arguments

Respondents maintain that all claims of the Philippines and its nationals relative to the war were dealt with in the San Francisco Peace Treaty of 1951 and the bilateral Reparations Agreement of 1956.[6]

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(1) Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

(2) The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.

Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention of 1926 (Slavery Convention of 1926), 60 L.N.T.S. 253, *entered into force* March 9, 1927.

[5] Torture is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. (Convention Against Torture, Article 1.1)

[6] Signed at San Francisco, September 8, 1951; Initial entry into force: April 28, 1952. The treaty was signed by Argentina, Australia, Belgium, Bolivia, Brazil, Cambodia, Canada, Chile, Colombia, Costa Rica, Cuba, Czechoslovakia, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Honduras, Indonesia, Iran, Iraq, Japan, Laos, Lebanon, Liberia,

Article 14 of the Treaty of Peace[7] provides:

Article 14. Claims and Property

a) It is recognized that Japan should pay reparations to the Allied Powers for the damage and suffering caused by it during the war. Nevertheless it is also recognized that the resources of Japan are not presently sufficient, if it is to maintain a viable economy, to make complete reparation for all such damage and suffering and at the present time meet its other obligations.

b) Except as otherwise provided in the present Treaty, the Allied Powers waive all reparations claims of the Allied Powers, other claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war, and claims of the Allied Powers for direct military costs of occupation.

In addition, respondents argue that the apologies made by Japan[8] have been satisfactory, and that Japan had addressed the individual claims of the women through the atonement money paid by the Asian Women's Fund.

Luxembourg, Mexico, the Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, The Philippines, Poland, Saudi Arabia, the Soviet Union, Sri Lanka, South Africa,Syria, Turkey, the United Kingdom, the United States, Uruguay, Venezuela, Vietnam. The signatories for the Republic of the Philippines were Carlos P. Romulo, J.M. Elizalde, Vicente Francisco, Diosdado Macapagal, Emiliano Tirona, and V.G. Sinco.

[7] Signed in San Francisco, September 8, 1951, ratified by the Philippine Senate on July 16, 1956. Signed by the Philippine President on July 18, 1956. Entered into force on July 23, 1956.

[8] On September 21, 1992, the Japanese Embassy formally confirmed to the Philippine government the involvement of the Japanese Imperial Army in the establishment of comfort women stations.

In May 1993, Japan approved textbooks featuring an account of how comfort women were forced to work as prostitutes for the Japanese Imperial Army.

On August 4, 1993, Japanese Prime Minister Miyazawa, before resigning, formally apologized to women all over the world who were forced to serve as comfort women:

Historical Background

The comfort women system was the tragic legacy of the Rape of Nanking. In December 1937, Japanese military forces captured the city of Nanking in China and began a "barbaric campaign of terror" known as the Rape of Nanking, which included the rapes and murders of an estimated 20,000 to 80,000 Chinese women, including young girls, pregnant mothers, and elderly women.[9]

In reaction to international outcry over the incident, the Japanese government sought ways to end international condemnation[10] by establishing the "comfort women" system. Under this system, the military could simultaneously appease soldiers' sexual appetites and contain soldiers' activities within a regulated environment.[11] Comfort stations would also prevent the spread of venereal disease among soldiers and discourage soldiers from raping inhabitants of occupied territories.[12]

> The Japanese government regrets and sincerely apologizes for the unbearable pain that these women regardless of their nationalities, suffered while being forced to work as so-called comfort women.
>
> The Japanese government expresses its heartfelt sentiments of reflection and apology to all the women for their many sufferings and the injuries to mind and body that cannot be healed.

The Philippine government, under the administration of then President Fidel V. Ramos, accepted the formal apology given by the Japanese Government. Though the formal apology came late, it is a most welcome gesture from the government of Japan, which has been very supportive of our economic development.

[9] Richard J. Galvin, *The Case for a Japanese Truth Commission Covering World War II Era Japanese War Crimes,* 11 TUL. J. INT'L & COMP. L. 59, 64 (2003).

[10] *See* Argibay, *Ad Litem* Judge, International Criminal Tribunal for the Former Yugoslavia, Speech at the *Stefan A. Riesenfeld Symposium: Sexual Slavery and the "Comfort Women" of World War II*, in 21 BERKELEY J. INT'L L. 375, 376 (2003).

[11] *Id.*

[12] Nearey, *Seeking Reparations in the New Millennium: Will Japan Compensate the "Comfort Women" of World War II?*, 15 TEMP. INT'L & COMP. L.J. 121, 134 (2001).

Daily life as a comfort woman was "unmitigated misery."[13] The military forced victims into barracks-style stations divided into tiny cubicles where they were forced to live, sleep, and have sex with as many 30 soldiers per day.[14] The 30 minutes allotted for sexual relations with each soldier were 30-minute increments of unimaginable horror for the women.[15] Disease was rampant.[16] Military doctors regularly examined the women, but these checks were carried out to prevent the spread of venereal diseases; little notice was taken of the frequent cigarette burns, bruises, bayonet stabs and even broken bones inflicted on the women by soldiers.

Fewer than 30% of the women survived the war.[17] Their agony continued in having to suffer with the residual physical, psychological, and emotional scars from their former lives. Some returned home and were ostracized by their families. Some committed suicide. Others, out of shame, never returned home.[18]

Efforts to Secure Reparation

The most prominent attempts to compel the Japanese government to accept legal responsibility and pay compensatory damages for the comfort women system were through a series of lawsuits, discussion at the United Nations (UN), resolutions by various nations, and the Women's International Criminal

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[13] USTINIA DOLGOPOL & SNEHAL PARANJAPE, COMFORT WOMEN: AN UNFINISHED ORDEAL 15 (1994).

[14] *Id.* at 48.

[15] See Johnson, Comment, *Justice for "Comfort Women": Will the Alien Tort Claims Act Bring Them the Remedies They Seek?*, 20 PENN ST. INT'L L. REV. 253, 260 (2001).

[16] *Id.* at 261. Soldiers disregarded rules mandating the use of condoms, and thus many women became pregnant or infected with sexually transmitted diseases.

[17] Boling, *Mass Rape, Enforced Prostitution, and the Japanese Imperial Army: Japan Eschews International Legal Responsibility?* 3 OCCASIONAL PAPERS/REPRINT SERIES CONTEMPORARY ASIAN STUDIES 8 (1995).

[18] *Id.*

Tribunal. The Japanese government, in turn, responded through a series of public apologies and the creation of the AWF.[19]

Lawsuits

In December 1991, Kim Hak-Sun and two other survivors filed the first lawsuit in Japan by former comfort women against the Japanese government. The Tokyo District Court however dismissed their case.[20] Other suits followed,[21] but the Japanese government has, thus far, successfully caused the dismissal of every case.[22]

Undoubtedly frustrated by the failure of litigation before Japanese courts, victims of the comfort women system brought their claims before the United States (US). On September 18,

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[19] YAMAMOTO, *ET AL., RACE, RIGHTS AND REPARATION* 435-38 (2001).

[20] Meade, *From Shanghai to Globocourt: An Analysis of the "Comfort Women's" Defeat in Hwang v. Japan*, 35 VAND. J. TRANSNAT'L L. 211, 233 (2002).

[21] Numerous lawsuits immediately followed, including lawsuits filed by the Korean Council for Women Drafted for Sexual Slavery, and a suit by a Dutch former comfort woman; Fisher, *Japan's Postwar Compensation Litigation*, 22 WHITTIER L. REV. 35, 44 (2000).

[22] The lower court ruling in *Ha v. Japan* has been the lone courtroom victory for comfort women. On December 25, 1992, ten Korean women filed the lawsuit with the Yamaguchi Prefectural Court, seeking an official apology and compensation from the Japanese government. The plaintiffs claimed that Japan had a moral duty to atone for its wartime crimes and a legal obligation to compensate them under international and domestic laws. More than five years later, on April 27, 1998, the court found the Japanese government guilty of negligence and ordered it to pay ¥300,000, or $2,270, to each of the three plaintiffs. However, the court denied plaintiffs' demands that the government issue an official apology. Both parties appealed, but Japan's High Court later overturned the ruling. *See* Park, *Broken Silence: Redressing the Mass Rape and Sexual Enslavement of Asian Women by the Japanese Government in an Appropriate Forum,* 3 ASIAN-PAC. L. & POL'Y J. 40 (2002); Kim & Kim, *Delayed Justice: The Case of the Japanese Imperial Military Sex Slaves*, 16 UCLA PAC. BASIN L.J. 263 (1998). Park, *Comfort Women During WW II: Are U.S. Courts a Final Resort for Justice?*, 17 AM. U. INT'L L. REV. 403, 408 (2002).

2000, 15 comfort women filed a class action lawsuit in the US District Court for the District of Columbia[23] "seeking money damages for [allegedly] having been subjected to sexual slavery and torture before and during World War II," in violation of "both positive and customary international law." The case was filed pursuant to the Alien Tort Claims Act ("ATCA"),[24] which allowed the plaintiffs to sue the Japanese government in a US federal district court.[25] On October 4, 2001, the district court dismissed the lawsuit due to lack of jurisdiction over Japan, stating that "[t]here is no question that this court is not the appropriate forum in which plaintiffs may seek to reopen x x x discussions nearly half a century later x x x [E]ven if Japan did not enjoy sovereign immunity, plaintiffs' claims are non-justiciable and must be dismissed."

The District of Columbia Court of Appeals affirmed the lower court's dismissal of the case.[26] On appeal, the US Supreme

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[23] *Hwang Geum Joo v. Japan* ("Hwang I"), 172 F. Supp. 2d 52 (D.D.C. 2001), affirmed, 332 F.3d 679 (D.C. Cir. 2003), vacated, 542 U.S. 901 (2004), remanded to 413 F.3d 45 (D.C. Cir. 2005), cert. denied, 126 S. Ct. 1418 (2006).

[24] Alien Tort Claims Act, 28 U.S.C. § 1350 (2000). The ATCA gives US federal district courts original jurisdiction to adjudicate civil cases and award tort damages for violations of the law of nations or United States treaties. See Ahmed, *The Shame of Hwang v. Japan: How the International Community Has Failed Asia's Comfort Women*, 14 TEX. J. WOMEN & L. 121, 141-42 (2004).

[25] Under the ATCA, when a "cause of action is brought against a sovereign nation, the only basis for obtaining personal jurisdiction over the defendant is through an exception to the Foreign Sovereign Immunities Act (FSIA)." See Jeffords, *Will Japan Face Its Past? The Struggle for Justice for Former Comfort Women,* 2 REGENT J. INT'L L. 145, 158 (2003/2004). The FSIA (28 U.S.C. § 1604 (1994 & Supp. 1999).) grants foreign states immunity from being sued in US district courts unless the state waives its immunity or the claims fall within certain enumerated exceptions. The Japanese government successfully argued that it is entitled to sovereign immunity under the FSIA. The government additionally argued that post-war treaties had resolved the issue of reparations, which were non-justiciable political questions.

[26] See *Hwang Geum Joo v. Japan* ("Hwang II"), 332 F.3d 679, 680-81 (D.C. Cir. 2003), vacated, 542 U.S. 901 (2004), remanded to 413 F.3d 45 (D.C. Cir. 2005), cert. denied, 126 S. Ct. 1418 (2006).

Court granted the women's petition for writ of *certiorari*, vacated the judgment of the District of Columbia Court of Appeals, and remanded the case.[27] On remand, the Court of Appeals affirmed its prior decision, noting that "much as we may feel for the plight of the appellants, the courts of the US simply are not authorized to hear their case."[28] The women again brought their case to the US Supreme Court which denied their petition for writ of *certiorari* on February 21, 2006.

Efforts at the United Nations

In 1992, the Korean Council for the Women Drafted for Military Sexual Slavery by Japan (KCWS), submitted a petition to the UN Human Rights Commission (UNHRC), asking for assistance in investigating crimes committed by Japan against Korean women and seeking reparations for former comfort women.[29] The UNHRC placed the issue on its agenda and appointed Radhika Coomaraswamy as the issue's special investigator. In 1996, Coomaraswamy issued a Report reaffirming Japan's responsibility in forcing Korean women to act as sex slaves for the imperial army, and made the following ***recommendations***:

A. At the national level

137. The Government of Japan should:

(a) Acknowledge that the system of comfort stations set up by the Japanese Imperial Army during the Second World War was a violation of its obligations under international law and accept legal responsibility for that violation;

(b) Pay compensation to individual victims of Japanese military sexual slavery according to principles outlined by the Special

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[27] See *Hwang Geum Joo v. Japan* ("Hwang III"), 542 U.S. 901 (2004) (memorandum), remanded to 413 F.3d 45 (D.C. Cir. 2005), cert. denied, 126 S. Ct. 1418 (2006).

[28] *Id.*

[29] SOH, THE COMFORT WOMEN PROJECT, SAN FRANCISCO STATE UNIVERSITY (1997-2001), http://online.sfsu.edu/~soh/comfortwomen.html, at 1234-35.

Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on the right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms. A special administrative tribunal for this purpose should be set up with a limited time-frame since many of the victims are of a very advanced age;

(c) Make a full disclosure of documents and materials in its possession with regard to comfort stations and other related activities of the Japanese Imperial Army during the Second World War;

(d) Make a public apology in writing to individual women who have come forward and can be substantiated as women victims of Japanese military sexual slavery;

(e) Raise awareness of these issues by amending educational curricula to reflect historical realities;

(f) Identify and punish, as far as possible, perpetrators involved in the recruitment and institutionalization of comfort stations during the Second World War.

Gay J. McDougal, the Special Rapporteur for the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, also presented a report to the Sub-Committee on June 22, 1998 entitled *Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-like Practices During Armed Conflict.* The report included an appendix *entitled An Analysis of the Legal Liability of the Government of Japan for 'Comfort Women Stations' established during the Second World War*,[30] which contained the following findings:

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[30] *An Analysis Of The Legal Liability Of The Government Of Japan For "Comfort Women Stations" Established During The Second World War* (Appendix); REPORT ON CONTEMPORARY FORMS OF SLAVERY: SYSTEMATIC RAPE, SEXUAL SLAVERY AND SLAVERY-LIKE PRACTICES DURING ARMED CONFLICT, Final report submitted by Ms. Gay J. McDougall, Special Rapporteur, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Commission on Human Rights (Fiftieth Session) E/CN.4/Sub.2/1998/13 (June 22, 1998).

68. The present report concludes that the Japanese Government remains liable for grave violations of human rights and humanitarian law, violations that amount in their totality to crimes against humanity. The Japanese Government's arguments to the contrary, including arguments that seek to attack the underlying humanitarian law prohibition of enslavement and rape, remain as unpersuasive today as they were when they were first raised before the Nuremberg war crimes tribunal more than 50 years ago. In addition, the Japanese Government's argument that Japan has already settled all claims from the Second World War through peace treaties and reparations agreements following the war remains equally unpersuasive. This is due, in large part, to the failure until very recently of the Japanese Government to admit the extent of the Japanese military's direct involvement in the establishment and maintenance of these rape centres. The Japanese Government's silence on this point during the period in which peace and reparations agreements between Japan and other Asian Governments were being negotiated following the end of the war must, as a matter of law and justice, preclude Japan from relying today on these peace treaties to extinguish liability in these cases.

69. The failure to settle these claims more than half a century after the cessation of hostilities is a testament to the degree to which the lives of women continue to be undervalued. Sadly, this failure to address crimes of a sexual nature committed on a massive scale during the Second World War has added to the level of impunity with which similar crimes are committed today. The Government of Japan has taken some steps to apologize and atone for the rape and enslavement of over 200,000 women and girls who were brutalized in "comfort stations" during the Second World War. However, anything less than full and unqualified acceptance by the Government of Japan of legal liability and the consequences that flow from such liability is wholly inadequate. It must now fall to the Government of Japan to take the necessary final steps to provide adequate redress.

The UN, since then, has not taken any official action directing Japan to provide the reparations sought.

Women's International War Crimes Tribunal

The Women's International War Crimes Tribunal (WIWCT) was a "people's tribunal" established by a number of Asian

women and human rights organizations, supported by an international coalition of non-governmental organizations.[31] First proposed in 1998, the WIWCT convened in Tokyo in 2000 in order to "adjudicate Japan's military sexual violence, in particular the enslavement of comfort women, to bring those responsible for it to justice, and to end the ongoing cycle of impunity for wartime sexual violence against women."

After examining the evidence for more than a year, the "tribunal" issued its verdict on December 4, 2001, finding the former Emperor Hirohito and the State of Japan guilty of crimes against humanity for the rape and sexual slavery of women.[32] It bears stressing, however, that although the tribunal included prosecutors, witnesses, and judges, its judgment was not legally binding since the tribunal itself was organized by private citizens.

Action by Individual Governments

On January 31, 2007, US Representative Michael Honda of California, along with six co-sponsor representatives, introduced House Resolution 121 which called for Japanese action in light of the ongoing struggle for closure by former comfort women. The Resolution was formally passed on July 30, 2007,[33] and made four distinct demands:

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[31] Chinkin, *Women's International Tribunal on Japanese Sexual Slavery*, 95 AM. J. INT'L. L. 335 (2001).

[32] A large amount of evidence was presented to the tribunal for examination. Sixty-four former comfort women from Korea and other surrounding territories in the Asia-Pacific region testified before the court. Testimony was also presented by historical scholars, international law scholars, and two former Japanese soldiers. Additional evidence was submitted by the prosecution teams of ten different countries, including: North and South Korea, China, Japan, the Philippines, Indonesia, Taiwan, Malaysia, East Timor, and the Netherlands. *Id.* at 336.

[33] Press Release, *Congressman Mike Honda, Rep. Honda Calls on Japan to Apologize for World War II Exploitation of "Comfort Women"* (January 31, 2007).

[I]t is the sense of the House of Representatives that the Government of Japan (1) should formally acknowledge, apologize, and accept historical responsibility in a clear and unequivocal manner for its Imperial Armed Forces' coercion of young women into sexual slavery, known to the world as "comfort women", during its colonial and wartime occupation of Asia and the Pacific Islands from the 1930s through the duration of World War II; (2) would help to resolve recurring questions about the sincerity and status of prior statements if the Prime Minister of Japan were to make such an apology as a public statement in his official capacity; (3) should clearly and publicly refute any claims that the sexual enslavement and trafficking of the "comfort women" for the Japanese Imperial Army never occurred; and (4) should educate current and future generations about this horrible crime while following the recommendations of the international community with respect to the "comfort women."[34]

In December 2007, the European Parliament, the governing body of the European Union, drafted a resolution similar to House Resolution 121.[35] Entitled, "*Justice for Comfort Women*," the resolution demanded: (1) a formal acknowledgment of responsibility by the Japanese government; (2) a removal of the legal obstacles preventing compensation; and (3) unabridged education of the past. The resolution also stressed the urgency with which Japan should act on these issues, stating: "the right of individuals to claim reparations against the government should be expressly recognized in national law, and cases for reparations for the survivors of sexual slavery, as a crime under international law, should be prioritized, taking into account the age of the survivors."

The Canadian and Dutch parliaments have each followed suit in drafting resolutions against Japan. Canada's resolution demands the Japanese government to issue a formal apology, to admit that its Imperial Military coerced or forced hundreds

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[34] H.R. Res. 121, 110th Cong. (2007) (enacted).

[35] European Parliament, Human rights: Chad, Women's Rights in Saudi Arabia, Japan's Wartime Sex Slaves, Dec. 17, 2007, http://www.europarl.europa.eu/sides/getDoc.do?language=EN&type=IMPRESS&reference=20071210BRI14639&secondRef=ITEM-008-EN.

of thousands of women into sexual slavery, and to restore references in Japanese textbooks to its war crimes.[36] The Dutch parliament's resolution calls for the Japanese government to uphold the 1993 declaration of remorse made by Chief Cabinet Secretary Yohei Kono.

The Foreign Affairs Committee of the United Kingdom's Parliament also produced a report in November, 2008 entitled, "*Global Security: Japan and Korea*" which concluded that Japan should acknowledge the pain caused by the issue of comfort women in order to ensure cooperation between Japan and Korea.

Statements of Remorse made by representatives of the Japanese government

Various officials of the Government of Japan have issued the following public statements concerning the comfort system:

a) Statement by the Chief Cabinet Secretary Yohei Kono in 1993:

> The Government of Japan has been conducting a study on the issue of wartime "comfort women" since December 1991. I wish to announce the findings as a result of that study.
>
> As a result of the study which indicates that comfort stations were operated in extensive areas for long periods, it is apparent that there existed a great number of comfort women. Comfort stations were operated in response to the request of the military authorities of the day. The then Japanese military was, directly or indirectly, involved in the establishment and management of the comfort stations and the transfer of comfort women. The recruitment of the comfort women was conducted mainly by private recruiters who acted in response to the request of the military. The Government study has revealed that in many cases they were recruited against their own will, through coaxing coercion, *etc*., and that, at times, administrative/military personnel directly took part in the recruitments. They lived in misery at comfort stations under a coercive atmosphere.

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[36] The Comfort Women—A History of Trauma,http:// taiwan.yam.org.tw/womenweb/conf_women/index_e.html.

As to the origin of those comfort women who were transferred to the war areas, excluding those from Japan, those from the Korean Peninsula accounted for a large part. The Korean Peninsula was under Japanese rule in those days, and their recruitment, transfer, control, *etc*., were conducted generally against their will, through coaxing, coercion, *etc*.

Undeniably, this was an act, with the involvement of the military authorities of the day, that severely injured the honor and dignity of many women. The Government of Japan would like to take this opportunity once again to extend its sincere apologies and remorse to all those, irrespective of place of origin, who suffered immeasurable pain and incurable physical and psychological wounds as comfort women.

It is incumbent upon us, the Government of Japan, to continue to consider seriously, while listening to the views of learned circles, how best we can express this sentiment.

We shall face squarely the historical facts as described above instead of evading them, and take them to heart as lessons of history. We hereby reiterated our firm determination never to repeat the same mistake by forever engraving such issues in our memories through the study and teaching of history.

As actions have been brought to court in Japan and interests have been shown in this issue outside Japan, the Government of Japan shall continue to pay full attention to this matter, including private researched related thereto.

b) Prime Minister Tomiichi Murayama's Statement in 1994

On the issue of wartime "comfort women," which seriously stained the honor and dignity of many women, I would like to take this opportunity once again to express my profound and sincere remorse and apologies

c) Letters from the Prime Minister of Japan to Individual Comfort Women

The issue of comfort women, with the involvement of the Japanese military authorities at that time, was a grave affront to the honor and dignity of a large number of women.

As Prime Minister of Japan, I thus extend anew my most sincere

apologies and remorse to all the women who endured immeasurable and painful experiences and suffered incurable physical and psychological wounds as comfort women.

I believe that our country, painfully aware of its moral responsibilities, with feelings of apology and remorse, should face up squarely to its past history and accurately convey it to future generations.

d) The Diet (Japanese Parliament) passed resolutions in 1995 and 2005

Solemnly reflecting upon the many instances of colonial rule and acts of aggression that occurred in modern world history, and recognizing that Japan carried out such acts in the past and inflicted suffering on the people of other countries, especially in Asia, the Members of this House hereby express deep remorse. (Resolution of the House of Representatives adopted on June 9, 1995)

e) Various Public Statements by Japanese Prime Minister Shinzo Abe

I have talked about this matter in the Diet sessions last year, and recently as well, and to the press. I have been consistent. I will stand by the Kono Statement. This is our consistent position. Further, we have been apologizing sincerely to those who suffered immeasurable pain and incurable psychological wounds as comfort women. Former Prime Ministers, including Prime Ministers Koizumi and Hashimoto, have issued letters to the comfort women. I would like to be clear that I carry the same feeling. This has not changed even slightly. (Excerpt from Remarks by Prime Minister Abe at an Interview by NHK, March 11, 2007).

I am apologizing here and now. I am apologizing as the Prime Minister and it is as stated in the statement by the Chief Cabinet Secretary Kono. (Excerpt from Remarks by Prime Minister Abe at the Budget Committee, the House of Councilors, the Diet of Japan, March 26, 2007).

I am deeply sympathetic to the former comfort women who suffered hardships, and I have expressed my apologies for the extremely agonizing circumstances into which they were placed. (Excerpt from Telephone Conference by Prime Minister Abe to President George W. Bush, April 3, 2007).

I have to express sympathy from the bottom of my heart to those people who were taken as wartime comfort women. As a human being, I would like to express my sympathies, and also as prime minister of Japan I need to apologize to them. My administration has been saying all along that we continue to stand by the Kono Statement. We feel responsible for having forced these women to go through that hardship and pain as comfort women under the circumstances at the time. (Excerpt from an interview article "A Conversation with Shinzo Abe" by the Washington Post, April 22, 2007).

x x x both personally and as Prime Minister of Japan, my heart goes out in sympathy to all those who suffered extreme hardships as comfort women; and I expressed my apologies for the fact that they were forced to endure such extreme and harsh conditions. Human rights are violated in many parts of the world during the 20th Century; therefore we must work to make the 21st Century a wonderful century in which no human rights are violated. And the Government of Japan and I wish to make significant contributions to that end. (Excerpt from Prime Minister Abe's remarks at the Joint Press Availability after the summit meeting at Camp David between Prime Minister Abe and President Bush, April 27, 2007).

The Asian Women's Fund

Established by the Japanese government in 1995, the AWF represented the government's concrete attempt to address its moral responsibility by offering monetary compensation to victims of the comfort women system.[37] The purpose of the AWF was to show atonement of the Japanese people through expressions of apology and remorse to the former wartime comfort women, to restore their honor, and to demonstrate Japan's strong respect for women.[38]

The AWF announced three programs for former comfort women who applied for assistance: (1) an atonement fund paying ¥2 million

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[37] YAMAMOTO, *ET AL.*, *supra* note 19 at 437. The government appointed Bunbei Hara, former Speaker of the Upper House of the Diet, as the first President of the Asian Women's Fund (1995-1999). Former Prime Minister Tomiichi Murayama succeeded Hara as the second president of the program (1999-present). See Jeffords, *supra* note 25 at 158.

[38] The Asian Women's Fund, http://www.awf.or.jp/english/project_atonement.html, at 55.

(approximately $20,000) to each woman; (2) medical and welfare support programs, paying ¥2.5-3 million ($25,000-$30,000) for each woman; and (3) a letter of apology from the Japanese Prime Minister to each woman. Funding for the program came from the Japanese government and private donations from the Japanese people. As of March 2006, the AWF provided ¥700 million (approximately $7 million) for these programs in South Korea, Taiwan, and the Philippines; ¥380 million (approximately $3.8 million) in Indonesia; and ¥242 million (approximately $2.4 million) in the Netherlands.

On January 15, 1997, the AWF and the Philippine government signed a Memorandum of Understanding for medical and welfare support programs for former comfort women. Over the next five years, these were implemented by the Department of Social Welfare and Development.

Our Ruling

Stripped down to its essentials, the issue in this case is whether the Executive Department committed grave abuse of discretion in not espousing petitioners' claims for official apology and other forms of reparations against Japan.

The petition lacks merit.

From a Domestic Law Perspective, the Executive Department has the exclusive prerogative to determine whether to espouse petitioners' claims against Japan.

Baker v. Carr[39] remains the starting point for analysis under the political question doctrine. There the US Supreme Court explained that:

> x x x Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department or a lack of judicially

[39] 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962).

discoverable and manageable standards for resolving it, or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on question.

In *Tañada v. Cuenco*,[40] we held that political questions refer "to those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government. It is concerned with issues dependent upon the wisdom, not legality of a particular measure."

Certain types of cases often have been found to present political questions.[41] One such category involves questions of foreign relations. It is well-established that "[t]he conduct of the foreign relations of our government is committed by the Constitution to the executive and legislative—'the political'—departments of the government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision."[42] The US Supreme Court has further cautioned that decisions relating to foreign policy are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which the Judiciary has neither aptitude, facilities nor responsibility.[43]

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[40] 103 Phil. 1051, 1068 (1957).

[41] *See Baker v. Carr*, 369 U.S. at 211-222.

[42] *Oetjen v. Central Leather Co.*, 246 U.S. 297, 302 (1918).

[43] *Chicago & S. Air Lines, Inc. v. Waterman S.S. Corp.*, 333 U.S. 103, 111 (1948).

To be sure, not all cases implicating foreign relations present political questions, and courts certainly possess the authority to construe or invalidate treaties and executive agreements.[44] However, the question whether the Philippine government should espouse claims of its nationals against a foreign government is a foreign relations matter, the authority for which is demonstrably committed by our Constitution not to the courts but to the political branches. In this case, the Executive Department has already decided that it is to the best interest of the country to waive all claims of its nationals for reparations against Japan in the Treaty of Peace of 1951. The wisdom of such decision is not for the courts to question. Neither could petitioners herein assail the said determination by the Executive Department *via* the instant petition for *certiorari*.

In the seminal case of *US v. Curtiss-Wright Export Corp.*,[45] the US Supreme Court held that "[t]he President is the sole organ of the nation in its external relations, and its sole representative with foreign relations."

> It is quite apparent that if, in the maintenance of our international relations, embarrassment — perhaps serious embarrassment — is to be avoided and success for our aims achieved, congressional legislation which is to be made effective through negotiation and inquiry within the international field must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible where domestic affairs alone involved. Moreover, he, not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries, and especially is this true in time of war. He has his confidential sources of information. He has his agents in the form of diplomatic, consular and other officials. x x x

This ruling has been incorporated in our jurisprudence through *Bayan v. Executive Secretary*[46] and *Pimentel v.*

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[44] CONSTITUTION, Art. VIII, Sec. 5(2)(a).

[45] 299 US 304, 57 S. Ct. 216, 81 L. Ed, 255 (1936).

[46] 396 Phil. 623, 663 (2000). We held:

By constitutional fiat and by the intrinsic nature of his office, the President, as head of State, is the sole organ and authority in the external affairs of the

Executive Secretary;[47] its overreaching principle was, perhaps, best articulated in (now Chief) Justice Puno's dissent in *Secretary of Justice v. Lantion*:[48]

> x x x The conduct of foreign relations is full of complexities and consequences, sometimes with life and death significance to the nation especially in times of war. It can only be entrusted to that department of government which can act on the basis of the best available information and can decide with decisiveness. x x x It is also the President who possesses the most comprehensive and the most confidential information about foreign countries for our diplomatic and consular officials regularly brief him on meaningful events all over the world. He has also unlimited access to ultra-sensitive military intelligence data. In fine, the presidential role in foreign affairs is dominant and the President is traditionally accorded a wider degree of discretion in the conduct of foreign affairs. The regularity, nay, validity of his actions are adjudged under less stringent standards, lest their judicial repudiation lead to breach of an international obligation, rupture of state relations, forfeiture of confidence, national embarrassment and a plethora of other problems with equally undesirable consequences.

The Executive Department has determined that taking up petitioners' cause would be inimical to our country's foreign policy interests, and could disrupt our relations with Japan, thereby

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country. In many ways, the President is the chief architect of the nation's foreign policy; his "dominance in the field of foreign relations is (then) conceded." Wielding vast powers and influence, his conduct in the external affairs of the nation, as Jefferson describes, is "executive altogether."

[47] 501 Phil. 304, 313 (2005). We stated:

In our system of government, the President, being the head of state, is regarded as the sole organ and authority in external relations and is the country's sole representative with foreign nations. As the chief architect of foreign policy, the President acts as the country's mouthpiece with respect to international affairs. Hence, the President is vested with the authority to deal with foreign states and governments, extend or withhold recognition, maintain diplomatic relations, enter into treaties, and otherwise transact the business of foreign relations. In the realm of treaty-making, the President has the sole authority to negotiate with other states.

[48] 379 Phil. 165, 233-234 (2004).

creating serious implications for stability in this region. For us to overturn the Executive Department's determination would mean an assessment of the foreign policy judgments by a coordinate political branch to which authority to make that judgment has been constitutionally committed.

In any event, it cannot reasonably be maintained that the Philippine government was without authority to negotiate the Treaty of Peace with Japan. And it is equally true that, since time immemorial, when negotiating peace accords and settling international claims:

> x x x [g]overnments have dealt with x x x private claims as their own, treating them as national assets, and as counters, 'chips,' in international bargaining. Settlement agreements have lumped, or linked, claims deriving from private debts with others that were intergovernmental in origin, and concessions in regard to one category of claims might be set off against concessions in the other, or against larger political considerations unrelated to debts.[49]

Indeed, except as an agreement might otherwise provide, international settlements generally wipe out the underlying private claims, thereby terminating any recourse under domestic law. In *Ware v. Hylton,*[50] a case brought by a British subject to

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[49] HENKIN, *FOREIGN AFFAIRS AND THE CONSTITUTION* 300 (2d 1996); see *Dames and Moore v. Regan,* 453 U.S. 654, 688, 101 S.Ct. 2972, 69 L.Ed.2d 918 (1981) (upholding the President's authority to settle claims of citizens as "a necessary incident to the resolution of a major foreign policy dispute between our country and another [at least] where ... Congress acquiesced in the President's action"); *Am. Ins. Ass'n v. Garamendi,* 539 U.S. 396, 424, 123 S.Ct. 2374, 156 L.Ed.2d 376 (2003) (acknowledging "President's authority to provide for settling claims in winding up international hostilities"). See also *Akbayan Citizens Action Party ("AKBAYAN") v. Aquino*, G.R. No. 170516, July 16, 2008, 558 SCRA 468, 517 where we held that:

> x x x While, on first impression, it appears wise to deter Philippine representatives from entering into compromises, it bears noting that treaty negotiations, or any negotiation for that matter, normally involve a process of *quid pro quo*, and oftentimes negotiators have to be willing to grant concessions in an area of lesser importance in order to obtain more favorable terms in an area of greater national interest.

[50] 3 U.S. (3 Dall.) 199, 230, 1 L.Ed. 568 (1796).

recover a debt confiscated by the Commonwealth of Virginia during the war, Justice Chase wrote:

> I apprehend that the treaty of peace abolishes the subject of the war, and that after peace is concluded, neither the matter in dispute, nor the conduct of either party, during the war, can ever be revived, or brought into contest again. All violences, injuries, or damages sustained by the government, or people of either, during the war, are buried in oblivion; and all those things are implied by the very treaty of peace; and therefore not necessary to be expressed. Hence it follows, that the restitution of, or compensation for, British property confiscated, or extinguished, during the war, by any of the United States, could only be provided for by the treaty of peace; and *if there had been no provision, respecting these subjects, in the treaty,* they could not be agitated after the treaty, by the British government, much less by her subjects in courts of justice. (Emphasis supplied).

This practice of settling claims by means of a peace treaty is certainly nothing new. For instance, in *Dames & Moore v. Regan*,[51] the US Supreme Court held:

> Not infrequently in affairs between nations, outstanding claims by nationals of one country against the government of another country are "sources of friction" between the two sovereigns. *United States v. Pink*, 315 U.S. 203, 225, 62 S.Ct. 552, 563, 86 L.Ed. 796 (1942). To resolve these difficulties, nations have often entered into agreements settling the claims of their respective nationals. As one treatise writer puts it, international agreements settling claims by nationals of one state against the government of another "are established international practice reflecting traditional international theory." *L. Henkin, Foreign Affairs and the Constitution* 262 (1972). Consistent with that principle, the United States has repeatedly exercised its sovereign authority to settle the claims of its nationals against foreign countries. x x x Under such agreements, the President has agreed to renounce or extinguish claims of United States nationals against foreign governments in return for lump-sum payments or the establishment of arbitration procedures. To be sure, many of

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[51] 453 U.S. 654, 101 S.Ct. 2972 (1981) (re the establishment of the Iran-United States Claims Tribunal following the seizure of American personnel as hostages at the American Embassy in Tehran).

these settlements were encouraged by the United States claimants themselves, since a claimant's only hope of obtaining any payment at all might lie in having his Government negotiate a diplomatic settlement on his behalf. But it is also undisputed that the "United States has sometimes disposed of the claims of its citizens without their consent, or even without consultation with them, usually without exclusive regard for their interests, as distinguished from those of the nation as a whole." Henkin, *supra*, at 262-263. Accord, Restatement (Second) of Foreign Relations Law of the United States § 213 (1965) (President "may waive or settle a claim against a foreign state x x x [even] without the consent of the [injured] national"). It is clear that the practice of settling claims continues today.

Respondents explain that the Allied Powers concluded the Peace Treaty with Japan not necessarily for the complete atonement of the suffering caused by Japanese aggression during the war, not for the payment of adequate reparations, but for security purposes. The treaty sought to prevent the spread of communism in Japan, which occupied a strategic position in the Far East. Thus, the Peace Treaty compromised individual claims in the collective interest of the free world.

This was also the finding in a similar case involving American victims of Japanese slave labor during the war.[52] In a consolidated case in the Northern District of California,[53] the court dismissed the lawsuits filed, relying on the 1951 peace treaty with Japan,[54] because of the following policy considerations:

The official record of treaty negotiations establishes that a fundamental goal of the agreement was to settle the reparations issue once and for all. As the statement of the chief United States negotiator, John Foster Dulles, makes clear, it was well understood that **leaving open the possibility of future claims would be an unacceptable impediment to a lasting peace**:

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[52] Bazyler, *The Holocaust Restitution Movement in Comparative Perspective*, 20 BERKELEY J. INT'L. L. 11, 25-32 (2002).

[53] *In Re World War II Era Japanese Forced Labor Litigation*, *supra* note 1.

[54] Treaty of Peace with Japan 1951, 136 UNTS 45.

> Reparation is usually the most controversial aspect of peacemaking. The present peace is no exception.
>
> On the one hand, there are claims both vast and just. Japan's aggression caused tremendous cost, losses and suffering.
>
> On the other hand, to meet these claims, there stands a Japan presently reduced to four home islands which are unable to produce the food its people need to live, or the raw materials they need to work. x x x

The policy of the United States that Japanese liability for reparations should be sharply limited was informed by the experience of six years of United States-led occupation of Japan. During the occupation the Supreme Commander of the Allied Powers (SCAP) for the region, General Douglas MacArthur, confiscated Japanese assets in conjunction with the task of managing the economic affairs of the vanquished nation and with a view to reparations payments. **It soon became clear that Japan's financial condition would render any aggressive reparations plan an exercise in futility. Meanwhile, the importance of a stable, democratic Japan as a bulwark to communism in the region increased.** At the end of 1948, MacArthur expressed the view that "[t]he use of reparations as a weapon to retard the reconstruction of a viable economy in Japan should be combated with all possible means" and "recommended that the reparations issue be settled finally and without delay."

That this policy was embodied in the treaty is clear not only from the negotiations history but also from the Senate Foreign Relations Committee report recommending approval of the treaty by the Senate. The committee noted, for example:

> Obviously insistence upon the payment of reparations in any proportion commensurate with the claims of the injured countries and their nationals would wreck Japan's economy, dissipate any credit that it may possess at present, destroy the initiative of its people, and create misery and chaos in which the seeds of discontent and communism would flourish. In short, [it] would be contrary to the basic purposes and policy of x x x the United States x x x.

We thus hold that, from a municipal law perspective, that *certiorari* will not lie. As a general principle – and particularly here, where such an extraordinary length of time has lapsed

between the treaty's conclusion and our consideration – the Executive must be given ample discretion to assess the foreign policy considerations of espousing a claim against Japan, from the standpoint of both the interests of the petitioners and those of the Republic, and decide on that basis if apologies are sufficient, and whether further steps are appropriate or necessary.

The Philippines is not under any international obligation to espouse petitioners' claims.

In the international sphere, traditionally, the only means available for individuals to bring a claim within the international legal system has been when the individual is able to persuade a government to bring a claim on the individual's behalf.[55] Even then, it is not the individual's rights that are being asserted, but rather, the state's own rights. Nowhere is this position more clearly reflected than in the dictum of the Permanent Court of International Justice (PCIJ) in the 1924 *Mavrommatis Palestine Concessions Case*:

> By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its *own right* to ensure, in the person of its subjects, respect for the rules of international law. The question, therefore, whether the present dispute originates in an injury to a private interest, which in point of fact is the case in many international disputes, is irrelevant from this standpoint. Once a State has taken up a case on behalf of one of its subjects before an international tribunal, in the eyes of the latter the State is sole claimant.[56]

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[55] The conceptual understanding that individuals have rights and responsibilities in the international arena does not automatically mean that they have the ability to bring international claims to assert their rights. Thus, the Permanent Court of International Justice declared that "it is scarcely necessary to point out that the capacity to possess civil rights does not necessarily imply the capacity to exercise those rights oneself." Appeal from a Judgment of the Hungaro/Czeochoslovak Mixed Arbitral Tribunal, Judgment, 1933, PCIJ, Ser. A/B No. 61, p. 208 at 231.

[56] PCIJ, Ser. A, No. 2, p. 11, at 16. This traditional view was repeated by the PCIJ in the *Panevezys-Saldutiskis Railway Case,* the Case Concerning

Since the exercise of diplomatic protection is the right of the State, reliance on the right is within the absolute discretion of states, and the decision whether to exercise the discretion may invariably be influenced by political considerations other than the legal merits of the particular claim.[57] As clearly stated by the ICJ in *Barcelona Traction*:

> The Court would here observe that, within the limits prescribed by international law, a State may exercise diplomatic protection **by whatever means and to whatever extent it thinks fit, for it is its own right that the State is asserting. Should the natural or legal person on whose behalf it is acting consider that their rights are not adequately protected, they have no remedy in international law.** All they can do is resort to national law, if means are available, with a view to furthering their cause or obtaining redress. The municipal legislator may lay upon the State an obligation to protect its citizens abroad, and may also confer upon the national a right to demand the performance of that obligation, and clothe the right with corresponding sanctions. However, all these questions remain within the province of municipal law and do not affect the position internationally.[58] (Emphasis supplied)

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the Payment of Various Serbian Loans issued in France, Judgment of July 12, 1929, PCIJ Reports, Series A No. 20; and in the *Case Concerning the Factory at Chorzow,* Judgment of September 13, 1928, Merits, PCIJ Reports, Series A No. 17. The ICJ has adopted it in the *Reparation for injuries suffered in the service of the United Nations* Advisory Opinion: ICJ Reports 1949, p. 174; the *Nottebohm Case (second phase)* Judgment of April 6, 1955: ICJ Reports 1955, p. 4 at p. 24; the *Interhandel Case* (Judgment of March 21st, 1959: ICJ Reports 1959, p. 6 at p. 27) and the *Barcelona Traction, Light and Power Company, Limited* case, (*Belg. v. Spain*), 1970 I.C.J. 3, 32 (Feb. 5).

[57] See BORCHARD, E., *DIPLOMATIC PROTECTION OF CITIZENS ABROAD AT VI* (1915). Under this view, the considerations underlying the decision to exercise or not diplomatic protection may vary depending on each case and may rely entirely on policy considerations regardless of the interests of the directly-injured individual, and the State is not required to provide justification for its decision.

[58] *Barcelona Traction, Light and Power Company*, *Limited*, case, *supra* note 56, at p. 44 par. 78.

The State, therefore, is the sole judge to decide whether its protection will be granted, to what extent it is granted, and when will it cease. It retains, in this respect, a discretionary power the exercise of which may be determined by considerations of a political or other nature, unrelated to the particular case.

The International Law Commission's (ILC's) Draft Articles on Diplomatic Protection fully support this traditional view. They (i) state that "the right of diplomatic protection belongs to or vests in the State,"[59] (ii) affirm its discretionary nature by clarifying that diplomatic protection is a "sovereign prerogative" of the State;[60] and (iii) stress that the state "has the right to exercise diplomatic protection on behalf of a national. It is under no duty or obligation to do so."[61]

It has been argued, as petitioners argue now, that the State has a *duty* to protect its nationals and act on his/her behalf when rights are injured.[62] However, at present, there is no sufficient

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[59] *ILC First Reading Draft Articles on Diplomatic Protection*, U.N. Doc. A/CN.4/484, ILC Report, A/53/10 (F), par. 60, Commentary to Draft Article 2, par. (1); see also, Commentary to Draft Article 1, par. (3), and text of Draft Article 2.

[60] Report of the International Law Commission on the work of its 50th session, *supra* note 60, par. 77.

[61] *ILC First Reading Draft Articles on Diplomatic Protection*, *supra* note 60, commentary to Draft Article 2, par. (2).

[62] For instance, Special Rapporteur Dugard proposed that the ILC adopt in its Draft Articles a provision under which States would be *internationally obliged* to exercise diplomatic protection in favor of their nationals injured abroad by grave breaches to *jus cogens* norms, if the national so requested and if he/she was not afforded direct access to an international tribunal. The proposed article reads as follows:

> Article [4]1. Unless the injured person is able to bring a claim for such injury before a competent international court or tribunal, the State of his/her nationality has a legal duty to exercise diplomatic protection on behalf of the injured person upon request, if the injury results from a grave breach of a *jus cogens* norm attributable to another State. 2. The state of nationality is relieved of this obligation if: (a) The exercise of diplomatic protection would seriously endanger the overriding interests of the State and/or its people; (b) Another State exercises diplomatic

evidence to establish a general international obligation for States to exercise diplomatic protection of their own nationals abroad.[63]

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protection on behalf of the injured person; (c) The injured person does not have the effective and dominant nationality of the State. States are obliged to provide in their municipal law for the enforcement of this right before a competent domestic court or other independent national authority." Special Rapporteur John Dugard, appointed in 1999, First Report on Diplomatic Protection, par. 74 (UN Doc. A/CN.4/506 (March 7, 2000) and Corr. 1 (June 7, 2000) and Add. 1 (April 20, 2000).

However, the proposal was not accepted by the ILC, as "the question was still not ripe for treatment" because "the State practice and their *opinio juris* still had not evolved in such direction". *Official Records of the General Assembly: 55th session, Supplement No. 10, Doc.* A/55/10 (2000), Report of the ILC on the work of its 52nd session, p. 131. Instead, Draft Article 19, entitled 'Recommended Practice,' suggests that states should be encouraged to exercise diplomatic protection 'especially when significant injury occurred' to the national. Drafted in soft language, the Article does not purport to create any binding obligations on the state.

In addition, some States have incorporated in their *municipal* law a duty to exercise diplomatic protection in favor of their nationals. (Dugard identifies this "obligation" to exist in the Constitutions of Albania, Belarus, Bosnia and Herzegovina, Bulgaria, Cambodia, China, Croatia, Estonia, Georgia, Guyana, Hungary, Italy, Kazakhstan, Lao People´s Democratic Republic, Latvia, Lithuania, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Spain, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, Viet Nam and Yugoslavia, albeit with different reaches. J. Dugard, First Report on diplomatic protection, *supra* note 13, par. 80), but their enforceability is also, to say the least, questionable (in many cases there are not even courts competent to review the decision). Moreover, their existence in no way implies that international law imposes such an obligation, simply suggesting "that certain States consider diplomatic protection for their nationals abroad to be desirable" (*ILC First Reading Draft Articles on Diplomatic Protection*, *supra* note 60, Commentary to Draft Article 2, par (2)).

[63] Even decisions of national courts support the thesis that general international law as it stands does not mandate an enforceable legal duty of diplomatic protection.

The traditional view has been challenged in the UK in a case arising from the unlawful detention by the US of prisoners in Guantanamo Bay. In *Abbasi v. Secretary of State for Foreign and Commonwealth Affairs* ([2002] EWCA Civ 1316, 19 September 2002), the applicant (a British national) sought judicial review of the adequacy of the diplomatic actions of the British government with the US government. The UK Court of Appeals came to the conclusion

Though, perhaps desirable, neither state practice nor *opinio juris* has evolved in such a direction. If it is a duty internationally,

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that diplomatic protection did not as such give rise to an enforceable duty under English Law. It found that "on no view would it be appropriate to order the Secretary of State to make any specific representations to the United States, even in the face of what appears to be a clear breach of a fundamental human right, as it is obvious that this would have an impact on the conduct of foreign policy."

Courts in the UK have also repeatedly held that the decisions taken by the executive in its dealings with foreign states regarding the protection of British nationals abroad are non-justiciable.

(1) *R. v. Secretary of State for Foreign and Commonwealth Affairs, ex parte Pirbhai* (107 ILR 462 (1985):

> "x x x in the context of a situation with serious implications for the conduct of international relations, the courts should act with a high degree of circumspection in the interests of all concerned. It can rarely, if ever, be for judges to intervene where diplomats fear to tread." (p.479, per Sir John Donaldson MR)

(2) *R. v. Secretary of State for Foreign and Commonwealth Affairs, ex parte Ferhut Butt* (116 ILR 607 (1999):

> "The general rule is well established that the courts should not interfere in the conduct of foreign relations by the Executive, most particularly where such interference is likely to have foreign policy repercussions (see *R.* v. *Secretary of State for Foreign and Commonwealth Affairs*, *ex parte Everett* [1989] 1 QB 811 at 820). This extends to decisions whether or not to seek to persuade a foreign government of any international obligation (*e.g.* to respect human rights) which it has assumed. What if any approach should be made to the Yemeni authorities in regard to the conduct of the trial of these terrorist charges must be a matter for delicate diplomacy and the considered and informed judgment of the FCO. In such matters the courts have no supervisory role." (p. 615, per Lightman J).

> "Whether and when to seek to interfere or to put pressure on in relation to the legal process, if ever it is a sensible and a right thing to do, must be a matter for the Executive and no one else, with their access to information and to local knowledge. It is clearly not a matter for the courts. It is clearly a high policy decision of a government in relation to its foreign relations and is not justiciable by way of judicial review." (p. 622, per Henry LJ).

(3) *R. (Suresh and Manickavasagam) v. Secretary of State for the Home Department* [2001] EWHC Admin 1028 (unreported, 16 November 2001):

it is only a moral and not a legal duty, and there is no means of enforcing its fulfillment.[64]

We fully agree that rape, sexual slavery, torture, and sexual violence are morally reprehensible as well as legally prohibited under contemporary international law.[65] However, petitioners

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> "... there is, in my judgment, no duty upon the Secretary of State to ensure that other nations comply with their human rights obligations. There may be cases where the United Kingdom Government has, for example by diplomatic means, chosen to seek to persuade another State to take a certain course in its treatment of British nationals; but there is no *duty* to do so." (paragraph 19, per Sir Richard Tucker).

The South African Constitutional Court in *Kaunda and others v. President of the Republic of South Africa and others* (Case CCCT23/04) recognized the constitutional basis of the right of diplomatic protection as enshrined in the South African Constitution, but went on to hold that the nature and extent of this obligation was an aspect of foreign policy within the discretion of the executive.

[64] BORCHARD, E., *DIPLOMATIC PROTECTION OF CITIZENS ABROAD,* 29 (1915).

[65] The concept of rape as an international crime is relatively new. This is not to say that rape has never been historically prohibited, particularly in war. But modern-day sensitivity to the crime of rape did not emerge until after World War II. In the Nuremberg Charter, the word rape was not mentioned. The article on crimes against humanity explicitly set forth prohibited acts, but rape was not mentioned by name. (For example, the Treaty of Amity and Commerce between Prussia and the United States provides that in time of war all women and children "shall not be molested in their persons." The Treaty of Amity and Commerce, Between his Majesty the King of Prussia and the United States of America, art. 23, Sept. 10, 1785, U.S.-Pruss., 8 TREATIES & OTHER INT'L AGREEMENTS OF THE U.S. 78, 85. The 1863 Lieber Instructions classified rape as a crime of "troop discipline." (Mitchell, *The Prohibition of Rape in International Humanitarian Law as a Norm of Jus cogens: Clarifying the Doctrine*, 15 DUKE J. COMP. INT'L. L. 219, 224). It specified rape as a capital crime punishable by the death penalty (*Id.* at 236). The 1907 Hague Convention protected women by requiring the protection of their "honour." ("Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected." Convention (IV) Respecting the Laws & Customs of War on Land, art. 46, Oct. 18, 1907. General Assembly resolution 95 (I) of December 11, 1946 entitled, "Affirmation of the Principles of International Law recognized by the Charter of the Nürnberg Tribunal"; General Assembly document A/64/Add.1

take quite a theoretical leap in claiming that these proscriptions automatically imply that the Philippines is under a non-derogable

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of 1946; See Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 279. Article 6(c) of the Charter established crimes against humanity as the following:

> CRIMES AGAINST HUMANITY: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the Jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

The Nuremberg Judgment did not make any reference to rape and rape was not prosecuted. (Judge Gabrielle Kirk McDonald, *The International Criminal Tribunals Crime and Punishment in the International Arena,*7 ILSA J. INT'L. COMP. L. 667, 676.) However, International Military Tribunal for the Far East prosecuted rape crimes, even though its Statute did not explicitly criminalize rape. The Far East Tribunal held General Iwane Matsui, Commander Shunroku Hata and Foreign Minister Hirota criminally responsible for a series of crimes, including rape, committed by persons under their authority. (THE TOKYO JUDGMENT: JUDGMENT OF THE INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST 445-54 (1977).

The first mention of rape as a specific crime came in December 1945 when Control Council Law No. 10 included the term rape in the definition of crimes against humanity. Law No. 10, adopted by the four occupying powers in Germany, was devised to establish a uniform basis for prosecuting war criminals in German courts. (Control Council for Germany, Law No. 10: Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity, Dec. 20, 1945, 3 Official Gazette Control Council for Germany 50, 53 (1946))

The 1949 Geneva Convention Relative to the Treatment of Prisoners of War was the first modern-day international instrument to establish protections against rape for women. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, art. 27, 6 U.S.T. 3316, 75 U.N.T.S. 287 (entry into force Oct. 20, 1950) [hereinafter Fourth Geneva Convention].Furthermore, the ICC, the ICTY, and the International Criminal Tribunal for Rwanda (ICTR) have significantly advanced the crime of rape by enabling it to be prosecuted as genocide, a war crime, and a crime against humanity.

Rape is clearly emerging as a core crime within humanitarian law. (APPLEMAN, *MILITARY TRIBUNALS AND INTERNATIONAL CRIMES* 299 (1954); MERON, *HUMAN RIGHTS AND HUMANITARIAN NORMS AS*

obligation to prosecute international crimes, particularly since petitioners do not demand the imputation of individual criminal liability, but seek to recover monetary reparations from the state of Japan. Absent the consent of states, an applicable treaty regime, or a directive by the Security Council, there is no non-derogable duty to institute proceedings against Japan. Indeed, precisely because of states' reluctance to directly prosecute claims against another state, recent developments support the modern trend to empower individuals to directly participate in suits against perpetrators of international crimes.[66] Nonetheless, notwithstanding

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CUSTOMARY LAW 47 (1989). A major step in this legal development came in 1949, when rape and sexual assault were included in the Geneva Conventions. Rape is included in the following acts committed against persons protected by the 1949 Geneva Conventions: "willful killing, torture or inhuman treatment, including biological experiments; willfully causing great suffering or serious injury to body or health." Rape as a violation of the laws or customs of war generally consists of violations of Article 3 of the 1949 Geneva Conventions, which, in part, prohibits "violence to life and person, in particular mutilation, cruel treatment and torture; outrages upon personal dignity, in particular humiliating and degrading treatment." (See Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 3(1)(c), 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, art. 3(1)(c), 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, art. 3(1)(c), 75 U.N.T.S. 973; Fourth Geneva Convention, *supra* note 23, art. 3(1)(c).

Article 27 of the Fourth Geneva Convention, directed at protecting civilians during time of war, states that "women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault."

Protocol I of the Geneva Conventions continues to expand the protected rights by providing that "women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any form of indecent assault." (Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Article 76(1), 1125 U.N.T.S. 4).

[66] For instance, the International Criminal Court was established to deal with the "most serious crimes of concern to the international community," with jurisdiction over genocide, crimes against humanity, and war crimes, as defined in the Rome Statute. The ICC Prosecutor can investigate allegations of crimes not only upon referral from the Security Council and state parties,

an array of General Assembly resolutions calling for the prosecution of crimes against humanity and the strong policy arguments warranting such a rule, the practice of states does not yet support the present existence of an obligation to prosecute international crimes.[67] Of course a customary duty of prosecution is ideal, but we cannot find enough evidence to reasonably assert its existence. To the extent that any state practice in this area is widespread, it is in the practice of granting amnesties, immunity, selective prosecution, or *de facto* impunity to those who commit crimes against humanity.[68]

Even the invocation of *jus cogens* norms and *erga omnes* obligations will not alter this analysis. Even if we sidestep the question of whether *jus cogens* norms existed in 1951, petitioners have not deigned to show that the crimes committed by the Japanese army violated *jus cogens* prohibitions at the time the Treaty of Peace was signed, or that the duty to prosecute perpetrators of international crimes is an *erga omnes* obligation or has attained the status of *jus cogens.*

The term *erga omnes* (Latin: *in relation to everyone*) in international law has been used as a legal term describing obligations owed by States towards the community of states as a whole. The concept was recognized by the ICJ in *Barcelona Traction:*

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but also on information from victims, non-governmental organizations or any other reliable source (Article 15). See also the Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, U.N. Doc. S/25704 at 36, annex (1993) and S/25704/Add.1 (1993), adopted by Security Council on 25 May 1993, U.N. Doc. S/RES/827 (1993).

[67] Scharf, *The Letter of the Law: The Scope of the International Legal Obligation To Prosecute Human Rights Crimes*, 59(4) LAW & CONTEMP. PROBS. 41, 59 (1996). Dugard, *Dealing with Crimes of a Past Regime: Is Amnesty Still an Option?*, 12 LEIDEN J. INT'L L. 1001, 1003 (1999). Gavron, *Amnesties in Light of Developments in International Law and the Establishment of the International Criminal Court*, 51 INT'L & COMP. L.Q. 91, 106 (2002).

[68] O'SHEA, *AMNESTY FOR CRIME IN INTERNATIONAL LAW AND PRACTICE* 35 (2002).

x x x an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising *vis-à-vis* another State in the field of diplomatic protection. By their very nature, the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes.*

Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination. Some of the corresponding rights of protection have entered into the body of general international law … others are conferred by international instruments of a universal or quasi-universal character.

The Latin phrase, '*erga omnes*,' has since become one of the rallying cries of those sharing a belief in the emergence of a value-based international public order. However, as is so often the case, the reality is neither so clear nor so bright. Whatever the relevance of obligations *erga omnes* as a legal concept, its full potential remains to be realized in practice.[69]

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[69] Bruno Simma's much-quoted observation encapsulates this feeling of disappointment:'Viewed realistically, the world of obligations *erga omnes* is still the world of the "ought" rather than of the "is"'THE CHARTER OF THE UNITED NATIONS: A COMMENTARY 125 (Simma, ed. 1995). See Tams, Enforcing Obligations *Erga omnes* in International Law (2005). In all cases where this principle has been cited, even the ICJ has found a way to avoid giving force to the claims based on the *erga omnes* character of the obligation, despite having recognized them in principle. In the *South West Africa Case*, the ICJ declared that an action *popularis* was incompatible with existing international law. In the Nicaragua case, it evaded the consequences of a violation of *erga omnes* obligations by treating human rights conventions as self-contained regimes. *Nicaragua v. US, Merits,* ICJ Reports 1986, 14 *et seq.* (134, par. 267): "However, where human rights are protected by international conventions, that protection takes the form of such arrangements for monitoring or ensuring respect for human rights as are provided for in the conventions themselves." In the *East Timor Case*, it denied jurisdiction on the ground that Indonesia was an "indispensable third party" to the proceedings which had not accepted jurisdiction. (*Portugal v. Australia,* ICJ Reports 1995, 90 (102, par 29) "Portugal's assertion that the right of peoples to self-determination… has an *erga omnes* character, is irreproachable."

The term is closely connected with the international law concept of *jus cogens*. In international law, the term "*jus cogens*" (literally, "compelling law") refers to norms that command peremptory authority, superseding conflicting treaties and custom. *Jus cogens* norms are considered peremptory in the sense that they are mandatory, do not admit derogation, and can be modified only by general international norms of equivalent authority.[70]

Early strains of the *jus cogens* doctrine have existed since the 1700s,[71] but peremptory norms began to attract greater scholarly attention with the publication of Alfred von Verdross's

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[70] See Vienna Convention on the Law of Treaties art. 53, opened for signature May 23, 1969, 1155 U.N.T.S. 331, 8 I.L.M. 679 [hereinafter VCLT].

[71] Classical publicists such as Hugo Grotius, Emer de Vattel, and Christian Wolff drew upon the Roman law distinction between *jus dispositivum* (voluntary law) and *jus scriptum* (obligatory law) to differentiate consensual agreements between states from the "necessary" principles of international law that bind all states as a point of conscience regardless of consent. (See Hugonis Grotii, *De Jure Belli et Pacis [On the Law of War and Peace]* (William Whewell ed. & trans., John W. Parker, London 2009) (1625); Emer de Vattel, *Le Droit des Gens ou Principes de la Loi Naturelle* [The Law of Nations or Principles of Natural Law] §§ 9, 27 (1758) (distinguishing "*le Droit des Gens Naturel, ou Nécessaire" from "le Droit Volontaire"*); Christian Wolff, Jus *Gentium Methodo Scientifica Pertractorum* [A Scientific Method for Understanding the Law of Nations] ¶ 5 (James Brown Scott ed., Joseph H. Drake trans., Clarendon Press 1934) (1764)). Early twentieth-century publicists such as Lassa Oppenheim and William Hall asserted that states could not abrogate certain "universally recognized principles" by mutual agreement. (William Hall, A Treatise on International Law 382-83 (8th ed. 1924) (asserting that "fundamental principles of international law" may "invalidate [], or at least render voidable," conflicting international agreements); 1 Lassa Oppenheim, International Law 528 (1905). Judges on the Permanent Court of International Justice affirmed the existence of peremptory norms in international law by referencing treaties *contra bonos mores* (contrary to public policy) in a series of individual concurring and dissenting opinions. (For example, in the 1934 Oscar Chinn Case, Judge Schücking's influential dissent stated that neither an international court nor an arbitral tribunal should apply a treaty provision in contradiction to *bonos mores*. Oscar Chinn Case, 1934 P.C.I.J. (ser. A/B) No. 63, at 149-50 (Dec. 12) (Schücking, J., dissenting).

influential 1937 article, Forbidden Treaties in International Law.[72] The recognition of *jus cogens* gained even more force in the 1950s and 1960s with the ILC's preparation of the Vienna Convention on the Law of Treaties (VCLT).[73] Though there was a consensus that certain international norms had attained the status of *jus cogens*,[74] the ILC was unable to reach a consensus on the proper criteria for identifying peremptory norms.

After an extended debate over these and other theories of *jus cogens*, the ILC concluded ruefully in 1963 that "there is not as yet any generally accepted criterion by which to identify a general rule of international law as having the character of *jus cogens*."[75] In a commentary accompanying the draft convention, the ILC indicated that "the prudent course seems to be to x x x leave the full content of this rule to be worked out in State

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[72] Verdross argued that certain discrete rules of international custom had come to be recognized as having a compulsory character notwithstanding contrary state agreements. At first, Verdross's vision of international *jus cogens* encountered skepticism within the legal academy. These voices of resistance soon found themselves in the minority, however, as the *jus cogens* concept gained enhanced recognition and credibility following the Second World War. (See Lauri Hannikainen, Peremptory Norms (*Jus cogens*) in International Law: Historical Development, Criteria, Present Status 150 (1988) (surveying legal scholarship during the period 1945-69 and reporting that "about eighty per cent [of scholars] held the opinion that there are peremptory norms existing in international law").

[73] In March 1953, the ILC's Special Rapporteur, Sir Hersch Lauterpacht, submitted for the ILC's consideration a partial draft convention on treaties which stated that "[a] treaty, or any of its provisions, is void if its performance involves an act which is illegal under international law and if it is declared so to be by the International Court of Justice." Hersch Lauterpacht, Law of Treaties: Report by Special Rapporteur, [1953] 2 Y.B. Int'l L. Comm'n 90, 93, U.N. Doc. A/CN.4/63.

[74] See Summary Records of the 877th Meeting, [1966] 1 Y.B. Int'l L. Comm'n 227, 230-231, U.N. Doc. A/CN.4/188 (noting that the "emergence of a rule of *jus cogens* banning aggressive war as an international crime" was evidence that international law contains "minimum requirement[s] for safeguarding the existence of the international community").

[75] Second Report on the Law of Treaties, [1963] 2 Y.B. Int'l L. Comm'n 1, 52, U.N. Doc. A/CN.4/156.

practice and in the jurisprudence of international tribunals."[76] Thus, while the existence of *jus cogens* in international law is undisputed, no consensus exists on its substance,[77] beyond a tiny core of principles and rules.[78]

Of course, we greatly sympathize with the cause of petitioners, and we cannot begin to comprehend the unimaginable horror they underwent at the hands of the Japanese soldiers. We are also deeply concerned that, in apparent contravention of fundamental principles of law, the petitioners appear to be without

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[76] *Id.* at 53.

[77] While the ICJ recently endorsed the *jus cogens* concept for the first time in its 2006 Judgment on *Preliminary Objections in Armed Activities on the Territory of the Congo* (*Congo v. Rwanda*), it declined to clarify *jus cogens*'s legal status or to specify any criteria for identifying peremptory norms. (Armed Activities on the Territory of the Congo, Jurisdiction of the Court and Admissibility of the Application (Dem. Rep. Congo v. Rwanda) (Judgment of February 3, 2006), at 31-32, available at http://www.icj-cij.org/docket/files/126/10435.pdf.

In some municipal cases, courts have declined to recognize international norms as peremptory while expressing doubt about the proper criteria for identifying *jus cogens*. (See, *e.g*., Sampson v. Federal Republic of Germany, 250 F.3d 1145, 1149 (7th Cir. 2001) (expressing concern that *jus cogens* should be invoked "[o]nly as a last resort").

In other cases, national courts have accepted international norms as peremptory, but have hesitated to enforce these norms for fear that they might thereby compromise state sovereignty. (See, *e.g*., *Bouzari v. Iran*, [2004] 71 O.R.3d 675 (Can.) (holding that the prohibition against torture does not entail a right to a civil remedy enforceable in a foreign court)).

In *Congo v. Rwanda*, for example, Judge *ad hoc* John Dugard observed that the ICJ had refrained from invoking the *jus cogens* concept in several previous cases where peremptory norms manifestly clashed with other principles of general international law. (See Armed Activities on the Territory of the Congo (*Dem. Rep. Congo v. Rwanda*) (Judgment of February 3, 2006), at 2 (Dissenting Opinion of Judge Dugard))

Similarly, the European Court of Human Rights has addressed *jus cogens* only once, in *Al-Adsani v. United Kingdom*, when it famously rejected the argument that *jus cogens* violations would deprive a state of sovereign immunity. *Al-Adsani v. United Kingdom*, 2001-XI Eur. Ct. H.R. 79, ¶ 61).

[78] SZTUCKI, *JUS COGENS AND THE VIENNA CONVENTION ON THE LAW OF TREATIES* 119-123 (1974).

a remedy to challenge those that have offended them before appropriate fora. Needless to say, our government should take the lead in protecting its citizens against violation of their fundamental human rights. Regrettably, it is not within our power to ***order*** the Executive Department to take up the petitioners' cause. Ours is only the power to ***urge*** and ***exhort*** the Executive Department to take up petitioners' cause.

WHEREFORE, the Petition is hereby *DISMISSED*.

SO ORDERED.

Corona, Velasco, Jr., Leonardo-de Castro, Brion, Bersamin, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Puno, C.J., in the result.

Carpio, J., concurs on the ground that petitioners' claims are barred by the Peace Treaty between RP and Japan.

Carpio Morales and *Peralta, JJ.,* join J. Nachura's separate opinion.

Nachura, J., see concurrence in the result.

SEPARATE CONCURRING OPINION

NACHURA, *J.*:

I concur in the result, but strictly on procedural grounds.

The Court cannot issue a writ of *certiorari* because the subject of the petition does not concern an issuance of the respondent government agencies in the exercise of a judicial or quasi-judicial function. Rule 65, Section 1 of the Rules of Court provides:

> Sec. 1. *Petition for certiorari*. — When any tribunal, board or officer exercising *judicial or quasi-judicial functions* has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings

of such tribunal, board or officer, and granting such incidental relief as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.[1]

This Court cannot also issue the writ of preliminary mandatory injunction prayed for by petitioners. With the dismissal of the *certiorari* proceeding, this ancillary remedy has no more leg to stand on. Further, the purpose of injunction is to prevent threatened or continuous irremediable injury to some of the parties before their case can be thoroughly studied and educated. Its sole aim is to preserve the *status quo* until the merits of the case shall have been heard fully.[2] Here, the *status quo* remains the same with or without the complained omission of the respondents. There is thus nothing for the Court to restore.

If at all, petitioners' application for a preliminary mandatory injunction comes in the nature of a petition for *mandamus*. Petitioners ultimately pray that the Court compel respondents to perform a specific act — to assist the petitioners in bringing their cause to the international community. Even if this Court, remotely, considers the petition as one for *mandamus*, the same would still fail. The remedy of *mandamus* is employed only to compel the performance, when refused, of a ministerial duty, not to require anyone to fulfill a discretionary power. The writ is simply a command to exercise a power already possessed and to perform a duty already imposed.[3] In this case, we find no valid basis for its issuance.

In the light of the foregoing, I vote to **DISMISS** the petition.

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[1] Italics supplied.

[2] *Bank of the Philippine Islands v. Santiago*, G.R. No. 169116, March 28, 2007, 519 SCRA 389, 404.

[3] *Pefianco v. Moral*, 379 Phil. 468, 479 (2000).

EN BANC

[G.R. No. 190529. April 29, 2010]

PHILIPPINE GUARDIANS BROTHERHOOD, INC. (PGBI), represented by its Secretary-General GEORGE "FGBF GEORGE" DULDULAO, *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATURE; PARTY- LIST; TWO GROUNDS FOR DELISTING BY COMELEC.—** The law is clear — the COMELEC may *motu proprio* or upon verified complaint of any interested party, remove or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition if it: (a) *fails to participate in the last two (2) preceding elections;* **or** *(b) fails to obtain at least two per centum (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered.* The word "or'' is a disjunctive term signifying disassociation and independence of one thing from the other things enumerated; it should, as a rule, be construed in the sense in which it ordinarily implies, **as a disjunctive word**. Thus, the plain, clear and unmistakable language of the law provides for two (2) separate reasons for delisting.

2. **ID.; ID.; ID; ID.; ID.; INTERPRETATION BASED ON THE TENOR AND IMPORT OF THE DELIBERATIONS ON THE BILL, INCLUSIVE OF INTERPELLATIONS, IN THE SENATE.—** The tenor and import of the deliberations inclusive of the interpellations in Senate Bill No. 1913 on October 19, 1994. It cited the following excerpts from the Records of the Senate: **Senator Gonzales**: On the other hand, Mr. President, under ground no. (7), Section 5 - **there are actually two grounds** it states: "Failure to participate in the last two (2) preceding elections or its failure to obtain at least ten percent (10%) of the votes cart (sic) under the party-list system in either of the last two (2) preceding elections for the constituency in which it has registered" In short, the first ground is that, it

failed to participate in the last (2) preceding elections. The second is, failure to obtain at least 10 percent of the votes cast under the party-list system in either of the last two preceding elections, Mr. President, **Senator Tolentino**: Actually, these are two separate grounds. **Senator Gonzales:** There are actually two grounds, Mr. President. **Senator Tolentino:** Yes, Mr. President.

3. **ID.; ID.; ID.; ID.; 2% PARTY-LIST VOTE REQUIREMENT PROVIDED IN RA 7941; PARTLY INVALIDATED; FRUSTRATES THE ATTAINMENT OF THE PERMISSIVE CEILING THAT 20% OF THE MEMBERS OF THE HOUSE OF REPRESENTATIVES SHALL CONSIST OF PARTY-LIST REPRESENTATIVES.—** In *Barangay Association for Advancement and National Transparency v. COMELEC* (*Banat*), where we ***partly*** invalidated the 2% party-list vote requirement provided in RA 7941 as follows: We rule that, in computing the allocation of **additional seats**, the continued operation of the two percent threshold for the distribution of the additional seats as found in the second clause of Section 11(b) of R.A. No. 7941 is **unconstitutional**. This Court finds that the two percent threshold makes it mathematically impossible to achieve the maximum number of available party list seats when the number of available party list seats exceeds 50. The continued operation of the two percent threshold in the distribution of the additional seats frustrates the attainment of the permissive ceiling that 20% of the members of the House of Representatives shall consist of party-list representatives.

4. **ID.; ID.; ID.; ID.; ID.; THE DISQUALIFICATION FOR FAILURE TO GET 2% PARTY-LIST VOTES SHOULD NOW NECESSARILY BE READ TO APPLY TO PARTY-LIST GROUPS OR ORGANIZATIONS THAT DID NOT QUALIFY FOR A SEAT IN THE TWO PRECEDING ELECTIONS FOR THE CONSTITUENCY IN WHICH IT REGISTERED.—** The disqualification for failure to get 2% party-list votes in two (2) preceding elections should therefore be understood in light of the *Banat* ruling that party-list groups or organizations garnering less than 2% of the party-list votes may yet qualify for a seat in the allocation of additional seats. We need not extensively discuss *Banat's* significance, except to state that a party-list group or organization which qualified in the *second round of seat allocation* cannot now validly be

delisted for the reason alone that it garnered less than 2% in the last two elections. In other words, the application of this disqualification should henceforth be contingent on the percentage of party-list votes garnered by the last party-list organization that qualified for a seat in the House of Representatives, a percentage that is less than the 2% threshold invalidated in *Banat*. *The disqualification should now necessarily be read to apply to party-list groups or organizations that did not qualify for a seat in two preceding elections for the constituency in which it registered*. x x x This, we declare, is how Section 6(8) of RA 7941 should be understood and applied. We do so under our authority to state what the law is, and as an exception to the application of the principle of *stare decisis.*

5. CIVIL LAW; CIVIL CODE; DOCTRINE OF *STARE DECISIS;* REQUIRES COURTS IN A COUNTRY TO FOLLOW THE RULE ESTABLISHED IN A DECISION OF ITS SUPREME COURT; EXCEPTION; CASE AT BAR.— The doctrine of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established) is embodied in Article 8 of the Civil Code of the Philippines which provides, thus: ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines. The doctrine enjoins adherence to judicial precedents. **It requires courts in a country to follow the rule established in a decision of its Supreme Court**. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of the *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument. The doctrine is grounded on the necessity for securing certainty and stability of judicial decisions x x x.

6. ID.; ID.; ID.; ID.; EXCEPTION.— The doctrine though is not cast in stone for upon a showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis,* the Court is justified in setting it aside. As our discussion above shows, the most compelling reason to abandon *Minero* exists; it was clearly an erroneous application of the law – an application that the principle of stability or predictability of decisions

alone cannot sustain. x x x Its basic defect lies in its characterization of the non-participation of a party-list organization in an election *as similar* to a failure to garner the 2% threshold party-list vote. What *Minero* effectively holds is that a party list organization that does not participate in an election necessarily gets, by default, less than 2% of the party-list votes. To be sure, this is a confused interpretation of the law, given the law's clear and categorical language and the legislative intent to treat the two scenarios differently. x x x *Minero* did unnecessary violence to the language of the law, the intent of the legislature, and to the rule of law in general. Clearly, we cannot allow PGBI to be prejudiced by the continuing validity of an erroneous ruling. Thus, we now abandon *Minero* and strike it out from our ruling case law.

7. **POLITICAL LAW; CONSTITUTIONAL LAW; SEPARATION OF POWERS; THE COURT DOES NOT ADDRESS MATTERS OVER WHICH FULL DISCRETIONARY AUTHORITY IS GIVEN BY THE CONSTITUTION TO THE LEGISLATURE; CASE AT BAR.—** We are aware that PGBI's situation – a party list group or organization that failed to garner 2% in a prior election and immediately thereafter did not participate in the preceding election – is something that is not covered by Section 6(8) of RA 7941. From this perspective, it may be an unintended gap in the law and as such is a matter for Congress to address. We cannot and do not address matters over which full discretionary authority is given by the Constitution to the legislature; to do so will offend the principle of separation of powers. If a gap indeed exists, then the present case should bring this concern to the legislature's notice.

8. **ID.; ID.; DUE PROCESS; ADMINISTRATIVE DUE PROCESS; ESSENCE IS THE OPPORTUNITY TO EXPLAIN ONE'S SIDE OF THE CONTROVERSY; CASE AT BAR.—** On the due process issue, we agree with the COMELEC that PGBI's right to due process was not violated for PGBI was given an opportunity to seek, as it did seek, a reconsideration of Resolution No. 8679. The essence of due process, we have consistently held, is simply the opportunity to be heard; as applied to administrative proceedings, due process is the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. A formal or trial-type hearing is not at all times and in all instances

essential. *The requirement is satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. What is frowned upon is absolute lack of notice and hearing* x x x. We find it obvious under the attendant circumstances that PGBI was not denied due process. In any case, given the result of this Resolution, PGBI has no longer any cause for complaint on due process grounds.

ABAD, *J.*, *dissenting opinion:*

1. **POLITICAL LAW; ELECTIONS; PARTY-LIST ORGANIZATIONS; TWO GROUNDS FOR DELISTING BY COMELEC; CASE AT BAR.—** Republic Act (R.A.) 7941 provides for two separate grounds for delisting a party-list organization, namely: a) failure to participate in the last two preceding elections; **or** b) failure to garner at least 2% of the votes cast under the party-list system in the two preceding elections for the constituency in which it has registered. I also agree that because of the Court's decision in *BANAT,* the needed minimum 2% of the votes cast in the two preceding elections should now be understood to mean the actual percentage of the votes garnered by the last party-list organization that qualified for a seat in the House of Representatives. But this could not apply to PGBI because *BANAT* took effect only in the preceding May 2007 elections and PGBI did not run in the same. It ran in the preceding May 2004 elections, when the *BANAT* ruling did not yet exist, but failed to get at least 2% of the votes cast in those elections.

2. **ID.; ID.; ID.; ID.; REQUISITES TO REMAIN IN THE REGISTER OF PARTY-LIST ORGANIZATIONS; *MINERO* RULING, A MECHANISM FOR ATTRITION, MUST NOT BE ABANDONED.—** I must disagree with the *ponencia's* view that the Court should reverse the *Minero* ruling that invoked Section 6(8) of R.A. 7941, which provides: **Section 6. <u>Refusal and/or Cancellation of Registration</u>. — The COMELEC may, *motu proprio* or upon verified complaint of any interested party, refuse or cancel, after due notice and hearing, the registration of any national, regional, or sectoral party, organization or coalition on any of the following grounds: x x x (8) It fails to participate in the last two (2) preceding elections or fails to obtain at least**

two per centum (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered. Since by its own admission, Minero failed to get at least 2% of the votes in the 2001 elections and did not participate at all in the 2004 elections, the Court held that it necessarily failed to get at least 2% of the votes cast in the two preceding elections. The COMELEC was thus justified in canceling its registration. x x x The register of party-list organizations cannot be allowed to grow infinitely. The system cannot tolerate sectoral parties with low-levels of voters' preference to remain on the ballot. For this reason, the legislature established a mechanism for attrition, the enforcement of which is an important responsibility of the COMELEC. The Court must not abandon *Minero.*

3. **ID.; ID.; ID.; ID.; ID.; VOTERS' PREFERENCE TEST; PARTY MUST PROVE BY THE RESULTS OF THE PRECEDING TWO ELECTIONS THAT IT RETAINS THE REQUIRED LEVEL OF VOTERS' PREFERENCE.—** It is evident from Section 6(8) above that the legislature intended the two separate tests—failure to take part in the last two preceding elections or failure to garner at least 2% of the votes cast in such elections—to be complimentary. Their purpose is to put every party-list organization, which won the right to be registered, to a two-election wringer, a **voters' preference test**, for lack of a better term to describe it. This means that, to remain in the party-list register and enjoy the right to take part in the party-list election, a party must prove by the results of the preceding two elections that it retains the required level of voters' preference. Failing in this, such party shall be dropped by the COMELEC, without prejudice to its applying for new registration after a mandatory one-term rest.

APPEARANCES OF COUNSEL

George Erwin M. Garcia for petitioner.
The Solicitor General for respondent.

RESOLUTION

BRION, *J*.:

The Philippine Guardians Brotherhood, Inc. (*PGBI*) seeks in this petition for *certiorari*[1] and in the motion for reconsideration it subsequently filed to nullify Commission on Elections (*COMELEC*) Resolution No. 8679 dated October 13, 2009 insofar as it relates to PGBI, and the Resolution dated December 9, 2009 denying PGBI's motion for reconsideration in SPP No. 09-004 (MP). *Via* these resolutions, the COMELEC delisted PGBI from the roster of registered national, regional or sectoral parties, organizations or coalitions under the party-list system.

BACKGROUND

Section 6(8) of Republic Act No. 7941 (*RA 7941*), otherwise known as the Party-List System Act, provides:

> Section 6. Removal and/or Cancellation of Registration. – The COMELEC may *motu proprio* or upon verified complaint of any interested party, remove or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds:
>
> x x x   x x x   x x x
>
> (8) It fails to participate in the last two (2) preceding elections ***or*** fails to obtain at least two per centum (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered.[Emphasis supplied.]

The COMELEC replicated this provision in COMELEC Resolution No. 2847 – the Rules and Regulations Governing the Election of the Party-List Representatives through the Party-List System – which it promulgated on June 25, 1996.

For the upcoming May 2010 elections, the COMELEC *en banc* issued on October 13, 2009 Resolution No. 8679 deleting several party-list groups or organizations from the list of registered

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[1] Filed under Rule 65 of the RULES OF COURT.

national, regional or sectoral parties, organizations or coalitions. **Among the party-list organizations affected was PGBI; it was delisted because it failed to get 2% of the votes cast in 2004 <u>and</u> it did not participate in the 2007 elections**. Nevertheless, the COMELEC stated in this Resolution that any national, regional sectoral party or organizations or coalitions adversely affected can personally or through its authorized representative file a verified opposition on October 26, 2009.

PGBI filed its Opposition to Resolution No. 8679, but likewise sought, through its pleading, the admission *ad cautelam* of its petition for accreditation as a party-list organization under the Party-List System Act. Among other arguments, PGBI asserted that:

(1) The assailed resolution negates the right of movant and those similarly situated to invoke Section 4 of R.A. No. 7941, which allows any party, organization and coalition already registered with the Commission to no longer register anew; the party though is required to file with the Commission, not later than ninety (90) days before the election, a manifestation of its desire to participate in the party-list system; since PGBI filed a Request/Manifestation seeking a deferment of its participation in the 2007 elections within the required period prior to the 2007 elections, it has the option to choose whether or not to participate in the next succeeding election under the same conditions as to rights conferred and responsibilities imposed;

(2) The Supreme Court's ruling in G.R. No. 177548 – *Philippine Mines Safety Environment Association, also known as "MINERO" v. Commission on Elections* – cannot apply in the instant controversy for two reasons: (a) the factual milieu of the cited case is removed from PGBI's; (b) MINERO, *prior to delisting*, was afforded the opportunity to be heard, while PGBI and the 25 others similarly affected by Resolution No. 8679 were not. Additionally, the requirement of Section 6(8) has been relaxed by the Court's ruling in G.R. No. 179271 (*Banat v. COMELEC*) and the exclusion of PGBI and the 25 other party-list is a denial of the equal protection of the laws;

(3) The implementation of the challenged resolution should be suspended and/or aborted to prevent a miscarriage of justice in view of the failure to notify the parties in accordance with the same Section 6(8) or R.A. No. 7941.[2]

The COMELEC denied PGBI's motion/opposition for lack of merit.

First, the COMELEC observed that PGBI clearly misunderstood the import of Section 4 of R.A. 7941.[3] The provision simply means that without the required manifestation or if a party or organization does not participate, the exemption from registration does not arise and the party, organization or coalition must go through the process again and apply for requalification; a request for deferment would not exempt PGBI from registering anew.

Second, the *MINERO* ruling is squarely in point, as MINERO failed to get 2% of the votes in 2001 **and** did not participate at all in the 2004 elections.

Third, PGBI was given an opportunity to be heard or to seek the reconsideration of the action or ruling complained of – the essence of due process; this is clear from Resolution No. 8679 which expressly gave the adversely affected parties the opportunity to file their opposition.

As regards the alternative relief of application for accreditation, the COMELEC found the motion to have been filed out of time, as August 17, 2009 was the deadline for accreditation provided in Resolution 8646. The motion was obviously filed months after the deadline.

PGBI came to us in its petition for *certiorari*, arguing the same positions it raised with the COMELEC when it moved to reconsider its delisting.

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[2] *Rollo*, pp. 42-48.

[3] Sec. 4. Manifestation to Participate in the Party-List System. – Any party, organization or coalition already registered with the Commission need not register anew. However, such party, organization or coalition shall file with the Commission, not later than ninety (90) days before the election, a manifestation of its desire to participate in the party-list system.

We initially dismissed the petition in light of our ruling in *Philippine Mines Safety Environment Association, also known as "MINERO" v. Commission on Elections* (*Minero*);[4] we said that no grave abuse of discretion exists in a ruling that correctly applies the prevailing law and jurisprudence. Applying Section 6(8) of RA 7941, the Court disqualified *MINERO* under the following reasoning:

> Since petitioner by its own admission failed to get 2% of the votes in 2001 and did not participate at all in the 2004 elections, it necessarily failed to get at least two per centum (2%) of the votes cast in the two preceding elections. COMELEC, therefore, is not duty bound to certify it.

PGBI subsequently moved to reconsider the dismissal of its petition. Among other arguments, PGBI claimed that the dismissal of the petition was contrary to law, the evidence and existing jurisprudence. Essentially, PGBI asserts that Section 6(8) of RA 7941 does not apply if one is to follow the tenor and import of the deliberations inclusive of the interpellations in Senate Bill No. 1913 on October 19, 1994. It cited the following excerpts from the Records of the Senate:

> **Senator Gonzales**: On the other hand, Mr. President, under ground no. (7), Section 5 – **there are actually two grounds** it states: " Failure to participate in the last two (2) preceding elections or its failure to obtain at least ten percent (10%) of the votes case (sic) under the party-list system in either of the last two (2) preceding elections for the constituency in which it has registered"
>
> In short, the first ground is that, it failed to participate in the last two (2) preceding elections. The second is, failure to obtain at least 10 percent of the votes cast under the party-list system in either of the last two preceding elections, Mr. President,
>
> **Senator Tolentino**: Actually, these are two separate grounds.
>
> **Senator Gonzales**: There are actually two grounds, Mr. President.
>
> **Senator Tolentino**: Yes, Mr. President.[5] [Underscoring supplied.]

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[4] G.R. No. 177548, May 10, 2007; see *rollo* of G.R. No. 177548, pp. 46-48.

[5] *Rollo*, pp. 74-75.

PGBI thus asserts that Section 6(8) does not apply to its situation, as it is obvious that it failed to participate in **one** (1) **but not in the two** (2) preceding elections. Implied in this is that it also failed to secure the required percentage in one (1) but not in the two (2) preceding elections.

Considering PGBI's arguments, we granted the motion and reinstated the petition in the court's docket.

THE ISSUES

We are called upon to resolve: (a) whether there is legal basis for delisting PGBI; and (b) whether PGBI's right to due process was violated.

OUR RULING

We find the petition partly impressed with merit.

a. The *Minero* Ruling

Our *Minero* ruling is an erroneous application of Section 6(8) of RA 7941; hence, it cannot sustain PGBI's delisting from the roster of registered national, regional or sectoral parties, organizations or coalitions under the party-list system.

First, the law is clear – the COMELEC may *motu proprio* or upon verified complaint of any interested party, remove or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition if it: (a) *fails to participate in the last two (2) preceding elections*; ***or*** (b) *fails to obtain at least two per centum (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered*.[6] The word "or" is a disjunctive term signifying disassociation and independence of one thing from the other things enumerated; it should, as a rule, be construed in the sense in which it ordinarily implies, **as a disjunctive word**.[7] Thus, the plain, clear and

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[6] Numbering supplied.

[7] *Agpalo*, Statutory Construction, p. 204 (2003); see also *The Heirs of George Poe v. Malayan Insurance Company, Inc.,* G.R. No. 156302, April 7, 2009.

unmistakable language of the law provides for two (2) separate reasons for delisting.

Second, *Minero* is diametrically opposed to the legislative intent of Section 6(8) of RA 7941, as PGBI's cited congressional deliberations clearly show.

Minero therefore simply cannot stand. Its basic defect lies in its characterization of the non-participation of a party-list organization in an election *as similar* to a failure to garner the 2% threshold party-list vote. What *Minero* effectively holds is that a party list organization that does not participate in an election necessarily gets, by default, less than 2% of the party-list votes. To be sure, this is a confused interpretation of the law, given the law's clear and categorical language and the legislative intent to treat the two scenarios differently. A delisting based on a mixture or fusion of these two different and separate grounds for delisting is therefore a strained application of the law – in jurisdictional terms, it is an interpretation not within the contemplation of the framers of the law and hence is a gravely abusive interpretation of the law.[8]

What we say here should of course take into account our ruling in *Barangay Association for National Advancement and Transparency v. COMELEC*[9] (*Banat*) where we ***partly*** invalidated the 2% party-list vote requirement provided in RA 7941 as follows:

> We rule that, in computing the allocation of **additional seats**, the continued operation of the two percent threshold for the distribution of the additional seats as found in the second clause of Section 11(b) of R.A. No. 7941 is **unconstitutional**. This Court finds that the two percent threshold makes it mathematically impossible to achieve the maximum number of available party list

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[8] See *Varias v. Commission on Elections*, G.R. No. 189078, February 11, 2010 where we held that the use of wrong considerations is an act not in contemplation of law – a jurisdictional error for this is one way of gravely abusing one's discretion.

[9] G.R. No. 179271, April 21, 2009.

seats when the number of available party list seats exceeds 50. The continued operation of the two percent threshold in the distribution of the additional seats frustrates the attainment of the permissive ceiling that 20% of the members of the House of Representatives shall consist of party-list representatives.

The disqualification for failure to get 2% party-list votes in two (2) preceding elections should therefore be understood in light of the *Banat* ruling that party-list groups or organizations garnering less than 2% of the party-list votes may yet qualify for a seat in the allocation of additional seats.

We need not extensively discuss *Banat*'s significance, except to state that a party-list group or organization which qualified in the *second round of seat allocation* cannot now validly be delisted for the reason alone that it garnered less than 2% in the last two elections. In other words, the application of this disqualification should henceforth be contingent on the percentage of party-list votes garnered by the last party-list organization that qualified for a seat in the House of Representatives, a percentage that is less than the 2% threshold invalidated in *Banat*. *The disqualification should now necessarily be read to apply to party-list groups or organizations that did not qualify for a seat in the two preceding elections for the constituency in which it registered.*

To reiterate, (a) Section 6(8) of RA 7941 provides for two separate grounds for delisting; these grounds cannot be mixed or combined to support delisting; and (b) the disqualification for failure to garner 2% party-list votes in two preceding elections should now be understood, in light of the *Banat* ruling, to mean *failure to qualify for a party-list seat in two preceding elections for the constituency in which it has registered*. This, we declare, is how Section 6(8) of RA 7941 should be understood and applied. We do so under our authority to state what the law is,[10] and as an exception to the application of the principle of *stare decisis*.

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[10] *Marbury v. Madison* (1 Cranch [5 US] 137, 2 L ed 60 [1803]) holds that "**it is emphatically the province and duty of the judicial department to say what the law is.**"

The doctrine of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established) is embodied in Article 8 of the Civil Code of the Philippines which provides, thus:

ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

The doctrine enjoins adherence to judicial precedents. **It requires courts in a country to follow the rule established in a decision of its Supreme Court.** That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.[11] The doctrine is grounded on the necessity for securing certainty and stability of judicial decisions, thus:

Time and again, the court has held that **it is a very desirable and necessary judicial practice** that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis et non quieta movere*. Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that **for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same**, even though the parties may be different. It proceeds from the first principle of justice that, **absent any powerful countervailing considerations, like cases ought to be decided alike**. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, **the rule of *stare decisis* is a bar to any attempt to relitigate the same issue**.[12]

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[11] See *Lazatin v. Desierto*, G.R. No. 147097, June 5, 2009, citing *Fermin v. People*, G.R. No. 157643, March 28, 2008, 550 SCRA 132.

[12] *Id.*, citing *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation*, G.R. No. 159422, March 28, 2008, 550 SCRA 180.

The doctrine though is not cast in stone for upon a showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis*, the Court is justified in setting it aside.[13]

As our discussion above shows, the most compelling reason to abandon *Minero* exists; it was clearly an erroneous application of the law – an application that the principle of stability or predictability of decisions alone cannot sustain. *Minero* did unnecessary violence to the language of the law, the intent of the legislature, and to the rule of law in general. Clearly, we cannot allow PGBI to be prejudiced by the continuing validity of an erroneous ruling. Thus, we now abandon *Minero* and strike it out from our ruling case law.

We are aware that PGBI's situation – a party list group or organization that failed to garner 2% in a prior election and immediately thereafter did not participate in the preceding election – is something that is not covered by Section 6(8) of RA 7941. From this perspective, it may be an unintended gap in the law and as such is a matter for Congress to address. We cannot and do not address matters over which full discretionary authority is given by the Constitution to the legislature; to do so will offend the principle of separation of powers. If a gap indeed exists, then the present case should bring this concern to the legislature's notice.

b. <u>The Issue of Due Process</u>

On the due process issue, we agree with the COMELEC that PGBI's right to due process was not violated for PGBI was given an opportunity to seek, as it did seek, a reconsideration of Resolution No. 8679. The essence of due process, we have consistently held, is simply the opportunity to be heard; as applied to administrative proceedings, due process is the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. A formal or trial-type hearing is not at all times and in all instances essential. *The*

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[13] *Ibid.*

requirement is satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. What is frowned upon is absolute lack of notice and hearing x x x.[14] We find it obvious under the attendant circumstances that PGBI was not denied due process. In any case, given the result of this Resolution, PGBI has no longer any cause for complaint on due process grounds.

WHEREFORE, premises considered, we *GRANT* the petition and accordingly *ANNUL* COMELEC Resolution No. 8679 dated October 13, 2009 insofar as the petitioner PGBI is concerned, and the Resolution dated December 9, 2009 which denied PGBI's motion for reconsideration in SPP No. 09-004 (MP). PGBI is qualified to be voted upon as a party-list group or organization in the coming May 2010 elections.

SO ORDERED.

Carpio, Corona, Carpio Morales, Nachura, Leonardo-de Castro, Bersamin, Del Castillo, Perez, and *Mendoza, JJ.,* concur.

Puno, C.J. and *Velasco, Jr., J.,* join the dissent of *J.* Abad.

Peralta and *Villarama, Jr., JJ.,* in the result.

Abad, J., see dissenting opinion.

DISSENTING OPINION

ABAD, *J.*:

This case stems from the Commission on Elections (COMELEC) *En Banc* resolution removing petitioner Philippine Guardians Brotherhood, Inc. (PGBI) from the roster of registered party-list organizations because of its failure to obtain at least 2% party-list votes in the May 2004 election and to participate in the May 2007 election.

I agree with the view of Justice Arturo D. Brion that Republic Act (R.A.) 7941 provides for two separate grounds for delisting

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[14] *Bautista v. Comelec*, 460 Phil. 459, 478 (2003).

a party-list organization, namely: a) failure to participate in the last two preceding elections; **or** b) failure to garner at least 2% of the votes cast under the party-list system in the two preceding elections for the constituency in which it has registered.

I also agree that because of the Court's decision in *BANAT*,[1] the needed minimum 2% of the votes cast in the two preceding elections should now be understood to mean the actual percentage of the votes garnered by the last party-list organization that qualified for a seat in the House of Representatives. But this could not apply to PGBI because *BANAT* took effect only in the preceding May 2007 elections and PGBI did not run in the same. It ran in the preceding May 2004 elections, when the *BANAT* ruling did not yet exist, but failed to get at least 2% of the votes cast in those elections.

I must disagree with the *ponencia's* view that the Court should reverse the *Minero* ruling[2] that invoked Section 6(8) of R.A. 7941, which provides:

Section 6. Refusal and/or Cancellation of Registration. — The COMELEC may, *motu proprio* or upon verified complaint of any interested party, refuse or cancel, after due notice and hearing, the registration of any national, regional, or sectoral party, organization or coalition on any of the following grounds:

x x x x x x x x x

(8) It fails to participate in the last two (2) preceding elections or fails to obtain at least two per centum (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered.

Since by its own admission, Minero failed to get at least 2% of the votes in the 2001 elections and did not participate at all in the 2004 elections, the Court held that it necessarily failed to

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[1] *Barangay Association for National Advancement and Transparency v. Commission on Elections*, G.R. No. 179295, April 21, 2009.

[2] *Philippine Mine Safety & Environment Association, also known as "MINERO" v. Commission on Elections*, G.R. No. 177548, May 10, 2007.

get at least 2% of the votes cast in the two preceding elections. The COMELEC was thus justified in canceling its registration.

The *ponencia* would allow PGBI to remain in the register of party-list organizations and avert disqualifications because, according to it, PGBI cannot be said to have failed to get at least 2% of the votes cast in the two preceding elections because it only ran in one of those two elections. It cannot also be said to have failed to take part in the two preceding elections because it ran in one of them. What is needed, the *ponencia* claims, are two strikes for the same ground in the two preceding elections.

But it is evident from Section 6(8) above that the legislature intended the two separate tests—failure to take part in the last two preceding elections or failure to garner at least 2% of the votes cast in such elections—to be complimentary. Their purpose is to put every party-list organization, which won the right to be registered, to a two-election wringer, a **voters' preference test**, for lack of a better term to describe it.

This means that, to remain in the party-list register and enjoy the right to take part in the party-list election, a party must prove by the results of the preceding two elections that it retains the required level of voters' preference. Failing in this, such party shall be dropped by the COMELEC, without prejudice to its applying for new registration after a mandatory one-term rest.

If the *ponencia's* views were to be followed, petitioner PGBI would be able to circumvent the voters' preference test that it needs to pass to remain in the register of party-list organizations. It would succeed in putting one over the parties that exerted efforts to get the required level of voters' preference. The following example should illustrate the unfair result:

Election Year	**Party-List X**	**Party-List Y**	**PGBI Party**
May 2004	**Deficient votes**	**Did not run**	**Deficient votes**
May 2007	**Deficient votes**	**Did not run**	**Did not run**
May 2010	**Cancelled**	**Cancelled**	**Not cancelled**

The register of party-list organizations cannot be allowed to grow infinitely. The system cannot tolerate sectoral parties with low-levels of voters' preference to remain on the ballot. For this reason, the legislature established a mechanism for attrition, the enforcement of which is an important responsibility of the COMELEC.

The Court must not abandon *Minero*. I vote to deny PGBI's motion for reconsideration.

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Jurisdiction — Includes actions for injunction and damages. (Subic Bay Metropolitan Authority *vs.* Rodriguez, G.R. No. 160270, April 23, 2010) p. 196

SALES

Contract to sell — Effect of failure to pay the purchase price in full. (Sps. Garcia *vs.* CA, G.R. No. 172036, April 23, 2010) p. 294

Sale of conjugal property — Considered void and inexistent if done without the written consent of the other spouse. (Fuentes *vs.* Roca, G.R. No. 178902, April 21, 2010) p. 9

— Governed by the Family Code if executed after the effectivity of the law even if the marriage took place prior thereto. *(Id.)*

Validity of — Sale is void in the absence of authentic consent. (Fuentes *vs.* Roca, G.R. No. 178902, April 21, 2010) p. 9

Void contract of sale — Right to have the sale declared void lies with the heirs as lawful owners of the property. (Fuentes *vs.* Roca, G.R. No. 178902, April 21, 2010) p. 9

SEPARATION OF POWERS

Application — The Court does not address matters over which full discretionary authority is given by the Constitution to the Legislature. (Philippine Guardians Brotherhood, Inc. *vs.* COMELEC, G.R. No. 190529, April 29, 2010) p. 590

SETTLEMENT OF ESTATE OF A DECEASED PERSON

Claims against estate — Rules provided by the Rules of Court. (ABS-CBN Broadcasting Corp. *vs.* Office of the Ombudsman, G.R. No. 133347, April 23, 2010) p. 147

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Duties — Sheriffs are bound to use reasonable skill and diligence in the performance of their official duties, particularly where the rights of individuals might be jeopardized by their neglect. (Tomboc *vs*. Velasco, Jr., A.M. No. P-07-2322, April 23, 2010) p. 62

SOLICITOR GENERAL

Functions — The Office of the Solicitor General is mandated by law to represent the Office of the Ombudsman. (Kalalo *vs*. Office of the Ombudsman, G.R. No. 158189, April 23, 2010) p. 160

SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT (R.A. NO. 7610)

Child Prostitution and Other Sexual Abuse — Elements. (People *vs*. Dalipe, G.R. No. 187154, April 23, 2010) p. 428

— Imposable penalty. *(Id.)*

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Principle of — Grounded on the necessity of securing certainty and stability of judicial decisions; exceptions. (Philippine Guardians Brotherhood, Inc. vs. COMELEC, G.R. No. 190529, April 29, 2010) p. 590

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Domicile — Defined and elucidated. (Asistio *vs*. Judge Trinidad-Pe Aguirre, G.R. No. 191124, April 27, 2010) p. 523

— Requisites for a change in domicile. *(Id.)*

Residency requirement of voters — Rule. (Asistio *vs*. Judge Trinidad-Pe Aguirre, G.R. No. 191124, April 27, 2010) p. 523

Right to vote — Blind adherence to a technicality, with the inevitable result of frustrating and nullifying the constitutionally guaranteed right of suffrage, cannot be countenanced. (Asistio *vs*. Judge Trinidad-Pe Aguirre, G.R. No. 191124, April 27, 2010) p. 523

— Only on the most serious grounds, and upon clear and convincing proof, may a citizen be deemed to have forfeited this precious heritage of freedom. *(Id.)*

SUMMARY JUDGMENT

Application — When proper. (Atty. Ferrer *vs*. Sps. Diaz, G.R. No. 165300, April 23, 2010) p. 244

Genuine issue — Defined. (Atty. Ferrer *vs*. Sps. Diaz, G.R. No. 165300, April 23, 2010) p. 244

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Collector of Customs — Has exclusive jurisdiction over seizure and forfeiture proceedings. (Subic Bay Metropolitan Authority *vs*. Rodriguez, G.R. No. 160270, April 23, 2010) p. 196

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— Absent any motive to perjure, the straightforward, cohesive and positive testimonies of prosecution witnesses are worthy of full faith and credit. (People *vs*. Bringas, G.R. No. 189093, April 23, 2010) p. 486

— Corroborative testimonies of relatives and friends are viewed with suspicion and scepticism by the Court. (People *vs*. Dalipe, G.R. No. 187154, April 23, 2010) p. 428

— Findings of the trial court, respected on appeal. (People *vs*. Bringas, G.R. No. 189093, April 23, 2010) p. 486

— Inconsistencies in the testimonies of witnesses, when referring to minor, trivial or inconsequential circumstances, even strengthen the credibility of the witnesses, because

they eliminate doubts that such testimony had been coached or rehearsed. (People *vs*. Dalipe, G.R. No. 187154, April 23, 2010) p. 428

— Not affected by delay in reporting the crime. *(Id.)*

— Testimony of accused discharged as a state witness, not rendered incredible nor its probative weight lessened. (People *vs*. Bringas, G.R. No. 189093, April 23, 2010) p. 486

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