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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.C. No. 8096. July 5, 2010]

REY J. VARGAS and EDUARDO A. PANES, JR., *complainants, vs.* **ATTY. MICHAEL A. IGNES, ATTY. LEONARD BUENTIPO MANN, ATTY. RODOLFO U. VIAJAR, JR., and ATTY. JOHN RANGAL D. NADUA,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC CORPORATIONS; GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS; MEMORANDUM CIRCULAR NO. 9; ENJOINS GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS TO REFRAIN FROM HIRING PRIVATE LAWYERS OR LAW FIRMS TO HANDLE THEIR LEGAL MATTERS.—** Under Section 10, Chapter 3, Title III, Book IV of the Administrative Code of 1987, it is the OGCC which shall act as the principal law office of all GOCCs. And Section 3 of Memorandum Circular No. 9, issued by President Estrada on August 27, 1998, enjoins GOCCs to refrain from hiring private lawyers or law firms to handle their cases and legal matters. But the same Section 3 provides that in exceptional cases, the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be, and the written concurrence of the COA shall first be secured before the hiring or employment of a private

lawyer or law firm. In *Phividec Industrial Authority v. Capitol Steel Corporation*, we listed three (3) indispensable conditions before a GOCC can hire a private lawyer: (1) private counsel can only be hired in exceptional cases; (2) the GOCC must first secure the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be; and (3) the written concurrence of the COA must also be secured.

2. **ID.; ID.; ID.; ID.; ID.; ID.; INDISPENSABLE CONDITIONS BEFORE A GOVERNMENT-OWNED OR CONTROLLED CORPORATION MAY HIRE A PRIVATE LAWYER; NOT COMPLIED WITH IN CASE AT BAR; EXPLAINED.—** We find that Attys. Nadua, Viajar, Jr. and Mann had no valid authority to appear as collaborating counsels of KWD in SCA Case No. 50-24 and Civil Case No. 1799. Nothing in the records shows that Atty. Nadua was engaged by KWD as collaborating counsel. While the 4th Whereas Clause of Resolution No. 009 partly states that he and Atty. Ignes "presently stand as KWD legal counsels," there is no proof that the OGCC and COA approved Atty. Nadua's engagement as legal counsel or collaborating counsel. Insofar as Attys. Viajar, Jr. and Mann are concerned, their appointment as collaborating counsels of KWD under Resolution No. 009 has no approval from the OGCC and COA. xxx In the case of Atty. Ignes, he also appeared as counsel of KWD without authority, after his authority as its counsel had expired. True, the OGCC and COA approved his retainership contract for one (1) year effective April 17, 2006. But even if we assume as true that he was not notified of the pre-termination of his contract, the records still disprove his claim that he stopped representing KWD after *April 17, 2007*.

3. **LEGAL ETHICS; ATTORNEYS; DISBARMENT OR SUSPENSION OF ATTORNEYS BY THE SUPREME COURT; GROUNDS; WILLFULLY APPEARING AS AN ATTORNEY FOR A PARTY TO A CASE WITHOUT AUTHORITY TO DO SO; A CASE OF.—** The following circumstances convince us that, indeed, respondents willfully and deliberately appeared as counsels of KWD without authority. One, respondents have admitted the existence of Memorandum Circular No. 9 and professed that they are aware of our ruling in *Phividec*. Thus, we entertain no doubt that they have full grasp of our ruling therein that there are indispensable conditions

before a GOCC can hire private counsel and that for non-compliance with the requirements set by Memorandum Circular No. 9, the private counsel would have no authority to file a case in behalf of a GOCC. Still, respondents acted as counsels of KWD without complying with what the rule requires. They signed pleadings as counsels of KWD. They presented themselves voluntarily, on their own volition, as counsels of KWD even if they had no valid authority to do so. Two, despite the question on respondents' authority as counsels of KWD which question was actually raised earlier in Civil Case No. 1799 by virtue of an urgent motion to disqualify KWD's counsels dated February 21, 2007 and during the hearing on February 23, 2007 respondents still filed the supplemental complaint in the case on March 9, 2007. And despite the pendency of this case before the IBP, Atty. Ignes had to be reminded by the RTC that he needs OGCC authority to file an intended motion for reconsideration in behalf of KWD. xxx Consequently, for respondents' willful appearance as counsels of KWD without authority to do so, there is a valid ground to impose disciplinary action against them. Under Section 27, Rule 138 of the Rules of Court, 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.*

4. ID.; ID.; ID.; DISBARMENT, WHEN PROPER; APPROPRIATE PENALTY IS FINE.— Disbarment, however, is the most severe form of disciplinary sanction, and, as such, the power to disbar must always be exercised with great caution, and should be imposed only for the most imperative reasons and in clear cases of misconduct affecting the standing and moral character of the lawyer as an officer of the court and member of the bar. Accordingly, disbarment should not be decreed where any punishment less severe such as a reprimand, suspension or *fine,* would accomplish the end desired. In *Santayana*, we imposed a fine of ₱5,000 on the respondent for willfully appearing as an attorney for a party to a case without authority to do so.

The respondent therein also appeared as private counsel of the National Electrification Administration, a GOCC, without any approval from the OGCC and COA. Conformably with *Santayana*, we impose a fine of ₱5,000 on each respondent.

R E S O L U T I O N

VILLARAMA, JR., *J.*:

Before the Court is a petition for review of Resolution No. XVIII-2008-335[1] passed on July 17, 2008 by the Board of Governors of the Integrated Bar of the Philippines (IBP) in CBD Case No. 07-1953. The IBP Board of Governors dismissed the disbarment case filed by the complainants against the respondents.

The facts and proceedings antecedent to this case are as follows:

Koronadal Water District (KWD), a government-owned and controlled corporation (GOCC), hired respondent Atty. Michael A. Ignes as private legal counsel for one (1) year effective April 17, 2006.[2] The Office of the Government Corporate Counsel (OGCC) and the Commission on Audit (COA) gave their consent to the employment of Atty. Ignes.[3] However, controversy later erupted when two (2) different groups, herein referred to as the Dela Peña board and Yaphockun board, laid claim as the legitimate Board of Directors of KWD.

On December 28, 2006, the members of the Dela Peña board filed Civil Case No. 1793[4] for Injunction and Damages, seeking to annul the appointment of two (2) directors, Joselito T. Reyes and Carlito Y. Uy, who will allegedly connive with

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[1] *Rollo*, p. 662.

[2] *Id.* at 133.

[3] *Id.* at 129-132.

[4] *Id.* at 404-420. Civil Case No. 1793 was later redocketed as Civil Case No. 1793-25.

Director Allan D. Yaphockun whose hostility to the "present" Board of Directors, the Dela Peña board, is supposedly of public knowledge.

On January 18, 2007, the Dela Peña board also adopted Resolution No. 009[5] appointing respondents Atty. Rodolfo U. Viajar, Jr. and Atty. Leonard Buentipo Mann as private collaborating counsels for all cases of KWD and its Board of Directors, under the direct supervision and control of Atty. Ignes.

Subsequently, on February 9, 2007, Attys. Ignes, Viajar, Jr. and Mann filed SCA Case No. 50-24 for Indirect Contempt of Court[6] entitled *Koronadal Water District (KWD), represented herein by its General Manager, Eleanor Pimentel-Gomba v. Efren V. Cabucay, et al*. On **February 19, 2007**, they also filed Civil Case No. 1799 for Injunction and Damages[7] entitled *Koronadal Water District (KWD), represented herein by its General Manager, & Eleanor Pimentel-Gomba v. Rey J. Vargas*. On **March 9, 2007**, KWD and Eleanor Pimentel-Gomba filed a supplemental complaint[8] in Civil Case No. 1799.

Meanwhile, in Contract Review No. 079[9] dated **February 16, 2007**, the OGCC had approved the retainership contract of Atty. Benjamin B. Cuanan as new legal counsel of KWD and stated that the retainership contract of Atty. Ignes had expired on **January 14, 2007**.

In its letter[10] dated **March 2, 2007**, the OGCC also addressed Eleanor P. Gomba's insistence that the retainership contract of Atty. Ignes will expire on April 17, 2007. The OGCC stated that as stipulated, the KWD or OGCC may terminate the contract

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[5] *Id.* at 136-137.

[6] *Id.* at 732-742.

[7] *Id.* at 715-731. Civil Case No. 1799 was later redocketed as Civil Case No. 1799-24, then 1799-(24)25.

[8] *Id.* at 36-62.

[9] *Id.* at 709-710.

[10] *Id.* at 711-712.

anytime without need of judicial action; that OGCC's grant of authority to private counsels is a privilege withdrawable under justifiable circumstances; and that the termination of Atty. Ignes's contract was justified by the fact that the Local Water Utilities Administration had confirmed the Yaphockun board as the new Board of Directors of KWD and that said board had terminated Atty. Ignes's services and requested to hire another counsel.

Alleging that respondents acted as counsel for KWD without legal authority, complainants filed a disbarment complaint[11] against the respondents before the IBP Commission on Bar Discipline (CBD), docketed as CBD Case No. 07-1953. Complainants alleged that respondents filed SCA Case No. 50-24 and Civil Case No. 1799 as counsels of KWD without legal authority. They likewise stated in their position paper[12] that Atty. Ignes continued representing KWD even after the OGCC had confirmed the expiration of Atty. Ignes's contract in its April 4, 2007 manifestation/motion[13] in Civil Case No. 1796-25 entitled *Koronadal Water District (KWD), represented herein by its General Manager, Eleanor Pimentel Gomba v. Supreme Investigative and Security Agency, represented by its Manager Efren Y. Cabucay.*

In his defense,[14] Atty. Mann stated that he and his fellow respondents can validly represent KWD until April 17, 2007 since Atty. Ignes was not notified of his contract's pre-termination. Atty. Mann also stated that he stopped representing KWD after April 17, 2007 in deference to the OGCC's stand. Attys. Ignes, Viajar, Jr. and Nadua echoed Atty. Mann's defense.[15]

On March 10, 2008, complainants filed a manifestation[16] before the IBP with the following attachments: (1) the transcript

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[11] *Id.* at 2-7.

[12] *Id.* at 346-376.

[13] *Id.* at 787-788.

[14] *Id.* at 297.

[15] *Id.* at 329-330.

[16] *Id.* at 468-471.

of stenographic notes taken on January 28, 2008 in Civil Case No. 1799, and (2) the notice of appeal dated February 28, 2008 of the January 7, 2008 Order dismissing Civil Case No. 1799. Aforesaid transcript showed that Atty. Ignes appeared as counsel of KWD and Ms. Gomba. He also signed the notice of appeal.

In his report and recommendation,[17] the Investigating Commissioner recommended that the charge against Atty. Ignes be dismissed for lack of merit. The Investigating Commissioner held that Atty. Ignes had valid authority as counsel of KWD for one (1) year, from April 2006 to April 2007, and he was unaware of the pre-termination of his contract when he filed pleadings in SCA Case No. 50-24 and Civil Case No. 1799 in February and March 2007.

As to Attys. Viajar, Jr., Mann and Nadua, the Investigating Commissioner recommended that they be fined ₱5,000 each for appearing as attorneys for a party without authority to do so, per *Santayana v. Alampay.*[18] The Investigating Commissioner found that they failed to secure the conformity of the OGCC and COA to their engagement as collaborating counsels for KWD.

As aforesaid, the IBP Board of Governors reversed the recommendation of the Investigating Commissioner and dismissed the case for lack of merit.

Hence, the present petition.

Complainants contend that the IBP Board of Governors erred in dismissing the case because respondents had no authority from the OGCC to file the complaints and appear as counsels of KWD in Civil Case No. 1799, SCA Case No. 50-24 and Civil Case No. 1796-25. Complainants point out that the retainership contract of Atty. Ignes had expired on January 14, 2007; that the "Notice of Appeal filed by Atty. Ignes, *et al.*" in Civil Case No. 1799 was denied per Order dated April 8, 2008 of the Regional Trial Court (RTC) "for being filed by one not duly authorized by law"; and that the authority of Attys. Viajar, Jr.

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[17] *Id.* at 664-671.

[18] A.C. No. 5878, March 21, 2005, 454 SCRA 1.

and Mann as collaborating counsels is infirm since Resolution No. 009 of the Dela Peña board lacks the conformity of the OGCC. As a consequence, according to complainants, respondents are liable for willfully appearing as attorneys for a party to a case without authority to do so.

In his comment, Atty. Ignes admits that their authority to represent KWD had expired on April 17, 2007, but he and his fellow respondents stopped representing KWD after that date. He submits that they are not guilty of appearing as counsels without authority. In their comment, Attys. Viajar, Jr. and Nadua propound similar arguments. They also say that their fees were paid from private funds of the members of the Dela Peña board and KWD personnel who might need legal representation, not from the public coffers of KWD. In his own comment, Atty. Mann submits similar arguments.

After a careful study of the case and the parties' submissions, we find respondents administratively liable.

At the outset, we note that the parties do not dispute the need for OGCC and COA conformity if a GOCC hires private lawyers. Nonetheless, we shall briefly recall the legal basis of this rule. Under Section 10, Chapter 3, Title III, Book IV of the Administrative Code of 1987, it is the OGCC which shall act as the principal law office of all GOCCs. And Section 3 of Memorandum Circular No. 9,[19] issued by President Estrada on August 27, 1998, enjoins GOCCs to refrain from hiring private lawyers or law firms to handle their cases and legal matters. But the same Section 3 provides that in exceptional cases, the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be,

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[19] PROHIBITING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS (GOCCs) FROM REFERRING THEIR CASES AND LEGAL MATTERS TO THE OFFICE OF THE SOLICITOR GENERAL, PRIVATE LEGAL COUNSEL OR LAW FIRMS AND DIRECTING THE GOCCs TO REFER THEIR CASES AND LEGAL MATTERS TO THE OFFICE OF THE GOVERNMENT CORPORATE COUNSEL, UNLESS OTHERWISE AUTHORIZED UNDER CERTAIN EXCEPTIONAL CIRCUMSTANCES.

and the written concurrence of the COA shall first be secured before the hiring or employment of a private lawyer or law firm. In *Phividec Industrial Authority v. Capitol Steel Corporation*,[20] we listed three (3) indispensable conditions before a GOCC can hire a private lawyer: (1) private counsel can only be hired in exceptional cases; (2) the GOCC must first secure the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be; and (3) the written concurrence of the COA must also be secured.

In the case of respondents, do they have valid authority to appear as counsels of KWD?

We find that Attys. Nadua, Viajar, Jr. and Mann had no valid authority to appear as collaborating counsels of KWD in SCA Case No. 50-24 and Civil Case No. 1799. Nothing in the records shows that Atty. Nadua was engaged by KWD as collaborating counsel. While the 4th Whereas Clause of Resolution No. 009 partly states that he and Atty. Ignes "presently stand as KWD legal counsels," there is no proof that the OGCC and COA approved Atty. Nadua's engagement as legal counsel or collaborating counsel. Insofar as Attys. Viajar, Jr. and Mann are concerned, their appointment as collaborating counsels of KWD under Resolution No. 009 has no approval from the OGCC and COA.

Attys. Nadua, Viajar, Jr. and Mann are in the same situation as the private counsel of Phividec Industrial Authority in *Phividec*. In that case, we also ruled that said private counsel of Phividec Industrial Authority, a GOCC, had no authority to file the expropriation case in Phividec's behalf considering that the requirements set by Memorandum Circular No. 9 were not complied with.[21] Thus, Resolution No. 009 did not grant authority to Attys. Nadua, Viajar, Jr. and Mann to act as collaborating counsels of KWD. That Atty. Ignes was not notified of the pre-termination of his own retainership contract

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[20] G.R. No. 155692, October 23, 2003, 414 SCRA 327, 334.

[21] *Id.* at 335-336.

cannot validate an inexistent authority of Attys. Nadua, Viajar, Jr. and Mann as collaborating counsels.

In the case of Atty. Ignes, he also appeared as counsel of KWD without authority, after his authority as its counsel had expired. True, the OGCC and COA approved his retainership contract for one (1) year effective April 17, 2006. But even if we assume as true that he was not notified of the pre-termination of his contract, the records still disprove his claim that he stopped representing KWD after *April 17, 2007*.

Atty. Ignes offered no rebuttal to the verified manifestation of complainants filed with the IBP on March 10, 2008. Attached therein was the transcript of stenographic notes[22] in Civil Case No. 1799 taken on *January 28, 2008* when Atty. Ignes argued the extremely urgent motion for the immediate *return of the facilities of the KWD* to the KWD Arellano Office. The RTC was compelled to ask him why he seeks the return of *KWD* properties if he filed the motion as counsel of *Ms. Gomba*. When the RTC noted that KWD does not appear to be a party to the motion, Atty. Ignes said that *KWD is represented by Ms. Gomba* per the caption of the case. Atty. Ignes also manifested that they will file a motion for reconsideration of the orders dismissing Civil Case No. 1799 and Civil Case No. 1793. The RTC ruled that it will not accept any motion for reconsideration in behalf of KWD unless he is authorized by the OGCC, but Atty. Ignes later filed a notice of appeal[23] dated *February 28, 2008*, in Civil Case No. 1799. As the notice of appeal signed by Atty. Ignes was filed by one (1) not duly authorized by law, the RTC, in its Order[24] dated April 8, 2008, denied due course to said notice of appeal.

As we see it, Atty. Ignes portrayed that his appearance on January 28, 2008 was merely as counsel of Ms. Gomba. He indicted himself, however, when he said that Ms. Gomba

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[22] *Rollo*, pp. 506-514.

[23] *Id.* at 482.

[24] *Id.* at 837-838.

represents KWD per the case title. In fact, the extremely urgent motion sought the return of the facilities of KWD to its Arellano Office. Clearly, Atty. Ignes filed and argued a motion with the interest of KWD in mind. The notice of appeal in Civil Case No. 1799 further validates that Atty. Ignes still appeared as counsel of KWD after his authority as counsel had expired. This fact was not lost on the RTC in denying due course to the notice of appeal.

Now did respondents *willfully* appear as counsels of KWD without authority?

The following circumstances convince us that, indeed, respondents willfully and deliberately appeared as counsels of KWD without authority. One, respondents have admitted the existence of Memorandum Circular No. 9 and professed that they are aware of our ruling in *Phividec*.[25] Thus, we entertain no doubt that they have full grasp of our ruling therein that there are indispensable conditions before a GOCC can hire private counsel and that for non-compliance with the requirements set by Memorandum Circular No. 9, the private counsel would have no authority to file a case in behalf of a GOCC. Still, respondents acted as counsels of KWD without complying with what the rule requires. They signed pleadings as counsels of KWD. They presented themselves voluntarily, on their own volition, as counsels of KWD even if they had no valid authority to do so.

Two, despite the question on respondents' authority as counsels of KWD which question was actually raised earlier in Civil Case No. 1799 by virtue of an urgent motion to disqualify KWD's counsels[26] dated February 21, 2007 and during the hearing on February 23, 2007[27] respondents still filed the supplemental complaint in the case on March 9, 2007. And despite the pendency of this case before the IBP, Atty. Ignes

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[25] *Id.* at 73-74, 77.

[26] *Id.* at 812-825.

[27] *Id.* at 826-836.

had to be reminded by the RTC that he needs OGCC authority to file an intended motion for reconsideration in behalf of KWD.

With the grain of evidence before us, we do not believe that respondents are innocent of the charge even if they insist that the professional fees of Attys. Nadua, Viajar, Jr. and Mann, as collaborating counsels, were paid not from the public coffers of KWD. To be sure, the facts were clear that they appeared as counsels of KWD without authority, and not merely as counsels of the members of the Dela Peña board and KWD personnel in their private suits.

Consequently, for respondents' willful appearance as counsels of KWD without authority to do so, there is a valid ground to impose disciplinary action against them. Under Section 27, Rule 138 of the Rules of Court, 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*.

Disbarment, however, is the most severe form of disciplinary sanction, and, as such, the power to disbar must always be exercised with great caution, and should be imposed only for the most imperative reasons and in clear cases of misconduct affecting the standing and moral character of the lawyer as an officer of the court and member of the bar. Accordingly, disbarment should not be decreed where any punishment less severe such as a reprimand, suspension or *fine,* would accomplish the end desired.[28] In *Santayana*,[29] we imposed a fine of ₱5,000 on the respondent for willfully appearing as an

[28] *Kara-an v. Pineda*, A.C. No. 4306, March 28, 2007, 519 SCRA 143, 146; *Briones v. Jimenez*, A.C. No. 6691, April 27, 2007, 522 SCRA 236, 243-244.

[29] *Supra* note 18 at 8-9.

attorney for a party to a case without authority to do so. The respondent therein also appeared as private counsel of the National Electrification Administration, a GOCC, without any approval from the OGCC and COA.

Conformably with *Santayana*, we impose a fine of ₱5,000 on each respondent.

On another matter, we note that respondents stopped short of fully narrating what had happened after the RTC issued four (4) orders on March 24, 2007 and on April 13, 2007 in Civil Case No. 1799.[30] As willingly revealed by complainants, all four (4) orders were nullified by the Court of Appeals.[31] We are compelled to issue a reminder that our Code of Professional Responsibility requires lawyers, like respondents, to always show candor and good faith to the courts.[32]

WHEREFORE, the petition is *GRANTED*. The assailed Resolution No. XVIII-2008-335 passed on July 17, 2008 by the IBP Board of Governors in CBD Case No. 07-1953 is *REVERSED* and *SET ASIDE*.

Respondents Attys. Michael A. Ignes, Leonard Buentipo Mann, Rodolfo U. Viajar, Jr., and John Rangal D. Nadua are found *GUILTY* of willfully appearing as attorneys for a party to a case without authority to do so and *FINED* ₱5,000 each, payable to this Court within ten (10) days from notice of this Resolution. They are *STERNLY WARNED* that a similar offense in the future will be dealt with more severely.

Let a copy of this Resolution be attached to respondents' personal records in the Office of the Bar Confidant.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Bersamin, and *Abad,*[*] *JJ.,* concur.

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[30] *Rollo*, pp. 172-173, 176-180.

[31] *Id.* at 1047, 1069.

[32] Canon 10, Code of Professional Responsibility.

[*] Additional member per Special Order No. 843.

SECOND DIVISION

[A.M. No. P-08-2590.* July 5, 2010]

JULIE ANN C. DELA CUEVA, *complainant, vs.* **SELIMA B. OMAGA, Court Stenographer I, MTC-Calauan, Laguna,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; THE SUPREME COURT, HAVING THE AUTHORITY OVER EMPLOYEES OF LOWER COURTS, HAS THE POWER AND DUTY TO PURSUE AN ADMINISTRATIVE MATTER REGARDLESS OF COMPLAINANT'S DESISTANCE.— At the outset, it should be stressed that complainant's change of heart in deciding not to pursue the case against respondent is of no moment as it has no controlling significance in this administrative case. The long standing policy is: Administrative actions cannot depend on the will or pleasure of the complainant who may, for reasons of his own, condone what may be detestable. Neither can the Court be bound by the unilateral act of the complainant in a matter relating to its disciplinary power x x x Desistance cannot divest the Court of its jurisdiction to investigate and decide the complaint against the respondent. To be sure, public interest is at stake in the conduct and actuations of officials and employees of the judiciary. And the program and efforts of this Court in improving the delivery of justice to the people should not be frustrated and put to naught by private arrangements between the parties. This is so because the issue in administrative cases is not whether the complainant has a cause of action against the respondent but, rather, whether the employee against whom the complaint is filed has breached the norms and standards of service in the judiciary. As such, this Court, having disciplinary authority over employees of the lower courts, has the power and duty to pursue this administrative matter regardless of complainant's desistance.

* Formerly OCA-IPI No. 08-2986-P.

2. **ID.; ID.; ID.; EMPLOYEES OF THE JUDICIARY ARE SUBJECT TO A HIGHER STANDARD THAN MOST OTHER CIVIL SERVANTS IN ORDER TO PRESERVE THE FAITH OF THE PEOPLE IN THE COURTS AS DISPENSERS OF JUSTICE.—** Employees of the judiciary, however, are subject to a higher standard than most other civil servants. It has been written that "a place in the judiciary demands upright men and women who must carry on with dignity and be ever conscious of the impression that they could create by the way they conduct themselves." In the case of *Acebedo v. Arquero*, this Court ruled that: Although every office in the government service is a public trust, no position exacts a greater demand for moral righteousness and uprightness from an individual than in the judiciary. That is why this Court has firmly laid down exacting standards of morality and decency expected of those in the service of the judiciary. Their conduct, not to mention their behavior, is circumscribed with the heavy burden of responsibility, characterized by, among other things, propriety and decorum so as to earn and keep the public's respect and confidence in the judicial service. It must be free from any whiff of impropriety, not only with respect to their duties in the judicial branch but also to their behavior outside the court as private individuals. There is no dichotomy of morality; court employees are also judged by their private morals. These exacting standards of morality and decency are required of employees of the judiciary in order to preserve the faith of the people in the courts as dispensers of justice. Our reminder, through the words of Justice Muñoz-Palma, must be taken to heart: x x x. The image of the court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel - hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a true temple of justice.

3. **ID.; ID.; ID.; REVISED UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; DISGRACEFUL AND IMMORAL CONDUCT; PENALTY.—** Under the Revised Uniform Rules on Administrative Cases in the Civil Service, disgraceful and immoral conduct is punishable by suspension of six months and one day to one year for the first offense.

4. ID.; ID.; ID.; ID.; IMMORALITY, DEFINED.— Immorality has been defined to include not only sexual matters but also "conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness; or is willful, flagrant or shameless conduct showing moral indifference to opinions of respectable members of the community, and an inconsiderate attitude toward good order and public welfare."

5. ID.; ID.; ID.; ID.; DISGRACEFUL AND IMMORAL CONDUCT, NOT PROVEN; IMPOSITION OF AN ADMINISTRATIVE PENALTY, NOT WARRANTED.— Respondent claims, however, that she had no knowledge that P/Supt. dela Cueva was married and that she ended their relationship as soon as she was made aware of his true civil status. If her contention were true, this would serve to exculpate her from the accusation of immorality. The Court finds respondent's assertion to be plausible. It should be noted that the complainant did not refute her defense that she did not learn of P/Supt. dela Cueva's marital status until complainant filed a complaint against them. Indeed, there is no concrete evidence on record to show that respondent knew of his married state at the time their relationship started. The idea, however, that the respondent never had the slightest notion that P/Supt. dela Cueva was married and that she did not cohabit with him despite having three children may be quite a stretch of the imagination. It is fairly inconceivable for a woman to have had a relationship with a married man for more than a decade without even a tinge of suspicion that he might have been lying about his true civil status. But then again, there is nothing on record which can refute respondent's allegation. In view of the lack of proof showing that respondent willingly entered into an immoral sexual liaison with a married man, she cannot be held liable for immoral and disgraceful conduct. It is a well-settled rule that administrative penalties must be supported by substantial evidence for the imposition thereof. This is in keeping with the constitutional imperative that a person is entitled to due process of law. The Court will exercise its disciplinary authority over respondent only if the case against her is established by clear, convincing and satisfactory evidence. In this case, the Court finds the evidence against respondent insufficient to warrant the imposition of an administrative penalty.

6. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 8972 (SOLO PARENTS' WELFARE ACT OF 2000); WORK DISCRIMINATION; A SOLO PARENT EMPLOYEE SHOULD NOT BE DISCRIMINATED AGAINST WITH RESPECT TO TERMS AND CONDITIONS OF EMPLOYMENT.— [T]he Court would like to point out that, in the absence of clear and convincing evidence, it would be insensitive to condemn the respondent for simply being an unmarried mother of three. There has been no showing that she has lived her life in a scandalous and disgraceful manner which, by any means, has affected her standing in the community. To speculate that she did so would be tantamount to committing a discrimination against a solo parent, which is prohibited under Section 7 of Republic Act No. 8972, the Solo Parents' Welfare Act of 2000, to wit: Section 7. *Work Discrimination* – No employer shall discriminate against any solo parent employee with respect to terms and conditions of employment on account of his/her status.

APPEARANCES OF COUNSEL

Muya and Paderayaon Law Offices for respondent.

D E C I S I O N

MENDOZA, *J.*:

This administrative case stemmed from a sworn Affidavit-Complaint[1] dated June 15, 2007 filed by Julie Ann dela Cueva charging respondent Selima B. Omaga, Court Stenographer, Municipal Trial Court, Calauan, Laguna, with Immorality.

Complainant Julie Ann C. dela Cueva is the legal wife of P/Supt. Nestor dela Cueva.[2] They were married on July 29, 1984, and the union bore three children. Due to the philandering ways of her husband, the couple separated on November 30, 1994.[3]

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[1] *Rollo*, p. 5.

[2] *Id.*

[3] *Id.* at 6.

Thereafter, the complainant cohabited with two different men in succession – (1) William Castillo with whom she had three children: Jessica, born on February 24, 1998; William Paolo, born on March 6, 2000; and Frenz William, born on August 8, 2002; and (2) Justiniano Montillano with whom she had one child, Justin Jan, born on March 31, 2006.[4]

On May 31, 2007, P/Supt. Nestor dela Cueva filed a Petition for Declaration of Nullity of Marriage alleging as ground his own psychological incapacity.[5] This angered and prompted his wife, the complainant, to file a criminal complaint against him for bigamy and concubinage. Her complaint alleged that he and respondent, Selima B. Omaga, got married and were living together as husband and wife despite the subsistence of his marriage with her (the complainant).[6] The criminal charges were dismissed by the provincial prosecutor in a resolution dated August 24, 2007.[7]

Complainant dela Cueva also filed an administrative complaint against both her husband and the respondent.[8] In her defense, respondent averred that she first met P/Supt. dela Cueva in 1995 when he was assigned by the Philippine National Police as Chief of Police in Calauan, Laguna. Their relationship started on March 8, 1995 and continued until she received notice of the bigamy and concubinage case filed against him.[9] It was only then that she discovered that he was married.[10] She bore P/Supt. dela Cueva three children: John Emmanuel, born on December 27, 1996; Patrick Josef, born on May 1, 1998; and Patricia May, born on May 18, 2000.[11] Respondent further

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[4] *Id.* at 124-127.

[5] *Id.* at 92.

[6] *Id.* at 9.

[7] *Id.* at 193.

[8] *Id.* at 9.

[9] *Id.* at 225 and 234.

[10] *Id.* at 234.

[11] *Id.* at 173.

asserted that despite having had three children with P/Supt. dela Cueva, they did not live together in one house but rather, he would just visit her in her house from time to time.[12]

On October 23, 2008, the Office of the Court Administrator recommended that "the complaint be re-docketed as a regular administrative matter and that respondent be in the meantime suspended for a period six (6) months and one (1) day, without pay with a stern warning that a repetition of the same act would be dealt with more severely."[13]

As recommended, the Court re-docketed the complaint as a regular administrative matter in a Resolution dated December 15, 2008.[14] In another Resolution dated June 10, 2009, the Office of the Court Administrator was directed to assign a Regional Trial Court judge in Laguna for investigation, report and recommendation.[15] On September 17, 2009, Judge Agripino G. Morga of the Regional Trial Court, Branch 32, San Pablo City, Laguna, was designated to be the investigating judge.

During the hearing of the case before the investigating judge on October 8, 2009, the complainant manifested that she was withdrawing her complaint after learning that respondent and her husband never lived together as husband and wife.[16] Complainant confessed that she was prompted to file the complaint simply because her husband had filed a petition for declaration of nullity of their marriage.[17]

In his Report and Recommendation dated December 10, 2009, Judge Morga recommended that the respondent be absolved from any administrative liability taking into consideration the following circumstances: (1) respondent and

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[12] *Id.* at 226.

[13] *Id.* at 4.

[14] *Id.* at 129.

[15] *Id.* at 137.

[16] *Id.* at 151.

[17] *Id.* at 156.

P/Supt. dela Cueva began their relationship after he was already separated in fact from complainant; (2) complainant is no longer interested in pursuing the case as she realized that filing it was a mistake since respondent and her husband never lived together as husband and wife; (3) there is no evidence to contradict respondent's claim that during their relationship she did not know dela Cueva was married and that they did not cohabit in one house; (4) respondent's performance as court stenographer was not adversely affected by her situation; and (5) respondent has properly reared her children and conducted herself in public appropriately.[18] He further stated that:

> All told, the totality of the above circumstances necessitates a review on the findings of the Honorable Court and the Court Administrator to impose a six-month suspension. While it cannot be disputed that respondent entered into an illicit relationship, the same to the mind of this Investigator was not so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree.[19]

The sole issue before this Court is whether or not respondent is guilty of immoral conduct.

At the outset, it should be stressed that complainant's change of heart in deciding not to pursue the case against respondent is of no moment as it has no controlling significance in this administrative case. The long standing policy is:

> Administrative actions cannot depend on the will or pleasure of the complainant who may, for reasons of his own, condone what may be detestable. Neither can the Court be bound by the unilateral act of the complainant in a matter relating to its disciplinary power x x x Desistance cannot divest the Court of its jurisdiction to investigate and decide the complaint against the respondent. To be sure, public interest is at stake in the conduct and actuations of officials and employees of the judiciary. And the program and efforts of this Court in improving the delivery of justice to the people

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[18] *Id.* at 301, 305 and 308.

[19] *Id.* at 308.

should not be frustrated and put to naught by private arrangements between the parties.[20]

This is so because the issue in administrative cases is not whether the complainant has a cause of action against the respondent but, rather, whether the employee against whom the complaint is filed has breached the norms and standards of service in the judiciary.[21] As such, this Court, having disciplinary authority over employees of the lower courts, has the power and duty to pursue this administrative matter regardless of complainant's desistance.

The Court now determines whether or not respondent is indeed guilty of immoral conduct.

Well-established is the principle that public office is a public trust.[22] No less than the Constitution requires that: "Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."[23] In relation thereto, this Court has held that:

x x x. This constitutional mandate should always be in the minds of all public servants to guide them in their actions during their entire tenure in the government service. The good of the service and the degree of morality which every official and employee in the public service must observe, if respect and confidence are to be maintained by the Government in the enforcement of the law, demand that no untoward conduct on his part, affecting morality, integrity and efficiency while holding office should be left without proper and commensurate sanction, all attendant circumstances taken into account.[24]

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[20] *Gamboa v. Gamboa*, A.M. No. P-04-1836, July 30, 2004, 435 SCRA 436, 440 citing *Rizon v. Zerna*, 365 SCRA 315, 319 (2001).

[21] *Id.*

[22] Const. (1987), Art. XI, Sec. 1.

[23] *Id.*

[24] *Lim-Arce v. Arce*, A.M. No. 89-312, January 9, 1992, 205 SCRA 21, 31.

Employees of the judiciary, however, are subject to a higher standard than most other civil servants. It has been written that "a place in the judiciary demands upright men and women who must carry on with dignity and be ever conscious of the impression that they could create by the way they conduct themselves."[25] In the case of *Acebedo v. Arquero*,[26] this Court ruled that:

Although every office in the government service is a public trust, no position exacts a greater demand for moral righteousness and uprightness from an individual than in the judiciary. That is why this Court has firmly laid down exacting standards of morality and decency expected of those in the service of the judiciary. Their conduct, not to mention their behavior, is circumscribed with the heavy burden of responsibility, characterized by, among other things, propriety and decorum so as to earn and keep the public's respect and confidence in the judicial service. It must be free from any whiff of impropriety, not only with respect to their duties in the judicial branch but also to their behavior outside the court as private individuals. There is no dichotomy of morality; court employees are also judged by their private morals.[27]

These exacting standards of morality and decency are required of employees of the judiciary in order to preserve the faith of the people in the courts as dispensers of justice.[28] Our reminder, through the words of Justice Muñoz-Palma, must be taken to heart:

x x x. The image of the court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel — hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a true temple of justice.[29]

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[25] *Supra* note 20.

[26] A.M. No. P-94-1054, March 11, 2003, 399 SCRA 10.

[27] *Acebedo v. Arquero*, A.M. No. P-94-1054, March 11, 2003, 399 SCRA 10, 16.

[28] *Navarro v. Navarro* A.M. No. O.C.A.-00-01, September 6, 2000, 339 SCRA 709, 717.

[29] *Recto v. Racelis*, A.M. No. P-182, April 30, 1976, 70 SCRA 438, 443.

This was further emphasized by the Court in *Ratti v. Mendoza-de Castro*:[30]

> It must be stressed that every employee of the judiciary should be an example of integrity, uprightness and honesty. Like any public servant, she must exhibit the highest sense of honesty and integrity not only in the performance of her official duties but in her personal and private dealings with other people. In order to preserve the good name and integrity of the courts of justice, court personnel are enjoined to adhere to the exacting standards of morality and decency in their professional and private conduct.

Under the Revised Uniform Rules on Administrative Cases in the Civil Service, disgraceful and immoral conduct is punishable by suspension of six months and one day to one year for the first offense.[31]

Immorality has been defined to include not only sexual matters but also "conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness; or is willful, flagrant or shameless conduct showing moral indifference to opinions of respectable members of the community, and an inconsiderate attitude toward good order and public welfare."[32]

There is no doubt that engaging in sexual relations with a married man is not only a violation of the moral standards expected of employees of the judiciary but is also a desecration of the sanctity of the institution of marriage which this Court abhors and is, thus, punishable.

Respondent claims, however, that she had no knowledge that P/Supt. dela Cueva was married and that she ended their relationship as soon as she was made aware of his true civil status. If her contention were true, this would serve to exculpate her from the accusation of immorality.

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[30] A.M. No. P-04-1844, July 23, 2004, 435 SCRA 11.

[31] CSC Memorandum Circular No. 19-99, Rule IV, Sec. 52(A)(15).

[32] *Regir v. Regir*, A.M. No. P-06-2282, August 4, 2009, 595 SCRA 455, 462.

The Court finds respondent's assertion to be plausible. It should be noted that the complainant did not refute her defense that she did not learn of P/Supt. dela Cueva's marital status until complainant filed a complaint against them. Indeed, there is no concrete evidence on record to show that respondent knew of his married state at the time their relationship started.

The idea, however, that the respondent never had the slightest notion that P/Supt. dela Cueva was married and that she did not cohabit with him despite having three children may be quite a stretch of the imagination. It is fairly inconceivable for a woman to have had a relationship with a married man for more than a decade without even a tinge of suspicion that he might have been lying about his true civil status. But then again, there is nothing on record which can refute respondent's allegation. In view of the lack of proof showing that respondent willingly entered into an immoral sexual liaison with a married man, she cannot be held liable for immoral and disgraceful conduct.

It is a well-settled rule that administrative penalties must be supported by substantial evidence for the imposition thereof.[33] This is in keeping with the constitutional imperative that a person is entitled to due process of law. The Court will exercise its disciplinary authority over respondent only if the case against her is established by clear, convincing and satisfactory evidence.[34] In this case, the Court finds the evidence against respondent insufficient to warrant the imposition of an administrative penalty.

We are, thus, guided by the disquisition of the Court in the case of *Concerned Employee v. Mayor.*[35] In said case, a court stenographer had sexual relations with a married man. She alleged that she did not know that her lover was married when they commenced their relationship. The Court acknowledged the validity of such a defense:

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[33] *Concerned Employee v. Mayor*, A.M. No. P-02-1564, November 23, 2004, 443 SCRA SCRA 448, 456.

[34] *Ui v. Bonifacio,* Adm. Case No. 3319, June 8, 2000, 333 SCRA 38, 52.

[35] *Supra* note 33.

The legal effect of such ignorance deserves due consideration, if only for intellectual clarity. The act of having sexual relations with a married person, or of married persons having sexual relations outside their marriage is considered "disgraceful and immoral" conduct because such manifests deliberate disregard by the actor of the marital vows protected by the Constitution and our laws. The perversion is especially egregious if committed by judicial personnel, those persons specifically tasked with the administration of justice and the laws of the land. **However, the malevolent intent that normally characterizes the act is not present when the employee is unaware that his/her sexual partner is actually married. This lack of awareness may extenuate the cause for the penalty**, as it did in the aforementioned Ui case.[36] (emphasis supplied)

In the cited case of *Ui v. Bonifacio*,[37] the respondent was a female lawyer who had a relationship with, and actually married, a man whose earlier marriage was still subsisting. She asserted, however, that as soon as she learned that he was married, she left him and ended their association. The Court found that she did not deserve administrative punishment:

All these taken together leads to the inescapable conclusion that respondent was imprudent in managing her personal affairs. However, the fact remains that her relationship with Carlos Ui, clothed as it was with what respondent believed was a valid marriage, cannot be considered immoral. For immorality connotes conduct that shows indifference to the moral norms of society and the opinion of good and respectable members of the community. **Moreover, for such conduct to warrant disciplinary action, the same must be "grossly immoral," that is, it must be so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree.**

We have held that "a member of the Bar and officer of the court is not only required to refrain from adulterous relationships . . . but must also so behave himself as to avoid scandalizing the public by creating the belief that he is flouting those moral standards." **Respondent's act of immediately distancing herself from Carlos Ui upon discovering his true civil status belies just that alleged**

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[36] *Supra* note 33 at 462.

[37] Adm. Case No. 3319, June 8, 2000, 333 SCRA 38.

moral indifference and proves that she had no intention of flaunting the law and the high moral standard of the legal profession. Complainant's bare assertions to the contrary deserve no credit. After all, the burden of proof rests upon the complainant, and the Court will exercise its disciplinary powers only if she establishes her case by clear, convincing and satisfactory evidence. This, herein complainant miserably failed to do.[38] (emphases supplied)

On a final note, the Court would like to point out that, in the absence of clear and convincing evidence, it would be insensitive to condemn the respondent for simply being an unmarried mother of three. There has been no showing that she has lived her life in a scandalous and disgraceful manner which, by any means, has affected her standing in the community.[39] To speculate that she did so would be tantamount to committing a discrimination against a solo parent,[40] which is prohibited under Section 7 of Republic Act No. 8972, the Solo Parents' Welfare Act of 2000, to wit:

Section 7. *Work Discrimination* – No employer shall discriminate against any solo parent employee with respect to terms and conditions of employment on account of his/her status.

WHEREFORE, the complaint for disgraceful and immoral conduct against respondent Selima B. Omaga is hereby *DISMISSED*.

SO ORDERED.

Carpio (Chairperson), Nachura, Peralta, and *Abad, JJ.,* concur.

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[38] *Id.* at 51.

[39] Separate Opinion of Justice Bellosillo in *Estrada v. Escritor*, A. M. No. P-02-1651, August 4, 2003, 408 SCRA 1, 200.

[40] Included in the definition of a "solo parent" under Section 3(a)(8) of Republic Act No. 8972 is an unmarried mother who has preferred to keep and rear her children instead of having others care for them or give them up to a welfare institution.

THIRD DIVISION

[A.M. No. RTJ-10-2236. July 5, 2010]
(Formerly OCA I.P.I. No. 09-3083-RTJ)

RUBEN N. SALCEDO, *complainant, vs.* **JUDGE GIL G. BOLLOZOS,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RULE ON THE WRIT OF *AMPARO*; WRIT APPLIES ONLY TO EXTRALEGAL KILLINGS AND ENFORCED DISAPPEARANCES OR THREATS THEREOF; IN CASE AT BAR, WRIT IS NOT APPLICABLE.—** At the outset, we agree with the complainant that the respondent judge erred in issuing the Writ of *Amparo* in Tanmalack's favor. Had he read Section 1 of the Rule on the Writ of *Amparo* more closely, the respondent judge would have realized that the writ, in its present form, only applies to "extralegal killings and enforced disappearances or threats thereof." The present case involves concerns that are purely property and commercial in nature – concerns that we have previously ruled are not covered by the Writ of *Amparo*. In *Tapuz v. Del Rosario*, we held: To start off with the basics, the writ of *Amparo* was originally conceived as a response to the extraordinary rise in the number of killings and enforced disappearances, and to the perceived lack of available and effective remedies to address these extraordinary concerns. It is intended to address violations of or threats to the rights to life, liberty or security, as an extraordinary and independent remedy beyond those available under the prevailing Rules, or as a remedy supplemental to these Rules. **What it is not, is a writ to protect concerns that are purely property or commercial. Neither is it a writ that we shall issue on amorphous and uncertain grounds.** Consequently, the Rule on the Writ of *Amparo* – in line with the extraordinary character of the writ and the reasonable certainty that its issuance demands – requires that every petition for the issuance of the writ must be supported by justifying allegations of fact, to wit: xxx ***(c) The right to life, liberty and security***

of the aggrieved party violated or threatened with violation by an unlawful act or omission of the respondent, and how such threat or violation is committed with the attendant circumstances detailed in supporting affidavits; ***(d) The investigation conducted, if any, specifying the names, personal circumstances, and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report***; ***(e) The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission***; xxx The writ shall issue if the Court is preliminarily satisfied with the *prima facie* existence of the ultimate facts determinable from the supporting affidavits that detail the circumstances of how and to what extent a threat to or violation of the rights to life, liberty and security of the aggrieved party was or is being committed. In the present case, the Writ of *Amparo* ought not to have been issued by the respondent judge since Tanmalack's petition is fatally defective in substance and content, as it does not allege that he is a victim of "extralegal killings and enforced disappearances or the threats thereof." The petition merely states that he is "under threat of deprivation of liberty with the police stating that he is not arrested but merely 'in custody.'"

2. **LEGAL ETHICS; JUDGES; ERRORS COMMITTED BY A JUDGE IN THE EXERCISE OF HIS ADJUDICATIVE FUNCTIONS CANNOT BE CORRECTED THROUGH ADMINISTRATIVE PROCEEDINGS, BUT SHOULD INSTEAD BE ASSAILED THROUGH JUDICIAL REMEDIES; RATIONALE.—** Plainly, the errors attributed to respondent judge pertain to the exercise of his adjudicative functions. As a matter of policy, in the absence of fraud, dishonesty, and corruption, the acts of a judge in his official capacity are not subject to disciplinary action. He cannot be subjected to liability – civil, criminal, or administrative – for any of his official acts, no matter how erroneous, as long as he acts in good faith. *Only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith, or deliberate intent to do an injustice will be administratively sanctioned*. Settled is the rule that errors committed by a judge in the exercise of his adjudicative functions cannot be corrected through

administrative proceedings, but should instead be assailed through judicial remedies. In the present case, the propriety of the issuance of the Writ of *Amparo* cannot be raised as an issue in the present administrative case. The proper recourse for the complainant should have been to file an appeal, from the final judgment or order of the respondent judge, to this Court under Rule 45 of the Rules of Court, pursuant to Section 19 of the Rule on the Writ of *Amparo*. In *Bello III v. Diaz*, we reiterated that disciplinary proceedings against judges do not complement, supplement, or substitute judicial remedies, whether ordinary or extraordinary; an inquiry into their administrative liability arising from judicial acts may be made only after other available remedies have been settled. We laid down the *rationale* for the rule in *Flores v. Abesamis*, *viz*: xxx **Law and logic decree that "administrative or criminal remedies are neither alternative nor cumulative to judicial review where such review is available, and must wait on the result thereof."** Indeed, since judges must be free to judge, without pressure or influence from external forces or factors, they should not be subject to intimidation, the fear of civil, criminal or administrative sanctions for acts they may do and dispositions they may make in the performance of their duties and functions; and it is sound rule, which must be recognized independently of statute, that judges are not generally liable for acts done within the scope of their jurisdiction and in good faith; and that exceptionally, **prosecution of the judge can be had only if "there be a final declaration by a competent court in some appropriate proceeding of the manifestly unjust character of the challenged judgment or order, and also evidence of malice or bad faith, ignorance or inexcusable negligence, on the part of the judge in rendering said judgment or order" or under the stringent circumstances set out in Article 32 of the Civil Code.**

3. **ID.; ID.; BIAS AND PARTIALITY; CAN NEVER BE PRESUMED AND MUST BE PROVED WITH CLEAR AND CONVINCING EVIDENCE.—** We note, too, that although the respondent judge erred in issuing the Writ of *Amparo*, we find, as the OCA did, that there is no evidence on record that supports the complainant's allegation that the issuance was tainted with manifest bias and partiality, bad faith, or gross ignorance of the law. The fact that the respondent judge and

Atty. Francis Ku are members of the Masonic fraternity does not justify or prove that the former acted with bias and partiality. Bias and partiality can never be presumed and must be proved with clear and convincing evidence. While palpable error may be inferred from respondent judge's issuance of the Writ of *Amparo*, there is no evidence on record that would justify a finding of partiality or bias. The complainant's allegation of partiality will not suffice in the absence of a clear and convincing proof that will overcome the presumption that the respondent judge dispensed justice according to law and evidence, without fear or favor.

4. **ID.; ID.; BAD FAITH OR MALICE; CANNOT BE INFERRED SIMPLY BECAUSE THE JUDGMENT IS ADVERSE TO A PARTY.—** [B]ad faith or malice cannot be inferred simply because the judgment is adverse to a party. To hold a judge administratively accountable simply because he erred in his judgment has never been the intent of the law; reasonable competence and good faith judgments, not complete infallibility, are what the law requires.

5. **ID.; ID.; GROSS IGNORANCE OF THE LAW; NOT A CASE OF; EXPLAINED.—** *A patent disregard of simple, elementary and well-known rules constitutes gross ignorance of the law*. Judges are expected to exhibit more than just cursory acquaintance with laws and procedural rules. They must know the law and apply it properly in good faith. They are likewise expected to keep abreast of prevailing jurisprudence. For, a judge who is plainly ignorant of the law taints the noble office and great privilege vested in him. We find that the respondent judge's error does not rise to the level of gross ignorance of the law that is defined by jurisprudence. We take judicial notice of the fact that at the time he issued the Writ of *Amparo* on January 23, 2008, the Rule on the Writ of *Amparo* has been effective for barely three months (The Rule on the Writ of *Amparo* became effective on October 24, 2007). At that time, the respondent judge cannot be said to have been fully educated and informed on the novel aspects of the Writ of *Amparo*. Simply stated, the Rule on the Writ of *Amparo* at that time cannot be said to be a simple, elementary, and well-known rule that its patent disregard would constitute gross ignorance of the law. More importantly, for full liability to attach for

ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found to be erroneous; it must be established that he was motivated by bad faith, dishonesty, hatred or some other similar motive. In the present case, the complainant failed to prove by substantial evidence that the respondent judge was motivated by bad faith and bias or partiality in the issuance of the Writ of *Amparo*.

6. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; THE COMPLAINANT HAS THE BURDEN OF PROVING THE ALLEGATIONS IN THE COMPLAINT BY SUBSTANTIAL EVIDENCE; DISMISSAL OF THE ADMINISTRATIVE COMPLAINT, PROPER IN CASE AT BAR.—** [I]n an administrative proceeding, the complainant has the burden of proving the allegations in the complaint by substantial evidence. We cannot give credence to charges based on mere suspicion or speculation. Hence, when the complainant relies on mere conjectures and suppositions, and fails to substantiate his claim, as in this case, the administrative complaint must be dismissed for lack of merit.

R E S O L U T I O N

BRION, *J.*:

We pass upon the verified Letter-Complaint, dated August 29, 2008, filed by Ruben N. Salcedo (*complainant*), charging Judge Gil G. Bollozos (*respondent judge*), Presiding Judge, Regional Trial Court, Branch 21, Cagayan de Oro City, with Grave Misconduct and Ignorance of the Law in the handling of SPEC. PROC. No. 2008-009, entitled "*Jose Tanmalack, Jr., represented by Jocelyn Tanmalack Tan v. Police Officers of Police Precinct No. 3, Agora, Lapasan, Cagayan De Oro City, and Insp. Wylen Rojo*."

THE FACTUAL BACKGROUND

The complaint arose from a verified handwritten petition for the Writ of *Habeas Corpus* and the Writ of *Amparo* (*the petition*)

filed by Jose Tanmalack, Jr. against the Police Officers of Police Precinct No. 3, Agora, Lapasan, Cagayan de Oro City, and Inspector Wylen Rojo. The complainant alleged that he is a co-owner of a parcel of land (*disputed property*) covered by Original Certificate of Title No. O-740 and registered in the name of Patricio Salcedo. The disputed property is about 126,112 square meters wide and is situated in Lapasan, Cagayan de Oro City.

On January 23, 2008 at around 2:30 p.m., while the complainant (together with his niece Rebecca R. Lumbay and his nephew Alan Jose P. Roa) was supervising an on-going construction over the disputed property, Tanmalack and heavily armed men arrived and forced themselves inside the fenced premises of the disputed property. The complainant averred that Tanmalack and his companions harassed and threatened to kill and to harm him and his workers; that Tanmalack uttered defamatory statements and accused him of land-grabbing; and that Tanmalack and his companions occupied the property and destroyed building materials such as G.I. sheets, lumber and other construction materials.

The complainant forthwith reported the incident to the nearby police station. The police promptly responded and arrested Tanmalack and brought him in for questioning. That same afternoon at around 4:45 p.m., Tanmalack, represented by his sister, Jocelyn Tanmalack Tan, filed the petition[1] on his behalf

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[1] The petition states in full:

June 23, 2008

Hon. Judge Gil Bollozos or the Hon. Executive Judge
Jose Escobido or the Vice Exec. Judge in his absence
RTC-Mis. Or.

Petition for Writ of *Habeas Corpus*
Petition for Writ of *Amparo*

Sir:

Jose Tan Malack Jr., is presently detained at the Agora police precinct No. 3, under the command of Insp. Wylen Rojo.

Jose was "held in custody" because he exercised self-help in preventing squatters from putting up improvements inside their titled property in the name of his sister. Property is titled under TCT No. T-162749.

while Tanmalack was detained by the police for employing "self-help in preventing squatters from putting up improvements in their titled property."

Clerk of Court Atty. Herlie Luis-Requerme narrated the circumstances surrounding the filing of the petition and how it came to be referred to the respondent judge's *sala*, as follows:

1. In the late afternoon of January 23, 2008, a query was received by the Office regarding the procedure in filing a petition for a Writ of *Amparo*. We gave the information that the established procedure is to assign cases to the different branches by raffling or in urgent cases, by a special raffle upon proper motions. But since the office has not received any case of that nature yet, and as the schedule of raffling will still be in the afternoon of the next day, it

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1) The petitioner is Filipino and a resident of c/o Jocelyn TM Tan at Capitol Subd., Osmeña Ave., Cag. De Oro City.
2) The police officers under officer Rojo are the respondents, as well as the alleged squatters.

The petitioner is under threat of deprivation of liberty with the police stating that he is not arrested but merely "in custody."

Wherefore, the prayer is to ask the Court to issue a writ of *Amparo* or *habeas corpus* to direct his immediate release.

JAN. 23, 2008. Cagayan de Oro City.

(Sdg.)
Jocelyn Tan Malack Tan
Sister

I Jocelyn TM Tan, hereby certify that the above statements are true and correct of my own personal knowledge and based on true records.

I have also not commenced any similar action in any body and I endeavor to inform the Court immediately w/in 5 days if I know of such an action exists. That I have not forum-shopped.

JAN. 23, 2008. Cagayan de Oro City.

(Sdg.)
ATTY. FRANCIS U. KU
Notary Public
Until December 31, 2009
IBP Lifetime No. 00548
PTR No. 1653333; 3 Jan, 2008
Roll No. 36666
Cagayan de Oro City

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will be referred to the Executive Judge for instruction and or appropriate action;

2. That since the Executive Judge was on leave, I went to consult the 1st Vice Executive Judge Evelyn Gamotin Nery. Since Judge Nery was busy at that time, I went to see 2nd Vice Executive Judge Ma. Anita Esguerra-Lucagbo;

3. That I clarified from Judge Lucagbo the procedure to be adopted under the Rule on the Writ of *Amparo* (A.M. No. 07-9-12-SC);

4. That the issue if any judge can immediately act on the petition was not clearly stated in the Rule but if the case will be referred to her as the 2nd Vice Executive Judge, she will be willing to look at the petition;

5. That when I went back at the Office at a little past 5:00 P.M. already, direct from the chamber of Judge Lucagbo, I found out that a Petition for Writ of *Amparo* was filed at around 4:45 P.M. as stamped in the petition;

6. That since I was out of the office, the Docket Clerk in charge, Mr. Rudy Exclamador, referred the case to the Administrative Officer Mary Lyn Charisse Lagamon;

7. That thinking I was no longer around as the personnel to whom I left the information that I was going to the sala of 1st Vice Executive Judge Nery was not able to inform the Admin. Officer of my whereabouts, Mr. Exclamador was instructed by her to refer the case to you [referring to the respondent judge];

8. That upon learning of the fact, I immediately called Mr. Exclamador and Ms. Lagamon to explain why they referred the case to your sala without any instruction from me;

9. That they said that they are of the honest belief that I was no longer around; that the lawyer was insisting to refer the case immediately to a judge since it is already 5:00 P.M. and considering the novelty, urgency and importance of the case, and fearing that no judge will be left to act on the petition if they still discuss what to do, Mr. Exclamador, with the concurrence of Admin. Officer Lagamon, referred the case to you since your sala was the nearest to our office, it being adjacent to your court;

10. That there is nobody from this Office who brought the handwritten petition to Judge Lucagbo nor was there any instruction

from her to any of the personnel to have the petition conform to a form acceptable to the court, such fact was confirmed by Judge Lucagbo;

11. That the office only acted what it deemed best under the circumstances and was not motivated by any ill motive or malice.[2]

Based on the petition and answers to the clarificatory questions propounded to Tanmalack's representative and counsel, the respondent judge immediately issued a Writ of *Amparo* dated January 23, 2008, directing "the police officers of Agora Police Station 3 or Insp. Wylen Rojo x x x to release immediately upon receipt of [the] writ but not later than 6:00 P.M. today, petitioner Jose Tanmalack, Jr., to the custody of Atty. Francis V. Ku." The respondent judge also directed the police officers to file their verified return to the petition within five (5) working days, together with supporting affidavits, in conformity with Section 9 of the Rule on the Writ of *Amparo*.

Around 5:30 p.m., the Writ of *Amparo* was served upon SPO3 Aener O. Adajar, PNP Chief Investigator. At six o'clock in the evening of that same day, the police released Tanmalack to the custody of Atty. Francis Ku.

In his complaint, the complainant questions the issuance of the Writ of *Amparo* which he claims had been unusually issued with haste. The complainant claims that the handwritten petition did not give any ground to warrant the issuance of the Writ of *Amparo*; that the respondent judge acted with grave abuse of discretion, bias, and obvious partiality, and in grave disregard of the Rules and the rule of law when he acted upon and granted the letter-petition for the issuance of the Writ of *Amparo*. The complainant also alleges that the respondent judge "accommodated" the issuance of the Writ of *Amparo* because he and Atty. Francis Ku (Tanmalack's counsel) are members of the Masonic fraternity.

The respondent judge filed his Comment dated March 30, 2009, in compliance with the directive of the Office of the Court Administrator (OCA). In his defense, he alleged:

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[2] Comment of Judge Gil G. Bollozos, March 30, 2009, pp. 1-2.

(a) [W]hen he received the petition from the Office of the Clerk of Court, he had no option but to exercise his judicial duty without any bias or partiality, nor did he consider that the petitioner's counsel is a fraternal brother (Mason);

(b) [A]lthough the petition is for the issuance of both writ of *amparo* and writ of *habeas corpus*, he deemed it more in consonance with the [Rule on the Writ of *Amparo*];

(c) [I]t was not improper even if the x x x petition was not raffled, and was immediately assigned to his sala by the Office of the Clerk of Court, since Par. 2, Sec. 3 of A.M. No. 07-9-12-SC states that any judge of a Regional Trial Court (RTC) can issue a writ and the said Sec. 3 further states that it can be filed on any day and at any time;

(d) [T]he person who filed the petition is the sister of Mr. Tanmalack who was detained at the Agora Police Station, Cagayan de Oro City; that the issuance of the writ was a matter of great urgency because the alleged illegal deprivation of liberty was made in the late afternoon of January 23, 2008, which was a Friday, and that if the Court would not act on the petition, the detainee would certainly spend the night in jail;

(e) [T]he petition, although in handwritten form, is not improper because Section 5 of the SC Circular (on the Writ of *Amparo*) only requires that the same be signed and verified; that he found the petition sufficient in form and in substance;

(f) [A]lthough the *Amparo* rules mandate that a judge shall immediately order the issuance of the writ if on its face it ought to issue, he propounded clarificatory questions on the petitioner's representative and their counsel, thus, the following information were elicited:

1) That the property of petitioner's family, which is under their possession and Tanmalack registered under TCT No. T-1627491, was intruded by some persons who wanted to fence the area and put up improvements by constructing "shanties" thereon;

2) That when petitioner Mr. Tanmalack prevented the intrusion it resulted to heated arguments and altercations which prompted him to go to the police station to report the incident and be blottered;

3) That when Mr. Tanmalack arrived at the police station in the late afternoon of January 23, 2008 in order to air his complaint, the intruders came and introduced themselves as the owners of the property;

4) That when Police Officer Rojo (Rojo) heard the version of these intruders and despite the protestations of petitioner and his relatives, the police did not anymore allow Mr. Tanmalack to leave the police station; and,

5) That petitioner's counsel called up Rojo to secure the immediate release of his client from police custody but to no avail;

(g) [A]fter he assiduously evaluated the aforestated facts, as well as the allegations in the petition, respondent Judge, in the exercise of his judicial function, found that the same warranted the issuance of the writ; the arrest of Mr. Tanmalack was unlawful because Rojo was not present in the area where the alleged incident happened, so that the statements of the complainants (Salcedo, Lumbay and Roa) would be hearsay;

(h) [I]n the Writ of *Amparo* the respondents were directed to file a verified return pursuant to the rules; during the summary hearing of the petition on 25 January 2008, it was only Rojo who appeared, the alleged complainants (Salcedo, Lumbay and Roa) who caused the detention of the petitioner were absent; P/ Insp. Rojo, when asked by the Court, gave the following answers:

1) That he would no longer file his Answer (which should be a verified return) on the complaint considering that the petitioner was already released;

2) That he confirmed that it was the petitioner who came first to the police station to complain, followed by the person who wanted to fence the property; the conflict between the petitioner and the other persons is on a property dispute, of which it was petitioner who is in possession; and

3) That he denied that he had arrested the petitioner and neither did he detain him but only he could not release the petitioner because of the complaint and for further evaluation.

(i) [H]e noted that the police blotter did not state that petitioner brought heavily armed men with him when he allegedly harassed the complainant.

[(j) That in the summary hearing on January 25, 2008, the petitioner as well as the respondent Rojo have arrived into an agreement that the writ be considered permanent.]

THE REPORT OF THE OCA

The OCA informed the Court that the case was already ripe for resolution in a Report dated April 8, 2010, signed by Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Raul Bautista Villanueva. The Report likewise presented a brief factual background of the case.

The OCA recommended that the administrative complaint against the respondent judge be dismissed for lack of merit. The recommendation was based on an evaluation which reads:

EVALUATION: The complaint is bereft of merit.

The petition for a writ of *Amparo* is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, as in the instant case, or of a private individual or entity. Whereas in other jurisdictions the writ covers only actual violations, the Philippine version is more protective of the right to life, liberty and security because it covers both actual and **threatened** violations of such rights.

Nowhere in the records of the instant complaint that the issuance of the writ of *Amparo* was attended by irregularities. The detainee's sister who filed the petition is allowed under Section 2(b) of the Rule on the Writ of *Amparo* (SC A.M. No. 07-9-12-SC). Also, the petition was properly filed with the Regional Trial Court "where the act or omission was committed or where any of its elements occurred."

Respondent Judge, in whose sala the said petition was assigned is deemed to have complied with his oath and judicial duty when he ordered the issuance of the writ of *Amparo* upon determination that the right to liberty of Mr. Tanmalack was being violated or threatened to be violated. These is no showing that respondent Judge, in granting the petition for a writ of *Amparo* was motivated by bad faith, ignominy or ill will, thus, herein complainant's allegation that respondent

Judge's act was tainted with grave abuse of discretion and authority, bias and partiality, and grave disregard of the rules, deserves scant consideration.

This Office agrees with respondent Judge's observation that "Rojo's declaration not anymore to contest the petition and that he (Rojo) did not arrest nor detain petitioner, but admitted that he could not release the latter for further evaluation because of the complaint is an admission that he deprived [or threatened to deprive] Jose [Dy Tanmalack] of his liberty."

OUR RULING

We concur with the OCA's recommendation that the administrative complaint against the respondent judge be dismissed for lack of merit.

At the outset, we agree with the complainant that the respondent judge erred in issuing the Writ of *Amparo* in Tanmalack's favor. Had he read Section 1 of the Rule on the Writ of *Amparo* more closely, the respondent judge would have realized that the writ, in its present form, only applies to "extralegal killings and enforced disappearances or threats thereof."[3] The present case involves concerns that are purely property and commercial in nature – concerns that we have previously ruled are not covered by the Writ of *Amparo*.[4] In *Tapuz v. Del Rosario*,[5] we held:

> To start off with the basics, the writ of *Amparo* was originally conceived as a response to the extraordinary rise in the number of killings and enforced disappearances, and to the perceived lack of available and effective remedies to address these extraordinary concerns. It is intended to address violations of or threats to the

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[3] Section 1 of the Rule on the Writ of *Amparo* provides:

Section 1. *Petition.* – The petition for a *writ of Amparo* is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.

The writ shall cover extralegal killings and enforced disappearances or threats thereof. [Emphasis supplied]

[4] *Tapuz v. Del Rosario*, G.R. No. 182484, June 17, 2008, 554 SCRA 768.

[5] *Id.*, at 784-785.

rights to life, liberty or security, as an extraordinary and independent remedy beyond those available under the prevailing Rules, or as a remedy supplemental to these Rules. **What it is not, is a writ to protect concerns that are purely property or commercial. Neither is it a writ that we shall issue on amorphous and uncertain grounds.** Consequently, the Rule on the Writ of *Amparo* – in line with the extraordinary character of the writ and the reasonable certainty that its issuance demands – requires that every petition for the issuance of the writ must be supported by justifying allegations of fact, to wit:

"(a) The personal circumstances of the petitioner;

(b) The name and personal circumstances of the respondent responsible for the threat, act or omission, or, if the name is unknown or uncertain, the respondent may be described by an assumed appellation;

(c) The right to life, liberty and security of the aggrieved party violated or threatened with violation by an unlawful act or omission of the respondent, and how such threat or violation is committed with the attendant circumstances detailed in supporting affidavits;

(d) The investigation conducted, if any, specifying the names, personal circumstances, and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report;

(e) The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission; and

(f) The relief prayed for.

The petition may include a general prayer for other just and equitable reliefs."

The writ shall issue if the Court is preliminarily satisfied with the *prima facie* existence of the ultimate facts determinable from the supporting affidavits that detail the circumstances of how and to what extent a threat to or violation of the rights to life, liberty and security of the aggrieved party was or is being committed.

In the present case, the Writ of *Amparo* ought not to have been issued by the respondent judge since Tanmalack's petition

is fatally defective in substance and content, as it does not allege that he is a victim of "extralegal killings and enforced disappearances or the threats thereof." The petition merely states that he is "under threat of deprivation of liberty with the police stating that he is not arrested but merely 'in custody.'"[6]

Whether the respondent judge could be held administratively liable for the error he committed in the present case, is, however, a question we must answer in the negative.

Plainly, the errors attributed to respondent judge pertain to the exercise of his adjudicative functions. As a matter of policy, in the absence of fraud, dishonesty, and corruption, the acts of a judge in his official capacity are not subject to disciplinary action. He cannot be subjected to liability – civil, criminal, or administrative – for any of his official acts, no matter how erroneous, as long as he acts in good faith. *Only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith, or deliberate intent to do an injustice will be administratively sanctioned*. Settled is the rule that errors committed by a judge in the exercise of his adjudicative functions cannot be corrected through administrative proceedings, but should instead be assailed through judicial remedies.[7]

In the present case, the propriety of the issuance of the Writ of *Amparo* cannot be raised as an issue in the present administrative case. The proper recourse for the complainant should have been to file an appeal, from the final judgment or order of the respondent judge, to this Court under Rule 45 of the Rules of Court, pursuant to Section 19 of the Rule on the Writ of *Amparo*. In *Bello III v. Diaz*,[8] we reiterated that disciplinary proceedings against judges do not complement, supplement, or substitute judicial remedies, whether ordinary or extraordinary; an inquiry into their administrative liability arising from judicial acts may be made only after other available

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[6] *Supra* note 1.

[7] *Planas v. Reyes*, A.M. No. RTJ-05-1905, February 23, 2005, 452 SCRA 146, 155.

[8] A.M. No. MTJ-00-1311, October 3, 2003, 412 SCRA 573, 578.

remedies have been settled. We laid down the *rationale* for the rule in *Flores v. Abesamis*,[9] *viz*:

As everyone knows, the law provides ample judicial remedies against errors or irregularities being committed by a Trial Court in the exercise of its jurisdiction. The ordinary remedies against errors or irregularities which may be regarded as normal in nature (*i.e.*, error in appreciation or admission of evidence, or in construction or application of procedural or substantive law or legal principle) include a motion for reconsideration (or after rendition of a judgment or final order, a motion for new trial), and appeal. The extraordinary remedies against error or irregularities which may be deemed extraordinary in character (*i.e.*, whimsical, capricious, despotic exercise of power or neglect of duty, *etc.*) are, *inter alia* the special civil actions of *certiorari*, prohibition or *mandamus*, or a motion for inhibition, a petition for change of venue, as the case may be.

Now, the established doctrine and policy is that disciplinary proceedings and criminal actions against Judges are not complementary or suppletory of, nor a substitute for, these judicial remedies, whether ordinary or extraordinary. Resort to and exhaustion of these judicial remedies, as well as the entry of judgment in the corresponding action or proceeding, are pre-requisites for the taking of other measures against the persons of the judges concerned, whether of civil, administrative, or criminal nature. It is only after the available judicial remedies have been exhausted and the appellate tribunals have spoken with finality, that the door to an inquiry into his criminal, civil, or administrative liability may be said to have opened, or closed.

Flores resorted to administrative prosecution (or institution of criminal actions) as a substitute for or supplement to the specific modes of appeal or review provided by law from court judgments or orders, on the theory that the Judges' orders had caused him "undue injury." This is impermissible, as this Court has already more than once ruled. **Law and logic decree that "administrative or criminal remedies are neither alternative nor cumulative to judicial review where such review is available, and must wait on the result thereof."** Indeed, since judges must be free to judge, without pressure or influence from external forces or factors, they should not be subject to intimidation, the fear of civil, criminal or administrative sanctions for acts they may do and dispositions they

[9] A.M. No. SC-96-1, July 10, 1997, 275 SCRA 302.

may make in the performance of their duties and functions; and it is sound rule, which must be recognized independently of statute, that judges are not generally liable for acts done within the scope of their jurisdiction and in good faith; and that exceptionally, **prosecution of the judge can be had only if "there be a final declaration by a competent court in some appropriate proceeding of the manifestly unjust character of the challenged judgment or order, and ** also evidence of malice or bad faith, ignorance or inexcusable negligence, on the part of the judge in rendering said judgment or order" or under the stringent circumstances set out in Article 32 of the Civil Code.**[10]

We note, too, that although the respondent judge erred in issuing the Writ of *Amparo*, we find, as the OCA did, that there is no evidence on record that supports the complainant's allegation that the issuance was tainted with manifest bias and partiality, bad faith, or gross ignorance of the law. The fact that the respondent judge and Atty. Francis Ku are members of the Masonic fraternity does not justify or prove that the former acted with bias and partiality. Bias and partiality can never be presumed and must be proved with clear and convincing evidence. While palpable error may be inferred from respondent judge's issuance of the Writ of *Amparo*, there is no evidence on record that would justify a finding of partiality or bias. The complainant's allegation of partiality will not suffice in the absence of a clear and convincing proof that will overcome the presumption that the respondent judge dispensed justice according to law and evidence, without fear or favor.[11]

Likewise, bad faith or malice cannot be inferred simply because the judgment is adverse to a party. To hold a judge administratively accountable simply because he erred in his judgment has never been the intent of the law; reasonable competence and good faith judgments, not complete infallibility, are what the law requires.

The more significant issue in this case is the complainant's charge of gross ignorance of the law against the respondent judge.

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[10] *Id.* at 316-317.

[11] *Supra* note 7, p. 159.

A patent disregard of simple, elementary and well-known rules constitutes gross ignorance of the law. Judges are expected to exhibit more than just cursory acquaintance with laws and procedural rules. They must know the law and apply it properly in good faith. They are likewise expected to keep abreast of prevailing jurisprudence. For, a judge who is plainly ignorant of the law taints the noble office and great privilege vested in him.[12]

We find that the respondent judge's error does not rise to the level of gross ignorance of the law that is defined by jurisprudence. We take judicial notice of the fact that at the time he issued the Writ of *Amparo* on January 23, 2008, the Rule on the Writ of *Amparo* has been effective for barely three months (The Rule on the Writ of *Amparo* became effective on October 24, 2007). At that time, the respondent judge cannot be said to have been fully educated and informed on the novel aspects of the Writ of *Amparo*. Simply stated, the Rule on the Writ of *Amparo* at that time cannot be said to be a simple, elementary, and well-known rule that its patent disregard would constitute gross ignorance of the law.

More importantly, for full liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found to be erroneous; it must be established that he was motivated by bad faith, dishonesty, hatred or some other similar motive.[13] In the present case, the complainant failed to prove by substantial evidence that the respondent judge was motivated by bad faith and bias or partiality in the issuance of the Writ of *Amparo*.

We take this occasion, however, to remind the respondent judge that under Canon 1.01 of the Code of Judicial Conduct, a judge must be "the embodiment of competence, integrity and independence." A judge is called upon to exhibit more than just

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[12] *Benito v. Balindong,* A.M. No. RTJ-08-2103 (Formerly OCA I.P.I. No. 07-2664-RTJ), February 23, 2009, 580 SCRA 41.

[13] *Visbal v. Vanilla*, A.M. No. MTJ-06-1651 (Formerly OCA I.P.I. No. 04-1576-MTJ), April 7, 2009, 584 SCRA 11.

a cursory acquaintance with statutes and procedural rules; it is imperative that he be conversant with basic legal principles and be aware of well-settled authoritative doctrines. He owes to the public and to this Court the duty to be proficient in the law. He is expected to keep abreast of laws and prevailing jurisprudence. Judges must not only render just, correct, and impartial decisions, resolutions, and orders, but must do so in a manner free of any suspicion as to their fairness, impartiality, and integrity, for good judges are men who have mastery of the principles of law and who discharge their duties in accordance with law.[14] We mentioned all these to emphasize to the respondent judge the need to be more judicious and circumspect in the issuance of extraordinary writs such as the Writ of *Amparo*.

We also reiterate that in an administrative proceeding, the complainant has the burden of proving the allegations in the complaint by substantial evidence.[15] We cannot give credence to charges based on mere suspicion or speculation. Hence, when the complainant relies on mere conjectures and suppositions, and fails to substantiate his claim, as in this case, the administrative complaint must be dismissed for lack of merit.[16]

WHEREFORE, in view of the foregoing, the Court *RESOLVES* to *DISMISS* the administrative complaint against Judge Gil G. Bollozos, Presiding Judge, Regional Trial Court, Branch 21, Cagayan de Oro City, for lack of merit.

SO ORDERED.

Carpio Morales (Chairperson), Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

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[14] *Id.*

[15] *Licudine v. Saquilayan*, A.M. No. P-02-1618, February 14, 2003, 396 SCRA 650, 656; *Montes v. Bugtas*, A.M. No. RTJ-01-1627, April 17, 2001, 356 SCRA 539, 545; *Barbers v. Laguio, Jr.*, A.M. No. RTJ-00-1568, February 15, 2001, 351 SCRA 606, 634.

[16] *Supra* note 7, p. 161.

[*] Designated additional Member of the Third Division effective May 17, 2010, per Special Order No. 843 dated May 17, 2010.

THIRD DIVISION

[G.R. No. 151246. July 5, 2010]

HEIRS OF THE LATE APOLINARIO FAMA (GABRIELA DE GUZMAN *VDA. DE* FAMA, MARIA FAMA-FLORENTIN, EMILIA FAMA-ESTEPA and MARIA QUITO *VDA. DE* FAMA and CHILDREN: VIRGILIO, ERNESTO, ROMEO, MANUEL, JR., and CORAZON, all surnamed FAMA), *petitioners, vs.* **MELECIO GARAS, ROBERTO MENDEZ, JOSE PAROCHA, URBANA BAY-AN, BERNARDO DAO-OA, JUAN NANTES, TONY TORIO, FLORENTINA MORALES, FILOMENA TORIO, ARSENIO TORIO, VICTORIANO NANTES, PABLO ESTRADA, LORENZO BAY-AN, FILEMON MASLOG, PEDRO ASPIRAS, SINFROSO LANG-ES, ROBERTO DULAY, LUCAS ABAG, BINTOR LANG-ES, DIANANG MAPALO, PEDRO MAPALO, JOSE LANG-ES, CEFERINO ORIBELLO, AVELINO PIO, FLORENTINA NANTES, RODOLFO MORALES, MARCOS BACTADAN, BERNARDO ESTRADA, GREGORIO PIANO, ADRIANO BENTRES, EBANG NANTES, PATRICIO ESTOESTA, DOMINGO LANG-ES, MIGUEL MAPALO and LAVIANA AGOJO,** *respondents.*

SYLLABUS

1. **CIVIL LAW; LAND TITLES AND DEEDS; ACT NO. 496 (LAND REGISTRATION ACT); TORRENS SYSTEM OF REGISTRATION; PURPOSE IS INDEFEASIBILITY OF TITLE.—** The Philippines first came under the Torrens System of Registration in 1902 by virtue of Act No. 496 or the Land Registration Act, the governing law at the time the subject land was first titled. The very purpose of the system of land registration under the Torrens system was to create an indefeasible title in the holder of the certificate. It was intended to free the land from all claims and liens of whatever character, which

existed against the land prior to the issuance of the certificate of title, except those which are noted upon the certificate of title and certain other liens specially mentioned in the law, such as taxes, *etc.* Once a title is registered, the owner may rest secure, without the necessity of waiting in the portals of the court, or sitting in the '*mirador de su casa*,' to avoid the possibility of losing his land.

2. **ID.; ID.; ID.; A DECREE OF REGISTRATION OBTAINED BY FRAUD MAY BE ASSAILED BY FILING A PETITION FOR REVIEW WITHIN ONE (1) YEAR AFTER ENTRY OF THE DECREE.—** It is not disputed that the subject land came under the Torrens System of Registration and a free patent and later a certificate of title were issued in favor of petitioners as early as 1918. Respondents allege that the subject land was erroneously included in the title. Thus, from the time the decree of registration was entered, respondents' predecessors-in-interest had one (1) year to assail it as provided in Section 38 of Act No. 496, to wit: SEC. 38. If the court after hearing finds that the applicant has title as stated in his application, and proper for registration, a decree of confirmation and registration shall be entered. Every decree of registration shall bind the land, and quiet title thereto, subject only to the exceptions stated in the following section. It shall be conclusive upon and against all persons, including the Insular Government and all the branches thereof, whether mentioned by name in the application, notice, or citation, or included in the general description "To all whom it may concern." **Such decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding in any court for reversing judgments or decrees; subject, however, to the right of any person deprived of land or of any estate or interest therein by decree of registration obtained by fraud to file in the Court of Land Registration a petition for review within one year after entry of the decree, provided no innocent purchaser for value has acquired an interest.**

3. **ID.; ID.; ID.; PROCEDURE IN SECTIONS 57 AND 58 THEREOF, NOT COMPLIED WITH.—** Assuming respondents' allegation was true, it appears that their predecessors-in-interest opted not to avail of this remedy and

instead sought the execution of a deed of quitclaim in their favor. And granting that indeed they were able to secure a deed of quitclaim, respondents could have complied with the procedure in Sections 57 and 58 of the same law: SEC. 57. **An owner desiring to convey in fee his registered land or any portion thereof shall execute a deed of conveyance, which the grantor or grantee may present to the register of deeds in the province where the land lies. The grantor's duplicate certificate shall be produced and presented at the same time. The register of deeds shall thereupon, in accordance with the rules and instructions of the court, make out in the registration book a new certificate of title to the grantee, and shall prepare and deliver to him an owner's duplicate certificate.** xxx SEC. 58. **When a deed in fee is for a part only of the land described in a certificate of title, the register of deeds shall also enter a new certificate and issue an owner's duplicate to the grantor for the part of the land not included in the deed.** xxx However, due to reasons known only to them, respondents' predecessors-in-interest once again chose not to avail of said remedy and allegedly had their claim over the subject land annotated. Sadly though, respondents could not present a copy of the alleged deed of quitclaim or of Nantes' annotated title. As said allegation of reconveyance by Nantes remains unsubstantiated, we cannot support respondents' cause.

4. ID.; ID.; ID.; ID.; REGISTRATION OF LAND UNDER THE TORRENS SYSTEM IS A PROCEEDING *IN REM*; ACTUAL NOTICE TO EVERY PERSON AFFECTED OR MAY BE AFFECTED IS NOT NECESSARY.— The title, once registered, is notice to the world. All persons must take notice. No one can plead ignorance of the registration. Moreover, actual notice to every person affected or may be affected by the titling is not necessary. It is well settled that the registration of land under the Torrens system is a proceeding *in rem* and not *in personam*. Such a proceeding *in rem*, dealing with a tangible *res*, may be instituted and carried to judgment without personal service upon the claimants within the state or notice by mail to those outside of it. Jurisdiction is acquired by virtue of the power of the court over the *res*. Such a proceeding would be impossible were this not so, for it would hardly do to make a distinction between constitutional rights of claimants who were

known and those who were not known to the plaintiff, when the proceeding is to bar all.

5. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; LACHES; FOR FILING A COMPLAINT FOR QUIETING OF TITLE ONLY AFTER ALMOST SIX (6) DECADES, RESPONDENTS, NOT PETITIONERS, WERE GUILTY OF LACHES.—** As correctly ruled by the RTC, if there was anyone guilty of laches in the instant case, it was respondents and not petitioners. It was in 1918 that the patent was issued and respondents only resorted to legal means to assert their ownership over the subject land in 1974 when petitioners filed a complaint against them and later in 1984 when they decided to file a complaint for quieting of title. They had to wait almost six (6) decades.

APPEARANCES OF COUNSEL

Elizabeth M. Rillera Fernandez for petitioners.

D E C I S I O N

VILLARAMA, JR.*, J.*:

On appeal is the Decision[1] dated November 28, 2001 of the Court of Appeals (CA) in CA-G.R. CV No. 58304 which reversed the October 6, 1997 Decision of the Regional Trial Court (RTC) of Agoo, La Union, Branch 31 in Civil Case Nos. A-424 and A-953 involving recovery of possession and quieting of title, respectively.

The instant case involves a seven (7)-hectare[2] portion of a fourteen (14)-hectare[3] parcel of land located in Pugo, La Union and includes the Ambangonan barrio site. The controversy is

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[1] *Rollo*, pp. 42-70. Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Candido V. Rivera and Juan Q. Enriquez, Jr. concurring.

[2] See records (Civil Case No. A-953), pp. 21 and 441.

[3] See records (Civil Case No. A-424), p. 917. The property is more particularly described as follows:

between the heirs of the registered owner (petitioners herein) and the occupants of the subject land (respondents) who claim that they have been in possession of the subject land since time immemorial through their ancestors and predecessors-in-interest.

The records reveal that one (1) Fernando Nantes caused the surveying of the fourteen (14)-hectare parcel of land in connection with his application for the issuance of a free patent over the said land. He was issued Free Patent No. 6381 on November 1, 1918 and Original Certificate of Title (OCT) No. 470 on November 11, 1918[4] covering the whole fourteen (14)-hectare piece of land. In 1930, Fernando Nantes sold the lot to Rosendo Farales who in turn sold it in 1931 to Apolinario Fama, father of petitioners. OCT No. 470 was replaced by Transfer Certificate of Title (TCT) No. 257 in the name of Apolinario Fama.

In 1947, claiming that TCT No. 257 was lost, Maria Fama Florentin, Apolinario Fama's daughter and one (1) of the petitioners herein, petitioned for the reconstitution thereof.[5] In 1948, TCT No. RT-223 (257) was issued in the name of Apolinario Fama covering the entire fourteen (14)-hectare land. In the same year, Apolinario Fama passed away.

Then, sometime in 1950, Maria Fama Florentin filed before the Court of First Instance (CFI, now RTC) of La Union a case

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Beginning at point marked 1 on plan Fp-6243, which is identical with B.L.B.M. No. 2, Ambangonan, thence N. 85°20' E. 133.4 m. to point 2; S. 74°45'E. 505.79 m. to point 3; S. 67°44'W. 336.89 m. to point 4; N. 85°58'W. 410.52 m. to point 5; N. 59°34'W. 145.01 m. to point 6; N. 57°52'E. 298.9 m. to point 1, point of beginning Point 2 identical with B.L.B.M. No. 1; points 3 and 5, Trees; point 4, stump; point 6, stakes; point 4, 5 and 6, on bank of Ambangonan river. Bounded on Northeast and Northwest by property of Andres Nantes; on Southeast by property of Eusebio Bernal; on Southwest by Ambangonan River, Bearings true. Variation 0°35'E. Points referred to marked on plan Fp-6243. Surveyed on June 19-20, 1914. Approved Sept. 11, 1914.

and containing an area of 14 hectares 40 ares and 77 centares, according to the official plat of the survey thereof on file in the Bureau of Lands at Manila.

[4] Records (Civil Case No. A-424), p. 917.

[5] *Id.* at 837.

against one (1) Lazaro Galera, predecessor of one (1) of the respondents, to recover an 11,000-square meter portion of the fourteen (14)-hectare piece of land. Galera, however, claimed ownership of the land he was occupying, insisting that it was donated to him by his father in 1916 and that he and his father have been possessing it openly and continuously for more than sixty (60) years. He also contended that Fernando Nantes obtained title to the fourteen (14)-hectare property through fraud.

In a Decision[6] dated November 27, 1956, the CFI did not entertain Galera's claim of ownership and ruled that it was not proven during trial that Fernando Nantes employed fraud in securing his title. Even assuming that Galera and his predecessors-in-interest owned the land, they permitted the issuance of the free patent and the certificate of title without filing any protest or suing for its recovery.

Galera appealed the CFI decision to the Supreme Court, but the same was dismissed on June 30, 1962. The High Court held that the lower court's decision had already attained finality; thus, the issues litigated could not anymore be reopened.[7]

In 1972, petitioners sent demand letters to respondents to vacate, but their demand to vacate remained unheeded. Thus, in 1974, they filed a complaint for recovery of possession with damages against respondents before the CFI of Agoo, La Union. The case was docketed as Civil Case No. A-424. Meanwhile, petitioners had caused the cancellation of TCT No. RT-223 (257) by virtue of an Extrajudicial Settlement,[8] and TCT No. T-13642[9] was issued in their names.

In their amended complaint,[10] petitioners alleged that sometime in 1937, respondents, without their consent, by means of force, intimidation, threat, strategy and stealth, entered the

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[6] *Id.* at 110-114.

[7] *Florentin v. Galera*, No. L-17419, June 30, 1962, 5 SCRA 500, 503.

[8] Records (Civil Case No. A-424), pp. 108-109.

[9] *Id.* at 106.

[10] *Id.* at 16-18.

subject property, constructed their houses thereon and made beneficial use of the land by tilling it and then gathering and appropriating its fruits.

Respondents, for their part, countered that they are the real owners of the subject property. They claimed that they and their predecessors-in-interest have been in open, continuous, notorious, public and exclusive possession of the subject land for more than a century and since the creation of Ambangonan as a barrio. They also denied petitioners' allegations that demands were made upon them to vacate the property. They claimed that petitioners acquired TCT No. RT-223 (257) in bad faith because petitioners were fully aware that respondents were the owners and were in actual possession of the subject land. Respondents likewise alleged that the transfer to Apolinario Fama was void because it was made within the five (5)-year prohibitory period.

On August 12, 1984, the *Sangguniang Bayan* of Pugo, La Union, upon motion of one (1) of its members, respondent Melecio Garas, submitted to the RTC Resolution No. 47-84[11] requesting that Civil Case No. A-474 be resolved in favor of respondents. Annexed to the resolution is a Petition[12] signed by respondents requesting that the title in the name of petitioners be nullified and another survey be made to segregate from the original survey the Ambangonan barrio site and the rice paddies that their forefathers have made, both of which were covered by petitioners' title.

On September 12, 1984, respondents together with the Pugo School Corporation, Barangay Ambangonan, and the Municipal Government of Pugo filed with the RTC of Agoo, La Union a complaint[13] for quieting of title, partition and damages with prayer for preliminary injunction against petitioners. The case was docketed as Civil Case No. A-953. They alleged that since time immemorial Ambangonan has been occupied by cultural

[11] *Id.* at 519-520.

[12] *Id.* at 521-522.

[13] As amended, records (Civil Case No. A-953), pp. 18-29.

minorities among which were respondents' ancestors and predecessors and that at present, it is now under the open, continuous, notorious, public and exclusive possession of respondents.

They further claimed that Fernando Nantes and one (1) Cesaria Rivera resided only on the western portion of Ambangonan but fraudulently secured Free Patent No. 6381 covering not only the property they were possessing, but also the eastern portion owned and possessed by respondents' predecessors-in-interest. Respondents contended that their predecessors-in-interest were able to convince Nantes and Rivera to execute deeds of quitclaim covering the eastern portion and the same was duly annotated on OCT No. 470. Nantes therefore sold his one-half (½) portion to Rosendo Farales, and TCT No. 154 was issued. However, because there was no partition yet, the whole fourteen (14)-hectare property was registered in the names of Nantes and Farales under said title. Later, it was sold to Apolinario Fama. TCT No. 154 was cancelled and TCT No. 257 was issued to Apolinario Fama but still covering the whole fourteen (14)-hectare property.

In petitioners' answer,[14] they claim among others that they and their predecessors-in-interest validly acquired by purchase the subject property and that respondents have no rights over the subject property as their predecessors-in-interest never owned any part thereof. Respondents' action is likewise barred by laches, prescription and estoppel.

By Order[15] dated November 12, 1984, Civil Case No. A-424 and Civil Case No. A-953 were consolidated.

During trial, testifying for and on behalf of petitioners was Maria Fama Florentin. She testified that she knows the respondents because they entered their fourteen (14)-hectare land in Pugo, La Union without her father's consent in 1937 and thereafter made some improvements on the subject land: a

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[14] *Id.* at 42-51.

[15] *Id.* at 77.

rice plantation, rice mills, fruit trees and houses. She, however, admitted that there were already houses in the area even prior to 1937 and that she was uncertain whether her father had filed a case against respondents.

On respondents' part, testimonies of the possessors/occupants of the subject land were presented. They were in unity in saying that they and their predecessors-in-interest have been in possession of the subject land for more than a century and have introduced improvements thereon, planted trees and tilled the land. They also presented vintage tax declarations, old receipts for payment of realty taxes due on the land, and road tax certificates all in their names and that of their predecessors-in-interest.

On October 6, 1997, the RTC of Agoo, La Union, Branch 31, rendered a Decision[16] in favor of petitioners. The *fallo* reads:

> WHEREFORE, this Court renders judgment in favor of the registered owners, Fama's heirs, and against Garas, *et al.* ordering the defendants in Civil Case No. A-424 and those in present possession or occupation of any portion of the property described in TCT No. RT-223 (257), issued by the Register of Deeds of La Union (now TCT No. T-13642), without the consent of the Heirs of Apolinario Fama or any deed emanating from the Famas entitling possession or ownership, like a deed of sale or lease *etc.* to vacate the same, but with the right to dismantle or disassemble those structures they built within the said property. Government infrastructure projects or units and the community chapel presently existing thereon are excluded from this Order to vacate.
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> Civil Case No. A-953 is hereby DISMISSED.
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> IT IS SO ORDERED.[17] (Underscoring in the original.)

The RTC gave preference to petitioners' title over the subject property and rejected respondents' claim of acquisitive

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[16] *Id.* at 431-449.

[17] *Id.* at 448-449.

prescription. It held that it was respondents who were guilty of laches and not petitioners. From the time the free patent was issued until the subject land was eventually placed under the Torrens system, respondents never made an adverse claim. If ever respondents or their ancestors had rights over the subject land, they slept on them, according to the court.

As to the government infrastructures, school buildings and chapel on the subject land, the RTC held that the petitioners probably did not object to their construction because their presence and existence would appreciate the value of the land. It ruled that it would be the height of injustice if the government would be punished and thus the portions occupied by said structures were ordered excluded from petitioners' ownership.

On appeal, the trial court's decision was reversed by the CA as follows:

> WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE insofar as Civil Case No. A-424 is concerned, and a new one entered dismissing the complaint for recovery of possession and directing the appellees to recognize the rightful possession of the following appellants over their occupied portions of the subject property:

1. Melecio Garas	-	Orchard — 1,080 sq.m.
		Res. Lot — 200 sq.m.
		Total land area — 1,280 sq.m.
2. Lorenzo Bay-an	-	Unirrig. — 4,212 sq.m.
		Res. Lot — 276 sq.m.
		Total land area — 4,488 sq.m.
3. Pablo Estrada	-	Orchard — 174 sq.m.
		Res. Lot — 100 sq.m.
		Total land area — 274 sq.m.
4. Juan Nantes	-	Res. Lot — 400 sq.m.
		Orchard — 560 sq.m.
		Total land area — 960 sq.m.

> On the other hand, let these cases be REMANDED to the court of origin for further presentation of evidence insofar as the following appellants/occupants are concerned:

1. Lucas Abag
2. Pedro Aspiras
3. Urbana Bay-an
4. Bernard Daoa (Dao-oa)
5. Roberto Dulay
6. Patricio Estoesta
7. Bernardo Estrada
8. Novato de Guzman
9. Jose Lang-as (Lang-es)
10. Sinfroso Lang-as (Lang-es)
11. Catalina Lentino
12. Felimon Masleg (Maslig; Maslog)
13. Florentina Morales
14. Rodolfo Morales
15. Pedro Mapalo
16. Ceferino Oribello
17. Gregorio Piano
18. Avelino Pio
19. Felomina Torio

The following parties who have submitted no proof of occupancy may be allowed to prove their possession by themselves or through their predecessors-in-interest:

1. Marcelino Abang
2. Tranquilino Abang
3. Pedro Aoas
4. Julio Bay-an
5. Juan Estoesta
6. Jimmy Evangelista
7. Artemio Galera
8. Amalia Lang-as
9. Diosdado Mazo
10. Elpidio Molina
11. Panfilo Molina
12. Eusebia Mi-ag
13. Pantaleon Morales
14. Pablito Rivera
15. Maximo Torio
16. Laviana Agojo
17. Adriano Bentres
18. Bintor Lang-es
19. Domingo Lang-es

20. Dianang Mapalo
21. Ebeng Nantes
22. Victoriano Nantes
23. Arsenio Torio
24. Tony Torio

The heirs of the following deceased parties may likewise be allowed to present further evidence on their alleged claim of ownership over certain portions of the subject property:

1. Marcelo Bay-an
2. Ambrocio Bastinga
3. Faustino Balangtad
4. Tuel
5. Felix Daoa
6. Pedro Baing (Baeng)
7. Andres Mamatec
8. Basilio Mapalo
9. Eufemiano Sapioc
10. Mercedes Yag-ao (Yog-an)
11. Juan Baday
12. Fernando Bay-an

The areas respectively occupied by the following may be determined:

1. Roberto Mendoz
2. Miguel Mapalo
3. Sps. Jose Parocha & Faustina Bay-an
4. Marcos Bactadan

The following appellants need to present evidence on their payment of taxes on the portions occupied by them, or such other proofs of occupancy as they may produce:

1. Marcelino Lumaguey
2. Tranquilino Abang

The spouses Pantaleon Morales and Florentina Nantes may be allowed to prove their payment of taxes on the 1,200-square-meter portion occupied by them.

Finally, the following who are not parties to these cases should not be allowed to present evidence, it appearing that they are likewise barred by laches:

1. Fernando Amgao
2. Eusebio Hiyag
3. Faustino Bactadan
4. Ang-cay
5. Alfredo Agujos
6. Rogelio Estoque
7. Flaviana Gatchalian
8. Ventura Lang-as (Lang-es)
9. Alvaro Palabay

SO ORDERED.[18]

The CA ruled that respondents were able to prove by overwhelming evidence that they and their predecessors-in-interest have been in actual and adverse possession of the land even prior to the alleged possession and issuance of the title in favor of petitioners' predecessor-in-interest in 1918. The CA also noted that petitioners failed to assert their right over the land and that they allowed more than four (4) decades to elapse before instituting an action for recovery of possession in 1974. They are therefore guilty of laches which bars them from recovering the possession of the subject land.

Aggrieved with the above ruling, petitioners filed the present petition arguing that the CA erred in:

1. … FINDING THAT THE RESPONDENTS HAVE PROVED THAT THEY AND THEIR PREDECESSORS-IN-INTEREST HAVE BEEN IN OPEN, CONTINUOUS, NOTORIOUS, EXCLUSIVE AND ACTUAL POSSESSION OF THE SUBJECT PROPERTY IN THE CONCEPT OF OWNERS EVEN PRIOR TO JANUARY 16, 1931 AND EARLIER.
2. … FINDING THAT THE CAUSE OF ACTION BY THE PETITIONERS IS BARRED BY LACHES.
3. … DISMISSING CIVIL CASE NO. A-424 (RECOVERY OF POSSESSION WITH DAMAGES) AND REMANDING CIVIL CASE NO. A-953 (QUIETING OF TITLE, PARTITION AND DAMAGES) FOR PRESENTATION OF ADDITIONAL

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[18] *Rollo*, pp. 65-70.

EVIDENCE TO PROVE RESPONDENTS' POSSESSION AND OWNERSHIP OF THE PROPERTY SUBJECT OF THIS CASE.[19]

Petitioners argue that they are not guilty of laches as the elements of laches are wanting in the instant case. As borne out from the testimonies of respondents themselves, petitioners' predecessor-in-interest, Apolinario Fama, asserted his ownership over the subject property. He occupied it for more than thirty (30) years and later his heirs instituted a civil case against Lorenzo Galera in 1950. Petitioners also argue that they have continuously interrupted respondents' possession and thus, the respondents cannot claim that they were unaware of Fama's ownership over the subject land.

Petitioners further point out that even if the respondents entered the subject property prior to 1931, it should be emphasized that a free patent was already issued in 1918. Hence, no length of possession can ripen to ownership in favor of the respondents.

Lastly, petitioners argue that the old tax declarations shown by respondents do not prove their ownership of the subject property. Said tax declarations, though old, do not indicate if they refer to the property in question or if they pertain to property covered by petitioners' title.

Respondents for their part, counter that petitioners' filing of a civil case against Lorenzo Galera in 1950 did not interrupt their continuous possession. Petitioners are still guilty of laches, having waited more than four (4) decades before instituting an action against them, and though a Torrens title is indefeasible, a registered owner may lose his right to recover possession by reason of laches.

The issue in the main is: Will respondents' possession over the subject land prevail over petitioners' title?

We rule in the negative.

The Philippines first came under the Torrens System of Registration in 1902 by virtue of Act No. 496 or the Land

[19] *Id.* at 19-20.

Registration Act, the governing law at the time the subject land was first titled. The very purpose of the system of land registration under the Torrens system was to create an indefeasible title in the holder of the certificate. It was intended to free the land from all claims and liens of whatever character, which existed against the land prior to the issuance of the certificate of title, except those which are noted upon the certificate of title and certain other liens specially mentioned in the law, such as taxes, *etc.*[20] Once a title is registered, the owner may rest secure, without the necessity of waiting in the portals of the court, or sitting in the '*mirador de su casa*,' to avoid the possibility of losing his land.[21]

It is not disputed that the subject land came under the Torrens System of Registration and a free patent and later a certificate of title were issued in favor of petitioners as early as 1918. Respondents allege that the subject land was erroneously included in the title. Thus, from the time the decree of registration was entered, respondents' predecessors-in-interest had one (1) year to assail it as provided in Section 38 of Act No. 496, to wit:

SEC. 38. If the court after hearing finds that the applicant has title as stated in his application, and proper for registration, a decree of confirmation and registration shall be entered. Every decree of registration shall bind the land, and quiet title thereto, subject only to the exceptions stated in the following section. It shall be conclusive upon and against all persons, including the Insular Government and all the branches thereof, whether mentioned by name in the application, notice, or citation, or included in the general description "To all whom it may concern." **Such decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding in any court for reversing judgments or decrees; subject, however, to the right of any person deprived of land or of any estate or interest therein by decree of registration obtained by fraud to file in the Court of Land**

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[20] *Bishop of Nueva Caceres v. Municipality of Tabaco*, 46 Phil. 271, 274 (1924).

[21] *Umbay v. Alecha*, No. 67284, March 18, 1985, 135 SCRA 427, 429, citing *Legarda and Prieto v. Saleeby*, 31 Phil. 590, 611 (1915).

Registration a petition for review within one year after entry of the decree, provided no innocent purchaser for value has acquired an interest. If there is any such purchaser, the decree of registration shall not be opened, but shall remain in full force and effect forever, subject only to the right of appeal hereinbefore provided. But any person aggrieved by such decree in any case may pursue his remedy by action for damages against the applicant or any other person for fraud in procuring the decree. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Act, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value. (Emphasis and underscoring supplied.)

Assuming respondents' allegation was true, it appears that their predecessors-in-interest opted not to avail of this remedy and instead sought the execution of a deed of quitclaim in their favor. And granting that indeed they were able to secure a deed of quitclaim, respondents could have complied with the procedure in Sections 57 and 58 of the same law:

SEC. 57. **An owner desiring to convey in fee his registered land or any portion thereof shall execute a deed of conveyance, which the grantor or grantee may present to the register of deeds in the province where the land lies. The grantor's duplicate certificate shall be produced and presented at the same time. The register of deeds shall thereupon, in accordance with the rules and instructions of the court, make out in the registration book a new certificate of title to the grantee, and shall prepare and deliver to him an owner's duplicate certificate.** The register of deeds shall note upon the original and duplicate certificates the date of transfer, the volume and page of the registration book where the new certificate is registered, and a reference by number to the last prior certificate. The grantor's duplicate certificate shall be surrendered, and the word "canceled" stamped upon it. The original certificate shall also be stamped "canceled." The deed of conveyance shall be filed and indorsed with the number and place of registration of the certificate of title of the land conveyed.

SEC. 58. **When a deed in fee is for a part only of the land described in a certificate of title, the register of deeds shall also enter a new certificate and issue an owner's duplicate to**

the grantor for the part of the land not included in the deed. In every case of transfer the new certificate or certificates shall include all the land described in the original and surrendered certificates: *Provided, however*, That no new certificate to a grantee of a part only of the land shall be invalid by reason of the failure of the register of deeds to enter a new certificate to the grantor for the remaining unconveyed portion: *And provided further*, That in case the land described in a certificate of title is divided into lots, designated by numbers or letters, with measurements of all the bounds, and a plan of said land has been filed with the clerk and verified pursuant to section forty-four of this Act, and a certified copy thereof is recorded in the registration book with the original certificate, when the original owner makes a deed of transfer in fee of one or more of such lots, the register of deeds may, instead of canceling such certificate and entering a new certificate to the grantor for the part of the land not included in the deed of transfer, enter on the original certificate and on the owner's duplicate certificate a memorandum of such deed of transfer, with a reference to the lot or lots thereby conveyed as designated on such plan, and that the certificate is canceled as to such lot or lots; and every certificate with such memorandum shall be effectual for the purpose of showing the grantor's title to the remainder of the land not conveyed as if the old certificate had been canceled and a new certificate of such land had been entered; and such process may be repeated so long as there is convenient space upon the original certificate and the owner's duplicate certificate for making such memorandum of sale of lots. (Emphasis and underscoring supplied.)

However, due to reasons known only to them, respondents' predecessors-in-interest once again chose not to avail of said remedy and allegedly had their claim over the subject land annotated. Sadly though, respondents could not present a copy of the alleged deed of quitclaim or of Nantes' annotated title. As said allegation of reconveyance by Nantes remains unsubstantiated, we cannot support respondents' cause.

The Court also cannot countenance respondents' averment that they and their predecessors-in-interest were not aware that the land has been titled and that it was only in 1974, when petitioners filed a complaint against them, that they became aware of such fact.

The title, once registered, is notice to the world. All persons must take notice. No one can plead ignorance of the registration.[22] Moreover, actual notice to every person affected or may be affected by the titling is not necessary. It is well settled that the registration of land under the Torrens system is a proceeding *in rem* and not *in personam*. Such a proceeding *in rem*, dealing with a tangible *res*, may be instituted and carried to judgment without personal service upon the claimants within the state or notice by mail to those outside of it. Jurisdiction is acquired by virtue of the power of the court over the *res*. Such a proceeding would be impossible were this not so, for it would hardly do to make a distinction between constitutional rights of claimants who were known and those who were not known to the plaintiff, when the proceeding is to bar all.[23]

Suffice it to state that the subject land had undergone not only one (1) but three (3) registrations: *first*, the registration of Free Patent No. 6381 resulting in the issuance of OCT No. 470; *second*, the registration of TCT No. 257 in the name of Apolinario Fama; and *third*, the registration of TCT No. RT-223 (257) as a result of reconstitution. With the act of registration serving as notice to the world, respondents and their predecessors-in-interest have been notified three (3) times and thus had three (3) opportunities to assert their ownership over the subject land. For three (3) times they failed. They were just content with declaring the same for tax purposes probably believing that said tax declarations will give them enough security and protection over their alleged ownership of the subject property.

It is also worthy of note that apart from the actual registration itself which serves as notice to the whole world, our land

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[22] *Pico v. Adalim-Salcedo*, G.R. No. 152006, October 2, 2009, 602 SCRA 21, 28, citing *Legarda and Prieto v. Saleeby*, 31 Phil. 590, 595 (1915); *St. Peter Memorial Park, Inc. v. Cleofas*, No. L-47385, July 30, 1979, 92 SCRA 389; *J.M. Tuason & Co., Inc. v. Court of Appeals*, No. L-23480, September 11, 1979, 93 SCRA 146.

[23] *Acosta v. Salazar*, G.R. No. 161034, June 30, 2009, 591 SCRA 262, 271, citing PEÑA, *REGISTRATION OF LAND TITLES AND DEEDS*, 1988 ed., p. 42.

registration laws have installed safeguards to ensure that sufficient notice is given to those who may be affected prior to effecting the registration or reconstitution of a title.

Act No. 496 or the Land Registration Act which governed the registration of Free Patent No. 6381 into OCT No. 470 provides:

SEC. 31. If, in the opinion of the examiner, the applicant has a good title, as alleged, and proper for registration, or if the applicant, after an adverse opinion of the examiner, elects to proceed further, the clerk of the court shall, immediately upon the filing of the examiner's opinion or the applicant's election, as the case may be, **cause notice of the filing of the application to be published once in two newspapers, one of which newspapers shall be printed in the English language and one in Spanish, of general circulation in the province or city where any portion of the land lies, or if there be no Spanish or English newspaper of general circulation in the province or city where any portion of the land lies, then it shall be a sufficient compliance with this section if the notice of the filing of the application be published in a daily English newspaper and a daily Spanish newspaper of the city of Manila having a general circulation.** The notice shall be issued by order of the court, attested by the clerk, and shall be in form substantially as follows:

REGISTRATION OF TITLE

Province (or city) of _____________

COURT OF LAND REGISTRATION

To (here insert the names of all persons appearing to have an interest and the adjoining owners so far as known), *and to all whom it may concern*:

Whereas an application has been presented to said court by (name or names, and addresses in full) to register and confirm his (or their) title in the following-described lands (insert description), you are hereby cited to appear at the Court of Land Registration, to be held at ______________, in said Province (or city) of ___________, on the _______ day of _________________, A.D. nineteen hundred and _______________, at _____ o'clock in the forenoon, to show cause, if any you have, why the prayer of said application shall not

be granted. And unless you appear at such court, at the time and place aforesaid, your default will be recorded and the said application will be taken as confessed, and you will be forever barred from contesting said application or any decree entered thereon.

Witness: ____________, judge of said court, this ______ day of _______, in the year nineteen hundred and __________.

Attest:

____
Clerk of Said Court.

SEC. 32. **The return of said notice shall not be less than twenty nor more than sixty days from date of issue. The court shall also, within seven days after publication of said notice in the newspapers, as hereinbefore provided, cause a copy of the publication in Spanish to be mailed by the clerk to every person named therein whose address is known. <u>The court shall also cause a duly-attested copy of the notice to be posted, in the Spanish language, in a conspicuous place on each parcel of land included in the application</u>, and also in a conspicuous place upon the chief municipal building of the *pueblo* in which the land or a portion thereof is [situated]**, by the governor or sheriff of the province or city, as the case may be, or by his deputy, fourteen days at least before the return day thereof, and his return shall be conclusive proof of such service. If the applicant requests to have the line of a public way determined, the court shall order a notice to be given by the clerk by mailing a registered letter to the president of the municipal council, or to the Municipal Board, as the case may be, of the municipality or city in which the land lies. If the land borders on a river, navigable stream, or shore, or on an arm of the sea where a river or harbor line has been established, or on a lake, or if it otherwise appears from the application or the proceedings that the Insular Government may have a claim adverse to that of the applicant, notice shall be given in the same manner to the Attorney-General. **The court may also cause other or further notice of the application to be given in such manner and to such persons as it may deem proper. The court shall, so far as it deems it possible, require proof of actual notice to all adjoining owners and to all persons who appear to have interest in or claim to the land included in the application. Notice to such persons by mail shall be by registered letter if practicable. The certificate of the clerk that he has served the notice as directed by the**

court, by publishing or mailing, shall be filed in the case before the return day, and shall be conclusive proof of such service. (Emphasis and underscoring supplied.)

Republic Act No. 26 entitled "AN ACT PROVIDING A SPECIAL PROCEDURE FOR THE RECONSTITUTION OF TORRENS CERTIFICATES OF TITLE LOST OR DESTROYED," on the other hand, governed the reconstitution of Apolinario Fama's TCT No. 257 into TCT No. RT-223 (257). Section 13 of said law provides for effecting notice to interested parties, to wit:

SEC. 13. The court shall **cause a notice of the petition**, filed under the preceding section, **to be published at the expense of the petitioner, twice in successive issues of the *Official Gazette*, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land is situated, at least thirty days prior to the date of hearing.** The court shall likewise cause a copy of the **notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at least thirty days prior to the date of hearing.** Said notice shall state, among other things, the number of the lost or destroyed certificate of title, if known, the name of the registered owner, the names of the occupants or persons in possession of the property, the owners of the adjoining properties and all other interested parties, the location, area and boundaries of the property, and the date on which all persons having any interest therein must appear and file their claim or objections to the petition. **The petitioner shall, at the hearing, submit proof of the publication, posting and service of the notice as directed by the court.** [Emphasis supplied.]

As correctly ruled by the RTC, if there was anyone guilty of laches in the instant case, it was respondents and not petitioners. It was in 1918 that the patent was issued and respondents only resorted to legal means to assert their ownership over the subject land in 1974 when petitioners filed a complaint against them and later in 1984 when they decided to file a complaint for quieting of title. They had to wait almost six (6) decades.

Respondents may have attempted to present evidence of their long-time possession over the subject property through testimonies and documentary evidence such as vintage tax declarations, tax receipts and proof of improvements. Their case is even supported by the local government in the area no less. However, we are in a society where the rule of law prevails. Laws were created to put order in a society. It applies to every one (1) and no member is given the choice as to whether he wants to be bound by it or not. In the instant case, laws were enacted installing mechanisms to quiet title to land and to forever stop any question as to its legality. If properly availed of, it could afford protection to any landowner. In spite of this, respondents and their predecessors-in-interest, assuming they indeed are the true owners, opted not to avail of this protection and now they have to suffer the dire consequences.

WHEREFORE, the November 28, 2001 Decision of the Court of Appeals in CA-G.R. CV No. 58304 is *SET ASIDE*. The October 6, 1997 Decision of the Regional Trial Court of Agoo, La Union, Branch 31 in Civil Case Nos. A-424 and A-953 is *REINSTATED and UPHELD*.

No costs.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Bersamin, and *Abad,*[*] *JJ.,* concur.

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[*] Additional member per Special Order No. 843.

THIRD DIVISION

[G.R. No. 159097. July 5, 2010]

METROPOLITAN BANK AND TRUST COMPANY, *petitioner, vs.* **RURAL BANK OF GERONA, INC.,** *respondent.*

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; OBLIGATIONS; DETERMINATION OF LIABLE PARTIES.—** The Terms and Conditions of the IBRD 4th Rural Credit Project (*Project Terms and Conditions*) executed by the Central Bank and the RBG shows that the farmers-borrowers to whom credits have been extended, are primarily liable for the payment of the borrowed amounts. The loans were extended through the RBG which also took care of the collection and of the remittance of the collection to the Central Bank. RBG, however, was not a mere conduit and collector. While the farmers-borrowers were the principal debtors, RBG assumed liability under the Project Terms and Conditions by solidarily binding itself with the principal debtors to fulfill the obligation. How RBG profited from the transaction is not clear from the records and is not part of the issues before us, but if it delays in remitting the amounts due, the Central Bank imposed a 14% per annum penalty rate on RBG until the amount is actually remitted. The Central Bank was further authorized to deduct the amount due from RBG's demand deposit reserve should the latter become delinquent in payment. On these points, paragraphs 5 and 6 of the Project Terms and Conditions read: 5. Collection received representing repayments of borrowers shall be immediately remitted to the Central Bank, otherwise[,] the Rural Bank/SLA shall be charged a penalty of fourteen [percent] (14%) p.a. until date of remittance. 6. **In case the rural bank becomes delinquent in the payment of amortizations due[,] the Central Bank is authorized to deduct the corresponding amount from the rural bank's demand deposit reserve at any time to cover any delinquency.** Based on these arrangements, the Central Bank's immediate recourse, therefore should have been against the

farmers-borrowers and the RBG; thus, it erred when it deducted the amounts covered by the debit advices from Metrobank's demand deposit account. Under the Project Terms and Conditions, Metrobank had no responsibility over the proceeds of the IBRD loans other than serving as a conduit for their transfer from the Central Bank to the RBG once credit advice has been issued. Thus, we agree with the CA's conclusion that the agreement governed only the parties involved – the Central Bank and the RBG. Metrobank was simply an outsider to the agreement.

2. **ID.; ID.; ID.; EXTINGUISHMENT OF OBLIGATIONS; NOVATION; LEGAL SUBROGATION, WHEN PRESUMED; A CASE OF.—** Our disagreement with the appellate court is in its conclusion that no legal subrogation took place; the present case, in fact, exemplifies the circumstance contemplated under paragraph 2, of Article 1302 of the Civil Code which provides: Art. 1302. It is presumed that there is legal subrogation: (1) When a creditor pays another creditor who is preferred, even without the debtor's knowledge; (2) **When a third person, not interested in the obligation, pays with the express or tacit approval of the debtor;** (3) When, even without the knowledge of the debtor, a person interested in the fulfillment of the obligation pays, without prejudice to the effects of confusion as to the latter's share. As discussed, Metrobank was a third party to the Central Bank-RBG agreement, had no interest except as a conduit, and was not legally answerable for the IBRD loans. Despite this, it was Metrobank's demand deposit account, instead of RBG's, which the Central Bank proceeded against, on the assumption perhaps that this was the most convenient means of recovering the cancelled loans. That Metrobank's payment was involuntarily made does not change the reality that it was Metrobank which effectively answered for RBG's obligations.

3. **ID.; ID.; ID.; ID.; ID.; ID.; ID.; TACIT APPROVAL, PRESENT; THAT TACIT APPROVAL CAME AFTER PAYMENT DOES NOT COMPLETELY NEGATE THE LEGAL SUBROGATION THAT HAD TAKEN PLACE.—** Was there express or tacit approval by RBG of the payment enforced against Metrobank? After Metrobank received the Central Bank's debit advices in November 1978, it (Metrobank) accordingly debited

the amounts it could from RBG's special savings account without any objection from RBG. RBG's President and Manager, Dr. Aquiles Abellar, even wrote Metrobank, on August 14, 1979, with proposals regarding possible means of settling the amounts debited by Central Bank from Metrobank's demand deposit account. These instances are all indicative of RBG's approval of Metrobank's payment of the IBRD loans. That RBG's tacit approval came after payment had been made does not completely negate the legal subrogation that had taken place.

4. ID.; ID.; ID.; ID.; ID.; SUBROGATION, EFFECTS THEREOF; IMPLEADING THE CENTRAL BANK AS A PARTY IS UNNECESSARY; EXPLAINED.— Article 1303 of the Civil Code states that subrogation transfers to the person subrogated the credit with all the rights thereto appertaining, either against the debtor or against third persons. As the entity against which the collection was enforced, Metrobank was subrogated to the rights of Central Bank and has a cause of action to recover from RBG the amounts it paid to the Central Bank, plus 14% per annum interest. Under this situation, impleading the Central Bank as a party is completely unnecessary. We note that the CA erroneously believed that the Central Bank's presence is necessary "in order x x x to shed light on the matter of reversals made by it concerning the loan applications of the end users and to have a complete determination or settlement of the claim." In so far as Metrobank is concerned, however, the Central Bank's presence and the reasons for its reversals of the IBRD loans are immaterial after subrogation has taken place; Metrobank's interest is simply to collect the amounts it paid the Central Bank. Whatever cause of action RBG may have against the Central Bank for the unexplained reversals and any undue deductions is for RBG to ventilate as a third-party claim; if it has not done so at this point, then the matter should be dealt with in a separate case that should not in any way further delay the disposition of the present case that had been pending before the courts since 1980.

APPEARANCES OF COUNSEL

Perez Calima Law Offices for petitioner.
C. Erundino M. Cajucom for respondent.

D E C I S I O N

BRION, *J.*:

Petitioner Metropolitan Bank and Trust Company (*Metrobank*) filed this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court to challenge the Court of Appeals (*CA*) decision dated December 17, 2002[2] and the resolution dated July 14, 2003[3] in CA-G.R. CV No. 46777. The CA decision set aside the July 7, 1994 decision[4] of the Regional Trial Court (*RTC*) of Tarlac, Branch 65, in Civil Case No. 6028 (a collection case filed by Metrobank against respondent Rural Bank of Gerona, Inc. [*RBG*]), and ordered the remand of the case to include the Central Bank of the Philippines[5] (*Central Bank*) as a necessary party.

THE FACTUAL ANTECEDENTS

RBG is a rural banking corporation organized under Philippine laws and located in Gerona, Tarlac. In the 1970s, the Central Bank and the RBG entered into an agreement providing that RBG shall facilitate the loan applications of farmers-borrowers under the Central Bank-International Bank for Reconstruction and Development's (*IBRD's*) 4th Rural Credit Project. The agreement required RBG to open a separate bank account where the IBRD loan proceeds shall be deposited. The RBG accordingly opened a special savings account with Metrobank's Tarlac Branch. As the depository bank of RBG, Metrobank was designated to receive the credit advice released by the Central Bank representing the proceeds of the IBRD loan of the farmers-borrowers; Metrobank, in turn, credited the proceeds

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[1] *Rollo*, pp. 3-32.

[2] *Id.* at 37-45; penned by Associate Justice Eugenio S. Labitoria, with Associate Justice Renato C. Dacudao and Associate Justice Danilo B. Pine concurring.

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

[4] *Id.* at 81-96; penned by Judge Miguel G. Sta. Romana.

[5] Now the *Bangko Sentral ng Pilipinas*.

to RBG's special savings account for the latter's release to the farmers-borrowers.

On September 27, 1978, the Central Bank released a credit advice in Metrobank's favor and accordingly credited Metrobank's demand deposit account in the amount of **₱178,652.00**, for the account of RBG. The amount, which was credited to RBG's special savings account represented the approved loan application of farmer-borrower **Dominador de Jesus**. RBG withdrew the ₱178,652.00 from its account.

On the same date, the Central Bank approved the loan application of another farmer-borrower, **Basilio Panopio**, for **₱189,052.00,** and credited the amount to Metrobank's demand deposit account. Metrobank, in turn, credited RBG's special savings account. Metrobank claims that the RBG also withdrew the entire credited amount from its account.

On October 3, 1978, the Central Bank approved **Ponciano Lagman's** loan application for **₱220,000.00**. As with the two other IBRD loans, the amount was credited to Metrobank's demand deposit account, which amount Metrobank later credited in favor of RBG's special savings account. Of the ₱220,000.00, RBG only withdrew ₱75,375.00.

On November 3, 1978, more than a month after RBG had made the above withdrawals from its account with Metrobank, **the Central Bank issued debit advices, *reversing* all the approved IBRD loans.**[6] The Central Bank implemented the reversal by debiting from Metrobank's demand deposit account the amount corresponding to all three IBRD loans.

Upon receipt of the November 3, 1978 debit advices, Metrobank, in turn, debited the following amounts from RBG's special savings account: ₱189,052.00, ₱115,000.00, and ₱8,000.41. Metrobank, however, claimed that these amounts were insufficient to cover all the credit advices that were reversed by the Central Bank. It demanded payment from RBG which could make partial payments. As of October 17, 1979, Metrobank

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[6] *Rollo*, p. 61.

claimed that RBG had an outstanding balance of ₱334,220.00. To collect this amount, it filed a **complaint for collection of sum of money** against RBG before the RTC, docketed as Civil Case No. 6028.[7]

In its July 7, 1994 decision,[8] the **RTC ruled for Metrobank**, finding that legal subrogation had ensued:

> [Metrobank] had allowed releases of the amounts in the credit advices it credited in favor of [RBG's special savings account] which credit advices and deposits were under its supervision. Being faulted in these acts or omissions, the Central Bank [*sic*] debited these amounts against [Metrobank's] demand [deposit] reserve; thus[, Metrobank's] demand deposit reserves diminished correspondingly, [Metrobank as of this time,] suffers prejudice in which case legal subrogation has ensued.[9]

It thus ordered RBG to pay Metrobank the sum of ₱334,200.00, plus interest at 14% per annum until the amount is fully paid.

On appeal, the CA noted that this was not a case of legal subrogation under Article 1302 of the Civil Code. Nevertheless, the CA recognized that Metrobank had a right to be reimbursed of the amount it had paid and failed to recover, as it suffered loss in an agreement that involved only the Central Bank and the RBG. It clarified, however, that a determination still had to be made on who should reimburse Metrobank. Noting that no evidence exists why the Central Bank reversed the credit advices it had previously confirmed, **the CA declared that the Central Bank should be impleaded as a necessary party** so it could shed light on the IBRD loan reversals. Thus, the CA set aside the RTC decision, and remanded the case to the trial court for further proceedings after the Central Bank is impleaded as a necessary party.[10] After the CA denied its motion for

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[7] *Id.* at 59-62.

[8] *Supra* note 4.

[9] *Id.* at 95.

[10] *Id.* at 44-45.

reconsideration, Metrobank filed the present petition for review on *certiorari*.

THE PETITION FOR REVIEW ON *CERTIORARI*

Metrobank disagrees with the CA's ruling to implead the Central Bank as a necessary party and to remand the case to the RTC for further proceedings. It argues that the inclusion of the Central Bank as party to the case is unnecessary since RBG has already admitted its liability for the amount Metrobank failed to recover. In two letters,[11] RBG's President/Manager made proposals to Metrobank for the repayment of the amounts

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[11] *Id.* at 97-98. The **August 14, 1979 letter** read:

This is in connection with the ₱398,652.00 which was debited by the Central Bank of the Philippines from your bank.

We would like to make the following proposals as agreed upon during our conference with Central Bank and [Metrobank] Officials:

1. Pending the re-consideration of the Central bank regarding the loan of Dominador de Jesus in the amount of ₱178,652.00, we would like to ask for a Plan of Payment for a period of six (6) months starting August, 1979;
2. With [regard to] the ₱220,000.00 balance plus interest, we would like to reiterate our request for a personal loan from your bank, the proceeds of which will be used to pay our capital build-up, to enable the bank to settle the said amount.

Considering that you have been our depository bank for a long time, we hope you will not fail us on our proposals especially now that we are badly in need of your help.

Thanking you in advance.

The **August 27, 1979 letter** read:

This will acknowledge receipt of your letter on August 26, 1979, informing me about the decision of Metrobank's management rejecting my proposals on August 14, 1979.

Please be informed that I am going to Manila today to confer with Director Consolacion Odra regarding the matter.

I will also try to get an appointment with your Executive Vice-President and if necessary, I will refer the matter to our legal counsel, the [Siguion]-Reyna Law Office, Soriano Building, Ayala Avenue, Makati, Metro Manila for [advice].

I have great hopes that this problem will be settled within five (5) days.

involved. Even assuming that no legal subrogation took place, Metrobank claims that RBG's letters more than sufficiently proved its liability.

Metrobank additionally contends that a remand of the case would unduly delay the proceedings. The transactions involved in this case took place in 1978, and the case was commenced before the RTC more than 20 years ago. The RTC resolved the complaint for collection in 1994, while the CA decided the appeal in 2002. To implead Central Bank, as a necessary party in the case, means a return to square one and the restart of the entire proceedings.

THE COURT'S RULING

The petition is impressed with merit.

A basic first step in resolving this case is to determine who the liable parties are on the IBRD loans that the Central Bank extended. The Terms and Conditions of the IBRD 4th Rural Credit Project[12] (*Project Terms and Conditions*) executed by the Central Bank and the RBG shows that the farmers-borrowers to whom credits have been extended, are primarily liable for the payment of the borrowed amounts. The loans were extended through the RBG which also took care of the collection and of the remittance of the collection to the Central Bank. RBG, however, was not a mere conduit and collector. While the farmers-borrowers were the principal debtors, RBG assumed liability under the Project Terms and Conditions by solidarily binding itself with the principal debtors to fulfill the obligation.

How RBG profited from the transaction is not clear from the records and is not part of the issues before us, but if it delays in remitting the amounts due, the Central Bank imposed a 14% per annum penalty rate on RBG until the amount is actually remitted. The Central Bank was further authorized to deduct the amount due from RBG's demand deposit reserve should the latter become delinquent in payment. On these points, paragraphs 5 and 6 of the Project Terms and Conditions read:

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[12] *Id.* at 74.

5. Collection received representing repayments of borrowers shall be immediately remitted to the Central Bank, otherwise[,] the Rural Bank/SLA shall be charged a penalty of fourteen [percent] (14%) p.a. until date of remittance.

6. **In case the rural bank becomes delinquent in the payment of amortizations due[,] the Central Bank is authorized to deduct the corresponding amount from the rural bank's demand deposit reserve**[13] **at any time to cover any delinquency.** [Emphasis supplied.]

Based on these arrangements, the Central Bank's immediate recourse, therefore should have been against the farmers-borrowers and the RBG; thus, it erred when it deducted the amounts covered by the debit advices from Metrobank's demand deposit account. Under the Project Terms and Conditions, Metrobank had no responsibility over the proceeds of the IBRD loans other than serving as a conduit for their transfer from the Central Bank to the RBG once credit advice has been issued. Thus, we agree with the CA's conclusion that the agreement governed only the parties involved – the Central Bank and the RBG. Metrobank was simply an outsider to the agreement. Our disagreement with the appellate court is in its conclusion that no legal subrogation took place; the present case, in fact, exemplifies the circumstance contemplated under paragraph 2, of Article 1302 of the Civil Code which provides:

Art. 1302. It is presumed that there is legal subrogation:

(1) When a creditor pays another creditor who is preferred, even without the debtor's knowledge;

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[13] Section 94 of the New Central Bank Act (Republic Act No. 7653) states:

> In order to control the volume of money created by the credit operations of the banking system, all banks operating in the Philippines shall be required to maintain reserves against their deposit liabilities: *Provided*, That the Monetary Board may, at its discretion, also require all banks and/or quasi-banks to maintain reserves against funds held in trust and liabilities for deposit substitutes as defined in this Act. The required reserves of each bank shall be proportional to the volume of its deposit liabilities and shall ordinarily take the form of a deposit in the Bangko Sentral. Reserve requirements shall be applied to all banks of the same category uniformly and without discrimination.

(2) When a third person, not interested in the obligation, pays with the express or tacit approval of the debtor;

(3) When, even without the knowledge of the debtor, a person interested in the fulfillment of the obligation pays, without prejudice to the effects of confusion as to the latter's share. [Emphasis supplied.]

As discussed, Metrobank was a third party to the Central Bank-RBG agreement, had no interest except as a conduit, and was not legally answerable for the IBRD loans. Despite this, it was Metrobank's demand deposit account, instead of RBG's, which the Central Bank proceeded against, on the assumption perhaps that this was the most convenient means of recovering the cancelled loans. That Metrobank's payment was involuntarily made does not change the reality that it was Metrobank which effectively answered for RBG's obligations.

Was there express or tacit approval by RBG of the payment enforced against Metrobank? After Metrobank received the Central Bank's debit advices in November 1978, it (Metrobank) accordingly debited the amounts it could from RBG's special savings account without any objection from RBG.[14] RBG's President and Manager, Dr. Aquiles Abellar, even wrote Metrobank, on August 14, 1979, with proposals regarding possible means of settling the amounts debited by Central Bank from Metrobank's demand deposit account.[15] These instances are all indicative of RBG's approval of Metrobank's payment of the IBRD loans. That RBG's tacit approval came after payment had been made does not completely negate the legal subrogation that had taken place.

Article 1303 of the Civil Code states that subrogation transfers to the person subrogated the credit with all the rights thereto appertaining, either against the debtor or against third persons. As the entity against which the collection was enforced, Metrobank was subrogated to the rights of Central Bank and has a cause

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[14] *Rollo,* p. 15.

[15] *Id.* at 97.

of action to recover from RBG the amounts it paid to the Central Bank, plus 14% per annum interest.

Under this situation, impleading the Central Bank as a party is completely unnecessary. We note that the CA erroneously believed that the Central Bank's presence is necessary "in order x x x to shed light on the matter of reversals made by it concerning the loan applications of the end users and to have a complete determination or settlement of the claim."[16] In so far as Metrobank is concerned, however, the Central Bank's presence and the reasons for its reversals of the IBRD loans are immaterial after subrogation has taken place; Metrobank's interest is simply to collect the amounts it paid the Central Bank. Whatever cause of action RBG may have against the Central Bank for the unexplained reversals and any undue deductions is for RBG to ventilate as a third-party claim; if it has not done so at this point, then the matter should be dealt with in a separate case that should not in any way further delay the disposition of the present case that had been pending before the courts since 1980.

While we would like to fully and finally resolve this case, certain factual matters prevent us from doing so. Metrobank contends in its petition that it credited RBG's special savings account with three amounts corresponding to the three credit advices issued by the Central Bank: the **₱178,652.00** for Dominador de Jesus; the **₱189,052.00** for Basilio Panopio; and the **₱220,000.00** for Ponciano Lagman. Metrobank claims that all of the three credit advices were subsequently reversed by the Central Bank, evidenced by three debit advices. The records, however, contained only the credit and debit advices for the amounts set aside for de Jesus and Lagman;[17] nothing in the findings of fact by the RTC and the CA referred to the amount set aside for Panopio.

Thus, what were sufficiently proven as credited and later on debited from Metrobank's demand deposit account were only the amounts of ₱178,652.00 and ₱189,052.00. With these

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[16] *Id.* at 44.

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

amounts combined, RBG's liability would amount to ₱398,652.00 – the same amount RBG acknowledged as due to Metrobank in its August 14, 1979 letter.[18] Significantly, Metrobank likewise quoted this amount in its July 11, 1979[19] and July 26, 1979[20] demand letters to RBG and its Statement of Account dated December 23, 1982.[21]

RBG asserts that it made partial payments amounting to ₱145,197.40,[22] but neither the RTC nor the CA made a conclusive finding as to the accuracy of this claim. Although Metrobank admitted that RBG indeed made partial payments, it never mentioned the actual amount paid; neither did it state that the ₱145,197.40 was part of the ₱312,052.41 that, it admitted, it debited from RBG's special savings account.

Deducting ₱312,052.41 (representing the amounts debited from RBG's special savings account, as admitted by Metrobank) from ₱398,652.00 amount due to Metrobank from RBG, the difference would only be ₱86,599.59. We are, therefore, at a loss on how Metrobank computed the amount of ₱334,220.00 it claims as the balance of RBG's loan. As this Court is not a trier of facts, we deem it proper to remand this factual issue to the RTC for determination and computation of the actual amount RBG owes to Metrobank, plus the corresponding interest and penalties.

WHEREFORE, we *GRANT* the petition for review on *certiorari*, and *REVERSE* the decision and the resolution of the Court of Appeals, in CA-G.R. CV No. 46777, promulgated on December 17, 2002 and July 14, 2003, respectively. We *AFFIRM* the decision of the Regional Trial Court, Branch 65, Tarlac, promulgated on July 7, 1994, insofar as it found respondent liable to the petitioner Metropolitan Bank and Trust

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[18] *Supra* note 15.

[19] Exhibits for the Plaintiff, p. 8.

[20] *Id.* at 10.

[21] *Id.* at 23.

[22] *Rollo*, pp. 67-68.

Company, but order the *REMAND* of the case to the trial court to determine the actual amounts due to the petitioner. Costs against respondent Rural Bank of Gerona, Inc.

SO ORDERED.

Carpio Morales (Chairperson), Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 160422. July 5, 2010]

MANILA ELECTRIC COMPANY (MERALCO), *petitioner, vs.* **SPS. EDITO and FELICIDAD CHUA, and JOSEFINA PAQUEO,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; PUBLIC UTILITIES; REPUBLIC ACT NO. 7832 (ANTI-ELECTRICITY AND ELECTRIC TRANSMISSION LINES/MATERIALS PILFERAGE ACT OF 1994); *PRIMA FACIE* EVIDENCE OF ILLEGAL USE OF ELECTRICITY; DISCUSSED.— Essential to the resolution of xxx issue is Section 4 of RA 7832, which reads: SEC. 4. *Prima Facie* Evidence. – (a) The presence of any of the following circumstances shall constitute ***prima facie*** **evidence of illegal use of electricity**, as defined in this Act, by the person benefited thereby, and shall be the basis for: (1) the **immediate disconnection** by the electric utility to such person after due notice, x x x (iv) The presence of a tampered, broken, or fake seal on the meter, or mutilated, altered, or

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[*] Designated additional Member of the Third Division, in view of the retirement of former Chief Justice Reynato S. Puno, per Special Order No. 843 dated May 17, 2010.

tampered meter recording chart or graph or computerized chart, graph, or log. (viii) x x x *Provided, however*, That the discovery of any of the foregoing circumstances, in order to constitute *prima facie* evidence, **must be personally witnessed and attested to by an officer of the law or a duly authorized representative of the Energy Regulatory Board** *(ERB)*. To reiterate, the discovery of a tampered, broken, or fake seal on the meter shall only constitute *prima facie* evidence of illegal use of electricity by the person who benefits from the illegal use *if* such discovery is **personally witnessed and attested to by an officer of the law or a duly authorized representative of the Energy Regulatory Board** (*ERB*). With such *prima facie* evidence, MERALCO is within its rights to immediately disconnect the electric service of the consumer after due notice.

2. **ID.; ID.; ID.; IMPLEMENTING RULES AND REGULATIONS; OFFICER OF THE LAW, DEFINED.—** Section 1, Rule III of the Rules and Regulations Implementing RA 7832 (*IRR*) defines an officer of the law as one "*who, by direct supervision of law or by election or by appointment by competent authority, is charged with the maintenance of public order and the protection and security of life and property, such as barangay captain, barangay chairman, barangay councilman, barangay leader, officer or member of Barangay Community Brigades, barangay policeman, PNP policeman, municipal councilor, municipal mayor and provincial fiscal.*"

3. **ID.; ID.; ID.; ID.; PRESENCE OF AN OFFICER OF THE LAW, REQUIRED IN INSPECTION; SIGNIFICANCE; NOT COMPLIED WITH IN CASE AT BAR.—** We emphasized the significance of this requirement in *Sps. Quisumbing v. MERALCO,* when we said: **The presence of government agents who may authorize immediate disconnections go into the essence of due process**. Indeed, we cannot allow respondent to act virtually as prosecutor and judge in imposing the penalty of disconnection due to alleged meter tampering. That would not sit well in a democratic country. After all, Meralco is a monopoly that derives its power from the government. Clothing it with unilateral authority to disconnect would be equivalent to giving it a license to tyrannize its hapless customers. After thoroughly examining the records of this case, we find no proof that MERALCO ever complied with the required presence of

an "officer of the law." In his testimony, Albano never mentioned that he was accompanied by an authorized government representative during the inspection. As evident from the Meter/ Socket Inspection Report, only Albano inspected the Chuas' electric meter; no evidence shows that he was accompanied by anyone else. Most telling of all, MERALCO does not even allege in its submissions with this Court that an ERB representative or an officer of the law ever accompanied its representative during the inspection of the Chuas' electric meter.

4. **ID.; ID.; ID.; ID.; CONSUMER, NOT THE PROPER WITNESS TO INSPECTION; INCLUSION OF THE PHRASE "BY THE CONSUMER CONCERNED" IS INVALID.—** Rule III, Section 1 of the IRR provides: "In order to constitute *prima facie* evidence, the discovery of any of the circumstances enumerated in Section 1 hereof, must be personally witnessed and attested to **by the consumer concerned** or a duly authorized ERB representative or any officer of the law, as the case may be." **We hold the view, however, that the inclusion of the phrase "*by the consumer concerned*" in the IRR is invalid because it is in excess of what the law being implemented provides**. As RA 7832 stands, only the presence of an authorized government agent, either an officer of the law or an authorized representative of the ERB, during the MERALCO inspection would allow any of the circumstances enumerated in Section 4 of RA 7832 to be considered *prima facie* evidence of illegal use of electricity by the benefited party. The law does not include the consumer or the consumer's representative in this enumeration.

5. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; RULE-MAKING POWER; CONFINED TO FILLING IN THE GAPS AND THE NECESSARY DETAILS IN CARRYING INTO EFFECT THE LAW AS ENACTED; VIOLATED IN CASE AT BAR.—** In legal contemplation, the ERB's inclusion of the phrase *"by the consumer concerned"* in Rule III, Section 1 of the IRR **expanded the clear wording of the law** and violated the recognized principle that an administrative agency's rule-making power is confined to filling in the gaps and the necessary details in carrying into effect the law as enacted; rule-making cannot extend, amend, or expand statutory requirements or embrace matters not covered by the law being implemented. Administrative regulations must always

be in harmony with the provisions of the law because any resulting discrepancy between the two will always be resolved in favor of the basic law. In the present case, the consumer cannot in any way be considered to be in the same classification as the named government representatives so that his or her presence can be a substitute for the presence of these representatives. For this reason, even if Florence Chua, the Chuas' daughter, acknowledged that she witnessed Albano's examination of the electric meter outside their house so that she signed the Meter/Socket Inspection Report, her presence did not characterize the discovered broken meter seal as *prima facie* evidence of illegal use of electricity justifying immediate disconnection.

6. **MERCANTILE LAW; PUBLIC UTILITIES; REPUBLIC ACT NO. 7832 (ANTI-ELECTRICITY AND ELECTRIC TRANSMISSION LINES/MATERIALS PILFERAGE ACT OF 1994); LEGAL REQUIREMENTS FOR AUTHORITY TO DISCONNECT ELECTRICITY, NOT COMPLIED WITH; *IN FLAGRANTE DELICTO*, DEFINED.—** MERALCO is authorized to immediately disconnect the electric service of its consumers without the need of a court or administrative order when: (a) the consumer, or someone acting in his behalf, is caught *in flagrante delicto* in any of the acts enumerated in Section 4 of RA 7832; or (b) when any of the circumstances constituting *prima facie* evidence of illegal use of electricity is discovered for the second time. *In flagrante delicto* means "[i]n the very act of committing the crime." To be caught *in flagrante delicto*, therefore, necessarily implies positive identification by an eyewitness or eyewitnesses *to the act of tampering* so that there is "direct evidence" of culpability, or "that which proves the fact in dispute without the aid of any inference or presumption." In the present case, however, MERALCO presented no proof that it ever caught the Chuas, or anyone acting in the Chuas' behalf, in the act of tampering with their electric meter. As correctly observed by the CA, the Chuas could not have been caught *in flagrante delicto* committing the tampering since in the first place, they were the ones who reported the defect in their meter. Moreover, the presence of a broken cover seal, broken sealing wire, and a missing terminal seal, is not enough to declare the Chuas *in flagrante delicto* tampering with the electric meter. As the

basic complaint for *mandamus* alleged, without any serious refutation from the petitioner, the electric meter is in a concrete post outside of the Chuas' perimeter fence; hence, in a location accessible to the public. We note, too, that MERALCO did not present any evidence that it caught the Chuas committing any of the acts constituting *prima facie* evidence of illegal use of electricity *for the second time*. In view of MERALCO's failure to comply with both Section 4 and Section 6 of RA 7832, MERALCO obviously had no authority to immediately disconnect the Chuas' electric service.

7. **ID.; ID.; ID.; COURTS ARE PROHIBITED FROM ISSUING INJUNCTIONS OR RESTRAINING ORDERS AGAINST ELECTRIC UTILITIES FROM DISCONNECTING SERVICE UNLESS THE CONSUMER PROVES THAT THE ELECTRIC UTILITY ACTED WITH EVIDENT BAD FAITH OR GRAVE ABUSE OF AUTHORITY.—** In view of MERALCO's dominance over its market and its customers and the latter's relatively weak bargaining position as against MERALCO, and in view too of the serious consequences and hardships a customer stands to suffer upon service disconnection, MERALCO's failure to strictly observe these legal requirements can be equated to the bad faith or abuse of right that the law speaks of. Under the circumstances, we cannot but conclude that MERALCO abused its superior and dominant position as well as the authority granted to it by law as a service provider when it persisted in disconnecting the Chuas' electric service. Hence, the general prohibition against the issuance of a restraining order or an injunction under Section 9 of RA 7832 cannot apply. Rather, what must prevail is the exception: an injunction can issue when a disconnection has been attended by bad faith or grave abuse of authority.

8. **REMEDIAL LAW; CIVIL PROCEDURE; PROVISIONAL REMEDIES; WRIT OF MANDATORY INJUNCTION; REQUISITES; ISSUANCE THEREOF, PROPER.—** As to whether the Chuas are entitled to a writ of mandatory injunction, we rule in the affirmative. An injunctive writ issues only upon a showing that: a) the applicant possesses a clear and unmistakable right; b) there is a material and substantial invasion of such right; and c) there is urgent and permanent necessity for an injunctive writ to prevent serious damage. In the present case,

the Chuas have established that they are paying MERALCO customers. In the absence of the *prima facie* evidence required by Section 4 and by the requirements of Section 6 of RA 7832 that the Chuas tampered with their electric meter, and in light as well of the merits of the Chuas' case as discussed below, the Chuas have an unmistakable right to be provided with continuous power supply – a right MERALCO obviously invaded when it cut off the Chuas' electric service. Electricity being what it is and has been in modern day living, an urgent and permanent need exists to prevent MERALCO from cutting off the Chuas' electric service under the circumstances that gave rise to the present dispute. Accordingly, we uphold the RTC and CA decisions ordering MERALCO to immediately restore the Chuas' electric service.

9. **ID.; EVIDENCE; BURDEN OF PROOF; LIES WITH THE PERSON WHO ASSERTS THE AFFIRMATIVE ALLEGATION; IN CASE AT BAR, CLAIM FOR DIFFERENTIAL BILLING, UNSUBTANTIATED.—** Aside from the doubtful veracity of the allegation and assumption that the Chuas tampered with their meter, we also consider that MERALCO did not provide any factual or legal basis for its differential billing. Section 6 of RA 7832 supplies the manner by which a public utility can compute the differential billing. xxx According to MERALCO's witness, Enrique Katipunan, the period affected by the Chuas' tampered electric meter was from August 17, 1992 to October 11, 1996 (*affected period*). In line with the fundamental rule that the burden of evidence lies with the person who asserts the affirmative allegation, MERALCO thus carried the burden to prove that the Chuas' electric meter had been tampered with as early as August 17, 1992. Significantly, while Katipunan stated that he "studied the Chuas' billing history to establish the affected period from August 17, 1992 to October 11, 1996," **we find conspicuously absent from his testimony any statement explaining how he established this four-year period as the period affected by the tampered electric meter**. Katipunan did not mention any abrupt or abnormal drop in the Chuas' electric consumption, nor did he identify anything suspicious in the Chuas' billing history that would lead him to conclude that the tampering began on August 17, 1992. All we have to rely on is Katipunan's assurance that the Chuas' electric meter

existed in a tampered state for this whole four-year period. This testimony, however, is uncorroborated by evidence. xxx MERALCO is duty bound to explain to its customers the basis for arriving at any given billing, particularly in cases of unregistered consumptions. Otherwise, consumers will stand piteously at the public utility's mercy. Courts cannot and will not in any way blindly grant a public utility's claim for differential billing if there is no sufficient evidence to prove entitlement. As MERALCO has failed to substantiate its claim for the differential billing, we rule that the Chuas cannot be held to account for the billed amount.

10. MERCANTILE LAW; PUBLIC UTILITIES; DOCTRINE OF INEXCUSABLE NEGLIGENCE; APPLIED TO METER TAMPERING; CASE AT BAR.— Apart from lacking factual or legal basis, another reason for us not to hold the Chuas accountable for MERALCO's differential billing is our previous ruling in *Ridjo Tape & Chemical Corp. v. CA*, where we said: It has been held that notice of a defect need not be direct and express; **it is enough that the same had existed for such a length of time that it is reasonable to presume that it had been detected, and the presence of a conspicuous defect which has existed for a considerable length of time will create a presumption of constructive notice thereof**. **Hence, MERALCO's failure to discover the defect, if any, considering the length of time, amounts to inexcusable negligence**. Furthermore, we need not belabor the point that as a public utility, MERALCO has the obligation to discharge its functions with utmost care and diligence. xxx The rationale behind this ruling is that **public utilities should be put on notice, as a deterrent, that if they completely disregard their duty of keeping their electric meters in serviceable condition, they run the risk of forfeiting, by reason of their negligence, amounts originally due from their customers.** xxx While *Ridjo* involved a defective meter, we have, on occasion, applied this same doctrine to cases that involved allegations of meter tampering. In both *Manila Electric Company v. Macro Textile Mills, Corp.* and *Davao Light & Power Co., Inc. v. Opena*, we faulted the electric companies involved for not immediately inspecting the electric meters after they noted a sudden drop in the consumer's registered electric consumption. Since, in both cases, the public utility

companies allowed several years to lapse before deciding to conduct an inspection of the electric meters, we ruled that they were both negligent and consequently barred them from collecting their claims of differential billing against the consumers. With these rulings in mind, we held in *MERALCO v. Wilcon Builders Supply, Inc.* that the use of the words "defect" and "defective" in *Ridjo* does not restrict the inexcusable negligence doctrine to cases of "mechanical defects" in installed electric meters. We said: The *Ridjo* doctrine simply states that the public utility has the imperative duty to make a reasonable and proper inspection of its apparatus and equipment to ensure that they do not malfunction. Its failure to discover the defect, if any, considering the length of time, amounts to inexcusable negligence; its failure to make the necessary repairs and replace the defective electric meter installed within the consumer's premises limits the latter's liability. The use of the words "defect" and "defective" in the above-cited case does not restrict the application of the doctrine to cases of "mechanical defects" in the installed electric meters. **A more plausible interpretation is to apply the rule on negligence whether the defect is inherent, intentional or unintentional, which therefore covers tampering, mechanical defects and mistakes in the computation of the consumers' billing.** The production and distribution of electricity is a highly technical business undertaking. In conducting its operation, it is only logical for a public utility, such as MERALCO, to employ mechanical devices and equipment for the orderly pursuit of its business. MERALCO has the imperative duty to make a reasonable and proper inspection of its apparatus and equipment to ensure that they do not malfunction, and the due diligence to discover and repair defects therein. Failure to perform such duties constitutes negligence. xxx Aside from the long period of time involved, we also underscore the fact that the alleged tampering in this case did not require special training or knowledge to be detected. Certainly, the missing terminal seal, the broken cover seal, and the broken sealing wire of the meter are visible to the naked eye and would have caught the attention of MERALCO's personnel in the course of their meter readings. As in *Ridjo*, we take judicial notice that during this long period of time, MERALCO's personnel had the opportunity to inspect and examine the Chuas' electric meter for the purpose of determining the monthly dues payable. Even if MERALCO did

not conduct these regular monthly inspections, we find it reasonable to expect that within this four-year period, MERALCO would, at the very least, annually examine the electric meter to verify its condition and to determine the accuracy of its readings if ordinary examination shows defects as in the case of the Chuas' meter. That it failed to do so constitutes negligence on its part, and bars it from collecting its claim for differential billing.

11. **CIVIL LAW; DAMAGES; AWARD OF MORAL DAMAGES; REQUISITES; PROPER IN CASE AT BAR.—** Article 32 of the Civil Code provides that moral damages are proper when the rights of individuals, including the right against deprivation of property without due process of law, are violated. Jurisprudence has established the following requisites for the award of moral damages: (1) there is an injury – whether physical, mental, or psychological – clearly sustained by the claimant; (2) there is a culpable act or omission factually established; (3) the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) the award of damages is predicated on any of the cases stated in Article 2219 of the Civil Code. Considering the manner MERALCO disconnected the Chuas' electric service, we find the award of moral damages proper. Apart from the havoc wreaked on the Chuas' daily lives when MERALCO abruptly and without legal basis cut off their electricity, the removal of the electric meter also caused the Chuas extreme social humiliation and embarrassment as they were subjected to speculations in their neighborhood of being "power thieves." As Mrs. Felicidad Chua testified, she suffered sleepless nights and felt serious anxiety after the removal of their electric meter came to the attention of the *barangay*. In fact, she even had to consult a doctor for this anxiety. Thus, even if the Chuas did subsequently obtain their electricity from another source, the damage to the Chuas' reputation and social standing had already been done.

12. **ID.; ID.; ID.; DESIGNED TO COMPENSATE THE CLAIMANT FOR ACTUAL INJURY SUFFERED AND NOT TO IMPOSE A PENALTY; REDUCTION, PROPER.—** [M]oral damages, which are left largely to the sound discretion of the courts, should be granted in reasonable amounts,

considering the attendant facts and circumstances. Moral damages, though incapable of pecuniary estimation, are designed to compensate the claimant for actual injury suffered and not to impose a penalty. As prevailing jurisprudence deems the award of moral damages in the amount of ₱100,000.00 appropriate in cases where MERALCO wrongfully disconnected electric service, we uphold the CA ruling, reducing the moral damages awarded from ₱300,000.00 to ₱100,000.00.

APPEARANCES OF COUNSEL

Angelito F. Aguila for petitioner.
Vidal M. Dela Vega for respondents.

D E C I S I O N

BRION, *J*.:

Manila Electric Company (*MERALCO* or *petitioner)* assails in this petition for review on *certiorari*[1] the decision of the Court of Appeals (*CA* or *appellate court*), dated October 20, 2003,[2] in CA-G.R. SP No. 77034, affirming with modification the March 26, 2003 decision of the Regional Trial Court (*RTC*) of Quezon City, Branch 82, in Civil Case No. Q-97-30503.[3]

The affirmed RTC decision ordered the petitioner to restore the electric power connection of spouses Edito and Felicidad Chua (*Chuas*) at their residence, and awarded ₱300,000.00 as moral damages. The CA affirmed the restoration of electric power connection but reduced the awarded moral damages to ₱100,000.00.

BACKGROUND FACTS

The facts, as found by the RTC and affirmed by the CA, are summarized below.

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[1] Under Rule 45 of the Rules of Court. *Rollo*, pp. 9-26.

[2] Penned by Associate Justice B.A. Adefuin-de la Cruz, with the concurrence of Associate Justices Buenaventura Guerrero and Eliezer de los Santos. *Id*. at 28-37.

[3] *Id*. at 66-77.

MERALCO is a utility company engaged in the business of sale and distribution of electricity within its franchise area. The Chuas are the beneficial users at their residence of electric service provided by MERALCO, registered under the name of respondent Josefina Paqueo with Account Number 05091-4038-14. MERALCO installed an electric meter with number Co. No. 33 SPN 46170 in front of the Chuas' home to record the Chuas' electric consumption. *The meter was in a concrete post outside the Chuas' perimeter fence*.[4]

From June 11, 1996 to September 11, 1996, the Chuas consumed between 231 to 269 kilowatt hours of electricity per month, with their corresponding monthly electric bills ranging from ₱747.84 to ₱887.27. In October 1996, the Chuas were surprised to receive an electricity bill for the amount of ₱4,906.87 for the period of September 11 to October 11, 1996 (*September 1996 bill*). According to this bill, they consumed 1,297 kilowatt hours for this one month period, or approximately 553% higher than their previous monthly bill.[5] Alarmed by the significant increase, Florence Chua (the Chuas' daughter) went to the MERALCO office to question the bill. Florence paid the bill under protest to avoid disconnection.

On October 31, 1996, MERALCO responded to the Chuas' complaint by sending a representative, Francisco Jose Albano, to their residence to inspect the electric meter. Albano filed a Meter/Socket Inspection Report stating that he replaced the old meter[6] and installed a new one[7] because *the old meter's terminal seal was missing, the cover seal was broken, and the meter had a broken sealing wire*.[8]

The Chuas were *billed based on the new meter* and its readings from October 11, 1996 to January 24, 1997, with an average

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[4] *Id.* at 45.

[5] *Id.*

[6] Meter No. 33SPN46170.

[7] Meter No. 33RZN80082.

[8] Dated October 31, 1996; *rollo*, p. 53.

usage ranging from 227 to 254 kilowatt hours, with corresponding monthly electric bills ranging from ₱700.00 to ₱800.00.[9]

On January 3, 1997, the Chuas received a letter from MERALCO, stating that:

> Our Inspection Office has referred to us for appropriate action the following finding(s) of our service inspectors and meter laboratory technicians after your metering installation at the above address was inspected on OCTOBER 31, 1996:
>
> 1. THE TERMINAL SEAL WAS MISSING.
> 2. THE SEALING WIRE OF THE ERB AND MERALCO LEAD COVER SEALS WAS CUT.
> 3. THE 1000TH, 100TH AND 10TH DIAL POINTERS OF THE REGISTER WERE OUT OF ALIGNMENT.
>
> **Given the above condition(s) and in accordance with the rules implementing Republic Act 7832, you are billed the amount of ₱183,983.66 (rate charge of ₱179,353.26 and energy tax of ₱4,630.40).** Furthermore, the company is now allowed to collect Surcharges as a penalty for all Violation of Contract cases apprehended effective January 17, 1995, which would be collected later.
>
> This is a formal demand upon you to pay the above stated amount at this office within ten days from your receipt of this letter; if no settlement is made within the given grace period, your service shall be disconnected and the necessary criminal or civil action initiated against you for violation of Republic Act 7832.[10]

The Chuas refused to pay as demanded. On January 24, 1997, MERALCO returned to their residence and removed Meter No. 33RZN80082, thereby disconnecting their electric supply.

On February 5, 1997, MERALCO sent the Chuas another demand letter stating that it had re-evaluated the Chuas' case based on field findings and the documents they furnished, and reduced the amount they had to pay from ₱183,983.66 to ₱71,737.49.[11]

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[9] *Id.* at 54.

[10] *Id.* at 55.

[11] The letter said:

On March 11, 1997, the Chuas filed a complaint for *mandamus* and damages,[12] praying that they be granted a preliminary mandatory injunction to compel MERALCO to restore the electrical connection to their residence. The Chuas also asked the court to award them moral and exemplary damages, attorney's fees, and litigation expenses.

After trial, the RTC rendered its decision, whose dispositive portion states:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against the defendant ordering the latter as follows:

1) To restore to plaintiffs at their residence at #9 Hukvet St., Area I, Veterans Village, Quezon City their electric power connection and/or services;
2) To pay the plaintiffs the sum of ₱300,000.00 as and by way of moral damages;
3) To pay the plaintiffs the sum of ₱30,000.00 as and by way of attorney's fees;
4) To pay the cost of suit.

SO ORDERED.[13]

Dear Atty. Chua:

This refers to our Company's claim for the value of unregistered consumption amounting to ₱183,983.66.

Please be informed that we have re-evaluated your case base on our field findings and the documents you have furnished. Thus, reducing the aforementioned amount to ₱71,737.49 (Rate Charge – ₱71,203.19 and Energy Tax – ₱184.30). In the interest of speedy disposition of the case, we are instructed to collect the recomputed amount and act accordingly, Moreso, we shall also require you to register the service under your name and pay the deposit amounting to ₱5,410.00, representing the meter and service deposit. This amount can be refunded upon termination of your service.

In view thereof, please consider this letter as our FINAL DEMAND and settle the aforesaid amount; otherwise, much to our regret, we shall refer the matter to our legal for legal sanction.

RTC Records, p. 14.

[12] *Rollo*, pp. 44-51.

[13] Dated March 26, 2003; *id.* at 76-77.

MERALCO appealed the trial court's decision to the CA.

The CA affirmed the RTC decision.[14] The appellate court confirmed that the meter had been tampered, but found that the tampering was mitigated by the Chuas' voluntary act of going to MERALCO to report the possible defect in their meter. The voluntary act, according to the court, constituted good faith as MERALCO would not have discovered the defects in the meter if the Chuas had not reported the matter.

The appellate court also noted that while Section 6 of Republic Act No. 7832 (*RA 7832*), or the "*Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994*," allows MERALCO to immediately disconnect electric service, it may only do so when the owner of the house has either been caught *in flagrante delicto* in any of the acts constituting *prima facie* evidence of illegal use, or has been discovered a second time in any of the enumerated circumstances. In the Chuas' case, they were not caught *in flagrante delicto* as they in fact reported the defect in their meter. This was the first instance, too, that MERALCO had discovered any tampering in the Chuas' meter. Under these circumstances, the appellate court concluded that MERALCO had no legal right to disconnect the Chuas' electrical service.

While upholding the RTC's factual findings, the CA modified the RTC decision by reducing the awarded moral damages from ₱300,000.00 to ₱100,000.00.

THE PETITION

MERALCO filed the present petition, raising the following arguments:[15]

I. The CA erred in ruling that MERALCO had no right to disconnect the electric service of the Chuas.

II. MERALCO is entitled to collect the differential billing of ₱183,983.66.

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[14] Dated October 20, 2003; *supra* note 2.

[15] *Supra* note 1.

III. Even assuming that MERALCO had no right to disconnect the Chuas' electric service, they are nevertheless not entitled to moral damages in the absence of evidence of damages they sustained.

MERALCO points out that it did not immediately disconnect electric service to the Chuas. It first sent several demand letters explaining the meter tampering and demanding payment for the billed differential in the sum of ₱183,983.66. It was only after the Chuas refused to pay the differential billing that MERALCO disconnected their electric service.

Additionally, MERALCO contends that based on Section 9 of RA 7832, no writs of injunction shall be issued by any court against any private electric utility exercising its right and authority to disconnect electric service unless there is *prima facie* evidence that the disconnection was made with evident bad faith or grave abuse of authority. Since the Chuas failed to prove MERALCO's evident bad faith in disconnecting their electric service, they are not entitled to an injunctive writ.

MERALCO further posits that the deliberate manipulation of the dial pointers prevented the full and correct billing of the electric energy actually delivered to and consumed by the Chuas. The differential billing represents the monetary equivalent of the electricity used by the Chuas but not registered by the meter.

Lastly, MERALCO maintains that even if it had no right to disconnect the Chuas' electric service, the Chuas nevertheless are not entitled to moral damages. The Chuas did not sustain damages after the disconnection since they sourced their electric supply from another electric meter within the premises.

THE COURT'S RULING

We deny the petition for lack of merit.

Prima facie evidence of illegal use of electricity

MERALCO claims that the meter tampering in this case stands undisputed in the evidence on record. Under RA 7832, the law presumes that the person benefited by the unlawful use of

electricity is the perpetrator of the meter tampering. Thus, no need arose for MERALCO to prove that the Chuas actually tampered with their meter; pursuant to Section 4 of RA 7832, Meralco had the right to immediately disconnect the Chuas' electric service.

We find MERALCO's position legally incorrect. Essential to the resolution of this issue is Section 4 of RA 7832, which reads:

SEC. 4. *Prima Facie* Evidence. –

(a) The presence of any of the following circumstances shall constitute ***prima facie* evidence of illegal use of electricity**, as defined in this Act, by the person benefited thereby, and shall be the basis for: (1) the **immediate disconnection** by the electric utility to such person after due notice, x x x

(iv) The presence of a tampered, broken, or fake seal on the meter, or mutilated, altered, or tampered meter recording chart or graph or computerized chart, graph, or log.

x x x x x x x x x

(viii) x x x *Provided, however*, That the discovery of any of the foregoing circumstances, in order to constitute *prima facie* evidence, **must be personally witnessed and attested to by an officer of the law or a duly authorized representative of the Energy Regulatory Board** *(ERB)*.

To reiterate, the discovery of a tampered, broken, or fake seal on the meter shall only constitute *prima facie* evidence of illegal use of electricity by the person who benefits from the illegal use *if* such discovery is **personally witnessed and attested to by <u>an officer of the law</u> or a duly authorized <u>representative of the Energy Regulatory Board</u>** (*ERB*). With such *prima facie* evidence, MERALCO is within its rights to immediately disconnect the electric service of the consumer after due notice.

Section 1, Rule III of the Rules and Regulations Implementing RA 7832 (*IRR*) defines an officer of the law as one "*who, by direct supervision of law or by election or by appointment by*

competent authority, is charged with the maintenance of public order and the protection and security of life and property, such as barangay captain, barangay chairman, barangay councilman, barangay leader, officer or member of Barangay Community Brigades, barangay policeman, PNP policeman, municipal councilor, municipal mayor and provincial fiscal."

The importance of having an authorized government representative present during an inspection was highlighted during the Senate deliberations on RA 7832 when Senator John H. Osmeña, the law's author, explained:

> Mr. President, if a utility like MERALCO finds certain circumstances or situations which are listed in Section 2 of this bill to be *prima facie* evidence, **I think they should be prudent enough to bring in competent authority, either the police or the NBI, to verify or substantiate their finding.** If they were to summarily proceed to disconnect on the basis of their findings and later on there would be a court case and the customer or the user would deny the existence of what is listed in Section 2, then they could be in a lot of trouble.[16]

We emphasized the significance of this requirement in *Sps. Quisumbing v. MERALCO,*[17] when we said:

> **The presence of government agents who may authorize immediate disconnections go into the essence of due process**. Indeed, we cannot allow respondent to act virtually as prosecutor and judge in imposing the penalty of disconnection due to alleged meter tampering. That would not sit well in a democratic country. After all, Meralco is a monopoly that derives its power from the government. Clothing it with unilateral authority to disconnect would be equivalent to giving it a license to tyrannize its hapless customers.[18]

After thoroughly examining the records of this case, we find no proof that MERALCO ever complied with the required presence of an "officer of the law." In his testimony, Albano

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[16] Record of the Senate, Vol. IV, No. 61, March 9, 1994, p. 357.

[17] 429 Phil. 727 (2002).

[18] *Id.* at 744-745.

never mentioned that he was accompanied by an authorized government representative during the inspection. As evident from the Meter/Socket Inspection Report, only Albano inspected the Chuas' electric meter; no evidence shows that he was accompanied by anyone else. Most telling of all, MERALCO does not even allege in its submissions with this Court that an ERB representative or an officer of the law ever accompanied its representative during the inspection of the Chuas' electric meter.

We note, too, that while MERALCO claimed in its Answer that an ERB representative was present and witnessed the *testing* of the Chuas' electric meter at the MERALCO laboratory,[19] it never once identified this ERB representative. MERALCO did not allege in either the present petition or in the Memorandum it filed with this Court that an ERB representative witnessed the laboratory testing of the Chuas' electric meter. The Meter Verification Report,[20] the document that contains the results of the laboratory testing, was also not signed by either an ERB representative or by any officer of the law.

For lack of any evidence showing that a government representative personally witnessed and attested to the discovery of the Chuas' tampered electric meter, no supporting *prima facie* evidence can be invoked for the immediate disconnection of the Chuas' electric service pursuant to Section 4 of RA 7832.

Consumer not the proper witness to inspection

Rule III, Section 1 of the IRR provides: "In order to constitute *prima facie* evidence, the discovery of any of the circumstances enumerated in Section 1 hereof, must be personally witnessed and attested to **by the consumer concerned** or a duly authorized ERB representative or any officer of the law, as the case may be."

We hold the view, however, that the inclusion of the phrase "*by the consumer concerned*" in the IRR is invalid because it is in excess of what the law being implemented provides.

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[19] *Rollo*, p. 62.

[20] RTC Records, pp. 58-59.

As RA 7832 stands, only the presence of an authorized government agent, either an officer of the law or an authorized representative of the ERB, during the MERALCO inspection would allow any of the circumstances enumerated in Section 4 of RA 7832 to be considered *prima facie* evidence of illegal use of electricity by the benefited party. The law does not include the consumer or the consumer's representative in this enumeration.

In legal contemplation, the ERB's inclusion of the phrase *"by the consumer concerned"* in Rule III, Section 1 of the IRR **expanded the clear wording of the law** and violated the recognized principle that an administrative agency's rule-making power is confined to filling in the gaps and the necessary details in carrying into effect the law as enacted; rule-making cannot extend, amend, or expand statutory requirements or embrace matters not covered by the law being implemented. Administrative regulations must always be in harmony with the provisions of the law because any resulting discrepancy between the two will always be resolved in favor of the basic law.[21] In the present case, the consumer cannot in any way be considered to be in the same classification as the named government representatives so that his or her presence can be a substitute for the presence of these representatives.

For this reason, even if Florence Chua, the Chuas' daughter, acknowledged that she witnessed Albano's examination of the electric meter outside their house so that she signed the Meter/Socket Inspection Report, her presence did not characterize the discovered broken meter seal as *prima facie* evidence of illegal use of electricity justifying immediate disconnection.

Legal requirements for authority to disconnect electricity

Section 6 of RA 7832 provides another mandatory requirement before MERALCO can immediately disconnect a consumer's electric service. The provision reads:

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[21] *Landbank of the Philippines v. Court of Appeals,* 327 Phil. 1047, 1052 (1996).

SEC. 6. ***Disconnection of Electric Service***. – The private electric utility or rural electric cooperative concerned shall have the right and authority to disconnect immediately the electric service after serving the written notice or warning to the effect, without the need of a court or administrative order, and deny restoration of the same, **when the owner of the house or establishment concerned or someone acting in his behalf shall have been caught *en flagrante delicto* doing any of the acts enumerated in Section 4** (a) hereof, or when any of the circumstances so enumerated shall have been **discovered for the second time**: *Provided,* That in the second case, a written notice or warning shall have been issued upon the first discovery: *Provided, further*, That the electric service shall not be immediately disconnected or shall be immediately restored upon the deposit of the amount representing the differential billing by the person denied the service, with the private electric utility or the rural cooperative concerned or with the competent court as the case may be*: Provided, furthermore*, That if the court finds that illegal use of electricity has not been committed by the same person, the amount deposited shall be credited against future billings, with legal interest thereon chargeable against the private utility or rural electric cooperative, and the utility or cooperative shall be made to immediately pay such person double the value of the payment or deposit with legal interest, which amount shall likewise be creditable against immediate future billings, without prejudice to any criminal, civil or administrative action that such person may be entitled to file under existing laws, rules and regulations: *Provided, finally*, That if the court finds the same person guilty of such illegal use of electricity, he shall, upon final judgment, be made to pay the electric utility or the rural electric cooperative concerned double the value of the estimated electricity illegally used which is referred to in this section as differential billing.

In other words, MERALCO is authorized to immediately disconnect the electric service of its consumers without the need of a court or administrative order when: (a) the consumer, or someone acting in his behalf, is caught *in flagrante delicto* in any of the acts enumerated in Section 4 of RA 7832; or (b) when any of the circumstances constituting *prima facie* evidence of illegal use of electricity is discovered for the second time.

In flagrante delicto means "[i]n the very act of committing the crime."[22] To be caught *in flagrante delicto*, therefore, necessarily implies positive identification by an eyewitness or eyewitnesses *to the act of tampering* so that there is "direct evidence" of culpability, or "that which proves the fact in dispute without the aid of any inference or presumption."[23]

In the present case, however, MERALCO presented no proof that it ever caught the Chuas, or anyone acting in the Chuas' behalf, in the act of tampering with their electric meter. As correctly observed by the CA, the Chuas could not have been caught *in flagrante delicto* committing the tampering since in the first place, they were the ones who reported the defect in their meter. Moreover, the presence of a broken cover seal, broken sealing wire, and a missing terminal seal, is not enough to declare the Chuas *in flagrante delicto* tampering with the electric meter. As the basic complaint for *mandamus* alleged, without any serious refutation from the petitioner, the electric meter is in a concrete post outside of the Chuas' perimeter fence; hence, in a location accessible to the public. We note, too, that MERALCO did not present any evidence that it caught the Chuas committing any of the acts constituting *prima facie* evidence of illegal use of electricity *for the second time*.

In view of MERALCO's failure to comply with both Section 4 and Section 6 of RA 7832, MERALCO obviously had no authority to immediately disconnect the Chuas' electric service.

Writ of Mandatory Injunction

On the validity of the injunctive writ the lower court issued in the Chuas' favor, MERALCO submits that the Chuas were not entitled to an injunctive writ since it had a right, under the law, to automatically disconnect the latter's electric service. Furthermore, Section 9 of RA 7832 prohibits courts from issuing injunctions or restraining orders against electric utilities from

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[22] *People v. Fronda*, 384 Phil. 732 (2000), citing *Black's Law Dictionary*, 575 (5th ed., 1979).

[23] *Go v. Leyte II Electric Cooperative, Inc.,* 546 Phil. 187, 195 (2008).

disconnecting service *unless* the consumer proves that the electric utility acted with evident bad faith in disconnecting the electric service. This cited provision states:

> Section 9. *Restriction on the Issuance of Restraining Orders or Writs of Injunction.* – No writ of injunction or restraining order shall be issued by any court against any private electric utility or rural electric cooperative exercising the right and authority to disconnect electric service as provided in this Act, unless there is *prima facie* evidence that the disconnection was made with evident bad faith or grave abuse of authority.

We have fully discussed above why MERALCO was not in the position under RA 7832 to immediately disconnect the Chuas' electric service. We add that while electricity is property[24] whose enjoyment, as a general rule, the owner may extend or deny to others,[25] electricity is not an ordinary kind of property that a service provider may grant or withhold to consumers at will. Electricity is a basic necessity whose generation and distribution is imbued with public interest, and its provider is a public utility subject to strict regulation by the State in the exercise of police power.[26] In view of the serious consequences resulting from immediate disconnection of electric service, the law provides strict requisites that MERALCO must follow before it can be granted authority to undertake instant disconnection of electric service due to its consumers. In view of MERALCO's dominance over its market and its customers and the latter's relatively weak bargaining position as against MERALCO, and in view too of the serious consequences and hardships a customer stands to suffer upon service disconnection, MERALCO's failure

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[24] *United States v. Carlos*, 21 Phil. 553, 560 (1911).

[25] Article 429 of the Civil Code provides:

The owner or lawful possessor of a thing has the right to exclude any person from the enjoyment and disposal thereof. For this purpose, he may use such force as may be reasonable to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property.

[26] *Republic v. Manila Electric Company*, 440 Phil. 389 (2002).

to strictly observe these legal requirements can be equated to the bad faith or abuse of right[27] that the law speaks of.

Under the circumstances, we cannot but conclude that MERALCO abused its superior and dominant position as well as the authority granted to it by law as a service provider when it persisted in disconnecting the Chuas' electric service. Hence, the general prohibition against the issuance of a restraining order or an injunction under Section 9 of RA 7832 cannot apply. Rather, what must prevail is the exception: an injunction can issue when a disconnection has been attended by bad faith or grave abuse of authority.

As to whether the Chuas are entitled to a writ of mandatory injunction, we rule in the affirmative. An injunctive writ issues only upon a showing that: a) the applicant possesses a clear and unmistakable right; b) there is a material and substantial invasion of such right; and c) there is urgent and permanent necessity for an injunctive writ to prevent serious damage.[28]

In the present case, the Chuas have established that they are paying MERALCO customers. In the absence of the *prima facie* evidence required by Section 4 and by the requirements of Section 6 of RA 7832 that the Chuas tampered with their electric meter, and in light as well of the merits of the Chuas' case as discussed below, the Chuas have an unmistakable right to be provided with continuous power supply – a right MERALCO obviously invaded when it cut off the Chuas' electric service. Electricity being what it is and has been in modern day living, an urgent and permanent need exists to prevent MERALCO from cutting off the Chuas' electric service under the circumstances that gave rise to the present dispute. Accordingly,

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[27] *Samar II Electric Cooperative, Inc. v. Quijano*, G.R. No. 144474, April 27, 2007, 522 SCRA 364, 376, citing *Manila Electric Company v. Hon. Lorna Navarro-Domingo*, G.R. No. 161893, June 27, 2006, 493 SCRA 363.

[28] *Manila Electric Company v. Jose*, G.R. No. 152769, February 14, 2007, 515 SCRA 669, 675, citing *Bank of the Philippine Islands v. Court of Appeals*, G.R. No. 142731, June 8, 2006, 490 SCRA 168, 175.

we uphold the RTC and CA decisions ordering MERALCO to immediately restore the Chuas' electric service.

Differential billing

MERALCO further asserts that the Chuas should be made to pay the differential billing for the electricity that they actually consumed but which was not reflected on their electric bills due to the tampered electric meter. Since the *prima facie* presumption afforded by Section 4 of RA 7832 does not apply, it falls upon MERALCO to first prove that the Chuas actually manipulated the dial pointers on their meter before it can hold them accountable for the differential billing. The circumstances discussed below, however, cast serious doubt on the allegation and assumption that the Chuas ever tampered with their electric meter.

First, we stress once again that the Chuas themselves requested MERALCO to inspect their meter for possible defects after they received their unusually high September 1996 bill; the Chuas themselves were instrumental in discovering the tampered condition of their electric meter. Had the Chuas been guilty of tampering as MERALCO assumed, they would not have drawn attention to themselves by reporting the problem with their meter; as the beneficial users of the electric service, they would have been MERALCO's main suspects once the tampering came to light. We thus find it highly illogical for the Chuas to be guilty of actual tampering given their actions on record on the discovery of the tampered condition of their meter.

Second, we observe that based on the Chuas' billing record, **no discernable difference exists between the Chuas' electric bills before and after MERALCO had replaced their tampered meter**. The Chuas consumed between 231 to 269 kilowatt hours of electricity per month from June 11, 1996 to September 11, 1996, with their corresponding monthly electric bills ranging from ₱747.84 to ₱887.27. (Their long-term usage record is further reflected in the appropriate footnoted table below.) The following usage record is undisputed after MERALCO installed a new meter to replace the tampered one.

Date	Kilowatt hours	Amount Paid (pesos)
October **1996**	1,297	4,906.87
November	227	781.86
December	228	806.19
January **1997**	254	898.89
January 24, 1997	96	331.04

Tampering with the electric meter is committed by the consumer to prevent the meter from registering the correct amount of electric consumed; thus, while using the same regular power supply, they are billed for less than what they actually consumed. Tampering affects only the registered usage as reflected in the electric meter, not the amount of electricity actually used, assuming a more or less uniform monthly usage of electricity.[29] Stated otherwise, when an electric meter is tampered, the recorded consumption is less than the electricity actually used. Consequently, **when a tampered electric meter is replaced, assuming the same amount of monthly rate of usage, the new electric meter will register the increased use of electricity that had previously been concealed by the tampered meter.**[30]

If the Chuas had truly tampered with their electric meter, it stands to reason that after MERALCO replaced the tampered electric meter with a new one, the Chuas' electric bills would have gone up to reflect the electricity they were actually consuming. **That the Chuas' monthly electric consumption remained virtually unchanged even after the defective electric meter had been replaced strongly disproves the contentions that the Chuas tampered with their electric meter and that the Chuas' electric meter registered less than the electricity**

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[29] *MERALCO v. Wilcon Builders Supply, Inc.,* G.R. No. 171534, June 30, 2008, 556 SCRA 742, 753-754, citing *MERALCO v. T.E.A.M. Electronics Corporation*, G.R. No. 131723, December 13, 2007, 540 SCRA 62.

[30] *Id.* at 754.

they had actually "consumed." Given the surrounding circumstance, the sequence of events, and the electric meter readings, *i.e.,* the exposed location of the Chuas' electric meter, the long-term consumption record shown below, the unusual upward spike of the meter reading in September 1996, the inspection and the replacement by a new electric meter, and the continued readings consistent with the readings prior to the September 1996 spike, it would not be surprising if the tampering of the seals came immediately before September 1996 and were made by parties other than the Chuas for their own reasons. To be sure, the Chuas would not have tampered with their own meter to increase their meter reading.

Aside from the doubtful veracity of the allegation and assumption that the Chuas tampered with their meter, we also consider that MERALCO did not provide any factual or legal basis for its differential billing. Section 6 of RA 7832 supplies the manner by which a public utility can compute the differential billing.

SEC. 6. ***Disconnection of Electric Service***. – x x x

For purposes of this Act, "**differential billing**" shall refer to the amount to be charged to the person concerned for the unbilled electricity illegally consumed by him as determined through the use of methodologies which utilize, among other, as basis for determining the amount of monthly electric consumption in kilowatt-hours to be billed either: (a) **the highest recorded monthly consumption within the five-year billing period preceding the time of the discovery**, (b) the estimated monthly consumption as per the report of load inspection conducted during the time of the discovery, (c) the higher consumption between the average consumption before or after the highest drastic drop in consumption within the five year billing period preceding the discovery, (d) the highest recorded monthly consumption within four (4) months after the time of discovery, or (e) the result of the ERB test during the time of discovery and, **as basis for determining the period to be recovered by the differential billing**, either: (1) the time when the electric service of the person concerned recorded an **abrupt or abnormal drop in consumption**, or (2) when there was **change in his service connection** such as a change in his service connection such as a change of meter, change of seal or reconnection, or in the

absence thereof, a maximum of sixty (60) billing months, up to the time of discovery: *Provided, however*, That such period shall, in no case, be less than one (1) year preceding the date of discovery of the illegal use of electricity.

According to MERALCO's witness, Enrique Katipunan, the period affected by the Chuas' tampered electric meter was from August 17, 1992 to October 11, 1996 (*affected period*).[31] In line with the fundamental rule that the burden of evidence lies with the person who asserts the affirmative allegation,[32] MERALCO thus carried the burden to prove that the Chuas' electric meter had been tampered with as early as August 17, 1992.

Significantly, while Katipunan stated that he "studied the Chuas' billing history to establish the affected period from August 17, 1992 to October 11, 1996,"[33] **we find conspicuously absent from his testimony any statement explaining how he established this four-year period as the period affected by the tampered electric meter**. Katipunan did not mention any abrupt or abnormal drop in the Chuas' electric consumption, nor did he identify anything suspicious in the Chuas' billing history that would lead him to conclude that the tampering began on August 17, 1992. All we have to rely on is Katipunan's assurance that the Chuas' electric meter existed in a tampered state for this whole four-year period. This testimony, however, is uncorroborated by evidence.

We are not unaware that MERALCO used the Chuas' September 1996 bill to compute the differential billing – the same bill that the Chuas protested with Meralco for being extraordinarily high. While Section 6 of RA 7832 does allow MERALCO to use the consumer's highest recorded monthly

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[31] TSN, November 15, 2001, pp. 8-9.

[32] *Aklan Electric Cooperative, Inc. v. National Labor Relations Commission*, 380 Phil. 225, 245 (2000); *Philippine Fruit & Vegetable Industries, Inc. v. National Labor Relations Commission*, 369 Phil. 929, 938 (1999).

[33] *Supra* note 31, p. 8.

consumption as the basis to compute the differential billing, still, Meralco – after examining the Chuas' records for the past four years[34] – should have noticed that the September 1996 bill

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[34] According to MERALCO's Computation Worksheet, the Chuas had the following billing record for the affected period:

Date	Kilowatt hours	Amount Paid (Pesos)
September **1992**	189	473.96
October	215	547.50
November	232	605.90
December	188	477.74
January **1993**	183	464.60
February	196	509.31
March	183	470.03
April	197	511.62
May	200	557.11
June	233	664.51
July	229	651.98
August	174	482.52
September	181	507.44
October	241	703.54
November	255	751.52
December	187	527.55
January **1994**	249	728.65
February	223	684.42
March	187	559.47
April	218	666.16
May	224	686.80
June	240	750.68
July	213	656.41
August	231	717.46
September	256	806.03
October	240	742.22
November	244	750.58
December	251	768.61

was truly unusual. As seen from their billing history, while the Chuas consistently consumed no more than 300 kilowatt hours of electricity every month for the past four years, in their September bill, their usage dramatically spiked to 1,297 kilowatt hours, or a difference of more than 400%. Even more telling is that **after MERALCO replaced the alleged tampered electric meter, the Chuas continued to consume the same amount of electricity they had consumed prior to the September 1996 bill.**

Given the strange circumstances surrounding the September 1996 bill, MERALCO should have exercised prudence and

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January **1995**	277	855.29
February	210	629.26
March	220	669.39
April	244	769.68
May	248	767.34
June	284	887.43
July	240	733.21
August	259	812.15
September	298	922.09
October	261	789.76
November	278	855.17
December	266	812.92
January **1996**	296	931.59
February	293	908.65
March	157	462.62
April	236	769.58
May	286	956.09
June	281	925.72
July	231	747.84
August	269	887.27
September	250	820.59
October	**1,297**	**4,812.47**

RTC Records, pp. 61-63.

employed another method to compute the Chuas' differential billing, such as using the estimated monthly consumption based on a load inspection report. At the very least, MERALCO should have exerted efforts to investigate the Chuas' complaint regarding the sudden increase in their electric bill, especially considering the Chuas' claim that they had not done anything new or used any additional appliances during the period covered by the September 1996 bill.[35] We find it significant that nothing in the record suggests that MERALCO even attempted to study, or even tried to explain, the sudden surge in the Chuas' September 1996 bill.

We highlight another important point to consider – that MERALCO sent the Chuas another letter dated February 5, 1997, where it reduced the Chuas' differential billing from ₱183,983.66 to ₱71,737.49.[36] While MERALCO admitted the existence of this letter in the proceedings before the lower courts, **it chose to ignore the existence of this February 5, 1997 letter in its submissions with this Court**; instead, in the Petition and Memorandum it filed with this Court, MERALCO reverted to its demand that the Chuas pay the original differential billing of ₱183,983.66. This unexplained and inconsistent MERALCO posture further strengthens our doubts on to the legitimacy and correctness of the Chuas' differential billing.

MERALCO is duty bound to explain to its customers the basis for arriving at any given billing, particularly in cases of unregistered consumptions. Otherwise, consumers will stand piteously at the public utility's mercy.[37] Courts cannot and will not in any way blindly grant a public utility's claim for differential billing if there is no sufficient evidence to prove entitlement.[38] As MERALCO has failed to substantiate its claim

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[35] *Rollo*, pp. 45-46.

[36] *Supra* note 11.

[37] *MERALCO v. Macro Textile Mills Corporation*, 424 Phil. 811, 828 (2002).

[38] *MERALCO v. Wilcon Builders Supply, Inc., supra* note 29, pp. 756-757.

for the differential billing, we rule that the Chuas cannot be held to account for the billed amount.

MERALCO guilty of inexcusable negligence

Apart from lacking factual or legal basis, another reason for us not to hold the Chuas accountable for MERALCO's differential billing is our previous ruling in *Ridjo Tape & Chemical Corp. v. CA*,[39] where we said:

> It has been held that notice of a defect need not be direct and express; **it is enough that the same had existed for such a length of time that it is reasonable to presume that it had been detected, and the presence of a conspicuous defect which has existed for a considerable length of time will create a presumption of constructive notice thereof**. **Hence, MERALCO's failure to discover the defect, if any, considering the length of time, amounts to inexcusable negligence**. Furthermore, we need not belabor the point that as a public utility, MERALCO has the obligation to discharge its functions with utmost care and diligence.
>
> Accordingly, we are left with no recourse but to conclude that this is a case of negligence on the part of MERALCO for which it must bear the consequences. Its failure to make the necessary repairs and replacement of the defective electric meter installed within the premises of petitioners was obviously the proximate cause of the instant dispute between the parties.
>
> Indeed, if an unusual electric consumption was not reflected in the statements of account of petitioners, MERALCO, considering its technical knowledge and vast experience in providing electric service, could have easily verified any possible error in the meter reading. In the absence of such a mistake, the electric meters themselves should be inspected for possible defects or breakdowns and forthwith repaired and, if necessary, replaced. x x x

The rationale behind this ruling is that **public utilities should be put on notice, as a deterrent, that if they completely disregard their duty of keeping their electric meters in serviceable condition, they run the risk of forfeiting, by reason of their negligence, amounts originally due from their customers.** Certainly, we cannot sanction a situation wherein the defects in the

[39] 350 Phil. 184 (1998).

electric meter are allowed to continue indefinitely until suddenly the public utilities concerned demand payment for the unrecorded electricity utilized when, in the first place, they should have remedied the situation immediately. If we turn a blind eye on MERALCO's omission, it may encourage negligence on the part of public utilities, to the detriment of the consuming public.[40]

While *Ridjo* involved a defective meter, we have, on occasion, applied this same doctrine to cases that involved allegations of meter tampering. In both *Manila Electric Company v. Macro Textile Mills, Corp.*[41] and *Davao Light & Power Co., Inc. v. Opena*,[42] we faulted the electric companies involved for not immediately inspecting the electric meters after they noted a sudden drop in the consumer's registered electric consumption. Since, in both cases, the public utility companies allowed several years to lapse before deciding to conduct an inspection of the electric meters, we ruled that they were both negligent and consequently barred them from collecting their claims of differential billing against the consumers.

With these rulings in mind, we held in *MERALCO v. Wilcon Builders Supply, Inc.*[43] that the use of the words "defect" and "defective" in *Ridjo* does not restrict the inexcusable negligence doctrine to cases of "mechanical defects" in installed electric meters. We said:

The *Ridjo* doctrine simply states that the public utility has the imperative duty to make a reasonable and proper inspection of its apparatus and equipment to ensure that they do not malfunction. Its failure to discover the defect, if any, considering the length of time, amounts to inexcusable negligence; its failure to make the necessary repairs and replace the defective electric meter installed within the consumer's premises limits the latter's liability. The use of the words "defect" and "defective" in the above-cited case does not restrict the application of the doctrine to cases of "mechanical defects" in

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[40] *Id.* at 194-195.

[41] 424 Phil. 811 (2002).

[42] G.R. No. 129807, December 9, 2005, 477 SCRA 58.

[43] *Supra* note 29.

the installed electric meters. **A more plausible interpretation is to apply the rule on negligence whether the defect is inherent, intentional or unintentional, which therefore covers tampering, mechanical defects and mistakes in the computation of the consumers' billing.**[44]

The production and distribution of electricity is a highly technical business undertaking. In conducting its operation, it is only logical for a public utility, such as MERALCO, to employ mechanical devices and equipment for the orderly pursuit of its business.[45] MERALCO has the imperative duty to make a reasonable and proper inspection of its apparatus and equipment to ensure that they do not malfunction, and the due diligence to discover and repair defects therein. Failure to perform such duties constitutes negligence.[46]

True, consumers who tamper with their electric meter do so surreptitiously to avoid being detected by the public utility providing the service; hence, at first glance, it may seem unreasonable for us to chastise MERALCO for not detecting the alleged tampering sooner. However, what stands out in this case is the **sheer length of time** that the Chuas' electric meter allegedly existed in a tampered state without being discovered by MERALCO if indeed the electric meter had been defective since 1992. If we presume MERALCO's findings to be correct, MERALCO discovered the broken seals in the Chuas' meter after **more than four years** (from August 1992 to October 1996), and only because the Chuas reported a possible defect with their electric meter to the public utility company.

Aside from the long period of time involved, we also underscore the fact that the alleged tampering in this case did not require special training or knowledge to be detected. Certainly, the missing terminal seal, the broken cover seal, and the broken sealing wire of the meter[47] are visible to the

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[44] *Id.* at 750-751.

[45] *Ridjo Tape and Chemical Corp. v. CA*, *supra* note 39, p. 193.

[46] *Id.* at 194.

[47] *Supra* note 8.

naked eye and would have caught the attention of MERALCO's personnel in the course of their meter readings.

As in *Ridjo*, we take judicial notice that during this long period of time, MERALCO's personnel had the opportunity to inspect and examine the Chuas' electric meter for the purpose of determining the monthly dues payable. Even if MERALCO did not conduct these regular monthly inspections, we find it reasonable to expect that within this four-year period, MERALCO would, at the very least, annually examine the electric meter to verify its condition and to determine the accuracy of its readings if ordinary examination shows defects as in the case of the Chuas' meter. That it failed to do so constitutes negligence on its part, and bars it from collecting its claim for differential billing.

On the issue of moral damages

Article 32 of the Civil Code provides that moral damages are proper when the rights of individuals, including the right against deprivation of property without due process of law, are violated. Jurisprudence has established the following requisites for the award of moral damages: (1) there is an injury – whether physical, mental, or psychological – clearly sustained by the claimant; (2) there is a culpable act or omission factually established; (3) the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) the award of damages is predicated on any of the cases stated in Article 2219 of the Civil Code.[48]

Considering the manner MERALCO disconnected the Chuas' electric service, we find the award of moral damages proper. Apart from the havoc wreaked on the Chuas' daily lives when MERALCO abruptly and without legal basis cut off their electricity, the removal of the electric meter also caused the Chuas extreme social humiliation and embarrassment as they were subjected to speculations in their neighborhood of being

[48] *Citytrust Banking Corporation v. Villanueva*, 413 Phil. 776 (2001); *Expertravel & Tours, Inc. v. CA*, 368 Phil. 444 (1999).

"power thieves." As Mrs. Felicidad Chua testified, she suffered sleepless nights and felt serious anxiety after the removal of their electric meter came to the attention of the *barangay*. In fact, she even had to consult a doctor for this anxiety.[49] Thus, even if the Chuas did subsequently obtain their electricity from another source,[50] the damage to the Chuas' reputation and social standing had already been done.

However, moral damages, which are left largely to the sound discretion of the courts, should be granted in reasonable amounts, considering the attendant facts and circumstances.[51] Moral damages, though incapable of pecuniary estimation, are designed to compensate the claimant for actual injury suffered and not to impose a penalty.[52] As prevailing jurisprudence[53] deems the award of moral damages in the amount of ₱100,000.00 appropriate in cases where MERALCO wrongfully disconnected electric service, we uphold the CA ruling, reducing the moral damages awarded from ₱300,000.00 to ₱100,000.00.

WHEREFORE, the petition is hereby *DENIED*. The assailed decision of the Court of Appeals dated October 20, 2003 in CA-G.R. SP No. 77034 is *AFFIRMED in toto*.

SO ORDERED.

Carpio Morales (Chairperson), Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

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[49] TSN, December 1, 1998, p. 7.

[50] From their relative, Teresita Paqueo's electric meter. *Rollo*, p. 70.

[51] *Prudenciado v. Alliance Transport System, Inc.*, G.R. No. L-33836, March 16, 1987, 148 SCRA 440.

[52] *San Andres v. CA*, 201 Phil. 552, 557 (1982).

[53] See *Manila Electric Company v. Jose*, *supra* note 28; *Manila Electric Company v. Vda. de Santiago*, G.R. No. 170482, September 4, 2009, 598 SCRA 315.

[*] Designated additional Member of the Third Division effective May 17, 2010, per Special Order No. 843 dated May 17, 2010.

SECOND DIVISION

[G.R. No. 164257. July 5, 2010]

SAN MIGUEL CORPORATION, *petitioner, vs.* **VICENTE B. SEMILLANO, NELSON MONDEJAR, JOVITO REMADA, ALILGILAN MULTI-PURPOSE COOP (AMPCO) and MERLYN V. POLIDARIO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FINDINGS OF FACT MADE BY THE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION ARE ACCORDED MUCH RESPECT AND EVEN FINALITY WHEN SUPPORTED BY AMPLE EVIDENCE AND AFFIRMED BY THE COURT OF APPEALS.—** Generally, the findings of fact made by the Labor Arbiter and the NLRC, as the specialized agencies presumed to have the expertise on matters within their respective fields, are accorded much respect and even finality, when supported by ample evidence and affirmed by the CA. The fact that the NLRC, in its subsequent resolution, reversed its original decision does not render the foregoing inapplicable where the resolution itself is not supported by substantial evidence.

2. **LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; PAYMENT OF WAGES; CONTRACTOR OR SUB-CONTRACTOR; CRITERIA TO DETERMINE THE EXISTENCE OF AN INDEPENDENT AND PERMISSIBLE CONTRACTOR RELATIONSHIP.—** The test to determine the existence of independent contractorship is whether or not the one claiming to be an independent contractor has contracted to do the work according to his own methods and without being subject to the control of the employer, except only as to the results of the work. The existence of an independent and permissible contractor relationship is generally established by the following criteria: whether or not the contractor is carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the

performance of a specified piece of work; the control and supervision of the work to another; the employer's power with respect to the hiring, firing and payment of the contractor's workers; the control of the premises; the duty to supply the premises, tools, appliances, materials, and labor; and the mode, manner and terms of payment.

3. ID.; ID.; ID.; ID.; PETITIONER FAILED TO PROVE THAT IT HAS SUBSTANTIAL EQUIPMENT, TOOLS MACHINERIES, AND SUPPLIES ACTUALLY USED BY IT IN THE PERFORMANCE OR COMPLETION OF THE SEGREGATION AND PILING JOB.— Although there may be indications of an independent contractor arrangement between petitioner and AMPCO, the most determinant of factors exists which indicate otherwise. Petitioner's averment that AMPCO had total assets amounting to ₱932,599.22 and income of ₱2,777,603.46 in 1994 was squarely debunked by the LA. x x x Neither did petitioner prove that AMPCO had substantial equipment, tools, machineries, and supplies actually and directly used by it in the performance or completion of the segregation and piling job. In fact, as correctly pointed out by the NLRC in its original decision, there is nothing in AMPCO's list of fixed assets, machineries, tools, and equipment which it could have used, actually and directly, in the performance or completion of its contracted job, work or service with petitioner. For said reason, there can be no other logical conclusion but that the tools and equipment utilized by respondents are owned by petitioner SMC. It is likewise noteworthy that neither petitioner nor AMPCO has shown that the latter had clients other than petitioner. Therefore, AMPCO has no independent business.

4. ID.; ID.; ID.; ID.; "CONTROL TEST," NOT ESTABLISHED.— DOLE Department Order No. 10 also states that an independent contractor carries on an independent business and undertakes the contract work on his own account, under his own responsibility, according to his own manner and method, and free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof. This embodies what has long been jurisprudentially recognized as the control test to determine the existence of employer-employee relationship.

In the case at bench, petitioner faults the CA for holding that the respondents were under the control of petitioner whenever they performed the task of loading in the delivery trucks and unloading from them. It, however, fails to show how AMPCO took "entire charge, control and supervision of the work and service agreed upon." AMPCO's Comment on the Petition is likewise utterly silent on this point. Notably, both petitioner and AMPCO chose to ignore the uniform finding of the LA, NLRC (in its original decision) and the CA that one of the assigned jobs of respondents was to "perform other acts as may be ordered by SMC's officers." Significantly, AMPCO, opted not to challenge the original decision of the NLRC that found it a mere labor-only contractor.

5. **ID.; ID.; ID.; ID.; ACTUAL STATUS AND PARTICIPATION OF RESPONDENTS' EMPLOYMENT BELIE THE CONTENTS OF THEIR SERVICE CONTRACT.—** The Court is not convinced that AMPCO wielded "exclusive discretion in the discharge" of respondents. As the CA correctly pointed out, Merlyn Polidario, AMPCO's project manager, even told respondents to "wait for further instructions from the SMC's supervisor" after they were prevented from entering petitioner SMC's premises. Based on the foregoing, no other logical conclusion can be reached than that it was petitioner, not AMPCO, who wielded power of control. Despite the fact that the service contracts contain stipulations which are earmarks of independent contractorship, they do not make it legally so. The language of a contract is neither determinative nor conclusive of the relationship between the parties. Petitioner SMC and AMPCO cannot dictate, by a declaration in a contract, the character of AMPCO's business, that is, whether as labor-only contractor, or job contractor. AMPCO's character should be measured in terms of, and determined by, the criteria set by statute. At a closer look, AMPCO's actual status and participation regarding respondents' employment clearly belie the contents of the written service contract.

6. **ID.; ID.; ID.; ID.; THE INDEPENDENT CONTRACTOR'S CERTIFICATE OF REGISTRATION ISSUED BY THE DEPARTMENT OF LABOR AND EMPLOYMENT IS NOT CONCLUSIVE PROOF OF ITS STATUS.—** Petitioner cannot rely either on AMPCO's Certificate of Registration as an

Independent Contractor issued by the proper Regional Office of the DOLE to prove its claim. It is not conclusive evidence of such status. The fact of registration simply prevents the legal presumption of being a mere labor-only contractor from arising. In distinguishing between permissible job contracting and prohibited labor-only contracting, the totality of the facts and the surrounding circumstances of the case are to be considered.

7. **ID.; ID.; ID.; RESPONDENTS CLEARLY PERFORMED ACTIVITIES DIRECTLY RELATED TO PETITIONER'S MAIN LINE OF BUSINESS.—** Petitioner also argues that among the permissible contracting arrangements include "work or services not directly related or not integral to the main business or operation of the principal including… work related to manufacturing processes of manufacturing establishments." The Court is not persuaded. The evidence is clear that respondents performed activities which were directly related to petitioner's main line of business. Petitioner is primarily engaged in manufacturing and marketing of beer products, and respondents' work of segregating and cleaning bottles is unarguably an important part of its manufacturing and marketing process.

8. **ID.; ID.; ID.; PETITIONER, AS PRINCIPAL EMPLOYER, IS SOLIDARILY LIABLE WITH THE CONTRACTOR, FOUND TO BE A LABOR-ONLY CONTRACTOR, AND IS DEEMED AN AGENT OF THE PRINCIPAL.—** Petitioner claims that the present case is outside the jurisdiction of the labor tribunals because respondent Vicente Semillano is a member of AMPCO, not SMC. Precisely, he has joined the others in filing this complaint because it is his position that petitioner SMC is his true employer and liable for all his claims under the Labor Code. Thus, petitioner SMC, as principal employer, is solidarily liable with AMPCO, the labor-only contractor, for all the rightful claims of respondents. Under this set-up, AMPCO, as the "labor-only" contractor, is deemed an agent of the principal (SMC). The law makes the principal responsible over the employees of the "labor-only" contractor as if the principal itself directly hired the employees.

APPEARANCES OF COUNSEL

Roque E. Paloma, Jr. for petitioner.

Elmer C. Balbin for Alilgilan Multi-Purpose Coop. and Merlyn Polidario.

Manuel Lao Ong for Vicente B. Semillano, Nelson Mondejar & Jovito Remada.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing (i) the February 19, 2004 Decision[1] of the Court of Appeals in CA-G.R. SP. No. 75209 which reversed and set aside the February 28, 2002 and September 27, 2002 Resolutions of the National Labor Relations Commission in NLRC Case No. V-000588-98; and (ii) its May 28, 2004 Resolution[2] denying petitioner's motion for the reconsideration thereof.

The facts of the case, as found by the Court of Appeals,[3] are as follows:

> "xxx It appears that AMPCO hired the services of Vicente, *et al.* [Vicente Semillano, Nelson Mondejar, Jovito Remada and Alex Hawod,[4] respondents herein] on different dates in December [of 1991 and] 1994. All of them were assigned to work in SMC's Bottling Plant situated at Brgy. Granada Sta. Fe, Bacolod City, in order to perform the following tasks: segregating bottles, removing dirt therefrom, filing them in designated places, loading and unloading

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[1] Penned by Associate Justice Mercedes Gozo-Dadole with Associate Justice Eugenio S. Labitoria and Associate Justice Rosmari D. Carandang concurring.

[2] *Id.*

[3] *Rollo*, pp. 34-43.

[4] Complainant Alex Hawod's complaint was dismissed by the Labor Arbiter because his signature does not appear in complainant's position paper as well as in the Joint Affidavit submitted.

the bottles to and from the delivery trucks, and performing other tasks as may be ordered by SMC's officers. [They] were required to work inside the premises of SMC using [SMC's] equipment. [They] rendered service with SMC for more than 6 months.

Subsequently, SMC entered into a Contract of Services[5] with AMPCO designating the latter as the employer of Vicente, *et al*. As a result, Vicente, *et al.* failed to claim the rights and benefits ordinarily accorded a regular employee of SMC. In fact, they were not paid their 13th month pay. On June 6, 1995, they were not allowed to enter the premises of SMC. The project manager of AMPCO, Merlyn Polidario, told them to wait for further instructions from the SMC's supervisor. Vicente, *et al.* waited for one month, unfortunately, they never heard a word from SMC.

Consequently, Vicente, *et al.*, as complainants, filed on July 17, 1995 a COMPLAINT FOR ILLEGAL DISMISSAL with the Labor Arbiter against AMPCO, Merlyn V. Polidario, SMC and Rufino I. Yatar [SMC Plant Manager], as respondents. xxx Complainants alleged that they were fillers of SMC Bottling Plant xxx assigned to perform activities necessary and desirable in the usual business of SMC. xxx They claim that they were under the control and supervision of SMC personnel and have worked for more than 6 months in the company. As such, they assert that they are regular employees of SMC.

However, SMC utilized AMPCO making it appear that the latter was their employer, so that SMC may evade the responsibility of paying the benefits due them under the law. Finally, complainants contend that AMPCO and SMC failed to give their 13th month pay and that they were prevented from entering the SMC's premises. Hence, complainants contend that they were illegally dismissed from service.

On the other hand, respondent SMC raised the defense that it is not the employer of the complainants. According to SMC, AMPCO is their employer because the latter is an independent contractor xxx. Also SMC alleged that it was AMPCO that directly paid their salaries and remitted their contributions to the SSS. Finally, SMC

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[5] It appears from the records that there are two (2) Service Contracts material to the controversy. The first is dated April 1992. The contractual period is for six (6) months commencing February 1, 1992. The other is dated May 1993. The contractual period is for 12 months commencing April 16, 1993. Both contracts stipulate that it is deemed renewed on a month-to-month basis.

assails the jurisdiction of the Labor Arbiter contending that the instant dispute is intra-cooperative in nature falling within the jurisdiction of the Arbitration Committee of the Cooperative Development Authority.

On April 30, 1998, the Labor Arbiter *(LA)* rendered his decision.[6] The dispositive portion of which reads:

Wherefore, premises considered, judgment is hereby rendered declaring herein complainants as regular employees of San Miguel Corporation and the latter is ordered:

1. To reinstate complainants to their previous or equivalent positions without loss of seniority rights with payment of full backwages from the time of their illegal dismissal up to the time of their actual reinstatement; and

2. To pay complainant's counsel attorney's fees 10% of the total award or ₱36,625.76.

Per our computation complainants Vicente Semillano, Nelson Mondejar and Jovito Remada are entitled to the amount of ₱122,085.88 each as full backwages covering the period June 6, 1995 up to April 30, 1998.

SO ORDERED.[7]

Accordingly, respondents filed a motion for partial execution of the decision of the Labor Arbiter praying for their immediate reinstatement.[8] Petitioner San Miguel Corporation *(SMC)* filed its Opposition to the motion.[9] The LA, however, rendered no ruling thereon.[10]

Petitioner appealed the LA Decision to the NLRC. Initially, the NLRC Fourth Division affirmed with modifications the findings of the LA as follows:

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[6] Penned by Labor Arbiter Jesus N. Rodriguez, Jr.

[7] *Rollo*, p. 209.

[8] *Id.* at 210-211.

[9] *Id.* at 212-214.

[10] Nothing in the records indicates that there was execution of the reinstatement aspect, whether by actual or by payroll reinstatement.

WHEREFORE, premises considered, the appeals of respondents AMPCO and SMC are denied for lack of merit and the decision appealed from is affirmed with a modification in the following:

a. Respondent SMC to pay complainants their backwages from June 6, 1995 up to and until July 22, 1998;

b. Respondent SMC to pay complainants their accrued salaries and allowances from July 23, 1998 up to the present; and

c. Respondent SMC to pay complainants ten percent (10%) of the total award as attorney's fees.

Complainants, to restate, are regular employees of San Miguel Corporation and the latter is ordered to reinstate complainants to their former position as pilers/segregators.

Petitioner SMC moved for a reconsideration of the foregoing decision. In a Resolution dated February 28, 2002, the NLRC acted on the motion and *reversed* its earlier ruling. It absolved petitioner from liability and instead held AMPCO, as employer of respondents, liable to pay for respondents' backwages, accrued salaries, allowances, and attorney's fees. In holding that AMPCO was an independent contractor, NLRC was of the view that the law only required substantial capital *or* investment. Since AMPCO had "substantial capital of nearly one (1) million" then it qualified as an independent contractor. The NLRC added that even under the control test, AMPCO would be the real employer of the respondents, since it had assumed the entire charge and control of respondents' services. Hence, an employer-employee relationship existed between AMPCO and the respondents.

Respondents timely filed their motion for reconsideration of the NLRC resolution but it was denied.[11]

Feeling aggrieved over the turnaround by the NLRC, the respondents filed a petition for review on *certiorari* under Rule 65 with the Court of Appeals *(CA),* which favorably acted on it.

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[11] *Rollo*, pp. 106-109.

In overturning the commission's ruling, the Court of Appeals ironically applied the same control test that the NLRC used to resolve the issue of who the actual employer was. The CA, however, found that petitioner SMC wielded (i) the power of control over respondent, as SMC personnel supervised respondents' performance of loading and unloading of beer bottles, and (ii) the power of dismissal, as respondents were refused entry by SMC to its premises and were instructed by the AMPCO manager "to wait for further instructions from the SMC's supervisor." The CA added that AMPCO was a labor-only contractor since "a capital of nearly one million pesos" was insufficient for it to qualify as an independent contractor. Thus, the decretal portion reads:

WHEREFORE, premises considered, the instant petition is GRANTED. The assailed Resolutions dated February 28, 2002 and September 27, 2002 both issued by the public respondent National Labor Relations Commission in the case docketed as RAB CASE NO. 06-07-10298-95 are hereby SET ASIDE and a new one entered reinstating its original Decision dated June 30, 2000, which affirmed with modification the decision of the Labor Arbiter dated April 30, 1998. No pronouncement as to costs.

SO ORDERED.

SMC filed a motion for reconsideration but it was denied by the CA in its May 28, 2004 Resolution.[12]

Hence, this petition for review on *certiorari*.

Petitioner SMC argues that the CA wrongly assumed that it exercised power of control over the respondents just because they performed their work within SMC's premises. In advocacy of its claim that AMPCO is an independent contractor, petitioner relies on the provisions of the service contract between petitioner and AMPCO, wherein the latter undertook to provide the materials, tools and equipment to accomplish the services contracted out by petitioner. The same contract provides that AMPCO shall have exclusive discretion in the selection,

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[12] *Id.* at 63.

engagement and discharge of its employees/personnel or otherwise in the direction and control thereof. Petitioner also adds that AMPCO determines the wages of its employees/ personnel who shall be within its full control.

Petitioner further argues that respondents' action is essentially one for "regularization" (as employees of SMC) which is nowhere recognized or allowed by law. Lastly, petitioner contends that the case involves an intra-cooperative dispute, which is within the original and exclusive jurisdiction of the Arbitration Committee of the Cooperative and, thereafter, the Cooperative Development Authority.

In its Comment,[13] respondent AMPCO essentially advanced the same arguments in support of its claim as a legitimate job contractor.

The only issue that needs to be resolved is whether or not AMPCO is a legitimate job contractor. A claim that an action for regularization has no legal basis and is violative of petitioner's constitutional and statutory rights is, therefore, dependent upon the resolution of the issue posed above.

The petition fails.

Generally, the findings of fact made by the Labor Arbiter and the NLRC, as the specialized agencies presumed to have the expertise on matters within their respective fields, are accorded much respect and even finality, when supported by ample evidence[14] and affirmed by the CA. The fact that the NLRC, in its subsequent resolution, reversed its original decision does not render the foregoing inapplicable where the resolution itself is not supported by substantial evidence.

Department of Labor and Employment (DOLE) Department Order No. 10, Series of 1997, defines "job contracting" and "labor-only contracting" as follows:

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[13] *Id.* at 335-342.

[14] *Aboitiz Haulers Inc. v. Dimapatoi*, G.R. No. 148619, September 19, 2006, 502 SCRA 281.

Sec. 8. *Job contracting*. – There is job contracting permissible under the Code if the following conditions are met:

(1) The contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and

(2) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business.

Sec. 9. *Labor-only contracting*. – (a) Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting where such person:

(1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and

(2) The workers recruited and placed by such persons are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed.

(b) Labor-only contracting as defined herein is hereby prohibited and the person acting as contractor shall be considered merely as an agent or intermediary of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

(c) For cases not falling under this Article, the Secretary of Labor shall determine through appropriate orders whether or not the contracting out of labor is permissible in the light of the circumstances of each case and after considering the operating needs of the employer and the rights of the workers involved. In such case, he may prescribe conditions and restrictions to insure the protection and welfare of the workers.

Section 5 of Department Order No. 18-02 (Series of 2002) of the Rules Implementing Articles 106 to 109 of the Labor Code further provides that:

"Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, *actually and directly used* by the contractor or subcontractor in the performance or completion of the *job work or service contracted out.* (emphasis supplied)

The "right to control" shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.

The test to determine the existence of independent contractorship is whether or not the one claiming to be an independent contractor has contracted to do the work according to his own methods and without being subject to the control of the employer, except only as to the results of the work.[15]

The existence of an independent and permissible contractor relationship is generally established by the following criteria: whether or not the contractor is carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of a specified piece of work; the control and supervision of the work to another; the employer's power with respect to the hiring, firing and payment of the contractor's workers; the control of the premises; the duty to supply the premises, tools, appliances, materials, and labor; and the mode, manner and terms of payment.[16]

Although there may be indications of an independent contractor arrangement between petitioner and AMPCO, the most determinant of factors exists which indicate otherwise.

Petitioner's averment that AMPCO had total assets amounting to ₱932,599.22 and income of ₱2,777,603.46 in 1994 was squarely debunked by the LA. Thus:

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[15] *San Miguel Corporation v. Aballa*, G.R. No. 149011, June 28, 2005, 461 SCRA 421.

[16] *DOLE Philippines Inc. v. Esteva,* G.R. No. 161115, November 30, 2006, 509 SCRA 376; and *Brotherhood Labor Unity Movement of the Philippines v. Zamora*, 231 Phil. 53 (1987).

Furthermore, there are no pieces of evidence that AMPCO has substantial capital or investment. An examination its "Statement of Income and Changes in Undivided Savings" show that its income for the year 1994 was ₱2,777,603.46 while its operating expenses for said year is ₱2,718,315.33 or a net income of ₱59,288.13 for the year 1994; that its cash on hand for 1994 is ₱22,154.80.

In fact, the NLRC in its original decision likewise stated as follows:

In contrast, the (sic) AMPCO's main business activity is trading, maintaining a store catering to members and the public. Its job contracting with SMC is only a minor activity or sideline. The component of AMPCO's substantial capital are [*sic*]in fact invested and used in the trading business. This is palpably shown in the sizable amount of its accounts receivables amounting to more than ₱.6M out of its members' capital of only ₱.47M in 1994.

Neither did petitioner prove that AMPCO had substantial equipment, tools, machineries, and supplies actually and directly used by it in the performance or completion of the segregation and piling job. In fact, as correctly pointed out by the NLRC in its original decision, there is nothing in AMPCO's list[17] of fixed

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[17] Attached as Annex 4 of AMPCO's Comment reveals the following:

1. Transportation Equipment.
   a. 1 unit custom van
   b. 1 motor – Ford 350 (Gasoline)
2. Land and Building
3. Furniture and Fixtures
   a. 3 pcs. office tables
   b. 3 pcs. Monobloc Chairs
4. Office Equipment
   a. 5 pcs. Casio electronic Calculator (12 digit)
   b. 1 unit Laminating Machine (ID)
   c. 1 Printing Calculator
   d. Dry Cell
5. Communication equipment
   a. 2 pcs. ICOM (Hand Set) with Anthena
6. Store Equipment
   a. Nutex – Temperature Compensated Capacity (kg.)/Weighing scale
   b. 1 Cash Box
   c. 1 Charmaster

assets, machineries, tools, and equipment which it could have used, actually and directly, in the performance or completion of its contracted job, work or service with petitioner. For said reason, there can be no other logical conclusion but that the tools and equipment utilized by respondents are owned by petitioner SMC. It is likewise noteworthy that neither petitioner nor AMPCO has shown that the latter had clients other than petitioner. Therefore, AMPCO has no independent business.

In connection therewith, DOLE Department Order No. 10 also states that an independent contractor carries on an independent business and undertakes the contract work on his own account, under his own responsibility, according to his own manner and method, and free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof. This embodies what has long been jurisprudentially recognized as the control test[18] to determine the existence of employer-employee relationship.

In the case at bench, petitioner faults the CA for holding that the respondents were under the control of petitioner whenever they performed the task of loading in the delivery trucks and unloading from them. It, however, fails to show how AMPCO took "entire charge, control and supervision of the work and service agreed upon." AMPCO's Comment on the Petition is likewise utterly silent on this point. Notably, both petitioner and AMPCO chose to ignore the uniform finding of the LA, NLRC (in its original decision) and the CA that one of the

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d. 80 empty cases w/ bottles Coke litro
   90 -do-Coke regular
   13 -do-Coke 500 ml
e. 2 pcs. Emergency light.

[18] The existence of an employer-employee relationship is determined on the basis of four standards, namely: (a) the manner of selection and engagement of the putative employee; (b) the mode of payment of wages; (c) the presence or absence of power of dismissal; and (d) the presence or absence of control of the putative employee's conduct. Most determinative among these factors is the so-called "control test." *Gallego v. Bayer Philippines, Inc.,* G.R. No. 179807, July 31, 2009, 594 SCRA 736.

assigned jobs of respondents was to "perform other acts as may be ordered by SMC's officers." Significantly, AMPCO, opted not to challenge the original decision of the NLRC that found it a mere labor-only contractor.

Moreover, the Court is not convinced that AMPCO wielded "exclusive discretion in the discharge"[19] of respondents. As the CA correctly pointed out, Merlyn Polidario, AMPCO's project manager, even told respondents to "wait for further instructions from the SMC's supervisor" after they were prevented from entering petitioner SMC's premises. Based on the foregoing, no other logical conclusion can be reached than that it was petitioner, not AMPCO, who wielded power of control.

Despite the fact that the service contracts[20] contain stipulations which are earmarks of independent contractorship, they do not make it legally so. The language of a contract is neither determinative nor conclusive of the relationship between the parties. Petitioner SMC and AMPCO cannot dictate, by a declaration in a contract, the character of AMPCO's business, that is, whether as labor-only contractor, or job contractor. AMPCO's character should be measured in terms of, and determined by, the criteria set by statute.[21] At a closer look, AMPCO's actual status and participation regarding respondents' employment clearly belie the contents of the written service contract.

Petitioner cannot rely either on AMPCO's Certificate of Registration as an Independent Contractor issued by the proper Regional Office of the DOLE to prove its claim. It is not

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[19] *See* Service Contract.

[20] Certificate of Registration as independent contractor issued by the Regional Director of Department of Labor Regional Office No. VI; Articles of Incorporation, under which providing services and other requirements of members, and engaging in utility services are among its main objectives; Certificate of Confirmation as a registered cooperative with the Bureau of Agricultural Cooperatives Development; Mayor's permit to engage in business as a contractor; Registration with the SSS as member.

[21] *De Los Santos and Buklod Manggagawa ng Camara v. National Labor Relations Commission,* 423 Phil. 1020, 1034 (2001).

conclusive evidence of such status. The fact of registration simply prevents the legal presumption of being a mere labor-only contractor from arising.[22] In distinguishing between permissible job contracting and prohibited labor-only contracting, the totality of the facts and the surrounding circumstances of the case are to be considered.[23]

Petitioner also argues that among the permissible contracting arrangements include "work or services not directly related or not integral to the main business or operation of the principal including… work related to manufacturing processes of manufacturing establishments."[24] The Court is not persuaded. The evidence is clear that respondents performed activities which were directly related to petitioner's main line of business. Petitioner is primarily engaged in manufacturing and marketing of beer products, and respondents' work of segregating and cleaning bottles is unarguably an important part of its manufacturing and marketing process.

Lastly, petitioner claims that the present case is outside the jurisdiction of the labor tribunals because respondent Vicente Semillano is a member of AMPCO, not SMC. Precisely, he has joined the others in filing this complaint because it is his position that petitioner SMC is his true employer and liable for all his claims under the Labor Code.

Thus, petitioner SMC, as principal employer, is solidarily liable with AMPCO, the labor-only contractor, for all the rightful claims of respondents. Under this set-up, AMPCO, as the "labor-only" contractor, is deemed an agent of the principal

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[22] "Section 11. Registration of contractor or subcontractors.-

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Failure to register shall give rise to the presumption that the contractor is engaged in labor-only contracting."– Department Order No. 18-02 Series of 2002.

[23] *Supra* note 18.

[24] Petition for Review on *Certiorari*, p. 19; *rollo*, p. 23 citing Department Order No. 10, Series of 1997.

(SMC). The law makes the principal responsible over the employees of the "labor-only" contractor as if the principal itself directly hired the employees.[25]

WHEREFORE, the petition is *DENIED*. The February 19, 2004 Decision of the Court of Appeals, reversing the decision of the National Labor Relations Commission and reinstating the decision of the Labor Arbiter, is *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Nachura, Peralta, and *Abad, JJ.*, concur.

FIRST DIVISION

[G.R. No. 164402. July 5, 2010]

ASUNCION URIETA *VDA. DE* AGUILAR, represented by ORLANDO U. AGUILAR, *petitioner, vs.* **SPOUSES EDERLINA B. ALFARO and RAUL ALFARO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI*; INSTANT CASE FALLS UNDER THE EXCEPTIONS WHERE THE SUPREME COURT MAY REVIEW FACTUAL ISSUES.— As a rule, only questions of law may be raised in petitions for review on *certiorari.* It is settled that in the exercise of the Supreme Court's power of review, the court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case. This rule,

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[25] *San Miguel Corporation v. MAERC Integrated Services, Inc.*, 453 Phil. 543 (2003).

however, is subject to a number of exceptions, one of which is when the findings of the appellate court are contrary to those of the trial court, like in the present case.

2. ID.; ID.; ACTIONS; REAL ACTIONS; *ACCION PUBLICIANA*; NATURE; PURPOSE; EXPLAINED.— Also known as *accion plenaria de posesion*, *accion publiciana* is an ordinary civil proceeding to determine the better right of possession of realty independently of title. It refers to an ejectment suit filed after the expiration of one year from the accrual of the cause of action or from the unlawful withholding of possession of the realty. The objective of the plaintiffs in *accion publiciana* is to recover possession only, not ownership. However, where the parties raise the issue of ownership, the courts may pass upon the issue to determine who between the parties has the right to possess the property. This adjudication, however, is not a final and binding determination of the issue of ownership; it is only for the purpose of resolving the issue of possession, where the issue of ownership is inseparably linked to the issue of possession. The adjudication of the issue of ownership, being provisional, is not a bar to an action between the same parties involving title to the property. The adjudication, in short, is not conclusive on the issue of ownership.

3. ID.; ID.; PLEADINGS; COUNTERCLAIM; A PERMISSIVE COUNTERCLAIM SHALL NOT BE CONSIDERED FILED UNTIL AND UNLESS THE FILING/DOCKET FEE PRESCRIBED IS PAID.— Both the trial court and the appellate court considered respondents' counterclaim as a petition for reconveyance. In which case, it should be treated merely as a permissive counterclaim because the evidence required to prove their claim differs from the evidence needed to establish petitioner's demand for recovery of possession. Being a permissive counterclaim, therefore, respondents should have paid the corresponding docket fees. However, there is no proof on record that respondents paid the required docket fees. The official receipts were neither attached to nor annotated on respondents' Answer with Counterclaims and Affirmative Defenses which was filed *via* registered mail on August 19, 1995. It has been our consistent ruling that it is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the full amount of the prescribed docket fee,

that vests a trial court with jurisdiction over the subject matter or nature of the action. The same rule applies to permissive counterclaims, third-party claims and similar pleadings, which shall not be considered filed until and unless the filing fee prescribed therefor is paid.

4. CIVIL LAW; LAND REGISTRATION; TORRENS CERTIFICATE OF TITLE; EVIDENCE OF INDEFEASIBLE TITLE TO PROPERTY IN FAVOR OF THE PERSON IN WHOSE NAME THE TITLE APPEARS; RESPONDENT'S "*KASULATAN SA BILIHAN*" CANNOT CONFER BETTER RIGHT AS AGAINST PETITIONER'S TORRENS TITLE.— It is settled that a Torrens title is evidence of indefeasible title to property in favor of the person in whose name the title appears. It is conclusive evidence with respect to the ownership of the land described therein. It is also settled that the titleholder is entitled to all the attributes of ownership of the property, including possession. Thus, in *Arambulo v. Gungab*, this Court declared that the "age-old rule is that the person who has a Torrens title over a land is entitled to possession thereof." In the present case, there is no dispute that petitioner is the holder of a Torrens title over the entire Lot 83. Respondents have only their notarized but unregistered *Kasulatan sa Bilihan* to support their claim of ownership. Thus, even if respondents' proof of ownership has in its favor a *juris tantum* presumption of authenticity and due execution, the same cannot prevail over petitioner's Torrens title. This has been our consistent ruling which we recently reiterated in *Pascual v. Coronel.*

5. ID.; ID.; ID.; TELLTALE SIGNS WHICH CAST DOUBT ON THE GENUINENESS OF THE "*KASULATAN*."— As the titleholder, petitioner is preferred to possess the entire Lot 83. Besides, there are telltale signs which cast doubt on the genuineness of the *Kasulatan*. To cite a few: 1. The date of its execution unbelievably coincides with the date the buyer, Anastacia, died; 2. Despite its alleged execution on April 17, 1973, respondents brought up the *Kasulatan* only when petitioner asked them to vacate the disputed premises. Prior thereto, they neither asserted their rights thereunder nor registered the same with the proper Registry of Deeds; 3. The lawyer who notarized the *Kasulatan sa Bilihan*, as well as the

witnesses thereto, was not presented in court; and, 4. The District Land Officer who signed OCT No. P-9354 by authority of the President is a public officer who has in his favor the presumption of regularity in issuing said title.

6. ID.; ID.; ID.; A TORRENS CERTIFICATE OF TITLE CANNOT BE THE SUBJECT OF A COLLATERAL ATTACK.— Respondents' attack on the validity of petitioner's title by claiming that their mother became the true owner of the southern portion of Lot 83 even before the issuance of OCT No. P-9354 constitutes as a collateral attack on said title. It is an attack incidental to their quest to defend their possession of the property in an *accion publiciana*, not in a direct action whose main objective is to impugn the validity of the judgment granting the title. This cannot be allowed. Under Section 48 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, a certificate of title cannot be the subject of collateral attack. Thus: SEC. 48. *Certificate not subject to collateral attack.* – A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or canceled except in a direct proceeding in accordance with law. A collateral attack transpires when, in another action to obtain a different relief and as an incident to the present action, an attack is made against the judgment granting the title. This manner of attack is to be distinguished from a direct attack against a judgment granting the title, through an action whose main objective is to annul, set aside, or enjoin the enforcement of such judgment if not yet implemented, or to seek recovery if the property titled under the judgment had been disposed of.

APPEARANCES OF COUNSEL

Orlalyn F. Suarez-Fetesio for petitioner.
Francis T. Villamar for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

In an action for recovery of possession of realty, who has the better right of possession, the registered owner armed with

a Torrens title or the occupants brandishing a notarized but unregistered deed of sale executed before the land was registered under the Torrens system?

As we previously ruled in similar cases,[1] we resolve the question in favor of the titleholder.

Factual Antecedents

On August 3, 1995, petitioner filed a Complaint for Recovery of Possession and Damages[2] before the Regional Trial Court (RTC) of San Jose, Occidental Mindoro. She alleged that on May 16, 1977, her husband Ignacio Aguilar (Ignacio) was issued Original Certificate of Title (OCT) No. P-9354[3] over a 606-square meter parcel of land designated as Lot 83 situated in Brgy. Buenavista, Sablayan, Occidental Mindoro. Prior thereto, or in 1968, Ignacio allowed petitioner's sister, Anastacia Urieta (Anastacia), mother of respondent Ederlina B. Alfaro (Ederlina), to construct a house on the southern portion of said land and to stay therein temporarily.

In 1994, Ignacio died and his heirs decided to partition Lot 83. Petitioner thus asked the respondents, who took possession of the premises after the death of Anastacia, to vacate Lot 83. They did not heed her demand.

Thus, petitioner filed a case for *accion publiciana* praying that respondents be ordered to vacate subject property, and to pay moral, temperate, and exemplary damages, as well as attorney's fees and the costs of suit.

In their Answer with Counterclaims and Affirmative Defenses,[4] respondents did not dispute that Ignacio was able to secure title

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[1] *Co v. Militar*, 466 Phil. 217 (2004); *Umpoc v. Mercado*, 490 Phil. 118; *Arambulo v. Gungab*, G.R. No. 156581, September 30, 2005, 471 SCRA 640; *Pascual v. Coronel*, G.R. No. 159292, July 12, 2007, 527 SCRA 474.

[2] Records, pp. 1-4. The case was raffled to Branch 46 and docketed as Civil Case No. R-924.

[3] *Id.* at 5.

[4] *Id.* at 12-16.

over the entire Lot 83. However, they asserted that on April 17, 1973, Ignacio and herein petitioner sold to their mother Anastacia the southern portion of Lot 83 consisting of 367.5 square meters as shown by the *Kasulatan sa Bilihan*[5] which bears the signatures of petitioner and Ignacio. Since then, they and their mother have been in possession thereof. Respondents also presented several Tax Declarations[6] in support of their allegations.

Respondents also raised the defense of prescription. They pointed out that *accion publiciana* or an action to recover the real right of possession independent of ownership prescribes in 10 years. However, it took petitioner more than 25 years before she asserted her rights by filing *accion publiciana.* As alleged in the complaint, they took possession of the disputed portion of Lot 83 as early as 1968, but petitioner filed the case only in 1995.

By way of counterclaim, respondents prayed that petitioner be directed to execute the necessary documents so that title to the 367.5-square meter portion of Lot 83 could be issued in their name. They likewise prayed for the dismissal of the complaint and for award of moral and exemplary damages, as well as attorney's fees.

In her Reply and Answer to Counterclaim,[7] petitioner denied having signed the *Kasulatan sa Bilihan* and averred that her signature appearing thereon is a forgery. She presented an unsworn written declaration dated January 28, 1994 where her husband declared that he did not sell the property in question to anyone. As to the issue of prescription, she asserted that respondents' occupation of subject property cannot ripen into ownership considering that the same is by mere tolerance of the owner. Besides, the purported *Kasulatan sa Bilihan* was not registered with the proper Registry of Deeds.

During the trial, petitioner presented the testimonies of Orlando Aguilar (Orlando) and Zenaida Baldeo (Zenaida).

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[5] *Id.* at 128.

[6] *Id.* at 129-138.

[7] *Id.* at 21-24.

Orlando testified that he has been staying in Lot 83 since 1960 and had built a house thereon where he is presently residing; and, that his mother, herein petitioner, denied having sold the property or having signed any document for that matter.

Zenaida also testified that in 1981, her father (Ignacio) and Ederlina had a confrontation before the *barangay* during which her father denied having conveyed any portion of Lot 83 to anybody. She further testified that she is familiar with the signature of her father and that the signature appearing on the *Kasulatan sa Bilihan* is not her father's signature.

For their part, respondents offered in evidence the testimonies of Estrella Bermudo Alfaro (Estrella), Ederlina, and Jose Tampolino (Jose). Estrella declared that she was present when Ignacio and the petitioner affixed their signatures on the *Kasulatan sa Bilihan*, which was acknowledged before Notary Public Juan Q. Dantayana on April 17, 1973. She narrated that her mother actually purchased the property in 1954, but it was only in 1973 when the vendor executed the deed of sale. In fact, her father Francisco Bermudo was able to secure a permit to erect a house on the disputed property from the Office of the Mayor of Sablayan, Occidental Mindoro in 1954.[8] She was surprised to learn though that their property is still registered in the name of the petitioner.

Ederlina corroborated the declarations of Estrella. She also alleged that her parents occupied the property in 1954 when they built a hut there, then later on, a house of strong materials.

Jose corroborated the declarations of the other witnesses for the respondents that the disputed portion of Lot 83 is owned by Anastacia.

Ruling of the Regional Trial Court

In its Decision[9] dated September 21, 1998, the court *a quo* ordered the respondents to vacate subject premises and denied

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[8] *Id.* at 139.

[9] *Id.* at 153-161; penned by Judge Ernesto P. Pagayatan.

their counterclaim for reconveyance on the grounds of prescription and laches. It held that the prescriptive period for reconvenyance of fraudulently registered real property is 10 years reckoned from the date of the issuance of the certificate of title. In this case, however, it is not disputed that OCT No. P-9354 covering the entire Lot 83 was issued to Ignacio in 1977. The trial court likewise held that respondents are guilty of laches and that the reconveyance of the disputed property in their favor would violate the rule on indefeasibility of Torrens title.

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

> WHEREFORE, and in the light of all the foregoing considerations, judgment is hereby rendered in favor of plaintiff and against the defendants, to wit:
>
> 1. Ordering the defendants and any person claiming right under them to vacate the premises in question and surrender the possession thereof to plaintiff;
>
> 2. To pay the amount of Ten Thousand Pesos (₱10,000.00) as and for reasonable attorney's fees;
>
> 3. To pay the costs of this suit.
>
> SO ORDERED.[10]

Ruling of the Court of Appeals

On June 7, 2004, the CA promulgated its Decision[11] reversing the trial court's Decision and dismissing the complaint, as well as respondents' counterclaim. The CA upheld the validity of the *Kasulatan sa Bilihan* since it is a notarized document and disputably presumed to be authentic and duly executed. In addition, witness Estrella categorically declared that she was present when petitioner and Ignacio signed the *Kasulatan sa Bilihan*. The CA elaborated that in order to disprove the

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[10] *Id.* at 161.

[11] CA *rollo*, pp. 82-89; penned by Associate Justice Mario L. Guariña III and concurred in by Associate Justices Rodrigo V. Cosico and Santiago Javier Ranada.

presumption accorded to a notarized document, the party contesting its authenticity and due execution must present a clear and convincing evidence to the contrary, which the petitioner failed to do.

The CA likewise disagreed with the court *a quo* that respondents' counterclaim should be dismissed on the ground of indefeasibility of title. It emphasized that the Torrens system was adopted to protect innocent third parties for value and not to protect fraud. Nonetheless, the CA did not grant the relief sought in respondents' counterclaim considering that not all interested parties were impleaded in the case.

The dispositive portion of the CA's Decision reads:

> IN VIEW OF THE FOREGOING, the decision appealed from is REVERSED, and a new one ENTERED dismissing the complaint and counterclaim.
>
> SO ORDERED.[12]

Issue

Without seeking reconsideration of the CA's Decision, petitioner interposed the present recourse raising the sole issue of:

> WHETHER X X X THE HONORABLE COURT OF APPEALS ERRED IN UPHOLDING THE VALIDITY/GENUINENESS AND DUE EXECUTION OF THE PURPORTED DEED OF SALE OF THE PORTION OF THE LOT DESPITE THE VEHEMENT DENIAL OF THE ALLEGED VENDORS.[13]

Petitioner contends that the CA grievously erred in upholding the validity and genuineness of the *Kasulatan sa Bilihan*. She alleges that she wanted to take the witness stand to disclaim in open court her purported signature appearing on respondents' *Kasulatan sa Bilihan*, but could not do so because she is too old, bed-ridden and has to bear a tortuous five-hour drive to

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[12] *Id.* at 89.

[13] *Rollo*, p. 201.

reach the court. Nevertheless, she executed a sworn statement declaring that she and her husband never sold any portion of Lot 83 and that their signatures appearing on said deed were forged. She avers that the assistance of an expert witness is not even necessary to detect the patent dissimilarities between said forged signatures and their authentic signatures.

Petitioner likewise argues that the CA erred in taking into consideration the appearance and condition of the paper where the *Kasulatan sa Bilihan* is written. She posits that the fabrication of an ancient-looking document nowadays is no longer difficult. She also points to several circumstances which cast doubt on the authenticity and due execution of the *Kasulatan sa Bilihan*, but which the CA inexplicably ignored

Furthermore, petitioner maintains that her title is indefeasible. And while there are exceptions to the rule on indefeasibility of title,[14] she emphasizes that respondents never disputed her title. With regard to the tax declarations presented by respondents, petitioner asserts that it has been the consistent ruling of this Court that tax declarations are not necessarily proof of ownership.

In their comment, respondents assert that in petitions filed under Rule 45 of the Rules of Court, only questions of law can be raised. Factual issues are prohibited. From the arguments advanced by the petitioner, however, it is clear that she is asking this Court to examine and weigh again the evidence on record.

Our Ruling

We grant the petition.

This case falls under the exceptions where the Supreme Court may review factual issues.

As a rule, only questions of law may be raised in petitions for review on *certiorari.*[15] It is settled that in the exercise of

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[14] Such as when a land in possession of a rightful possessor in the concept of owner is fraudulently registered in the name of another.

[15] RULES OF COURT, Rule 45, Section 1.

the Supreme Court's power of review, the court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case.[16] This rule, however, is subject to a number of exceptions,[17] one of which is when the findings of the appellate court are contrary to those of the trial court, like in the present case.

Nature and purpose of accion publiciana.

Also known as *accion plenaria de posesion*,[18] *accion publiciana* is an ordinary civil proceeding to determine the better right of possession of realty independently of title.[19] It refers to an ejectment suit filed after the expiration of one year from the accrual of the cause of action or from the unlawful withholding of possession of the realty.[20]

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[16] *Santos v. Lumbao*, G.R. No. 169129, March 28, 2007, 519 SCRA 408, 420.

[17] The recognized exceptions are: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is a grave abuse of discretion; (3) when the finding is grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the CA is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA, in making its findings, went beyond the issues of the case and the same [are] contrary to the admissions of both parties; (7) when the findings of the CA are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (10) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record. (*Sering v. Court of Appeals*, 422 Phil. 467, 471-472; *Fuentes v. Court of Appeals*, 335 Phil. 1163, 1168 (1997)).

[18] *Bejar v. Caluag*, G.R. No. 171277, February 17, 2007, 516 SCRA 84, 90; *Barredo v. Santiago*, 102 Phil. 127, 130 (1957).

[19] *Bejar v. Caluag*, *id.*; *Sps. Cruz v. Torres*, 374 Phil. 529, 533 (1999); *Bishop of Cebu v. Mangaron*, 6 Phil. 286, 291 (1906); *Ledesma v. Marcos*, 9 Phil. 618, 620 (1908).

[20] *Encarnacion v. Amigo*, G.R. No. 169793, September 15, 2006, 502 SCRA 172, 179; *Lopez v. David*, *Jr.*, G.R. No. 152145, March 30, 2004, 426 SCRA 535, 543.

The objective of the plaintiffs in *accion publiciana* is to recover possession only, not ownership.[21] However, where the parties raise the issue of ownership, the courts may pass upon the issue to determine who between the parties has the right to possess the property. This adjudication, however, is not a final and binding determination of the issue of ownership; it is only for the purpose of resolving the issue of possession, where the issue of ownership is inseparably linked to the issue of possession. The adjudication of the issue of ownership, being provisional, is not a bar to an action between the same parties involving title to the property.[22] The adjudication, in short, is not conclusive on the issue of ownership.[23]

Guided by the foregoing jurisprudential guideposts, we shall now resolve the arguments raised by the parties in this petition.

As against petitioner's Torrens title, respondents' Kasulatan sa Bilihan cannot confer better right to possess.

It is settled that a Torrens title is evidence of indefeasible title to property in favor of the person in whose name the title appears.[24] It is conclusive evidence with respect to the ownership of the land described therein.[25] It is also settled that the titleholder is entitled to all the attributes of ownership of the property, including possession.[26] Thus, in *Arambulo v. Gungab*,[27] this Court declared that the "age-old rule is that the person who has a Torrens title over a land is entitled to possession thereof."

In the present case, there is no dispute that petitioner is the holder of a Torrens title over the entire Lot 83. Respondents have only their notarized but unregistered *Kasulatan sa Bilihan*

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[21] *Natalia Realty, Inc. v. Court of Appeals*, 440 Phil. 1, 25 (2002).

[22] *Rivera v. Rivera*, 453 Phil. 404, 412 (2003).

[23] *Umpoc v. Mercado*, 490 Phil. 118, 136 (2005).

[24] See *Baloloy v. Hular*, 481 Phil. 398, 410 (2004).

[25] *Carvajal v. Court of Appeals,* 345 Phil. 582, 594 (1997).

[26] *Supra* note 24.

[27] G.R. No. 156581, September 30, 2005, 471 SCRA 648.

to support their claim of ownership. Thus, even if respondents' proof of ownership has in its favor a *juris tantum* presumption of authenticity and due execution, the same cannot prevail over petitioner's Torrens title. This has been our consistent ruling which we recently reiterated in *Pascual v. Coronel*,[28] *viz*:

> Even if we sustain the petitioners' arguments and rule that the deeds of sale are valid contracts, it would still not bolster the petitioners' case. In a number of cases, the Court had upheld the registered owners' superior right to possess the property. In *Co v. Militar*, the Court was confronted with a similar issue of which between the certificate of title and an unregistered deed of sale should be given more probative weight in resolving the issue of who has the better right to possess. There, the Court held that the court *a quo* correctly relied on the transfer certificate of title in the name of petitioner, as opposed to the unregistered title in the name of respondents. The Court stressed therein that the Torrens System was adopted in this country because it was believed to be the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized.
>
> Likewise, in the recent case of *Umpoc v. Mercado*, the Court declared that the trial court did not err in giving more probative weight to the TCT in the name of the decedent *vis-à-vis* the contested unregistered Deed of Sale. Later in *Arambulo v. Gungab*, the Court held that the registered owner is preferred to possess the property subject of the unlawful detainer case. The age-old rule is that the person who has a Torrens Title over a land is entitled to possession thereof. (Citations omitted.)

As the titleholder, therefore, petitioner is preferred to possess the entire Lot 83. Besides, there are telltale signs which cast doubt on the genuineness of the *Kasulatan*. To cite a few:

1. The date of its execution unbelievably coincides with the date the buyer, Anastacia, died;
2. Despite its alleged execution on April 17, 1973, respondents brought up the *Kasulatan* only when

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[28] G.R. No. 159292, July 12, 2007, 527 SCRA 474, 484-485.

petitioner asked them to vacate the disputed premises. Prior thereto, they neither asserted their rights thereunder nor registered the same with the proper Registry of Deeds;

3. The lawyer who notarized the *Kasulatan sa Bilihan*, as well as the witnesses thereto, was not presented in court; and,

4. The District Land Officer who signed OCT No. P-9354 by authority of the President is a public officer who has in his favor the presumption of regularity in issuing said title.

Torrens certificate of title cannot be the subject of collateral attack.

Moreover, respondents' attack on the validity of petitioner's title by claiming that their mother became the true owner of the southern portion of Lot 83 even before the issuance of OCT No. P-9354 constitutes as a collateral attack on said title. It is an attack incidental to their quest to defend their possession of the property in an *accion publiciana*, not in a direct action whose main objective is to impugn the validity of the judgment granting the title.[29] This cannot be allowed. Under Section 48 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, a certificate of title cannot be the subject of collateral attack. Thus:

> SEC. 48. *Certificate not subject to collateral attack.* – A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or canceled except in a direct proceeding in accordance with law.

A collateral attack transpires when, in another action to obtain a different relief and as an incident to the present action, an attack is made against the judgment granting the title.[30]

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[29] *Ugale v. Gorospe*, G.R. No. 149516, September 11, 2006, 501 SCRA 376, 386; *Caraan v. Court of Appeals*, G.R. No. 140752, November 11, 2005, 474 SCRA 543, 550; *Baloloy v. Hular*, 481 Phil. 398, 410 (2004) and CIVIL CODE, Article 428.

[30] *Teoville Homeowners Association, Inc. v. Ferreira*, G.R. No. 140086, June 8, 2005, 459 SCRA 459, 474.

This manner of attack is to be distinguished from a direct attack against a judgment granting the title, through an action whose main objective is to annul, set aside, or enjoin the enforcement of such judgment if not yet implemented, or to seek recovery if the property titled under the judgment had been disposed of.[31] Thus, in *Magay v. Estiandan*,[32] therein plaintiff-appellee filed an *accion publiciana*. In his defense, defendant-appellant alleged among others that plaintiff-appellee's Transfer Certificate of Title No. 2004 was issued under anomalous circumstances. When the case reached this Court, we rejected defendant-appellant's defense on the ground that the issue on the validity of said title can only be raised in an action expressly instituted for that purpose. Also, in *Co v. Court of Appeals*[33] we arrived at the same conclusion and elaborated as follows:

> In their reply dated September 1990, petitioners argue that the issues of fraud and ownership raised in their so-called compulsory counterclaim partake of the nature of an independent complaint which they may pursue for the purpose of assailing the validity of the transfer certificate of title of private respondents. That theory will not prosper.
>
> While a counterclaim may be filed with a subject matter or for a relief different from those in the basic complaint in the case, it does not follow that such counterclaim is in the nature of a separate and independent action in itself. In fact, its allowance in the action is subject to explicit conditions, as above set forth, particularly in its required relation to the subject matter of opposing party's claim. Failing in that respect, it cannot even be filed and pursued as an altogether different and original action.
>
> It is evident that the objective of such claim is to nullify the title of private respondents to the property in question, which thereby challenges the judgment pursuant to which the title was decreed. This is apparently a collateral attack which is not permitted under the principle of indefeasibility of a Torrens title. It is well settled that a Torrens title cannot be collaterally attacked. The issue on the

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[31] *Id.*

[32] 161 Phil. 586, 587 (1976).

[33] 274 Phil. 108, 116 (1991).

validity of title, *i.e.*, whether or not it was fraudulently issued, can only be raised in an action expressly instituted for that purpose. Hence, whether or not petitioners have the right to claim ownership of the land in question is beyond the province of the instant proceeding. That should be threshed out in a proper action.

The lower courts cannot pass upon or grant respondents' counterclaim for lack of jurisdiction.

Both the trial court and the appellate court considered respondents' counterclaim as a petition for reconveyance. In which case, it should be treated merely as a permissive counterclaim because the evidence required to prove their claim differs from the evidence needed to establish petitioner's demand for recovery of possession. Being a permissive counterclaim, therefore, respondents should have paid the corresponding docket fees.[34] However, there is no proof on record that respondents paid the required docket fees. The official receipts were neither attached to nor annotated on respondents' Answer with Counterclaims and Affirmative Defenses[35] which was filed *via* registered mail[36] on August 19, 1995. It has been our consistent ruling that it is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the full amount of the prescribed docket fee, that vests a trial court with jurisdiction over the subject matter or nature of the action.[37] The same rule applies to permissive counterclaims, third-party claims and similar pleadings, which shall not be considered filed until and unless the filing fee prescribed therefor is paid.[38]

On a final note, and as discussed above, we stress that our ruling in this case is limited only to the issue of determining who between the parties has a better right to possession. This

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[34] See *Alday v. FGU Insurance Corporation*, 402 Phil. 962 (2001).

[35] Records, pp. 12-16.

[36] *Id.* at 20.

[37] *Sun Insurance Office v. Asuncion*, 252 Phil. 280, 291 (1989).

[38] *Id.*

adjudication is not a final and binding determination of the issue of ownership. As such, this is not a bar for the parties to file an action for the determination of the issue of ownership where the validity of the *Kasulatan sa Bilihan* and of OCT No. P-9354 can be properly threshed out.

WHEREFORE, the petition is *GRANTED*. The assailed Decision of the Court of Appeals dated June 7, 2004 is *REVERSED and SET ASIDE* and the September 21, 1998 Decision of Regional Trial Court, Branch 46, San Jose, Occidental Mindoro, insofar as it orders the respondents to vacate the premises is *REINSTATED and AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 164577. July 5, 2010]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **SANDIGANBAYAN (FIRST DIVISION), VICTORINO A. BASCO, ROMEO S. DAVID, and ROGELIO L. LUIS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; AN APPEAL BY THE PROSECUTION FROM A JUDGMENT OF ACQUITTAL NECESSARILY PLACES THE ACCUSED IN DOUBLE JEOPARDY; EXCEPTIONS TO THE RULE; MAY BE BROUGHT TO THE ATTENTION OF THE REVIEWING COURT THROUGH A SPECIAL CIVIL ACTION OF *CERTIORARI* UNDER

RULE 65 OF THE RULES OF COURT.— Procedurally, the petitioner resorted to a wrong remedy. Section 1 of Rule 122 allows "any party" to appeal from a judgment or final order, unless the right of the accused against double jeopardy will be violated. It is axiomatic that an appeal in criminal cases throws the whole case wide open for review by an appellate court. As a consequence, an appeal by the prosecution from a judgment of acquittal necessarily places the accused in double jeopardy. The rule barring an appeal from a judgment of acquittal is, however, not absolute. The following are the recognized exceptions thereto: (i) when the prosecution is denied due process of law; and (ii) when the trial court commits grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing a criminal case by granting the accused' demurrer to evidence. Such issues are brought to the attention of a reviewing court through the special civil action of *certiorari* under Rule 65 on the ground of grave abuse of discretion, amounting to lack or excess of jurisdiction. In assailing the resolution of the Sandiganbayan, the petitioner resorted to this petition for review on *certiorari* under Rule 45, purportedly raising pure questions of law. This is erroneous for which reason this petition is dismissible outright.

2. **ID.; ID.; ID.; ID.; ALTHOUGH A DISMISSAL ORDER CONSEQUENT TO A DEMURRER TO EVIDENCE IS NOT SUBJECT TO APPEAL, IT IS STILL REVIEWABLE BUT ONLY BY *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT.—** Although the dismissal order consequent to a demurrer to evidence is not subject to appeal, it is still reviewable but only by *certiorari* under Rule 65 of the Rules of Court. In such a case, the factual findings of the trial court are conclusive upon the reviewing court, and the only legal basis to reverse and set aside the order of dismissal upon demurrer to evidence is by a clear showing that the trial court, in acquitting the accused, committed grave abuse of discretion amounting to lack or excess of jurisdiction or a denial of due process, thus, rendering the assailed judgment void.

3. **ID.; ID.; ID.; ID.; PETITIONER'S RELIANCE ON THE COURT'S PRONOUNCEMENT IN *PEOPLE VS. VILLALON* IS MISPLACED.—** Petitioner attempts to justify its position by relying on our pronouncement in *People v. Villalon*, which

reads: As a general rule, the dismissal or termination of the case after arraignment and plea of the defendant to a valid information shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the complaint or information. However, an appeal by the prosecution from the order of dismissal (of the criminal case) by the trial court shall not constitute double jeopardy if (1) the dismissal is made upon motion, or with the express consent, of the defendant, *and* (2) the dismissal is not an acquittal or based upon consideration of the evidence or of the merits of the case; *and* (3) the question to be passed upon by the appellate court is purely legal so that should the dismissal be found incorrect, the case would have to be remanded to the court of origin for further proceedings, to determine the guilt or innocence of the defendant. A cursory reading of the above judicial pronouncement readily betrays petitioner's posture on the matter. The use of the conjunctive word "and" which even originally appeared italicized suggests the concurrence of those three requisites to prevent double jeopardy from attaching.

4. ID.; ID.; ID.; ID.; NO GRAVE ABUSE OF DISCRETION OR LACK OF JURISDICTION WAS ATTRIBUTED TO THE SANDIGANBAYAN IN ISSUING THE QUESTIONED RESOLUTION.— The demurrer to evidence in criminal cases, such as the one at bench, is "filed after the prosecution had rested its case." As such, it calls "for an *appreciation of the evidence* adduced by the prosecution *and its sufficiency* to warrant conviction beyond reasonable doubt, resulting in a dismissal of the case on the merits, tantamount to an acquittal of the accused." Judicial action on a motion to dismiss or demurrer to evidence is best left to the exercise of sound judicial discretion. Accordingly, unless the Sandiganbayan acted without jurisdiction or with grave abuse of discretion, its decision to grant or deny the demurrer may not be disturbed. Not surprisingly, petitioner has not attributed any commission of grave abuse of discretion on the part of Sandiganbayan in issuing the questioned resolution, on the mistaken assumption that it can assail the resolution on purely legal questions. As explained above, it cannot do so. A judgment of acquittal cannot be reopened or appealed because of the doctrine that nobody can be put twice in jeopardy for the same offense.

5. ID.; ID.; ID.; ID.; PETITIONER FAILED TO RAISE PURE QUESTIONS OF LAW.— Granting arguendo that petitioner's recourse under Rule 45 was proper, nevertheless, petitioner failed to raise pure questions of law. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented. There is a question of law in a given case when the doubt or difference arises as to what the law is on certain state of facts. Contrary to petitioner's contention, the determination of whether the established facts fall squarely within the provisions of the law, that is, Section 3 (e) of R.A. No. 3019, would require us to reassess and reexamine the evidence, and essentially to supplant the lower courts' finding. This is beyond the province of Rule 45. Judicial review under Rule 45 does not envisage a re-evaluation of the sufficiency of the evidence upon which respondent court's action was predicated. It bears reiterating that a judgment of acquittal, "even if seemingly erroneous," is the final verdict. Similarly, the second issue posed by petitioner is a question of fact disguised as a question of law. An affirmative ruling thereon would also require us to review the factual bases of the ruling of the CA in the administrative case. In fact, as noted by respondent court, the same issue of legality or validity of the subject contracts had already been passed upon by the CA, and the Ombudsman did not even attempt to question the CA ruling, which could only mean its adherence thereto.

6. ID.; ID.; ID.; ID.; DISMISSAL OF AN ADMINISTRATIVE CASE DOES NOT BAR THE FILING OF A CRIMINAL PROSECUTION FOR THE SAME OR SIMILAR ACTS SUBJECT OF THE ADMINISTRATIVE COMPLAINT.— Petitioner would also make much of the principle in law that the dismissal of the administrative case does not necessarily prevent a criminal prosecution from proceeding. Indeed, the dismissal of an administrative case does not bar the filing of a criminal prosecution for the same or similar acts subject of the administrative complaint. Neither does the disposition in one case inevitably govern the resolution of the other case/s and vice versa. Administrative liability is one thing; criminal liability for the same act is another. The distinct and independent nature of one proceeding from the other can be attributed to the following: first, the difference in the quantum of evidence required and, correlatively, the procedure observed and

sanctions imposed; and second, the principle that a single act may offend against two or more distinct and related provisions of law, or that the same act may give rise to criminal as well as administrative liability.

7. **ID.; ID.; ID.; ID.; DISMISSAL OF THE ADMINISTRATIVE CASE MAY BE INVOKED TO ABATE THE CRIMINAL CASE IF THE LATTER CASE IS PROSECUTED BASED ON THE SAME FACTS AND EVIDENCE AS THAT IN THE ADMINISTRATIVE CASE.—** Although the dismissal of the criminal case cannot be pleaded to abate the administrative proceedings primarily on the ground that the quantum of proof required to sustain administrative charges is significantly lower than that necessary for criminal actions, the same does not hold true if it were the other way around, that is, the dismissal of the administrative case is being invoked to abate the criminal case. The reason is that the evidence presented in the administrative case may not necessarily be the same evidence to be presented in the criminal case. The prosecution is certainly not precluded from adducing additional evidence to discharge the burden of proof required in the criminal cases. However, if the criminal case will be prosecuted based on the *same* facts *and* evidence as that in the administrative case, and the court trying the latter already squarely ruled on the absence of facts and/or circumstances sufficient to negate the basis of the criminal indictment, then to still burden the accused to present controverting evidence despite the failure of the prosecution to present sufficient and competent evidence, will be a futile and useless exercise.

APPEARANCES OF COUNSEL

Office of the Special Prosecutor for petitioner.
Herrera Batacan & Associates Law Firm for Romeo S. David.
Redemberto R. Villanueva for Rogelio L. Luis.
De Borja Medialdea Bello Guevarra & Gerodias for Victorino A. Basco.

DECISION

MENDOZA, *J.*:

The prosecution cannot appeal from a ruling granting the demurrer to evidence of the accused as it is equivalent to an acquittal, unless the prosecution can sufficiently prove that the court's action is attended with grave abuse of discretion. Otherwise, the constitutional right of the accused against double jeopardy will be violated.

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Court filed by the People of the Philippines, represented by the Office of the Ombudsman, assailing the July 23, 2004 Resolution[1] of the Sandiganbayan granting the accused's respective demurrers to evidence filed with prior leave of court.

THE FACTS:

On November 23, 1999, private respondents Victorino A. Basco, Romeo S. David and Rogelio L. Luis were charged with having violated Section 3(e) of Republic Act No. 3019,[2] as amended, (Anti-Graft and Corrupt Practices Act) before the

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[1] Penned by Associate Justice Diosdado M. Peralta (now a member of this Court) with Associate Justices Teresita J. Leonardo-De Castro (now a member of this Court) and Rolando B. Jurado, concurring.

[2] SEC. 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:

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

Sandiganbayan.[3] The Information, docketed as Criminal Case No. 25752, alleged:

That between November 15, 1996 to May 7, 1998 or some time prior or subsequent thereto, in the Municipality of Mabalacat, Pampanga, Philippines, and within the jurisdiction of this Honorable Court, accused Victorino A. Basco, Romeo S. David and Rogelio L. Luis, all high ranking public officers, being then Chairman and President/Presidents and Chief Executive Officers of the Bases Conversion Development Authority [BCDA], Clark Development Corporation/Clark International Airport, [CDC /CIAC] and Philippine National Construction Corporation [PNCC], respectively, while in the performance of their official functions, taking advantage of their positions and committing the offenses in relation to their office, confederating and conspiring with one another, with manifest partiality and evident bad faith, did then and there, willfully, unlawfully and criminally enter into contracts/transactions for the construction of the Mabalacat-Clark Spur Road and the Clark Perimeter Road, without the benefit of public bidding and at the price higher by 60 to 167% than the typical roadway construction cost, thus, depriving the government of the opportunity of obtaining the most advantageous construction cost, causing undue injury to the same and giving unwarranted benefits, advantage and preference to their preferred private contractors.

Before the arraignment, the accused filed a Motion for Leave of Court to File Motion for Reconsideration/Re-investigation. Acting thereon, the Sandiganbayan required the Office of the Special Prosecutor to comment and submit the final action taken by the Office of Ombudsman.

In a Memorandum, dated March 26, 2000, Special Prosecution Officer Roberto T. Agagon recommended the withdrawal of the information without prejudice to the conduct of further preliminary investigation to resolve the issue on overpricing by referring the matter to the Commission on Audit (COA) "whose report shall serve as legal basis for indictment against the accused."[4] Then Ombudsman Aniano Desierto, however,

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[3] *Rollo*, p. 87.

[4] Said recommendation was endorsed for approval by Prosecution Bureau

disapproved the recommendation and directed the prosecutor to "proceed with the trial."

Upon arraignment, the three (3) respondents pleaded not guilty.

On August 23, 2002, the Sandiganbayan issued a Pre-trial Order identifying the issues as follows: (i) whether or not the construction projects involved should have been subjected to a public bidding as mandated by P.D. 1594,[5] as amended;[6] (ii) whether or not there was overpricing in the construction costs of the projects; (iii) whether or not the government suffered undue injury or damage as a consequence; (iv) whether or not the accused acted with evident bad faith and/or manifest partiality; and (v) whether or not the accused conspired with each other in committing the offense charged.

During the trial, the prosecution presented its lone witness, Atty. Emora C. Pagunuran, Legal Counsel, Office of the Legal Affairs, Office of the Ombudsman. Thereafter, the prosecution filed its Formal Offer of Evidence. After the evidence were admitted, the prosecution rested its case.

Instead of presenting their evidence, the respondents filed their respective motions for leave to file their demurrer to evidence based substantially on the following grounds: (i) that

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Director Victorio U. Tabanguil and Deputy Special Prosecutor Robert E. Kallos and concurred in by Special Prosecutor Leonardo P. Tamayo. *Respondent David's Demurrer to Evidence*, p. 3, *rollo*, p. 89.

[5] "Sec. 4. Bidding.—Construction projects shall generally be undertaken by contract after competitive public bidding. Projects may be undertaken by administration or force account or by negotiated contract only in exceptional cases where time is of the essence, or where there is lack of qualified bidders or contractors, or where there is a conclusive evidence that greater economy and efficiency would be achieved through this arrangement, and in accordance with provisions of laws and acts on the matter, subject to the approval of the Ministry of Public Works, Transportation and Communications, the Minister of Public Highways, or the Minister of Energy, as the case may be, if the project cost is less than ₱1 Million, and of the President of the Philippines, upon the recommendation of the Minister, if the project cost is ₱1 Million or more."

[6] Executive Order No. 164 and Executive Order No. 80.

Atty. Pagunuran had no personal knowledge of the transactions involved and so her testimony was hearsay; (ii) that the prosecution failed to prove that the questioned contracts were indeed overpriced as Atty. Pagunuran merely relied on the Department of Public Works and Highways (DPWH) table of "Typical Construction Costs, 1999" without more; and (iii) that the ruling of the Court of Appeals in an administrative case (C.A. G.R. SP No. 62084), which upheld the validity of the direct negotiated contracts, even in the absence of a public bidding, was already the law of the case.

The motions were granted and the Sandiganbayan directed the prosecution to file its opposition.

It appears that accused Rogelio L. Luis and Victorino A. Basco (and several other BCDA officers) were also charged administratively in the Office of the Ombudsman, docketed as OMB-ADM-0-98-0430 and entitled *Joseph M. Ocol//FFIB vs. Victorino A. Basco et. al.*, based on the same act subject of the criminal indictment. The Office of the Ombudsman found one of the respondents therein (Isaac Puno III) administratively liable for simple misconduct. In the case of Basco and Luis, however, the complaint against them was dismissed for lack of jurisdiction.[7]

Isaac Puno III then filed a petition for review with the Court of Appeals (CA). After a study of his case, the CA exonerated him on the ground that the failure to conduct a public bidding was legally justified as "time was of the essence." It likewise considered the absence of a prior written approval from then President Ramos as merely confirmatory rather than curative in nature and, as a consequence, did not render the negotiated contracts[8] invalid.

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[7] *Isaac Puno III v. Office of the Ombudsman and Joseph Ocol*, CA-G.R. SP. No. 62084, February 11, 2002.

[8] Referring to the November 15, 1996 Memorandum of Agreement for the construction of the Mabalacat Clark Spur Road and Clark Perimeter Road Projects, and likewise the August 15, 1997 Supplemental Agreement to the same MOA entered into by all the accused herein.

On April 15, 2004, Sandiganbayan issued a Resolution[9] denying the demurrers to evidence. It opined that the prosecution's evidence substantiated the essential elements charged in the Information. For said reason, it was incumbent on the respondents to present controverting evidence. On the exoneration in the administrative case, Sandiganbayan was of the view that there was disparity in the nature of the two proceedings and in the quantum of evidence required, and so it did not necessarily bar a successful criminal prosecution involving the same or similar acts.

The private respondents filed their motion for reconsideration which was granted in a Resolution dated July 23, 2004. The *fallo* of the resolution reads:

> WHEREFORE, in view of the foregoing, this Court is constrained to GRANT, as it hereby GRANTS, the Motions for Reconsideration of accused Victorino A. Basco, Romeo S. David and Rogelio L. Luis, as the evidence of the prosecution failed to sufficiently establish the essential elements of the offense charged and to overcome the presumption of innocence in favor of the said accused. Accordingly, the cases against accused Victorino A. Basco, Romeo S. David and Rogelio L. Luis are hereby DISMISSED.

In making such a turnaround, the Sandiganbayan took into account the decision of the Court of Appeals in the administrative case, which upheld the legality and validity of the subject contracts, as a "persuasive ruling" considering that it involved the same issues, subject matter and parties. It reasoned out that since the bases for the two (2) separate and distinct proceedings pertain to the same evidence, then the principle that the dismissal of an administrative case does not necessarily bar the filing of a criminal prosecution for the same or similar acts subject of the administrative complaint, on which its previous resolution was anchored, no longer applies. It, thus, concluded that there being want of substantial evidence to support an administrative charge, there could be no sufficient evidence to warrant a conclusion that there is probable cause for a violation of Section 3(e) of R.A. No. 3019.

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[9] *Rollo*, pp. 49-53.

The Sandiganbayan further stated that the prosecution failed to establish the fact of overpricing. The prosecution witness was unable to justify her sole reliance on DPWH table of "Typical Construction Costs, 1999" *vis-à-vis* the roadway construction cost of the projects involved to prove overpricing. It noted that the Office of the Ombudsman itself was not firmly convinced of respondents' culpability as shown by (i) its issuance of two conflicting memoranda, *viz*: one in the administrative case dated June 28, 2000 (OMB-ADM-0-98-0430) where it found that there was no overpricing; and the other, in the criminal case (this case) dated June 19, 2000 (OMB-0-98-1629 and OMB-0-99-0368), where it found evidence that the project was overpriced; and (ii) the recommendation of Special Prosecutor Roberto Agagon that the contracts be reviewed by the COA, at a time when the Information was already filed in court.

Hence, this petition.

In the petition, the Office of the Ombudsman raises the following:

ISSUES

I. WHETHER THE ACT OF THE RESPONDENTS IN ENTERING INTO NEGOTIATED CONTRACTS IN THE IMPLEMENTATION OF THE MABALACAT-CLARK SPUR ROAD AND CLARK PERIMETER ROAD PROJECTS WAS IN ACCORDANCE WITH THE REQUIREMENTS OF P.D. 1594

II. WHETHER THE SANDIGANBAYAN CAN ADOPT THE FINDINGS OF FACTS OF THE COURT OF APPEALS CONSIDERING THAT THE CASE BEFORE THE FORMER COURT IS CRIMINAL IN NATURE, WHILE IN THE LATTER IT IS ADMINISTRATIVE

In their respective comments on the petition, the respondents are one in questioning the propriety of resorting to this present petition for review on *certiorari* under Rule 45 on the ground that it places them in double jeopardy.

In its Reply, petitioner argued that the right of the accused against double jeopardy cannot be invoked because the issues presented for resolution are purely legal.[10] In resolving the legal issues, there is no need to reevaluate the evidence already adduced before the Sandiganbayan. Petitioners also lament the fact that the Sandiganbayan ignored the legal dictum that the dismissal of the administrative case does not bar the filing of a criminal prosecution for the same or similar act/s subject of the criminal case. Under that doctrine, a criminal case already filed must proceed in the normal course of litigation.

THE COURT'S RULING

The petition fails.

Procedurally, the petitioner resorted to a wrong remedy. Section 1 of Rule 122 allows "any party" to appeal from a judgment or final order, unless the right of the accused against double jeopardy will be violated. It is axiomatic that an appeal in criminal cases throws the whole case wide open for review by an appellate court. As a consequence, an appeal by the prosecution from a judgment of acquittal necessarily places the accused in double jeopardy.[11]

The rule barring an appeal from a judgment of acquittal is, however, not absolute. The following are the recognized exceptions thereto: (i) when the prosecution is denied due process of law;[12] and (ii) when the trial court commits grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing a criminal case by granting the accused' demurrer to evidence.[13]

Such issues are brought to the attention of a reviewing court through the special civil action of *certiorari* under Rule 65 on

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[10] Petitioner's Reply, p. 4, citing *People v. Villalon*, 192 SCRA 521.

[11] *People v. Laguio*, G.R. No. 128587, March 16, 2007, 518 SCRA 402,403.

[12] *Id.* at 403-404, citing *Galman v. Sandiganbayan*, G.R. No. 72670, September 12, 1986, 144 SCRA 43.

[13] *Id.* at 405-406, citing *People v. Uy*, G.R. No. 158157, September 30, 2005, 471 SCRA 668.

the ground of grave abuse of discretion, amounting to lack or excess of jurisdiction. In assailing the resolution of the Sandiganbayan, the petitioner resorted to this petition for review on *certiorari* under Rule 45, purportedly raising pure questions of law. This is erroneous for which reason this petition is dismissible outright. In *People v. Laguio*,[14] the same procedural misstep was addressed by the Court in this wise:

> By this time, it is settled that the appellate court may review dismissal orders of trial courts granting an accused' demurrer to evidence. This may be done *via* the special civil action of *certiorari* under Rule 65 based on the ground of grave abuse of discretion, amounting to lack or excess of jurisdiction. Such dismissal order, being considered void judgment, does not result in jeopardy. Thus, when the order of dismissal is annulled or set aside by an appellate court in an original special civil action *via certiorari*, the right of the accused against double jeopardy is not violated.
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> Unfortunately, what petitioner People of the Philippines, xxx filed with the Court in the present case is an appeal by way of a petition for review on *certiorari* under Rule 45 raising a pure question of law, which is different from a petition for *certiorari* under Rule 65.
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> Also, in *Madrigal,* we stressed that the special civil action of *certiorari* and appeal are two different remedies mutually exclusive; they are neither alternative nor successive. Where appeal is available, *certiorari* will not prosper. In the dismissal of a criminal case upon demurrer to evidence, appeal is not available as such an appeal will put the accused in double jeopardy. *Certiorari,* however, is allowed.
>
> For being the wrong remedy taken by petitioner People of the Philippines in this case, this petition is **outrightly dismissible**. The Court cannot reverse the assailed dismissal order of the trial court by appeal without violating private respondent's right against double jeopardy. [Emphasis Supplied]

Stated differently, although the dismissal order consequent to a demurrer to evidence is not subject to appeal, it is still reviewable but only by *certiorari* under Rule 65 of the Rules of

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[14] *Id.*

Court. In such a case, the factual findings of the trial court are conclusive upon the reviewing court, and the only legal basis to reverse and set aside the order of dismissal upon demurrer to evidence is by a clear showing that the trial court, in acquitting the accused, committed grave abuse of discretion amounting to lack or excess of jurisdiction or a denial of due process, thus, rendering the assailed judgment void.[15]

Petitioner attempts to justify its position by relying on our pronouncement in *People v. Villalon*,[16] which reads:

> As a general rule, the dismissal or termination of the case after arraignment and plea of the defendant to a valid information shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the complaint or information. However, an appeal by the prosecution from the order of dismissal (of the criminal case) by the trial court shall not constitute double jeopardy if (1) the dismissal is made upon motion, or with the express consent, of the defendant, *and* (2) the dismissal is not an acquittal or based upon consideration of the evidence or of the merits of the case; *and* (3) the question to be passed upon by the appellate court is purely legal so that should the dismissal be found incorrect, the case would have to be remanded to the court of origin for further proceedings, to determine the guilt or innocence of the defendant. (emphasis supplied)

A cursory reading of the above judicial pronouncement readily betrays petitioner's posture on the matter. The use of the conjunctive word "and" which even originally[17] appeared italicized suggests the concurrence of those three requisites to prevent double jeopardy from attaching.

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[15] *Dayap v. Sendiong,* G.R. No. 177960, January 29, 2009.

[16] 192 SCRA 521, recited in Petitioner's Memorandum, *Rollo*, p. 424.

[17] *People v. Villalon*, *supra*, which cited the case of *People v. City Court of Manila*, 154 SCRA 175 (1987), merely reiterated *People v. Desalisa,* 125 Phil. 27 (1966), where the Supreme Court at the time admittedly made "certain loose statements" on the subject of double jeopardy.

The demurrer to evidence in criminal cases, such as the one at bench, is "filed after the prosecution had rested its case." As such, it calls "for an *appreciation of the evidence* adduced by the prosecution *and its sufficiency* to warrant conviction beyond reasonable doubt, resulting in a dismissal of the case on the merits, tantamount to an acquittal of the accused."[18] Judicial action on a motion to dismiss or demurrer to evidence is best left to the exercise of sound judicial discretion. Accordingly, unless the Sandiganbayan acted without jurisdiction or with grave abuse of discretion, its decision to grant or deny the demurrer may not be disturbed.[19]

Not surprisingly, petitioner has not attributed any commission of grave abuse of discretion on the part of Sandiganbayan in issuing the questioned resolution, on the mistaken assumption that it can assail the resolution on purely legal questions. As explained above, it cannot do so. A judgment of acquittal cannot be reopened or appealed because of the doctrine that nobody can be put twice in jeopardy for the same offense.

Granting *arguendo* that petitioner's recourse under Rule 45 was proper, nevertheless, petitioner failed to raise pure questions of law. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented. There is a question of law in a given case when the doubt or difference arises as to what the law is on certain state of facts.[20]

Contrary to petitioner's contention, the determination of whether the established facts fall squarely within the provisions of the law, that is, Section 3 (e) of R.A. No. 3019, would require us to reassess and reexamine the evidence, and essentially to supplant the lower courts' finding. This is beyond the province of Rule 45. Judicial review under Rule 45 does not envisage

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[18] *Dayap v. Sendiong*, G.R. 177960, January 29, 2009.

[19] *People v. Sandiganbayan*, G.R. Nos. 137707-11, December 17, 2004.

[20] Oscar M. Herrera, 2000 ed, p. 648, citing Moran, *Comments on the Rules of Court*, 1979 ed.

a re-evaluation of the sufficiency of the evidence upon which respondent court's action was predicated. It bears reiterating that a judgment of acquittal, "even if seemingly erroneous," is the final verdict.[21]

Similarly, the second issue posed by petitioner is a question of fact disguised as a question of law. An affirmative ruling thereon would also require us to review the factual bases of the ruling of the CA in the administrative case. In fact, as noted by respondent court, the same issue of legality or validity of the subject contracts had already been passed upon by the CA, and the Ombudsman did not even attempt to question the CA ruling, which could only mean its adherence thereto.

Petitioner would also make much of the principle in law that the dismissal of the administrative case does not necessarily prevent a criminal prosecution from proceeding. Indeed, the dismissal of an administrative case does not bar the filing of a criminal prosecution for the same or similar acts subject of the administrative complaint. Neither does the disposition in one case inevitably govern the resolution of the other case/s and vice versa. Administrative liability is one thing; criminal liability for the same act is another.[22] The distinct and independent nature of one proceeding from the other can be attributed to the following: first, the difference in the quantum of evidence required and, correlatively, the procedure observed and sanctions imposed; and second, the principle that a single act may offend against two or more distinct and related provisions of law, or that the same act may give rise to criminal as well as administrative liability.[23]

Although the dismissal of the criminal case cannot be pleaded to abate the administrative proceedings primarily on the ground that the quantum of proof required to sustain administrative charges is significantly lower than that necessary for criminal

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[21] *People v. Sandiganbayan*, *supra*.

[22] *Paredes v. Sandiganbayan, CA*, G.R. No. 108251, January 31, 1996.

[23] *Paredes v. CA*, G.R. No. 169534, July 30, 2007.

actions, the same does not hold true if it were the other way around, that is, the dismissal of the administrative case is being invoked to abate the criminal case. The reason is that the evidence presented in the administrative case may not necessarily be the same evidence to be presented in the criminal case. The prosecution is certainly not precluded from adducing additional evidence to discharge the burden of proof required in the criminal cases.[24] However, if the criminal case will be prosecuted based on the *same* facts *and* evidence as that in the administrative case, and the court trying the latter already squarely ruled on the absence of facts and/or circumstances sufficient to negate the basis of the criminal indictment,[25] then to still burden the accused to present controverting evidence despite the failure of the prosecution to present sufficient and competent evidence, will be a futile and useless exercise.

Petitioner's claim that the respondent court should not have adopted the Court of Appeal's findings and instead made its own separate finding on the matter deserves scant consideration.

WHEREFORE, petition is *DISMISSED*.

SO ORDERED.

Carpio (Chairperson), Nachura, Brion,[*] and *Abad, JJ.*, concur.

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[24] *Id.*

[25] *Nicolas v. Sandiganbayan*, G.R. Nos. 175930-31, February 11, 2008.

[*] Designated as additional member vice Associate Justice Diosdado M. Peralta, per raffle of December 9, 2009.

FIRST DIVISION

[G.R. No. 165036. July 5, 2010]

HAZEL MA. C. ANTOLIN, *petitioner, vs.* **ABELARDO T. DOMONDON, JOSE A. GANGAN, and VIOLETA J. JOSEF,** *respondents.*

[G.R. No. 175705. July 5, 2010]

HAZEL MA. C. ANTOLIN, *petitioner, vs.* **ANTONIETA FORTUNA-IBE,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; THE APPLICANT MUST HAVE A WELL-DEFINED, CLEAR, AND CERTAIN LEGAL RIGHT TO THE THING DEMANDED.—** At the very outset let us be clear of our ruling. Any claim for re-correction or revision of her 1997 examination cannot be compelled by *mandamus*. This much was made evident by our ruling in *Agustin-Ramos v. Sandoval,* x x x For a writ of *mandamus* to issue, the applicant must have a well-defined, clear, and certain legal right to the thing demanded. The corresponding duty of the respondent to perform the required act must be equally clear. No such clarity exists here; neither does petitioner's right to demand a revision of her examination results. And despite petitioner's assertions that she has not made any demand for re-correction, the most cursory perusal of her Second Amended Petition and her prayer that the respondents "make the appropriate revisions on the results of her examination" belies this claim.

2. **ID.; ID.; ID.; PETITIONER HAD AN ADEQUATE REMEDY FROM THE BOARD OF ACCOUNTANCY'S REFUSAL TO PROVIDE HER WITH COPIES OF THE EXAMINATION PAPERS**.— Like the claimants in *Agustin,* the remedy of petitioner from the refusal of the Board to release the Examination Papers should have been through an appeal to the PRC. Undoubtedly, petitioner had an adequate remedy from the Board's refusal to provide her with copies of the Examination

Papers. Under Section 5(a) of Presidential Decree No. 223, the PRC has the power to promulgate rules and regulations to implement policies for the regulation of the accounting profession. In fact, it is one such regulation (PRC Resolution No. 338) that is at issue in this case. In addition, under Section 5(c), the PRC has the power to **review, coordinate, integrate and approve the policies, resolutions, rules and regulations, orders or decisions promulgated by the various Boards** with respect to the profession or occupation under their jurisdictions including the results of their licensure examinations but their decisions on administrative cases shall be final and executory unless appealed to the Commission within thirty (30) days from the date of promulgation thereof.

3. **ID.; ID.; ID.; SINCE THE PROFESSIONAL REGULATION COMMISSION (PRC) ITSELF ISSUED THE RESOLUTION QUESTIONED BY PETITIONER, IT WAS IN THE BEST POSITION TO RESOLVE QUESTIONS ADDRESSED TO ITS AREA OF EXPERTISE.—** Petitioner posits that no remedy was available because the PRC's power to "review" and "approve" in Section 5(c) only refers to appeals in decisions concerning administrative investigations and not to instances where documents are being requested. Not only is this position myopic and self-serving, it is bereft of either statutory or jurisprudential basis. The PRC's quasi-legislative and enforcement powers, encompassing its authority to review and approve "policies, resolutions, rules and regulations, orders, or decisions" cover more than administrative investigations conducted pursuant to its quasi-judicial powers. More significantly, since the PRC itself issued the resolution questioned by the petitioner here, it was in the best position to resolve questions addressed to its area of expertise. Indeed, petitioner could have saved herself a great deal of time and effort had she given the PRC the opportunity to rectify any purported errors committed by the Board.

4. **ID.; ID.; ID.; MOOTNESS OF ISSUE; PETITIONER'S BELATED PASSING OF THE CPA BOARD EXAMS DOES NOT AUTOMATICALLY MEAN THAT HER INTEREST IN THE EXAMINATION PAPERS HAS BECOME A MERE SUPERFLUITY; THE CONSTITUTIONAL QUESTION PRESENTED, IN VIEW OF THE LIKELIHOOD THAT THE**

ISSUE IN THE CASE WILL BE REPEATED, WARRANTS REVIEW.— In this jurisdiction, any citizen may challenge any attempt to obstruct the exercise of his or her right to information and may seek its enforcement by *mandamus*. And since every citizen possesses the inherent right to be informed by the mere fact of citizenship, we find that petitioner's belated passing of the CPA Board Exams does not automatically mean that her interest in the Examination Papers has become mere superfluity. Undoubtedly, the constitutional question presented, in view of the likelihood that the issues in this case will be repeated, warrants review.

5. POLITICAL LAW; ADMINISTRATIVE LAW; PRINCIPLE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; REASON; EXCEPTIONS TO THE RULE.— One of the reasons for exhaustion of administrative remedies is our well-entrenched doctrine on separation of powers, which enjoins upon the Judiciary a becoming policy of non-interference with matters falling primarily (albeit not exclusively) within the competence of other departments. Courts, for reasons of law, comity and convenience, should not entertain suits unless the available administrative remedies have first been resorted to and the proper authorities have been given an appropriate opportunity to act and correct their alleged errors, if any, committed in the administrative forum. However, the principle of exhaustion of administrative remedies is subject to exceptions, among which is when only a question of law is involved. This is because issues of law – such as whether petitioner has a constitutional right to demand access to the Examination Papers - cannot be resolved with finality by the administrative officer.

6. ID.; CONSTITUTIONAL LAW; RIGHT TO INFORMATION; THE PEOPLE'S RIGHT TO INFORMATION IS LIMITED TO "MATTERS OF PUBLIC CONCERN" AND IS FURTHER SUBJECT TO LIMITATIONS AS MAY BE PROVIDED BY LAW.— Like all the constitutional guarantees, the right to information is not absolute. The people's right to information is limited to "matters of public concern," and is further "subject to such limitations as may be provided by law." Similarly, the State's policy of full disclosure is limited to "transactions involving public interest," and is "subject to

reasonable conditions prescribed by law." The Court has always grappled with the meanings of the terms "public interest" and "public concern." As observed in *Legaspi v. Civil Service Commission:* In determining whether x x x a particular information is of public concern there is no rigid test which can be applied. "Public concern" like "public interest" is a term that eludes exact definition. Both terms embrace a broad spectrum of subjects which the public may want to know, either because these directly affect their lives, or simply because such matters naturally arouse the interest of an ordinary citizen. In the final analysis, it is for the courts to determine on a case by case basis whether the matter at issue is of interest or importance, as it relates to or affects the public. We have also recognized the need to preserve a measure of confidentiality on some matters, such as national security, trade secrets and banking transactions, criminal matters, and other confidential matters.

7. **ID.; ID.; ID.; THE NATIONAL BOARD EXAMINATIONS SUCH AS THE CPA BOARD EXAMS ARE MATTERS OF PUBLIC CONCERN.—** We are prepared to concede that national board examinations such as the CPA Board Exams are matters of public concern. The populace in general, and the examinees in particular, would understandably be interested in the fair and competent administration of these exams in order to ensure that only those qualified are admitted into the accounting profession. And as with all matters pedagogical, these examinations could be not merely quantitative means of assessment, but also means to further improve the teaching and learning of the art and science of accounting.

8. **ID.; ID.; ID.; SINCE THE PROFESSIONAL REGULATION COMMISSION (PRC) IS NOT A PARTY TO THE PROCEEDINGS AND WAS NOT GIVEN AN OPPORTUNITY TO EXPLAIN THEIR SIDE, CONSIDERING THE FAR-REACHING IMPLICATIONS OF THE CASE WHICH MAY IMPACT ON EVERY BOARD EXAMINATION IT ADMINISTERS, THE COURT REMANDED THE CASE TO THE TRIAL COURT FOR FURTHER PROCEEDINGS.—** We do realize that there may be valid reasons to limit access to the Examination Papers in order to properly administer the exam. More than the mere

convenience of the examiner, it may well be that there exist inherent difficulties in the preparation, generation, encoding, administration, and checking of these multiple choice exams that require that the questions and answers remain confidential for a limited duration. However, the PRC is not a party to these proceedings. They have not been given an opportunity to explain the reasons behind their regulations or articulate the justification for keeping the Examination Documents confidential. In view of the far-reaching implications of this case, which may impact on every board examination administered by the PRC, and in order that all relevant issues may be ventilated, we deem it best to remand these cases to the RTC for further proceedings.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez and Gatmaitan for petitioner.

Valdez Domondon and Associates for respondents Domondons, *et al.*

Castillo Laman Tan Pantaleon and San Jose for Fortuna–Ibe.

D E C I S I ON

DEL CASTILLO, *J.*:

Examinations have a two-fold purpose. First, they are summative; examinations are intended to assess and record what and how much the students have learned. Second, and perhaps more importantly, they are formative; examinations are intended to be part and parcel of the learning process. In a perfect system, they are tools for learning. In view of the pedagogical aspect of national examinations, the need for all parties to fully ventilate their respective positions, and the view that government transactions can only be improved by public scrutiny, we remand these cases to the trial court for further proceedings.

Factual Antecedents

Petitioner took the accountancy licensure examinations (the Certified Public Accountant [CPA] Board Exams) conducted

by the Board of Accountancy (the Board) in October 1997.[1] The examination results were released on October 29, 1997; out of 6,481 examinees, only 1,171 passed. Unfortunately, petitioner did not make it. When the results were released, she received failing grades in four out of the seven subjects.[2]

Subject	Petitioner's Grade
Theory of Accounts	65 %
Business Law	66 %
Management Services	69 %
Auditing Theory	82 %
Auditing Problems	70 %
Practical Accounting I	68 %
Practical Accounting II	77 %

Convinced that she deserved to pass the examinations, she wrote to respondent Abelardo T. Domondon (Domondon), Acting Chairman of the Board of Accountancy, and requested that her answer sheets be re-corrected.[3] On November 3, 1997, petitioner was shown her answer sheets, but these consisted merely of shaded marks, so she was unable to determine why she failed the exam.[4] Thus, on November 10, 1997, she again wrote to the Board to request for copies of (a) the questionnaire in each of the seven subjects (b) her answer sheets; (c) the answer keys to the questionnaires, and (d) an explanation of the grading system used in each subject (collectively, the Examination Papers).[5]

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[1] The examination questions were of the multiple choice type, where each question was followed by four possible answers to choose from. The examinee was required to indicate his or her answer by shading in pencil one of four small "circles" corresponding to each choice.

[2] *Rollo* (G.R. No.175705), p. 73.

[3] *Id.* at 69.

[4] *Id.* at 70.

[5] *Id.* at 71.

Acting Chairman Domondon denied petitioner's request on two grounds: first, that Section 36, Article III of the Rules and Regulations Governing the Regulation and Practice of Professionals, as amended by Professional Regulation Commission (PRC) Resolution No. 332, series of 1994, only permitted access to the petitioner's answer sheet (which she had been shown previously), and that reconsideration of her examination result was only proper under the grounds stated therein:

> Sec. 36 An examinee shall be allowed to have access or to go over his/her test papers or answer sheets on a date not later than thirty (30) days from the official release of the results of the examination. Within ten (10) days from such date, he/she may file his/her request for reconsideration of ratings. Reconsideration of rating shall be effected only on grounds of mechanical error in the grading of his/her testpapers or answer sheets, or malfeasance.[6]

Second, Acting Chairman Domondon clarified that the Board was precluded from releasing the Examination Papers (other than petitioner's answer sheet) by Section 20, Article IV of PRC Resolution No. 338, series of 1994, which provides:

> Sec. 20. *Illegal, Immoral, Dishonorable, Unprofessional Acts* – The hereunder acts shall constitute prejudicial, illegal, grossly immoral, dishonorable, or unprofessional conduct:
>
> A. Providing, getting, receiving, holding, using or reproducing questions
>
> x x x x x x x x x
>
> 3. that have been given in the examination except if the test bank for the subject has on deposit at least two thousand (2,000) questions.[7]

After a further exchange of correspondence,[8] the Board informed petitioner that an investigation was conducted into

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[6] *Id.* at 72.

[7] *Id.* at 38.

[8] *Id.* at 73-78.

her exam and there was no mechanical error found in the grading of her test papers.[9]

Proceedings before the Regional Trial Court

Undeterred, on January 12, 1998, petitioner filed a Petition for *Mandamus* with Damages against the Board of Accountancy and its members[10] before the Regional Trial Court (RTC) of Manila. The case was raffled to Branch 33, and docketed as Civil Case No. 98-86881. The Petition included a prayer for the issuance of a preliminary mandatory injunction ordering the Board of Accountancy and its members (the respondents) to furnish petitioner with copies of the Examination Papers. Petitioner also prayed that final judgment be issued ordering respondents to furnish petitioner with all documents and other materials as would enable her to determine whether respondents fairly administered the examinations and correctly graded petitioner's performance therein, and, if warranted, to issue to her a certificate of registration as a CPA.[11]

On February 5, 1998, respondents filed their Opposition to the Application for a Writ of Preliminary Mandatory Injunction, and argued, *inter alia,* that petitioner was not entitled to the relief sought, that the respondents did not have the duty to furnish petitioner with copies of the Examination Papers, and that petitioner had other plain, speedy, adequate remedy in the ordinary course of law, namely, recourse to the PRC.[12] Respondents also filed their Answer with Compulsory Counterclaim in the main case, which asked that the Petition for *Mandamus* with Damages be dismissed for lack of merit on the following grounds: (1) petitioner failed to exhaust administrative remedies; (2) the petition stated no cause of action because there was no ministerial duty to release the

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[9] *Rollo* (G.R. No. 165036), pp. 107-108.

[10] Namely, Conchita L. Manabat, Abelardo T. Domondon, Reynaldo D. Gamboa, Jose V. Ramos, Violeta J. Josef, Antonieta Fortuna-Ibe, and Jose Gangan.

[11] *Rollo* (G.R. No. 175705), pp. 34-42.

[12] CA *rollo* (CA G.R. SP No. 76498), pp. 62-70.

information demanded; and (3) the constitutional right to information on matters of public concern is subject to limitations provided by law, including Section 20, Article IV, of PRC Resolution No. 338, series of 1994.[13]

On March 3, 1998, petitioner filed an Amended Petition (which was admitted by the RTC), where she included the following allegation in the body of her petition:

> The allegations in this amended petition are meant only to plead a cause of action for access to the documents requested, not for re-correction which petitioner shall assert in the proper forum depending on, among others, whether she finds sufficient error in the documents to warrant such or any other relief. None of the allegations in this amended petition, including those in the following paragraphs, is made to assert a cause of action for re-correction.[14]

If only to underscore the fact that she was not asking for a re-checking of her exam, the following prayer for relief was deleted from the Amended Petition: "and, if warranted, to issue to her a certificate of registration as a CPA."

On June 23, 1998, respondents filed a Manifestation and Motion to Dismiss Application for Writ of Preliminary Mandatory Injunction, on the ground that petitioner had taken and passed the May 1998 CPA Licensure Examination and had taken her oath as a CPA.[15] Petitioner filed her Opposition on July 8, 1998.[16] Subsequently, on October 29, 1998, respondents filed their Answer with Counterclaim to the amended petition. They reiterated their original allegations and further alleged that there was no cause of action because at the time the Amended Petition was admitted, they had ceased to be members of the Board of Accountancy and they were not in possession of the documents sought by the petitioner.[17]

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[13] *Id.* at 76-90.

[14] *Id.* at 91-93.

[15] *Id.* at 76-90.

[16] *Id.* at 120-123.

[17] *Id.* at 127-130.

Ruling of the Regional Trial Court

In an Order dated October 16, 1998, the trial court granted respondent's Motion to Dismiss Petitioner's Application for a Writ of Preliminary Mandatory Injunction (not the main case), ruling that the matter had become moot since petitioner passed the May CPA Licensure 1998 Examination and had already taken her oath as a CPA.[18]

Undaunted, petitioner sought and obtained leave to file a ***Second*** Amended Petition for *Mandamus* with Damages[19] where she finally impleaded the PRC as respondent and included the following plea in her prayer:

> WHEREFORE, petitioner respectfully prays that:
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> x x x x x x x x x
>
> 2. Judgment be issued –
>
> (a) commanding respondents to give petitioner all documents and other materials as would enable her to determine whether respondents fairly administered the same examinations and correctly graded petitioner's performance therein **and, if warranted, to make the appropriate revisions on the results of her examination.** (Emphasis ours)

On June 21, 2002, the trial court dismissed the petition on the ground that the petition had already become moot, since petitioner managed to pass the 1998 CPA Board examinations.[20] Petitioner sought reconsideration[21] which was granted by the trial court in its Omnibus Order[22] dated November 11, 2002. The Omnibus Order provides in part:

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[18] *Id.* at 131.

[19] *Id.* at 150-159.

[20] *Id.* at 36-38; penned by Judge Reynaldo G. Ros.

[21] *Id.* at 215-227. On August 26, 2002, private respondents filed their Comment/Opposition; *id.* at 234-241. Petitioner filed her Reply, *id.* at 242-249.

[22] *Id.* at 29-30.

On the motion for reconsideration filed by the petitioner, the Court is inclined to reconsider its Order dismissing the petition. The Court agrees with the petitioner that the passing of the petitioner in the subsequent CPA examination did not render the petition moot and academic because the relief "and if warranted, to issue to her a certificate of registration as Certified Public Accountant" was deleted from the original petition. As regard the issue of whether the petitioner has the constitutional right to have access to the questioned documents, the Court would want first the parties to adduce evidence before it can resolve the issue so that it can make a complete determination of the rights of the parties.

The Court would also want the Professional Regulation Commission to give its side of the case the moment it is impleaded as a respondent in the Second Amended Petition for *Mandamus* filed by the petitioner which this Court is inclined to grant.

As to the Motion for Conservatory Measures filed by the petitioner, the Court denies the same. It is clear that the PRC has in custody the documents being requested by the petitioner. It has also an adequate facility to preserve and safeguard the documents. To be sure that the questioned documents are preserved and safeguarded, the Court will order the PRC to preserve and safeguard the documents and make them available anytime the Court or petitioner needs them.

WHEREFORE, the Order of this Court dated June 20, 2002 is reconsidered and set aside. The Professional Regulation Commission is ordered to preserve and safeguard the following documents:

a) Questionnaire in each of the seven subjects comprising the Accountancy Examination of October, 1997;
b) Petitioner's Answer Sheets; and
c) Answer keys to the questionnaires.

SO ORDERED.[23]

Respondents filed a motion for reconsideration which was denied.[24]

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[23] *Id.* at 30.

[24] *Id.* at 33.

Proceedings before the Court of Appeals

The RTC Decisions led to the filing of three separate petitions for *certiorari* before the Court of Appeals (CA):

(a) CA-GR SP No. 76498, a petition filed by respondents Domondon, Gangan, and Josef on April 11, 2003;

(b) CA-GR SP No. 76546, a petition filed by respondent Ibe on April 30, 2003; and

(c) CA-GR SP No. 76545, a petition filed by the Board of Accountancy and PRC.

It is the first two proceedings that are pending before us. In both cases, the CA set aside the RTC Decisions and ordered the dismissal of Civil Case No. 98-8681.

Ruling of the Court of Appeals

In its December 11, 2006 Decision[25] in CA-GR SP No. 76546, the CA ruled that the petition has become moot in view of petitioner's eventual passing of the 1998 CPA Board Exam. In CA-GR SP No. 76498, the CA found, in a Decision dated February 16, 2004,[26] that (i) Section 20, Article IV of PRC Resolution No. 338 constituted a valid limitation on petitioner's right to information and access to government documents; (ii) the Examination Documents were not of public concern, because petitioner merely sought review of her failing marks; (iii) it was not the ministerial or mandatory function of the respondents to review and reassess the answers to examination questions of a failing examinee; (iv) the case has become moot, since petitioner already passed the May 1998 CPA Board Examinations and took her oath as a CPA; and (v) petitioner failed to exhaust administrative remedies, because, having failed to secure the

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[25] *Rollo* (G.R. No. 175705), pp. 22-33; penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Martin S. Villarama, Jr. and Lucas P. Bersamin.

[26] *Rollo* (G.R. No. 165036), pp. 37-53; penned by Associate Justice Renato C. Dacudao and concurred in by Associate Justice Danilo B. Pine and Presiding Justice Cancio C. Garcia.

desired outcome from the respondents, she did not elevate the matter to the PRC before seeking judicial intervention.[27]

CA-GR SP No. 76498 and CA-GR SP No. 76546 were brought before us by the petitioner and docketed as G.R. Nos. 165036 and 175705, respectively. The cases were then consolidated, in view of the similarity of the factual antecedents and issues, and to avoid the possibility of conflicting decisions by different divisions of this Court.[28]

Issues

Before us, petitioner argues that she has a right to obtain copies of the examination papers so she can determine for herself why and how she failed and to ensure that the Board properly performed its duties. She argues that the Constitution[29] as well as the Code of Conduct and Ethical Standards for Public Officials and Employees[30] support her right to demand access to the

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[27] Petitioner's Motion for Reconsideration was denied in a Resolution dated August 24, 2004.

[28] *Rollo* (G.R. No. 175075), pp. 89-90.

[29] Article III, Sec. 7 provides:

Section 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

Article XI, Sec. 1 provides:

Section 1. Public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives.

[30] Republic Act No. 6713, An Act Establishing A Code Of Conduct And Ethical Standards For Public Officials And Employees, To Uphold The Time-Honored Principle Of Public Office Being A Public Trust, Granting Incentives And Rewards For Exemplary Service, Enumerating Prohibited Acts And Transactions And Providing Penalties For Violations Thereof And For Other Purposes (1989).

Section 5. Duties of Public Officials and Employees. - In the performance of their duties, all public officials and employees are under obligation to:

Examination Papers. Furthermore, she claims that there was no need to exhaust administrative remedies, since no recourse to the PRC was available, and only a pure question of law is involved in this case. Finally, she claims that her demand for access to documents was not rendered moot by her passing of the 1998 CPA Board Exams.

Our Ruling

Propriety of Writ of Mandamus

At the very outset let us be clear of our ruling. Any claim for re-correction or revision of her 1997 examination cannot be compelled by *mandamus*. This much was made evident by our ruling in *Agustin-Ramos v. Sandoval,*[31] where we stated:

> After deliberating on the petition in relation to the other pleadings filed in the proceedings at bar, the Court resolved to DENY said petition for lack of merit. The petition at bar prays for the setting aside of the Order of respondent Judge dismissing petitioners' *mandamus* action to compel the other respondents (Medical Board of Examiners and the Professional Regulation Commission) "to reconsider, recorrect and/or rectify the board ratings of the petitioners from their present failing grades to higher or passing marks." **The function of reviewing and re-assessing the petitioners' answers to the examination questions, in the light of the facts and arguments presented by them x x x is a discretionary function of the Medical Board, not a ministerial and mandatory one, hence, not within the scope of the writ of *mandamus*.** The obvious remedy of the petitioners from the adverse judgment by the Medical Board of Examiners was an appeal to the Professional Regulation Commission itself, and thence to the Court of Appeals; and since they did not apply for relief to the Commission prior to their institution of the special civil action of *mandamus* in the Regional Trial Court, the omission was fatal to the action under the familiar doctrine requiring exhaustion of administrative remedies.

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x x x x x x x x x

(e) Make documents accessible to the public. - All public documents must be made accessible to, and readily available for inspection by, the public within reasonable working hours.

[31] G.R. No. 84470, February 2, 1989 (Minute Resolution).

Apart from the obvious undesirability of a procedure which would allow Courts to substitute their judgment for that of Government boards in the determination of successful examinees in any administered examination – an area in which courts have no expertise – and the circumstance that the law declares the Court of Appeals to be the appropriate review Court, the Regional Trial Court was quite correct in refusing to take cognizance of an action seeking reversal of the quasi-judicial action taken by the Medical Board of Examiners.[32] (Emphasis ours)

For a writ of *mandamus* to issue, the applicant must have a well-defined, clear, and certain legal right to the thing demanded. The corresponding duty of the respondent to perform the required act must be equally clear.[33] No such clarity exists here; neither does petitioner's right to demand a revision of her examination results. And despite petitioner's assertions that she has not made any demand for re-correction, the most cursory perusal of her Second Amended Petition and her prayer that the respondents "make the appropriate revisions on the results of her examination" belies this claim.

Like the claimants in *Agustin,* the remedy of petitioner from the refusal of the Board to release the Examination Papers should have been through an appeal to the PRC. Undoubtedly, petitioner had an adequate remedy from the Board's refusal to provide her with copies of the Examination Papers. Under Section 5(a) of Presidential Decree No. 223,[34] the PRC has the power to promulgate rules and regulations to implement policies for the regulation of the accounting profession.[35] In fact, it is one such

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[32] *Id.*

[33] *Lemi v. Valencia*, 135 Phil. 185, 193 (1968); *Subido v. Hon. Ocampo*, 164 Phil. 438, 447-448 (1976).

[34] Creating The Professional Regulation Commission And Prescribing Its Powers And Functions (1973).

[35] See also Section 5(a), which provides:

Section 5. Powers of the Commission. The powers of the Commission are as follows:

a) To administer, implement and enforce the regulatory policies of the National Government with respect to the regulation and licensing of the various

regulation (PRC Resolution No. 338) that is at issue in this case. In addition, under Section 5(c), the PRC has the power to

> **review, coordinate, integrate and approve the policies, resolutions, rules and regulations, orders or decisions promulgated by the various Boards** with respect to the profession or occupation under their jurisdictions including the results of their licensure examinations but their decisions on administrative cases shall be final and executory unless appealed to the Commission within thirty (30) days from the date of promulgation thereof.

Petitioner posits that no remedy was available because the PRC's power to "review" and "approve" in Section 5(c) only refers to appeals in decisions concerning administrative investigations[36] and not to instances where documents are being requested. Not only is this position myopic and self-serving, it is bereft of either statutory or jurisprudential basis. The PRC's quasi-legislative and enforcement powers, encompassing its authority to review and approve "policies, resolutions, rules and regulations, orders, or decisions" cover more than administrative investigations conducted pursuant to its quasi-judicial powers.[37] More significantly, since the PRC itself issued the resolution questioned by the petitioner here, it was in the best position to resolve questions addressed to its area of expertise. Indeed, petitioner could have saved herself a great deal of time and effort had she given the PRC the opportunity to rectify any purported errors committed by the Board.

One of the reasons for exhaustion of administrative remedies is our well-entrenched doctrine on separation of powers, which enjoins upon the Judiciary a becoming policy of non-interference

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professions and occupations under its jurisdiction including the maintenance of professional and occupational standards and ethics and the enforcement of the rules and regulations relative thereto.

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m) To exercise general supervision over the members of the various Boards;

[36] Pursuant to the Rules and Regulations Governing the Regulation and Practice of Professionals.

[37] See *Lupangco v. Court of Appeals*, 243 Phil. 993, 1002 (1988).

with matters falling primarily (albeit not exclusively) within the competence of other departments.[38] Courts, for reasons of law, comity and convenience, should not entertain suits unless the available administrative remedies have first been resorted to and the proper authorities have been given an appropriate opportunity to act and correct their alleged errors, if any, committed in the administrative forum.[39]

However, the principle of exhaustion of administrative remedies is subject to exceptions, among which is when only a question of law is involved.[40] This is because issues of law – such as whether petitioner has a constitutional right to demand access to the Examination Papers – cannot be resolved with finality by the administrative officer.[41]

Issues of Mootness

We now turn to the question of whether the petition has become moot in view of petitioner's having passed the 1998 CPA examination. An issue becomes moot and academic when it ceases to present a justiciable controversy, so that a declaration on the issue would be of no practical use or value.[42]

In this jurisdiction, any citizen may challenge any attempt to obstruct the exercise of his or her right to information and may seek its enforcement by *mandamus*.[43] And since every citizen

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[38] *Merida Water District v. Bacarro*, G.R. No. 165993, September 30, 2008, 567 SCRA 203, 209.

[39] *Laguna CATV Network, Inc. v. Hon. Maraan*, 440 Phil. 734, 740 (2002).

[40] *Valmonte v. Belmonte, Jr.*, 252 Phil. 264, 269 (1989).

[41] *Castro v. Secretary of Education*, G.R. No. 132174, August 20, 2001

[42] See *Gancho-on v. Secretary Gloria*, 337 Phil. 654, 658 (1997); *Philippine Airlines, Inc. v. Pascua*, 456 Phil. 425, 436 (2003); *David v. Macapagal-Arroyo*, G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489, 171424, May 3, 2006, 489 SCRA 160, 213-214; *Soriano Vda. De Dabao v. Court of Appeals,* 469 Phil. 928, 937 (2004).

[43] *Bantay Republic Act or BA-RA 7941 v. Commission on Elections*, G.R. Nos. 177271 & 177314, May 4, 2007, 523 SCRA 1, 14-15.

possesses the inherent right to be informed by the mere fact of citizenship,[44] we find that petitioner's belated passing of the CPA Board Exams does not automatically mean that her interest in the Examination Papers has become mere superfluity. Undoubtedly, the constitutional question presented, in view of the likelihood that the issues in this case will be repeated, warrants review.[45]

The crux of this case is whether petitioner may compel access to the Examination Documents through *mandamus*. As always, our inquiry must begin with the Constitution. Section 7, Article III provides:

Sec.7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

Together with the guarantee of the right to information, Section 28, Article II promotes full disclosure and transparency in government, *viz:*

Sec. 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

Like all the constitutional guarantees, the right to information is not absolute. The people's right to information is limited to "matters of public concern," and is further "subject to such

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[44] *Tañada v. Hon. Tuvera*, 220 Phil. 422, 433-434 (1985).

[45] Even if we were to assume that the issue has become moot, we have repeatedly enumerated the exceptions to the rule on mootness, thus:

The "moot and academic" principle is not a magical formula that can automatically dissuade the courts in resolving a case. Courts will decide cases, otherwise moot and academic, if: first, there is a grave violation of the Constitution; second, the exceptional character of the situation and the paramount public interest is involved; third, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and fourth, the case is capable of repetition yet evading review. *David v. Macapagal-Arroyo, supra* note 42 at 214-215.

limitations as may be provided by law." Similarly, the State's policy of full disclosure is limited to "transactions involving public interest," and is "subject to reasonable conditions prescribed by law." The Court has always grappled with the meanings of the terms "public interest" and "public concern." As observed in *Legaspi v. Civil Service Commission:*[46]

> In determining whether x x x a particular information is of public concern there is no rigid test which can be applied. "Public concern" like "public interest" is a term that eludes exact definition. Both terms embrace a broad spectrum of subjects which the public may want to know, either because these directly affect their lives, or simply because such matters naturally arouse the interest of an ordinary citizen. In the final analysis, it is for the courts to determine on a case by case basis whether the matter at issue is of interest or importance, as it relates to or affects the public.

We have also recognized the need to preserve a measure of confidentiality on some matters, such as national security, trade secrets and banking transactions, criminal matters, and other confidential matters.[47]

We are prepared to concede that national board examinations such as the CPA Board Exams are matters of public concern. The populace in general, and the examinees in particular, would understandably be interested in the fair and competent administration of these exams in order to ensure that only those qualified are admitted into the accounting profession. And as with all matters pedagogical, these examinations could be not merely quantitative means of assessment, but also means to further improve the teaching and learning of the art and science of accounting.

On the other hand, we do realize that there may be valid reasons to limit access to the Examination Papers in order to properly administer the exam. More than the mere convenience

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[46] *Legaspi v. Civil Service Commission*, 234 Phil. 521, 535 (1987).

[47] *Chavez v. Presidential Commission on Good Government*, 360 Phil. 133, 160 (1998).

of the examiner, it may well be that there exist inherent difficulties in the preparation, generation, encoding, administration, and checking of these multiple choice exams that require that the questions and answers remain confidential for a limited duration. However, the PRC is not a party to these proceedings. They have not been given an opportunity to explain the reasons behind their regulations or articulate the justification for keeping the Examination Documents confidential. In view of the far-reaching implications of this case, which may impact on every board examination administered by the PRC, and in order that all relevant issues may be ventilated, we deem it best to remand these cases to the RTC for further proceedings.

IN VIEW OF THE FOREGOING, the petitions are *GRANTED*. The December 11, 2006 and February 16, 2004 Decisions of the Court of Appeals in CA-GR SP No. 76546 and CA-GR SP No. 76498, respectively, are hereby *SET ASIDE*. The November 11, 2002 and January 30, 2003 Orders of the Regional Trial Court of Manila, Branch 33, in Civil Case No. 98-86881 are *AFFIRMED*. The case is remanded to the Regional Trial Court for further proceedings.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Perez, JJ.,* concur.

THIRD DIVISION

[G.R. No. 167401. July 5, 2010]

BAGONG PAGKAKAISA NG MANGGAGAWA NG TRIUMPH INTERNATIONAL, represented by SABINO F. GRAGANZA, Union President, and REYVILOSA TRINIDAD, *petitioners, vs.* **SECRETARY OF THE DEPARTMENT OF LABOR AND EMPLOYMENT and TRIUMPH INTERNATIONAL (PHILS.), INC.,** *respondents.*

[G.R. No. 167407. July 5, 2010]

TRIUMPH INTERNATIONAL (PHILS.), INC., *petitioner, vs.* **BAGONG PAGKAKAISA NG MANGGAGAWA NG TRIUMPH INTERNATIONAL, ELOISA FIGURA, JERRY JAICTEN, ROWELL FRIAS, MARGARITA PATINGO and ROSALINDA OLANGAR,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT; LABOR SECRETARY'S AWARD IN RESOLVING THE BARGAINING DEADLOCK, UPHELD; FACTORS SHOWING SUFFICIENT JUSTIFICATION FOR THE AWARD.— We find no compelling justification to disturb the award. We are convinced, as the appellate court was, of the reasonableness of the award. It was based on the prevailing economic indicators in the workplace, in the industry, and in the local and regional economy. As well, it took into account the comparative standing of the company in terms of employees' wages and other economic benefits. We find the following factors as sufficient justification for the award: 1. The regional financial crisis and the downturn in the economy at the time, impacting on the performance of the company as indicated in its negative financial picture in 1999. 2. The company's favorable comparison with industry standards in terms of employee

benefits, especially wages. Its average daily basic wage of ₱310.00 is 40% higher than the statutory minimum wage of ₱223.50, and superior to the industry's average of ₱258.00. For the years prior to the 1999 negotiations, its aggregate daily wage increase of ₱64.00 surpassed the statutory minimum increase of ₱33.00. 3. The forty-two (42) non-wage benefit programs of the company which undeniably extend the reach of the employees' cash wage in enhancing the well-being of the employees and their families.

2. ID.; ID.; ID.; CONCLUSIONS OF THE LABOR SECRETARY ARE ACCORDED RESPECT AS THEY WERE MADE BY A PUBLIC OFFICIAL ESPECIALLY TRAINED IN THE DELEGATE TASKED OF RESOLVING COLLECTIVE BARGAINING DISPUTES, AND ON THEIR FACE ARE JUST AND REASONABLE.— The conclusions of the Labor Secretary, drawn as they were from a close examination of the submissions of the parties, do not indicate any legal error, much less any grave abuse of discretion. We accord respect to these conclusions as they were made by a public official especially trained in the delicate task of resolving collective bargaining disputes, and are on their face just and reasonable. "[U]nless there is a clear showing of grave abuse of discretion, this Court cannot, and will not, interfere with the labor expertise of the public respondent Secretary of Labor," as the Court held in *Pier Arrastre and Stevedoring Services v. Ma. Nieves Roldan-Confesor, et al.*

3. ID.; ID.; ID.; THE SUCCESSFUL NEGOTIATION OF TWO PREVIOUS COLLECTIVE AGREEMENTS, CONSIDERED. — We also note that during the pendency of the present dispute, the parties entered into a new CBA for the years 2000-2005, providing for a ₱45.00/day wage increase for the workers. The CA cited this agreed wage adjustment as an indication of the reasonableness of the disputed award. The Labor Secretary himself alluded to "*the letter-manifestation received by this Office on 15 June 2000 containing the signatures of some 700 employees of the Company indicating the acceptance of the award rendered in the 31 May 2000 Order.*" There was also the manifestation of the company dated February 7, 2006, advising the Court that it concluded another CBA with the union providing for a wage increase of ₱22.00/day effective

July 19, 2005; ₱20.00/day for July 19, 2006; and ₱20.00/day for July 19, 2007. The successful negotiation of two collective agreements even before the parties could sit down and formalize the 1999-2001 CBA highlights the need for the parties to abide by the decision of the Labor Secretary and move on to the next phase of their collective bargaining relationship.

4. **ID.; ID.; STRIKES AND LOCKOUTS; ASSUMPTION OF JURISDICTION POWERS OF THE LABOR SECRETARY; INTENT OF THE LAW IS TO GIVE THE LABOR SECRETARY FULL AUTHORITY TO RESOLVE ALL MATTERS WITHIN THE DISPUTE THAT GAVE RISE TO OR WHICH AROSE OUT OF THE STRIKE OR LOCKOUT.—** We agree with the CA's conclusion that the Labor Secretary erred, to the point of abusing his discretion, when he did not resolve the dismissal issue on the mistaken reading that this issue falls within the jurisdiction of the labor arbiter. This was an egregious error and an abdication of authority on the matter of strikes – the ultimate weapon in labor disputes that the law specifically singled out under Article 263 of the Labor Code by granting the Labor Secretary assumption of jurisdiction powers. Article 263(g) is both an extraordinary and a preemptive power to address an extraordinary situation – a strike or lockout in an industry indispensable to the national interest. This grant is not limited to the grounds cited in the notice of strike or lockout that may have preceded the strike or lockout; nor is it limited to the incidents of the strike or lockout that in the meanwhile may have taken place. As the term "assume jurisdiction" connotes, the intent of the law is to give the Labor Secretary full authority to resolve all matters within the dispute that gave rise to or which arose out of the strike or lockout; it includes and extends to all questions and controversies arising from or related to the dispute, including cases over which the labor arbiter has exclusive jurisdiction.

5. **ID.; ID.; ID.; ID.; THE DISMISSAL ISSUE OF A UNION OFFICER OR MEMBER THAT RESULTED FROM A STRIKE WAS PROPERLY BROUGHT BEFORE THE LABOR SECRETARY; CASE AT BAR.—** In the present case, what the Labor Secretary refused to rule upon was the dismissal from employment that resulted from the strike. Article 264 significantly dwells on this exact subject matter by defining

the circumstances when a union officer or member may be declared to have lost his employment. We find from the records that this was an issue that arose from the strike and was, in fact, submitted to the Labor Secretary, through the union's motion for the issuance of an order for immediate reinstatement of the dismissed officers and the company's opposition to the motion. Thus, the dismissal issue was properly brought before the Labor Secretary and this development in fact gave rise to his mistaken ruling that the matter is legally within the jurisdiction of the labor arbiter to decide.

6. **ID.; ID.; ID.; ID.; ID.; THE COURT OF APPEALS WAS TOTALLY OUT OF PLACE IN PROCEEDING TO RESOLVE THE DISMISSAL ISSUE ON A PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT.—** We cannot disagree with the CA's sympathies when it stated that a remand of the case "*would only compel the individual petitioners, x x x lowly workers who have been out of work for more than four (4) years, to tread once again the [calvary] of a protracted litigation*." The dismissal issue and its resolution, however, go beyond the realm of sympathy as they are governed by law and procedural rules. The recourse to the CA was through the medium of a petition for *certiorari* under Rule 65 – an extraordinary but limited remedy. The CA was correct in declaring that the Labor Secretary had seriously erred in not ruling on the dismissal issue, but was totally out of place in proceeding to resolve the dismissal issue; its action required the prior and implied act of suspending the Rules of Court – a prerogative that belongs to this Court alone. In the recent case of *Marcos-Araneta v. Court of Appeals,* we categorically ruled that the CA cannot resolve the merits of the case on a petition for *certiorari* under Rule 65 and must confine itself to the jurisdictional issues raised. **Let this case be another reminder to the CA of the limits of its *certiorari* jurisdiction**.

7. **ID.; ID.; ID.; DEFIANCE OF RETURN-TO-WORK OF THE LABOR SECRETARY UPON ASSUMPTION OF JURISDICTION CONSTITUTES A VALID GROUND FOR DISMISSAL; ANY WORKER OR UNION OFFICER WHO KNOWINGLY PARTICIPATES IN THE COMMISSION OF ILLEGAL ACTS DURING A STRIKE MAY BE DECLARED**

TO HAVE LOST HIS EMPLOYMENT STATUS.— Under the law, the Labor Secretary's assumption of jurisdiction over the dispute or its certification to the National Labor Relations Commission for compulsory arbitration shall have the effect of automatically enjoining the intended or impending strike or lockout and all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions before the strike or lockout. The union and its officers, as well as the workers, defied the Labor Secretary's assumption of jurisdiction, especially the accompanying return-to-work order within twenty-four (24) hours; their defiance made the strike illegal under the law and applicable jurisprudence. Consequently, it constitutes a valid ground for dismissal. Article 264(a), paragraph 3 of the Labor Code provides that "Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status."

8. **ID.; ID.; ID.; THE UNION AND ITS OFFICERS ARE LIABLE FOR LEADING AND INSTIGATING PROHIBITED ACTIVITIES AS A FORM OF STRATEGY TO OBTAIN CONCESSIONS FROM THE COMPANY MANAGEMENT DURING THE CBA NEGOTIATIONS.—** The union officers were answerable not only for resisting the Labor Secretary's assumption of jurisdiction and return-to-work orders; they were also liable for leading and instigating and, in the case of Figura, for participating in a work slowdown (during the CBA negotiations), a form of strike undertaken by the union without complying with the mandatory legal requirements of a strike notice and strike vote. These acts are similarly prohibited activities. There is sufficient indication in the case record that the union officers, collectively, save for shop steward Olangar, were responsible for the work slowdown, the illegal strike, and the violation of the Labor Secretary's assumption order, that started with the slowdown in July 1999 and lasted up to March 2000 (or for about ten (10) months). These illegal concerted actions could not have happened at the spur of the moment and could not have been sustained for several months without the sanction and encouragement of the union and its officers; undoubtedly, they resulted from a collective decision

of the entire union leadership and constituted a major component of the union's strategy to obtain concessions from the company management during the CBA negotiations.

9. **ID.; ID.; ID.; ALL UNION MEMBERS WHO KNOWINGLY PARTICIPATED IN THE ILLEGAL STRIKE PLACED THEIR EMPLOYMENT STATUS AT RISK.—** In the face of the union's defiance of his first return-to-work order, the Labor Secretary issued a second return-to-work directive on February 22, 2000 where the labor official noted that despite the lapse of the return-to-work period indicated in the order, the union continued with its strike. At a conciliation meeting on February 29, 2000, the company agreed to extend the implementation of the return-to-work order to March 6, 2000. The union, through a letter dated March 2, 2000, advised the NCMB administrator of the decision of the union executive board for the return to work of all striking workers the following day. In a letter also dated March 2, 2000, the company also advised the NCMB Administrator that it was willing to accept all returning employees, without prejudice to whatever legal action it may take against those who committed illegal acts. The above union letter clearly shows the involvement of the entire union leadership in defying the Labor Secretary's assumption of jurisdiction order as well as return-to-work orders. From the illegal work slowdown to the filing of the strike notice, the declaration of the strike, and the defiance of the Labor Secretary's orders, it was the union officers who were behind the every move of the striking workers; and collectively deciding the twists and turns of the strike which even became violent as the striking members prevented and coerced returning workers from gaining entry into the company premises. To our mind, all the union officers who knowingly participated in the illegal strike knowingly placed their employment status at risk.

10. **ID.; ID.; ID.; THE EXTENSION OF THE RETURN-TO-WORK ORDER AND THE SUBMISSION OF ALL STRIKING WORKERS CANNOT IN ANY WAY BE CONSIDERED A WAIVER THAT THE UNION CAN USE TO NEGATE THEIR LIABILITY FOR THEIR ACTIONS.—** The extension of the return-to-work order and the submission of all striking workers, by the company, cannot in any way be considered a waiver that

the union officers can use to negate liability for their actions, as the CA opined in its assailed decision. In the first place, as clarified by Funtila's letter to the NCMB dated March 2, 2000, the company will accept all employees who will report for work up to March 6, 2000, without prejudice to whatever legal action it may take against those who committed illegal acts. He also clarified that it extended the return-to-work, upon request of the union and the DOLE to accommodate employees who were in the provinces, who were not notified, and those who were sick. As a point of law, we find that the company did not waive the right to take action against the erring officers, and this was acknowledged by the Labor Secretary himself in his order of March 9, 2000, when he directed the company "to accept back to work the twenty (20) union officers and one (1) shop steward[,] without prejudice to the Company's exercise of its prerogative to continue its investigation." The order was issued upon complaint of the union that the officers were placed under preventive suspension.

APPEARANCES OF COUNSEL

Pro-Labor Legal Assistance Center (PLACE) for Bagong Pagkakaisa ng Manggagawa ng Truimph Int'l., *et al.*

Sycip Salazar Hernandez & Gatmaitan for Triumph Int'l.

D E C I S I O N

BRION, *J.*:

Before the Court are two separate petitions[1] which were consolidated pursuant to our Resolution dated June 8, 2005.[2] The *first*,[3] filed by the Bagong Pagkakaisa ng Manggagawa ng Triumph International (*union*), seeks to set aside the decision[4]

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[1] Filed under Rule 45 of the Rules of Court.

[2] *Rollo* (G.R. No. 167407), p. 1150.

[3] G.R. No. 167401.

[4] *Rollo* (G.R. No. 167401), pp. 35-71. *Bagong Pagkakaisa ng Manggagawa ng Triumph International, et al. v. Hon. Bienvenido Laguesma, et al.*, promulgated on August 19, 2004. Penned by Associate Justice Perlita J.

of the Court of Appeals (*CA*) in CA-G.R. SP No. 60516, and the subsequent resolution[5] of March 10, 2005, on the parties' motion for reconsideration. The *second*,[6] filed by Triumph International (Phils.), Inc. (*company*), prays for the annulment of the same decision and resolution with respect to the illegal dismissal issue.

THE ANTECEDENTS

The relevant facts, clearly laid out in the challenged CA decision, are summarized below.

The union and the company had a collective bargaining agreement (*CBA*) that expired on July 18, 1999. The union seasonably submitted proposals to the company for its renegotiation. Among these proposals were economic demands for a wage increase of ₱180.00 a day, spread over three (3) years, as follows: ₱70.00/day from July 19, 1999; ₱60.00/day from July 19, 2000, and ₱50.00/day from July 19, 2001. The company countered with a wage increase offer, initially at ₱42.00 for three years, then increased it to ₱45.00, also for three years.

The negotiations reached a deadlock, leading to a Notice of Strike the union filed on October 15, 1999.[7] The National Conciliation and Mediation Board (*NCMB*) exerted efforts but failed to resolve the deadlock.

On November 15, 1999, the company filed a Notice of Lock-out[8] for unfair labor practice due to the union's alleged work slowdown. The union went on strike three days later, or on November 18, 1999.

Tria-Tirona, and concurred in by Associate Justice Ruben T. Reyes (retired member of this Court) and Associate Justice Jose C. Reyes, Jr.

[5] *Id.* at 72-79.

[6] *Rollo* (G.R. No. 167407).

[7] *Rollo* (G.R. No. 167401), pp. 306-307.

[8] *Rollo* (G.R. No. 167407), p. 290.

On January 27, 2000, Secretary Bienvenido E. Laguesma (*Labor Secretary*) of the Department of Labor and Employment (*DOLE*) assumed jurisdiction over the labor dispute, pursuant to Article 263(g) of the Labor Code.[9] The Labor Secretary directed all striking workers to return to work within twenty-four (24) hours from receipt of the assumption order, while the company was directed to accept them back to work under the same terms and conditions existing before the strike. The Labor Secretary also required the parties to submit their respective position papers.

On February 2 and 3, 2000, several employees attempted to report for work, but the striking employees prevented them from entering the company premises.

In a petition dated February 8, 2000,[10] the company asked the Labor Secretary to issue an order directing the union to allow free ingress to and egress from the company premises; to dismantle all structures obstructing free ingress and egress; and, to deputize the Philippine National Police to assist the DOLE in the peaceful implementation of the Labor Secretary's January 27, 2000 order.

The Labor Secretary reiterated his directives in another order dated February 22, 2000,[11] and deputized Senior Superintendent Manuel A. Cabigon, Director of the Southern Police District, "*to assist in the peaceful and orderly implementation of this Order*."

At a conciliation meeting held on February 29, 2000, the company agreed to extend the implementation of the return-to-work order until March 6, 2000.[12] The union, through a letter dated March 2, 2000,[13] advised the NCMB Administrator of the union executive board's decision to return to work the

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[9] *Rollo* (G.R. No. 167401), pp. 265-266.

[10] *Id.* at 320-323.

[11] *Rollo* (G.R. No. 167407), pp. 247-248.

[12] *Id.* at 317.

[13] *Id.* at 318.

following day. In a letter also dated March 2, 2000,[14] the company advised the NCMB Administrator that it was willing to accept all returning employees, without prejudice to whatever legal action it may take against those who committed illegal acts. The company also stated that all the union officers and members and the union board members would be placed under preventive suspension, pending investigation of their alleged illegal acts.

The striking employees returned to work on March 3 and 4, 2000 but twenty (20) union officers and a shop steward were not allowed entry into the company premises. The excluded union leaders were each served identical letters[15] directing them to explain in writing why their employment should not be terminated or why no disciplinary action should be imposed on them for defying and violating the Labor Secretary's assumption order of January 27, 2000 and the second return-to-work order of February 22, 2000; for blocking and resisting the entry of returning employees on February 2, 3, and 8, 2000; for acts of violence committed on February 24 and 25, 2000; and for defying the company's return-to-work order of all employees on February 8, 2000.[16]

On March 6, 2000, the twenty-one (21) union officers, by motion, asked the Labor Secretary to issue a reinstatement order and to cite the company for contempt. On March 9, 2000, the Labor Secretary directed the company to accept the union officers and the shop steward back to work, without prejudice to the continuation of the investigation.[17]

At the conciliation meeting of March 15, 2000, the company agreed to reinstate the union officers in the payroll effective March 13, 2000[18] and withdrew its notice of lockout.[19]

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[14] *Id.* at 319.

[15] *Id.* at 785-824.

[16] *Id.* at 309-310.

[17] *Rollo* (G.R. No.167401), pp. 269-270.

[18] *Rollo* (G.R. No.167407), p. 346.

[19] *Id.* at 299-300.

On March 21, 2000, the union officers again received identically worded letters requiring them to explain in writing within twenty-four (24) hours why no disciplinary action, including dismissal, should be taken against them for leading, instigating, and participating in a deliberate work slowdown during the CBA negotiations.[20]

The union officers explained, as required, through their respective affidavits,[21] and a hearing followed on May 5, 2000. Thereafter, the union officers were each served a notice of termination of employment effective at the close of office hours on May 11, 2000.[22]

On June 8, 2000, the union and the officers filed a petition to cite the company and its responsible officers for contempt, and moved that a reinstatement order be issued.[23] They claimed that: (1) the company officials violated the Labor Secretary's return-to-work order when these officials placed them under preventive suspension and refused them entry into the company premises; (2) the company also violated the March 9, 2000 order of the Labor Secretary when they were reinstated only in the payroll; and (3) the company committed unfair labor practice and dismissed them without basis.

THE LABOR SECRETARY'S DECISION

The Labor Secretary resolved the bargaining deadlock[24] and awarded a wage increase of ₱48.00 distributed over three years, as follows:[25]

Effective July 19, 1999 – ₱15.00/day
Effective July 19, 2000 – ₱16.00/day
Effective July 19, 2001 – ₱17.00/day

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[20] *Id.* at 367-383.

[21] *Id.* at 486-784.

[22] *Id.* at 785-824; dated May 11, 2000.

[23] *Rollo* (G.R. No. 167401), pp. 584-662.

[24] On May 31, 2000.

[25] *Rollo* (G.R. No. 167401), pp. 274-282.

The union's other economic demands and non-economic proposals were all denied.

The union moved for the reconsideration[26] of the Labor Secretary's decision, while the company moved for its own partial reconsideration.[27] The Labor Secretary denied both motions, declaring that the petition to cite the company and its responsible officers for contempt had already been rendered moot and academic.[28] He also ruled that the legality of the union officers' dismissal properly falls within the original and exclusive jurisdiction of the labor arbiter under Article 217 of the Labor Code.

The union elevated the case to the CA, through a petition for *certiorari* under Rule 65 of the Rules of Court,[29] on the following grounds:

1. The Labor Secretary committed grave abuse of discretion amounting to lack or excess of jurisdiction when he denied the proposals of the 1,130 union members to improve the existing CBA.
2. The Labor Secretary committed grave abuse of discretion when he declared that the issue of reinstatement of the officers of the union and the petition to cite the company and its responsible officers for contempt had become academic.

The union insisted on its demanded ₱180.00 daily wage increase distributed over three years (1999 to 2001), arguing that the demand is just, fair and reasonable based on the company's capacity to pay and the company's bargaining history. It noted that the company gave a ₱55.00 increase for the years 1993-1995, and ₱64.00 for the years 1996 to 1998. It also objected the rejection of its other economic demands and non-economic proposals.

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[26] *Id.* at 664-738.

[27] *Id.* at 740-743.

[28] *Id.* at 284-289.

[29] CA-G.R. SP No. 60516.

The union also contended that the company and its responsible officers should have been held in contempt for violating the Labor Secretary's return-to-work order. It argued that the officers should have been reinstated in the absence of substantial evidence supporting the charges against them.

The company responded by praying for the dismissal of the petition for lack of abuse of discretion on the part of the Labor Secretary. It posited that the ₱48.00 wage increase award is more than reasonable, and that the Labor Secretary properly stayed his hand on the issue of illegal dismissal as the matter was beyond his jurisdiction. The company likewise argued that any question on the award had been mooted by the workers' acceptance of the wage increase.

While the petition was pending, individual settlements were reached between certain individual petitioners (Cenon N. Dionisio, Catalina N. Velasquez, Nila P. Tresvalles, Vivian A. Arcos, Delia N. Soliven, Leticia S. Santos, Emerita D. Maniebo, Conchita R. Encinas, Elpidia C. Cancino, Consolacion S. Umalia, Nenette N. Gonzales, Creselita D. Rivera, and Rolando O. Madera) and the company. These petitioners executed their respective Release, Waiver and Quitclaim after receiving their separation pay and other benefits from the company.[30]

In light of these developments and the workers' acceptance of the wage award (except for the union officers), the company moved for the dismissal of the petition.[31] The union and the remaining union officers opposed the motion, contending that the workers' acceptance of the awarded wage increase cannot be considered a waiver of their demand; the receipt of the ₱48.00 award was merely an advance on their demand. The Release, Waiver and Quitclaim executed by the 13 officers, on the other hand, cannot bind the officers who opted to maintain the petition.

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[30] *Rollo* (G.R. No. 167407), pp. 1117-1142.

[31] *Rollo* (G.R. No. 167401), p. 53.

On December 17, 2001, two more officers – Juliana D. Galo and Remedios C. Barque – also executed their respective Release, Waiver and Quitclaim.[32]

THE CA DECISION

The CA found the petition partly meritorious. It affirmed the Labor Secretary's wage increase award, but modified his ruling on the dismissal of the union officers.[33]

On the wage issue and related matters, the CA found the Labor Secretary's award legally in order. It noted the following factors supportive of the award:

1. The average daily salary of an employee of ₱310.00 is more than the statutory minimum wage as admitted by the union itself.
2. The company grants to its employees forty-two (42) other monetary and welfare benefits.
3. The increase in the wages of the employees carries with it a corresponding increase in their salary-based benefits.
4. The wage increase granted to workers employed in the industry is less than the increase proposed by the company.
5. The Asian financial crisis.

The CA also noted that, in the meantime, the parties had executed a new CBA for the years 2002 to 2005 where they freely agreed on a total ₱45.00/day wage increase distributed over three years.

On the other hand, the CA faulted the Labor Secretary for not ruling on the dismissal of the union officers. It took exception to the Labor Secretary's view that the dismissal question is within the exclusive jurisdiction of the labor arbiter pursuant to Article 217 of the Labor Code. It invoked the ruling of this Court in *Interphil Laboratories Employees Union-FFW v.*

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[32] *Rollo* (G.R. No. 167407), pp. 1143-1146.

[33] *Supra* note 4.

Interphil Laboratories, Inc.,[34] which, in turn, cited *International Pharmaceuticals, Inc. v. Secretary of Labor,*[35] where we held that the Labor Secretary has jurisdiction over all questions and controversies arising from an assumed dispute, including cases over which the labor arbiter has exclusive jurisdiction.

The CA pointed out that while the labor dispute before the Labor Secretary initially involved a bargaining deadlock, a related strike ensued and charges were brought against the union officers (for defiance of the return-to-work order of the Labor Secretary, and leading, instigating, and participating in a deliberate work slowdown during the CBA negotiations) resulting in their dismissal from employment; thus, the dismissal is intertwined with the strike that was the subject of the Labor Secretary's assumption of jurisdiction.

The CA, however, avoided a remand of the illegal dismissal aspect of the case to the Labor Secretary on the ground that it would compel the remaining six officers, lowly workers who had been out of work for four (4) years, to go through the "*calvary*" of a protracted litigation. In the CA's view, it was in keeping with justice and equity for it to proceed to resolve the dismissal issue itself.

The six remaining officers of the union – Reyvilosa Trinidad, Eloisa Figura, Jerry Jaicten, Rowell Frias, Margarita Patingo, and Rosalinda Olangar (shop steward) – all stood charged with defying (1) the Labor Secretary's return-to-work order of January 27, 2000,[36] and (2) the company's general notice for the return of all employees on February 8, 2000.[37] Later, they were also charged with leading, instigating, and participating in a deliberate slowdown during the CBA negotiations.

The charges were supported by the affidavits of Ernesto P. Dayag, Salvio Bayon, Victoria Sanchez, Lyndon Dinglasan,

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[34] G.R. No. 142824, December 19, 2001, 372 SCRA 658.

[35] G.R. Nos. 92981-83, January 9, 1992, 205 SCRA 59.

[36] *Supra* note 9, at 3.

[37] *Supra* note 16, at 5.

Teresita Nacion, Herman Vinoya, and Leonardo Gomez.[38] The CA noted that in all these affidavits, "no mention was ever made of [anyone] of the six (6) remaining individual petitioners, save for Reyvilosa Trinidad. Also, none of the said affidavits even hinted at the culpabilities of petitioners Eloisa Figura, Jerry Jaicten, Rowell Frias, Margarita Patingo, and Rosalinda Olangar for the alleged illegal acts imputed to them."[39]

For failure of the company to prove by substantial evidence the charges against the remaining officers, the CA concluded that their employment was terminated without valid and just cause, making their dismissal illegal.

With respect to Trinidad, the CA found that her presence in the picket line and participation in an illegal act – obstructing the ingress to and egress from the company's premises – were duly established by the affidavit of Bayon.[40] For this reason, the CA found Trinidad's dismissal valid.

The appellate court thus affirmed the May 31, 2000[41] order of the Labor Secretary and modified the resolution dated July 14, 2000.[42]

The CA denied the motions for reconsideration that the union and its officers, and the company filed.[43] Hence, the present petitions.

<u>THE PETITIONS</u>

<u>G.R. No. 167401</u>

The petition is anchored on the following grounds –

1. The CA erred in sustaining the Labor Secretary's wage increase award of ₱48.00/day spread over three years.

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[38] *Rollo (*G.R. No. 167407), pp. 465-478.

[39] *Id.* at 69; CA decision, p. 34, last paragraph.

[40] *Id.* at 467-468.

[41] *Supra* note 24.

[42] *Supra* note 28.

[43] *Supra* note 5.

2. The CA erred in finding the dismissal of Trinidad valid.

The union presents the following arguments –

On the CBA Award

The union contends that the CBA wage increases from 1994 to 1998 ranged from ₱16.00/day to ₱27.00/day for every year of the CBA period; the arguments behind the company's decreased wage offer were the same arguments it raised in previous CBA negotiations; the alleged financial crisis in the region on which the CBA award was based actually did not affect the company because it sourced its raw materials from its mother company, thereby avoiding losses; the company's leading status in the industry in terms of wages should not be used in the determination of the award; rather, it should be based on the company's financial condition and its number one rank among 7,000 corporations in the country manufacturing ladies', girls', and babies' garments, and number 46 in revenues with gross revenues of ₱1.08B, assets of ₱525.5M and stockholders' equity of ₱232.1M; in granting only a wage increase out of 44 items in its proposal, the award disregarded the factors on which its demands were based such as the peso devaluation and the daily expenditure of ₱1,400.00/day for a family of six (6) as found by the National Economic and Development Authority.

On the Dismissal of Reyvilosa Trinidad

The union seeks a reversal of the dismissal of Trinidad. It argues that she was dismissed for alleged illegal acts based solely on the self-serving affidavits executed by officers of the company; the strike had not been declared illegal for the company had not initiated an action to have it declared illegal; Trinidad was discriminated against because of the four union officers mentioned in the affidavits, three were granted one month separation pay plus other benefits to settle the dispute in regard to the three; also the same arrangement was entered into with the other officers, which resulted in the signing of the waiver, quitclaim and release; the only statement in the affidavits against Trinidad was her alleged megaphone message to the striking employees not to return to work.

The union thus asks this Court to modify the assailed CA ruling through an order improving the CBA wage award and the grant of the non-wage proposals. It also asks that the dismissal of Trinidad be declared illegal, and that the company be ordered to pay the union moral and exemplary damages, litigation expenses, and attorney's fees.

G.R. No. 167407

For its part, the company seeks to annul the CA rulings on the dismissal issue, on the following grounds –

1. The CA erred in ruling that the Labor Secretary abused his discretion in not resolving the issue of the validity of the dismissal of the officers of the union.
2. The CA erred in resolving the factual issue of dismissal instead of remanding the case for further proceedings.
3. In resolving the issue, the company was deprived of its right to present evidence and, therefore, to due process of law.

The company submits that the Labor Secretary has no authority to decide the legality or illegality of strikes or lockouts, jurisdiction over such issue having been vested on the labor arbiters pursuant to Article 217 of the Labor Code; under Article 263 of the Code, the Labor Secretary's authority over a labor dispute encompasses only the issues, not the legality or illegality of any strike that may have occurred in the meantime.[44] It points out that before the Labor Secretary can take cognizance of an incidental issue such as a dismissal question, it must first be properly submitted to him, as in the case of *International Pharmaceuticals, Inc. v. Secretary of Labor*[45] where the Labor Secretary was adjudged to have the power to assume jurisdiction over a labor dispute and its incidental issues such as unfair labor practices subject of cases already ongoing before the National Labor Relations Commission (*NLRC*).

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[44] *Philippine Airlines v. Secretary of Labor and Employment,* G.R. No. 88210, 193 SCRA 223.

[45] *Supra* note 35.

The company takes exception to the CA ruling that it submitted the dismissal issue to the Labor Secretary claiming that it can be seen from its opposition to the union's petition to cite the company for contempt;[46] that it consistently maintained that the Labor Secretary has no jurisdiction over the dismissal issue; that the affidavits it submitted to the Labor Secretary were only intended to establish the union's violation of the return-to-work orders and, to support its petition, on February 8, 2000,[47] for the issuance of a return-to-work order; and, that the CA overstepped its jurisdiction when it ruled on a factual issue, the sole office of *certiorari* being the corrections of errors of jurisdiction, including the commission of grave abuse of discretion.

The company likewise disputes the CA's declaration that it took into consideration all the evidence on the dismissal issue, claiming that the evidence on record is deficient, for it did not have the opportunity to adduce evidence to prove the involvement of the union officers in the individual acts for which they were dismissed; had it been given the opportunity to present evidence, it could have done so. To prove its point, it included in its motion for partial reconsideration[48] a copy of the information,[49] charging union officers Nenette Gonzales and Margarita Patingo of malicious mischief for stoning a company vehicle on February 25, 2000, while the strike was ongoing.

Even assuming that it could no longer submit evidence on the dismissal of the union officers, the company posits that sufficient grounds exist to uphold the dismissals. It maintains that the officers are liable to lose their employment status for knowingly staging a strike after the assumption of jurisdiction by the Labor Secretary and in defying the return-to-work

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[46] *Rollo* (G.R. No. 167407), pp. 347-354.

[47] *Id.* at 302-305.

[48] *Supra* note 27.

[49] *Rollo* (G.R. No. 167407), p. 1103.

mandated by the assumption, which are considered prohibited activities under Article 264(a) of the Labor Code, not to mention that without first having filed a notice, when the union officers and members engaged in and instigated a work slowdown, a form of strike, without complying with the procedural requirements for staging a strike, the union officers had engaged in an illegal strike.

The parties practically reiterated these positions and the positions taken below in their respective comments to each other's petition.

THE COURT'S RULING

The CBA Award

We affirm the CA's disposition, upholding the Labor Secretary's award in resolving the bargaining deadlock between the union and the company for their 1999-2001 CBA.

We find no compelling justification to disturb the award. We are convinced, as the appellate court was, of the reasonableness of the award. It was based on the prevailing economic indicators in the workplace, in the industry, and in the local and regional economy. As well, it took into account the comparative standing of the company in terms of employees' wages and other economic benefits. We find the following factors as sufficient justification for the award:

1. The regional financial crisis and the downturn in the economy at the time, impacting on the performance of the company as indicated in its negative financial picture in 1999.
2. The company's favorable comparison with industry standards in terms of employee benefits, especially wages. Its average daily basic wage of ₱310.00 is 40% higher than the statutory minimum wage of ₱223.50, and superior to the industry's average of ₱258.00. For the years prior to the 1999 negotiations, its aggregate daily wage increase of ₱64.00 surpassed the statutory minimum increase of ₱33.00.

3. The forty-two (42) non-wage benefit programs of the company which undeniably extend the reach of the employees' cash wage in enhancing the well-being of the employees and their families.

The Labor Secretary's Order of May 31, 2000 fully explained these considerations as follows:[50]

> We fully agree with the Union that relations between management and labor ought to be governed by the higher precepts of social justice as enshrined in the Constitution and in the laws. We further agree with it that the worker's over-all well-being is as much affected by his wages as by other macro-economic factors as the CPI, cost of living, the varied needs of the family. Yet, the other macro-economic factors cited by the company such as the after-effects of the regional financial crisis, the existing unemployment rate, and the need to correlate the rate of wage increase with the CPI are equally important. Of course[,] other macro-economic factors such as the contraction of sales and production as well as the growing lack of direct investors, are also important considerations. It is noteworthy that both the Union and Management recognize that the entire gamut of macro-economic factors necessarily impact on the micro-economic conditions of an individual company even in terms of wage increases.
>
> The Union also makes mention of the need to factor in the industry where the employer belongs x x x. This is affirmed by the Company when it provides a comparison with the other key players in the industry. It has been properly shown that its prevailing levels of wages and other benefits are, generally, superior to its counterparts in the local garments industry. x x x
>
> But even as we agree with the Union that the Company's negative financial picture for 1999 should not be an overriding consideration in coming up with an adjudicated wage increase, We cannot make the historical wage increases as our starting point in determining the appropriate wage adjustment. The Company's losses for 1999 which, even the Union recognizes, amounts to millions of pesos, coupled with the current economic tailspin warrant a more circumspect view[.]
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> Cognizance is likewise made of the Company's 42 non-wage benefits programs which substantially [answer] the Union's concerns

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[50] *Supra* note 24.

with respect to the living wage and the needs of a family. It would not be amiss to mention that said benefits have their corresponding monetary valuations that in effect increase a worker's daily pay. Likewise, the needed family expenditure is answered for not solely by an individual family member's income alone, but also from other incomes derived by the entire family from all possible sources.

Considering the foregoing circumstances, We deem it reasonable and fair to balance our award on wages.

The conclusions of the Labor Secretary, drawn as they were from a close examination of the submissions of the parties, do not indicate any legal error, much less any grave abuse of discretion. We accord respect to these conclusions as they were made by a public official especially trained in the delicate task of resolving collective bargaining disputes, and are on their face just and reasonable. "[U]nless there is a clear showing of grave abuse of discretion, this Court cannot, and will not, interfere with the labor expertise of the public respondent Secretary of Labor," as the Court held in *Pier Arrastre and Stevedoring Services v. Ma. Nieves Roldan-Confesor, et al*.[51]

We also note that during the pendency of the present dispute, the parties entered into a new CBA for the years 2000-2005, providing for a ₱45.00/day wage increase for the workers. The CA cited this agreed wage adjustment as an indication of the reasonableness of the disputed award. The Labor Secretary himself alluded to "*the letter-manifestation received by this Office on 15 June 2000 containing the signatures of some 700 employees of the Company indicating the acceptance of the award rendered in the 31 May 2000 Order.*"[52] There was also the manifestation of the company dated February 7, 2006, advising the Court that it concluded another CBA with the union providing for a wage increase of ₱22.00/day effective July 19, 2005; ₱20.00/day for July 19, 2006; and ₱20.00/day for July 19, 2007.[53] The successful negotiation of two collective

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[51] 311 Phil. 311 (1995).

[52] *Rollo* (G.R. No. 167401), p. 287.

[53] *Id.* at 794-815.

agreements even before the parties could sit down and formalize the 1999-2001 CBA highlights the need for the parties to abide by the decision of the Labor Secretary and move on to the next phase of their collective bargaining relationship.

The Illegal Dismissal Issue

Before we rule on the substantive aspect of this issue, we deem it proper to resolve first the company's submission that the CA erred: (1) in ruling that the Labor Secretary gravely abused his discretion in not deciding the dismissal issue; and, (2) in deciding the factual issue itself, instead of remanding the case, thereby depriving it of the right to present evidence on the matter.

We agree with the CA's conclusion that the Labor Secretary erred, to the point of abusing his discretion, when he did not resolve the dismissal issue on the mistaken reading that this issue falls within the jurisdiction of the labor arbiter. This was an egregious error and an abdication of authority on the matter of strikes – the ultimate weapon in labor disputes that the law specifically singled out under Article 263 of the Labor Code by granting the Labor Secretary assumption of jurisdiction powers. Article 263(g) is both an extraordinary and a preemptive power to address an extraordinary situation – a strike or lockout in an industry indispensable to the national interest. This grant is not limited to the grounds cited in the notice of strike or lockout that may have preceded the strike or lockout; nor is it limited to the incidents of the strike or lockout that in the meanwhile may have taken place. As the term "assume jurisdiction" connotes, the intent of the law is to give the Labor Secretary full authority to resolve all matters within the dispute that gave rise to or which arose out of the strike or lockout; it includes and extends to all questions and controversies arising from or related to the dispute, including cases over which the labor arbiter has exclusive jurisdiction.[54]

In the present case, what the Labor Secretary refused to rule upon was the dismissal from employment that resulted from

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[54] *Supra* note 34.

the strike. Article 264 significantly dwells on this exact subject matter by defining the circumstances when a union officer or member may be declared to have lost his employment. We find from the records that this was an issue that arose from the strike and was, in fact, submitted to the Labor Secretary, through the union's motion for the issuance of an order for immediate reinstatement of the dismissed officers and the company's opposition to the motion. Thus, the dismissal issue was properly brought before the Labor Secretary and this development in fact gave rise to his mistaken ruling that the matter is legally within the jurisdiction of the labor arbiter to decide.

We cannot disagree with the CA's sympathies when it stated that a remand of the case "*would only compel the individual petitioners, x x x lowly workers who have been out of work for more than four (4) years, to tread once again the [calvary] of a protracted litigation*."[55] The dismissal issue and its resolution, however, go beyond the realm of sympathy as they are governed by law and procedural rules. The recourse to the CA was through the medium of a petition for *certiorari* under Rule 65 – an extraordinary but limited remedy. The CA was correct in declaring that the Labor Secretary had seriously erred in not ruling on the dismissal issue, but was totally out of place in proceeding to resolve the dismissal issue; its action required the prior and implied act of suspending the Rules of Court – a prerogative that belongs to this Court alone. In the recent case of *Marcos-Araneta v. Court of Appeals,*[56] we categorically ruled that the CA cannot resolve the merits of the case on a petition for *certiorari* under Rule 65 and must confine itself to the jurisdictional issues raised. **Let this case be another reminder to the CA of the limits of its *certiorari* jurisdiction**.

But as the CA did, we similarly recognize that undue hardship, to the point of injustice, would result if a remand would be ordered under a situation where we are in the position to resolve

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[55] *Rollo* (G.R. No. 167401), p. 77.

[56] G.R. No. 154096, August 22, 2008; see also *Silverio v. CA*, G.R. No. L-39861, March 17, 1986, 141 SCRA 527.

the case based on the records before us. As we said in *Roman Catholic Archbishop of Manila v. Court of Appeals:*[57]

> [w]e have laid down the rule that the remand of the case to the lower court for further reception of evidence is not necessary where the Court is in a position to resolve the dispute based on the records before it. On many occasions, the Court, in the public interest and for the expeditious administration of justice, has resolved actions on the merits instead of remanding them to the trial court for further proceedings, such as where the ends of justice, would not be subserved by the remand of the case.[58]

Thus, we shall directly rule on the dismissal issue. And while we rule that the CA could not validly rule on the merits of this issue, we shall not hesitate to refer back to its dismissal ruling, where appropriate.

The first question to resolve is the sufficiency of the evidence and records before us to support a ruling on the merits. We find that the union fully expounded on the merits of the dismissal issue while the company's positions find principal support from the affidavits of Dayag, Bayon, Sanchez, Dinglasan, Nacion, Vinoya, and Gomez. *The affidavits became the bases of the individual notices of termination of employment sent to the union officers*. The parties' affidavits and their submitted positions constitute sufficient bases to support a decision on the merits of the dismissal issue.

The dismissed union officers of the union originally numbered twenty-one (21), twenty (20) of whom – led by union President Cenon Dionisio – were executive officers and members of the union board. Completing the list was shop steward Olangar. As mentioned earlier, fifteen (15) of the dismissed officers, including Dionisio, executed a Release, Waiver and Quitclaim and readily accepted their dismissal.[59] Those who remained to contest their dismissal were Reyvilosa N. Trinidad, 2nd Vice-President; Eloisa Figura, Asst. Secretary; Jerry Jaicten,

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[57] G.R. No. 77425, June 19, 1991, 198 SCRA 300.

[58] *Id.* at 303.

[59] *Supra* note 30.

PRO; Rowell Frias, Board Member; Margarita Patingo, Board Member; and Rosalinda Olangar, Shop Steward.

The officers of the union subject of the petition were dismissed from the service for allegedly committing illegal acts (1) during the CBA negotiations and (2) during the strike declared by the union, shortly after the negotiations reached a deadlock. The acts alluded to under the first category[60] involved "leading, instigating, participating in a deliberate slowdown during the CBA negotiations" and, under the second,[61] the alleged defiance and violation by the union officers of the assumption of jurisdiction and the return-to-work order of the Labor Secretary dated January 27, 2000, as well as the second return-to-work order dated February 22, 2000. More specifically, in the course of the strike, the officers were charged with blocking and preventing the entry of returning employees on February 2, 3, and 8, 2000; and on February 24 and 25, 2000, when acts of violence were committed. They likewise allegedly defied the company's general return-to-work notice for the return of all employees on February 8, 2000.[62]

The CA erred in declaring that except for Trinidad, the company failed to prove by substantial evidence the charges against the remaining union officers, thus making this dismissal illegal. The appellate court noted that in all the affidavits the company submitted as evidence "no mention was ever made of [anyone] of the six (6) remaining individual petitioners, save for Reyvilosa Trinidad. Also, none of the said affidavits even hinted at the culpabilities of petitioners Eloisa Figuna, Jerry Jaicten, Rowell Frias, Margarita Patingo and Rosalinda Olangar for the alleged illegal acts imputed to them."[63]

The charges on which the company based its decision to dismiss the union officers and the shop steward may be grouped

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[60] *Supra* note 20, at 5.

[61] *Supra* note 15, at 4.

[62] *Supra* note 16, at 5.

[63] *Supra* note 39.

into the following three categories: (1) defiance of the return-to-work order of the Labor Secretary, (2) commission of illegal acts during the strike, and (3) leading, instigating and participating in a deliberate work slowdown during the CBA negotiations.

While it may be true that the affidavits the company submitted to the Labor Secretary did not specifically identify Figuna, Jaiden, Frias, Patingo and Olangar to have committed individual illegal acts during the strike, there is no dispute that the union defied the return-to-work orders the Labor Secretary handed down on two occasions, first on January 27, 2000 (more than two months after the union struck on November 18, 1999) and on February 22, 2000. In decreeing a return-to-work for the second time, the Labor Secretary noted:

> To date, despite the lapse of the return-to-work period indicated in the Order, the Union continues with its strike. A report submitted by NCMB-NCR even indicated that all gates of the Company are blocked thereby preventing free ingress and egress to the premises.[64]

Under the law,[65] the Labor Secretary's assumption of jurisdiction over the dispute or its certification to the National Labor Relations Commission for compulsory arbitration shall have the effect of automatically enjoining the intended or impending strike or lockout and all striking or locked out employees shall immediately return to work and the employer

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[64] *Rollo* (G.R. No. 167407), p. 248, par. 2.

[65] LABOR CODE, Article 263(g) – When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure the compliance with this provision as well as with such orders as he may issue to enforce the same.

shall immediately resume operations and readmit all workers under the same terms and conditions before the strike or lockout. The union and its officers, as well as the workers, defied the Labor Secretary's assumption of jurisdiction, especially the accompanying return-to-work order within twenty-four (24) hours; their defiance made the strike illegal under the law[66] and applicable jurisprudence.[67] Consequently, it constitutes a valid ground for dismissal.[68] Article 264(a), paragraph 3 of the Labor Code provides that "Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status."

The union officers were answerable not only for resisting the Labor Secretary's assumption of jurisdiction and return-to-work orders; they were also liable for leading and instigating and, in the case of Figura, for participating in a work slowdown (during the CBA negotiations), a form of strike[69] undertaken by the union without complying with the mandatory legal requirements of a strike notice and strike vote. These acts are similarly prohibited activities.[70]

There is sufficient indication in the case record that the union officers, collectively, save for shop steward Olangar, were responsible for the work slowdown, the illegal strike, and the violation of the Labor Secretary's assumption order, that started with the slowdown in July 1999 and lasted up to March 2000 (or for about ten (10) months).[71] These illegal concerted actions could not have happened at the spur of the moment and could

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[66] LABOR CODE, Article 264.

[67] *University of San Agustin Employees Union-FFW v. Court of Appeals*, G.R. No. 169632, March 28, 2006, 485 SCRA 526.

[68] *Philcom Employees Union v. Philippine Global Communications*, G.R. No. 141667, July 17, 2006, 495 SCRA 214.

[69] *Toyota Motor Phils. Corp. Workers Association (TMPCWA) v. NLRC*, G.R. Nos. 158786 & 158789, October 19, 2007, 537 SCRA 171.

[70] *Supra* note 64.

[71] *Rollo* (G.R. No. 167407), pp. 314-316.

not have been sustained for several months without the sanction and encouragement of the union and its officers; undoubtedly, they resulted from a collective decision of the entire union leadership and constituted a major component of the union's strategy to obtain concessions from the company management during the CBA negotiations.

That the work slowdown happened is confirmed by the affidavits[72] and the documentary evidence submitted by the company. Thus, Ernesto P. Dayag, a security officer of the agency servicing the company (Tamaraw Security Service, Inc.) stated under oath that in October 1999, the union members were engaging in a noise-barrage everyday and when it was time to go back to work at noontime, they would mill around the production area or were at the toilet discussing the ongoing CBA negotiations (among others), and were slow in their movements; in late October (October 27, 1999), they did the same thing at about seven o'clock in the morning which was already time for work; even those who were already working were deliberately slow in their movements. On November 12, 1999, when union officer Lisa Velasquez talked to the union members at lunchtime regarding the CBA negotiations, only about 50% of the union members returned to their work stations.

Victoria P. Sanchez, a sewer in the company's production department, deposed that sometime in the middle of September 1999, the sewers were told by the shop stewards to reduce their efficiency below 75%. They followed the order as it came from a decision of the union officers at a meeting. It was not difficult to comply with the order because they only had to slow down at the pre-production and early segments of the production line so that the rest of the line would suffer.

Teresita T. Nacion, another sewer, corroborated Sanchez's deposition stating that in mid-September 1999, during the CBA negotiations, the sewers were told by the shop stewards to reduce their efficiency below 75% pursuant to the union decision to slow down production so that the company would suffer losses.

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[72] *Supra* note 38.

The work slowdown resulted in production losses to the company which it documented and submitted in evidence[73] before the Labor Secretary and was summarized in the affidavit[74] of Leonardo T. Gomez, who testified on the impact of the decrease of the workers' production efficiency that peaked in September, October, and November 1999, resulting in a financial loss to the company of ₱69.277M. Specifically, the company's efficiency record for the year 1999[75] posted Eloisa C. Figura's[76] work performance from April to June 1999 at 77.19% and from July to November 1999 at 51.77%, a substantial drop in her efficiency.

The union's two-pronged strategy to soften the company's stance in the CBA negotiations culminated in its declaration of a strike on November 18, 1999, which prompted the Labor Secretary's intervention through an assumption of jurisdiction. Judging from the manner the union staged the strike, it is readily apparent that the union's objective was to paralyze the company and to maintain the work stoppage for as long as possible.

This is the economic war that underlies the Labor Code's strike provisions, and which the same Code also tries to temper by regulation. Thus, even with the assumption of jurisdiction and its accompanying return-to-work order, the union persisted with the strike and prevented the entry to the company premises of workers who wanted to report back for work. In particular, Salvio Bayon, a company building technician and a member of the union, deposed that at about seven o'clock in the morning of February 3, 2000, he and ten (10) of his co-employees attempted to enter the company premises, but they were prevented by a member of the strikers, led by union President Cenon Dionisio and other officers of the union; the same thing happened on February 8, 24 and 28, 2000.[77]

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[73] *Supra* note 69.

[74] *Rollo* (G.R. No. 167407), pp. 477-478.

[75] *Id.* at 479-480.

[76] One of the six union officers who pursued the union petition.

[77] *Id.* at 467-468, Bayon's affidavit.

In the face of the union's defiance of his first return-to-work order, the Labor Secretary issued a second return-to-work directive on February 22, 2000 where the labor official noted that despite the lapse of the return-to-work period indicated in the order, the union continued with its strike.[78] At a conciliation meeting on February 29, 2000, the company agreed to extend the implementation of the return-to-work order to March 6, 2000.[79] The union, through a letter dated March 2, 2000,[80] advised the NCMB administrator of the decision of the union executive board for the return to work of all striking workers the following day. In a letter also dated March 2, 2000,[81] the company also advised the NCMB Administrator that it was willing to accept all returning employees, without prejudice to whatever legal action it may take against those who committed illegal acts.

The above union letter clearly shows the involvement of the entire union leadership in defying the Labor Secretary's assumption of jurisdiction order as well as return-to-work orders. From the illegal work slowdown to the filing of the strike notice, the declaration of the strike, and the defiance of the Labor Secretary's orders, it was the union officers who were behind the every move of the striking workers; and collectively deciding the twists and turns of the strike which even became violent as the striking members prevented and coerced returning workers from gaining entry into the company premises. To our mind, all the union officers who knowingly participated in the illegal strike knowingly placed their employment status at risk.

In a different vein, the union faulted the company for having dismissed the officers, there being no case filed on the legality or illegality of the strike. We see no merit in this argument. In *Gold City Integrated Port Service, Inc. v. NLRC*,[82] we held

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[78] *Supra* note 11.

[79] *Supra* note 12.

[80] *Supra* note 13.

[81] *Supra* note 14.

[82] G.R. No. 103560, July 6, 1995, 245 SCRA 627, 630.

that "[t]he law, in using the word 'may,' grants the employer the option of declaring a union officer who participated in an illegal strike as having lost his employment." We reiterated this principle in *San Juan De Dios Educational Foundation Employees Union-Alliance of Filipino Workers v. San Juan De Dios Educational Foundation, Inc.*,[83] where we stated that "Despite the receipt of an order from the SOLE to return to their respective jobs, the Union officers and members refused to do so and defied the same. Consequently, then, the strike staged by the Union is a prohibited activity under Article 264 of the Labor Code. Hence, the dismissal of its officers is in order. The respondent Foundation was, thus, justified in terminating the employment of the petitioner Union's officers."

The union attempted to divert attention from its defiance of the return-to-work orders with the specious submission that it was the company which violated the Labor Secretary's January 27, 2000 order, by not withdrawing its notice of lockout.[84]

The evidence indicates otherwise. The Labor Secretary himself, in his order of February 22, 2000,[85] noted that the union continued its strike despite the lapse of the return-to-work period specified in his January 27, 2000 order. There is also the report of the NCMB-NCR clearly indicating that all gates of the company were blocked, thereby preventing free ingress to and egress from the company premises. There, too, was the letter of the company personnel manager, Ralph Funtila, advising the union that the company will comply with the Labor Secretary's January 27, 2000 order; Funtila appealed to the striking employees and the officers to remove all the obstacles and to lift their picket line to ensure free ingress and egress.[86] Further, as we earlier noted, the union itself, in its letter of March 2, 2000, advised the NCMB that the union board of

[83] G.R. No. 143341, May 28, 2004, 430 SCRA 193, 207.

[84] *Rollo* (G.R. No. 167407), p. 1204; Union Comment, par. 10.

[85] *Supra* note 11.

[86] *Rollo* (G.R. No. 167407), p. 307.

directors had decided to return to work on March 3, 2000 indicating that they had been on strike since November 18, 1999 and were defiant of the return-to-work orders since January 28, 2000.

As a final point, the extension of the return-to-work order and the submission of all striking workers, by the company, cannot in any way be considered a waiver that the union officers can use to negate liability for their actions, as the CA opined in its assailed decision.[87] In the first place, as clarified by Funtila's letter to the NCMB dated March 2, 2000,[88] the company will accept all employees who will report for work up to March 6, 2000, without prejudice to whatever legal action it may take against those who committed illegal acts. He also clarified that it extended the return-to-work, upon request of the union and the DOLE to accommodate employees who were in the provinces, who were not notified, and those who were sick.

As a point of law, we find that the company did not waive the right to take action against the erring officers, and this was acknowledged by the Labor Secretary himself in his order of March 9, 2000,[89] when he directed the company "to accept back to work the twenty (20) union officers and one (1) shop steward[,] without prejudice to the Company's exercise of its prerogative to continue its investigation." The order was issued upon complaint of the union that the officers were placed under preventive suspension.

For having participated in a prohibited activity not once, but twice, the union officers, except those our Decision can no longer reach because of the amicable settlement they entered into with the company, legally deserve to be dismissed from the service. For failure of the company, however, to prove by substantial evidence the illegal acts allegedly committed by Rosalinda Olangar, who is a shop steward but not a union officer, we find her dismissal without a valid cause.

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[87] *Id.* at 70; CA Decision, p. 35, par. 4.

[88] *Id.* at 319.

[89] *Supra* note 17.

WHEREFORE, premises considered, judgment is hereby rendered *AFFIRMING* with *MODIFICATION* the challenged decision and resolution of the Court of Appeals in CA-G.R. SP No. 60516, as follows:

1. The collective bargaining award of DOLE Secretary Bienvenido E. Laguesma, contained in his order dated May 31, 2000, is fully *AFFIRMED*;
2. The dismissal of REYVILOSA TRINIDAD, union 2nd Vice-President, is likewise *AFFIRMED*;
3. The dismissal of ELOISA FIGURA, Assistant Secretary; JERRY JAICTEN, Press Relations Officer; and ROWELL FRIAS, Board Member, is declared *VALID* and for a just cause; and
4. The dismissal of ROSALINDA OLANGAR is declared illegal. The CA award is *SUSTAINED* in her case.

SO ORDERED.

Carpio Morales (Chairperson), Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

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[*] Designated additional Member of the Third Division, in view of the retirement of former Chief Justice Reynato S. Puno, per Special Order No. 843 dated May 17, 2010.

FIRST DIVISION

[G.R. No. 168164. July 5, 2010]

VICENTE ADRIANO, *petitioner, vs.* **ALICE TANCO, GERALDINE TANCO, RONALD TANCO, and PATRICK TANCO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; INSTANT CASE FALLS UNDER THE EXCEPTIONS WHERE THE SUPREME COURT MAY REVIEW FACTUAL ISSUES.—** Respondents, who put forward the first issue, contend that Vicente is actually raising factual issues which is not allowed in a petition for review on *certiorari* filed under Rule 45 of the Rules of Court. They maintain that under Rule 45, only questions of law may be raised as issues and resolved by this Court. Vicente, on the other hand, concedes that the issues set forth in his petition are not questions of law. Nevertheless, he counter-argues that this case falls under the exceptions where this Court may pass upon questions of fact. We agree with Vicente. The determination of whether a person is an agricultural tenant is basically a question of fact. And, as a general rule, questions of fact are not proper in a petition filed under Rule 45. But since the findings of facts of the DARAB and the CA contradict each other, it is crucial to go through the evidence and documents on record as a matter of exception to the rule.

2. **ID.; EVIDENCE; FINDINGS OF AGRARIAN TRIBUNALS THAT TENANCY RELATIONSHIP EXIST ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.—** Vicente posits that the CA erred in substituting its own findings with the unanimous findings of the PARAD and the DARAB. He asserts that factual findings of administrative agencies are entitled to great respect and even finality since they have acquired expertise on the field for which they were created. The only requirement is that said findings must be supported by substantial evidence. Vicente believes that the findings of the agrarian tribunals are supported by substantial evidence since he did

not observe regular working hours, handles all phases of farm works, and lives in an old building located at the middle of the plantation.

3. LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM; TENANCY; DEFINED; ESSENTIAL REQUISITES.— Tenancy relationship is a juridical tie which arises between a landowner and a tenant once they agree, expressly or impliedly, to undertake jointly the cultivation of a land belonging to the landowner, as a result of which relationship the tenant acquires the right to continue working on and cultivating the land. The existence of a tenancy relationship cannot be presumed and allegations that one is a tenant do not automatically give rise to security of tenure. For tenancy relationship to exist, the following essential requisites must be present: (1) the parties are the landowner and the tenant; (2) the subject matter is agricultural land; (3) there is consent between the parties; (4) the purpose is agricultural production; (5) there is personal cultivation by the tenant; and, (6) there is sharing of the harvests between the parties. All the requisites must concur in order to establish the existence of tenancy relationship, and the absence of one or more requisites is fatal.

4. ID.; ID.; ID.; ID.; ID.; ESSENTIAL ELEMENT OF CONSENT BETWEEN THE PARTIES; NOT ESTABLISHED.— After a thorough evaluation of the records of this case, we affirm the findings of the CA that the essential requisites of consent and sharing are lacking. The essential element of consent is sorely missing because there is no proof that the landowners recognized Vicente, or that they hired him, as their legitimate tenant. And, although Vicente claims that he is a tenant of respondents' agricultural lot in Norzagaray, Bulacan, and that he has continuously cultivated and openly occupied it, no evidence was presented to establish the presence of consent other than his self-serving statements. These cannot suffice because independent and concrete evidence is needed to prove consent of the landowner.

5. ID.; ID.; ID.; ID.; ID.; ESSENTIAL REQUISITE OF SHARING OF HARVEST IS LIKEWISE LACKING.— The essential requisite of sharing of harvests is lacking. Independent evidence, such as receipts, must be presented to show that there was sharing of the harvest between the landowner and the tenant.

Self-serving statements are not sufficient. Here, there was no evidence presented to show sharing of harvest in the context of a tenancy relationship between Vicente and the respondents. The only evidence submitted to establish the purported sharing of harvests were the allegations of Vicente which, as discussed above, were self-serving and have no evidentiary value. Moreover, petitioner's allegations of continued possession and cultivation do not support his cause. It is settled that mere occupation or cultivation of an agricultural land does not automatically convert a tiller or farm worker into an agricultural tenant recognized under agrarian laws. It is essential that, together with the other requisites of tenancy relationship, the agricultural tenant must prove that he transmitted the landowner's share of the harvest.

6. **ID.; ID.; ID.; ID.; ID.; FOR IMPLIED TENANCY TO ARISE IT IS NECESSARY THAT ALL THE ESSENTIAL REQUISITES OF TENANCY MUST BE PRESENT; ONE WHO ALLEGES EXISTENCE OF TENANCY HAS THE BURDEN OF PROVING HIS AFFIRMATIVE ALLEGATION OF TENANCY.—** Neither can we agree with the DARAB's theory of implied tenancy because the landowner never acquiesced to Vicente's cultivating the land. Besides, for implied tenancy to arise it is necessary that all the essential requisites of tenancy must be present. Lastly, it is well to stress that Vicente has the burden of proving his affirmative allegation of tenancy. It is elementary that he who alleges the affirmative of the issue has the burden of proof. And if the petitioner upon whom rests the burden of proving his cause of action fails to show in a satisfactory manner the facts upon which he bases his claim, the respondents are under no obligation to prove their exception or defense. In the case at bench, aside from being self-serving, some of the allegations of Vicente are contradicted by the evidence on record. While he claims that Arsenio instituted him as tenant in 1970 and has since then occupied and cultivated respondents' landholdings, the Deed of Absolute Sale presented by the latter indubitably shows that Alice (or the Tanco family) acquired the same only in 1975.

APPEARANCES OF COUNSEL

Al Harith D. Sali for petitioner.

Tupaz and Tupaz Law Offices and *Ernesto P. Pangalangan* for respondents.

DECISION

DEL CASTILLO, *J.*:

Laws which have for their object the preservation and maintenance of social justice are not only meant to favor the poor and the underprivileged. They apply with equal force to those who, notwithstanding their more comfortable position in life, are equally deserving of protection from the courts. Social justice is not a license to trample on the rights of the rich in the guise of defending the poor, where no act of injustice or abuse is being committed against them.[1]

This Petition for Review on *Certiorari* assails the October 12, 2004 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 74465 which reversed and set aside the June 17, 1998 Decision[3] of the Department of Agrarian Reform Adjudication Board (DARAB). The DARAB Decision affirmed the Decision[4] of the Provincial Agrarian Reform Adjudicator (PARAD) which declared and recognized petitioner Vicente Adriano (Vicente) as tenant/lessee of the landholding subject matter of this case. Also assailed is the May 4, 2005 Resolution denying the motion for reconsideration

Factual Antecedents

On December 18, 1975, respondent Alice Tanco (Alice) purchased a parcel of land consisting of 28.4692 hectares located in Norzagaray, Bulacan.[5] The land was devoted to mango plantation. Later on, it was partitioned among the respondents (Alice and her three children, namely, Geraldine, Ronald, and

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[1] *Heirs of Nicolas Jugalbot v. Court of Appeals*, G.R. No. 170346, March 12, 2007, 518 SCRA 203, 220.

[2] CA *rollo,* pp. 247-304; penned by Associate Justice Regalado E. Maambong and concurred in by Associate Justices Eloy R. Bello, Jr. and Lucenito N. Tagle.

[3] *Rollo*, pp. 32-37.

[4] CA *rollo,* pp. 93-100.

[5] See Deed of Absolute Sale, *id.* at 157-158.

Patrick), each receiving 7 hectares, except Alice who got an extra 0.4692 hectare.

Controversy arose when Alice sent to Vicente a letter[6] dated January 16, 1995 informing him that subject landholding is not covered by the Comprehensive Agrarian Reform Program (CARP). She asked him to vacate the property as soon as possible.

Proceedings before the PARAD

Seeing the letter of Alice as a threat to his peaceful possession of subject farmland which might impair his security of tenure as a tenant, Vicente filed before the regional office of DARAB in Region III a Complaint for Maintenance of Peaceful Possession with Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction.[7] He averred that in 1970, Arsenio Tanco (Arsenio),[8] the husband of Alice, instituted him as tenant-caretaker of the entire mango plantation. Since then, he has been performing all phases of farm works, such as clearing, pruning, smudging, and spraying of the mango trees. The fruits were then divided equally between them. He also alleged that he was allowed to improve and establish his home at the old building left by *Ang Tibay* Shoes located at the middle of the plantation. Presently, he is in actual possession of and continues to cultivate the land.

In their Answer,[9] respondents denied having instituted any tenant on their property. They stressed that Vicente never worked and has no employer-employee relationship with Geraldine, Ronald, and Patrick. Insofar as Alice is concerned, respondents asserted that Vicente is not a tenant but a mere regular farm worker. They claimed that in April 1994 and April 1995, upon the intercession of the Municipal Agrarian Reform Officer (MARO), Alice agreed to avail the services of Vicente for the

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[6] *Id.* at 77.

[7] *Id.* at 71-74.

[8] While in its April 23, 1996 Decision (*supra* note 4) PARAD considered Arsenio Tanco to have passed away, respondents inserted a footnote in their Memorandum stating that Arsenio Tanco is still alive.

[9] CA *rollo*, pp. 78-79.

specific purpose of spraying the mango trees. In consideration thereof, Alice also agreed to pay Vicente an amount equivalent to 50% of the produce, which was then the prevailing practice in Bulacan. Respondents maintained that Alice agreed to this setup since the MARO made it clear to both parties that the contract was for the specific purpose of spraying the mango trees only and that the same will not ripen into tenancy relationship.

Respondents likewise alleged that it was impossible for the late Arsenio to institute Vicente as tenant in 1970 since the Tanco family acquired the mango plantation from Manufacturers Bank & Trust Co. only in December 1975.

On April 23, 1996, the PARAD rendered a Decision[10] in favor of Vicente. It opined that since Vicente was performing functions more than just a mere caretaker and was even allowed to live in subject landholding with his family, he is therefore a tenant. The dispositive portion of the PARAD's Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> (1) Declaring and recognizing plaintiff Vicente Adriano as tenant/lessee of subject landholding;
>
> (2) Ordering the MARO of Norzagaray to cause the preparation of an Agricultural Leasehold Contract between the plaintiff and the defendants;
>
> (3) Plaintiff must be maintained in peaceful possession and cultivation of the landholding.
>
> SO ORDERED.[11]

Respondents moved for reconsideration which was denied.[12]

Proceedings before the DARAB

Thus, respondents appealed to the DARAB which affirmed the ruling of the PARAD. It held that since the landholding is

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[10] *Id.* at 93-100.

[11] *Id.* at 100.

[12] See Order dated June 26, 1996, *id.* at 101.

an agricultural land, that respondents allowed Vicente to take care of the mango trees, and that they divided the fruits equally between them, then an implied tenancy was created.

Proceedings before the CA

Twice rebuffed but still undeterred, respondents elevated the case to the CA *via* a Petition for Review[13] under Rule 43 of the Rules of Court. They contended, among others, that the essential elements of tenancy relationship are wanting in the instant controversy. They claimed that their property is not an agricultural land, but lies within a mineralized area; Alice hired Vicente as a caretaker and, therefore, the nature of their relationship is that of an employer-employee relationship; and, there is no proof that the parties share in the harvest. With regard to DARAB's theory of implied lease, respondents maintained that they never authorized Vicente to spray the mango trees. Respondents insisted that Alice agreed to engage the services of Vicente for the specific purpose of spraying the mango trees in 1994 and 1995 for humanitarian reasons in order to recompense him for the expenses he had already spent for the unauthorized spraying. The agreement was made upon the intercession of the MARO, who emphasized that the same would not ripen into tenancy relationship.

Respondents further contended that, if at all, Vicente's claim should be limited to the property assigned to Alice because she was the only one who hired him as a caretaker. In fact, he had been consistently receiving a monthly salary as a hired caretaker, as well as bonuses, as shown by several cash vouchers[14] attached to their petition. Furthermore, it is impossible for Vicente, who is already old, to personally cultivate the entire 28.4692 hectares of land all by himself.

Impressed with respondents' arguments, the CA rendered a Decision in their favor. Thus:

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[13] *Id.* at 2-53.

[14] *Id.* at 121-135.

Prescinding from the foregoing premises, the instant petition is GRANTED. The Decision dated 18 June 1998 and the Resolution dated 28 November 2002 of the Department of Agrarian Reform Adjudication Board (DARAB) are hereby REVERSED and SET ASIDE, and another judgment is entered, declaring respondent Vicente Adriano NOT a tenant of respondents Alice K. Tanco [TCT-No. T-93.233 (M)-7.4692 hectares], Geraldine Tanco [TCT No. 93.230 (M)-7 hectares], Ronald Tanco [TCT No. T-93.232 (M)-7 hectares], and Patrick Tanco [TCT No. T-93.231 (M)-7 hectares], whose subject landholdings are all located at San Mateo, Norzagaray, Bulacan, respondent being a mere employee or *hired caretaker/ overseer/worker* of petitioner Alice K. Tanco with respect to her property in question, covering 7.4692 hectares, and thus respondent is NOT entitled to security of tenure under the Comprehensive Agrarian Reform Law (Republic Act No. 6657).

Costs against respondent.

SO ORDERED.[15]

Vicente sought reconsideration, which the CA denied in its May 4, 2005 Resolution.[16]

Issues

Hence, this petition. From the parties' exchange of pleadings, it appears that the fundamental issues to be resolved in this petition in the order of their importance are as follows:

I

WHETHER THE ISSUES RAISED BY THE PETITIONER ARE QUESTIONS OF LAW WHICH CAN BE REVIEWED BY THE SUPREME COURT.[17]

II

WHETHER THE FINDINGS OF THE PARAD AND THE DARAB THAT VICENTE IS A *BONA FIDE* TENANT IS SUPPORTED BY SUBSTANTIAL EVIDENCE.[18]

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[15] *Id.* at 303-304.

[16] *Id.* at 329-330.

[17] See respondents' Memorandum, *rollo*, pp. 406-421.

[18] See petitioner's Memorandum, *id.* at 364-378.

Our Ruling

This case falls under the exceptions where the Supreme Court may review factual issues.

Respondents, who put forward the first issue, contend that Vicente is actually raising factual issues which is not allowed in a petition for review on *certiorari* filed under Rule 45 of the Rules of Court. They maintain that under Rule 45, only questions of law may be raised as issues and resolved by this Court.

Vicente, on the other hand, concedes that the issues set forth in his petition are not questions of law. Nevertheless, he counter-argues that this case falls under the exceptions where this Court may pass upon questions of fact.

We agree with Vicente. The determination of whether a person is an agricultural tenant is basically a question of fact.[19] And, as a general rule, questions of fact are not proper in a petition filed under Rule 45.[20] But since the findings of facts of the DARAB and the CA contradict each other, it is crucial to go through the evidence and documents on record as a matter of exception[21] to the rule.[22]

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[19] *Cornes v. Leal Realty Centrum, Co., Inc.*, G.R. No. 172146, July 30, 2008, 560 SCRA 545, 567.

[20] RULES OF COURT, Rule 45, Section 1.

[21] The other recognized exceptions are: (1) when the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) when the inference made is manifestly mistaken; (3) when there is a grave abuse; (4) when the judgment is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellee; (7) when the findings of fact of the Court of Appeals are contrary to those of the trial court; (8); when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) when the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. (*Sarmiento v. Court of Appeals,* 353 Phil. 834, 846 [1998]).

[22] *De Jesus v. Moldex Realty, Inc.*, G.R. No. 153595, November 23, 2007, 538 SCRA 316, 320.

The findings of the agrarian tribunals that tenancy relationship exists are not supported by substantial evidence.

Vicente posits that the CA erred in substituting its own findings with the unanimous findings of the PARAD and the DARAB. He asserts that factual findings of administrative agencies are entitled to great respect and even finality since they have acquired expertise on the field for which they were created. The only requirement is that said findings must be supported by substantial evidence. Vicente believes that the findings of the agrarian tribunals are supported by substantial evidence since he did not observe regular working hours, handles all phases of farm works, and lives in an old building located at the middle of the plantation.

We are not persuaded.

Tenancy relationship is a juridical tie which arises between a landowner and a tenant once they agree, expressly or impliedly, to undertake jointly the cultivation of a land belonging to the landowner, as a result of which relationship the tenant acquires the right to continue working on and cultivating the land.[23]

The existence of a tenancy relationship cannot be presumed and allegations that one is a tenant do not automatically give rise to security of tenure.[24] For tenancy relationship to exist, the following essential requisites must be present: (1) the parties are the landowner and the tenant; (2) the subject matter is agricultural land; (3) there is consent between the parties; (4) the purpose is agricultural production; (5) there is personal cultivation by the tenant; and, (6) there is sharing of the harvests between the parties.[25] All the requisites must concur in order to establish the existence of tenancy relationship, and the absence of one or more requisites is fatal.[26]

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[23] REPUBLIC ACT NO. 1199, Section 6, (Agricultural Tenancy Act of the Philippines).

[24] *De Jesus v. Moldex Realty Inc.*, *supra* note 22 at 321.

[25] *Id.*

[26] *Cornes v. Leal Realty Centrum, Co., Inc.*, *supra* note 19 at 576-568.

After a thorough evaluation of the records of this case, we affirm the findings of the CA that the essential requisites of consent and sharing are lacking.

The essential element of consent is sorely missing because there is no proof that the landowners recognized Vicente, or that they hired him, as their legitimate tenant. And, although Vicente claims that he is a tenant of respondents' agricultural lot in Norzagaray, Bulacan, and that he has continuously cultivated and openly occupied it, no evidence was presented to establish the presence of consent other than his self-serving statements. These cannot suffice because independent and concrete evidence is needed to prove consent of the landowner.[27]

Likewise, the essential requisite of sharing of harvests is lacking. Independent evidence, such as receipts, must be presented to show that there was sharing of the harvest between the landowner and the tenant.[28] Self-serving statements are not sufficient.[29]

Here, there was no evidence presented to show sharing of harvest in the context of a tenancy relationship between Vicente and the respondents. The only evidence submitted to establish the purported sharing of harvests were the allegations of Vicente which, as discussed above, were self-serving and have no evidentiary value. Moreover, petitioner's allegations of continued possession and cultivation do not support his cause. It is settled that mere occupation or cultivation of an agricultural land does not automatically convert a tiller or farm worker into an agricultural tenant recognized under agrarian laws.[30] It is essential that, together with the other requisites of tenancy relationship,

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[27] *Heirs of Nicolas Jugalbot v. Court of Appeals*, *supra* note 1 at 214-215; *Berenguer, Jr. v. Court of Appeals,* G.R. No. 60287, August 17, 1988, 164 SCRA 431, 438-439.

[28] *Berenguer, Jr. v. Court of Appeals, id.*

[29] *Id.*

[30] *Danan v. Court of Appeals*, G.R. No. 132579, October 25, 2005, 474 SCRA 113, 126.

the agricultural tenant must prove that he transmitted the landowner's share of the harvest.[31]

Neither can we agree with the DARAB's theory of implied tenancy because the landowner never acquiesced to Vicente's cultivating the land. Besides, for implied tenancy to arise it is necessary that all the essential requisites of tenancy must be present.[32]

Lastly, it is well to stress that Vicente has the burden of proving his affirmative allegation of tenancy. It is elementary that he who alleges the affirmative of the issue has the burden of proof. And if the petitioner upon whom rests the burden of proving his cause of action fails to show in a satisfactory manner the facts upon which he bases his claim, the respondents are under no obligation to prove their exception or defense. In the case at bench, aside from being self-serving, some of the allegations of Vicente are contradicted by the evidence on record. While he claims that Arsenio instituted him as tenant in 1970 and has since then occupied and cultivated respondents' landholdings, the Deed of Absolute Sale presented by the latter indubitably shows that Alice (or the Tanco family) acquired the same only in 1975.

WHEREFORE, the instant petition is *DENIED*. The assailed October 12, 2004 Decision of the Court of Appeals in CA-G.R. SP No. 74465 declaring petitioner Vicente Adriano not a tenant of the respondents and thus not entitled to security of tenure under the Comprehensive Agrarian Reform Law, and the May 4, 2005 Resolution denying the motion for reconsideration are *AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Perez, JJ.,* concur.

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[31] *Ambayec v. Court of Appeals*, 499 Phil. 536, 545 (2005).

[32] *Landicho v. Sia*, G.R. No. 169472, January 20, 2009, 576 SCRA 602, 621.

FIRST DIVISION

[G.R. No. 168960. July 5, 2010]

AMELIA B. HEBRON, *petitioner, vs.* **FRANCO L. LOYOLA, ANGELO L. LOYOLA, RAFAEL L. LOYOLA, ARMANDO L. LOYOLA, SENEN L. LOYOLA, MA. VENUS L. RONQUILLO, PERLA L. ABAD and the Intestate Estate of EDUARDO L. LOYOLA, CARMELITA A. MANABO, HERMINIA AGUINALDO-ROSAS, DIGNA AGUINALDO-VALENCIA, ROGELIO AGUINALDO, MILA AGUINALDO-DIAZ, BABY AGUINALDO, RUBEN LOYOLA substituted by Josefina C. Loyola, Glesilda A. Legosto, Evelyn C. Loyola, Marina C. Loyola, Aure C. Loyola, Corazon C. Lugarda and Joven Francisco C. Loyola, LORENZO LOYOLA, CANDELARIA LOYOLA, NICANDRO LOYOLA, FLORA LOYOLA, TERESITA L. ALZONA, VICENTE LOYOLA, ROSARIO L. LONTOC, SERAFIN LOYOLA, ROBERTO LOYOLA, BIBIANO LOYOLA, PURITA LOYOLA, ESTELA LOYOLA, ESTER DANICO, EDUARDO DANICO, EMELITA DANICO, MERCEDITA DANICO, HONESTO DANICO, DANTE DANICO, ERLINDA DANICO-DOMINGUEZ represented by Teodoro Dominguez and Beverly Anne Dominguez, EFREN CABIGAN and ISIDRO CABIGAN,** *respondents.* **ALBERTO L. BAUTISTA represented by Felicidad G. Bautista, Agnes B. Zulueta, Ayreen B. Alba, Joseph Anthony G. Bautista, Ann-Janet G. Bautista and ALFREDO L. BAUTISTA,** *unwilling respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; NOT ONLY THE PLAINTIFFS WHO HAS DUTY TO ESTABLISH THEIR CLAIMS, THE DEFENDANTS ALSO HAVE THE

DUTY TO ESTABLISH THEIR DEFENSES.— Rule 131 of the Rules of Court states: Section 1. Burden of Proof.– Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his **claim *or defense*** by the amount of evidence required by law. From the above provision it is clear that the defendant, not only the plaintiff, also has a burden of proof. The plaintiffs have the duty to establish their claims. And, it is the defendants who have the duty to establish their defenses. Children of the deceased, like Candida and her siblings, are compulsory heirs who are entitled to a share in the properties of the deceased. Art. 980 of the Civil Code states: "The children of the deceased shall always inherit from him in their own right, dividing the inheritance in equal shares." The heirs of Conrado are also heirs of Remigia and Januario, being the children of a child of Remigia and Januario; and as such are entitled to their shares in the estate of Remigia and Januario. Petitioner has admitted in her answer that respondents are heirs of Remigia and Januario; and that the two subject properties were left behind by Remigia and Januario. "An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof." Hence, we find no error committed by the CA when it affirmed the ruling of the trial court that the burden was on petitioner to establish her affirmative defense of waiver or sale of the shares of Candida and the heirs of Conrado. The defense of petitioner is that Candida and the heirs of Conrado have waived or sold their shares in the subject properties. This alleged fact is denied by the respondents. Hence, this is the fact that is at issue and this alleged fact has to be proven by petitioner, who is the one who raised the said alleged fact. The burden of proof of the ***defense*** of waiver or sale is on petitioner. Whether petitioner has been able to prove the said fact is undoubtedly a question of fact, not of law. It involves the weighing and calibration of the evidence presented. In the absence of any of the exceptions that calls for the Court to do so, the Court will not disturb the factual findings of the RTC that were affirmed by the CA in the present case.

2. **CIVIL LAW; CIVIL CODE; EFFECT OF PARENTAL AUTHORITY ON THE PROPERTY OF THE CHILDREN; THE POWERS GIVEN TO PARENTS AS THE NATURAL GUARDIAN COVERS ONLY MATTERS OF**

ADMINISTRATION AND CANNOT INCLUDE THE POWER OF DISPOSITION.— The minor children of Conrado inherited by representation in the properties of their grandparents Remigia and Januario. These children, not their mother Victorina, were the co-owners of the inherited properties. Victorina had no authority or had acted beyond her powers in conveying, if she did indeed convey, to the petitioner's mother the undivided share of her minor children in the property involved in this case. "The powers given to her by the laws as the natural guardian covers only matters of administration and cannot include the power of disposition. She should have first secured the permission of the court before she alienated that portion of the property in question belonging to her minor children." In a number of cases, where the guardians, mothers or grandmothers, did not seek court approval of the sale of properties of their wards, minor children, the Court declared the sales void. Although the CA inaccurately cited Articles 321 and 323 of the Civil Code, its conclusion that Victorina had no capacity to relinquish her children's shares in the inherited properties was, nevertheless, correct.

3. **ID.; ID.; ID.; ID.; PETITIONER FAILED TO PROVE BY PREPONDERANCE OF EVIDENCE HER ALLEGED ACT OF RELINQUISHMENT, BY SALE OR WAIVER, OF THE SHARES OF THE CHILDREN.—** On this factual issue too, we find no reason to disturb the finding of the CA affirming that of the RTC that petitioner failed to prove by preponderance of evidence her alleged fact of relinquishment, by sale or waiver, of the shares of Candida and the heirs of Conrado. Again, the court has no duty to delve into and weigh the pieces of evidence presented by the parties and passed upon by both the RTC and the CA with consistent conclusions on this matter and absent the other exceptions to the general rule. Nevertheless, we did so, but find no error in the findings of the RTC and the CA on this issue. The very sketchy and partly hearsay testimony of petitioner was resoundingly rebutted by the testimonies of the respondents. The hearsay letter of Soledad, self-serving entries of relinquishment in the notebook of accounts and tampered notebook of educational expenses hinting at a relinquishment of shares cannot be given weight. Moreover, these were refuted by the presentation of document embodying the notarized extrajudicial partition establishing no such relinquishment. The

evidence does not preponderate in favor of petitioner. Absent a preponderance of evidence on the fact in issue of relinquishment of shares, then Candida and the heirs of Conrado, as admitted heirs of Remigia and Januario, are entitled to their shares in the two subject properties.

4. **ID.; ID.; ID.; ID.; LACHES; CONSIDERING THAT THE PARTIES ARE CLOSELY RELATED TO EACH OTHER AND CONSIDERING THAT THE PARTIES ARE MANY DIFFERENT HEIRS, SOME OF WHOM RESIDE OUTSIDE THE PHILIPPINES, THE PASSAGE OF SIX YEARS BEFORE THE RESPONDENTS ASKED FOR PARTITION THROUGH THE COURT IS NOT UNREASONABLE.—** Laches is the failure of or neglect for an unreasonable and unexplained length of time to do that which by exercising due diligence, could or should have been done earlier, or to assert a right within reasonable time, warranting a presumption that the party entitled thereto has either abandoned it or declined to assert it. In the present case, the book of accounts, showing the record of receipts of some heirs of their shares, has repeated entries in Amelia's handwriting that Candida and the heirs of Conrado are no longer entitled to shares in the fruits of the properties in litigation because they have sold or given their share in the said properties to Encarnacion. These entries only prove that Amelia no longer recognized the entitlement of Candida and the heirs of Conrado to their respective shares. It is relevant to note however that the entries in the book of accounts started only on July 17, 1986. Hence, there is definite proof of non-recognition by petitioner of Candida and the heirs of Conrado's entitlement to shares in the subject properties starting only on July 17, 1986. Before this time, during the administration of the properties by Encarnacion Loyola-Bautista and some undetermined number of years after her death, Candida and the heirs of Conrado were proven to have been receiving their shares in the fruits of the subject properties. On record is the written demand letter for partition of the litigated properties signed by Candida and the heirs of Conrado dated November 4, 1990. The complaint for partition was subsequently filed on February 23, 1993. From July 17, 1986, to November 4, 1990 only 4 years have elapsed. Even from July 17, 1986 to February 23, 1993 just six years have passed. Considering that the parties are closely related to each

other and considering also that the parties are many different heirs, some of whom reside outside the Philippines, the passage of six years before the respondents asked for partition through the court is not unreasonable. We find respondents not guilty of laches.

APPEARANCES OF COUNSEL

Sedfrey M. Candelaria for petitioner.
Franco L. Loyola for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Courts, not being omniscient, can only strive to determine what actually and truly transpired based on the evidence before it and the imperfect rules that were designed to assist in establishing the truth in disputed situations. Despite the difficulties in ascertaining the truth, the courts must ultimately decide. In civil cases, its decision must rest on preponderance of admissible evidence.

This petition for review assails the February 22, 2005 Decision[1] and the July 7, 2005 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV. No. 64105. The CA partially granted the appeal before it and modified the June 22, 1999 Decision[3] of the Regional Trial Court (RTC) of Cavite, Branch 20, which ordered the partition of two parcels of land among the seven sets of plaintiffs (respondents herein).

Factual Antecedents

This case originated from a suit for partition and damages concerning the two parcels of land denominated as Lot Nos. 730

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[1] *Rollo*, pp. 39-52; penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Aurora Santiago-Lagman.

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

[3] Records, pp. 262-266; penned by Judge Lucenito N. Tagle.

and 879 of the Carmona cadastre. Lot No. 730, with an area of 17,688 square meters, was owned by Remigia Baylon who was married to Januario Loyola. Lot No. 879, with an area of 10,278 square meters was owned by Januario Loyola, the husband of Remigia Baylon. Januario and Remigia had seven children, namely Conrado, Jose, Benjamin, Candida, Soledad, Cristeta and Encarnacion, all surnamed Loyola.

The administration of the said lots was entrusted to Encarnacion Loyola-Bautista. All the heirs of Januario and Remigia received their shares in the fruits of the subject properties during Encarnacion's administration thereof. With the latter's death on September 15, 1969, administration of the subject properties was assumed by her daughter, Amelia Bautista-Hebron, who, after some time, started withholding the shares of Candida and the heirs of Conrado. By the time partition of the said properties was formally demanded on November 4, 1990, Candida was the only one still living among the children of Januario and Remigia. The rest were survived and represented by their respective descendants and children, to wit:

1. Conrado Loyola, by his children, Ruben Loyola, now substituted by his heirs, namely, Josefina, Edgardo, Evelyn, Marina, Aure, Corazon and Joven Francisco, all surnamed Loyola, and respondents Lorenzo Loyola, Candelaria Loyola, Flora Loyola, Nicardo Loyola, Teresita Loyola-Alonza, Vicente Loyola and Rosario Loyola-Lontoc;

2. Jose Loyola, by his children, respondents Serafin Loyola, Bibiano Loyola, Roberto Loyola, Purita Loyola-Lebrudo and Estela Loyola;

3. Benjamin Loyola, by his children, respondents Franco Loyola, Angelo Loyola, Rafael Loyola, Senen Loyola, Perla Loyola-Abad, Ma. Venus Loyola-Ronquillo, Armando Loyola as well as his daughter-in-law by his son, Eduardo Loyola, respondent Carmen Hermosa;

4. Soledad Loyola, by her children, respondents Ester Danico, Eduardo Danico, Mercedita Danico, Honesto Danico, Emelita Danico and Dante Danico;

5. Cristeta Loyola, by her children, respondents Efren Cabigan and Isidro Cabigan; and

6. Encarnacion Loyola-Bautista, by her son, respondent Alfredo Bautista, by petitioner Amelia Bautista-Hebron, and by her daughter-in-law by her son, Alberto Bautista, respondent Felicidad Bautista, and the latter's children, respondents Anjanet, Agnes, Ayren and Joseph Anthony, all surnamed Bautista.

For petitioner's failure to heed their formal demand, respondents filed with the RTC of Imus, Cavite, Branch 20, the complaint for partition and damages from which the instant suit stemmed. While manifesting her conformity to the partition demanded by her co-heirs, petitioner claimed in her amended answer that Candida and the heirs of Conrado have already relinquished their shares in consideration of the financial support extended them by her mother, Encarnacion. In the pre-trial order, the trial court consequently limited the issue to be resolved to the veracity of the aforesaid waiver or assignment of shares claimed by petitioner.

Trial on the merits then ensued. While conceding their receipt of financial assistance from Encarnacion, Candida and the heirs of Conrado maintained that adequate recompense had been effectively made when they worked without pay at the former's rice mill and household or, in the case of Carmelita Aguinaldo-Manabo, when she subsequently surrendered her earnings as a public school teacher to her said aunt.

Ruling of the Regional Trial Court

On June 22, 1999, the trial court rendered a Decision granting the partition sought. The dispositive portion of the Decision states:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered ordering the partition of the following real properties, to wit:
>
> 1. The parcel of land known as Lot 730 of the Carmona Cadastre with an area of 17,688 sq. meters more of less; and

2. the parcel of land known as Lot 879 of the Carmona Cadastre with an area of 10,278 sq. meters, more of less

among all the seven (7) sets of plaintiffs in seven (7) equal parts.

In this regard, the parties are directed within thirty (30) days from receipt hereof to make the partition of the two (2) lots among themselves should they agree, and thereafter, to submit in Court their deed of partition for its confirmation.

SO ORDERED.[4]

Ruling of the Court of Appeals

Petitioner, the defendant in the case before the RTC, appealed the Decision to the CA. The CA found the petitioner entitled to participate in the partition of the subject properties. It stated that petitioner's inadvertent exclusion from the partition of the subject properties arose from the trial court's use of the phrase "seven (7) sets of ***plaintiffs***" in the dispositive portion of the appealed Decision instead of the more accurate "seven (7) sets of ***heirs***."

The CA however, like the trial court, found that petitioner was not able to prove the existence of the waiver or assignment of their shares by Candida and the heirs of Conrado. The dispositive portion of the Decision states:

WHEREFORE, the appeal is **PARTIALLY GRANTED** and the appealed June 22, 1999 decision is, accordingly, **MODIFIED** to include appellant's participation in the partition of the subject parcels as one of the heirs of Encarnacion Loyola-Bautista. The rest is **AFFIRMED *in toto***.[5]

The CA denied the motion for reconsideration filed by petitioner. Hence, petitioner elevated the case to us via the present petition for review.

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[4] *Id.* at 266.

[5] *Rollo*, p. 51.

Issues

Petitioner raises the following issues:

I

WHETHER X X X THE APPELLATE COURT ERRED IN AFFIRMING THE RULING OF THE TRIAL COURT THAT THE BURDEN OF PROOF WAS SHIFTED TO DEFENDANT-APPELLANT AMELIA B. HEBRON AND THAT THE LATTER FAILED TO SUBSTANTIATE HER CLAIM WITH PREPONDERANCE OF EVIDENCE.

II

WHETHER X X X THE APPELLATE COURT ERRED IN AFFIRMING THE RULING OF THE TRIAL COURT THAT A SPOUSE PRESENT CANNOT RELINQUISH THE SHARES IN THE PARCELS OF LAND IF IT WILL DEPRIVE MINOR CHILDREN OF THEIR HEREDITARY RIGHTS.

III

WHETHER X X X THE APPELLATE COURT ERRED IN AFFIRMING THE RULING OF THE TRIAL COURT THAT NO CONCRETE PROOF EVIDENCING THE SALE OR ASSIGNMENT OF SHARES OF CANDIDA LOYOLA-AGUINALDO AND CONRADO LOYOLA IN THE TWO PARCELS OF LAND IN FAVOR OF PETITIONER'S MOTHER, ENCARNACION LOYOLA-BAUTISTA, HAD BEEN PRESENTED BY PETITIONER DURING THE TRIAL DESPITE THE EXISTENCE OF PAROL EVIDENCE BY WAY OF AN EXCEPTION TO THE STATUTE OF FRAUDS.

IV

WHETHER X X X THE APPELLATE COURT COMMITTED A REVERSIBLE ERROR IN NOT CONSIDERING THAT CANDIDA LOYOLA-AGUINALDO AND THE HEIRS OF CONRADO LOYOLA ARE BARRED BY ESTOPPEL IN ASSERTING THAT THEY ARE STILL ENTITLED TO SHARE IN THE QUESTIONED PARCELS OF LAND.[6]

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[6] *Id.* at 106.

Petitioner's Arguments

Petitioner contends that she has no affirmative allegation to prove, hence, the burden of proof is on respondents and not on her. And if at all, she has proven that Candida and the heirs of Conrado have relinquished their respective shares.

She further contends that ownership of inherited properties does not fall under Articles 321 and 323 of the Civil Code and thus, the properties inherited by the children of Conrado can be alienated by their mother, Victorina, in favor of petitioner's mother.

Petitioner also contends that her parol evidence proved the alleged executed agreement of waiver of shares in the two subject inherited properties in consideration of the educational and other financial support extended by Encarnacion to Candida and Conrado's respective families.

Finally, petitioner posits that Candida and the heirs of Conrado are estopped by laches from asserting their entitlement to shares in the subject properties.

Respondents' Arguments

On the other hand, respondents argue that Candida and the heirs of Conrado have not relinquished their shares in the litigated properties. They insist that the alleged agreement of relinquishment of shares cannot be proved by parol evidence.

They also contend that all the issues raised are factual in nature, and the findings of fact of the CA are final and conclusive and thus, may not be the subject of review by the Supreme Court, absent any of the recognized exceptions to the said rule.

Our Ruling

The petition has no merit.

Burden of Proof

Rule 131 of the Rules of Court states:

Section 1. Burden of Proof.- Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish

his **claim *or defense*** by the amount of evidence required by law. (Emphasis supplied)

From the above provision it is clear that the defendant, not only the plaintiff, also has a burden of proof. The plaintiffs have the duty to establish their claims. And, it is the defendants who have the duty to establish their defenses.

Children of the deceased, like Candida and her siblings, are compulsory heirs who are entitled to a share in the properties of the deceased. Art. 980 of the Civil Code states: "The children of the deceased shall always inherit from him in their own right, dividing the inheritance in equal shares." The heirs of Conrado are also heirs of Remigia and Januario, being the children of a child of Remigia and Januario; and as such are entitled to their shares in the estate of Remigia and Januario.[7]

Petitioner has admitted in her answer that respondents are heirs of Remigia and Januario;[8] and that the two subject properties were left behind by Remigia and Januario.[9] "An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof."[10] Hence, we find no error committed by the CA when it affirmed the ruling of the trial court that the burden was on petitioner to establish her affirmative defense of waiver or sale of the shares of Candida and the heirs of Conrado.

The defense of petitioner is that Candida and the heirs of Conrado have waived or sold their shares in the subject properties. This alleged fact is denied by the respondents. Hence, this is the fact that is at issue and this alleged fact has to be proven by petitioner, who is the one who raised the said alleged fact. The burden of proof of the ***defense*** of waiver or sale is on petitioner.

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[7] Art. 981. Should children of the deceased and the descendants of other children who are dead, survive, the former shall inherit in their own right, and the latter by right of representation.

[8] Records, p. 74.

[9] *Id.* at 75.

[10] RULES OF COURT, Rule 130, Section 4.

Whether petitioner has been able to prove the said fact is undoubtedly a question of fact, not of law. It involves the weighing and calibration of the evidence presented. In the absence of any of the exceptions that calls for the Court to do so, the Court will not disturb the factual findings of the RTC that were affirmed by the CA in the present case.

Shares of Minor Children

The minor children of Conrado inherited by representation in the properties of their grandparents Remigia and Januario. These children, not their mother Victorina, were the co-owners of the inherited properties. Victorina had no authority or had acted beyond her powers in conveying, if she did indeed convey, to the petitioner's mother the undivided share of her minor children in the property involved in this case. "The powers given to her by the laws as the natural guardian covers only matters of administration and cannot include the power of disposition. She should have first secured the permission of the court before she alienated that portion of the property in question belonging to her minor children."[11] In a number of cases, where the guardians, mothers or grandmothers, did not seek court approval of the sale of properties of their wards, minor children, the Court declared the sales void.[12]

Although the CA inaccurately cited Articles 321 and 323 of the Civil Code, its conclusion that Victorina had no capacity to relinquish her children's shares in the inherited properties was, nevertheless, correct.

Evidence of Sale/Waiver of Shares in Real Properties

On this factual issue too, we find no reason to disturb the finding of the CA affirming that of the RTC that petitioner failed to prove by preponderance of evidence her alleged fact

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[11] *Badillo v. Soromero*, 236 Phil. 438,448-449 (1987). See also *Nario v. Philippine American Life Ins. Co.,* 126 Phil. 793, 801 (1967).

[12] *Laforga v. Laforga*, 22 Phil. 374 (1912); *Ledesma Hermanos v. Castro,* 55 Phil. 136 (1930); *Inton v. Quintana*, 81 Phil. 97, 101 (1948).

of relinquishment, by sale or waiver, of the shares of Candida and the heirs of Conrado. Again, the court has no duty to delve into and weigh the pieces of evidence presented by the parties and passed upon by both the RTC and the CA with consistent conclusions on this matter and absent the other exceptions to the general rule. Nevertheless, we did so, but find no error in the findings of the RTC and the CA on this issue.

The very sketchy and partly hearsay testimony of petitioner was resoundingly rebutted by the testimonies of the respondents. The hearsay letter of Soledad, self-serving entries of relinquishment in the notebook of accounts and tampered notebook of educational expenses hinting at a relinquishment of shares cannot be given weight. Moreover, these were refuted by the presentation of document embodying the notarized extrajudicial partition establishing no such relinquishment. The evidence does not preponderate in favor of petitioner.

Absent a preponderance of evidence on the fact in issue of relinquishment of shares, then Candida and the heirs of Conrado, as admitted heirs of Remigia and Januario, are entitled to their shares in the two subject properties.

Laches

Laches is the failure of or neglect for an unreasonable and unexplained length of time to do that which by exercising due diligence, could or should have been done earlier, or to assert a right within reasonable time, warranting a presumption that the party entitled thereto has either abandoned it or declined to assert it.[13]

In the present case, the book of accounts, showing the record of receipts of some heirs of their shares, has repeated entries in Amelia's handwriting that Candida and the heirs of Conrado are no longer entitled to shares in the fruits of the properties in litigation because they have sold or given their share in the said properties to Encarnacion. These entries only prove that Amelia no longer recognized the entitlement of Candida and

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[13] *Velez, Sr. v. Rev. Demetrio*, 436 Phil. 1, 7-8 (2002).

the heirs of Conrado to their respective shares. It is relevant to note however that the entries in the book of accounts started only on July 17, 1986. Hence, there is definite proof of non-recognition by petitioner of Candida and the heirs of Conrado's entitlement to shares in the subject properties starting only on July 17, 1986. Before this time, during the administration of the properties by Encarnacion Loyola-Bautista and some undetermined number of years after her death, Candida and the heirs of Conrado were proven to have been receiving their shares in the fruits of the subject properties.

On record is the written demand letter for partition of the litigated properties signed by Candida and the heirs of Conrado dated November 4, 1990. The complaint for partition was subsequently filed on February 23, 1993.

From July 17, 1986, to November 4, 1990 only 4 years have elapsed. Even from July 17, 1986 to February 23, 1993 just six years have passed. Considering that the parties are closely related to each other and considering also that the parties are many different heirs, some of whom reside outside the Philippines, the passage of six years before the respondents asked for partition through the court is not unreasonable. We find respondents not guilty of laches.

WHEREFORE, the petition for review is *DENIED*. The February 22, 2005 Decision and the July 7, 2005 Resolution of the Court of Appeals in CA-G.R. CV. No. 64105 are *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Perez, JJ.,* concur.

THIRD DIVISION

[G.R. No. 169227. July 5, 2010]

PHILIPPINE RURAL RECONSTRUCTION MOVEMENT (PRRM), *petitioner, vs.* **VIRGILIO E. PULGAR,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; LIMITED TO QUESTIONS OF LAW; EXCEPTIONS TO THE RULE; APPLICABLE IN CASE AT BAR.—** Under the Rules of Court and settled doctrine, a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to questions of law. As a rule, the findings of fact of the CA are final and conclusive, and this Court will not review them on appeal. This rule, however, is not absolute and admits of several exceptions. To resolve the issue of whether PRRM is guilty of illegal dismissal, we necessarily have to determine the veracity of the parties' allegations, a function we are ordinarily barred from performing when deciding a Rule 45 petition. However, due to the conflicting factual findings of the NLRC and the CA, as well as the presence of some relevant facts that, had they been considered by the CA, would have justified a different conclusion, we find the review of the evidence on record compelling and proper.

2. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; ALLEGATION OF CONSTRUCTIVE DISMISSAL BELIED BY THE FACTS OF THE CASE.—** While Pulgar claims he was constructively dismissed when he was barred from the premises on March 31, 1997, **he still filed his application for leave for April 1-15, 1997**. The fact alone that Pulgar was able to return to the office to file his application for leave for April 1-15, 1997 raises doubt as to his purported ban from the premises. More importantly, if Pulgar truly believed that he had already been constructively dismissed on March 31, 1997, reason dictates that he would no longer bother to apply

for a leave of absence from PRRM for April 1-15, 1997. The fact that he did belies his contention that he believed he had already been constructively dismissed on March 31, 1997. Also worth mentioning is the fact that Pulgar continued to receive his salary from PRRM even after March 31, 1997, or the date of his alleged constructive dismissal. In fact, Pulgar received his salary up until April 15, 1997, when his vacation and sick leaves had been consumed. These circumstances, taken together, lead us to conclude that PRRM did not terminate Pulgar's employment. On the contrary, what appears from the evidence is that it was Pulgar himself who terminated his employment with PRRM when he filed an illegal dismissal complaint against the organization while he was on leave.

3. ID.; ID.; ID.; REASONS BEHIND RESPONDENT'S ABRUPT DECISION TO TERMINATE HIS EMPLOYMENT, CONSIDERED.— From Pulgar's own admissions, we consider the following facts to be established: *First*, Pulgar took funds intended for one activity or project and applied them to other activities/projects. *Second*, Pulgar took the savings from the TBFO and placed them in a bank account **under his own name.** To date, Pulgar has not turned over these funds to the PRRM. *Third*, Pulgar submitted manufactured and fake receipts to PRRM to liquidate TBFO's expenses. Noticeably, from Pulgar's disclosures alone, a *prima facie* case for estafa can already be made out against Pulgar. With the danger of criminal prosecution hanging over his head, Pulgar's abrupt decision to terminate his employment with PRRM becomes easily understandable.

4. ID.; ID.; ID.; BARE ALLEGATIONS OF CONSTRUCTIVE DISMISSAL, WHEN UNCORROBORATED BY THE EVIDENCE ON RECORD, CANNOT BE GIVEN CREDENCE.— While we recognize the rule that in illegal dismissal cases, the employer bears the burden of proving that the termination was for a valid or authorized cause, in the present case, however, the facts and the evidence do not establish a *prima facie* case that the employee was dismissed from employment. **Before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service**. Logically, if there is no dismissal,

then there can be no question as to its legality or illegality. Bare allegations of constructive dismissal, when uncorroborated by the evidence on record, cannot be given credence.

5. **ID.; ID.; ID.; WHILE THE CONSTITUTION IS COMMITTED TO THE POLICY OF SOCIAL JUSTICE AND PROTECTION OF THE WORKING CLASS, IT SHOULD NOT BE SUPPOSED THAT EVERY LABOR DISPUTE WILL BE AUTOMATICALLY DECIDED IN FAVOR OF LABOR.—** Although under normal circumstances, an employee's act of filing an illegal dismissal complaint against his employer is inconsistent with abandonment; in the present case, **we simply cannot use that one act to conclude that Pulgar did not terminate his employment with PRRM, and in the process ignore the clear, substantial evidence presented by PRRM that proves otherwise.** Our ruling on this point in *Leopard Integrated Services, Inc. v. Macalinao* is very relevant. x x x While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. Management also has its rights which are entitled to respect and enforcement in the interest of simple fair play. Out of its concern for those with less privileges in life, the Supreme Court has inclined, more often than not, toward the worker and upheld his cause in his conflicts with the employer. Such favoritism, however, has not blinded the Court to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and the applicable law and doctrine.

6. **ID.; ID.; ID.; EMPLOYER'S MONETARY CLAIM WAS BELATEDLY FILED.—** Examining the records of the case, it appears that Pulgar has not yet returned the money he took from the TBFO and deposited in his name to PRRM. We have previously ruled on the Labor Arbiter's jurisdiction to rule on all money claims, including those of the employer, arising out of the employer-employee relationship. Unfortunately for PRRM, it never raised as an issue the money allegedly still in Pulgar's custody in the proceedings before the Labor Arbiter, or even before the NLRC. x x x As a factual matter, this issue should have been raised at the earliest opportunity before the Labor Arbiter, to allow both parties to present their evidence.

The rule is well-settled that points of law, theories, issues and arguments not adequately brought to the attention of the trial court need not be, and ordinarily will not be considered by a reviewing court as they cannot be raised for the first time on appeal because this would be offensive to the basic rules of fair play, justice and due process.

APPEARANCES OF COUNSEL

Declaro Banico & Associates for petitioner.
Escobido & Pulgar Law Offices for respondent.

D E C I S I O N

BRION, *J*.:

Before us is the petition for review on *certiorari*[1] filed by the Philippine Rural Reconstruction Movement (*PRRM*) to assail the Court of Appeals' (*CA*) decision, dated May 25, 2005,[2] and its resolution, dated August 5, 2005,[3] in CA-G.R. SP No. 62036. The appellate court set aside the National Labor Relations Commission's (*NLRC*) January 28, 2000 decision, and held that PRRM illegally dismissed respondent Virgilio Pulgar (*Pulgar*) from employment.

BACKGROUND FACTS

PRRM is a non-stock, non-profit, non-governmental organization. Pulgar was the manager of PRRM's branch office – the Tayabas Bay Field Office (*TBFO*) – in Quezon Province. When Pulgar was reassigned to PRRM's central office, PRRM, through Goyena Solis (*Solis*), conducted an investigation into alleged financial anomalies committed at the TBFO.

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[1] Under Rule 45 of the RULES OF COURT; *rollo*, pp. 9-45.

[2] Penned by Associate Justice Salvador Valdez, Jr., with the concurrence of Associate Justices Mariano del Castillo (now a member of this Court) and Magdangal de Leon; *id.* at 46-53.

[3] *Id.* at 54-55.

In her investigation report, Solis stated that part of the funds allotted to the TBFO was missing or not properly accounted for. The report also stated that some of the receipts that the TBFO submitted to liquidate the organization's financial transactions were fictitious and manufactured.[4]

The PRRM management sent Pulgar a copy of the report, together with a memorandum, asking him to explain these findings.[5]

In a letter dated February 24, 1997, Pulgar *admitted that TBFO's reported expenses did not reflect its actual expenses*. He explained that as field manager, he presumed he had the discretion to determine when and how the funds would be used, as long as the use was devoted to the implementation of TBFO projects. Thus, there were instances when *he used the funds intended for one project to sustain the activities of other projects*. Pulgar further admitted that *some of the receipts he submitted to liquidate TBFO's expenses were not genuine*; he claimed that he had to produce fake receipts to comply with the central office's requirements and deadlines, otherwise the release of TBFO's subsequent funds would be delayed. Pulgar also disclosed that he had, on his own initiative, *opened a separate bank account at the Capitol Bank*[6] *for TBFO's savings; the account had a remaining balance of ₱206,958.50*. Lastly, Pulgar manifested his willingness to attend a meeting with the senior officers, scheduled on February 28, 1997, to further explain his side.[7]

On March 4, 1997, Pulgar met with PRRM representatives to discuss the findings of the investigation report. During the meeting, Pulgar furnished these representatives with a photocopy of a **savings account passbook with Account Number 1103508 under Pulgar's name at the Cooperative Bank of Quezon.** The passbook showed that the account had a balance of

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[4] Dated February 13, 1997; *id.* at 165-174.

[5] Dated February 20, 1997; *id.* at 175.

[6] Account Number 2-042-00188-9.

[7] *Rollo*, pp. 176-182.

₱207,693.10. According to Pulgar, this balance represented the TBFO savings he mentioned in his response. At this point, two versions of the story develop.

PRRM maintains that while the investigation was ongoing, Pulgar went on leave on March 3-10, March 20-25, and April 1-15, 1997. After the lapse of his last leave on April 15, 1997, Pulgar no longer reported to work, leading PRRM to believe that Pulgar had abandoned his work to evade any liability arising from the investigation. PRRM was therefore surprised to learn that Pulgar had filed an illegal dismissal case on April 3, 1997.

Pulgar tells another tale. According to him, on March 17, 1997, he submitted a letter to PRRM to complain that he was not given the right to confront and question Solis,[8] but his letter went unanswered. Thereafter, on March 31, 1997, he was not allowed to enter the premises of the organization. Pulgar also alleges that PRRM's representatives removed his personal properties and records from his office, placed them in boxes and kept them in storage.

Believing he was constructively dismissed by PRRM's actions, Pulgar filed a complaint against PRRM on April 3, 1997 for illegal dismissal, illegal suspension, and nonpayment of service incentive leave pay and 13th month pay. Pulgar also asked for actual damages, moral damages, and attorney's fees. At the mandatory conferences before Labor Arbiter Pablo Espiritu, Jr. (*Labor Arbiter*), Pulgar dropped the illegal suspension charge, as well as his claim for payment of service incentive leave with pay.[9]

On March 31, 1999, the Labor Arbiter found in his decision[10] that Pulgar had been illegally dismissed and ordered PRRM to pay Pulgar ₱319,387.50 as full backwages. However, the Labor Arbiter chose not to award Pulgar moral or exemplary damages after finding that PRRM had legitimate grounds to investigate

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[8] *Id.* at 118.

[9] Per the Labor Arbiter's decision; *id.* at 67.

[10] *Id.* at 66-76.

Pulgar. Due to the strained relations between PRRM and Pulgar, the Labor Arbiter opted to award Pulgar separation pay instead of ordering his reinstatement.

On appeal, the NLRC reversed the Labor Arbiter in its January 28, 2000 decision and dismissed Pulgar's complaint,[11] giving more weight to PRRM's allegation that Pulgar abandoned his work. This prompted Pulgar to bring the matter to the CA *via* a petition for review on *certiorari* (should be petition for *certiorari*) under Rule 65 of the 1997 Rules on Civil Procedure.[12]

On May 25, 2005, the CA rendered the assailed decision,[13] granting Pulgar's petition and reinstating the Labor Arbiter's decision. The appellate court noted that PRRM never rebutted Pulgar's contentions that he had been prevented from entering the premises and that his personal effects were taken from his office and placed in storage. The CA further observed that PRRM presented no evidence to prove that Pulgar abandoned his job. Reasoning that filing an illegal dismissal complaint is inconsistent with the charge of abandonment, the appellate court concluded that Pulgar had been illegally dismissed.

In the present petition, filed after the appellate court denied PRRM's Motion for Reconsideration, PRRM raises the issue of whether Pulgar was illegally dismissed from employment.

PRRM posits that it did not dismiss Pulgar from employment. Rather, Pulgar chose not to return to work, after his leave of absence, to evade any criminal liability that might arise from the ongoing investigation PRRM was conducting regarding the alleged financial anomalies Pulgar committed when he was the field manager of the TBFO. PRRM opines that Pulgar filed the present illegal dismissal case as a diversionary tactic to avoid having to submit himself to PRRM's ongoing investigation. Lastly, PRRM asks this Court to order Pulgar to return the PRRM funds still in his custody amounting to ₱207,693.10.

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[11] *Id.* at 56-63.

[12] *Id.* at 77-98.

[13] *Supra* note 2.

On the other hand, Pulgar claims that this Court should respect the Labor Arbiter's factual finding that he was illegally dismissed since the Labor Arbiter had the opportunity to observe the actuations, behavior and demeanor of the parties. Pulgar further alleges that PRRM can no longer claim the PRRM funds in his possession since the Labor Arbiter had already ruled that PRRM failed to raise the award of these funds as a relief in its Position Paper. Since PRRM never appealed this part of the Labor Arbiter's decision, it is now bound by these findings.

THE COURT'S RULING

We grant the petition.

Procedural issue

Under the Rules of Court and settled doctrine, a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to questions of law. As a rule, the findings of fact of the CA are final and conclusive, and this Court will not review them on appeal.[14] This rule, however, is not absolute and admits of several exceptions.[15]

To resolve the issue of whether PRRM is guilty of illegal dismissal, we necessarily have to determine the veracity of the parties' allegations, a function we are ordinarily barred

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[14] *Amigo v. Teves*, 96 Phil. 252 (1954).

[15] (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misappreciation of facts; (5) when the findings of fact are conflicting; (6) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) when the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record. *Campos v. Pastrana, et al.*, G.R. No. 175994, December 8, 2009.

from performing when deciding a Rule 45 petition. However, due to the conflicting factual findings of the NLRC and the CA, as well as the presence of some relevant facts that, had they been considered by the CA, would have justified a different conclusion, we find the review of the evidence on record compelling and proper.

The illegal dismissal issue

In concluding that Pulgar was constructively dismissed from employment, the CA relied on two main factors: (a) Pulgar's claim that he was barred from entering the premises on March 31, 1997; and (b) the fact that Pulgar immediately filed a complaint for illegal dismissal against PRRM. At first glance, the CA's decision appears correct. But the facts are not as simple as they appear to be.

Primarily, we underscore the fact that when Pulgar filed an illegal dismissal complaint on April 3, 1997, he was still on leave from the organization. In other words, **from PRRM's standpoint, Pulgar was still its employee when he filed the illegal dismissal case against the organization.**

Pulgar claims that he was forced to file an illegal dismissal complaint against PRRM while he was on leave because he was not allowed to enter the office premises on March 31, 1997. But aside from making this allegation, Pulgar failed to provide any other details on **how** he was prevented from entering the premises. Was he physically prevented from entering the premises by a security guard? Did the senior officers of PRRM refuse to let him into the office when he reported to work? We are left to guess the particulars of how PRRM prevented Pulgar from entering the premises, leaving us to doubt the veracity of this allegation.

To bolster his contention that he was constructively dismissed, Pulgar asserts that his personal things were taken from his office, placed in boxes and put in storage. To support this allegation, he attached three photographs.[16] But the only thing seen in

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[16] *Rollo*, p. 117.

these photographs is a storage room with sealed boxes on the floor. Taken at face value, there is nothing in the photographs that proves that the boxes in the storage room even contain Pulgar's personal things. Absent such proof, we cannot use these pictures to prove that Pulgar was constructively dismissed from employment.

We further note that at the time PRRM was conducting an investigation into the alleged anomalies committed in the liquidation and use of PRRM funds at the TBFO during Pulgar's management, Pulgar went on a number of leaves, specifically on March 3-10, 1997, then on March 20-25, 1997, and finally on April 1-15, 1997. The timing and frequency of these leaves, while not indicative of Pulgar's intention to sever his employment, at the very least, imply Pulgar's active efforts to evade the organization's ongoing investigation.

Significantly, while Pulgar claims he was constructively dismissed when he was barred from the premises on March 31, 1997, **he still filed his application for leave for April 1-15, 1997**. The fact alone that Pulgar was able to return to the office to file his application for leave for April 1-15, 1997 raises doubt as to his purported ban from the premises. More importantly, if Pulgar truly believed that he had already been constructively dismissed on March 31, 1997, reason dictates that he would no longer bother to apply for a leave of absence from PRRM for April 1-15, 1997. The fact that he did belies his contention that he believed he had already been constructively dismissed on March 31, 1997.

Also worth mentioning is the fact that Pulgar continued to receive his salary from PRRM even after March 31, 1997, or the date of his alleged constructive dismissal. In fact, Pulgar received his salary up until April 15, 1997, when his vacation and sick leaves had been consumed.

These circumstances, taken together, lead us to conclude that PRRM did not terminate Pulgar's employment. On the contrary, what appears from the evidence is that it was Pulgar

himself who terminated his employment with PRRM when he filed an illegal dismissal complaint against the organization while he was on leave.

The key to understanding Pulgar's motive in severing his employment with PRRM lies in Pulgar's letter dated February 24, 1997, written in response to the investigation report that implicated him in these financial anomalies. He wrote:

Noticing that even at the Central Office, project funds allotted for one field office or branch were used to sustain the operation of other on-going activities of another field office/branch or even of the Central Office, I presumed that the same is also applicable in the field office. That is, as field manager, it was to my discretion as to where and how the fund should be used so long as its utilization concerns the implementation of the project. With this in mind, I made some major decisions at the field office which I believe could be of great help make the operations smooth sailing.

For instance, there were cases when **funds for the FSP were used to finance the operations of the Community-based Mangrove and Community based Reforestation projects and other side activities** (*e.g.* Rapid Site Assessment, election campaign) in order to accomplish the project/activity on time. Likewise, cost savings measures were undertaken so that funds could be made available to the office when the immediate need for the fund arises particularly during situations when the release from the Central Office were delayed. And since the implementing guidelines from the CO was silent on the maintenance of another account for savings made by the field office, **I took the initiative to open a separate account for the field office's savings.** By doing this, possible disruption of work at the field and the delay in the salary of the staff were prevented.

As for the **inconsistencies of the liquidation documents submitted**, this was **necessary in order to comply with the requirements and deadlines set by the Central Office**, otherwise, the release for the succeeding quarter or period in questions will be put on hold. Given the situation and with the continuity of the field office's operation still in mind, **I was forced to adjust the documents submitted just to meet the deadlines and avoid disruption of work**. However, never had I intentionally done this with malicious intent of, as Ms. Solis puts it, using the fund for

personal gain. As I will explain later, funds were used to finance activities that were related to the operations of the field office and whatever savings were made remains in safekeeping for possible use of the office's operation. x x x

With regard to the case of the AECI project, its account has been required to be closed and cash advances liquidated (with accompanying Official Receipts) by November 1996 or exactly by the end of its six months of implementation. This being the case, and with the slight delay met in the implementation of the project, **adjustment in the documents became a necessary evil in order to comply with the requirements of the CO**.[17] [Emphasis supplied.]

In the same letter, Pulgar manifested that the TBFO had savings in the amount of ₱206,958.50, which he deposited with Capitol Bank under Account No. 2-042-00188-9.[18] At the meeting with PRRM senior officers on March 4, 1997, Pulgar also admitted that the TBFO's savings in the amount of ₱207,693.10 were actually deposited with the Cooperative Bank of Quezon *in an account under his name*.

From Pulgar's own admissions, we consider the following facts to be established:

First, Pulgar took funds intended for one activity or project and applied them to other activities/projects.

Second, Pulgar took the savings from the TBFO and placed them in a bank account **under his own name.** To date, Pulgar has not turned over these funds to the PRRM.

Third, Pulgar submitted manufactured and fake receipts to PRRM to liquidate TBFO's expenses.

Noticeably, from Pulgar's disclosures alone, a *prima facie* case for estafa can already be made out against Pulgar. With the danger of criminal prosecution hanging over his head, Pulgar's abrupt decision to terminate his employment with PRRM becomes easily understandable.

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

[18] *Id.* at 182.

While we recognize the rule that in illegal dismissal cases, the employer bears the burden of proving that the termination was for a valid or authorized cause, in the present case, however, the facts and the evidence do not establish a *prima facie* case that the employee was dismissed from employment. **Before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service**. Logically, if there is no dismissal, then there can be no question as to its legality or illegality.[19] Bare allegations of constructive dismissal, when uncorroborated by the evidence on record, cannot be given credence.[20]

As we said in *Machica v. Roosevelt Services Center, Inc.*:[21]

> The rule is that one who alleges a fact has the burden of proving it; thus, petitioners were burdened to prove their allegation that respondents dismissed them from their employment. It must be stressed that the evidence to prove this fact must be clear, positive and convincing. **The rule that the employer bears the burden of proof in illegal dismissal cases finds no application here because the respondents deny having dismissed the petitioners**.[22] [Emphasis supplied.]

Although under normal circumstances, an employee's act of filing an illegal dismissal complaint against his employer is inconsistent with abandonment; in the present case, **we simply cannot use that one act to conclude that Pulgar did not terminate his employment with PRRM, and in the process ignore the clear, substantial evidence presented by PRRM that proves otherwise.** Our ruling on this point in *Leopard Integrated Services, Inc. v. Macalinao* is very relevant. We said: [23]

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[19] *Ledesma, Jr. v. NLRC*, G.R. No. 174585, October 19, 2007, 537 SCRA 358.

[20] *Go v. Court of Appeals*, G.R. No. 158922, May 28, 2004, 430 SCRA 358.

[21] G.R. No. 168664, May 4, 2006, 489 SCRA 534.

[22] *Id.* at 544-545.

[23] G.R. No. 159808, September 30, 2008, 567 SCRA 192.

The fact that respondent filed a complaint for illegal dismissal, as noted by the CA, is not by itself sufficient indicator that respondent had no intention of deserting his employment since the totality of respondent's antecedent acts palpably display the contrary. In *Abad v. Roselle Cinema*, the Court ruled that:

> The filing of a complaint for illegal dismissal should be taken into account together with the surrounding circumstances of a certain case. In *Arc-Men Food Industries Inc. v. NLRC*, the Court ruled that **the substantial evidence proffered by the employer that it had not, in the first place, terminated the employee, should not simply be ignored on the pretext that the employee would not have filed the complaint for illegal dismissal if he had not really been dismissed**. "This is clearly a *non-sequitur* reasoning that can never validly take the place of the evidence of both the employer and the employee."[24] [Emphasis supplied.]

While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. Management also has its rights which are entitled to respect and enforcement in the interest of simple fair play. Out of its concern for those with less privileges in life, the Supreme Court has inclined, more often than not, toward the worker and upheld his cause in his conflicts with the employer. Such favoritism, however, has not blinded the Court to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and the applicable law and doctrine.[25]

PRRM'S monetary claim is belatedly raised

Examining the records of the case, it appears that Pulgar has not yet returned the money he took from the TBFO and deposited in his name to PRRM.

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[24] *Id.* at 201-202.

[25] *Enriquez v. Bank of Philippine Islands*, G.R. No. 172812, February 12, 2008, 544 SCRA 590, citing *Sosito v. Aguinaldo Development Corporation,* 156 SCRA 392 (1987).

We have previously ruled on the Labor Arbiter's jurisdiction to rule on all money claims, including those of the employer, arising out of the employer-employee relationship.[26] Unfortunately for PRRM, it never raised as an issue the money allegedly still in Pulgar's custody in the proceedings before the Labor Arbiter, or even before the NLRC. As the Labor Arbiter held:

> One final note. The Labor Code allows for claims made by employers against employees arising from employer-employee relations. In this case, the records show that Pulgar holds the amount of ₱207,693.10 as alleged "savings" as manager of TBFO. PRRM attached Annex 11, which is a savings passbook of Pulgar with Cooperative Bank of Quezon Province, the existence of which was not denied by Pulgar before this Arbitration Branch. There is nothing on record which would show that this amount has been returned to PRRM. x x x **However, a perusal of PRRM's pleadings would reveal that the latter does not raise as a relief an award for the return of the ₱207,693.10.** [A]s it were, we cannot act on the same in view of PRRM's failure (for reasons known only to it) to pray for such award. [Emphasis supplied.][27]

As a factual matter, this issue should have been raised at the earliest opportunity before the Labor Arbiter, to allow both parties to present their evidence. The rule is well-settled that points of law, theories, issues and arguments not adequately brought to the attention of the trial court need not be, and ordinarily will not be considered by a reviewing court as they cannot be raised for the first time on appeal[28] because this would be offensive to the basic rules of fair play, justice and due process.[29]

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[26] See *Bañez v. Valdevilla,* 387 Phil. 601 (2000).

[27] *Rollo*, p. 75.

[28] *Tay Chun Suy v. Court of Appeals*, G.R. No. 93640, January 7, 1994, 229 SCRA 151; *Santos v. Intermediate Appellate Court,* 229 Phil. 588 (1986); *Berin v. Court of Appeals*, G.R. No. 57490, February 27, 1991, 194 SCRA 508 (1991).

[29] *Cruz v. Court of Appeals*, G.R. No. 108738, June 17, 1994, 233 SCRA 301; *National Power Corporation v. Gutierrez*, G.R. No. 60077, January 18, 1991, 193 SCRA 1.

WHEREFORE, premises considered, we *GRANT* the petition. The May 25, 2005 Decision and the August 5, 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 62036 are *REVERSED* and *SET ASIDE*. The January 28, 2000 Decision of the National Labor Relations Commission in NLRC NCR CA No. 019914-99 is *REINSTATED*.

SO ORDERED.

Carpio Morales (Chairperson), Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 170530. July 5, 2010]

SARGASSO CONSTRUCTION & DEVELOPMENT CORPORATION/PICK & SHOVEL, INC.,/ATLANTIC ERECTORS, INC. (JOINT VENTURE), *petitioner, vs.* **PHILIPPINE PORTS AUTHORITY,** *respondent.*

SYLLABUS

1. **CIVIL LAW; CONTRACTS; ESSENTIAL ELEMENTS; ELUCIDATED.—** Every contract has the following essential elements: (i) consent, (ii) object certain and (iii) cause. Consent has been defined as the concurrence of the wills of the contracting parties with respect to the object and cause which shall constitute the contract. In general, contracts undergo three distinct stages, to wit: negotiation, perfection or birth, and consummation. **Negotiation** begins from the time the prospective contracting parties manifest their interest in the

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[*] Designated additional Member of the Third Division, in view of the retirement of former Chief Justice Reynato S. Puno, per Special Order No. 843 dated May 17, 2010.

contract and ends at the moment of their agreement. **Perfection** or birth of the contract takes place when the parties agree upon the essential elements of the contract, *i.e.*, consent, object and price. **Consummation** occurs when the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof. The birth or the perfection of the contract, which is the crux of the present controversy, refers to that moment in the life of a contract when there is finally a concurrence of the wills of the contracting parties with respect to the object and the cause of the contract.

2. ID.; ID.; GOVERNMENT OR PUBLIC CONTRACT; DEFINED AND EXPOUNDED.— A **government or public contract** has been defined as a contract entered into by state officers acting on behalf of the state, and in which the entire people of the state are directly interested. It relates wholly to matter of public concern, and affects private rights only so far as the statute confers such rights when its provisions are carried out by the officer to whom it is confided to perform. A government contract is essentially similar to a private contract contemplated under the Civil Code. The legal requisites of consent of the contracting parties, an object certain which is the subject matter, and cause or consideration of the obligation must likewise concur. Otherwise, there is no government contract to speak of. As correctly found by the CA, the issue on the reclamation of the area between Timber Pier and Pier 2 of the Port of San Fernando involves a government infrastructure project, and it is beyond dispute that the applicable laws, rules and regulations on government contracts or projects apply.

3. ID.; ID.; ID.; ID.; NEGOTIATED CONTRACTS BY GOVERNMENT OWNED AND CONTROLLED CORPORATIONS ARE CRYSTAL CLEAR IN REQUIRING THE GOVERNING BOARD'S APPROVAL THEREOF.— On the matter of entering into negotiated contracts by government-owned and controlled corporations, the provisions of existing laws are crystal clear in requiring the governing board's approval thereof. The Court holds that the CA correctly applied the pertinent laws, to wit: Executive Order No. 380… provides for revised *levels of authority on approval of government contracts*. Section 1 thereof authorizes… GOCCs: 1. To enter into infrastructure contracts awarded through public

bidding regardless of the amount involved; 2. To enter into *negotiated* infrastructure contracts involving not more than one hundred million pesos (₱100 million) in the case of the Department of Transportation and Communications and the Department of Public Works and Highways, and **not more than fifty million pesos (₱50 million) in the case of the other Departments and governments corporations**; Provided, That contracts exceeding the said amounts shall only be entered into upon prior authority from the Office of the President; and Provided, Further, That said contracts shall only be awarded in strict compliance with Section 5 of Executive Order No. 164, S. of 1987. xxx Furthermore, the Revised Administrative Code lays down the same requirement, thus: Sec. 51. *Who May Execute Contracts.* Contracts in behalf of the Republic of the Philippines shall be executed by the President unless authority therefore is expressly vested by law or by him in any other public officer. Contracts in behalf of the political subdivisions and corporate agencies or instrumentalities shall be approved by their respective governing boards or councils and executed by their respective executive heads.

4. **ID.; ID.; ID.; ID.; A GOVERNMENT CONTRACT IS PERFECTED ONLY UPON APPROVAL BY A COMPETENT AUTHORITY.—** Petitioner neither disputes nor admits the application of the foregoing statutory provisions but insists, nonetheless, that the Notice of Award itself already embodies a perfected contract having passed the negotiation stage despite the clear absence thereon of a condition requiring the prior approval of respondent's higher authority. Petitioner's argument is untenable. Contracts to which the government is a party are *generally* subject to the same laws and regulations which govern the validity and sufficiency of contracts between private individuals. A government contract, however, is perfected only upon approval by a competent authority, where such approval is required. The contracting officer functions as agent of the Philippine government for the purpose of making the contract. There arises then, in that regard, a principal-agent relationship between the Government, on one hand, and the contracting official, on the other. The latter though, in contemplation of law, possesses only *actual agency authority*. This is to say that his contracting power exists, where it exists at all, **only because and by virtue of a law, or by authority of law,**

creating and conferring it. And it is well settled that **he may make only such contracts as he is so authorized to make**. Flowing from these basic guiding principles is another stating that the government is bound only to the extent of the power it has actually given its officers-agents. It goes without saying then that, conformably to a fundamental principle in agency, the acts of such agents in entering into agreements or contracts beyond the scope of their actual authority do not bind or obligate the Government. The moment this happens, the principal-agent relationship between the Government and the contracting officer ceases to exist.

5. **ID.; ID.; ID.; ID.; ALL SIGNATORIES IN A CONTRACT SHOULD BE CLOTHED WITH AUTHORITY TO BIND THE PARTIES THEY REPRESENT.—** Under Article 1881 of the Civil Code, the agent must act within the scope of his authority to bind his principal. So long as the agent has authority, express or implied, the principal is bound by the acts of the agent on his behalf, whether or not the third person dealing with the agent believes that the agent has actual authority. Thus, all signatories in a contract should be clothed with authority to bind the parties they represent. P.D. 857 likewise states that one of the corporate powers of respondent's Board of Directors is to "reclaim… any part of the lands vested in the Authority." It also "exercise[s] all the powers of a corporation under the Corporation Law." On the other hand, the law merely vests the general manager the "general power… to sign contracts" and "to perform such other duties as the Board may assign…" Therefore, unless respondent's Board validly authorizes its general manager, the latter cannot bind respondent PPA to a contract. The Court completely agrees with the CA that the petitioner failed to present competent evidence to prove that the respondent's general manager possessed such actual authority delegated either by the Board of Directors, or by statutory provision. The authority of government officials to represent the government in any contract must proceed from an express provision of law or valid delegation of authority. Without such actual authority being possessed by PPA's general manager, there could be no real consent, much less a perfected contract, to speak of.

6. ID.; ID.; ID.; ID.; APPLICABLE LAWS FORM PART OF, AND ARE READ INTO, THE CONTRACT WITHOUT NEED FOR ANY EXPRESS REFERENCE THERETO, MORE SO, TO A PURPORTED GOVERNMENT CONTRACT, WHICH IS IMBUED WITH PUBLIC INTEREST.— It is of no moment if the phrase "approval of higher authority" appears nowhere in the Notice of Award. It neither justifies petitioner's presumption that the required approval "had already been granted" nor supports its conclusion that no *other* condition (than the completion of fendering of Pier 2 as stated in the Notice of Award) ought to be complied with to create a perfected contract. Applicable laws form part of, and are read into, the contract without need for any express reference thereto; more so, to a purported government contract, which is imbued with public interest.

7. ID.; ID.; ID.; ID.; GOVERNMENT CONTRACTS SHOULD CONFORM TO THE BASIC PROVISIONS OF THE P.D. 1594 OR THE "GOVERNMENT PROCUREMENT REFORM ACT OF 2003" PARTICULARLY IN THE PROVISION REQUIRING COMPETITIVE PUBLIC BIDDING.— Adopting the trial court's ratiocination, petitioner further argues that had it been true that respondent's general manager was without authority to bind respondent by contract, then the former should have disapproved the supplemental contract on that ground. Petitioner also interprets the Board's silence on the matter as an explicit recognition of the latter's authority to enter into a negotiated contract involving the reclamation project. This posture, however, does not conform with the basic provisions of the law to which we always go back. Section 4 of P.D. 1594 provides: Section 4. *Bidding.* Construction projects shall generally be undertaken by contract after competitive public bidding. Projects may be undertaken by administration or force account or by negotiated contract **only in exceptional cases** where time is of the essence, or where there is lack of qualified bidders or contractors, or where there is a conclusive evidence that greater economy and efficiency would be achieved through this arrangement, and in accordance with provision of laws and acts on the matter, subject to the approval of the Ministry of Public Works, Transportation and Communications, the Minister of Public Highways, or the Minister of Energy, as the case may be, if the project cost is

less than ₱1 Million, and of the President of the Philippines, upon the recommendation of the Minister, if the project cost is ₱1 Million or more.

8. ID.; ID.; ID.; ID.; EVEN GRANTING THE *ARGUENDO* THAT THE BOARD'S ACTION OR INACTION IS AN EXPLICIT RECOGNITION OF THE GENERAL MANAGER, THE PURPORTED CONTRACT CANNOT POSSIBLY BE THE BASIS OF AN ACTION FOR SPECIFIC PERFORMANCE BECAUSE THE NEGOTIATED CONTRACT CONTRAVENES STRINGENT LEGAL REQUIREMENTS AIMED AT PROTECTING THE INTEREST OF THE PUBLIC.— The Board of Directors of the respondent did not see fit to approve the contract by negotiation after finding that "the Pier 2 Project was basically for the construction of a pier while the supplemental agreement refers to reclamation. Thus, there is no basis to compare the terms and conditions of the reclamation project with the original contract (Pier 2 Project) of Sargasso." So even granting *arguendo* that the Board's action or inaction is an "explicit" recognition of the authority of the general manager, the purported contract cannot possibly be the basis of an action for specific performance because the *negotiated* contract itself basically contravenes stringent legal requirements aimed at protecting the interest of the public. The bottom line here is that the facts do not conform to what the law requires. No wonder petitioner conveniently omitted any attempt at presenting its case within the statutory exceptions, and insisted that respondent's disapproval of the supplemental agreement was "a mere afterthought" "perhaps realizing the infirmity of its excuse" (referring to petitioner's belated pre-disqualification in the construction project). But the Court, at the very outset, has previously clarified that the two projects involved herein are distinct from each other. Hence, petitioner's disqualification in the construction project due to its lack of certain requirements has no significant bearing in this case.

9. ID.; ID.; ID.; ID.; PETITIONER'S INVOCATION OF THE DOCTRINE OF APPARENT AUTHORITY IS MISPLACED.— Petitioner's invocation of the doctrine of apparent authority is misplaced. This doctrine, in the realm of government contracts, has been restated to mean that the government is NOT bound by unauthorized acts of its agents,

even though within the apparent scope of their authority. Under the law on agency, however, "apparent authority" is defined as the power to affect the legal relations of another person by transactions with third persons arising from the other's manifestations to such third person such that the liability of the principal for the acts and contracts of his agent extends to those which are within the apparent scope of the authority conferred on him, although no actual authority to do such acts or to make such contracts has been conferred.

10. **ID.; ID.; ID.; ID.; WAYS OF ASCERTAINING THE EXISTENCE OF APPARENT AUTHORITY; NOT A SINGLE ACT OF RESPONDENT, ACTING THROUGH ITS BOARD OF DIRECTORS, WAS CITED AS HAVING CLOTHED ITS GENERAL MANAGER WITH APPARENT AUTHORITY TO EXECUTE THE CONTRACT WITH IT.—** Apparent authority, or what is sometimes referred to as the "holding out" theory, or doctrine of ostensible agency, imposes liability, *not as the result of the reality of a contractual relationship*, but rather because of the actions of a principal or an employer in somehow misleading the public into believing that the relationship or the authority exists. The existence of apparent authority may be ascertained through (1) the general manner in which the corporation holds out an officer or agent as having the power to act or, in other words, the apparent authority to act in general, with which it clothes him; or (2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, whether within or beyond the scope of his ordinary powers. It requires presentation of evidence of similar act(s) executed either in its favor or in favor of other parties. Easily discernible from the foregoing is that apparent authority is determined only by the acts of the principal and not by the acts of the agent. The principal is, therefore, not responsible where the agent's own conduct and statements have created the apparent authority. In this case, not a single act of respondent, acting through its Board of Directors, was cited as having clothed its general manager with apparent authority to execute the contract with it.

APPEARANCES OF COUNSEL

Quasha Ancheta Peña & Nolasco for petitioner.
The Government Corporate Counsel for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 which seeks to annul and set aside the August 22, 2005 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CV No. 63180 and its November 14, 2005 Resolution[2] denying petitioner's motion for the reconsideration thereof. The questioned CA decision *reversed* the June 8, 1998 Decision[3] of the Regional Trial Court of Manila, Branch 14, in Civil Case No. 97-83916, which granted petitioner's action for specific performance.

The factual and procedural antecedents have been succinctly recited in the subject Court of Appeals decision in this wise:[4]

Plaintiff Sargasso Construction and Development Corporation, Pick and Shovel, Inc. and Atlantic Erectors, Inc., a joint venture, was awarded the construction of Pier 2 and the rock causeway (R.C. Pier 2) for the port of San Fernando, La Union, after a public bidding conducted by the defendant PPA. Implementation of the project commenced on August 14, 1990. The port construction was in pursuance of the development of the Northwest Luzon Growth Quadrangle. Adjacent to Pier 2 is an area of ₱4,280 square meters intended for the reclamation project as part of the overall port development plan.

In a letter dated October 1, 1992 of Mr. Melecio J. Go, Executive Director of the consortium, plaintiff offered to undertake the reclamation between the Timber Pier and Pier 2 of the Port of San Fernando, La Union, as an extra work to its existing construction of R.C. Pier 2 and Rock Causeway for a price of ₱36,294,857.03. Defendant replied thru its Assistant General Manager Teofilo H. Landicho who sent the following letter dated December 18, 1992:

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[1] Penned by Associate Justice Martin S. Villarama, Jr., (now a member of this Court) with Associate Justice Bienvenido L. Reyes and Associate Justice Lucenito N. Tagle concurring.

[2] *Rollo*, p. 30.

[3] Penned by Judge Inocencio D. Maliaman.

[4] *Rollo*, pp. 11-29.

"This is to acknowledge receipt of your letter dated 01 October 1992 offering to undertake the reclamation between the Timber Pier and Pier 2, at the Port of San Fernando, La Union as an extra work to your existing contract.

"Your proposal to undertake the project at a total cost of THIRTY–SIX MILLION TWO HUNDRED NINETY–FOUR THOUSAND EIGHT HUNDRED FIFTY–SEVEN AND 03/100 PESOS (₱36,294,857.03) is not acceptable to PPA. If you can reduce your offer to THIRTY MILLION SEVEN HUNDRED NINETY–FOUR THOUSAND TWO HUNDRED THIRTY AND 89/100 (₱30,794,230.89) **we may consider favorably award of the project in your favor, <u>subject to the approval of higher authority.</u>**

Please signify your agreement to the reduced amount of ₱30,794,230.89 by signing in the space provided below. (emphasis in the original)

On August 26, 1993, a Notice of Award signed by PPA General Manager Rogelio Dayan was sent to plaintiff for the phase I Reclamation Contract in the amount of ₱30,794,230.89 and instructing it to "enter into and execute the contract agreement with this Office" and to furnish the documents representing performance security and credit line. Defendant likewise stated [and] made it a condition that "fendering of Pier No. 2 Port of San Fernando, and the Port of Tabaco is completed before the approval of the contract for the reclamation project." Installation of the rubber dock fenders in the said ports was accomplished in the year 1994. PPA Management further set a condition [that] "the acceptance by the contractor that mobilization/ demobilization cost shall not be included in the contract and that escalation shall be reckoned upon approval of the Supplemental Agreement." The award of the negotiated contract as additional or supplemental project in favor of plaintiff was intended "to save on the mobilization/demobilization costs and some items as provided for in the original contract." Hence, then General Manager Carlos L. Agustin presented for consideration by the PPA Board of Directors the contract proposal for the reclamation project.

At its meeting held on September 9, 1994, the Board decided not to approve the contract proposal, as reflected in the following excerpt of the minutes taken during said board meeting:

"After due deliberation, the Board advised Management **to bid the project since there is no strong legal basis for**

> **Management to award the supplemental contract through negotiation**. The Board noted that the Pier 2 Project was basically for the construction of a pier while the supplemental agreement refers to reclamation. Thus there is no basis to compare the terms and conditions of the reclamation project with the original contract (Pier 2 Project) of Sargasso."[5]

It appears that PPA did not formally advise the plaintiff of the Board's action on their contract proposal. As plaintiff learned that the Board was not inclined to favor its Supplemental Agreement, Mr. Go wrote General Manager Agustin requesting that the same be presented again to the Board meeting for approval. However, no reply was received by plaintiff from the defendant.

On June 30, 1997, plaintiff filed a **complaint** for specific performance and damages before the Regional Trial Court of Manila alleging that defendant PPA's unjustified refusal to comply with its undertaking, unnecessarily leading to the delay in the implementation of the award under the August 26, 1993 Notice of Award, has put on hold plaintiff's men and resources earmarked for the project, aside from effectively tying its hands in undertaking other projects for fear that plaintiff's incapacity to undertake work might be spread thinly and it might not be able to function efficiently if the PPA project and other projects should require simultaneous attention. Plaintiff averred that it sought reconsideration of the August 9, 1996 letter of PPA informing it that it did not qualify to bid for the proposed extension of RC Pier No. 2, Port of San Fernando, La Union for not having IAC Registration and Classification and not complying with equipment requirement. In its letter dated September 19, 1996, plaintiff pointed out that the disqualification was clearly unjust and totally without basis considering that individual contractors of the joint venture have undertaken separately bigger projects, and have been such individual contractors for almost 16 years. It thus prayed that judgment be rendered by the court directing the defendant (a) to comply with its undertaking under the Notice of Award dated August 26, 1993; and (b) to pay plaintiff actual damages (₱1,000,000.00), exemplary damages (₱1,000,000.00), attorney's fees (₱300,000.00) and expenses of litigation and costs (₱50,000.00).

Defendant PPA thru the Office of the Government Corporate Counsel (OGCC) filed its **Answer** with Compulsory Counterclaim

[5] Emphasis in the original.

contending that the alleged Notice of Award has already been properly revoked when the Supplemental Agreement which should have implemented the award was denied approval by defendant's Board of Directors. As to plaintiff's pre-disqualification from participating in the bidding for the extension of R.C. Pier No. 2 Project at the Port of San Fernando, La Union, the same is based on factual determination by the defendant that plaintiff lacked IAC Registration and Classification and equipment for the said project as communicated in the August 9, 1996 letter. Defendant disclaimed any liability for whatever damages suffered by the plaintiff when it "jumped the gun" by committing its alleged resources for the reclamation project despite the fact that no Notice to Proceed was issued to plaintiff by the defendant. The cause of action insofar as the Extension of R.C. Pier No. 2 of the Port of San Fernando, La Union, is barred by the statute of limitation since plaintiff filed its request for reconsideration way beyond the seven (7) day-period allowed under IB 6-5 of the Implementing Rules and Regulations of P.D. 1594. Defendant clarified that the proposed Reclamation Project and Extension of R.C. Pier No. 2 San Fernando, La Union, are separate projects of PPA. The Board of Directors denied approval of the Supplemental Agreement on September 9, 1994 for lack of legal basis to award the supplemental contract through negotiation which was properly communicated to the plaintiff as shown by its letter dated September 19, 1994 seeking reconsideration thereof. As advised by the Board, PPA Management began to make preparations for the public bidding for the proposed reclamation project. In the meantime, defendant decided to pursue the extension of R.C. Pier 2, San Fernando, La Union. xxx It [prayed that the complaint be dismissed]. (Emphasis supplied)

After trial, the lower court rendered a decision in favor of the plaintiff, the dispositive portion of which reads:

"WHEREFORE, and in view of the foregoing considerations, judgment is hereby rendered ordering the defendant to execute a contract in favor of the plaintiff for the reclamation of the area between the Timber Pier and Pier 2 located at San Fernando, La Union for the price of ₱30,794,230.89 and to pay the costs.

The counterclaim is dismissed for lack of merit.

SO ORDERED.[6]

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[6] Decision of the Trial Court, *rollo*, pp. 158-167.

In addressing affirmatively the basic issue of whether there was a perfected contract between the parties for the reclamation project, the trial court ruled that the "higher authority x x adverted to does not necessarily mean the Board of Directors *(Board).* Under IRR, P.D. 1594 (1)B10.6, approval of award and contracts is vested on the head of the infrastructure department or its duly authorized representative. Under Sec. 9 (iii) of P.D. 857 which has amended P.D. 505 that created the PPA, one of the particular powers and duties of the General Manager and Assistant General Manager is to sign contracts."[7] It went on to say that "in the case of the PPA, the power to enter into contracts is not only vested on the Board of Directors, but also to the manager" citing Section 9 (III) of P.D. No. 857.[8]

The trial court added that the tenor of the Notice of Award implied that respondent's general manager had been empowered by its Board of Directors to bind respondent by contract. It noted that whereas the letter-reply contained the phrase "approval of the higher authority," the conspicuous absence of the same in the Notice of Award supported the finding that the general manager had been vested with authority to enter into the contract for and in behalf of respondent. To the trial court, the disapproval by the PPA Board of the supplementary contract for the reclamation on a ground other than the general manager's lack

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[7] *Id.* at 163.

[8] Providing for the Reorganization of Port Administrative and Operation Functions in the Philippines, Revising Presidential Decree No. 505 dated July 11, 1974, Creating The Philippine Port Authority, by Substitution, and for other Purposes otherwise known as the Revised Charter of the Philippine Ports Authority. Section 9 thereof provides:

Section 9. General Powers and Duties of the General Manager and Assistant General Managers

a) General Powers and Duties of the General Manager. —

The General Manager shall be responsible to the Board, and shall have the following general powers, functions, and duties: xxx

(iii) To sign contracts, to approve expenditures and payments within the budget provisions, and generally to do any all acts or things for the proper operations of the Authority or any of the Ports under the jurisdiction, control or ownership of the Authority.

of authority was an explicit recognition that the latter was so authorized to enter into the purported contract.

Respondent moved for a reconsideration of the RTC decision but it was denied for lack of merit. Respondent then filed its Notice of Appeal. Subsequently, petitioner moved to dismiss the appeal on the ground that respondent failed to perfect its appeal seasonably. On June 27, 2000, the Court of Appeals issued a Resolution[9] dismissing respondent's appeal for having been filed out time. Respondent's motion for reconsideration of said resolution was also denied.[10]

Undaunted, respondent elevated its problem to this Court via a petition for review on *certiorari* under Rule 45 assailing the denial of its appeal. On July 30, 2004, the Court rendered an *en banc* decision[11] granting respondent's petition on a liberal interpretation of the rules of procedure, and ordering the CA to conduct further proceedings.

On August 22, 2005, the CA rendered the assailed decision reversing the trial court's decision and dismissing petitioner's complaint for specific performance and damages. Thus, the dispositive portion thereof reads:

> WHEREFORE, premises considered, the present appeal is hereby GRANTED. The appealed Decision dated June 8, 1998 of the trial court in Civil Case No. 97-83916 is hereby REVERSED and SET ASIDE. A new judgment is hereby entered DISMISSING the complaint for specific performance and damages filed by Plaintiff Sargasso Construction and Development Corporation/Pick & Shovel, Inc./ Atlantic Erectors, Inc., (Joint Venture) against the Philippine Ports Authority for lack of merit.

In setting aside the trial court's decision, the CA ruled that the law itself should serve as the basis of the general manager's

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[9] *Rollo*, pp. 268-271.

[10] *Id.* at 277.

[11] *Philippine Ports Authority v. Sargasso Construction and Development Corp., Pick & Shovel, Inc./ Atlantic Erectors, Inc. (Joint Venture)*, G.R. No. 146478, July 30, 2004, 435 SCRA 512.

authority to bind respondent corporation and, thus, the trial court erred in merely relying on the wordings of the Notice of Award and the Minutes of the Board meeting in determining the limits of his authority; that the power of the general manager "to sign contracts" is different from the Board's power "to make or enter (into) contracts"; and that, in the execution of contracts, the general manager only exercised a delegated power, in reference to which, evidence was wanting that the PPA Board delegated to its general manager the authority to enter into a supplementary contract for the reclamation project.

The CA also found the disapproval of the contract on a ground other than the general manager's lack of authority rather inconsequential because Executive Order 380[12] expressly authorized the governing boards of government-owned or controlled corporations "to enter into negotiated infrastructure contracts involving… not more than fifty million (₱50 million)." The CA further noted that the Notice of Award was only one of those documents that comprised the entire contract and, therefore, did not in itself evidence the perfection of a contract.

Hence, this petition.

The issue to be resolved in this case is whether or not a contract has been perfected between the parties which, in turn, depends on whether or not the general manager of PPA is vested with authority to enter into a contract for and on behalf of PPA.

The petition fails.

Petitioner contends that the existence of "Notice of Award of Contract and Contractor's Conforme thereto," resulting from its negotiation with respondent, proves that a contract has already been perfected, and that the other documents enumerated under the amended Rules and Regulations[13] implementing P.D.

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[12] Revising the Levels of Authority on Approval of Government Contracts (1989).

[13] IB [2.10] 2.8 *Documents Comprising The Contract*

The following documents shall form part of the contract:

1. Contract Agreement

1594[14] are mere physical representations of the parties' meeting of the minds; that the "Approval of Award by Approving Authority" is only a "supporting document," and not an evidence of perfection of contract, and which merely "facilitates the approval of the contract";[15] that PPA is bound by the acts of its general manager in issuing the Notice of Award under the doctrine of apparent authority; and that the doctrine of estoppel, being an equitable doctrine, cannot be invoked to perpetuate an injustice against petitioner.

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2. Conditions of Contract
3. Drawings/Plans
4. Specifications
5. Invitations to Bid
6. Instructions to Bidders
7. Addenda
8. Bid Form including the following Annexes:
    a. Authority of the Signing Official
    b. Bid Prices in the Bill of Quantities
    c. Detailed Estimates
    d. Construction Schedule
    e. Construction Methods
    f. Project Organizational Chart
    g. Manpower Schedule
    h. Equipment Utilization Schedule
    i. Cash Flow and Payments Schedule
    j. [Certification] AFFIDAVIT of Site Inspection
9. Performance Bond
10. Prequalification [and Post qualification Statements]
11. Certificate of Cash Deposit for Operating Expenses (IF NECESSARY)
12. Notice of Award of Contract and Contractor's "Conforme" thereto
13. Other Contract Documents that may be required by the Office/ Agency/Corporation concerned

[14] Prescribing Policies, Guidelines, Rules and Regulations for Government Infrastructure Contracts (1978).

[15] IB [2.11] 2.9 *Supporting Documents*

To facilitate the approval of the contract, the following supporting documents shall be submitted:

1. xxx

6. Approval of Award by Approving Authority

x x x x x x x x x

At the outset, it must be stated that there are two (2) separate and distinct, though related, projects involving the parties herein, *viz*: (i) the construction of Pier 2 and the rock causeway for the port of San Fernando, La Union, and (ii) the reclamation of the area between the Timber Pier and Pier 2 of the same port. Petitioner's action for specific performance and damages merely relates to the latter.

Every contract has the following essential elements: (i) consent, (ii) object certain and (iii) cause. Consent has been defined as the concurrence of the wills of the contracting parties with respect to the object and cause which shall constitute the contract.[16] In general, contracts undergo three distinct stages, to wit: negotiation, perfection or birth, and consummation. **Negotiation**[17] begins from the time the prospective contracting parties manifest their interest in the contract and ends at the moment of their agreement. **Perfection** or birth of the contract takes place when the parties agree upon the essential elements of the contract, *i.e.*, consent, object and price. **Consummation** occurs when the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof. The birth or the perfection of the contract, which is the crux of the present controversy, refers to that moment in the life of a contract when there is finally a concurrence of the wills of the contracting parties with respect to the object and the cause of the contract.[18]

A **government or public contract** has been defined as a contract entered into by state officers acting on behalf of the

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[16] Jurado. Desiderio P., *Comments and Jurisprudence on Obligations and Contracts*, 1993, Tenth Revised Edition, p. 396; *citing* 3 Castan, 7th Ed., pp. 326-327, 8 Manresa, 5th Ed., Bk. P. 365, and Sanchez Roman 191.

[17] A negotiation is formally initiated by an *offer* which should be certain with respect to both the object and the cause or consideration of the envisioned contract. In order to produce a contract, there must be *acceptance*, which may be express or implied, but it must not qualify the terms of the offer. The acceptance of an offer must be unqualified and absolute to perfect the contract. In other words, it must be identical in all respects with that of the offer so as to produce consent or meeting of the minds.

[18] *Supra* note 16 at 390.

state, and in which the entire people of the state are directly interested. It relates wholly to matter of public concern, and affects private rights only so far as the statute confers such rights when its provisions are carried out by the officer to whom it is confided to perform.[19]

A government contract is essentially similar to a private contract contemplated under the Civil Code. The legal requisites of consent of the contracting parties, an object certain which is the subject matter, and cause or consideration of the obligation must likewise concur. Otherwise, there is no government contract to speak of.[20]

As correctly found by the CA, the issue on the reclamation of the area between Timber Pier and Pier 2 of the Port of San Fernando involves a government infrastructure project, and it is beyond dispute that the applicable laws, rules and regulations on government contracts or projects apply.

On the matter of entering into negotiated contracts by government-owned and controlled corporations, the provisions of existing laws are crystal clear in requiring the governing board's approval thereof. The Court holds that the CA correctly applied the pertinent laws, to wit:

> Executive Order No. 380… provides for revised *levels of authority on approval of government contracts*. Section 1 thereof authorizes… GOCCs:
>
> 1. To enter into infrastructure contracts awarded through public bidding regardless of the amount involved;
>
> 2. To enter into *negotiated* infrastructure contracts involving not more than one hundred million pesos (₱100 million) in the case of the Department of Transportation and Communications and the Department of Public Works and Highways, and **not more than fifty million pesos (₱50 million) in the case of**

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[19] Cobacha, Agapito P. and Lucenario, Domingo O, *Law on Public Bidding and Government Contracts*, 1960, p. 283, citing *People v. Palmer*, 35 N.Y.S. 222, 14 Misc. 41.

[20] Fernandez, Jr., Bartolome C., *A Treatise on Government Contracts under Philippine Law*, 2003 Revised Edition, p. 10.

the other Departments and governments corporations; Provided, That contracts exceeding the said amounts shall only be entered into upon prior authority from the Office of the President; and Provided, Further, That said contracts shall only be awarded in strict compliance with Section 5 of Executive Order No. 164, S. of 1987.

x x x x x x x x x

The rule on negotiated contracts, as amended on August 12, 2000 (IB 10.6.2) now reads –

1. Negotiated contract may be entered into only where any of the following conditions exists and the implementing office/ agency/corporation is not capable of undertaking the contract by administration:

a. In times of emergencies arising from natural calamities where immediate action is necessary to prevent imminent loss of life and/or property or to restore vital public services, infrastructure and utilities such as…

b. Failure to award the contract after competitive public bidding for valid cause or causes

c. Where the subject project is adjacent or contiguous to an on-going project and it could be economically prosecuted by the same contractor provided that subject contract has similar or related scope of works and it is within the contracting capacity of the contractor, in which case, direct negotiation may be undertaken with the said contractor…

x x x x x x x x x

In cases a and b above, bidding may be undertaken through sealed canvass of at least three (3) qualified contractors… **Authority to negotiate contract for projects under these exceptional cases shall be subject to prior approval by heads of agencies within their limits of approving authority**."[21] (emphasis in the original)

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[21] Decision of the Court of Appeals, pp. 14,16-17; *rollo*, pp. 86, 88-89.

Furthermore, the Revised Administrative Code[22] lays down the same requirement, thus:

> Sec. 51. *Who May Execute Contracts.* Contracts in behalf of the Republic of the Philippines shall be executed by the President unless authority therefore is expressly vested by law or by him in any other public officer.
>
> Contracts in behalf of the political subdivisions and corporate agencies or instrumentalities shall be approved by their respective governing boards or councils and executed by their respective executive heads.

Petitioner neither disputes nor admits the application of the foregoing statutory provisions but insists, nonetheless, that the Notice of Award itself already embodies a perfected contract having passed the negotiation stage[23] despite the clear absence thereon of a condition requiring the prior approval of respondent's higher authority.

Petitioner's argument is untenable. Contracts to which the government is a party are *generally* subject to the same laws and regulations which govern the validity and sufficiency of contracts between private individuals.[24] A government contract, however, is perfected[25] only upon approval by a competent authority, where such approval is required.[26]

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[22] Chapter II Book I Section 51.

[23] Memorandum for the Petitioner, p. 20; *rollo*, p. 401.

[24] Manual on Contracts Review, March 1997, p. 14.

[25] The Court in *Central Bank of the Philippines vs. Court of Appeals*, G.R. No. L-33022, April 22, 1975, 63 SCRA 446-447, involving a government contract, said "*An agreement presupposes a meeting of minds and when that point is reached in the negotiations between two parties intending to enter into a contract, the purported contract is deemed perfected and none of them may thereafter disengage himself therefrom without being liable to the other in an action for specific performance.* xxx *Even a government-owned corporation may not under the guise of protecting the public interest unceremoniously disregard contractual commitments to the prejudice of the other party*.," cited in Government Contracts, U.P. Law Center, 1982, p. 42. In said case, however, it is the Monetary Board of respondent Central Bank which "unanimously voted and approved the award to the plaintiff [petitioner therein]."

[26] *Supra* note 19.

The contracting officer functions as agent of the Philippine government for the purpose of making the contract. There arises then, in that regard, a principal-agent relationship between the Government, on one hand, and the contracting official, on the other. The latter though, in contemplation of law, possesses only *actual agency authority*. This is to say that his contracting power exists, where it exists at all, **only because and by virtue of a law, or by authority of law, creating and conferring it**. And it is well settled that **he may make only such contracts as he is so authorized to make**. Flowing from these basic guiding principles is another stating that the government is bound only to the extent of the power it has actually given its officers-agents. It goes without saying then that, conformably to a fundamental principle in agency, the acts of such agents in entering into agreements or contracts beyond the scope of their actual authority do not bind or obligate the Government. The moment this happens, the principal-agent relationship between the Government and the contracting officer ceases to exist.[27] (emphasis supplied)

It was stressed that

…the contracting official who gives his consent as to the subject matter and the consideration ought to be empowered legally to bind the Government and that his actuations in a particular contractual undertaking on behalf of the government come within the ambit of his authority. On top of that, the approval of the contract by a higher authority is usually required by law or administrative regulation as a requisite for its perfection.[28]

Under Article 1881 of the Civil Code, the agent must act within the scope of his authority to bind his principal. So long as the agent has authority, express or implied, the principal is bound by the acts of the agent on his behalf, whether or not the third person dealing with the agent believes that the agent has actual authority.[29] Thus, all signatories in a contract should be clothed with authority to bind the parties they represent.

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[27] *Supra* note 20 at 8.

[28] *Id.* at 10; *cited* in the Decision of the Court of Appeals.

[29] De Leon, Hector S., *Comments and Cases on Partnership, Agency, and Trusts*, 2005 Sixth Edition, p. 460.

P.D. 857 likewise states that one of the corporate powers of respondent's Board of Directors is to "reclaim… any part of the lands vested in the Authority." It also "exercise[s] all the powers of a corporation under the Corporation Law." On the other hand, the law merely vests the general manager the "general power… to sign contracts" and "to perform such other duties as the Board may assign…" Therefore, unless respondent's Board validly authorizes its general manager, the latter cannot bind respondent PPA to a contract.

The Court completely agrees with the CA that the petitioner failed to present competent evidence to prove that the respondent's general manager possessed such actual authority delegated either by the Board of Directors, or by statutory provision. The authority of government officials to represent the government in any contract must proceed from an express provision of law or valid delegation of authority.[30] Without such actual authority being possessed by PPA's general manager, there could be no real consent, much less a perfected contract, to speak of.

It is of no moment if the phrase "approval of higher authority" appears nowhere in the Notice of Award. It neither justifies petitioner's presumption that the required approval "had already been granted" nor supports its conclusion that no *other* condition (than the completion of fendering of Pier 2 as stated in the Notice of Award) ought to be complied with to create a perfected contract.[31] Applicable laws form part of, and are read into, the contract without need for any express reference thereto;[32] more so, to a purported government contract, which is imbued with public interest.

Adopting the trial court's ratiocination, petitioner further argues that had it been true that respondent's general manager was without authority to bind respondent by contract, then the former should have disapproved the supplemental contract on that

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[30] Manual on Contracts Review, March 1997, p. 25.

[31] Memorandum for Petitioner, p. 24; *rollo*, p. 405.

[32] *Intra-Strata Assurance Corp. and Philippine Home Assurance Corp. v. Republic*, G.R. No. 156571, July 9, 2008, 557 SCRA 363.

ground.[33] Petitioner also interprets the Board's silence on the matter as an explicit recognition of the latter's authority to enter into a negotiated contract involving the reclamation project. This posture, however, does not conform with the basic provisions of the law to which we always go back. Section 4 of P.D. 1594[34] provides:[35]

> Section 4. *Bidding.* Construction projects shall generally be undertaken by contract after competitive public bidding. Projects may be undertaken by administration or force account or by negotiated contract **only in exceptional cases** where time is of the essence, or where there is lack of qualified bidders or contractors, or where there is a conclusive evidence that greater economy and efficiency would be achieved through this arrangement, and in accordance with provision of laws and acts on the matter, subject to the approval of the Ministry of Public Works, Transportation and Communications, the Minister of Public Highways, or the Minister of Energy, as the case may be, if the project cost is less than ₱1 Million, and of the President of the Philippines, upon the recommendation of the Minister, if the project cost is ₱1 Million or more.

Precisely, the Board of Directors of the respondent did not see fit to approve the contract by negotiation after finding that "the Pier 2 Project was basically for the construction of a pier while the supplemental agreement refers to reclamation. Thus, there is no basis to compare the terms and conditions of the reclamation project with the original contract (Pier 2 Project) of Sargasso." So even granting *arguendo* that the Board's action or inaction is an "explicit" recognition of the authority of the general manager, the purported contract cannot possibly be the basis of an action for specific performance because the *negotiated* contract itself basically contravenes stringent legal requirements

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[33] Memorandum for the Petitioner, p. 29; *rollo*, pp. 410-412.

[34] Now expressly repealed by R.A. 9184 (An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purposes) otherwise known as Government Procurement Reform Act of 2003.

[35] *Cited* in the Decision of the Court of Appeals.

aimed at protecting the interest of the public. The bottom line here is that the facts do not conform to what the law requires.

No wonder petitioner conveniently omitted any attempt at presenting its case within the statutory exceptions, and insisted that respondent's disapproval of the supplemental agreement was "a mere afterthought" "perhaps realizing the infirmity of its excuse" (referring to petitioner's belated pre-disqualification in the construction project). But the Court, at the very outset, has previously clarified that the two projects involved herein are distinct from each other. Hence, petitioner's disqualification in the construction project due to its lack of certain requirements has no significant bearing in this case.

Lastly, petitioner's invocation of the doctrine of apparent authority[36] is misplaced. This doctrine, in the realm of government contracts, has been restated to mean that the government is NOT bound by unauthorized acts of its agents, even though within the apparent scope of their authority.[37] Under the law on agency, however, "apparent authority" is defined as the power to affect the legal relations of another person by transactions with third persons arising from the other's manifestations to such third person[38] such that the liability of the principal for the acts and contracts of his agent extends to those which are within the apparent scope of the authority conferred on him, although no actual authority to do such acts or to make such contracts has been conferred.[39]

Apparent authority, or what is sometimes referred to as the "holding out" theory, or doctrine of ostensible agency, imposes liability, *not as the result of the reality of a contractual relationship*, but rather because of the actions of a principal or an employer in somehow misleading the public into believing

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[36] Memorandum for Petitioner, p. 32, citing the case of *First Phil. International Bank v. Court of Appeals*, 252 SCRA 259,295; *rollo*, p. 413.

[37] *Supra* note 19 at 294-295.

[38] 3 Am. Jur. 2d § 79.

[39] 2 Am. Jur. 82.

that the relationship or the authority exists.[40] The existence of apparent authority may be ascertained through (1) the general manner in which the corporation holds out an officer or agent as having the power to act or, in other words, the apparent authority to act in general, with which it clothes him; or (2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, whether within or beyond the scope of his ordinary powers. It requires presentation of evidence of similar act(s) executed either in its favor or in favor of other parties.[41]

Easily discernible from the foregoing is that apparent authority is determined only by the acts of the principal and not by the acts of the agent. The principal is, therefore, not responsible where the agent's own conduct and statements have created the apparent authority.[42]

In this case, not a single act of respondent, acting through its Board of Directors, was cited as having clothed its general manager with apparent authority to execute the contract with it.

With the foregoing disquisition, the Court finds it unnecessary to discuss the other arguments posed by petitioner.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Carpio (Chairperson), Nachura, Peralta, and *Abad, JJ.,* concur.

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[40] *Professional Services, Inc. v. Agana*, G.R. No. 126297, January 31, 2007, 513 SCRA 500-501.

[41] *People's Aircargo and Warehousing Co., Inc. v. CA*, 357 Phil. 850 (1998).

[42] 3 Am. Jur. 2d § 79.

SECOND DIVISION

[G.R. No. 171736. July 5, 2010]

PENTACAPITAL INVESTMENT CORPORATION, *petitioner, vs.* **MAKILITO B. MAHINAY,** *respondent.*

[G.R. No. 181482. July 5, 2010]

PENTACAPITAL INVESTMENT CORPORATION, *petitioner, vs.* **MAKILITO B. MAHINAY,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; SUPPLEMENTAL PLEADINGS; MUST ALLEGE ONLY MATERIAL FACTS WHICH HAPPENED OR CAME WITHIN THE PARTY'S KNOWLEDGE AFTER THE ORIGINAL PLEADING WAS FILED.—** As a general rule, leave will be granted to a party who desires to file a supplemental pleading that alleges any material fact which happened or came within the party's knowledge after the original pleading was filed, such being the office of a supplemental pleading. The application of the rule would ensure that the entire controversy might be settled in one action, avoid unnecessary repetition of effort and unwarranted expense of litigants, broaden the scope of the issues in an action owing to the light thrown on it by facts, events and occurrences which have accrued after the filing of the original pleading, and bring into record the facts enlarging or charging the kind of relief to which plaintiff is entitled. It is the policy of the law to grant relief as far as possible for wrongs complained of, growing out of the same transaction and thus put an end to litigation.

2. **ID.; ID.; ID.; ID.; ALLEGED OBLIGATION OF PETITIONER ALREADY EXISTED AND WAS KNOWN TO RESPONDENT AT THE TIME OF FILING OF HIS ANSWER WITH COUNTERCLAIM; A SUPPLEMENTAL PLEADING MUST STATE TRANSACTIONS, OCCURRENCES OR EVENTS WHICH TOOK PLACE SINCE THE TIME THE PLEADING SOUGHT TO BE SUPPLEMENTED WAS**

FILED.— It is obvious that the alleged obligation of petitioner already existed and was known to respondent at the time of the filing of his Answer with Counterclaim. He should have demanded payment of his commission and share in the proceeds of the sale in that Answer with Compulsory Counterclaim, but he did not. He is, therefore, proscribed from incorporating the same and making such demand via a supplemental pleading. The supplemental pleading must be based on matters arising subsequent to the filing of the original pleading related to the claim or defense presented therein, and founded on the same cause of action. Supplemental pleadings must state transactions, occurrences or events which took place since the time the pleading sought to be supplemented was filed.

3. **CIVIL LAW; CONTRACTS; ELEMENTS.—** To ascertain whether or not respondent is bound by the promissory notes, it must be established that all the elements of a contract of loan are present. Like any other contract, a contract of loan is subject to the rules governing the requisites and validity of contracts in general. It is elementary in this jurisdiction that what determines the validity of a contract, in general, is the presence of the following elements: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation which is established.

4. **ID.; ID.; LOAN PROMISSORY NOTES SHOULD BE ACCEPTED AS THEY APPEAR ON THEIR FACE ABSENT ANY PROOF THAT IT IS SUBJECT TO CERTAIN CONDITIONS.—** As it now appears, the promissory notes clearly stated that respondent promised to pay petitioner ₱1,520,000.00 and ₱416,800.00, plus interests and penalty charges, a year after their execution. Nowhere in the notes was it stated that they were subject to a condition. As correctly observed by petitioner, respondent is not only a lawyer but a law professor as well. He is, therefore, legally presumed not only to exercise vigilance over his concerns but, more importantly, to know the legal and binding effects of promissory notes and the intricacies involving the execution of negotiable instruments including the need to execute an agreement to document extraneous collateral conditions and/or agreements, if truly there were such. This militates against respondent's claim that

there was indeed such an agreement. Thus, the promissory notes should be accepted as they appear on their face.

5. **ID.; ID.; ID.; ALLEGED UNCOLLECTED COMMISSIONS NEGATED BY THE FACTS OF THE CASE.—** Respondent's liability is not negated by the fact that he has uncollected commissions from the sale of the Molino properties. As the records of the case show, at the time of the execution of the promissory notes, the Molino properties were subject of various court actions commenced by different parties. Thus, the sale of the properties and, consequently, the payment of respondent's commissions were put on hold. The non-payment of his commissions could very well be the reason why he obtained a loan from petitioner.

6. **ID.; OBLIGATIONS AND CONTRACTS; OBLIGATIONS WITH A PENAL CLAUSE; A PENALTY CHARGE MAY BE EQUITABLY REDUCED WHEN CONSIDERED UNCONSCIONABLE.—** Aside from the payment of the principal obligation of ₱1,936,800.00, the parties agreed that respondent pay interest at the rate of 25% from February 17, 1997 until fully paid. Such rate, however, is excessive and thus, void. Since the stipulation on the interest rate is void, it is as if there was no express contract thereon. To be sure, courts may reduce the interest rate as reason and equity demand. In this case, 12% interest is reasonable. The promissory notes likewise required the payment of a penalty charge of 3% per month or 36% per annum. We find such rates unconscionable. This Court has recognized a penalty clause as an accessory obligation which the parties attach to a principal obligation for the purpose of ensuring the performance thereof by imposing on the debtor a special prestation (generally consisting of the payment of a sum of money) in case the obligation is not fulfilled or is irregularly or inadequately fulfilled. However, a penalty charge of 3% per month is unconscionable; hence, we reduce it to 1% per month or 12% per annum, pursuant to Article 1229 of the Civil Code.

7. **ID.; DAMAGES; LIQUIDATED DAMAGES; AMOUNT OR RATE MAY BE REDUCED WHEN FOUND TO BE INIQUITOUS OR UNCONSCIONABLE.—** Respondent promised to pay 25% of his outstanding obligations as attorney's fees in case of non-payment thereof. Attorney's fees here are

in the nature of liquidated damages. As long as said stipulation does not contravene law, morals, or public order, it is strictly binding upon respondent. Nonetheless, courts are empowered to reduce such rate if the same is iniquitous or unconscionable pursuant to the above-quoted provision. This sentiment is echoed in Article 2227 of the Civil Code, to wit: Art. 2227. Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable. Hence, we reduce the stipulated attorney's fees from 25% to 10%.

8. **REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; A PRESUMPTION MAY OPERATE AGAINST AN ADVERSARY WHO HAS NOT INTRODUCED PROOF TO REBUT IT.—** Under Article 1354 of the Civil Code, it is presumed that consideration exists and is lawful unless the debtor proves the contrary. Moreover, under Section 3, Rule 131 of the Rules of Court, the following are disputable presumptions: (1) private transactions have been fair and regular; (2) the ordinary course of business has been followed; and (3) there was sufficient consideration for a contract. A presumption may operate against an adversary who has not introduced proof to rebut it. The effect of a legal presumption upon a burden of proof is to create the necessity of presenting evidence to meet the legal presumption or the *prima facie* case created thereby, and which, if no proof to the contrary is presented and offered, will prevail. The burden of proof remains where it is, but by the presumption, the one who has that burden is relieved for the time being from introducing evidence in support of the averment, because the presumption stands in the place of evidence unless rebutted.

9. **ID.; ID.; ID.; THE PRESUMPTION THAT A CONTRACT HAS SUFFICIENT CONSIDERATION CANNOT BE OVERTHROWN BY BARE UNCORROBORATED AND SELF-SERVING ASSERTION OF RESPONDENT THAT IT HAS NO CONSIDERATION; ALLEGED LACK OF CONSIDERATION MUST BE SHOWN BY PREPONDERANCE OF EVIDENCE.—** In the present case, as proof of his claim of lack of consideration, respondent denied under oath that he owed petitioner a single centavo. He added that he did not apply for a loan and that when he signed the promissory notes, they were all blank forms and all

the blank spaces were to be filled up only if the sale transaction over the subject properties would not push through because of a possible adverse decision in the civil cases involving them (the properties). He thus posits that since the sale pushed through, the promissory notes did not become effective. Contrary to the conclusions of the RTC and the CA, we find such proof insufficient to overcome the presumption of consideration. The presumption that a contract has sufficient consideration cannot be overthrown by the bare, uncorroborated and self-serving assertion of respondent that it has no consideration. The alleged lack of consideration must be shown by preponderance of evidence.

10. ID.; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; DEFINED; REQUISITES; ESTABLISHED IN CASE AT BAR.— *Res judicata* means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It lays the rule that an existing final judgment or decree rendered on the merits, without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit. The requisites of *res judicata* are: (1) The former judgment or order must be final; (2) It must be a judgment on the merits; (3) It must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) There must be between the first and second actions, identity of parties, subject matter, and cause of action. These requisites are present in the instant case. It is undisputed that respondent instituted an action for Preliminary Mandatory Injunction against Pentacapital Realty, before the RTC of Cebu City, docketed as Civil Case No. CEB-25032. On motion of Pentacapital Realty, in an Order dated August 15, 2001, the court dismissed the complaint on two grounds: 1) non-payment of the correct filing fee considering that the complaint was actually a collection of sum of money although denominated as Preliminary Mandatory Injunction; and 2) lack of cause of action. The court treated the complaint as a collection suit because respondent was seeking the payment of his unpaid commission or share in the proceeds of the sale of the Molino Properties. Additionally, the RTC found that respondent had no cause of action against Pentacapital Realty,

there being no privity of contract between them. Lastly, the court held that it was CRDI which agreed that 20% of the total consideration of the sale be paid and delivered to respondent. Instead of assailing the said Order, respondent filed his supplemental compulsory counterclaim, demanding again the payment of his commission, this time, against petitioner in the instant case. The Order, therefore, became final and executory.

11. **ID.; ID.; ID.; ID.; IDENTITY OF PARTIES; THERE IS IDENTITY OF PARTIES NOT ONLY WHEN THE PARTIES IN THE CASES ARE THE SAME, BUT ALSO BETWEEN THOSE IN PRIVITY WITH THEM.—** Respondent's supplemental counterclaim against petitioner is anchored on the doctrine of piercing the veil of corporate fiction. Obviously, after the dismissal of his complaint before the RTC-Cebu, he now proceeds against petitioner, through a counterclaim, on the basis of the same cause of action. Thus, if we follow respondent's contention that petitioner and Pentacapital Realty are one and the same entity, the latter being a subsidiary of the former, respondent is barred from instituting the present case based on the principle of bar by prior judgment. The RTC-Cebu already made a definitive conclusion that Pentacapital Realty is not a privy to the contract between respondent and CRDI. It also categorically stated that it was CRDI which agreed to pay respondent's commission equivalent to 20% of the proceeds of the sale. With these findings, and considering that petitioner's alleged liability stems from its supposed relation with Pentacapital Realty, logic dictates that the findings of the RTC-Cebu, which had become final and executory, should bind petitioner. It is well-settled that when material facts or questions in issue in a former action were conclusively settled by a judgment rendered therein, such facts or questions constitute *res judicata* and may not again be litigated in a subsequent action between the same parties or their privies regardless of the form of the latter. Absolute identity of parties is not required, and where a shared identity of interest is shown by the identity of the relief sought by one person in a prior case and the second person in a subsequent case, such was deemed sufficient. There is identity of parties not only when the parties in the cases are the same, but also between those in privity with them.

12. **ID.; ID.; FORUM-SHOPPING; DEFINED.—** Forum-shopping is the act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another. What is important in determining whether forum-shopping exists is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issues.

13. **ID.; ID.; ID.; WAYS OF COMMITTING FORUM-SHOPPING. —** Forum-shopping can be committed in three ways: (1) by filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) by filing multiple cases based on the same cause of action and with the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) by filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).

14. **ID.; ID.; ID.; ELEMENTS OF FORUM-SHOPPING; NOT PRESENT IN CASE AT BAR.—** The elements of forum-shopping are: (a) identity of parties or at least such parties that represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration. These elements are not present in this case. In G.R. No. 171736, petitioner assails the propriety of the admission of respondent's supplemental compulsory counterclaim; while in G.R. No. 181482, petitioner assails the grant of respondent's supplemental compulsory counterclaim.

In other words, the first case originated from an interlocutory order of the RTC, while the second case is an appeal from the decision of the court on the merits of the case. There is, therefore, no forum-shopping for the simple reason that the petition and the appeal involve two different and distinct issues.

APPEARANCES OF COUNSEL

Solis Medina Limpengco & Fajardo Law Offices for petitioner.
M.B. Mahinay & Associates for respondent.

D E C I S I O N

NACHURA, *J.*:

Before us are two consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioner Pentacapital Investment Corporation. In G.R. No. 171736, petitioner assails the Court of Appeals (CA) Decision[1] dated December 20, 2005 and Resolution[2] dated March 1, 2006 in CA-G.R. SP No. 74851; while in G.R. No. 181482, it assails the CA Decision[3] dated October 4, 2007 and Resolution[4] dated January 21, 2008 in CA-G.R. CV No. 86939.

The Facts

Petitioner filed a complaint for a sum of money against respondent Makilito Mahinay based on two separate loans obtained by the latter, amounting to ₱1,520,000.00 and ₱416,800.00, or a total amount of ₱1,936,800.00. These loans

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[1] Penned by Associate Justice Mario L. Guariña III, with Associate Justices Roberto A. Barrios and Santiago Javier Ranada, concurring; *rollo* (G.R. No. 171736), pp. 75-82.

[2] *Id.* at 84.

[3] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Noel G. Tijam and Myrna Dimaranan Vidal, concurring; *rollo* (G.R. No. 181482), pp. 114-142.

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

were evidenced by two promissory notes[5] dated February 23, 1996. Despite repeated demands, respondent failed to pay the loans, hence, the complaint.[6]

In his Answer with Compulsory Counterclaim,[7] respondent claimed that petitioner had no cause of action because the promissory notes on which its complaint was based were subject to a condition that did not occur.[8] While admitting that he indeed signed the promissory notes, he insisted that he never took out a loan and that the notes were not intended to be evidences of indebtedness.[9] By way of counterclaim, respondent prayed for the payment of moral and exemplary damages plus attorney's fees.[10]

Respondent explained that he was the counsel of Ciudad Real Development Inc. (CRDI). In 1994, Pentacapital Realty Corporation (Pentacapital Realty) offered to buy parcels of land known as the Molino Properties, owned by CRDI, located in Molino, Bacoor, Cavite. The Molino Properties, with a total area of 127,708 square meters, were sold at ₱400.00 per sq m. As the Molino Properties were the subject of a pending case, Pentacapital Realty paid only the down payment amounting to ₱12,000,000.00. CRDI allegedly instructed Pentacapital Realty to pay the former's creditors, including respondent who thus received a check worth ₱1,715,156.90.[11] It was further agreed that the balance would be payable upon the submission of an Entry of Judgment showing that the case involving the Molino Properties had been decided in favor of CRDI.[12]

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[5] *Rollo* (G.R. No. 181482), pp. 155-157.

[6] *Id.* at 171-174.

[7] *Id.* at 175-185.

[8] *Id.* at 176.

[9] *Id.* at 119.

[10] *Id.* at 183.

[11] *Id.* at 120.

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

Respondent, Pentacapital Realty and CRDI allegedly agreed that respondent had a charging lien equivalent to 20% of the total consideration of the sale in the amount of ₱10,277,040.00. Pending the submission of the Entry of Judgment and as a sign of good faith, respondent purportedly returned the ₱1,715,156.90 check to Pentacapital Realty. However, the Molino Properties continued to be haunted by the seemingly interminable court actions initiated by different parties which thus prevented respondent from collecting his commission.

On motion[13] of respondent, the Regional Trial Court (RTC) allowed him to file a Third Party Complaint[14] against CRDI, subject to the payment of docket fees.[15]

Admittedly, respondent earlier instituted an action for Specific Performance against Pentacapital Realty before the RTC of Cebu City, Branch 57, praying for the payment of his commission on the sale of the Molino Properties.[16] In an Amended Complaint,[17] respondent referred to the action he instituted as one of Preliminary Mandatory Injunction instead of Specific Performance. Acting on Pentacapital Realty's Motion to Dismiss, the RTC dismissed the case for lack of cause of action.[18] The dismissal became final and executory.

With the dismissal of the aforesaid case, respondent filed a Motion to Permit Supplemental Compulsory Counterclaim.[19] In addition to the damages that respondent prayed for in his compulsory counterclaim, he sought the payment of his commission amounting to ₱10,316,640.00, plus interest at the rate of 16% per annum, as well as attorney's fees equivalent

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[13] *Id.* at 208-212.

[14] *Id.* at 213-216.

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

[16] *Id.* at 158-161.

[17] *Id.* at 162-167.

[18] *Id.* at 168-170.

[19] *Id.* at 219-223.

to 12% of his principal claim.[20] Respondent claimed that Pentacapital Realty is a 100% subsidiary of petitioner. Thus, although petitioner did not directly participate in the transaction between Pentacapital Realty, CRDI and respondent, the latter's claim against petitioner was based on the doctrine of piercing the veil of corporate fiction. Simply stated, respondent alleged that petitioner and Pentacapital Realty are one and the same entity belonging to the Pentacapital Group of Companies.[21]

Over the opposition of petitioner, the RTC, in an Order[22] dated August 22, 2002, allowed the filing of the supplemental counterclaim. Aggrieved, petitioner sought recourse in the CA through a special civil action for *certiorari*, seeking to reverse and set aside the RTC Order. The case was docketed as CA-G.R. SP No. 74851. On December 20, 2005, the CA rendered the assailed Decision dismissing the petition.[23] The appellate court sustained the allowance of the supplemental compulsory counterclaim based on the allegations in respondent's pleading. The CA further concluded that there was a logical relationship between the claims of petitioner in its complaint and those of respondent in his supplemental compulsory counterclaim. The CA declared that it was inconsequential that respondent did not clearly allege the facts required to pierce the corporate separateness of petitioner and its subsidiary, the Pentacapital Realty.[24]

Petitioner now comes before us in G.R. No. 171736, raising the following issues:

A.

WHETHER RESPONDENT MAHINAY IS BARRED FROM ASSERTING THE CLAIM CONTAINED IN HIS "SUPPLEMENTAL COMPULSORY COUNTERCLAIM" ON THE GROUNDS OF (1) *RES JUDICATA,* (2) WILLFUL AND DELIBERATE FORUM

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[20] *Id.* at 226.

[21] *Id.* at 224-227.

[22] *Id.* at 238-239.

[23] *Supra* note 1.

[24] *Rollo* (G.R. No. 171736), pp. 79-82.

SHOPPING, AND (3) FAILURE TO INTERPOSE SUCH CLAIM ON TIME PURSUANT TO SECTION 2 OF RULE 9 OF THE RULES OF COURT;

B.

WHETHER RESPONDENT MAHINAY'S SUPPLEMENTAL COMPULSORY COUNTERCLAIM IS ACTUALLY A THIRD-PARTY COMPLAINT AGAINST PENTACAPITAL REALTY, THE INTRODUCTION OF WHICH REQUIRES THE PAYMENT OF THE NECESSARY DOCKET FEES;

C.

ASSUMING FOR THE SAKE OF PURE ARGUMENT THAT IT IS PROPER TO PIERCE THE CORPORATE VEIL AND TO ALLOW RESPONDENT MAHINAY TO LODGE A "SUPPLEMENTAL COMPULSORY COUNTERCLAIM" AGAINST HEREIN PETITIONER PENTACAPITAL INVESTMENT FOR AN ALLEGED OBLIGATION OF ITS SUBSIDIARY, PENTACAPITAL REALTY, ON THE THEORY THAT THEY ARE "ONE AND THE SAME COMPANY," WHETHER PENTACAPITAL REALTY SHOULD HAVE AT LEAST BEEN MADE A PARTY TO THE CASE AS RULED BY THIS HONORABLE COURT IN *FILMERCO COMMERCIAL CO., INC. VS. INTERMEDIATE APPELLATE COURT;*

D.

WHETHER RESPONDENT MAHINAY SHOULD BE ALLOWED TO PRESENT EVIDENCE ON HIS SO-CALLED "SUPPLEMENTAL COMPULSORY COUNTERCLAIM" INASMUCH AS (1) RESPONDENT MAHINAY'S PLEADINGS ARE BEREFT OF ANY ALLEGATIONS TO BUTTRESS THE MERGING OF PENTACAPITAL REALTY AND PENTACAPITAL INVESTMENT INTO ONE ENTITY AND THE CONSEQUENT IMPUTATION ON THE LATTER OF THE FORMER'S SUPPOSED LIABILITY ON RESPONDENT MAHINAY'S SUPPLEMENTAL COMPULSORY COUNTERCLAIM, AND (2) THE INCIDENTS ALLEGEDLY PERTAINING TO, AND WHICH WOULD THEREBY SUPPORT, THE PIERCING OF CORPORATE VEIL ARE NOT EVIDENTIARY MATTERS MATERIAL TO THE PROCEEDINGS BEFORE THE COURT *A QUO* CONSIDERING THAT THE SAME ARE BEYOND THE SCOPE OF THE PLEADINGS;

E.

WHETHER THE DOCTRINE OF PIERCING THE CORPORATE VEIL MAY BE INVOKED AND APPLIED IN ORDER TO EVADE AN OBLIGATION AND FACILITATE PROCEDURAL WRONGDOING; AND

F.

WHETHER PETITIONER PENTACAPITAL INVESTMENT COMMITTED FORUM SHOPPING WHEN IT FILED THE PRESENT PETITION DURING THE PENDENCY OF THE MOTION FOR RECONSIDERATION IT FILED BEFORE THE COURT *A QUO* AND, SUBSEQUENTLY, OF THE APPEAL BEFORE THE COURT OF APPEALS TO QUESTION THE JUDGMENT OF THE COURT *A QUO*.[25]

There being no writ of injunction or Temporary Restraining Order (TRO), the proceedings before the RTC continued and respondent was allowed to present his evidence on his supplemental compulsory counterclaim. After trial on the merits, the RTC rendered a decision[26] dated March 20, 2006, the dispositive portion of which reads:

WHEREFORE, PREMISES CONSIDERED, plaintiff's complaint is hereby ordered dismissed for lack of merit. This court, instead, finds that defendant was able to prove by a clear preponderance of evidence his cause of action against plaintiff as to defendant's compulsory and supplemental counterclaims. That, therefore, this court hereby orders the plaintiff to pay unto defendant the following sums, to wit:

1. ₱1,715,156.90 representing the amount plaintiff is obligated to pay defendant as provided for in the deed of sale and the supplemental agreement, plus interest at the rate of 16% per annum, to be computed from September 23, 1998 until the said amount shall have been fully paid;

2. Php 10,316,640.00 representing defendant's share of the proceeds of the sale of the Molino property (defendant's

[25] *Id.* at 459-460.

[26] Penned by Judge Maria Rosario B. Ragasa, *rollo* (G.R. No. 181482), pp. 311-323.

charging lien) plus interest at the rate of 16% per annum, to be computed from September 23, 1998 until the said amount shall have been fully paid;

3. Php 50,000.00 as attorney's fees based on *quantum meruit*;

4. Php 50,000.00 litigation expenses, plus costs of suit.

This court finds it unnecessary to rule on the third party complaint, the relief prayed for therein being dependent on the possible award by this court of the relief of plaintiff's complaint.[27]

On appeal, the CA, in CA-G.R. CV No. 86939, affirmed *in toto* the above decision. The CA found no basis for petitioner to collect the amount demanded, there being no perfected contract of loan for lack of consideration.[28] As to respondent's supplemental compulsory counterclaim, quoting the findings of the RTC, the appellate court held that respondent was able to prove by preponderance of evidence that it was the intent of Pentacapital Group of Companies and CRDI to give him ₱10,316,640.00 and ₱1,715,156.90.[29] The CA likewise affirmed the award of interest at the rate of 16% per annum, plus damages.[30]

Unsatisfied, petitioner moved for reconsideration of the aforesaid Decision, but it was denied in a Resolution[31] dated January 21, 2008. Hence, the present petition in G.R. No. 181482, anchored on the following arguments:

A.

Considering that the inferences made in the present case are manifestly absurd, mistaken or impossible, and are even contrary to the admissions of respondent Mahinay, and inasmuch as the judgment is premised on a misapprehension of facts, this Honorable Court may validly take cognizance of the errors relative to the findings of fact of both the Honorable Court of Appeals and the court *a quo*.

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[27] *Id.* at 322-323.

[28] *Rollo* (G.R. No. 181482), p. 133.

[29] *Id.* at 137-139.

[30] *Id.* at 140-141.

[31] *Supra* note 4.

B.

Respondent Mahinay is liable to petitioner PentaCapital Investment for the PhP1,936,800.00 loaned to him as well as for damages and attorney's fees.

1.

> The Honorable Court of Appeals erred in concluding that respondent Mahinay failed to receive the money he borrowed when there is not even any dispute as to the fact that respondent Mahinay did indeed receive the PhP1,936,800.00 from petitioner PentaCapital Investment.

2.

> The Promissory Notes executed by respondent Mahinay are valid instruments and are binding upon him.

C.

Petitioner PentaCapital Investment cannot be held liable on the supposed "supplemental compulsory counterclaim" of respondent Mahinay.

1.

> The findings of fact as well as the conclusions arrived at by the Court of Appeals in its decision were based on mistaken assumptions and on erroneous appreciation of the evidence on record.

2.

> There is no evidence on record to support the merging of PentaCapital Realty and petitioner PentaCapital Investment into one entity and the consequent imputation on the latter of the former's supposed liability on respondent Mahinay's supplemental compulsory counterclaim.

3.

> Inasmuch as the claim of respondent Mahinay is supposedly against PentaCapital Realty, and considering that petitioner PentaCapital Investment is a separate, distinct entity from PentaCapital Realty, the latter should have been impleaded as it is an indispensable party.

D.

Assuming for the sake of pure argument that it is proper to disregard the corporate fiction and to consider herein petitioner PentaCapital Investment and its subsidiary, PentaCapital Realty, as one and the same entity, respondent Mahinay's "supplemental compulsory counterclaim" must still necessarily fail.

1.

The cause of action of respondent Mahinay, as contained in his "supplemental compulsory counterclaim," is already barred by a prior judgment (*res judicata*).

2.

Considering that the dismissal on the merits by the RTC Cebu of respondent Mahinay's complaint against PentaCapital Realty for attorney's fees has attained finality, respondent Mahinay committed a willful act of forum shopping when he interposed the exact same claim in the proceedings *a quo* as a supposed supplemental compulsory counterclaim against what he claims to be "one and the same" company.

3.

Respondent Mahinay's supplemental compulsory counterclaim is actually a third party complaint against PentaCapital Realty; the filing thereof therefore requires the payment of the necessary docket fees.

E.

The doctrine of piercing the corporate veil is an equitable remedy which cannot and should not be invoked, much less applied, in order to evade an obligation and facilitate procedural wrongdoing.[32]

Simply put, the issues for resolution are: 1) whether the admission of respondent's supplemental compulsory counterclaim is proper; 2) whether respondent's counterclaim is barred by *res judicata;* and (3) whether petitioner is guilty of forum-shopping.

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[32] *Rollo* (G.R. No. 181482), pp. 40-43.

The Court's Ruling

Admission of Respondent's
Supplemental Compulsory Counterclaim

The pertinent provision of the Rules of Court is Section 6 of Rule 10, which reads:

Sec. 6. *Supplemental pleadings.* – Upon motion of a party, the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions, occurrences or events which have happened since the date of the pleading sought to be supplemented. The adverse party may plead thereto within ten (10) days from notice of the order admitting the supplemental pleading.

As a general rule, leave will be granted to a party who desires to file a supplemental pleading that alleges any material fact which happened or came within the party's knowledge after the original pleading was filed, such being the office of a supplemental pleading. The application of the rule would ensure that the entire controversy might be settled in one action, avoid unnecessary repetition of effort and unwarranted expense of litigants, broaden the scope of the issues in an action owing to the light thrown on it by facts, events and occurrences which have accrued after the filing of the original pleading, and bring into record the facts enlarging or charging the kind of relief to which plaintiff is entitled. It is the policy of the law to grant relief as far as possible for wrongs complained of, growing out of the same transaction and thus put an end to litigation.[33]

In his Motion to Permit Supplemental Compulsory Counterclaim, respondent admitted that, in his Answer with Compulsory Counterclaim, he claimed that, as one of the corporations composing the Pentacapital Group of Companies, petitioner is liable to him for ₱10,316,640.00, representing 20% attorney's fees and share in the proceeds of the sale transaction between Pentacapital Realty and CRDI. In the same pleading,

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[33] *Lambino v. Presiding Judge, RTC, Br. 172, Valenzuela City*, G.R. No. 169551, January 24, 2007, 512 SCRA 525, 539-540.

he further admitted that he did not include this amount in his compulsory counterclaim because he had earlier commenced another action for the collection of the same amount against Pentacapital Realty before the RTC of Cebu. With the dismissal of the RTC-Cebu case, there was no more legal impediment for respondent to file the supplemental counterclaim.

Moreover, in his Answer with Compulsory Counterclaim, respondent already alleged that he demanded from Pentacapital Group of Companies to which petitioner supposedly belongs, the payment of his 20% commission. This, in fact, was what prompted respondent to file a complaint before the RTC-Cebu for preliminary mandatory injunction for the release of the said amount.

Given these premises, it is obvious that the alleged obligation of petitioner already existed and was known to respondent at the time of the filing of his Answer with Counterclaim. He should have demanded payment of his commission and share in the proceeds of the sale in that Answer with Compulsory Counterclaim, but he did not. He is, therefore, proscribed from incorporating the same and making such demand via a supplemental pleading. The supplemental pleading must be based on matters arising subsequent to the filing of the original pleading related to the claim or defense presented therein, and founded on the same cause of action.[34] Supplemental pleadings must state transactions, occurrences or events which took place since the time the pleading sought to be supplemented was filed.[35]

Even on the merits of the case, for reasons that will be discussed below, respondent's counterclaim is doomed to fail.

Petitioner's Complaint

In its complaint for sum of money, petitioner prayed that respondent be ordered to pay his obligation amounting to ₱1,936,800.00 plus interest and penalty charges, and attorney's fees. This obligation was evidenced by two promissory notes

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[34] *Id.* at 539.

[35] *De Rama v. Court of Appeals*, 405 Phil. 531, 547 (2001).

executed by respondent. Respondent, however, denied liability on the ground that his obligation was subject to a condition that did not occur. He explained that the promissory notes were dependent upon the happening of a remote event that the parties tried to anticipate at the time they transacted with each other, and the event did not happen.[36] He further insisted that he did not receive the proceeds of the loan.

To ascertain whether or not respondent is bound by the promissory notes, it must be established that all the elements of a contract of loan are present. Like any other contract, a contract of loan is subject to the rules governing the requisites and validity of contracts in general. It is elementary in this jurisdiction that what determines the validity of a contract, in general, is the presence of the following elements: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation which is established.[37]

In this case, respondent denied liability on the ground that the promissory notes lacked consideration as he did not receive the proceeds of the loan.

We cannot sustain his contention.

Under Article 1354 of the Civil Code, it is presumed that consideration exists and is lawful unless the debtor proves the contrary.[38] Moreover, under Section 3, Rule 131 of the Rules of Court, the following are disputable presumptions: (1) private transactions have been fair and regular; (2) the ordinary course of business has been followed; and (3) there was sufficient consideration for a contract.[39] A presumption may operate against an adversary who has not introduced proof to rebut it. The effect

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[36] *Rollo* (G.R. 181482), p. 176.

[37] *Saguid v. Security Finance, Inc.*, G.R. No. 159467, December 9, 2005, 477 SCRA 256, 268; *Santos v. Heirs of Jose P. Mariano & Erlinda Mariano-Villanueva*, 398 Phil. 174 (2000).

[38] *Saguid v. Security Finance, Inc.*, *supra*, at 270.

[39] *Surtida v. Rural Bank of Malinao (Albay), Inc.*, G.R. No. 170563, December 20, 2006, 511 SCRA 507, 519.

of a legal presumption upon a burden of proof is to create the necessity of presenting evidence to meet the legal presumption or the *prima facie* case created thereby, and which, if no proof to the contrary is presented and offered, will prevail. The burden of proof remains where it is, but by the presumption, the one who has that burden is relieved for the time being from introducing evidence in support of the averment, because the presumption stands in the place of evidence unless rebutted.[40]

In the present case, as proof of his claim of lack of consideration, respondent denied under oath that he owed petitioner a single centavo. He added that he did not apply for a loan and that when he signed the promissory notes, they were all blank forms and all the blank spaces were to be filled up only if the sale transaction over the subject properties would not push through because of a possible adverse decision in the civil cases involving them (the properties). He thus posits that since the sale pushed through, the promissory notes did not become effective.

Contrary to the conclusions of the RTC and the CA, we find such proof insufficient to overcome the presumption of consideration. The presumption that a contract has sufficient consideration cannot be overthrown by the bare, uncorroborated and self-serving assertion of respondent that it has no consideration.[41] The alleged lack of consideration must be shown by preponderance of evidence.[42]

As it now appears, the promissory notes clearly stated that respondent promised to pay petitioner ₱1,520,000.00 and ₱416,800.00, plus interests and penalty charges, a year after their execution. Nowhere in the notes was it stated that they were subject to a condition. As correctly observed by petitioner, respondent is not only a lawyer but a law professor as well. He is, therefore, legally presumed not only to exercise vigilance

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[40] *Id.* at 519-520.

[41] *Id.* at 520; *Fernandez v. Fernandez*, 416 Phil. 322 (2001).

[42] *Surtida v. Rural Bank of Malinao (Albay), Inc.*, *supra*, at 520.

over his concerns but, more importantly, to know the legal and binding effects of promissory notes and the intricacies involving the execution of negotiable instruments including the need to execute an agreement to document extraneous collateral conditions and/or agreements, if truly there were such.[43] This militates against respondent's claim that there was indeed such an agreement. Thus, the promissory notes should be accepted as they appear on their face.

Respondent's liability is not negated by the fact that he has uncollected commissions from the sale of the Molino properties. As the records of the case show, at the time of the execution of the promissory notes, the Molino properties were subject of various court actions commenced by different parties. Thus, the sale of the properties and, consequently, the payment of respondent's commissions were put on hold. The non-payment of his commissions could very well be the reason why he obtained a loan from petitioner.

In *Sierra v. Court of Appeals*,[44] we held that:

> A promissory note is a solemn acknowledgment of a debt and a formal commitment to repay it on the date and under the conditions agreed upon by the borrower and the lender. A person who signs such an instrument is bound to honor it as a legitimate obligation duly assumed by him through the signature he affixes thereto as a token of his good faith. If he reneges on his promise without cause, he forfeits the sympathy and assistance of this Court and deserves instead its sharp repudiation.

Aside from the payment of the principal obligation of ₱1,936,800.00, the parties agreed that respondent pay interest at the rate of 25% from February 17, 1997 until fully paid. Such rate, however, is excessive and thus, void. Since the stipulation on the interest rate is void, it is as if there was no express contract thereon. To be sure, courts may reduce the

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[43] *Rollo* (G.R. No. 181482), p. 59.

[44] G.R. No. 90270, July 24, 1992, 211 SCRA 785, 795.

interest rate as reason and equity demand.[45] In this case, 12% interest is reasonable.

The promissory notes likewise required the payment of a penalty charge of 3% per month or 36% per annum. We find such rates unconscionable. This Court has recognized a penalty clause as an accessory obligation which the parties attach to a principal obligation for the purpose of ensuring the performance thereof by imposing on the debtor a special prestation (generally consisting of the payment of a sum of money) in case the obligation is not fulfilled or is irregularly or inadequately fulfilled.[46] However, a penalty charge of 3% per month is unconscionable;[47] hence, we reduce it to 1% per month or 12% per annum, pursuant to Article 1229 of the Civil Code which states:

> Art. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. *Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.*[48]

Lastly, respondent promised to pay 25% of his outstanding obligations as attorney's fees in case of non-payment thereof. Attorney's fees here are in the nature of liquidated damages. As long as said stipulation does not contravene law, morals, or public order, it is strictly binding upon respondent. Nonetheless, courts are empowered to reduce such rate if the same is iniquitous or unconscionable pursuant to the above-quoted provision.[49] This sentiment is echoed in Article 2227 of the Civil Code, to wit:

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[45] *Ileana Dr. Macalinao v. Bank of the Philippine Islands*, G.R. No. 175490, September 17, 2009.

[46] *Development Bank of the Philippines v. Family Foods Manufacturing Co., Ltd.,* G.R. No. 180458, July 30, 2009, 594 SCRA 461.

[47] See *Ileana Dr. Maclinao v. Bank of the Philippine Islands, supra* note 45.

[48] Emphasis supplied.

[49] *Co v. Admiral United Savings Bank*, G.R. No. 154740, April 16, 2008, 551 SCRA 472.

Art. 2227. Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable.

Hence, we reduce the stipulated attorney's fees from 25% to 10%.[50]

Respondent's Counterclaim and Supplemental Counterclaim

The RTC, affirmed by the CA, granted respondent's counterclaims as it applied the doctrine of piercing the veil of corporate fiction. It is undisputed that the parties to the contract of sale of the subject properties are Pentacapital Realty as the buyer, CRDI as the seller, and respondent as the agent of CRDI. Respondent insisted, and the RTC and the CA agreed, that petitioner, as the parent company of Pentacapital Realty, was aware of the sale transaction, and that it was the former who paid the consideration of the sale. Hence, they concluded that the two corporations should be treated as one entity.

Petitioner assails the CA Decision sustaining the grant of respondent's counterclaim and supplemental counterclaim on the following grounds: *first,* respondent's claims are barred by *res judicata*, the same having been adjudicated with finality by the RTC-Cebu in Civil Case No. CEB-25032; *second*, piercing the veil of corporate fiction is without basis; *third,* the case is dismissible for failure to implead Pentacapital Realty as indispensable party; and *last*, respondent's supplemental counterclaim is actually a third party complaint against Pentacapital Realty, the filing thereof requires the payment of the necessary docket fees.

Petitioner's contentions are meritorious.

Res judicata means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It lays the rule that an existing final judgment or decree rendered on the merits, without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive

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[50] *Id.*; *Sim v. M.B. Finance Corporation*, G.R. No. 164300, November 29, 2006, 508 SCRA 556.

of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.[51]

The requisites of *res judicata* are:

(1) The former judgment or order must be final;

(2) It must be a judgment on the merits;

(3) It must have been rendered by a court having jurisdiction over the subject matter and the parties; and

(4) There must be between the first and second actions, identity of parties, subject matter, and cause of action.[52]

These requisites are present in the instant case. It is undisputed that respondent instituted an action for Preliminary Mandatory Injunction against Pentacapital Realty, before the RTC of Cebu City, docketed as Civil Case No. CEB-25032. On motion of Pentacapital Realty, in an Order dated August 15, 2001, the court dismissed the complaint on two grounds: 1) non-payment of the correct filing fee considering that the complaint was actually a collection of sum of money although denominated as Preliminary Mandatory Injunction; and 2) lack of cause of action. The court treated the complaint as a collection suit because respondent was seeking the payment of his unpaid commission or share in the proceeds of the sale of the Molino Properties. Additionally, the RTC found that respondent had no cause of action against Pentacapital Realty, there being no privity of contract between them. Lastly, the court held that it was CRDI which agreed that 20% of the total consideration of the sale be paid and delivered to respondent.[53] Instead of assailing the said Order, respondent

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[51] *Heirs of Panfilo F. Abalos v. Bucal*, G.R. No. 156224, February 19, 2008, 546 SCRA 252, 271-272.

[52] *The Estate of Don Filemon Y. Sotto v. Palicte*, G.R. No. 158642, September 22, 2008, 566 SCRA 142, 150; *Mallion v. Alcantara*, G.R. No. 141528, October 31, 2006, 506 SCRA 336, 343-344.

[53] *Rollo* (G.R. No. 181482), pp. 168-170.

filed his supplemental compulsory counterclaim, demanding again the payment of his commission, this time, against petitioner in the instant case. The Order, therefore, became final and executory.

Respondent's supplemental counterclaim against petitioner is anchored on the doctrine of piercing the veil of corporate fiction. Obviously, after the dismissal of his complaint before the RTC-Cebu, he now proceeds against petitioner, through a counterclaim, on the basis of the same cause of action. Thus, if we follow respondent's contention that petitioner and Pentacapital Realty are one and the same entity, the latter being a subsidiary of the former, respondent is barred from instituting the present case based on the principle of bar by prior judgment. The RTC-Cebu already made a definitive conclusion that Pentacapital Realty is not a privy to the contract between respondent and CRDI. It also categorically stated that it was CRDI which agreed to pay respondent's commission equivalent to 20% of the proceeds of the sale. With these findings, and considering that petitioner's alleged liability stems from its supposed relation with Pentacapital Realty, logic dictates that the findings of the RTC-Cebu, which had become final and executory, should bind petitioner.

It is well-settled that when material facts or questions in issue in a former action were conclusively settled by a judgment rendered therein, such facts or questions constitute *res judicata* and may not again be litigated in a subsequent action between the same parties or their privies regardless of the form of the latter.[54] Absolute identity of parties is not required, and where a shared identity of interest is shown by the identity of the relief sought by one person in a prior case and the second person in a subsequent case, such was deemed sufficient.[55] There is identity of parties not only when the parties in the cases are the same, but also between those in privity with them.

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[54] *Navarro v. Metropolitan Bank & Trust Company*, G.R. Nos. 165697 & 166481, August 4, 2009, 595 SCRA 149.

[55] *The Estate of Don Filemon Y. Sotto v. Palicte*, *supra* note 52, at 152.

No other procedural law principle is indeed more settled than that once a judgment becomes final, it is no longer subject to change, revision, amendment, or reversal, except only for correction of clerical errors, or the making of *nunc pro tunc* entries which cause no prejudice to any party, or where the judgment itself is void. The underlying reason for the rule is two-fold: (1) to avoid delay in the administration of justice and thus make orderly the discharge of judicial business; and (2) to put judicial controversies to an end, at the risk of occasional errors, inasmuch as controversies cannot be allowed to drag on indefinitely and the rights and obligations of every litigant must not hang in suspense for an indefinite period of time.[56]

In view of the foregoing disquisitions, we find no necessity to discuss the other issues raised by petitioner.

Forum Shopping

For his part, respondent adopts the conclusions made by the RTC and the CA in granting his counterclaims. He adds that the petition should be dismissed on the ground of forum-shopping. He argues that petitioner is guilty of forum-shopping by filing the petition for review (G.R. No. 181482), assailing the CA Decision dated October 4, 2007, despite the pendency of G.R. No. 171736 assailing the CA Decision dated December 20, 2005.

We do not agree with respondent.

Forum-shopping is the act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another.[57]

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[56] *Navarro v. Metropolitan Bank & Trust Company*, *supra* note 54.

[57] *Briones v. Henson-Cruz*, G.R. No. 159130, August 22, 2008, 563 SCRA 69, 84.

What is important in determining whether forum-shopping exists is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issues.[58]

Forum-shopping can be committed in three ways: (1) by filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) by filing multiple cases based on the same cause of action and with the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) by filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).[59]

More particularly, the elements of forum-shopping are: (a) identity of parties or at least such parties that represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[60]

These elements are not present in this case. In G.R. No. 171736, petitioner assails the propriety of the admission of respondent's supplemental compulsory counterclaim; while in G.R. No. 181482, petitioner assails the grant of respondent's supplemental compulsory counterclaim. In other words, the first case originated

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[58] *Collantes v. Court of Appeals,* G.R. No. 169604, March 6, 2007, 517 SCRA 561, 568.

[59] *Id.* at 569; *Ao-As v. Court of Appeals*, G.R. No. 128464, June 20, 2006, 491 SCRA 339.

[60] *Id.*; *Marcopper Mining Corporation v. Solidbank Corporation*, 476 Phil. 415 (2004).

from an interlocutory order of the RTC, while the second case is an appeal from the decision of the court on the merits of the case. There is, therefore, no forum-shopping for the simple reason that the petition and the appeal involve two different and distinct issues.

WHEREFORE, premises considered, the petitions are hereby *GRANTED*. The Decisions and Resolutions of the Court of Appeals dated December 20, 2005 and March 1, 2006, in CA-G.R. SP No. 74851, and October 4, 2007 and January 21, 2008, in CA-G.R. CV No. 86939, are *REVERSED and SET ASIDE*.

Respondent Makilito B. Mahinay is ordered to pay petitioner Pentacapital Investment Corporation ₱1,936,800.00 plus 12% interest *per annum*, and 12% *per annum* penalty charge, starting February 17, 1997. He is likewise ordered to pay 10% of his outstanding obligation as attorney's fees. No pronouncement as to costs.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 174129. July 5, 2010]

HONESTO V. FERRER, JR., and ROMEO E. ESPERA, *petitioners, vs.* **MAYOR SULPICIO S. ROCO, JR., in his capacity as Mayor of Naga City, Sangguniang Panglungsod of the City of Naga, and PEÑAFRANCIA MEMORIAL PARK CORPORATION,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; NATURE OF ACTION.—** Declaratory relief is defined as an action by any person interested in a deed, will, contract or other written instrument, executive order or resolution, to determine any question of construction or validity arising from the instrument, executive order or regulation, or statute, and for a declaration of his rights and duties thereunder. The only issue that may be raised in such a petition is the question of construction or validity of the provisions in an instrument or statute.

2. **ID.; ID.; ID.; REQUISITES OF AN ACTION FOR DECLARATORY RELIEF.—** It is settled that the requisites of an action for declaratory relief are: 1] the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance; 2] the terms of said documents and the validity thereof are doubtful and require judicial construction; 3] there must have been no breach of the documents in question; 4] there must be an actual justiciable controversy or the "ripening seeds" of one between persons whose interests are adverse; 5] **the issue must be ripe for judicial determination**; and 6] **adequate relief is not available through other means or other forms of action or proceeding.**

3. **ID.; ID.; ID.; ISSUE RAISED BY PETITIONERS IS NOT YET RIPE FOR JUDICIAL DETERMINATION.—** In this case, the issue raised by petitioners is clearly not yet ripe for judicial determination. Nowhere in the assailed resolutions and ordinance does it show that the public respondents acted on private respondent's application *with finality*. What appears therefrom is that the application of private respondent for development permit has been endorsed to the Housing and Land Use Regulatory Board (HLURB) for appropriate action, the latter being the sole regulatory body for housing and land development.

4. **POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF PRIMARY ADMINISTRATIVE JURISDICTION; COURTS CANNOT OR WILL NOT DETERMINE A CONTROVERSY WHERE THE ISSUES FOR RESOLUTION DEMAND THE**

EXERCISE OF SOUND ADMINISTRATIVE DISCRETION REQUIRING THE SPECIAL KNOWLEDGE, EXPERIENCE AND SERVICES OF THE ADMINISTRATIVE TRIBUNAL TO DETERMINE TECHNICAL AND INTRICATE MATTERS OF FACT.— Under the doctrine of primary administrative jurisdiction, courts cannot or will not determine a controversy where the issues for resolution demand the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact. In other words, if a case is such that its determination requires the expertise, specialized training and knowledge of an administrative body, relief must first be obtained in an administrative proceeding before resort to the courts is had even if the matter may well be within their proper jurisdiction.

APPEARANCES OF COUNSEL

Rodriguez Delos Santos & Naidas Law Offices for petitioners.
Donardo R. Paglinawan for Peñafrancia Memorial Park.
Angel R. Ojastro III for Mayor Sulpicio S. Roco, Jr.

D E C I S I O N

MENDOZA, *J.*:

At bench is a petition for review under Rule 45 of the Rules of Court filed by petitioners Honesto V. Ferrer, Jr. and Romeo E. Espera against respondents Mayor Sulpicio S. Roco, Jr., in his capacity as mayor of Naga City; the Sangguniang Panglungsod of the City of Naga; and Peñafrancia Memorial Park Corporation or "PMPC" (formerly ARE Square Realty Development Corporation).

The petition challenges ***(1)*** the April 21, 2006 Decision of the Court of Appeals[1] affirming *in toto* the April 17, 2001 Order[2] of the Regional Trial Court, Naga City, Branch 24; and

[1] *Rollo*, pp.35-43.

[2] *Id.* at 127-129.

(2) its August 9, 2006 Resolution[3] denying the Motion for Reconsideration filed by the petitioners.

THE RELEVANT ANTECEDENTS:

Wenceslao D. San Andres, Jose A. Ocampo, Crisensana M. Vargas, Honesto V. Ferrer, Jr., Alfonso N. Peralta, Otilla C. Sierra, Jovito A. delos Santos, William Tan, Felipe Sese, and Romeo E. Espera filed a Petition for Declaratory Relief and/or Injunction with prayer for Temporary Restraining Order (TRO)[4] questioning Resolution No. 2000-263,[5] Resolution No. 2000-354[6] and Ordinance No. 2000-059[7] issued by the respondents, Mayor Sulpicio S. Roco, Jr. and the members of the Sangguniang Panglungsod of Naga City. The said resolutions and ordinance read:

RESOLUTION NO. 2000-263

WHEREAS, received by the Sanggunian for appropriate action was the application of Mr. Robert L. Obiedo of ARE Square Realty Development Corporation for Preliminary Approval for Locational

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[3] *Id.* at 45-46.

[4] *Id.* at 47-58.

[5] Resolution Approving the Application of Mr. Robert L. Obiedo of ARE Square Realty Development Corporation for Preliminary Approval for Locational Clearance (PALC) for a First Class Memorial Park located at Barangay Balagtas, City of Naga; *Id.* at 60-61.

[6] Resolution Approving the Application for Development Permit (DP) of Mr. Robert L. Obiedo of the ARE Square Realty Development Corporation to develop the Eternal Gardens Memorial Park located at Barangay Balagtas, this city, subject to certain conditions, and compliance of all existing Laws, Ordinances, Rules and Regulations and further favorably **Endorsing** the same to the Housing Land Use and Regulatory Board (HLURB) for appropriate action; *Id.* at 62-63.

[7] An Ordinance Amending Ordinance No. 401, S. 1972, entitled: "An Ordinance Regulating the Establishment, Maintenance and Operation of Private Memorial Park-Type Cemetery or Burial Ground within the jurisdiction of Naga City, and Providing Penalties for Violation thereof," specifically subparagraph (2) of paragraph (c) under Section 3 and subparagraph (A) under Section 5 thereof on the Minimum Area of the Proposed Cemetery and Mayor's Permit and License Fees, respectively; *Id.* at 64-65.

Clearance (PALC) for a First Class Memorial Park located at Barangay Balatas, City of Naga;

WHEREAS, the City Planning & Development Office evaluated and reviewed the documents submitted by Mr. Robert L. Obiedo for the purpose and found that the substantial requirements have been complied with;

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BE IT RESOLVED, as it is hereby resolved, to approve the application of Mr. Robert L. Obiedo of ARE Square Realty Development Corporation for Preliminary Approval for Locational Clearance (PALC) for a First Class Memorial Park located at Barangay Balatas, City of Naga.

RESOLUTION NO. 2000-354

WHEREAS, received by the Sangguniang Panglungsod for consideration was the letter dated September 4, 2000 of Mr. Robert L. Obiedo through his official representative Mrs. Alice C. Enojado of the ARE Square Realty Development Corporation applying for a Development Permit (DP) for their proposed Eternal Gardens Memorial Park with a total area of 60, 781 sq. m. located at Barangay Balatas, this city;

WHEREAS, in the Technical Evaluation Report dated October 2, 2000, the City Planning & Development Officer manifested that after evaluation and review of the submitted documents they found that the applicant has substantially complied with the requirements;

x x x x x x x x x

BE IT RESOLVED, as it is hereby resolved, to approve the application for Development Permit (DP) of Mr. Robert L. Obiedo of the ARE Square Realty Development Corporation to develop the Eternal Gardens Memorial Park located at Barangay Balatas, this city, subject to the following conditions and compliance of all existing laws, ordinances, rules and regulations and further favorably **endorsing** the same to the Housing Land Use and Regulatory Board (HLURB) for appropriate action, to wit:

x x x x x x x x x [Emphasis supplied]

ORDINANCE NO. 2000-059

Be it ordained by the Sangguniang Panglungsod of the City of Naga, that:

SECTION 1. – Ordinance No. 401, s. 1972, entitled: "An Ordinance Regulating the Establishment, Maintenance and Operation of Private Memorial Park-Type Cemetery or Burial Ground within the Jurisdiction of Naga City, and Providing Penalties for Violation Thereof"; specifically sub-paragraph (2) of paragraph (c) under Section 3 and sub-paragraph (a) under Section 5 thereof, on the minimum area of the proposed cemetery and Mayor's Permit and License Fees, respectively, is hereby amended, now to read follows:

> 'SECTION 3. – the operation and maintenance of the private memorial park-type cemetery established pursuant to this Ordinance shall be subject to the provisions of the cemetery law and/or other pertinent laws as well as rules and regulations promulgated or as may be promulgated by the Municipal Board, subject further to the following conditions:
>
> x x x x x x x x x
>
> (c) No application for the establishment of a private cemetery shall be considered:
>
> x x x x x x x x x
>
> (2) if the proposed private cemetery site is less than five (5) hectares;
>
> x x x x x x x x x.'

Respondents filed a Motion to Dismiss[8] for lack of jurisdiction. Finding the motion to be well-taken, the RTC dismissed the petition in an order dated April 17, 2001.[9] The RTC found that the prayer of petitioners was premature as the questioned resolutions and ordinance were merely promulgated to pave the way for the endorsement of the application of the private respondent to the HLURB. It recognized that the HLURB is the entity which will decide whether the application of the private respondent will be granted or not.

Apparently not in conformity with the order of dismissal, the petitioners appealed to the Court of Appeals premised on the following errors —

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[8] *Id.* at 66-68.

[9] *Id.* at 127-129.

"THE TRIAL COURT ERRED IN HOLDING THAT HLURB HAS JURISDICTION OVER THE CASE.

THE TRIAL COURT ERRED IN NOT GRANTING APPELLANTS' PRAYER FOR TRO AND OR WRIT OF PRELIMINARY INJUNCTION."[10]

As earlier stated, the Court of Appeals affirmed *in toto* the April 17, 2001 Order of the RTC.[11] Pertinently, the Court of Appeals wrote:

"Indeed, the doctrine of administrative remedies requires that resort be first made to the administrative authorities in cases falling under their jurisdiction to allow them to carry out their functions and discharge their liabilities within the specialized areas of their competence. This is because the administrative agency concerned is in the best position to correct any previous error committed in its forum. Clearly, the filing of the petition for declaratory relief with the trial court had no basis, as there can be no issue ripe for judicial determination when the matter is within the primary jurisdiction of an administrative agency, the HLURB.

Consequently, inasmuch as the filing of the petition below was premature, appellant's application for temporary restraining order and/or writ of preliminary injunction, which is merely ancillary to the petition, has no leg to stand on."

Petitioners filed a Motion for Reconsideration but it was denied by the Court of Appeals in its August 9, 2006 Resolution.[12]

Hence, this Petition *(filed by Honesto V. Ferrer and Romeo E. Espera only)*[13] wherein the following arguments have been presented —

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[10] *Id.* at 146.

[11] *Id.* at 35-43.

[12] *Id.* at 45-46.

[13] *Id.* at 9; Appellants Wenceslao D. San Andres, Jose A. Ocampo, Cresensana M. Vargas, Alfonso N. Peralta, Otilla C. Sierra, Jovito A. Delos Santos, William Tan and Felipe Sese are not included as petitioners due to their failure to signify their interest in pursuing the case with the Supreme Court or that their present whereabouts cannot be located.

"THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE PETITION FOR DECLARATORY RELIEF FILED WITH THE TRIAL COURT AS PREMATURE AND HAVING NO BASIS, ON THE PRETEXT THAT THE ISSUE RAISED THEREIN IS NOT YET RIPE FOR ADJUDICATION.

THE COURT OF APPEALS GRAVELY ERRED IN NOT APPLYING THE EXCEPTIONS TO THE GENERAL RULE ON THE EXHAUSTION OF ADMINISTRATIVE REMEDIES BEFORE RESORT TO COURTS.

THE COURT OF APPEALS GRAVELY ERRED IN NOT RECONSIDERING ITS DECISION."[14]

On June 23, 2008, after the submission of the separate comments by the private respondent PMC[15] and the public respondents,[16] and of the reply[17] by the petitioners, the petition was given due course and the parties were directed to submit their respective memoranda.[18]

After a thorough study of the respective positions of the parties on the issue at hand, the Court has reached the conclusion that the petition lacks merit.

Declaratory relief is defined as an action by any person interested in a deed, will, contract or other written instrument, executive order or resolution, to determine any question of construction or validity arising from the instrument, executive order or regulation, or statute, and for a declaration of his rights and duties thereunder. The only issue that may be raised in such a petition is the question of construction or validity of the provisions in an instrument or statute.

It is settled that the requisites of an action for declaratory relief are: 1] the subject matter of the controversy must be a

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[14] *Id.* at 24.

[15] *Id.* at 181-195.

[16] *Id.* at 215-221.

[17] *Id.* at 227-231.

[18] *Id.* at 233.

deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance; 2] the terms of said documents and the validity thereof are doubtful and require judicial construction; 3] there must have been no breach of the documents in question; 4] there must be an actual justiciable controversy or the "ripening seeds" of one between persons whose interests are adverse; 5] **the issue must be ripe for judicial determination**; and 6] **adequate relief is not available through other means or other forms of action or proceeding**.[19] [emphasis supplied]

In this case, the issue raised by petitioners is clearly not yet ripe for judicial determination. Nowhere in the assailed resolutions and ordinance does it show that the public respondents acted on private respondent's application *with finality*. What appears therefrom is that the application of private respondent for development permit has been endorsed to the Housing and Land Use Regulatory Board (HLURB) for appropriate action, the latter being the sole regulatory body for housing and land development.

Under the doctrine of primary administrative jurisdiction, courts cannot or will not determine a controversy where the issues for resolution demand the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact. In other words, if a case is such that its determination requires the expertise, specialized training and knowledge of an administrative body, relief must first be obtained in an administrative proceeding before resort to the courts is had even if the matter may well be within their proper jurisdiction.[20]

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[19] *Almeda v. Bathala Marketing Industries, Inc.*, G.R. No. 150806, January 28, 2008, 542 SCRA 470.

[20] *Euro-Med Laboratories, Phil., Inc. v. The Province of Batangas*, G.R. No. 148106, July 17, 2006, 495 SCRA 301.

WHEREFORE, the April 21, 2006 Decision of the Court of Appeals and its August 9, 2006 Resolution are hereby *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Nachura, Leonardo-de Castro,[*] and *Abad, JJ.,* concur.

THIRD DIVISION

[G.R. No. 175023. July 5, 2010]

GIOVANI SERRANO *y* CERVANTES, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; QUESTIONS OF FACT CANNOT BE ENTERTAINED SAVE FOR EXCEPTIONAL REASONS THAT MUST BE CLEARLY AND CONVINCINGLY SHOWN.—** We clarify that we shall no longer deal with the correctness of the RTC and the CA's appreciation of the victim's identification of the petitioner as his assailant. This is a question of fact that we cannot entertain in a Rule 45 review, save for exceptional reasons that must be clearly and convincingly shown. As a rule, we accord the greatest respect for the findings of the lower courts, especially the evaluation by the trial judge who had the distinct opportunity to directly hear and observe the witnesses and their testimonies.

2. **ID.; CRIMINAL PROCEDURE; IDENTIFICATION OF THE ACCUSED; POSITIVE IDENTIFICATION OF ACCUSED ARE SUPPORTED BY AMPLE EVIDENCE.—** The RTC's

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[*] Designated as additional member in lieu of Justice Diosdado M. Peralta per raffle dated June 22, 2009.

and CA's conclusions on the petitioner's positive identification are supported by ample evidence. We consider in this regard the following pieces of evidence of the prosecution: (1) the manner of attack which was done frontally and at close range, thus allowing the victim to see his assailant; (2) the lighting conditions at the scene of the stabbing, provided by two Meralco posts; the scene was also illuminated by "*white, fluorescent type*" light coming from a steel manufacturing shop; and (3) that the victim and the petitioner knew each other also allowed the victim to readily identify the petitioner as his assailant.

3. **ID.; EVIDENCE; CREDIBILITY OF WITNESSES; CREDIBILITY OF VICTIM BOLSTERED THE IDENTIFICATION OF THE ACCUSED.—** The victim's credibility is further strengthened by his lack of improper motive to falsely accuse the petitioner of the crime. Human experience tells us that it is unnatural for a victim to accuse someone other than his actual attacker; in the normal course of things, the victim would have the earnest desire to bring the guilty person to justice, and no other. We consider, too, that the victim consistently and positively, in and out of court, identified the petitioner as his assailant. The victim testified that the petitioner was a neighbor who lived just a few houses away from his house. We also take into account the evidence that the petitioner was the only one seen in possession of a knife during the rumble. The victim testified that he saw the petitioner holding a knife which he used to chase away others. Prosecution witness Arceo testified that he also saw the petitioner wielding a knife during the rumble. Based on these considerations, we find the victim's identification of the petitioner as his assailant to be positive and conclusive. In contrast, we find the inconsistencies attributed to the victim to be minor and insufficient to discredit his testimony. These inconsistencies refer to extraneous matters that happened during the rumble, not directly bearing on the stabbing. They do not likewise relate to the material elements of the crime. We also cannot give any credit to the petitioner's position that the victim's failure to identify the weapon used to stab him discredited his testimony. The victim's failure to identify the weapon is irrelevant under the circumstances, considering that the identity of the weapon is not an element of the crime charged.

4. **ID.; ID.; ID.; FACTORS TO DETERMINE THE PRESENCE OF AN INTENT TO KILL.—** Intent to kill is a state of mind that the courts can discern only through external manifestations, *i.e.*, acts and conduct of the accused at the time of the assault and immediately thereafter. In *Rivera v. People*, we considered the following factors to determine the presence of an intent to kill: (1) the means used by the malefactors; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactors before, at the time, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed and the motives of the accused. We also consider motive and the words uttered by the offender at the time he inflicted injuries on the victim as additional determinative factors.

5. **ID.; ID.; ID.; THE STABBING, BEATING AND STONING OF THE VICTIM CLEARLY SHOWS THE INTENT TO KILL.—** In this case, the records show that the petitioner used a knife in his assault. The petitioner stabbed the victim in the abdomen while the latter was held by Gener and Orieta. Immediately after the stabbing, the petitioner, Gener and Orieta beat and stoned the victim until he fell into a creek. It was only then that the petitioner, Gener and Orieta left. We consider in this regard that the stabbing occurred at around 9:30 p.m. with only the petitioner, Gener, Orieta, and the victim as the only persons left in the area. The CA aptly observed that a reasonable inference can be made that the victim was left for dead when he fell into the creek. Under these circumstances, we are convinced that the petitioner, in stabbing, beating and stoning the victim, intended to kill him. Thus, the crime committed cannot be merely serious physical injuries.

6. **ID.; ID.; ID.; FRUSTRATED HOMICIDE DISTINGUISHED FROM ATTEMPTED HOMICIDE; THE CRUCIAL POINT TO CONSIDER IS THE NATURE OF THE WOUND INFLICTED WHICH MUST BE SUPPORTED BY INDEPENDENT PROOF SHOWING THAT THE WOUND INFLICTED WAS SUFFICIENT TO CAUSE THE VICTIM'S DEATH WITHOUT TIMELY MEDICAL INTERVENTION.— The crucial point to consider is the nature of the wound inflicted which must be supported by independent proof showing that the wound inflicted was**

sufficient to cause the victim's death without timely medical intervention. In discussing the importance of ascertaining the degree of injury sustained by a victim and its importance in determining criminal liability, the Court in *People v. Matyaong*, said: In considering the extent of injury done, account must be taken of the injury to the function of the various organs, and also the danger to life. A division into mortal and nonmortal wounds, if it could be made, would be very desirable; but the unexpected complications and the various extraneous causes which give gravity to the simplest cases, and, on the other hand, the favorable termination of some injuries apparently the most dangerous, render any such classification impracticable. The general classification into slight, severe, dangerous, and mortal wounds may be used, but the possibility of the slight wound terminating with the loss of the person's life, and the apparently mortal ending with only a slight impairment of some function, must always be kept in mind. x x x The danger to life of any wound is dependent upon a number of factors: the extent of the injury, the form of the wound, the region of the body affected, the blood vessels, nerves, or organs involved, the entrance of disease-producing bacteria or other organisms into the wound, the age and constitution of the person injured, and the opportunities for administering proper surgical treatment. When nothing in the evidence shows that the wound would be fatal without medical intervention, the character of the wound enters the realm of doubt; under this situation, the doubt created by the lack of evidence should be resolved in favor of the petitioner. Thus, the crime committed should be attempted, not frustrated, homicide.

7. **ID.; ID.; ID.; ALTHOUGH THE STAB WOUND COULD HAVE BEEN FATAL SINCE THE VICTIM TESTIFIED THAT HE SAW HIS INTESTINES OUT, THE SAME CANNOT BE CONSIDERED SINCE NO EVIDENCE WAS PRESENTED TO PROVE THAT THE GRAVITY OF THE WOUND WAS SUFFICIENT TO CAUSE DEATH.—** From all accounts, although the stab wound could have been fatal since the victim testified that he saw his intestines showed, no exact evidence exists to prove the gravity of the wound; hence, we cannot consider the stab wound as sufficient to cause death. As correctly observed by the CA, the victim's attending physician did not testify on the gravity of the wound inflicted on the

victim. We consider, too, the CA's observation that the medical certifications issued by the East Avenue Medical Center merely stated the location of the wound. There was also no proof that without timely medical intervention, the victim would have died. This paucity of proof must necessarily favor the petitioner. The view from the "frustrated" stage of the crime gives the same results. The elements of frustrated homicide are: (1) the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault; **(2) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance**; and (3) none of the qualifying circumstance for murder under Article 248 of the Revised Penal Code, as amended, is present. Since the prosecution failed to prove the second element, we cannot hold the petitioner liable for frustrated homicide.

8. ID.; CIVIL LIABILITY; AMOUNT OF ₱3,858.50 AS ACTUAL DAMAGES ORDERED BY THE COURT OF APPEALS TO BE PAID THE VICTIM IS ERRONEOUS AND CONTRARY TO PREVAILING JURISPRUDENCE.— We modify the CA decision with respect to the petitioner's civil liability. The CA ordered actual damages to be paid in the amount of ₱3,858.50. This is erroneous and contrary to the prevailing jurisprudence. In *People v. Andres*, we held that if the actual damages, proven by receipts during the trial, amount to less than ₱25,000.00, the victim shall be entitled to temperate damages in the amount of ₱25,000.00, in lieu of actual damages. The award of temperate damages is based on Article 2224 of the New Civil Code which states that temperate or moderate damages may be recovered when the court finds that some pecuniary loss was suffered but its amount cannot be proven with certainty. In this case, the victim is entitled to the award of ₱25,000.00 as temperate damages considering that the amount of actual damages is only ₱3,858.50. The amount of actual damages shall be deleted. Lastly, we find that the victim is also entitled to moral damages in the amount of ₱10,000.00 in accordance with settled jurisprudence. Under Article 2219, paragraph 1 of the New Civil Code, the victim is entitled to moral damages in a criminal offense resulting in physical injuries.

APPEARANCES OF COUNSEL

Theodore O. Te for petitioner.
The Solicitor General for respondent.

DECISION

BRION, *J*.:

We review in this petition for review on *certiorari*[1] the decision[2] dated July 20, 2006 of the Court of Appeals (*CA*) in CA-G.R. CR No. 29090, entitled "*People of the Philippines v. Giovani Serrano y Cervantes*." The CA modified the decision dated October 25, 2004[3] of the Regional Trial Court[4] (*RTC*), Branch 83, Quezon City, and found petitioner Giovani Serrano *y* Cervantes (*petitioner*) guilty beyond reasonable doubt of attempted homicide, instead of frustrated homicide.

THE FACTS

The case stemmed from a brawl involving 15 to 18 members of two (2) rival groups that occurred at the University of the Philippines, Diliman, Quezon City (*UP*) on the evening of March 8, 1999. The incident resulted in the stabbing of Anthony Galang (*victim*). Pinpointed as the victim's assailant, the petitioner was charged on March 11, 1999,[5] with frustrated homicide in an Information that reads:

> That on or about the 8th day of March 1999, in Quezon City, Philippines, the said accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one ANTHONY GALANG *Y* LAGUNSAD, by then and there stabbing him on the stomach with a bladed weapon, thus performing all the acts of execution which should have produced the crime of homicide, as a consequence but which nevertheless did not produce it, by reason of some causes

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

[2] *Rollo*, pp. 27-42. Penned by CA Associate Justice Rebecca de Guia-Salvador, with Presiding CA Justice (now retired Supreme Court Associate Justice) Ruben T. Reyes and CA Associate Justice (now retired) Monina Arevalo-Zeñarosa concurring.

[3] Criminal Case No. Q-99-81784; *id.* at 46-73.

[4] Penned by Judge Estrella T. Estrada.

[5] *Rollo*, p. 46.

independent of the will of the accused; that is the timely and able medical assistance rendered to said ANTHONY GALANG *Y* LAGUNSAD which prevented his death, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.[6]

On March 20, 2000, the petitioner pleaded not guilty. During the pre-trial, the prosecution and the defense agreed to dispense with the testimonies of SPO2 Isagani dela Paz and the records custodian of East Avenue Medical Center on the basis of the following stipulations: (1) SPO2 dela Paz was the one who conducted the investigation; (2) SPO2 dela Paz took the statement of the victim at the East Avenue Medical Center; (3) the victim was able to narrate the story of the incident to SPO2 dela Paz before he underwent surgery; (4) SPO2 dela Paz prepared a referral-letter to the city prosecutor; (5) SPO2 dela Paz had no personal knowledge of the incident; and (6) the victim was confined for treatment at the East Avenue Medical Center from March 8, 1999, and the documents referring to his confinement and treatment were duly executed and authenticated.[7] After these stipulations, trial on the merits immediately followed.

The Prosecution's Evidence

The prosecution presented the victim, Arlo Angelo Arceo, Sgt. Rolando Zoleto, and SPO2 Roderick Dalit.

These witnesses testified that, at around 9:30 p.m. of March 8, 1999, the victim and his two friends, Arceo and Richard Tan, were on their way to Fatima II in Pook Dagohoy, UP Campus when they came across Gener Serrano, the petitioner's brother, who was with his group of friends. The victim, Arceo and Tan approached Gener and his friends to settle a previous quarrel between Gener and Roberto Comia. While the victim and Gener were talking, Comia suddenly appeared and hurled invectives at Gener. Irked, Gener challenged Comia to a fistfight to settle their quarrel once and for all; Comia rose to the challenge.

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[6] *Ibid.*

[7] *Id.* at 47.

It was at this point that the petitioner appeared with other members of his group. He was a guest at a party nearby, and was informed that a fight was about to take place between his brother and Comia. Members of the victim's group also started to show up.

The petitioner watched Gener fight Comia. When Gener lost the fight, the petitioner sought to get back at the victim and his friends. Thus, the one-on-one escalated into a rumble between the members of the two groups. During the rumble, and with the aid of the light emanating from two Meralco posts, the victim and Arceo saw that the petitioner had a knife and used it to chase away the members of their group. The petitioner also chased Arceo away, leaving the victim alone; the petitioner's group ganged up on him.

The petitioner went to where the victim was being beaten by Gener and one Obet Orieta. It was then that the victim was stabbed. The petitioner stabbed the left side of his stomach while he was standing, with Gener and Orieta holding his arms. The petitioner, Gener and Orieta thereafter continued to beat and stone the victim until he fell into a nearby creek. The petitioner and his group left him there.

From his fallen position, the victim inspected his stab wound and saw that a portion of his intestines showed. On foot, he went to find help. The victim was initially taken to the UP Infirmary, but was referred to the East Avenue Medical Center where he underwent surgery. The victim stayed at the hospital for a week, and thereafter stayed home for one month to recuperate.

In the investigation that immediately followed, the victim identified the petitioner as the person who stabbed him. In court, the victim likewise positively identified the petitioner as his assailant.

The Defense's Evidence

The defense presented the testimonies of the petitioner, Gener, and George Hipolito.

The petitioner denied that he stabbed the victim. While he admitted that he was present during the fistfight between Gener and Comia, he claimed that he and Gener left as soon as the rumble started. The petitioner testified that as he and Gener were running away from the scene (to get back to the party), bottles and stones were being thrown at them.

Hipolito, a participant in the rumble and a member of the petitioner's group, narrated that the rumble happened fast and he was too busy defending himself to take note of everything that happened. He testified that he did not see the petitioner and Gener during the fight. He also testified that the place where the rumble took place was near a steel manufacturing shop which provided some light to the area. He further testified that the victim was left alone at the scene and he alone faced the rival group.

THE RTC RULING

After considering the evidence, the trial court found the petitioner guilty beyond reasonable doubt of frustrated homicide. It held, thus:

> The bare statement of Giovani Serrano that he did not stab Anthony and he really does not know who might have stabbed Anthony is outweighed by the positive identification by Anthony that Giovani stabbed him frontally while they faced each other and also the circumstantial evidence pointing to him as the wielder of the knife. Naturally, Giovani Serrano would feign ignorance as to who stabbed Anthony but there is no way that he can avoid said direct and circumstantial evidences.[8]

Accordingly, the RTC decision disposed:

> WHEREFORE, the prosecution having established the guilt of accused GIOVANI SERRANO *Y* CERVANTES of the offense of FRUSTRATED HOMICIDE beyond reasonable doubt, this Court finds him GUILTY thereof and hereby sentences him to undergo imprisonment of FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of *prision correccional* as minimum to TEN (10) YEARS of *prision mayor* as maximum.

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[8] *Id.* at 72.

Accused Giovani Serrano is hereby ordered to reimburse to complainant Anthony Galang the medical expenses incurred by the latter in his hospitalization and treatment of his injuries in the amount of FIFTEEN THOUSAND PESOS (₱15,000.00) and loss of income for one (1) month in the amount of FOUR THOUSAND PESOS (₱4,000.00) or the total amount of NINETEEN THOUSAND PESOS (₱19,000.00).

Costs against the accused.

SO ORDERED.[9]

The petitioner appealed to the CA. He claimed that the inconsistencies in the victim's testimony rendered it incredible, but the RTC disregarded the claim. The RTC also disregarded the evidence that the dimness of the light in the crime scene made it impossible for the victim to identify his assailant.

THE CA RULING

In its decision, the CA agreed with the RTC that the petitioner had been positively identified as the victim's assailant. The CA, however, ruled that the crime committed was attempted homicide, not frustrated homicide. The CA ruled that the prosecution evidence failed to conclusively show that the victim's single stab wound was sufficient to cause death without timely medical intervention. In support of its conclusion, the CA said that:

Thus, in ***Paddayuman v. People*** (G.R. No. 120344, 23 January 2002), appellant's conviction for attempted homicide was upheld because there was **no evidence that the wounds suffered by the victim were fatal enough as to cause her demise.** Thus:

> x x x petitioner stabbed the victim twice on the chest, which is indicative of an intent to kill. x x x This can be gleaned from the testimony of Dr. Pintucan who did not categorically state whether or not the wounds were fatal. x x x (I)n *People v. Pilones*, this Court held that even if the victim was wounded but the injury was not fatal and could not cause his death, the crime would only be attempted.

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[9] *Id.* at 73.

Similarly, in the case of ***People v. Costales*** (G.R. No. 141154, 15 January 2002), where the offense charged was frustrated murder, the trial court rendered a verdict of guilty for **attempted** murder because the prosecution failed to present a medical certificate or competent testimonial evidence which will prove that the victim would have died from her wound without medical intervention. Citing ***People v. De La Cruz*,** the Supreme Court sustained the trial court and stressed that:

> x x x the crime committed for the shooting of the victim was **attempted** murder and **not frustrated** murder **for the reason that "his injuries, <u>though no doubt serious,</u> <u>were not proved fatal</u>** such that without timely medical intervention, they would have caused his death.[10]

Thus, the CA modified the RTC decision. The dispositive portion of the CA decision reads:

> WHEREFORE, with the MODIFICATIONS that:
>
> 1) Appellant is found **<u>GUILTY</u>** beyond reasonable doubt of the crime of **<u>ATTEMPTED HOMICIDE</u>** and sentenced to suffer the indeterminate penalty of imprisonment of **<u>SIX</u>** (6) **<u>MONTHS</u>** of *arresto mayor* as minimum to **<u>FOUR</u>** (4) **<u>YEARS</u>** and **<u>TWO</u>** (2) **<u>MONTHS</u>** of *prision correccional*, as maximum;
>
> 2) The actual damages is **<u>REDUCED</u>** to ₱3,858.50; and
>
> 3) The award of loss earnings is **<u>DELETED,</u>**
>
> The appealed decision is **<u>AFFIRMED</u>** in all other respects.
>
> SO ORDERED.[11]

Undaunted, the petitioner filed this present petition.

<u>THE ISSUES</u>

The petitioner raises the following issues for the Court's consideration:

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[10] *Id.* at 37-38.

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

A

THE COURT OF APPEALS ERRED IN GIVING FULL FAITH AND CREDENCE TO THE INCREDIBLE AND INCONSISTENT TESTIMONY OF THE PRIVATE COMPLAINANT.

B

THE COURT OF APPEALS ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF THE WITNESSES FOR THE PROSECUTION, WHICH WERE BASED ON MERE SPECULATION AND CONJECTURE.

C

THE COURT OF APPEALS GRAVELY ERRED IN OVERLOOKING THE FACT THAT THE STABBING INCIDENT OCCURRED IN THE MIDDLE OF A STREET BRAWL, WHERE ANYBODY OF THE NUMEROUS PARTICIPANTS COULD HAVE BEEN THE ASSAILANT.

D

THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE GUILT OF THE ACCUSED-APPELLANT WAS PROVEN BEYOND REASONABLE DOUBT.[12]

The petitioner claims that the lower courts' decisions were erroneous based on two-pronged arguments – *first*, he cannot be convicted because he was not positively identified by a credible testimony; and *second*, if he is criminally culpable, he can only be convicted of serious physical injuries as the intent to kill the victim was not sufficiently proven.

THE COURT RULING

We do not find merit in the petitioner's arguments, and accordingly hold that the petition is devoid of merit.

At the outset, we clarify that we shall no longer deal with the correctness of the RTC and the CA's appreciation of the victim's identification of the petitioner as his assailant. This is a question of fact that we cannot entertain in a Rule 45 review, save for

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

exceptional reasons[13] that must be clearly and convincingly shown. As a rule, we accord the greatest respect for the findings of the lower courts, especially the evaluation by the trial judge who had the distinct opportunity to directly hear and observe the witnesses and their testimonies. As we explained in *People v. Lucena*[14] –

> [It] has been consistently held by this Court that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge, who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various *indicia* available but not reflected in the record. The demeanor of the person on the stand can draw the line between fact and fancy. The forthright answer or the hesitant pause, the quivering voice or the angry tone, the flustered look or the sincere gaze, the modest blush or the guilty blanch – these can reveal if the witness is telling the truth or lying through his teeth.[15]

In this regard, the petitioner cites an exception – the lower courts' misappreciation of the testimonial evidence. Due consideration of the records, however, does not support the petitioner's position. We find that the RTC and the CA did not err in their appreciation of the evidence.

The petitioner was positively identified

The RTC's and CA's conclusions on the petitioner's positive identification are supported by ample evidence. We consider in

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[13] They are: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to the findings of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and, (11) such findings are contrary to the admissions of both parties; *Pelonia v. People*, G.R. No. 168997, April 13, 2007, 521 SCRA 207.

[14] 408 Phil. 172, 183 (2001).

[15] *Id.* at 183.

this regard the following pieces of evidence of the prosecution: (1) the manner of attack which was done frontally and at close range, thus allowing the victim to see his assailant; (2) the lighting conditions at the scene of the stabbing, provided by two Meralco posts;[16] the scene was also illuminated by "*white, fluorescent type*" light coming from a steel manufacturing shop;[17] and (3) that the victim and the petitioner knew each other also allowed the victim to readily identify the petitioner as his assailant.

The victim's credibility is further strengthened by his lack of improper motive to falsely accuse the petitioner of the crime. Human experience tells us that it is unnatural for a victim to accuse someone other than his actual attacker; in the normal course of things, the victim would have the earnest desire to bring the guilty person to justice, and no other. We consider, too, that the victim consistently and positively, in and out of court, identified the petitioner as his assailant. The victim testified that the petitioner was a neighbor who lived just a few houses away from his house.

We also take into account the evidence that the petitioner was the only one seen in possession of a knife during the rumble. The victim testified that he saw the petitioner holding a knife which he used to chase away others.[18] Prosecution witness Arceo testified that he also saw the petitioner wielding a knife during the rumble.

Based on these considerations, we find the victim's identification of the petitioner as his assailant to be positive and conclusive.

In contrast, we find the inconsistencies attributed to the victim to be minor and insufficient to discredit his testimony. These inconsistencies refer to extraneous matters that happened during the rumble, not directly bearing on the stabbing. They do not likewise relate to the material elements of the crime.

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[16] *Rollo*, p. 33.

[17] *Id.* at 34.

[18] *Id.* at 48.

We also cannot give any credit to the petitioner's position that the victim's failure to identify the weapon used to stab him discredited his testimony. The victim's failure to identify the weapon is irrelevant under the circumstances, considering that the identity of the weapon is not an element of the crime charged.

The intent to kill was sufficiently established

The petitioner posits that he can only be held liable for serious physical injuries since the intent to kill, the necessary element to characterize the crime as homicide, was not sufficiently proven. The assailant's intent to kill is the main element that distinguishes the crime of physical injuries from the crime of homicide. The crime can only be homicide if the intent to kill is proven.

Intent to kill is a state of mind that the courts can discern only through external manifestations, *i.e.*, acts and conduct of the accused at the time of the assault and immediately thereafter. In *Rivera v. People*,[19] we considered the following factors to determine the presence of an intent to kill: (1) the means used by the malefactors; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactors before, at the time, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed and the motives of the accused. We also consider motive and the words uttered by the offender at the time he inflicted injuries on the victim as additional determinative factors.[20]

In this case, the records show that the petitioner used a knife in his assault. The petitioner stabbed the victim in the abdomen while the latter was held by Gener and Orieta. Immediately after the stabbing, the petitioner, Gener and Orieta beat and stoned the victim until he fell into a creek. It was only then that the petitioner, Gener and Orieta left. We consider in this regard that the stabbing occurred at around 9:30 p.m. with only the petitioner, Gener, Orieta, and the victim as the only persons left

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[19] G.R. No. 166326, January 25, 2006, 480 SCRA 188, 197, citing *People v. Delim*, 444 Phil. 430, 450 (2003).

[20] *Epifanio v. People*, G.R. No. 157057, June 26, 2007, 525 SCRA 552, 562.

in the area. The CA aptly observed that a reasonable inference can be made that the victim was left for dead when he fell into the creek.

Under these circumstances, we are convinced that the petitioner, in stabbing, beating and stoning the victim, intended to kill him. Thus, the crime committed cannot be merely serious physical injuries.

Frustrated homicide versus attempted homicide

Since the victim did not die, the issue posed to us is the stage of execution of the crime. The lower courts differed in their legal conclusions.

On one hand, the RTC held that the crime committed reached the frustrated stage since the victim was stabbed on the left side of his stomach and beaten until he fell into a creek.[21] The RTC also took into account that the victim had to be referred by the UP Infirmary to the East Avenue Medical Center for medical treatment.[22]

On the other hand, the CA ruled that the crime committed only reached the attempted stage as there was lack of evidence that the stab wound inflicted was fatal to cause the victim's death.[23] The CA observed that the attending physician did not testify in court.[24] The CA also considered that the Medical Certificate and the Discharge Summary issued by the East Avenue Medical Center fell short of "specifying the nature or gravity of the wound."[25]

Article 6 of the Revised Penal Code, as amended defines the stages of a felony in the following manner:

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[21] *Rollo*, p. 68.

[22] *Id.* at 69.

[23] *Id.* at 32.

[24] *Ibid.*

[25] *Ibid.*

ART. 6. *Consummated, **frustrated**, and **attempted** felonies.* — Consummated felonies, as well as those which are frustrated and attempted, are punishable.

A felony is consummated when all the elements necessary for its execution and accomplishment are present; and it is ***frustrated*** when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.

There is an ***attempt*** when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance. [Emphasis and italics supplied.]

In *Palaganas v. People*,[26] we made the following distinctions between frustrated and attempted felony as follows:

1.) In frustrated felony, the offender has performed all the acts of execution which should produce the felony as a consequence; whereas in attempted felony, the offender merely commences the commission of a felony directly by overt acts and does not perform all the acts of execution.

2.) In frustrated felony, the reason for the non-accomplishment of the crime is some cause independent of the will of the perpetrator; on the other hand, in attempted felony, the reason for the non-fulfillment of the crime is a cause or accident other than the offender's own spontaneous desistance.[27]

The crucial point to consider is the nature of the wound inflicted which must be supported by independent proof showing that the wound inflicted was sufficient to cause the victim's death without timely medical intervention.

In discussing the importance of ascertaining the degree of injury sustained by a victim and its importance in determining criminal liability, the Court in *People v. Matyaong*, said:[28]

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[26] G.R. No. 165483, September 12, 2006, 501 SCRA 533.

[27] *Id.* at 535.

[28] 411 Phil. 938, 948 (2001), cited in *Epifanio v. People*, *supra* note 21, at 563.

In considering the extent of injury done, account must be taken of the injury to the function of the various organs, and also the danger to life. A division into mortal and nonmortal wounds, if it could be made, would be very desirable; but the unexpected complications and the various extraneous causes which give gravity to the simplest cases, and, on the other hand, the favorable termination of some injuries apparently the most dangerous, render any such classification impracticable. The general classification into slight, severe, dangerous, and mortal wounds may be used, but the possibility of the slight wound terminating with the loss of the person's life, and the apparently mortal ending with only a slight impairment of some function, must always be kept in mind. x x x

The danger to life of any wound is dependent upon a number of factors: the extent of the injury, the form of the wound, the region of the body affected, the blood vessels, nerves, or organs involved, the entrance of disease-producing bacteria or other organisms into the wound, the age and constitution of the person injured, and the opportunities for administering proper surgical treatment.

When nothing in the evidence shows that the wound would be fatal without medical intervention, the character of the wound enters the realm of doubt; under this situation, the doubt created by the lack of evidence should be resolved in favor of the petitioner. Thus, the crime committed should be attempted, not frustrated, homicide.[29]

Under these standards, we agree with the CA's conclusion. From all accounts, although the stab wound could have been fatal since the victim testified that he saw his intestines showed, no exact evidence exists to prove the gravity of the wound; hence, we cannot consider the stab wound as sufficient to cause death. As correctly observed by the CA, the victim's attending physician did not testify on the gravity of the wound inflicted on the victim. We consider, too, the CA's observation that the medical certifications issued by the East Avenue Medical Center merely stated the location of the wound.[30] There was also no

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[29] *Epifanio v. People*, *supra* note 21, at 563-564; also see *Paddayuman v. People*, G.R. No. 120344, January 23, 2002, 374 SCRA 278, 288.

[30] *Rollo*, p. 40.

proof that without timely medical intervention, the victim would have died.[31] This paucity of proof must necessarily favor the petitioner.

The view from the "frustrated" stage of the crime gives the same results. The elements of frustrated homicide are: (1) the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault; **(2) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance**; and (3) none of the qualifying circumstance for murder under Article 248 of the Revised Penal Code, as amended, is present.[32] Since the prosecution failed to prove the second element, we cannot hold the petitioner liable for frustrated homicide.

THE PENALTY

Article 51 of the Revised Penal Code, as amended, provides that the imposable penalty for an attempted crime shall be lower by two degrees than that prescribed by law for the consummated felony.

Under Article 249, the crime of homicide is punished by *reclusion temporal*. Applying Article 61 (*Rules of graduating penalties*) and Article 71 (*Graduated scales*), two (2) degrees lower of *reclusion temporal* is *prision correccional* which has a duration of six (6) months and one (1) day to six (6) years.

Under the Indeterminate Sentence Law, the *maximum term* of the indeterminate sentence shall be taken, in view of the attending circumstances that could be properly imposed under the rules of the Revised Penal Code, and the *minimum term* shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code.[33] Thus, the maximum term of the indeterminate sentence shall be taken within the range of *prision correccional*, depending on the modifying circumstances. In turn, the minimum term of the indeterminate penalty to be imposed

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[31] *Ingles v. CA*, G.R. No. 117161, March 3, 1997, 269 SCRA 122, 130.

[32] *Mahawan v. People*, G.R. No. 176609, December 18, 2008, 574 SCRA 737, 758.

[33] Section 1.

shall be taken from the penalty one degree lower of *prision correccional*, that is *arresto mayor* with a duration of one (1) month and one (1) day to six (6) months.

In the absence of any modifying circumstance, the maximum term of the indeterminate penalty shall be taken from the medium period of *prision correccional* or two (2) years and four (4) months and one (1) day to four (4) years and two (2) months.[34] The minimum term shall be taken within the range of *arresto mayor*. Hence, the penalty imposed by the CA against the petitioner of six (6) months of *arresto mayor*, as minimum term of the indeterminate penalty, to four (4) years and two (2) months of *prision correccional*, as maximum term of the indeterminate penalty, is correct.

THE CIVIL LIABILITY

We modify the CA decision with respect to the petitioner's civil liability. The CA ordered actual damages to be paid in the amount of ₱3,858.50. This is erroneous and contrary to the prevailing jurisprudence.

In *People v. Andres*,[35] we held that if the actual damages, proven by receipts during the trial, amount to less than ₱25,000.00, the victim shall be entitled to temperate damages in the amount of ₱25,000.00, in lieu of actual damages. The award of temperate damages is based on Article 2224 of the New Civil Code which states that temperate or moderate damages may be recovered when the court finds that some pecuniary loss was suffered but its amount cannot be proven with certainty. In this case, the victim is entitled to the award of ₱25,000.00 as temperate damages considering that the amount of actual damages is only ₱3,858.50. The amount of actual damages shall be deleted.

Lastly, we find that the victim is also entitled to moral damages in the amount of ₱10,000.00 in accordance with settled jurisprudence.[36] Under Article 2219, paragraph 1 of the New Civil

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[34] Applying Article 64 of the Revised Penal Code, as amended.

[35] G.R. Nos. 135697-98, August 15, 2003, 409 SCRA 141, 152.

[36] *People v. Flores*, G.R. Nos. 143435-36, November 28, 2003, 416 SCRA 612.

Code, the victim is entitled to moral damages in a criminal offense resulting in physical injuries.

WHEREFORE, we hereby *DENY* the petition. The decision, dated July 20, 2006, of the Court of Appeals in CA-G.R. CR No. 29090, finding petitioner Giovani Serrano *y* Cervantes guilty beyond reasonable doubt of Attempted Homicide, is *AFFIRMED* with *MODIFICATION*. The petitioner is *ORDERED* to *PAY* the victim, Anthony Galang, the following amounts:

(1) ₱25,000.00 as temperate damages; and

(2) ₱10,000.00 as moral damages.

Costs against the petitioner.

SO ORDERED.

Carpio Morales (Chairperson), Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 175700. July 5, 2010]

SALVADOR V. REBELLION, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; ANY OBJECTION INVOLVING A WARRANT OF ARREST MUST BE MADE BEFORE THE ACCUSED ENTERS HIS

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[*] Designated as additional Member of the Third Division, in view of the retirement of former Chief Justice Reynato S. Puno, per Special Order No. 843 dated May 17, 2010.

PLEA, OTHERWISE, THE OBJECTION IS DEEMED WAIVED.— Petitioner's claim that his warrantless arrest is illegal lacks merit. We note that nowhere in the records did we find any objection interposed by petitioner to the irregularity of his arrest prior to his arraignment. It has been consistently ruled that an accused is estopped from assailing any irregularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before arraignment. Any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived. In this case, petitioner was duly arraigned, entered a negative plea and actively participated during the trial. Thus, he is deemed to have waived any perceived defect in his arrest and effectively submitted himself to the jurisdiction of the court trying his case. At any rate, the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error. It will not even negate the validity of the conviction of the accused.

2. **ID.; ID.; ID.; WARRANTLESS ARREST; PETITIONER'S ARREST WAS IN *FLAGRANTE DELICTO*.—** Our own review discloses sufficient evidence that the warrantless arrest of petitioner was effected under Section 5(a), or the arrest of a suspect in *flagrante delicto*. The MAC team witnessed petitioner handing a piece of plastic sachet to Clarito. Arousing their suspicion that the sachet contains *shabu*, team members PO3 Garcia and PO3 Sotomayor alighted from their motorcycles and approached them. Clarito was not able to completely get hold of the plastic sachet because of their arrival. At the first opportunity, the team members introduced themselves. Upon inquiry by PO3 Garcia what petitioner was holding, the latter presented three strips of aluminum foil which the former confiscated. At a distance, PO3 Sotomayor saw petitioner in possession of the plastic sachet which contains white crystalline substance. There and then, petitioner and Clarito were apprehended and brought to the CID for investigation. After laboratory examination, the white crystalline substance placed inside the plastic sachet was found positive for methamphetamine hydrochloride or *shabu*, a regulated drug. Under these circumstances, we entertain no doubt that

petitioner was arrested in *flagrante delicto* as he was then committing a crime, violation of the Dangerous Drugs Act, within the view of the arresting team. Thus, his case comes under the exception to the rule requiring a warrant before effecting an arrest. Consequently, the results of the attendant search and seizure were admissible in evidence to prove his guilt of the offense charged.

3. **ID.; EVIDENCE; DEFENSES OF ALIBI AND DENIAL; CANNOT PREVAIL OVER POSITIVE AND CATEGORICAL IDENTIFICATION OF CREDIBLE WITNESSES.—** Petitioner's version, on the other hand, cannot stand against the positive evidence of the prosecution. It strains our credulity to believe his version that at the time of his arrest, he was merely standing in front of the store waiting for the change of his ₱500.00 bill and that the small plastic sachet was in fact recovered from another male individual standing in front of him. Petitioner is thus suggesting that he was arrested for no cause at all. We are not swayed by his account. His version of the incident is simply incredible. Moreover, he was positively, categorically and consistently identified by the prosecution witnesses who were shown to have no ill motive on their part in testifying against him. Consequently, their testimonies should prevail over the alibi and denial of petitioner whose testimony is not substantiated by clear and convincing evidence.

4. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; ESTABLISHED IN CASE AT BAR.—** The essential elements in illegal possession of dangerous drugs are (1) the accused is in possession of an item or object that is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possess the said drug. All these elements are obtaining and duly established in this case.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

The threshold issue confronting us is whether the facts presented in this case make out a legitimate instance of a warrantless arrest, *i.e.* under circumstances sufficient to engender a reasonable belief that some crime was being or about to be committed or had just been committed.

This petition for review assails the September 26, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 29248 which affirmed with modification the December 8, 2004 Decision[2] of the Regional Trial Court (RTC) of Mandaluyong City, Branch 209, finding petitioner guilty of violation of Section 16, Article III of Republic Act (RA) No. 6425, as amended (otherwise known as the Dangerous Drugs Act of 1972, as amended).

Factual Antecedents

On July 31, 2000, an Information was filed charging petitioner Salvador V. Rebellion with violation of Section 16, Article III of RA 6425, as amended, the accusatory portion thereof reads:

> That on or about the 27th day of July 2000, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, not having been lawfully authorized to possess or otherwise use any regulated drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control one (1) heat-sealed transparent plastic sachet containing 0.03 gram of white crystalline substance and one (1) piece of aluminum foil strip with trace of white crystalline substance, which were found positive [for] Methamphetamine Hydrochloride, commonly known as "*shabu*,"

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[1] CA *rollo*, pp. 110-119; penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Bienvenido L. Reyes and Myrna Dimaranan-Vidal.

[2] Records, pp. 350-357; penned by Judge Adelaida R. Crisostomo-Reyes.

a regulated drug, without the corresponding license and prescription, in violation of the above cited law.

Contrary to law.[3]

When arraigned on September 6, 2000, petitioner entered a plea of not guilty. After pre-trial, trial on the merits forthwith commenced.

At about 4:40 in the afternoon of July 27, 2000, PO3 George Garcia (PO3 Garcia) and PO3 Romeo Sotomayor, Jr. (PO3 Sotomayor), together with Michael Fermin and Joseph Apologista, all members of the Mayor's Action Command (MAC) of Mandaluyong City, were on routine patrol along M. Cruz St., Barangay Mauway, when they chanced upon two individuals chanting and in the act of exchanging something. The police officers introduced themselves and then inquired from petitioner what he was holding. Petitioner took out from his possession three strips of aluminum foil which PO3 Garcia confiscated. PO3 Sotomayor also found on petitioner a plastic sachet which contained white crystalline substance which looked like *tawas*. Suspecting that the substance was "*shabu*," he confiscated the plastic sachet. Petitioner and his companion, who was later identified as Clarito Yanson (Clarito), were brought to the MAC station at the Criminal Investigation Division (CID) for investigation. After laboratory examination, the contents of the plastic sachet weighing 0.03 gram were found positive for Methamphetamine Hydrochloride or *shabu*, a regulated drug. The test on the three strips of aluminum foil also yielded positive for traces of *shabu*.

On the basis thereof, petitioner was correspondingly charged with illegal possession of dangerous drugs. Clarito, on the other hand, was further investigated by the City Prosecutor's Office.

Petitioner denied the charge against him. He claimed that he was merely standing in front of a store waiting for the change of his ₱500.00 bill when he was suddenly accosted by the MAC team.

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[3] *Id.* at 1.

Ruling of the Regional Trial Court

The trial court found petitioner guilty as charged and sentenced him to suffer an indeterminate penalty of six months of *arresto mayor* as minimum to two years and four months of *prision correccional* as maximum. The trial court gave credence to the straightforward testimonies of the prosecution witnesses and ruled that the elements of the offense charged were duly established.

Ruling of the Court of Appeals

On appeal, petitioner insisted that his warrantless arrest was unlawful since he was not committing any crime when he was arrested.

On September 26, 2006, the CA affirmed the judgment of the RTC with modification. The appellate court sustained the validity of the warrantless arrest of petitioner holding that the latter was caught by the MAC team in *flagrante delicto* or while he was in the act of giving to Clarito a plastic sachet of *shabu*. The CA brushed aside the self-serving version of petitioner. The dispositive portion of the Decision provides:

> WHEREFORE, the appealed Decision dated December 8, 2004 of the trial court is affirmed, subject to the modification of accused-appellant's imprisonment sentence which should be six (6) months of *arresto mayor* maximum, as the minimum penalty, to two (2) years, four (4) months and one (1) day of *prision correccional* medium, as the maximum penalty.
>
> SO ORDERED.[4]

Issue

Reconsideration having been denied, petitioner is now before us raising a singular issue on:

> WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT FINDING THE PETITIONER GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

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[4] CA *rollo*, p. 119.

Petitioner challenges the legality of his warrantless arrest by asserting that at the time he was apprehended, he was not committing or attempting to commit an offense. Petitioner argues that since his arrest was illegal, the eventual search on his person was also unlawful. Thus, the illicit items confiscated from him are inadmissible in evidence for being violative of his constitutional right against unreasonable searches and seizure.

Our Ruling

We sustain the appellate court in affirming petitioner's conviction by the trial court.

Petitioner's claim that his warrantless arrest is illegal lacks merit. We note that nowhere in the records did we find any objection interposed by petitioner to the irregularity of his arrest prior to his arraignment. It has been consistently ruled that an accused is estopped from assailing any irregularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before arraignment. Any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived.[5] In this case, petitioner was duly arraigned, entered a negative plea and actively participated during the trial. Thus, he is deemed to have waived any perceived defect in his arrest and effectively submitted himself to the jurisdiction of the court trying his case. At any rate, the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error. It will not even negate the validity of the conviction of the accused.[6]

A lawful arrest without a warrant may be made by a peace officer or a private individual under any of the following circumstances:[7]

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[5] *People v. Alunday*, G.R. No. 181546, September 3, 2008, 564 SCRA 135, 149.

[6] *People v. Santos*, G.R. No. 176735, June 26, 2008, 555 SCRA 578, 601.

[7] RULES OF COURT, Rule 113, Section 5.

Sec 5. *Arrest without warrant, when lawful* – A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) hereof, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and he shall be proceeded against in accordance with Section 7, Rule 112.

Our own review discloses sufficient evidence that the warrantless arrest of petitioner was effected under Section 5(a), or the arrest of a suspect in *flagrante delicto.* The MAC team witnessed petitioner handing a piece of plastic sachet to Clarito. Arousing their suspicion that the sachet contains *shabu*, team members PO3 Garcia and PO3 Sotomayor alighted from their motorcycles and approached them. Clarito was not able to completely get hold of the plastic sachet because of their arrival. At the first opportunity, the team members introduced themselves. Upon inquiry by PO3 Garcia what petitioner was holding, the latter presented three strips of aluminum foil which the former confiscated. At a distance, PO3 Sotomayor saw petitioner in possession of the plastic sachet which contains white crystalline substance. There and then, petitioner and Clarito were apprehended and brought to the CID for investigation. After laboratory examination, the white crystalline substance placed inside the plastic sachet was found positive for methamphetamine hydrochloride or *shabu*, a regulated drug.

Under these circumstances, we entertain no doubt that petitioner was arrested in *flagrante delicto* as he was then committing a crime, violation of the Dangerous Drugs Act, within the view of the arresting team. Thus, his case comes under the

exception to the rule requiring a warrant before effecting an arrest. Consequently, the results of the attendant search and seizure were admissible in evidence to prove his guilt of the offense charged. As correctly pointed out by the appellate court in addressing the matter of the purportedly invalid warrantless arrest:

> In any event, the warrantless arrest of accused-appellant was lawful because he was caught by the police officers in *flagrante delicto* or while he was in the act of handing to Clarito Yanson a plastic sachet of "*shabu*." Upon seeing the exchange, PO3 Sotomayor and PO3 Garcia approached accused-appellant and Clarito Yanson and introduced themselves as members of the MAC. PO3 Sotomayor confiscated from accused-appellant the plastic sachet of "*shabu*" while PO3 Garcia confiscated the aluminum foil strips which accused-appellant was also holding in his other hand.
>
> Jurisprudence is settled that the arresting officer in a legitimate warrantless arrest has the authority to search on the belongings of the offender and confiscate those that may be used to prove the commission of the offense. x x x

Petitioner's version, on the other hand, cannot stand against the positive evidence of the prosecution. It strains our credulity to believe his version that at the time of his arrest, he was merely standing in front of the store waiting for the change of his ₱500.00 bill and that the small plastic sachet was in fact recovered from another male individual standing in front of him. Petitioner is thus suggesting that he was arrested for no cause at all. We are not swayed by his account. His version of the incident is simply incredible. Moreover, he was positively, categorically and consistently identified by the prosecution witnesses who were shown to have no ill motive on their part in testifying against him. Consequently, their testimonies should prevail over the alibi and denial of petitioner whose testimony is not substantiated by clear and convincing evidence.[8]

In fine, we defer to the findings of the trial court which were affirmed by the appellate court, there being no cogent reason

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[8] *People v. Castel*, G.R. No. 171164, November 28, 2008, 572 SCRA 642, 668-669.

to veer away from such findings. Well-settled is the rule that the factual findings and conclusions of the trial court and the CA are entitled to great weight and respect and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked certain facts or circumstance which would substantially affect the disposition of the case.[9]

The essential elements in illegal possession of dangerous drugs are (1) the accused is in possession of an item or object that is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possess the said drug. All these elements are obtaining and duly established in this case.

We now proceed to determine the propriety of the penalty imposed upon petitioner.

Petitioner was charged with and convicted for violation of Section 16, Article III of RA 6425, as amended, for having possessed a sachet of *shabu* with a weight of 0.03 gram. Section 16 provides a penalty of imprisonment ranging from six months and one day to four years and a fine ranging from ₱600.00 to ₱4,000.00 on any person found in possession or use of any regulated drug without the corresponding license or prescription, irrespective of the volume or amount of the drug involved. However, said Section 16 was amended by RA 7659[10] which took effect on December 31, 1993. As amended, Section 16 now provides:

> Section 16. *Possession or Use of Regulated Drugs*. – The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who shall possess or use any regulated drug without the corresponding license or prescription, subject to the provisions of Section 20 hereof.

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[9] *Nepumuceno v. People*, G.R. No. 166246, April 30, 2008, 553 SCRA 344, 353.

[10] An act To Impose The Death Penalty on Certain Heinous Crimes, Amending For That Purpose The Revised Penal Laws, As Amended, Other Special Penal Laws And For Other Purposes.

Section 20 of RA 6425 was likewise amended by Section 17 of RA 7659 where the imposable penalty now depends on the quantity of the dangerous drugs involved. Thus, as amended by Section 17, the pertinent provision of Section 20, Article IV of RA 6425 now reads:

Section 17. Section 20, Article IV of Republic Act No. 6425, as amended, known as the Dangerous Drugs Act of 1972, is hereby amended to read as follows:

> Section 20. *Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments of the Crime*. – The penalties for offenses under Sections 3, 4, 7, 8 and 9 of Article II and Sections 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:

x x x x x x x x x

3. 200 grams or more of *shabu* or methylamphetamine hydrochloride

x x x x x x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from *prision correcional* to *reclusion perpetua* depending upon the quantity.

Thus, in *People v. Tira*,[11] we classified the penalties and graduated the same by degree where the quantity of the *shabu* or methylamphetamine hydrochloride involved is less than 200 grams, *viz:*

Under Section 16, Article III of RA 6425, as amended, the imposable penalty of possession of a regulated drug, less than 200 grams, in this case, *shabu*, is *prision correccional* to *reclusion perpetua*. Based on the quantity of the regulated drug subject of the offense, the imposable penalty shall be as follows:

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[11] G.R. No. 139615, May 28, 2004, 430 SCRA 134, 155.

QUANTITY	IMPOSABLE PENALTY
less than one (1) gram to 49-25 grams	*prision correccional*
49.26 grams to 98-50 grams	*prision mayor*
98.51 grams to 147.75 grams	*reclusion temporal*
147.76 grams to 199 grams	*reclusion perpetua*

Following the above illustration and considering the *shabu* found in the possession of the petitioner is only 0.03 gram, the imposable penalty for the crime is *prision correccional*. Applying the Indeterminate Sentence Law, the appellate court correctly sentenced petitioner to suffer an indeterminate penalty of imprisonment of six months of *arresto mayor* as minimum to two years, four months and one day of *prision correccional* as maximum.

RA 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, increased the penalty for illegal possession of less than five grams of methamphetamine hydrochloride or *shabu* to an imprisonment of 12 years and one day to 20 years and a fine ranging from ₱300,000.00 to ₱400,000.00. Said law, however, not being favorable to the petitioner, cannot be given retroactive application in this case.

WHEREFORE, premises considered, the September 26, 2006 Decision of the Court of Appeals in CA-G.R. CR No. 29248 affirming the conviction of petitioner Salvador V. Rebellion for the unlawful possession of 0.03 gram of *shabu* and sentencing him to suffer the penalty of six months of *arresto mayor* as minimum to two years, four months and one day of *prision correccional* as maximum is *AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Perez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 175730. July 5, 2010]

HERMINIO T. DISINI, *petitioner, vs.* **THE HONORABLE SANDIGANBAYAN, THE REPUBLIC OF THE PHILIPPINES, as represented by the OFFICE OF THE SOLICITOR GENERAL (OSG), and the PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG),** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; ISSUE OF VALIDITY OF SERVICE OF SUMMONS MOOTED BY VOLUNTARY APPEARANCE.—** While petitioner bewailed the mode of service of summons on him and questioned the *Sandiganbayan's* jurisdiction over his person, he has rendered his own arguments moot by his voluntary appearance or submission to the jurisdiction of the *Sandiganbayan*. Jurisprudence holds that an objection based on lack of jurisdiction over the person is waived when the defendant files a motion or pleading which seeks affirmative relief other than the dismissal of the case.

2. **ID.; ID.; FORUM-SHOPPING; DEFINED; EXPOUNDED.—** There is forum-shopping when one party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely, by some other court. Forum shopping is a prohibited malpractice and condemned as trifling with the courts and their processes. It is proscribed because it unnecessarily burdens the courts with heavy caseloads, and unduly taxes the manpower and financial resources of the judiciary. It is inimical to the orderly administration of justice as it creates the possibility of conflicting decisions being rendered by two courts, and opens the system to the possibility of manipulation. In filing a Second Motion to Lift the Order of Default with the

Sandiganbayan while the instant Petition is pending with this Court, petitioner has unfairly doubled his chances of securing the lifting of the default order. "This misdeed amounts to a wagering on the result of [petitioner's] twin devious strategies, and shows not only [his] lack of faith in this Court in its evenhanded administration of law but also [his] expression of disrespect if not ridicule for our judicial process and orderly procedure."

3. **ID.; ID.; ISSUE OF NON-LIFTING OF DEFAULT ORDER DISMISSED FOR FORUM-SHOPPING.—** The situation here is strikingly similar to that in *People v. Sandiganbayan*. In that case, the petitioner had filed with the *Sandiganbayan* a motion for consolidation of a bribery case with a plunder case. The *Sandiganbayan* refused, leading the petitioner to file a petition for *certiorari* with this Court. While the said petition was pending with this Court, the petitioner filed *another* motion for consolidation with the *Sandiganbayan*, *praying anew* for the consolidation of the bribery case with a plunder case. The motion raised the same issues and prayed for the same remedy as the pending petition with this Court, namely, the consolidation of the bribery case and the plunder case. The Court held that "such move clearly constitutes forum-shopping." This is almost exactly what happened in the instant case. Petitioner had filed with the *Sandiganbayan* a motion to lift default order. The *Sandiganbayan* refused, leading petitioner to file a petition for *certiorari* with this Court. While the said petition was pending with this Court, petitioner filed *another* motion to lift default order with the *Sandiganbayan*, *praying anew* for the lifting of the default order. Thus, following the ruling in *People v. Sandiganbayan*, we rule that petitioner's actuations clearly constitute forum-shopping. Because of the forum-shopping committed by petitioner, the Court cannot grant the relief he prayed for.

4. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; IMPROPER IN CASE AT BAR; RULE 65 PETITIONS FOR *CERTIORARI* ARE EXTRAORDINARY REMEDIES AVAILABLE ONLY WHEN THERE IS GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION AND THE PETITIONER HAS NO OTHER PLAIN, SPEEDY AND ADEQUATE REMEDY FOR CORRECTING SUCH**

ABUSE.— Grave abuse of discretion refers to such "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. The actions of the *Sandiganbayan* were not thus tainted under the circumstances we described above. Thus, we cannot accept petitioner's contention that the proceedings taken below must be nullified because of the alleged "railroading" by the *Sandiganbayan*. Moreover, Rule 65 petitions for *certiorari* are extraordinary remedies available only when there is grave abuse of discretion amounting to lack of jurisdiction and the petitioner has no other plain, speedy, and adequate remedy for correcting such abuse. By filing a Second Motion to Lift the Order of Default and the various motions seeking the *Sandiganbayan's* correction of the perceived errors during the Republic's *ex parte* presentation of evidence, petitioner has revealed his belief that he had adequate remedies before the *Sandiganbayan*. A resort to a Rule 65 petition is, under the premises, improper.

APPEARANCES OF COUNSEL

Bernas Law Offices for petitioner.

D E C I S I O N

DEL CASTILLO, *J*.:

The simultaneous availment of judicial remedies from different fora for exactly the same ultimate relief and involving the same issue constitutes forum-shopping. It is a prohibited malpractice, condemned for trifling with the courts and their processes.

The Case

The instant Petition for *Certiorari* and Prohibition[1] under Rule 65 of the Rules of Court seeks to:

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[1] *Rollo*, pp. 3-75.

1. Annul the December 18, 2006 Resolution of the *Sandiganbayan* (respondent court), which denied petitioner's Motion to Lift Default Order and to Admit Answer, and consequently allowed respondent Republic to present evidence *ex-parte* in Civil Case No. 0013 entitled *"Republic of the Philippines v. Herminio T. Disini, et al.";*

2. Annul the orders or declarations made by the *Sandiganbayan* in open court during the hearing of December 8, 2006, which prevented petitioner from commenting *ad cautelam* on the Republic's Urgent Manifestation and Motion (hereinafter the Urgent Manifestation and Motion) to Present Evidence *Ex-Parte*;[2]

3. Prohibit the *Sandiganbayan* from continuing with the *ex-parte* proceedings and rendering a judgment by default;

4. Secure injunctive relief to enjoin the *Sandiganbayan* from conducting further proceedings in Civil Case No. 0013 and from rendering judgment on the basis of the *ex-parte* proceedings; and

5. Declare null and void all the proceedings conducted as against petitioner because of lack of jurisdiction over his person, violation of his Constitutional rights to due process and fair play, and the arbitrary acts of respondent court which effectively ousted it of jurisdiction to hear the case.[3]

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[2] *Sandiganbayan rollo,* Vol. IV, pp. 470-475. The Urgent Manifestation and Motion prays for the resolution of PCGG's earlier motion to drop Sison as party-defendant (filed on September 17, 2002; *id.* at 374-377; considered submitted for resolution by virtue of *Sandiganbayan's* Order dated September 20, 2002; *id.* at 411) and the motion-to-intervene filed by strangers to the amended complaint (filed September 15, 2006; *id.* at 428-432). In the event that these motions are resolved in PCGG's favor, they also pray that they be allowed to present evidence *ex-parte*.

[3] *Rollo,* pp. 852-853.

In sum, petitioner assails the *Sandiganbayan's* refusal to set aside its Order of Default against petitioner, as well as its acts which allegedly reveal its inclination to "railroad" the proceedings and render a precipitate judgment by default against petitioner.[4]

Factual Antecedents

On July 23, 1987, the Republic (through the Presidential Commission on Good Government [PCGG]) filed with the *Sandiganbayan* a civil complaint for reconveyance, reversion, accounting, restitution, and damages against petitioner Herminio T. Disini (Disini), spouses Ferdinand and Imelda Marcos (Marcos spouses) and Rodolfo B. Jacob (Jacob).[5] The same was docketed as Civil Case No. 0013 and assigned to the First Division of the *Sandiganbayan* (respondent court). Summons for Disini was issued on July 29, 1987.[6] Per Sheriff's Return dated September 4, 1987,[7] the summons[8] was unserved on the ground that petitioner did not live at the given address, which was No. 92 Kennedy St., Greenhills, San Juan, Metro Manila. The occupants of said address were the Roman family.

On August 26, 1987,[9] the Complaint was amended[10] to include Rafael A. Sison (Sison) as a party-defendant.[11]

The Amended Complaint alleged that Disini acted in unlawful concert with his co-defendants in acquiring and accumulating ill-gotten wealth through the misappropriation of public funds,

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[4] *Id.* at 853.

[5] *Sandiganbayan rollo*, Vol. I, pp. 1-22.

[6] *Id.* at 23.

[7] *Id.* at 72.

[8] *Id.* at 23.

[9] *Sandiganbayan* Resolution dated August 26, 1987, *id.* at 68.

[10] *Id.* at 44-66.

[11] *Id.* at 41-43.

plunder of the nation's wealth, extortion, embezzlement, and other acts of corruption.[12]

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[12] The portions of the Amended Complaint that pertain to petitioner are as follows:

4. Defendant HERMINIO T. DISINI is a close associate of defendant Ferdinand E. Marcos and the husband of the first cousin of Defendant Imelda R. Marcos. By reason of this relationship, defendant Herminio Disini was awarded by defendant Ferdinand E. Marcos the tobacco filter monopoly. It was from the said monopoly that the former first derived his fortune. In the same token, at the behest of defendant Ferdinand E. Marcos, the corporations under Defendant Herminio Disini became the beneficiaries of rescue funds infused by the government to the tune of several billion pesos. Later, said defendant Herminio Disini obtained staggering commissions from the Westinghouse in exchange for securing the nuclear plant contract from the Philippine government. Said defendant may be served with summons and other court processes at his last known address at 92 Kennedy St., Greenhills, San Juan, Metro Manila. Defendant Herminio T. Disini is temporarily outside, even as he remains a resident and citizen of the Philippines.

x x x x x x x x x

13. Defendants Herminio T. Disini and Rodolfo Jacob, by themselves and/or in unlawful concert, active collaboration and willing participation of defendants Ferdinand E. Marcos and Imelda R. Marcos, and taking undue advantage of their association and influence with the latter defendant spouses in order to prevent disclosure and recovery of ill-gotten assets, engaged in devices, schemes, and stratagems such as:

    (a) acted as the above defendant spouses' dummy, nominee and/or agent in acquiring and exercising control of several corporations, such as: (1) Herdis Group of Companies, (2) Energy Corporation, (3) Vulcan Industrial Mining, (4) United Oriental Bank, (5) Three-M;

    (b) unlawfully obtained favored loans and rescue funds from government financing institutions, under terms and conditions grossly and manifestly disadvantageous to plaintiff and the Filipino people;

    (c) unlawfully utilizing the Herdis Group of Companies and Asia Industries, Inc. as conduits through which defendants received, kept, and/or invested improper payments such as unconscionably large commissions from foreign corporations like the Westinghouse Corporation;

The *Sandiganbayan* issued summons on the Amended Complaint on September 3, 1987.[13] On September 15, 1987, the *Sandiganbayan* Deputy Sheriff proceeded to the same address, No. 92 Kennedy Street, Greenhills, San Juan, Metro Manila. Again, the summons was returned unserved for the reason that the Roman family occupied the said residence.[14]

In the meantime, petitioner's co-defendants, Sison[15] and Jacob,[16] filed their respective answers, while the Marcos spouses were declared in default[17] for failure to file their responsive pleadings despite valid service of summons.[18]

(d) secured special concessions, privileges and/or benefits from defendants Ferdinand E. Marcos and Imelda R. Marcos, such as a contract awarded to Westinghouse Corporation which built an inoperable nuclear facility in the country for a scandalously exorbitant amount that included defendant's staggering commissions – defendant Rodolfo Jacob executed for HGI the contract for the aforesaid nuclear plant;

(e) participated in numerous stratagems and devices to prevent disclosure and to avoid discovery of their unabated plunder of the public treasury by, among others, acting as conduits to siphon out of the country illegally acquired assets of defendants Ferdinand E. Marcos and Imelda R. Marcos, through Fe Roa Gimenez, a defendant in a separate suit;

(f) obtained, with the active collaboration of defendant Rafael A. Sison, from the Development Bank of the Philippines (DBP) huge amounts in peso and foreign currency denominated loans and guarantees in favor of Cellophil Resources Corporation, a corporation beneficially held and controlled by Defendant Herminio T. Disini, in violation of duly approved DBP policies on allowable collateral ratios, maximum allowable exposure and standard conditions for loans and guarantee accommodations. (Amended Complaint, pp. 11-13; *Sandiganbayan rollo*, Vol. I, pp. 54-56)

[13] *Sandiganbayan rollo*, Vol. I, p. 70.

[14] *Id.* at 81.

[15] Filed on November 18, 1987 (*Id.* at 100-106).

[16] Filed on February 14, 1989 (*Id.* at 323-336).

[17] *Sandiganbayan* Resolution dated June 23, 1989 (*Id.* at 490-505).

[18] *Marcos v. Garchitorena,* G.R. Nos. 90110-43, February 22, 1990 (unsigned resolution).

After the lapse of two years without any progress in the case, Jacob filed an Omnibus Motion for the *Sandiganbayan* to either set the case for pre-trial or to dismiss the same with respect to Jacob for failure to prosecute.[19] Jacob argued that there was no excuse for the delay in prosecuting the case. He reasoned that, if summons could not be served on his co-defendant Disini within a reasonable time, the prosecution should have moved to exclude Disini from the complaint so that the case could be disposed of one way or another instead of being left pending indefinitely.

The *Sandiganbayan* denied Jacob's motion.[20] It held that the Republic had not lacked in efforts to ascertain Disini's whereabouts; hence, there is no basis to rule that it failed to prosecute the case. Nevertheless, it ordered the Republic to furnish the court with the correct address of petitioner or to file a motion to show the reasonability of expecting Disini to be summoned.

In response, the Republic filed a Manifestation that it is still in the process of securing *alias* summonses for the unserved defendants and will take steps to serve summons by publication.[21]

On October 11, 1990, the Republic moved to drop Jacob as party-defendant considering that he will testify as a witness for the Republic in its ill-gotten wealth cases both here and abroad.[22] It also sought several times to suspend the pre-trial on various grounds such as the PCGG's vacillation regarding the grant of immunity in favor of Jacob[23] and the Republic's admission that it still could not ascertain Disini's whereabouts for purposes of service of summons. The Republic explained that it was still trying to exhaust all efforts to make a personal or substituted

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[19] *Sandiganbayan rollo*, Vol. I, pp. 570-571.

[20] Resolution dated October 26, 1989. *Sandiganbayan rollo,* Vol. II, p. 10.

[21] *Id.* at 56-57.

[22] *Sandiganbayan rollo,* Vol. III, pp. 12-13.

[23] *Id.* at 80-83 and 120-121.

service of summons through the help of the Philippine consulate office in Austria, where Disini is believed to be residing.[24]

On August 4, 1994, the *Sandiganbayan* resolved to grant the dismissal of the complaint against Jacob with prejudice and ordered him dropped as party-defendant.[25]

When it appeared that pre-trial could finally continue in 1995, the Republic again moved for several resetting of pre-trial for reasons such as looking at the possibility of granting immunity to petitioner's other co-defendant, Sison, and the unavailability of the solicitor assigned to the case.[26]

After displaying utmost liberality in the past as regards the postponement of the pre-trial, the *Sandiganbayan* issued a strongly-worded Order on January 17, 1997, on which date the Republic was still not ready to submit Sison's affidavit for the consideration of the court. The Order reads:

> Over the year, the matter of the affidavit [of Sison] remains unresolved. In the end, this case is sought once more to be reset with no visible product for the effort.
>
> Under the circumstances, should no action be taken thereon with finality on or before March 14, 1997, the Court will assume that the government is not disposed to prosecute this matter and will dismiss the case.[27]

Heeding the *Sandiganbayan's* warning, the Office of the Solicitor General filed its Manifestation and Urgent Motion to Drop Rafael Sison as Party-Defendant on March 14, 1997.[28]

A year later, on April 8, 1998, the Republic filed an *Ex Parte* Motion for Leave to Serve Summons by Publication.[29] It stated

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[24] *Id.* at 20-22.

[25] *Id.* at 292-308.

[26] *Id.* at 542, 561-562, 567; *Sandiganbayan rollo*, Vol. IV, pp. 24-25, 69-70, 78, 90-91.

[27] *Sandiganbayan rollo,* Vol. IV, pp. 195-196.

[28] *Id.* at 201-202.

[29] *Id.* at 243-244.

that resort to service by publication was needed because they could not ascertain Disini's whereabouts despite diligent efforts to do so. While this motion was awaiting resolution five months later, the Republic filed an Urgent *Ex Parte* Motion for Issuance of *Alias* Summons.[30] It allegedly received information that Disini had returned to the Philippines and could be served with summons at No. 92 Kennedy Street, Greenhills, San Juan, Metro Manila. *Alias* summons was issued but was returned unserved on the ground that Disini did not occupy the said house, which belonged to the Roman family.[31] Receiving information that Disini was often seen at No. 35 Buchanan Street, Greenhills, San Juan, Metro Manila, the sheriff proceeded to the new address only to find that it belonged to petitioner's cousin, Jesus Disini.[32]

Failing to serve summons personally on Disini, the Republic filed an Urgent Motion to Resolve Motion for Leave to Serve Summons by Publication on October 3, 2001.[33] While awaiting the resolution of the Urgent Motion, the Republic again received information that petitioner has been regularly seen at the Wack Wack Golf and Country Club in Mandaluyong City and at No. 57 Flamingo Street, Greenmeadows Subdivision, Quezon City. Thus, the Republic sought again the issuance of *alias* summons, without prejudice to the resolution of its previous Motion for Leave for Issuance of Summons by Publication.[34] The *Sandiganbayan* issued an *alias* summons for Disini, but it was returned unserved.

On February 6, 2002, the Republic filed a Motion to Resolve (*Ex Parte* Motion for Leave to Serve Summons by Publication).[35] The same was granted[36] and on April 23, 2002, the summons and the Amended Complaint were published in People's

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[30] Filed on September 11, 1998, *id.* at 251-252.

[31] Sheriff's Return, *id.* at 258-259.

[32] Sheriff's Return, *id.* at 258-259.

[33] *Id.* at 285-287.

[34] Filed on November 8, 2001, *id.* at 292-294.

[35] *Id.* at 299-301.

[36] *Id.* at 318-319.

Tonight, with a copy sent by registered mail to Disini's last known address, No. 92 Kennedy Street, Greenhills, San Juan, Metro Manila.[37] By August 27, 2002, petitioner was declared in default for failure to file his responsive pleading within 60 days from the publication of the summons.[38]

Since three of the party-defendants (Ferdinand Marcos, Imelda Marcos, and petitioner) had been declared in default, while one was dropped to become state witness (Jacob), Sison remained as the sole defendant who could participate in Civil Case No. 0013. Given that there was a pending motion to drop Sison also as party-defendant, the Republic asked the *Sandiganbayan* to resolve the said motion so that they could proceed with the *ex parte* presentation of evidence.[39] The said motion was submitted for resolution on September 20, 2002.[40]

On February 17, 2003, with the motion to drop Sison as party-defendant still pending, the Republic asked the *Sandiganbayan* to hold in abeyance the pre-trial until the said motion had been resolved.[41] On February 27, 2003, the *Sandiganbayan* clerk of court sent notice of the cancellation of the pre-trial set for March 4, 2003.[42]

The records of the *Sandiganbayan* became silent from the year 2003 to 2006, revealing an inaction that would only be broken by a foreign court that imposed a deadline on the freeze orders of the Disini Swiss accounts. This development began when petitioner Disini's wife and children filed a petition[43] in a

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[37] *Id.* at 343-344.

[38] *Id.* at 365-366.

[39] *Id.* at 374-377.

[40] *Id.* at 411.

[41] *Id.* at 418-421.

[42] *Id.* at 423.

[43] Entitled *Pacienca Escolin-Disini, Liliana and Herminio Angel Disini, and Lea Disini vs. District Attorney I of the Canton of Zurich, Section B, Superior Court of the Canton of Zurich, 3rd Criminal Chamber, and the Republic of the Philippines. Id.* at 476-492.

Swiss Federal Court to remove a previously issued freeze order on their Swiss accounts. On August 18, 2006, the Swiss Federal Court rendered a partial decision[44] ordering the counsel for the Republic of the Philippines to submit a forfeiture order from a Philippine court with regard to the assets of Liliana and Herminio Disini not later than December 30, 2006; otherwise, the Swiss Federal Court would revoke the freeze order on the Disini Swiss accounts.[45]

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[44] *Id.* at 476-492.

[45] The relevant portion of the Swiss Federal Court decision, as translated into English, reads as follows:

Facts of the Case

A.

In April 1986, the Republic of the Philippines requested the Swiss authorities for judicial assistance in the repatriation of assets which had been misappropriated by Ferdinand E. Marcos, his family members and persons close to him in the exercise of their official functions. This group of persons includes Herminio T. Disini. On April 7, 1986, the Solicitor General of the Philippines initiated a criminal investigation against him.

On October 21, 1986, the Office of the Investigating Judge of Canton Fribourg ordered the accounts of Herminio T. Disini blocked.

B.

With the requests for judicial assistance dated March 20, 1989 and July 11, 1991, the Republic of the Philippines also requested the blocking of the accounts of family members of Herminio T. Disini and return of the corresponding account records.

By an order dated October 14, 1991, the Investigating Judge of Canton Fribourg granted the request, ordered the referenced accounts of Schweizerische Volksbank (now: Credit Suisse) under the names of Pacienca Escolin-Disini (the wife of Herminio T. Disini), Herminio Angel Disini (the son of Herminio T. Disini) and his wife Liliana, and Lea Disini (the daughter of Herminio T. Disini) to be blocked. The account records were delivered to the Republic of the Philippines on November 8, 1999.

Subsequently, a number of requests by the account holders to release the blocked assets were rejected.

x x x x x x x x x

D.

On December 21, 2004, the account holders filed another petition demanding the release of their accounts stating that there were no criminal or civil

proceedings pending in the Philippines for which judicial assistance could be provided. The [Cantonal] Attorney's Office dismissed the petition by Herminio Angel and Liliana Disini, Paciencia Escolin-Disini and Lea Disini on August 30, 2005 referring to a report by the Philippines dated June 10, 2005 ("Status Report") which stated that a number of criminal and forfeiture proceedings were pending against Herminio T. Disini.

x x x x x x x x x

The Supreme Court considers:

x x x x x x x x x

5.3 The appellants' account records were sent to the Philippines as early as 1991. As such, the Philippines have already had all of the records necessary to confiscate the appellants' assets blocked in Switzerland.

The Philippine forfeiture proceeding (Civil Case No. 0013) was initiated in 1987, that is 19 years ago. According to the Philippine authorities, Herminio T. Disini was declared in default on August 27, 2002 after he had allegedly prevented the service of court summonses for years and thereby blocked the case. Nonetheless, the case is still pending in the pre-trial phase.

x x x x x x x x x

5.4 However, after the account block has been maintained for so long without the Philippines ever indicating a term for the conclusion of the forfeiture proceeding, it appears – also in light of Art. 3 par. 3 of the Judicial Assistance Treaty – appropriate to provide the Republic of the Philippines with a final opportunity to reach a forfeiture decision concerning the appellants' assets.

Therefore the counsel of the Philippines is granted until December 31, 2006 to submit to the Supreme Court at least a lower court forfeiture decision concerning the appellants' assets blocked in Switzerland. Until then, the Supreme Court case will be stayed. After expiration of this period, the Supreme Court will revoke the block on the accounts of Liliana and Herminio Angel Disini if no forfeiture order has been handed down or if the submitted decision does not meet the minimum requirements of Art. 74a IRSG.

x x x x x x x x x

Thus the Federal Court decides

1.

To the legal representative of the Republic of the Philippines is given a time limit until December 31, 2006 in order to file a erstinstanzlichen Einziehungsentscheid (first instance decision) with regard to the assets of Liliana and Herminio Angel Disini which are blocked in Switzerland.

x x x x x x x x x

This deadline apparently spurred the Republic (through the PCGG) to file an Urgent Manifestation and Motion[46] with the *Sandiganbayan* on November 30, 2006. The Republic prayed for the resolution of its Urgent Motion to Resolve (its motion to drop Rafael Sison as party-defendant).[47] Should the resolution of this pending motion be favorable to the Republic, it likewise prayed for the setting of the *ex parte* presentation of evidence at an early date.

On December 7, 2006, petitioner Disini filed a Motion to Lift Order of Default and for Leave to File and Admit Attached Answer,[48] together with an Answer to Amended Complaint with Compulsory Counterclaims.[49] He maintained that he was unaware of the civil case pending against him because he never received summons or other processes from the court, nor any pleadings from the parties of the case. His only fault, he averred, was that he was ignorant of the proceedings in the case because of the absence of a proper notice. Petitioner asked the respondent court to look at his meritorious defenses. He then invoked the liberality of the courts in lifting default orders to give both parties every opportunity to defend their cases, and pointed out that the proceedings, being in their pre-trial stage, would not be delayed by petitioner's participation therein.

Petitioner's Answer contained affirmative defenses such as the respondent court's failure to acquire jurisdiction over his person through service by publication and the failure of the Amended Complaint to state a cause of action against him.

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[46] *Sandiganbayan rollo*, Vol. IV, pp. 470-475.

[47] It also included a motion to resolve the Motion to Intervene filed by third parties, who claim equitable ownership of a piece of real estate, which was included in the list of sequestered assets of Disini. This Motion to Intervene was eventually dismissed on the ground that the property over which the movants claim an interest is not among the properties in litigation in Civil Case No. 0013. *Sandiganbayan rollo*, Vol. V, pp. 120-123.

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

[49] *Id.* at 22-64.

With the two motions pending before it, the *Sandiganbayan* heard the Republic on its Urgent Manifestation and Motion on December 8, 2006. Petitioner Disini's lawyers were present during the hearing but were not allowed to participate therein because of the prevailing default order against Disini. The *Sandiganbayan* issued the following Order at the end of the said hearing:

This morning, the Court heard the arguments of the counsel for [respondent] regarding the latter's "Urgent Manifestation and Motion" dated November 29, 2006. The Court also gave the [respondent] a non-extendible period of three days counted from today within which to file its comment on the Motion to Lift Order of Default filed by [petitioner] Disini, and the latter is given a non-extendible period of three days from December 11, 2006 or until December 14, 2006, within which to file his reply to the comment of the [respondent], after which the incident shall be considered submitted for resolution without need of oral arguments. The Court will act on the [respondent]'s "Urgent Manifestation and Motion" dated November 29, 2006 after the Court has resolved the Motion to Lift Order of Default.

x x x x x x x x x[50]

On December 11, 2006, the Republic filed its Comment/ Opposition[51] stating that it exhausted all efforts to ascertain the whereabouts of petitioner Disini. Failing to do so, the Republic resorted to service of summons by publication. This mode of service is allowed under Sections 14 and 15 of Rule 14 considering that the forfeiture case is *in rem* and the defendant's address is unknown. The Republic explained that it filed its *Ex Parte* Motion for Leave to Serve Summons by Publication because it received information that petitioner had already gone to Austria. Clearly then, Disini was no longer a resident of the Philippines. The Republic reiterated that the service of summons by publication is proper considering that what is involved is a forfeiture case, an action *in rem*, under Republic Act No. 1379,

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[50] *Id.* at 74-A. Signed by Presiding Justice Teresita J. Leonardo-De Castro, Diosdado M. Peralta, Efren N. Dela Cruz.

[51] *Id.* at 80-99.

in relation to Executive Order (EO) Nos. 1, 2, 14, and 14-A all issued by President Corazon C. Aquino.

As for petitioner's allegation that the Republic was aware of Disini's address as shown by the fact that summons were properly served at his correct address[52] in two criminal cases pending before the same First Division of the *Sandiganbayan*, the Republic pointed out that these criminal cases were filed on June 30, 2004, while respondent's *Ex Parte* Motion for Leave to Serve Summons by Publication was filed on April 8, 1998. Hence, at the time the Republic asked for service by publication, it was not yet aware of petitioner's correct address. Since petitioner failed to file his answer to a validly served Amended Complaint, the motion to lift the order of default is utterly lacking merit.

Petitioner Disini filed his Reply on December 14, 2006[53] basically expounding on the arguments he stated in his Motion to Lift.

On December 15, 2006, the *Sandiganbayan* granted PCGG's motion to drop Sison as party-defendant in Civil Case No. 0013,[54] leaving only the defaulted defendants (*i.e.*, the Marcos spouses and petitioner Disini) as parties to the case.

Ruling of the Sandiganbayan (Assailed Resolution)

On December 18, 2006, the *Sandiganbayan* resolved to deny[55] petitioner's Motion to Lift Default Order.

The *Sandiganbayan* held that the Republic exerted diligence in ascertaining petitioner's whereabouts as evidenced by the two motions it filed for the issuance of *alias* summons. The *Sandiganbayan* looked favorably at the Republic's efforts to personally serve the summons on petitioner despite the

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[52] The correct address of Herminio T. Disini was No. 1 Lark Street, Greenmeadows, Quezon City.

[53] *Sandiganbayan rollo*, Vol. V, pp. 100-129.

[54] *Id.* at 124-127.

[55] *Id.* at 131-138.

pendency of its *Ex Parte* Motion for Leave to Serve Summons by Publication. It held that the Republic's determination to serve summons at the places where the petitioner was last heard of to reside belies the petitioner's claim that the Republic had intended to mislead the court into service by publication all along. The *Sandiganbayan* likewise held that the rules for a valid service of summons by publication were observed.

The *Sandiganbayan* did not find any indication that the Republic knew petitioner's actual residence when it sought leave to serve summons by publication in 1998 and 2001.

As for the argument that publication is not proper because the action is *in personam,* the *Sandiganbayan* ruled that Civil Case No. 0013 is an action *in rem* for which service by publication is proper. The case is *in rem* because it involves the forfeiture of ill-gotten wealth based on EO No. 2,[56] EO No. 14[57] and No. 14-A[58] promulgated by former President Corazon Aquino by virtue of her legislative authority. It cited the case of *Republic v. Sandiganbayan and Marcos*[59] where the Court ruled that forfeiture proceedings are civil actions *in rem.*

Given the validity of the service of summons, the respondent court held that petitioner's failure to file a responsive pleading within the allotted period resulted in his default. The respondent court refused to lift the order of default on the ground that there was no fraud, accident, mistake or excusable negligence that would justify such an action.

Petitioner then filed an Extremely Urgent Motion for Reconsideration[60] and an Extremely Urgent Manifestation and Motion[61] on December 19, 2006. Aside from asking for

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[56] Dated March 12, 1986.

[57] Dated May 7, 1986.

[58] Dated August 18, 1986.

[59] 416 SCRA 133, 141.

[60] *Sandiganbayan rollo,* Vol. V, pp. 140-169.

[61] *Id.* at 170-175.

reconsideration, petitioner also prayed that the republic's *ex parte* presentation of evidence be held in abeyance until the resolution of his motion for reconsideration.

Petitioner's motions were set for hearing on December 20, 2006 but the said hearing did not take place. Instead, the *Sandiganbayan* issued the following orders on December 19 and 20, 2006 respectively:

> Considering the difficulty in obtaining a quorum for the purpose of hearing the Extremely Urgent Manifestation and Motion dated December 18, 2006 of [petitioner] Herminio T. Disini, the Court resolves to cancel the hearing on the abovesaid motion on December 20, 2006, and instead require the [respondent] to file its written comment on the above-said motion on or before December 22, 2006, after which the motion shall be deemed submitted for resolution.[62]
>
> Considering the difficulty in obtaining a quorum for the purpose of hearing the Extremely Urgent Motion for Reconsideration dated December 19, 2006 of [petitioner] Herminio T. Disini which was filed at the close of office hours on December 19, 2006, the Court resolves to cancel the hearing on the above-said motion on December 20, 2006, and instead require the [respondent] to file its written comment on the above-said motion within a non-extendible period of three (3) days from receipt thereof, after which the motion shall be deemed submitted for resolution, unless the parties or the Court will set the matter for hearing anew after the submission of the above comment.[63]

The Republic's *ex parte* presentation of evidence held before the *Sandiganbayan* Executive Clerk of Court began on December 20, 2006 as evidenced by the transcript.[64] While petitioner was not allowed to participate in the said proceedings, he was notified thereof and his counsels were present to observe the same.

On December 22, 2006, petitioner filed this Petition for *Certiorari*. On January 2, 2007, he filed a Supplement to the

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[62] *Id.* at 197. Issued on December 19, 2006.

[63] *Id.* at 198. Issued on December 20, 2006.

[64] *Id.* at 200-206.

Petition for *Certiorari* and Prohibition[65] protesting the continuation of the *ex parte* proceedings before the *Sandiganbayan* as a grave abuse of discretion amounting to lack of jurisdiction. He also filed a Second Supplemental Petition on January 5, 2007.[66]

Proceedings before the Sandiganbayan during the pendency of the instant Petition for Certiorari and Prohibition

On August 7, 2007, the *Sandiganbayan* issued its Resolution[67] denying petitioner's Extremely Urgent Motion for Reconsideration for lack of merit.

The Republic presented 10 witnesses.[68] It filed its Formal Offer of Evidence dated October 17, 2008, which offer was admitted in the Resolution dated December 3, 2008.[69] On February 11, 2009, the Republic filed its Memorandum.[70]

On July 7, 2009, despite the pendency of his Petition for *Certiorari* and Prohibition with the Supreme Court, petitioner filed with the *Sandiganbayan* a *Second Motion to Lift the Order of Default*[71] dated August 27, 2002 – the very same Order which is now at the heart of the present petition.

On September 8, 2009, petitioner filed with the *Sandiganbayan* a Motion to Expunge or Cross-Examine Plaintiff's Witnesses.[72]

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[65] *Id.* at 312-328.

[66] *Rollo*, pp. 533-590.

[67] *Sandiganbayan rollo,* Vol. VII, pp. 420-434.

[68] Stephen Tanchuling on December 22, 2006; Ma. Lourdes Magno *y* Oliveros on January 9, 2007; Danilo Daniel on January 25, 2007; Angelito Vicente Manahan on February 14, 2007; Rafael Sison on March 26, 2007; Maria Cristina Beronilla on August 1, 2007; Rodolfo Jacob on January 12, 2007; Jesus Jose Vergara on January 15, 2007; Ricardo Valera Paras on August 14, 2007; and Jesus Disini on August 8, 2008.

[69] *Sandiganbayan rollo*, Vol. X, p. 2.

[70] *Id.* at 25-83.

[71] *Id.* at 101-205.

[72] *Id.* at 342-355.

On September 15, 2009, he also filed a Motion to Expunge Evidence Presented Before the Clerk of Court.[73]

On September 23, 2009, petitioner filed with this Court a Motion for Leave to File Supplemental Memorandum,[74] which was denied in a Resolution dated September 30, 2009.[75]

On October 15, 2009, petitioner filed with the *Sandiganbayan* a Motion to Expunge Rolando Gapud's Deposition taken on October 18-20, 1995.[76] On October 19, 2009, he filed a Motion to Expunge or Cross-Examine Plaintiff's witnesses.[77]

On February 18, 2010, petitioner filed with the *Sandiganbayan* a Supplement to the Second Motion to Lift the Order of Default dated August 27, 2002 with Motion to Take Judicial Notice.[78] On March 4, 2010, he filed a Motion for Leave to Take Deposition.[79]

Issues

Petitioner raised the following issues for our consideration:

1. Whether the *Sandiganbayan* court gravely abused its discretion in not lifting its default order against petitioner Disini.

2. Whether the *Sandiganbayan* court gravely abused its discretion when it allowed the Republic to present its evidence *ex-parte* while petitioner's Motion for Reconsideration [of the stay of the default order] had not yet been resolved.[80]

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[73] *Id.* at 356-361.

[74] *Rollo*, pp. 1229-1242.

[75] *Id.* at 1245-1246.

[76] *Sandiganbayan rollo*, Vol. XI, pp. 56-69.

[77] *Id.* at 146-176.

[78] *Id.* at 321-342.

[79] *Id.* at 378-386.

[80] *Rollo*, p. 870.

Our Ruling

Issue of Validity of Service of Summons Mooted by Voluntary Appearance

In his Petition, petitioner originally sought the nullification of the proceedings before the *Sandiganbayan* on the theory of lack of jurisdiction over his person, premised on the alleged impropriety in the service of summons.

However, petitioner subsequently filed several motions with the *Sandiganbayan* which sought various affirmative reliefs from that court, *sans* any qualification of the nature of its appearance and without reserving or reiterating its previous objection on the ground of lack of jurisdiction over the person. These motions are:

(a) Motion to Expunge Exhibits "A", "B", "C", "D", "E", "XX", "YY", "ZZ", "EE", and their Submarkings or Cross-Examine Plaintiff's Witness,[81] which sought to expunge various affidavits of the Republic's witnesses;

(b) Motion to Expunge Evidence Presented Before the Clerk of Court,[82] which prayed that all the evidence presented before the clerk of court be stricken off the records for being taken in violation of the Rules;

(c) Motion to Expunge Gapud's Deposition taken on 18-20 October 1995,[83] which sought to remove from the records the deposition offered by the Republic;

(d) Motion to Expunge Exhibits "FFF" and "GGG",[84] which sought to strike off the mentioned exhibits of respondents and asked the *Sandiganbayan* to permit petitioner to cross-examine witness Jesus Disini;

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[81] Filed on September 8, 2009. *Sandiganbayan*, *rollo*, Vol. X, pp. 342-355.

[82] Filed on September 15, 2009. *Id.* at 356-361.

[83] Filed on October 15, 2009. *Sandiganbayan rollo*, Vol. XI, pp. 56-69.

[84] Filed on October 19, 2009. *Id.* at 146-176.

(e) Motion for Consolidation,[85] which prayed that Civil Case No. 0013 be consolidated with Criminal Case Nos. 28001 and 28001; and

(f) Motion for Leave to Take Deposition based on Section 1 of Rule 23 (Depositions Pending Action or *De Benne Esse*).[86]

In regard to the last mentioned Motion for Leave to Take Deposition[87] (which is the last pleading on record), it is important to note that there are two instances when the defendant can take depositions under Section 1 of Rule 23: (1) after the court has acquired jurisdiction over the defendant or the property subject of the action; and (2) after an answer has been served. Both instances presuppose that the court has already acquired jurisdiction over the defendant. By seeking the relief contained in this provision, petitioner is deemed to have voluntarily submitted himself to the jurisdiction of the *Sandiganbayan*. Thus, petitioner may be held to have waived his objections regarding the lack of jurisdiction over his person by seeking affirmative relief through the said provision.

While petitioner bewailed the mode of service of summons on him and questioned the *Sandiganbayan's* jurisdiction over his person, he has rendered his own arguments moot by his voluntary appearance or submission to the jurisdiction of the *Sandiganbayan*. Jurisprudence holds that an objection based on lack of jurisdiction over the person is waived when the defendant files a motion or pleading which seeks affirmative relief other than the dismissal of the case.[88]

Issue of Non-Lifting of Default Order Dismissed for Forum-shopping

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[85] Filed on February 8, 2010. *Id.* at 302-311.

[86] Filed on March 4, 2010. *Id.* at 378-386.

[87] *Id.*

[88] *Philippine Commercial International Bank v. Spouses Dy,* G.R. No. 171137, June 5, 2009, 588 SCRA 612, 629.

When petitioner filed this Petition on December 22, 2006 assailing the *Sandiganbayan's* December 18, 2006 Resolution, the latter was still the subject of a pending Extremely Urgent Motion for Reconsideration filed by petitioner with the *Sandiganbayan*. The filing of the instant petition before this Court while a motion for reconsideration was still pending before the *Sandiganbayan* constitutes, strictly speaking, forum-shopping,[89] which could have warranted the outright dismissal of the petition. However, in light of the due process issues raised by petitioner and the very real possibility that he had no other speedy remedy available to him, his Petition was given due course.

Inexplicably, and in continuing disregard of the rules on forum-shopping and judicial courtesy, petitioner raised again the same issue (validity of the default order and the propriety of lifting said default order) in a Second Motion to Lift the Order of Default dated August 27, 2002 which he filed with the *Sandiganbayan* after the latter denied his Extremely Urgent Motion for Reconsideration.

This Second Motion to Lift the Order of Default was filed on July 27, 2009, admittedly during the pendency of the instant Petition. Both remedies seek from different fora exactly the same ultimate relief (lifting of the default order issued by the *Sandiganbayan*) and raise the same issue (validity of the default order and the propriety of lifting said default order). In availing himself of these two remedies, petitioner has engaged in forum-shopping.

There is forum shopping when one party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved

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[89] *Montes v. Court of Appeals,* G.R. No. 143797, May, 4, 2006, 489 SCRA 432-443, 439-440; *Go v. Looyuko,* G.R. Nos. 147923, 147962 & 154035, October 26, 2007, 537 SCRA 445, 477-478; *Madara v. Hon. Perello*, G.R. No. 172449, August 20, 2008, 562 SCRA 638-659, 654-655.

adversely, by some other court.[90] Forum shopping is a prohibited malpractice and condemned as trifling with the courts and their processes.[91] It is proscribed because it unnecessarily burdens the courts with heavy caseloads, and unduly taxes the manpower and financial resources of the judiciary.[92] It is inimical to the orderly administration of justice as it creates the possibility of conflicting decisions being rendered by two courts,[93] and opens the system to the possibility of manipulation.[94]

In filing a Second Motion to Lift the Order of Default with the *Sandiganbayan* while the instant Petition is pending with this Court, petitioner has unfairly doubled his chances of securing the lifting of the default order. "This misdeed amounts to a wagering on the result of [petitioner's] twin devious strategies, and shows not only [his] lack of faith in this Court in its evenhanded administration of law but also [his] expression of disrespect if not ridicule for our judicial process and orderly procedure."[95]

The situation here is strikingly similar to that in *People v. Sandiganbayan*.[96] In that case, the petitioner had filed with the *Sandiganbayan* a motion for consolidation of a bribery case with a plunder case. The *Sandiganbayan* refused, leading the petitioner to file a petition for *certiorari* with this Court. While the said petition was pending with this Court, the petitioner

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[90] *Feliciano v. Villasin*, G.R. No. 174929, June 27, 2008, 556 SCRA 348-373, 370.

[91] *Chemphil Export & Import Corporation v. Court of Appeals*, 321 Phil. 619, 655-656 (1995).

[92] *Abines v. Bank of the Philippine Islands*, G.R. No. 167900, February 13, 2006, 482 SCRA 421, 428.

[93] *Tan v. Court of Appeals*, G.R. No. 164966, June 8, 2007, 524 SCRA 306, 318, citing *Top Rate Construction & General Services, Inc. v. Paxton Development Corporation*, 457 Phil. 740, 748 (2003).

[94] *Madara v. Hon. Perello*, *supra* note 89.

[95] *Top Rate Construction & General Services, Inc. v. Paxton Development Corporation*, *supra* note 93 at 760.

[96] 456 Phil. 707, 718 (2003).

filed *another* motion for consolidation with the *Sandiganbayan*, *praying anew* for the consolidation of the bribery case with a plunder case. The motion raised the same issues and prayed for the same remedy as the pending petition with this Court, namely, the consolidation of the bribery case and the plunder case. The Court held that "such move clearly constitutes forum-shopping."

This is almost exactly what happened in the instant case. Petitioner had filed with the *Sandiganbayan* a motion to lift default order. The *Sandiganbayan* refused, leading petitioner to file a petition for *certiorari* with this Court. While the said petition was pending with this Court, petitioner filed *another* motion to lift default order with the *Sandiganbayan*, *praying anew* for the lifting of the default order. Thus, following the ruling in *People v. Sandiganbayan*, we rule that petitioner's actuations clearly constitute forum-shopping.

Because of the forum-shopping committed by petitioner, the Court cannot grant the relief he prayed for.

Certiorari is an improper remedy

Petitioner imputes grave abuse of discretion on the *Sandiganbayan* for allegedly "railroading" the proceedings in violation of his right to due process and fair trial. More specifically, petitioner points out that when the *Sandiganbayan* denied his Motion to Lift Order of Default (December 18, 2006), he immediately filed an Extremely Urgent Motion for Reconsideration (December 19, 2006). However, before the latter could be resolved, the *Sandiganbayan* allowed the *ex-parte* presentation of evidence to proceed (December 20, 2006). This prompted petitioner to file the instant Petition with this Court two days later (December 22, 2006).

While it may have been more convenient if the *Sandiganbayan* resolved first the Extremely Urgent Motion for Reconsideration before allowing the *ex-parte* presentation of evidence, we cannot say that the course taken by the *Sandiganbayan* constitutes grave abuse of discretion. We cannot infer from the *Sandiganbayan's* deliberate speed that it was done to prejudice petitioner. There

was adequate justification for the *Sandiganbayan's* resolve to finish the twenty-year old forfeiture case with dispatch. Aside from the length of time that Civil Case No. 0013 has stagnated in the dockets, the Republic's manifestation (that a resolution was necessary by December 30, 2006 in order to maintain the Swiss Federal Court's freeze order on petitioner's Swiss accounts) is reason enough not to further delay the case as a matter of public interest. Besides, it should be remembered that when the *Sandiganbayan* received evidence *ex-parte* on December 20, 2006, petitioner was still in default and his Motion to Lift Default Order has already been denied. The *ex-parte* presentation of evidence on December 20, 2006 was simply consistent with petitioner's default status as of that time.

Grave abuse of discretion refers to such "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. The actions of the *Sandiganbayan* were not thus tainted under the circumstances we described above. Thus, we cannot accept petitioner's contention that the proceedings taken below must be nullified because of the alleged "railroading" by the *Sandiganbayan*.

Moreover, Rule 65 petitions for *certiorari* are extraordinary remedies available only when there is grave abuse of discretion amounting to lack of jurisdiction and the petitioner has no other plain, speedy, and adequate remedy for correcting such abuse.[97]

By filing a Second Motion to Lift the Order of Default and the various motions seeking the *Sandiganbayan's* correction of the perceived errors during the Republic's *ex parte* presentation of evidence, petitioner has revealed his belief that he had adequate remedies before the *Sandiganbayan*. A resort to a Rule 65 petition is, under the premises, improper.

[97] RULES OF COURT, Rule 65, Section 1.

WHEREFORE, the Petition for *Certiorari* is *DISMISSED*. Costs against petitioner.

SO ORDERED.

Corona, C.J. (Chairperson), Carpio,[*] *Velasco, Jr.,* and *Perez, JJ.,* concur.

THIRD DIVISION

[G.R. No. 176885. July 5, 2010]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **DOMINGO ESPINOSA,** *respondent.*

SYLLABUS

1. **CIVIL LAW; PROPERTY; PUBLIC DOMINION; PUBLIC LANDS NOT SHOWN TO HAVE BEEN RECLASSIFIED OR RELEASED AS ALIENABLE AGRICULTURAL LAND OR ALIENATED TO A PRIVATE PERSON BY THE STATE REMAIN PART OF THE INALIENABLE PUBLIC DOMAIN.—** It is doctrinal that all lands not appearing to be clearly of private dominion presumptively belong to the State. Public lands not shown to have been reclassified or released as alienable agricultural land or alienated to a private person by the State remain part of the inalienable public domain. Unless public land is shown to have been reclassified or alienated to a private person by the State, it remains part of the inalienable public domain. The onus to overturn, by incontrovertible evidence, the presumption that the land subject of an application for registration is alienable or disposable rests with the applicant.

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[*] In lieu of Associate Justice Teresita J. Leonardo-De Castro, per raffle dated June 28, 2010.

2. ID.; ID.; ID.; ID.; RESPONDENT'S FAILURE TO PRESENT THE QUANTUM OF EVIDENCE TO PROVE THAT THE LAND IN DISPUTE IS ALIENABLE AND DISPOSAL LAND, THE PRESUMPTION REMAINS THAT THE SUBJECT PROPERTIES REMAIN PART OF THE ALIENABLE PUBLIC DOMAIN AND, COULD NOT BECOME THE SUBJECT OF CONFIRMATION OF IMPERFECT TITLE. — Respondent having failed to present the quantum of evidence to prove that the land in dispute is alienable and disposable public land, the CA should have reversed the MTC judgment conformably to our ruling in the *Tri-Plus* case. The presumption remains that subject properties remain part of the inalienable public domain and, therefore, could not become the subject of confirmation of imperfect title.

3. REMEDIAL LAW; EVIDENCE; THE GENERAL RULE WITH REGARD TO THE CONCLUSIVENESS OF THE TRIAL COURT AND APPELLATE TRIBUNAL'S FACTUAL FINDINGS IS NOT APPLICABLE IN CASE AT BAR.— The Court is not bound to weigh all over again the evidence adduced by the parties, particularly where the findings of both the trial court and the appellate court coincide. The resolution of factual issues is a function of the trial court whose findings on these matters are, as a general rule, binding on this Court, more so where these have been affirmed by the CA. In the present case, however, the general rule with regard to the conclusiveness of the trial court and appellate tribunal's factual findings should not be applied. A review of the records shows that other than the notation on the advanced survey plan stating in effect that the subject property is alienable and disposable and respondent's self-serving testimony, there is an utter lack of evidence to show the actual legal classification of the disputed lot. Respondent was not able to show proof that the property was alienable or disposable. The approved survey plan merely identifies the property preparatory to a judicial proceeding for adjudication of title.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Gil Dinglasan Tanyag for respondent.

DECISION

VILLARAMA, JR., *J.*:

This petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assails the Decision[1] of the Court of Appeals (CA) dated August 16, 2004 in CA-G.R. CV. No. 72736 which affirmed the September 28, 2000 Judgment[2] of the Municipal Trial Court (MTC) of Consolacion, Cebu ordering the confirmation and registration of respondent's imperfect title over the disputed property.

Briefly, the undisputed factual antecedents are as follows:

On March 2, 1999, respondent filed with the MTC of Consolacion, Cebu, an application for registration of title to Lot No. 8408, Cad 545-D located at Barangay Cabangahan, Consolacion, Cebu, with an area of 17,891 square meters and an assessed value of ₱9,730.00 per Tax Declaration No. 01039.[3]

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[1] *Rollo*, pp. 31-39. Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Mercedes Gozo-Dadole and Ramon M. Bato, Jr. concurring. The dispositive portion of the decision reads as follows:

> WHEREFORE, in view of the foregoing, the appealed judgment dated 28 September 2000 of the Municipal Trial Court of Consolacion, Cebu in Land Registration Case No. N-83 is AFFIRMED. No costs.
>
> SO ORDERED.

[2] In LRC Case No. N-83 (LRA Record No. N-70924), *id.* at 45-51.

[3] Records, p. 6. As amended by Republic Act No. 7691, which was approved on March 25, 1994, Section 34 of Batas Pambansa Blg. 129, or the Judiciary Reorganization Act of 1980, grants Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts the delegated jurisdiction to hear and determine cadastral or land registration cases covering lots where there is no controversy or opposition or contested lots where the value of which does not exceed ₱100,000.00. Sec. 34 of BP Blg. 129, as amended, provides,

> SEC. 34. *Delegated jurisdiction in cadastral and land registration cases.* – Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts may be assigned by the Supreme Court to hear and determine cadastral or land registration cases covering lots where there is no controversy or opposition, or contested lots where the value of which does not exceed One hundred thousand pesos (₱100,000.00),

At the trial, respondent was the sole witness presented to prove his possession and ownership over the land. He claimed to be the owner of the disputed property, having acquired it from his mother, Isabel Espinosa, by virtue of a deed of absolute sale. He also testified that he has been in open, public, continuous and notorious possession of the land in the concept of an owner for more than thirty (30) years, and that his mother had declared the land for taxation purposes as early as 1965. He had the property surveyed and an advance survey and a technical description were secured. The Chief of the Map Projection Section of the Department of Environment and Natural Resources (DENR) had also verified in a notation on the right side portion of the plan that the lot is within the alienable and disposable area. A certification was also issued by the DENR-Community Environment and Natural Resources Officer (CENRO) stating that the lot was not covered by any subsisting public land application. The original tracing cloth plan of the property also appears to have been appended to the application but the records show that it was not presented in court as the MTC's Clerk of Court had submitted the original tracing cloth plan to the Land Registration Authority.

On September 28, 2000, over petitioner's opposition, the MTC granted respondent's petition for registration of his imperfect title. The trial court held:

> After a careful consideration of the evidence presented in the above-entitled case, the Court is convinced, and so holds, that the applicant was able to establish his ownership and possessions (*sic*) over the subject lot which is within the area considered by the Department of Environment and Natural Resources (DENR) as alienable and disposable land of the public domain.
>
> The Court is likewise convinced that the applicant and that of his predecessors-in-interests have been in open, actual, public, continuous, adverse and under claim of title thereto within the time prescribed

such value to be ascertained by the affidavit of the claimant or by agreement of the respective claimants if there are more than one, or from the corresponding tax declaration of the real property. Their decisions in these cases shall be appealable in the same manner as decisions of the Regional Trial Courts.

by law (Sec. 14, sub-par. 1, P.D. 1529) and/or in accordance with the Land Registration Act.

WHEREFORE, and in view of all the foregoing, Judgment is hereby rendered rending (*sic*) for the registration and the confirmation of title of the applicant over Lot No. 8408, Cad 545-D(New), situated at Cabangahan, Consolacion, Cebu, Philippines, containing an area of 17,891 square meters and that upon the finality of this decision, let a corresponding decree of registration be issued in favor of the herein applicant in accordance with Section 39, P.D. 1529.

SO ORDERED.[4]

Petitioner filed a notice of appeal[5] with the trial court. On August 16, 2004, the CA affirmed the judgment of the MTC. According to the CA, the evidence presented competently and sufficiently shows that the property is within the alienable and disposable area of public land. The CA considered the approved advance survey plan of Lot 8408, Cad 545-D presented by respondent and the notation thereon made by Cynthia Ibanez, Chief of the Map Projection Section of DENR, as sufficient proof that the land is alienable public land, considering that the plan, which had Ibanez's notation "Conformed Per LC Map Notation LC Map No. 2545 Project No. 28, Block-1 certified on June 25, 1963, verified to be within alienable and disposable land," was approved by the Land Management Services of the DENR.[6] The CA found the non-presentation of the original tracing cloth plan during trial not fatal to respondent's case because it was shown that the original tracing cloth plan was appended to the application submitted before the MTC although the original tracing cloth plan was later submitted by the Clerk of Court to the Land Registration Authority. The CA noted that applicants usually present the original drafting film or the approved survey plan in court in lieu of the original tracing cloth plan.[7]

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[4] *Rollo*, p. 51.

[5] *Id*. at 52-53.

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

[7] *Id*. at 36-37.

The CA also found that respondent acquired the property from his mother on June 15, 1971 and the latter declared the same for taxation purposes sometime in 1965. Respondent's possession of the property in the concept of an owner, when tacked with the previous possession of his mother, his predecessor-in-interest, presented a consolidated ownership and possession of the property for a period of over thirty (30) years. The CA further held that to require respondent to prove possession over the property as early as June 12, 1945 would be unjust, unfair and iniquitous.[8]

Hence, the present petition.

On June 20, 2007, the Court required respondent to comment on the petition within ten (10) days from notice. Despite service of the Court's Resolution, however, respondent failed to file the required Comment. Hence, on November 17, 2008, we dispensed with the filing of the comment and considered the case submitted for resolution.

Petitioner raises the following grounds before this Court, to wit:

I.

THE HONORABLE COURT OF APPEALS ERRED IN GRANTING THE APPLICATION FOR LAND REGISTRATION BECAUSE RESPONDENT FAILED TO PROVE THAT THE LAND HAS BEEN CLASSIFIED AS ALIENABLE OR DISPOSABLE.

II.

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT A DECREE OF LAND REGISTRATION MAY ISSUE BECAUSE RESPONDENT FAILED TO SUBMIT THE ORIGINAL TRACING CLOTH PLAN FROM THE LAND REGISTRATION AUTHORITY.[9]

Essentially, the issue is whether the Court of Appeals erred in affirming the trial court's judgment confirming respondent's title to the subject property.

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[8] *Id*. at 37-38.

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

The petition is impressed with merit.

It is doctrinal that all lands not appearing to be clearly of private dominion presumptively belong to the State. Public lands not shown to have been reclassified or released as alienable agricultural land or alienated to a private person by the State remain part of the inalienable public domain.[10] Unless public land is shown to have been reclassified or alienated to a private person by the State, it remains part of the inalienable public domain.[11] The onus to overturn, by incontrovertible evidence, the presumption that the land subject of an application for registration is alienable or disposable rests with the applicant.[12]

Generally, the Court is not bound to weigh all over again the evidence adduced by the parties, particularly where the findings of both the trial court and the appellate court coincide. The resolution of factual issues is a function of the trial court whose findings on these matters are, as a general rule, binding on this Court, more so where these have been affirmed by the CA.[13] In the present case, however, the general rule with regard to the conclusiveness of the trial court and appellate tribunal's factual findings should not be applied. A review of the records shows that other than the notation on the advanced survey plan stating in effect that the subject property is alienable and disposable and respondent's self-serving testimony, there is an utter lack of evidence to show the actual legal classification of the disputed lot. Respondent was not able to show proof that the property was alienable or disposable. The approved survey

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[10] *Vide*: *Republic v. Candy Maker, Inc.*, G.R. No. 163766, June 22, 2006, 492 SCRA 272, 291; *Republic v. Naguiat*, G.R. No. 134209, January 24, 2006, 479 SCRA 585, 590-591; and *Ramos-Balalio v. Ramos*, G.R. No. 168464, January 23, 2006, 479 SCRA 533, 539-540.

[11] *Menguito v. Republic*, G.R. No. 134308, December 14, 2000, 348 SCRA 128, 139.

[12] *Republic v. Naguiat*, *supra* at 591.

[13] *Bernarda CH. Osmeña v. Nicasio CH. Osmeña, et al.*, G.R. No. 171911, January 26, 2010.

plan merely identifies the property preparatory to a judicial proceeding for adjudication of title.[14]

The factual circumstances of the present case are similar to those in *Republic v. Tri-Plus Corporation*[15] (*Tri-Plus* case), wherein the respondent filed an application for registration of title over two (2) lots also of the cadastral survey of Consolacion, Cebu. The petitioner Republic of the Philippines, represented by the Office of the Solicitor General, likewise asserted that a mere notation appearing in the survey plans of the disputed properties showing that the subject lands had been classified as alienable and disposable on June 25, 1963 was not sufficient to establish the nature and character of these lands. The Republic claimed that there should be a positive act on the part of the government, such as a certification from the DENR, to prove that the said lands were indeed alienable and disposable. On the other hand, the respondent argued that the notations appearing in the survey plans of the subject properties serve as sufficient proof that the subject lands were alienable and disposable as these were duly approved by the DENR, Land Management Services, whose official acts were presumed to be in accordance with law.

The Court, in the *Tri-Plus* case, ruled in favor of the petitioner and held that:

> In any case, while the subject lands were properly identified, the Court finds that respondent failed to comply with the other legal requirements for its application for registration to be granted.
>
> Applicants for confirmation of imperfect title must prove the following: (a) that the land forms part of the alienable and disposable agricultural lands of the public domain; and (b) that they have been in open, continuous, exclusive and notorious possession and occupation of the same under a *bona fide* claim of ownership either since time immemorial or since June 12, 1945.

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[14] *Vide*: *Carvajal v. Court of Appeals*, G.R. No. 98328, October 9, 1997, 280 SCRA 351; *Director of Lands v. Court of Appeals*, No. 58867, June 22, 1984, 129 SCRA 689, 693.

[15] G.R. No. 150000, September 26, 2006, 503 SCRA 91. See also *Republic v. Barandiaran*, G.R. No. 173819, November 23, 2007, 538 SCRA 705.

In the present case, the Court finds merit in petitioner's contention that respondent failed to prove the first requirement that the properties sought to be titled forms part of the alienable and disposable agricultural lands of the public domain.

Section 6 of Commonwealth Act No. 141, as amended, provides that the classification and reclassification of public lands into alienable or disposable, mineral or forest land is the prerogative of the Executive Department. Under the Regalian doctrine, which is embodied in our Constitution, all lands of the public domain belong to the State, which is the source of any asserted right to any ownership of land. All lands not appearing to be clearly within private ownership are presumed to belong to the State. Accordingly, public lands not shown to have been reclassified or released as alienable agricultural land or alienated to a private person by the State remain part of the inalienable public domain.

It must be stressed that incontrovertible evidence must be presented to establish that the land subject of the application is alienable or disposable.

In the present case, the only evidence to prove the character of the subject lands as required by law is the notation appearing in the Advance Plan stating in effect that the said properties are alienable and disposable. However, this is hardly the kind of proof required by law. **To prove that the land subject of an application for registration is alienable, an applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order, an administrative action, investigation reports of Bureau of Lands investigators, and a legislative act or statute. The applicant may also secure a certification from the Government that the lands applied for are alienable and disposable. In the case at bar, while the Advance Plan bearing the notation was certified by the Lands Management Services of the DENR, the certification refers only to the technical correctness of the survey plotted in the said plan and has nothing to do whatsoever with the nature and character of the property surveyed. Respondents failed to submit a certification from the proper government agency to prove that the lands subject for registration are indeed alienable and disposable**.[16] (Emphasis ours.)

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[16] *Republic v. Tri-Plus Corporation*, *supra* at 101-102.

Respondent having failed to present the quantum of evidence to prove that the land in dispute is alienable and disposable public land, the CA should have reversed the MTC judgment conformably to our ruling in the *Tri-Plus* case. The presumption remains that subject properties remain part of the inalienable public domain and, therefore, could not become the subject of confirmation of imperfect title.[17]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CV. No. 72736 is *REVERSED* and *SET ASIDE,* and the petition for registration in L.R.C. Case No. N-83 (LRA Record No. N-70924) is hereby *DISMISSED*.

No costs.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Bersamin, and *Abad,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 179793. July 5, 2010]

MAGDALENA HIDALGO, EDITHA GONZALES, EUNICE P. MALIMBAN, CHRISTINE VIDAL, CHRISTIAN CALLEJO, CONSOLACION P. MORENO, SHERINA F. DOREZA, LUZ T. SUCGANG, PRISCILLA F. ESTOYE, REYNOSO V. GALLANO, ROSITA L. SENEDRIN, JULITA P. DE CASTRO, JULIETA F. PALAFOX, ERLINDO V. GALANO, JR., ROSALINDA

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[17] See *Republic v. Herbieto*, G.R. No. 156117, May 26, 2005, 459 SCRA 183, 203; *Director of Lands v. Court of Appeals*, G.R. No. 83609, October 26, 1989, 178 SCRA 708, 711.

[*] Additional member per Special Order No. 843.

R. SALUD, EVANGELINE D. EVANGELISTA, BABYLINDA N. NOHAY, BELINDA D. CARDONA, WILMA D. BARCENA, ANABELLE P. MOJADAS, LEONORA GRANADO, RICARDO R. BARANGCO, ROMEO O. MAICON, DANILO B. ENRICO, MARIANILA SITO, MERLINA A. CATAAN, NEMIA E. PIANO, SOLEDAD P. RAMOS, DANTE L. PESIGAN, EDA A. JUNIO, MERCEDES R. NAFARRETE, MARILYN S. GONO, LUZ SAMSON, ERNESTO C. DESEAR, TERESITA G. GONZAGA, TERESITA E. EUSTAQUIO, VIRGINIA S. MONTEMAYOR, CRISTINA ABANTO, HENRY C. AMORTIZADO, FRANKIE VALERA, NELIA G. CAMORO, JOYSIE LABRADOR, GERTRUDES FALALES, OPHELIA G. MUSAMAREN, PETRA M. IRINGAN, FRANCISCO C. CAPIZ, JR., RICKY ECHIEVERA, MA. ELGIN O. ABAIS, JOHN CARANAN, ROMEO LAGUNA, REBECCA C. BUGUA, NELSON FERRER, HELEN MANRESA, CONSORCIA FAJANEL, MA. JUANA A. GOLFO, RUBYLYN D. DUMANDAL, FLORECERFINA S. BANDOLIN, FLORENCIO A. QUILATON, JR., GLORIA J. DOMINGO, MAY MACUGAY, MARY ANN CLAUDIO, ELVIRA KALALO, DOROTEA MARTINEZ, LIGAYA PANEDA, and RENATO AGUILAR, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES, for and in behalf of the ARMED FORCES OF THE PHILIPPINES COMMISSARY AND EXCHANGE SERVICES (AFPCES),** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE LAW; PRESIDENTIAL DECREE (PD) NO. 807 OR THE CIVIL SERVICE DECREE OF THE PHILIPPINES AND EXECUTIVE ORDER (EO) NO. 180 ARE THE RELEVANT LAWS GOVERNING THE EMPLOYMENT STATUS OF GOVERNMENT EMPLOYEES.—** Presidential Decree (PD)

No. 807 or the Civil Service Decree of the Philippines declares that the Civil Service Commission shall be the central personnel agency to set standards and to enforce the laws governing the discipline of civil servants. PD No. 807 categorically described the scope of the civil service as embracing every branch, agency, subdivision, and instrumentality of the government, including every government-owned or controlled corporations whether performing governmental or proprietary function; and construed an agency to mean any bureau, office, commission, administration, board, committee, institute, corporation, whether performing governmental or proprietary function, or any other unit of the National Government, as well as provincial, city or municipal government, except as otherwise provided. Subsequently, Executive Order (EO) No. 180 defined government employees as all employees of all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters. It provided that the Civil Service and labor laws shall be followed in the resolution of complaints, grievances and cases involving government employees.

2. **ID.; ID.; ID.; SINCE THE ARMED FORCES OF THE PHILIPPINES COMMISSARY AND EXCHANGE SERVICES (AFPCES) IS AN AGENCY UNDER THE DIRECT CONTROL AND SUPERVISION OF THE ARMED FORCES OF THE PHILIPPINES (AFP), BY CLEAR IMPLICATION OF THE LAW, ALL AFPCES PERSONNEL SHOULD BE CLASSIFIED AS GOVERNMENT EMPLOYEES AND ANY APPOINTMENT, PROMOTION, DISCIPLINE AND TERMINATION OF ITS CIVILIAN STAFF SHOULD BE GOVERNED BY APPROPRIATE CIVIL SERVICE LAWS AND REGULATIONS.—** In *Philippine Refining Company v. Court of Appeals*, we declared that AFPCES is a government agency that is not immune from suit since it is engaged in proprietary activities. We find no compelling reason to deviate from such pronouncement. The historical background of its creation and establishment indicates that AFPCES is an agency under the direct control and supervision of the AFP as it was established to take charge of the operations and management of all commissary facilities in military establishments all over the country. By clear implication of law, all AFPCES personnel should therefore

be classified as government employees and any appointment, promotion, discipline and termination of its civilian staff should be governed by appropriate civil service laws and procedures.

3. ID.; ID.; ID.; IT IS NOT THE ABSENCE OR PRESENCE OF THE REQUIRED APPOINTMENT FROM THE CIVIL SERVICE COMMISSION, OR THE MEMBERSHIP OF AN EMPLOYEE IN THE SOCIAL SECURITY SYSTEM OR GOVERNMENT SERVICE INSURANCE SYSTEM THAT DETERMINES THE STATUS OF AN EMPLOYEE BUT IT IS THE REGULATION OR THE LAW CREATING THE SERVICE THAT DETERMINES THE POSITION OF THE EMPLOYEE.— Petitioners' employment to the AFPCES should have been made in conformity with pertinent civil service regulations since AFPCES is a government agency under the direct control and supervision of the AFP. However, since this did not happen, petitioners were placed under an anomalous situation with AFPCES insisting that they are government employees under the jurisdiction of the CSC, but with the CSC itself disavowing any jurisdiction over them. This notwithstanding, since it cannot be denied that petitioners are government employees, the proper body that has jurisdiction to hear the case is the CSC. Such fact cannot be negated by the failure of respondents to follow appropriate civil service rules in the hiring, appointment, discipline and dismissal of petitioners. Neither can it be denied by the fact that respondents chose to enroll petitioners in the SSS instead of the GSIS. Such considerations cannot be used against the CSC to deprive it of its jurisdiction. It is not the absence or presence of the required appointment from the CSC, or the membership of an employee in the SSS or in the GSIS that determine the status of the position of an employee. We agree with the opinion of the AFP Judge Advocate General that it is the regulation or the law creating the Service that determines the position of the employee. Petitioners are government personnel since they are employed by an agency attached to the AFP. Consequently, as correctly observed by the Court of Appeals, the Labor Arbiter's decision on their complaint for illegal dismissal cannot be made to stand since the same was issued without jurisdiction. Any decision issued without jurisdiction is a total nullity, and may be struck down at any time.

4. ID.; ID.; ID.; THE COURT ORDERED THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) TO FORWARD THE ENTIRE RECORDS OF THE CASE TO THE CIVIL SERVICE COMMISSION (CSC) AND FOR THE LATTER TO TAKE COGNIZANCE OF THE CASE AND TO RESOLVE IT WITH DELIBERATE DISPATCH.— Given petitioners' peculiar situation, the Court is constrained not to deny the petition entirely, but instead to refer it to the CSC *pro hac vice*. The Court notes that this case has been pending for nearly a decade, but deciding it on the merits at this juncture, while ideal and more expeditious, is not possible. The records of the case fail to adequately spell out the validity of the complaint for illegal dismissal as well as the actual amount of the claim. In fact, the records even fail to disclose the amount of salary received by petitioners while they were engaged to work in AFPCES' facilities. But rather than directing petitioners to re-file and relitigate their claim before the CSC – a step which will only duplicate much of the proceedings already accomplished – the Court deems it best, *pro hac vice*, to order the NLRC to forward the entire records of the case directly to the CSC which is directed to take cognizance of the case. The CSC is directed to promptly resolve whether petitioners were illegally dismissed from the service, and whether they are entitled to their monetary claims. Further, taking into consideration AFPCES' failure to observe the proper procedure required by pertinent civil service rules and regulations regarding the hiring, appointment and placement of petitioners, we likewise caution the CSC not to use the AFPCES' inefficiency to prejudice the status of petitioners' employment or to deny whatever right they may have under pertinent civil service laws. To hold otherwise would only be giving premium to AFPCES' delinquent attitude towards petitioners in particular, and to the civil service in general. The AFPCES cannot be made to have its cake and eat it, too.

APPEARANCES OF COUNSEL

Apolinario N. Lomabao, Jr. for petitioners.
The Solicitor General for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Which quasi-judicial agency has jurisdiction to hear and decide complaints for illegal dismissal against an adjunct government agency engaged in proprietary function? Should the complaint be lodged before the National Labor Relations Commission (NLRC) or to the Civil Service Commission (CSC)? This is the focal issue that needs to be resolved in this petition for review on *certiorari* assailing the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. SP No. 84801 nullifying the Labor Arbiter's and the NLRC's rulings.

Republic of the Philippines has represented respondent Armed Forces of the Philippines Commissary and Exchange Services (AFPCES) in this recourse. AFPCES is a unit/facility of the Armed Forces of the Philippines (AFP) organized pursuant to Letter of Instruction (LOI) No. 31, which was issued on November 20, 1972 by then President Ferdinand Marcos. Under LOI No. 31-A, which amended LOI No. 31, an amount of ₱5 million was set aside from the Philippine Veterans' Claims Settlement Fund as seed capital for the AFPCES to be utilized and administered for the operations and management of all commissary facilities in the military establishments all over the country. AFPCES was intended to benefit the veterans, their widows and orphans, and the members of the AFP and their dependents. In December 1972, the AFP General Headquarters (AFP GHQ) issued Staff Memorandum No. 5 formally organizing the AFPCES.[3]

In order to socialize the services of AFPCES, General Order No. 920 was issued by the AFP GHQ on July 13, 1976

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[1] *Rollo*, pp. 11-23. Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Portia Aliño-Hormachuelos and Arcangelita Romilla-Lontok concurring.

[2] *Id.* at 24-26.

[3] *Id.* at 101-102.

reorganizing the AFPCES as an AFP-Wide Service Support Unit. General Order No. 920 also provided that all installation Commissary Exchange Service including their equipment, records and assets shall be assigned and absorbed by the AFPCES.[4] This, in effect, centralized the management of the commissary exchange services to the AFPCES. On February 26, 1987, General Order No. 138 was issued activating the AFPCES as a regular unit under the direct control of the AFP Chief of Staff.[5]

Petitioners, on the other hand, numbering 65 in all,[6] were hired as regular employees of AFPCES. Some worked as food handlers in AFPCES' catering business and served during social functions held within its premises. Others occupied positions as computer technicians, auditors, record clerks, cashiers, canvassers, bookkeepers, and warehousemen.[7] Several of them had worked with AFPCES for a number of years, ranging from 4 to 31 years. Since the start of their employment, petitioners were enrolled in the Social Security System (SSS), with respondent

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[4] *Id.* at 102.

[5] *Id.* at 13.

[6] *Id.* at 11-12. Magdalena Hidalgo, Eunice Malimban, Christian Callejo, Rosalinda R. Salud, Babylinda N. Nohay, Wilma D. Barcena, Leonora Granado, Romeo O. Maicon, Marianila Sito, Nemia E. Piano, Editha Gonzales, Christine Vidal, Consolacion P. Moreno, Evangeline D. Evangelista, Belinda D. Cardona, Anabelle P. Mojadas, Ricardo R. Barangco, Danilo B. Enrico, Merlina A. Cataan, Soledad P. Ramos, Dante L. Pesigan, Mercedes R. Nafarrete, Luz Samson, Teresita G. Gonzaga, Virginia S. Montemayor, Henry C. Amortizado, Nelia G. Camoro, Gertrudes Falales, Petra M. Iringan, Ricky Echievera, John Caranan, Sherina F. Doreza, Priscilia F. Estoye, Rosita L. Senedrin, Juliet F. Palafox, Rebecca C. Bugua, Helen Manresa, Ma. Juana A. Golfo, Eda A. Junio, Marilyn S. Gono, Ernesto C. Desear, Teresita E. Eustaquio, Cristina Abanto, Frankie Valera, Joysie Labrador, Ophelia G. Musamarin, Francisco G. Capiz, Jr., Ma. Elgin O. Abais, Romeo Laguna, Luz T. Sucgang, Reynoso V. Gallano, Julita P. De Castro, Erlindo V. Galano, Jr., Nelson Ferrer, Consorcia Fajanel, Rubylyn D. Dumandal, Florecerfina S. Bandolin, Gloria J. Domingo, Mary Ann Claudio, Dorotea Martinez, Florencio A. Quilaton, Jr., May Macugay, Elvira Kalalo, Ligaya Paneda and Renato Aguilar.

[7] *Id.* at 32.

AFPCES paying its corresponding employer's share in their monthly SSS contribution.[8]

Between 1999 and 2001, however, AFPCES advised petitioners to undergo an indefinite leave of absence without pay, allegedly upon a conditional promise that they would be allowed to return to work as soon as AFPCES' tax subsidy is released and upon resumption of its store operations.[9]

When AFPCES failed to recall petitioners to their work as allegedly promised, petitioners filed a complaint for illegal (constructive) dismissal with damages against AFPCES before the NLRC.[10] On July 4, 2002, after efforts to forge an amicable settlement had failed, Labor Arbiter Salimathar V. Nambi rendered a decision[11] in favor of petitioners by ordering AFPCES to pay a total of ₱16,007,996.00 as back wages, 13th month pay and separation pay to petitioners.

AFPCES filed an appeal[12] praying, among others, that it be exempted from posting the required appeal bond. The NLRC, however, denied the plea and gave AFPCES ten (10) days to post an appeal bond. The NLRC likewise denied AFPCES' motion for reconsideration. Meanwhile, petitioners sought the immediate execution of the Labor Arbiter's decision.

AFPCES filed a petition before the appellate court docketed as CA-G.R. SP. No. 84801, and prayed among others, for the issuance of a temporary restraining order to enjoin the NLRC from dismissing the appeal and granting execution of the Labor Arbiter's decision.

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

[9] *Id.* at 14.

[10] Docketed as NLRC-NCR Case No. 00-03-01533-2001 (NLRC-NCR CA No. 032920-02).

[11] CA *rollo*, pp. 35-41.

[12] *Id.* at 42-54.

On October 22, 2004, the Court of Appeals issued a Resolution denying AFPCES' prayer for the issuance of a temporary restraining order for lack of merit.[13]

Subsequently, on October 29, 2004, the NLRC dismissed AFPCES' appeal following its failure to post the required appeal bond.[14] On December 7, 2004, petitioners moved for the execution of the Labor Arbiter's decision.

On March 17, 2005, the enforcing sheriffs of the NLRC issued a Progress Report[15] indicating that writs of execution and garnishment have been issued against AFPCES' funds deposited with the Land Bank of the Philippines to satisfy the Labor Arbiter's award. The said report noted that AFPCES has reinstated petitioners to their former positions although Capt. Preciliano M. Ruiz, AFPCES' commander and general manager, gave no assurance regarding the payment of petitioners' salaries.[16]

On April 7, 2005, the Court of Appeals granted AFPCES' motion to lift the writ of garnishment and to stay the execution of the Labor Arbiter's monetary award. Undaunted, petitioners were able to secure an *alias* writ of execution after due hearing before the Labor Arbiter. The issue was again brought before the Court of Appeals.

On August 31, 2006, the appellate court promulgated the assailed Decision in CA-G.R. SP No. 84801 granting AFPCES' petition. The Court of Appeals, after applying the Supreme Court's pronouncement in *Duty Free Philippines v. Mojica*,[17] explained that since AFPCES is a governmental agency that has no personality separate and distinct from the AFP, petitioners are considered civil service employees, and that complaints for

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[13] *Id.* at 69-70.

[14] *Id.* at 121-123.

[15] *Id.* at 159.

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

[17] G.R. No. 166365, September 30, 2005, 471 SCRA 776.

illegal dismissal should therefore be lodged not with the Labor Arbiter but with the CSC.[18]

Aggrieved, petitioners moved for a reconsideration of the said decision, but the appellate court denied the same for lack of merit.[19]

Hence, this petition.

Pivotal to the resolution of this petition is a determination of the classification of petitioners' employment status with respondent AFPCES. AFPCES asserts that since petitioners are government employees, jurisdiction over their complaints lies not with the NLRC, but with the CSC. Petitioners, on the other hand, contend that since they do not belong to the approved plantilla of government personnel, their complaints for illegal dismissal was properly made before the NLRC.

Let us clarify the matter.

Presidential Decree (PD) No. 807 or the Civil Service Decree of the Philippines[20] declares that the Civil Service Commission shall be the central personnel agency to set standards and to enforce the laws governing the discipline of civil servants.[21] PD No. 807 categorically described the scope of the civil service as embracing every branch, agency, subdivision, and instrumentality of the government, including every government-owned or controlled corporations whether performing governmental or proprietary function;[22] and construed an agency to mean any bureau, office, commission, administration, board, committee, institute, corporation, whether performing governmental or proprietary function, or any other unit of the

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[18] *Rollo*, p. 19.

[19] *Id.* at 24-26.

[20] Took effect on October 6, 1975 and superceded Republic Act No. 2260, or the Civil Service Act of 1959.

[21] Section 2, Art. II, PD No. 807.

[22] Section 4, Art. IV, *Id.*

National Government, as well as provincial, city or municipal government, except as otherwise provided.[23]

Subsequently, Executive Order (EO) No. 180[24] defined government employees as all employees of all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.[25] It provided that the Civil Service and labor laws shall be followed in the resolution of complaints, grievances and cases involving government employees.[26]

In *Philippine Refining Company v. Court of Appeals*,[27] we declared that AFPCES is a government agency that is not immune from suit since it is engaged in proprietary activities. We find no compelling reason to deviate from such pronouncement. The historical background of its creation and establishment indicates that AFPCES is an agency under the direct control and supervision of the AFP as it was established to take charge of the operations and management of all commissary facilities in military establishments all over the country. By clear implication of law, all AFPCES personnel should therefore be classified as government employees and any appointment, promotion, discipline and termination of its civilian staff should be governed by appropriate civil service laws and procedures.

Interestingly, in the course of the proceedings, petitioners did not question or refute such classification of the AFPCES. They, in fact, averred that AFPCES is not created by a special law to classify it as a government-owned or controlled corporation with original charter, but a mere entity of the AFP. They also

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[23] Section 3, Art. III, *Id.*

[24] PROVIDING GUIDELINES FOR THE EXERCISE OF THE RIGHT TO ORGANIZE OF GOVERNMENT EMPLOYEES, CREATING A PUBLIC SECTOR LABOR-MANAGEMENT COUNCIL, AND FOR OTHER PURPOSES. It took effect on June 1, 1987.

[25] Section 1, EO No. 180.

[26] Section 16, *Id.*

[27] G.R. No. 118794, May 8, 1996, 256 SCRA 667, 675.

admit that AFPCES is without any corporate features as it is merely an agency performing proprietary functions not only for the benefit of veterans, their widows and orphans, and the members of the AFP, but for the public in general.[28]

Petitioners, however, assert that the pronouncement in *Duty Free Philippines* should not be applied in the instant case since the factual milieu of the said case is different from the case at bar.

We partly agree with petitioners.

Like AFPCES, Duty Free Philippines is also a government agency engaged in proprietary activities without separate corporate existence. Unlike Duty Free Philippines, however, AFPCES committed acts which created an impression upon petitioners that they fall within the coverage of pertinent labor laws and not the civil service law. First, since the start of their employment and until their unceremonious indefinite suspension from work, AFPCES have enrolled petitioners to the SSS, the primary governmental agency engaged in providing social security benefits to employees of the private sector, instead of the Government Service Insurance System (GSIS) as mandated by Commonwealth Act No. 186.[29] AFPCES even remitted its corresponding employer's share to petitioners' SSS contributions. Such practice has been continuously observed by the AFPCES in the span of more than three (3) decades.

Second, the hiring, appointment and discipline of AFPCES employees never went through the proper procedure as required by pertinent civil service laws and regulations. In a formal request made by Feliciano M. Gacis, Jr., Officer-in-Charge of the Office of the Assistant Secretary for Personnel of the Department of National Defense, inquiring from the CSC whether petitioners

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[28] *Rollo*, p. 40.

[29] AN ACT TO CREATE AND ESTABLISH A "GOVERNMENT SERVICE INSURANCE SYSTEM," TO PROVIDE FOR ITS ADMINISTRATION, AND TO APPROPRIATE THE NECESSARY FUNDS THEREFOR, otherwise known as the "Government Service Insurance Act." The Act took effect on November 14, 1936.

are indeed government employees covered by the Civil Service Law and CSC regulations, the said Commission issued a Resolution containing the following findings:

> It is explicit that the aforequoted LOI merely set aside a fund in the amount of five (5) [m]illion [p]esos for the operation of a commissary in all military establishments in the country for the benefit of veterans, their widows and orphans, and the members of the Armed Forces of the Philippines. And the fund and commissary shall be managed by an entity called AFPCES. It can, thus, be said that the AFPCES is a mere entity in the Armed Forces of the Philippines that is tasked to manage a commissary in different military establishments for the benefit of those mentioned in the said LOI. Hence, it does not necessarily follow that all its civilian employees are considered government employees covered by and subject to the Civil Service Law and rules.
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> Section 2 (1), Article IX B of the 1987 Constitution defines the scope of the civil service, as follows:
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> > "Sec. 2. (1) The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters."
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> From the aforequoted constitutional provision, it is clear that only government-owned or controlled corporations with original charters are embraced by the civil service. Hence, the question now that needs to be answered is: Can LOI 31-A be considered as the charter of the AFPCES such that it can be considered a government-owned or controlled corporation embraced by the Civil Service Law and rules?
>
> After a careful evaluation and scrutiny of LOI 31-A, the Commission is of the opinion and so holds that the said LOI could hardly be considered as the charter of AFPCES. It should be noted that the said LOI does not specify the composition of AFPCES, its specific functions, its governing board, its powers and the limitation of the exercise thereof. In short, the said LOI does not provide the AFPCES corporate features. This being the case, the AFPCES cannot be considered a government-owned or controlled corporation with original charter. In fact, the AFPCES does not exercise corporate powers. Accordingly, its civilian employees cannot be considered as government employees covered by the Civil Service Law and rules.

x x x x x x x x x

Further, there is neither a showing that the positions of civilian employees of the AFPCES are included in the plantilla of personnel duly approved by the Department of Budget and Management (DBM) nor said employees were issued appointments attested by the Commission.

WHEREFORE, the Commission hereby rules that all civilian employees of the Armed Forces of the Philippines Commissary and Exchange Service are not government employees covered and embraced by the Civil Service Law and rules.[30]

Indeed, petitioners' employment to the AFPCES should have been made in conformity with pertinent civil service regulations since AFPCES is a government agency under the direct control and supervision of the AFP. However, since this did not happen, petitioners were placed under an anomalous situation with AFPCES insisting that they are government employees under the jurisdiction of the CSC, but with the CSC itself disavowing any jurisdiction over them.

This notwithstanding, since it cannot be denied that petitioners are government employees, the proper body that has jurisdiction to hear the case is the CSC. Such fact cannot be negated by the failure of respondents to follow appropriate civil service rules in the hiring, appointment, discipline and dismissal of petitioners. Neither can it be denied by the fact that respondents chose to enroll petitioners in the SSS instead of the GSIS. Such considerations cannot be used against the CSC to deprive it of its jurisdiction. It is not the absence or presence of the required appointment from the CSC, or the membership of an employee in the SSS or in the GSIS that determine the status of the position of an employee. We agree with the opinion of the AFP Judge Advocate General that it is the regulation or the law creating the Service that determines the position of the employee.[31]

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[30] *Rollo*, pp. 104-106. Civil Service Commission Resolution No. 010051 dated January 5, 2001.

[31] CA *rollo*, p. 46.

Petitioners are government personnel since they are employed by an agency attached to the AFP. Consequently, as correctly observed by the Court of Appeals, the Labor Arbiter's decision on their complaint for illegal dismissal cannot be made to stand since the same was issued without jurisdiction. Any decision issued without jurisdiction is a total nullity, and may be struck down at any time.[32]

However, given petitioners' peculiar situation, the Court is constrained not to deny the petition entirely, but instead to refer it to the CSC *pro hac vice*. The Court notes that this case has been pending for nearly a decade, but deciding it on the merits at this juncture, while ideal and more expeditious, is not possible. The records of the case fail to adequately spell out the validity of the complaint for illegal dismissal as well as the actual amount of the claim. In fact, the records even fail to disclose the amount of salary received by petitioners while they were engaged to work in AFPCES' facilities. But rather than directing petitioners to re-file and relitigate their claim before the CSC – a step which will only duplicate much of the proceedings already accomplished – the Court deems it best, *pro hac vice*, to order the NLRC to forward the entire records of the case directly to the CSC which is directed to take cognizance of the case. The CSC is directed to promptly resolve whether petitioners were illegally dismissed from the service, and whether they are entitled to their monetary claims. Further, taking into consideration AFPCES' failure to observe the proper procedure required by pertinent civil service rules and regulations regarding the hiring, appointment and placement of petitioners, we likewise caution the CSC not to use the AFPCES' inefficiency to prejudice the status of petitioners' employment or to deny whatever right they may have under pertinent civil service laws. To hold otherwise would only be giving premium to AFPCES' delinquent attitude towards petitioners in particular, and to the civil service in general. The AFPCES cannot be made to have its cake and eat it, too.

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[32] *Solid Homes, Inc. v. Payawal*, G.R. No. 84811, August 29, 1989, 177 SCRA 72, 80.

WHEREFORE, the petition is *PARTLY GRANTED*. The Court of Appeals Decision dated August 31, 2006 in CA-G.R. SP No. 84801 and its Resolution dated September 18, 2007 are hereby *SET ASIDE*.

The National Labor Relations Commission (NLRC) is *DIRECTED* to forward the records of the case (NLRC-NCR Case No. 03-01533-2001-NLRC NCR Case No. 032920-02) to the Civil Service Commission (CSC), which is ordered to promptly proceed with the resolution of the case on the merits with deliberate dispatch.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Bersamin, and *Abad,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 180819. July 5, 2010]

AMIHAN BUS LINES, INC., *petitioner, vs.* **ROMARS INTERNATIONAL GASES CORPORATION, represented by CHARLIE J. SAPUGAY; Regional Trial Court, Branch 36, Iriga City, presided by HON. MILAGROS G. QUIJANO; and SAMUEL S. SANTAYANA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ANNULMENT OF JUDGMENTS; THE FRAUD THAT WILL JUSTIFY ANNULMENT OF A JUDGMENT IS EXTRINSIC FRAUD.— It is doctrinal that the fraud that will justify annulment of a judgment is extrinsic fraud. Extrinsic fraud

[*] Additional member per Special Order No. 843.

refers to any fraudulent act of the prevailing party in litigation committed outside of the trial of the case, whereby the defeated party is prevented from fully exhibiting his side of the case by fraud or deception practiced on him by his opponent, such as by keeping him away from court, by giving him a false promise of a compromise, or where the defendant never had the knowledge of the suit, being kept in ignorance by the acts of the plaintiff, or where an attorney fraudulently or without authority connives at his defeat. These instances show that there was never a real contest in the trial or hearing of the case so that the judgment should be annulled and the case set for a new and fair hearing.

2. **ID.; ID.; ID.; NO HINT OF FRAUDULENT SCHEME COMMITTED BY RESPONDENT WHICH PREVENTED THE PETITIONER FROM HAVING A FAIR TRIAL OR PRESENTING ITS CASE.—** In the instant case, none of the instances exists to justify the annulment of the decision of the RTC. Petitioner's contention that the failure to present its side on account of its former counsel's gross negligence constitutes extrinsic fraud is untenable. The nature of extrinsic fraud necessarily requires that its cause be traceable to some fraudulent act of the prevailing party committed outside the trial of the case. There is extrinsic fraud when a party was prevented from having presented all of his case to the court as when the lawyer connives at his defeat or corruptly sells out his client's interest. As found by the CA, there was actually "no hint of fraudulent scheme committed by the respondent which prevented the petitioner from having a fair trial or presenting its case." The proceedings in the trial court clearly show that petitioner was not at all prevented by the prevailing party from fully exhibiting its defense before the court.

3. **ID.; ID.; ID.; THE MISTAKE OR NEGLIGENCE OF COUNSEL WAS NOT SO GROSS, PALPABLE AND INEXCUSABLE AS TO RESULT IN THE VIOLATION OF PETITIONER'S SUBSTANTIVE RIGHTS.—** We rule that the mistake or negligence of petitioner's counsel was not so gross, palpable and inexcusable as to result in the violation of petitioner's substantive rights. As the records will show, the trial court and even respondent Romars had extended so much forbearance to petitioner. It cannot be denied that petitioner was remiss in exercising vigilance to protect its rights in its case. The failure of petitioner and its counsel to appear during

the pre-trial was compounded by their inaction, and resulted in the finality and eventual execution of the default judgment. Petitioner cannot put all the blame for this fiasco on its counsel and then claim that it was denied due process under the badge of extrinsic fraud.

APPEARANCES OF COUNSEL

Joannes J. Infante for petitioner.
Carpio & General for respondents.

D E C I S I O N

NACHURA, *J*.:

This is a petition for review of the Resolutions[1] of the Court of Appeals (CA), affirming the issuances of the Regional Trial Court (RTC), Iriga City, Branch 36, in Civil Case No. IR-3532 for Damages filed by respondent Romars International Gases Corporation (respondent Romars) against herein petitioner Amihan Bus Lines, Inc.

The antecedent facts are as follows:

On February 20, 2005, at about 2:00 p.m., an almost head-on collision occurred between respondent Romars' gas tanker, with tractor number TCC 583 and trailer number UUP 138, and petitioner's bus, with plate number DVG 844, along Quirino highway in Ragay, Camarines Sur. The gas tanker was negotiating an inclined curve along Fort Junction Norte, Ragay, Camarines Sur when it was bumped by an oncoming Amihan Passenger Bus which suddenly took the lane of the gas tanker. Both vehicles were damaged, but the trailer truck was a total wreck.

On July 22, 2005, respondent Romars filed a complaint,[2] praying that judgment be rendered ordering petitioner to pay

[1] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Arcangelita Romilla-Lontok and Ramon M. Bato, Jr., concurring; *rollo,* pp. 29-38, 39-41.

[2] *Id*. at 42-46.

(1) actual damages in the following amounts: ₱800,000.00 for the replacement of the tractor head, and ₱50,000.00 per month in unrealized net income from the time of the incident until actual payment; (2) exemplary damages in the sum of ₱50,000.00; and (3) attorney's fees in the amount of ₱50,000.00. Petitioner filed its Answer with Compulsory Counterclaims,[3] alleging that the company had exercised the required diligence of a good father of a family in the selection and supervision of its employees. It prayed that the complaint be dismissed for lack of cause of action and that it be paid the following sums of money: ₱47,055.00 for the repair of the bus; ₱210,000.00 for unrealized profits incurred by petitioner; ₱50,000.00 for exemplary damages; and ₱50,000.00 for attorney's fees.

On January 27, 2006, a preliminary conference was held before the Branch Clerk of Court. Plaintiff therein, through counsel, submitted its pre-trial brief. Defendant's representative was present, but since its counsel was not around, a continuation of the preliminary conference was set for February 20, 2006.[4] After the defendant submitted its pre-trial brief, pre-trial was set for March 20, 2006.

When the case was called for pre-trial on March 20, 2006, only plaintiff's counsel was present. A representative of Amihan Bus Lines appeared to inform the court that the defendant was willing to have the case amicably settled. By agreement of the parties, pre-trial was set for March 29, 2006.[5] On said date, only plaintiff's counsel appeared, prompting the court to set the case for reception of plaintiff's evidence *ex-parte* on May 16, 2006. This Order was, however, reconsidered when defendant bus company appeared with a new counsel. The latter manifested that he had recently been hired as counsel by the bus company, and asked for a resetting. There being no objection from the plaintiff, the court agreed to set the case anew for preliminary conference on July 3, 2006 and for pre-trial conference on July 10,

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[3] *Id*. at 50-55.

[4] Order dated January 27, 2006; *id*. at 61.

[5] Order dated March 20, 2006; *id*. at 62.

2006.[6] On the latter date, pre-trial was reset to August 31, 2006, where defendant's counsel again failed to appear, prompting the trial court to grant plaintiff's prayer that it be allowed to present its evidence *ex-parte* on October 11, 2006.[7]

Thereafter, on December 14, 2006, defendant filed an "Entry of Appearance with Motion to Allow Defendant to Present its Evidence," alleging that the non-appearance during the pre-trial conference on August 31, 2006 was due to the fact that defendant was not duly informed of the same since its counsel had withdrawn from the case.

Finding the excuse to be lame and not supported by the records, the trial court denied the motion.[8]

On April 17, 2007, the trial court rendered judgment in favor of the plaintiff. Based on the evidence presented, the trial court found that defendant's bus driver failed to take precautionary measures, as demanded by the situation. The court said that the bus driver decided to overtake a parked trailer along the curved lane without slowing down, thereby hitting the oncoming tractor which was traveling on the opposite lane. The trial court thus ruled:

WHEREFORE, premises considered, defendant Amihan Bus Lines, Inc. is hereby ordered plaintiff Romars International Gases Corporation represented by Charlie Sapugay, the following sum to wit:

1. Eight Hundred Thousand Pesos (Php 800,000.00) as actual damages;
2. Twenty–Five Thousand Pesos (Php 25,000.00) as exemplary damages;
3. Twenty Thousand Pesos (Php 20,000.00) as attorney's fees and litigation expenses[;] and
4. To pay the costs of this suit.

SO ORDERED.[9]

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[6] Order dated May 16, 2006; *id*. at 64.

[7] Order dated August 31, 2006; *id*. at 66.

[8] *Id*. at 72-74.

[9] *Id*. at 80.

Upon motion of the plaintiff, the trial court ordered the issuance of a writ of execution.[10] The motion for reconsideration filed by the defendant was denied.

Recourse to the CA was made by the defendant (now petitioner), seeking to annul the following issuances of the trial court: (1) decision dated April 17, 2007, finding petitioner liable; (2) Order dated January 18, 2007, denying the "Entry of Appearance with Motion to Present Evidence"; and (3) Order dated June 26, 2007, granting respondent Romars' motion for execution. It contended that it "was prevented from having a fair trial through extrinsic fraud."[11]

On September 26, 2007, the CA dismissed the petition outright.

Hence, this petition alleging the following grounds:

I

THE GROSS NEGLIGENCE AND INCOMPETENCE OF PETITIONER'S FORMER COUNSEL AMOUNT TO EXTRINSIC FRAUD TO JUSTIFY THE ANNULMENT OF THE ASSAILED DECISION OF THE RESPONDENT RTC.

II

THE ASSAILED DECISION OF RESPONDENT RTC HAS NO LEGAL BASIS BECAUSE THE RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDCITION IN NOT RECONSIDERING THE ORDER DATED AUGUST 31, 2006.

III

THE EXECUTION PROCEEDINGS ARE NULL AND VOID BECAUSE THE EXECUTION PROCEEDINGS ARE NOT IN ACCORDANCE WITH THE RULES CONSIDERING THAT THE COUNSEL ON RECORD OF PETITIONER IS NOT SERVED WITH COPY OF THE ASSAILED DECISION OF THE RESPONDENT RTC

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[10] *Id*. at 82.

[11] *Id*. at 32.

AND THE PROCEDURES FOR EXECUTION OF MONETARY JUDGMENT ARE NOT FOLLOWED.[12]

The petition is devoid of merit.

It is doctrinal that the fraud that will justify annulment of a judgment is extrinsic fraud. Extrinsic fraud refers to any fraudulent act of the prevailing party in litigation committed outside of the trial of the case, whereby the defeated party is prevented from fully exhibiting his side of the case by fraud or deception practiced on him by his opponent, such as by keeping him away from court, by giving him a false promise of a compromise, or where the defendant never had the knowledge of the suit, being kept in ignorance by the acts of the plaintiff, or where an attorney fraudulently or without authority connives at his defeat. These instances show that there was never a real contest in the trial or hearing of the case so that the judgment should be annulled and the case set for a new and fair hearing.[13]

In the instant case, none of the foregoing instances exists to justify the annulment of the decision of the RTC. Petitioner's contention that the failure to present its side on account of its former counsel's gross negligence constitutes extrinsic fraud is untenable. The nature of extrinsic fraud necessarily requires that its cause be traceable to some fraudulent act of the prevailing party committed outside the trial of the case.[14] There is extrinsic fraud when a party was prevented from having presented all of his case to the court as when the lawyer connives at his defeat or corruptly sells out his client's interest.[15]

As found by the CA, there was actually "no hint of fraudulent scheme committed by the respondent which prevented the petitioner from having a fair trial or presenting its case."[16] The

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[12] *Id.* at 15.

[13] *Leonardo v. S.T. Best, Inc.,* 466 Phil. 981 (2004).

[14] *Salonga v. Court of Appeals,* 336 Phil. 514 (1997).

[15] See *Heirs of Antonio Pael v. Court of Appeals,* 382 Phil. 222 (2000).

[16] *Rollo*, p. 34.

proceedings in the trial court clearly show that petitioner was not at all prevented by the prevailing party from fully exhibiting its defense before the court. We quote with approval the following disquisition of the appellate court:

> [I]t is the firm belief of this Court that the petitioner has only itself to blame for the legal predicament it is in now, brought about by its own failure to observe some basic procedural rules.
>
> For one, the re-setting of the pre-trial of the case below to 31 August 2006 was done in open court during the hearing conducted on 10 July 2006, the petitioner being a party thereto at that time was actually notified thereof but chose not to attend for reasons only known to it. Not only that, records on hand reveal that a copy of the 10 July 2006 Order was indeed received by the petitioner on 19 July 2006 but still, the latter opted not to attend thereat.
>
> For another, notwithstanding receipt by the petitioner of the Order dated 31 August 2006 on 11 September 2006, the former did not take any remedial action therefrom by filing a timely motion for reconsideration.
>
> Then, too, it took petitioner herein more than three (3) months, from the time the 31 August 2006 Order was issued, to file its "Entry of Appearance with Motion to Allow Defendant to Present Its Evidence" but failed to offer any reason persuasive enough for the respondent court to relax the stringent rules in its favor.
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> x x x x x x x x x
>
> Finally, it bears stressing that petitioner herein received a copy of the challenged Decision dated 17 April 2007 of the respondent court on 25 April 2007 but as it were in the past, no legal action therefrom was taken by the former to pursue its cause against the private respondent.[17]

We, therefore, rule that the mistake or negligence of petitioner's counsel was not so gross, palpable and inexcusable as to result in the violation of petitioner's substantive rights. As the records will show, the trial court and even respondent Romars had extended so much forbearance to petitioner. It cannot be denied

[17] *Id.* at 34-37.

that petitioner was remiss in exercising vigilance to protect its rights in its case. The failure of petitioner and its counsel to appear during the pre-trial was compounded by their inaction, and resulted in the finality and eventual execution of the default judgment. Petitioner cannot put all the blame for this fiasco on its counsel and then claim that it was denied due process under the badge of extrinsic fraud.

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

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 181051. July 5, 2010]

MANDAUE GALLEON TRADE, INC. and GAMALLOSONS TRADERS, INC., represented by FAUSTO B. GAMALLO, *petitioners, vs.* **BIENVENIDO ISIDTO, ERWIN BA-AY, VICTORIANO BENDANILLA, EDUVIGIS GUTIB, JULITO GUTIB, GREGORIO ORDENISA, DAMIAN RABANAL, ROSITA RABANAL, EUSTAQUIA SIGLOS, PRIMITIVO SIGLAS, and RODOLFO TORRES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; A CERTIFICATE OF NON-FORUM SHOPPING IS A REQUISITE FOR THE PERFECTION OF AN APPEAL, AND NON-COMPLIANCE THEREWITH SHALL NOT STOP THE RUNNING OF THE PERIOD FOR PERFECTING AN APPEAL.— A certificate of non-forum shopping is a requisite for the perfection of an appeal, and non-compliance therewith shall not stop the running of the

period for perfecting an appeal. In the instant case, petitioners aver that the CA should have granted the petition and decided the case on the merits, considering that petitioners complied, albeit belatedly, with the requirement of a certificate of non-forum shopping. Petitioners pray for a reversal of the Decision of the CA, without presenting any special circumstances or compelling reasons why the Court should liberally apply the Rules in their favor. Petitioners do not offer any valid or justifiable excuse for their failure to file the certificate on non-forum shopping together with the notice of appeal. Administrative Circular No. 28-91, dated February 8, 1994, issued by the Supreme Court requires that every petition filed with the Supreme Court or the CA must be accompanied by a certificate of non-forum shopping. Later, Administrative Circular No. 04-94 was issued and made effective on April 1, 1994. It expanded the certification requirement to include cases filed in court and in quasi-judicial agencies. The Court adopted paragraphs (1) and (2) of Administrative Circular No. 04-94 to become Section 5, Rule 7 of the 1997 Rules of Civil Procedure. Significantly, to curb the malpractice of forum shopping, the rule ordains that a violation thereof would constitute contempt of court and be a cause for the summary dismissal of the petition, without prejudice to the taking of appropriate action against the counsel of the party concerned.

2. ID.; ID.; ID.; ID.; THE FILING OF CERTIFICATE OF NON-FORUM SHOPPING IS MANDATORY IN INITIATORY PLEADINGS; SUBSEQUENT COMPLIANCE WITH THE REQUIREMENT DOES NOT EXCUSE A PARTY'S FAILURE TO COMPLY THEREWITH IN THE FIRST INSTANCE.— The filing of a certificate of non-forum shopping is mandatory in initiatory pleadings. The subsequent compliance with the requirement does not excuse a party's failure to comply therewith in the first instance. In those cases where the Court excused non-compliance with the requirement to submit a certificate of non-forum shopping, it found special circumstances or compelling reasons which made the strict application of the Circular clearly unjustified or inequitable. In this case, however, the petitioners offered no valid justification for their failure to comply with the Circular.

3. ID.; ID.; ID.; ID.; PROCEDURAL RULES ARE REQUIRED TO BE FOLLOWED EXCEPT ONLY FOR THE MOST PERSUASIVE REASONS.— It bears stressing that while it is true that litigation is not a game of technicalities and that rules of procedure shall not be strictly enforced at the cost of substantial justice, it does not mean that the Rules of Court may be ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution. It must be emphasized that procedural rules should not be belittled or dismissed simply because their non-observance might have resulted in prejudice to a party's substantial rights. Like all rules, they are required to be followed, except only for the most persuasive of reasons.

APPEARANCES OF COUNSEL

Rufus B. Rodriguez & Associates for petitioners.
Vito Minoria for respondents.

D E C I S I O N

NACHURA, *J*.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated January 31, 2007 and the Resolution[2] dated December 14, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 86209.

The facts of the case are as follows:

Respondents, alleging that they were employees of petitioners, filed a case for illegal dismissal and non-payment of overtime pay, holiday pay, thirteenth (13th) month pay, and service incentive leave pay against petitioners, Manuel Jose Oyson III and Simonette C. Abao before the Regional Arbitration Branch VII,

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[1] Penned by Executive Justice Arsenio J. Magpale, with Associate Justices Romeo F. Barza and Priscilla Baltazar-Padilla, concurring; *rollo*, pp. 264-272.

[2] Penned by Associate Justice Priscilla Baltazar-Padilla, with Associate Justices Isaias P. Dicdican and Franchito N. Diamante, concurring; *rollo*, pp. 56-57.

Cebu City of the National Labor Relations Commission (NLRC). Petitioners are engaged in making rattan furniture in Mandaue City.

Respondents averred that they started working at Gamallo Sons, Inc. in 1977 and 1978. In 1980, the firm name was changed to Gamallosons Traders, Inc. and eventually it became Mandaue Galleon Trade, Inc. The employees suspected that the adoption and substitution of many firm names was intended to subvert the labor standard benefits, status, terms, and conditions of employment.

They claimed that, in order to ensure their availability for possible twenty-four (24) hour service, respondents were extended loans to build their houses in petitioners' compound. Thus, they were on call any time, day or night.

On July 22, 1978, respondents were notified that the company adopted a policy of voluntary retrenchment, offering employees separation pay equivalent to one (1) month pay for every year of service. However, respondents did not avail of the said plan. They asserted that, on March 5, 2001, they were dismissed from employment without just cause and without due process.

On the other hand, petitioners averred that respondents were not their employees but were independent contractors who received various orders from many other furniture manufacturers, and that respondents constructed their houses and workplaces in the compound owned by another corporation, the Galleon Agro Realty Development Corporation.

On April 3, 2002, the Labor Arbiter rendered a decision,[3] finding respondents illegally dismissed from employment. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering the respondents Mandaue Galleon Trade, Inc. and Gamallosons Traders, Inc. to pay jointly and severally the complainants as follows:

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[3] Penned by Labor Arbiter Ernesto F. Carreon; *rollo*, pp. 74-81.

1.	Bienvenido Isidto	₱ 95,200.00
2.	Erwin Ba-ay	₱ 57,500.00
3.	Victoriano Bendanilla	₱ 75,000.00
4.	Eduveges Gutib	₱ 90,000.00
5.	Julito Gutib	₱ 90,000.00
6.	Gregorio Ordanisa	₱ 85,000.00
7.	Damian Rabanal	₱ 85,000.00
8.	Rosita Rabanal	₱ 85,000.00
9.	Eustaquia Siglos	₱ 85,000.00
10.	Primitivo Siglos	₱ 85,000.00
11.	Rodolfo Torres	₱ 85,000.00
	Total	₱ 917,700.00

The other claims and the case against respondents Manuel Jose Oyson and Simonette Abao are dismissed for lack of merit.

SO ORDERED.[4]

The Labor Arbiter ruled that respondents were indeed employees of petitioners. He ratiocinated that aside from the bare allegations of petitioners that respondents were independent contractors and had contracted work from other furniture manufacturers, no proof was presented to establish the same. By petitioners' own admission, it was proven that respondents were provided with houses and workplaces in the compound of the sister company of petitioners. Illegal dismissal was established by the fact that respondents were not given work by petitioners and by the demand of the general manager of petitioners for respondents to vacate the place where they constructed their houses.

Petitioners filed an appeal before the NLRC. However, they failed to attach a certification of non-forum shopping to their notice of appeal, as required by Section 4, Rule VI of the NLRC Rules of Procedure. Thus, on December 4, 2003, the NLRC issued a resolution[5] dismissing petitioners' appeal for being fatally defective, and the decision of the Labor Arbiter was

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[4] *Id.* at 81.

[5] Penned by Commissioner Oscar S. Uy, with Commissioner Edgardo M. Enerlan and Presiding Commissioner Gerardo C. Nograles, concurring; *rollo*, pp. 84-86.

affirmed *in toto* with finality. Petitioners filed a motion for reconsideration. However, the same was denied in a resolution[6] dated May 27, 2004.

On March 15, 2005, an Entry of Judgment was issued by the NLRC, stating that, pursuant to the Internal Rules of the Commission, the December 4, 2003 NLRC resolution had become final and executory on July 17, 2004.

Aggrieved, petitioners filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA. On January 31, 2007, the CA rendered a Decision,[7] the dispositive portion of which reads:

WHEREFORE, in the light of the foregoing, the instant petition is hereby **DISMISSED**. Consequently, the assailed Resolutions **dated December 4, 2003 and May 27, 2004**, respectively of public respondent NLRC are hereby AFFIRMED.[8]

Petitioners filed a motion for reconsideration. But the same was denied by the CA in a Resolution dated December 14, 2007.

Hence, this petition.

Petitioners present this sole issue for our resolution:

WHETHER OR NOT THE COURT OF APPEALS COMMITTED A GRAVE AND REVERSIBLE ERROR IN AFFIRMING THE DECISION OF THE NLRC DENYING PETITIONERS' APPEAL ON MERE TECHNICALITY DESPITE THE EXISTENCE OF MERITORIOUS CASE OF THE PETITIONERS.[9]

The appeal is devoid of merit.

Section 4(a), Rule VI of The New Rules of Procedure of the NLRC[10] prescribes, *viz.*:

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

[7] *Supra* note 1.

[8] *Id.* at 271.

[9] *Rollo*, p. 18.

[10] The New Rules of Procedure of the NLRC, as amended by NLRC

SECTION 4. REQUISITES FOR PERFECTION OF APPEAL. — (a) The Appeal shall be filed within the reglementary period as provided in Section 1 of this Rule; shall be verified by appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, with proof of payment of the required appeal fee and the posting of a cash or surety bond as provided in Section 6 of this Rule; shall be accompanied by memorandum of appeal in three (3) legibly typewritten copies which shall state the grounds relied upon and the arguments in support thereof; the relief prayed for; and a statement of the date when the appellant received the appealed decision, resolution or order and a certificate of non-forum shopping with proof of service on the other party of such appeal. A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period for perfecting an appeal.

Based on the foregoing, a certificate of non-forum shopping is a requisite for the perfection of an appeal, and non-compliance therewith shall not stop the running of the period for perfecting an appeal.

In the instant case, petitioners aver that the CA should have granted the petition and decided the case on the merits, considering that petitioners complied, albeit belatedly, with the requirement of a certificate of non-forum shopping.[11] Petitioners pray for a reversal of the Decision of the CA, without presenting any special circumstances or compelling reasons why the Court should liberally apply the Rules in their favor. Petitioners do not offer any valid or justifiable excuse for their failure to file the certificate on non-forum shopping together with the notice of appeal.

Administrative Circular No. 28-91, dated February 8, 1994, issued by the Supreme Court requires that every petition filed with the Supreme Court or the CA must be accompanied by a certificate of non-forum shopping. Later, Administrative Circular No. 04-94 was issued and made effective on April 1,

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Resolution No. 01-02, Series of 2002, was the rule of procedure in effect at the time of the promulgation of the NLRC Resolutions assailed in the instant petition. At present, the 2005 Revised Rules of Procedure of the NLRC is observed in cases filed before the NLRC.

[11] *Rollo*, p. 19.

1994. It expanded the certification requirement to include cases filed in court and in quasi-judicial agencies. The Court adopted paragraphs (1) and (2) of Administrative Circular No. 04-94 to become Section 5, Rule 7 of the 1997 Rules of Civil Procedure. Significantly, to curb the malpractice of forum shopping, the rule ordains that a violation thereof would constitute contempt of court and be a cause for the summary dismissal of the petition, without prejudice to the taking of appropriate action against the counsel of the party concerned.[12]

The filing of a certificate of non-forum shopping is mandatory in initiatory pleadings. The subsequent compliance with the requirement does not excuse a party's failure to comply therewith in the first instance. In those cases where the Court excused non-compliance with the requirement to submit a certificate of non-forum shopping, it found special circumstances or compelling reasons which made the strict application of the Circular clearly unjustified or inequitable. In this case, however, the petitioners offered no valid justification for their failure to comply with the Circular.[13]

In *Spouses Ong v. CA*,[14] we ruled that non-compliance with the required certification is fatal. The filing of the same is not waived by failing to immediately assert the defect, and neither is it cured by its belated submission on the ground that the party was not in any way guilty of actual forum shopping. In cases where the Court tolerated the deficiency, special circumstances or compelling reasons made the strict application distinctly unjustified.

In *Altres v. Empleo*,[15] the Court *en banc* issued guidelines based on jurisprudential pronouncements respecting non-

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[12] *Land Car, Inc. v. Bachelor Express, Inc.*, G.R. No. 154377, December 8, 2003, 417 SCRA 307, 311.

[13] *Batoy v. Regional Trial Court, Branch 50, Loay, Bohol*, G.R. No. 126833, February 17, 2003, 397 SCRA 506.

[14] 433 Phil. 490 (2002).

[15] G.R. No. 180986, December 11, 2008, 573 SCRA 583.

compliance with the requirements on, or submission of defective, verification and certification against forum shopping. The portions thereof which are pertinent to the instant case are the following:

> 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.
>
> 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.
>
> 3) Verification is deemed *substantially complied* with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.
>
> 4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."

Finally, it bears stressing that while it is true that litigation is not a game of technicalities and that rules of procedure shall not be strictly enforced at the cost of substantial justice, it does not mean that the Rules of Court may be ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution. It must be emphasized that procedural rules should not be belittled or dismissed simply because their non-observance might have resulted in prejudice to a party's substantial rights. Like all rules, they are required to be followed, except only for the most persuasive of reasons.

WHEREFORE, in view of the foregoing, the Decision dated January 31, 2007 and the Resolution dated December 14, 2007 of the Court of Appeals in CA-G.R. SP No. 86209 are hereby *AFFIRMED*.

Costs against petitioners.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 182740. July 5, 2010]

LYDIA ESCARCHA, for and in behalf of JOSEPH ERWIN M. ESCARCHA, SHEILA MAY ESCARCHA, and ALYSSA M. ESCARCHA, *petitioner, vs.* **LEONIS NAVIGATION CO., INC. and/or WORLD MARINE PANAMA, S.A.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATIONS; SEAFARER; THE ONLY CONDITION FOR DEATH OF A SEAFARER TO BE COMPENSABLE; APPLICATION.— For death of a seafarer to be compensable under this provision, the death must occur *during the term of his contract of employment;* it is the only condition for compensability. The employer is liable upon proof that the seaman died during the effectivity of his employment contract. Corollary, Section 18 (B)(1) of the 1996 POEA-SEC further provides that the employment of the seafarer is terminated when he "signs-off and is disembarked for medical reasons pursuant to Section 20 (B)[4] of [the] contract." In the present case, Eduardo was repatriated for medical reasons; he arrived in the Philippines on June 17,

1999, to undergo further evaluation and treatment after being diagnosed with *advanced mycobacterium tuberculosis, advanced HIV disease, cardiac dysrhythmias,* and *anemia.* Eduardo's employment was therefore terminated upon his repatriation on June 17, 1999. Thus, when Eduardo died on June 9, 2001, approximately *two (2) years after his repatriation,* his employment with the respondents had long been terminated.

2. ID.; ID.; WHEN DEATH DUE TO PNEUMONIA TRACEABLE TO PULMONARY TUBERCULOSIS IS NOT COMPENSABLE.— [T]he causes of Eduardo's death, as shown by his death certificate, indicate that pneumonia was simply the final illness that immediately brought about Eduardo's death. The long road to pneumonia started from an underlying cause – AIDS – that rendered him susceptible to the antecedent cause of tuberculosis, and to pneumonia as the immediate cause of death. x x x Pulmonary Tuberculosis was listed as one of the **antecedent causes** of Eduardo's death, *i.e.,* it was a condition that led to or precipitated the immediate cause of his death, as recorded in the death certificate. Related to pneumonia as the immediate cause of death, this means that Eduardo's pneumonia directly sprang from and was directly linked and traceable to pulmonary tuberculosis, that in turn traced itself to AIDS. Parenthetically, tuberculosis is listed under the ECC Rules and the POEA-SEC as an occupational disease. Eduardo, however, was not engaged in any of the occupations where tuberculosis is a listed illness. Moreover, no evidence on record shows how Eduardo's *working conditions* brought on or aggravated the tuberculosis that became the antecedent cause of his death two years after repatriation.

3. ID.; ID.; *ACQUIRED IMMUNE DEFICIENCY SYNDROME* (AIDS) IS NOT A COMPENSABLE DISEASE.— AIDS is not listed as an occupational disease both under the POEA-SEC and the ECC Rules. Thus, the claimant bears the burden of reasonably proving the relationship between the work of the deceased and AIDS, or that the risk of contracting AIDS was increased by the working conditions of the deceased. In the present case, we do not find Eduardo's AIDS to have been work-related. Records have shown that it was a pre-existing illness that Eduardo did not disclose during his PEME with the respondents' medical testing center.

APPEARANCES OF COUNSEL

Dela Cruz Entero & Associates for petitioner.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

BRION, *J.*:

We review in this petition for review on *certiorari*[1] the October 17, 2007 decision[2] and the April 29, 2008 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 98719 that reversed and set aside the December 29, 2006[4] and the March 12, 2007[5] resolutions of the National Labor Relations Commission (*NLRC*). The NLRC resolutions, in turn, reversed the Labor Arbiter's decision,[6] dismissing the complaint for death compensation benefits of petitioner Lydia Escarcha, for and in behalf of Joseph Erwin Escarcha, Sheila May Escarcha, and Alyssa Escarcha (collectively, *the petitioners*).

ANTECEDENT FACTS

On February 16, 1999, Eduardo S. Escarcha (*Eduardo*) entered into a one-year contract of employment with Leonis Navigation Company, Inc. and World Marine Panama, S.A. (collectively, *the respondents*). He was employed as a First Engineer on board the *M.V. Diamond Glory* with a basic monthly salary of US$950.00.[7] Eduardo submitted himself to the required Pre-

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

[2] Penned by Associate Justice Rodrigo V. Cosico, and concurred in by Associate Justice Hakim S. Abdulwahid and Associate Justice Arturo G. Tayag; *rollo*, pp. 21-27.

[3] *Id.* at 28.

[4] *Id.* at 29-41.

[5] *Id.* at 42-43.

[6] *Id.* at 54-60.

[7] *Id.* at 71.

Employment Medical Examination (*PEME*), and was pronounced fit to work by the company-designated physician.[8] He boarded the *M.V. Diamond Glory* on March 11, 1999.

Sometime in April 1999 (or roughly a month after coming on board), Eduardo became ill while *M.V. Diamond Glory* was on its way to New Orleans. On May 3, 1999, Eduardo was brought to the Touro Infirmary when *M.V. Diamond Glory* docked at the port of New Orleans. Eduardo was found to be suffering from *serious febrile illness*. He was also declared "unfit for regular duty" and "unfit to travel."[9]

Eduardo's condition worsened despite medical attention, and he became comatose. The attending physician, Dr. James R. Patterson (*Dr. Patterson*), found Eduardo to be suffering from *advanced mycobacterium tuberculosis, advanced Human Immunodeficiency Virus (HIV) disease, cardiac dysrhythmias,* and *anemia.* Dr. Patterson's discharge summary also stated that Eduardo's Acquired Immune Deficiency Syndrome (*AIDS*) was under treatment.[10]

On June 17, 1999, Eduardo was repatriated to the Philippines, and was confined at the San Lazaro Hospital for further treatment and evaluation. He was discharged from the hospital after one and a half months, but was ordered to report back for a series of medical check-ups.

Despite continued treatment, Eduardo died on June 9, 2001 (approximately two years after repatriation). The death certificate listed *pneumonia* as the immediate cause; *Pulmonary Tuberculosis, Tuberculosis Meningitis, Disseminated Candidiasis, Anemia Secondary to Chronic Disease, Wasting Syndrome, Scabies, and Seborrheic Dermatitis* as antecedent causes; and AIDS as underlying cause.[11]

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[8] *Id.* at 70.

[9] *Id.* at 72.

[10] CA *rollo*, p. 97.

[11] *Rollo*, p. 75.

At the time of his death, Eduardo left behind his wife Lydia, and their three children – Joseph Erwin, Sheila May, and Alyssa.

The petitioners demanded the payment of death benefits from the respondents which refused to grant the demand. The petitioners then sought the assistance of the Associated Marine Officers' and Seamen's Union of the Philippines, Eduardo's labor union, in pursuing their claim. A series of grievance meetings was held which proved unfruitful. With the failure of conciliation, the petitioners proceeded to file their complaint for death compensation benefits against the respondents with the NLRC.

THE LABOR ARBITRATION RULINGS

Labor Arbiter Jose G. de Vera (*LA de Vera*) dismissed the petitioners' complaint.[12] He held that Eduardo's illness was pre-existing; Eduardo was already afflicted with HIV when he boarded the respondents' vessel. LA de Vera noted that Eduardo admitted to Nigel Griffiths (*Griffiths*), a foreign nurse, that he had concealed his condition from the respondents.

The NLRC, in its resolution of December 29, 2006,[13] set aside LA de Vera's decision and ordered the respondents to pay US$60,000.00 death benefits to Eduardo's wife, Lydia, and US$15,000.00 death benefits to each of their three children.

The NLRC held that LA de Vera erred in concluding that Eduardo's illness was pre-existing based on (1) the result of the HIV test conducted by the National Reference Testing Center for HIV Testing, and (2) Griffiths' report. It did not consider the HIV test result as competent evidence of a pre-existing HIV condition, as it did not mention Eduardo's name, nor did it particularly state that an HIV test was conducted on Eduardo. The NLRC noted that the respondents failed to corroborate their allegation that Eduardo deliberately shopped for agencies that required a PEME without HIV testing. Similarly, the NLRC declared Griffiths' report without evidentiary value as it was unsigned.

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[12] *Supra* note 6.

[13] *Supra* note 4.

The NLRC further ruled that Eduardo's illness was aggravated by his employment. As First Engineer, Eduardo monitored the ship's engine on a daily basis; he was responsible for its mechanical propulsion, maintenance, and operation. He also supervised welding job orders. In undertaking these tasks, he was exposed to various engine toxics and deleterious residues and substances such as metallic iron, oxides, asbestos and carbon monoxides.

The respondents moved for the reconsideration of this resolution, but the NLRC dismissed their motion in its resolution of March 12, 2007.[14]

<u>THE CA DECISION</u>

The respondents filed a petition for *certiorari* before the CA, docketed as CA-G.R. SP No. 98719. While the respondents' petition was pending, the petitioners moved for the execution of the NLRC resolutions. Despite the respondents' opposition, the labor arbiter issued a writ of execution. To prevent the execution of the NLRC's judgment, the respondents agreed to pay the petitioners ₱4,737,810.00, without prejudice to the outcome of their petition for *certiorari* before the CA. The petitioners, in turn, agreed to desist from pursuing the execution proceedings they initiated.[15]

The CA reversed and set aside the NLRC resolutions.[16] According to the CA, death arising from a pre-existing illness is not compensable. Although Eduardo was pronounced fit to work after undergoing the PEME, the CA declared the PEME result unreliable to determine a person's real state of health because a PEME is not exploratory. Thus, the CA held that the petitioners cannot be compensated for Eduardo's death because the latter did not disclose that he was already afflicted with HIV when he applied for the position of first engineer. Moreover,

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[14] *Supra* note 5.

[15] *Id.* at 167-170.

[16] *Id.* at 21-27.

the petitioners failed to show a reasonable connection between Eduardo's work and his sickness, or that the working conditions increased the risk of contracting the disease.

The petitioners moved for the reconsideration of this decision, but the CA denied their motion in its resolution of April 29, 2008.[17]

THE PETITION FOR REVIEW ON *CERTIORARI*

The petitioners allege that the CA erred in denying the award of death compensation benefits.

The petitioners argue that Eduardo had no pre-existing illness because he underwent a PEME and was declared fit to work. In addition, the petitioners claim that a reasonable connection existed between Eduardo's work and the illnesses that caused his death. In fact, pneumonia and pulmonary tuberculosis are listed as compensable illnesses. Even if it were otherwise, the petitioners contend it was not necessary to prove the work-relatedness of Eduardo's illnesses. Unlike the 2000 Philippine Overseas Employment Agency (*POEA*) Standard Employment Contract (*SEC*), the 1996 POEA-SEC, which governs Eduardo's employment contract with the respondents, does not require proof of work-relatedness as condition *sine qua non* for the claim of death compensation benefits. It is enough that death occur during the term of the contract.

In their Comment,[18] the respondents maintain that death benefits are not payable if the death occurred beyond the term of the employment contract or if the deceased fraudulently concealed his real state of health. The respondents likewise pray that the petitioners be ordered to return the amount of ₱4,737,810.00.

THE COURT'S RULING

We do not find the petition meritorious.

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[17] *Supra* note 3.

[18] *Id.* at 87-103.

The Rule on Death Benefits

POEA Memorandum Circular No. 055-96 or the "Revised Standard Employment Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-going Vessels"[19] provides for the minimum requirements for Filipino seafarer's overseas employment. Section 20(A) of the 1996 POEA-SEC, which is based on POEA Memorandum Circular No. 055-96, clearly states:

Section 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR DEATH

1. In case of death of the seafarer **during the term of his contract**, the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount of Fifty Thousand US dollars (US$50,000) and an additional amount of Seven Thousand US dollars (US$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment.

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4. The other liabilities of the employer when the seafarer dies as a result of injury or illness **during the term of employment** are as follows:

a. The employer shall pay the deceased's beneficiary all outstanding obligations due the seafarer under this Contract.

b. The employer shall transport the remains and personal effects of the seafarer to the Philippines at employer's expense except if the death occurred in a port where local government laws or regulations do not permit the transport of such remains. In case death occurs at sea, the disposition of the remains shall be handled or dealt with in accordance with the master's best judgment. In all cases, the employer/master shall communicate with the manning agency to advise for disposition of seafarer's remains.

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[19] During the signing of the parties' contract of employment, and at the time of Eduardo's repatriation, the 2000 POEA-SEC (Department Order No. 4, s. of 2000) was not yet effective.

c. The employer shall pay the beneficiaries of the seafarer the Philippine currency equivalent to the amount of One Thousand US dollars (US$1,000) for burial expenses at the exchange rate prevailing during the time of payment. [Emphases supplied.]

Stated differently, for death of a seafarer to be compensable under this provision, the death must occur *during the term of his contract of employment*; it is the only condition for compensability. The employer is liable upon proof that the seaman died during the effectivity of his employment contract.[20]

Corollary, Section 18(B) (1) of the 1996 POEA-SEC further provides that the employment of the seafarer is terminated when he "signs-off and is disembarked for medical reasons pursuant to Section 20 (B) [4] of [the] Contract."[21]

In the present case, Eduardo was repatriated for medical reasons; he arrived in the Philippines on June 17, 1999, to undergo further evaluation and treatment after being diagnosed with *advanced mycobacterium tuberculosis, advanced HIV disease, cardiac dysrhythmias,* and *anemia*. Eduardo's employment was therefore terminated upon his repatriation on June 17, 1999. Thus, when Eduardo died on June 9, 2001, approximately *two (2) years after his repatriation*, his employment with the respondents had long been terminated. As we held in *Prudential Shipping and Management Corporation v. Sta. Rita*:

The death of a seaman during the term of employment makes the employer liable to his heirs for death compensation benefits. Once it is established that the seaman died during the effectivity of his employment contract, the employer is liable. However**, if the seaman dies after the termination of his contract of employment, his**

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[20] See *Coastal Safeway Marine Services, Inc. v. Delgado*, G.R. No. 168210, June 17, 2008, 554 SCRA 590, 598.

[21] Section 20(B) [4]. Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event the seafarer is declared (1) fit for repatriation; or (2) fit to work but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.

beneficiaries are not entitled to the death benefits enumerated above.[22] [Emphasis supplied.]

<u>The Collective Bargaining Agreement</u>

The petitioners likewise cannot seek refuge from the Collective Bargaining Agreement (*CBA*)[23] executed between the respondents and the Associated Marine Officers' and Seamen's Union of the Philippines, Eduardo's sole bargaining representative. Section 1, Article XX of this CBA reads:

> The Company shall pay to the covered Seafarer's next-of-kin US$60,000.00 for death provided that such covered Seafarer **dies while on board the ship**, or **while travelling to or from the Ship**. x x x If the Union has paid a part of the death compensation in accordance with x x x SECTION 2 below, the Company shall pay the balance remaining x x x after deducting the amounts advanced by the Union to the Seafarer's next-of-kin.[24] [Emphases supplied.]

As earlier stated, Eduardo boarded the ship on March 11, 1999, and was repatriated on June 17, 1999. He died two years later on June 9, 2001. Clearly, Eduardo did not die on board the respondents' ship, or while travelling to or from the ship, so as to entitle him to death compensation under the CBA. *What legal basis the petitioners rely upon – after admitting that Eduardo died two years after repatriation – truly escapes us.*

<u>Work-relatedness Issues</u>

The petitioners argue that work-relatedness of the illnesses that caused Eduardo's death is not a material issue under the 1996 POEA-SEC, as it only requires that *death occur during the term of the contract*.[25] We agree with this position, but given that Eduardo died two years after the termination of his employment contract, we see no point in belaboring this issue.

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[22] G.R. No. 166580, February 8, 2007, 515 SCRA 157, 168-169.

[23] Took effect on May 1, 1999.

[24] *Rollo*, p. 85.

[25] *Id.* at 8.

Alternatively, the petitioners argue that Eduardo's death should be compensable because his work *triggered* the illnesses or *worsened* them.[26]

Eduardo's death which occurred two years after his repatriation is covered by a death certificate that listed *pneumonia* as the immediate cause; *Pulmonary Tuberculosis, Tuberculosis Meningitis, Disseminated Candidiasis, Anemia Secondary to Chronic Disease, Wasting Syndrome, Scabies and Seborrheic Dermatitis* as antecedent causes; and *AIDS* as underlying cause. Properly understood, these findings are significant as they point us to a definite conclusion on the issue of work-relatedness or work-aggravation.

Pneumonia, the **immediate cause** of Eduardo's death, is listed under the Implementing Rules and Regulations of the Labor Code (*ECC Rules*) as an occupational disease. But for a disability or death from this cause to be compensable, all the following conditions must be satisfied:

(1) The [seafarer's] work **must involve the risks described herein**;

(2) The disease was **contracted as a result of the [seafarer's] exposure to the described risks**;

(3) The disease was contracted within a period of exposure and under such other factors necessary to contract it; [and]

(4) There was no notorious negligence on the part of the [seafarer]. [Emphases supplied.]

Corollary, the ECC Rules specifically requires for compensability that *pneumonia* must have been contracted under the following conditions:

(a) There must be an honest and definite history of wetting and chilling during the course of employment and also, of injury to the chest wall with or without rib fracture, or inhalation of noxious gases, fumes and other deleterious substances in the place of work.

(b) There must be a direct connection between the offending agent or event and the worker's illness.

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

(c) The signs of consolidation should appear soon (within a few hours) and the symptoms of initial chilling and fever should at least be 24 hours after the injury or exposure.

(d) The patient must manifest any of the following symptoms within a few days of the accident: (1) severe chill and fever; (2) headache and pain, agonizing in character, in the side of the body; (3) short, dry, painful cough with blood-tinged expectoration; and (4) physical signs of consolidation, with fine rales.

Significantly, these are the very same conditions required under the POEA-SEC for pneumonia to be considered a compensable occupational disease.[27]

Our consideration of the attendant facts shows the petitioners failed to adduce evidence establishing these required conditions. On the contrary, the causes of Eduardo's death, as shown by his death certificate, indicate that pneumonia was simply the final illness that immediately brought about Eduardo's death. The long road to pneumonia started from an underlying cause – AIDS – that rendered him susceptible to the antecedent cause of tuberculosis, and to pneumonia as the immediate cause of

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[27] **Section 32-A. Occupational Diseases:**

x x x x x x x x x

13. Pneumonia. All of the following conditions must be met:

a. There must be an honest and definite history of wetting and chilling during the course of employment and also, of injury to the chest wall with or without rib fracture, or inhalation of noxious gases, fumes and other deleterious substances in the place of work.

b. There must be direct connection between the offending agent or event and the seafarer's illness.

c. The signs of consolidation should appear soon (within a few hours) and the symptoms of initial chilling and fever should at least be 24 hours after the injury or exposure.

d. The patient must manifest any of the following symptoms within a few days of the accident: (1) severe chill and fever; (2) headache and pain, agonizing in character, in the side of the body; (3) short, dry, painful cough with blood-tinged expectoration, and (4) physical signs of consolidation, with fine rales.

death. This is discussed at length below in the discussion on AIDS. Suffice it to state for now that no evidence on record shows that Eduardo's working conditions on board as a First Engineer caused the pneumonia that brought on his death two years after he had disembarked from his vessel.

Pulmonary Tuberculosis[28] was listed as one of the **antecedent causes** of Eduardo's death, *i.e.,* it was a condition that led to or precipitated the immediate cause of his death, as recorded in the death certificate.[29] Related to pneumonia as the immediate cause of death, this means that Eduardo's pneumonia directly sprang from and was directly linked and traceable to pulmonary tuberculosis, that in turn traced itself to AIDS. Parenthetically, tuberculosis is listed under the ECC Rules and the POEA-SEC as an occupational disease. Eduardo, however, was not engaged in any of the occupations where tuberculosis is a listed illness. Moreover, no evidence on record shows how Eduardo's *working conditions* brought on or aggravated the tuberculosis that became the antecedent cause of his death two years after repatriation.

An **underlying cause** is defined by the World Health Organization as the disease or injury that initiated the train of events leading directly to death, or the circumstances of the accident or violence that produced the fatal injury.[30] AIDS, described in Eduardo's death certificate as the underlying cause of death, is a human disease characterized by a marked decrease of helper-induced T-lymphocyte cells, resulting in a general breakdown of the body's immune system.[31] In simpler terms,

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[28] Among the illnesses listed in the death certificate as antecedent causes of Eduardo's death, only pulmonary tuberculosis was listed under the ECC Rules and POEA SEC as occupational.

[29] http://www.jrank.org/health/pages/33876/antecedent-causes-death.htm >antecedent causes of death, last visited on May 28, 2010.

[30] Under international rules for selecting an underlying cause from the reported conditions, every death is attributed to one underlying cause based on the information reported on the death certificate. See: *Wisconsin Department of Health Services* (http://dhs.wisconsin.gov/wish/main/Mortality/define.htm), last visited on May 28, 2010.

[31] *Webster's Family Encyclopedia*, Volume 1, p. 16.

it is a disease that attacks a person's immune system, leaving it so damaged that certain diseases (opportunistic infections) or cancers develop. AIDS is the final and most serious stage of HIV infection,[32] and it takes time for HIV to progress to AIDS.[33]

According to the *Merck Manual of Medical Information*, the virus that causes AIDS can only be transmitted in the following ways: (a) sexual relation with an infected person; (b) injection or infusion of contaminated blood; and (c) transfer of the virus from an infected mother to a child before or during birth.[34] HIV is not transmitted by casual contact or even by close, nonsexual contact at work, school or home. No contact of HIV transmission has been traced to the coughing or sneezing of an infected person or to a mosquito bite.[35]

Opportunistic infections that develop with AIDS are infections by organisms that do not cause disease in people with healthy immune systems. Both the HIV infection and the opportunistic infections and cancers produce the symptoms of AIDS.[36]

Pneumonia caused by the fungus *Pneumocystis carinii* is a common and recurring opportunistic infection in people with AIDS, and is the first opportunistic infection to develop. *Tuberculosis* is more frequent and deadlier in people who have HIV infection than in those who do not, and is difficult to treat if the strain of the tuberculosis is resistant to antibiotics. Another mycobacterium, *Mycobacterium avium complex,* is a common cause of fever, weight loss, and diarrhea in people with the advanced disease.[37]

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[32] HIV is an infection by one of two viruses that progressively destroys white blood cells called lymphocytes, causing Acquired Immune Deficiency Syndrome (AIDS) and other diseases that result from the impaired immunity.

[33] (http://www.ashastd.org/learn_hiv_aids.cfm), last visited on May 24, 2010; see also *The Merck Manual of Medical Information*, Pocket Book, Simon and Schuster, Inc. (1997 ed.), p. 927.

[34] *Id.* at 927-928.

[35] *Id.* at 929.

[36] *Id.* at 929-930.

[37] *Id.* at 930.

AIDS is not listed as an occupational disease both under the POEA-SEC and the ECC Rules. Thus, the claimant bears the burden of reasonably proving the relationship between the work of the deceased and AIDS, or that the risk of contracting AIDS was increased by the working conditions of the deceased.

In the present case, we do not find Eduardo's AIDS to have been work-related. Records have shown that it was a pre-existing illness that Eduardo did not disclose during his PEME with the respondents' medical testing center.

The evidence reveals that Eduardo had undergone a previous PEME on October 29, 1997 (or two years before his deployment with the respondents) as a prerequisite for his employment with another agency – Southfield Agencies (Southfield). The PEME was conducted by the PROBE Polyclinic and Diagnostic Center (*PROBE*), Southfield's designated testing center. Dr. Laura S. Gonzales, the examining physician, found Eduardo **positive for HIV**, and declared him **unfit for sea duty**.[38] Eduardo was then advised to proceed to the Department of Health's National Reference Testing Center for HIV Testing for further examination and tests. The National Reference Testing Center for HIV Testing confirmed the findings of PROBE, and declared Eduardo to be **HIV positive**.[39]

Eduardo underwent another PEME, this time in relation to his application with the respondents in 1999 (or two years after PROBE's test). The PEME was conducted by the respondents' designated testing center – the Holy Angel Medical Clinic.[40] Fortunately or unfortunately for Eduardo, this testing center did not require an AIDS clearance test, and he did not disclose that he had been tested HIV positive when he filled up the PEME form. In fact, he answered "*No*" to the question, "*Has applicant suffered from, or been told he had, any of the following conditions: x x x 21) Sexually Transmitted Disease*."[41] Thus, through a confluence

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[38] CA *rollo*, p. 91.

[39] *Id.* at 92.

[40] *Id.* at 96.

[41] *Ibid.*

of events – a testing center that for some reason did not test a prospective seaman for AIDS, and the seaman's own failure to disclose his affliction – Eduardo was able to board the respondents' vessel in March 1999 despite his HIV positive condition.

Records show that within a short two months after deployment with the respondents' vessel, Eduardo was diagnosed to be suffering from, among others, advanced HIV. Dr. Patterson of the Touro Infirmary in New Orleans, where Eduardo was admitted in May 1999,[42] mentioned in the Physician's Discharge Summary that Eduardo's **AIDS was "under treatment"**; and that the "***[p]atient had a very stormy course related to his advanced HIV disease, which was discovered here, but which the patient knew about 18 months prior to admission***."[43] Apparently, it was only at this point that the respondents came to fully know that Eduardo had AIDS.

The nature of HIV and AIDS negates the petitioners' claim that the illnesses that caused Eduardo's death were acquired during his employment on board the respondents' vessel because he passed the company's PEME. Three reasons, already touched upon in the discussions above, militate against this claim.

First, the respondents' testing center did not test for HIV, and Eduardo did not disclose his HIV positive condition. Under these circumstances, a PEME cannot lead to the conclusion that Eduardo was HIV-free when he boarded the respondents' vessel and acquired his HIV/AIDS only while on board the vessel. We have had occasion to recognize in the past that a PEME, in the way it is conducted in the maritime industry, is generally not exploratory in nature, nor is it a totally in-depth and thorough examination of an applicant's medical condition. The PEME, usually cursorily made, determines whether one is "fit to work" at sea or "fit for sea service"; it does not reveal the real state of health of an applicant.[44] In the present case, the worthlessness

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[42] *Id.* at 97.

[43] *Ibid.*

[44] See *NYK-FIL Ship Management, Inc. v. NLRC*, G.R. No. 161104, September 27, 2006, 503 SCRA 595, 609.

of the respondents' PEME for AIDS determination purposes is hardly disputable.

Second, from the causes of AIDS we pointed out above, it appears – in the absence of any record of blood transfusion while on board – that Eduardo acquired his AIDS through sexual relations with an infected person and not because of his brief two-month stay on board or of his working conditions during that period. As discussed above, HIV/AIDS, while communicable, can be transmitted only under specific conditions. By a process of elimination, Eduardo could have acquired his AIDS only through sexual transmission – a claim made by the respondents, albeit through an unsigned report by a foreign nurse who was not available for examination during the arbitration and whose statement cannot therefore be appreciated as evidence.[45]

Third, HIV/AIDS is a disease of the immune system that does not progress to the point of attracting opportunistic infections until the immune system has substantially been weakened by the progress of the disease. It does not reach this advanced stage in two months' time as established medical literature shows. Eduardo did not succumb to the disease and the opportunistic infections it carried until after two years from the respondents' discovery of the disease, and four years after he was tested positive by PROBE.

Based on these considerations, we cannot escape the conclusion that the petition is without merit and that the CA was correct when it reversed and set aside the NLRC award of death benefits to the petitioners as heirs of Eduardo. This is a conclusion that cannot be helped nor swayed by the intent of our laws and jurisprudence to be read liberally in their application to our overseas Filipino workers. Liberal construction is not a license to disregard the evidence on record or to misapply our laws.[46] That the petitioners have now secured the execution of

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[45] CA *rollo*, pp. 100-104.

[46] See *Klaveness Maritime Agency, Inc. v. Beneficiaries of the Late Second Officer Anthony S. Allas*, G.R. No. 168560, January 28, 2008, 542 SCRA 593, 603.

the NLRC decision involving a very sizeable sum is unfortunate, but is a situation that is not irremediable since the parties themselves agreed that this would be a live issue subject to the final outcome of the case.

WHEREFORE, premises considered, we *DENY* the petition for lack of merit, and accordingly *AFFIRM* the challenged decision and resolution of the Court of Appeals in CA-G.R. SP No. 98719. In light of this judgment, the petitioners are hereby *ORDERED* to *RETURN* the amount of Four Million Seven Hundred Thirty-Seven Thousand Eight Hundred Ten Pesos (₱4,737,810.00) to the respondents. Costs against the petitioners.

SO ORDERED.

Carpio Morales (Chairperson), Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 182793. July 5, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DIONISIO CALONGE *y* VERANA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; PARRICIDE; ELEMENTS.— Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; (3) the deceased is the father, mother, or child, whether legitimate of illegitimate other ascendant

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[*] Designated additional Member of the Third Division, in view of the retirement of former Chief Justice Reynato S. Puno, per Special Order No. 843 dated May 17, 2010.

or other descendant, or the legitimate spouse of accused. The key element in parricide is the relationship of the offender with the victim.

2. **REMEDIAL LAW; EVIDENCE; CIRCUMSTANCIAL EVIDENCE; WHEN ADEQUATE FOR CONVICTION.—** The oft-repeated rule has been that circumstantial evidence is adequate for conviction if there is more than one circumstance, the facts from which the inferences are derived have been proven and the combination of all circumstances is such as to produce a conviction beyond reasonable doubt. While no general rule can be laid down as to the quantity of circumstantial evidence which will suffice in a given case, all the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt. The circumstances proved should constitute an unbroken chain which leads to only one fair and reasonable conclusion that the accused, to the exclusion of all others, is the guilty person.

3. **ID.; ID.; ID.; CIRCUMSTANCES ESTABLISHING THE GUILT OF THE ACCUSED FOR THE CRIME OF PARRICIDE.—** [T]he following circumstances taken together established without doubt that is was appellant who inflicted fatal wounds on Rosita, Melody, Dony Rose and Kimberly inside their house early morning of December 1, 2001: (1) after having a quarrel with Rosita the previous night, appellant was seen by Melody sharpening his bolo which he later hid under his pillow; (2) the bolo, knife and flashlight used in the hacking of the victims belong to appellant, and which were found in his possession when policeman arrived at the scene; (3) the medical findings showed that the victims' injuries were caused by sharp and bladed instruments; (4) there were no sign of forcible entry as the things inside the house were not disarranged; (5) the only persons inside the house were appellant, Rosita and their three children who slept in adjacent rooms separated only by a curtain; (6) the only house near appellant's house was that of his parents-in-law; (7) Rosita was heard by her relatives shouting for help before their bodies were discovered; (8) appellant sustained only superficial wounds and was found conscious by the policemen; (9) appellant could not explain

or say anything about how and when he and the victims were injured; and (10) Melody saw her father initially strike at her mother before the latter ran outside the house, and then stab her also five (5) times.

4. **CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; TREACHERY, PRESENT.—** In the killing of Dony Rose and Kimberly, the trial court was correct in appreciating the aggravating circumstance of treachery. There is treachery when the attack is so sudden and unexpected that the victim had no opportunity either to avert the attack or to defend himself. Indeed, nothing can be more sudden and unexpected than when a father stabs to death his two (2) young daughters while they were sound asleep and totally defenseless.

5. **ID; ID; TREACHERY AND EVIDENT PREMEDITATION, ABSENT.—** As to the killing of Rosita, neither treachery nor evident premeditation was present considering that she was able to parry the first thrust of appellant and ran away outside the house, and there is no evidence proving that appellant determined to commit the crime even as Melody's recounted that she saw his father sharpening his bolo before they slept the previous night. Evident premeditation needs proof of the time when the intent to commit the crime is endangered in the mind of the accused, the motive which gives rise to it, and the means which are beforehand selected to carry out that intent. All such facts and antecedents which make notorious the pre-existing design to accomplish the criminal purpose must be proven to the satisfaction of the court. There is paucity of evidence as to the time, motive and the means chosen by appellant to carry out the intent to kill his entire family.

6. **ID; PARRICIDE; CIVIL LIABILITIES.—** On the civil indemnity awarded by the trial court in the amount of ₱75,000.00 each and another ₱50,000.00 each as moral damages, for the deaths of Dony Rose and Kimberly, the Court sustains the same. Likewise, the heirs of Rosita are entitled to civil indemnity of ₱50,000.00 and another ₱50,000.00 as moral damages.

7. **ID; FRUSTRATED PARRICIDE; CIVIL LIABILITIES.—** The trial court awarded Melody moral damages in the amount of ₱25,000.00, and another ₱20,000.00 as exemplary damages which are justified under Articles 2219 (1) and 2229 of the

Civil Code. Further, under Article 2230 of the New Civil Code, exemplary damages are awarded to serve as a deterrent to serious wrongdoings, as vindication of undue suffering and wanton invasion of the rights of an injured person, and as punishment for those guilty of outrageous conduct. Melody is likewise entitled to the sum of ₱11,025.00 as cost of her treatment and hospitalization. Anent actual or compensatory damages, it bears stressing that only substantiated and proven expenses or those which appear to have been genuinely incurred in connection with the death, wake or burial of the victim will be recognized by the courts. Prosecution witness Lourdes Amlag testified that the family incurred expenses in connection with the funeral, wake and burial, totaling ₱21,255.00, as shown in the itemized list submitted to the trial court.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VILLARAMA, JR., *J.*:

For review is the Decision[1] dated November 29, 2007 of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 01516 which affirmed with modification the Joint Decision[2] dated August 10, 2005 of the Regional Trial Court of Bayombong, Nueva Vizcaya, Branch 27 in Criminal Case Nos. 4077-4080 finding the above-named accused-appellant guilty beyond reasonable doubt of parricide and frustrated parricide.

The facts as culled from the records:

Rosita A. Calonge was appellant's legitimate wife, with whom he had three (3) children, namely: Melody, Dony Rose and

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[1] CA *rollo*, pp. 108-125. Penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta.

[2] Records, pp. 252-265. Penned by Judge Jose B. Rosales.

Kimberly whose respective ages at the time of the incident were nine (9), seven (7) and six (6) years.[3] The family lived in a four (4) by five (5) meters house at a farm land near the house of Rosita's parents at Barangay Cabuluan, Villaverde, Nueva Vizcaya.

On December 1, 2001 at around 6:00 o'clock in the morning, the Villaverde Police Station received a radio call from the *barangay* captain of Cabuluan that a massacre took place in their locality. By 7:30 a.m., the responding team led by PO3 Alfelmer Balut arrived at the area. Rosita's bloodied body was found lying on the ground about fifteen (15) meters away from their house. Her right hand was loosely clasping a knife. Lying on his back near the stairs was appellant who was also wounded but still conscious. Beside him were a bolo and a flashlight, both stained with blood. While the windows of the house were locked with a piece of tie wire, the door was already opened, its metal lock was found three (3) to five (5) meters from the door and seven (7) to ten (10) meters from the body of Rosita. Inside the two (2) "bedrooms" of the house separated only by a curtain, they found the lifeless bodies of the two (2) young girls, Kimberly and Dony Rose. The other child, Melody, was also bloodied but alive and conscious. They brought Melody to the Veterans Regional Hospital where she was treated and confined for seventeen (17) days.[4]

Police investigators found no signs of struggle or forcible entry as the things inside the house were not disarranged. Photographs of the three (3) dead victims (Rosita, Dony Rose and Kimberly) were also taken at the crime scene. When interviewed by the policemen, Melody's grandmother, Ana O. Amlag, said that Melody told her it was their father (appellant) who attacked her, her mother and her sisters. Melody's grandparents said they knew it was appellant because they had

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[3] Exhibit "B" and Pre-Trial Order, records, pp. 15 and 93.

[4] TSN, July 10, 2002, pp. 3-4, 7-13; TSN, August 6, 2002, pp. 1-2; TSN, September 11, 2002, pp. 4-6; TSN, October 9, 2002, pp. 5-9; Exhibits "O" and "Q", records, pp. 199-200.

heard Rosita shouting that appellant will kill them. On the other hand, when appellant was asked what happened and who attacked him, he answered he does not know. Appellant asked to be treated also and they brought him to the hospital.[5]

While still in the hospital, Melody, assisted by her first cousin Ana Fe Huang, gave her statement to the police. She identified her father, who had a quarrel with her mother the previous night, as the one (1) who hacked her and also fatally stabbed her mother and two (2) sisters.[6]

On January 17, 2002, appellant was charged with parricide and frustrated parricide under the following Informations:

Criminal Case No. 4077

That on December 01, 2001 in the morning, at Barangay Cabuluan, Municipality of Villaverde, Province of Nueva Vizcaya, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, with intent to kill, evident premeditation, treachery and superior strength, did then and there willfully, unlawfully and feloniously, with the use of a bladed/pointed object, stab ROSITA CALONGE *y* AMLAG, legal wife of the accused, thus inflicting upon the latter mortal wound which caused her instantaneous death, to the damage and prejudice of her heirs.

CONTRARY TO LAW.[7]

Criminal Case No. 4078

That on December 01, 2001 in the morning, at Barangay Cabuluan, Municipality of Villaverde, Province of Nueva Vizcaya, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, with intent to kill, evident premeditation, treachery and superior strength, did then and there willfully, unlawfully and feloniously, with the use of a bladed/pointed object, hack KIMBERLY CALONGE *y* AMLAG, 06 years old, daughter of the accused, thus

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[5] Exhibits "P", "P-2" and "P-1", records, pp. 16, 41 and 60; TSN, August 6, 2002, pp. 1-4, 6-7, 10, 12.

[6] Exhibit "G", records, p. 4; TSN, July 10, 2002, p. 13; TSN, August 6, 2002, pp. 7-8, 14-17.

[7] Records, p. 1.

inflicting upon the latter mortal wounds which caused her instantaneous death, to the damage and prejudice of her heirs.

CONTRARY TO LAW.[8]

Criminal Case No. 4079

That on December 01, 2001 in the morning, at Barangay Cabuluan, Municipality of Villaverde, Province of Nueva Vizcaya, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, with intent to kill, evident premeditation, treachery and superior strength, did then and there willfully, unlawfully and feloniously, with the use of a bladed/pointed object, stab DONY ROSE CALONGE *y* AMLAG, 07 years old, daughter of the accused, thus inflicting upon the latter mortal wounds which caused her instantaneous death, to the damage and prejudice of her heirs.

CONTRARY TO LAW.[9]

Criminal Case No. 4080

That on December 01, 2001 in the morning, at Barangay Cabuluan, Municipality of Villaverde, Province of Nueva Vizcaya, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, with intent to kill, evident premeditation, treachery and superior strength, did then and there willfully, unlawfully and feloniously, with the use of a bladed object, hack Melody Calonge *y* Amlag, 09 years old, daughter of the accused, thus inflicting upon the latter fatal wounds and performing all the acts of execution which should have produced the crime of Parricide as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the accused, that is, the timely medical attendance given which prevented the victim's death, but nevertheless resulted to her damage and prejudice.

CONTRARY TO LAW.[10]

When arraigned, appellant pleaded not guilty. During the trial, the prosecution presented as witnesses PO3 Alfelmer

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

[9] *Id.*, p. 49.

[10] *Id.*, p. 68.

Balut, Dr. Telesforo A. Ragpa (Municipal Health Officer), Lourdes Amlag, Dr. Lirio Marie Ronduen-Adriatico and Melody A. Calonge.

The sole witness for the defense was appellant who gave a different version of the incident. According to appellant, he came home on the night of November 30, 2001 at around 6:00 o'clock. After taking coffee, he took supper with his family. At about 8:30 p.m., he put Kimberly to sleep while his wife together with Dony Rose was in the kitchen preparing for their food the following morning because they will go to church. He could not remember what time he fell asleep but when he woke up in the morning, he was no longer in their house but in a hospital. Only then he realized that he was wounded on the chest and neck. He tried to inquire from people in the hospital what happened but no voice came out of his mouth. He does not know who caused his injuries as he could not recall anything that transpired from the time he slept until the morning of December 1, 2001. Appellant denied that he and his wife quarrelled the previous night. What he knows is that his wife had a quarrel with spouses *Manong* Sante and *Manang* Paula, as the latter who is the sister of his wife did not want them to stay in the place.[11] On cross-examination, appellant claimed that the doors of the house were still open at that time because somebody else was still using the kitchen. He denied that he sharpened his bolo that same night, as in fact all his carpentry tools were placed in their kitchen. As to his flashlight, appellant insisted it was his wife who was using it that night but he admitted that it was already placed very near the door where he had put Kimberly to sleep. He actually placed his bolo, flashlight and those other items in a shelf just four (4) meters away from where he slept.[12]

On August 18, 2005, the trial court promulgated its Joint Decision dated August 10, 2005 convicting appellant of the crimes charged, the *fallo* of which reads:

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[11] TSN, February 23, 2005, pp. 4-7.

[12] *Id.*, pp. 8-9, 11-12; TSN, February 24, 2005, pp. 2-3.

WHEREFORE, finding the accused Dionisio Calonge *y* Verana GUILTY beyond reasonable doubt of three counts of parricide and one count of frustrated parricide, he is hereby sentenced as follows: (1) for the killing of Kimberly Calonge and Dony Rose Calonge, the said accused is hereby sentenced to suffer *death penalty* by lethal injection for each case; to pay the heirs of the said victims, the sums of ₱75,000.00 for each case as civil indemnity and ₱50,000.00 as moral damages; and to pay the heirs actual damages in the sum of ₱21,255.00 for the death of Kimberly, Dony Rose and Rosita A. Calonge; (2) for the killing of Rosita Calonge, the said accused is hereby sentenced to suffer the penalty of *reclusion perpetua*; and to pay the heirs of Rosita the sum of ₱50,000.00 as civil indemnity and the sum of ₱50,000.00 as moral damages; (3) for the crime of frustrated parricide for wounding Melody Calonge, he is hereby sentenced to suffer the penalty of 8 years and 1 day of *prision mayor* as the minimum term to 20 years of [*reclusion temporal*[13]] as the maximum term; to pay the victim moral damages in the sum of ₱25,000.00; exemplary damages in the sum of ₱20,000.00 and ₱11,015.00 as actual damages.

SO ORDERED.[14]

On appeal, the CA affirmed the trial court's judgment but modified the death penalty imposed on appellant in Criminal Case Nos. 4078 and 4079 (parricide committed against Kimberly and Dony Rose) by reducing it to *reclusion perpetua*.[15] Appellant filed a notice of appeal[16] and accordingly the records of the case were elevated to this Court.

On August 11, 2008, the Court resolved to require the parties to file their respective supplemental briefs, if they so desired.[17] In a Manifestation dated October 29, 2008, the Public Attorney's Office, representing the appellant, informed the Court that it would no longer file a supplemental brief; it was adopting its

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[13] As amended by Order dated September 5, 2005, records, p. 267.

[14] *Id.*, p. 265.

[15] CA *rollo*, p. 125.

[16] *Id.*, pp. 128-131.

[17] *Rollo,* p. 25.

main brief on record.[18] The Office of the Solicitor General, representing the People, likewise omitted to submit a supplemental brief.[19]

Appellant seeks the reversal of his conviction by the RTC and CA on the following grounds:

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF PROSECUTION WITNESS MELODY CALONGE DESPITE ITS EVIDENT CONTRADICTIONS AND APPARENT UNREALITY.

II.

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.[20]

Appellant contends that the trial court overlooked the following inconsistencies and contradictions in the testimony of Melody: (1) the alleged misunderstanding between her parents prior to December 1, 2001, which she first denied but changed it during a subsequent hearing when she claimed her parents had a quarrel before the stabbing incident occurred, (2) the time of such quarrel for which she gave three (3) different answers (8:00 to 9:00 p.m. of November 30, 2001; 2:00 early morning of December 1, 2001; and 6:00 to 7:00 p.m. of November 30, 2001), and (3) whether it was Melody or her mother who was first hacked by her father. These inconsistent statements of the alleged eyewitness engender doubt as to their reliability and veracity.

Appellant further argues that Melody's identification of appellant as the perpetrator of the crimes remained uncorroborated. The failure to present such other alleged witnesses (her grandparents) was not satisfactorily explained

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[18] *Id.*, pp. 28-31.

[19] *Id.*, p. 33.

[20] CA *rollo,* p. 45.

by the prosecution. He assails Melody's testimony as highly incredible. While Melody claimed that she saw appellant hacked and stabbed her sisters, the fact is that, during that time, according to her, she was sleeping together with her mother in another room inside their house. Moreover, it was impossible for Melody to have seen that the person who killed her mother and two (2) sisters was appellant when in fact, according to her, there was no light inside their room when the incident happened. Clearly, the prosecution failed to discharge its burden of proving the identity of the offender.

We disagree.

It is plain that the errors imputed to the trial court are factual and chiefly assail its evaluation of the credibility of witnesses. The doctrinal rule is that findings of fact made by the trial court, which had the opportunity to directly observe the witnesses and to determine the probative value of the other testimonies are entitled to great weight and respect because the trial court is in a better position to assess the same, an opportunity not equally open to the appellate court.[21] We find no cogent reason to deviate from the findings and conclusions of the RTC and CA in this case.

It was established from prosecution evidence that the lone survivor Melody saw appellant using his bolo and knife, struck at her mother who was able to evade it and run outside the house. Appellant then turned to Melody, and hacked her three (3) times before stabbing Dony Rose and Kimberly who were both still sleeping. After finishing off his family, appellant inflicted his lone superficial wound before lying down on the floor, apparently to avoid suspicion that he was himself the culprit and create an impression that a trespasser had attacked all of them in the night. Melody vividly recounted to the court what she had witnessed while pretending to be still asleep even after she was hacked by appellant.

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[21] *People v. Villamor,* G.R. Nos. 140407-08 & 141908-09, January 15, 2002, 373 SCRA 254, 265, citing *People v. Visaya*, G.R. No. 136967, February 26, 2001, 352 SCRA 713, 725-726.

Melody's account was corroborated by the findings of prosecution witnesses Dr. Ragpa (who conducted the autopsy on the bodies of the three [3] victims) and Dr. Ronduen-Adriatico (who examined and treated Melody). Dr. Ragpa testified that Rosita sustained only a single stab wound on the chest. He explained that the width of such wound, 2 ½ inches, was caused by a single upward thrust and pulling out of the bladed instrument. The six (6)-inch deep wound hit the lower tip of the heart and resected the pulmonary vessels. For Rosita, the cause of death was hypovolemic shock due to resected pulmonary blood vessels. As for Kimberly, she sustained a hacking wound on the left axilla (armpit), probably inflicted in a lying position, which cut the head of the left humerus and resecting the axillary blood vessels. Kimberly also died from hypovolemic shock due to injured/resected left axillary blood vessels. Dony Rose had one (1) incised wound and one (1) stab wound on her chest, which penetrated the left ventricle of the heart. She likewise died of hypovolemic shock due to penetrating stab wound on the chest.[22] On the other hand, Dr. Ronduen-Adriatico testified that Melody sustained five (5) wounds and had three (3) amputations of the three (3) digits of her right hand. She found the wounds located at the left side of the head, lower lip, left side of the neck, left shoulder, chest and the third, fourth and fifth fingers. Although the only fatal wound is that at the left side of the neck, the combination of all wounds would have caused the death of Melody had there been no timely medical assistance rendered on the patient. The neck wound was a fatal injury (victim could have died in less than six [6] hours) because of its proximity to large blood vessels such as carotid and tubular vessels.[23]

We hold that the trial court did not err in finding Melody's testimony clear and unequivocal, despite her answers not being as complete as would be desired, considering her age and difficulty of translating the questions to her in the Ifugao dialect. Her account of the incident was consistent with the physical evidence,

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[22] Exhibits "I", "J" and "K", records, pp. 193-195; TSN, March 5, 2003, pp. 2-9.

[23] TSN, June 2, 2004, pp. 2-8.

particularly the findings of Dr. Ragpa and Dr. Ronduen-Adriatico on the injuries sustained and cause of death of the victims as a result of the carnage wrought upon their family by appellant.

The inconsistencies mentioned by appellant relate only to minor details and not to the fact of the fatal stabbing of his wife and two (2) children in his own hands. We have consistently ruled that not all inconsistencies in the witnesses' testimony affect their credibility. Inconsistencies on minor details and collateral matters do not affect the substance of their declaration, their veracity, or the weight of their testimonies. Thus, although there may be inconsistencies on the testimonies of witnesses on minor details, they do not impair credibility where there is consistency in relating the principal occurrence and positive identification of the assailants.[24] Discrepancies referring only to minor details and collateral matters – not to the central fact of the crime – do not affect the veracity or detract from the essential credibility of a witness as long as it is coherent and intrinsically believable on the whole.[25]

It must be further stressed that during her testimony, Melody had to be assisted by an interpreter as she responded to the questions in the Ifugao dialect. Besides, ample margin of error and understanding should be accorded to young witnesses who, much more than adults, would be gripped with tension due to the novelty of the experience of testifying before a court.[26] Despite the language barrier, Melody remained categorical and steadfast in declaring that it was her very own father, appellant, who hacked her, her mother and her younger sisters using his bolo and knife in the early morning of December 1, 2001 at their house. Thus, she testified during the direct examination:

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[24] *People v. Castro*, G.R. No. 172370, October 6, 2008, 567 SCRA 586, 595-596, citing *People v. Bato,* G.R. No. 134939, February 16, 2000, 325 SCRA 671, 677 and *People v. Valla,* G.R. No. 111285, January 24, 2000, 323 SCRA 74, 82.

[25] *People v. Suarez,* G.R. Nos. 153573-76, April 15, 2005, 456 SCRA 333, 345.

[26] *People v. De la Cruz,* G.R. No. 116726, July 28, 1997, 276 SCRA 352, 357, citing *People v. Salazar*, G.R. No. 84391, April 7, 1993, 221 SCRA 170, 177.

PROS. TURINGAN:

Q. Do you recall of any incident at that evening that is relevant to this case involving the killing of your sister Dony Rose, Kimberly, your mother and the fact that you were wounded?

A. Yes, there was sir.

Q. What was that incident that you recall Melody?

A. He hacked us, sir.

Q. ***Who hacked you?***

A. ***My papa, sir.***

COURT:

Q. Do you know the full name of your papa or nickname?

A. Yes, sir I know.

Q. What is the full name of your papa?

A. Dionisio Calonge, sir.

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PROS. TURINGAN:

Q. What did your father use in hacking you Melody?

A. The knife and the bolo, sir.

x x x x x x x x x

PROS. TURINGAN:

These bolo and knife, how are they related to the bolo and knife used by your father in hacking you, your sister and your mother?

A. He stabbed and then he hacked, sir.

Q. By the way, these bolo and knife, do you know who own these bolo and knife?

A. Yes, sir.

Q. Who own these bolo and knife Melody?

A. My father sir.

Q. How are these knife and bolo related to the bolo and knife used by your father in hacking your sister, yourself and your mother?

A. ***He used that bolo in hacking and stabbing my mother and my sister, sir.***

Q. Who was hacked first by your father Melody?

A. I, sir.

Q. After hacking [you] Melody. . .By the way, what part of your body was hacked by your father?

A. This one, sir. (Witness showing to the Court the three fingers that were cut from the middle finger up to the small finger of the left arm and also below the shoulder of the left arm).

Q. Where else, Melody?

A. (Witness showing to the Court the scar located at the left side of her lower lip and also at the back of her left ear).

Q. After your father Melody hacked you, what happened next?

A. My mother, sir.

COURT:

Q. ***What was done to your mother?***

A. ***He stabbed her, sir.***

PROS. TURINGAN:

Q. And after he stabbed your mother, what did your father do next Melody?

A. He returned back and used the bolo in hacking me three times, sir.

Q. After that, what happened next Melody?

A. ***Next, sir my father used the bolo in stabbing my sister's armpit and used in hacking her abdomen.***

Q. Which of these bolo and knife did he use in hacking and stabbing your sister?

ATTY. TABAGO:

Who? Sister?

A. Both, sir.

COURT:

Q. Are you saying that your father was holding two weapons at the same time?

A. Yes, sir.

Alright, go ahead.

PROS. TURINGAN:

Q. After that what did your father do?

A. ***He pretended to stab his body, his neck and his abdomen, sir.***

Q. What did your father use in stabbing and wounding himself?

A. The bolo, sir.

Q. You are referring to this Exh. "G"?

A. Yes, sir.[27] [Emphasis supplied.]

CONTINUATION OF DIRECT
BY PROS. TURINGAN:

Q. When was that again when your mother and your sisters were hacked and stabbed by your father?

A. December 1, 2001, sir.

Q. In the early morning of December 1, 2001 were there other persons in your house aside from you, your father, mother and your sisters?

A. None, sir.

Q. The weapons used by your father in hacking and stabbing you, your mother and your sisters, if you can see them could you be able to identify them?

A. Yes, sir.

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[27] TSN, March 6, 2003, pp. 18-23.

Q. There are here a bolo and a knife Melody, can you please examine these bolo and knife and tell the Court if these are the same weapons used by your father in hacking and stabbing you, your mother and your sisters?

A. Yes, sir.

Q. Who owns these bolo and knife Melody?

A. My father, sir.[28]

As to appellant's assertion that Melody could not have seen her father stab her two (2) sisters who slept on the other room since it was still dark inside the house, Melody (during cross-examination[29]) had described their "rooms" as not actually separated by walls. She could thus see her two (2) sisters and appellant from where she was sleeping.[30] The policemen who investigated the crime scene also found that the partition was just a curtain.[31] Melody slept beside her mother while her sisters were beside their father on the other "room."[32] And while indeed it was still dark when appellant started hacking his wife and daughters, Melody had sufficient illumination provided by the flashlight used by appellant. This was mentioned by Melody in the later part of her direct examination:

Q. Please tell the Court how you were able to see your father hacked and stabbed you, your mother and sisters?

A. (No answer yet)

COURT:

Q. x x x Why don't you start with where was she at the time the hacking and stabbing took place?

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[28] TSN, July 9, 2003, pp. 2-3.

[29] TSN, September 17, 2003, p. 4.

[30] *Id.*

[31] TSN, October 9, 2002, p. 8.

[32] TSN, September 17, 2003, p. 3.

PROSECUTOR:

We withdraw that, your Honor. Aside from these bolo and knife Melody, was your father holding any other things?

A. Yes, sir.

Q. What was that Melody?

A. Flashlight, sir.

Q. Can you identify that flashlight it (sic) [if] you can see it Melody?

A. Yes, sir.

Q. There is here a flashlight marked as Exhibit "I". Can you please examine this flashlight and tell the Honorable Court if it is the same flashlight you mentioned?

A. Yes, sir.

Q. Who owns this flashlight Melody?

A. My father, sir.

x x x x x x x x x[33]

Q. Could you please tell the Court how this flashlight was being held by your father?

A. ***He put in his head the flashlight, sir.***

Q. Can you demonstrate how he placed in his head Melody?

A. (Witness demonstrating how he placed the flashlight at the left side of her head with the use of a rubber tied on the flashlight).[34] [EMPHASIS SUPPLIED.]

On cross-examination, Melody fixed the time of the incident at 4:00 in the morning when she woke up to prepare food. However, she went back to bed because she knew that appellant was already awake. Her mother and sisters were still asleep. Appellant then started hacking, first her mother, who evaded the blow and was able to run outside to seek help from her

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[33] TSN, July 9, 2003, pp. 3-4.

[34] TSN, July 16, 2003, pp. 2-3.

grandmother and aunt. Returning to Melody, appellant hit her three (3) times before following her mother outside.[35] At this point, Melody also recalled that her parents quarrelled on the night of November 30, 2001. Before they went to sleep, she saw her father sharpening his bolo. When she asked appellant what he was doing, he replied that he will kill Uncle Santy and his family. Melody said that she pretended to be still asleep when she woke up the next morning because she had seen appellant placed that bolo under his pillow. As to the exact time the quarrel took place, it can be gleaned from the transcript of stenographic notes that Melody initially could not estimate with reference to the night before they slept, but she eventually declared that her parents quarrelled from 6:00 o'clock until 7:00 o'clock in the evening of November 30, 2001.[36]

Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendant or other descendant, or the legitimate spouse of accused.[37] The key element in parricide is the relationship of the offender with the victim.[38] All the elements of the crime were clearly and sufficiently proved by the prosecution.

Even granting *arguendo* that Melody did not see the actual stabbing of her mother and two (2) sisters, the attendant circumstances point to no one else but the appellant as the perpetrator. Direct evidence of the actual killing is not indispensable for convicting an accused when circumstantial evidence can sufficiently establish his guilt. The oft-repeated rule has been that circumstantial evidence is adequate for conviction if there is more than one circumstance, the facts from which the inferences are derived have been proven and

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[35] TSN, July 17, 2003, pp. 5-6; TSN, September 17, 2003, pp. 6-9.

[36] TSN, September 17, 2003, pp. 11-13; TSN, September 18, 2003, pp. 2-3; TSN, November 12, 2003, pp. 2-7.

[37] LUIS B. REYES, *The Revised Penal Code*, *2006 Edition*, Book II, p. 457.

[38] *Id.*; *People v. Malabago,* G.R. No. 115686, December 2, 1996, 265 SCRA 198, 206.

the combination of all circumstances is such as to produce a conviction beyond reasonable doubt.[39] While no general rule can be laid down as to the quantity of circumstantial evidence which will suffice in a given case, all the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt. The circumstances proved should constitute an unbroken chain which leads to only one fair and reasonable conclusion that the accused, to the exclusion of all others, is the guilty person.[40]

As correctly found by the CA, the following circumstances taken together established without doubt that it was appellant who inflicted fatal wounds on Rosita, Melody, Dony Rose and Kimberly inside their house early morning of December 1, 2001: (1) after having a quarrel with Rosita the previous night, appellant was seen by Melody sharpening his bolo which he later hid under his pillow; (2) the bolo, knife and flashlight used in the hacking of the victims belong to appellant, and which were found in his possession when policemen arrived at the scene; (3) the medical findings showed that the victims' injuries were caused by sharp and bladed instruments; (4) there were no sign of forcible entry as the things inside the house were not disarranged; (5) the only persons inside the house were appellant, Rosita and their three children who slept in adjacent rooms separated only by a curtain; (6) the only house near appellant's house was that of his parents-in-law; (7) Rosita was heard by her relatives shouting for help before their bodies were discovered; (8) appellant sustained only superficial wounds and was found

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[39] *People v. Mactal,* G.R. No. 141187, April 28, 2003, 401 SCRA 612, 617-618, citing *People v. Abella,* G.R. No. 127803, August 28, 2000, 339 SCRA 129; *People v. Bago,* G.R. No. 122290, April 6, 2000, 330 SCRA 115; *People v. Sañez,* G.R. No. 132512, December 15, 1999, 320 SCRA 805, 815; *People v. Dela Cruz,* G.R. No. 108180, February 8, 1994, 229 SCRA 754, 764; *People v. De Guzman,* G.R. No. 92537, April 25, 1994, 231 SCRA 737 and *People v. Retuta,* G.R. No. 95758, August 2, 1994, 234 SCRA 645.

[40] *People v. Castillo,* G.R No. 172695, June 29, 2007, 526 SCRA 215, 221-222.

conscious by the policemen; (9) appellant could not explain or say anything about how and when he and the victims were injured; and (10) Melody saw her father initially strike at her mother before the latter ran outside the house, and then stab her also five (5) times.

Appellant simply raises the defense of denial, which is inherently weak and cannot prevail over the positive identification[41] made by Melody that he was the one (1) who hacked her, her mother and her sisters. Moreover, an affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness,[42] as in this case, the child of the assailant who survived his murderous rampage.

Under Article 246 of the Revised Penal Code, as amended by Section 5 of Republic Act (R.A.) No. 7659, the penalty for parricide is composed of two (2) indivisible penalties, *reclusion perpetua* to death.

In the killing of Dony Rose and Kimberly, the trial court was correct in appreciating the aggravating circumstance of treachery. There is treachery when the attack is so sudden and unexpected that the victim had no opportunity either to avert the attack or to defend himself.[43] Indeed, nothing can be more sudden and unexpected than when a father stabs to death his two (2) young daughters while they were sound asleep and totally defenseless. Thus, for the parricide committed against both Dony Rose and Kimberly, appellant was properly meted the death penalty in Criminal Case Nos. 4079 and 4078. Since the killings were committed in 2001, the trial court was correct in imposing upon appellant the supreme penalty of death. In view, however, of the passage and effectivity of R.A. No. 9346 on June 24, 2006, proscribing the imposition of the capital

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[41] *People v. Dela Torre*, G.R. No. 83326, May 27, 1997, 272 SCRA 615, 623.

[42] *People v. Tumulak,* G.R. No. 177299, November 28, 2007, 539 SCRA 296, 304.

[43] *People v. Delima, Jr.,* G.R. No. 169869, July 12, 2007, 527 SCRA 526, 539, citing *Andrada v. People,* G.R. No. 135222, March 4, 2005, 452 SCRA 685, 695.

punishment, the CA correctly modified the imposable penalty on appellant to *reclusion perpetua*, without eligibility for parole, in line with Sections 2 and 3 of the said law.[44]

SEC. 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

SEC. 3. Persons convicted of offenses punished with *reclusion perpetua* or whose sentences will be reduced to *reclusion perpetua,* by reason of this Act, <u>shall not be eligible for parole</u> under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended. (Underscoring supplied.)

As to the killing of Rosita, neither treachery nor evident premeditation was present considering that she was able to parry the first thrust of appellant and ran away outside the house, and there is no evidence proving that appellant determined to commit the crime even as Melody recounted that she saw his father sharpening his bolo before they slept the previous night. Evident premeditation needs proof of the time when the intent to commit the crime is engendered in the mind of the accused, the motive which gives rise to it, and the means which are beforehand selected to carry out that intent. All such facts and antecedents which make notorious the pre-existing design to accomplish the criminal purpose must be proven to the satisfaction of the court.[45] There is paucity of evidence as to the time, motive and the means chosen by appellant to carry out the intent to kill his entire family. There being no aggravating or mitigating circumstance, the trial court was correct in

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[44] *People v. Castro, supra* note 24 at 607.

[45] *People v. Torpio,* G.R. No. 138984, June 4, 2004, 431 SCRA 9, 15-16, citing *People v. Recepcion,* G.R. Nos. 141943-45, November 13, 2002, 391 SCRA 558, 590.

sentencing appellant to the lower penalty of *reclusion perpetua*[46] in Criminal Case No. 4077.

On the civil indemnity awarded by the trial court in the amount of ₱75,000.00 each and another ₱50,000.00 each as moral damages, for the deaths of Dony Rose and Kimberly, the Court sustains the same. Likewise, the heirs of Rosita are entitled to civil indemnity of ₱50,000.00 and another ₱50,000.00 as moral damages.

With regard to the frustrated felony, Article 250 of the Revised Penal Code, as amended, provides that –

> ART. 250. *Penalty for frustrated parricide, murder, or homicide.* – The courts, in view of the facts of the case, may impose upon the person guilty of the frustrated crime of parricide, murder or homicide, defined and penalized in the preceding articles, a penalty lower by one degree than that which should be imposed under the provisions of Article 50.
>
> The courts, considering the facts of the case, may likewise reduce by one degree the penalty which under Article 51 should be imposed for an attempt to commit any of such crimes.

We therefore find the penalty imposed by the trial court proper and correct for this offense.

The trial court awarded Melody moral damages in the amount of ₱25,000.00, and another ₱20,000.00 as exemplary damages which are justified under Articles 2219 (1) and 2229 of the Civil Code. Further, under Article 2230 of the New Civil Code, exemplary damages are awarded to serve as a deterrent to serious wrongdoings, as vindication of undue suffering and wanton invasion of the rights of an injured person, and as punishment for those guilty of outrageous conduct.[47]

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[46] See *People v. Ayuman,* G.R. No. 133436, April 14, 2004, 427 SCRA 248, 260.

[47] *People v. Castro, supra* note 24, at 609, citing *People v. Gandia,* G.R. No. 175332, February 6, 2008, 544 SCRA 115, *People v. Daleba, Jr.,* G.R. No. 168100, November 20, 2007, 537 SCRA 708.

Melody is likewise entitled to the sum of ₱11,025.00 as cost of her treatment and hospitalization. Anent actual or compensatory damages, it bears stressing that only substantiated and proven expenses or those which appear to have been genuinely incurred in connection with the death, wake or burial of the victim will be recognized by the courts.[48] Prosecution witness Lourdes Amlag testified that the family incurred expenses in connection with the funeral, wake and burial, totalling ₱21,255.00, as shown in the itemized list submitted to the trial court.[49]

WHEREFORE, premises considered, the Decision dated November 29, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01516 is hereby *AFFIRMED*.

With costs against accused-appellant.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Bersamin, and *Abad,*[*] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 186411. July 5, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARTURO PALER,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; TWO ELEMENTS OF RAPE THROUGH FORCE OR INTIMIDATION, ESTABLISHED.

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[48] *People v. Listerio,* G.R. No. 122099, July 5, 2000, 335 SCRA 40, 66.

[49] Exhibits "L", "M" and "N", records, pp. 196-198; TSN, January 28, 2004, pp. 2-5.

[*] Designated additional member per Special Order No. 843 dated May 17, 2010.

— In the case at bar, appellant was charged with rape through force and intimidation. For conviction to lie, it is necessary for the prosecution to prove two elements––that appellant had carnal knowledge of the victim and that such act was done through force or intimidation. x x x Appellant's carnal knowledge of the victim was established by her categorical narration of the incident. The victim clearly recounted how appellant pulled her in a secluded portion of the cemetery, removed her clothes, and had sexual intercourse with her. Aware that appellant had committed an act she describes as *"niyotnak"* and *"eyot"*, she said that she felt pain after the incident. Her testimony is supported by the medico-legal findings of lacerations on her hymen. Lacerations, whether healed or fresh, are the best physical evidence of forcible defloration. Moreover, when the victim's straightforward testimony is consistent with the physical finding of penetration, there is sufficient basis for concluding that sexual intercourse did take place.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDING THEREOF BY THE TRIAL AND APPELLATE COURTS, ACCORDED RESPECT; MENTAL RETARDATION DOES NOT DISQUALIFY A PERSON FROM TESTIFYING.—** Appellant attacks the victim's capacity to testify based on her weak mental condition. However, as correctly held by the appellate court, mental retardation, by itself, does not disqualify a person from testifying. What is essential is the quality of perception, and the manner in which this perception is made known to the court. In this case, records show that despite the victim's mental retardation, she testified in a straightforward and categorical manner that appellant had raped her. The defense could not even shake her resolve to implicate appellant in the crime. On the contrary, her statements during cross-examination even support her position. There is thus, no reason to overturn the finding of credibility by the trial and appellate courts.

3. **CRIMINAL LAW; RAPE; CIVIL LIABILITY; EXEMPLARY DAMAGES, AWARDED.—** As regards the award of damages, we find that exemplary damages of PhP 30,000 is warranted following recent jurisprudence. The award of exemplary damages is granted when the crime is attended by an aggravating circumstance; or as in this case, as a public example, in order to protect hapless individuals from molestation.

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 April 30, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02647 entitled *People of the Philippines v. Arturo L. Paler* which affirmed the November 22, 2006 Decision[2] of the Regional Trial Court of San Fernando City, La Union, Branch 13, in Criminal Cases Nos. 5474 and 5475. The trial court held accused-appellant Arturo Paler guilty of two counts of rape.

The Facts

AAA[3] is a mentally retarded young girl, whose mental condition is akin to that of a five years old child. On October 6, 2000, after attending classes at the La Union National High School, AAA, then 14 years old, headed for home at the eastern portion of the cemetery in Lingsat, San Fernando, La Union. She rode a jeepney and disembarked at the cemetery around 5 o'clock in the afternoon. While AAA was walking along the path near the Chinese pagoda, accused-appellant Arturo Paler pulled her to the side of the pagoda. Arturo then undressed AAA and he also removed his own clothes. Arturo thereafter, proceeded to have

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[1] *Rollo*, pp. 2-16. Penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Magdangal M. De Leon and Normandie B. Pizarro.

[2] CA *rollo*, pp. 7-16. Penned by Judge Alpino P. Florendo.

[3] Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, together with that of her immediate family members, is withheld and fictitious initials instead are used to represent her in order to protect her privacy.

sexual intercourse with AAA. AAA felt pain. After the incident, she went home but did not tell anyone what had happened.[4]

On October 20, 2000, the same incident happened again. After attending classes, AAA rode a jeepney and got off the cemetery. While walking towards their home, AAA was suddenly pulled by Arturo near the Chinese pagoda. Arturo then removed AAA's uniform and underwear. Thereafter, he had sexual intercourse with her. When Arturo was done with his assault, AAA went home.[5]

Afraid that her mother might get mad at her, AAA chose to reveal to her auntie what had happened to her. Her auntie helped her in filing the case. They reported the matter to the *barangay* captain and then AAA was brought to the City Health Office for a medical examination. AAA underwent three medical examinations. The first two were conducted by Dr. Minda Amor Martinez while the third was conducted by Dr. Melina L. Mayames. Dr. Mayames' findings show, among others, that AAA's external genitalia had an "incomplete fresh laceration at the 9 o'clock position."[6]

Also, AAA underwent a psychological examination. Janet Calado, a psychologist and Chapter Executive Manager of the Philippine Mental Health Association, Inc., reported that AAA's mental condition is classified as severely retarded. She noted that AAA's IQ is equivalent to that of a five year-old child and she needs to be under continued counseling to help her develop the skills needed to enable her to perform her daily living as a normal person.[7]

Thereafter, on January 23, 2000, two Informations for rape, docketed as Criminal Cases Nos. 5474 and 5475, were filed against Arturo Paler. Except for the date when the crime

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[4] *Rollo,* p. 4.

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

[6] *Id.* at 5.

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

allegedly took place, the allegations in the Informations were the same, thus:

> That on or about the 6th day of October, 2000, in the City of San Fernando, La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and **by using force and intimidation**, did then and there willfully, unlawfully and feloniously have carnal knowledge with the aforenamed 14 year-old [AAA] against her will and consent, to her damage and prejudice.
>
> Contrary to law.[8] (Emphasis supplied.)

During trial, accused-appellant Arturo denied the charges against him. He claimed that around 2:00 p.m. of October 6, 2000, upon Federico Espiritu Jr.'s request, he fetched the latter's daughter from school and brought her to her home in Ili Norte, San Juan, La Union. He then waited for Federico to arrive at around 6:00 p.m. and thereafter they bought gin and had a drinking spree. He spent the night at Espiritu's house and left for Lingsat only on the next morning.[9]

He also averred that on October 20, 2000, he worked in the cemetery from 7:00 a.m. to 5:00 p.m., taking only a one hour break at noon. After working, he returned to the house where he was staying. He was then asked by Noli Valdriz to look after his daughter until 6:00 p.m. Thereafter, Valdriz brought out a bottle of gin and they had a drinking spree until 10:00 p.m. They went to sleep afterwards.[10]

Federico Espiritu Jr. and Noli Valdriz corroborated Arturo's statements.

On November 22, 2006, the RTC rendered a Decision, the dispositive part of which reads:

> WHEREFORE, premises considered, the Court finds the accused ARTURO PALER guilty beyond reasonable doubt of two (2) counts

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[8] CA *rollo,* pp. 5-6.

[9] *Rollo,* p. 8.

[10] *Id.*

of rape and sentences him to *reclusion perpetua* for each count and orders him to pay the complainant [Fifty Thousand Pesos (PhP50,000.00)] as civil indemnity and [Fifty Thousand Pesos (PhP50,000.00)] as moral damages. With Costs.

SO ORDERED.[11]

The case was appealed to the CA.

The Ruling of the Court of Appeals

Despite AAA's mental capacity, the CA upheld her credibility. It noted AAA's firm declaration that accused-appellant Arturo raped her and how she remained consistent with this statement even under grueling cross-examination.

Also, the appellate court affirmed the trial court's finding that Arturo had forced carnal knowledge of AAA. It noted that AAA's weak mental condition made it impossible for her to resist the attacks of Arturo. The CA emphasized that the force employed in rape does not need to be of such character as could not be resisted; instead, it must only be sufficient to consummate the purpose which the accused had in mind.[12]

Hence, we have this appeal.

The Issues

In a Resolution dated March 30, 2009, this Court required the parties to submit supplemental briefs if they so desired. On June 10, 2009, accused-appellant, through counsel, signified that he is not going to file a supplemental brief anymore. The issue raised in accused-appellant's Brief dated August 1, 2007 is now deemed adopted in this present appeal, thus:

The trial court erred in finding the accused-appellant guilty of the crime charged despite failure of the prosecution to establish his guilt beyond reasonable doubt.[13]

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

[12] *Rollo*, p. 15.

[13] *Id.* at 30.

The Ruling of the Court

The appeal is without merit.

Appellant Arturo faults the CA for admitting evidence and basing its decision on AAA's mental retardation when such fact was not alleged in the Informations. He claims that AAA's mental retardation is an essential fact that should have been specifically alleged. He further asserts that AAA's weak mental state did not contribute to her credibility as a witness but instead showed that her statements in court were results of a systematic training and rehearsal. He insists that AAA's mother only coached her to implicate him in the crimes.

We are not convinced.

Article 266-A (1) of the Revised Penal Code provides that rape against a woman may be committed under any of the following circumstances:

Article 266-A. Rape: When And How Committed.

Rape is Committed –

1. By a man who shall have carnal knowledge of a woman under any of the following:

   a. Through force, threat, or intimidation;
   b. When the offended party is deprived of reason or otherwise unconscious;
   c. By means of fraudulent machination or grave abuse of authority; and
   d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present

In this provision, carnal knowledge of a woman who is a mental retardate is rape.[14] A mental condition of retardation deprives the complainant of that natural instinct to resist a bestial assault on her chastity and womanhood.[15] For this reason, sexual

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[14] *People v. Magabo*, G.R. No. 139471, January 23, 2001, 350 SCRA 126, 131.

[15] *People v. Andaya,* G.R. No. 126545, April 21, 1999, 306 SCRA 202, 215.

intercourse with one who is intellectually weak to the extent that she is incapable of giving consent to the carnal act already constitutes rape; without requiring proof that the accused used force or intimidation in committing the act.[16] In this circumstance, what needs to be alleged in the information and proven during trial are the facts of appellant's carnal knowledge of the victim, and the victim's mental retardation.

However, such is not the situation here. In the case at bar, appellant was charged with rape through force and intimidation. For conviction to lie, it is necessary for the prosecution to prove two elements—that appellant had carnal knowledge of the victim and that such act was done through force or intimidation. Clearly, contrary to appellant's claims, an allegation in the Information of the victim's mental retardation was not necessary.

Appellant attacks the victim's capacity to testify based on her weak mental condition. However, as correctly held by the appellate court, mental retardation, by itself, does not disqualify a person from testifying. What is essential is the quality of perception, and the manner in which this perception is made known to the court.[17] In this case, records show that despite the victim's mental retardation, she testified in a straightforward and categorical manner that appellant had raped her. The defense could not even shake her resolve to implicate appellant in the crime. On the contrary, her statements during cross-examination even support her position. There is thus, no reason to overturn the finding of credibility by the trial and appellate courts.

As to the sufficiency of the prosecution's evidence, we find appellant's conviction to be in order.

Appellant's carnal knowledge of the victim was established by her categorical narration of the incident. The victim clearly recounted how appellant pulled her in a secluded portion of the cemetery, removed her clothes, and had sexual intercourse with

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[16] *Id.*

[17] *People v. Macapal, Jr.,* G.R. No. 155335, July 14, 2005, 463 SCRA 387, 400.

her.[18] Aware that appellant had committed an act she describes as *"niyotnak"* and *"eyot,"* she said that she felt pain after the incident. Her testimony is supported by the medico-legal findings of lacerations on her hymen.[19] Lacerations, whether healed or fresh, are the best physical evidence of forcible defloration.[20] Moreover, when the victim's straightforward testimony is consistent with the physical finding of penetration, there is sufficient basis for concluding that sexual intercourse did take place.[21]

Likewise established is the attendant circumstance of force. Force or intimidation necessary in rape is relative, for it largely depends on the circumstances of the rape as well as the size, age, strength and relation of the parties.[22] In this case, the CA properly determined that appellant used force against the victim, thus:

> Contrary to the suppositions of accused-appellant, records bear out that he indeed used force and intimidation on private complainant. It should be remembered that private complainant was pulled by accused-appellant towards the Chinese pagoda to satisfy his lust. Considering her weak mental state, her abduction in the cemetery cowered her into submission. While the intimidation on her could not hold true for others who are of normal events, she categorically testified that when she was pulled by accused-appellant, she thought that he would kill her. In her testimony, she consistently repeated that she was scared and afraid. Evidently, her mental condition was such that she would not resist sexual advances because she was so deprived of reason to make any effective resistance. Hence, by being so deprived, the act is made possible in the same way when there is

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[18] TSN, September 11, 2003, pp. 5-8; September 23, 2003, pp. 2-3.

[19] *Supra* note 6.

[20] *People v. Cabudbod,* G.R. No. 176348, April 16, 2009.

[21] *People v. Malibiran,* G.R. No. 173471, March 17, 2009; *People v. Corpuz,* G.R. No. 168101, February 13, 2006, 482 SCRA 435, 448; *People v. Bañares,* G.R. No. 127491, May 28, 2004, 430 SCRA 435, 448.

[22] *People v. Murillo,* G.R. Nos. 128851-56, February 19, 2001, 352 SCRA 105, 118.

active resistance but the same is overcome by force or threat, which is the essence of rape.[23]

As regards the award of damages, we find that exemplary damages of PhP 30,000 is warranted following recent jurisprudence.[24] The award of exemplary damages is granted when the crime is attended by an aggravating circumstance;[25] or as in this case, as a public example, in order to protect hapless individuals from molestation.[26]

WHEREFORE, the Court *AFFIRMS* the April 30, 2008 Decision Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02647 with *MODIFICATION*. As modified, the dispositive portion of the affirmed November 22, 2006 Decision of the RTC Decision shall read:

> WHEREFORE, premises considered, the Court finds the accused ARTURO PALER guilty beyond reasonable doubt of two (2) counts of rape and sentences him to *reclusion perpetua* for each count. Likewise, accused is ordered to pay the complainant, for each count of rape, PhP50,000.00 as civil indemnity and PhP50,000.00 as moral damages and PhP30,000 as exemplary damages. With Costs.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Del Castillo, and *Perez, JJ.,* concur.

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[23] *Rollo,* pp. 14-15.

[24] *People v. Ofemiano,* G.R. No. 187155, February 1, 2010.

[25] CIVIL CODE, Art. 2230.

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

FIRST DIVISION

[G.R. No. 186461. July 5, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SEVERIANO OGAN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; ELEMENTS, ESTABLISHED.— Republic Act No. 8353 (RA 8353) or The Anti-Rape Law of 1997 expanded the definition of rape to include other forms of sexual assault on a person. Article 266-A of the Revised Penal Code (RPC) was amended to include the second paragraph defining how rape is committed: 1. By a man who shall have carnal knowledge of a woman under any of the following circumstances: a) Through force, threat, or intimidation; The records show that the prosecution has established the elements of rape in AAA's testimony. x x x Based on AAA's testimony, accused-appellant clearly raped her. AAA convincingly described how she was raped, first, by sexual assault, and then, by penile penetration. It is thus erroneous for the defense to insist that only acts of lasciviousness were committed against AAA. As the appellate court observed, AAA gave explicit testimony of how accused-appellant used his penis to penetrate her sexual organ.

2. ID.; ID.; STATUTORY RAPE, COMMITTED.— As provided for in the Revised Penal Code, sexual intercourse with a girl below 12 years old is statutory rape. The two elements of statutory rape are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman was below 12 years of age. Sexual congress with a girl under 12 years old is always rape. The crime of statutory rape carries the penalty of *reclusion perpetua* unless attended by the qualifying circumstances defined under Article 266-B. Since the age of AAA (seven years old) was alleged and duly proved, Ogan must be convicted of statutory rape.

3. REMEDIAL LAW; EVIDENCE; MEDICAL FINDINGS CONSISTENT WITH TESTIMONY OF THE WITNESSES.— The Court finds, contrary to Ogan's assertion, that the medical

findings do not discredit the prosecution's main evidence. We must take exception to the misleading claim of Ogan that the lacerations of the complainants were more than a month old though the rapes were allegedly committed only two weeks before the medical examination. BBB was raped on November 21, 1998, while AAA was raped the next day. After the medical examination on December 7, 1998, Dr. Ambas, who examined the victims, said that the lacerations were approximately more than a month old. Her findings on how old the lacerations were are only estimates and should not serve to acquit Ogan. x x x The examining physician's findings on record clearly do not imply that the rapes were committed before the dates Ogan was accused of raping AAA and BBB. Besides, there is no gainsaying that medical evidence is merely corroborative, and is even dispensable, in proving the crime of rape. A freshly broken hymen is not required for a rape conviction.

4. **ID.; ID.; DEFENSE OF ALIBI, NOT GIVEN WEIGHT; PHYSICAL IMPOSSIBILITY TO BE AT THE SCENE OF THE CRIME AT THE TIME OF COMMISSION, NOT ESTABLISHED.—** Denial is inherently a weak defense as it is negative and self-serving. Corollarily, alibi is the weakest of all defenses, for it is easy to contrive and difficult to prove. The trial court noted that Ogan's alibi was self-serving and corroborated only by his wife and child, who understandably cannot be expected to be disinterested witnesses. They appeared to be closing ranks to hide a serious offense committed by a family member. For the defense of alibi to prosper, it must be sufficiently convincing as to preclude any doubt on the physical impossibility of the presence of the accused at the *locus criminis* or its immediate vicinity at the time of the incident. Thus, he was not able to show that it was physically impossible for him to have been at his own residence at the time the rape incidents occurred. For one, the funeral of Astudillo happened on November 20, 1998 or a day before the first rape incident happened, and the funeral was in the same village as Ogan's residence. For another, the presence of his wife and children at their house on November 21 and 22, 1998 was only attested to by his wife and daughter. So it was not physically impossible for him to have been at his own home at the time of the rape incident.

5. ID.; ID.; ACCUSED'S "*PROMISSORY NOTE*" VOWING NOT TO REPEAT "*THE OFFENSE*," CONSIDERED.— Far from supporting accused-appellant's claim of innocence, the records show that the evidence for the defense raised more questions on his assertions. The most obvious contradiction, which Ogan did not deny, is why a supposedly innocent man would sign a "promissory note" in favor of the victims and vow not to repeat "the offense." It is unbelievable that a grown man, a police officer at that, would attempt to settle a criminal complaint if he were innocent.

6. ID; RULES ON EXAMINATION OF A CHILD WITNESS; COURTS ARE REMINDED TO FOLLOW THE RULE.— To borrow from the *Rule*, courts must exercise control to ensure that questions are stated in a form appropriate to the developmental level of the child. Even calling her simply by her name rather than "Madame Witness" would have made BBB more responsive and comfortable on the witness stand. Had the *Rule* been followed, BBB would have been able to have an easier time communicating with the court and the lawyers during the trial. There would have been no confusion as to the details of her ordeal.

7. CRIMINAL LAW; RAPE; PENALTY AND CIVIL LIABILITIES. — In Criminal Case No. 1256, accused-appellant was sentenced to *reclusion perpetua*, and pay civil indemnity of Php 75,000 and pay damages of Php 25,000. The award of civil indemnity to the rape victim is mandatory upon the finding that rape took place. The imposable indemnity is Php 75,000 if the death penalty is imposed, and Php 50,000 if the penalty is *reclusion perpetua*. In Criminal Case No. 1256, the crime committed is simple rape under Article 266-A of the Revised Penal Code when the offended party is under 12 years old, and the imposable penalty is *reclusion perpetua*. We thus modify the award of Php 75,000 to Php 50,000 as civil indemnity. Moral damages, on the other hand, are awarded to rape victims without need of proof other than the fact of rape under the assumption that the victim suffered moral injuries from the experience she underwent. This award is separate and distinct from the awarded civil indemnity and is currently set at Php 50,000. Exemplary damages are also in order. As we held in *People v. Pascual*, this is not the first time that

a child has been snatched from the cradle of innocence by some beast to sate its deviant sexual appetite. Ogan should thus also be made to pay exemplary damages to somehow abate this distressing trend. Current jurisprudence pegs this award at Php 30,000. In Criminal Case No. 1257, the appellate court modified accused-appellant's penalty to *reclusion perpetua*, and increased civil indemnity to Php 75,000. Php 25,000 in damages was also awarded. The award of civil indemnity and damages must be modified to conform to prevailing jurisprudence. Since we find that accused-appellant only committed simple rape under Art. 266-A of the Code when the offended party is under 12 years old, he must pay the corresponding damages of Php 50,000 as civil indemnity, Php 50,000 as moral damages, and Php 30,000 as exemplary damages.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J*.:

This is an appeal from the January 30, 2008 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02199 entitled *People of the Philippines v. Severiano T. Ogan*, which affirmed with modification the Decision of the Regional Trial Court (RTC), Branch 35 in Bontoc, Mountain Province in Criminal Case Nos. 1256 and 1257, both for rape. Accused-appellant Severiano T. Ogan (Ogan) was sentenced to *reclusion perpetua* for each rape.

Following *People v. Cabalquinto*,[1] the Court withholds the real names of the offended parties and their immediate family members as well as such other personal circumstances or information tending to establish their identities.

[1] G.R. No. 167693, September 19, 2006, 502 SCRA 419.

The Facts

Two Informations charged Ogan with rape as follows:

Criminal Case No. 1256

That on or about November 22, 1998, in the afternoon thereof, at Kayan East, Tadian, Mountain Province, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design tell and direct one [AAA] who is seven (7) years of age to enter his house and once inside the kitchen the above-named accused by means of force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge of one [AAA] without the consent of [AAA] and against her will, the damage and prejudice of the victim.

That the accused is a member of the Philippine National Police.

CONTRARY TO LAW.[2]

Criminal Case No. 1257

That on or about November 21, 1998, in the afternoon thereof, at Kayan East, Tadian, Mountain Province, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design tell and with force and intimidation, pull and drag into his house his niece [BBB] and once inside the kitchen did then and there willfully, unlawfully and feloniously have carnal knowledge of [BBB], a minor who is nine (9) years of age, without the consent of and against her will, to the damage and prejudice of the victim.

That the accused is a member of the Philippine National Police.

CONTRARY TO LAW.[3]

Both cases were jointly heard and during his arraignment, Ogan pleaded not guilty to both charges.

Version of the Prosecution

At the trial, the prosecution presented the following witnesses: AAA, a playmate of BBB; AAA's mother, CCC; BBB, the niece of Ogan; her mother DDD; Dr. Rhodora Ambas; and SPO1 Rosita Calisog.

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[2] *Rollo,* p.4.

[3] *Id.*

The prosecution showed that around noon on November 21, 1998, BBB, then nine years old, went looking for her brother Lyndon at the house of her uncle, Ogan, located in Barangay Kayan East, Tadian, Mountain Province. She was invited inside by Ogan and taken to the kitchen. There, Ogan took off his pants and removed that of BBB. He brought out his penis, masturbated it, then inserted it into BBB's vagina, causing her pain. BBB then felt in her vagina a sticky mucus-like substance which came out of the accused's sex organ. Afterward, Ogan gave BBB PhP 10 and threatened her not to tell anyone of the incident. BBB then went home.[4]

The next day, BBB and AAA, then 7 years old, went to Ogan's house to play with his daughter Agnes. Agnes was not around. However, Ogan, who was alone in the house at the time, ordered the girls to take a bath and wash their vaginas. The two complied, after which Ogan ordered them to go to the kitchen. Ogan followed them, brought out his penis and rubbed it with oil, then knelt in front of AAA and BBB and viewed their sexual organs purportedly to determine which was bigger. As BBB went into the living room to watch television, Ogan laid AAA on a bench, spread her legs apart, then licked and fingered her genitals. He thereafter succeeded in inserting his penis in her vagina. After the sexual act, Ogan washed his penis, hands and mouth, then gave the girls PhP 10, and they left.[5]

Sometime in the late November 1998, CCC, the mother of AAA, overheard her daughters AAA and EEE talking about something Ogan did to AAA. When asked by CCC about the incident, AAA revealed details of the rape incident. Alarmed, CCC conferred with DDD, BBB's mother. Together, the two mothers then brought their daughters to the police station on December 6, 1998, where SPO1 Rosita Calisog made a report and took their sworn statements.[6]

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

[5] *Id.* at 31.

[6] *Id.*

Following their complaint against Ogan, the parties went to Dr. Rhodora Ambas to have a physical examination conducted.[7] Her examination of BBB showed positive hymenal lacerations at 7 o'clock and 11 o'clock positions. AAA, on the other hand, showed positive hymenal lacerations at 3 o'clock position.[8]

Before his arrest, Ogan and his wife Catalina approached the mothers of AAA and BBB on several occasions. The couple sought for an amicable settlement of the cases.[9]

Also presented during trial was testimony as to the age of AAA. Her mother, CCC, testified that she was born on January 29, 1991 and was seven (7) years old at the time of the rape on November 22, 1998. The prosecution also presented AAA's certificate of live birth during CCC's direct examination.[10] As to the age of BBB, her mother, DDD, testified that BBB was born on November 1, 1989 and was nine (9) years old at the time of the rape on November 21, 1998. Her certificate of live birth confirming her birth date was likewise presented.[11]

Version of the Defense

The evidence for the defense consisted merely of the testimonies of Ogan, his wife Catalina and their daughter Agnes.

Ogan is a police officer assigned with the PNP in Tadian, Mountain Province. He is married to Catalina, a public school teacher stationed in Barangay Pandayan, Tadian, and Agnes is their daughter. The family owns a house in Kayan East, Tadian, where the couple and their children go home to on weekends. On weekdays, Ogan stays in Tadian Poblacion, while his wife and children stay in Pandayan, Tadian.

The defense stated that on November 20, 1998, a Friday, Ogan and his family attended the funeral of one Supervisor

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] TSN, October 26, 1999, p. 3.

[11] TSN, October 27, 1999, p. 2.

Astudillo in Kayan East, Tadian. The next day, November 21, 1998, Ogan reported for duty at 8 in the morning at the PNP station in Tadian, Mountain Province but returned to Kayan East two hours later. He and his wife and all their children stayed at home the rest of the day. In the afternoon, AAA and BBB arrived at their house and played with Agnes. At 12:30 p.m. on November 22, 1998, Ogan accompanied his family to Tadian Poblacion. There, his wife and children proceeded to Pandayan while Ogan remained behind and went to his quarters.[12] In gist, Ogan presented the defense of alibi.

On cross-examination, Ogan admitted that he signed a "promissory note" before the *barangay lupon* of Kayan, upon the insistence of his wife. The note contained a promise for him to "change his [character] and not to repeat the same offense."[13]

The Ruling of the Trial Court

On December 2, 2003, in a joint judgment, the RTC pronounced Ogan guilty of the crimes of rape in Criminal Case No. 1256 and acts of lasciviousness in Criminal Case No. 1257. The dispositive portion of the RTC Decision[14] reads:

> WHEREFORE, Judgment is hereby rendered sentencing Severiano Ogan, thus:
>
> 1. To suffer imprisonment ranging from six (6) months of *arresto mayor* as minimum, to four (4) years and two (2) months of *prision correccional* as maximum in Crim. Case 1257;
> 2. To suffer the penalty of *reclusion perpetua* in Crim. Case 1256;
> 3. To pay the offended party [AAA] in Crim. Case 1257 ₱25,000.00 as indemnity and ₱20,000.00 as damages; and
> 4. To pay the victim [BBB] in Crim. Case 1256 ₱75,000.00 as indemnity and ₱25,000.00 as damages.

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[12] *Rollo*, p. 7

[13] CA *rollo*, p.33.

[14] *Id.* at 37. Penned by Acting Judge Artemio B. Marrero.

With the accessory penalties appurtenant thereto.

SO ORDERED.

The trial court found the testimonies of AAA and BBB credible. However, it did not appreciate the circumstance of relation as to BBB as it was not proved that BBB is a niece of accused-appellant. As to the defense of alibi, it ruled that the testimonies of Ogan and his wife and daughter were self-serving. The fact that Ogan tried to settle the cases against him were also considered by the court in convicting him.

On October 17, 2005, this Court ordered the transfer of Ogan's appeal to the Court of Appeals in conformity with *People v. Mateo*.[15]

The Ruling of the Court of Appeals

On appeal, accused-appellant pointed out that based on the testimonies of the victims, he merely rubbed his penis on the sexual organs of the young girls. No act of penetration or any acts that would fall under the definition of rape occurred. Thus, the defense maintained that only acts of lasciviousness were committed against AAA in Criminal Case No. 1256 when he rubbed his penis until he ejaculated. AAA also allegedly made a lot of inconsistencies that should have been considered by the lower court.

The People, represented by the Office of the Solicitor General (OSG), argued in its Brief that with respect to Criminal Case No. 1257 where Ogan was convicted only of acts of lasciviousness, the mere touching by the male's organ on the labia or pudendum of a woman's private part is sufficient to consummate rape. A modification of the trial court's judgment was thus recommended. The OSG was of the view that accused-appellant should be convicted of rape on two counts; hence, he should suffer the penalty of *reclusion perpetua* for both counts. It was also recommended that the accused-appellant pay civil indemnity of PhP 75,000 and moral damages of PhP 50,000.

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

On the basis of the clear and categorical testimonies of AAA and BBB, the CA appreciated two counts of rape. It found that the prosecution successfully established all the elements in the crime of rape. The defense of alibi was not given credence by the appellate court as it was self-serving and unsubstantiated by clear and convincing proof. Thus, the CA affirmed *in toto* the Decision in Criminal Case No. 1256 but modified the Decision in Criminal Case No. 1257, as it found accused-appellant likewise guilty of raping BBB.

The *fallo* of the CA Decision[16] reads:

WHEREFORE, the Judgment of the trial court in Criminal Case No. 1256 is affirmed without modification. Insofar as Criminal Case No. 1257 is concerned, appellant is found guilty of rape instead of acts of lasciviousness. He is sentenced to suffer the penalty of *reclusion perpetua*. The civil indemnity for [BBB] to be paid by the appellant is increased to ₱75,000.00 and the damages awarded by the trial court is increased to ₱25,000.00.

SO ORDERED.

On February 8, 2008, Ogan filed his Notice of Appeal of the appellate court's decision.

On April 15, 2009, the Court required the parties to submit supplemental briefs if they so desired. The parties similarly manifested to adopt the arguments contained in their respective briefs earlier filed with the Court.

The Issues

I

Whether the Court of Appeals gravely erred in finding accused-appellant guilty beyond reasonable doubt of the crime charged

II

Whether accused-appellant should be convicted only for acts of lasciviousness

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[16] Penned by Associate Justice Sixto C. Marella, Jr., with Associate Justices Mario L. Guariña and Japar B. Dimaampao, concurring.

Our Ruling

We deny this appeal.

According to the defense, BBB categorically stated that Ogan only rubbed his penis on AAA's vagina. He likewise did the same with BBB. There is, therefore, no act committed that could be defined as rape. What were committed against AAA and BBB, the defense claims, were only acts of lasciviousness.

To further his cause, Ogan points to the inconsistencies in the testimony of AAA, arguing that it is unbelievable that AAA would feel pain from Ogan's insertion of his finger but not from his penis. Moreover, the testimony of the examining doctor shows that the hymenal lacerations found in both AAA and BBB were more than a month old but the rapes were allegedly committed only two weeks before the medical examination.

The OSG, on the other hand, argues that the testimony of a rape victim, especially one who accuses a close relative, should be given greater weight. It opined that the inconsistencies raised by the defense are immaterial, because they do not relate to the principal event.

The OSG also dubs as weak the defense of alibi presented by Ogan, especially since his identity was sufficiently and positively established by eyewitnesses.

Criminal Case No. 1256

Rape Established

Republic Act No. 8353 (RA 8353) or The Anti-Rape Law of 1997 expanded the definition of rape to include other forms of sexual assault on a person.[17] Article 266-A of the Revised Penal Code (RPC) was amended to include the second paragraph defining how rape is committed:

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

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[17] *People v. Dulay*, G.R. Nos. 144344-68, July 23, 2002, 385 SCRA 155, 162-153.

The records show that the prosecution has established the elements of rape in AAA's testimony. The relevant portion of AAA's testimony is reproduced below:

Q Madam witness do you know Severiano Ogan?
A Yes, Ma'am.
Q How do you know him?
A He is my uncle.[18]

x x x x x x x x x

Q While he was kneeling down what did he do with your vagina?
A He spread apart the labia of our vagina [to] see who has a bigger vagina.
Q Did he put his finger in your vagina?
A Yes, Ma'am.
Q And what did he do, if that is your finger did he insert his finger in your vagina?
A (Witness showing her forefinger)
Q What was the feeling madam witness?
A I felt pain.[19]

x x x x x x x x x

Q [When] you were lying on the floor what did he do with your legs?
A He spread apart my legs, and inserted his penis into my vagina.
Q What was your feeling at that time when he was inserting his penis into your vagina?
A [It] felt somewhat painful.[20]

Based on AAA's testimony, accused-appellant clearly raped her. AAA convincingly described how she was raped, first, by sexual assault, and then, by penile penetration. It is thus erroneous for the defense to insist that only acts of lasciviousness were committed against AAA. As the appellate court observed, AAA gave explicit testimony of how accused-appellant used his penis to penetrate her sexual organ.

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[18] TSN, June 30, 1999, pp. 2-3.

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

[20] *Id.* at 7.

Statutory Rape Committed

Paragraph (d) of Art. 266-A states that statutory rape is committed:

> **d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.** (emphasis supplied)

As provided for in the Revised Penal Code, sexual intercourse with a girl below 12 years old is statutory rape. The two elements of statutory rape are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman was below 12 years of age. Sexual congress with a girl under 12 years old is always rape.[21] The crime of statutory rape carries the penalty of *reclusion perpetua* unless attended by the qualifying circumstances defined under Article 266-B.[22]

Since the age of AAA (seven years old) was alleged and duly proved, Ogan must be convicted of statutory rape.

We likewise affirm the ruling of the trial court that the prosecution failed to prove that accused-appellant took advantage of his position as a police officer for purposes of convicting him of qualified rape, since his victims were not under police custody.[23] Both AAA and BBB were categorical in saying that they were at Ogan's house as visitors of his daughter.

Medical Findings Consistent with Testimony

The Court finds, contrary to Ogan's assertion, that the medical findings do not discredit the prosecution's main evidence. We must take exception to the misleading claim of Ogan that the

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[21] *People v. Perez*, G.R. No. 182924, December 24, 2008, 575 SCRA 653.

[22] *People v. Mingming*, G.R. No. 174195, December 10, 2008, 573 SCRA 509.

[23] Article 266-B of the Revised Penal Code reads:

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

x x x x x x x x x

2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution.

lacerations of the complainants were more than a month old though the rapes were allegedly committed only two weeks before the medical examination. BBB was raped on November 21, 1998, while AAA was raped the next day. After the medical examination on December 7, 1998, Dr. Ambas, who examined the victims, said that the lacerations were approximately more than a month old. Her findings on how old the lacerations were are only estimates and should not serve to acquit Ogan. More so, the records reveal the following:

Cross-examination of Dr. Rhodora Ambas:

Q These lacerations that you saw that time were fresh or [healed]?

A Healed lacerations.

Q These kinds of lacerations on the two minors that you examined, how long will it take these lacerations to heal?

A About 3 weeks sir.[24]

The examining physician's findings on record clearly do not imply that the rapes were committed before the dates Ogan was accused of raping AAA and BBB. Besides, there is no gainsaying that medical evidence is merely corroborative, and is even dispensable, in proving the crime of rape.[25] A freshly broken hymen is not required for a rape conviction.[26]

Alibi Weak

Denial is inherently a weak defense as it is negative and self-serving. Corollarily, alibi is the weakest of all defenses, for it is easy to contrive and difficult to prove.[27] The trial court noted that Ogan's alibi was self-serving and corroborated only by his

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[24] TSN, August 17, 2000.

[25] *People v. Cabudbod*, G.R. No. 176348, April 16, 2009.

[26] *People v. Ortoa*, G.R. No. 174484, February 23, 2009; citing *People v. Operario*, G.R. No. 146590, July 17, 2003, 406 SCRA 564, 572; *People v. Basite*, G.R. No. 150382, October 2, 2003, 412 SCRA 558, 565.

[27] *People v. An*, G.R. No. 169870, August 4, 2009.

wife and child, who understandably cannot be expected to be disinterested witnesses. They appeared to be closing ranks to hide a serious offense committed by a family member.[28] For the defense of alibi to prosper, it must be sufficiently convincing as to preclude any doubt on the physical impossibility of the presence of the accused at the *locus criminis* or its immediate vicinity at the time of the incident.[29] Thus, he was not able to show that it was physically impossible for him to have been at his own residence at the time the rape incidents occurred. For one, the funeral of Astudillo happened on November 20, 1998 or a day before the first rape incident happened, and the funeral was in the same village as Ogan's residence. For another, the presence of his wife and children at their house on November 21 and 22, 1998 was only attested to by his wife and daughter. So it was not physically impossible for him to have been at his own home at the time of the rape incident.

Far from supporting accused-appellant's claim of innocence, the records show that the evidence for the defense raised more questions on his assertions. The most obvious contradiction, which Ogan did not deny, is why a supposedly innocent man would sign a "promissory note" in favor of the victims and vow not to repeat "the offense." It is unbelievable that a grown man, a police officer at that, would attempt to settle a criminal complaint if he were innocent.

Criminal Case No. 1257

There is no merit as well to accused-appellant's argument as to BBB. We thus affirm the appellate court's conviction of Ogan of rape in Criminal Case No. 1257 instead of acts of lasciviousness.

Inconsistencies in Testimony of BBB

Ogan asserts that it is beyond belief that BBB would feel pain from sexual assault through the use of fingers but not when it came to penile penetration. Such a claim is both immaterial

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[28] *People v. Wasit*, G.R. No. 182454, July 23, 2009.

[29] *People v. Sulima*, G.R. No. 183702, February 10, 2009.

and baseless. The elements of the crime of rape were firmly established by the prosecution witnesses; pain is not one of those elements. For reference, the direct testimony of BBB is quoted below:

Atty. Carantes

Q Your father said that you will go and find your brother Lyndon; where did you go and find Lyndon?

A I went to look for him and found him at Gagawa.

Q Where is Gagawa?

A In Kayan, ma'am.

Q You stated earlier that you went to the house of Severiano Ogan; can you narrate to us what happened in the house of Mr. Severiano Ogan?

A Because my father told me to go and look for Lyndon.

Q When your father told you to look for Lyndon, you proceeded to the house of Severiano Ogan?

A Yes, ma'am.

Q Did you see Severiano Ogan in his house?

A Yes, ma'am.

Q So what happened when you saw him in his house?

A I saw him in his house.

Q When you saw him in his house, did he say anything to you?

A Yes, ma'am.

Q What did he say to you?

A He told me: "Do not go away."

Q What did you say?

A I did not leave.

Q What else happened?

A He removed his pants and he removed my pants and then he raped me.

Q How did he rape you?

A Because he brought out his penis and he "*dinama na sak-en*," he placed his penis inside my vagina.

Fiscal Dominguez:
Your Honor "*dama*" in Kayan means rape.

Atty. Carantes

Q You stated he placed his penis inside your vagina, what happened after that?

A Sperm came out from him, ma'am.

Q Can you describe how the sperm [looked] like?

A It looks like mucous, ma'am.

Q How did you know that?

A Because it looks like mucous.

Q After that, Madam Witness, what else happened?

A And then afterwards he gave me ₱10.00

Q Did he say anything when he gave that ₱10.00?

A Yes, ma'am.

Q What did he say?

A He said: "Do not tell anybody of what happened now otherwise I will shoot your father."

Q After he said these, what else happened?

A I went to Gagawa.[30]

x x x x x x x x x

Fiscal Dominguez

May we ask additional questions.

COURT

Proceed.

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[30] TSN, June 29, 1999, pp. 5-7.

Fiscal Dominguez

Q Madam Witness, what did you feel when this Severiano Ogan inserted his penis into your vagina?

A I felt pain.[31]

In ruling against Ogan's argument, the appellate court correctly turned to jurisprudence that holds that even the slightest penetration of the female organ constitutes carnal knowledge.[32] Where penetration is not fully established, as accused-appellant insists, we have held that consummated rape can still be based on the victim's testimony that she felt pain in the attempt at penetration.[33] *People v. Brioso*[34] explains that the Court looks for other details in the evidence presented to be convinced that there was a penetration of the *labia* of the pudendum of the victim. In the instant case, BBB's testimony that she felt pain while Ogan inserted his penis into her sexual organ is corroborated by the medical findings of hymenal lacerations. We are thus convinced that Ogan did not merely commit acts of lasciviousness but was able to consummate the rape of BBB. The totality of the evidence points only to this conclusion.

We present an important observation on courts and counsel acting on cases involving children. The problem encountered by the trial court in eliciting a clear and concise testimony from the child witnesses could have been avoided by asking questions that were appropriately-phrased for a child their age.

This case was decided by the trial court in 2002, when the *Rule on Examination of a Child Witness* was already effective. The *Rule* provides:

SEC. 19. *Mode of questioning*.— The court shall exercise control over the questioning of children so as to (1) facilitate the ascertainment

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[31] TSN, June 29, 1999, pp. 9-10.

[32] *People v. Campuhan*, G.R. No. 129433, March 30, 2000, 329 SCRA 270, 282.

[33] *People v. Brioso*, G.R. No. 182517, March 13, 2009.

[34] *Id*.

of the truth, (2) ensure that questions are stated in a form appropriate to the developmental level of the child, (3) protect children from harassment or undue embarrassment, and (4) avoid waste of time.

The court may allow the child witness to testify in a narrative form.

To borrow from the *Rule*, courts must exercise control to ensure that questions are stated in a form appropriate to the developmental level of the child. Even calling her simply by her name rather than "Madame Witness" would have made BBB more responsive and comfortable on the witness stand. Had the *Rule* been followed, BBB would have been able to have an easier time communicating with the court and the lawyers during the trial. There would have been no confusion as to the details of her ordeal.

Penalty Imposed

It bears noting that both the trial and appellate courts did not specify what kind of damages was being awarded apart from civil indemnity.[35] In awarding damages, the trial court should state the factual bases of the award of these damages.[36] Thus, in rape cases, damages may refer to moral and exemplary, and these must be specified as these have different bases.[37]

In Criminal Case No. 1256, accused-appellant was sentenced to *reclusion perpetua*, and pay civil indemnity of PhP 75,000 and pay damages of PhP 25,000.

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[35] CA *rollo*, p. 37.

[36] *Santiago v. Court of Appeals*, G.R. No. 127440, January 26, 2007, 513 SCRA 69.

[37] *People v. Belga*, G.R. No. 129769, January 19, 2001, 349 SCRA 678:

Jurisprudence has elucidated that the award authorized by the criminal law as civil indemnity *ex delicto* for the offended party, in the amount authorized by the prevailing judicial policy and aside from other proven actual damages, is itself equivalent to actual or compensatory damages in civil law. For that matter, the civil liability *ex delicto* provided by the Revised Penal Code, that is, restitution, reparation and indemnification, all correspond to actual or compensatory damages in the Civil Code, since the other damages provided therein are moral, nominal, temperate or moderate, liquidated, and exemplary or corrective damages which have altogether different concepts and fundaments.

The award of civil indemnity to the rape victim is mandatory upon the finding that rape took place. The imposable indemnity is PhP 75,000 if the death penalty is imposed, and PhP 50,000 if the penalty is *reclusion perpetua*.[38] In Criminal Case No. 1256, the crime committed is simple rape under Article 266-A of the Revised Penal Code when the offended party is under 12 years old, and the imposable penalty is *reclusion perpetua*. We thus modify the award of PhP 75,000 to PhP 50,000 as civil indemnity

Moral damages, on the other hand, are awarded to rape victims without need of proof other than the fact of rape under the assumption that the victim suffered moral injuries from the experience she underwent. This award is separate and distinct from the awarded civil indemnity and is currently set at PhP 50,000.[39]

Exemplary damages are also in order. As we held in *People v. Pascual*,[40] this is not the first time that a child has been snatched from the cradle of innocence by some beast to sate its deviant sexual appetite. Ogan should thus also be made to pay exemplary damages to somehow abate this distressing trend. Current jurisprudence pegs this award at PhP 30,000.[41]

In Criminal Case No. 1257, the appellate court modified accused-appellant's penalty to *reclusion perpetua*, and increased civil indemnity to PhP 75,000. PhP 25,000 in damages was also awarded. The award of civil indemnity and damages must be modified to conform to prevailing jurisprudence. Since we find that accused-appellant only committed simple rape under Art. 266-A of the Code when the offended party is under 12 years old, he must pay the corresponding damages of PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, and PhP 30,000 as exemplary damages.

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[38] *People v. Valenzuela*, G.R. No. 182057, February 6, 2009, 578 SCRA 157.

[39] *Id*.

[40] G.R. No. 171089, October 17, 2008, 569 SCRA 534, 543; citing *People v. Domingo*, G.R. No. 177744, November 23, 2007, 538 SCRA 733, 738-739.

[41] *People v. Araojo*, G.R. No. 185203, September 17, 2009.

WHEREFORE, the appeal is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02199 finding accused-appellant guilty of rape is *AFFIRMED* with the *MODIFICATION* that in Criminal Case Nos. 1256 and 1257, accused-appellant is ordered to pay each victim PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, and PhP 30,000 as exemplary damages.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Del Castillo, and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 186472. July 5, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ANTONIO SIONGCO *y* DELA CRUZ, ERIBERTO ENRIQUEZ *y* GEMSON, GEORGE HAYCO *y* CULLERA, and ALLAN BONSOL *y* PAZ,** *accused,* **ANTONIO SIONGCO *y* DELA CRUZ and ALLAN BONSOL *y* PAZ,** *appellants.*

SYLLABUS

1. CRIMINAL LAW; KIDNAPPING AND SERIOUS ILLEGAL DETENTION; ELEMENTS THEREOF, PROVEN.— As correctly held by the RTC and the CA, the prosecution indubitably proved beyond reasonable doubt that the elements of kidnapping and serious illegal detention obtain in the case at bar. Accused-appellants are private individuals who, together with their cohorts, took 11-year-old Nikko out of his hometown in Balanga, Bataan on December 27, 1998. They brought him

to Manila on December 28, 1998, where demands for a ₱400,000.00 ransom were made to his mother. x x x The deprivation required by Article 267 of the Revised Penal Code means not only the imprisonment of a person, but also the deprivation of his liberty in whatever form and for whatever length of time. It includes a situation where the victim cannot go out of the place of confinement or detention or is restricted or impeded in his liberty to move. In this case, although Nikko was free to move around, he was at all times under the alternate watch of appellants and their cohorts. He was in their physical custody and complete control as he was kept in places strange and unfamiliar to him. While he was allowed to play in the houses where he was kept, the fact remains that he was under the control of his captors who left him there, as he could not leave the house until they shall have returned for him. Because of his tender age and the fact that he did not know the way back home, he was then and there deprived of his liberty. x x x [T]he fact that the victim voluntarily went with the accused did not remove the element of deprivation of liberty, because the victim went with the accused on a false inducement, without which the victim would not have done so. In the present case, when Nikko boarded the bus bound for Pilar, Bataan, he was under the impression that Bonsol and Enriquez were to be trusted as he was assured by Siongco that the two would accompany him to get his much desired "Gameboy." Without such assurance, Nikko would not have boarded the said vehicle. In kidnapping, the victim need not be taken by the accused forcibly or against his will. What is controlling is the act of the accused in detaining the victim against his or her will after the offender is able to take the victim in his custody. In short, the carrying away of the victim in the crime of kidnapping and serious illegal detention can either be made forcibly or, as in the instant case, fraudulently. Equally significant is the fact that, in kidnapping, the victim's lack of consent is also a fundamental element. The general rule is that the prosecution is burdened to prove lack of consent on the part of the victim. However, where the victim is a minor, lack of consent is presumed. In this case, Nikko was only 11 years old when he was kidnapped; thus incapable of giving consent, and incompetent to assent to his seizure and illegal detention. The consent of the boy could place appellants in no better position than if the act had been done against his will. A kidnapper should not be

rewarded with an acquittal simply because he is ingenious enough to conceal his true motive from his victim until he is able to transport the latter to another place.

2. **REMEDIAL LAW; EVIDENCE; CONSPIRACY, SUFFICIENTLY ESTABLISHED; CIRCUMSTANCES SHOWING CONSPIRACY.—** The identical factual findings of both the trial and appellate courts likewise show that the actuations and roles played by appellants Siongco and Bonsol undoubtedly demonstrate that they conspired with Hayco and Enriquez in kidnapping and illegally detaining Nikko. Being sufficiently supported by evidence on record, we find no reason to disturb the same. Siongco was the one who promised Nikko a "Gameboy." He told the boy to go with Bonsol and Enriquez and get the toy in Pilar, Bataan. On December 28, 1998, he arrived in Dinalupihan, Bataan to fetch Nikko. From there, he, Enriquez and Nikko left for Bicutan, Taguig, Metro Manila in a bus. The following day, Siongco, Nikko, Enriquez, and the latter's friend went to the marketplace and called Nikko's mother. Siongco demanded from her payment of ₱400,000.00 as a condition for the boy's release. Siongco repeatedly telephoned Elvira with the same demand and threats over the next couple of days. On December 31, 1998, he instructed Enriquez to meet Elvira at the Genesis Bus Station to get the ransom money. It is immaterial whether appellant Bonsol acted as a principal or as an accomplice because the conspiracy and his participation therein have been established. In conspiracy, the act of one is the act of all and the conspirators shall be held equally liable for the crime. On the pretext of getting Nikko's much desired "Gameboy," Bonsol and Enriquez were able to conveniently whisk Nikko out of Balanga and bring him to Pilar, then to Mariveles, and eventually to Dinalupihan, where Siongco fetched him. Thus, Enriquez and Siongco's plan of bringing Nikko to Metro Manila, a terrain unfamiliar to the boy and where the two could enjoy anonymity to carry out their ultimate goal of extorting ransom money from Nikko's mother, was accomplished. As shown by the evidence, without the participation of appellant Bonsol, the commission of the offense would not have come to fruition.

3. **ID.; CRIMINAL PROCEDURE; DENIAL OF THE RIGHT TO COUNSEL, NOT A CASE OF; THE COURT IS NOT**

PRECLUDED TO APPOINT *DE OFICIO* COUNSEL IN THE ABSENCE OF THE CHOSEN COUNSEL.— A scrutiny of the records shows that Atty. Moralde was appointed as appellants' counsel *de oficio* in six (6) hearings, because their regular counsel *de oficio*, Atty. Antoniano from the Public Attorney's Office (PAO), was inexplicably absent. There is no denial of the right to counsel where a counsel *de oficio* is appointed during the absence of the accused's counsel *de parte*, or in this case the regular counsel *de oficio,* pursuant to the court's desire to finish the case as early as practicable under the continuous trial system. The choice of counsel by the accused in a criminal prosecution is not a plenary one. If the chosen counsel deliberately makes himself scarce, the court is not precluded from appointing a *de oficio* counsel, which it considers competent and independent, to enable the trial to proceed until the counsel of choice enters his appearance. Otherwise, the pace of a criminal prosecution will be entirely dictated by the accused, to the detriment of the eventual resolution of the case.

4. CRIMINAL LAW; KIDNAPPING AND SERIOUS ILLEGAL DETENTION; PENALTY AND CIVIL LIABILITIES.— The CA correctly modified the penalty imposed by the RTC to *reclusion perpetua* without eligibility for parole. The penalty for kidnapping for the purpose of extorting ransom from the victim or any other person under Article 267 of the Revised Penal Code is death. However, R.A. No. 9346 has banned the imposition of death penalty and reduced all death sentences to *reclusion perpetua* without eligibility for parole. In line with prevailing jurisprudence, an award of ₱50,000.00 as civil indemnity is proper. The award of ₱100,000.00 moral damages is increased to ₱200,000.00 considering the minority of Nikko. As the crime was attended by a demand for ransom, and by way of example or correction, Nikko is entitled to ₱100,000.00 exemplary damages as correctly awarded by the CA.

APPEARANCES OF COUNSEL

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

DECISION

NACHURA, *J.*:

Before the Court for review is the September 20, 2007 Decision[1] of the Court of Appeals (CA), affirming the guilty verdict rendered by the Regional Trial Court (RTC), Branch 166, Pasig City,[2] promulgated on November 6, 2000, against appellants Antonio Siongco (Siongco) and Allan Bonsol (Bonsol), with modification on the penalty imposed and the amount of damages to be paid to their victim, Nikko Satimbre (Nikko).[3] This review is made, pursuant to the pertinent provisions of Sections 3 and 10 of Rule 122 and Section 13 of Rule 124 of the Revised Rules of Criminal Procedure, as amended by A.M. No. 00-5-03-SC.

The factual findings of both courts show that between 6:00 and 7:00 p.m. of December 27, 1998, 11-year-old Nikko, a resident of Balanga, Bataan, was induced by Siongco to board a bus bound for Pilar, Bataan, together with the latter's friends, Marion Boton (Boton) and Eriberto Enriquez (Enriquez). Nikko was told that the two would accompany him in getting the "Gameboy" that Siongco promised. Siongco was no stranger to Nikko as he used to be a security guard at Footlockers shoe store where Nikko's mother, Elvira Satimbre (Elvira), works as a cashier. After a short stop in Pilar, Bataan, the three proceeded to Mariveles, Bataan, where they met with George Hayco (Hayco). The boy was then brought to Dinalupihan, Bataan, where he was kept for the night.[4]

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[1] Docketed as CA-G.R. CR-H.C. No. 00774, penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Rodrigo V. Cosico and Apolinario D. Bruselas, Jr., concurring; *rollo*, pp. 3-29.

[2] CA *rollo*, pp. 26-39.

[3] Appellants have been in confinement at the National Bilibid Prisons since November 23, 2000.

[4] *Supra* note 1, at 5-6.

Meanwhile, Elvira arrived home at 7:00 p.m. and found that her son was not there. She searched for him in the places he frequented, but to no avail. As her continued search for the child proved futile, she reported him missing to the nearest police detachment.[5]

The following day, December 28, 1998, Enriquez and Siongco took Nikko to Bicutan, Taguig, Metro Manila.[6] On December 29, 1998, Elvira received a phone call from a man, later identified as appellant Siongco, who claimed to have custody of Nikko and asked for ₱400,000.00 in exchange for his liberty. Elvira haggled with her son's captor until the latter agreed to reduce the ransom money to ₱300,000.00. Elvira was also able to talk to her son who was only able to utter "*Hello Ma*" as Siongco immediately grabbed the phone from him. Siongco warned Elvira to refrain from reporting the matter to the police. He also threatened that Nikko would be killed if she fails to give the ransom money at 6:00 p.m. of the next day at Genesis Bus Station in Pasay City.[7] That night, Elvira telephoned the Office of the Chief of Police of Balanga, Bataan and reported that Nikko was kidnapped.[8]

On December 30, 1998, Enriquez and Siongco moved Nikko to Pateros and cautioned him not to tell anybody that he was kidnapped. They stayed at the house of Heracleo San Jose (Heracleo), a relative of Enriquez. They again called Elvira who failed to keep her appointment with them in Pasay City. She explained that she was still gathering funds for the ransom money. The captors reiterated their threats and, at midnight, they called and instructed her to proceed to Avenida with whatever available money she had, subject to a subsequent agreement as to the balance. Elvira refused and insisted that she preferred to give the amount in full.[9]

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[5] *Id.* at 8.

[6] *Id.* at 6.

[7] *Supra* note 2, at 34.

[8] *Supra* note 1, at 9.

[9] *Id.* at 7.

In the morning of December 31, 1998, Siongco called Elvira several times with the same threats and demands. Elvira agreed to meet them that afternoon at the Genesis Bus Station in Pasay City. Nikko was allowed to speak with his mother and he assured her that he was not being maltreated. After the call, Enriquez informed Nikko that his mother wanted a "*kaliwaan*" (face to face exchange) deal. Soon thereafter, Enriquez and Siongco left to meet Elvira, while Nikko stayed behind.[10]

On the same day, Police Senior Inspector Rodolfo Azurin, Jr. (Police Senior Inspector Azurin, Jr.) was on duty at Crimes Operation Division of the Philippine Anti-Organized Crime Task Force (PAOCTF) office in Camp Crame, Quezon City. At 11:00 a.m., Elvira arrived and requested for assistance for the recovery of her kidnapped son. The PAOCTF team then instructed her to bring to the pay-off site a brown envelope with a letter asking for extension of payment. After briefing, Azurin and other police operatives proceeded to Genesis Bus Station in Pasay City. While waiting for Elvira, they noticed two (2) male persons, later identified as Enriquez and Siongco, restlessly moving around the place. At around 2:30 p.m., Elvira arrived carrying the brown envelope. As instructed by the kidnappers, she positioned herself near a tree and tied a white kerchief around her neck. Shortly thereafter, Enriquez approached Elvira and took the brown envelope from her. As he was walking away, the PAOCTF team arrested him. Thereafter, they followed Siongco, who hurriedly hailed a taxicab and sped away. Siongco was arrested at the residence of Heracleo in Pateros where Nikko was also rescued. Thereafter, Siongco and Enriquez were brought to Camp Crame.[11]

The investigations of Nikko and the two detainees, coupled with the follow-up operations of the PAOCTF, led to the arrest of appellant Bonsol, and the other cohorts, Hayco and Boton.[12]

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[10] *Id.*

[11] *Id.* at 9.

[12] *Id.* at 12.

On January 4, 1999, an Information[13] was filed in court, charging herein appellants Siongco and Bonsol, together with Enriquez, Hayco, Boton, and a John Doe, with KIDNAPPING and SERIOUS ILLEGAL DETENTION under Article 267 of the Revised Penal Code.

Arraigned on February 24, 1999, the five accused pleaded not guilty to the offense charged.[14] Trial then ensued; in the course of which, the prosecution presented in evidence the oral testimonies of its witnesses: 1) the victim himself, 11-year-old Nikko; 2) his mother, Elvira; 3) Heracleo, relative of accused Enriquez; 4) Police Senior Inspector Azurin, Jr. of the PAOCTF; and 5) Police Superintendent Paul Tucay, the one who arrested Bonsol, Hayco and Boton.[15]

With the exception of Boton, all of the accused took the witness stand. Hayco and Bonsol denied knowledge of and participation in the crime. Siongco testified that, on December 27, 1998, he saw Nikko at a "*peryahan*" in Balanga, Bataan but he did not mind the boy as he was busy conversing with Enriquez about their business of selling toys. He went to Manila and

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[13] The Information reads:

The undersigned State Prosecutors of the Department of Justice hereby accuse ANTONIO SIONGCO *y* DELA CRUZ, ERIBERTO ENRIQUEZ *y* GEMSON, GEORGE HAYCO *y* CULLERA, MARION BOTON *y* CEREZA *alias* "Marion," ALLAN BONSOL *y* PAZ, and "JOHN DOE" of the crime of kidnapping and serious illegal detention committed for the purpose of extorting ransom, defined and penalized under Article 267 of the Revised Penal Code, as amended by Section 8 of Republic Act No. 7659, committed as follows:

"That on or about December 27, 1998, in Balanga, Bataan, thence to Pateros, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, said accused, conspiring together, confederating, and mutually helping one another, did then and there willfully, unlawfully, and feloniously kidnap, carry away and seriously detain Nikko B. Satimbre, an eleven (11) years (sic) old child, which (sic) kidnapping or serious illegal detention lasted for more than three (3) days thereby depriving him of his liberty, and which was committed for the purpose of extorting ransom from the mother of the victim, to the damage and prejudice of the victim himself and of his mother."

CONTRARY TO LAW (sic). (CA *rollo*, pp. 4-5).

[14] Records, p. 42.

[15] *Supra* note 2, at 27-30.

stayed at the house of Heracleo on December 28 and 29, 1998 to collect installment payments from customers. On December 31, 1998, he went to his brother's house in San Juan, Metro Manila and when he came back to Pateros on the same day, he was arrested by PAOCTF agents.

Enriquez declared that Nikko voluntarily went with them. He affirmed that he travelled with Nikko and Siongco to Manila. They stayed in Bicutan and then moved to Pateros. He alleged that they called Nikko's mother because the boy kept asking for a "Gameboy." He went to the Genesis Bus Station to meet Nikko's mother, who, according to Siongco, would have something tied around her neck.[16]

The RTC rejected the denials and alibis raised by the accused and held that they conspired and mutually helped one another in kidnapping and illegally detaining Nikko by taking him through a circuitous journey from Balanga, Bataan to Manila where ransom demands for his liberty were made.

In a decision dated November 6, 2000, the RTC convicted Siongco, Bonsol, Enriquez and Hayco of the offense charged in the Information and meted upon them the extreme penalty of death. Boton was ACQUITTED on the ground of reasonable doubt. The pertinent portion of the RTC decision reads:

> WHEREFORE, the Court finds accused **Antonio Siongco *y* Dela Cruz, Eriberto Enriquez *y* Gemson, George Hayco *y* Cullera and Allan Bonsol *y* Paz GUILTY** beyond reasonable doubt of the crime of Kidnapping and Serious Illegal Detention for the purpose of extorting ransom, as defined and penalized under Article 267 of the Revised Penal Code, as amended by Section 8 of R.A. 7659, and are hereby sentenced to suffer the **Supreme penalty of Death** and indemnify the victim, Nikko Satimbre, and his mother, Elvira Satimbre, each, in the amount of ₱50,000.00, as moral damages, plus the costs of suit.
>
> On the ground of reasonable doubt, the Court finds accused **Marion Boton *y* Cereza NOT GUILTY** of the crime charged in the Information.
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> SO ORDERED.[17]

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[16] *Id.* at 34-35.

[17] *Id.* at 39.

From the RTC, the case went directly to this Court for automatic review.[18] The parties were then required to file, as they did file, their respective appellants'[19] and appellee's[20] briefs. Consistent with this Court's ruling in *People v. Mateo*,[21] the case was transferred to the CA[22] for intermediate review and disposition.

Upon review, the CA concurred with the factual findings and conclusions of the trial court and affirmed the judgment of conviction but modified the penalty imposed to *reclusion perpetua*. The CA increased the amount of moral damages to ₱100,000.00 and awarded ₱100,000.00 as exemplary damages, to be paid jointly and solidarily by the accused to their victim, Nikko. The *fallo* of the CA Decision states:

> WHEREFORE, the Judgment dated November 6, 2000 of the RTC Branch 166, Pasig City, in Criminal Case No. 115317-H, is **AFFIRMED** with the **MODIFICATION** that accused-appellants are sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and ordered to jointly and solidarily pay private complainant Nikko Satimbre the amounts of ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages.
>
> SO ORDERED.[23]

Only herein appellants Siongco and Bonsol were able to perfect an appeal[24] of the CA Decision. Consequently, in its September 29, 2008 Resolution,[25] the CA declared the conviction of accused Enriquez and Hayco as final and executory, and a Partial Entry of Judgment was made against them.[26] In a

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[18] Docketed as G.R. No. 146756.

[19] CA *rollo*, pp. 65-86, 102-150, 177-186, 311-323.

[20] *Id.* at 231-309.

[21] G.R. No. 170569, September 30, 2008, 567 SCRA 244.

[22] Docketed as CA-G.R. CR-H.C. No. 00774.

[23] *Supra* note 1, at 28.

[24] CA *rollo*, p. 378.

[25] *Id.* at 384.

[26] *Id.* at 385-386.

Resolution dated April 13, 2009,[27] this Court accepted the appeal interposed by Siongco and Bonsol.

We deny the appeal.

Article 267 of the Revised Penal Code, as amended by Republic Act (R.A.) No. 7659, defines and penalizes kidnapping and serious illegal detention as follows:

> 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.
>
> 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.

In the recent *People of the Philippines v. Christopher Bringas y Garcia, Bryan Bringas y Garcia, John Robert Navarro y Cruz, Erickson Pajarillo y Baser (deceased), and Eden Sy Chung,*[28] we reiterated the following elements that must be established by the prosecution to obtain a conviction for kidnapping, *viz.*: (a) the offender is a private individual; (b) he

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[27] *Rollo*, pp. 41-42.

[28] G.R. No. 189093, April 23, 2010.

kidnaps or detains another, or in any manner deprives the latter of his liberty; (c) the act of detention or kidnapping must be illegal; and (d) in the commission of the offense, any of the following circumstances is present: (1) the kidnapping or detention lasts for more than three days; (2) it is committed by simulating public authority; (3) any serious physical injuries are inflicted upon the person kidnapped or detained, or threats to kill him are made; or (4) the person kidnapped or detained, is a minor, a female, or a public officer. If the victim is a minor, or is kidnapped or detained for the purpose of extorting ransom, the duration of detention becomes immaterial.

The essence of kidnapping is the actual deprivation of the victim's liberty, coupled with indubitable proof of the intent of the accused to effect such deprivation.[29]

As correctly held by the RTC and the CA, the prosecution indubitably proved beyond reasonable doubt that the elements of kidnapping and serious illegal detention obtain in the case at bar. Accused-appellants are private individuals who, together with their cohorts, took 11-year-old Nikko out of his hometown in Balanga, Bataan on December 27, 1998. They brought him to Manila on December 28, 1998, where demands for a ₱400,000.00 ransom were made to his mother.

Appellants contend that the essential element of detention or deprivation of liberty was absent because Nikko voluntarily went with them and that he was free to move around and play with other children. We disagree.

The deprivation required by Article 267 of the Revised Penal Code means not only the imprisonment of a person, but also the deprivation of his liberty in whatever form and for whatever length of time. It includes a situation where the victim cannot go out of the place of confinement or detention or is restricted or impeded in his liberty to move.[30] In this case, although Nikko

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[29] *People v. Borromeo*, 380 Phil. 523 (2000); *People. v. Soberano*, 346 Phil. 449 (1997).

[30] *People v. Bisda,* 454 Phil. 194 (2003); *People v. Baldogo,* 444 Phil. 35 (2003).

was free to move around, he was at all times under the alternate watch of appellants and their cohorts. He was in their physical custody and complete control as he was kept in places strange and unfamiliar to him. While he was allowed to play in the houses where he was kept, the fact remains that he was under the control of his captors who left him there, as he could not leave the house until they shall have returned for him. Because of his tender age and the fact that he did not know the way back home, he was then and there deprived of his liberty.

As to the contention of appellant Siongco that there was no force or intimidation involved in the taking, this Court held in *People of the Philippines v. Ernesto Cruz, Jr. y Concepcion and Reynaldo Agustin y Ramos*[31] that the fact that the victim voluntarily went with the accused did not remove the element of deprivation of liberty, because the victim went with the accused on a false inducement, without which the victim would not have done so. In the present case, when Nikko boarded the bus bound for Pilar, Bataan, he was under the impression that Bonsol and Enriquez were to be trusted as he was assured by Siongco that the two would accompany him to get his much desired "Gameboy." Without such assurance, Nikko would not have boarded the said vehicle. In kidnapping, the victim need not be taken by the accused forcibly or against his will. What is controlling is the act of the accused in detaining the victim against his or her will after the offender is able to take the victim in his custody. In short, the carrying away of the victim in the crime of kidnapping and serious illegal detention can either be made forcibly or, as in the instant case, fraudulently.[32]

Equally significant is the fact that, in kidnapping, the victim's lack of consent is also a fundamental element.[33] The general rule is that the prosecution is burdened to prove lack of consent

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[31] G.R. No. 168446, September 18, 2009.

[32] *People of the Philippines v. Ernesto Cruz, Jr. y Concepcion and Reynaldo Agustin y Ramos, id.*; *People v. Deduyo*, 460 Phil. 266 (2003); citing FLORENZ D. REGALADO, *Criminal Law Conspectus* 488 (2000).

[33] *People v. Bisda*, *supra* note 30, at 471, citing *Chatwin v. United States*, 90 L. ed. 198 (1945).

on the part of the victim. However, where the victim is a minor, lack of consent is presumed. In this case, Nikko was only 11 years old when he was kidnapped; thus incapable of giving consent, and incompetent to assent to his seizure and illegal detention. The consent of the boy could place appellants in no better position than if the act had been done against his will. A kidnapper should not be rewarded with an acquittal simply because he is ingenious enough to conceal his true motive from his victim until he is able to transport the latter to another place.[34]

The identical factual findings of both the trial and appellate courts likewise show that the actuations and roles played by appellants Siongco and Bonsol undoubtedly demonstrate that they conspired with Hayco and Enriquez in kidnapping and illegally detaining Nikko. Being sufficiently supported by evidence on record, we find no reason to disturb the same.

Siongco was the one who promised Nikko a "Gameboy." He told the boy to go with Bonsol and Enriquez and get the toy in Pilar, Bataan. On December 28, 1998, he arrived in Dinalupihan, Bataan to fetch Nikko. From there, he, Enriquez and Nikko left for Bicutan, Taguig, Metro Manila in a bus. The following day, Siongco, Nikko, Enriquez, and the latter's friend went to the marketplace and called Nikko's mother. Siongco demanded from her payment of ₱400,000.00 as a condition for the boy's release. Siongco repeatedly telephoned Elvira with the same demand and threats over the next couple of days. On December 31, 1998, he instructed Enriquez to meet Elvira at the Genesis Bus Station to get the ransom money.

It is immaterial whether appellant Bonsol acted as a principal or as an accomplice because the conspiracy and his participation therein have been established. In conspiracy, the act of one is the act of all and the conspirators shall be held equally liable for the crime.[35] On the pretext of getting Nikko's much desired

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[34] *Id.* at 472.

[35] *People v. Cruz*, *supra* note 31; *People v. Pangilinan*, 443 Phil. 198, 239 (2003); *People v. Boller*, 429 Phil. 754 (2002); *People v. Bacungay*, 428 Phil. 798 (2002); *People v. Manlansing,* 428 Phil. 743 (2002).

"Gameboy," Bonsol and Enriquez were able to conveniently whisk Nikko out of Balanga and bring him to Pilar, then to Mariveles, and eventually to Dinalupihan, where Siongco fetched him. Thus, Enriquez and Siongco's plan of bringing Nikko to Metro Manila, a terrain unfamiliar to the boy and where the two could enjoy anonymity to carry out their ultimate goal of extorting ransom money from Nikko's mother, was accomplished. As shown by the evidence, without the participation of appellant Bonsol, the commission of the offense would not have come to fruition.

Finally, appellants bewail that they were deprived of their right to an independent and competent counsel when the RTC appointed Atty. Michael Moralde (Atty. Moralde) as their counsel *de oficio* during the pre-trial conference, direct examination and cross-examination of the prosecution's principal witness, Nikko. This was so, despite Atty. Moralde's manifestation during Nikko's cross-examination that the defense of his actual client, accused Boton, conflicts with that of the other accused.[36]

A scrutiny of the records shows that Atty. Moralde was appointed as appellants' counsel *de oficio* in six (6) hearings, because their regular counsel *de oficio*, Atty. Antoniano from the Public Attorney's Office PAO), was inexplicably absent. There is no denial of the right to counsel where a counsel *de oficio* is appointed during the absence of the accused's counsel *de parte*, or in this case the regular counsel *de oficio,* pursuant to the court's desire to finish the case as early as practicable under the continuous trial system.[37] The choice of counsel by the accused in a criminal prosecution is not a plenary one. If the chosen counsel deliberately makes himself scarce, the court is not precluded from appointing a *de oficio* counsel, which it considers competent and independent, to enable the trial to proceed until the counsel of choice enters his appearance. Otherwise, the pace of a criminal prosecution will be entirely

[36] *Supra* note 18. (CA *rollo*, pp. 102-150.)

[37] *People v. Larrañaga*, 466 Phil. 324 (2004); *People v. Macagaling*, G.R. Nos. 109131-33, October 3, 1994, 237 SCRA 299.

dictated by the accused, to the detriment of the eventual resolution of the case.[38]

The fact that Boton's defense conflicts with that of appellants is immaterial because, as borne out by records, Atty. Moralde expressly declared that the questions he propounded to Nikko were only for his client Boton. Thereafter, Atty. Antoniano was furnished with copies of the transcript of stenographic notes of the proceedings she missed and was given ample opportunity to conduct her own cross-examination during the subsequent hearings. Eventually, she adopted the cross-examination conducted by the other defense counsels.[39]

The CA correctly modified the penalty imposed by the RTC to *reclusion perpetua* without eligibility for parole. The penalty for kidnapping for the purpose of extorting ransom from the victim or any other person under Article 267 of the Revised Penal Code[40] is death. However, R.A. No. 9346[41] has banned the imposition of death penalty and reduced all death sentences to *reclusion perpetua* without eligibility for parole.[42] In line with prevailing jurisprudence,[43] an award of ₱50,000.00 as civil indemnity is proper. The award of ₱100,000.00 moral damages is increased to ₱200,000.00 considering the minority of Nikko.[44]

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[38] *People v. Larrañaga, id.*

[39] *Supra* note 1, at 17-19.

[40] As amended by R.A. No. 7659.

[41] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[42] *People v. Mamantak,* G.R. No. 174659, July 28, 2008, 560 SCRA 298.

[43] See *People of the Philippines v. Christopher Bringas y Garcia, Bryan Bringas y Garcia, John Robert Navarro y Cruz, Erickson Pajarillo y Baser (deceased), and Eden Sy Chung, supra* note 28*; People v. Mamantak*, *id.; People v. Solangon*, G.R. No. 172693, November 21, 2007, 537 SCRA 746; *People v. Yambot*, 397 Phil. 23 (2000).

[44] See *People of the Philippines v. Christopher Bringas y Garcia, Bryan Bringas y Garcia, John Robert Navarro y Cruz, Erickson Pajarillo y Baser (deceased), and Eden Sy Chung*, *supra* note 28; *People v. Mamantak*, *supra* note 42, at 310; *People v. Solangon*, *supra* note 43, at 757; *People v. Garalde*, G.R. No. 173055, April 13, 2007, 521 SCRA 327; *People v. Bisda*, *supra* note 30; *People v. Baldogo*, *supra* note 30; *People v. Garcia*, 424 Phil. 158 (2002).

As the crime was attended by a demand for ransom, and by way of example or correction, Nikko is entitled to ₱100,000.00 exemplary damages as correctly awarded by the CA.[45]

WHEREFORE, the September 20, 2007 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00774, finding appellants Antonio Siongco *y* dela Cruz and Allan Bonsol *y* Paz guilty beyond reasonable doubt of *KIDNAPPING* and *SERIOUS ILLEGAL DETENTION*, is *AFFIRMED* with the *MODIFICATION* that a ₱50,000.00 civil indemnity is awarded and the amount of moral damages is increased to ₱200, 000.00.

Costs against appellants.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 186550. July 5, 2010]

ASIAN CATHAY FINANCE AND LEASING CORPORATION, *petitioner, vs.* **SPOUSES CESARIO GRAVADOR and NORMA DE VERA and SPOUSES EMMA CONCEPCION G. DUMIGPI and FEDERICO L. DUMIGPI,** *respondents.*

SYLLABUS

1. **CIVIL LAW; LOANS; INTEREST; UNCONSCIONABLE INTEREST, A CASE OF.—** [T]he amount of loan obtained by respondents on October 22, 1999 was ₱800,000.00. Respondents paid the installment for November 1999, but

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[45] *Id.*

failed to pay the subsequent ones. On February 1, 2000, ACFLC demanded payment of ₱1,871,480.00. In a span of three months, respondents' obligation ballooned by more than ₱1,000,000.00. ACFLC failed to show any computation on how much interest was imposed and on the penalties charged. Thus, we fully agree with the CA that the amount claimed by ACFLC is unconscionable.

2. **ID; ID; ID; EFFECTS OF STIPULATIONS AUTHORIZING IMPOSITION OF USURIOUS INTEREST.—** Stipulations authorizing the imposition of iniquitous or unconscionable interest are contrary to morals, if not against the law. Under Article 1409 of the Civil Code, these contracts are inexistent and void from the beginning. They cannot be ratified nor the right to set up their illegality as a defense be waived. The nullity of the stipulation on the usurious interest does not, however, affect the lender's right to recover the principal of the loan. Nor would it affect the terms of the real estate mortgage. The right to foreclose the mortgage remains with the creditors, and said right can be exercised upon the failure of the debtors to pay the debt due. The debt due is to be considered without the stipulation of the excessive interest. A legal interest of 12% per annum will be added in place of the excessive interest formerly imposed. The nullification by the CA of the interest rate and the penalty charge and the consequent imposition of an interest rate of 12% and penalty charge of 1% per month cannot, therefore, be considered a reversible error.

3. **ID; MORTGAGE; WAIVER OF THE RIGHT OF REDEMPTION MUST BE MADE CLEARLY AND UNEQUIVOCALLY TO BE VALID; APPLICATION.—** Settled is the rule that for a waiver to be valid and effective, it must, in the first place, be couched in clear and unequivocal terms which will leave no doubt as to the intention of a party to give up a right or benefit which legally pertains to him. Additionally, the intention to waive a right or an advantage must be shown clearly and convincingly.

4. **ID; ID; ID; WAIVER OF THE RIGHT OF REDEMPTION THROUGH A FINE PRINT IN A MORTGAGE CONTRACT, HELD INVALID.—** The supposed waiver by the mortgagors was contained in a statement made in fine print in the REM. It was made in the form and language prepared by [petitioner]

ACFLC while the [respondents] merely affixed their signatures or adhesion thereto. It thus partakes of the nature of a contract of adhesion. It is settled that doubts in the interpretation of stipulations in contracts of adhesion should be resolved against the party that prepared them. This principle especially holds true with regard to waivers, which are not presumed, but which must be clearly and convincingly shown. [Petitioner] ACFLC presented no evidence hence it failed to show the efficacy of this waiver. Moreover, to say that the mortgagor's right of redemption may be waived through a fine print in a mortgage contract is, in the last analysis, tantamount to placing at the mortgagee's absolute disposal the property foreclosed. It would render practically nugatory this right that is provided by law for the mortgagor for reasons of public policy. A contract of adhesion may be struck down as void and unenforceable for being subversive to public policy, when the weaker party is completely deprived of the opportunity to bargain on equal footing. In fine, when the redemptioner chooses to exercise his right of redemption, it is the policy of the law to aid rather than to defeat his right. Thus, we affirm the CA in nullifying the waiver of the right of redemption provided in the real estate mortgage.

APPEARANCES OF COUNSEL

YF Lim & Associates Law Office for petitioner.
Venustiano S. Roxas for respondents.

D E C I S I O N

NACHURA, *J.*:

On appeal is the June 10, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 83197, setting aside the April 5, 2004 decision[2] of the Regional Trial Court (RTC), Branch 9,

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[1] Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Rosemari D. Carandang and Estela M. Perlas-Bernabe, concurring; *rollo*, pp. 72-88.

[2] Records, pp. 207-215.

Bulacan, as well as its subsequent Resolution[3] dated February 11, 2009, denying petitioner's motion for reconsideration.

On October 22, 1999, petitioner Asian Cathay Finance and Leasing Corporation (ACFLC) extended a loan of Eight Hundred Thousand Pesos (₱800,000.00)[4] to respondent Cesario Gravador, with respondents Norma de Vera and Emma Concepcion Dumigpi as co-makers. The loan was payable in sixty (60) monthly installments of ₱24,400.00 each. To secure the loan, respondent Cesario executed a real estate mortgage[5] over his property in Sta. Maria, Bulacan, covered by Transfer Certificate of Title No. T-29234.[6]

Respondents paid the initial installment due in November 1999. However, they were unable to pay the subsequent ones. Consequently, on February 1, 2000, respondents received a letter demanding payment of ₱1,871,480.00 within five (5) days from receipt thereof. Respondents requested for an additional period to settle their account, but ACFLC denied the request. Petitioner filed a petition for extrajudicial foreclosure of mortgage with the Office of the Deputy Sheriff of Malolos, Bulacan.

On April 7, 2000, respondents filed a suit for annulment of real estate mortgage and promissory note with damages and prayer for issuance of a temporary restraining order (TRO) and writ of preliminary injunction. Respondents claimed that the real estate mortgage is null and void. They pointed out that the mortgage does not make reference to the promissory note dated October 22, 1999. The promissory note does not specify the maturity date of the loan, the interest rate, and the mode of payment; and it illegally imposed liquidated damages. The real estate mortgage, on the other hand, contains a provision on the waiver of the mortgagor's right of redemption, a provision that is contrary to law and public policy. Respondents added that

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[3] *Rollo*, pp. 90-92.

[4] Exhibit "C", records, p. 16.

[5] Exhibit "B", *id.* at 14-15.

[6] Exhibit "A", *id.* at 12.

ACFLC violated Republic Act No. 3765, or the *Truth in Lending Act*, in the disclosure statement that should be issued to the borrower. Respondents, thus, claimed that ACFLC's petition for foreclosure lacked factual and legal basis, and prayed that the promissory note, real estate mortgage, and any certificate of sale that might be issued in connection with ACFLC's petition for extrajudicial foreclosure be declared null and void. In the alternative, respondents prayed that the court fix their obligation at ₱800,000.00 if the mortgage could not be annulled, and declare as null and void the provisions on the waiver of mortgagor's right of redemption and imposition of the liquidated damages. Respondents further prayed for moral and exemplary damages, as well as attorney's fees, and for the issuance of a TRO to enjoin ACFLC from foreclosing their property.

On April 12, 2000, the RTC issued an Order,[7] denying respondents' application for TRO, as the acts sought to be enjoined were already *fait accompli*.

On May 12, 2000, ACFLC filed its Answer, denying the material allegations in the complaint and averring failure to state a cause of action and lack of cause of action, as defenses. ACFLC claimed that it was merely exercising its right as mortgagor; hence, it prayed for the dismissal of the complaint.

After trial, the RTC rendered a decision, dismissing the complaint for lack of cause of action. Sustaining the validity of the promissory note and the real estate mortgage, the RTC held that respondents are well-educated individuals who could not feign naiveté in the execution of the loan documents. It, therefore, rejected respondents' claim that ACFLC deceived them into signing the promissory note, disclosure statement, and deed of real estate mortgage. The RTC further held that the alleged defects in the promissory note and in the deed of real estate mortgage are too insubstantial to warrant the nullification of the mortgage. It added that a promissory note is not one of the essential elements of a mortgage; thus, reference to a promissory note is neither indispensable nor imperative for the

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[7] *Id.* at 40.

validity of the mortgage. The RTC also upheld the interest rate and the penalty charge imposed by ACFLC, and the waiver of respondents' right of redemption provided in the deed of real estate mortgage.

The RTC disposed thus:

WHEREFORE, on the basis of the evidence on record and the laws/jurisprudence applicable thereto, judgment is hereby rendered DISMISSING the complaint in the above-entitled case for want of cause of action as well as the counterclaim of [petitioner] Asian Cathay Finance & Leasing Corporation for moral and exemplary damages and attorney's fees for abject lack of proof to justify the same.

SO ORDERED.[8]

Aggrieved, respondents appealed to the CA. On June 10, 2008, the CA rendered the assailed Decision, reversing the RTC. It held that the amount of ₱1,871,480.00 demanded by ACFLC from respondents is unconscionable and excessive. Thus, it declared respondents' principal loan to be ₱800,000.00, and fixed the interest rate at 12% per annum and reduced the penalty charge to 1% per month. It explained that ACFLC could not insist on the interest rate provided on the note because it failed to provide respondents with the disclosure statement prior to the consummation of the loan transaction. Finally, the CA invalidated the waiver of respondents' right of redemption for reasons of public policy. Thus, the CA ordered:

WHEREFORE, premises considered, the appealed decision is **REVERSED AND SET ASIDE.** Judgment is hereby rendered as follows:

1) Affirming the amount of the principal loan under the REM and Disclosure Statement both dated October 22, 1999 to be ₱800,000.00, subject to:

a. 1% interest per month (12% per annum) on the principal from November 23, 1999 until the date of the foreclosure sale, less ₱24,000.00 paid by [respondents] as first month amortization[;]

[8] *Id*. at 215.

b. 1% penalty charge per month on the principal from December 23, 1999 until the date of the foreclosure sale.

2) Declaring par. 14 of the REM as null and void by reason of public policy, and granting mortgagors a period of one year from the finality of this Decision within which to redeem the subject property by paying the redemption price as computed under paragraph 1 hereof, plus one percent (1%) interest thereon from the time of foreclosure up to the time of the actual redemption ursuant to Section 28, Rule 39 of the 1997 Rules on Civil Procedure.

The claim of the [respondents] for moral and exemplary damages and attorney's fees is dismissed for lack of merit.

SO ORDERED.[9]

ACFLC filed a motion for reconsideration, but the CA denied it on February 11, 2009.

ACFLC is now before us, faulting the CA for reversing the dismissal of respondents' complaint. It points out that respondents are well-educated persons who are familiar with the execution of loan documents. Thus, they cannot be deceived into signing a document containing provisions that they are not amenable to. ACFLC ascribes error on the part of the CA for invalidating the interest rates imposed on respondents' loan, and the waiver of the right of redemption.

The appeal lacks merit.

It is true that parties to a loan agreement have a wide latitude to stipulate on any interest rate in view of Central Bank Circular No. 905, series of 1982, which suspended the Usury Law ceiling on interest rate effective January 1, 1983. However, interest rates, whenever unconscionable, may be equitably reduced or even invalidated. In several cases,[10] this Court

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[9] *Rollo*, pp. 86-87.

[10] *Heirs of Zoilo Espiritu v. Landrito*, G.R. No. 169617, April 3, 2007, 520 SCRA 383, 393; *Ruiz v. Court of Appeals*, 449 Phil. 419, 433-435 (2003); *Spouses Solangon v. Salazar*, 412 Phil. 816, 822-823 (2001).

had declared as null and void stipulations on interest and charges that were found excessive, iniquitous and unconscionable.

Records show that the amount of loan obtained by respondents on October 22, 1999 was ₱800,000.00. Respondents paid the installment for November 1999, but failed to pay the subsequent ones. On February 1, 2000, ACFLC demanded payment of ₱1,871,480.00. In a span of three months, respondents' obligation ballooned by more than ₱1,000,000.00. ACFLC failed to show any computation on how much interest was imposed and on the penalties charged. Thus, we fully agree with the CA that the amount claimed by ACFLC is unconscionable.

In *Spouses Isagani and Diosdada Castro v. Angelina de Leon Tan*, *Sps. Concepcion T. Clemente and Alexander C. Clemente, Sps. Elizabeth T. Carpio and Alvin Carpio, Sps. Marie Rose T. Soliman and Arvin Soliman and Julius Amiel Tan*,[11] this Court held:

> The imposition of an unconscionable rate of interest on a money debt, even if knowingly and voluntarily assumed, is immoral and unjust. It is tantamount to a repugnant spoliation and an iniquitous deprivation of property, repulsive to the common sense of man. It has no support in law, in principles of justice, or in the human conscience nor is there any reason whatsoever which may justify such imposition as righteous and as one that may be sustained within the sphere of public or private morals.

Stipulations authorizing the imposition of iniquitous or unconscionable interest are contrary to morals, if not against the law. Under Article 1409 of the Civil Code, these contracts are inexistent and void from the beginning. They cannot be ratified nor the right to set up their illegality as a defense be waived. The nullity of the stipulation on the usurious interest does not, however, affect the lender's right to recover the principal of the loan. Nor would it affect the terms of the real estate mortgage. The right to foreclose the mortgage remains with the creditors, and said right can be exercised upon the failure of the debtors to pay the debt due. The debt due is to

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[11] G.R. No. 168940, November 24, 2009.

be considered without the stipulation of the excessive interest. A legal interest of 12% per annum will be added in place of the excessive interest formerly imposed.[12] The nullification by the CA of the interest rate and the penalty charge and the consequent imposition of an interest rate of 12% and penalty charge of 1% per month cannot, therefore, be considered a reversible error.

ACFLC next faults the CA for invalidating paragraph 14 of the real estate mortgage which provides for the waiver of the mortgagor's right of redemption. It argues that the right of redemption is a privilege; hence, respondents are at liberty to waive their right of redemption, as they did in this case.

Settled is the rule that for a waiver to be valid and effective, it must, in the first place, be couched in clear and unequivocal terms which will leave no doubt as to the intention of a party to give up a right or benefit which legally pertains to him. Additionally, the intention to waive a right or an advantage must be shown clearly and convincingly.[13] Unfortunately, ACFLC failed to convince us that respondents waived their right of redemption voluntarily.

As the CA had taken pains to demonstrate:

> The supposed waiver by the mortgagors was contained in a statement made in fine print in the REM. It was made in the form and language prepared by [petitioner]ACFLC while the [respondents] merely affixed their signatures or adhesion thereto. It thus partakes of the nature of a contract of adhesion. It is settled that doubts in the interpretation of stipulations in contracts of adhesion should be resolved against the party that prepared them. This principle especially holds true with regard to waivers, which are not presumed, but which must be clearly and convincingly shown. [Petitioner] ACFLC presented no evidence hence it failed to show the efficacy of this waiver.

Moreover, to say that the mortgagor's right of redemption may be waived through a fine print in a mortgage contract is, in the last

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[12] *Heirs of Zoilo Espiritu v. Landrito*, *supra* note 11, at 398.

[13] See *Thomson v. Court of Appeals*, G.R. No. 116631, October 28, 1998, 358 Phil. 761, 778 (1998).

analysis, tantamount to placing at the mortgagee's absolute disposal the property foreclosed. It would render practically nugatory this right that is provided by law for the mortgagor for reasons of public policy. A contract of adhesion may be struck down as void and unenforceable for being subversive to public policy, when the weaker party is completely deprived of the opportunity to bargain on equal footing.[14]

In fine, when the redemptioner chooses to exercise his right of redemption, it is the policy of the law to aid rather than to defeat his right.[15] Thus, we affirm the CA in nullifying the waiver of the right of redemption provided in the real estate mortgage.

Finally, ACFLC claims that respondents' complaint for annulment of mortgage is a collateral attack on its certificate of title. The argument is specious.

The instant complaint for annulment of mortgage was filed on April 7, 2000, long before the consolidation of ACFLC's title over the property. In fact, when respondents filed this suit at the first instance, the title to the property was still in the name of respondent Cesario. The instant case was pending with the RTC when ACFLC filed a petition for foreclosure of mortgage and even when a writ of possession was issued. Clearly, ACFLC's title is subject to the final outcome of the present case.

WHEREFORE, the petition is *DENIED*. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 83197 are *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

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[14] *Rollo*, pp. 85-86.

[15] *Iligan Bay Manufacturing Corporation v. Dy*, G.R. Nos. 140836 & 140907, June 8, 2007, 524 SCRA 55, 70.

FIRST DIVISION

[G.R. No. 187075. July 5, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROMMEL BELO *y* DE LEON,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS AFFIRMING THOSE OF THE TRIAL COURT ARE BINDING ON THE SUPREME COURT.—** In deciding this appeal, the Court once again reiterates the legal aphorism that factual findings of the Court of Appeals 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. Unfortunately, however, accused-appellant failed to show any of these as to warrant a review of the findings of fact of the lower courts.

2. **ID; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT THEREON, ACCORDED RESPECT.—** [T]he trial court found the collective testimonies of the witnesses for the prosecution to be credible, while those of the accused-appellant, incredible and barren of probative weight. It is also 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. In this regard, a meticulous review of the records gives us no reason to deviate from the factual findings of the trial court.

3. **ID; ID; POLICE BLOTTER; NOT CONCLUSIVE PROOF OF THE TRUTH OF THE ENTRIES MADE THEREIN; CASE AT BAR.—** [I]t should be noted that entries in a police blotter, though regularly done in the course of the performance of official duty, are not conclusive proof of the truth of such entries for they are often incomplete and inaccurate. They,

therefore, should not be given undue significance or probative value as to the facts stated therein. Blotter entries are merely prima facie proof of the facts stated therein. Furthermore, the heading in the police blotter in the case at bar states that the incident was "Alleged Rape." This shows that the crime sought to be entered in the police blotter was consummated rape and not merely attempted.

4. **CRIMINAL LAW; RAPE; DEFENSE OF CONSENSUAL SEX MUST BE ESTABLISHED BY STRONG EVIDENCE; APPLICATION.—** [T]he defense of consensual sex must be established by strong evidence in order to be worthy of judicial acceptance. As held in *People v. Corpuz*: "Appellant's "sweetheart" theory, being an affirmative defense, must be established by convincing evidence — some documentary and/or other evidence like mementos, love letters, notes, photographs and the like. Other than appellant's testimony, however, no convincing evidence was presented to substantiate his theory." Notably, apart from accused-appellant's allegation that he and AAA were sweethearts, no love letter, memento or picture was presented by him to prove that such romantic relationship existed. While Vergara testified on his knowledge of the supposed relationship, he admitted that his basis was merely the information previously given by accused-appellant and that he really had no personal knowledge concerning the same.

5. **ID; ID; ABSENCE OF BRUISES AND CONTUSIONS DOES NOT NEGATE THE COMMISSION OF RAPE.—** [I]n belying the charge of rape by the prosecution, accused-appellant claims that the absence of bruises and contusions on AAA's body, based on the medico-legal report, negates the crime of rape. This contention deserves scant consideration. The absence of bruises and contusions does not negate the commission of rape. As held in *People v. Dado*: "The absence of finger grips, contusions, bruises or scratches on; the different parts of Eden's body does not negate the commission of rape. **It is not necessary that the victim should bear marks of physical violence sustained by reason of the persistence of the sexual attacker, nor is the exertion of irresistible force by the culprit an indispensable element of the offense."**

6. **ID; ID; NON-PRESENTATION OF THE KNIFE DOES NOT NEGATE THE EXISTENCE OF FORCE AND**

INTIMIDATION.— [T]he fact that [accused] did not possess any bread knife when he was apprehended a few moments after the commission of the alleged crime supposedly negates the existence of force and intimidation, also does not hold water. The non-presentation of the weapon used in the commission of rape is not essential to the conviction of the accused-appellant. As held in *People v. Degamo*: "**It is settled that the non-presentation of the weapon used in the commission of rape is not essential to the conviction of the accused.** The testimony of the rape victim that appellant was armed with a deadly weapon when he committed the crime is sufficient to establish that fact for so long as the victim is credible."

7. ID; ID; CIVIL LIABILITIES.— The award of civil indemnity of PhP 50,000 in simple rape cases without need of pleading or proof is correct. In addition, moral damages of PhP 50,000 were also properly awarded. These are automatically granted in rape cases without need of proof other than the commission of the crime in accordance with prevailing jurisprudence. We, however, additionally grant exemplary damages in the amount of PhP 30,000, in line with current jurisprudence, for the special aggravating circumstance of the use of a deadly weapon attended the commission of the rape.

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 31, 2008 Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 00388 entitled *People of the Philippines v. Rommel Belo y De Leon* which

[1] *Rollo*, pp. 2-11. Penned by Associate Justice Edgardo P. Cruz and concurred in by Associate Justices Fernanda Lampas Peralta and Normandie B. Pizarro.

affirmed, with modifications, an earlier decision[2] of the Regional Trial Court of Biñan, Laguna, Branch 24, in Criminal Case No. 11114-B, finding herein accused-appellant Rommel Belo *y* De Leon guilty beyond reasonable doubt of the crime of rape[3] committed against AAA,[4] and sentenced him to suffer the penalty of death and to pay the amount of fifty thousand pesos (PhP 50,000) as moral damages.

The Facts

Accused-appellant was charged in an information dated June 16, 2000, which reads:

> That on or about November 12, 1999, in the Municipality of Sta. Rosa, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, accused Rommel Belo *y* De Leon, with lewd design, through violence, force and intimidation with the use of deadly bladed weapon, did then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA] against her will and consent, to her damage and prejudice.
>
> Contrary to law.[5]

At his arraignment on September 26, 2000, accused-appellant, with the assistance of his counsel, entered a plea of not guilty.[6] Thereafter, trial on the merits ensued.

During the trial, the prosecution offered the oral testimonies of AAA, the victim, and Dr. Soledad Cunanan, the municipal health officer of Sta. Rosa, Laguna. On the other hand, the defense presented as its witnesses the accused-appellant himself, Rommel Belo, PO3 Tanny Gangano and Reggie Vergara ("Vergara").

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[2] CA *rollo*, pp. 18-25. Penned by Judge Damaso A. Herrera.

[3] Under Art. 335 of the Revised Penal Code, as amended by Republic Act No. 7659.

[4] The real name of the victim is withheld to protect her identity and privacy pursuant to Section 44 of Republic Act No. 9262 and Section 40 of A.M. No. 04-10-11-SC. See our ruling in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

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

[6] RTC Records, p. 18.

Version of the Prosecution

A summary of the facts according to the prosecution is as follows:

On November 12, 1999, at around four o'clock in the afternoon, AAA, while taking a bath alone in her house, noticed that the lights in her living room were turned off.[7] Thinking that it was her live-in partner who arrived at their house and turned the lights off in the living room, AAA called his name. When nobody answered, she opened the door of the bathroom. She was shocked to see accused-appellant who was holding a bread knife. Accused-appellant then said "*sandali lang ito*" and pushed her inside the bathroom.[8] While pointing the bread knife at her, accused-appellant kissed and touched AAA's private parts. He also asked her to hold his penis with her left hand, and then eventually, accused-appellant inserted his penis into her vagina. After obtaining carnal knowledge of AAA, accused-appellant threatened her not to tell anybody about what just happened, or else, he would kill her. Despite such threats, AAA informed her live-in partner about it. Immediately thereafter, they reported the incident to the authorities.[9]

Upon medical examination, Dr. Soledad Cunanan found the following:

FINDINGS:

> Conscious, not in cardio-respiratory distress
> Breasts full, with brownish nipple and areola
> Heart and lungs unremarkable
> Abdomen flat, no masses palpated
> No gross deformities of extremities, moderate amount of thick axillary hair

External Genitalia Examination:

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[7] TSN, February 13, 2001, pp. 3-4.

[8] *Id.* at 4.

[9] *Id.* at 5.

There's moderate to abundant amount of pubic hair, black and curly, and distributed on the mons pubis and vulvar area. The labia majora is convex, hyperpigmented, and not well-coaptated. The labia minora is noted to be also hyperpigmented and in-between the labia majora. On separating the same showed a fleshy-type, elastic hymen with deep healing laceration at 7 o'clock position and a deep healed laceration at 3 o'clock position. Minimal blood-tinge vaginal discharge is noted. There's no resistance upon examination of the vaginal orifice.

CONCLUSION: The patient is in non-virgin state physically. (Exh. "B")[10]

Version of the Defense

Accused-appellant's version of the incident, on the other hand, is as follows:

Admitting that he was at AAA's house on November 12, 1999 at around four o'clock in the afternoon, accused-appellant, however, claims that what actually transpired was consensual sex and not rape. He further claims that AAA was his girlfriend even if she has a live-in partner.[11] He even asserts that this was not the first time that they had sexual intercourse as he made love to her in October 1999 in her very own bedroom.[12] He also maintains that they kept their relationship secret upon AAA's request since the latter was allegedly afraid that her live-in partner might not pursue his intention to marry her if he finds out about their relationship.[13]

According to accused-appellant, on November 12, 1999, he was in front of his house when AAA passed by and invited him to her house. She allegedly told him that she would not lock the door of her house so that he could easily enter.[14] Before proceeding to AAA's house, accused-appellant talked to Vergara and Dante

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[10] RTC Records, p. 6.

[11] TSN, February 26, 2002, p. 7.

[12] *Id.* at 7-8.

[13] TSN, April 18, 2002, pp. 13-14.

[14] *Id.* at 6-7.

Manlangit ("Manlangit") and asked them to follow him to AAA's house in order to prove his relationship with the latter.[15] He also claims that when he entered AAA's bathroom, he kissed AAA and then she took off his clothes. Further, accused-appellant and AAA were supposedly kissing each other when they heard a noise and noticed Vergara and Manlangit peeping through the bathroom's window, and that despite accused-appellant's assurance to AAA that he would ask Vergara and Manlangit not to tell anyone about what they saw, AAA filed a case against him.[16]

Ruling of the Trial Court

Between the two conflicting versions of the incident, the trial court gave credence to the version of the prosecution and rendered its Decision[17] dated February 27, 2004 finding accused-appellant guilty of the crime of rape, the decretal portion of which reads:

> WHEREFORE, premises considered, finding the accused ROMMEL BELO guilty beyond reasonable doubt of the crime of Rape with the use of force and intimidation and armed with a deadly weapon, he is hereby sentenced to suffer the penalty of Death. Accused is also directed to pay the private complainant the sum of Fifty Thousand Pesos (₱50,000.00) for and as moral damages.
>
> SO ORDERED.[18]

Pursuant to our pronouncement in *People v. Mateo*,[19] modifying the pertinent provisions of the Revised Rules on Criminal Procedure insofar as they provide for direct appeals from the Regional Trial Court to this Court in cases in which the penalty imposed by the trial court is death, *reclusion perpetua* or life imprisonment, and the Resolution dated September 19, 1995 in "Internal Rules

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[15] *Id.* at 10 and 22.

[16] *Id.* at 16-25.

[17] *Supra* note 2.

[18] CA *rollo*, p. 25.

[19] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 657-658.

of the Supreme Court," the case was transferred, for appropriate action and disposition, to the Court of Appeals, where it was docketed as CA-G.R. CR-HC No. 00388.

On June 19, 2006, accused-appellant filed his Appellant's Brief,[20] while the People of the Philippines, through the Office of the Solicitor General, filed its Appellee's Brief[21] on October 25, 2006.

Ruling of the Appellate Court

As stated above, the Court of Appeals, in its Decision[22] dated October 31, 2008, in CA-G.R. CR-HC No. 00388, affirmed with modifications the judgment of conviction by the trial court, the dispositive portion of which reads:

> WHEREFORE, the appealed decision of the Regional Trial Court of Laguna (Biñan, Branch 24) is AFFIRMED with MODIFICATIONS in that (i) instead of the penalty of death, accused-appellant is sentenced to suffer *reclusion perpetua* and (ii) he is ordered to pay to AAA the amount of ₱50,000.00 as civil indemnity *ex delicto*.
>
> SO ORDERED.[23]

On November 13, 2008, accused-appellant filed his Notice of Appeal of the Decision dated October 31, 2008 rendered by the Court of Appeals.[24]

In Our Resolution dated July 1, 2009,[25] We notified the parties that they may file their respective supplemental briefs, if they so desire, within thirty (30) days from notice. On August 18, 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 17, 2006 has adequately addressed the

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[20] CA *Rollo*, pp. 61-75.

[21] *Id.* at 90-120.

[22] *Rollo*, pp. 2-11.

[23] *Id.* at 10.

[24] *Id.* at 12-13.

[25] *Id.* at 18.

issues and arguments in the instant case.[26] In the same vein, on August 24, 2009, accused-appellant manifested that he will no longer file a supplemental brief and is merely adopting the appellant's brief as his supplemental brief.[27]

The Issues

Accused-appellant contends in his *Brief*[28] that:

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT WHEN HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

II.

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE PROSECUTION'S WITNESSES.

III.

THE TRIAL COURT GRAVELY ERRED IN DISREGARDING THE DEFENSE EVIDENCE WHICH, IF PROPERLY APPRECIATED, COULD HAVE LED TO THE ACQUITTAL OF THE ACCUSED-APPELLANT.[29]

The Court's Ruling

We sustain accused-appellant's conviction.

After a careful examination of the records of this case, we are satisfied that the prosecution's evidence established the guilt of the accused beyond reasonable doubt.

In deciding this appeal, the Court once again reiterates the legal aphorism that factual findings of the Court of Appeals affirming those of the trial court are binding on this Court unless there is a clear showing that such findings are tainted with

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[26] *Id.* at 19-20.

[27] *Id.* at 22-24.

[28] CA *rollo*, pp. 61-75.

[29] *Id.* at 68-69.

arbitrariness, capriciousness or palpable error.[30] Unfortunately, however, accused-appellant failed to show any of these as to warrant a review of the findings of fact of the lower courts.

Pertinently, the trial court found the collective testimonies of the witnesses for the prosecution to be credible, while those of the accused-appellant, incredible and barren of probative weight. It is also 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.[31] In this regard, a meticulous review of the records gives us no reason to deviate from the factual findings of the trial court.

In his *Brief*, accused-appellant faults the trial court for giving credence to AAA's testimony. First, in assailing AAA's credibility, he asserts that based on the testimony of PO3 Tanny Galang, the incident entered in the police blotter was merely attempted and not consummated as AAA initially reported that there was only an attempt to molest and rape her. However, AAA later on claimed that the alleged rape was consummated.[32]

Concerning this, it should be noted that entries in a police blotter, though regularly done in the course of the performance of official duty, are not conclusive proof of the truth of such entries for they are often incomplete and inaccurate. They, therefore, should not be given undue significance or probative value as to the facts stated therein. Blotter entries are merely *prima facie* proof of the facts stated therein.[33] Furthermore,

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[30] *Fuentes v. Court of Appeals*, G.R. No. 109849, February 26, 1997, 268 SCRA 703.

[31] *Mendoza v. People*, G.R. No. 165820, December 8, 2004 citing *People of the Philippines v. Cajurao*, G.R. No. 122767, January 20, 2004.

[32] *Rollo*, pp. 69-70.

[33] *People v. Sorongon*, G.R. No. 142416, February 11, 2003, 397 SCRA 264 citing *People v. Durohom*, G.R. No. 146276, November 21, 2002.

the heading in the police blotter in the case at bar states that the incident was "Alleged Rape." This shows that the crime sought to be entered in the police blotter was consummated rape and not merely attempted.[34]

At any rate, the prosecution has sufficiently established that accused-appellant was able to consummate his carnal desire. As testified by AAA:

Q What happened next after that?

A Then he kissed my lips, sir. And when I was about to avoid him, he mushed my breast and he told me to hold on his penis with my left hand '*pinatitigas niya iyong ari niya*.'

Q What happened then, if any?

A I was then trembling, sir and pitied him.

Q What happened next, if any?

A Then when his penies (sic) was already '*tumigas*' then he inserted his penies (sic) to my private part, sir.[35]

Second, accused-appellant claims that it is highly suspicious for AAA to leave the door of her house unlocked considering that she was alone and was about to take a bath. This supposedly shows the intention of AAA to allow accused-appellant to conveniently enter her house.

We do not agree. As convincingly argued by the prosecution, such act cannot be taken as an invitation for accused-appellant to enter AAA's house as it could be plainly attributed to oversight or to the fact that it was still early in the afternoon and she was expecting her live-in partner to arrive at any moment.[36]

Further, the defense of consensual sex must be established by strong evidence in order to be worthy of judicial acceptance. As held in *People v. Corpuz*:[37]

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[34] *Rollo*, p. 6.

[35] TSN, February 13, 2001, p. 5.

[36] CA *rollo*, p. 108.

[37] G.R. No. 175836, January 30, 2009, 577 SCRA 465.

Appellant's "sweetheart" theory, being an affirmative defense, must be established by convincing evidence — some documentary and/or other evidence like mementos, love letters, notes, photographs and the like. Other than appellant's testimony, however, no convincing evidence was presented to substantiate his theory.[38]

Notably, apart from accused-appellant's allegation that he and AAA were sweethearts, no love letter, memento or picture was presented by him to prove that such romantic relationship existed. While Vergara testified on his knowledge of the supposed relationship, he admitted that his basis was merely the information previously given by accused-appellant and that he really had no personal knowledge concerning the same. As testified to by Vergara:

Q Why do you know that they are sweethearts?

A Because Rommel told me, sir.

Q Told you what?

A He told me that he is having a relationship with (AAA)

x x x x x x x x x

Q Besides that information told you by Rommel Belo that he had relationship with (AAA), what else, if any, to prove that they are sweethearts?

A There was a time that Rommel told me that (AAA) and him went out on a date so I believe that they have a relationship, sir.[39]

x x x x x x x x x

Q So, the personal relationship of Rommel and (AAA) was based only by you on the information given to you by Rommel. Am I right?

A He told me that (AAA) and him go out on a date, sir. That they go to a motel, and, of course, I believe him, sir.[40]

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[38] *Id.* at 471.

[39] TSN, September 24, 2002, pp. 7-8.

[40] *Id.* at 17.

And as correctly observed by the Court of Appeals, even supposing that the sweetheart theory is true, a love affair does not justify rape, for the beloved cannot be sexually violated against her will for love is not a license for lust.[41]

Third, in belying the charge of rape by the prosecution, accused-appellant claims that the absence of bruises and contusions on AAA's body, based on the medico-legal report, negates the crime of rape.[42] This contention deserves scant consideration.

The absence of bruises and contusions does not negate the commission of rape. As held in *People v. Dado*:[43]

> The absence of finger grips, contusions, bruises or scratches on; the different parts of Eden's body does not negate the commission of rape. **It is not necessary that the victim should bear marks of physical violence sustained by reason of the persistence of the sexual attacker, nor is the exertion of irresistible force by the culprit an indispensable element of the offense.** Corollarily, Eden's failure to shout or offer tenacious resistance cannot be said to render voluntary her submission to the lustful criminal act of appellant. (Emphasis supplied.)

Thus, for rape to be committed, it is not necessary that there be marks of physical violence present on the victim's body. Corollarily, accused-appellant's contention, that the fact that he did not possess any bread knife when he was apprehended a few moments after the commission of the alleged crime supposedly negates the existence of force and intimidation, also does not hold water. The non-presentation of the weapon used in the commission of rape is not essential to the conviction of the accused-appellant. As held in *People v. Degamo*:[44]

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[41] *People v. Pulanco*, G.R. No. 141186, November 27, 2003, 416 SCRA 532.

[42] CA *rollo*, pp. 71-72.

[43] G.R. No. 87775, June 1, 1995, 244 SCRA 655, 667.

[44] G.R. No. 121211, April 30, 2003, 402 SCRA 133.

It is settled that the non-presentation of the weapon used in the commission of rape is not essential to the conviction of the accused. The testimony of the rape victim that appellant was armed with a deadly weapon when he committed the crime is sufficient to establish that fact for so long as the victim is credible. It must be stressed that in rape, it is usually only the victim who can attest to its occurrence and that is why courts subject the testimony of the alleged victims to strict scrutiny before relying on it for the conviction of the accused. In the present case, complainant positively described how appellant, armed with a knife, threatened and raped her. Appellant failed to show any compelling reason for us to brush aside the probative weight given by the trial court to the testimony of herein complainant. Absent any showing that certain facts of substance and significance have been plainly overlooked or that the trial court's findings are clearly arbitrary, the conclusions reached by the trial court must be respected and the judgment rendered should be affirmed. (Emphasis supplied.)

Penalty Imposed

The award of civil indemnity of PhP 50,000 in simple rape cases without need of pleading or proof is correct. In addition, moral damages of PhP 50,000 were also properly awarded. These are automatically granted in rape cases without need of proof other than the commission of the crime in accordance with prevailing jurisprudence.[45] We, however, additionally grant exemplary damages in the amount of PhP 30,000, in line with current jurisprudence,[46] for the special aggravating circumstance of the use of a deadly weapon attended the commission of the rape.[47]

WHEREFORE, the appeal is *DENIED*. The CA Decision dated October 31, 2008 in CA-G.R. CR-H.C. No. 00388 finding accused-appellant Rommel Belo guilty of rape is *AFFIRMED*

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[45] *People v. Cruz*, G.R. No. 186129, August 4, 2009, 595 SCRA 411, 421-422.

[46] *People v. Ofemiano*, G.R. No. 187155, February 1, 2010 citing *People v. Pabol*, G.R. No. 187084, October 12, 2009, 603 SCRA 522, 532-533.

[47] *People v. Magbanua*, G.R. No. 176265, April 30, 2008, 553 SCRA 698, 708.

with the *MODIFICATION* that accused-appellant shall suffer *reclusion perpetua*, without eligibility for parole, and shall, in addition, pay PhP 30,000 to AAA as exemplary damages.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Del Castillo, and *Perez, JJ.,* concur.

THIRD DIVISION

[G.R. No. 187737. July 5, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALIODING SULTAN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); DIFFICULTY OF STRICTLY COMPLYING WITH SECTION 21 THEREOF JUSTIFIES SLIGHT DEVIATION FROM THE RULE.— In the case at bar, the failure of the apprehending officer to "immediately after seizure and confiscation, physically inventory and photograph the [prohibited drugs] in the presence of the accused" as required by Section 21 can be considered as a slight infraction that does not automatically render the seized items inadmissible. There is a justifiable reason for such failure in this case as was explained by SPO3 Balolong during his cross-examination. x x x It was the difficulty, if not the impossibility, of strictly complying with Section 21 of Rep. Act No. 9165 during the actual apprehension and arrest which justifies the slight deviation by the arresting officers from the rule. The strong resistance of the appellant to the arrest and the interference of several persons made it imperative upon the apprehending police officers to withdraw from the place immediately. Consequently, the

confiscated items were marked only upon turn over to the evidence custodian.

2. ID; ID; ILLEGAL SALE OF *SHABU*; ELEMENTS, PRESENT. — For the successful prosecution of the illegal sale of *shabu*, the following elements must be established: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. All these requisites were met by the prosecution in this case.

3. ID; ID; CHAIN OF CUSTODY DID NOT SUFFER FROM SERIOUS FLAWS AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED DRUGS WERE NOT AFFECTED BY THE FAILURE TO COMPLY STRICTLY WITH SECTION 21 THEREOF.— The chain of custody in the instant case did not suffer from serious flaws as appellant argues. The identity of the regulated drug, as well as the buy-bust money, has been proven beyond reasonable doubt by the prosecution. The prosecution was able to establish the chain of custody in the presentation of the evidence custodian whose testimony was dispensed with upon the admission of the defense that he made the identifying markings on the "items confiscated from the possession of the [appellant]" and personally submitted them to the Ilocos Norte Provincial Crime Laboratory Office at Camp Juan, Laoag City. x x x The prosecution witnesses were further able to present and identify in court the confiscated items and the marked money. PO2 Cabigas identified in open court the three (3) sachets that the appellant gave in the course of the illicit sale transaction. x x x The trial court observed that the bills presented in court had the same serial numbers as those mentioned in the Joint Affidavit of the arresting police officers. Thus, it is clear that the integrity and evidentiary value of the seized drugs were not affected by the failure to comply strictly with Section 21. There is no doubt in our minds that the seized drugs obtained from the appellant at the Muslim Compound in Barangay 1, Laoag City, were the same ones which were brought to the crime laboratory and analyzed as positive for *shabu*.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS BY THE TRIAL COURT, ACCORDED RESPECT.— The trial court found undeserving of credence appellant's self-serving testimony and defense witness Chona Martin's assertion that it was merely by chance that she saw appellant and pointed him to the police officers as the person peddling illegal drugs. The trial court, in fact, branded Chona Martin's testimony as obviously fabricated. It is a fundamental rule that findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors, gross misapprehension of facts and speculative, arbitrary and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the CA. As there appears no cogent reason to depart from the findings of the trial court and the CA, we stand by their findings.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Macario D. Arquillo for accused-appellant.

D E C I S I O N

VILLARAMA, JR., *J.*:

Assailed before this Honorable Court is the October 17, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02646. The CA affirmed the August 28, 2006 Decision[2] of the Regional Trial Court (RTC) of Laoag City, Branch 13 finding appellant Alioding Sultan guilty beyond reasonable doubt of

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[1] *Rollo*, pp. 2-14. Penned by Associate Justice Romeo F. Barza, with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Arcangelita M. Romilla-Lontok concurring.

[2] CA *rollo*, pp. 37-48. Penned by Judge Philip G. Salvador.

violation of Section 5,[3] Article II of Republic Act No. 9165[4] or the "Comprehensive Dangerous Drugs Act of 2002."

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[3] SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) 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 controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemicals trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

[4] AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

The prosecution charged appellant with violation of Section 5, Article II of Rep. Act No. 9165 in two (2) Informations which read:

Criminal Case No. 11867 for illegal delivery of *shabu*

That on or about the 19th day of August 2005 in the City of Laoag, Philippines and within the jurisdiction of this Honorable Court, the herein accused, did then and there wilfully, unlawfully and feloniously give away and deliver to a police officer who acted as a poseur buyer one plastic bag containing metamphetamine hydrochloride (popularly known as *shabu*) a dangerous drug with a weight of .1211 gram. without any license or authority, in violation of the aforecited law.

CONTRARY TO LAW.[5]

Criminal Case No. 11868 for illegal sale of *shabu*

That on or about the 19th day of August 2005 in the City of Laoag, Philippines and within the jurisdiction of this Honorable Court, the herein accused, did then and there wilfully, unlawfully and feloniously sell and deliver to a police officer who acted as a poseur buyer two plastic bags containing metamphetamine hydrochloride (popularly known as *shabu*) a dangerous drug with a weight of .4931 grams and 0.5334 grams respectively without any license or authority, in violation of the aforecited law.

CONTRARY TO LAW.[6]

Upon arraignment on August 25, 2005, the appellant, assisted by counsel *de parte*, pleaded not guilty to both charges.[7] Thereafter, trial ensued.

The prosecution evidence established the following facts:

At around noon of August 19, 2005, SPO3 Rovimanuel Balolong, Chief, Intelligence Division of the Laoag City Police Station, was in his house with two (2) colleagues, SPO3 Allan Tunac and PO2 Sherwin Cabigas. While about to have lunch,

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[5] Records (Criminal Case No. 11867), p. 1.

[6] Records (Criminal Case No. 11868), p. 1.

[7] Records (Criminal Case No. 11867), p. 15.

SPO3 Balolong received a call in his cellular phone from a female police informant telling him that a certain "Dax" was selling *shabu* at his residence at Brgy. 1, Muslim Compound, Laoag City, and that she could access *shabu* from him. SPO3 Balolong advised the informant to see him at his residence to discuss the information further. When the informant arrived, SPO3 Balolong, together with SPO3 Tunac and PO2 Cabigas, conducted a briefing with the informant and not long after, devised a buy-bust plan to catch the appellant in *flagrante delicto*. SPO3 Balolong produced four (4) pieces of 500-peso bills[8] and marked them with his initials on the lower right hand corner of the face of the bills. He then handed the marked bills to PO2 Cabigas to use in the operation.[9] Then they proceeded as planned.

PO2 Cabigas, who was the poseur-buyer, went with the informant and took a tricycle to the Muslim Compound where the appellant's residence was located. Upon reaching an abandoned school located near the compound, PO2 Cabigas and the informant alighted from the tricycle and proceeded on foot to the appellant's residence. However, even before reaching the said residence, the informant spotted the appellant walking towards them at a distance of around fifteen (15) meters. She discreetly informed PO2 Cabigas that the person in yellow was the person they were after. PO2 Cabigas and the informant met with the appellant and received two (2) plastic sachets of *shabu*[10] in exchange for ₱2,000 and a smaller sachet of *shabu* as "bonus."[11]

Upon receiving the three (3) sachets of *shabu* from the appellant, PO2 Cabigas inserted them in his right side pocket and simultaneously pressed the "call button" on his cellular phone inside his pocket. This raised the signal to SPO3 Balolong and SPO3 Tunac, who were waiting nearby inside their vehicle, that the illegal sale of *shabu* has been consummated and for them to assist PO2 Cabigas in arresting the appellant. After

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[8] *Id.* at 9.

[9] TSN, November 15, 2005, pp. 4-7.

[10] Chemistry Report No. D-059-2005, records (Criminal Case No. 11867), p. 7.

[11] TSN, January 23, 2006, pp. 5-8.

pressing the call button, PO2 Cabigas held the appellant's arm and informed him that he was a police officer and that he was arresting him for violation of Rep. Act No. 9165. According to PO2 Cabigas, "[the appellant] put up a strong resistance."[12] Around fifteen (15) seconds after the signal was sent, SPO3 Balolong and Tunac arrived at the scene. They saw PO2 Cabigas and the appellant grappling and immediately assisted PO2 Cabigas in arresting the appellant.

After the arrest, SPO3 Balolong confiscated the buy-bust money from the appellant's wallet and asked him whether he had authority to sell *shabu*, to which the appellant could not present any. The police officers then brought the appellant to the Laoag City Police Station together with the confiscated *shabu* and buy-bust money and turned over the evidence to the evidence custodian, SPO2 Loreto Ancheta, who marked[13] the items appropriately. Thereafter they filed the appropriate charges.[14]

On the other hand, the evidence of the appellant is basically a denial of all the allegations. According to the defense, that morning at around 11:00 a.m., Chona Martin was then at their store located in Brgy. 11, Lagasca Street, Laoag City. Later on, Ariel Palaganas, who was her neighbor, gave her ₱1,000 and sent her to the Muslim Compound to buy *shabu*. He did not tell her from whom to buy but she was nonetheless able to buy the *shabu*. She handed the *shabu* to Ariel Palaganas and then proceeded to Vintar Road on a tricycle as she was headed for the town of Vintar. While on the tricycle, she was flagged down by three (3) men who were riding in a red car. The men were identified as SPO3 Balolong, SPO3 Tunac and PO2 Cabigas. According to her, she was frisked by the policemen and they found one (1) sachet of *shabu*. They told her to come with them to a *carinderia* which was owned by SPO3 Balolong and there she was interrogated as to where and from whom she got the *shabu*. She merely told them that she got it from a small

[12] *Id.* at 9.

[13] *Id.* at 10-11; TSN, January 10, 2006, pp. 2-3.

[14] *Id.* at 10.

child in the Muslim Compound. Unsatisfied, the policemen brought her along to the Muslim Compound and made her search for the small child who delivered the *shabu* to her. Being unable to spot the child, she pointed to a man who was walking and whom she identified in open court as the appellant Alioding Sultan.[15]

The appellant, for his part, testified that on that day, he was walking on the street beside the house of his siblings as he was looking for his children when suddenly he was arrested. He asked why he was being arrested and the police responded by saying that he should come with them peacefully if he did not want to get harmed. He was brought to the headquarters where the policemen took off his clothes and kept telling him to just bring "it" out. He, however, did not know what it was that they wanted him to bring out. This went on for around fifteen (15) minutes but still the police did not find anything on him.[16]

After trial, the RTC of Laoag City, Branch 13, gave credence to the testimonies and evidence presented by the prosecution and found the appellant guilty beyond reasonable doubt of the offense charged. The dispositive portion of the Decision dated August 28, 2006 reads:

> WHEREFORE, the Court hereby renders judgment finding the accused Alioding Sultan **GUILTY** beyond reasonable doubt as charged of illegal sale and delivery of *shabu* in Criminal Case No. 11868 and is therefore sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱2,000,000.00, with no costs.
>
> For lack of factual basis, the accused is found **NOT GUILTY** and is therefore **ACQUITTED** of the separate case of illegal delivery of *shabu* as charged in Criminal Case No. 11867.
>
> The *shabu* subject of these cases are forfeited, the same to be disposed of as the law prescribes.
>
> SO ORDERED.[17]

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[15] TSN, April 17, 2006, pp. 3-16.

[16] TSN, May 25, 2006, pp. 3-5.

[17] Records (Criminal Case No. 11867), p. 72.

On appeal, the CA affirmed the RTC in its October 17, 2008 Decision stating that:

> It is settled rule that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill motive on the part of the police officers or deviation from the regular performance of their duties. Prescinding from the foregoing, this Court is convinced that the guilt of appellant has been sufficiently proven beyond reasonable doubt by the evidence on record.
>
> The sale of *shabu* is penalized under Section 5, Article II of Republic Act No. 9165. Said section reads:
>
>> SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.
>
> Hence, the penalty of life imprisonment and a fine of ₱2,000,000.00 were properly imposed on the appellant.
>
> WHEREFORE, premises considered, the instant appeal is **DISMISSED.**
>
> SO ORDERED.[18]

Hence, this appeal.

The main issue in this case is whether or not the appellant is guilty beyond reasonable doubt for violation of Section 5, Article II of Rep. Act No. 9165 for selling and delivering 0.4931 grams and 0.5334 grams of *shabu*, respectively.

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[18] *Rollo*, pp. 12-13.

The appellant contends that the prosecution failed to prove the *corpus delicti*. According to him, there was no showing of any attempt or effort by the arresting officers to comply with the requirements of Section 21 of Rep. Act No. 9165 and the prosecution failed to present evidence on post-examination custody as the chemist who examined the specimens did not testify in open court. Hence, there is doubt as to the identity of the specimen submitted in court.

The State, for its part, through the Solicitor General maintains that the prosecution sufficiently established the unbroken chain of custody of the seized drugs and that the trial court correctly gave credence to the prosecution witnesses' testimonies as against those of the defense.

We affirm the appellant's conviction.

Section 21 of Rep. Act No. 9165 was originally envisioned by the legislature to serve as a protection for the accused from malicious imputations of guilt by abusive police officers. The illegal drugs being the *corpus delicti*, it is essential for the prosecution to prove and show to the court beyond reasonable doubt that the illegal drugs presented to the trial court as evidence of the crime are indeed the illegal drugs seized from the accused.

Section 21, paragraph No. 1, prescribes the *method* by which law enforcement agents/personnel are to go about in handling the *corpus delicti* at the time of seizure in order to ensure full protection to the accused. It reads:

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

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused

or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

x x x x x x x x x

However, Section 21 was not meant to thwart the legitimate efforts of law enforcement agents. Slight infractions or nominal deviations by the police from the prescribed method of handling the *corpus delicti* should not exculpate an otherwise guilty defendant.[19] In fact, the Implementing Rules and Regulations of Rep. Act No. 9165 adequately reflects the desire of the law to excuse from the rigid tenor of Section 21 situations wherein slight infractions in methodology are present but the integrity and identity of the specimen remains intact. It reads:

Section 21. x x x

(a) xxx Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

In the case at bar, the failure of the apprehending officer to "immediately after seizure and confiscation, physically inventory and photograph the [prohibited drugs] in the presence of the accused" as required by Section 21 can be considered as a slight infraction that does not automatically render the seized items inadmissible. There is a justifiable reason for such failure in this case as was explained by SPO3 Balolong during his cross-examination. To wit:

[ATTY. CARIDAD:] Now, while you were still there and you said the accused resisted, is it not a fact that the sisters of the accused tried to pull the accused because they insisted that the accused was not selling *shabu*, yes or no?

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[19] See *People v. Sta. Maria*, G.R. No. 171019, February 23, 2007, 516 SCRA 621, 633.

[WITNESS:]	I do not know any sister of the accused, sir.
[ATTY. CARIDAD:]	There were women who tried to pull the accused from the hold of Cabigas and the police officers who were with Cabigas because they insisted that the accused was not selling *shabu* at that time when he was arrested?
[WITNESS:]	No, sir, they were interfering with our job, sir.
[ATTY CARIDAD:]	Interfering you said, what do you mean by interfering? What did they do by way of interfering?
[WITNESS:]	They tried to stop us by pulling, grabbing and pushing us from arresting Alioding Sultan, sir.[20]

x x x x x x x x x

[ATTY CARIDAD:]	He never made any inventory of those sachets in that place where the same were confiscated?
[WITNESS:]	We could not, sir.
[ATTY CARIDAD:]	The answer is yes or no.
[WITNESS:]	No, sir.
[ATTY CARIDAD:]	Also you did not mark except the markings that you made before the alleged buy-bust operation was conducted, after confiscating the same from the possession of the accused, you never marked the same?
[WITNESS:]	If you mean the money, sir, no, sir.
[ATTY CARIDAD:]	So it is very clear now, Mr. Witness, that you never made an inventory in the place where the arrest was made by placing or wrote in the very place the three (3) sachets

[20] TSN, November 15, 2005, pp. 20-21.

	in that inventory together the money, alleged money that was used in the buy-bust operation, is that it?
[WITNESS:]	We could not, sir.
[ATTY CARIDAD:]	Now, no pictures were taken on those articles that were confiscated as well as the buy-bust money allegedly used in that buy-bust operation, is it not, there were none?
[WITNESS:]	The investigators, I do not know if the investigators took pictures, sir.
[ATTY CARIDAD:]	Took pictures, where are those pictures now, Mr. Witness, if you say that the investigators took pictures of those evidences?
[WITNESS:]	No. I said I am not sure if the investigators took pictures, sir.
[ATTY CARIDAD:]	I see. But you are very sure that no pictures were taken at the place where the confiscation was made, is it not?
[WITNESS:]	It is impossible, sir.[21]

It was the difficulty, if not the impossibility, of strictly complying with Section 21 of Rep. Act No. 9165 during the actual apprehension and arrest which justifies the slight deviation by the arresting officers from the rule. The strong resistance of the appellant to the arrest and the interference of several persons made it imperative upon the apprehending police officers to withdraw from the place immediately. Consequently, the confiscated items were marked only upon turn over to the evidence custodian.

But were the integrity and evidentiary value of the confiscated drugs preserved despite the justified infraction of Section 21? We rule in the affirmative.

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[21] *Id.* at 18-19.

For the successful prosecution of the illegal sale of *shabu*, the following elements must be established: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. All these requisites were met by the prosecution in this case.

The chain of custody in the instant case did not suffer from serious flaws as appellant argues. The identity of the regulated drug, as well as the buy-bust money, has been proven beyond reasonable doubt by the prosecution. The prosecution was able to establish the chain of custody in the presentation of the evidence custodian whose testimony was dispensed with upon the admission of the defense that he made the identifying markings on the "items confiscated from the possession of the [appellant]" and personally submitted them to the Ilocos Norte Provincial Crime Laboratory Office at Camp Juan, Laoag City.[22] They were received on August 19, 2005 at 1415H by PO3 Silverio Abrera from SPO2 Ancheta himself, as evidenced by the rubber stamp[23] at the bottom of the endorsement letter[24] which bore SPO2 Ancheta's signature on the space after "Delivered by." Upon receiving the sachets containing the illegal drugs, PO3 Abrera recorded the letter request and the specimens, after which he immediately endorsed them to Police Inspector Valeriano Laya II, the Forensic Chemical Officer who, as also admitted by the defense,[25] marked them upon receipt and on the same day, examined the specimens and found the contents thereof to be positive for methamphetamine hydrochloride as

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[22] TSN, January 10, 2006, pp. 2-3.

[23] Exhibit "B-1", records (Criminal Case No. 11867), p. 16; TSN, February 15, 2006, pp. 3-5.

[24] Exhibit "B", *id.*

[25] TSN, October 6, 2005, pp. 2-5.

shown by his Initial Laboratory Report[26] and confirmatory Chemistry Report No. D-059-2005.[27]

The prosecution witnesses were further able to present and identify in court the confiscated items and the marked money. PO2 Cabigas identified in open court the three (3) sachets that the appellant gave in the course of the illicit sale transaction. In particular, he pointed to the smallest plastic sachet[28] as the plastic sachet that the appellant gave away as bonus while the two (2) other sachets bigger in size[29] were the ones that the appellant sold, pointing in the process the markings that SPO2 Ancheta made in his presence, specifically, the initial signature of SPO2 Ancheta, the letters "LCPS" which is the acronym for the Laoag City Police Station, the initials "AS" of the appellant and the letters "BB" which stand for "buy bust."[30] He also identified the marked money, the serial numbers of which were placed in the police blotter after the operation. Further, SPO3 Balolong who was also present and looking when the markings were made by the evidence custodian, made a similar identification.[31] He also identified the four (4) ₱500 bills buy-bust money that he marked before the operation with his initials. The trial court observed that the bills presented in court had the same serial numbers as those mentioned in the Joint Affidavit[32] of the arresting police officers. Thus, it is clear that the integrity and evidentiary value of the seized drugs were not affected by the failure to comply strictly with Section 21. There is no doubt in our minds that the seized drugs obtained from the appellant at the Muslim Compound in Barangay 1, Laoag City, were the same ones which were brought to the crime laboratory and analyzed as positive for *shabu*.

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[26] Exhibit "C", records (Criminal Case No. 11867), p. 17.

[27] Exhibit "D", *id.* at 18.

[28] Exhibit "D-3", TSN, January 23, 2006, p. 15.

[29] Exhibit "D-1" and "D-2", *id.* at 15-16.

[30] TSN, January 23, 2006, pp. 15-16.

[31] TSN, November 15, 2005, pp. 10-11.

[32] Records (Criminal Case No. 11867), pp. 3-4.

The non-presentation of the chemist who tested the illegal drugs, contrary to appellant's contentions, is insufficient to acquit him. As we ruled in *People v. Zenaida Quebral y Mateo, et al.,*[33] which dealt with a similar issue,

> The accused-appellants also point out that, since the chemist who examined the seized substance did not testify in court, the prosecution was unable to establish the indispensable element of *corpus delicti*. But this claim is unmeritorious. This Court has held that the non-presentation of the forensic chemist in illegal drug cases is an insufficient cause for acquittal. The *corpus delicti* in dangerous drugs cases constitutes the dangerous drug itself. This means that proof beyond doubt of the identity of the prohibited drug is essential.
>
> Besides, *corpus delicti* has nothing to do with the testimony of the laboratory analyst. In fact, this Court has ruled that the report of an official forensic chemist regarding a recovered prohibited drug enjoys the presumption of regularity in its preparation. Corollarily, under Section 44 of Rule 130, Revised Rules of Court, entries in official records made in the performance of official duty are *prima facie* evidence of the facts they state. Therefore, the report of Forensic Chemical Officer Sta. Maria that the five plastic sachets PO3 Galvez gave to her for examination contained *shabu* is conclusive in the absence of evidence proving the contrary. At any rate, as the CA pointed out, the defense agreed during trial to dispense with the testimony of the chemist and stipulated on his findings.

Notably, similar to the above-cited case, the parties in this case also stipulated on the content of the would-be testimony of the chemist.[34]

Also undeserving of serious consideration is appellant's defense that there was no buy-bust operation. The trial court found undeserving of credence appellant's self-serving testimony and defense witness Chona Martin's assertion that it was merely by chance that she saw appellant and pointed him to the police

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[33] G.R. No. 185379, November 27, 2009, pp. 6-7, citing *People v. Cervantes*, G.R. No. 181494, March 17, 2009, 581 SCRA 762, 781, *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 631-632 and *People v. Bandang*, G.R. No. 151314, June 3, 2004, 430 SCRA 570, 586-587.

[34] TSN, October 6, 2005, pp. 2-6.

officers as the person peddling illegal drugs. The trial court, in fact, branded Chona Martin's testimony as obviously fabricated.[35] It is a fundamental rule that findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors, gross misapprehension of facts and speculative, arbitrary and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial.[36] The rule finds an even more stringent application where said findings are sustained by the CA.[37] As there appears no cogent reason to depart from the findings of the trial court and the CA, we stand by their findings.

Having been caught in *flagrante delicto*, the appellant's identity as seller of the *shabu* can no longer be doubted. Against the positive testimonies of the prosecution witnesses, appellant's plain denial of the offenses charged, unsubstantiated by any credible and convincing evidence, must simply fail.[38] Moreover, there is no showing that the prosecution witnesses were impelled by ill motives to testify falsely against the appellant. As appellant himself has testified, he has never met the police officers prior to the arrest.[39]

WHEREFORE, the Court *DENIES* the appeal and *AFFIRMS* the October 17, 2008 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02646 which affirmed the August 28, 2006 Decision of the Regional Trial Court of Laoag City.

Costs against the accused-appellant.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Bersamin, and *Abad,*[*] *JJ.,* concur.

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[35] CA *rollo*, p. 47.

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

[37] *People v. Cabugatan*, G.R. No. 172019, February 12, 2007, 515 SCRA 537, 547.

[38] *People v. Sy*, G.R. No. 171397, September 27, 2006, 503 SCRA 772, 783.

[39] TSN, May 25, 2006, p. 7.

[*] Additional member per Special Order No. 843.

SECOND DIVISION

[G.R. No. 187879. July 5, 2010]

DALISAY E. OCAMPO, VINCE E. OCAMPO, MELINDA CARLA E. OCAMPO, and LEONARDO E. OCAMPO, JR., *petitioners, vs.* **RENATO M. OCAMPO and ERLINDA M. OCAMPO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL PROCEEDINGS; SPECIAL ADMINISTRATOR; DUTY, EXPLAINED.—** A special administrator is an officer of the court who is subject to its supervision and control, expected to work for the best interest of the entire estate, with a view to its smooth administration and speedy settlement. When appointed, he or she is not regarded as an agent or representative of the parties suggesting the appointment. The principal object of the appointment of a temporary administrator is to preserve the estate until it can pass to the hands of a person fully authorized to administer it for the benefit of creditors and heirs, pursuant to Section 2 of Rule 80 of the Rules of Court.

2. **ID; ID; ID; APPOINTMENT OR REMOVAL OF SPECIAL ADMINISTRATOR IS DISCRETIONARY ON THE PART OF THE PROBATE COURT.—** While the RTC considered that respondents were the nearest of kin to their deceased parents in their appointment as joint special administrators, this is not a mandatory requirement for the appointment. It has long been settled that the selection or removal of special administrators is not governed by the rules regarding the selection or removal of regular administrators. The probate court may appoint or remove special administrators based on grounds other than those enumerated in the Rules at its discretion, such that the need to first pass upon and resolve the issues of fitness or unfitness and the application of the order of preference under Section 6 of Rule 78, as would be proper in the case of a regular administrator, do not obtain. As long as the discretion is exercised without grave abuse, and is based on reason, equity, justice, and legal principles, interference by higher courts is unwarranted. The appointment

or removal of special administrators, being discretionary, is thus interlocutory and may be assailed through a petition for *certiorari* under Rule 65 of the Rules of Court.

3. ID; ID; ID; CONDITION AND PURPOSE OF THE BOND.— Pursuant to Section 1 of Rule 81, the bond secures the performance of the duties and obligations of an administrator namely: (1) to administer the estate and pay the debts; (2) to perform all judicial orders; (3) to account within one (1) year and at any other time when required by the probate court; and (4) to make an inventory within three (3) months. More specifically, per Section 4 of the same Rule, the bond is conditioned on the faithful execution of the administration of the decedent's estate requiring the special administrator to (1) make and return a true inventory of the goods, chattels, rights, credits, and estate of the deceased which come to his possession or knowledge; (2) truly account for such as received by him when required by the court; and (3) deliver the same to the person appointed as executor or regular administrator, or to such other person as may be authorized to receive them. Verily, the administration bond is for the benefit of the creditors and the heirs, as it compels the administrator, whether regular or special, to perform the trust reposed in, and discharge the obligations incumbent upon, him. Its object and purpose is to safeguard the properties of the decedent, and, therefore, the bond should not be considered as part of the necessary expenses chargeable against the estate, not being included among the acts constituting the care, management, and settlement of the estate. Moreover, the ability to post the bond is in the nature of a qualification for the office of administration.

4. ID; ID; ID; REMOVAL OF SPECIAL ADMINISTRATORS BASED ON JUSTICE AND EQUITY, UPHELD.— [T]his Court finds no grave abuse of discretion on the part of the RTC when it revoked the appointment of respondents as joint special administrators, the removal being grounded on reason, equity, justice, and legal principle. Indeed, even if special administrators had already been appointed, once the probate court finds the appointees no longer entitled to its confidence, it is justified in withdrawing the appointment and giving no valid effect thereto.

5. ID; ID; REGULAR ADMINISTRATOR, HOW APPOINTED; WHERE APPOINTMENT OF REGULAR ADMINISTRATRIX

WAS HELD IMPROPER; CASE AT BAR.— [T]he Court finds the RTC's designation of Melinda as regular administratrix improper and abusive of its discretion. x x x [T]here was no petition for letters of administration with respect to Melinda, as the prayer for her appointment as co-administrator was embodied in the motion for the termination of the special administration. Although there was a hearing set for the motion on November 5, 2007, the same was canceled and reset to February 8, 2008 due to the absence of the parties' counsels. The February 8, 2008 hearing was again deferred to March 10, 2008 on account of the ongoing renovation of the Hall of Justice. Despite the resetting, petitioners filed a Manifestation/ Motion dated February 29, 2008, reiterating their prayer for partition or for the appointment of Melinda as regular administrator and for the revocation of the special administration. It may be mentioned that, despite the filing by respondents of their Opposition and Comment to the motion to revoke the special administration, the prayer for the appointment of Melinda as regular administratrix of the estate was not specifically traversed in the said pleading. Thus, the capacity, competency, and legality of Melinda's appointment as such was not properly objected to by respondents despite being the next of kin to the decedent spouses, and was not threshed out by the RTC acting as a probate court in accordance with [Rules 78 and 79 of the Rules of Court].

APPEARANCES OF COUNSEL

Ramon D. Casano for petitioners.
The Law Firm of Perlas de Guzman & Partners for respondents.

D E C I S I O N

NACHURA, *J*.:

This petition[1] for review on *certiorari* under Rule 45 of the Rules of Court seeks to reverse and set aside the Decision[2]

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[1] *Rollo,* pp. 12-33.

[2] Penned by Associate Justice Ramon R. Garcia, with Associate Justices Josefina Guevara-Salonga and Magdangal M. de Leon, concurring; *id.* at 34-51.

dated December 16, 2008 and the Resolution[3] dated April 30, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 104683. The Decision annulled and set aside the Order dated March 13, 2008[4] of the Regional Trial Court (RTC), Branch 24, Biñan, Laguna, in Sp. Proc. No. B-3089; while the Resolution denied the motion for reconsideration of the Decision.

The Antecedents

Petitioners Dalisay E. Ocampo (Dalisay), Vince E. Ocampo (Vince), Melinda Carla E. Ocampo (Melinda), and Leonardo E. Ocampo, Jr. (Leonardo, Jr.) are the surviving wife and the children of Leonardo Ocampo (Leonardo), who died on January 23, 2004. Leonardo and his siblings, respondents Renato M. Ocampo (Renato) and Erlinda M. Ocampo (Erlinda) are the legitimate children and only heirs of the spouses Vicente and Maxima Ocampo, who died intestate on December 19, 1972 and February 19, 1996, respectively. Vicente and Maxima left several properties, mostly situated in Biñan, Laguna. Vicente and Maxima left no will and no debts.

On June 24, 2004, five (5) months after the death of Leonardo, petitioners initiated a petition for intestate proceedings, entitled "*In Re: Intestate Proceedings of the Estate of Sps. Vicente Ocampo and Maxima Mercado Ocampo, and Leonardo M. Ocampo*," in the RTC, Branch 24, Biñan, Laguna, docketed as Spec. Proc. No. B-3089.[5] The petition alleged that, upon the death of Vicente and Maxima, respondents and their brother Leonardo jointly controlled, managed, and administered the estate of their parents. Under such circumstance, Leonardo had been receiving his share consisting of one-third (1/3) of the total income generated from the properties of the estate. However, when Leonardo died, respondents took possession, control and management of the properties to the exclusion of petitioners. The petition prayed for the settlement of the estate of Vicente

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[3] *Id.* at 52-53.

[4] *Id.* at 54-55.

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

and Maxima and the estate of Leonardo. It, likewise, prayed for the appointment of an administrator to apportion, divide, and award the two estates among the lawful heirs of the decedents.

Respondents filed their Opposition and Counter-Petition dated October 7, 2004,[6] contending that the petition was defective as it sought the judicial settlement of two estates in a single proceeding. They argued that the settlement of the estate of Leonardo was premature, the same being dependent only upon the determination of his hereditary rights in the settlement of his parents' estate. In their counter-petition, respondents prayed that they be appointed as special joint administrators of the estate of Vicente and Maxima.

In an Order dated March 4, 2005,[7] the RTC denied respondents' opposition to the settlement proceedings but admitted their counter-petition. The trial court also clarified that the judicial settlement referred only to the properties of Vicente and Maxima.

Through a Motion for Appointment of Joint Special Administrators dated October 11, 2005,[8] respondents reiterated their prayer for appointment as special joint administrators of the estate, and to serve as such without posting a bond.

In their Comment dated November 3, 2005,[9] petitioners argued that, since April 2002, they had been deprived of their fair share of the income of the estate, and that the appointment of respondents as special joint administrators would further cause injustice to them. Thus, they prayed that, in order to avoid further delay, letters of administration to serve as joint administrators of the subject estate be issued to respondents and Dalisay.

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[6] *Id.* at 36.

[7] *Id.* at 36-37.

[8] *Id.* at 37.

[9] *Id.*

In another Motion for Appointment of a Special Administrator dated December 5, 2005,[10] petitioners nominated the Biñan Rural Bank to serve as special administrator pending resolution of the motion for the issuance of the letters of administration.

In its June 15, 2006 Order,[11] the RTC appointed Dalisay and Renato as special joint administrators of the estate of the deceased spouses, and required them to post a bond of ₱200,000.00 each.[12]

Respondents filed a Motion for Reconsideration dated August 1, 2006[13] of the Order, insisting that Dalisay was incompetent and unfit to be appointed as administrator of the estate, considering that she even failed to take care of her husband Leonardo when he was paralyzed in 1997. They also contended that petitioners' prayer for Dalisay's appointment as special administrator was already deemed abandoned upon their nomination of the Biñan Rural Bank to act as special administrator of the estate.

In their Supplement to the Motion for Reconsideration,[14] respondents asserted their priority in right to be appointed as administrators being the next of kin of Vicente and Maxima, whereas Dalisay was a mere daughter-in-law of the decedents and not even a legal heir by right of representation from her late husband Leonardo.

Pending the resolution of the Motion for Reconsideration, petitioners filed a Motion to Submit Inventory and Accounting dated November 20, 2006,[15] praying that the RTC issue an order directing respondents to submit a true inventory of the

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[10] *Id.*

[11] *Id.*

[12] As admitted by respondents in their Petition for *Certiorari* with Urgent Prayer for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction; *id.* at 86.

[13] *Id.* at 38.

[14] *Id.*

[15] *Id.*

estate of the decedent spouses and to render an accounting thereof from the time they took over the collection of the income of the estate.

Respondents filed their Comment and Manifestation dated January 15, 2007,[16] claiming that they could not yet be compelled to submit an inventory and render an accounting of the income and assets of the estate inasmuch as there was still a pending motion for reconsideration of the June 15, 2006 Order appointing Dalisay as co-special administratrix with Renato.

In its Order dated February 16, 2007, the RTC revoked the appointment of Dalisay as co-special administratrix, substituting her with Erlinda. The RTC took into consideration the fact that respondents were the nearest of kin of Vicente and Maxima. Petitioners did not contest this Order and even manifested in open court their desire for the speedy settlement of the estate.

On April 23, 2007, or two (2) months after respondents' appointment as joint special administrators, petitioners filed a Motion for an Inventory and to Render Account of the Estate,[17] reiterating their stance that respondents, as joint special administrators, should be directed to submit a true inventory of the income and assets of the estate.

Respondents then filed a Motion for Exemption to File Administrators' Bond[18] on May 22, 2007, praying that they be allowed to enter their duties as special administrators without the need to file an administrators' bond due to their difficulty in raising the necessary amount. They alleged that, since petitioners manifested in open court that they no longer object to the appointment of respondents as special co-administrators, it would be to the best interest of all the heirs that the estate be spared from incurring unnecessary expenses in paying for the bond premiums. They also assured the RTC that they would

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[16] *Id.* at 39.

[17] *Id.*

[18] *Id.* at 40.

faithfully exercise their duties as special administrators under pain of contempt should they violate any undertaking in the performance of the trust of their office.

In an Order dated June 29, 2007,[19] the RTC directed the parties to submit their respective comments or oppositions to the pending incidents, *i.e.*, petitioners' Motion for Inventory and to Render Account, and respondents' Motion for Exemption to File Administrators' Bond.

Respondents filed their Comment and/or Opposition,[20] stating that they have already filed a comment on petitioners' Motion for Inventory and to Render Account. They asserted that the RTC should, in the meantime, hold in abeyance the resolution of this Motion, pending the resolution of their Motion for Exemption to File Administrators' Bond.

On October 15, 2007, or eight (8) months after the February 16, 2007 Order appointing respondents as special joint administrators, petitioners filed a Motion to Terminate or Revoke the Special Administration and to Proceed to Judicial Partition or Appointment of Regular Administrator.[21] Petitioners contended that the special administration was not necessary as the estate is neither vast nor complex, the properties of the estate being identified and undisputed, and not involved in any litigation necessitating the representation of special administrators. Petitioners, likewise, contended that respondents had been resorting to the mode of special administration merely to delay and prolong their deprivation of what was due them. Petitioners cited an alleged fraudulent sale by respondents of a real property for ₱2,700,000.00, which the latter represented to petitioners to have been sold only for ₱1,500,000.00, and respondents' alleged misrepresentation that petitioners owed the estate for the advances to cover the hospital expenses of Leonardo, but, in fact, were not yet paid.

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[19] *Id.*

[20] *Id.* at 40-41.

[21] *Id.* at 56-63.

Respondents filed their Opposition and Comment[22] on March 10, 2008, to which, in turn, petitioners filed their Reply to Opposition/Comment[23] on March 17, 2008.

In its Order dated March 13, 2008,[24] the RTC granted petitioners' Motion, revoking and terminating the appointment of Renato and Erlinda as joint special administrators, on account of their failure to comply with its Order, particularly the posting of the required bond, and to enter their duties and responsibilities as special administrators, *i.e.*, the submission of an inventory of the properties and of an income statement of the estate. The RTC also appointed Melinda as regular administratrix, subject to the posting of a bond in the amount of ₱200,000.00, and directed her to submit an inventory of the properties and an income statement of the subject estate. The RTC likewise found that judicial partition may proceed after Melinda had assumed her duties and responsibilities as regular administratrix.

Aggrieved, respondents filed a petition for *certiorari*[25] under Rule 65 of the Rules of Court before the CA, ascribing grave abuse of discretion on the part of the RTC in (a) declaring them to have failed to enter the office of special administration despite lapse of reasonable time, when in truth they had not entered the office because they were waiting for the resolution of their motion for exemption from bond; (b) appointing Melinda as regular administratrix, a mere granddaughter of Vicente and Maxima, instead of them who, being the surviving children of the deceased spouses, were the next of kin; and (c) declaring them to have been unsuitable for the trust, despite lack of hearing and evidence against them.

Petitioners filed their Comment to the Petition and Opposition to Application for temporary restraining order and/or writ of

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[22] *Id.* at 71-75.

[23] *Id.* at 76-80.

[24] *Id.* at 54-55.

[25] *Id.* at 81-107.

preliminary injunction,[26] reiterating their arguments in their Motion for the revocation of respondents' appointment as joint special administrators. Respondents filed their Reply.[27]

On December 16, 2008, the CA rendered its assailed Decision granting the petition based on the finding that the RTC gravely abused its discretion in revoking respondents' appointment as joint special administrators without first ruling on their motion for exemption from bond, and for appointing Melinda as regular administratrix without conducting a formal hearing to determine her competency to assume as such. According to the CA, the posting of the bond is a prerequisite before respondents could enter their duties and responsibilities as joint special administrators, particularly their submission of an inventory of the properties of the estate and an income statement thereon.

Petitioners filed a Motion for Reconsideration of the Decision.[28] The CA, however, denied it. Hence, this petition, ascribing to the CA errors of law and grave abuse of discretion for annulling and setting aside the RTC Order dated March 13, 2008.

Our Ruling

The pertinent provisions relative to the special administration of the decedents' estate under the Rules of Court provide—

Sec. 1. *Appointment of special administrator.* – When there is delay in granting letters testamentary or of administration by any cause including an appeal from the allowance or disallowance of a will, the court may appoint a special administrator to take possession and charge of the estate of the deceased until the questions causing the delay are decided and executors or administrators appointed.[29]

Sec. 2. *Powers and duties of special administrator.* – Such special administrator shall take possession and charge of goods, chattels, rights, credits, and estate of the deceased and preserve the same for

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[26] *Id.* at 108-132.

[27] *Id.* at 142-145.

[28] *Id.* at 146-155.

[29] Rule 80.

the executor or administrator afterwards appointed, and for that purpose may commence and maintain suits as administrator. He may sell only such perishable and other property as the court orders sold. A special administrator shall not be liable to pay any debts of the deceased unless so ordered by the court.[30]

Sec. 1. *Bond to be given before issuance of letters; Amount; Conditions.* – Before an executor or administrator enters upon the execution of his trust, and letters testamentary or of administration issue, he shall give a bond, in such sum as the court directs, conditioned as follows:

(a) To make and return to the court, within three (3) months, a true and complete inventory of all goods, chattels, rights, credits, and estate of the deceased which shall come to his possession or knowledge or to the possession of any other person for him;

(b) To administer according to these rules, and, if an executor, according to the will of the testator, all goods, chattels, rights, credits, and estate which shall at any time come to his possession or to the possession of any other person for him, and from the proceeds to pay and discharge all debts, legacies, and charges on the same, or such dividends thereon as shall be decreed by the court;

(c) To render a true and just account of his administration to the court within one (1) year, and at any other time when required by the court;

(d) To perform all orders of the court by him to be performed.[31]

Sec. 4. *Bond of special administrator.* – A special administrator before entering upon the duties of his trust shall give a bond, in such sum as the court directs, conditioned that he will make and return a true inventory of the goods, chattels, rights, credits, and estate of the deceased which come to his possession or knowledge, and that he will truly account for such as are received by him when required by the court, and will deliver the same to the person appointed executor or administrator, or to such other person as may be authorized to receive them.[32]

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[30] *Id.*

[31] Rule 81.

[32] *Id.*

Inasmuch as there was a disagreement as to who should be appointed as administrator of the estate of Vicente and Maxima, the RTC, acting as a probate court, deemed it wise to appoint joint special administrators pending the determination of the person or persons to whom letters of administration may be issued. The RTC was justified in doing so considering that such disagreement caused undue delay in the issuance of letters of administration, pursuant to Section 1 of Rule 80 of the Rules of Court. Initially, the RTC, on June 15, 2006, appointed Renato and Dalisay as joint special administrators, imposing upon each of them the obligation to post an administrator's bond of ₱200,000.00. However, taking into account the arguments of respondents that Dalisay was incompetent and unfit to assume the office of a special administratrix and that Dalisay, in effect, waived her appointment when petitioners nominated Biñan Rural Bank as special administrator, the RTC, on February 16, 2007, revoked Dalisay's appointment and substituted her with Erlinda.

A special administrator is an officer of the court who is subject to its supervision and control, expected to work for the best interest of the entire estate, with a view to its smooth administration and speedy settlement.[33] When appointed, he or she is not regarded as an agent or representative of the parties suggesting the appointment.[34] The principal object of the appointment of a temporary administrator is to preserve the estate until it can pass to the hands of a person fully authorized to administer it for the benefit of creditors and heirs, pursuant to Section 2 of Rule 80 of the Rules of Court.[35]

While the RTC considered that respondents were the nearest of kin to their deceased parents in their appointment as joint

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[33] *Co v. Rosario*, G.R. No. 160671, April 30, 2008, 553 SCRA 225, 229.

[34] *Heirs of Belinda Dahlia A. Castillo v. Lacuata-Gabriel*, G.R. No. 162934, November 11, 2005, 474 SCRA 747, 757; *Valarao v. Pascual*, 441 Phil. 226, 238 (2002).

[35] *Tan v. Gedorio, Jr.,* G.R. No. 166520, March 14, 2008, 548 SCRA 528, 537.

special administrators, this is not a mandatory requirement for the appointment. It has long been settled that the selection or removal of special administrators is not governed by the rules regarding the selection or removal of regular administrators.[36] The probate court may appoint or remove special administrators based on grounds other than those enumerated in the Rules at its discretion, such that the need to first pass upon and resolve the issues of fitness or unfitness[37] and the application of the order of preference under Section 6 of Rule 78,[38] as would be proper in the case of a regular administrator, do not obtain. As long as the discretion is exercised without grave abuse, and is based on reason, equity, justice, and legal principles, interference by higher courts is unwarranted.[39] The appointment or removal of special administrators, being discretionary, is thus interlocutory and may be assailed through a petition for *certiorari* under Rule 65 of the Rules of Court.[40]

Granting the *certiorari* petition, the CA found that the RTC gravely abused its discretion in revoking respondents' appointment as joint special administrators, and for failing to first resolve the pending Motion for Exemption to File Administrators' Bond, ratiocinating that the posting of the administrators' bond is a pre-requisite to respondents' entering into the duties and responsibilities of their designated office. This Court disagrees.

It is worthy of mention that, as early as October 11, 2005, in their Motion for Appointment as Joint Special Administrators,

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[36] *Co v. Rosario*, *supra* note 33, at 228; *Tan v. Gedorio, Jr., supra*, at 536; *Heirs of Belinda Dahlia A. Castillo v. Lacuata-Gabriel*, *supra* note 34, at 760; *Pijuan v. De Gurrea,* 124 Phil. 1527, 1531-1532 (1966); *Roxas v. Pecson*, 82 Phil. 407, 410 (1948).

[37] *Co v. Rosario*, *supra* note 33, at 228; *Rivera v. Hon. Santos, et al.,* 124 Phil. 1557, 1561 (1966).

[38] *Infra.*

[39] *Co v. Rosario*, *supra* note 33, at 228; *Fule v. Court of Appeals*, 165 Phil. 785, 800 (1976).

[40] *Tan v. Gedorio, Jr., supra* note 35, at 536; *Jamero v. Melicor,* 498 Phil. 158, 165-166 (2005).

respondents already prayed for their exemption to post bond should they be assigned as joint special administrators. However, the RTC effectively denied this prayer when it issued its June 15, 2006 Order, designating Renato and Dalisay as special administrators and enjoining them to post bond in the amount of ₱200,000.00 each. This denial was, in effect, reiterated when the RTC rendered its February 16, 2007 Order substituting Dalisay with Erlinda as special administratrix.

Undeterred by the RTC's resolve to require them to post their respective administrators' bonds, respondents filed anew a Motion for Exemption to File Administrators' Bond on May 22, 2007, positing that it would be to the best interest of the estate of their deceased parents and all the heirs to spare the estate from incurring the unnecessary expense of paying for their bond premiums since they could not raise the money themselves. To note, this Motion was filed only after petitioners filed a Motion for an Inventory and to Render Account of the Estate on April 23, 2007. Respondents then argued that they could not enter into their duties and responsibilities as special administrators in light of the pendency of their motion for exemption. In other words, they could not yet submit an inventory and render an account of the income of the estate since they had not yet posted their bonds.

Consequently, the RTC revoked respondents' appointment as special administrators for failing to post their administrators' bond and to submit an inventory and accounting as required of them, tantamount to failing to comply with its lawful orders. Inarguably, this was, again, a denial of respondents' plea to assume their office *sans* a bond. The RTC rightly did so.

Pursuant to Section 1 of Rule 81, the bond secures the performance of the duties and obligations of an administrator namely: (1) to administer the estate and pay the debts; (2) to perform all judicial orders; (3) to account within one (1) year and at any other time when required by the probate court; and (4) to make an inventory within three (3) months. More specifically, per Section 4 of the same Rule, the bond is conditioned on the faithful execution of the administration of

the decedent's estate requiring the special administrator to (1) make and return a true inventory of the goods, chattels, rights, credits, and estate of the deceased which come to his possession or knowledge; (2) truly account for such as received by him when required by the court; and (3) deliver the same to the person appointed as executor or regular administrator, or to such other person as may be authorized to receive them.

Verily, the administration bond is for the benefit of the creditors and the heirs, as it compels the administrator, whether regular or special, to perform the trust reposed in, and discharge the obligations incumbent upon, him. Its object and purpose is to safeguard the properties of the decedent, and, therefore, the bond should not be considered as part of the necessary expenses chargeable against the estate, not being included among the acts constituting the care, management, and settlement of the estate. Moreover, the ability to post the bond is in the nature of a qualification for the office of administration.[41]

Hence, the RTC revoked respondents' designation as joint special administrators, especially considering that respondents never denied that they have been in possession, charge, and actual administration of the estate of Vicente and Maxima since 2002 up to the present, despite the assumption of Melinda as regular administratrix. In fact, respondents also admitted that, allegedly out of good faith and sincerity to observe transparency, they had submitted a Statement of Cash Distribution[42] for the period covering April 2002 to June 2006,[43] where they indicated that Renato had received ₱4,241,676.00, Erlinda ₱4,164,526.96, and petitioners ₱2,486,656.60, and that the estate had advanced ₱2,700,000.00 for the hospital and funeral expenses of Leonardo.[44] The latter cash advance was questioned by petitioners in their

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[41] *Commissioner of Internal Revenue v. Court of Appeals,* 385 Phil. 397, 409 (2000); *Moran Sison v. Teodoro*, 100 Phil. 1055, 1058 (1957); *Sulit v. Santos*, 56 Phil. 626, 630 (1932).

[42] Annex "N" to the Petition for *Certiorari* before the CA.

[43] Per respondents' Petition for *Certiorari* before the CA; *rollo*, p. 96.

[44] Per petitioners' Comment to the petition before the CA; *id.* at 114.

motion for revocation of special administration on account of the demand letter[45] dated June 20, 2007 of Asian Hospital and Medical Center addressed to Dalisay, stating that there still remained unpaid hospital bills in the amount of ₱2,087,380.49 since January 2004. Undeniably, respondents had already been distributing the incomes or fruits generated from the properties of the decedents' estate, yet they still failed to post their respective administrators' bonds despite collection of the advances from their supposed shares. This state of affairs continued even after a considerable lapse of time from the appointment of Renato as a special administrator of the estate on June 15, 2006 and from February 16, 2007 when the RTC substituted Erlinda, for Dalisay, as special administratrix.

What is more, respondents' insincerity in administering the estate was betrayed by the Deed of Conditional Sale dated January 12, 2004[46] discovered by petitioners. This Deed was executed between respondents, as the only heirs of Maxima, as vendors, thus excluding the representing heirs of Leonardo, and Spouses Marcus Jose B. Brillantes and Amelita Catalan-Brillantes, incumbent lessors, as vendees, over a real property situated in Biñan, Laguna, and covered by Transfer Certificate of Title No. T-332305 of the Registry of Deeds of Laguna, for a total purchase price of ₱2,700,000.00. The Deed stipulated for a payment of ₱1,500,000.00 upon the signing of the contract, and the balance of ₱1,200,000.00 to be paid within one (1) month from the receipt of title of the vendees. The contract also stated that the previous contract of lease between the vendors and the vendees shall no longer be effective; hence, the vendees were no longer obligated to pay the monthly rentals on the property. And yet there is a purported Deed of Absolute Sale[47] over the same realty between respondents, and including Leonardo as represented by Dalisay, as vendors, and the same spouses, as vendees, for a purchase price of only ₱1,500,000.00. Notably,

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[45] *Id.* at 64-65.

[46] *Id.* at 66-67.

[47] *Id.* at 68-70.

this Deed of Absolute Sale already had the signatures of respondents and vendee-spouses. Petitioners claimed that respondents were coaxing Dalisay into signing the same, while respondents said that Dalisay already got a share from this transaction in the amount of ₱500,000.00. It may also be observed that the time of the execution of this Deed of Absolute Sale, although not notarized as the Deed of Conditional Sale, might not have been distant from the execution of the latter Deed, considering the similar Community Tax Certificate Numbers of the parties appearing in both contracts.

Given these circumstances, this Court finds no grave abuse of discretion on the part of the RTC when it revoked the appointment of respondents as joint special administrators, the removal being grounded on reason, equity, justice, and legal principle. Indeed, even if special administrators had already been appointed, once the probate court finds the appointees no longer entitled to its confidence, it is justified in withdrawing the appointment and giving no valid effect thereto.[48]

On the other hand, the Court finds the RTC's designation of Melinda as regular administratrix improper and abusive of its discretion.

In the determination of the person to be appointed as regular administrator, the following provisions of Rule 78 of the Rules of Court, state –

Sec. 1. *Who are incompetent to serve as executors or administrators.* – No person is competent to serve as executor or administrator who:

(a) Is a minor;

(b) Is not a resident of the Philippines; and

(c) Is in the opinion of the court unfit to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity, or by reason of conviction of an offense involving moral turpitude.

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[48] *Co v. Rosario*, *supra* note 33, at 228-229.

Sec. 6. *When and to whom letters of administration granted.* – If no executor is named in the will, or the executor or executors are incompetent, refuse the trust, or fail to give bond, or a person dies intestate, administration shall be granted:

(a) To the surviving husband or wife, as the case may be, or next of kin, or both, in the discretion of the court, or to such person as such surviving husband or wife, or next of kin, requests to have appointed, if competent and willing to serve;

(b) If such surviving husband or wife, as the case may be, or next of kin, or the person selected by them, be incompetent or unwilling, or if the husband or widow, or next of kin, neglects for thirty (30) days after the death of the person to apply for administration or to request that administration be granted to some other person, it may be granted to one or more of the principal creditors, if competent and willing to serve;

(c) If there is no such creditor competent and willing to serve, it may be granted to such other person as the court may select.

Further, on the matter of contest for the issuance of letters of administration, the following provisions of Rule 79 are pertinent –

Sec. 2. *Contents of petition for letters of administration.* – A petition for letters of administration must be filed by an interested person and must show, so far as known to the petitioner:

(a) The jurisdictional facts;

(b) The names, ages, and residences of the heirs, and the names and residences of the creditors, of the decedent;

(c) The probable value and character of the property of the estate;

(d) The name of the person for whom letters of administration are prayed.

But no defect in the petition shall render void the issuance of letters of administration.

Sec. 3. *Court to set time for hearing. Notice thereof.* – When a petition for letters of administration is filed in the court having jurisdiction, such court shall fix a time and place for hearing the petition, and shall cause notice thereof to be given to the known

heirs and creditors of the decedent, and to any other persons believed to have an interest in the estate, in the manner provided in Sections 3 and 4 of Rule 76.

Sec. 4. *Opposition to petition for administration.* – Any interested person may, by filing a written opposition, contest the petition on the ground of the incompetency of the person for whom letters are prayed therein, or on the ground of the contestant's own right to the administration, and may pray that letters issue to himself, or to any competent person or persons named in the opposition.

Sec. 5. *Hearing and order for letters to issue.* – At the hearing of the petition, it must first be shown that notice has been given as herein-above required, and thereafter the court shall hear the proofs of the parties in support of their respective allegations, and if satisfied that the decedent left no will, or that there is no competent and willing executor, it shall order the issuance of letters of administration to the party best entitled thereto.

Admittedly, there was no petition for letters of administration with respect to Melinda, as the prayer for her appointment as co-administrator was embodied in the motion for the termination of the special administration. Although there was a hearing set for the motion on November 5, 2007, the same was canceled and reset to February 8, 2008 due to the absence of the parties' counsels. The February 8, 2008 hearing was again deferred to March 10, 2008 on account of the ongoing renovation of the Hall of Justice. Despite the resetting, petitioners filed a Manifestation/Motion dated February 29, 2008,[49] reiterating their prayer for partition or for the appointment of Melinda as regular administrator and for the revocation of the special administration. It may be mentioned that, despite the filing by respondents of their Opposition and Comment to the motion to revoke the special administration, the prayer for the appointment of Melinda as regular administratrix of the estate was not specifically traversed in the said pleading. Thus, the capacity, competency, and legality of Melinda's appointment as such was not properly objected to by respondents despite being the next of kin to the decedent spouses, and was not

[49] *Rollo*, p. 41.

threshed out by the RTC acting as a probate court in accordance with the above mentioned Rules.

However, having in mind the objective of facilitating the settlement of the estate of Vicente and Maxima, with a view to putting an end to the squabbles of the heirs, we take into account the fact that Melinda, pursuant to the RTC Order dated March 13, 2008, already posted the required bond of ₱200,000.00 on March 26, 2008, by virtue of which, Letters of Administration were issued to her the following day, and that she filed an Inventory of the Properties of the Estate dated April 15, 2008.[50] These acts clearly manifested her intention to serve willingly as administratrix of the decedents' estate, but her appointment should be converted into one of special administration, pending the proceedings for regular administration. Furthermore, since it appears that the only unpaid obligation is the hospital bill due from Leonardo's estate, which is not subject of this case, judicial partition may then proceed with dispatch.

WHEREFORE, the petition is *PARTIALLY GRANTED*. The Decision dated December 16, 2008 and the Resolution dated April 30, 2009 of the Court of Appeals in CA-G.R. SP No. 104683 are *AFFIRMED* with the *MODIFICATION* that the Order dated March 13, 2008 of the Regional Trial Court, Branch 24, Biñan, Laguna, with respect to the revocation of the special administration in favor of Renato M. Ocampo and Erlinda M. Ocampo, is *REINSTATED*. The appointment of Melinda Carla E. Ocampo as regular administratrix is *SET ASIDE*. Melinda is designated instead as special administratrix of the estate under the same administrator's bond she had posted. The trial court is directed to conduct with dispatch the proceedings for the appointment of the regular administrator and, thereafter, to proceed with judicial partition. No costs.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

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[50] As admitted by respondents in their Comment; *id.* at 165-166.

SECOND DIVISION

[G.R. No. 188129. July 5, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RICARDO BODOSO *y* BOLOR,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT.—** 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.

2. **ID.; ID.; ID.; TESTIMONY OF A CHILD RAPE VICTIM, GIVEN CONSIDERABLE WEIGHT.—** [T]he Court finds that the victim's testimony on the incident was candid and straightforward, indicative of a reliable and trustworthy recollection of what took place on that fateful day. x x x The Court gives considerable weight on the above testimony of AAA since, ordinarily and customarily, Filipino children revere and respect their elders. This is deeply ingrained in them and is even recognized by law. Thus, it is unthinkable, if not completely preposterous, that a daughter would audaciously concoct a story of rape against her father in wanton disregard of the unspeakable trauma and social stigma it may generate on her and the entire family. An unmarried teenage lass does not ordinarily file a rape complaint against anybody, much less her own father, if it never did happen.

3. **ID.; ID.; ID.; UNEXPECTED BEHAVORIAL RESPONSE OF A VICTIM AFTER THE COMMISSION OF RAPE DOES**

NOT AFFECT HER CREDIBILITY.— The fear of bodily harm against herself and her mother can explain why AAA acted the way she did while walking home with her mother. After going through a harrowing experience in the hands of her father, her young mind could only imagine the worst from him. Few things are more recognized than the love that a daughter has for her mother. Verily, the guilt of the accused cannot be doubted just because AAA did not act as expected of a rape victim. Her behavior after the incident can be attributed to her young age, her father's moral ascendancy over her, and her fear that he might harm her and her mother should she find out that he had ravished their daughter. At any rate, not all rape victims are expected to act conformably to the usual expectation of everyone. Different and varying degrees of behavioral responses are expected in the proximity of, or in confronting, an aberrant episode. In *People v. Silvano,* it was written: It is a time-honored precept that different people react differently to a given situation or type of situation and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience. For the same reason, the fact that AAA first confided the rape to Melchor Brusola and his family, instead of her mother, should not be taken against her.

4. **ID.; ID.; DENIAL AND ALIBI, NOT GIVEN WEIGHT; POSITIVE ASSERTION, GREATER EVIDENTIARY WEIGHT THAN MERE DENIAL.—** In both incidents, the accused puts up the defense of denial and alibi. In a long line of cases, it has been consistently held that between the positive assertion of prosecution witnesses and the negative averment of an accused, the former undisputedly deserves more credence and is entitled to greater evidentiary value than mere denial. On the other hand, for alibi to prosper, the accused must not only 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.

5. **ID.; ID.; ADMISSIONS; AGE OF THE RAPE VICTIM WAS DULY PROVEN BY JUDICIAL ADMISSION.—** The assertion of the accused that the minority of AAA was not established because the prosecution failed to present her birth certificate in evidence deserves scant consideration. The

Informations specifically alleged that AAA was a minor, *i.e.*, barely 14 years old on July 14, 1999 and September 1999, when she was raped by her own father. The accused himself, with the assistance of counsel, categorically admitted during pre-trial that AAA was his daughter and that she was only 14 years old on July 14, 1999 and in September 1999. These stipulations are binding on this Court because they are judicial admissions within the contemplation of Section 4, Rule 129 of the Revised Rules of Court. The stipulation of facts signed by the parties, that is, the accused, his counsel and the prosecutor, in a criminal case is recognized as a declaration constituting judicial admission and is binding upon the parties. The stipulated facts stated in the pre-trial order amount to an admission by the accused and a waiver of his right to present evidence to the contrary. Although the right to present evidence is guaranteed by the Constitution, such right may be waived expressly or impliedly. Thus, the rule that no proof need be offered as to any facts admitted during a pre-trial hearing applies.

6. **CRIMINAL LAW; RAPE; PENALTY AND CIVIL LIABILITIES.—** With respect to the penalty, the Court of Appeals failed to state that the reduction from death to *reclusion perpetua* is without eligibility for parole as held in the case of *People v. Antonio Ortiz.* This should be rectified. Moreover, it also erred in reducing the amount of the civil indemnity from ₱75,000.00 to ₱50,000.00. As the penalty would still have been death had it not been abolished, the amount of the civil indemnity should have remained at ₱75,000.00. x x x Moreover, 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. Finally, in addition to the damages awarded, the accused should also pay interest at the legal rate of 6% from this date until fully paid.

APPEARANCES OF COUNSEL

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

DECISION

MENDOZA, *J.*:

For final review by this Court are the December 18, 2008 Decision[1] and February 17, 2009 Resolution[2] of the Court of Appeals, in CA-G.R. CR-HC No. 01526, which *affirmed with modification* the July 28, 2005 Decision[3] of the Regional Trial Court, Branch 16, Tabaco City *(RTC),* in Criminal Case No. T-3285 and Criminal Case No. T-3286, thus, sentencing the accused to suffer the penalty of *reclusion perpetua* for each count of rape and reduced the amount of civil indemnity from ₱75,000.00 to ₱50,000.00.

The RTC Decision[4] convicted the accused for two counts of rape which he committed against his own daughter and sentenced him to suffer the penalty of death and to pay "the sum of ₱75,000.00, for each case, as civil indemnity, the sum of ₱50,000.00 for each case, as moral damages, and the sum of ₱25,000.00 for each case, as exemplary damages, or the aggregate sum of ₱300,000.00 plus the costs of the suit."

It appears that on February 17, 2000, two (2) Informations were filed charging the accused with two (2) counts of rape. The accusatory portions of the two Informations read as follows:

Criminal Case No. T-3285

That on July 14, 1999, at around 8:00 o'clock in the morning, more or less, at Barangay San Isidro, Municipality of Malilipot, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, by means of force, threat and intimidation, did then and there

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[1] Penned by Associate Justice Arturo G. Tayag, with Associate Justice Martin S. Villarama, Jr. (now a member of this Court) and Associate Justice Noel G. Tijam concurring; *Rollo*, pp. 2-26.

[2] *Id.* at 30.

[3] CA *rollo*, pp. 60-70; Records (Volume No. 1), pp. 229-239.

[4] *Id.*

wilfully, unlawfully and feloniously have carnal knowledge with his own daughter, AAA,[5] a minor being only 14 years of age, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.[6]

Criminal Case No. T-3286

That sometime in the month of September, 1999, at around 8:00 o'clock in the morning, more or less, at Barangay San Isidro, Municipality of Malilipot, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with his own daughter, AAA, a minor being only 14 years of age, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.[7]

Upon arraignment, the accused entered a plea of "Not Guilty' to both charges.[8] During the pre-trial conference, the parties stipulated that there should be no dispute with respect to the following matters:

1. Identity of the accused;
2. The private complainant in this case is a minor, being 14 years old on the date of the incidents, July 14, 1999 and September, 1999;
3. The private complainant is the daughter of the accused; and

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[5] The Court shall use fictitious initials in lieu of the real names and circumstances of the victim and the latter's immediate family members other than accused-appellant. (See *People v. Gloria*, G.R. No. 168476, September 27, 2006, 503 SCRA 742; citing Sec. 29 of Republic Act (R.A.) No. 7610, Sec. 44 of R.A. No. 9262, and Sec. 40 of the Rule on Violence Against Women and Their Children; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419).

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

[7] *Id.* at 6.

[8] Records (Volume No. 1), pp. 37-38.

4. The private complainant and the accused were living in the same house at Brgy. San Ilawod, Malilipot, Albay.[9]

During the trial, the prosecution presented, as its witnesses, private complainant AAA and Dr. Arsenia Mañosca-Moran, the Municipal Health Officer who examined her. On the other hand, the accused, through counsel, manifested in open court that he had no intention of presenting any evidence. Consequently, on April 2, 2001, the cases against the accused were considered submitted for decision.[10]

On July 2, 2001, a decision was rendered by the trial court finding the accused guilty as charged and imposing upon him the penalty of death. The cases were then brought to this Court for automatic review[11] and were docketed as G.R. No. 149382 and G.R. No. 149383. On March 5, 2003, this Court resolved[12] to remand the cases to the trial court for proper disposition, particularly to ascertain the voluntariness of the accused on his waiver of his right to present evidence, as expressed in the April 2, 2001 Order[13] of the trial court; his understanding of its consequences; and the conduct of further proceedings, including receiving evidence, if the contrary would be found.

In compliance with the aforementioned order of this Court, the trial court allowed the accused to present his evidence on February, 17, 2004. After resting its case, the defense moved and was granted leave to submit a memorandum.[14] Upon submission of a Memorandum,[15] the case was deemed submitted for decision.[16]

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[9] *Id.* at 46-47.

[10] Records (Volume No. 1), p. 106.

[11] *Id.* at 134.

[12] *Id.* at 137-155.

[13] *Id.* at 106.

[14] *Id.* at 219.

[15] *Id.* at 224-226.

[16] *Id.* at 227.

The trial court wove together the evidence presented by the prosecution and summarized its version of the incidents in this wise:

Complainant AAA is a 14-year-old minor daughter of accused Ricardo Bodoso. She was living with her father (accused herein), mother and other siblings at their house located at Brgy. San Isidro Iraya, Malilipot, Albay.

Sometime in the evening of 14 July 1999, complainant's mother and other siblings went to the Poblacion of Malilipot, Albay, to watch the coronation night of the Search for Miss Malilipot 1999. Complainant, on the other hand, was watching television at the house of her grandmother, about 8 to 10 meters away from their house, when she was summoned by her father (herein accused) to go home. She obeyed her father and immediately went home at about 8:00 o'clock in the evening.

Upon reaching their house, complainant entered the bedroom to look for a dress. Her father also entered the bedroom and told her to come near him. When complainant failed to respond, her father pulled her and forcibly laid her on the bed. After undressing himself, complainant's father removed her shirt and shorts. He then inserted his sexual organ into the vagina of the complainant and made push and pull movement for about 5 minutes. Complainant tried to extricate herself from her father's hold but to no avail, and so she just cried out her misfortune.

After the sexual act, accused helped complainant in putting back her shirts and shorts and they both went out of the room. Later, they rode together in a bicycle and proceeded to the Poblacion of Malilipot, Albay, to watch the beauty contest. When the contest ended at about 12:00 o'clock midnight, complainant, together with her mother and other siblings, all walked home to Brgy. San Isidro, Ilawod, Malilipot, Albay. Complainant did not inform her mother about the incident because she was afraid her father might kill them.

The said incident of sexual abuse was followed by another incident at about 8:00 o'clock in the morning during the month of September, 1999, while complainant was reading a pocketbook inside their bedroom. Her mother then was in Tabaco, Albay, selling spices while her sister Vivian was burning dry leaves in their yard. After her father entered the bedroom, he pulled her in order to have sexual intercourse with her. She tried to get away from her father's hold but she could

not, so she just kept on crying while she was sexually molested. After satisfying his lust, complainant's father just helped her put on her shorts and panty, dressed himself and left the room. When her mother arrived at about 12:00 noon, she did not again reveal what her father had done to her because she was afraid her mother might be killed.

Apprehensive that she or mother would be killed by her father if she would divulge the aforementioned rapes committed on 14 July 1999 and September, 1999, and fearful that she would again be sexually abused by her own father, complainant decided to leave their house on 07 January 2000, together with a friend named Cheryll Binaday who was also being maltreated by her own mother. Together, they walked along the seashore towards the direction of Brgy. Salvacion, Tabaco, Albay, when a motorized tricycle being driven by a certain Melchor passed by. When Melchor recognized the complainant, he brought them to his house, located at Brgy. San Isidro Iraya, Malilipot, Albay. Then and there, complainant revealed to Melchor that she was raped twice by her own father. Thereafter, Melchor's family called for a *Brgy. Kagawad*, who in turn, advised the complainant to seek the help of the police authorities.

At the Municipal Police Station of Malilipot, Albay, complainant was investigated by the police and she gave her sworn statement. Complainant was also examined by Dr. Arsenia Mañosora-Moran, Municipal Health Officer, Malilipot, Albay. The examination of the complainant yielded the following results as contained in a Medical Certificate dated 10 January 2000, viz:

> *"Genitalia: Hymen: with heat sealed incomplete laceration at 1:00, 3:00, 5:00, & 11:00 and complete laceration at 9:00 o'clock with sharp coaptable borders without congestion."*

Explaining her findings, Dr. Moran stated that the lacerations found in the hymen of the complainant were caused by sexual intercourse and that because there was no congestion, the incident could have happened a long time ago before the examination of the patient. Hence, the present criminal complaints against the accused.[17] (Citations omitted.)

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[17] RTC Decision, pp. 3-5; CA *rollo,* pp. 15-17; Records (Volume 1) pp. 231-233.

The defense version of the events was summed up by the trial court in this manner:

> Setting up denial and alibi, accused Ricardo Bodoso averred that on the night of 14 July 1999, he was out of their house proceeding to Tabaco, Albay, to see a friend named Quirino who was to help him find a job. He recalled that he left their house of about 5:00 o'clock in the afternoon and returned home at almost 12:00 o'clock midnight. He also insisted that he was in Manila during the month of September, 1999, when the alleged incident happened. According to him, it was only on 30 October 1999 that he came home because he was requested by his mother to attend to the grave of his father. Finally, the accused claimed that, maybe, complainant filed the cases against him because she was afraid of him when she went away from home on 06 January 2000 and did not return home the whole night staying at the police headquarters.[18] (Citations omitted.)

The trial court, in its July 28, 2005 Decision,[19] finally convicted the accused of two (2) counts of rape defined under Article 266-A, and penalized under Article 266-B, of the Revised Penal Code. It did not give due consideration to the defense of denial and alibi put up by the accused and, instead, gave credence to the evidence of the prosecution. It noted that in contrast to the "evasive" narration of the accused,[20] AAA testified in a straightforward and categorical manner.[21] Thus, the trial court disposed:

> WHEREFORE, the Court finds accused RICARDO BODOSO guilty beyond reasonable doubt of two (2) counts of Rape, defined and penalized under Articles 266-A and 266-B, of the Revised Penal Code, as amended by Republic Act No. 8353. Accordingly, said accused is hereby sentenced to suffer the supreme penalty of DEATH in each of the two (2) counts of rape. He is also ordered to pay complainant AAA the sum of Php75,000.00 for each case, as civil indemnity; the sum of Php50,000.00 for each case, as moral damages;

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[18] RTC Decision, p.5; CA *rollo,* p. 17. Records (Volume 1) p. 233.

[19] *Supra* note 4.

[20] RTC Decision, p.8; CA *rollo,* p. 20; Records (Volume No. 1), p.236.

[21] RTC Decision, p.6; CA *rollo,* p 18; Records (Volume No. 1), p.234.

and the sum of Php25,000.00 for each case, as exemplary damages, or the aggregate sum of Php300,000.00, plus costs of the suit.

Let the entire records of these two (2) cases, together with the evidence, be forwarded to the Hon. Court of Appeals for automatic review, pursuant to Administrative Circular No. 20-2005 dated April 19, 2005.

SO ORDERED.

Aggrieved, the accused appealed to the Court of Appeals presenting in his Brief[22] the following

ASSIGNMENT OF ERRORS:

I.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIMES CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II.

THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE MINORITY OF THE PRIVATE COMPLAINANT AND HER RELATIONSHIP TO THE ACCUSED-APPELLANT.[23]

On December 18, 2008, the Court of Appeals rendered the subject decision echoing the findings of the trial court that the accused was guilty of the crimes leveled against him. The appellate court, however, was of the view that the award of civil indemnity should be reduced to ₱50,000.00[24] considering that R.A. 9346[25] prohibits the imposition of the death penalty. The dispositive portion of the decision of the Court of Appeals, thus, reads:

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[22] CA *rollo,* pp. 44-59.

[23] *Id.* at 46, 51.

[24] CA Decision, p. 23. *Rollo,* p. 24.

[25] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

WHEREFORE, premises considered, the instant appeal is hereby DISMISSED for lack of merit. Accordingly, the joint Decision of the Regional Trial Court (RTC), Branch 16, Tabaco City, dated 28 July 2005 in Criminal Cases Nos. T-3285 and T-3286, finding the accused-appellant guilty beyond reasonable doubt of two (2) counts of Rape, is hereby AFFIRMED with MODIFICATION in that DEATH PENALTY is reduced to *RECLUSION PERPETUA* in each of the two (2) counts of Rape and that the award of civil indemnity is hereby reduced from ₱75,000.00 to ₱50,000.00 for each case.

SO ORDERED.[26]

Hence this appeal.

In a resolution dated July 29, 2009,[27] the Court required the parties to file their respective supplemental briefs within thirty (30) days from notice, if they so desired. In separate manifestations, dated September 22, 2009[28] and October 16, 2009,[29] both parties waived the filing of supplemental briefs and instead opted to stand by their respective briefs filed before the Court of Appeals.

In his brief, the accused argues that AAA's testimony of what happened after the first rape incident on July 14, 1999 is hard to believe, thus, creating serious doubts as to the crimes imputed to him. The accused bases his argument on the following testimony of AAA:

ATTY. BROTAMONTE:

x x x x x x x x x

Q. That night after your father supposedly raped you, you accompanied him to watch the program or contest in Poblacion, Malilipot, Albay?

A. Yes.

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[26] *Rollo*, p. 25.

[27] *Id.* at 32.

[28] *Id.* at 36-37.

[29] *Id.* at 47-48.

Q. Before going to Malilipot to watch the program or contest you eat [sic] supper with your father?

PROS. PIFAÑO:
Vague, what date?

ATTY. BROTAMONTE:
I am referring to the date of the supposed first rape incident.

COURT:
Witness may answer.

WITNESS:
A. Not yet.

ATTY. BROTAMONTE:

Q. What time did you take your supper that night?
A. After watching the program and contest in Malilipot late that night.

Q. You do not take your supper before going to Poblacion, Malilipot to watch [the] program or contest because you were then in a hurry to see that program?
A. Yes.

Q. Of course you were happy to watch the program or contest in Poblacion, Malilipot, Albay?
A. Yes.

Q. What kind of program were [sic] shown?
A. Search for Binibining Malilipot.

Q. And that contest consist of making the contestant[s] who were women or ladies to walk while wearing bathing suits?
A. Yes.

Q. And of course being a lady yourself, you are so happy, watching them showing how feminine they are?
A. Yes.

Q. You have seen these women or ladies walking in front of [the] public wearing swimming suits that made you happy but did not cause sadness to you considering that you were just supposedly raped that night before going to watch to program?
A. Yes.

Q. You did not imagine yourself being supposedly violated while watching those ladies in skimpy attire?
A. I felt that.

Q. And yet you are happy watching them?
A. I was happy just waiting for the declared winner.

Q. Do you think that [it] is normal to be happy watching those ladies in skimpy attire just after you were supposedly raped by your father?
A. No, that is not normal.

Q. What time did you went [sic] home after watching those [sic] program.
A. Late in the evening about 1:00 or 12:00 o'clock.

Q. And you also went home with your father?
A. No, with me was my mother.

Q. Why, where was your father when you left the program when you go [sic] home?
A. Outside, I did not know where.

Q. But before you go home, you looked for him in the vicinity of the venue of the program so that he could accompany you home, is that correct?
A. Not anymore because with me was my mother.

Q. But of course in going to the program, you and your father were together in going there?
A. Yes.

Q. You walked all the way from your house to the Poblacion of Malilipot which is more than three (3) kilometers?
A. No, we rode on a bicycle.

Q. Your farther [sic] drove the bicycle?
A. Yes.

Q. And you rode on the bicycle while standing beside [sic] him?
A. In front because I did not know how to ride at the back.

Q. So, you were seated in the bicycle between the bicycle handle, which is equivalent to the wheels of [a] motor vehicle, and you father?
A. Yes.

Q. You chose to seat [sic] between the driver's handle and you father because it is where you could conveniently sit?
A. Yes.

Q. You did not choose to ride by standing behind your father by clumping your feet on the axle of the rear wheel because that is somewhat convenient for you?
A. Because I might fall from that position.[30]

The accused argues that if AAA had indeed been raped, she would have naturally felt pain all over her body and could not have sat behind the bike's handle, travelled for three (3) hours to Malilipot and enjoyed watching the pageant.

The accused also points out the following testimony of AAA on what she and her mother talked about as they were walking home. Thus:

Q. When you went home with your mother, in as much as your father was left behind the Poblacion of Malilipot, Albay, the bicycle was also left with him?
A. Yes.

Q. So, with nothing to ride on, you and your mother just walked all the way from Poblacion Malilipot to San Isidro Ilawod, right?
A. Yes, because we are so many then.

Q. And you walked for about an hour?
A. Yes.

Q. What did you talk about while walking towards your house?
A. We talked about who could win because when we left, nobody was declared yet.

Q. You and your mother were talking about happy things while walking towards home?
A. They were happy but not me.

Q. Before you were raped, your usual self has been very happy?
A. No.

Q. Your mother did not ask you why you were very sad?
A. I did not manifest that I was sad.

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[30] TSN, November 13, 2000, pp. 10-15.

Q. You pretended to be happy while walking with your mother?
A. Yes.

Q. So, you initiated [a] topic that are [sic] happy to pretend that you are happy?
A. Yes.[31]

The accused contends that if AAA was indeed raped by the accused, her agitated state could not have escaped her mother's attention because it normally takes a while for a rape victim to regain her composure. Since she was not at all agitated while she was walking home with her mother, it could not be said that AAA was raped. At such a young age, AAA could not have calculatedly presented herself as if nothing had happened.

Moreover, the accused finds it hard to believe that AAA would reveal her tormenting experience to a certain Melchor Brusola and his family, a stranger to her, but not to her own mother.

Finally, the accused asserts that the prosecution was not able to prove the minority of AAA because it failed to introduce in evidence her birth certificate.

The Court finds no merit in the 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. The assessment made by the trial court is even more enhanced when the Court of Appeals affirms the same,[32] as in this case.

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

[32] *People v. Dalipe,* G.R. No. 187154, April 23, 2010.

In its effort to ferret out the truth, the Court examined the transcripts of stenographic notes. Like the trial court, the Court finds that the victim's testimony on the incident was candid and straightforward, indicative of a reliable and trustworthy recollection of what took place on that fateful day. She narrated the sexual abuse in this manner:

PROS. PIFAÑO:

Q. On July 14, 1999 at 8:00 o'clock in the evening, do you remember where were you?
A. Yes, sir.

Q. Where were you on said date and time?
A. In our house.

Q. While there on said date and time, do you remember if there was any unusual incident that happened?
A. There was.

Q. Will you tell the Honorable Court what is that unusual incident that happened?
A. I was then in our house and I entered the bedroom. He call[ed] me but I did not come near him. When I did not come near him, he pulled me and forcibly laid me on the bed then while I was on the bed, he entered his sexual organ into my vagina.

INTERPRETER:

Witness was crying in making this statement.

PROS. PIFAÑO: (Continuing)

Q. After the accused entered his sexual organ into your vagina, what happened next?
A. He made a push and pull movement with his organ inside my vagina.

Q. For how long did the accused make his push and pull movement with his organ inside you vagina?
A. About five minutes.

Q. While he was doing this to you, what did you do?
A. I tried to extricate from his hold but I was not able to.

Q. So what did you do?
A. I kept crying.

Q. After the accused sexually abused you on said date and time for 5 minutes, what happened next?
A. He put on my dress on me then he also put back his shirts and shorts.

Q. After he dressed up, what did he do?
A. He went out.

PROS. PIFAÑO: (Continuing)

Q. How about you, did you report the incident to your mother?
A. No, because I was afraid.

Q. Why? What are you afraid of?
A. He might kill my mother and my siblings.

Q. When the incident of sexual abuse committed by the accused against you, who was the person present if there is any?
A. Nobody, because the other members of the family were in Malilipot. The only person left in our house were he and me.

Q. On September 1999, do you remember where were you?
A. Yes, sir.

Q. Where were you on said date and time?
A. In our house.

Q. While in your house on said date and time at about 8:00 o'clock in the morning, do you remember if there was any unusual incident that happened?
A. There was.

Q. Will you tell the Honorable Court what is that unusual incident that happened?
A. I was then in the bedroom lying and reading pocket books when he pulled my dress up then removed my shorts and panty.

PROS. PIFAÑO: (Continuing)

Q. After he removed your shorts and panty, what happened next?
A. He entered his penis into my vagina.

Q. When your father entered his penis into your vagina, to whom do you refer?
A. Ricardo Bodoso.

Q. And what is your relation to him?
A. My father.

Q. After the accused entered his penis into your vagina, what happened next?
A. Then he again made a push and pull into my vagina.

Q. For how long did he make that push and pull?
A. About 3 minutes.

Q. When the accused sexually abused you on September 1999 at about 8:00 o'clock in the morning, do you know who were present in the house?
A. Yes, sir.

Q. Who?
A. My sister.

Q. What is the name of your sister?
A. BBB

Q. How far was she in your place where you were sexually abused?
A. She was in the yard burning dry leaves.

Q. When the accused sexually abused you on said date and time, what did you do?
A. I was trying to get away from his hold but I couldn't.

Q. So what did you do?
A. I kept crying.

INTERPRETER:

Witness still crying.

PROS. PIFAÑO: (Continuing)

Q. When the accused satisfied his lust, what did he do?
A. He put on my shorts and panty.

Q. After the accused put on your shorts and panty, what did he do?
A. He went away.

Q. Where was your mother then when the incident happened?
A. She was in the Tabaco market vending some spices.

Q. What time then (sic) your mother went home?
A. About 11:00 or 12:00.[33]

The Court gives considerable weight on the above testimony of AAA since, ordinarily and customarily, Filipino children revere and respect their elders. This is deeply ingrained in them and is even recognized by law. Thus, it is unthinkable, if not completely preposterous, that a daughter would audaciously concoct a story of rape against her father in wanton disregard of the unspeakable trauma and social stigma it may generate on her and the entire family. An unmarried teenage lass does not ordinarily file a rape complaint against anybody, much less her own father, if it never did happen.[34]

The Court finds difficulty in subscribing to the assertion of the accused that AAA could not have been possibly raped simply because she was able to travel on a bicycle with her father and watched a beauty pageant right after the incident. AAA's honor might have been tarnished and her womanhood desecrated, but it does not follow that her physical capacity was affected.

The fear of bodily harm against herself and her mother can explain why AAA acted the way she did while walking home with her mother. After going through a harrowing experience in the hands of her father, her young mind could only imagine the worst from him. Few things are more recognized than the love that a daughter has for her mother. Verily, the guilt of the accused cannot be doubted just because AAA did not act as expected of a rape victim. Her behavior after the incident can be attributed to her young age, her father's moral ascendancy over her, and her fear that he might harm her and her mother should she find out that he had ravished their daughter. At any rate, not all rape victims are expected to act conformably to the usual expectation of everyone.[35] Different and varying degrees of behavioral

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[33] TSN, October 3, 2000, pp. 4-8.

[34] *People v. Miranda,* G.R. No. 176634, April 5, 2010, citing *People v. Alvero,* 386 Phil. 181, 198 (2000).

[35] *People v. Silvano*, 368 Phil. 676 (1999).

responses are expected in the proximity of, or in confronting, an aberrant episode. In *People v. Silvano,*[36] it was written:

> It is a time-honored precept that different people react differently to a given situation or type of situation and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience.

For the same reason, the fact that AAA first confided the rape to Melchor Brusola and his family, instead of her mother, should not be taken against her.

The prosecution's version of what transpired on the two unforgettable occasions is fortified by the medical findings of Dr. Arsenia Mañosca-Moran, who testified that the lacerations found in her hymen could have been caused by sexual intercourse. Her report that there was no congestion because the incident took place several months before the examination of the patient on January 8, 2000 is consistent with the story of AAA that she was raped on July 14, 1999 and September 1999. When the testimony of the witness corresponds with medical findings, there is sufficient basis to conclude that the essential requisites of carnal knowledge have been established.[37] The mass of physical and testimonial evidence in this case clearly establishes the guilt of the accused. In fine, the trial court was correct in its findings.

In both incidents, the accused puts up the defense of denial and alibi. In a long line of cases, it has been consistently held that between the positive assertion of prosecution witnesses and the negative averment of an accused, the former undisputedly deserves more credence and is entitled to greater evidentiary value than mere denial.[38] On the other hand, for alibi to prosper, the accused must not only prove that he was at another place at the time of the commission of the crime, but also that it was

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[36] *Id.*

[37] *People v. Anthony Rante y Reyes,* G.R. No. 184809, March 29, 2010, citing *People v. Tuazon,* G.R. No. 168102, 22 August 2008, 563 SCRA 124, 135.

[38] *People v. Bustamante,* 445 Phil. 345 (2003); *People v. Monteron*, 428 Phil. 401 (2002) and *Tecson v. Sandiganbayan*, 376 Phil. 191 (1999).

physically impossible for him to be at the crime scene at that time.[39] As noted by the trial court:

> Besides, the claim of the accused that he stayed in Tabaco in (sic) the evening of July 14, 1999 until midnight was belied by his own admission during the hearing on February 17, 2000, thus:
>
> ATTY. BONAFER, JR.: (continuing)
>
> x x x x x x x x x
>
> Q. Now, Mr. witness, how would you describe your relationship or your dealings with the private complainant prior to July 14, 1999?
>
> A. In fact, I was so surprised because on the night of July 14, 1999 **we are so happy together eating our supper** and in fact, when I learned of that incident I was surprised. xxx[40]

The assertion of the accused that the minority of AAA was not established because the prosecution failed to present her birth certificate in evidence deserves scant consideration. The Informations specifically alleged that AAA was a minor, *i.e.*, barely 14 years old on July 14, 1999 and September 1999, when she was raped by her own father. The accused himself, with the assistance of counsel, categorically admitted during pre-trial that AAA was his daughter and that she was only 14 years old on July 14, 1999 and in September 1999. These stipulations are binding on this Court because they are judicial admissions within the contemplation of Section 4, Rule 129 of the Revised Rules of Court.[41] The stipulation of facts signed by the parties, that is, the accused, his counsel and the prosecutor, in a criminal case is recognized as a declaration constituting judicial admission and is binding upon the parties. The stipulated

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[39] *People v. Alvarado*, 429 Phil. 208 (2002).

[40] TSN, February 17, 2003, p.11.

[41] Sec. 4. *Judicial admissions.* – **An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof.** The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made (Emphasis supplied.)

facts stated in the pre-trial order amount to an admission by the accused and a waiver of his right to present evidence to the contrary. Although the right to present evidence is guaranteed by the Constitution, such right may be waived expressly or impliedly.[42] Thus, the rule that no proof need be offered as to any facts admitted during a pre-trial hearing applies.[43]

In this regard, the Court is also guided by the ground rules laid down in the case of *People v. Pruna*,[44] in appreciating the age, either as an element of the crime or as a qualifying circumstance. Thus*:*

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

2. **In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.**

3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

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[42] *Alano v. CA*, 347 Phil. 549 (1997).

[43] *Afable, et al. v. Ruiz, et al*., 56 O.G. 3767; *supra*; *Munasque v. Court of Appeals*, 224 Phil. 79 (1985) and *Permanent Concrete Products, Inc. v. Teodoro*, 135 Phil. 364 (1968).

[44] 439 Phil. 440 (2002).

4. **In the absence of a certificate of live birth, authentic document or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.**

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

The trial court should always make a categorical finding as to the age of the victim. (Emphasis supplied)

At any rate, the minority of AAA was never in question as it was never contested. Not only did the accused admit such fact during the pre-trial conference,[45] but he also neither objected to, nor refuted, the following: AAA's testimony during the trial; the Medical Certificate[46] issued by Dr. Mañosca-Moran on January 10, 2000 and signed by AAA and her mother, which stated that she was only 14 years old at the time of the examination; and AAA's sworn statement[47] subscribed and sworn to on the same date before Judge Edwin C. Ma-Alat.

With respect to the penalty, the Court of Appeals failed to state that the reduction from death to *reclusion perpetua* is without eligibility for parole as held in the case of *People v. Antonio Ortiz.*[48] This should be rectified.

Moreover, it also erred in reducing the amount of the civil indemnity from ₱75,000.00 to ₱50,000.00. As the penalty would still have been death had it not been abolished, the amount of the civil indemnity should have remained at ₱75,000.00. The discussion in *People v. Rodolfo Lopez*[49] is worth noting. Thus:

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[45] Records (Volume No. 1), pp. 46-47.

[46] Exh. C, Records (Volume 1) p. 4; Exh. D. Records (Volume 2) p. 4.

[47] Exh. A. Records (Volume 1) p. 2; Exh. B. Records (Volume 2) p. 2.

[48] G.R. No. 179944, September 4, 2009.

[49] G.R. No. 179714, October 2, 2009.

On pecuniary liability, this Court ruled in *People of the Philippines v. Sarcia* that:

> The principal consideration for the award of damages, under the ruling in *People v. Salome* and *People v. Quiachon* is the **penalty provided by law or imposable for the offense because of its heinousness, not** the public penalty **actually** imposed on the offender.

Regarding the civil indemnity and moral damages, *People v. Salome* explained the basis for increasing the amount of said civil damages as follows:

> The Court, likewise, affirms the civil indemnity awarded by the Court of Appeals to Sally in accordance with the ruling in *People v. Sambrano* which states:
>
> As to damages, we have held that **if the rape is perpetrated with any of the attending qualifying circumstances that require the imposition of the death penalty**, the civil indemnity for the victim shall be **<u>Php75,000.00</u>** . . . Also, in rape cases, moral damages are warded without the need of proof other than the fact of rape because it is assumed that the victim has suffered moral injuries entitling her to such an award. However, the trial court's award of Php50,000.00 as moral damages should also be increased to Php75,000.00 pursuant to current jurisprudence on qualified rape.
>
> It should be noted that while the new law prohibits the *imposition* of the death penalty, **the penalty provided for by law for a heinous offense is <u>still death</u> and the offense is <u>still heinous</u>.** Consequently, the civil indemnity for the victim is still **<u>Php75,000.00</u>**.
>
> *People v. Quiachon* also ratiocinates as follows:
>
> With respect to the award of damages, the appellate court, following prevailing jurisprudence, correctly awarded the following amounts: Php75,000.00 as civil indemnity **which is awarded if the crime is qualified by circumstances warranting the imposition of the death penalty**; Php75,000.00 as moral damages because the victim is assumed to have suffered moral injuries, hence, entitling her to an award of moral damages even without proof thereof, x x x.

> **Even if** the penalty of death is not to be imposed on the appellant because of the prohibition in R. A. No. 9346, **the civil indemnity of Php75,000.00 is still proper** because, following the ratiocination in *People v. Victor*, **the said award is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense.** The Court declared that the award of ₱75,000.00 shows "**not only a reaction to the apathetic societal perception of the penal law and the financial fluctuations over time but also the expression of the displeasure of the court of the incidence of heinous crimes against chastity.**"
>
> The litmus test therefore, in the determination of the civil indemnity is the heinous character of the crime committed, which would have warranted the imposition of the death penalty, regardless of whether the penalty actually is reduced to *reclusion perpetua*. (Emphasis included)

Moreover, to conform with existing jurisprudence,[50] the amount of exemplary damages should be increased from ₱25,000.00 to ₱30,000.00 for each count of rape. Finally, in addition to the damages awarded, the accused should also pay interest at the legal rate of 6% from this date until fully paid.[51]

WHEREFORE, the December 18, 2008 Decision of the Court of Appeals, in CA-G.R. CR H.C. No. 01526, finding accused RICARDO BODOSO *y* BOLOR guilty of two (2) counts of rape is hereby *MODIFIED* to read as follows:

> WHEREFORE, finding the accused guilty of two (2) counts of rape committed against his daughter, AAA, the Court hereby sentences the accused, in each count, to suffer

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[50] *People v. Antonio Dalisay y Destresa,* G.R. No. 188100, November 25, 2009 and *People v. Elmer Peralta y Hidalgo,* G.R. No. 187531, October 16, 2009.

[51] *People v. Bagos* G.R. No. 177152, January 6, 2010, citing *People v. Guevarra*, G.R. No. 182192, October 29, 2008, 570 SCRA 288, 313; *People v. Antivola*, 466 Phil. 394 (2004) and *People v. Olaybar*, 459 Phil. 114 (2003).

the penalty of *reclusion perpetua,* without eligibility for parole; and to pay AAA the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages; and to pay the costs.

The accused shall also pay legal interest on all damages awarded until fully paid.

SO ORDERED.

*Carpio (Chairperson), Peralta, Bersamin,** and *Abad, JJ.,* concur.

THIRD DIVISION

[G.R. No. 188223. July 5, 2010]

SENTINEL INTEGRATED SERVICES, INC., *petitioner, vs.* **RIO JOSE REMO,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL OF EMPLOYEE; AN ACT OF ACTIVE BAD FAITH FATALLY TAINTED THE DISMISSAL AND RENDERED IT ILLEGAL.—** Our examination of the records shows that Sentinel terminated Remo's employment not because it was suffering from financial losses, but because "he had to be replaced as operations officer by Marcelo Albay who has military training," while Remo held an administrative position that unfortunately was indispensable. Sentinel concealed this real motive and committed misrepresentation when, in its letter terminating Remo's employment, it stated that: "In view of the economic

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* Designated as additional member in lieu of Justice Antonio Eduardo B. Nachura per raffle dated June 16, 2010.

slump, it therefore necessitates the downsizing of personnel to give way to a re-organization for a smaller staff. x x x Thank you very much for giving your best service to the Agency for the past several years." The labor tribunals glossed over this misrepresentation and failed to appreciate it for what it was – an act of active bad faith that fatally tainted Remo's dismissal and rendered it illegal. We note that the CA correctly noted this fatal flaw when it stated that, "If this was so, then the termination of [Remo] should not have been attributed to retrenchment

2. ID.; ID.; ID.; PAYMENT OF SEPARATION PAY IN LIEU OF REINSTATEMENT IS ORDERED IN VIEW OF THE SENSITIVE NATURE OF THE EMPLOYEE'S POSITION.— As a rule, an illegal dismissal merits the penalty of reinstatement and the payment of backwages from the time of dismissal up to actual reinstatement. Considering, however, the sensitive nature of Remo's position, viewed in light of what had transpired between the parties, we deem it appropriate to order the payment of separation pay in lieu of reinstatement, computed from the time of Remo's dismissal up to the time of finality of this Decision. This is the same result that the CA decreed, although not for the same reason and under a computation reckoned from the finality of its own decision.

APPEARANCES OF COUNSEL

Quasha Ancheta Pena & Nolasco for petitioner.
Jose S. Torregoza for respondent.

D E C I S I O N

BRION, *J*.:

Sentinel Integrated Services, Inc. (*Sentinel*) challenges, in this petition for review on *certiorari*,[1] the decision[2] and the

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

[2] *Rollo,* pp. 75-85; penned by Associate Justice Marlene Gonzales-Sison, with Associate Justice Bienvenido L. Reyes and Associate Justice Isaias P. Dicdican concurring.

resolution[3] of February 12, 2009 and June 3, 2009, respectively, of the Court of Appeals (*CA*) in CA-G.R. SP No. 99550.[4]

The challenged CA rulings reversed and set aside the resolution of the National Labor Relations Commission (*NLRC*) dated January 31, 2007,[5] that in turn affirmed the labor arbiter's decision dated January 31, 2006.[6] **The labor arbiter's decision upheld the dismissal of respondent Rio Jose Remo (*Remo*) on the ground of retrenchment**. (Remo served Sentinel for almost twenty [20] years, commencing employment on March 21, 1986 as a janitor, and rising to the position of operations officer in 2005.)

<u>The CA Decision</u>

The CA ruled that the NLRC committed grave abuse of discretion in upholding Remo's dismissal on the ground of retrenchment. The appellate court found that Sentinel failed to discharge the burden of proving that the losses it incurred warranted Remo's dismissal. The CA rejected Sentinel's financial statements from 1995 to 2005 (which were submitted during the compulsory arbitration) in the absence of evidence that these were "fully audited by an independent external auditor." Also, it held that the NLRC should not have factored in the ₱5 million awarded by this Court in another case[7] as an actual loss because the award, although final, could still be the subject of compromise. The CA considered the hiring of a replacement (Marcelo Albay) for Remo, as an indication that Sentinel's financial distress was not as serious as it claimed, and that retrenchment was not the actual reason for Remo's dismissal. Lastly, the CA pointed out that there was no showing that other less drastic means had

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

[4] *Rio Jose Remo v. Sentinel Integrated Services, Inc./Dr. Jesus Manotok.*

[5] *Rollo*, pp. 299-304.

[6] *Id.* at 280-287.

[7] G.R. No. 159966, entitled *Sentinel Integrated Services, Inc., et al. v. Efren Soliven, et al.*

been tried and found insufficient or inadequate before Sentinel resorted to retrenchment – a jurisprudential requisite in retrenchments.[8] It, therefore, opined that Sentinel did not act in good faith in terminating Remo's employment.

The Parties' Position

Sentinel mainly submits that it sufficiently proved that it was suffering from financial losses to justify Remo's retrenchment; thus, Remo's dismissal from employment was valid. It contends that the appellate court committed reversible error in: (1) failing to consider its audited financial statements as basis for the retrenchment; (2) ruling that the ₱5 million awarded by the Court in an earlier case should not have been included in its losses; and (3) ruling that the hiring of Marcelo Albay as a replacement for Remo was an indication that it was not in serious financial distress.

In his comment of December 15, 2009,[9] Remo asks the Court to dismiss the petition "for utter lack of merit," stating that the CA committed no reversible error in rendering the assailed decision.

The Court's Ruling

We resolve to deny the petition for lack of merit.

We find, after considering the records and the parties' submissions, that although the CA focused more on the retrenchment aspect of the disputed dismissal, it still committed no reversible error in nullifying the NLRC resolution as it found grave abuse of discretion in the labor tribunal's gross misappreciation of the other adduced evidence.

Our examination of the records shows that Sentinel terminated Remo's employment not because it was suffering from financial losses, but because "he had to be replaced as operations officer by Marcelo Albay who has military training,"

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[8] *Philippine Carpet Association (PHILCA) v. Sto. Tomas*, G.R. No. 168719, February 22, 2006, 483 SCRA 128.

[9] *Rollo*, pp. 460-475.

while Remo held an administrative position that unfortunately was indispensable.[10] Sentinel concealed this real motive and committed misrepresentation when, in its letter terminating Remo's employment, it stated that: "In view of the economic slump, it therefore necessitates the downsizing of personnel to give way to a re-organization for a smaller staff. x x x Thank you very much for giving your best service to the Agency for the past several years."[11]

The labor tribunals glossed over this misrepresentation and failed to appreciate it for what it was – an act of active bad faith that fatally tainted Remo's dismissal and rendered it illegal. We note that the CA correctly noted this fatal flaw when it stated that, "If this was so, then the termination of [Remo] should not have been attributed to retrenchment."[12] This finding totally renders any further discussion of Sentinel's submitted financial statements and its audit-related issues unnecessary.

As a rule, an illegal dismissal merits the penalty of reinstatement and the payment of backwages from the time of dismissal up to actual reinstatement.[13] Considering, however, the sensitive nature of Remo's position, viewed in light of what had transpired between the parties, we deem it appropriate to order the payment of separation pay in lieu of reinstatement, computed from the time of Remo's dismissal up to the time of finality of this Decision.[14] This is the same result that the CA

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[10] *Id.* at 66.

[11] *Id.* at 157.

[12] *Id.* at 83.

[13] Labor Code, Article 279. Security of Tenure. – x x x An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[14] *Esmalin v. NLRC,* G.R. No. 67880, September 15, 1989, 177 SCRA 537; see also *Asiaworld Publishing House, Inc. v. Ople,* 236 Phil. 236 (1987).

decreed, although not for the same reason and under a computation reckoned from the finality of its own decision.

WHEREFORE, premises considered, we *AFFIRM* the challenged decision and resolution of the Court of Appeals in CA-G.R. SP No. 99550, with *MODIFICATION* with respect to the exact basis for the finding of illegality and the computation of separation pay of one month pay for every year of service which should be from the date of the respondent's dismissal up to the finality of this Decision.

SO ORDERED.

Carpio Morales (Chairperson), Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 188975. July 5, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ALBERT TEÑOSO *Y* LOPEZ *alias* "PAKING" and EDGARDO COCOTAN *alias* "PAOT,"** *appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MINOR INCONSISTENCIES IN THE TESTIMONIES OF WITNESSES CANNOT DESTROY THE TRUTHFULNESS OF THEIR TESTIMONIES.— The Court examined the inconsistencies in the testimonies of the prosecution witnesses but found them too inconsequential to adversely affect their

[*] Designated additional Member of the Third Division, in view of the retirement of former Chief Justice Reynato S. Puno, per Special Order No. 843 dated May 17, 2010.

overall integrity. Such minor inconsistencies in the narration of a witness do not detract from its essential credibility as long as it is in its entirety coherent and intrinsically believable. Inaccuracies may in fact suggest that the witness is telling the truth and has not been rehearsed as it is not to be expected that he will be able to remember every single detail of an incident with perfect or total recall.

2. ID.; ID.; ID.; CHILD WITNESS; CREDIBILITY THEREOF, UPHELD.— There is no inconsistency in the statement of Leoncio. It can be gleaned from Leoncio's testimony that Paot initially shot Jongjong. When the latter had the opportunity to stand and run, he was shot from behind by Paking. This seeming inconsistency only strengthens the story of Leoncio that the two accused took turns in shooting Jongjong. It bears stressing too that Leoncio, being a child witness, cannot be expected to provide an accurate answer to every question asked. Most importantly, the trial court found Leoncio credible. The assessment by the trial court of his honesty and reliability is worth repeating: Anent Saldivar IV's alleged vague description and out-of-court identification of Teñoso, suffice it to state that whatever perceived vagueness or irregularity there were in the identification of Teñoso had been cured by the subsequent positive identification in court of Teñoso not only by Saldivar IV, *despite the attempt of the trial judge to mislead the child witness by pointing to another person*, but also by witness Torio.

3. ID.; ID.; DENIAL AND ALIBI, NOT GIVEN WEIGHT.— The Court has considered the defense of denial and alibi put up by the accused, but finds them relatively weak and insufficient to overcome the positive and categorical identification of the accused as perpetrators. The rule is that the defense of denial, when unsubstantiated by clear and convincing evidence, is negative and self-serving and merits no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses who testified on affirmative matters.

4. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; ELEMENTS, PROVEN.— Upon re-examination of the records, the Court is of the considered view that the qualifying circumstance of treachery was duly proven. The elements of treachery are: 1) the employment of means, methods or forms of execution that affords the person attacked

no opportunity to defend himself or to retaliate; and 2) that said means, method or forms of execution were deliberately and consciously adopted. It was clearly shown that Jongjong was shot while on board his motorcycle. The attack was undoubtedly swift and sudden which did not afford him any opportunity to defend himself. After falling from his motorcycle, he was assaulted by the two accused who also restrained his hands to prevent him from retaliating. When he was able to free himself, they pursued him and then shot him from behind.

5. **ID.; MURDER; CIVIL LIABILITIES.—** The award of civil indemnity is proper. It requires no proof other than the fact of death as a result of the crime and proof of the accused's responsibility therefor. Although jurisprudence fixed the civil indemnity at ₱50,000.00 only, the Court upholds the award of ₱300,000.00 civil indemnity since the parties had stipulated such amount in the event of a judgment of conviction. The award of ₱50,000.00 as moral damages is also correct. Moral damages are awarded in view of the violent death of a victim. There is no need for any allegation or proof of the emotional sufferings of the heirs. Likewise, the award of exemplary damages is warranted when the commission of the offense is attended by an aggravating circumstance, whether ordinary or qualifying, as in this case. Accordingly, the Court awards exemplary damages in the amount of ₱30,000.00 to the heirs of the victim.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellants.

D E C I S I O N

MENDOZA, *J.*:

At bench is an appeal from the March 19, 2009 Decision of the Court of Appeals[1] *affirming with modification* the February 7,

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[1] CA *rollo,* pp. 183-201 penned by Associate Justice Josefina Guevarra-Salonga with Associate Justice Angelita M. Romilla-Lontok and Associate Justice Romeo F. Barza concurring.

2007 Decision[2] of the Regional Trial Court, Tayug, Pangasinan, Branch 51. The RTC convicted the accused of the crime of Murder and sentenced both of them to suffer the penalty of *reclusion perpetua* and to indemnify, *in solidum,* the heirs of the victim in the liquidated sum of ₱300,000.00 as stipulated, and to pay the costs.[3]

In addition to what the RTC had imposed, the Court of Appeals ordered the accused to pay the heirs of the victim the amount of ₱50,000.00 as moral damages.

THE FACTS:

Accused Albert Teñoso and Edgardo Cocotan were charged with the crime of Murder.[4] The Information[5] indicting them reads:

> That on or about March 20, 2004, in the morning, along Ylarde and Zamora St., municipality of San Nicolas, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed and with the use of unlicensed firearm with treachery and evident premeditation, conspiring, confederating and helping one another, did then and there willfully, unlawfully and feloniously shoot ROSITO SAMBRANO @ Jongjong at his back which caused his death, to the damage and prejudice of the heirs of said ROSITO SAMBRANO @ JONG-JONG.
>
> CONTRARY to Article 248 of the Revised Penal Code in relation to Republic Act 8294.

The evidence for the prosecution showed that in the morning of March 20, 2004, Rosito Sambrano, also known as "Jongjong," was asked by Rebecca Saldivar to bring her 6-year-old son, Leoncio Saldivar IV, to Barangay Siblot, San Nicolas, Pangasinan; that Jongjong and Leoncio rode a motorcycle with Leoncio seated in front of Jongjong; that when they were near the public market,

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[2] Records, pp. 253-277.

[3] Records, p. 277.

[4] CA *rollo*, p. 184.

[5] Records, p.1.

a shot was heard and they fell; that Albert Teñoso *alias "Paking"* and Edgardo Cocotan *alias "Paot"* approached them and held Jongjong by his two arms; that they then mauled him and, later, shot him; and that thereafter, Leoncio reported to his mother saying, *"Mama, Kuya Jongjong (is) already dead. He was killed by Kuya Paot."*[6]

In his defense, accused Teñoso admitted that he was in the vicinity when the shooting occurred, but denied any participation therein. He claimed that on that day, he and Paot were summoned by Mayor Christopher Jones Rodrigo to put up a streamer in front of the public market; that at the market, he asked Paot to get a ladder from a fire station about 40 meters away; that later, he heard shouts and saw people running; that he went near the place of the commotion and there he saw Paot fighting with someone he did not know; that the two were grappling for a gun until he heard an explosion followed by successive blasts; that when the two separated, he saw a gun on the pavement, picked it up, boarded a tricycle, and went home; and that he was brought to the police station where he surrendered the gun.[7]

On his part, Cocotan asserted that he did not kill Jong Sambrano; that he was hired as a personal driver and security of then Mayor Rodrigo; that at that time, he and Teñoso were asked to hang a streamer at the tricycle terminal; that while on his way to get a ladder from a nearby fire station, a motorcycle driven by Jongjong stopped near him; that they then stared at each other; that he sensed that Jongjong was about to draw a gun from his waistline; that upon seeing this, he immediately held Jongjong's waist causing the latter to fall down from his motorcycle; that as Jongjong attempted to get his gun, he got hold of its nozzle; that when Jongjong pulled the trigger, the bullet hit him on his left toe; and that, thereafter, he heard a shot from behind him and then they got separated from each other.[8]

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[6] CA *rollo*, p. 185; TSN, April 26, 2004, pp. 6-7; TSN, May 18, 2004, pp. 3-6.

[7] *Id.* at 73, 188; TSN, August 10, 2005, pp. 2-7; TSN, September 14, 2005, pp. 2-4.

[8] *Id.* at 75, 189; TSN, August 14, 2006, pp. 2-7.

The trial court gave weight to the evidence of the prosecution over that of the defense, and convicted the accused of the crime of Murder in its February 7, 2007 Decision.[9]

Aggrieved, the accused appealed the said decision to the Court of Appeals. In the Appellants' Brief,[10] the accused prayed for their exoneration anchored on the following:

"ASSIGNMENT OF ERRORS

I

THE COURT *A QUO* GRAVELY ERRED IN FINDING ACCUSED–APPELLANTS GUILTY DESPITE THE PROSECUTION'S FAILURE TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

II

THE COURT *A QUO* GRAVELY ERRED IN DISREGARDING THE VERSION OF THE ACCUSED-APPELLANTS AND INSTEAD RELYING HEAVILY ON THE INCONSISTENT TESTIMONIES OF THE PROSECUTION WITNESSES.

III

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT ALBERT TEÑOSO NOTWITHSTANDING THE DUBIOUSNESS OF HIS IDENTIFICATION.

IV

THE COURT *A QUO* GRAVELY ERRED IN CONSIDERING THE ATTENDANCE OF QUALIFYING CIRCUMSTANCES OF TREACHERY AND EVIDENT PREMEDITATION.

V

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE PRESENCE OF THE AGGRAVATING CIRCUMSTANCE OF USE OF UNLICENSED FIREARM.

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[9] Records, p. 277.

[10] CA *rollo*, pp. 65-118.

VI

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT ACCUSED-APPELLANTS CONSPIRED TO COMMIT THE OFFENSE CHARGED.

VII

THE COURT *A QUO* GRAVELY ERRED IN DISREGARDING THE RESULT OF THE PARAFFIN TEST CONDUCTED ON ACCUSED-APPELLANT ALBERT TEÑOSO.

VIII

THE COURT *A QUO* GRAVELY ERRED IN DISREGARDING THE VOLUNTARY SURRENDER OF THE FIREARM BY ACCUSED-APPELLANT ALBERT TEÑOSO."[11]

As earlier stated, on March 19, 2009, the Court of Appeals rendered the assailed Decision[12] affirming with modification the RTC Decision. It wrote:

We find the appeal bereft of merit.

In the main, accused-appellants anchor their arguments on the credibility of the prosecution's witnesses whose testimonies were replete with discrepancies. They assert that the trial court erred in giving credence to the respective eye-witness accounts of Saldivar IV and Torio alleging that the same were laden with inconsistencies and that the identification given was uncertain and vague. They further contend that the out-of-court identification made by Saldivar IV was suggestive and hence, should be disregarded. They also impute error on the part of the trial court in disregarding the results of the paraffin tests on Teñoso and failure to present in evidence the firearm allegedly used by them. They contend that the mitigating circumstance should have been appreciated in favor of accused-appellant Teñoso. Lastly, they insist that the trial court erred in considering the qualifying circumstances of treachery, evident premeditation and use of unlicensed firearm since the prosecution failed to prove the same.

We are not persuaded.

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[11] *Id.* at 67-68.

[12] *Id.* at 183-204.

On the issue of credibility of a witness, the well-established rule is that the assessment of credibility of the witness is a matter best assigned to the trial court which had the firsthand opportunity to hear the testimonies of the witnesses and observe their demeanor, conduct and attitude during cross-examination. Such matters cannot be gathered from a mere reading of the transcripts of stenographic notes. Hence, the trial court's findings carry great weight and will be sustained by the appellate court unless the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the outcome of the case. The exception finds no application in the case before Us.

In challenging the reliability of the prosecution witnesses, accused-appellants labor on unfounded and tenuous arguments which will find no approval from this Court. As We see it, the eye-witness accounts of Torio and Saldivar IV were clear and unequivocal in pointing to both accused-appellants as the victim's attackers on the fateful morning of 20 March 2004.

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Accused-appellants cannot also harp on the varying statements of the child-witness with respect to whether he was playing or not before they left their house or the fact that the child-witness did not immediately relate his experience to his mother as soon as he saw her. Being collateral matters, these have no bearing on the commission of the crime and will not render his entire testimony unworthy of belief. As previously held by the Supreme Court, the testimony of children of sound mind is likely to be more correct and truthful than that of older persons, so that once established that they have fully understood the character and nature of an oath, their testimony should be given full credence. In the same vein, the perceived contradictions with regard to the estimated distance between the witness and the victim or how far the latter was able to run after the mauling are insignificant details that cannot damage the entirety of Torio's testimony.

Neither will the disparity on the testimony of each witness with respect to the number of shots heard by them, have an effect on the veracity of their eye-witness' accounts considering that they were situated differently from the other. It should be stressed that the same incident, when viewed from different angles or perspectives, may result in different impressions on the part of several witnesses.

The circumstances attending the incident may add to the confusion, as in the case at bar, where the quarry attempted to escape and the policemen all made an effort to detain him. Recollection of a particular happening, especially if it is unquiet or even tumultuous, is at best imperfect but not necessarily perjurious. The narration of the same event by different witnesses cannot be expected to be absolutely symmetrical, with all of them agreeing fully on every detail, as if recorded in their minds with computer accuracy.

Anent Saldivar IV's alleged vague description and out-of-court identification of Teñoso, suffice it to state that whatever perceived vagueness or irregularity there were in the identification of Teñoso had been cured by the subsequent positive identification in court of Teñoso not only by Saldivar IV, despite the attempt of the trial judge to mislead the child witness by pointing to another person, but also by witness Torio. Thus, as previously held by the Supreme Court, the '*inadmissibility of a police line-up identification . . . should not necessarily foreclose the admissibility of an independent in-court identification.'*

Thus, on the face of the categorical and unmistakable identification made by the witnesses for the prosecution, We find that the prosecution was able to establish beyond any tinge of doubt that Teñoso and Cocotan were responsible for the death of Sambrano. In the light of their positive identification and the credible accounts of the events leading to the victim's demise, their respective defenses of denial, cannot overcome his positive identification by the eyewitnesses. A mere denial, like alibi, is inherently a weak defense and constitutes self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters. This is especially true since We do not find any reason why the Saldivars would involve their 6-year old son in this whole ordeal if not for their earnest effort to attain justice.

Also, the seeming nonchalant actuation of Teñoso in picking-up the gun after the victim was gunned down and the flight of Cocotan to evade arrest, all the more fortify their guilt for the death of Sambrano. Moreover, the fact that Teñoso was found negative for the presence of gunpowder nitrates will not, by itself, prove his innocence. As held in *People v. Manalo*,

> "The second assigned error would stress the alleged absence of physical evidence showing that the accused-appellant fired a gun. To this, We need only remark that such circumstance

neither proves his innocence as well. In fact, even if he were subjected to a paraffin test and the same yields a negative finding, it cannot be definitely concluded that he had not fired a gun as it is possible for one to fire a gun and yet be negative for the presence of nitrates as when the hands are washed before the test *(People v. Talingdan, 191 SCRA 333 [1990]; People v. Roallos, 113 SCRA 584 [1982])*. The Court has even recognized the great possibility that there will be no paraffin traces on the hand if, as in the instant case, the bullet was fired from a .45 Caliber pistol *(People v. Rebullar, 188 SCRA 838 [1990]."*

Finding the culpability of accused-appellants duly proven beyond reasonable doubt, We find that, among those alleged in the Information, only the qualifying circumstances of treachery was duly proven by the prosecution.

An unexpected and sudden attack under circumstances which render the victim unable and unprepared to defend himself by reason of the suddenness and severity of the attack, constitutes *alevosia*. For treachery or *alevosia* to be appreciated as a qualifying circumstance, the prosecution must establish the concurrence of two (2) conditions: (a) that at the time of the attack, the victim was not in a position to defend himself; and (b) that the offender consciously adopted the particular means, method or form of attack employed by him. Given the factual milieu of the present case, the prosecution was able to prove that the victim was shot while on board his motorcycle. The attack was undoubtedly swift and sudden which did not afford him any opportunity to defend himself. As the attack was without any forewarning, the victim, after having fallen from his motorcycle, was assaulted by his attackers who acted in concert by restraining his hands to prevent him from retaliating. And even as the victim tried to flee, accused-appellants continued to pursue him even shooting him from behind. Indisputably, the victim was killed with the presence of the qualifying circumstance of treachery.

Verily, accused-appellant Teñoso's claim that he is entitled to the mitigating circumstance of voluntary surrender, has no merit. It should be recalled that Teñoso left the public market right after the incident and waited in his house if someone will look for him. It was only after learning that he was indeed being sought after that he called the police not for the purpose of surrendering but only '*to explain.'* In fact, when asked if it was his intention to surrender

himself when he went to the police station, he denied the same and insisted that he only intended to surrender the firearm.

As this Court sees it, Teñoso's demeanor does not portray the voluntary surrender required under the law since it lacks the intent to unconditionally surrender himself to the authorities either as an acknowledgement of guilt or a desire to save the authorities the trouble and the expense that would necessarily be incurred in searching for and capturing the culprit. Jurisprudence has it that the act of surrender must be spontaneous, accompanied by an acknowledgment of guilt, or an intention to save the authorities the trouble and the expense that search and capture would require. Going to the police station 'to clear his name' does not show any intent of appellant to surrender unconditionally to the authorities.

Thus, the dispositive portion of the assailed Court of Appeals Decision reads:

WHEREFORE, the foregoing considered, the Appeal is hereby **DISMISSED** and the assailed Decision **AFFIRMED** with the **MODIFICATION** that accused-appellant, in addition to their civil liability, are each ordered to pay the heirs of the victim the amount of Fifty Thousand Pesos (₱50,000.00) as moral damages.

Apparently not satisfied with the decision, the accused elevated their case to this Court. The accused filed a *Manifestation (In Lieu of Supplemental Brief),* that they were adopting the Appellants' Brief they filed before the Court of Appeals.[13] Plaintiff, on the other hand, moved and manifested that it would no longer file any Supplemental Brief and would also adopt its arguments in the Appellee's Brief previously filed.[14]

The Court resolves to deny the appeal.

No reversible error was committed by the Court of Appeals in rendering the well-written March 19, 2009 Decision.

In their brief, the accused have capitalized on the supposed inconsistencies in the testimony of prosecution witnesses. They

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[13] See *Rollo*, pp. 38-41.

[14] See *Rollo*, pp. 34-37.

pointed out that Arnold Torio had testified that Teñoso @ Paking held Jongjong's right hand while Cocotan @ Paot held the other hand[15] and both were punching his head and body. This went on for less than a minute. Thereafter, Teñoso, using his right hand, shot Jongjong.[16] Immediately, Torio heard two (2) explosions.[17]

Leoncio Salvador IV, on the other hand, testified that Teñoso held Jongjong's left arm while Cocotan held the other arm;[18] that they shot Jongjong at the back;[19] that Jongjong ran and Cocotan chased him while Teñoso shot him at the back; and that four shots were fired.[20]

The accused enumerated other inconsistencies, to wit: ***(1)*** Arnold Torio testified that the mauling took place right in front of him and his driver and the road ahead was clear and empty,[21] but he also mentioned that there were many people at the place where the mauling took place since it was a market day;[22] ***(2)*** He also stated that he saw the mauling incident at a distance of ten (10) meters,[23] but on cross-examination, he replied that he was about fifteen (15) meters from where the mauling took place;[24] ***(3)*** He further testified that after being beaten up, Jongjong was able to run for about ten (10) meters before he stumbled and got shot,[25] but later, he said that it was a distance of fifteen (15) meters;[26] and ***(4)*** Leoncio initially stated that

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[15] CA *rollo*, p. 77; TSN, June 1, 2004, p. 5.

[16] *Id.*, TSN, June 22, 2004, p. 3.

[17] *Id.*, TSN, July 13, 2004, p. 3.

[18] *Id.*, TSN, August 24, 2004, p. 6.

[19] *Id.*, TSN, August 24, 2004, p. 7.

[20] *Id.*, TSN, August 24, 2004, p. 8.

[21] *Id.*, TSN, July 27, 2004, p. 11.

[22] *Id.* at 77-78, TSN, July, 27, 2004, p. 6.

[23] *Id.* at 78, TSN, June 22, 2004, p. 2.

[24] *Id.*, TSN, August 4, 2004, p. 7.

[25] *Id.*, TSN, July 13, 2004, p. 2.

[26] *Id.*, TSN, July 27, 2004, p. 9.

Cocotan shot Jongjong but later he said that it was Teñoso who shot Jongjong at the back.[27]

The Court examined the inconsistencies in the testimonies of the prosecution witnesses but found them too inconsequential to adversely affect their overall integrity. Such minor inconsistencies in the narration of a witness do not detract from its essential credibility as long as it is in its entirety coherent and intrinsically believable. Inaccuracies may in fact suggest that the witness is telling the truth and has not been rehearsed as it is not to be expected that he will be able to remember every single detail of an incident with perfect or total recall.[28]

In this case, the cited discrepancies as to the distance, the number of shots and which hand was actually used in holding Jongjong were not too critical as to discredit altogether the testimonies of Arnold Tenorio and Leoncio Saldivar IV. These are minor details that cannot destroy the truthfulness of their story.

The accused also tried to sway the Court with the inconsistency in the statement of Leoncio Saldivar IV as to who actually shot the victim. The pertinent portions of his testimony read:

"PROS. BINCE:

Q: What happened next after Paking and Paot were holding the hands of Kuya Jong Jong?

WITNESS:

A: They shot him at the back.

COURT:

Questions from the Court.

Q: How would you know the holding, carrying and shooting when according to you immediately upon the fall of that motorcycle you ran four (4) meters away to the basketball court?

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[27] *Id.*, TSN, August 24, 2004, pp. 7-8.

[28] *Sayoc v. People*, G.R. No. 157723, April 30, 2009, 587 SCRA 266.

A: Because at first I was by the jeep and they were in front of the jeep.

Q: Where is the jeep? Was it beside the motorcycle or to (sic) the basketball court where you were?
A: Near the municipal hall, sir.

Q: And was that motorcycle that fell also near the municipal hall?
A: (Witness nodded).

Q: Was that basketball court where you ran to also near the municipal hall?
A: Yes, sir.

Q: What kind of jeep was that? Was it a small owner type jeep which is long?
A: It's a passenger jeep, sir.

Next question.

PROS. BINCE:

Q: **You claimed that Kuya Jong was shot. Who shot him?**
A: **Paot.**

COURT:

Q: With what did Paot shoot?

WITNESS:

A: I do not know.

COURT:

Q: Was it a gun or a sling shot?
A: A small gun.

Q: Can you demonstrate the length?
A: (Witness demonstrated a length of about six (6) inches.)

Q: Was it made of wood or metal or what?
A: A metal, sir.

PROS. BINCE:

Q: **What did Paking do when Paot shoot (sic) Kuya Jong, if any?**
A: **Kuya Jong ran and he was chased.**

Q: **Who chased Kuya Jong?**
A: **Paot.**

Q: **What about Paking? What did he do, if any?**
A: **No, it was him who shot at the back.**

COURT:

Q: **Who shot at the back?**
A: **Paking.**

Q: Whose back did he shoot?
A: Of Kuya Jong.

PROS. BINCE:

Q: **So it's now clear that it was Paking who shot Kuya Jong at the back and not Paot?**
A: **Yes, sir."**[29]

From the foregoing, the accused argues that there was an inconsistency in the sense that at one point, Leoncio stated that it was Paot (Cocotan) who shot Jongjong. Later, he pointed to Paking (Teñoso) as the gunman.

The Court is not persuaded. There is no inconsistency in the statement of Leoncio. It can be gleaned from Leoncio's testimony that Paot initially shot Jongjong. When the latter had the opportunity to stand and run, he was shot from behind by Paking. This seeming inconsistency only strengthens the story of Leoncio that the two accused took turns in shooting Jongjong.[30] It bears stressing too that Leoncio, being a child witness, cannot be expected to provide an accurate answer to every question asked.[31]

Most importantly, the trial court found Leoncio credible. The assessment by the trial court of his honesty and reliability is worth repeating:

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[29] TSN, August 24, 2004, pp. 7-8; (emphases supplied).

[30] CA *rollo*, p. 186; TSN, August 24, 2004, pp. 5-9.

[31] *People v. De Leon*, 387 Phil. 779 (2000).

Anent Saldivar IV's alleged vague description and out-of-court identification of Teñoso, suffice it to state that whatever perceived vagueness or irregularity there were in the identification of Teñoso had been cured by the subsequent positive identification in court of Teñoso not only by Saldivar IV, *despite the attempt of the trial judge to mislead the child witness by pointing to another person*, but also by witness Torio. x x x.[32]

The Court has considered the defense of denial and alibi put up by the accused,[33] but finds them relatively weak and insufficient to overcome the positive and categorical identification of the accused as perpetrators. The rule is that the defense of denial, when unsubstantiated by clear and convincing evidence, is negative and self-serving and merits no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses who testified on affirmative matters.[34]

Upon re-examination of the records, the Court is of the considered view that the qualifying circumstance of treachery was duly proven. The elements of treachery are: 1) the employment of means, methods or forms of execution that affords the person attacked no opportunity to defend himself or to retaliate; and 2) that said means, method or forms of execution were deliberately and consciously adopted.[35]

It was clearly shown that Jongjong was shot while on board his motorcycle. The attack was undoubtedly swift and sudden which did not afford him any opportunity to defend himself. After falling from his motorcycle, he was assaulted by the two accused who also restrained his hands to prevent him from retaliating. When he was able to free himself, they pursued him and then shot him from behind.

The award of civil indemnity is proper. It requires no proof other than the fact of death as a result of the crime and proof

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[32] *Rollo,* pp. 16-17.

[33] *Sayoc v. People*, *supra* note 28.

[34] *Domingo v. People*, G.R. No. 186101, October 12, 2009.

[35] *People v. Lumintigar*, 424 Phil. 148 (2002).

of the accused's responsibility therefor. Although jurisprudence fixed the civil indemnity at ₱50,000.00 only,[36] the Court upholds the award of ₱300,000.00 civil indemnity since the parties had stipulated such amount in the event of a judgment of conviction.[37]

The award of ₱50,000.00 as moral damages is also correct. Moral damages are awarded in view of the violent death of a victim. There is no need for any allegation or proof of the emotional sufferings of the heirs. Likewise, the award of exemplary damages is warranted when the commission of the offense is attended by an aggravating circumstance, whether ordinary or qualifying,[38] as in this case. Accordingly, the Court awards exemplary damages in the amount of ₱30,000.00[39] to the heirs of the victim.

WHEREFORE, the decretal portion of the March 19, 2009 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02751 is *MODIFIED* to read as follows:

> WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of Murder, the Court hereby sentences both of them to suffer the penalty of *reclusion perpetua;* to indemnify, jointly and severally, the heirs of Rosito Sambrano in the amount of ₱300,000.00 as civil indemnity, as stipulated; to pay, jointly and severally, the said heirs the amounts of ₱50,000.00 as moral damages, ₱30,000.00 as exemplary damages and the cost of the suit.
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> Both accused are further ordered to pay legal interest on the civil liabilities imposed until fully paid.

SO ORDERED.

Carpio (Chairperson), Nachura, Peralta, and *Abad, JJ.,* concur.

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[36] *People v. Gutierrez*, G.R. No. 188602, February 4, 2010.

[37] Records, p. 40.

[38] *People v. Gutierrez*, *supra* note 36.

[39] *Id.*

SECOND DIVISION

[G.R. No. 189807. July 5, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JESSIE DACALLOS *y* MODINA,** *appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; GUIDELINES IN THE REVIEW OF RAPE CASES AND THE RULE ON ASSESSMENT OF CREDIBILITY OF WITNESSES, APPLIED.—** The CA correctly used the guidelines set by this Court in its review of rape cases, and the long-settled rule on the assessment of credibility of witnesses x x x Both the RTC and the CA found the testimony of AAA credible, truthful and straightforward as against a mere denial proffered by Dacallos.
2. **CRIMINAL LAW; RAPE; CIVIL LIABILITIES; AWARD OF MORAL AND EXEMPLARY DAMAGES, INCREASED.—** [W]e disagree with the amount of moral and exemplary damages, ₱30,000.00 and ₱20,000.00, respectively, awarded by the CA to the victim, AAA. Thus, consistent with prevailing jurisprudence, we increase the grant of moral damages to ₱50,000.00 and the award of exemplary damages to ₱30,000.00.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

NACHURA, *J*.:

For review is the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03485, which affirmed the decision[2] of

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[1] Penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court), with Associate Justices Jose C. Reyes, Jr. and Normandie B. Pizarro, concurring; *rollo,* pp. 2-16.

[2] Penned by Judge Silverio Q. Castillo, CA *rollo*, pp. 13-20.

the Regional Trial Court (RTC), Branch 48, Manila City, finding appellant Jessie M. Dacallos guilty of rape under Article 266-A of the Revised Penal Code.

The accused was charged in an Information which reads:

> That on or about July 15, 2002, in the City of x x x, the said accused [Dacallos], being then the common-law husband of complainant's mother, by means of force, violence and intimidation, to wit: by then and there threatening to kill said AAA should she refuse, removing her panty and lying on top of her, did then and there willfully, unlawfully and feloniously succeed in having carnal knowledge of her, against her will and consent, thereby endangering the normal growth and development of the said complainant.
>
> Contrary to law.[3]

During arraignment, Dacallos pled not guilty to the charge. Trial on the merits followed. The CA summarized the respective evidence presented by the parties, as follows:

> AAA testified that she was born on February 4, 1989. She is now staying at Marilac Hills in Alabang which is an institution for women. In 2002, she was residing at Vitas, Tondo, Manila with her family in a house that has an area of approximately four (4) by three (3) meters. The names of her siblings are Jerry (12 years old), Jimmy (11 years old) and Janet (5 years old). She is the child of her mother with her first husband. She narrated that on July 15, 2002, while at home, her stepfather, Jessie Dacallos, closed the door and grabbed her from the bed. He then undressed her and forcibly inserted his penis into her vagina. In the courtroom, she was able to identify Dacallos. She said that she does not use the surname of his stepfather because she is mad at him. Moreover, she does not know the whereabouts of her mother but only learned that she was brought to the mental hospital. She also intimated that her mother became insane because she was physically battered and mauled by her stepfather. She reported the matter to the police and they took her sworn statement. She claimed that in 2002, when the rape incident occurred, she was only thirteen (13) years old. She prayed for justice for the rape that was done to her.

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[3] *Id.* at 13.

The prosecution likewise presented as witness Dr. Ma. Salome Fernandez, a medico-legal officer in the National Bureau of Investigation (NBI). She testified that she conducted a medical examination on the victim after she received a referral letter from SPO1 Aladina Vicente. In a report dated July 17, 2002, she wrote a brief history of the case, thus:

> "Subject was allegedly raped by her stepfather, Jessie, on several occasions when she is alone in the house. When the accompanying person, *barangay kagawad* was interviewed, according to the *kagawad*, the subject's mother had been severely battered by suspect, (and this happened most of the time) hence she couldn't come. The subject is usually raped by suspect in front of her mother."

She also made a remark in the said report that the subject was "not referred to NPS since her answers are appropriate, only slow in comprehension and with short attention span (low IQ) (low academic attainment)." She also took a photograph of the victim.

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On the other hand, accused-appellant vehemently denied the accusation hurled against him. He claimed that it was impossible for him to have committed the crime charged because in the early morning of July 15, 2002, around 4:00 a.m., he was at home sleeping. He came home from his work from the vulcanizing shop and he was so tired. He works as a vulcanizer at a shop owned by Diding Pidalan at Road 10, Don Bosco, Tondo, Manila, which is about one (1) kilometer away from their house. He has been working there for seventeen (17) years and reports to work from 7:00 p.m. to 10:00 a.m. the following morning. In the early morning of July 15, 2002, he was at home sleeping because there are times that he has no work, like during Sundays. Accused-appellant explained that he was at home on July 15, 2002 because he was sick with flu. His companions at home are his wife, their three (3) children and his wife's child with another man, referring to AAA. On July 15, 2002, the kids were playing in the house and his wife was lying down. He insists that nothing happened in their house in the early morning of July 15, 2002. He maintains that the victim accused him of raping her because he slapped her. Moreover, his relationship with her is not good. She is hardheaded and even quarrels with her mother. He further narrates that whenever he asks AAA to do something, she stamps her feet. He also disclosed that he is not legally married to the victim's mother.

He said that his wife was brought to the mental hospital while his children were in the custody of DSWD.[4]

In convicting Dacallos, the RTC accorded complete credence to the testimony of AAA, and sentenced Dacallos, thus:

WHEREFORE, the Court finds the accused JESSIE DACALLOS *Y* MODINA guilty beyond reasonable doubt of the felony of **RAPE** and pursuant to law, he is sentenced to suffer prison term of *reclusion perpetua* and to pay the victim the following:

1. ₱50,000.00 as indemnity fee;
2. ₱30,000.00 as moral damages;
3. ₱20,000.00 as exemplary damages;
4. and cost.

In view of the accused's conviction, the BJMP of Manila City Jail is ordered to commit the accused to the National Bilibid Prison in Muntinlupa, Manila.

SO ORDERED.[5]

On appeal, the CA affirmed the conviction of Dacallos, to wit:

WHEREFORE, premises considered, the Decision of the Regional Trial Court of Manila, Branch 48, in *Criminal Case No. 02-205108*, promulgated on June 10, 2008 convicting accused [Dacallos] of the crime of rape is hereby **AFFIRMED** with **MODIFICATION** in that accused [Dacallos] is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole.

With costs against the accused [Dacallos].

SO ORDERED.[6]

Hence, this appeal by Dacallos via a Notice of Appeal,[7] assigning the following errors:[8]

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[4] *Rollo*, pp. 3-6.

[5] CA *rollo*, p. 20.

[6] *Rollo*, p. 15.

[7] Dated August 17, 2009; *rollo,* pp. 17-18.

[8] In his Manifestation and Motion dated May 16, 2010, appellant Dacallos

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL FAITH AND CREDENCE TO THE HIGHLY INCREDIBLE TESTIMONY OF [AAA].

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT [DACALLOS] GUILTY BEYOND REASONABLE DOUBT.

We abide by the uniform rulings of the lower courts that Dacallos raped AAA, a minor and the daughter of his common-law wife.

The CA correctly used the guidelines set by this Court in its review of rape cases, and the long-settled rule on the assessment of credibility of witnesses:

> In the review of rape cases, [w]e are almost invariably guided by the following principles: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove it; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.
>
> Equally settled is the rule that assessment of credibility of witnesses is a function that is best discharged by the trial judge whose conclusions thereon are accorded much weight and respect, and will not be disturbed on appeal unless a material or substantial fact has been overlooked or misappreciated which if properly taken into account could alter the outcome of the case.[9]

Both the RTC and the CA found the testimony of AAA credible, truthful and straightforward as against a mere denial

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waived his right to file a Supplemental Brief. Consequently, Dacallos, in his appeal before this Court, simply adopts the errors raised and discussions contained in his Appellant's Brief before the CA.

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

proffered by Dacallos. Moreover, the lower courts did not accept Dacallos' theory that AAA harbored serious anger and resentment toward him because he allegedly mauled her mother, causing the latter to become insane. On the foregoing points, the CA correctly declared:

It has been held that when the offended party is a young and immature girl between the ages of 12 and 16, as in this case, courts are inclined to give credence to her version of the incident, considering not only her relative vulnerability but also the public humiliation to which she would be exposed in the course of trial if her accusations were untrue. Testimonies of youthful rape victims are, as a general rule, given full faith and credit, considering that when a girl says she has been raped, she says in effect all that is necessary to show that the rape was indeed committed.

What lends further credence to the victim's testimony is the fact that it was amply supported by the physical evidence on record. The medico-legal officer testified that there is conclusive evidence that the victim suffered injury in the genital area due to a blunt force. And when the consistent and forthright testimony of a rape victim is consistent with medical findings, there is sufficient basis to warrant a conclusion that the essential requisites of carnal knowledge have been established.

x x x x x x x x x

x x x. The alleged ill-feelings and resentment are too flimsy to justify the filing of charges of rape. We also note that accused-appellant [Dacallos] failed to present any evidence to support his claim that AAA fabricated a story that [she] had been raped simply because the latter harbored ill-feelings and resentment towards him. Other than his bare allegations, there is no evidence to show that she was motivated by any improper motive. Not a few persons accused of rape have attributed the charges brought against them to resentment, revenge or other ulterior motives but such alleged motives have never swayed the Court to credit them.[10]

From the foregoing, it is beyond cavil that Dacallos raped AAA.

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[10] *Id.* at 11-12.

However, we disagree with the amount of moral and exemplary damages, ₱30,000.00 and ₱20,000.00, respectively, awarded by the CA to the victim, AAA. Thus, consistent with prevailing jurisprudence, we increase the grant of moral damages to ₱50,000.00 and the award of exemplary damages to ₱30,000.00.[11]

WHEREFORE, the decision of the Regional Trial Court in Criminal Case No. 02-205108 and the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 03485 are *AFFIRMED* with *MODIFICATION.* Appellant Jessie Dacallos *y* Modina is *SENTENCED* to suffer the penalty of *reclusion perpetua* with no possibility of parole and to pay the victim, AAA, the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages. Costs against appellant.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 190384. July 5, 2010]

HEIRS OF SPOUSES CRISPULO FERRER and ENGRACIA PUHAWAN, represented by ROMEO F. GAZA as Attorney-in-Fact, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS, NATIONAL POWER CORPORATION, GUIDO ALFREDO DELGADO, FERNANDO ROXAS, ALBERTO PANGCOG, SAMUEL PIEDAD, GREGORIO ALVAREZ, RAFAEL LAGOS, AUGUSTO GO, NAPOLEON EUFEMIO, MELITO SALAZAR, VIRGILIO ODI and MEHOLK SADAIN,** *respondents.*

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[11] *People v. Abellera*, G.R. No. 166617, July 3, 2007, 526 SCRA 329.

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI,* NOT A SUBSTITUTE FOR THE LOST APPEAL.—** Procedurally, the Court found that the petitioners, by resorting to a *certiorari* petition, erred in choosing the legal remedy against the CA rulings. We noted that the errors the petitioners raised were errors of law rather than errors of jurisdiction, since "[t]he gist of [the] petitioners' objections to the CA ruling was the appellate court's failure to appreciate their arguments and evidence in support of their claims, but this does not amount to an error of jurisdiction. A *certiorari* writ will not be issued to cure errors by the lower court in its appreciation of the evidence, its conclusions anchored on the said findings, and its conclusions of law. As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctible by an appeal x x x [by] *certiorari* filed under Rule 45 [of the Rules of Court]." **We considered the resort to a *certiorari* petition under Rule 65 as a disingenuous move to circumvent the rule on the period for filing an appeal by *certiorari* under Rule 45 which allows only 15 days from notice of the judgment appealed from to file an appeal. As the petition was filed 38 days after receipt of the assailed CA resolution denying the motion for reconsideration, the petitioners used the *certiorari* petition as a substitute for the lost appeal, a move the Court has consistently reproved.**

2. **ID.; INTERNAL RULES OF THE SUPREME COURT; REQUIREMENTS FOR ALLOWANCE OF A SECOND MOTION FOR RECONSIDERATION; APPLICATION.—** Section 3, Rule 15 of the Internal Rules of the Supreme Court (*IRSC*) sets forth the rule when the Court may entertain a second motion for reconsideration. x x x Aside from meeting the voting requirements, a movant is required by the IRSC to substantially show that a reconsideration of the Court's ruling is necessary in the higher interest of justice, which standard is satisfied upon proving that the assailed ruling is both (1) legally erroneous and (2) patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. In this case, petitioners' reasons do not sufficiently establish

that a reversal of the Court's ruling will serve the higher interest of justice. On the contrary, for the Court to consider and find meritorious the petitioners' argument will mean abandoning settled principles of law to accommodate the petitioners' stale and clearly unsubstantiated claims.

3. CIVIL LAW; PUBLIC LAND ACT (CA 141); REQUIREMENTS FOR ACQUISITION OF OWNERSHIP OVER ALIENABLE PUBLIC LAND.— The petitioners' reliance on Article 1137 of the Civil Code is not entirely accurate. The petitioners alleged that Lot 1873 is an alienable and disposable land of the public domain. However, acquisition of ownership over *alienable public lands* is governed, not by the general provisions on prescription in the Civil Code, but more particularly, by Commonwealth Act No. 141 (*CA 141*) or the Public Land Act. Article 1137 of the Civil Code authorizes acquisition by prescription only of private lands, not of public lands even though these may have been decreed as alienable and disposable. Alienable and disposable lands of the public domain may be acquired by private persons, not by virtue of prescription but, through *adverse possession*, upon compliance with the requirements of Section 48(b) of CA 141 x x x Verily, it is not the mere lapse of time that vests title over the land to the claimant; it is also necessary that the land be an alienable and disposable land of the public domain and that the claimant be in open, continuous, exclusive, and notorious possession of the land. Listed down, the acquisition through adverse possession of public lands requires the following: 1. the land applied for must be an alienable and disposable public land; and 2. the claimants, by themselves or through their predecessors-in-interest, have been in open, continuous, exclusive, and notorious possession and occupation of the land since June 12, 1945 or earlier.

4. ID.; ID.; ID.; REQUIREMENTS, NOT SATISFIED IN CASE AT BAR.— Upon an exhaustive review of the records and a thorough evaluation of the petitioners' allegations and arguments, we are unconvinced that the petitioners have satisfied these requirements. *First*, no conclusive proof appears in the records showing that Lot 1873 has been officially decreed to be an alienable and disposable public land at the time the petitioners' predecessors supposedly occupied the lot in 1916 or at anytime thereafter. That

petitioners' predecessor, Crispulo Ferrer, was a claimant and, purportedly, had a survey plan of Lot 1873 does not necessarily imply that the lot is an alienable land. *Second*, we similarly found nothing in the records that would support the petitioners' allegation that their predecessors had occupied Lot 1873 since 1916 or at anytime before the cut-off date of June 12, 1945. As mentioned, the Bureau of Lands certificate, issued on January 26, 1978, simply stated that Crispulo Ferrer was a survey claimant of Lot 1873, without indicating the nature and duration of his possession. The requirement of an open, continuous, exclusive, and notorious occupation of alienable public land must be *conclusively established* to avoid the erroneous validation of actually fictitious claims of possession over the property.

5. **ID.; LACHES; PRINCIPLE, APPLIED; ELEMENTS, PRESENT IN CASE AT BAR.—** [T]he petitioners' inaction from 1936 to 1997, or for 61 long years, makes the application of the principle of laches more than justified to defeat their claim over Lot 1873. The application of the principle of laches requires the presence of the following elements – all of which are present in this case: (1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made and for which the complainant seeks a remedy; (2) delay in asserting the complainant's right, the complainant having had knowledge or notice, of defendant's conduct and having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred. Napocor executed acts that were contrary to the petitioners' asserted claim of ownership over Lot 1873, yet until 1997, the petitioners made no move to vindicate their claimed right and resist Napocor's intrusion. Napocor certainly could not be blamed if it considered itself the true owner of Lot 1873 and expected no adverse claims thereto, as it had acquired the lot by purchase as early as 1940 and had constructed numerous structures thereon. To recognize the petitioners' belated and legally baseless claim over Lot 1873 would mean requiring Napocor to pay rentals and interest from 1936 to the present, a move that could possibly bleed Napocor's coffers dry to the detriment of the public. *Vigilantibus et*

non dormientibus jura subveniunt – the laws serve the vigilant, not those who sleep. x x x The principle of laches applies with equal force to defeat the petitioners' claim over Lot 72 which was occupied by Napocor way back in 1937. Also, we find no reason to disagree with the RTC's finding that Lot 72 had already been adjudicated in favor of, and for which the property was in fact titled in the names of, Hilaria and Victoria Puhawan. As the heirs of Engracia Puhawan, the petitioners likewise have no valid claim over Lot 72.

APPEARANCES OF COUNSEL

Rodrigo V. Cosico for petitioners.
The Solicitor General for respondents.

R E S O L U T I O N

BRION, *J*.:

Petitioners, the heirs of spouses Crispulo Ferrer and Engracia Puhawan, filed a petition for *certiorari*[1] assailing the rulings[2] of the Court of Appeals (*CA*) rendered in CA-G.R. CV No. 67923. The Court, acting through its Second Division, denied the *certiorari* petition through a Resolution dated January 18, 2010,[3] which the petitioners sought to be reconsidered of on March 17, 2010.[4] In a Resolution dated April 21, 2010,[5] the Court denied the petitioners' motion and reiterated the dismissal of the *certiorari* petition. Petitioners now request leave from the Court to file a second motion for reconsideration.[6]

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[1] Under Rule 65 of the Rules of Court; *rollo*, pp. 3-25.

[2] Referring to the CA decision dated May 12, 2009 (*id.* at 30-46) and the resolution dated October 23, 2009 (*id.* at 89-91); penned by Associate Justice Rosalinda Asuncion-Vicente, and concurred in by Associate Justice Portia Alino-Hormachuelos and Associate Justice Myrna Dimaranan Vidal.

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

[4] *Id.* at 181-191.

[5] *Id.* at 214-224.

[6] *Id.* at 226-236.

Brief Background

The present case arose from an **injunction suit**[7] instituted by the petitioners against respondent National Power Corporation (*Napocor*). Petitioners sought to enjoin Napocor from selling the Caliraya Hydroelectric Power Plant, as they claimed ownership over portions of the land where the power plant stood, specifically Lot 1873 and Lot 72.[8] Additionally, the petitioners demanded **payment of damages** from Napocor as rentals for the use and occupation of the lots since 1936 – the year Napocor first occupied the lot and began construction of the power plant.

Napocor denied the petitioners' allegations and claimed it acquired portions of **Lot 1873**[9] through purchase from the petitioners' half sister, Oliva Ferrer. The sale was evidenced by two deeds dated August 31, 1940[10] and March 4, 1948, both duly notarized and registered under Act No. 3344 (System of Registration for Unregistered Real Estate). As for **Lot 72**, Napocor claimed that its right to occupy and use the lot stemmed from the Right of Way Agreement executed in its favor by the petitioners' predecessors on April 22, 1940. The encumbrance was annotated on the title covering Lot 72.[11]

The petitioners opposed Napocor's claims and contended that the sale of portions of Lot 1873 between Napocor and Oliva Ferrer was void. They alleged that Oliva Ferrer was a co-heir who owned, in common with the petitioners, Lot 1873 – a fact clearly indicated in both deeds of sale covering Lot 1873.[12]

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[7] Civil Case No. SC-3604; *id.* at 92-97.

[8] The petitioners were also claiming ownership rights over a third lot, Lot 90. Napocor admitted occupying portions of Lot 90, in excess of the areas it' purchased. Thus, the RTC ordered Napocor to pay the reasonable value of the excess areas occupied by it, determined after a survey of Lot 90. Both parties did not contest the RTC's ruling insofar as Lot 90 was concerned; *id.* at 124.

[9] Lot 1873 has a total land area of 50,079 square meters; Napocor bought 29,598 square meters. *Id.* at 93.

[10] *Id.* at 208-210.

[11] *Id.* at 123.

[12] *Id.* at 208.

As a co-heir, Oliva Ferrer inherited only 3,129.93 square meters of Lot 1873,[13] and the sale to Napocor of an area in excess of this amount without authority from the other co-owners was, according to the petitioners, void. To further support their claim of ownership, the petitioners presented a Certification dated January 26, 1978, issued by the Bureau of Lands, stating that Lot 1873 was claimed by and surveyed for Crispulo Ferrer. They also relied on Original Certificate of Title (*OCT*) Nos. P-3898 and P-3899 issued on September 25, 1977 in the name of Emiliano Ferrer, son of Crispulo Ferrer and Engracia Puhawan and one of the petitioners herein.

On March 15, 2000, the Regional Trial Court (*RTC*) issued a decision,[14] dismissing the petitioners' action for injunction and damages after finding their claims over Lot 1873 and Lot 72 insufficient.[15]

The trial court ruled that the petitioners failed to present convincing proof of their claim of ownership of **Lot 1873**; other than the Bureau of Lands certificate, which by itself was not a proof of ownership, the petitioners had nothing to support their claim. In contrast, Napocor was able to present two deeds of sale covering 29,598 square meters of Lot 1873, which were duly notarized and registered under Act No. 3344. The RTC also took cognizance of the fact that Napocor has been in possession of Lot 1873 and constructed numerous structures thereon since 1936. Thus, it found it ridiculous for petitioners

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[13] Crispulo Ferrer left behind eight heirs who, the petitioners claimed, were each entitled to inherit 3,129.93 square meters of Lot 1873; *id.* at 9-10.

[14] Penned by Judge Leonardo L. Leonida; *id.* at 117-124.

[15] The dispositive portion of the RTC's decision of March 15, 2000 read:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Denying the petition for preliminary injunction;
2. Dismissing the action for damages;
3. Ordering the defendants to pay the plaintiffs the reasonable value of the excess area occupied by [Napocor] in lot 90[,] estimated to be [438] square meters or such excess area as may be determined through a survey of lot 90.

SO ORDERED. *Id.* at 124.

or their predecessors not to raise a restraining hand or shout of protest during Napocor's long occupation and use of the lot.[16]

As for **Lot 72**, the RTC found that the certificate of title covering the lot contained an entry dated May 20, 1940, referring to an instrument dated April 22, 1940, by virtue of which the heirs of Bernabe Puhawan (which included Engracia Puhawan, one of the petitioners' predecessors) granted Napocor a right of way over the lot. The entry was further classified as a waterway, an intake road, and a right of way, making the easement a legal encumbrance under Section 44 of Presidential Decree No. 1529[17] or the Property Registration Decree. In the absence of proof that this has been cancelled, the RTC said that the easement should be respected. Moreover, the RTC also found that Lot 72 had already been acquired by Hilaria and Victoria Puhawan through a deed of extrajudicial partition of Bernabe Puhawan's estate executed on November 3, 1939. Hence, the petitioners, as heirs of Engracia Puhawan, have no legal claim over Lot 72.[18]

The petitioners assailed the RTC decision through a petition for *certiorari* filed with the CA. **The CA found no reason to reverse the trial court's decision and accordingly affirmed it through its decision of May 12, 2009.**[19] **The CA likewise found unmeritorious the petitioners' motion for reconsideration and denied it through its resolution of October 23, 2009**,[20] a copy of which was received by petitioners on November 3,

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[16] *Id.* at 122.

[17] Sec. 44 – Every registered owner receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land taking a certificate of title for value and in good faith, shall hold the same free from all encumbrances except those noted on said certificate and any of the following encumbrances which may be subsisting, namely:

x x x x x x x x x

Third. Any public highway or private way established or recognized by law[.]

[18] *Rollo,* p. 123.

[19] *Supra* note 2.

[20] *Ibid.*

2009. Thirty-eight days later, on December 11, 2009, the petitioners filed with the Court a petition for *certiorari* under Rule 65 of the Rules of Court. Rejecting the petitioners' arguments, we denied the petition and denied the subsequent motion for reconsideration in our Resolutions of January 18, 2010 and April 21, 2010, respectively.

Procedurally, the Court found that the petitioners, by resorting to a *certiorari* petition, erred in choosing the legal remedy against the CA rulings. We noted that the errors the petitioners raised were errors of law rather than errors of jurisdiction, since "[t]he gist of [the] petitioners' objections to the CA ruling was the appellate court's failure to appreciate their arguments and evidence in support of their claims, but this does not amount to an error of jurisdiction. A *certiorari* writ will not be issued to cure errors by the lower court in its appreciation of the evidence, its conclusions anchored on the said findings, and its conclusions of law. As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctible by an appeal x x x [by] *certiorari* filed under Rule 45 [of the Rules of Court]."[21] **We considered the resort to a *certiorari* petition under Rule 65 as a disingenuous move to circumvent the rule on the period for filing an appeal by *certiorari* under Rule 45 which allows only 15 days from notice of the judgment appealed from to file an appeal. As the petition was filed 38 days after receipt of the assailed CA resolution denying the motion for reconsideration, the petitioners used the *certiorari* petition as a substitute for the lost appeal, a move the Court has consistently reproved.**

Despite these procedural lapses, the Court nevertheless reviewed the merits of the petitioners' case, but as the RTC and the CA did, found nothing to support the petitioners' claims. In seeking to enjoin Napocor from selling Lot 1873 and to claim damages for the use and occupation thereof, the petitioners relied on their claim of ownership which they

[21] *Rollo*, pp. 219-220.

contended was sufficiently proved by (1) the certification from the Bureau of Lands showing that their predecessor, Crispulo Ferrer, was a survey claimant, and (2) the OCTs covering the lot in the name of co-petitioner Emiliano Ferrer. We rejected these claims by ruling that:

The Bureau of Lands Certification] did not adequately establish their right to Lot 1873. **All that the Certification proved was that Crispulo Ferrer was a survey claimant.** The purpose of a survey plan is simply to identify and delineate the extent of the land. **A survey plan, even if approved by the Bureau of Lands, is not a proof of ownership of the land covered by the plan**. Even though the OCTs in Emiliano Ferrer's name covering portions of Lot 1873 were never contested, **the CA found that the portions of land covered by his certificates of title were not those on which Napocor's power plant stood.**[22]

We further ruled that any objection the petitioners might have against the sale of Lot 1873 between Napocor and Oliva Ferrer has already been barred by the principle of laches. We explained:

From 1936 when Napocor began construction of the power plant up to 1997 when the action for injunction and damages was instituted, the petitioners made no move to assert their claim over Lot 1873; for 61 long years, the petitioners have slept on their rights, but now ironically demand vigilance on the Court's part to protect their rights.[23]

As for Lot 72, we declared that:

[T]he CA correctly pointed out that the petitioners never took any issue with the RTC's ruling concerning the parties' rights over [this lot]; the petitioners devoted most of their time discussing their claims over Lot 1873. At any rate, the parties' rights with respect to these lots [this lot] have been carefully considered and resolved by the RTC and CA, and we agree with their findings and conclusions [that Napocor's easement rights over Lot 72 subsists].[24]

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[22] *Id.* at 221.

[23] *Id.* at 222.

[24] *Id.* at 223.

Insisting that they have a rightful claim over Lot 1873 and Lot 72, the petitioners now request leave to file a second motion for reconsideration.

Petitioners' Second Motion for Reconsideration

The petitioners insist that they have a better claim than Napocor over Lot 1873 and Lot 72. Believing that they have a strong and meritorious case against Napocor, the petitioners contend that the interest of justice should override the application of procedural rules and the principle of laches.

In support of their claim over Lot 1873, the petitioners reiterate the same allegations and arguments they raised before the RTC and the CA (specifically, the Bureau of Lands certificate in Crispulo Ferrer's name). They also contend that they have acquired ownership over Lot 1873 through prescription, as their predecessors have taken possession of and occupied the lot since 1916. By the time Napocor purportedly purchased the lot from Oliva Ferrer in 1940 and 1948, the petitioners have already acquired ownership over Lot 1873 through extraordinary acquisitive prescription for over 30 years under Article 1137 of the Civil Code.

Additionally, the petitioners challenge the CA's finding that they never raised any objection concerning Lot 72 before the CA. They point to the memorandum they filed before the CA where they alleged that despite the grant of a right of way, Napocor used an area that was more than what was granted to it by the petitioners' predecessors. By alleging this matter, the petitioners claim to have timely raised the issue of whether Napocor should pay damages by way of rentals for the use and occupation of areas of Lot 72 in excess of what was granted to it.

The Court's Ruling

We **DENY** the requested leave to file a second motion for reconsideration.

Section 3, Rule 15 of the Internal Rules of the Supreme Court (*IRSC*) sets forth the rule when the Court may entertain a second motion for reconsideration. The rule states:

Sec. 3. *Second motion for reconsideration.* – The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court *en banc* upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.

In the Division, a vote of three Members shall be required to elevate a second motion for reconsideration to the Court *En Banc*.

Aside from meeting the voting requirements, a movant is required by the IRSC to substantially show that a reconsideration of the Court's ruling is necessary in the higher interest of justice, which standard is satisfied upon proving that the assailed ruling is both (1) legally erroneous and (2) patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties.

In this case, petitioners' reasons do not sufficiently establish that a reversal of the Court's ruling will serve the higher interest of justice. On the contrary, for the Court to consider and find meritorious the petitioners' argument will mean abandoning settled principles of law to accommodate the petitioners' stale and clearly unsubstantiated claims.

The petitioners insist that the Bureau of Lands certificate, stating that their predecessor Crispulo Ferrer was a survey claimant of the property covered by Cadastral Survey No. 90 of Lumban, Laguna, sufficiently establishes their claim over **Lot 1873**, despite our consistent ruling that the certificate is no proof of title of ownership over the property.

A survey made in a cadastral proceeding merely *identifies* each lot preparatory to a judicial proceeding for adjudication of title to any of the lands upon claim of interested parties.[25] The

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[25] *Republic v. Intermediate Appellate Court*, 239 Phil. 393, 402 (1987).

purpose of a survey plan is simply to identify and delineate the extent of the land.[26] *It is not a proof of ownership of the land covered by the plan*.[27] In the present case, the petitioners were not even able to present the actual survey plan approved by the Bureau of Lands; all that they relied on was the Bureau of Lands certificate that proved nothing more beyond than what was expressly stated therein: that Lot 1873 is in the name of Crispulo Ferrer, *as a survey claimant*.

Notably, nothing in the certificate indicated whether Crispulo Ferrer was actually in possession of Lot 1873 or for how long he had been in possession thereof. We find the matter and duration of the petitioners and their predecessors' possession relevant in view of the petitioners' contention that they acquired ownership of Lot 1873 through prescription, *i.e.*, the lapse of the requisite 30-year period provided in Article 1137 of the Civil Code. Article 1137 states:

> Article 1137. Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith.

The petitioners' reliance on Article 1137 of the Civil Code is not entirely accurate. The petitioners alleged that Lot 1873 is an alienable and disposable land of the public domain. However, acquisition of ownership over *alienable public lands* is governed, not by the general provisions on prescription in the Civil Code, but more particularly, by Commonwealth Act No. 141 (*CA 141*) or the Public Land Act. Article 1137 of the Civil Code authorizes acquisition by prescription only of private lands, not of public lands even though these may have been decreed as alienable and disposable.

Alienable and disposable lands of the public domain may be acquired by private persons, not by virtue of prescription but,

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[26] *Director of Lands v. Reyes*, 160A Phil. 832 (1975).

[27] See *Gimeno v. CA*, 170 Phil. 645 (1977); *Heirs of Marina Regalado v. Republic*, G.R. No. 168155, February 15, 2007, 516 SCRA 38.

through *adverse possession*, upon compliance with the requirements of Section 48(b) of CA 141, which states:

> Sec. 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:
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> x x x x x x x x x
>
> (b) Those who by themselves or through their predecessors in interest have been **in open, continuous, exclusive, and notorious possession and occupation** of **alienable and disposable lands of the public domain**, under a *bona fide* claim of acquisition of ownership, since June 12, 1945, *or earlier, immediately preceding the filing of the application for confirmation of title* except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

Verily, it is not the mere lapse of time that vests title over the land to the claimant; it is also necessary that the land be an alienable and disposable land of the public domain and that the claimant be in open, continuous, exclusive, and notorious possession of the land. Listed down, the acquisition through adverse possession of public lands requires the following:

1. the land applied for must be an alienable and disposable public land; and
2. the claimants, by themselves or through their predecessors-in-interest, have been in open, continuous, exclusive, and notorious possession and occupation of the land since June 12, 1945 or earlier.[28]

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[28] *Republic v. Divinaflor*, 402 Phil. 498, 507-508 (2001), citing *Republic v. CA*, 235 SCRA 567 (1994).

Upon an exhaustive review of the records and a thorough evaluation of the petitioners' allegations and arguments, we are unconvinced that the petitioners have satisfied these requirements.

First, no conclusive proof appears in the records showing that Lot 1873 has been officially decreed to be an alienable and disposable public land at the time the petitioners' predecessors supposedly occupied the lot in 1916 or at anytime thereafter. That petitioners' predecessor, Crispulo Ferrer, was a claimant and, purportedly, had a survey plan of Lot 1873 does not necessarily imply that the lot is an alienable land.[29]

Second, we similarly found nothing in the records that would support the petitioners' allegation that their predecessors had occupied Lot 1873 since 1916 or at anytime before the cut-off date of June 12, 1945. As mentioned, the Bureau of Lands certificate, issued on January 26, 1978, simply stated that Crispulo Ferrer was a survey claimant of Lot 1873, without indicating the nature and duration of his possession. The requirement of an open, continuous, exclusive, and notorious occupation of alienable public land must be *conclusively established* to avoid the erroneous validation of actually fictitious claims of possession over the property.[30]

Even supposing that the petitioners, through their predecessors, have held possession of Lot 1873 since 1916, this condition only works to their disadvantage. As early as 1936, Napocor occupied portions of Lot 1873 and began construction of the power plant. On May 30, 1940,[31] Oliva Ferrer granted Napocor the right of way over the lot. Then, on August 31, 1940 and March 4, 1948, she sold portions of the lot to Napocor. In all of these instances, no word of protest was heard from the petitioners and their predecessors, at least until April 1997, when they demanded payment of rent from

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[29] *Republic v. CA*, 238 Phil. 429 (1987).

[30] *San Miguel Corporation v. CA*, G.R. No. L-49903, February 21, 1983, 120 SCRA 734, 735.

[31] *Rollo,* p. 120.

Napocor for the use and occupation of Lot 1873. The petitioners' inaction establishes the fact that they were never in open, ***continuous***, ***exclusive***, and ***notorious*** possession of Lot 1873. More importantly, the petitioners' inaction from 1936 to 1997, or for 61 long years, makes the application of the principle of laches more than justified to defeat their claim over Lot 1873.

The application of the principle of laches requires the presence of the following elements – all of which are present in this case:

(1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made and for which the complainant seeks a remedy;

(2) delay in asserting the complainant's right, the complainant having had knowledge or notice, of defendant's conduct and having been afforded an opportunity to institute a suit;

(3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and

(4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred.[32]

Napocor executed acts that were contrary to the petitioners' asserted claim of ownership over Lot 1873, yet until 1997, the petitioners made no move to vindicate their claimed right and resist Napocor's intrusion. Napocor certainly could not be blamed if it considered itself the true owner of Lot 1873 and expected no adverse claims thereto, as it had acquired the lot by purchase as early as 1940 and had constructed numerous structures thereon. To recognize the petitioners' belated and legally baseless claim over Lot 1873 would mean requiring Napocor to pay rentals and interest from 1936 to the present, a move that could possibly bleed Napocor's coffers dry to the detriment of the public. *Vigilantibus et non dormientibus jura subveniunt* – the laws serve the vigilant, not those who sleep. Quoting the Court's ruling in *Vda. de Rigonan v. Derecho*, our resolution of April 21, 2010 said:

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[32] *Claverias v. Quingco*, G.R. No. 77744, March 6, 1992, 207 SCRA 66, 83.

x x x The Court aptly stated in *Miguel v. Catalino*:

> Courts cannot look with favor at parties who, by their silence, delay, and inaction, knowingly induce another to spend time, effort, and expense in cultivating the land, paying taxes and making improvements thereon x x x only to spring from ambush and claim title when the possessor's efforts and the rise of land values offer an opportunity to make easy profit at his expense.

To grant respondents relief when they have not even offered any justifiable excuse for their inaction would be unjust. It is certainly beyond our comprehension how they could have remained silent for more than 50 years. **They have only themselves to blame if the Court at this late hour can no longer afford them relief against the inequities they allegedly suffered.**[33]

The principle of laches applies with equal force to defeat the petitioners' claim over Lot 72 which was occupied by Napocor way back in 1937. Also, we find no reason to disagree with the RTC's finding that Lot 72 had already been adjudicated in favor of, and for which the property was in fact titled in the names of, Hilaria and Victoria Puhawan. As the heirs of Engracia Puhawan, the petitioners likewise have no valid claim over Lot 72.

The essence of the Court's adjudicatory function is to apply the law to facts, as supported by the evidence and the records. The petitioners have already exhausted all possible legal arguments and, as we have discussed, none of which are compelling enough to require reconsideration of our past ruling. To be sure, repetitive filing of legally useless submissions cannot pressure this Court into taking another look at an unmeritorious case; they can only increase the petitioners' legal expenses, as in this case, where we are ordering the payment of double costs for the act of unnecessarily and stubbornly wasting the Court's time.

WHEREFORE, we *DENY* the petitioners' motion for leave to file a second motion for reconsideration of our April 21, 2010 Resolution. We hereby declare our Resolutions of January 18,

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[33] 502 Phil. 202, 229-230 (2005).

2010 and April 21, 2010 final and executory. No further pleadings shall be entertained. We accordingly direct that entry of judgment be immediately made. Double costs against petitioners.

SO ORDERED.

Carpio Morales (Chairperson), Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 190633. July 5, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BASILIO CADAP,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; ELEMENTS.—** For conviction in the crime of rape, the following elements must be proved: 1. that the accused had carnal knowledge of a woman; 2. that said act was accomplished under any of the following circumstances — a. through force, threat or intimidation; b. when the offended party is deprived of reason or is otherwise unconscious; c. by means of fraudulent machination or grave abuse of authority; or d. when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2. **REMEDIAL LAW; EVIDENCE; GUIDING PRINCIPLES IN THE REVIEW OF RAPE CASES.—** By the distinctive nature of rape cases, conviction thereon usually rests solely on the basis of the testimony of the victim, provided that such testimony is credible, natural, convincing and consistent with human nature and the normal course of things. Accordingly, the Court has

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[*] Designated additional Member of the Third Division effective May 17, 2010, per Special Order No. 843 dated May 17, 2010.

consistently adhered to the following guiding principles in the review of similar cases, to wit: (1) an accusation for rape can be made with facility; while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that, in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.

3. ID.; ID.; CREDIBILITY OF WITNESSES; ASSESSMENT OF THE TRIAL COURT ON THE CREDIBILITY OF THE WITNESS, ACCORDED HIGHEST RESPECT.— Complementing the foregoing principles is the rule that the credibility of the victim is always the single most important issue in prosecution for rape; that in passing upon the credibility of witnesses, the highest degree of respect must be afforded to the findings of the trial court. AAA had pointed to the appellant as the person who forced himself on her in the afternoon of December 2, 2006. And the unyielding principle is that denial cannot prevail over the victim's categorical and positive identification of the accused in the absence of proof of ill motive. Here, 11-year-old AAA identified appellant as the malefactor. Considering her tender years, she could not have invented a horrid tale, but must have recounted a harrowing experience. Indeed, it is unbelievable for an 11-year-old country lass to publicly disclose that she had been sexually abused, then undergo the trouble and humiliation of a public trial if her motive were other than to protect her honor and bring to justice the person who unleashed his lust on her. Just like the CA, the Court loathes to disturb the trial court's assessment of AAA's credibility, having had the opportunity to observe her demeanor on the witness stand. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. When a girl, especially a minor, says that she has been defiled, she says in effect all that is necessary to show that rape was inflicted on her.

4. CRIMINAL LAW; RAPE; ABSENCE OF INJURIES IN EXTERNAL GENITALIA DOES NOT NEGATE THE

COMMISSION OF RAPE.— Appellant has made much of the absence of scratches or contusions in AAA's external genitalia. Given the unwavering testimony of AAA as to her ordeal in the hands of appellant, however, the Court cannot accord merit to the argument that the lack of physical manifestation of rape weakens the case against appellant. As aptly observed by the CA, the medical report on AAA is only corroborative of the finding of rape. The absence of external signs or physical injuries, such as freshly broken hymen, or laceration, on the complainant's body, does not necessarily negate the commission of rape. This is because complete or full penetration of the victim's private parts is not required to consummate the crime of rape. Neither is hymenal laceration or like vaginal injury an element of the crime of rape, albeit a healed or fresh laceration is a compelling proof of defloration. What is more, the foremost consideration in the prosecution of rape is the victim's testimony and not the findings of the medico-legal officer. In fact, a medical examination of the victim is not indispensable in a prosecution for rape; the victim's testimony alone, if credible, is sufficient to convict.

5. ID.; ID.; PENALTY AND CIVIL LIABILITIES.— The award by the CA of civil indemnity *ex delicto* in the amount of Php 75,000 up from the Php 50,000 decreed by the RTC, and the increase from Php 50,000 to Php 75,000 of the award of moral damages, should be modified. The award of both items at the level set forth in the CA decision is proper only in qualified rape where the imposable penalty under the law is death, albeit Republic Act No. 9346 now prohibits the imposition of the death penalty. The charge against appellant, however, and for which he was convicted, was simple rape punishable under paragraph 1 of Art. 266-B of the Revised Penal Code by *reclusion perpetua*. In line with current jurisprudence, the correct amount should be Php 50,000 as civil indemnity and the same amount as moral damages. The award of Php 30,000 by way of exemplary damages is, however, proper as a measure to deter other individuals with aberrant sexual tendencies.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J*.:

This is an appeal from the Decision[1] dated September 30, 2009 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03388 affirming with modification the Decision[2] of the Regional Trial Court (RTC) of Lagawe, Ifugao, which adjudged appellant Basilio Cadap guilty beyond reasonable doubt of statutory rape.

In an information filed before the RTC of Lagawe, Ifugao, thereat docketed as Crim. Case No. 1658 and eventually raffled to Branch 14 of the court, Cadap was charged with statutory rape, allegedly committed as follows:

That on or about the afternoon of December 2, 2006 at Tungod, Lagawe, Ifugao, and within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one [AAA],[3] a minor, eleven (11) years of age against her will and consent.

CONTRARY TO LAW.

Upon arraignment, appellant, duly assisted by counsel, pleaded not guilty to the charge.

During the pre-trial conference, the private complainant spurned the proffered plea bargaining to a lesser offense. The parties then stipulated on the following, among others: The defense admitted the birth certificate of AAA (Exhibit "A") and the medical certificate (Exhibit "B") prepared by Dr.

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[1] *Rollo*, pp. 2-12. Penned by Associate Pampio A. Abarintos and concurred in by Associate Justices Juan Enriquez and Francisco P. Acosta.

[2] *Id.* at 47-50. Penned by Presiding Judge Joseph P. Baguilat.

[3] The name and personal circumstances of the victim and her immediate family are withheld per Republic Act No. 7610 or *The Special Protection of Children Against Child Abuse, Exploitation, and Discrimination Act* (1992) and Republic Act 9262 or the *Anti-Violence Against Women and Their Children Act* (2004).

Bernardo Bulintao, but denied the veracity of the entries in both documents.

During trial, the prosecution presented testimonial and documentary evidence essentially to establish the following facts and incidents:

In the afternoon of December 2, 2006, AAA, then eleven (11) years old, was with her aunt, BBB, at the house of one Robert Dinamling, in Tungod, Lagawe, Ifugao, attending a "Binogwa," an Ifugao ritual for a dead relative. After lunch, AAA decided to go to a friend's house to play. Before AAA could reach her friend's house, Cadap suddenly appeared, grabbed, and then led her to an adjacent forested area. While alarmed over this turn of events, AAA did not resist appellant's advances, having been sexually abused once before and threatened with physical harm by appellant. Appellant, while holding a piece of wood, then removed both his pants and AAA's clothes. He then laid AAA on the ground and inserted his penis into her vagina while fondling her breast. Moments later, something came out of appellant's penis, implying that he ejaculated.

Meanwhile, BBB started looking for her niece. She met one Jenifer Gumiling who pointed her in the direction where AAA was last seen traversing. Since she was carrying a baby, BBB requested one Benedict to do the searching. Eventually, Benedict found where AAA was. Thus informed of AAA's whereabouts, BBB, together with Bulahao Kimayong and several others, proceeded to the forested area. From a short distance, BBB saw the naked appellant on top of AAA. Furious, BBB jumped at appellant, kicking and shouting at him. BBB would later call the police to arrest appellant. AAA would in turn be brought to the Ifugao Provincial Hospital where Dr. Bernardo Bulintao examined her.

On the other hand, the defense expressly waived its right to present evidence.

The trial court found that AAA positively identified appellant as the one who sexually abused her. The court also found AAA's testimony on the fact of molestation adequately corroborated

by competent testimonial evidence. On May 16, 2008, the RTC rendered judgment[4] finding appellant guilty of rape, as defined under Paragraphs 1(a) and (d) of Article 266-A of the Revised Penal Code, as amended, and sentencing him to suffer the penalty of *reclusion perpetua* and to pay AAA PhP 50,000 as civil indemnity *ex delicto* and PhP 50,000 as moral damages.

On appellate review, the CA affirmed the findings and ruling of the RTC with the modification as to the amount and the kind of damages imposable. The dispositive portion of the CA's decision dated September 30, 2009 reads:

> IN LIGHT OF ALL THE FOREGOING, the appeal is hereby **DENIED**. The Decision of the Regional Trial Court (RTC) is hereby **AFFIRMED WITH MODIFICATION**. Accused-appellant Basilio Cadap is sentenced to suffer the penalty of *reclusion perpetua* and to pay the victim AAA (to be identified through the Information in this case) ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.
>
> SO ORDERED.[5]

On October 19, 2009, appellant filed his Notice of Appeal of the CA Decision, therein manifesting that he is appealing said decision on the ground that it is contrary to facts, law and jurisprudence. As before the appellate court, appellant would claim that the CA and, the RTC before it, erred in finding him guilty beyond reasonable doubt.

After a review of the records of this case, the Court affirms appellant's conviction.

Evidently, appellant anchors his defense on denial. He denies having committed the criminal act imputed against him and assails the credibility of AAA and other prosecution witnesses, particularly Bulahao Kimayong, who testified merely seeing, during the period material, AAA and appellant, both without their clothes on, lying side by side. To appellant, AAA's account of penile penetration and purported ejaculation is belied by

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[4] *Supra* note 2.

[5] *Supra* note 1.

physical evidence. He maintains, in this regard, that the medical examination conducted on the very same date of the incident revealed the absence of abrasion, contusions, or scratches in AAA's external genitalia. He also invites attention to the fact that no spermatozoa was found in her vagina.

We are not persuaded.

For conviction in the crime of rape,[6] the following elements must be proved:

1. that the accused had carnal knowledge of a woman;
2. that said act was accomplished under any of the following circumstances––
   a. through force, threat or intimidation;
   b. when the offended party is deprived of reason or is otherwise unconscious;
   c. by means of fraudulent machination or grave abuse of authority; or
   d. when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.[7]

By the distinctive nature of rape cases, conviction thereon usually rests solely on the basis of the testimony of the victim, provided that such testimony is credible, natural, convincing and consistent with human nature and the normal course of things.[8] Accordingly, the Court has consistently adhered to the following guiding principles in the review of similar cases, to wit: (1) an accusation for rape can be made with facility; while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that, in the nature of things, only two persons are usually involved

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[6] Penile or organ rape.

[7] REVISED PENAL CODE, Art. 266-A; *People v. Barangan*, G.R. No. 175480, October 2, 2007, 534 SCRA 570.

[8] *People v. Corpuz*, G.R. No. 168101, February 13, 2006, 482 SCRA 435, 444.

in the crime of rape, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[9]

Complementing the foregoing principles is the rule that the credibility of the victim is always the single most important issue in prosecution for rape;[10] that in passing upon the credibility of witnesses, the highest degree of respect must be afforded to the findings of the trial court.[11]

AAA had pointed to the appellant as the person who forced himself on her in the afternoon of December 2, 2006. And the unyielding principle is that denial cannot prevail over the victim's categorical and positive identification of the accused in the absence of proof of ill motive.[12] Here, 11-year-old AAA identified appellant as the malefactor. Considering her tender years, she could not have invented a horrid tale, but must have recounted a harrowing experience. Indeed, it is unbelievable for an 11-year-old country lass to publicly disclose that she had been sexually abused, then undergo the trouble and humiliation of a public trial if her motive were other than to protect her honor and bring to justice the person who unleashed his lust on her.

Just like the CA, the Court loathes to disturb the trial court's assessment of AAA's credibility, having had the opportunity to observe her demeanor on the witness stand. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would

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[9] *Id.*; *People v. Quiachon*, G.R. No. 170236, August 31, 2006, 500 SCRA 704, 714; *People v. Arsayo*, G.R. No. 166546, September 26, 2006, 503 SCRA 275, 284; *People v. Bidoc*, G.R. No. 169430, October 21, 2006, 506 SCRA 481, 495.

[10] *People v. Ceballos, Jr.*, G.R. No. 169642, September 14, 2007, 533 SCRA 493.

[11] *People v. Balonzo*, G.R. No. 176153, September 21, 2007, 533 SCRA 760.

[12] *People v. Rentoria*, G.R. No. 175333, September 21, 2007, 533 SCRA 708.

be exposed if the matter to which she testified is not true.[13] When a girl, especially a minor, says that she has been defiled, she says in effect all that is necessary to show that rape was inflicted on her.[14]

Appellant has made much of the absence of scratches or contusions in AAA's external genitalia. Given the unwavering testimony of AAA as to her ordeal in the hands of appellant, however, the Court cannot accord merit to the argument that the lack of physical manifestation of rape weakens the case against appellant. As aptly observed by the CA, the medical report on AAA is only corroborative of the finding of rape. The absence of external signs or physical injuries, such as freshly broken hymen, or laceration, on the complainant's body, does not necessarily negate the commission of rape.[15] This is because complete or full penetration of the victim's private parts is not required to consummate the crime of rape. Neither is hymenal laceration or like vaginal injury an element of the crime of rape,[16] albeit a healed or fresh laceration is a compelling proof of defloration.[17] What is more, the foremost consideration in the prosecution of rape is the victim's testimony and not the findings of the medico-legal officer. In fact, a medical examination of the victim is not indispensable in a prosecution for rape; the victim's testimony alone, if credible, is sufficient to convict.[18]

AAA's testimony that she was raped was, as found by the CA, corroborated on its material points such that appellant and AAA were seen by BBB in what appeared to be an act of sexual congress. Furthermore, as related by the CA, although witness

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[13] *Llave v. People*, G.R. No. 166040, April 26, 2006, 488 SCRA 376.

[14] *People v. Corpuz*, G.R. No. 168101, February 13, 2006, 428 SCRA 435; *People v. Bidoc*, G.R. No. 169430, October 21, 2006, 506 SCRA 481.

[15] *People v. Espino, Jr.*, G.R. No. 176742, June 17, 2008, 554 SCRA 682; citing *People v. Boromeo*, G.R. No. 150501, June 3, 2004, 430 SCRA 533, 546.

[16] *People v. Espino, Jr.*, *supra*; citing *People v. Esteves*, 438 Phil. 687, 699 (2002).

[17] *People v. Sambrano*, G.R. No. 143708, February 24, 2003, 398 SCRA 106.

[18] *People v. Espino, Jr.*, *supra*; citing *People v. Logmao*, 414 Phil. 378, 387 (2001).

Bulahao testified to not actually seeing the two having sexual intercourse, he nevertheless said seeing the two lying on the ground naked. Bulahao's testimony is inferential or circumstantial evidence of sexual intercourse between the minor AAA and appellant.

In all, we find no reason to disturb the factual findings of the CA, confirmatory of that of the trial court.

The award by the CA of civil indemnity *ex delicto* in the amount of PhP 75,000 up from the PhP 50,000 decreed by the RTC, and the increase from PhP 50,000 to PhP 75,000 of the award of moral damages, should be modified. The award of both items at the level set forth in the CA decision is proper only in qualified rape where the imposable penalty under the law is death, albeit Republic Act No. 9346[19] now prohibits the imposition of the death penalty. The charge against appellant, however, and for which he was convicted, was simple rape punishable under paragraph 1 of Art. 266-B of the Revised Penal Code by *reclusion perpetua*. In line with current jurisprudence, the correct amount should be PhP 50,000 as civil indemnity and the same amount as moral damages.[20]

The award of PhP 30,000 by way of exemplary damages is, however, proper as a measure to deter other individuals with aberrant sexual tendencies.[21]

WHEREFORE, the appealed decision of the Court of Appeals dated September 30, 2009 is hereby *AFFIRMED* with the *MODIFICATION* that the amount of PhP 75,000 awarded as civil indemnity and PhP 75,000 as moral damages shall be respectively reduced to PhP 50,000.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Del Castillo, and *Perez,*

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[19] The Anti-Death Penalty Law.

[20] *People v. Dalisay*, G.R. No. 188106, November 25, 2009; citing *People v. Abellera*, G.R. No. 166617, July 3, 2007, 526 SCRA 329.

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

SECOND DIVISION

[G.R. No. 191404. July 5, 2010]

EUMELIA R. MITRA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and FELICISIMO S. TARCELO,** *respondents.*

SYLLABUS

1. **CRIMINAL LAW; BOUNCING CHECKS LAW (BP 22); PURPOSE.—** BP 22 or the Bouncing Checks Law was enacted for the specific purpose of addressing the problem of the continued issuance and circulation of unfunded checks by irresponsible persons. To stem the harm caused by these bouncing checks to the community, BP 22 considers the mere act of issuing an unfunded check as an offense not only against property but also against public order. The purpose of BP 22 in declaring the mere issuance of a bouncing check as *malum prohibitum* is to punish the offender in order to deter him and others from committing the offense, to isolate him from society, to reform and rehabilitate him, and to maintain social order. The penalty is stiff. BP 22 imposes the penalty of imprisonment for at least 30 days or a fine of up to double the amount of the check or both imprisonment and fine.

2. **ID.; ID.; THE PERSON WHO ACTUALLY SIGNED THE CORPORATE CHECK SHALL BE LIABLE FOR VIOLATION THEREOF; APPLICATION.—** The third paragraph of Section 1 of BP 22 reads: "Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act." This provision recognizes the reality that a corporation can only act through its officers. Hence, its wording is unequivocal and mandatory – that the *person who actually signed* the corporate check shall be held liable for a violation of BP 22. This provision does not contain any condition, qualification or limitation. In the case of *Llamado v. Court of Appeals,* the Court ruled that the accused was liable on the unfunded corporate check which he signed as treasurer of the corporation. He could not invoke his lack of involvement in the negotiation for the transaction as a defense because

BP 22 punishes the mere issuance of a bouncing check, not the purpose for which the check was issued or in consideration of the terms and conditions relating to its issuance. In this case, Mitra signed the LNCC checks as treasurer. Following *Llamado*, she must then be held liable for violating BP 22.

3. **ID.; ID.; PRESUMPTION THAT THE DRAWER GAINS KNOWLEDGE OF THE INSUFFICIENCY OF FUNDS AROSE ONCE THE CHECK IS DISHONORED.—** Another essential element of a violation of BP 22 is the drawer's knowledge that he has insufficient funds or credit with the drawee bank to cover his check. Because this involves a state of mind that is difficult to establish, BP 22 creates the *prima facie* presumption that once the check is dishonored, the drawer of the check gains knowledge of the insufficiency, unless within five banking days from receipt of the notice of dishonor, the drawer pays the holder of the check or makes arrangements with the drawee bank for the payment of the check. The service of the notice of dishonor gives the drawer the opportunity to make good the check within those five days to avert his prosecution for violating BP 22.

4. **REMEDIAL LAW; APPEALS; ISSUES; QUESTION ON PROPER SERVICE OF NOTICE OF DISHONOR OF THE CHECK IS A FACTUAL ISSUE NOT PROPER FOR REVIEW.—** Mitra alleges that there was no proper service on her of the notice of dishonor and, so, an essential element of the offense is missing. This contention raises a factual issue that is not proper for review. It is not the function of the Court to re-examine the finding of facts of the Court of Appeals. Our review is limited to errors of law and cannot touch errors of facts unless the petitioner shows that the trial court overlooked facts or circumstances that warrant a different disposition of the case or that the findings of fact have no basis on record. Hence, with respect to the issue of the propriety of service on Mitra of the notice of dishonor, the Court gives full faith and credit to the consistent findings of the MTCC, the RTC and the CA.

5. **CRIMINAL LAW; BOUNCING CHECKS LAW (BP 22); ELEMENTS, PRESENT IN CASE AT BAR.—** To reiterate the elements of a violation of BP 22 as contained in the above-quoted provision, a violation exists where: 1. a person makes

or draws and issues a check to apply on account or for value; 2. the person who makes or draws and issues the check knows at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the full payment of the check upon its presentment; and 3. the check is subsequently dishonored by the drawee bank for insufficiency of funds or credit, or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment. There is no dispute that Mitra signed the checks and that the bank dishonored the checks because the account had been closed. Notice of dishonor was properly given, but Mitra failed to pay the checks or make arrangements for their payment within five days from notice. With all the above elements duly proven, Mitra cannot escape the civil and criminal liabilities that BP 22 imposes for its breach.

APPEARANCES OF COUNSEL

M.C. Santos Law Office for petitioner.
Dennis C. Macatangay for respondent.

D E C I S I O N

MENDOZA, *J*.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the July 31, 2009 Decision[1] and the February 11, 2010 Resolution of the Court of Appeals (CA) in CA-G.R. CR No. 31740. The subject decision and resolution affirmed the August 22, 2007 Decision of the Regional Trial Court, Branch 2, Batangas City *(RTC)* which, in turn, affirmed the May 21, 2007 Decision of the Municipal Trial Court in Cities, Branch 2, Batangas City *(MTCC).*

<u>THE FACTS:</u>

Petitioner Eumelia R. Mitra *(Mitra)* was the Treasurer, and Florencio L. Cabrera, Jr. (now deceased) was the President, of

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[1] Penned by Associate Justice Bienvenido L. Reyes with Associate Justice Isaias P. Dicdican and Associate Justice Marlene Gonzales-Sison concurring.

Lucky Nine Credit Corporation *(LNCC),* a corporation engaged in money lending activities.

Between 1996 and 1999, private respondent Felicisimo S. Tarcelo *(Tarcelo)* invested money in LNCC. As the usual practice in money placement transactions, Tarcelo was issued checks equivalent to the amounts he invested plus the interest on his investments. The following checks, signed by Mitra and Cabrera, were issued by LNCC to Tarcelo.[2]

Bank	Date Issued	Date of Check	Amount	Check No.
Security Bank	September 15, 1998	January 15, 1999	₱3,125.00	0000045804
-do-	September 15, 1998	January 15, 1999	125,000.00	0000045805
-do-	September 20, 1998	January 20, 1999	2,500.00	0000045809
-do-	September 20, 1998	January 20, 1999	100,000.00	0000045810
-do-	September 30, 1998	January 30, 1999	5,000.00	0000045814
-do-	September 30, 1998	January 30, 1999	200,000.00	0000045815
-do-	October 3, 1998	February 3, 1999	2,500.00	0000045875
-do-	October 3, 1998	February 3, 1999	100,000.00	0000045876
-do-	November 17, 1998	February 17, 1999	5,000.00	0000046061
-do-	November 17, 1998	March 17, 1999	5,000.00	0000046062
-do-	November 17, 1998	March 17, 1999	200,000.00	0000046063
-do-	November 19, 1998	January 19, 1999	2,500.00	0000046065
-do-	November 19, 1998	February 19, 1999	2,500.00	0000046066
-do-	November 19, 1998	March 19, 1999	2,500.00	0000046067
-do-	November 19, 1998	March 19, 1999	100,000.00	0000046068
-do-	November 20, 1998	January 20, 1999	10,000.00	0000046070
-do-	November 20, 1998	February 20, 1999	10,000.00	0000046071
-do-	November 20, 1998	March 20, 1999	10,000.00	0000046072
-do-	November 20, 1998	March 20, 1999	10,000.00	0000046073

[2] Complaint-Affidavits, *Rollo*, pp. 109-115.

-do-	November 30, 1998	January 30, 1999	2,500.00	0000046075
-do-	November 30, 1998	February 28, 1999	2,500.00	0000046076
-do-	November 30, 1998	March 30, 1999	2,500.00	0000046077
-do-	November 30, 1998	March 30, 1999	100,000.00	0000046078

When Tarcelo presented these checks for payment, they were dishonored for the reason "account closed." Tarcelo made several oral demands on LNCC for the payment of these checks but he was frustrated. Constrained, in 2002, he caused the filing of seven informations for violation of Batas Pambansa Blg. 22 (BP 22) in the total amount of ₱925,000.00 with the MTCC in Batangas City.[3]

After trial on the merits, the MTCC found Mitra and Cabrera guilty of the charges. The *fallo* of the May 21, 2007 MTCC Decision[4] reads:

WHEREFORE, **foregoing premises considered,** the accused **FLORENCIO I. CABRERA, JR.,** and **EUMELIA R. MITRA** are hereby found guilty of the offense of violation of Batas Pambansa Bilang 22 and are hereby **ORDERED** to respectively pay the following fines for each violation *and with subsidiary imprisonment in all cases, in case of insolvency:*

1. **Criminal Case No. 43637 - ₱200,000.00**
2. **Criminal Case No. 43640 - ₱100,000.00**
3. **Criminal Case No. 43648 - ₱100,000.00**
4. **Criminal Case No. 43700 - ₱125,000.00**
5. **Criminal Case No. 43702 - ₱200,000.00**
6. **Criminal Case No. 43704 - ₱100,000.00**
7. **Criminal Case No. 43706 - ₱100,000.00**

Said accused, nevertheless, are adjudged civilly liable and are ordered to pay, *in solidum*, private complainant Felicisimo S. Tarcelo the amount of **NINE HUNDRED TWENTY-FIVE THOUSAND PESOS (₱925,000.000).**

SO ORDERED.

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[3] *Id.* at 116-129.

[4] *Id.* at 130-134.

Mitra and Cabrera appealed to the Batangas RTC contending that: they signed the seven checks in blank with no name of the payee, no amount stated and no date of maturity; they did not know when and to whom those checks would be issued; the seven checks were only among those in one or two booklets of checks they were made to sign at that time; and that they signed the checks so as not to delay the transactions of LNCC because they did not regularly hold office there.[5]

The RTC affirmed the MTCC decision and later denied their motion for reconsideration. Meanwhile, Cabrera died. Mitra alone filed this petition for review[6] claiming, among others, that there was no proper service of the notice of dishonor on her. The Court of Appeals dismissed her petition for lack of merit.

Mitra is now before this Court on a petition for review and submits these issues:

1. WHETHER OR NOT THE ELEMENTS OF VIOLATION OF BATAS PAMBANSA BILANG 22 MUST BE PROVED BEYOND REASONABLE DOUBT AS AGAINST THE CORPORATION WHO OWNS THE CURRENT ACCOUNT WHERE THE SUBJECT CHECKS WERE DRAWN BEFORE LIABILITY ATTACHES TO THE SIGNATORIES.

2. WHETHER OR NOT THERE IS PROPER SERVICE OF NOTICE OF DISHONOR AND DEMAND TO PAY TO THE PETITIONER AND THE LATE FLORENCIO CABRERA, JR.

The Court denies the petition.

A check is a negotiable instrument that serves as a substitute for money and as a convenient form of payment in financial transactions and obligations. The use of checks as payment allows commercial and banking transactions to proceed without the actual handling of money, thus, doing away with the need to physically count bills and coins whenever payment is made. It permits commercial and banking transactions to be carried out quickly and efficiently. But the convenience afforded by

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[5] *Id.* at 143.

[6] *Id.* at 75-105.

checks is damaged by unfunded checks that adversely affect confidence in our commercial and banking activities, and ultimately injure public interest.

BP 22 or the Bouncing Checks Law was enacted for the specific purpose of addressing the problem of the continued issuance and circulation of unfunded checks by irresponsible persons. To stem the harm caused by these bouncing checks to the community, BP 22 considers the mere act of issuing an unfunded check as an offense not only against property but also against public order.[7] The purpose of BP 22 in declaring the mere issuance of a bouncing check as *malum prohibitum* is to punish the offender in order to deter him and others from committing the offense, to isolate him from society, to reform and rehabilitate him, and to maintain social order.[8] The penalty is stiff. BP 22 imposes the penalty of imprisonment for at least 30 days or a fine of up to double the amount of the check or both imprisonment and fine.

Specifically, *BP 22* provides:

SECTION 1. Checks Without Sufficient Funds. — Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine and imprisonment at the discretion of the court.

The same penalty shall be imposed upon any person who, having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, shall fail to keep sufficient funds or to

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[7] *Lozano v. Martinez*, 230 Phil. 406, 428 (1986).

[8] *Rosario v. Co*, G.R. No. 133608, August 26, 2008, 563 SCRA 239, 253.

maintain a credit to cover the full amount of the check if presented within a period of ninety (90) days from the date appearing thereon, for which reason it is dishonored by the drawee bank.

Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act.

SECTION 2. Evidence of Knowledge of Insufficient Funds. — The making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety (90) days from the date of the check, shall be *prima facie* evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.

Mitra posits in this petition that before the signatory to a bouncing corporate check can be held liable, all the elements of the crime of violation of BP 22 must first be proven against the corporation. The corporation must first be declared to have committed the violation before the liability attaches to the signatories of the checks.[9]

The Court finds Itself unable to agree with Mitra's posture. The third paragraph of Section 1 of BP 22 reads: "Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act." This provision recognizes the reality that a corporation can only act through its officers. Hence, its wording is unequivocal and mandatory – that the *person who actually signed* the corporate check shall be held liable for a violation of BP 22. This provision does not contain any condition, qualification or limitation.

In the case of *Llamado v. Court of Appeals,*[10] the Court ruled that the accused was liable on the unfunded corporate

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[9] *Rollo,* p. 47.

[10] 337 Phil. 153, 160 (1997).

check which he signed as treasurer of the corporation. He could not invoke his lack of involvement in the negotiation for the transaction as a defense because BP 22 punishes the mere issuance of a bouncing check, not the purpose for which the check was issued or in consideration of the terms and conditions relating to its issuance. In this case, Mitra signed the LNCC checks as treasurer. Following *Llamado*, she must then be held liable for violating BP 22.

Another essential element of a violation of BP 22 is the drawer's knowledge that he has insufficient funds or credit with the drawee bank to cover his check. Because this involves a state of mind that is difficult to establish, BP 22 creates the *prima facie* presumption that once the check is dishonored, the drawer of the check gains knowledge of the insufficiency, unless within five banking days from receipt of the notice of dishonor, the drawer pays the holder of the check or makes arrangements with the drawee bank for the payment of the check. The service of the notice of dishonor gives the drawer the opportunity to make good the check within those five days to avert his prosecution for violating BP 22.

Mitra alleges that there was no proper service on her of the notice of dishonor and, so, an essential element of the offense is missing. This contention raises a factual issue that is not proper for review. It is not the function of the Court to re-examine the finding of facts of the Court of Appeals. Our review is limited to errors of law and cannot touch errors of facts unless the petitioner shows that the trial court overlooked facts or circumstances that warrant a different disposition of the case[11] or that the findings of fact have no basis on record. Hence, with respect to the issue of the propriety of service on Mitra of the notice of dishonor, the Court gives full faith and credit to the consistent findings of the MTCC, the RTC and the CA.

The defense postulated that there was no demand served upon the accused, said denial deserves scant consideration. Positive allegation

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[11] *American Home Assurance Company v. Chua,* 368 Phil. 555, 569 (1999).

of the prosecution that a demand letter was served upon the accused prevails over the denial made by the accused. Though, having denied that there was no demand letter served on April 10, 2000, however, ***the prosecution positively alleged and proved that the questioned demand letter was served upon the accused on April 10, 2000, that was at the time they were attending Court hearing before Branch I of this Court.*** In fact, the prosecution had submitted a Certification issued by the other Branch of this Court certifying the fact that the accused were present during the April 10, 2010 hearing. With such straightforward and categorical testimony of the witness, the Court believes that the prosecution has achieved what was dismally lacking in the three (3) cases of ***Betty King, Victor Ting and Caras*** – evidence of the receipt by the accused of the demand letter sent to her. The Court accepts the prosecution's narrative that the accused refused to sign the same to evidence their receipt thereof. To require the prosecution to produce the signature of the accused on said demand letter would be imposing an undue hardship on it. As well, actual receipt acknowledgment is not and has never been required of the prosecution either by law or jurisprudence.[12] [emphasis supplied]

With the notice of dishonor duly served and disregarded, there arose the presumption that Mitra and Cabrera knew that there were insufficient funds to cover the checks upon their presentment for payment. In fact, the account was already closed.

To reiterate the elements of a violation of BP 22 as contained in the above-quoted provision, a violation exists where:

1. a person makes or draws and issues a check to apply on account or for value;
2. the person who makes or draws and issues the check knows at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the full payment of the check upon its presentment; and
3. the check is subsequently dishonored by the drawee bank for insufficiency of funds or credit, or would have been dishonored for the same reason had not the

[12] *Rollo*, p. 133.

drawer, without any valid reason, ordered the bank to stop payment.[13]

There is no dispute that Mitra signed the checks and that the bank dishonored the checks because the account had been closed. Notice of dishonor was properly given, but Mitra failed to pay the checks or make arrangements for their payment within five days from notice. With all the above elements duly proven, Mitra cannot escape the civil and criminal liabilities that BP 22 imposes for its breach.[14]

WHEREFORE, the July 31, 2009 Decision and the February 11, 2010 Resolution of the Court of Appeals in CA-G.R. CR No. 31740 are hereby *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Nachura, Peralta, and *Abad, JJ.,* concur.

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[13] *Rigor v. People*, 485 Phil. 125, 139 (2004).

[14] In *Gosiaco v. Ching*, G.R. No. 173807, April 16, 2009, 585 SCRA 471, 483, we held an accused corporate officer free from civil liability for the corporate debt after the lower court acquitted the accused of criminal liability under BP 22. Note that this is a totally different case from the present case as the issue here is both criminal and civil liability.

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— Relates wholly to matters of public concern, and affects private rights only so far as the statute confers such rights when its provisions are carried out by the officer to whom it is confided to perform. *(Id.)*

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Definition — The first paragraph of Sec. 1, Rule 63 of the 1997 Rules of Court is defined as a special civil action by any person interested under a deed, will, contract or other

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Doctrine of — Requires that when an administrative remedy is provided by law, relief must be sought by exhausting this remedy before judicial intervention may be availed of; exception. (Antolin *vs*. Domondon, G.R. No. 165036, July 05, 2010) p. 164

FORUM SHOPPING

Certificate of non-forum shopping — A requisite for the perfection of an appeal, and not compliance therewith shall not stop the running of the period for perfecting an appeal. (Mandaue Galleon Trade, Inc. *vs*. Isidto, G.R. No. 181051, July 05, 2010) p. 409

— The filing thereof is mandatory in initiatory pleadings and subsequent compliance with the requirement does not excuse a party's failure to comply therewith in the first instance. *(Id.)*

Concept — By forum shopping, a party initiates two or more actions in separate tribunals, grounded on the same cause, hoping that one or the other tribunal would favorably dispose of the matter. (Disini *vs*. Sandiganbayan, G.R. No. 175730, July 05, 2010) p. 351

(Pentacapital Investment Corp. *vs.* Mahinay, G.R. No. 171736, July 05, 2010) p. 283

— The elements of forum shopping are: (1) identity of parties, or at least such parties as would represent the same interest in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) identity of the two preceding particulars such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration. *(Id.)*

— The ways of committing forum shopping are: (1) by filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is litis pendentia); (2) by filing multiple cases based on the same cause of action and with the same prayer, the previous cases having been resolved (where the ground for dismissal is res judicata); and by filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action). *(Id.)*

HOMICIDE

Frustrated homicide — Civil liabilities of accused, cited. (Serrano *vs*. People, G.R. No. 175023, July 05, 2010) p. 319

— To distinguish from attempted homicide, the crucial point to consider is the nature of the wounds inflicted which must be supported by independent proof showing that

the wound inflicted was sufficient to cause the victim's death without timely medical intervention. *(Id.)*

Intent to kill — The factors to determine intent to kill are: (1) the means used by the malefactors; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactors before, at the time, or immediately after the killing of the victim; and the circumstances under which the crime was committed and the motives of the accused. (Serrano *vs*. People, G.R. No. 175023, July 05, 2010) p. 319

INJUNCTIONS

Writ of mandatory injunction — Requisites for issuance. (MERALCO *vs*. Sps. Chua, G.R. No. 160422, July 05, 2010) p. 80

INTERESTS

Unconscionable interest — Established when a loan of ₱800,000.00 ballooned to ₱1,871,480.00 in a span of three (3) months. (Asian Cathay Finance and Leasing Corp. *vs*. Sps. Cesario Gravador and Norma de Vera, G.R. No. 186550, July 05, 2010) p. 504

Usurious interest — Stipulations authorizing the imposition of iniquitous or unconscionable interest are contrary to morals, if not against the law, hence, the contract is inexistent and void from the beginning. (Asian Cathay Finance and Leasing Corp. *vs*. Sps. Cesario Gravador and Norma de Vera, G.R. No. 186550, July 05, 2010) p. 504

— The nullity of the stipulation on the usurious interest does not, however, affect the lender's right to recover the principal of the loan. *(Id.)*

JUDGES

Administrative complaint against judges — Complainant has the burden of proving the allegations in the complaint by substantial evidence. (Salcedo *vs*. Judge Bollozos, A.M. No. RTJ-10-2236, July 05, 2010) p. 27

Bad faith or malice — Cannot be inferred simply because the judgment is adverse to a party. (Salcedo *vs*. Judge Bollozos, A.M. No. RTJ-10-2236, July 05, 2010) p. 27

Bias and partiality — Can never be presumed and must be proved with clear and convincing evidence. (Salcedo *vs*. Judge Bollozos, A.M. No. RTJ-10-2236, July 05, 2010) p. 27

Duties — Judges are expected to keep abreast of prevailing jurisprudence. (Salcedo *vs*. Judge Bollozos, A.M. No. RTJ-10-2236, July 05, 2010) p. 27

Errors committed in the exercise of his adjudicative function — Cannot be corrected through administrative proceedings. (Salcedo *vs*. Judge Bollozos, A.M. No. RTJ-10-2236, July 05, 2010) p. 27

Gross ignorance of the law — To be liable, the assailed order, decision, or actuation of the judge in the performance of official duties must not only be found erroneous, but it must be established that he was motivated by bad faith, dishonesty, hatred or some other similar motive. (Salcedo *vs*. Judge Bollozos, A.M. No. RTJ-10-2236, July 05, 2010) p. 27

JUDGMENTS

Annulment of — The fraud that will justify an annulment of judgment is extrinsic fraud; the nature of extrinsic fraud necessarily requires that its cause be traceable to some fraudulent act of the prevailing party committed outside the trial of the case. (Amihan Bus Lines, Inc. *vs*. Romars Int'l. Gases Corp., G.R. No. 180819, July 05, 2010) p. 401

KIDNAPPING AND SERIOUS ILLEGAL DETENTION

Commission of — Imposable penalty and civil liabilities of the accused. (People *vs*. Siongco, G.R. No. 186472, July 05, 2010) p. 488

— The victim need not be taken by the accused forcibly or against his will, what is controlling is the act of the accused in detaining the victim against his or her will after the offender is able to take the victim in his custody. *(Id.)*

LABOR

Labor statutes — While the Constitution is committed to the policy of social justice and protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. (Phil. Rural Reconstruction Movement *vs*. Pulgar, G.R. No. 169227, July 05, 2010) p. 244

LABOR CONTRACTING OR SUB-CONTRACTING

Independent and permissible contractor relationship — The Certificate of Registration issued by the Department of Labor and Employment is not a conclusive evidence of its status. (San Miguel Corp. *vs*. Semillano, G.R. No. 164257, July 05, 2010) p. 115

LACHES

Doctrine of — Applicable in case of filing a complaint for quieting of title only after almost six (6) decades. (Heirs of the Late Apolinario Fama *vs*. Garas, G.R. No. 151246, July 05, 2010) p. 46

— Considering that the parties are closely related to each other and considering that the parties are many different heirs, some of whom reside outside the country, the passage of six years before the parties asked for partition through the court is not unreasonable. (Hebron *vs*. Loyola, G.R. No. 168960, July 05, 2010) p. 230

— Elements of laches are: (1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made and for which the complainant seeks a remedy; (2) delay in asserting the complainant's right, the complainant having had knowledge or notice, of defendant's conduct and having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is

accorded to the complainant, or the suit is not held to be barred. (Heirs of Sps. Crispulo Ferrer and Engracia Puhawan *vs*. CA, G.R. No. 190384, July 05, 2010) p. 618

LAND REGISTRATION ACT (ACT NO. 496)

Certificate of Title — Cannot be the subject of a collateral attack. (Vda. de Aguilar *vs*. Sps. Alfaro, G.R. No. 164402, July 05, 2010) p. 131

— Serves as evidence of an indefeasible and incontrovertible title to a property in favor of the person whose name appears therein. *(Id.)*

Decree of registration obtained by fraud — May be assailed by filing a petition for review within one (1) year after entry of the decree, provided no innocent purchaser for value has acquired an interest. (Heirs of the Late Apolinario Fama *vs*. Garas, G.R. No. 151246, July 05, 2010) p. 46

Torrens system of registration — Being a proceeding in rem, actual notice to every person affected or may be affected is not necessary. (Heirs of the Late Apolinario Fama *vs*. Garas, G.R. No. 151246, July 05, 2010) p. 46

— Procedures. *(Id.)*

— Purpose. *(Id.)*

LOANS

Promissory notes — Should be accepted as they appear on their face absent any proof that it is subject to certain conditions. (Pentacapital Investment Corp. *vs*. Mahinay, G.R. No. 171736, July 05, 2010) p. 283

MANDAMUS

Petition for — Applicant must have a well-defined, clear, and certain legal right to the thing demanded. (Antolin *vs*. Domondon, G.R. No. 165036, July 05, 2010) p. 164

MORAL DAMAGES

Award of — Designed to compensate the claimant for actual injury suffered and not to impose a penalty. (MERALCO *vs*. Sps. Chua, G.R. No. 160422, July 05, 2010) p. 80

— Requisites. *(Id.)*

— When may be reduced. *(Id.)*

MORTGAGES

Right of redemption — Waiver thereof must be made clearly and unequivocally to be valid. (Asian Cathay Finance and Leasing Corp. *vs*. Sps. Cesario Gravador and Norma de Vera, G.R. No. 186550, July 05, 2010) p. 504

— Waiver thereof through a fine print in a mortgage contract is held invalid. *(Id.)*

MOTION FOR RECONSIDERATION

Second motion for reconsideration — Section 3, Rule 15 of the Internal Rules of the Supreme Court sets forth the rule when the Court may entertain a second motion for reconsideration; aside from meeting the voting requirement, the movant is required to substantially show that a reconsideration of the Court's ruling is necessary in the higher interest of justice, which standard is satisfied upon proving that the assailed ruling is both: (1) legally erroneous, and (2) patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. (Heirs of Sps. Crispulo Ferrer and Engracia Puhawan *vs*. CA, G.R. No. 190384, July 05, 2010) p. 618

MURDER

Commission of — Civil liabilities of accused, cited. (People *vs*. Teñoso, G.R. No. 188975, July 05, 2010) p. 595

OBLIGATIONS

Obligations with a penalty clause — The penalty charge may be equitably reduced when considered unconscionable. (Pentacapital Investment Corp. *vs*. Mahinay, G.R. No. 171736, July 05, 2010) p. 283

OBLIGATIONS, EXTINGUISHMENT OF

Legal subrogation — Effect. (Metropolitan Bank and Trust Co. *vs.* Rural Bank of Gerona, Inc., G.R. No. 159097, July 05, 2010) p. 68

— Tacit approval that comes after payment does not completely negate the legal subrogation that had taken place. *(Id.)*

— When presumed. *(Id.)*

PARENTAL AUTHORITY

Effect on the property of the children — The powers given to parents as the natural guardians cover only matters of administration and cannot include the power of disposition. (Hebron *vs.* Loyola, G.R. No. 168960, July 05, 2010) p. 230

PARRICIDE

Commission of — Civil liabilities of accused, cited. (People *vs.* Calonge, G.R. No. 182793, July 05, 2010) p. 435

— The elements of the crime of parricide are: (1) a person is killed; (2) the deceased is killed by the accused; and (3) the deceased is the father, mother or child, whether legitimate or illegitimate, of the accused or any of his ascendants or descendants, or his spouse. *(Id.)*

Frustrated parricide — Civil liabilities of the accused, cited. (People *vs.* Calonge, G.R. No. 182793, July 05, 2010) p. 435

PLEADINGS

Supplemental pleadings — Must allege only material facts which happened or came within the party's knowledge after the original pleading was filed. (Pentacapital Investment Corp. *vs.* Mahinay, G.R. No. 171736, July 05, 2010) p. 283

— Must state transactions, occurrences or events which took place since the time the pleadings sought to be supplemented was filed. *(Id.)*

PRESUMPTIONS

Application — A presumption may operate against an adversary who has not introduced proof to rebut it. (Pentacapital Investment Corp. *vs*. Mahinay, G.R. No. 171736, July 05, 2010) p. 283

Presumption that a contract has sufficient consideration — Cannot be overthrown by bare uncorroborated and self-serving assertion of respondent that the contract has no consideration. (Pentacapital Investment Corp. *vs*. Mahinay, G.R. No. 171736, July 05, 2010) p. 283

PROFESSIONAL REGULATION COMMISSION

Powers — Include the power to review, coordinate, integrate, and approve the policies, resolutions, rules and regulations, orders or decisions promulgated by the various Boards with respect to the profession or occupation under their jurisdiction including the results of their licensure examination but their decisions on administrative cases shall be final and executory unless appealed to the Commission within thirty (30) days from the date of promulgation thereof. (Antolin *vs*. Domondon, G.R. No. 165036, July 05, 2010) p. 164

PROPERTY

Property of public dominion — Despite the failure to present the quantum of evidence to prove that the land in dispute is alienable and disposable land, the presumption remains that the subject properties remain part of the inalienable public domain and, could not become the subject of confirmation of imperfect title. (Rep. of the Phils. *vs*. Espinosa, G.R. No. 176885, July 05, 2010) p. 377

— Public lands not shown to have been reclassified or released as alienable agricultural land or alienated to a private person by the state remain part of the inalienable public domain. *(Id.)*

PUBLIC CORPORATIONS

Government-owned or controlled corporation — Enjoined by Memorandum Circular No. 9 to refrain from hiring private lawyers or law firms to handle their legal matters; exceptions. (Vargas *vs*. Atty. Ignes, A.C. No. 8096, July 05, 2010) p. 1

PUBLIC LAND ACT (C.A. NO. 141)

Alienable lands — Alienable and disposable lands of public domain may be acquired by private persons, not by virtue of prescription but, through adverse possession, upon compliance with the requirements of Sec. 48 (b) of the Act. (Heirs of Sps. Crispulo Ferrer and Engracia Puhawan *vs*. CA, G.R. No. 190384, July 05, 2010) p. 618

PUBLIC UTILITIES

Doctrine of inexcusable negligence — Applicable to meter tampering. (MERALCO *vs*. Sps. Chua, G.R. No. 160422, July 05, 2010) p. 80

QUALIFYING CIRCUMSTANCES

Minority and relationship as special qualifying circumstances — Appreciated when the attack was so swift and unexpected, affording the hapless, unarmed and unsuspecting victim no opportunity to resist or defend himself. (People *vs*. Teñoso, G.R. No. 188975, July 05, 2010) p. 595

RAPE

Carnal knowledge — Laceration, whether healed or fresh, is the best physical evidence of forcible defloration. (People *vs*. Paler, G.R. No. 186411, July 05, 2010) p. 458

Civil liabilities of accused — Cited. (People *vs*. Cadap, G.R. No. 190633, July 05, 2010) p. 635

(People *vs*. Dacallos, G.R. No. 189807, July 05, 2010) p. 612

(People *vs*. Bodoso, G.R. No. 188129, July 05, 2010) p. 565

(People *vs*. Belo, G.R. No. 187075, July 05, 2010) p. 514

Commission of — Established when a man shall have carnal knowledge of a woman by means of force, threat or intimidation. (People *vs*. Cadap, G.R. No. 190633, July 05, 2010) p. 635

— Imposable penalty. *(Id.)*

(People *vs*. Bodoso, G.R. No. 188129, July 05, 2010) p. 565

— Not negated by the absence of bruises and contusions. (People *vs*. Belo, G.R. No. 187075, July 05, 2010) p. 514

— Not negated by the absence of injuries in external genitalia. (People *vs*. Cadap, G.R. No. 190633, July 05, 2010) p. 635

Element of force and intimidation — Not negated by the non-presentation of the weapon used in the commission of the rape. (People *vs*. Belo, G.R. No. 187075, July 05, 2010) p. 514

Prosecution of rape cases — Defense of consensual sex must be established by strong evidence. (People *vs*. Belo, G.R. No. 187075, July 05, 2010) p. 514

— Guiding principles in the determination of the innocence or guilt of the accused. (People *vs*. Cadap, G.R. No. 190633, July 05, 2010) p. 635

(People *vs*. Dacallos, G.R. No. 189807, July 05, 2010) p. 612

Statutory rape — Committed by a man who shall have carnal knowledge of a woman who is under twelve (12) years of age. (People *vs*. Ogan, G.R. No. 186461, July 05, 2010) p. 468

RES JUDICATA

Elements of — That: (1) the former judgment or order must be final; (2) it must be a judgment on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be between the first and second actions, identity of parties, subject matter, and cause of action. (Pentacapital Investment Corp. *vs*. Mahinay, G.R. No. 171736, July 05, 2010) p. 283

Identity of parties as an element — Present not only when the parties in the cases are the same but also between those in privity with them. (Pentacapital Investment Corp. *vs*. Mahinay, G.R. No. 171736, July 05, 2010) p. 283

SALES

Contract of sale — Cannot confer a better right as against a torrens title. (Vda. de Aguilar *vs*. Sps. Alfaro, G.R. No. 164402, July 05, 2010) p. 131

SEAFARERS

Compensable diseases — Do not include Acquired Immune Deficiency Syndrome (AIDS). (Escarcha *vs*. Leonis Navigation Co., Inc., G.R. No. 182740, July 05, 2010) p. 418

Death of a seafarer — Not compensable when due to pneumonia traceable to pulmonary tuberculosis. (Escarcha *vs*. Leonis Navigation Co., Inc., G.R. No. 182740, July 05, 2010) p. 418

— To be compensable, the death must occur during the term of his contract of employment. *(Id.)*

SETTLEMENT OF ESTATE OF A DECEASED PERSON

Bonds of executors and administrators — Secure the performance of the duties and obligations of an administrator namely: (1) to administer the estate and pay the debts; (2) to perform all judicial orders; (3) to account within one (1) year and at any other time when required by the probate court; and (4) to make an inventory within three (3) months. (Ocampo *vs*. Ocampo, G.R. No. 187879, July 05, 2010) p. 545

Special administrator — Defined as an officer of the court who is subject to its supervision and control, expected to work for the best interest of the entire estate, with a view to its smooth administration and speedy settlement. (Ocampo *vs*. Ocampo, G.R. No. 187879, July 05, 2010) p. 545

— The appointment or removal thereof is discretionary on the part of the probate court. (*(Id.)*

SOLO PARENTS' WELFARE ACT OF 2000 (R.A. NO. 8972)

Application — A solo parent employee should not be discriminated against with respect to terms and conditions of employment. (Dela Cueva *vs*. Omaga, A.M. No. P-08-2590, July 05, 2010) p. 14

STRIKES

Illegal strike — All union members who knowingly participated in the illegal strike placed their employment status at risk. (Bagong Pagkakaisa Ng Manggagawa ng Triumph Int'l. *vs*. Sec. of the DOLE, G.R. No. 167401, July 05, 2010) p. 184

Prohibited activities during a strike — The union and its officers are liable for leading and instigating prohibited activities as a form of strategy to obtain concessions from the company management during the CBA negotiations. (Bagong Pagkakaisa Ng Manggagawa ng Triumph Int'l. *vs*. Sec. of the DOLE, G.R. No. 167401, July 05, 2010) p. 184

SUPREME COURT

Administrative supervision over lower courts and their personnel — Includes the power and duty to pursue an administrative matter regardless of complainant's desistance. (Dela Cueva *vs*. Omaga, A.M. No. P-08-2590, July 05, 2010) p. 14

WITNESSES

Credibility of — Determination of the trial court, especially when affirmed by the appellate court is accorded great respect; exceptions. (People *vs*. Cadap, G.R. No. 190633, July 05, 2010) p. 635

(People *vs*. Bodoso, G.R. No. 188129, July 05, 2010) p. 565

— Mental retardation per se does not affect credibility. (People *vs*. Paler, G.R. No. 186411, July 05, 2010) p. 458

— Not affected by discrepancies in their testimonies referring to minor details and collateral matters. (People *vs*. Teñoso, G.R. No. 188975, July 05, 2010) p. 595

— Testimonies of victims of tender age are credible, more so, if they are without any motive to falsely testify against the offender. (People *vs*. Bodoso, G.R. No. 188129, July 05, 2010) p. 565

— Unexpected behavioral response of a victim after the commission of rape does not affect her credibility. *(Id.)*

Rule on Examination of a Child Witness — Courts must exercise control to ensure that questions are stated in a form appropriate to the developmental level of the child. (People *vs*. Ogan, G.R. No. 186461, July 05, 2010) p. 468

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