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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.M. No. RTJ-09-2180. July 27, 2010]
(Formerly OCA I.P.I. No. 08-2817-RTJ)

ROLANDO E. MARCOS, *complainant, vs.* **JUDGE OFELIA T. PINTO, Regional Trial Court, Branch 60, Angeles City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; THE ISSUE IS NOT WHETHER COMPLAINANT HAS CAUSE OF ACTION BUT WHETHER THE EMPLOYEE HAS BREACHED THE NORMS AND STANDARDS OF THE JUDICIARY; CASE AT BAR. — The OCA maintained that while Marcos is not the real party-in-interest in the subject case, he can still file the instant administrative case against respondent judge. It explained that in administrative proceedings, the issue is not whether the complainant has a cause of action against the respondent, but whether the employees have breached the norms and standards of the Judiciary. Thus, the Court, in a Resolution dated April 20, 2009, resolved to re-docket the administrative complaint as a regular administrative matter against Judge Pinto and referred the matter to the Presiding Justice of the Court of Appeals for raffle among the Justices, for investigation, report and recommendation.

2. ID.; ID.; JUDGES; WHEN LIABLE FOR GROSS IGNORANCE OF THE LAW. — To be held liable for gross ignorance of

the law, the judge must be shown to have committed an error that was "gross or patent, deliberate or malicious." Also administratively liable for gross ignorance of the law is a judge who — shown to have been motivated by bad faith, fraud, dishonesty or corruption — ignored, contradicted or failed to apply settled law and jurisprudence. x x x As a matter of public policy then, the acts of a judge in his official capacity are not subject to disciplinary action, even though such acts are erroneous. Good faith and absence of malice, corrupt motives or improper considerations are sufficient defenses in which a judge charged with ignorance of the law can find refuge. It does not mean, however, that a judge, given the leeway he is accorded in such cases, should not evince due care in the performance of his adjudicatory prerogatives.

3. REMEDIAL LAW; DISCIPLINE OF JUDGES; CODE OF JUDICIAL CONDUCT; JUDGES SHALL AVOID IMPROPRIETY AND THE APPEARANCES OF IMPROPRIETY IN ALL OF THEIR ACTIVITIES; VIOLATION IN CASE AT BAR. — With regard to the accusation of impropriety, we find it to be with basis. Section 1, Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary enunciates the rule that *"Judges shall avoid impropriety and the appearance of impropriety in all of their activities."* Upon assumption of office, a judge becomes the visible representation of the law and of justice. Membership in the Judiciary circumscribes one's personal conduct and imposes upon him a number of inhibitions, whose faithful observance is the price one has to pay for holding such an exalted position. Thus, a magistrate of the law must comport himself at all times in such a manner that his conduct, official or otherwise, can withstand the most searching public scrutiny, for the ethical principles and sense of propriety of a judge are essential to the preservation of the people's faith in the judicial system. This Court does not require of judges that they measure up to the standards of conduct of the saints and martyrs, but we do expect them to be like Caesar's wife in all their activities. Hence, we require them to abide strictly by the Code of Judicial Conduct. Here, it appears that respondent judge has failed to live up to those rigorous standards. Her act of solemnizing the marriage of accused's son in the residence of the accused speaks for itself. It is improper and highly unethical for a judge to actively participate in such social affairs, considering that

the accused is a party in a case pending before her own sala. What she should have done was courteously deny the parties' request. Her claim that she was unaware that the parties were related to the accused fails to convince. In pending or prospective litigations before them, judges should be scrupulously careful to avoid anything that may tend to awaken the suspicion that their personal, social or sundry relations could influence their objectivity. Not only must judges possess proficiency in law, they must also act and behave in such manner that would assure litigants and their counsel of the judges' competence, integrity and independence.

4. ID.; ID.; SIMPLE MISCONDUCT, A LESS SERIOUS OFFENSE; PENALTY. — Under Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, simple misconduct is considered a less serious offense, sanctioned with suspension without pay for not less than one month, but not more than three months, or a fine of not less than Ten Thousand Pesos (₱10,000.00) but not exceeding Twenty Thousand Pesos (₱20,000.00).

APPEARANCES OF COUNSEL

Ramirez Lazaro Patricio and Associates for complainant.
Gener C. Endona for respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a Complaint[1] dated February 1, 2008, filed by Rolando E. Marcos (complainant) against respondent Ofelia T. Pinto (respondent judge), Presiding Judge, Regional Trial Court (RTC), Branch 60, Angeles City, for Gross Ignorance of the Law, Knowingly Rendering an Unjust Judgment/Order and Partiality relative to Criminal Case No. 04-775 entitled *People of the Philippines v. Espilo Leyco.*

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

[1] *Rollo,* pp. 1-20.

On September 5, 2001, a criminal case for violation of Republic Act (R.A.) 7610,[2] docketed as Criminal Case No. 04-775, entitled *People v. Espilo Leyco* was filed before the RTC of Angeles City, Branch 60, presided by respondent Judge Pinto. Accused Leyco was arraigned on August 31, 2005. Pre-trial was terminated and trial ensued with the presentation of witnesses. Meanwhile, while the case was being tried, accused Leyco filed a petition for review with the Secretary of the Department of Justice and sought to set aside the resolution of the Angeles City Prosecution Office, which recommended the filing of the information against the accused.

On October 25, 2006,[3] a year after the case was filed, the Secretary of Justice, Raul Gonzales, reversed the resolution of the Angeles City Prosecution and directed the City Prosecutor to file a Motion to Withdraw the Information filed against accused Leyco. On November 10, 2006, in compliance with the said directive, the Assistant City Prosecutor handling the subject case filed a Motion to Withdraw Information. Thus, on November 16, 2006,[4] private complainant in the said case moved for reconsideration of the DOJ's resolution.

On December 22, 2006,[5] while the resolution of private complainant's motion for reconsideration was still pending, respondent Judge Pinto granted the Motion to Withdraw Information and dismissed the subject case. The pertinent portion of the Order reads:

> On November 13, 2006, the Court gave Atty. Renan B. Castillo, private prosecutor, to file his comment and/or objection on the Motion to Withdraw Information dated November 10, 2006 filed by 2nd Assistant City Prosecutor Oliver S. Garcia and duly approved by

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[2] An Act Providing For Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, And For Other Purposes. Approved June 17, 1992.

[3] *Rollo*, pp. 229-230.

[4] *Id.*

[5] *Id.* at 21.

City Prosecutor Teilo P. Quiambao. Up to this time, the said intended pleading has not been filed.

WHEREFORE, the Court grants the Motion to Withdraw Information and considers this case as dismissed.

The cash bail posted by the accused is hereby ordered released to him upon presentation of the original receipt.

SO ORDERED.

Angeles City, Philippines, December 22, 2006.

(Signed)

Ofelia Tuazon Pinto

On February 2, 2007, private complainant filed a motion seeking the reconsideration of the order of dismissal but it was denied.[6]

On April 15, 2008, Secretary Gonzales denied private complainant's motion for reconsideration.

Thus, feeling aggrieved, Marcos, one of the witnesses in the subject criminal case, filed the instant administrative complaint against respondent Judge Pinto.

Marcos alleged that respondent judge did not even exert any effort to assess whether there was a valid ground to dismiss the case. He claimed that respondent judge cannot validly dismiss the case based on the failure of the private prosecutor to file any comment or opposition to the motion to withdraw information. More so since as of November 17, 2006, the private prosecutor already withdrew himself from handling the subject case. Complainant also pointed out that respondent judge did not even set a time frame within which to file the comment or opposition.

Moreover, complainant alleged that respondent judge manifested bias and partiality in favor of accused Leyco which he attributed to a special relationship between respondent judge and the Spouses Leyco. Complainant claimed that respondent judge even

[6] *Id.* at 22.

acted as the solemnizing officer at the marriage of Paul F. Leyco, son of accused Leyco. He, thus, questioned the integrity of respondent judge, considering that the marriage ceremony was held on January 19, 2007 during the period when respondent judge issued the assailed order of dismissal. To support his claim, complainant presented a certified true copy of the marriage certificate issued by the National Statistics Office showing that respondent judge was indeed the one who solemnized the marriage at the Leyco's residence.

On March 5, 2008, the Office of the Court Administrator (OCA) directed Judge Pinto to file her Comment on the instant complaint.[7]

In her Comment[8] dated April 2, 2008, Judge Pinto denied the allegations of the complainant and claimed the same to be misplaced and baseless. She insisted that she exercised judicial discretion when she issued the Order dismissing the criminal case against Leyco. She emphasized that Marcos should have resorted to the appropriate judicial recourse instead of filing the instant administrative complaint.

Judge Pinto likewise argued that complainant's allegation that she had been biased and partial to the accused was unsupported by evidence. She, however, admitted that she was indeed the solemnizing officer in the marriage of the accused's son, Paul Leyco, but stressed that it was her duty after all to solemnize marriages under the Family Code. She likewise pointed out that she did not know that the parties were related to the accused. She claimed that she came to know of such fact only when she was already in the residence of the marrying parties. Judge Pinto insisted that said act cannot be equated as giving favor to a party in a criminal case contrary to what the complainant claims.

Finally, Judge Pinto argued that the instant complaint should be dismissed outright, because complainant Marcos was not the true party-in-interest in the criminal case; thus, he has no

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[7] *Id.* at 92.

[8] *Id.* at 96-106.

locus standi to file the complaint. Marcos was a mere witness for the prosecution.

In a Memorandum[9] dated March 9, 2009, the OCA recommended that the complaint be re-docketed as a regular administrative complaint against Judge Pinto. It, likewise, recommended that the matter be referred to the Presiding Justice of the Court of Appeals for investigation, report and recommendation.

The OCA maintained that while Marcos is not the real party-in-interest in the subject case, he can still file the instant administrative case against respondent judge. It explained that in administrative proceedings, the issue is not whether the complainant has a cause of action against the respondent, but whether the employees have breached the norms and standards of the Judiciary.

Thus, the Court, in a Resolution[10] dated April 20, 2009, resolved to re-docket the administrative complaint as a regular administrative matter against Judge Pinto and referred the matter to the Presiding Justice of the Court of Appeals for raffle among the Justices, for investigation, report and recommendation.

In compliance, Justice Arturo G. Tayag,[11] in his Report and Recommendation, found the charges of gross ignorance of the law and knowingly rendering an erroneous or unjust order against Judge Pinto to be true and with basis. He, however, found the charge of violation of Canon 2 of the Code of Judicial Conduct to be baseless.

In his Report, Justice Tayag, observed that Judge Pinto did not perform her duty of making an independent evaluation or assessment of the merits of the case when she dismissed Criminal Case No. 04-775. He, however, found no basis for violation of Canon 2 of the Code of Judicial Conduct, since he noted that

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[9] *Id.* at 210- 214.

[10] *Id.* at 215-216.

[11] Associate Justice of the Court of Appeals to whom the instant administrative case was raffled for investigation and recommendation.

in cases where both the parties requested the solemnizing officer, in writing, to have the marriage solemnized at a house or place designated by them, such can be done.

Accordingly, Justice Tayag, after considering that this is the respondent's first offense and that respondent has a good record as a Family Court Judge, recommended that Judge Pinto be meted a penalty of two (2) months suspension from service without pay.

RULING

While we agree that respondent judge should be administratively held liable for her acts, we, however, disagree with the findings and recommendation of the Investigating Justice.

To be held liable for gross ignorance of the law, the judge must be shown to have committed an error that was "gross or patent, deliberate or malicious." Also administratively liable for gross ignorance of the law is a judge who — shown to have been motivated by bad faith, fraud, dishonesty or corruption — ignored, contradicted or failed to apply settled law and jurisprudence.[12] Such is not the case presently before this Court.

In the instant case, it was apparent that the assailed Order of dismissal was solely anchored on the private prosecutor's failure to file his comment and/or objection to the Motion to Withdraw the Information. Indeed, respondent judge did not perform her duty of making an independent evaluation or assessment of the merits of the case when she dismissed Criminal Case No. 04-775. The disputed Order does not contain the facts of the case and the law upon which the dismissal was based. However, there was also no evidence showing that in issuing said Order, respondent judge was motivated by bad faith, fraud, dishonesty or corruption.

In administrative proceedings like the one at bench, it goes without saying that it is the complainant who has the burden of

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[12] *Cabatingan, Sr. v. Arcueno,* A.M. No. MTJ-00-1323, August 22, 2002, 387 SCRA 532, 541.

proving by substantial evidence the allegations in their complaint.[13] We do not find any evidence to support complainant's accusations.

As a matter of public policy then, the acts of a judge in his official capacity are not subject to disciplinary action, even though such acts are erroneous. Good faith and absence of malice, corrupt motives or improper considerations are sufficient defenses in which a judge charged with ignorance of the law can find refuge. It does not mean, however, that a judge, given the leeway he is accorded in such cases, should not evince due care in the performance of his adjudicatory prerogatives.[14]

With regard to the accusation of impropriety, we find it to be with basis. Section 1, Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary[15] enunciates the rule that *"Judges shall avoid impropriety and the appearance of impropriety in all of their activities."*

Upon assumption of office, a judge becomes the visible representation of the law and of justice. Membership in the Judiciary circumscribes one's personal conduct and imposes upon him a number of inhibitions, whose faithful observance is the price one has to pay for holding such an exalted position. Thus, a magistrate of the law must comport himself at all times in such a manner that his conduct, official or otherwise, can withstand the most searching public scrutiny, for the ethical principles and sense of propriety of a judge are essential to the preservation of the people's faith in the judicial system. This Court does not require of judges that they measure up to the standards of conduct of the saints and martyrs, but we do expect them to be like Caesar's wife in all their activities.[16] Hence, we require them to abide strictly by the Code of Judicial Conduct.

Here, it appears that respondent judge has failed to live up to those rigorous standards. Her act of solemnizing the marriage

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[13] *Araos v. Luna-Pison,* A.M. No. RTJ-02-1677, February 28, 2002, 378 SCRA 246, 250-251.

[14] *Diego v. Judge Castillo*, 479 Phil. 705, 713 (2004).

[15] A.M. No. 03-05-01-SC, effective June 1, 2004.

[16] *OCA v. Judge Sayo,* 431 Phil. 408 (2002).

of accused's son in the residence of the accused speaks for itself. It is improper and highly unethical for a judge to actively participate in such social affairs, considering that the accused is a party in a case pending before her own sala. What she should have done was courteously deny the parties' request. Her claim that she was unaware that the parties were related to the accused fails to convince.

In pending or prospective litigations before them, judges should be scrupulously careful to avoid anything that may tend to awaken the suspicion that their personal, social or sundry relations could influence their objectivity. Not only must judges possess proficiency in law, they must also act and behave in such manner that would assure litigants and their counsel of the judges' competence, integrity and independence.[17]

Considering the above findings, it is apparent that respondent judge's actuations constitute simple misconduct.

Under Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, simple misconduct is considered a less serious offense, sanctioned with suspension without pay for not less than one month, but not more than three months, or a fine of not less than Ten Thousand Pesos (₱10,000.00) but not exceeding Twenty Thousand Pesos (₱20,000.00).

WHEREFORE, the Court finds Judge Ofelia T. Pinto of the Regional Trial Court of Angeles City, Branch 60, *GUILTY* of *SIMPLE MISCONDUCT* for which she is *FINED* in the amount of ₱10,000.00. She is, likewise, *STERNLY WARNED* that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

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

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[17] *Atty. Molina v. Judge Paz*, 462 Phil. 620, 630 (2003).

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Raffle dated July 19, 2010.

EN BANC

[A.M. No. 2008-19-SC. July 27, 2010]

RE: COMPLAINTS OF MRS. MILAGROS LEE AND SAMANTHA LEE AGAINST ATTY. GIL LUISITO R. CAPITO

SYLLABUS

1. LEGAL AND JUDICIAL ETHICS; ATTORNEYS; RESPONDENT FOUND GUILTY OF GROSS DISCOURTESY; PROPER PENALTY.— The Court finds that respondent is indeed guilty of gross discourtesy amounting to conduct unbecoming of a court employee. By such violation, respondent failed to live up to his oath of office as member of the Integrated Bar of the Philippines and violated Rule 7.03 of the Code of Professional Responsibility. Gross discourtesy in the course of official duties is classified as less grave offense under the *Revised Uniform Rules on Administrative Cases in the Civil Service,* punishable with suspension for one month and one day to six months for the first offense and dismissal for the second offense.

2. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; RULE 7.03 AND 8.01 THEREOF; VIOLATED BY THE RESPONDENT; REFERRAL OF THE CASE AT BAR TO THE OFFICE OF THE BAR CONFIDANT, PROPER.— It appearing that aside from violating Rule 7.03 of the Code of Professional Responsibility, respondent appears to have also violated Rule 8.01of the same Code, the recommendation to refer the case to the Office of the Bar Confidant for appropriate action is in order.

3. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHOULD NOT USE ABUSIVE, OFFENSIVE, SCANDALOUS, MENACING AND IMPROPER LANGUAGE.— The Court has consistently been reminding officials and employees of the Judiciary that their conduct or behavior is circumscribed with a heavy burden of responsibility which, at all times, should be characterized by, among other

things, strict propriety and decorum. As such, they should not use abusive, offensive, scandalous, menacing and improper language. Their every act or word should be marked by prudence, restraint, courtesy and dignity.

R E S O L U T I O N

CARPIO MORALES, *J.*:

Atty. Gil Luisito R. Capito (respondent), Court Attorney IV at the Office of the Chief Attorney (OCAT), was charged with grave misconduct and willful failure to pay just debts by Milagros Lee (Milagros) and her daughter Samantha Lee.

Atty. Eden T. Candelaria (Atty. Candelaria), Deputy Clerk of Court and Chief Administrative Officer, in her February 6, 2009 Memorandum,[1] summarizes the facts which spawned the filing of the complaint against respondent as follows:

Mrs. Milagros Lee alleged that sometime in March 2008, Atty. Capito was introduced to her by neighbors Ma. Cecilia and Ferdinand De Guzman as she needs a lawyer to file a claim for financial support for her and her children against her husband who is in Hawaii. Atty. Capito is a friend of Ferdinand De Guzman.

Mrs. Lee again encountered Atty. Capito in the third week of April 2008 when Ms. De Guzman (*a.k.a.* Michelle) picked up Mrs. Lee in her house and told her that Atty. Capito is in their (Michelle['s]) house and that Mrs. Lee can now consult her problems with Platinum Plans and her claim for support against her husband. The De Guzman spouses made mention to her that Atty. Capito specializes in land cases and that he is connected with Senator Loren Legarda. She came to know also that Atty. Capito is working in the Supreme Court. [Mrs.] Milagros Lee's marriage contract and other documents were photocopied by Samantha Lee and were given to Atty. Capito for his information.

On June 26, 2008, Mrs. Lee had a meeting with Atty. Capito at KFC to discuss the matter concerning her possible claim for support.

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

After the consultation, Atty. Capito said, "*Malabo na daw makaclaim for support,*" and he did not do any legal action on the matter.

On June 27, 2008, Atty. Capito went to Mrs. Lee's house to borrow money. She told him that she does not have any, and that his (Atty. Capito['s]) friends, the De Guzman spouses, induced her to invest money that would earn a lot, but the money was not returned anymore. She was in short, scammed. She mentioned, however, that she has an existing bracelet which Atty. Capito asked her to pawn and give him the money so he could redeem his cell phone from the casino. The bracelet was pawned for ₱7,000.00 and the ₱4,000.00 was allegedly lent to Atty. Capito.

The following day, June 28, 2008, Atty. Capito called Mrs. Lee on the phone and asked the latter if he can come to her house and stay there for just two (2) weeks. Mrs. Lee consented, but his stay was prolonged for a month. During his stay in Mrs. Lee's house, Atty. Capito was treated as a guest. He told Mrs. Lee that he will pay for the board and lodging. But it did not happen. Not a single centavo was actually paid to her.

On July 7, 2008, despite the borrowed sum not having been returned yet, Atty. Capito again borrowed ₱10,000 from Mrs. Lee and promised that he will return the money immediately. Because he saw the Lees' kindness, he again borrowed money twice. One was on a date which Mrs. Lee cannot remember anymore, and another one was on July 23, 2008. Both were in the amount of ₱1,000.00 each. Mrs. Lee alleged that Atty. Capito was in dire need as he has no money for his daily use. He even asked Mrs. Lee to borrow money for him if she has some other acquaintance or friend as he had a problem with a case he filed, and proposed to double the payment. His debt with the complaint (sic) allegedly reached to ₱16,000[.]

For several times, Mrs. Lee called Atty. Capito in the OCAT through phone, but she received an answer "*wala pa*" until Mrs. Lee told him to give the exact date when to pay her. Mrs. Lee alleged that Atty. Capito promised to pay her on September 30, 2008. On said date, Mrs. Lee together with her daughter Samantha, went early to the said office but she was told "*wala pa*." Mrs. Lee got angry as they needed the money already that is why they came early to see him at his office.[2] (italics in the original; underscoring supplied)

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[2] *Id.* at 1-2.

When Milagros finally met respondent on September 30, 2008, respondent, in the presence of several others, told her *"Eh kung sabihin ko na sugar mommy kita,"*[3] adding that "*Nagpapakantot ka naman sa akin*."[4]

Respondent's side of the case was also summarized by Atty. Candelaria, *viz*:

> In the investigations conducted by this Office, Atty[.] Capito denied having stayed in the house of Mrs. Lee. He claimed that he is not indebted to Mrs. Lee, and stated that he had already explained everything in his Affidavit of Explanation and Rejoinder. The said pleadings he filed deny any indebtedness owing to Mrs. Lee as the alleged indebtedness is not supported by any concrete evidence and that Mrs. Lee is saying things irrelevant to the complaint not intended to prove the alleged indebtedness but intended to ruin his honor and reputation. Atty. Capito alleged that it is the complainants who are in dire need of money as they even asked him to write a demand letter to the father of Ferdinand De Guzman for the latter to pay even a small amount of money for their daily living. The accusations though not true, caused the recurrence of his asthma [rendering] him unable to report for work for several days[.] He maintains that he is the administrator of the estate of his father Luis Capito (Former Mayor of Borongan, Eastern Samar for more than twenty [20] years) whose assets and properties is worth the amount of ₱10,000,000.00.[5] (underscoring supplied)

Leonora F. Diño, Executive Assistant at the OCAT, corroborated complainant Milagros' account of the September 30, 2008 incident that respondent, while engaged in a heated argument with Milagros, loudly uttered: *"Nagpapakantot ka naman . . .!"*[6]

Jose Torres, testifying for complainant, related that he one time drove Milagros and respondent to Pampanga; and that

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[3] TSN, November 13, 2008, p. 5.

[4] *Id.* at 6.

[5] *Rollo*, pp. 6-7.

[6] *Vide* Testimony of Leonora F. Diño taken on November 21, 2008, *id.* at 40-45.

also at one time, while he was buying something at the store of Milagros, he saw respondent seated in her sala wearing a t-shirt.

Torres' wife Edeta declared that she once saw respondent knocking at the door of Milagros' house while she was at the latter's store buying some stuff.

Still testifying for Milagros, Toribio S. Balicot, Computer Operator IV, Records Division, OCAT, declared that respondent's cellphone number — 09282037934 — which is registered in his (Balicot's) cellfone, is the same number claimed by Milagros to be respondent's cellphone number.

Atty. Candelaria thereupon evaluated the case, parts of which are quoted below:

> On the first issue, we give credence to the testimony of complainants that Atty. Capito indeed stayed in their house, *vis-à-vis* denial asserted by Atty. Capito. Mrs. Lee's claim was corroborated by her fifteen (15) year old daughter, Ms. Samantha Lee[.]
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> x x x x x x x x x x x x
>
> Her testimony affirmed her sworn statement. Her personal account was answered in the first person and not stated as "told to her" or "as instructed to her." No words of uncertainty was reflected in her testimony of the fact that Atty. Capito stayed in their house. A fifteen (15) year old girl would not usually lie on her personal knowledge of the incident.
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> Added to these was the text message presented by Mrs. Lee that came from cellphone number 09282037934[.]
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> x x x x x x x x x x x x
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> . . . Mr. Balicot who works in the same office, confirmed in his testimony that cellphone number 09282037934 belongs to Atty. Capito as the same number is registered in his cellphone in the name of Atty. Capito. . . .
>
> Moreover, Mr. Torres testified that he saw Atty. Capito either once or twice in the sala of Mrs. Lee wearing a t-shirt.
>
> On the issue of alleged indebtedness of ₱16,000.00, we are not inclined to recommend favorable action by the Court . . .

. . . The claim was neither raised and adjudicated in the First Level Court (Metropolitan Trial Court) nor is the *existence and justness of the amount of debt* undisputed by the respondent. Atty. Capito denied that he has any debt owing to Mrs. Lee, hence the latter must thresh out her claim before the small claims court[.][7] (italics in the original; underscoring supplied)

Respondent's alleged private practice of law was found unsubstantiated.[8]

Respondent's utterance of vulgar words[9] was found "uncalled for and totally abhorring" by Atty. Candelaria given that the words were uttered in the presence of Milagros' daughter and in public.[10]

Atty. Candelaria thus concluded that respondent is liable for gross discourtesy.[11]

The Court finds that respondent is indeed guilty of gross discourtesy amounting to conduct unbecoming of a court employee. By such violation, respondent failed to live up to his oath of office as member of the Integrated Bar of the Philippines and violated Rule 7.03 of the Code of Professional Responsibility.[12]

Gross discourtesy in the course of official duties is classified as less grave offense under the *Revised Uniform Rules on Administrative Cases in the Civil Service*,[13] punishable with suspension for one month and one day to six months for the first offense and dismissal for the second offense.[14]

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[7] *Rollo*, pp. 10-11.

[8] *Id.* at 12.

[9] *Vide* Testimony of Leonora Diño, November 21, 2008.

[10] *Rollo*, p. 12.

[11] *Id.* at 12-13.

[12] Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

[13] CSC Resolution No. 99-1936, August 31, 1999.

[14] Section 52(B)(3).

In recommending the penalty for respondent, Atty. Candelaria found two mitigating circumstances in his favor: (1) his 17 years of service to the Court and (2) this being the first time that he has been administratively charged.

Atty. Candelaria thus gave the following recommendations:

(a) The case of willful failure to pay just debts be dismissed for failure of complainant to substantiate the charge. However, complainant Mrs. Lee is informed that the Court is not a collection agency. The sum of money representing the respondent's alleged indebtedness can be claimed before the regular court as a collection suit;

(b) Respondent . . . be suspended for three (3) months without pay for Gross Discourtesy, with a warning that a repetition of the same o[r] similar acts . . . will be dealt with more severely;

(c) For his demeanor which appears to be a violation of Rule 7.03 of the Code of Professional Responsibility, the same be referred to the Office of the Bar Confidant for appropriate action.[15] (underscoring supplied)

The Court has consistently been reminding officials and employees of the Judiciary that their conduct or behavior is circumscribed with a heavy burden of responsibility which, at all times, should be characterized by, among other things, strict propriety and decorum. As such, they should not use abusive, offensive, scandalous, menacing and improper language. Their every act or word should be marked by prudence, restraint, courtesy and dignity.[16]

It appearing that aside from violating Rule 7.03 of the Code of Professional Responsibility, respondent appears to have also violated Rule 8.01[17] of the same Code, the recommendation to

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[15] *Rollo*, p. 15.

[16] *Quilo v. Jundarino*, A.M. No. P-09-2644, July 30, 2009, 594 SCRA 259, 278-279.

[17] A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

refer the case to the Office of the Bar Confidant for appropriate action is in order.

WHEREFORE, Atty. Gil Luisito R. Capito, Court Attorney IV, Office of the Chief Attorney, is, for Gross Discourtesy, *SUSPENDED* for Three Months without pay, with a *WARNING* that a repetition of the same or similar acts shall be dealt with more severely.

Let this case be referred to the Office of the Bar Confidant for appropriate action, it appearing that respondent has also violated Rules 7.03 and 8.01 of the Code of Professional Responsibility.

SO ORDERED.

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

EN BANC

[G.R. No. 180291. July 27, 2010]

GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS) and WINSTON F. GARCIA, in his capacity as PRESIDENT and GENERAL MANAGER of the GSIS, *petitioners, vs.* **DINNAH VILLAVIZA, ELIZABETH DUQUE, ADRONICO A. ECHAVEZ, RODEL RUBIO, ROWENA THERESE B. GRACIA, PILAR LAYCO, and ANTONIO JOSE LEGARDA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE AGENCIES; GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS);

AMENDED POLICY AND PROCEDURAL GUIDELINES; PROVIDES THAT FAILURE TO FILE ANSWER MERELY TRANSLATES THE ACT TO A WAIVER OF RIGHT TO FILE AN ANSWER. – Rule XI, Section 4 of the GSIS' Amended Policy and Procedural Guidelines No. 178-04, specifically provides: If the respondent fails to file his Answer within five (5) working days from receipt of the Formal Charge for the supporting evidence, when requested, he shall be considered to have waived his right to file an answer and the PGM or the Board of Trustees, in proper cases, shall render judgment, as may be warranted by the facts and evidence submitted by the prosecution. A perusal of said section readily discloses that the failure of a respondent to file an answer merely translates to a waiver of "his right to file an answer." There is nothing in the rule that says that the charges are deemed admitted. It has not done away with the burden of the complainant to prove the charges with clear and convincing evidence. It is true that Section 4 of the Rules of Court provides that the rules can be applied in a "suppletory character." Suppletory is defined as "supplying deficiencies." It means that the provisions in the Rules of Court will be made to apply only where there is an insufficiency in the applicable rule. There is, however, no such deficiency as the rules of the GSIS are explicit in case of failure to file the required answer. What is clearly stated there is that GSIS may "render judgment as may be warranted by the facts and evidence submitted by the prosecution." Even granting that Rule 8, Section 11 of the Rules of Court finds application in this case, petitioners must remember that there remain averments that are not deemed admitted by the failure to deny the same. Among them are immaterial allegations and incorrect conclusions drawn from facts set out in the complaint. Thus, even if respondents failed to file their answer, it does not mean that all averments found in the complaint will be considered as true and correct in their entirety, and that the forthcoming decision will be rendered in favor of the petitioners. We must not forget that even in administrative proceedings, it is still the complainant, or in this case the petitioners, who have the burden of proving, with substantial evidence, the allegations in the complaint or in the formal charges.

2. ID.; ID.; CIVIL SERVICE COMMISSION; OMNIBUS RULES; WEARING OF RED SHIRTS TO WITNESS PUBLIC HEARING DO NOT AMOUNT TO CONCERTED OR MASS

ACTION PROSCRIBED BY THE RULES; RATIONALE. — On the merits, what needs to be resolved in the case at bench is the question of whether or not there was a violation of Section 5 of CSC Resolution No. 02-1316. Stated differently, whether or not respondents' actions on May 27, 2005 amounted to a "prohibited concerted activity or mass action." Pertinently, the said provision states: Section 5. As used in this Omnibus Rules, the phrase ''prohibited concerted activity or mass action'' shall be understood to refer to any collective activity undertaken by government employees, by themselves or through their employees organizations, with intent of effecting work stoppage or service disruption in order to realize their demands of force concession, economic or otherwise, from their respective agencies or the government. It shall include mass leaves, walkouts, pickets and acts of similar nature. In this case, CSC found that the acts of respondents in going to the GSIS-IU office wearing red shirts to witness a public hearing do not amount to a concerted activity or mass action proscribed above. CSC even added that their actuations can be deemed an exercise of their constitutional right to freedom of expression. The CA found no cogent reason to deviate therefrom. As defined in Section 5 of CSC Resolution No. 02-1316 which serves to regulate the political rights of those in the government service, the concerted activity or mass action proscribed must be coupled with the "intent of effecting work stoppage or service disruption in order to realize their demands of force concession." Wearing similarly colored shirts, attending a public hearing at the GSIS-IU office, bringing with them recording gadgets, clenching their fists, some even badmouthing the guards and PGM Garcia, are acts not constitutive of an (i) intent to effect work stoppage or service disruption and (ii) for the purpose of realizing their demands of force concession. Precisely, the limitations or qualifications found in Section 5 of CSC Resolution No. 02-1316 are there to temper and focus the application of such prohibition. Not all collective activity or mass undertaking of government employees is prohibited. Otherwise, we would be totally depriving our brothers and sisters in the government service of their constitutional right to freedom of expression. Government workers, whatever their ranks, have as much right as any person in the land to voice out their protests against what they believe to be a violation of their rights and interests. Civil Service does not deprive them of their freedom

> of expression. It would be unfair to hold that by joining the government service, the members thereof have renounced or waived this basic liberty. This freedom can be reasonably regulated only but can never be taken away. x x x Respondents' freedom of speech and of expression remains intact, and CSC's Resolution No. 02-1316 defining what a prohibited concerted activity or mass action has only tempered or regulated these rights. Measured against that definition, respondents' actuations did not amount to a prohibited concerted activity or mass action. The CSC and the CA were both correct in arriving at said conclusion.

APPEARANCES OF COUNSEL

Chief Legal Counsel (GSIS) for petitioners.
Barbers Molina and Molina for respondents.

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 seeking to reverse and set aside the August 31, 2007 Decision[1] of the Court of Appeals *(CA),* in CA-G.R. SP No. 98952, dismissing the petition for *certiorari* of Government Service Insurance System *(GSIS)* assailing the Civil Service Commission's Resolution No. 062177.

THE FACTS:

Petitioner Winston Garcia *(PGM Garcia)*, as President and General Manager of the GSIS, filed separate formal charges against respondents Dinnah Villaviza, Elizabeth Duque, Adronico A. Echavez, Rodel Rubio, Rowena Therese B. Gracia, Pilar Layco, and Antonio Jose Legarda for Grave Misconduct and/or Conduct Prejudicial to the Best Interest of the Service pursuant

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[1] *Rollo*, pp. 295-312. Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justice Rosalinda Asuncion-Vicente and Associate Justice Enrico A. Lanzanas.

to the Rules of Procedure in Administrative Investigation (RPAI) of GSIS Employees and Officials, III, D, (1, c, f) in relation to Section 52A (3), (20), Rule IV, of the Uniform Rules on Administrative Cases in the Civil Service (URACCS), in accordance with Book V of the Administrative Code of 1987, committed as follows:

> That on 27 May 2005, respondent, wearing red shirt together with some employees, marched to or appeared simultaneously at or just outside the office of the Investigation Unit in a mass demonstration/ rally of protest and support for Messrs. Mario Molina and Albert Velasco, the latter having surreptitiously entered the GSIS premises;
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> x x x x x x x x x
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> That some of these employees badmouthed the security guards and the GSIS management and defiantly raised clenched fists led by Atty. Velasco who was barred by Hearing Officer Marvin R. Gatpayat in an Order dated 24 May 2005 from appearing as counsel for Atty. Molina pursuant to Section 7 (b) (2) of R.A. 6713 otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees;
>
> That respondent, together with other employees in utter contempt of CSC Resolution No. 021316, dated 11 October 2002, otherwise known as Omnibus Rules on Prohibited Concerted Mass Actions in the Public Sector caused alarm and heightened some employees and disrupted the work at the Investigation Unit during office hours.[2]

This episode was earlier reported to PGM Garcia, through an office memorandum dated May 31, 2005, by the Manager of the GSIS Security Department (GSIS-SD), Dennis Nagtalon. On the same day, the Manager of the GSIS Investigation Unit (GSIS-IU), Atty. Lutgardo Barbo, issued a memorandum to each of the seven (7) respondents requiring them to explain in writing and under oath within three (3) days why they should not be administratively dealt with.[3]

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[2] *Id.* at 296-297.

[3] *Id.*

Respondents Duque, Echavez, Rubio, Gracia, Layco, and Legarda, together with two others, submitted a letter-explanation to Atty. Barbo dated June 6, 2005. Denying that there was a planned mass action, the respondents explained that their act of going to the office of the GSIS-IU was a spontaneous reaction after learning that their former union president was there. Aside from some of them wanting to show their support, they were interested in that hearing as it might also affect them. For her part, respondent Villaviza submitted a separate letter explaining that she had a scheduled pre-hearing at the GSIS-IU that day and that she had informed her immediate supervisor about it, attaching a copy of the order of pre-hearing. These letters were not under oath.[4]

PGM Garcia then filed the above-mentioned formal charges for Grave Misconduct and/or Conduct Prejudicial to the Best Interest of the Service against each of the respondents, all dated June 4, 2005. Respondents were again directed to submit their written answers under oath within three (3) days from receipt thereof.[5] None was filed.

On June 29, 2005, PGM Garcia issued separate but similarly worded decisions finding all seven (7) respondents guilty of the charges and meting out the penalty of one (1) year suspension plus the accessory penalties appurtenant thereto.

On appeal, the Civil Service Commission *(CSC)* found the respondents guilty of the lesser offense of Violation of Reasonable Office Rules and Regulations and reduced the penalty to reprimand. The CSC ruled that respondents were not denied their right to due process but there was no substantial evidence to hold them guilty of Conduct Prejudicial to the Best Interest of the Service. Instead,

> x x x. The actuation of the appellants in going to the IU, wearing red shirts, to witness a public hearing cannot be considered as constitutive of such offense. Appellants' (respondents herein) assembly at the said office to express support to Velasco, their Union

[4] *Id.* at 297-299.

[5] *Id.*, Annexes "J" to "P", at 107-120.

President, who pledged to defend them against any oppression by the GSIS management, can be considered as an exercise of their freedom of expression, a constitutionally guaranteed right.[6] x x x

PGM Garcia sought reconsideration but was denied. Thus, PGM Garcia went to the Court of Appeals via a Petition for Review under Rule 43 of the Rules on Civil Procedure.[7] The CA upheld the CSC in this wise:

The Civil Service Commission is correct when it found that the act sought to be punished hardly falls within the definition of a prohibited concerted activity or mass action. The petitioners failed to prove that the supposed concerted activity of the respondents resulted in work stoppage and caused prejudice to the public service. Only about twenty (20) out of more than a hundred employees at the main office, joined the activity sought to be punished. These employees, now respondents in this case, were assigned at different offices of the petitioner GSIS. Hence, despite the belated claim of the petitioners that the act complained of had created substantial disturbance inside the petitioner GSIS' premises during office hours, there is nothing in the record that could support the claim that the operational capacity of petitioner GSIS was affected or reduced to substantial percentage when respondents gathered at the Investigation Unit. Despite the hazy claim of the petitioners that the gathering was intended to force the Investigation Unit and petitioner GSIS to be lenient in the handling of Atty. Molina's case and allow Atty. Velasco to represent Atty. Molina in his administrative case before petitioner GSIS, there is likewise no concrete and convincing evidence to prove that the gathering was made to demand or force concessions, economic or otherwise from the GSIS management or from the government. In fact, in the separate formal charges filed against the respondents, petitioners clearly alleged that respondents "marched to or appeared simultaneously at or just outside the office of the Investigation Unit in a mass demonstration/rally of protest and support for Mssrs. Mario Molina and Albert Velasco, the latter surreptitiously entered the GSIS premises." Thus, petitioners are aware at the outset that the only apparent intention of the respondents in going to the IU was to show support to Atty. Mario Molina and

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[6] *Id.* at 191-192.

[7] *Id.* at 300-302.

Albert Velasco, their union officers. The belated assertion that the intention of the respondents in going to the IU was to disrupt the operation and pressure the GSIS administration to be lenient with Atty. Mario Molina and Albert Velasco, is only an afterthought.[8]

Not in conformity, PGM Garcia is now before us via this Petition for Review presenting the following:

STATEMENT OF THE ISSUES

I

WHETHER AN ADMINISTRATIVE TRIBUNAL MAY APPLY SUPPLETORILY THE PROVISIONS OF THE RULES OF COURT ON THE EFFECT OF FAILURE TO DENY THE ALLEGATIONS IN THE COMPLAINT AND FAILURE TO FILE ANSWER, WHERE THE RESPONDENTS IN THE ADMINISTRATIVE PROCEEDINGS DID NOT FILE ANY RESPONSIVE PLEADING TO THE FORMAL CHARGES AGAINST THEM.

II

WHETHER THE RULE THAT ADMINISTRATIVE DUE PROCESS CANNOT BE EQUATED WITH DUE PROCESS IN JUDICIAL SENSE AUTHORIZES AN ADMINISTRATIVE TRIBUNAL TO CONSIDER IN EVIDENCE AND GIVE FULL PROBATIVE VALUE TO UNNOTARIZED LETTERS THAT DID NOT FORM PART OF THE CASE RECORD.

III

WHETHER A DECISION THAT MAKES CONCLUSIONS OF FACTS BASED ON EVIDENCE ON RECORD BUT MAKES A CONCLUSION OF LAW BASED ON THE ALLEGATIONS OF A DOCUMENT THAT NEVER FORMED PART OF THE CASE RECORDS IS VALID.

IV

WHETHER FURTHER PROOF OF SUSBTANTIAL REDUCTION OF THE OPERATIONAL CAPACITY OF AN AGENCY, DUE TO UNRULY MASS GATHERING OF

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[8] *Id.* at 309-310.

GOVERNMENT EMPLOYEES INSIDE OFFICE PREMISES AND WITHIN OFFICE HOURS, IS REQUIRED TO HOLD THE SAID EMPLOYEES LIABLE FOR CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE PURSUANT TO CSC RESOLUTION NO. 021316.

V

WHETHER AN UNRULY MASS GATHERING OF TWENTY EMPLOYEES, LASTING FOR MORE THAN AN HOUR DURING OFFICE HOURS, INSIDE OFFICE PREMISES AND WITHIN A UNIT TASKED TO HEAR AN ADMINISTRATIVE CASE, TO PROTEST THE PROHIBITION AGAINST THE APPEARANCE OF THEIR LEADER AS COUNSEL IN THE SAID ADMINISTRATIVE CASE, FALLS WITHIN THE PURVIEW OF THE CONSTITUTIONAL GUARANTEE TO FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY.

VI

WHETHER THE CONCERTED ABANDONMENT OF EMPLOYEES OF THEIR POSTS FOR MORE THAN AN HOUR TO HOLD AN UNRULY PROTEST INSIDE OFFICE PREMISES ONLY CONSTITUTES THE ADMINISTRATIVE OFFENSE OF VIOLATION OF REASONABLE OFFICE RULES AND REGULATIONS.[9]

The Court finds no merit in the petition.

Petitioners primarily question the probative value accorded to respondents' letters of explanation in response to the memorandum of the GSIS-IU Manager. The respondents never filed their answers to the formal charges. The petitioners argue that there being no answers, the allegations in the formal charges that they filed should have been deemed admitted pursuant to Section 11, Rule 8 of the Rules of Court which provides:

SECTION 11. *Allegations not specifically denied deemed admitted*.— Material averment in the complaint, other than those as to the amount of liquidated damages, shall be deemed admitted when not specifically denied. Allegations of usury in a complaint

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[9] *Id.*, GSIS/PGM Garcia's Memorandum, at 496-471.

to recover usurious interest are deemed admitted if not denied specifically and under oath.

According to the petitioners, this rule is applicable to the case at bench pursuant to Rule 1, Section 4 of the Rules of Court which reads:

> SECTION 4. *In what cases not applicable.* — These Rules shall not apply to election cases, land registration, cadastral, naturalization and insolvency proceedings, and other cases not herein provided for, except by analogy or in a suppletory character and whenever practicable and convenient. (underscoring supplied)

The Court does not subscribe to the argument of the petitioners. Petitioners' own rules, Rule XI, Section 4 of the GSIS' Amended Policy and Procedural Guidelines No. 178-04, specifically provides:

> If the respondent fails to file his Answer within five (5) working days from receipt of the Formal Charge for the supporting evidence, when requested, he shall be considered to have waived his right to file an answer and the PGM or the Board of Trustees, in proper cases, shall render judgment, as may be warranted by the facts and evidence submitted by the prosecution.

A perusal of said section readily discloses that the failure of a respondent to file an answer merely translates to a waiver of "his right to file an answer." There is nothing in the rule that says that the charges are deemed admitted. It has not done away with the burden of the complainant to prove the charges with clear and convincing evidence.

It is true that Section 4 of the Rules of Court provides that the rules can be applied in a "suppletory character." Suppletory is defined as "supplying deficiencies."[10] It means that the provisions in the Rules of Court will be made to apply only where there is an insufficiency in the applicable rule. There is, however, no such deficiency as the rules of the GSIS are explicit in case of failure to file the required answer. What is clearly

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[10] Merriam Webster's Collegiate Dictionary, 10th Edition, p. 1184.

stated there is that GSIS may "render judgment as may be warranted by the facts and evidence submitted by the prosecution."

Even granting that Rule 8, Section 11 of the Rules of Court finds application in this case, petitioners must remember that there remain averments that are not deemed admitted by the failure to deny the same. Among them are immaterial allegations and incorrect conclusions drawn from facts set out in the complaint.[11] Thus, even if respondents failed to file their answer, it does not mean that all averments found in the complaint will be considered as true and correct in their entirety, and that the forthcoming decision will be rendered in favor of the petitioners. We must not forget that even in administrative proceedings, it is still the complainant, or in this case the petitioners, who have the burden of proving, with substantial evidence, the allegations in the complaint or in the formal charges.[12]

A perusal of the decisions of the CA and of the CSC will reveal that the case was resolved against petitioners based, not on the absence of respondents' evidence, but on the weakness of that of the petitioners. Thus, the CA wrote:

> Petitioners correctly submitted the administrative cases for resolution without the respondents' respective answer to the separate formal charges in accordance with Section 4, Rule XI of the RPAI. Being in full control of the administrative proceeding and having effectively prevented respondents from further submitting their responsive answer and evidence for the defense, petitioners were in the most advantageous position to prove the merit of their allegations in the formal charges. When petitioner Winston Garcia issued those similarly worded decisions in the administrative cases against the respondents, it is presumed that all evidence in their favor were duly submitted and justly considered independent of the weakness of respondent's evidence in view of the principle that "the

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[11] Herrera, *Remedial Law*, Vol. I, p. 548 (2000 ed.).

[12] *First United Construction Corporation v. Valdez*, G.R. No. 154108, December 10, 2008, 573 SCRA 391, 399.

burden of proof belongs to the one who alleges and not the one who denies."[13]

On the merits, what needs to be resolved in the case at bench is the question of whether or not there was a violation of Section 5 of CSC Resolution No. 02-1316. Stated differently, whether or not respondents' actions on May 27, 2005 amounted to a "prohibited concerted activity or mass action." Pertinently, the said provision states:

> Section 5. As used in this Omnibus Rules, the phrase ''prohibited concerted activity or mass action'' shall be understood to refer to any collective activity undertaken by government employees, by themselves or through their employees organizations, with intent of effecting work stoppage or service disruption in order to realize their demands of force concession, economic or otherwise, from their respective agencies or the government. It shall include mass leaves, walkouts, pickets and acts of similar nature. (underscoring supplied)

In this case, CSC found that the acts of respondents in going to the GSIS-IU office wearing red shirts to witness a public hearing do not amount to a concerted activity or mass action proscribed above. CSC even added that their actuations can be deemed an exercise of their constitutional right to freedom of expression. The CA found no cogent reason to deviate therefrom.

As defined in Section 5 of CSC Resolution No. 02-1316 which serves to regulate the political rights of those in the government service, the concerted activity or mass action proscribed must be coupled with the "intent of effecting work stoppage or service disruption in order to realize their demands of force concession." Wearing similarly colored shirts, attending a public hearing at the GSIS-IU office, bringing with them recording gadgets, clenching their fists, some even badmouthing the guards and PGM Garcia, are acts not constitutive of an (i) intent to effect work stoppage or service disruption and (ii) for the purpose of realizing their demands of force concession.

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[13] *Rollo*, pp. 307-308.

Precisely, the limitations or qualifications found in Section 5 of CSC Resolution No. 02-1316 are there to temper and focus the application of such prohibition. Not all collective activity or mass undertaking of government employees is prohibited. Otherwise, we would be totally depriving our brothers and sisters in the government service of their constitutional right to freedom of expression.

Government workers, whatever their ranks, have as much right as any person in the land to voice out their protests against what they believe to be a violation of their rights and interests. Civil Service does not deprive them of their freedom of expression. It would be unfair to hold that by joining the government service, the members thereof have renounced or waived this basic liberty. This freedom can be reasonably regulated only but can never be taken away.

A review of PGM Garcia's formal charges against the respondents reveals that he himself was not even certain whether the respondents and the rest of the twenty or so GSIS employees who were at the GSIS-IU office that fateful day marched there or just simply appeared there simultaneously.[14] Thus, the petitioners were not even sure if the spontaneous act of each of the twenty or so GSIS employees on May 27, 2005 was a concerted one. The report of Manager Nagtalon of the GSIS-SD which was the basis for PGM Garcia's formal charges reflected such uncertainty. Thus,

> Of these red shirt protesters, only Mr. Molina has official business at the Investigation Unit during this time. The rest abandoned their post and duties for the duration of this incident which lasted until 10:55 A.M. It was also observed that the protesters, some of whom raised their clenched left fists, carefully planned this illegal action as evident in their behavior of arrogance, defiance and provocation, the presence of various recording gadgets such as VCRs, voice recorders and digital cameras, the bad mouthing of the security guards and the PGM, the uniformity in their attire and the collusion regarding

[14] *Id.* at 107.

the anomalous entry of Mr. Albert Velasco to the premises as reported earlier.[15]

The said report of Nagtalon contained only bare facts. It did not show respondents' unified intent to effect disruption or stoppage in their work. It also failed to show that their purpose was to demand a force concession.

In the recent case of *GSIS v. Kapisanan ng mga Manggagawa sa GSIS*,[16] the Court upheld the position of petitioner GSIS because its employees, numbering between 300 and 800 each day, staged a walkout and participated in a mass protest or demonstration outside the GSIS for four straight days. We cannot say the same for the 20 or so employees in this case. To equate their wearing of red shirts and going to the GSIS-IU office for just over an hour with that four-day mass action in *Kapisanan ng mga Manggagawa sa GSIS* case and to punish them in the same manner would most certainly be unfair and unjust.

Recent analogous decisions in the United States, while recognizing the government's right as an employer to lay down certain standards of conduct, tend to lean towards a broad definition of "public concern speech" which is protected by their First Amendment. One such case is that of *Scott v. Meters*.[17] In said case, the New York Transit Authority (NYTA), responsible for operation of New York City's mass transit service, issued a rule prohibiting employees from wearing badges or buttons on their uniforms. A number of union members wore union buttons promoting their opposition to a collective bargaining agreement. Consequently, the NYTA tried to enforce its rule and threatened to subject these union members to discipline. The court, though recognizing the government's right to impose reasonable restrictions, held that the NYTA's rule was "unconstitutionally overboard."

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[15] *Id.* at 99.

[16] *GSIS v. Kapisanan ng mga Manggagawa sa GSIS*, G.R. No. 170132, December 6, 2006, 510 SCRA 622.

[17] *Scott v. Meyers*, 191 F.3d 82 (2d Cir. 1999).

In another case, *Communication Workers of America v. Ector County Hospital District*,[18] it was held that,

> A county hospital employee's wearing of a "Union Yes" lapel pin during a union organization drive constituted speech on a matter of public concern, and the county's proffered interest in enforcing the anti-adornment provision of its dress code was outweighed by the employee's interest in exercising his First Amendment speech and associational rights by wearing a pro-union lapel button.[19]

Thus, respondents' freedom of speech and of expression remains intact, and CSC's Resolution No. 02-1316 defining what a prohibited concerted activity or mass action has only tempered or regulated these rights. Measured against that definition, respondents' actuations did not amount to a prohibited concerted activity or mass action. The CSC and the CA were both correct in arriving at said conclusion.

WHEREFORE, the assailed August 31, 2007 Decision of the Court of Appeals as well as its October 16, 2007 Resolution in CA G.R. SP No. 98952 are hereby *AFFIRMED*.

SO ORDERED.

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

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[18] *Communication Workers of America v. Ector County Hospital District*, 392 F.3d 733, 176 L.R.R.M. (BNA) 2155, 60 Fed. R. Serv. 3d 107 (5th Cir. 2004).

[19] *Id*.

EN BANC

[G.R. No. 180543. July 27, 2010]

KILOSBAYAN FOUNDATION and BANTAY KATARUNGAN FOUNDATION, as represented by JOVITO R. SALONGA, *petitioners, vs.* **LEONCIO M. JANOLO, JR., PRESIDING JUDGE, RTC, BRANCH 264, PASIG CITY; GREGORY S. ONG, ASSOCIATE JUSTICE, SANDIGANBAYAN; and THE LOCAL CIVIL REGISTRAR OF SAN JUAN, METRO MANILA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DEFAULT; REMEDIES AVAILABLE TO A PARTY DECLARED IN DEFAULT.— The question on the propriety of the remedy availed of by petitioners is resolved in *Cerezo v. Tuazon*, where the Court discussed the various remedies available to a party declared in default, including a petition for *certiorari* to declare the nullity of a judgment by default if the trial court improperly declared a party in default, or even if the trial court properly declared a party in default, if grave abuse of discretion attended such declaration. A party declared in default may thus alternatively file a petition for *certiorari* assailing both the order of default and the judgment of default. On the choice of *remedy*, the Court finds petitioners' recourse procedurally allowable.

2. ID.; COURTS; HIERARCHY OF COURTS; RULE; EXCEPTION; NOT PRESENT.— The hierarchy of courts serves as a general determinant of the appropriate forum for appeals and petitions for extraordinary writs. The rule on hierarchy of courts is not absolute, and the Court has full discretionary power to take cognizance of a petition filed directly with it. A direct invocation of this Court's original jurisdiction may be allowed where there are special and important reasons therefor clearly and specifically set out in the petition. The present petition is bereft of even a single allegation of exceptional and compelling circumstance to warrant an exception to the rule. In fact, this valid objection

elicited no response from petitioners, who glossed over all procedural issues in their Consolidated Reply. If petitioners themselves do not provide the Court some basis for the direct recourse, the Court is not minded to search for one.

3. ID.; PLEADINGS AND PRACTICES; VERIFICATION; RULE; VERIFICATION IS NOT AN EMPTY RITUAL OR MEANINGLESS FORMALITY AND MUST NEVER BE SACRIFICED IN THE NAME OF MERE EXPEDIENCE OR SHEER CAPRICE.— [T]he petition carries a defective verification since it was verified without stating the basis thereof. In the Verification/ Certification of the Petition, the affiant states that he "has read the same and all the facts contained therein are true and correct." The Rules clearly state that a pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records, and a pleading required to be verified which lacks a proper verification shall be treated as an unsigned pleading. Verification is not an empty ritual or a meaningless formality. Its import must never be sacrificed in the name of mere expedience or sheer caprice. For what is at stake is the matter of verity attested by the sanctity of an oath to secure an assurance that the allegations in the pleading have been made in good faith, or are true and correct and not merely speculative.

4. LEGAL AND JUDICIAL ETHICS; NOTARY PUBLIC; 2004 RULES ON NOTARIAL PRACTICE; AFFIANT MUST PRESENT COMPETENT EVIDENCE OF HIS IDENTITY BEFORE THE NOTARY PUBLIC.— [T]his Court observes that the affiant failed to present competent evidence of his identity before the notary public, as required under the 2004 Rules on Notarial Practice. The Court cannot assume that affiant, being a public figure, is personally known to the notary public, for the *jurat* does not contain a statement to that effect.

5. REMEDIAL LAW; APPEALS; PETITION; PROOF OF SERVICE; NON-COMPLIANCE WITH THE REQUIREMENT IS A SUFFICIENT GROUND FOR THE DISMISSAL OF THE PETITION.— Records also show that petitioners failed to furnish public respondent with a copy of the petition. The Rules require that the petition should be filed with proof of service on all adverse parties, and that the failure

to comply with the requirement shall be sufficient ground for the dismissal of the petition.

6. LEGAL AND JUDICIAL ETHICS; JUDGES; COMPULSORY DISQUALIFICATION AND VOLUNTARY INHIBITION; RULE, DISCUSSED.— The rule on compulsory disqualification and voluntary inhibition of judges is provided under Section 1, Rule 137 of the Rules of Court. x x x A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above. While the second paragraph does not expressly enumerate the specific grounds for inhibition and leaves it to the sound discretion of the judge, such should be based on just or valid reasons. The import of the rule on the voluntary inhibition of judges is that the decision on whether to inhibit is left to the sound discretion and conscience of the judge based on his rational and logical assessment of the circumstances prevailing in the case brought before him. It makes clear to the occupants of the Bench that outside of pecuniary interest, relationship or previous participation in the matter that calls for adjudication, there might be other causes that could conceivably erode the trait of objectivity, thus calling for inhibition. That is to betray a sense of realism, for the factors that lead to preferences and predilections are many and varied. In the final reckoning, there is really no hard and fast rule when it comes to the inhibition of judges. Each case should be treated differently and decided based on its peculiar circumstances.

7. ID.; ID.; ID.; ABSENT CLEAR AND CONVINCING EVIDENCE, BARE ALLEGATIONS OF BIAS AND PREJUDICE ARE NOT ENOUGH TO OVERCOME THE PRESUMPTION THAT A JUDGE WILL UNDERTAKE HIS NOBLE ROLE TO DISPENSE JUSTICE ACCORDING TO LAW AND EVIDENCE AND WITHOUT FEAR OR FAVOR.— The issue of *voluntary* inhibition is primarily **a matter of conscience and sound discretion** on the part of the judge. It is a **subjective test**, the result of which the reviewing tribunal will not disturb in the absence of any manifest finding of arbitrariness and whimsicality. The discretion given to trial judges is an acknowledgment of the fact that they are in a better position to determine the issue of inhibition, as they are the ones who directly deal with the parties-litigants in their courtrooms. Impartiality being a state of mind, there is thus a need for some

kind of manifestation of its reality, in order to provide "good, sound or ethical grounds" or "just and valid reasons" for inhibition. Bare allegations of bias and prejudice are not enough in the absence of clear and convincing evidence to overcome the presumption that a judge will undertake his noble role to dispense justice according to law and evidence and without fear or favor.

8. ID.; ID.; ID.; AUTOMATIC GRANT OF A MOTION FOR VOLUNTARY INHIBITION WILL OPEN THE FLOODGATES TO A FORM OF FORUM-SHOPPING, IN WHICH LITIGANTS WOULD BE ALLOWED TO SHOP FOR A JUDGE MORE SYMPATHETIC TO THEIR CAUSE.— In *Gochan v. Gochan*, the Court elucidated further: xxx In a string of cases, the Supreme Court has said that bias and prejudice, to be considered valid reasons for the voluntary inhibition of judges, must be proved with **clear and convincing evidence**. Bare allegations of their partiality will not suffice. It cannot be presumed, especially if weighed against the sacred oaths of office of magistrates, requiring them to administer justice fairly and equitably– both to the poor and the rich, the weak and the strong, the lonely and the well-connected. The Court applied the same precept in *Pagoda Philippines, Inc. v. Universal Canning, Inc.* where the judge's right to inhibit was weighed against his duty to decide the case without fear of repression. Indeed, the automatic granting of a motion for voluntary inhibition would open the floodgates to a form of forum-shopping, in which litigants would be allowed to shop for a judge more sympathetic to their cause, and would prove antithetical to the speedy and fair administration of justice.

9. ID.; ID.; ID.; ORGANIZATIONAL AFFILIATION *PER SE* IS NOT A GROUND FOR INHIBITION.— A judge must decide based on a rational and logical assessment of the circumstances prevailing in a case brought before him. In the present case, petitioners cite public respondent's affiliation with an alumni association as the sole ground to which they anchor their motion for the voluntary inhibition of public respondent. xxx Inhibition is not allowed at every instance that a schoolmate or classmate appears before the judge as counsel for one of the parties, however. In one case, the Court ruled that organizational affiliation *per se* is not a ground for inhibition. Membership in a college fraternity, by itself, does not constitute a ground

to disqualify an investigator, prosecutor or judge from acting on the case of a respondent who happens to be a member of the same fraternity. A trial Judge, appellate Justice, or member of this Court who is or was a member of a college fraternity, a university alumni association, a socio-civic association like Jaycees or Rotary, a religion-oriented organization like Knights of Columbus or Methodist Men, and various other fraternal organizations is not expected to automatically inhibit himself or herself from acting whenever a case involving a member of his or her group happens to come before him or her for action. A member in good standing of any reputable organization is expected all the more to maintain the highest standards of probity, integrity, and honor and to faithfully comply with the ethics of the legal profession. The added fact that the law school's alumni association published statements in support of Ong's application cannot lend credence to the imputation of bias on the part of public respondent. No clear and convincing evidence was shown to indicate that public respondent actively sponsored and participated in the adoption and publication of the alumni association's stand. It is inconceivable to suppose that the alumni association's statement obliged all its members to earnestly embrace the manifesto as a matter of creed.

10. ID.; ID.; ID.; THE TRIAL JUDGE'S RESOLUTION OF THE MOTION FOR VOLUNTARY INHIBITION ONE DAY AFTER IT WAS FILED, NOT CONSIDERED ARBITRARY.— Arbitrariness cannot be inferred either from the fact that public respondent resolved the motion for voluntary inhibition one day after it was filed. Since the personal process of "careful self-examination" is essentially a matter of conscience, the judge may decide as soon as the factual basis of the motions has been clearly laid before the court because from there on the resolution of the motion enters the subjective phase.

11. ID.; ID.; ID.; FILING OF COMMENTS OR OPPOSITIONS TO THE MOTION FOR VOLUNTARY INHIBITION IS NOT REQUIRED BEFORE THE COURT MAY RULE ON THE MOTION.— That public respondent, Ong and his counsel former Senator Rene Saguisag are all graduates of San Beda College of Law was clearly and early on established. Hence, this *sole* ground relied upon by petitioners in their motion, it bears repeating, no longer required a hearing or called for the

submission of a comment or opposition, and the absence thereof did not prejudice petitioners. In one case, it was held that the Rules of Court does not direct the court to order the filing of comments or oppositions to the motion before the motion is resolved. The parties may orally argue and ventilate their positions and, thereafter, the court may rule on the motion. The Court notes that when petitioners filed the Omnibus Motion (for reconsideration and deferment) which basically reiterated their previous arguments, they no longer set the motion for hearing and simply submitted their motion *ex parte* without further arguments, thereby recognizing the non-litigious nature of their allegations.

12. ID.; ID.; ID.; A MOTION FOR RECONSIDERATION OF AN ORDER DENYING INHIBITION MUST BE RESOLVED WITHIN THE MANDATORY 90-DAY PERIOD.— Petitioners further complain that public respondent proceeded to hear the case and declared them in default without first resolving their pending motion. Records show that petitioners filed on August 13, 2007 an Omnibus Motion for reconsideration of the August 7, 2007 Order and for deferment of the hearings set on August 14, 21 and 28, 2007. Petitioners, thereafter, did not appear in the various settings, they alleging that the question of voluntary inhibition, which they deem to be an "overriding consideration" partaking of a "highly prejudicial matter," had yet to be resolved by the trial court. While there is no specific rule providing for a definite period of time within which to resolve a motion for reconsideration of an order denying inhibition, judges must endeavor to act promptly on it within the mandatory 90-day period so as not to interrupt the course of trial.

13. ID.; ORDER; *NUNC PRO TUNC* ORDER, EXPLAINED.— The issuance of a *nunc pro tunc* order is recognized where an order actually rendered by a court at a former time had not been entered of record as rendered. The phrase *nunc pro tunc* signifies "now for then," or that a thing is done now that shall have the same legal force and effect as if done at the time it ought to have been done. The purpose of an order *nunc pro tunc* is to make a present record of an order that the court made in a previous term, but which was not then recorded. It can only be made when the thing ordered has previously been made, but, by inadvertence, has not been entered. In the case

at bar, the trial court actually took judicial action which was, however, by mistake or inadvertence, not placed in proper form on record. In any event, petitioners neither seriously contest the veracity of the transcript used as basis for such confirmatory order nor claim any unwarranted prejudice from the fact of its resolution during their non-appearance in the scheduled hearing.

14. JUDICIAL ETHICS; JUDGES; DISQUALIFICATION AND INHIBITION; DISALLOWANCE OF A MOTION FOR POSTPONEMENT IS NOT SUFFICIENT TO SHOW ARBITRARINESS AND PARTIALITY OF THE TRIAL COURT.— The disallowance of a motion for postponement is not sufficient to show arbitrariness and partiality of the trial court. For one, the grant of such is not a matter of right for it is addressed to the sound discretion of the court. Parties have absolutely no right to assume that their motion for deferment would be granted, hence, they should prepare for the hearing, lest they pass the blame to no one but themselves. Further, in considering such motions, two things must be borne in mind: (1) the reason for the postponement and (2) the merits of the case of the movant. In this case, the requested postponement was premised on the pendency of the motion for reconsideration. The Omnibus Motion was, however, "submitted *ex parte* and without further arguments from Oppositors," drawing public respondent to promptly resolve it by denying it.

15. ID.; ID.; ID.; BIAS AND PREJUDICE MUST BE SHOWN TO HAVE RESULTED IN AN OPINION ON THE MERITS ON THE BASIS OF AN EXTRAJUDICIAL SOURCE, NOT ON WHAT THE JUDGE LEARNED FROM PARTICIPATING IN THE CASE; BIAS, BAD FAITH, MALICE OR CORRUPT PURPOSE MUST BE ESTABLISHED BY EXTRINSIC EVIDENCE.— No trace of bias can be found at that juncture when the court proceeded to declare petitioners in default after resolving the pending incidents. It is an equally important doctrine that bias and prejudice must be shown to have resulted in an opinion on the merits on the basis of an extrajudicial source, not on what the judge learned from participating in the case. As long as opinions formed in the course of judicial proceedings are based on the evidence presented and the conduct observed by the magistrate, such opinion – even if later found to be erroneous – will not

prove personal bias or prejudice on the part of the judge. While palpable error may be inferred from the decision or the order itself, extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose.

16. ID.; ID.; ID.; DIVERGENCE OF OPINION AS TO APPLICABLE LAWS AND JURISPRUDENCE BETWEEN COUNSEL AND THE JUDGE IS NOT A PROPER GROUND FOR DISQUALIFICATION.— Divergence of opinion as to applicable laws and jurisprudence between counsel and the judge is not a proper ground for disqualification. Opinions framed in the course of judicial proceedings, although erroneous, as long as they are based on the evidence presented and conduct observed by the judge, do not prove bias or prejudice. Repeated rulings against a litigant no matter how erroneous are not bases for disqualification.

17. ID.; ID.; ID.; ABSENT CLEAR AND CONVINCING EVIDENCE TO PROVE THE CHARGE OF ARBITRARINESS OR PREJUDICE, A RULING NOT TO INHIBIT ONESELF CANNOT JUST BE OVERTURNED.— In the absence then of clear and convincing evidence to prove the charge, a ruling not to inhibit oneself cannot just be overturned. In this case, petitioners failed to demonstrate such acts or conduct *clearly* indicative of arbitrariness or prejudice as to thaw the attributes of the cold neutrality of an impartial judge. Unjustified assumptions and mere misgivings that the hand of prejudice, passion, pride and pettiness moves the judge in the performance of his functions are patently weak to parry the presumption that a judge shall decide on the merits of a case with an unclouded vision of its facts. In fine, the Court finds no grave abuse of discretion when public respondent did not inhibit himself from hearing the case.

18. ID.; CIVIL PROCEDURE; DEFAULT; MOTION TO LIFT AN ORDER OF DEFAULT, REQUISITES TO PROSPER.— For a motion to lift an order of default to prosper, the following requisites must concur: (1) it must be made by motion under oath by one who has knowledge of the facts; (2) it must be shown that the failure to file answer was due to fraud, accident, mistake or excusable negligence; and (3) there must be a proper showing of the existence of meritorious defense.

19. ID.; ID.; ID.; ID.; NON-COMPLIANCE THEREWITH IS FATAL; THE TRIAL COURT HAS NO AUTHORITY TO CONSIDER A MOTION TO LIFT THE ORDER OF DEFAULT WHERE SUCH MOTION WAS NOT MADE UNDER OATH.— As the trial court observed, the motion to vacate or set aside the order of default failed to comply with paragraph (b), Section 3, Rule 9 of the Rules of Court, it noting, *inter alia*, that the motion was "not under oath, it failed to explain or justify why movants have not filed any opposition to the petition, and it was not accompanied by an affidavit of merit." Indeed, a trial court has no authority to consider a motion to lift the order of default where such motion was not made under oath. Moreover, a motion to lift an order of default must allege with particularity the facts constituting the fraud, accident, mistake or excusable neglect which caused the failure to answer. In this case, petitioners' unverified motion does not contain any justifiable reason for their failure to file an appropriate responsive pleading. Petitioners' persistent stance on the pendency of their Omnibus Motion deserves scant consideration in view of the recognition of the *nunc pro tunc* order confirming the August 14, 2007 denial of such motion.

20. ID.; ID.; MOTIONS; MOTION FOR INHIBITION; FILING THEREOF WILL NOT TOLL THE RUNNING OF THE REGLEMENTARY PERIOD TO FILE A RESPONSIVE PLEADING.— Moreover, the filing of a motion for inhibition could not toll the running of the reglementary period to file a responsive pleading, for where a period is to be suspended by the filing of a pleading, the Rules of Court expressly provides for such a suspension. Despite the grant of an extension of time, petitioners did not file an Opposition to Ong's Petition, even one *ex abundante ad cautelam* that would have sufficiently dealt with their concern over the alleged pending incident.

21. ID.; ID.; ID.; MOTION TO LIFT ORDER OF DEFAULT; PETITIONER MUST DEMONSTRATE A MERITORIOUS DEFENSE; TERM "MERITORIOUS DEFENSE," DISCUSSED.— [P]etitioners failed to allege, much less demonstrate, a meritorious defense or any argument to protect whatever interest they may have under the entry which they resist to be corrected, either embodied in a separate affidavit of merit or embedded in the verified motion itself. Petitioners would later admit that they are "not real adversarial litigants

in the juridical sense" as they are acting as "judicial monitors and observers." *Velayo-Fong v. Velayo* discusses the meaning of meritorious defense: Moreover, when a party files a motion to lift order of default, she must also show that she has a meritorious defense or that something would be gained by having the order of default set aside. The term meritorious defense implies that the applicant has the burden of proving such a defense in order to have the judgment set aside. The cases usually do not require such a strong showing. The test employed appears to be essentially the same as used in considering summary judgment, that is, **whether there is enough evidence to present an issue for submission to the trier of fact**, or a showing that on the undisputed facts it is not clear that the judgment is warranted as a matter of law. The defendant must **show** that she has a meritorious defense **otherwise** the grant of her motion will prove to be a useless exercise. Thus, **her motion must be accompanied by a statement of the evidence which she intends to present if the motion is granted and which is such as to warrant a reasonable belief that the result of the case would probably be otherwise if a new trial is granted**.

22. ID.; SPECIAL PROCEEDINGS; PETITION FOR CORRECTION OF THE NATIONALITY OR CITIZENSHIP OF A PERSON IN THE CIVIL REGISTRY; PROCEEDINGS ADVERSARIAL IN NATURE.— The Court, in *Kilosbayan Foundation v. Ermita*, stated that substantial corrections to the nationality or citizenship of persons recorded in the civil registry are effected through a petition filed in court under Rule 108 of the Rules of Court. Jurisprudence has settled that such proceedings are adversarial in nature or "[o]ne having opposing parties; contested, as distinguished from an *ex parte* application, one which the party seeking relief has given legal warning to the other party, and afforded the latter an opportunity to contest it." In this case, impleaded as defendants were the Civil Registrar of San Juan, Metro Manila and any other person having or claiming an interest under the entry sought to be corrected. The interest of the State was amply represented by the Office of the Solicitor General, while petitioners' "interest" was deemed waived when they failed to appear and file a responsive pleading.

APPEARANCES OF COUNSEL

Jovito R. Salonga and *Emilio C. Capulong, Jr.* for petitioners.
Walter S. Ong for Justice Gregory S. Ong.

D E C I S I O N

CARPIO MORALES, *J.*:

On July 9, 2007, private respondent Gregory Ong (Ong), following the promulgation of the Court's Decision in *Kilosbayan Foundation v. Ermita*,[1] filed a petition[2] under Rule 108 of the Rules Court for the "amendment/correction/supplementation or annotation" of the entry on citizenship in his Certificate of Birth, docketed as Sp. Proc. No. 11767-SJ and raffled to Branch 264 of the Regional Trial Court (RTC) of Pasig City over which public respondent Leoncio Janolo, Jr. presided.

Via the present recourse of *certiorari* and prohibition, petitioners *Kilosbayan* Foundation and *Bantay Katarungan* Foundation assail four Orders and the Decision emanating from the proceedings in the RTC case.

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[1] G.R. No. 177721, July 3, 2007, 526 SCRA 353, 367. The dispositive portion of the Decision reads:

> WHEREFORE, the petition is GRANTED as one of injunction directed against respondent Gregory S. Ong, who is hereby ENJOINED from accepting an appointment to the position of Associate Justice of the Supreme Court or assuming the position and discharging the functions of that office, until he shall have successfully completed all necessary steps, through the appropriate adversarial proceedings in court, to show that he is a natural-born Filipino citizen and correct the records of his birth and citizenship.
>
> This Decision is FINAL and IMMEDIATELY EXECUTORY.
>
> No costs.
>
> SO ORDERED.

[2] *Rollo*, pp. 89-132. Entitled "*Gregory Santos Ong v. The Civil Registrar of San Juan, Metro Manila, and any person having or claiming an interest under the entry where an amendment/correction/supplementation or correction is sought*."

As Ong's petition was set for hearing by the RTC on August 7, 14, 21 and 28, 2007,[3] petitioners-therein oppositors[4] filed on August 6, 2007 a motion for voluntary inhibition, which the RTC denied by Order of August 7, 2007, a day after it was filed and prior to the hearing on the motion.[5] Despite the pendency of petitioners' motion for reconsideration, the RTC proceeded to hear Ong's petition on August 14 and 21, 2007. It was only by Order of September 17, 2007[6] that the motion for reconsideration was resolved, a copy of which was received by petitioners on October 4, 2007.

Meanwhile, by Order of August 21, 2007,[7] the RTC declared petitioners in default. Petitioners' motion to vacate the order of default was likewise denied by Order of October 4, 2007,[8] a copy of which was received by petitioners on October 17, 2007. Subsequently, the RTC granted Ong's petition and recognized him as a natural-born citizen of the Philippines, by Decision of October 24, 2007.[9]

In the present petition filed on December 3, 2007, petitioners assert that public respondent "erred and committed grave abuse of discretion: (a) [i]n not voluntarily inhibiting himself from presiding over the case; (b) [i]n declaring herein [p]etitioners as having defaulted; and (c) in granting the Petition of [r]espondent Gregory S. Ong."[10]

The Court, by Resolution of February 19, 2008, required respondents to comment on the petition, with which Ong and

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[3] Order of July 10, 2007; *id.* at 111-112.

[4] Notice of Appearance of July 23, 2007; *id.* at 113-114.

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

[6] *Id.* at 23-25.

[7] *Id.* at 29-30.

[8] *Id.* at 33-35.

[9] *Id.* at 39-63.

[10] *Id.* at 9.

the Office of the Solicitor General (OSG) complied on March 14, 2008 and June 5, 2008, respectively. Petitioners submitted their Consolidated Reply on December 10, 2008.

The Court shall first resolve the preliminary objections raised by respondents. Both Ong and the OSG claim that petitioners availed themselves of an improper remedy and disregarded the hierarchy of courts. Ong adds that the defective verification renders the petition as unsigned pleading, and the lack of service of the petition on all adverse parties violates basic rules.

The question on the propriety of the remedy availed of by petitioners is resolved in *Cerezo v. Tuazon*,[11] where the Court discussed the various remedies available to a party declared in default, including a petition for *certiorari* to declare the nullity of a judgment by default if the trial court improperly declared a party in default, or even if the trial court properly declared a party in default, if grave abuse of discretion attended such declaration. A party declared in default may thus alternatively file a petition for *certiorari* assailing both the order of default and the judgment of default.[12] On the choice of *remedy*, the Court finds petitioners' recourse procedurally allowable. The same, however, cannot be said as to the choice of court *forum*.

The hierarchy of courts serves as a general determinant of the appropriate forum for appeals and petitions for extraordinary writs.[13] The rule on hierarchy of courts is not absolute, and the Court has full discretionary power to take cognizance of a petition filed directly with it. A direct invocation of this Court's original jurisdiction may be allowed where there are special and important reasons therefor clearly and specifically set out in the petition.[14]

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[11] 469 Phil. 1020 (2004).

[12] *Id.* at 1036-1038.

[13] *LPBS Commercial, Inc. v. Amila*, G.R. No. 147443, February 11, 2008, 544 SCRA 199.

[14] Cf. *Lumanlaw v. Peralta, Jr.*, G.R. No. 164953, February 13, 2006, 482 SCRA 396, 419; *Civil Service Commission v. Department of Budget and Management*, G.R. No. 158791, July 22, 2005, 464 SCRA 115, 123.

The present petition is bereft of even a single allegation of exceptional and compelling circumstance to warrant an exception to the rule. In fact, this valid objection elicited no response from petitioners, who glossed over all procedural issues in their Consolidated Reply. If petitioners themselves do not provide the Court some basis for the direct recourse, the Court is not minded to search for one.

Further, the petition carries a defective verification since it was verified without stating the basis thereof. In the Verification/ Certification of the Petition, the affiant states that he "has read the same and all the facts contained therein are true and correct."[15] The Rules clearly state that a pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records, and a pleading required to be verified which lacks a proper verification shall be treated as an unsigned pleading.[16] Verification is not an empty ritual or a meaningless formality. Its import must never be sacrificed in the name of mere expedience or sheer caprice. For what is at stake is the matter of verity attested by the sanctity of an oath to secure an assurance that the allegations in the pleading have been made in good faith, or are true and correct and not merely speculative.[17]

Moreover, this Court observes that the affiant failed to present competent evidence of his identity before the notary public, as required under the 2004 Rules on Notarial Practice.[18] The Court cannot assume that affiant, being a public figure, is personally known to the notary public, for the *jurat* does not contain a statement to that effect.

Records also show that petitioners failed to furnish public respondent with a copy of the petition. The Rules require that

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[15] *Rollo*, p. 16.

[16] RULES OF COURT, Rule 7, Sec. 4.

[17] *Hun Hyung Park v. Eung Won Choi*, G.R. No. 165496, February 12, 2007, 515 SCRA 502, 508.

[18] A.M. No. 02-8-13-SC (2004), Rule II, Sec. 6 in relation to Section 12.

the petition should be filed with proof of service on all adverse parties, and that the failure to comply with the requirement shall be sufficient ground for the dismissal of the petition.[19]

On procedural grounds alone then, the petition is susceptible to dismissal. The Court deems it best, however, to resolve the substantial issues in the interest of justice.

In their motion for voluntary inhibition, petitioners cite that Ong, his counsel, and public respondent are members of the San Beda Law Alumni Association which, along with the school's Benedictine community, publicly endorsed and supported Ong's petition through newspaper advertisements. Moreover, from the account of the proceedings, petitioners point out that issuing the order of default without resolving the motion for reconsideration of the order denying the motion for inhibition exhibits blatant bias for being unduly precipitate and wholly unwarranted.

The rule on compulsory disqualification and voluntary inhibition of judges is provided under Section 1, Rule 137 of the Rules of Court:

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

In keeping with the tenet that judges should not only act with fairness, independence, impartiality and honesty but should also be perceived to be the embodiment of such qualities, the

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[19] RULES OF COURT, Rule 56, Sec. 2 in relation to Rule 46, Sec. 3.

Court added the rule on voluntary inhibition in 1964. In outlining the genesis of the provision, the Court narrated:

> In *Umale v. Villaluz,* the Court traced the history of the second paragraph of the above-quoted provision, which had been added only as an amendment to the Rules of Court in 1964. Prior to that year, the question on whether to take cognizance of the case did not depend upon the discretion of the judges not legally disqualified to sit in a given case. If those concerned were not disqualified, it was their official duty to proceed with the case or else risk being called upon to account for their dereliction. They could not voluntarily inhibit themselves on grounds of prejudice or bias, extreme delicacy, or even if they themselves took great interest and an active part in the filing of the case. *Gutierrez v. Santos* and *Del Castillo v. Javelona* paved the way for the recognition of other circumstances for disqualification– those that depended upon the exercise of discretion of the judges concerned.[20]

While the second paragraph does not expressly enumerate the specific grounds for inhibition and leaves it to the sound discretion of the judge, such should be based on just or valid reasons. The import of the rule on the voluntary inhibition of judges is that the decision on whether to inhibit is left to the sound discretion and conscience of the judge based on his rational and logical assessment of the circumstances prevailing in the case brought before him. It makes clear to the occupants of the Bench that outside of pecuniary interest, relationship or previous participation in the matter that calls for adjudication, there might be other causes that could conceivably erode the trait of objectivity, thus calling for inhibition. That is to betray a sense of realism, for the factors that lead to preferences and predilections are many and varied.[21]

In the final reckoning, there is really no hard and fast rule when it comes to the inhibition of judges. Each case should be treated differently and decided based on its peculiar circumstances.

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[20] *Pagoda Philippines, Inc. v. Universal Canning, Inc.,* G.R. No. 160966, October 11, 2005, 472 SCRA 355, 361.

[21] *Gutang v. CA,* 354 Phil. 77, 85 (1998).

The issue of *voluntary* inhibition is primarily **a matter of conscience and sound discretion** on the part of the judge. It is a **subjective test**, the result of which the reviewing tribunal will not disturb in the absence of any manifest finding of arbitrariness and whimsicality. The discretion given to trial judges is an acknowledgment of the fact that they are in a better position to determine the issue of inhibition, as they are the ones who directly deal with the parties-litigants in their courtrooms.[22]

Impartiality being a state of mind, there is thus a need for some kind of manifestation of its reality, in order to provide "good, sound or ethical grounds" or "just and valid reasons" for inhibition.[23] Bare allegations of bias and prejudice are not enough in the absence of clear and convincing evidence to overcome the presumption that a judge will undertake his noble role to dispense justice according to law and evidence and without fear or favor.[24] In *Gochan v. Gochan*,[25] the Court elucidated further:

> Verily, the second paragraph of Section 1 of Rule 137 does not give judges the unfettered discretion to decide whether to desist from hearing a case. The inhibition must be for just and valid causes. The mere imputation of bias or partiality is not enough ground for them to inhibit, especially when the charge is without basis. This Court has to be shown acts or conduct clearly indicative of arbitrariness or prejudice before it can brand them with the stigma of bias or partiality.
>
> In a string of cases, the Supreme Court has said that bias and prejudice, to be considered valid reasons for the voluntary inhibition of judges, must be proved with **clear and convincing evidence**. Bare allegations of their partiality will not suffice. It cannot be presumed, especially if weighed against the sacred oaths of office of magistrates, requiring them to administer justice fairly and

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[22] *Id.* at 88.

[23] *Vide Parayno v. Meneses*, G.R. No. 112684, April 26, 1994, 231 SCRA 807, 810.

[24] *People v. Governor Kho,* 409 Phil. 326, 336 (2001).

[25] 446 Phil. 433 (2003).

equitably– both to the poor and the rich, the weak and the strong, the lonely and the well-connected.[26] (emphasis and underscoring supplied)

The Court applied the same precept in *Pagoda Philippines, Inc. v. Universal Canning, Inc.*[27] where the judge's right to inhibit was weighed against his duty to decide the case without fear of repression. Indeed, the automatic granting of a motion for voluntary inhibition would open the floodgates to a form of forum-shopping, in which litigants would be allowed to shop for a judge more sympathetic to their cause, and would prove antithetical to the speedy and fair administration of justice.[28]

A judge must decide based on a rational and logical assessment of the circumstances prevailing in a case brought before him.[29] In the present case, petitioners cite public respondent's affiliation with an alumni association as the sole ground to which they anchor their motion for the voluntary inhibition of public respondent.

Before the trial court, petitioners alleged that the law school ties among public respondent, Ong and his counsel, they having graduated from San Beda College of Law, albeit years apart, spell partiality.

Inhibition is not allowed at every instance that a schoolmate or classmate appears before the judge as counsel for one of the parties, however.[30] In one case,[31] the Court ruled that organizational affiliation *per se* is not a ground for inhibition.

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[26] *Id.* at 447-448.

[27] G.R. No. 160966, October 11, 2005, 472 SCRA 355.

[28] *Id.* at 362-363.

[29] Vide *Chin v. Court of Appeals,* 456 Phil. 440, 451 (2003).

[30] Vide *Santos et al. v. BLTB Co., Inc., etc. et al.*, 145 Phil. 422, 438 (1970); Cf. *Masado and Elizaga Re: Criminal Case No. 4954-M*, A.M. No. 87-9-3918-RTC, October 26, 1987, 155 SCRA 72.

[31] *Bellosillo v. Board of Governors of the Integrated Bar of the Philippines*, G.R. No. 126980, March 31, 2006, 486 SCRA 152.

Membership in a college fraternity, by itself, does not constitute a ground to disqualify an investigator, prosecutor or judge from acting on the case of a respondent who happens to be a member of the same fraternity. A trial Judge, appellate Justice, or member of this Court who is or was a member of a college fraternity, a university alumni association, a socio-civic association like Jaycees or Rotary, a religion-oriented organization like Knights of Columbus or Methodist Men, and various other fraternal organizations is not expected to automatically inhibit himself or herself from acting whenever a case involving a member of his or her group happens to come before him or her for action.

A member in good standing of any reputable organization is expected all the more to maintain the highest standards of probity, integrity, and honor and to faithfully comply with the ethics of the legal profession.[32] (underscoring supplied)

The added fact that the law school's alumni association published statements in support of Ong's application cannot lend credence to the imputation of bias on the part of pubic respondent. No clear and convincing evidence was shown to indicate that public respondent actively sponsored and participated in the adoption and publication of the alumni association's stand. It is inconceivable to suppose that the alumni association's statement obliged all its members to earnestly embrace the manifesto as a matter of creed.

Arbitrariness cannot be inferred either from the fact that public respondent resolved the motion for voluntary inhibition one day after it was filed. Since the personal process of "careful self-examination"[33] is essentially a matter of conscience, the judge may decide as soon as the factual basis of the motions has been clearly laid before the court because from there on the resolution of the motion enters the subjective phase.

That public respondent, Ong and his counsel former Senator Rene Saguisag are all graduates of San Beda College of Law was clearly and early on established. Hence, this *sole* ground

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[32] *Id.* at 158-159.

[33] *Pimentel v. Hon. Salanga*, 128 Phil. 176, 183 (1967).

relied upon by petitioners in their motion, it bears repeating, no longer required a hearing or called for the submission of a comment or opposition, and the absence thereof did not prejudice petitioners.

In one case,[34] it was held that the Rules of Court does not direct the court to order the filing of comments or oppositions to the motion before the motion is resolved. The parties may orally argue and ventilate their positions and, thereafter, the court may rule on the motion.

The Court notes that when petitioners filed the Omnibus Motion (for reconsideration and deferment) which basically reiterated their previous arguments, they no longer set the motion for hearing and simply submitted their motion *ex parte* without further arguments, thereby recognizing the non-litigious nature of their allegations.

Even assuming that Ong interposed no objection to the motion, it was still up to public respondent to discern, for a qualified judge cannot be ousted from sitting in a case by sheer agreement of the parties.

Petitioners further complain that public respondent proceeded to hear the case and declared them in default without first resolving their pending motion. Records show that petitioners filed on August 13, 2007 an Omnibus Motion[35] for reconsideration of the August 7, 2007 Order and for deferment of the hearings set on August 14, 21 and 28, 2007. Petitioners, thereafter, did not appear in the various settings, they alleging that the question of voluntary inhibition, which they deem to be an "overriding consideration" partaking of a "highly prejudicial matter," had yet to be resolved by the trial court.[36]

While there is no specific rule providing for a definite period of time within which to resolve a motion for reconsideration of

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[34] *Calo v. Tan*, G.R. No. 151266, November 29, 2005, 476 SCRA 426.

[35] *Rollo*, pp. 5, 119-122.

[36] *Id.* at 12-13.

an order denying inhibition, judges must endeavor to act promptly on it within the mandatory 90-day period so as not to interrupt the course of trial.[37]

The trial court narrated what transpired on August 14, 2007 as confirmed by the entry of the *nunc pro tunc* Order of September 17, 2007 making on record the denial of the Omnibus Motion.

> During the hearing on August 14, 2007, the Court, after considering the arguments and counter-arguments from petitioner [Ong] and the Office of the Solicitor General, and finding no cogent reasons to reconsider its earlier position, denied in open court the motion seeking a reconsideration of the Order dated August 7, 2007 which denied movants' "Motion for Voluntary Inhibition of Presiding Judge." Corollarily, for lack of merit, the motion to defer the proceedings in the instant case was similarly denied. (see TSN, August 14, 2007, pp. 13). (citation in the original)[38]

The cited record of the proceedings validates the disposition made by the trial court on the given date, during which time petitioners failed to appear. After hearing the arguments, the trial court ruled as follows, quoted verbatim:

> COURT: That's right, so there's no basis to overturn our previous Order denying the motion to voluntary inhibition filed by Atty. Capulong Now, there's another matter being raised here, counsel could not have a valid argument here to delay the proceedings What the Supreme Court wanted is to have an Order summary of the proceeding because Kilos Bayan did sought at their level. Supreme Court was expecting that they will do so again in our level, but in… since there's seems to be no good idea waiting for the adversary arguments, so, it will, when it reaches the Supreme Court, it will repeat the purpose to which they were directed to litigate. They're supposed to litigate because if they believe they're… for the denial of the petition, unless the application for declaration of natural born citizen, they should do

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[37] *Vide Custodio v. Judge Quitain*, 450 Phil. 70, 76-77 (2003).

[38] *Rollo*, p. 26.

> so without any delay, so, use Bayan as a very… an active group and Bantay Katarungan, they should be a party to expeditious resolution of cases, not to a delay. How many are we here from government. We are here to litigate. So, the Motion for Reconsideration is denied, and Motion to Defer Further Proceedings is also denied. The settings for August were all placed in the Order which was published in the newspaper of general circulation. We have previously agreed that we will proceed to cross of petitioner and witnesses. Are you ready or would you agree to the suggestion by the Court that we conduct pre-trial?[39] (underscoring supplied)

The issuance of a *nunc pro tunc* order is recognized where an order actually rendered by a court at a former time had not been entered of record as rendered.[40] The phrase *nunc pro tunc* signifies "now for then," or that a thing is done now that shall have the same legal force and effect as if done at the time it ought to have been done.[41] The purpose of an order *nunc pro tunc* is to make a present record of an order that the court made in a previous term, but which was not then recorded. It can only be made when the thing ordered has previously been made, but, by inadvertence, has not been entered.[42]

In the case at bar, the trial court actually took judicial action which was, however, by mistake or inadvertence, not placed in proper form on record. In any event, petitioners neither seriously contest the veracity of the transcript used as basis for such confirmatory order nor claim any unwarranted prejudice from

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[39] Transcript of Stenographic Notes, August 14, 2007, pp. 12-13.

[40] *Cardoza v. Singson*, G.R. No. 59284, January 12, 1990, 181 SCRA 45.

[41] *Lichauco v. Tan Pho*, 51 Phil. 862, 880 (1923); *vide Mocorro, Jr. v. Ramirez*, G.R. No. 178366, July 28, 2008, 560 SCRA 362, 373.

[42] *Maramba v. Lozano, et al.*, 126 Phil. 833, 837-838 (1967); *vide Tirol, Jr. v. Justice del Rosario*, 376 Phil. 115, 119-120 (1999), where the Sandiganbayan issued a written order *nunc pro tunc* 18 days after the ruling in open court.

the fact of its resolution during their non-appearance in the scheduled hearing.

The disallowance of a motion for postponement is not sufficient to show arbitrariness and partiality of the trial court.[43] For one, the grant of such is not a matter of right for it is addressed to the sound discretion of the court.[44] Parties have absolutely no right to assume that their motion for deferment would be granted, hence, they should prepare for the hearing, lest they pass the blame to no one but themselves.

Further, in considering such motions, two things must be borne in mind: (1) the reason for the postponement and (2) the merits of the case of the movant.[45] In this case, the requested postponement was premised on the pendency of the motion for reconsideration. The Omnibus Motion was, however, "submitted *ex parte* and without further arguments from Oppositors,"[46] drawing public respondent to promptly resolve it by denying it.

As to the merits of the case of petitioners, the trial court was left with nothing to assess since they did not file any Opposition to Ong's Petition despite the grant to them of extension of time for the purpose and their various submissions to the trial court all related to peripheral issues.

No trace of bias can be found at that juncture when the court proceeded to declare petitioners in default after resolving the pending incidents. It is an equally important doctrine that bias and prejudice must be shown to have resulted in an opinion on the merits on the basis of an extrajudicial source, not on what the judge learned from participating in the case. As long

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[43] *Alcaraz v. Court of Appeals*, G.R. No. 152202, July 28, 2006, 497 SCRA 75, 82.

[44] *Bautista v. Court of Appeals*, G.R. No. 157219, May 28, 2004, 430 SCRA 353, 357.

[45] *Sevilla v. Quintin*, A.M. No. MTJ-05-1603, October 25, 2005, 474 SCRA 10.

[46] *Rollo*, p. 121.

as opinions formed in the course of judicial proceedings are based on the evidence presented and the conduct observed by the magistrate, such opinion – even if later found to be erroneous – will not prove personal bias or prejudice on the part of the judge. While palpable error may be inferred from the decision or the order itself, extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose.[47]

Divergence of opinion as to applicable laws and jurisprudence between counsel and the judge is not a proper ground for disqualification. Opinions framed in the course of judicial proceedings, although erroneous, as long as they are based on the evidence presented and conduct observed by the judge, do not prove bias or prejudice. Repeated rulings against a litigant no matter how erroneous are not bases for disqualification.[48]

As for the allegation of undue haste, the Court cannot appreciate it, considering that the trial court even granted petitioners additional period within which to file an Opposition and in view of the nature of the case, which empowers the trial court to make orders expediting proceedings.[49]

In the absence then of clear and convincing evidence to prove the charge, a ruling not to inhibit oneself cannot just be overturned.[50] In this case, petitioners failed to demonstrate such acts or conduct *clearly* indicative of arbitrariness or prejudice as to thaw the attributes of the cold neutrality of an impartial judge. Unjustified assumptions and mere misgivings that the hand of prejudice, passion, pride and pettiness moves the judge in the performance of his functions are patently weak to parry the presumption that a judge shall decide on the merits of a case with an unclouded vision of its facts.

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[47] *Gochan v. Gochan, supra* at 447-448; *Webb v. People*, 342 Phil. 206, 216 (1997).

[48] *People v. Governor Kho, supra* at 336.

[49] RULES OF COURT, Rule 108, Sec. 6.

[50] *Sps. Hizon v. Sps. Dela Fuente*, 469 Phil. 1076, 1083 (2004).

In fine, the Court finds no grave abuse of discretion when public respondent did not inhibit himself from hearing the case.

On the second issue, petitioners assail the Orders of August 21, 2007 and October 4, 2007 declaring them in default and denying their motion to vacate order, respectively.

Rules of procedure, especially those prescribing the time within which certain acts must be done, have often been held as absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business.[51] Section 5, Rule 108 of the Rules of Court provides that "[t]he civil registrar and any person having or claiming any interest under the entry whose cancellation or correction is sought may, within fifteen (15) days from notice of the petition, or from the last date of publication of such notice, file his opposition thereto." Records show that the notice was last published on July 26, 2007.[52]

The trial court pointed out that petitioners filed their entry of appearance[53] without any attached Opposition to Ong's petition and that, despite the grant to them of additional five days from August 7, 2007, they still failed to make a submission. Petitioners do not contest the trial court's earlier observation that at the August 7, 2007 hearing, petitioners' counsel undertook to submit the Opposition within the extended period and to appear at the next hearing,[54] where eventually both their pleading and presence turned up unforthcoming.

Petitioners thereafter filed an Urgent *Ex-Parte* Motion to Vacate the August 21, 2007 Order, insisting that the Omnibus Motion presented a prejudicial issue that should have been resolved first before the trial court proceeded with the case. Notably, in both the Motion to Vacate Order and the Memorandum and/or Submission, petitioners relied only on this ground and

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[51] *Philippine National Bank v. Deang Marketing Corporation*, G.R. No. 177931, December 8, 2008.

[52] *Vide rollo*, p. 144.

[53] *Id.* at 113-114.

[54] *Id.* at 24.

impliedly waived other defenses or grounds for the lifting of the default order.

For a motion to lift an order of default to prosper, the following requisites must concur: (1) it must be made by motion under oath by one who has knowledge of the facts; (2) it must be shown that the failure to file answer was due to fraud, accident, mistake or excusable negligence; and (3) there must be a proper showing of the existence of meritorious defense.[55]

As the trial court observed, the motion to vacate or set aside the order of default failed to comply with paragraph (b), Section 3, Rule 9 of the Rules of Court,[56] it noting, *inter alia*, that the motion was "not under oath, it failed to explain or justify why movants have not filed any opposition to the petition, and it was not accompanied by an affidavit of merit."[57]

Indeed, a trial court has no authority to consider a motion to lift the order of default where such motion was not made under oath.[58] Moreover, a motion to lift an order of default must allege with particularity the facts constituting the fraud, accident, mistake or excusable neglect which caused the failure to answer.[59]

In this case, petitioners' unverified motion does not contain any justifiable reason for their failure to file an appropriate responsive pleading. Petitioners' persistent stance on the pendency

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[55] *Montinola, Jr. v. Republic Planters Bank*, 244 Phil. 49 (1988), which was decided under the 1964 Rules of Civil Procedure, Section 3 of Rule 18 of which was substantially retained as Section 3(b) of Rule 9 of the 1997 Rules of Civil Procedure.

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

[57] *Rollo*, p. 34.

[58] *SSS v. Hon. Chaves*, 483 Phil. 292, 301 (2004).

[59] *Villareal v. CA*, 356 Phil. 826, 844 (1998).

of their Omnibus Motion deserves scant consideration in view of the recognition of the *nunc pro tunc* order confirming the August 14, 2007 denial of such motion.

Moreover, the filing of a motion for inhibition could not toll the running of the reglementary period to file a responsive pleading, for where a period is to be suspended by the filing of a pleading, the Rules of Court expressly provides for such a suspension.[60] Despite the grant of an extension of time, petitioners did not file an Opposition to Ong's Petition, even one *ex abundante ad cautelam* that would have sufficiently dealt with their concern over the alleged pending incident.

Further, petitioners failed to allege, much less demonstrate, a meritorious defense or any argument to protect whatever interest they may have under the entry which they resist to be corrected, either embodied in a separate affidavit of merit or embedded in the verified motion itself.[61] Petitioners would later admit that they are "not real adversarial litigants in the juridical sense" as they are acting as "judicial monitors and observers."[62]

Velayo-Fong v. Velayo[63] discusses the meaning of meritorious defense:

> Moreover, when a party files a motion to lift order of default, she must also show that she has a meritorious defense or that something would be gained by having the order of default set aside. The term meritorious defense implies that the applicant has the burden of proving such a defense in order to have the judgment set aside. The cases usually do not require such a strong showing. The test employed appears to be essentially the same as used in considering summary judgment, that is, **whether there is enough evidence to present an issue for submission to the trier of fact**, or a showing that on the undisputed facts it is not clear that the judgment is warranted

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[60] *Vide Republic v. Sandiganbayan*, 325 Phil. 762, 784 (1996).

[61] *Vide Capuz v. Court of Appeals*, G.R. No. 112795, June 27, 1994, 233 SCRA 471, 475.

[62] *Rollo*, p. 131.

[63] G.R. No. 155488, December 6, 2006, 510 SCRA 320.

as a matter of law. The defendant must **show** that she has a meritorious defense **otherwise** the grant of her motion will prove to be a useless exercise. Thus, **her motion must be accompanied by a statement of the evidence which she intends to present if the motion is granted and which is such as to warrant a reasonable belief that the result of the case would probably be otherwise if a new trial is granted**.[64] (emphasis in the original)

Conjunctively, the glaring deficiencies negate the posture that petitioners had no intention to delay the case and that their defenses, if any, deserve to see the light of day in court. *David v. Gutierrez-Fruelda*[65] did not countenance the failure to comply with the basic requirements of a motion to lift an order of default. Accordingly, public respondent did not arbitrarily declare them in default and deny their motion to lift the order of default.

Respecting the trial court's Decision of October 24, 2007, petitioners recapitulate their arguments against the inhibition and default orders to conclude that the assailed decision is "insupportable."[66] As lone ground, petitioners posit that the special proceedings under Rule 108 do not fall under the juridical concept of adversarial proceedings in the absence of effective adversaries since the Office of the Civil Registrar is a formal party while the Office of the Solicitor General sided with Ong's legal position. Petitioners admit that they, while being parties in interest in their capacity as judicial monitors and observers, are not real adversarial litigants in the juridical sense.[67]

The Court, in *Kilosbayan Foundation v. Ermita*,[68] stated that substantial corrections to the nationality or citizenship of persons recorded in the civil registry are effected through a

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[64] *Id.* at 334-335.

[65] G.R. No. 170427, January 30, 2009.

[66] *Rollo*, p. 288.

[67] *Id.* at 15.

[68] *Supra* note 1 at 366 citing *Barco v. Court of Appeals*, 465 Phil. 39 (2004), *Lee v. Court of Appeals*, 419 Phil. 392 (2001), *Republic v. Valencia*, 225 Phil. 408 (1986).

petition filed in court under Rule 108 of the Rules of Court. Jurisprudence has settled that such proceedings are adversarial in nature or "[o]ne having opposing parties; contested, as distinguished from an *ex parte* application, one which the party seeking relief has given legal warning to the other party, and afforded the latter an opportunity to contest it."[69] In this case, impleaded as defendants were the Civil Registrar of San Juan, Metro Manila and any other person having or claiming an interest under the entry sought to be corrected. The interest of the State was amply represented by the Office of the Solicitor General, while petitioners' "interest" was deemed waived when they failed to appear and file a responsive pleading.

Petitioners raise no additional ground to substantiate their imputation of grave abuse of discretion on the part of public respondent insofar as the issuance of the October 24, 2007 Decision is concerned. Since no further issues were raised, the Court is precluded from making a definitive pronouncement on the *substantial* aspect of the assailed decision.

WHEREFORE, in light of all the foregoing, the petition is *DISMISSED*.

SO ORDERED.

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

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[69] *Tan Co v. The Civil Registrar of Manila*, 467 Phil. 904, 916 (2004); *Republic v. Kho*, G.R. No. 170340, June 29, 2007, 526 SCRA 177, 187.

SECOND DIVISION

[G.R. No. 119857. July 28, 2010]

GOLDEN APPLE REALTY AND DEVELOPMENT CORPORATION and ROSVIBON REALTY CORPORATION, *petitioners, vs.* **SIERRA GRANDE REALTY CORPORATION, MANPHIL INVESTMENT CORPORATION, RENAN V. SANTOS and PATRICIO MAMARIL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEAL TO THE SUPREME COURT; CONTRARY FINDINGS OF THE TRIAL COURT AND THE COURT OF APPEALS LEAVE THE SUPREME COURT WITH NO ALTERNATIVE BUT TO RE-EXAMINE SOME OF THE FACTS PRESENTED. — In *Guillang v. Bedania,* this Court reiterated that it is not a trier of facts, but certain exceptions apply, thus: The principle is well-established that this Court is not a trier of facts. Therefore, in an appeal by certiorari under Rule 45 of the Rules of Court, only questions of law may be raised. The resolution of factual issues is the function of the lower courts whose findings on these matters are received with respect and are, as a rule, binding on this Court. However, this Rule is subject to certain exceptions. One of these is **when the findings of the appellate court are contrary to those of the trial court.** Findings of fact of the trial court and the Court of Appeals may also be set aside when such findings are not supported by the evidence or where the lower courts' conclusions are based on a misapprehension of facts. Obviously, the contrary findings of the trial court and the CA leave this Court with no other alternative but to re-examine some of the facts raised in the present petition.

2. CIVIL LAW; CONTRACTS; *BADGES OF FRAUD*; MAY BE USED REFERRING TO THE SAID PHRASE'S GENERAL AND ORDINARY MEANING; APPLICATION. — A close reading of the CA Decision would reveal that the said court used the phrase *badges of fraud* to refer to certain fraudulent acts that attended the execution of the Contract to Sell and the Deeds of Absolute Sale which would eventually tend to prove that the same transactions were indeed suspicious as

the said contracts were antedated, simulated and fraudulent. x x x This then refutes the whole discussion of petitioners as to the misuse or misappreciation of the applicable laws by the CA in arriving at its judgment. Again, an examination of the CA's Decision shows that the phrase did not refer to any particular provision of a law, hence, the general and ordinary meaning of the phrase prevails. In the same manner, this Court, in numerous cases concerning various subjects, has used the same phrase in its rulings referring to the said phrase's general and ordinary meaning. x x x It is undisputed that petitioner Rosvibon had no legal personality at the time of the execution of the Contract to Sell. As stated by the petitioners themselves in their petition: x x x It is worthy to note at this juncture, that **while it may be true that one of the vendees corporation, Rosvibon, does not have the personality to enter into a Contract to Sell on June 22, 1985, as it was only incorporated on July 8, 1985,** it cannot be said that said corporation does not have the personality to enter into the Contract to Sale as the said contract was executed on 26 July 1985. It bears to stress, however, that the CA did not pass upon the corporate personality of Rosvibon nor did it declare the same corporation's franchise invalid. Thus, there is no need for a *quo warranto* proceeding as claimed by petitioners. The CA merely made the finding which is undisputed by the petitioners that Rosbivon had no legal personality at the time of the execution of the Contract to Sell. According to the CA, because of Rosbivon's lack of personality at the time of the execution of the Contract to Sell, its presence as a party to the same transaction is taken as another indication that fraud was indeed attendant. This is one of the situations included, and comprising the phrase *badges of fraud.*

3. ID.; ID.; NOTATION OF PAYMENT OF *CEDULA*, REQUIRED. — The CA then had a basis in concluding the defect in the notarial requirement of the transaction. The pertinent provisions of the Notarial Law applicable at the time provides: Sec. 251. *Requirement as to notation of payment of cedula tax* — Every contract, deed, or other document acknowledged before a notary public shall have certified thereon that the parties thereto have presented their proper *cedula* certificates or are exempt from *cedula* tax, and these shall be entered by the notary public as a part of such certification, the number, the place of issues, and date of each *cedula* certificate as aforesaid.

4. ID.; ID.; MAY BE DECLARED INVALID DUE TO FRAUD; CASE AT BAR. — As provided in the Civil Code: Art. 1355. Except in cases specified by law, lesion or inadequacy of cause shall not invalidate a contract, **unless there has been fraud, mistake or undue influence.** The CA was clear as to its main reason for invalidating the contracts in question – there was fraud. The inadequacy of price was merely one of the circumstances upon which the CA was able to find the existence of fraud and not the main cause for the invalidation of the subject contracts.

APPEARANCES OF COUNSEL

Chan Robles & Associates for petitioners.

Villaraza & Cruz Law Office for Sierra Grande Realty Corporation.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review[1] on *certiorari* under Rule 45 of the Rules of Court seeking to nullify and set aside the Decision[2] of the Court of Appeals (CA) dated January 23, 1995 and the Resolution[3] dated March 28, 1995 in CA-G.R. CV No. 40961.

The antecedent facts are the following:

On December 1, 1981, Hayari Trading Corporation (Hayari), through a Loan Agreement,[4] borrowed from Manphil Investment Corporation (Manphil) the amount of Two Million Five Hundred Thousand Pesos (₱2,500,000.00) for the benefit of Filipinas Textile Mills, Inc. (Filtex).

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[1] *Rollo,* pp. 2-65.

[2] Penned by Associate Justice Bernardo P. Pardo, with Associate Justices Justo P. Torres, Jr. and B.A. Adefuin–de La Cruz, concurring; *id.* at 67-71.

[3] *Rollo,* p. 73.

[4] Records, pp. 1212-1216.

On the same date, Hayari President Yu Han Yat, Jr., his wife Terry Villanueva Yu and the latter's uncle, Bernardino Villanueva, executed an *Assumption of Joint and Solidary Liability*[5] for and in consideration of the loan granted to Hayari, assuming joint and solidary liability with Hayari for the due and punctual payment of all and/or any amortizations on the loan, as well as all amounts payable to Manphil, in connection therewith and for the strict performance and fulfillment of the obligation of Hayari.

In connection therewith, Valiant Realty and Development Corporation, represented by its General Manager Bernardino Villanueva, and Sierra Grande Realty Corporation (Sierra Grande), represented by Terry Villanueva Yu, executed a Third Party Real Estate Mortgage[6] in favor of Manphil over a parcel of land, otherwise known as the *Roberts property*.

Filtex also constituted a real estate mortgage over certain parcels of land that it owned and also constituted a chattel mortgage over the machinery of Hayari in order to secure payment of the loan.

Thereafter, Bernardino Villanueva suggested that the *Roberts property* be subdivided to make it easier for Sierra Grande to sell the same. On June 22, 1985, as suggested, the Board of Directors of Sierra Grande, composed of brothers and sisters Robert Villanueva, Daniel Villanueva, Terry Villanueva Yu, Susan Villanueva and Eden Villanueva, passed a resolution[7] authorizing General Manager Bernardino Villanueva, brother of their deceased father, to hire a geodetic engineer and cause the subdivision plan to be approved by the Land Registration Commission, and to sell the subdivided lots after approval of the subdivision plan, if found to be necessary and for which the corporation may need to carry its purpose.

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[5] *Id.* at 1219.

[6] *Id.* at 1220-1223.

[7] *Id.* at 1177-1178.

Eventually, on June 22, 1985, Bernardino Villanueva executed a Contract to Sell[8] the *Roberts property* with Golden Apple Realty and Development, Inc. (Golden Apple), majority of its stocks are owned by Elmer Tan, a first cousin of the Villanueva brothers and sisters, and Rosvibon Realty Corporation (Rosvibon), majority of its stocks are owned by Rosita So, another sister of the father of the Villanueva brothers and sisters, for the amount of ₱441,032.00. The amount of ₱10,000.00 of the purchase price will have to be paid to the vendor upon the signing of the contract and the balance to be paid to the mortgagee Manphil, on or before October 31, 1987.

On June 29, 1985, the *Roberts property* was surveyed and subdivided into four lots,[9] subject to the approval of the subdivision plan.

On July 26, 1985, Sierra Grande, through Bernardino Villanueva, finally executed a Deed of Sale[10] of Lots 1, 2 and 3, with a total land area of 1,402 square meters, to Golden Apple, for ₱382,080.00 and another Deed of Sale[11] of Lot 4, with a total land area of 499 sq. m., to Rosvibon for ₱119,760.00.

Meanwhile, Sierra Grande's Board, on August 29, 1985, passed a resolution[12] revoking the authority of Bernardo Villanueva to sell the *Roberts property*. Hayari President Yu Han Yat, Jr., husband of Sierra Grande director Terry Villanueva Yu, advised Manphil, through a letter[13] dated August 30, 1985, that all dealings with respect to its loan or credit facility with Manphil shall be coursed through or effected with the express knowledge, representation or consent of the President of Hayari. Thereafter,

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[8] *Id.* at 1185-1187.

[9] Lot No. 889-B-1, Lot No. 889-B-2, Lot No. 889-B-3 and Lot No. 889-B-4; *id.* at 1297.

[10] Records, pp. 1188-1190.

[11] *Id.* at 1191-1192.

[12] *Id.* at 1328.

[13] *Id.* at 1329.

a resolution[14] notarized on September 3, 1985 was passed by the directors of Sierra Grande revoking the authority previously granted to Bernardino Villanueva to negotiate and contract the sale of the *Roberts property* and any other property, in behalf of the corporation and place on notice all prospective buyers or vendees not to negotiate or contract with any party other than the duly authorized officer or officers of the corporation who are expressly empowered to enter into such transaction and who can exhibit a formal board resolution duly certified by the board secretary and signed by the majority of the board of directors who are also the majority stockholders representing at least 2/3 of the capital stock .

Nevertheless, on September 16, 1985, Elmer Tan, on behalf of the buyer corporations, paid to Manphil for Hayari's account an amortization of ₱57,819.72, for the principal sum due on July 27, 1985; ₱42,192.30, for Int.-CBP; ₱27,329.05, for interest; and ₱3,423.40, as penalties.[15]

Sometime in January 1986, Sierra Grande learned that Bernardino Villanueva[16] tried to secure the duplicate original title[17] of the subject parcel of land from Manphil claiming to be the President of Hayari. As a result, on November 20, 1986, Sierra Grande, through Susan Villanueva Tan, the Corporate Secretary, wrote[18] Manphil stating that Bernardino Villanueva was not in any way connected officially with Sierra Grande and was not authorized to deal in any way with the *Roberts property* nor borrow the transfer certificate title to the same property. Susan Tan also wrote[19] the Bangko Sentral ng Pilipinas

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[14] *Id.* at 1328.

[15] *Id.* at 1194-1211.

[16] Through a letter dated January 23, 1986, requesting to borrow the title on the reason that such title will be transferred to a sister company, whose officers are also the officers of Hayari; *id.* at 1331.

[17] TCT No. 19801; *id.* at 1179-1180.

[18] Records, p. 1333.

[19] *Id.* at 1334.

(BSP), as the subject property was already on receivership, informing the latter of the following: that Hayari had not made any request to borrow any duplicate original title; that Bernardino Villanueva was not connected in any way with Hayari; that Bernardino Villanueva had no authority to borrow any duplicate original title; and that whatever authorization Bernardo Villanueva had in dealing with the *Roberts property* had been withdrawn and abrogated under a board resolution. The letter also requested that even if payments were made on the loan of Hayari by a third party, the subject duplicate original title must not be released without the express consent of Hayari.

Later, on August 15, 1988, Terry Villanueva Yu, the President of Sierra Grande at that time, informed[20] Manphil that Bernardino Villanueva and Elmer Tan had attempted to pre-terminate Hayari's loan in order to obtain the duplicate original title of the subject lot. It was also mentioned in the letter that Hayari may opt to pre-terminate the loan itself and be subrogated in the right of action against Bernardino Villanueva.

However, on October 20, 1988, Manphil allowed Elmer Tan to pre-terminate Hayari's obligation after making total payments to Manphil in the amount of ₱3,134,921.00.[21]

Hence, Golden Apple and Rosvibon, on November 28, 1988, filed with the Regional Trial Court of Pasay City, a Complaint[22] against Sierra Grande and Manphil for specific performance and damages.

On February 27, 1991, the trial court rendered its Decision,[23] the dispositive portion of which reads:

WHEREFORE, the Court hereby renders judgment for the plaintiffs and against the defendants, ordering,

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[20] *Id.* at 1343-1345.

[21] *Id.* at 1217.

[22] *Id.* at 16-35.

[23] *Id.* at 279-293.

1) all defendants to surrender and deliver to plaintiffs corporations the owner's duplicate copy of TCT No. 19801 of the Registry of Deeds for Pasay City;

2) defendants Sierra Grande to pay plaintiffs the sums of ₱50,000.00 by way of moral and exemplary damages, respectively;

3) defendant Sierra Grande to pay plaintiffs the sum of ₱50,000.00 as and for attorney's fees and costs of suit.

The Counterclaim is hereby DISMISSED.

SO ORDERED.

On April 3, 1991, Sierra Grande filed a Motion for Reconsideration[24] of the decision, which was eventually denied by the trial court.[25]

The respondents herein filed their appeal with the CA, which reversed the decision of the trial court in its Decision[26] dated January 23, 1995. The dispositive portion of the said Decision reads as follows:

WHEREFORE, the Court REVERSES the appealed decision. We DISMISS the plaintiffs' complaint and on defendant Sierra Grande's counterclaim, we SENTENCE plaintiffs to pay defendant Sierra Grande ₱20,000.00, as attorney's fees and costs.

SO ORDERED.

The Motion for Reconsideration[27] dated February 3, 1995 filed by herein petitioners was later on denied by the CA.[28] Thus, the present petition.

Petitioners raised the following assignment of errors:

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[24] *Id.* at 296-320.

[25] *Id.* at 449.

[26] CA *rollo*, pp. 288-292.

[27] *Id.* at 295-306.

[28] *Id.* at 327.

ASSIGNMENT OF ERRORS

The respondent Court of Appeals grievously erred in:

4.1 invalidating the Deeds of Absolute Sale between "Golden Apple" and "Rosvibon," as vendees, and "Sierra Grande," as vendor, on the primordial premise that "badges of fraud" attended their execution;

4.2 applying Article 1602 of the Civil Code to the case at bar;

4.3 overextending Article 1602 of the Civil Code to include lack of capacity, notarial infirmity, and conflict of interest to the concept of "badges of fraud";

4.4 invalidating the contracts on the ground of insufficiency of consideration;

4.5 invalidating the contracts on the ground of lack of legal personality of vendee "Rosvibon Realty";

4.6 invalidating the contracts on the ground of irregularity in its execution and in concluding that the deeds of sale were ante-dated;

4.7 invalidating the contracts on the ground of conflict of interest; and finally

4.8 disallowing damages awarded by the trial court to the petitioners.

The petition is unmeritorious.

In reversing the decision of the trial court, the CA, in a short and succinct manner, made factual conclusions that necessitated its finding that the contracts in question were invalid.

The said ruling of the CA is contrary to the factual findings of the trial court. In *Guillang v. Bedania*,[29] this Court reiterated that it is not a trier of facts, but certain exceptions apply, thus:

The principle is well-established that this Court is not a trier of facts. Therefore, in an appeal by *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised. The resolution of factual issues is the function of the lower courts whose findings

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[29] G.R. No. 162987, May 21, 2009.

on these matters are received with respect and are, as a rule, binding on this Court.[30]

However, this rule is subject to certain exceptions. One of these is **when the findings of the appellate court are contrary to those of the trial court**.[31] Findings of fact of the trial court and the Court of Appeals may also be set aside when such findings are not supported by the evidence or where the lower courts' conclusions are based on a misapprehension of facts.[32]

Obviously, the contrary findings of the trial court and the CA leave this Court with no other alternative but to re-examine some of the facts raised in the present petition.

Petitioners claim that the CA misused the term *badges of fraud* in reaching its decision. According to them, Article 1602, upon which the term *badges of fraud* refers to, is not applicable, because the said article refers to a sale with a right to repurchase, whereas the subject invalidated contracts were absolute sales. They cited a case[33] where this Court pronounced that, badges of fraud is a circumstance in Article 1602 of the Civil Code, which, if present in any given transaction, gives rise to the presumption that it is not a sale but an equitable mortgage. Thus, according to petitioners, the CA confused Article 1602 (1) with that of Article 1470,[34] because both articles deal with sale in general and have inadequacy of price as subject matter. Either way, they argue, the inadequacy of the price does not result in the cancellation or invalidation of contracts.

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[30] *McKee v. Intermediate Appellate Court*, G.R. Nos. 68102-03, July 16, 1992, 211 SCRA 517.

[31] *Philippine Rabbit Bus Lines, Inc. v. Intermediate Appellate Court*, G.R. Nos. 66102-04, August 30, 1990, 189 SCRA 158.

[32] *McKee v. Intermediate Appellate Court*, *supra* note 30.

[33] *Romero v. Narciso*, G.R. No. L-43680, April 12, 1978. (*Rollo*, p. 23.)

[34] Art. 1470. Gross inadequacy of the price does not affect a contract of sale, except as it may indicate a defect in the consent, or that the parties really intended a donation or some other act or contract.

However, the above argument of petitioners is speculative. A close reading of the CA Decision would reveal that the said court used the phrase *badges of fraud* to refer to certain fraudulent acts that attended the execution of the Contract to Sell and the Deeds of Absolute Sale which would eventually tend to prove that the same transactions were indeed suspicious as the said contracts were antedated, simulated and fraudulent. The said findings were pointed out by the CA in this manner:

> We declare the contracts invalid.
>
> We find that there were badges of fraud showing that the contracts were simulated and fraudulent.
>
> First, one of the vendees, Rosvibon, was incorporated only on July 8, 1985 (Exhibit "17-A"). Thus, at the time the Contract to Sell was executed, Rosvibon Realty Corporation had no legal personality to purchase the property.
>
> Second, the deeds of absolute sale were executed irregularly. The notarial acknowledgment did not indicate the residence certificates of the vendees which were in fact obtained subsequent to the date of notarization. This is an anomaly which shows that the deeds of sale were ante-dated to beat the resolution revoking the vendor's authority to sell.
>
> Third, there was no sufficient consideration paid for the property involved and, worse, was attended with fraudulent conflict of interest because the vendor, Bernardino Villanueva, was a stockholder of the buyer corporations.[35]

This then refutes the whole discussion of petitioners as to the misuse or misappreciation of the applicable laws by the CA in arriving at its judgment. Again, an examination of the CA's Decision shows that the phrase did not refer to any particular provision of a law, hence, the general and ordinary meaning of the phrase prevails. In the same manner, this Court, in numerous cases[36] concerning various subjects, has used the same phrase

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[35] *Rollo,* pp. 69-70.

[36] *Carlos v. Hon. Angeles*, 400 Phil. 405 (2000); *Cuenca v. Atas*, G.R. No. 146214, October 5, 2007, 535 SCRA 48; *Unionbank v. Ong*, G.R.

in its rulings referring to the said phrase's general and ordinary meaning.

Petitioners also contend that whether or not one of the vendee corporations is not yet in existence at the time the Contract to Sell was executed cannot be directly questioned by any party to a suit as the existence of a corporation may only be attacked by the Government through the Solicitor General in a *quo warranto* proceeding called for the purpose and not by a collateral attack whereby the corporate existence is questioned in some incidental proceedings not provided by law for the express purpose of attacking the corporate existence.

That particular line of argument is an over-stretch. It is undisputed that petitioner Rosvibon had no legal personality at the time of the execution of the Contract to Sell. As stated by the petitioners themselves in their petition:

> x x x It is worthy to note at this juncture, that **while it may be true that one of the vendees corporation, Rosvibon, does not have the personality to enter into a Contract to Sell on June 22, 1985, as it was only incorporated on July 8, 1985**, it cannot be said that said corporation does not have the personality to enter into the Contract of Sale as the said contract was executed on 26 July 1985.[37]

It bears to stress, however, that the CA did not pass upon the corporate personality of Rosvibon nor did it declare the same corporation's franchise invalid. Thus, there is no need for a *quo warranto* proceeding as claimed by petitioners. The CA merely made the finding which is undisputed by the petitioners that Rosbivon had no legal personality at the time of the execution of the Contract to Sell. According to the CA, because of

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No. 152347, June 21, 2006, 491 SCRA 581; *Concept Builders, Inc. v. National Labor Relations Commission*, 326 Phil. 955 (1996); *Banaga, Jr. v. Commission on Elections*, 391 Phil. 596 (2000); *Trust International Paper Corporation v. Pelaez*, G.R. No. 164871, August 22, 2006, 499 SCRA 552; *Pamplona Plantation Company, Inc. v. Tinghil*, G.R. No. 159121, February 3, 2005, 450 SCRA 421.

[37] *Rollo*, p. 36.

Rosbivon's lack of personality at the time of the execution of the Contract to Sell, its presence as a party to the same transaction is taken as another indication that fraud was indeed attendant. This is one of the situations included, and comprising the phrase *badges of fraud*.

As to the contention of petitioners that the CA erred in invalidating the contracts on the ground of notarial infirmity and concluding that they were ante-dated, this Court finds the said argument devoid of any merit.

Petitioners claim that, since the representative of the corporation appeared before the Notary Public, the acknowledgment was complied with, even if they admitted that the representatives of the corporations which executed the Deeds of Absolute Sale did not present their residence certificates nor indicate the number, date and place of issue of the same residence certificates in the acknowledgment. As shown in the records and in the testimony of the Notary Public, Atty. Melanio L. Zoreta, the requirement of the presentation of the residence certificate was missing. Thus, as testified:

On Cross-examination:

Atty. Alindato

Q: But you are sure, of course, that this document was completed in its form without any additional data to be filled up, Mr. Witness, except your signature and the date and the document number, and the page number, *etc*. And of course, the dry seal?

A: I could remember, sir, that it took upon me to see that the residence certificate of the corporation being represented by Mrs. Rosita So and Elmer Tan did not have the residence certificate.

But upon the assurance of Mr. Bernardino Villanueva that they will just put it afterwards, I notarized it because as far as I am concerned, as a notary public, as long as I know the persons who appeared before me and they have so identified themselves the company or entity that they are representing would be of legal ground already.

Q: So you are changing your previous answer that this document was represented to you was already complete when you said that in your latest answer that there were numbers of residence certificate which are lacking?

A: Actually, I am changing my answer but you asked again for me for the second time. That is why I took note that the residence certificate of the two corporations were not yet then typewritten or given by the parties involved.[38]

The CA then had a basis in concluding the defect in the notarial requirement of the transaction. The pertinent provisions of the Notarial Law[39] applicable at that time provides:

Sec. 251. *Requirement as to notation of payment of cedula tax* — Every contract, deed, or other document acknowledged before a notary public shall have certified thereon that the parties thereto have presented their proper *cedula* certificates or are exempt from the *cedula* tax, and these shall be entered by the notary public as a part of such certification, the number, the place of issues, and date of each *cedula* certificate as aforesaid.

Another issue raised by petitioners is that the CA erred in voiding the contracts on the ground of insufficiency of consideration or price, because the claim of inadequacy of price must be proven and that the respondents belatedly questioned the contracts' validity. They further claim that the consideration was substantial and adequate.

It must be noted that the property in question, subject of the Contract to Sell for the sum of ₱441,032.00, is a land with a contained area of, more or less, One Thousand Nine Hundred and One (1,901) sq. m. with a two-storey residential building located in Pasay City. In claiming that the said price of the property is not inadequate, petitioners stated that the payment of Elmer Tan to pre-terminate Hayari's obligation amounting to Three Million One Hundred Thirty-Four Thousand Nine Hundred Twenty-One Pesos (₱3,134,921.00) as part of the

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[38] TSN, September 7, 1989, p. 822.

[39] Revised Administrative Code.

consideration paid for the property should be included. However, as correctly argued by respondent Sierra Grande, the amortizations paid by Elmer Tan to Manphil was for a loan incurred by Hayari and not by respondent Sierra Grande; thus, any payment of the amortizations on the loan of Hayari cannot be considered as part of the consideration for the sale of the land owned by respondent Sierra Grande. It is then safe to declare that respondent Sierra Grande did not benefit from the loan or from its pre-termination. Moreover, the records are bereft of any evidence to support the claim of petitioners that the sum of money paid by Elmer Tan, on behalf of Hayari, was part of the consideration for the same property. What only appears is that the only consideration paid for the sale of the *Roberts property* was the sum contained in the Contract to Sell, which was ₱441,032.00 which, considering the size[40] and location[41] of the property, is inadequate. What prompted Elmer Tan to pay the total amount of ₱3,134,921.00 cannot be gleaned from the records, except that it was for the loan incurred by Hayari, which is an independent juridical entity, separate and distinct from Sierra Grande. Hence, the CA did not commit any error in declaring that there was an insufficiency of consideration or price as the same is shown on the very face of the Contract to Sell.

Anent the contention of petitioners that inadequacy of price does not invalidate a contract, the said rule is not without an exception. As provided in the Civil Code:

> Art. 1355. Except in cases specified by law, lesion or inadequacy of cause shall not invalidate a contract, **unless there has been fraud, mistake or undue influence**.

The CA was clear as to its main reason for invalidating the contracts in question — there was fraud. The inadequacy of price was merely one of the circumstances upon which the CA was able to find the existence of fraud and not the main cause for the invalidation of the subject contracts.

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[40] 1,901 sq. m.

[41] Robert St., Bo. San Rafael, Pasay City, Metro Manila.

All the other sub-issues raised by petitioners are rendered inconsequential by the above disquisitions of this Court.

WHEREFORE, the petition for review on *certiorari* dated May 3, 1995 is *DENIED*. Consequently, the Decision dated January 23, 1995 and the Resolution dated March 28, 1995, of the Court of Appeals, are hereby *AFFIRMED*.

SO ORDERED.

Nachura, Villarama, Jr.,[*] *Abad,* and *Mendoza, JJ.*, concur.

Carpio, J. (Chairperson), no part.

FIRST DIVISION

[G.R. No. 147629. July 28, 2010]

JAKA INVESTMENTS CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; CLAIM FOR REFUND; BURDEN OF PROOF IS ON THE TAXPAYER TO PROVE ENTITLEMENT TO SUCH REFUND.— In claims for refund, the burden of proof is on the taxpayer to prove entitlement to such refund. As we held in *Compagnie Financiere Sucres Et Denrees v. Commissioner of Internal Revenue*- Along with police power and eminent domain, taxation is one of the three basic and necessary attributes of sovereignty. Thus, the State cannot be deprived of this most essential power and attribute of sovereignty by

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[*] Designated as an additional member in lieu of Senior Associate Justice Antonio T. Carpio per raffle dated July 12, 2010.

vague implications of law. Rather, being derogatory of sovereignty, the governing principle is that tax exemptions are to be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority; and **he who claims an exemption must be able to justify his claim by the clearest grant of statute**. x x x Tax refunds are a derogation of the State's taxing power. Hence, like tax exemptions, they are construed strictly against the taxpayer and liberally in favor of the State. Consequently, he who claims a refund or exemption from taxes has the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted. x x x. It was thus incumbent upon petitioner to show clearly its basis for claiming that it is entitled to a tax refund. This, to our mind, the petitioner failed to do.

2. ID.; ID.; ID.; DOCUMENTARY STAMP TAX; NATURE; LEVIED INDEPENDENTLY OF THE LEGAL STATUS OF THE TRANSACTIONS GIVING RISE THERETO; IT MUST BE PAID UPON ISSUANCE OF THE INSTRUMENTS, WITHOUT REGARD TO WHETHER THE CONTRACTS WHICH GAVE RISE TO THEM ARE RESCISSIBLE, VOID, VOIDABLE, OR UNENFORCEABLE.— A documentary stamp tax is in the nature of an excise tax. It is not imposed upon the business transacted but is an excise upon the privilege, opportunity or facility offered at exchanges for the transaction of the business. It is an excise upon the facilities used in the transaction of the business separate and apart from the business itself. Documentary stamp taxes are levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. Thus, we have held that **documentary stamp taxes are levied independently of the legal status of the transactions giving rise thereto**. The documentary stamp taxes must be paid upon the **issuance** of the said instruments, **without regard to whether the contracts which gave rise to them are rescissible, void, voidable, or unenforceable**.

3. ID.; ID.; ID.; PETITIONER'S BASIS FOR CLAIMS OF REFUND IS NOT CLEAR.— Petitioner claims overpayment of the documentary stamp tax but its basis for such is not clear at all. While insisting that the documentary stamp tax it had paid for was not based on the original issuance of JEC shares

as provided in Section 175 of the 1994 Tax Code, petitioner failed in showing, even through a mere basic computation of the tax base and the tax rate, that the documentary stamp tax was based on the transfer of shares under Section 176 either. It would have been helpful for petitioner's cause had it submitted proof of the par value of the shares of stock involved, to show the actual basis for the documentary stamp tax computation. For comparison, the original Subscription Agreement ought to have been submitted as well. All that petitioner submitted to back up its claim were the certifications issued by then RDO Esquivias. As correctly pointed out by respondent, however, the amounts in the RDO certificates were the amounts of documentary stamp tax representing the equivalent of each group of shares being applied for payment. The purpose for issuing such certifications was to allow registration of transfer of shares of stock used in partial payment for petitioner's subscription to the original issuance of JEC shares. It should not be used as evidence of payment of documentary stamp tax. Neither should it be the lone basis of a claim for a documentary stamp tax refund. The fact that it was petitioner and not JEC that paid for the documentary stamp tax on the original issuance of shares is of no moment, as Section 173 of the 1994 Tax Code states that the documentary stamp tax shall be paid by the person making, signing, issuing, accepting or transferring the property, right or obligation.

4. REMEDIAL LAW; EVIDENCE; CONCLUSION REACHED BY THE COURT OF TAX APPEALS IS BINDING ON THE COURT.— [W]e deem it appropriate to reiterate the well-established doctrine that as a matter of practice and principle, this Court will not set aside the conclusion reached by an agency, like the Court of Tax Appeals, especially if affirmed by the Court of Appeals. By the very nature of its function, it has dedicated itself to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority on its part, which we find is not present here.

APPEARANCES OF COUNSEL

Ponce Enrile Reyes & Manalastas for petitioner.
Alberto R. Bomediano, Jr. for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is a petition for review of the **Decision**[1] of the Court of Appeals dated August 22, 2000 sustaining the Court of Tax Appeals in denying petitioner's (JAKA Investments Corporation's) claim for refund of its alleged overpayment of documentary stamp tax and surcharges, as well as the **Resolution**[2] dated March 27, 2001 likewise denying petitioner's Motion for Reconsideration.

The antecedent facts are undisputed.

Sometime in 1994, petitioner sought to invest in **JAKA Equities Corporation (JEC)**, which was then planning to undertake an initial public offering (IPO) and listing of its shares of stock with the Philippine Stock Exchange. JEC increased its authorized capital stock from One Hundred Eighty-Five Million Pesos (₱185,000,000.00) to Two Billion Pesos (₱2,000,000,000.00). Petitioner proposed to subscribe to Five Hundred Eight Million Eight Hundred Six Thousand Two Hundred Pesos (₱508,806,200.00) out of the increase in the authorized capital stock of JEC through a tax-free exchange under Section 34(c)(2) of the National Internal Revenue Code (NIRC) of 1977, as amended, which was effected by the execution of a Subscription Agreement and Deed of Assignment of Property in Payment of Subscription. Under this Agreement, as payment for its subscription, petitioner will assign and transfer to JEC the following shares of stock:

(a) 154,208,404 shares in Republic Glass Holdings Corporation (RGHC),

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[1] Penned by Justice Delilah Vidallon-Magtolis with Associate Justices Eloy R. Bello, Jr. and Elvi John S. Asuncion, concurring; *rollo*, pp. 33-41.

[2] *Rollo*, p. 43.

(b) 2,822,500 shares in Philippine Global Communications, Inc. (PGCI),

(c) 7,495,488 shares in United Coconut Planters Bank (UCPB), and

(d) 1,313,176 shares in Far East Bank and Trust Company (FEBTC).[3]

The intended IPO and listing of shares of JEC did not materialize. However, JEC still decided to proceed with the increase in its authorized capital stock and petitioner agreed to subscribe thereto, but under different terms of payment. Thus, petitioner and JEC executed the **Amended Subscription Agreement**[4] on September 5, 1994, wherein the above-enumerated RGHC, PGCI, and UCPB shares of stock were transferred to JEC. In lieu of the FEBTC shares, however, the amount of Three Hundred Seventy Million Seven Hundred Sixty-Six Thousand Pesos (₱370,766,000.00) was paid for in cash by petitioner to JEC.

On October 14, 1994, petitioner paid One Million Three Thousand Eight Hundred Ninety-Five Pesos and Sixty-Five Centavos (₱1,003,895.65) for basic documentary stamp tax inclusive of the 25% surcharge for late payment on the Amended Subscription Agreement, broken down as follows:

Documentary Stamp Tax	-	₱803,116.72
25% Surcharge	-	200,778.93
Total		₱1,003,895.65[5]

On October 17, 1994, Revenue District Officer (RDO) Atty. Sixto S. Esquivias IV (RDO Esquivias) issued three Certifications,[6] as follows:

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[3] *Id.* at 5.

[4] *Id.* at 44-49.

[5] As shown in the Authority to Accept Payment (BIR Form No. 2319) SN:1511920, *rollo*, p. 50.

[6] *Rollo*, pp. 51-53.

Cert. No.	Shares of Stock	Documentary Stamps
94-10-17-07	7,495,488 UCPB shares	₱ 23,423.14
94-10-17-08	154,208,403 RGHC shares	481,901.88
94-10-17-14	2,822,500 PGCI shares	88,203.13
		₱593,528.15

Petitioner, after seeing the RDO's certifications, the total amount of which was less than the actual amount it had paid as documentary stamp tax, concluded that it had overpaid. Petitioner subsequently sought a refund for the alleged excess documentary stamp tax and surcharges it had paid on the Amended Subscription Agreement in the amount of Four Hundred Ten Thousand Three Hundred Sixty-Seven Pesos (₱410,367.00), the difference between the amount of documentary stamp tax it had paid and the amount of documentary stamp tax certified to by the RDO, through a letter-request[7] to the BIR dated October 10, 1996.

On October 11, 1996, petitioner filed a petition for refund before the Court of Tax Appeals, docketed as **C.T.A. Case No. 5428**, which was denied in a **Decision**[8] dated January 19, 1999. The Court of Tax Appeals likewise denied petitioner's Motion for Reconsideration in its **Resolution**[9] dated March 1, 1999.

Petitioner appealed to the Court of Appeals by way of petition for review. The Court of Appeals sustained the Court of Tax Appeals in its **Decision** on CA-G.R. SP No. 51834 dated August 22, 2000 as well as in its **Resolution** dated March 27, 2001 of petitioner's Motion for Reconsideration.

Hence, petitioner is now before this Court to seek the reversal of the questioned Decision and Resolution of the Court of Appeals.

Petitioner's main contention in this claim for refund is that the tax base for the documentary stamp tax on the Amended Subscription Agreement should have been only the shares of

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[7] *Id.* at 54-57.

[8] *Id.* at 22-29.

[9] *Id.* at 31.

stock in RGHC, PGCI, and UCPB that petitioner had transferred to JEC as payment for its subscription to the JEC shares, and should not have included the cash portion of its payment, based on **Section 176** of the National Internal Revenue Code of 1977, as amended by Republic Act No. 7660, or the New Documentary Stamps Tax Law (the 1994 Tax Code), the law applicable at the time of the transaction. Petitioner argues that the cash component of its payment for its subscription to the JEC shares, totaling Three Hundred Seventy Million Seven Hundred Sixty-Six Thousand Pesos (₱370,766,000.00) should not have been charged any documentary stamp tax. Petitioner claims that there was overpayment because the tax due on the transferred shares was only Five Hundred Ninety-Three Thousand Five Hundred Twenty-Eight and 15/100 Pesos (₱593,528.15), as indicated in the certifications issued by RDO Esquivias. Petitioner alleges that it is entitled to a refund for the overpayment, which is the difference in the amount it had actually paid (₱1,003,895.65) and the amount of documentary stamp tax due on the transfer of said shares (₱593,528.15), or a total of Four Hundred Ten Thousand Three Hundred Sixty-Seven Pesos (₱410,367.00).

Petitioner contends that both the Court of Appeals and the Court of Tax Appeals erroneously relied on respondent's (Commissioner of Internal Revenue's) assertions that it had paid the documentary stamp tax on the original issuance of the shares of stock of JEC under **Section 175** of the 1994 Tax Code.

Petitioner explains that in this instance where shares of stock are used as subscription payment, there are two documentary stamp tax incidences, namely, the documentary stamp tax on the original issuance of the shares subscribed (the JEC shares), which is imposed under Section 175; and the documentary stamp tax on the shares transferred in payment of such subscription (the transfer of the RGHC, PGCI and UCPB shares of stock from petitioner to JEC), which is imposed under Section 176 of the 1994 Tax Code. Petitioner argues that the documentary stamp tax imposed under Section 175 is due on original issuances of certificates of stock and is computed based on the aggregate

par value of the shares to be issued; and that these certificates of stock are issued only upon full payment of the subscription price such that under the Bureau of Internal Revenue's (BIR's) Revised Documentary Stamp Tax Regulations,[10] it is stated that the documentary stamp tax on the original issuance of certificates of stock is imposed on fully paid shares of stock only. Petitioner alleges that it is the issuing corporation which is primarily liable for the payment of the documentary stamp tax on the original issuance of shares of stock. Petitioner further argues that the documentary stamp tax on Section 176 of the 1994 Tax Code is imposed for every transfer of shares or certificates of stock, computed based on the par value of the shares to be transferred, and is due whether a certificate of stock is actually issued, indorsed or delivered pursuant to such transfer. It is the transferor who is liable for the documentary stamp tax on the transfer of shares.

Petitioner claims that the documentary stamp tax under Section 175 attaches to the certificate/s of stock to be issued by virtue of petitioner's subscription while the documentary stamp tax under Section 176 attaches to the Amended Subscription Agreement, since it is this instrument that evidences the transfer of the RGHC, PGCI and UCPB shares from petitioner to JEC.

Petitioner contends that at the time of the execution of the Amended Subscription Agreement, the JEC shares or certificates subscribed by petitioner could not have been issued by JEC because the same were yet to be sourced from the increase in authorized capital stock of JEC, which in turn had yet to be approved by the Securities and Exchange Commission (SEC). Petitioner thus reasons that the documentary stamp tax under Section 175 could not have accrued at the time the Amended Subscription Agreement was executed because no right to the shares had neither been nor could be established in favor of the petitioner at such time. Petitioner theorizes that the earliest time that the subscription could actually be executed would be when the SEC approves the increase in the authorized capital stock

[10] BIR Revenue Regulations No. 9-94 effective January 1994.

of JEC. On the other hand, upon the execution of the Amended Subscription Agreement, the assignment or the transfer of RGHC, PGCI and UCPB shares in favor of JEC (which is evidenced by said agreement), is deemed immediately enforceable as this is a necessary requirement of the SEC.

Petitioner points out that Section 175 of the 1994 Tax Code imposes a documentary stamp tax on every original issuance of **certificates of stock**, whereas Republic Act No. 8424, the Tax Reform Act of 1997 (the 1997 Tax Code), amended this provision and imposed a documentary stamp tax on the original issuance of **shares of stock.** Petitioner argues that under Section 175 of the 1994 Tax Code, there was no documentary stamp tax due on the mere execution of a subscription agreement to shares of stock, and the tax only accrued upon issuance of the certificates of stock. In this case, the change in wording introduced by the 1997 Tax Code cannot be made applicable to the Amended Subscription Agreement, which was executed in 1994, because it is a well-settled doctrine in taxation that a law must have prospective application.

Lastly, petitioner alleges that it is entitled to refund under the NIRC.[11]

In his **Comment (To Petition for Review)**,[12] respondent avers that the lower courts did not err in denying petitioner's claim for refund, and that petitioner is raising issues in this petition which were not raised in the lower courts.

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[11] Sec. 295. Authority of Commissioner to make compromise and to refund taxes. — The Commissioner may:

x x x x x x x x x

(3) Credit or refund taxes erroneously or illegally received, or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two years after the payment of the tax or penalty.

[12] *Rollo*, pp. 90-100.

Respondent maintains that the documentary stamp tax imposed in this case is on the original issue of certificates of stock of JEC on the subscription by the petitioner of the ₱508,806,200.00 shares out of the increase in the authorized capital stock of the former pursuant to Section 175 of the NIRC. The documentary stamp tax was not imposed on the shares of stock owned by petitioner in RGHC, PGCI, and UCPB, which merely form part of the partial payment of the subscribed shares in JEC. Respondent avers that the amounts indicated in the Certificates of RDO Esquivias are the amounts of documentary stamp tax representing the equivalent of each group of shares being applied for payment. Considering that the amount of documentary stamp tax represented by the shares of stock in the aforementioned companies amounted only to ₱593,528.15, while the basic documentary stamp tax for the entire subscription of ₱508,806,200.00 was computed by respondent's revenue officers to the tune of ₱803,116.72, exclusive of the penalties, leaving a balance of ₱209,588.57, is a clear indication that the payment made with the shares of stock is insufficient.

Respondent claims that the certifications were issued by RDO Esquivias purposely to allow the registration of transfer of the shares of stock used in payment of the subscribed shares in the name of JEC from petitioner by the Corporate Secretary of the UCPB and are not evidence of the payment of the documentary stamp tax on the issuance of the increased shares of stocks of JEC.[13]

Respondent argues that the documentary stamp tax attaches upon acceptance by the corporation of the stockholder's subscription in the capital stock of the corporation, and that the term "original issue" of the certificate of stock means "the point at which the stockholder acquires and may exercise attributes of ownership over the stocks."[14] Respondent further argues that the stocks can be alienated; the dividends or fruits derived therefrom can be enjoyed; and they can be conveyed, pledged,

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[13] *Id.* at 95.

[14] *Id.* at 97.

or encumbered; that the certificate, irrespective of whether or not it is in the actual constructive possession of the stockholder, is considered issued because it is with value and, hence, the documentary stamp tax must be paid; and concludes that a person may own shares of stock without possessing a certificate of stock. Respondent cites *Commissioner of Internal Revenue v. Construction Resources of Asia, Inc.*,[15] where the Court held:

> The delivery of the certificates of stocks to the private respondent's stockholders whether actual or constructive, is not essential for the documentary and science stamps taxes to attach. What is taxed is the privilege of issuing shares of stock and, therefore, the taxes accrue at the time the shares are issued. The only question before us is whether or not said private respondents issued the certificates of stock covering the paid-in-capital of ₱17,880,000.00.

Respondent claims that it is well-settled as a general rule of Corporation Law that a subscriber for stock in a corporation or purchaser of stock becomes a stockholder as soon as his subscription is accepted by the corporation whether a certificate of stock is issued to him or not, and although he may have no certificate, he is thereupon entitled to all the rights and is subject to all the liabilities of a stockholder.

Respondent argues, based on the above, that the contention of petitioner that the documentary stamp tax under Section 175 of the 1994 Tax Code could not have accrued at the time the Amended Subscription Agreement was executed since the increase in capital stock of JEC had yet to be approved by the SEC was inaccurate. He states that it is evident from the Amended Subscription Agreement that the subscribed shares from the increase in JEC's stock were fully paid through cash and shares of stock.

Respondent submits that the change in wording, from "certificates" to "shares" of stock, introduced to Section 175 by the 1997 Tax Code, was a mere clarification and codification of the foregoing principle or policy.

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[15] 230 Phil. 76, 81 (1986).

Respondent stresses that the documentary stamp tax can be levied or collected from the person making, signing, issuing, accepting, or transferring the obligation or property, as provided in Section 173 of the Tax Code.

In its **Reply to Respondent's Comment to the Petition**,[16] petitioner contends that respondent erroneously insists that the documentary stamp tax sought to be refunded is the one imposed on the subscription by petitioner to ₱508,806,200.00 new shares of JEC. Petitioner further contends that since the documentary stamp tax due on the issuance of new shares or on original shares is ₱2.00 for every ₱200 under Section 175 of the Tax Code, then the documentary stamp tax on petitioner's subscription to JEC shares should amount to ₱5,088,062.00, which is much higher than the ₱803,116.72 basic documentary stamp tax paid under ATAP No. 1511920.[17] Petitioner argues that at the time the documentary stamp tax was paid, before a taxpayer was allowed to pay the taxes due, a BIR revenue officer would first compute the tax due and then issue an authority to accept payment (ATAP) and it was very unlikely that the revenue officer could have made such a glaring mistake.

Petitioner alleges that there is no BIR certification requirement prior to the issuance of original shares of stock; and that it is only upon the regular annual audit of the books of a corporation that the BIR determines if the documentary stamp tax on new or original issuances of shares, if any were issued, had in fact been paid. If not, then a deficiency assessment, with penalties and surcharges, would then be made by the BIR. Petitioner further alleges that, on the other hand, before the transfer of issued and outstanding shares to a new owner is recorded in the books of a corporation, the capital gains tax thereon and the documentary stamp tax on the transfer must first be paid, and a BIR certification must be presented to the Corporate Secretary authorizing the corporation to record the transfer, otherwise, the corporate secretary shall be subjected to penalties.

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[16] *Rollo,* pp. 103-111.

[17] *Id.* at 50.

Petitioner claims that the three BIR certifications in this case specifically allow the registration of the UCPB, RGHC, and PGCI shares in the name of JEC, the transferee, and that said certifications evidence payment of the taxes due on the transfer of the shares from petitioner to JEC, not on the original issuance of shares of JEC.

The parties' respective memoranda contained reiterations of the allegations raised in their respective pleadings as discussed above.

The sole issue to be resolved is whether petitioner is entitled to a partial refund of the documentary stamp tax and surcharges it paid on the execution of the Amended Subscription Agreement.

In claims for refund, the burden of proof is on the taxpayer to prove entitlement to such refund. As we held in *Compagnie Financiere Sucres Et Denrees v. Commissioner of Internal Revenue*[18] —

> Along with police power and eminent domain, taxation is one of the three basic and necessary attributes of sovereignty. Thus, the State cannot be deprived of this most essential power and attribute of sovereignty by vague implications of law. Rather, being derogatory of sovereignty, the governing principle is that tax exemptions are to be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority; and **he who claims an exemption must be able to justify his claim by the clearest grant of statute**.
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> x x x Tax refunds are a derogation of the State's taxing power. Hence, like tax exemptions, they are construed strictly against the taxpayer and liberally in favor of the State. Consequently, he who claims a refund or exemption from taxes has the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted. x x x.

It was thus incumbent upon petitioner to show clearly its basis for claiming that it is entitled to a tax refund. This, to our mind, the petitioner failed to do.

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[18] G.R. No. 133834, August 28, 2006, 499 SCRA 664, 667-668.

The Court of Tax Appeals construed the claim for exemption strictly against petitioner and held that:

The focal issue which is presented for our consideration is whether or not the transfer of the 1,313,176 FEBTC shares under the "Amended Subscription Agreement and Deed of Assignment of Property in Payment of Subscription" should be excluded in the taxable base for the computation of DST, thus entitling petitioner to the refund of the amount of ₱410,367.00.

We find nothing ambiguous nor obscure in the language of Section 173, taken in relation to Section 175 of the 1994 Tax Code x x x insofar as the same is brought to bear upon the circumstances in the instant case. These provisions furnish the best means of their own exposition that a documentary stamp tax (DST) is due and payable on documents, instruments, loan agreements and papers, acceptances, assignments, sales and transfers which evidenced the transaction agreed upon by the parties and should be paid by the person making, signing, issuing, accepting or transferring the property, right or obligation.

> Sec. 173. *Stamp taxes upon documents, instruments, and papers*. — Upon documents, instruments, and papers, and upon acceptances, assignments, sales, and transfers of the obligation, or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following sections of this Title, by the person making, signing, issuing, accepting, or transferring the same, whenever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and at the same time such act is done or transaction had: *Provided*, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax. (as amended by R.A. No. 7660)

x x x x x x x x x

Understood to mean what it plainly expressed, the DST imposition is essentially addressed and directly brought to bear upon the DOCUMENT evidencing the transaction of the parties which establishes its rights and obligations.

In the case at bar, the rights and obligations between petitioner JAKA Investments Corporation and JAKA Equities Corporation are established and enforceable at the time the "Amended Subscription Agreement and Deed of Assignment of Property in Payment of Subscription" were signed by the parties and their witness, so is the right of the state to tax the aforestated document evidencing the transaction. **DST is a tax on the document itself and therefore the rate of tax must be determined on the basis of what is written or indicated on the instrument itself independent of any adjustment which the parties may agree on in the future** x x x**.** The DST upon the taxable document should be paid at the time the contract is executed or at the time the transaction is accomplished. The overriding purpose of the law is the collection of taxes. So that when it paid in cash the amount of ₱370,766,000.00 in substitution for, or replacement of the 1,313,176 FEBTC shares, its payment of ₱1,003,835.65 documentary stamps tax pursuant to Section 175 of NIRC is in order.

Thus, applying the settled rule in this jurisdiction that, a claim for refund is in the nature of a claim for exemption, thus, should be construed in *strictissimi juris* against the taxpayer (*Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd.*, 244 SCRA 332) and since the petitioner failed to adduce evidence that will show that it is exempt from DST under Section 199 or other provision of the tax code, We rule the focal issue in the negative.[19] (Emphases ours.)

In the questioned Decision, the Court of Appeals concurred with the findings of the Court of Tax Appeals and we quote with approval the relevant portions below:

Petitioner alleges, though, that considering that the assessment of payment of documentary stamp tax was made payable only to the aforesaid issuances of certificates of [stock] exclusive of that of FEBTC shares of stock which were paid in cash, and that it has paid a total of Php1,003,895.65 inclusive of surcharges for late payment, the petitioner is entitled to a refund of Php410,367.00. This argument does not hold water. As discussed earlier, **a documentary stamp is levied upon the privilege, the opportunity and the facility offered at exchanges for the transaction of the business. This being the case, and as correctly found by the tax court, the**

[19] *Rollo,* pp. 26-29.

documentary stamp tax imposition is essentially addressed and directly brought to bear upon the document evidencing the transaction of the parties which establishes its rights and obligations, which in the case at bar, was established and enforceable upon the execution of the Amended Subscription Agreement and Deed of Assignment of Property in Payment of Subscription.

Moreover, the documentary stamp tax is imposed on the entire subscription (*i.e.*, subscribed capital stock) which is the amount of the capital stock subscribed whether fully paid or not. It connotes an original subscription contract for the acquisition by a subscriber of unissued shares in a corporation, which in this case is equivalent to a total par value of Php508,806,200.00.

Besides, a tax cannot be imposed unless it is supported by the clear and express language of a statute; on the other hand, once the tax is unquestionably imposed, a claim of exemption from tax payments must be clearly shown and based on language in the law too plain to be mistaken. And since a claim for refund is in the nature of a claim for exemption the same is likewise construed in *strictissimi juris* against the taxpayer. Furthermore, it is a basic rule in taxation that the factual findings of the Court of Tax Appeals, when supported by substantial evidence, will not be disturbed on appeal unless it [is] shown that the said court committed gross error in the appreciation of facts. In this case, the tax court did not deviate from this rule.

We find no error in the above pronouncements of the Court of Appeals.

A documentary stamp tax is in the nature of an excise tax. It is not imposed upon the business transacted but is an excise upon the privilege, opportunity or facility offered at exchanges for the transaction of the business. It is an excise upon the facilities used in the transaction of the business separate and apart from the business itself. Documentary stamp taxes are levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments.[20]

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[20] *Antam Pawnshop Corporation v. Commissioner of Internal Revenue,* G.R. No. 167962, September 19, 2008, 566 SCRA 57, 70.

Thus, we have held that **documentary stamp taxes are levied independently of the legal status of the transactions giving rise thereto**. The documentary stamp taxes must be paid upon the **issuance** of the said instruments, **without regard to whether the contracts which gave rise to them are rescissible, void, voidable, or unenforceable**.[21]

The relevant provisions of the Tax Code at the time of the transaction are quoted below:

Sec. 175. ***Stamp tax on original issue of certificates of stock***. — **On every original issue**, whether on organization, reorganization or for any lawful purpose, **of certificates of stock by any association, company, or corporations, there shall be collected a documentary stamp tax of Two pesos (₱2.00) on each two hundred pesos, or fractional part thereof, of the par value of such certificates**: Provided, That in the case of the original issue of stock without par value the amount of the documentary stamp tax herein prescribed shall be based upon the actual consideration received by the association, company, or corporation for the issuance of such stock, and in the case of stock dividends on the actual value represented by each share.

Sec. 176. ***Stamp tax on sales, agreements to sell, memoranda of sales, deliveries or transfer of due-bills, certificates of obligation, or shares or certificates of stock.*** — On all sales, or agreements to sell, or memoranda of sales, or deliveries, or transfer of due-bills, certificates of obligation, or shares or certificates of stock in any association, company or corporation, or transfer of such securities by assignment in blank, or by delivery, or by any paper or agreement, or memorandum or other evidences of transfer or sale whether entitling the holder in any manner to the benefit of such due-bills, certificates of obligation or stock, or to secure the future payment of money, or for the future transfer of any due-bill, certificates of obligation or stock, there shall be collected a documentary stamp tax of One peso (₱1.00) on each two hundred pesos, or fractional part thereof, of the par value of such due-bill, certificates of obligation or stock: *Provided*, That only one tax shall be collected on each sale or transfer of stock or securities from

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[21] *Philippine Home Assurance Corporation v. Court of Appeals*, 361 Phil. 368, 373 (1999).

one person to another, regardless of whether or not a certificate of stock or obligation is issued, endorsed, or delivered in pursuance of such sale or transfer: and *Provided, further*, That in the case of stock without par value the amount of the documentary stamp herein prescribed shall be equivalent to twenty-five *per centum* of the documentary stamp tax paid upon the original issue of said stock: *Provided, furthermore*, That the tax herein imposed shall be increased to One peso and fifty centavos (₱1.50) beginning 1996.

We find our discussion in the case of *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc*.[22] regarding these same provisions of the Tax Code to be instructive, and we quote:

In Section 175 of the Tax Code, DST is imposed on the original issue of shares of stock. The DST, as an excise tax, is levied upon the privilege, the opportunity and the facility of issuing shares of stock. In *Commissioner of Internal Revenue v. Construction Resources of Asia, Inc*., this Court explained that **the DST attaches upon acceptance of the stockholder's subscription in the corporation's capital stock regardless of actual or constructive delivery of the certificates of stock**. Citing *Philippine Consolidated Coconut Ind., Inc. v. Collector of Internal Revenue*, the Court held:

> The documentary stamp tax under this provision of the law may be levied only once, that is upon the original issue of the certificate. The crucial point therefore, in the case before Us is the proper interpretation of the word 'issue'. In other words, when is the certificate of stock deemed 'issued' for the purpose of imposing the documentary stamp tax? Is it at the time the certificates of stock are printed, at the time they are filled up (in whose name the stocks represented in the certificate appear as certified by the proper officials of the corporation), at the time they are released by the corporation, or at the time they are in the possession (actual or constructive) of the stockholders owning them?
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> x x x x x x x x x

[22] G.R. Nos. 172045-46, June 16, 2009, 589 SCRA 253, 265-267.

> Ordinarily, when a corporation issues a certificate of stock (representing the ownership of stocks in the corporation to fully paid subscription) the certificate of stock can be utilized for the exercise of the attributes of ownership over the stocks mentioned on its face. The stocks can be alienated; the dividends or fruits derived therefrom can be enjoyed, and they can be conveyed, pledged or encumbered. The certificate as issued by the corporation, irrespective of whether or not it is in the actual or constructive possession of the stockholder, is considered issued because it is with value and hence the documentary stamp tax must be paid as imposed by Section 212 of the National Internal Revenue Code, as amended.

In Section 176 of the Tax Code, DST is imposed on the sales, agreements to sell, memoranda of sales, deliveries or transfer of shares or certificates of stock in any association, company, or corporation, or transfer of such securities by assignment in blank, or by delivery, or by any paper or agreement, or memorandum or other evidences of transfer or sale whether entitling the holder in any manner to the benefit of such certificates of stock, or to secure the future payment of money, or for the future transfer of certificates of stock. In *Compagnie Financiere Sucres et Denrees v. Commissioner of Internal Revenue*, this Court held that under Section 176 of the Tax Code, sales to secure the future transfer of due-bills, certificates of obligation or certificates of stock are subject to documentary stamp tax.

Revenue Memorandum Order No. 08-98 (RMO 08-98) provides the guidelines on the corporate stock documentary stamp tax program. RMO 08-98 states that:

> 1. All existing corporations shall file the Corporation Stock DST Declaration, and the DST Return, if applicable **when DST is still due on the subscribed share issued by the corporation**, on or before the tenth day of the month following publication of this Order.
>
> x x x x x x x x x
>
> 3. All existing corporations with authorization for increased capital stock shall file their Corporate Stock DST Declaration, together with the DST Return, if applicable **when DST is due on subscriptions made after the authorization**, on or before the tenth day of the month following the date of authorization. (Boldfacing supplied)

RMO 08-98, reiterating Revenue Memorandum Circular No. 47-97 (RMC 47-97), also states that what is being taxed is the privilege of issuing shares of stock, and, therefore, the taxes accrue at the time the shares are issued. RMC 47-97 also defines issuance as the point in which the stockholder acquires and may exercise attributes of ownership over the stocks.

As pointed out by the CTA, Sections 175 and 176 of the Tax Code contemplate a subscription agreement in order for a taxpayer to be liable to pay the DST. A subscription contract is defined as any contract for the acquisition of unissued stocks in an existing corporation or a corporation still to be formed. A stock subscription is a contract by which the subscriber agrees to take a certain number of shares of the capital stock of a corporation, paying for the same or expressly or impliedly promising to pay for the same. (Emphases ours.)

Petitioner claims overpayment of the documentary stamp tax but its basis for such is not clear at all. While insisting that the documentary stamp tax it had paid for was not based on the original issuance of JEC shares as provided in Section 175 of the 1994 Tax Code, petitioner failed in showing, even through a mere basic computation of the tax base and the tax rate, that the documentary stamp tax was based on the transfer of shares under Section 176 either. It would have been helpful for petitioner's cause had it submitted proof of the par value of the shares of stock involved, to show the actual basis for the documentary stamp tax computation. For comparison, the original Subscription Agreement ought to have been submitted as well.

All that petitioner submitted to back up its claim were the certifications issued by then RDO Esquivias. As correctly pointed out by respondent, however, the amounts in the RDO certificates were the amounts of documentary stamp tax representing the equivalent of each group of shares being applied for payment. The purpose for issuing such certifications was to allow registration of transfer of shares of stock used in partial payment for petitioner's subscription to the original issuance of JEC shares. It should not be used as evidence of payment of documentary stamp tax. Neither should it be the lone basis of a claim for a documentary stamp tax refund.

The fact that it was petitioner and not JEC that paid for the documentary stamp tax on the original issuance of shares is of no moment, as Section 173 of the 1994 Tax Code states that the documentary stamp tax shall be paid by the person making, signing, issuing, accepting or transferring the property, right or obligation.

Lastly, we deem it appropriate to reiterate the well-established doctrine that as a matter of practice and principle, this Court will not set aside the conclusion reached by an agency, like the Court of Tax Appeals, especially if affirmed by the Court of Appeals. By the very nature of its function, it has dedicated itself to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority on its part, which we find is not present here.[23]

WHEREFORE, premises considered, the petition is hereby *DISMISSED*.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Del Castillo, and *Perez, JJ.,* concur.

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[23] *Compagnie Financiere Sucres Et Denrees v. Commissioner of Internal Revenue, supra* note 18 at 669.

SECOND DIVISION

[G.R. No. 152236. July 28, 2010]

RPRP VENTURES MANAGEMENT & DEVELOPMENT CORPORATION, *petitioner, vs.* **HON. TEOFILO L. GUADIZ, JR., Presiding Judge, Regional Trial Court of Makati City, Branch 147; METROPOLITAN BANK AND TRUST COMPANY and ATTY. ENRIQUETO MAGPANTAY, in his capacity as a Notary Public of Makati City,** *respondents.*

SYLLABUS

1. CIVIL LAW; MORTGAGE; EXTRAJUDICIAL FORCLOSURE OF REAL ESTATE/CHATTEL MORTGAGE; PETITION FILED BEFORE A NOTARY PUBLIC; PAYMENT OF DOCKET FEE, NOT REQUIRED. – Section 7 (c), Rule 141 of the Rules of Court requires the payment of docket fees when filing Petitions for Extrajudicial Foreclosure of real and chattel mortgages. However, the said provisions of the law pertains to petitions for foreclosure filed before the Office of the *Ex-Officio* Sheriff. In the present case, Section 7 (c), Rule 141 of the Rules of Court is inapplicable, because the petition for extra-judicial foreclosure of real property mortgage was filed before a notary public.

2. ID.; ID.; ID.; ID.; NOTICE OF SALE ISSUED BY A NOTARY PUBLIC IS NOT WITHIN THE SCOPE OF JUDICIAL NOTICES. – Respondent Metrobank was not mistaken when it stated that P.D. 1079, as amended, did not apply to the publication of Notices of Sale in extra-judicial foreclosures conducted by notaries public, because the said law was applicable to the publication of Notices of Sale in extra-judicial foreclosures of mortgage conducted by a Sheriff. Presidential Decree No. 1079, as amended, refers to judicial notices or those notices issued by the *Ex-Officio* Sheriff and Clerk of Court in extra-judicial foreclosures of mortgage, and a notice of sale issued by a Notary Public is not within the scope of judicial notices.

APPEARANCES OF COUNSEL

Paras and Manlapas Lawyers for petitioner.
Santiago Corpus & Ejercito Law Offices for Metrowork and Atty. Enriqueto Magpantay.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review[1] on *certiorari* under Rule 45 of the Rules of Court seeking to nullify and set aside the Decision[2] of the Court of Appeals (CA) dated September 4, 2001 and its Resolution[3] dated January 17, 2002.

The antecedent facts are the following:

On September 26, 1997, petitioner was granted a loan in the amount of Forty Three Million (₱43,000,000.00) Pesos by Metrobank, for which the former signed a promissory note[4] in favor of the latter. As a security for the said loan, petitioner executed a Deed of Real Estate Mortgage[5] dated September 25, 1997 over a property situated in Makati City[6] in favor of Metrobank. Eventually, the amount due[7] on the loan amounted to ₱62,619,460.33 by September 20, 1999.

Petitioner defaulted in the payment of the loan obligation; hence, Metrobank filed a petition for extrajudicial foreclosure[8]

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[1] *Rollo*, pp. 26.

[2] Penned by Associate Justice Mercedes Gozo-Dadole, with then Presiding Justice Ma. Alicia Austria-Martinez and Associate Justice Portia Aliño-Hormachuelos, concurring; *id.* at 35-41.

[3] *Id.* at 43-44.

[4] CA *rollo*, p. 154.

[5] *Id.* at 156-159.

[6] Covered by TCT No. 202513 containing an area of 1,021 sq. m.; *id.* at 160-162.

[7] Per statement of account, *id.* at 177.

[8] CA *rollo*, pp. 54-57.

of the mortgaged real estate property with a notary public, private respondent Atty. Enriqueto Magpantay. The notary public, in a Notice of Sale[9] dated November 12, 1999, scheduled the foreclosure sale of the mortgaged property on December 9, 1999. The said Notice of Sale was published[10] at the *Challenger News* on November 15, 22, and 29, 1999. In the said auction sale, Metrobank was the highest and only bidder in the amount of ₱34,877,479.20.[11]

Subsequently, petitioner filed a Complaint[12] for the Annulment of the Extrajudicial Foreclosure Sale and Real Estate Mortgage Contract with Prayer for TRO and Issuance of the Writ of Preliminary Mandatory Injunction dated December 23, 1999 with the trial court.[13] Petitioner contended that the foreclosure sale conducted by the notary public was null and void because of the following: the publication of the Notice of Sale in the *Challenger News* was not assigned by publication by raffle, which is in violation of Presidential Decree (P.D.) 1079; the *Challenger News* is not a newspaper of general circulation as defined by the rules; and Metrobank should pay the fees for the filing of a request or application for extra-judicial foreclosure as fixed by Section 7 (c), Rule 141 of the Rules of Court.

In an Order[14] dated March 15, 2000, the trial court denied the application of petitioner, the dispositive portion of which states:

> WHEREFORE, in view of the foregoing, the Court, finding the application for the issuance of a writ of preliminary injunction to be not well-taken, hereby denies the same.
>
> SO ORDERED.

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[9] *Id.* at 118-119.

[10] *Id.* at 180-181.

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

[12] *Id.* at 43-53.

[13] RTC of Makati City, Branch 147 and docketed as Civil Case No. 99-2139.

[14] CA *rollo*, pp. 34-42.

Petitioner filed with the CA a Petition for *Certiorari*[15] dated July 6, 2000, which was dismissed by the same Court in a Resolution[16] dated July 19, 2000 for being time-barred. However, after petitioner filed its Motion for Reconsideration[17] dated August 14, 2000, the CA reinstated the earlier petition in a Resolution[18] dated October 17, 2000.

On September 4, 2001, the CA rendered its Decision,[19] with the following disposition:

WHEREFORE, foregoing premises considered, this petition is DENIED DUE COURSE and, accordingly, DISMISSED.

SO ORDERED.

A Motion for Reconsideration[20] dated September 14, 2001 was subsequently filed, but was eventually denied by the CA in its Resolution[21] dated January 17, 2002.

Thus, the present petition.

In a Resolution[22] dated May 29, 2002, this Court denied the petition for review on *certiorari* for lack of proof of service of the petition on the lower court concerned and on the adverse parties pursuant to Section 5 (d), Rule 56 and Section 13, Rule 13 of the Rules of Court. Nevertheless, after the petitioner filed its Motion for Reconsideration[23] dated June 26, 2002, this Court, in its Resolution[24] dated July 17, 2002, reinstated the present petition.

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[15] *Id.* at 2-30.

[16] *Id.* at 122-123.

[17] *Id.* at 124-139.

[18] *Id.* at 216-217.

[19] *Id.* at 329-335.

[20] *Id.* at 339-353.

[21] *Id.* at 416-417.

[22] *Rollo*, p. 45.

[23] *Id.* at 46-55.

[24] *Id.* at 55.

In its Manifestation and Motion[25] dated August 16, 2002, the Office of the Solicitor General prayed that it be excused from filing a comment on the petition and from further participating in the case as it involves purely private interests and that no government or public interest is to be represented, to which this Court, in its Resolution[26] dated November 18, 2002, noted and granted the same manifestation and motion.

The arguments raised in the petition are:

> The decision of the Court of Appeals [on] September 4, 2001 established that prior to January 15, 2000, the date when A.M. No. 99-10-05-0 took effect, extra-judicial foreclosure sale of real property when conducted by a notary public pursuant to Act No. 3135 is exempted from (1) the payment of the filing fee prescribed in Sec. 7 (c) of Rule 141 of the New Rules of Court, (2) the raffle of the newspapers or publications prescribed in Sec. 2 of P.D. No. 1079 by the executive judge of the Court of First Instance, now the Regional Trial Court where the notice of sale is to be published for three (3) consecutive weeks before the actual sale;
>
> [T]he order of the court *a quo* in SCA Civil Case No. 99-2139 denying the petitioner's application for the issuance of the writ of preliminary injunction rendered the issues of (1) accurate accounting of obligation by excluding the amount representing penalty on interest which is not stipulated in the promissory note (2) premature foreclosure and the damages caused by the illegal foreclosure moot and academic without the benefit of hearing in the trial court, in violation of both substantive and procedural laws (3) imposed additional obligation on the petitioner which is not included in the real estate mortgage contract.[27]

Before anything else, it must always be remembered that based on the Real Estate Mortgage entered into by petitioner and Metrobank, in case of breach thereof, the sale of the mortgage property shall be governed by Act No. 3135. Therefore, not being contrary to law, morals, good customs and public policy,

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[25] *Id.* at 59-63.

[26] *Id.* at 84.

[27] *Id.* at 13, 19.

the principle that contracts are respected as the law between the parties is applicable in the present case. The pertinent portion of the Real Estate Mortgage reads:

> (3) If at any time the Mortgagor/Borrower shall fail or refuse to pay the obligations herein secured, or any of the amortization of such indebtedness when due, or to comply with any of the conditions and stipulations herein agreed, or shall, during the time this mortgage is in force, institute insolvency proceedings or be voluntarily declared insolvent or shall use the proceeds of this loan for purposes other than those specified herein or if this mortgage cannot be recorded in the corresponding Registry of Deeds, then all the obligations secured by this Mortgagee may, at its election, immediately foreclose this mortgage judicially in accordance with the Rules of Court, **or extrajudicially in accordance with Act 3135, as amended.** x x x[28]

After a careful study of the arguments raised by the petitioner, this Court finds the petition unmeritorious.

Petitioner highly disputes the CA's citing of the case of *China Banking Corporation v. Court of Appeals*,[29] claiming it to be inapplicable in the present case. According to petitioner, the facts obtaining in the China Bank case are different from the present case. It expounded that in the China Bank case, there was an admission from the mortgagors that they were unable to settle to the fullest their obligation which necessitated the extra-judicial foreclosure. However, as contended by the petitioner, they contested the amount due based on the amortization schedule because it included charges on penalties on interest which was not stipulated in the promissory note; hence, there was no admission on its part that it was unable to settle its obligation. As such, it claims that it was not yet on default when the extra-judicial foreclosure of the mortgaged property took place.

The similarities between the China Bank case and the present case may not be as stark and apparent, but still, the former is not rendered inapplicable to the latter by their faint dissimilarities.

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[28] CA *rollo*, p. 195.

[29] G.R. No. 121158, December 5, 1996, 265 SCRA 327.

Contrary to the assertion of the petitioner that it never admitted its inability to pay its loan and that it was not in default because it merely disputed Metrobank's computation of the charges due, a close reading of the complaint it filed with the lower court categorically shows that it acknowledged its default in the payment of its loan obligation by stating the following:

9. In the meantime, however, defendant Metrobank graciously accommodated plaintiff's several requests for deferments of payments until and after the issue on the computation, particularly the eighteen (18%) percent penalty being charged or imputed on interest is settled.

10. Plaintiff was not contented with the deferments of payment without the issue on accounting being settled by the defendant Metrobank. On "November 6, 1998, plaintiff wrote defendant Metrobank two (2) letters, one letter contained plaintiff's proposal to restructure its loan and request for waiver of charges, while the second letter, reiterated plaintiff to review the statement of account referred to in paragraph 7 and citing reasons therefor.

11. Plaintiff, while awaiting response from the defendant Metrobank, requested the latter on "December 2, 1998 for another extension of ninety (90) days to pay its account in cash and in lieu thereof offered another property in its name consisting of TWENTY-EIGHT THOUSAND EIGHT HUNDRED FIFTY-EIGHT (28,858) SQ. METERS subdivided into FOUR HUNDRED (400) to FIVE HUNDRED (500) SQ. METERS each with individual titles in Tacloban City, with the option to buy back the same.

12. Defendant Metrobank, on January 12, 1999, approved plaintiff's request to restructure its loan account of PESOS FORTY MILLION (₱40,000,000.00) for five (5) years inclusive of two (2) years grace period which plaintiff, in its "letter of January 21, 1999, politely declined because of the additional PESOS TEN MILLION THREE HUNDRED FIFTY-FOUR THOUSAND EIGHT HUNDRED EIGHTY-SIX AND SEVENTY-SEVEN CENTAVOS (₱10,354,886.77) defendant Metrobank wanted to collect from plaintiff, bringing its total accountability to PESOS FIFTY MILLION THREE HUNDRED FIFTY-FOUR THOUSAND EIGHT HUNDRED EIGHTY-SIX & SEVENTY-SEVEN CENTAVOS (₱50,354,886.77).

13. Defendant Metrobank, in its letter of February 1, 1999, informed plaintiff that it has approved another restructuring scheme

in the amount of PESOS FORTY-SIX MILLION (₱46,000,000.00) of which PESOS SIX MILLION (₱6,000,000.00) was not yet matured which came from the defendant Metrobank's Tacloban branch discounting line, which plaintiff politely declined for the second time.

14. Plaintiff, on February 10, 1999, requested defendant Metrobank to appraise its Tacloban property and to reconsider its decision denying the acceptability of the said property by way of *dacion en pago*.

15. Plaintiff, upon learning of defendant Metrobank's final decision not accept its Tacloban property offered the latter to settle its obligation by way of full *dacion en pago* on its Dasmariñas property, on March 22, 1999.

16. Defendant Metrobank, however, in its letter of April 21, 1999, informed plaintiff that it was still agreeable to restructure plaintiff's loan account of PESOS FORTY MILLION EIGHT HUNDRED FIFTY THOUSAND (₱40.850M) by way of *dacion en pago* of plaintiff's Dasmariñas property only in the amount of PESOS TWENTY-SIX MILLION (₱26,000,000.00) and the remaining amount of PESOS FOURTEEN MILLION EIGHT HUNDRED FIFTY THOUSAND (₱14,850,000.00) plus other charges, *i.e.*, interest, past due interest and penalty shall be booked under term loan for five (5) years.

The various and constant requests for deferment of payment and restructuring of loan, without actually paying the amount due, are clear indications that petitioner was unable to settle its obligation. Therefore, the CA did not err in citing the China Bank[30] case wherein this Court ruled that:

Anent the second issue, we find that petitioners are entitled to foreclose the mortgages. In their complaint for accounting with damages pending with the trial court, private respondents averred that:

> 8. Up to and until February, 1993, PLAINTIFF-CORPORATION had paid to the DEFENDANT-BANK, the amount of THREE HUNDRED FIFTY THOUSAND (₱350,000.00) Pesos, Philippine Currency, and was willing to pay the balance in installments of FOUR HUNDRED

[30] *Id.* at 340.

> THOUSAND (₱400,000.00) Pesos, Philippine Currency, every month, in the meantime, but the DEFENDANT-BANK refused to accept, demanding instead SEVEN HUNDRED MILLION (₱7,000,000.00) Pesos, Philippine Currency, a month.
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> 9. In spite of the expressed willingness and commitment of plaintiffs to pay their obligation in a manner which they could afford, on March 11, 1993, MORTGAGORS and DEFENDANT-CORPORATIONS, each received a Letter of Demand from DEFENDANT-BANK, for the payment of ₱28,775,615.14 exclusive of interest and penalty evidenced by 11 promissory notes enclosed therein x x x.
>
> 10. Upon receipt of the letter, PLAINTIFF-CORPORATION through its President pleaded with the Chairman of the Board of the DEFENDANT-BANK, through whom Defendant-Corporation was transacting business with, to accept its offer of payment of FOUR HUNDRED THOUSAND (₱400,000.00) Pesos, Philippine Currency, a month, in the meantime, which was again refused by the said Chairman.

which allegations are a clear admission that they were unable to settle to the fullest their obligation. Foreclosure is valid where the debtors, as in this case, are in default in the payment of their obligation.[31] The essence of a contract of mortgage indebtedness is that a property has been identified or set apart from the mass of the property of the debtor-mortgagor as security for the payment of money or the fulfillment of an obligation to answer the amount of indebtedness, in case of default of payment.[32] It is a settled rule that in a real estate mortgage when the obligation is not paid when due, the mortgagee has the right to foreclose the mortgage and to have the property seized and sold in view of applying the proceeds to the payment of the obligation.[33]

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[31] *Cortes v. Intermediate Appellate Court*, G.R. No. 73678, July 21, 1989, 175 SCRA 545, 548.

[32] *Fiestan v. Court of Appeals*, G.R. No. 81552, May 28, 1990, 185 SCRA 751, 757.

[33] *State Investment House, Inc. v. Court of Appeals*, G.R. No. 99308, November 13, 1992, 215 SCRA 734, 744, citing *Commodity Financing Co., Inc. v. Jimenez*, 91 SCRA 57 (1979).

Anent the petitioner's contention that Metrobanks' Petition for Foreclosure of Real Estate Mortgage Contract is subject to the payment of the prescribed legal fees pursuant to Section 7 (c), Rule 141 of the Rules of Court, the same is inaccurate. Section 7 (c), Rule 141 of the Rules of Court requires the payment of docket fees when filing Petitions for Extrajudicial Foreclosure of real and chattel mortgages. However, the said provisions of the law pertains to petitions for foreclosure filed before the Office of the *Ex-Officio* Sheriff. In the present case, Section 7 (c), Rule 141 of the Rules of Court is inapplicable, because the petition for extra-judicial foreclosure of real property mortgage was filed before a notary public.

Petitioner further argues that the provisions of Section 2 of P.D. 1079, as amended, should have been followed. The said law reads:

> Sec. 2. The executive judge of the court of first instance (Regional Trial Court) shall designate a regular working day and a definite time each week during which the said judicial notices or advertisements shall be distributed personally by him for publication to qualified newspapers or periodicals as defined in the preceding section, which distribution shall be done by raffle: Provided, That should the circumstances require that another day be set for the purpose, he shall notify in writing the editors and publishers concerned at least three (3) days in advance of the designated date: Provided, further, That the distribution of the said notices by raffle shall be dispensed with in case only one newspaper or periodical is in operation in a particular province or city.

Respondent Metrobank was not mistaken when it stated that P.D. 1079, as amended, did not apply to the publication of Notices of Sale in extra-judicial foreclosures conducted by notaries public, because the said law was applicable to the publication of Notices of Sale in extra-judicial foreclosures of mortgage conducted by a Sheriff.

Presidential Decree No. 1079, as amended, refers to judicial notices or those notices issued by the *Ex-Officio* Sheriff and Clerk of Court in extra-judicial foreclosures of mortgage, and

a notice of sale issued by a Notary Public is not within the scope of judicial notices.

In connection therewith, as correctly pointed out by the trial court, Administrative Matter No. 99-10-05-0, which prescribes the rules in cases of extra-judicial foreclosure of mortgage and requires the payment of filing fees and the raffling of all notices of public auction in all extra-judicial foreclosures of mortgage, was issued on December 14, 1999 and took effect on January 15, 2000, while the petition for extra-judicial foreclosure of real estate mortgage was filed by Metrobank on October 29,1999. Consequently, the petition for extrajudicial foreclosure of real estate mortgage filed with the notary public was not yet governed by the said administrative matter when the former was filed.

As to the persistent claim of the petitioner that Metrobank erred in adding penalty on interest in the latter's computation of charges due has been rendered moot and academic by Metrobank's express abandonment of the said charge in the computation of petitioner's total loan obligation. However, despite the non-inclusion of the penalty on interest, petitioner was still unable to pay its entire obligation; thus, necessitating the conduct of the extra-judicial foreclosure of the mortgaged property.

WHEREFORE, the petition for review on *certiorari* dated April 5, 2002 is hereby *DENIED*. Consequently, the Decision of the Court of Appeals dated September 4, 2001 and its Resolution dated January 17, 2002 are hereby *AFFIRMED in toto*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 173150. July 28, 2010]

LYDIA C. GELIG, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; CONVICTION; AN ACCUSED WAIVES HIS RIGHT AGAINST DOUBLE JEOPARDY WHEN HE APPEALS FROM THE JUDGMENT OF HIS CONVICTION. — When an accused appeals from the judgment of his conviction, he waives his constitutional guarantee against double jeopardy and throws the entire case open for appellate review. We are then called upon to render such judgment as law and justice dictate in the exercise of our concomitant authority to review and sift through the whole case to correct any error, even if unassigned.

2. CRIMINAL LAW; DIRECT ASSAULT; TWO FORMS OF COMMISSION. — Direct assault is defined and penalized under Article 148 of the Revised Penal Code. x x x It is clear from the provision that direct assault is an offense against public order that may be committed in two ways: *first*, by any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition; and *second*, by any person or persons who, without a public uprising, shall attack, employ force, or seriously intimidated or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance.

3. ID.; ID.; ELEMENTS FOR THE COMMON FORM THEREOF. — The case of Lydia falls under the second mode, which is the more common form of assault. Its elements are: 1. That the offender (a) makes an attack, (b) employs force, (c) makes a serious intimidation, or (d) makes a serious resistance. 2. That the person assaulted is a person in authority or his agent. 3. That at the time of the assault the person in authority or his agent (a) is engaged in the actual performance of official

duties, or [b] that he is assaulted by reason of the past performance of official duties. 4. That the offender knows that the one he is assaulting is a person in authority or his agent in the exercise of his duties. 5. That there is no public uprising.

4. ID.; ID.; PRESENT WHEN THE VICTIM BEING A PUBLIC SCHOOL TEACHER, BELONGS TO A CLASS OF PERSONS IN AUTHORITY EXPRESSLY MENTIONED BY THE LAW; APPLICATION IN CASE AT BAR. — Gemma being a public school teacher, belongs to the class of persons in authority expressly mentioned in Article 152 of the Revised Penal Code, as amended. The pertinent portion of the provision reads as follows: Art. 152. *Persons in Authority and Agents of Persons in Authority — Who shall be deemed as such. —* x x x In applying the provisions of articles 148 and 151 of this Code teachers, professors, and persons charged with the supervision of public or duly recognized private schools, colleges and universities, and lawyers in the actual performance of their professional duties or on the occasion of such performance shall be deemed persons in authority (As amended by *Batas Pambansa Bilang* 873, approved June 12, 1985). Undoubtedly, the prosecution adduced evidence to establish beyond reasonable doubt the commission of the crime of direct assault. The appellate court must be consequently overruled in setting aside the trial court's verdict. It erred in declaring that Lydia could not be held guilty of direct assault since Gemma was no longer a person in authority at the time of the assault because she allegedly descended to the level of a private person by fighting with Lydia. The fact remains that at the moment Lydia initiated her tirades, Gemma was busy attending to her official functions as a teacher.

5. ID.; ID.; IMPOSABLE PENALTY. — Having establish the guilt of the petitioner beyond reasonable doubt for the crime of direct assault, she must suffer the penalty imposed by law. The penalty for this crime is *prision correccional* in its medium and maximum periods and a fine not exceeding ₱1,000.00, when the offender is a public officer or employee, or when the offender lays hands upon a person in authority. Here, Lydia is a public officer or employee since she is a teacher in a public school. By slapping and pushing Gemma, another teacher, she laid her hands on a person in authority. The penalty should be fixed in its medium period in the absence of mitigating or

aggravating circumstances. Applying the Indeterminate Sentence Law, the petitioner should be sentenced to an indeterminate term, the minimum of which is within the range of the penalty next lower in degree, *i.e.*, *arresto mayor* in its maximum period to *prision correccional* in its minimum period, and the maximum of which is that properly imposable under the Revised Penal Code, *i.e.*, *prision correccional* in its medium and maximum periods. Thus, the proper and precise prison sentence that should be imposed must be within the indeterminate term of four (4) months and one (1) day to two (2) years and four (4) monthss of *arresto mayor*, maximum to *prision correccional* minimum to three (3) years, six (6) months and twenty-one (21) days to four (4) years, nine (9) months and ten (10) days of *prision correccional* in its medium and maximum periods. A fine of not more than ₱1,000.00 must also be imposed on Lydia in accordance with law.

6. ID.; UNINTENTIONAL ABORTION; NOT PROVEN IN CASE AT BAR. — The prosecution's success in proving that Lydia committed the crime of direct assault does not necessarily mean that the same physical force she employed on Gemma also resulted in the crime of unintentional abortion. There is no evidence on record to prove that the slapping and pushing of Gemma by Lydia that occurred on July 17, 1981 was the proximate cause of the abortion. While the medical certificate of Gemma's attending physician, Dr. Susan Jaca (Dr. Jaca), was presented to the court to prove that she suffered an abortion, there is no data in the document to prove that her medical condition was a direct consequence of the July 17, 1981 incident. It was therefore vital for the prosecution to present Dr. Jaca since she was competent to establish a link, if any, between Lydia's assault and Gemma's abortion. Without her testimony, there is no way to ascertain the exact effect of the assault on Gemma's abortion. It is worth stressing that Gemma was admitted and confined in a hospital for incomplete abortion on August 28, 1981, which was 42 days after the July 17, 1981 incident. This interval of time is too lengthy to prove that the discharge of the fetus from the womb of Gemma was a direct outcome of the assault. Her bleeding and abdominal pain two days after the said incident were not substantiated by proof other than her testimony. Thus, it is not unlikely that the abortion may have been the result of other factors.

APPEARANCES OF COUNSEL

Jerome G. Donaldo for petitioner.
The Solicitor General for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

An examination of the entire records of a case may be explored for the purpose of arriving at a correct conclusion, as an appeal in criminal cases throws the whole case open for review, it being the duty of the court to correct such error as may be found in the judgment appealed from.[1]

Petitioner Lydia Gelig (Lydia) impugns the Decision[2] promulgated on January 10, 2006 by the Court of Appeals (CA) in CA-G.R. CR No. 27488 that vacated and set aside the Decision[3] of the Regional Trial Court (RTC), Cebu City, Branch 23, in Criminal Case No. CU-10314. The RTC Decision convicted Lydia for committing the complex crime of direct assault with unintentional abortion but the CA found her guilty only of the crime of slight physical injuries.

Factual Antecedents

On June 6, 1982, an Information[4] was filed charging Lydia with Direct Assault with Unintentional Abortion committed as follows:

That on the 17th day of July, 1981 at around 10:00 o'clock in the morning, at Barangay Nailon, Municipality of Bogo, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court,

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[1] *People v. Pajarillo*, 183 Phil. 392, 399 (1979).

[2] CA *rollo*, pp. 86-94; penned by Associate Justice Arsenio J. Magpale and concurred in by Associate Justices Vicente L. Yap and Apolinario D. Bruselas, Jr.

[3] Records, pp. 157-161; penned by Judge Generosa G. Labra.

[4] *Id.* at 40.

the above-named accused, did, then and there, willfully, unlawfully, and feloniously assault, attack, employ force and seriously intimidate one Gemma B. Micarsos a public classroom teacher of Nailon Elementary School while in the performance of official duties and functions as such which acts consequently caused the unintentional abortion upon the person of the said Gemma S. Micarsos.

CONTRARY TO LAW.

Lydia pleaded not guilty during her arraignment. Thereafter, trial ensued.

The Prosecution's Version

Lydia and private complainant Gemma B. Micarsos (Gemma), were public school teachers at the Nailon Elementary School, in Nailon, Bogo, Cebu. Lydia's son, Roseller, was a student of Gemma at the time material to this case.

On July 17, 1981, at around 10:00 o'clock in the morning, Lydia confronted Gemma after learning from Roseller that Gemma called him a "sissy" while in class. Lydia slapped Gemma in the cheek and pushed her, thereby causing her to fall and hit a wall divider. As a result of Lydia's violent assault, Gemma suffered a contusion in her "maxillary area", as shown by a medical certificate[5] issued by a doctor in the Bogo General Hospital. However, Gemma continued to experience abdominal pains and started bleeding two days after the incident. On August 28, 1981, she was admitted in the Southern Islands Hospital and was diagnosed, to her surprise, to have suffered incomplete abortion. Accordingly, a medical certificate[6] was issued.

The Defense's Version

Lydia claimed that she approached Gemma only to tell her to refrain from calling her son names, so that his classmates will not follow suit. However, Gemma proceeded to attack her

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[5] Exhibit "A", Folder of Exhibits.

[6] Exhibit "B", *id.*

by holding her hands and kicking her. She was therefore forced to retaliate by pushing Gemma against the wall.

Ruling of the Regional Trial Court

On October 11, 2002, the trial court rendered a Decision convicting Lydia of the complex crime of direct assault with unintentional abortion. The dispositive portion reads:

> WHEREFORE, the court finds the accused LYDIA GELIG, guilty beyond reasonable doubt of the crime of direct assault with unintentional abortion, and she is hereby sentenced to suffer an Indeterminate Penalty of SIX (6) MONTHS OF *ARRESTO MAYOR* AS MINIMUM TO FOUR (4) YEARS, TWO (2) MONTHS OF *PRISION CORRECCIONAL* AS MAXIMUM. She is likewise ordered to pay the offended party the amount of Ten Thousand (₱10,000.00) Pesos as actual damages and Fifteen Thousand (₱15,000.00) Pesos for moral damages.
>
> SO ORDERED.[7]

Thus, Lydia filed an appeal.

Ruling of the Court of Appeals

The CA vacated the trial court's judgment. It ruled that Lydia cannot be held liable for direct assault since Gemma descended from being a person in authority to a private individual when, instead of pacifying Lydia or informing the principal of the matter, she engaged in a fight with Lydia.[8] Likewise, Lydia's purpose was not to defy the authorities but to confront Gemma on the alleged name-calling of her son.[9]

The appellate court also ruled that Lydia cannot be held liable for unintentional abortion since there was no evidence that she was aware of Gemma's pregnancy at the time of the incident.[10]

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[7] Records, p. 161.

[8] CA *rollo*, p. 92.

[9] *Id.* at 91.

[10] *Id.* at 93.

However, it declared that Lydia can be held guilty of slight physical injuries, thus:

WHEREFORE, premises considered, the appealed Decision of the Regional Trial Court-Branch 23 of Cebu City, dated October 11, 2002 is hereby **VACATED AND SET ASIDE**. A new one is entered CONVICTING the accused-appellant for slight physical injuries pursuant to Article 266 (1) of the Revised Penal Code and sentencing her to suffer the penalty of *arresto menor* minimum of ten (10) days.

SO ORDERED.[11]

Issues

Still dissatisfied, Lydia filed this petition raising the following as errors:

1. The Honorable Court of Appeals erred in finding that the petitioner is liable for Slight Physical Injuries pursuant to Article 266 (1) of the Revised Penal Code and sentencing her to suffer the penalty of *arresto menor* minimum of ten days.

2. The Honorable Court of Appeals erred in finding that the petitioner can be convicted of Slight Physical Injuries under the information charging her for Direct Assault with Unintentional Abortion.[12]

Our Ruling

The petition lacks merit.

When an accused appeals from the judgment of his conviction, he waives his constitutional guarantee against double jeopardy and throws the entire case open for appellate review. We are then called upon to render such judgment as law and justice dictate in the exercise of our concomitant authority to review and sift through the whole case to correct any error, even if unassigned.[13]

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[11] *Id.* at 94.

[12] *Rollo*, p. 8.

[13] *People v. Rondero*, 378 Phil. 123, 143 (1999).

The Information charged Lydia with committing the complex crime of direct assault with unintentional abortion. Direct assault is defined and penalized under Article 148 of the Revised Penal Code. The provision reads as follows:

> Art. 148. *Direct assaults*. — Any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition, or shall attack, employ force, or seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance, shall suffer the penalty of *prision correccional* in its medium and maximum periods and a fine not exceeding 1,000 pesos, when the assault is committed with a weapon or when the offender is a public officer or employee, or when the offender lays hands upon a person in authority. If none of these circumstances be present, the penalty of *prision correccional* in its minimum period and a fine not exceeding 500 pesos shall be imposed.

It is clear from the foregoing provision that direct assault is an offense against public order that may be committed in two ways: *first*, by any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition; and *second*, by any person or persons who, without a public uprising, shall attack, employ force, or seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance.[14]

The case of Lydia falls under the second mode, which is the more common form of assault. Its elements are:

> 1. That the offender (a) makes an attack, (b) employs force, (c) makes a serious intimidation, or (d) makes a serious resistance.
>
> 2. That the person assaulted is a person in authority or his agent.
>
> 3. That at the time of the assault the person in authority or his agent (a) is engaged in the actual performance of official duties, or

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[14] *Rivera v. People*, 501 Phil. 37, 44-45 (2005).

[b] that he is assaulted by reason of the past performance of official duties.

4. That the offender knows that the one he is assaulting is a person in authority or his agent in the exercise of his duties.

5. That there is no public uprising.[15]

On the day of the commission of the assault, Gemma was engaged in the performance of her official duties, that is, she was busy with paperwork while supervising and looking after the needs of pupils who are taking their recess in the classroom to which she was assigned. Lydia was already angry when she entered the classroom and accused Gemma of calling her son a "sissy." Lydia refused to be pacified despite the efforts of Gemma and instead initiated a verbal abuse that enraged the victim. Gemma then proceeded towards the principal's office but Lydia followed and resorted to the use of force by slapping and pushing her against a wall divider. The violent act resulted in Gemma's fall to the floor.

Gemma being a public school teacher, belongs to the class of persons in authority expressly mentioned in Article 152 of the Revised Penal Code, as amended. The pertinent portion of the provision reads as follows:

Art. 152. *Persons in Authority and Agents of Persons in Authority — Who shall be deemed as such.* —

x x x x x x x x x

In applying the provisions of Articles 148 and 151 of this Code, teachers, professors, and persons charged with the supervision of public or duly recognized private schools, colleges and universities, and lawyers in the actual performance of their professional duties or on the occasion of such performance shall be deemed persons in authority. (As amended by *Batas Pambansa Bilang* 873, approved June 12, 1985).[16]

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[15] Reyes, Luis B., *The Revised Penal Code*, *Book Two*, Fifteenth Edition, Revised 2001, p. 122.

[16] *Id.* at 147.

Undoubtedly, the prosecution adduced evidence to establish beyond reasonable doubt the commission of the crime of direct assault. The appellate court must be consequently overruled in setting aside the trial court's verdict. It erred in declaring that Lydia could not be held guilty of direct assault since Gemma was no longer a person in authority at the time of the assault because she allegedly descended to the level of a private person by fighting with Lydia. The fact remains that at the moment Lydia initiated her tirades, Gemma was busy attending to her official functions as a teacher. She tried to pacify Lydia by offering her a seat so that they could talk properly,[17] but Lydia refused and instead unleashed a barrage of verbal invectives. When Lydia continued with her abusive behavior, Gemma merely retaliated in kind as would a similarly situated person. Lydia aggravated the situation by slapping Gemma and violently pushing her against a wall divider while she was going to the principal's office. No fault could therefore be attributed to Gemma.

The prosecution's success in proving that Lydia committed the crime of direct assault does not necessarily mean that the same physical force she employed on Gemma also resulted in the crime of unintentional abortion. There is no evidence on record to prove that the slapping and pushing of Gemma by Lydia that occurred on July 17, 1981 was the proximate cause of the abortion. While the medical certificate of Gemma's attending physician, Dr. Susan Jaca (Dr. Jaca), was presented to the court to prove that she suffered an abortion, there is no data in the document to prove that her medical condition was a direct consequence of the July 17, 1981 incident.[18] It was therefore vital for the prosecution to present Dr. Jaca since she was competent to establish a link, if any, between Lydia's assault and Gemma's abortion. Without her testimony, there is no way to ascertain the exact effect of the assault on Gemma's abortion.

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[17] TSN, March 20, 1991, p. 6.

[18] Exhibit "C", Folder of Exhibits.

It is worth stressing that Gemma was admitted and confined in a hospital for incomplete abortion on August 28, 1981, which was 42 days after the July 17, 1981 incident. This interval of time is too lengthy to prove that the discharge of the fetus from the womb of Gemma was a direct outcome of the assault. Her bleeding and abdominal pain two days after the said incident were not substantiated by proof other than her testimony. Thus, it is not unlikely that the abortion may have been the result of other factors.

The Proper Penalty

Having established the guilt of the petitioner beyond reasonable doubt for the crime of direct assault, she must suffer the penalty imposed by law. The penalty for this crime is *prision correccional* in its medium and maximum periods and a fine not exceeding ₱1,000.00, when the offender is a public officer or employee, or when the offender lays hands upon a person in authority.[19] Here, Lydia is a public officer or employee since she is a teacher in a public school. By slapping and pushing Gemma, another teacher, she laid her hands on a person in authority.

The penalty should be fixed in its medium period in the absence of mitigating or aggravating circumstances.[20] Applying the Indeterminate Sentence Law,[21] the petitioner should be sentenced to an indeterminate term, the minimum of which is within the

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[19] REVISED PENAL CODE, Article 148.

[20] See REVISED PENAL CODE, Article 64 (1).

[21] Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. (As amended by Act No. 4225)

range of the penalty next lower in degree, *i.e.*, *arresto mayor* in its maximum period to *prision correccional* in its minimum period, and the maximum of which is that properly imposable under the Revised Penal Code, *i.e.*, *prision correccional* in its medium and maximum periods.

Thus, the proper and precise prison sentence that should be imposed must be within the indeterminate term of four (4) months and one (1) day to two (2) years and four (4) months of *arresto mayor*, maximum to *prision correccional* minimum to three (3) years, six (6) months and twenty-one (21) days to four (4) years, nine (9) months and ten (10) days of *prision correccional* in its medium and maximum periods. A fine of not more than ₱1,000.00 must also be imposed on Lydia in accordance with law.

WHEREFORE, the Decision of the Court of Appeals finding petitioner Lydia Gelig guilty beyond reasonable doubt of the crime of slight physical injuries is *REVERSED and SET ASIDE*. Judgment is hereby rendered finding Lydia Gelig guilty beyond reasonable doubt of the crime of direct assault and is ordered to suffer an indeterminate prison term of one (1) year and one (1) day to three (3) years, six (6) months and twenty-one (21) days of *prision correccional*. She is also ordered to pay a fine of ₱1,000.00.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Perez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 175595. July 28, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **TEDDY MAGAYON,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; GUIDING PRINCIPLES IN REVIEWING RAPE CASES.— Rape is a serious transgression with grave consequences, both for the accused-appellant and the complainant; hence, a painstaking assessment of a judgment of conviction for rape must be done. In reviewing rape cases, this Court is guided by three principles: (1) an accusation of rape can be made with facility, and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (2) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense. With these principles as guideposts and considering the gravity of the offense charged as well as the severity of the penalty that may be imposed, this Court has meticulously evaluated the entire case records and transcript of stenographic notes, and finds no reason to deviate from the appellate court's finding of accused-appellant's guilt.

2. ID.; STATUTORY RAPE; ELEMENTS OF THE CRIME.— Accused-appellant is charged in the information under Article 335 of the Revised Penal Code of raping a nine-year old girl. Noticeably, the applicable provision is paragraph 3 thereof which classified the offense as statutory rape. The elements of statutory rape, as provided for in Article 335, paragraph 3 of the Revised Penal Code, are the following: (1) that the offender had carnal knowledge of a woman; and (2) that such woman is under twelve (12) years of age.

3. ID.; ID.; ID.; GRAVAMEN OF THE OFFENSE WHICH IS SEXUAL INTERCOURSE WITH A WOMAN UNDER 12 YEARS OF AGE WAS ADEQUATELY PROVEN.— [T]he

gravamen of the offense is sexual intercourse with a woman against her will or without her consent. If the woman is under 12 years of age, such as in the case of AAA, proof of force and consent becomes immaterial, not only because force is not an element of statutory rape, but because the absence of free consent is presumed. Conviction will therefore lie, provided sexual intercourse is proven. The prosecution adequately proved that AAA was nine years old on August 9, 1996 at the time accused-appellant allegedly had carnal knowledge of her. This was evidenced by AAA's birth certificate, which showed that she was born on September 18, 1986. Since she was merely 9 years old at that time, no proof of involuntariness on her part is necessary. AAA, being a minor at the time the act was committed against her, is considered by law to be incapable of consenting to the sexual act. To convict accused-appellant of rape, the only circumstance that needs to be proven is the fact of sexual intercourse.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; BEST ASSESSED BY TRIAL COURTS.— The focal point of almost all rape cases is the issue of credibility of the witnesses, to be addressed primarily by the trial court, which is in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying. 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 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. Accordingly, its findings are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which would otherwise affect the result of the case. The assessment made by the trial court is even more enhanced when the Court of Appeals affirms the same, as in this case. Here, in giving greater weight to the version of the defense, the trial court observed that the victim was direct, unequivocal, convincing and consistent in answering the questions propounded to her. The records

disclose that AAA was categorical and straightforward in narrating the distasteful details of her horrid experience as accused-appellant ravished her even at such tender age.

5. ID.; ID.; ID.; A RAPE VICTIM WHO TESTIFIES IN A CATEGORICAL, STRAIGHTFORWARD, SPONTANEOUS AND FRANK MANNER AND REMAINS CONSISTENT, IS A CREDIBLE WITNESS.— It must be stressed that AAA did not only identify Magayon as her rapist, she also gave the specifics of how the sexual intercourse happened. A rape victim, who testifies in a categorical, straightforward, spontaneous and frank manner, and remains consistent, is a credible witness. Moreover, when the offended parties are young and immature girls, as in this case, where the victim was only nine years old at the time the rape was committed, courts are inclined to lend credence to their version of what transpired, not only because of their relative vulnerability, but also because of the shame and embarrassment to which they would be exposed by court trial, if the matter about which they testified were not true.

6. ID.; ID.; DEFENSE OF DENIAL; CANNOT PREVAIL OVER THE AFFIRMATIVE TESTIMONY OF THE VICTIM.— Magayon denies raping the victim. His denial in this case, unsubstantiated by clear and convincing evidence, is negative, self-serving evidence, which cannot be given greater evidentiary weight than the testimony of the complaining witness who testified on affirmative matters. His denial cannot prevail over the affirmative testimony of AAA, a minor less than 12 years old, who narrated the sexual episode.

7. ID.; ID.; CREDIBILITY OF VICTIM BOLSTERED BY HER LACK OF ILL MOTIVE TO TESTIFY AGAINST THE ACCUSED AND THERE IS NO IOTA OF EVIDENCE WHERE IT CAN BE INFERRED THAT SHE WAS IMPELLED BY SUCH MOTIVE.— [T]he testimony of Asi and the medical report do not affect the outcome of the case since they are mere corroborative evidence. This is so because in rape cases, the accused may be convicted solely on the testimony of the victim, provided that such testimony is credible, natural, convincing and consistent with human nature and the normal course of things. Such is the case here. In fact, AAA's credibility is bolstered by her lack of ill motive to testify against Magayon and there is no iota of evidence

where it can be inferred that she could have been impelled by such motive.

8. ID.; ID.; THERE IS NO STANDARD FORM OF HUMAN BEHAVIORAL RESPONSE WHEN ONE IS CONFRONTED WITH A STRANGE, STARTLING OR FRIGHTFUL EXPERIENCE.— The defense also makes much of AAA's composure right after the molestation. This Court finds the same to be without merit, considering that different people react differently to a given situation. There is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

For review is the Decision[1] of the Court of Appeals dated August 1, 2006, which affirmed with modification the Decision[2] rendered by the Regional Trial Court (RTC), Branch 41, Pinamalayan, Oriental Mindoro, in Criminal Case No. P-5558, finding accused-appellant Teddy Magayon (Magayon) guilty beyond reasonable doubt of the crime of Rape as defined and penalized under Article 335, paragraph 3, of the Revised Penal Code, imposing the penalty of *reclusion perpetua*, and ordering Magayon to pay the offended party Fifty Thousand Pesos (₱50,000.00) as moral damages.

On November 6, 1996, Magayon was charged before the RTC of Rape. The accusatory portion of the Information reads:

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[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok with Associate Justices Roberto A. Barrios and Mario L. Guariña III, concurring; *rollo*, pp. 3-14.

[2] Penned by Presiding Judge Normelito J. Ballocanag; CA *rollo*, pp. 17-27.

That on or about the 9th day of August, 1996, at 9:00 o'clock in the morning, more or less, in Barangay Rosacarra, Municipality of Bansud, province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, did then and there willfully, unlawfully and feloniously lay with and have carnal knowledge of one AAA,[3] a nine-year old girl, against her will and without her consent.[4]

When arraigned on December 12, 1996, Magayon, with the assistance of *counsel de oficio*, pleaded not guilty to the charge.[5] Following the termination of the pre-trial conference, trial on the merits ensued.

The prosecution offered five witnesses, namely: (1) BBB, the victim's maternal grandmother, who initiated the filing of this case since the mother was uninterested to pursue it; (2) Dr. Preciosa Soller, Municipal Health Officer of XXX, Oriental Mindoro, who personally examined AAA; (3) Francisco Asi (Asi), who claimed to have witnessed the rape incident; (4) private complainant AAA, the nine-year old victim; and (5) Violeta Nazareno, a social worker of the Department of Social Welfare and Development (DSWD), XXX, Oriental Mindoro, who had custody of the minor-victim during the trial.

The following documentary pieces of evidence were also presented by the prosecution: (a) Exhibit "A" - Affidavit[6] of BBB; (b) Exhibit "B" - Medico-Legal Report[7] issued by Dr. Preciosa Soller; (c) Exhibit "C" - Affidavit[8] of witness Francisco

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[3] Under Republic Act No. 9262 also known as "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim and those of her immediate family members are withheld and fictitious initials are instead used to protect the victim's privacy.

[4] Records, p. 1.

[5] *Id.* at 18.

[6] *Id.* at 5.

[7] *Id.* at 7.

[8] *Id.* at 6.

Asi; (d) Exhibit "D" - *Sinumpaang Salaysay*[9] of the victim; and (e) Exhibit "E" - Birth Certificate[10] of AAA, indicating that she was born on September 18, 1986.

The prosecution first presented BBB, the grandmother of the victim AAA.

At the onset, she testified that her daughter's inaction against Magayon pushed her to file the complaint on behalf of her granddaughter, since Magayon's uncle was the second husband of AAA's mother.[11] She narrated that sometime in August, 1996, having heard of the rumor about AAA's rape being spread around by Francisco Asi, she confronted the latter and inquired on the veracity of the gossip.[12] Francisco Asi confirmed to her that indeed Magayon sexually abused AAA. After obtaining this information, BBB approached and sought the advice of the *Barangay* Captain of XXX, Oriental Mindoro, who told her that, as AAA's grandmother, she had the right to vindicate AAA's honor and suggested to her to have AAA undergo a medical examination.[13] BBB then brought AAA to Dr. Soller, who, after having examined AAA, instructed BBB to lodge a complaint with the Police Station of Bansud. There, BBB executed an affidavit in connection with her complaint.[14]

Dr. Preciosa Soller, second witness for the prosecution, testified that she was the one who conducted the physical examination on AAA on September 4, 1996, and reduced the result in a medico-legal report with the following findings:

Findings:

1) Perineum – Abrasion left side along the labia minora and majora

2) Hymen – destroyed completely with remnants at the right side

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[9] *Id.* at 4.

[10] *Id.* at 43.

[11] TSN, February 20, 1997, p. 7.

[12] *Id.* at 3-4.

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

[14] *Id.* at 6.

3) Vaginal laceration, complete, posterior portion with inflammation of the edges

4) No semen recovered, vaginal rugae present.

x x x x x x x x x

Remarks:

Physical virginity lost.[15]

Dr. Soller further testified that the lacerated hymen could have been caused by an insertion of a hard object into the vagina such as a hardened penis.[16]

The third witness presented was Francisco Asi. Asi declared that he knew AAA and Magayon since the two are residents of Barangay XXX, where he also lived.[17] At about 9:00 o'clock in the morning of August 9, 1996, he was outside his house preparing his *kangga* (a carabao-drawn, sled-type cart made from bamboo and wood) and was about to leave, when Magayon, with AAA riding on a *kangga*, passed by. Soon, he also embarked on his trip headed in the direction where Magayon and AAA went. At a distance of two arms' length, he saw Magayon, who was leaning on the sled, holding AAA on top of him and making a push and pull movement.[18] AAA, who was wearing a skirt, tried to extricate herself from Magayon's clutch.[19] He inquired by blurting out to Magayon what he was doing with the little girl. The road they were traveling led to two separate paths which would eventually converge somewhere into a single road. Asi took the left road while the two hit the right. It was only after the lapse of fifteen minutes that Magayon and AAA emerged at the junction.[20] Asi also identified the affidavit he executed in relation to the rape incident.

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[15] Records, p. 7.

[16] TSN, March 21, 1997, p. 3.

[17] TSN, July 17, 1997, p. 4.

[18] *Id.* at 5.

[19] *Id.* at 6.

[20] *Id.* at 14.

The fourth witness who took the witness stand was the victim herself, AAA. She testified that at around 9:00 o'clock in the morning on August 9, 1996, she and her 11-year old brother were in her grandmother's house with Magayon. Magayon took her out of the house and brought her somewhere and raped her for about two minutes.[21] As Magayon was doing it, she felt pain in her vagina. After the episode, the two of them went back to the house.[22] On the witness stand, she identified the affidavit she made when she went to the police station.

The final witness presented by the prosecution was Violeta Nazareno, social worker of the DSWD, whose duty was to assist victims of rape. Violeta came to know of AAA because the latter was referred to her for assistance.[23] She said she knew that AAA was born on September 18, 1986 because she came into possession of the victim's birth certificate.[24]

After the presentation of the prosecution's evidence, Magayon, with the assistance of counsel *de parte*, filed a Demurrer to Evidence. In his demurrer, Magayon argued that for serious insufficiency of evidence to warrant the holding of further trial, the charge against him must be dismissed. He pointed out that the testimony of the prosecution witness Dr. Soller stating that the vaginal injuries of the victim were inflicted on August 31, 1996 was inconsistent with the charge which stated that the rape incident took place on August 9, 1996.[25] He said that also exculpating evidence were the contradictory testimonies of the victim who claimed she was raped when she was alone in her house, and Asi who said that the rape took place while she was aboard Magayon's sled.[26]

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[21] TSN, August 7, 1998, p. 4.

[22] *Id*.

[23] TSN, September 12, 1998, p. 1.

[24] *Id.* at 2-3.

[25] Records, p. 61.

[26] *Id.* at 63.

The RTC denied the demurrer of evidence and a hearing was set for the presentation of the evidence for the defense.[27] The accused, with the assistance of counsel, however, waived his right to present his evidence on the ground that the prosecution fell short of overcoming the presumption of his innocence.[28] He prayed that he be given 30 days to file his memorandum. The RTC then ordered the prosecution and the defense to submit their respective memoranda within 30 days and after the lapse of said period, the case was deemed submitted for decision.[29]

On January 28, 1999, the RTC handed down a guilty verdict against Magayon and sentenced him to suffer the penalty of *reclusion perpetua* and to indemnify the offended party the sum of Fifty Thousand Pesos (₱50,000.00) as moral damages. The dispositive portion of the decision reads:

> WHEREFORE, in x x x light of the foregoing, this Court finds accused Teddy Magayon guilty beyond reasonable [doubt of] the crime of RAPE under Article 335, paragraph 3 of the Revised Penal Code and he is hereby sentenced to suffer the penalty of *Reclusion Perpetua* and to indemnify the offended party, AAA, the sum of Fifty Thousand (₱50,000.00) Pesos as moral damages x x x and to pay the cost.[30]

In its decision, the RTC debunked Magayon's arguments in his demurrer to evidence. It said that Dr. Soller's testimony and her medical report indicating August 31, 1996 as the date of infliction of the vaginal laceration did not disprove the commission of rape on August 9, 1996, since the victim herself categorically declared that she was raped on the latter date. Besides, the RTC opined that the medical report and the testimony of Dr. Soller were presented not to prove that the victim was raped, but that she had lost virginity and were mere corroborative evidence of the sexual abuse. Furthermore, the trial court

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[27] *Id.* at 67.

[28] *Id.* at 77.

[29] *Id.*

[30] *Id.* at 91.

reconciled the discrepancy between the testimony of AAA and Dr. Soller by explaining that when Dr. Soller examined AAA on September 4, 1996, she asked AAA about the rape incident, the latter must have remembered the latest incident of rape that happened on August 31, 1996, which could be the date of the last of the three rape incidents she went through in August 1996, as contained in her Affidavit dated August 9, 1996.[31]

On intermediate appellate review before the Court of Appeals, Magayon insisted that the testimonies of the prosecution witnesses were inconsistent with each other, thus, not credible to sustain conviction. He emphasized the alleged inconsistency between the victim's testimony giving an account of the rape on August 9, 1996, which the victim claimed happened outside the house, and Asi's testimony wherein he said that he had witnessed the incident while the victim and Magayon were riding on the sled.[32] He also found it incredible for the supposed victim, who was at a very tender age of nine, to be so composed that she even managed to play with the other children immediately following the rape incident, as if nothing happened to her.[33]

On the other hand, the Office of the Solicitor General maintained that the victim's recital of the details of the rape bears an *indicia* of truth. Besides, it continued, there was no reason to reverse the holding of the RTC on the credibility of the witnesses since it had the opportunity to observe their demeanor. The Office of the Solicitor General also belittled the inconsistencies pointed out by the defense stating that the same were inconsequential as they referred to trivial details that had nothing to do with the fact of the commission of rape. As to the unlikely behavior of the victim, it stressed that rape victims had varying ways of responding to their plight, but such did not detract from their credibility.[34] Lastly, the same office recommended that an award of moral damages in the amount

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[31] *Id.* at 88.

[32] *Rollo*, p. 80.

[33] *Id.*

[34] *Id.* at 122.

of Fifty Thousand Pesos (₱50,000.00), as well as exemplary damages, in addition to civil indemnity in the same amount, be given to the victim.

In a decision dated August 1, 2006, the Court of Appeals affirmed the guilty verdict of the RTC. It said it found no cogent reason to disturb the findings of the trial court on the fact of the commission of rape as narrated by the victim and corroborated by Francisco Asi, and further confirmed by the medico-legal report. The Court of Appeals, however, increased the award of civil indemnity and moral damages to Seventy-Five Thousand Pesos (₱75,000.00) each, and pegged the exemplary damages at Twenty-Five Thousand Pesos (₱25,000.00), citing recent jurisprudence to support such modifications. The dispositive portion of the Court of Appeals' decision reads:

> WHEREFORE, in view of the foregoing, the Decision dated January 28, 1999 of the Regional Trial Court of Pinamalayan, Oriental Mindoro, Branch 41, in Criminal Case No. P-5558 is AFFIRMED with the modification that civil indemnity is awarded at ₱75,000.00 and exemplary damages at ₱25,000.00. The award of moral damages is increased to ₱75,000.00.[35]

Hence, this recourse where accused-appellant prays for his acquittal.

In his lone assignment of error, accused-appellant alleges that:

> THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR THE CRIME OF RAPE WHEN HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

Rape is a serious transgression with grave consequences, both for the accused-appellant and the complainant; hence, a painstaking assessment of a judgment of conviction for rape must be done.[36]

In reviewing rape cases, this Court is guided by three principles: (1) an accusation of rape can be made with facility, and while

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[35] *Id.* at 148-149.

[36] *People v. Bagaua*, 442 Phil. 245, 250 (2002).

the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (2) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[37]

With these principles as guideposts and considering the gravity of the offense charged as well as the severity of the penalty that may be imposed, this Court has meticulously evaluated the entire case records and transcript of stenographic notes, and finds no reason to deviate from the appellate court's finding of accused-appellant's guilt.

Accused-appellant is charged in the information under Article 335[38] of the Revised Penal Code of raping a nine-year old girl. Noticeably, the applicable provision is paragraph 3 thereof which classified the offense as statutory rape. The elements of statutory rape, as provided for in Article 335, paragraph 3 of the Revised Penal Code, are the following:

(1) that the offender had carnal knowledge of a woman; and

(2) that such woman is under twelve (12) years of age.[39]

In rape cases, the gravamen of the offense is sexual intercourse with a woman against her will or without her consent.[40] If the woman is under 12 years of age, such as in the case of AAA, proof of force and consent becomes immaterial, not only because

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[37] *People v. Gonzales*, G.R. No. 141599, June 29, 2004, 433 SCRA 102, 108.

[38] Since the crime was committed before October 22, 1997, the date of the effectivity of Republic Act No. 8353 (The Anti-Rape Law of 1997), the applicable law is Article 335 of the the Revised Penal Code, as amended by Republic Act No. 7659. (See *People v. Tormis*, G.R. No. 183456, December 18, 2008, 574 SCRA 903, 917.)

[39] *People v. Yabut*, 370 Phil. 612, 624 (1999).

[40] *People v. Igat*, 353 Phil. 294, 302 (1998).

force is not an element of statutory rape, but because the absence of free consent is presumed. Conviction will therefore lie, provided sexual intercourse is proven.[41]

The prosecution adequately proved that AAA was nine years old on August 9, 1996 at the time accused-appellant allegedly had carnal knowledge of her. This was evidenced by AAA's birth certificate, which showed that she was born on September 18, 1986.[42] Since she was merely 9 years old at that time, no proof of involuntariness on her part is necessary. AAA, being a minor at the time the act was committed against her, is considered by law to be incapable of consenting to the sexual act. To convict accused-appellant of rape, the only circumstance that needs to be proven is the fact of sexual intercourse.

It is commonly observed that prosecutions for rape almost always involve sharply contrasting and irreconcilable declarations of the victim and the accused.[43]

The focal point of almost all rape cases is the issue of credibility of the witnesses, to be addressed primarily by the trial court, which is in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying.[44] 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 witnesses and assess their credibility.[45] In essence, when the question arises as to which of the conflicting versions of the prosecution and the defense is worthy of belief,

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[41] *People v. Dimaano*, G.R. No. 168168, September 14, 2005, 469 SCRA 647, 665.

[42] Exhibit "A"; records, p. 43.

[43] *People v. Gragasin*, G.R. No. 186496, August 25, 2009, 597 SCRA 214, 226.

[44] *People v. Jimenez*, G.R. No. 170235, April 24, 2009, 586 SCRA 580, 590.

[45] *People v. Fernandez*, G.R. No. 172118, April 24, 2007, 522 SCRA 189, 200.

the assessment of the trial court is generally given the highest degree of respect, if not finality.[46] Accordingly, its findings are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which would otherwise affect the result of the case. The assessment made by the trial court is even more enhanced when the Court of Appeals affirms the same, as in this case.[47]

Here, in giving greater weight to the version of the defense, the trial court observed that the victim was direct, unequivocal, convincing and consistent in answering the questions propounded to her. The records disclose that AAA was categorical and straightforward in narrating the distasteful details of her horrid experience as accused-appellant ravished her even at such tender age:

Q. On said date at about 9:00 in the morning, do you remember any unusual incident that took place?

A. Yes, sir, my t-shirt and short were removed.

Q. Who removed your t-shirt and short?

A. My uncle Teddy, sir.

Q. The one you pointed a while ago?

A. Yes, sir.

Q. After your t-shirt and shorts were removed what happened next?

A. He raped me, sir.

Q. Why did you say you were raped by Teddy Magayon?

A. I felt it, sir.

Q. What did you feel?

A. I felt pain, sir.

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[46] *Id*.

[47] *Id*.

Q. Where did you feel pain?

A. Witness placing her palm over her private organ "*dito po*."

x x x x x x x x x

Q. For how long a time did the accused raped (sic) you on August 9, 1996?

A. Around two minutes, sir.[48]

It must be stressed that AAA did not only identify Magayon as her rapist, she also gave the specifics of how the sexual intercourse happened.

A rape victim, who testifies in a categorical, straightforward, spontaneous and frank manner, and remains consistent, is a credible witness.[49] Moreover, when the offended parties are young and immature girls, as in this case, where the victim was only nine years old at the time the rape was committed, courts are inclined to lend credence to their version of what transpired, not only because of their relative vulnerability, but also because of the shame and embarrassment to which they would be exposed by court trial, if the matter about which they testified were not true.[50]

Magayon denies raping the victim. His denial in this case, unsubstantiated by clear and convincing evidence, is negative, self-serving evidence, which cannot be given greater evidentiary weight than the testimony of the complaining witness who testified on affirmative matters. His denial cannot prevail over the affirmative testimony of AAA, a minor less than 12 years old, who narrated the sexual episode.

With respect to the alleged conflicting testimonies of AAA and prosecution witness Asi, and the medical report indicating that the rape incident happened on August 31, 1996 and not on

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[48] TSN, August 7, 1997, pp. 3-4.

[49] *People v. Lou*, 464 Phil. 413, 425 (2004).

[50] *People v. Malibiran*, G.R. No. 173471, March 17, 2009, 581 SCRA 655, 666-667.

August 9, 1996, the same cannot be used to cast doubt on the victim's credibility. Witness Asi must be referring to the third rape incident, albeit not charged in the information, which was narrated by the victim AAA in her August 9, 1996 *Sinumpaang Salaysay* and which was formally offered by the prosecution as Exhibit "D."[51] According to AAA's affidavit, she was molested by Magayon on three different occasions, although he was only charged for one of them: the first happened in her house; the second occurred the following day as Magayon ordered AAA to accompany him to harvest banana buds; and the third transpired on a Friday of the same month while AAA was riding on Magayon's sled.[52] In the same vein, the medical report indicating a recent vaginal laceration could have been caused by the latest molestation suffered by AAA in the hands of accused-appellant.

In any case, the testimony of Asi and the medical report do not affect the outcome of the case since they are mere corroborative evidence. This is so because in rape cases, the accused may be convicted solely on the testimony of the victim, provided that such testimony is credible, natural, convincing and consistent with human nature and the normal course of things.[53] Such is the case here. In fact, AAA's credibility is bolstered by her lack of ill motive to testify against Magayon and there is no iota of evidence where it can be inferred that she could have been impelled by such motive. In one case the defense argued that the testimony of the prosecution witness varied from that of the victim. This Court debunked said contention in this manner:

> At any rate, that the testimony of private complainant's mother did not jibe with that of private complainant's testimony is not fatal to the prosecution's cause for the latter's testimony is only corroborative. In rape cases, the accused may be convicted solely on the testimony of the victim, provided that such testimony is credible, natural, convincing and consistent with human nature and the normal course of things. In the case at bar, the rape victim's

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[51] Records, p. 2.

[52] Exhibit "D", p. 2.

[53] *People v. Callos*, 419 Phil. 422, 431 (2001).

testimony is credible, natural, convincing and consistent with human nature and the normal course of things. Her credibility is augmented by the fact that she has no motive to testify against the accused and there is no evidence which even remotely suggests that she could have been actuated by such motive.[54]

This Court in another case held that the testimony of a trustworthy victim prevails over the seemingly inconsistent medical report, thus:

> Insofar as the evidentiary value of a medical examination is concerned, we have held that "a medical examination of the victim, as well as the medical certificate, is merely corroborative in character and is not an indispensable element in rape. What is important is that the testimony of private complainant about the incident is clear, unequivocal and credible." A medical examination is not indispensable to the prosecution of rape as long as the evidence on hand convinces the court that a conviction for rape is proper.[55]

The defense also makes much of AAA's composure right after the molestation. This Court finds the same to be without merit, considering that different people react differently to a given situation.[56] There is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience.[57]

In fine, the prosecution was able to discharge its burden of proving accused-appellant's guilt. Accused-appellant is guilty beyond reasonable doubt of statutory rape under Article 335, paragraph 3 of the Revised Penal Code.

Under the second paragraph of Article 335, carnal knowledge of a woman under 12 years of age is punishable by *reclusion perpetua*.

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[54] *Id*.

[55] *People v. Baltazar*, 385 Phil. 1023, 1036 (2000).

[56] *People v. Yabut*, *supra* note 39 at 622.

[57] *Id*.

On the award of damages, civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape.[58] Moral damages are automatically awarded upon such finding without need of further proof, because it is assumed that a rape victim has actually suffered moral injuries entitling the victim to such award.[59] The award of exemplary damages given by the Court of Appeals is in accord with recent jurisprudence.[60] This award is put in place to serve as a public example to deter molesters of hapless individuals.[61] However, the award of exemplary damages is increased to Thirty Thousand Pesos (₱30,000.00) in accordance with the prevailing jurisprudence.[62]

Pursuant to prevailing jurisprudence, the amount of Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity must be modified to Fifty Thousand Pesos (₱50,000.00), and moral damages reduced from Seventy-Five Thousand Pesos (₱75,000.00) to Fifty Thousand Pesos (₱50,000.00).[63] In *People v. Sambrano*,[64] the Court decreed that the award of Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity and Seventy-Five Thousand Pesos (₱75,000.00) as moral damages are only warranted when the rape is perpetrated with any of the attending qualifying aggravating circumstances that require the imposition of the death penalty. The instant case involves simple rape. Hence, the amounts of Fifty Thousand Pesos (₱50,000.00) as civil indemnity and Fifty Thousand Pesos (₱50,000.00) as moral damages are in order.

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[58] *People v. Calongui*, G.R. No. 170566, March 3, 2006, 484 SCRA 76, 88.

[59] *People v. Sabardan*, G.R. No. 132135, May 21, 2004, 429 SCRA 9, 28-29.

[60] *People v. Pacheco*, G.R. No. 187742, April 20, 2010.

[61] *Id*.

[62] *Id*.

[63] *People v. Corpuz*, G.R. No. 175836, January 30, 2009, 577 SCRA 465, 474-475.

[64] 446 Phil. 145, 162 (2003).

WHEREFORE, premises considered, the decision of the Court of Appeals, finding accused-appellant Teddy Magayon *GUILTY* beyond reasonable doubt of the crime of *RAPE*, is hereby *AFFIRMED with MODIFICATION* as to the award of damages: Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages and Thirty Thousand Pesos (₱30,000.00) as exemplary damages. No costs.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Del Castillo, and *Perez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 176743. July 28, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NELSON BALUNSAT *y* BALUNSAT,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; STATUTORY RAPE; GRAVAMEN OF THE OFFENSE; ELEMENTS THAT MUST BE PROVEN; CASE AT BAR.— The gravamen of the offense of statutory rape, as provided for in Article 266-A, paragraph 1(d) of the Revised Penal Code, as amended, is the carnal knowledge of a woman below 12 years old. Sexual congress then with a girl under 12 years of age is always rape. Thus, force, intimidation or physical evidence of injury are immaterial. To convict an accused of the crime of statutory rape, the prosecution must prove: first, the age of the complainant; second, the identity of the accused; and last but not the least, the carnal knowledge between the accused and the complainant. As shown by AAA's Certificate of Live Birth, she was born on February 3, 1989. Hence, on April 24, 1999, when the rape charge in Criminal

Case No. 763-T supposedly took place, she was only 10 years and 2 months old. Inside the court room, AAA identified her first cousin Nelson as her rapist. The remaining element of statutory rape which needed to be established herein is carnal knowledge between Nelson and AAA.

2. ID.; ID.; ID.; COMPLETE OR FULL PENETRATION OF THE COMPLAINANT'S PRIVATE PART IS NOT NECESSARY IN THE CRIME OF RAPE.— We stress that in the crime of rape, complete or full penetration of the complainant's private part is not at all necessary. Neither is the rupture of the hymen essential. What is fundamental is that the entry or at least the introduction of the male organ into the labia of the pudendum is proved. The mere introduction of the male organ into the labia majora of the victim's genitalia, even without the full penetration of the complainant's vagina, consummates the crime. Hence, the "touching" or "entry" of the penis into the labia majora or the labia minora of the pudendum of the victim's genitalia consummates rape.

3. ID.; ID.; ID.; THE COURT IS NOT CONVINCED THAT A MEMBER OF THE FAMILY IS CAPABLE OF RISKING HER YOUNG NIECE'S REPUTATION AND FUTURE AND HER ENTIRE FAMILY'S HONOR BY CONCOCTING UP A CHARGE AS SERIOUS AS RAPE AGAINST A NEPHEW OVER A PIECE OF PROPERTY.— We find little merit in Nelson's assertion that the false rape charges were filed against him because of a land dispute between him and his Auntie DDD, who accompanied AAA to the *barangay* authorities and the Tuao Police Station to report the purported rape. We are unconvinced that an aunt is capable of risking her young niece's reputation and future and her entire family's honor by concocting up a charge as serious as rape against a nephew over a piece of property. Time and again, we have ruled that it is unlikely for a young girl like AAA and her family to impute the crime of rape to their own blood relative and face social humiliation if not to vindicate AAA's honor. No member of a rape victim's family would dare encourage the victim to publicly expose the dishonor to the family unless the crime was in fact committed, more so in this case where the victim and the offender belong to the same family.

4. ID.; ACTS OF LASCIVIOUSNESS; ELEMENTS OF THE CRIME; ESTABLISHED IN CASE AT BAR.— The elements of the crime of acts of lasciviousness are: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done (a) by using force and intimidation, or (b) when the offended party is deprived of reason or otherwise unconscious, or (c) when the offended party is under 12 years of age; and (3) that the offended party is another person of either sex. All these elements are present in Criminal Case No. 781-T. First, there were acts of lasciviousness or lewdness, *i.e.*, Nelson lying naked on top of his cousin BBB while the latter was sleeping at their grandmother's house; and Nelson attempting to insert his penis into BBB even when the latter was fully-clothed. Second, the lascivious or lewd acts were committed on BBB who was only 11 years old at the time of the incident. And third, the offended party BBB is another person of the opposite sex. BBB positively identified Nelson as the offender. We stress that both the RTC and the Court of Appeals gave great weight to BBB's testimony and were convinced that Nelson committed a crime against BBB on April 26, 1999 at around 1:00 p.m., even though said courts may have varying views as to the precise designation of the crime. In contrast, Nelson merely denied the accusation against him, proffering the alibi that he was at a neighbor's house the whole day of April 26, 1999, going home to his grandmother's place only to eat lunch at around 11:00 a.m.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE CRYING OF A VICTIM DURING HER TESTIMONY BOLSTERS CREDIBILITY WITH THE VERITY BORNE OUT OF HUMAN NATURE AND EXPERIENCE.— We have carefully gone over the records of this case, particularly, the transcript of stenographic notes to ferret out the truth and we find AAA's testimony on the incident that took place on April 24, 1999 to be candid, straightforward, truthful, and convincing, consistent with the finding of the RTC, which had the opportunity to closely observe AAA as she was giving her testimony. AAA was able to describe with the simplicity of a child the ordeal that she suffered, even vividly recounting the pain caused by Nelson's penetration of her female organ. x x x AAA broke down and cried while narrating on the witness stand how she was sexually abused by Nelson. Such spontaneous

emotional outburst strengthens her credibility. The crying of a victim during her testimony bolstered her credibility with the verity borne out of human nature and experience. As previously held, when a young girl like private complainant cries rape, she is saying in effect all that is necessary to show that rape has indeed been committed.

6. ID.; ID.; ID.; TESTIMONY OF VICTIM IS CORROBORATED BY THE MEDICAL FINDINGS.— AAA's testimony is supported by the x x x medical findings of Dr. Roselyn B. Cuarteros of the Tuao District Hospital. x x x It is settled that when the victim's testimony is corroborated by the physician's finding of penetration, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge. Laceration, whether healed or fresh, is the best physical evidence of forcible defloration.

7. ID.; ID.; DEFENSES OF ALIBI AND DENIAL; REJECTED.— Nelson's defense consisted mainly of denial and alibi. Mere denial without any strong evidence to support it cannot prevail over AAA's categorical and positive identification of Nelson. His alibi is likewise unavailing. We give scant consideration to Nelson's claim that he went to Barangay Lallalayug, Tuao, Cagayan, with five companions from Barangay x x x to play basketball in the morning of April 24, 1999, after which, they stayed at the house of a certain Fred Ocab until 4:00 o'clock in the afternoon. Nelson did not present as corroborating witness any one of his supposed five companions to Barangay Lallalayug in the morning of April 24, 1999 or Fred Ocab in whose house he allegedly stayed at in the afternoon of the same date. For alibi to be considered, it must be supported by credible corroboration, preferably from disinterested witnesses who will swear that they saw or were with the accused somewhere else when the crime was being committed. In the absolute absence of corroborating evidence, Nelson's alibi is implausible.

8. ID.; ID.; ID.; CANNOT PREVAIL OVER COMPLAINANT'S DIRECT, POSITIVE AND CATEGORICAL ASSERTION.— Denial could not prevail over complainant's direct, positive and categorical assertion. As between a positive and categorical testimony which has the ring of truth, on one hand, and a bare denial, on the other, the former is generally held to prevail. Also, for Nelson's alibi to be credible and given due weight, he must show that it was physically impossible for him to have

been at the scene of the crime at the approximate time of its commission. His defense of alibi is not only self-serving and easily fabricated, but is also the weakest defense he could interpose. We have uniformly held that denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credibility.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

On appeal is the Decision[1] dated July 13, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02097, affirming with modification the Joint Judgment[2] of the Regional Trial Court (RTC), Branch 11 of Tuao, Cagayan, in Criminal Case Nos. 762-T, 763-T, and 781-T. The RTC found accused-appellant Nelson Balunsat (Nelson) guilty of two counts of statutory rape committed against his first cousin AAA in Criminal Case Nos. 762-T and 763-T and for attempted rape committed against his other first cousin BBB in Criminal Case No. 781-T. On appeal, the Court of Appeals affirmed the conviction of Nelson for the statutory rape of AAA in Criminal Case No. 763-T and the penalties imposed upon Nelson for the said crime, *i.e.*, imprisonment ranging from 17 years of *reclusion temporal* as minimum to *reclusion perpetua* as maximum, and payment of civil indemnity to AAA in the amount ₱50,000.00. The appellate court, however, also made the following modifications to the RTC judgment: (1) acquitting Nelson of the charge of statutory

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[1] Penned by Associate Justice Magdangal M. de Leon with Associate Justices Godardo A. Jacinto and Juan Q. Enriquez, Jr., concurring; *rollo*, pp. 4-24.

[2] Penned by Judge Orlando D. Beltran, CA *rollo* (CA-G.R. CR.-H.C. No. 02097), pp. 22-27.

rape of AAA in Criminal Case No. 762-T on reasonable doubt; and (2) finding Nelson guilty, not of attempted rape, but of acts of lasciviousness committed on BBB, in Criminal Case No. 781-T, for which he was sentenced to suffer the indeterminate penalty of four (4) months of *arresto mayor*, as minimum, to two (2) years, four (4) months and one (1) day of *prision correccional*, as maximum.

The three Informations filed against Nelson before the RTC of Tuao, Cagayan alleged:

Criminal Case No. 762-T:

That on or about April 26, 1999 in the Municipality of Tuao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused Nelson Balunsat *y* Balunsat, with lewd design and by the use of force, did then and there willfully, unlawfully and feloniously have sexual intercourse with the offended party, AAA, a woman, below 12 years old against her will.

Criminal Case No. 763-T:

That on or about April 24, 1999, in the Municipality of Tuao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Nelson Balunsat *y* Balunsat, with lewd design and by the use of force, did then and there, willfully, unlawfully and feloniously have sexual intercourse with the offended party, AAA, a woman below 12 years old against her will.

Criminal Case No. 781-T:

That on or about April 26, 1999, in the Municipality of Tuao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused Nelson Balunsat, with lewd design and by the use of force and intimidation lay on top of the offended party, BBB, a minor 11 years of age to have sexual intercourse with her.

That the accused had commenced the commission of the crime of Rape directly by overt acts but did not perform all the acts of execution which would have produce it by reason of some causes of accidents other than his own spontaneous desistance.[3]

Nelson pleaded "not guilty" to all three charges.

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[3] CA *rollo* (CA-G.R. CR.-H.C. No. 02097), pp. 9-10.

During the trial, the prosecution presented AAA and BBB and also their birth certificates[4] to establish their ages during the rape incidents. According to the prosecution, the crimes charged were committed as follows:

> The evidence for the prosecution shows that the private complainant, [AAA], was ten (10) years old at the time of the commission of the offense (Exhibit "D" and "D-1"). At about 9:00 o'clock in the morning of April 24, 1999 she was alone in their house at x x x as her parents were in the cornfields working. When she was in the process of cooking lunch, the accused Nelson Balunsat, who is the first cousin of the private complainant, their mothers being sisters, arrived. He took off the shorts and underwear of the private complainant and, thereafter, took off his short pants and underwear. He forced [AAA] to lie down on the floor and, opening wide her legs, succeeded in having sexual intercourse with her. Then he said "*Nu maddanug ka e patayan ta ka*" in Itawes which, in English means, "If you report this I will kill you." Then he left the private complainant who could not do anything but cry. Her private parts bled and she felt extreme pain. She did not tell her parents about the incident because of the threats made by the accused.
>
> On April 26, 1999[,] at about 1:00 o'clock in the afternoon, private complainant [AAA] was sleeping in a room of the house of her grandmother CCC in the same barangay x x x, Tuao, Cagayan. With her was her cousin [BBB]. The accused arrived and removed his shorts and underwear and lay down beside [BBB]. The accused tried to insert his fully erect penis into [BBB]'s private parts. However, BBB resisted and the accused could not make any penetration of his penis on the former. Failing to satisfy his lust on [BBB], the accused told her to move over and then lay himself down beside private complainant [AAA]. He removed the shorts and panties of [AAA] and had sexual intercourse with her. Then he left both girls. On April 28, 1999, [AAA] told her Aunt [DDD] who then brought [AAA] first to the barangay authorities of x x x and later to the Tuao Police Station to report the twin rapes. She was then brought to the Tuao District Hospital where she was medico-legally examined by Dr. Roselyn B. Cardenas. The latter issued a medico-legal certificate (Exhibit "C") where her findings showed the following: "hymen with recent laceration at 1 o'clock" (Exhibit "C-1").

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[4] Records, pp. 19-20.

The April 26, 1999 rape incident as testified to by private complainant [AAA], was corroborated by [BBB], the private complainant in Criminal Case No. 781-T for Attempted Rape.

[BBB] testified that at about 1:00 o'clock p.m. on April 26, 1999 she and her cousin [AAA] were in the house of their grandmother CCC at x x x, Tuao, Cagayan, lying on a bed sleeping. The accused Nelson Balunsat arrived and went to the place where the two girls were sleeping. He laid down beside [BBB] and after removing his clothes tried to insert his penis inside her private parts. [BBB], however, resisted and the accused was unable to have sexual intercourse with her. Failing in his intentions on [BBB], the accused moved to [AAA] and had sexual intercourse with the latter. [BBB] testified that she saw the fully erect penis of the accused entering the vaginal orifice of [AAA]. She could not do anything because she was threatened by the accused.[5]

The defense, on the other hand, relied on denial and alibi, testified to by Nelson himself. Nelson's testimony was summarized as follows:

The accused interposed the defense of alibi. He claims that in the morning of April 24, 1999 he went to Bgy. Lallalayug, Tuao, Cagayan, with the other young men of Bgy. x x x to play basketball. After playing basketball, he and [his] companions went to the house of one Fred Ocab where he stayed up to about 4:00 o'clock in the afternoon, after which he went home.

As regards the rape on April 26, 1999, the accused Nelson Balunsat claimed that after eating lunch at his house at about 11:00 o'clock he went to the house of one Manang Siony, which is near his house, to hear the drama being aired over the radio. Parenthetically, it should be mentioned that the accused is living with his grandmother [CCC] where the alleged rape of April 26, 1999 (Criminal Case No. 762-T) took place. He denied having raped [AAA] either on April 24, 1999 or on April 26, 1999. x x x.[6]

The court *a quo* rendered its Joint Judgment on January 9, 2002 finding Nelson guilty beyond reasonable doubt of two counts of rape and one count of attempted rape, thus:

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[5] CA *rollo* (CA-G.R. CR.-H.C. No. 02097), pp. 23-25.

[6] *Id.* at 25.

WHEREFORE, in view of all the foregoing, the Court finds the accused **Nelson Balunsat *y* Balunsat GUILTY beyond reasonable doubt** of the crime of **RAPE** on two (2) counts and **ATTEMPTED RAPE** and hereby sentences him:

1. In **Criminal Case No. 762-T:** to suffer imprisonment ranging from seventeen (17) years of *reclusion temporal* as minimum to *reclusion perpetua* as maximum and to pay the private complainant AAA the amount of Fifty Thousand as civil indemnity;

2. In **Criminal Case No. 763-T:** to suffer imprisonment of seventeen (17) years of *reclusion temporal* as minimum to *reclusion perpetua* as maximum and to pay the private complainant AAA the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity;

3. In **Criminal Case No. 781-T:** to suffer imprisonment of six (6) years of *prision correccional* as minimum to ten (10) years of *prision mayor* as maximum.

He is further sentenced to suffer all the accessory penalties provided for by law.[7]

Nelson filed with the RTC a Notice of Appeal of the foregoing judgment on January 29, 2002,[8] and his appeal before the Court of Appeals was docketed as CA-G.R. CR No. 26323. However, the Public Attorney's Office (PAO), as counsel *de oficio* for Nelson, filed on October 6, 2002 a Manifestation with Motion to Elevate the Case to the Supreme Court[9] on the ground that the appealed RTC judgment imposed upon Nelson, two penalties of *reclusion temporal* to *reclusion perpetua* imprisonment and one sentence of *prision correccional to prision mayor* imprisonment, were within the appellate jurisdiction of the Supreme Court pursuant to Rule 122, Section 3(c) of the Revised Rules of Criminal Procedure. The Court of Appeals, in its Resolution[10]

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[7] *Id.* at 26-27.

[8] Records, p. 97.

[9] CA *rollo* (CA-G.R. CR No. 26323), pp. 28-29.

[10] *Id.* at 31-33.

dated November 14, 2002, granted Nelson's Motion and ordered its Division Clerk of Court to forward the records of the case to the Supreme Court for appropriate action.

In our Resolution[11] of December 16, 2002, we accepted the appeal and informed Nelson that he may file an additional appellant's brief; and in case such brief is filed, we required the Office of the Solicitor General (OSG) to also file an additional appellee's brief. We further directed our Division Clerk of Court to inquire from or confirm with the Director of the Bureau of Corrections whether Nelson was then confined at the New Bilibid Prison or any other national penal institution under the said Bureau.

Nelson filed his Appellant's Brief[12] on February 24, 2003, while the People, through the OSG, filed its Appellee's Brief (with Recommendation for Increase of the Penalty and for Award of Civil Indemnity and Moral Damages)[13] on July 14, 2003.

Conformably with our decision in *People v. Mateo,*[14] Nelson's appeal was returned to the Court of Appeals where it was docketed as CA-G.R. CR.-H.C. No. 02097.

On July 13, 2006, the Court of Appeals promulgated its Decision in CA-G.R. CR.-H.C. No. 02097, affirming with modifications the appealed RTC judgment.

While agreeing with the RTC that Nelson did rape AAA on April 24, 1999 as charged in Criminal Case No. 763-T, the Court of Appeals found reasonable doubt that Nelson raped AAA again on April 26, 1999 as charged in Criminal Case No. 762-T. The appellate court ratiocinated:

> At bar, however, there are matters which are extremely doubtful regarding the perpetration of the second rape. The prosecution was uncertain whether AAA and BBB were lying together on the floor

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[11] CA *rollo* (CA-G.R. CR.-H.C. No. 02097), p. 2.

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

[13] *Id.* at 33-76.

[14] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 657-658.

or on the folding bed inside CCC's house at around 1:00 p.m. of April 26, 1999; whether who between BBB and AAA was the first subject of appellant's assault; and whether the two minors were sleeping or awake when appellant arrived. What the prosecution could only muster was the alleged undressing of AAA and the penetration of appellant's penis into her vagina but no actual sexual intercourse was proven. Interestingly, there was not even a modicum of testimonial evidence whether appellant removed also his undergarments. Moreover, it is least probable that appellant could have satisfied his lust on AAA for about 2 to 3 minutes under such a precarious situation.

Evidently, AAA failed to account satisfactorily how she was raped the second time around. She, BBB and their CCC were all awake when appellant arrived at the time and place in question. There was no indication that they were paralyzed with fear by his sudden presence at the time when the said minors were about to sleep. That BBB was the initial subject of appellant's lechery could have so alarmed AAA and prompted her to avoid the ensuing assault on her. It is highly inconceivable for AAA to remain dormant while BBB was nearly raped by appellant. Struggle, outcry, shouting, or resistance was not futile, despite poking of the knife at BBB's stomach, which circumstance was neither alleged in the Information nor proven at the trial, hence unreliable. Interestingly, the same knife was not used against AAA, as admitted by BBB.

In the light of AAA's situation at that moment, she had the earliest opportunity to escape. Yet, she did not. Or, it could have been that AAA merely relayed to BBB the sordid tale of the previous rape, *i.e*, having seen the penis of appellant fully erect, its penetration into AAA's organ, which formed, although fruitless, a part of BBB's eyewitness account that led to the accusation of second rape. Or, in AAA's subject narration, she could have only wanted to reinforce her desire to be vindicated for the outrage she had earlier felt against appellant.

Unfortunately, We cannot indulge in speculations and surmises in Our judicial review. Where there is no sufficient proof of the *corpus delicti* of an alleged rape, the crime is deemed to be inexistent and could not be attributed to the accused. Speculations and probabilities cannot take the place of proof required to establish the guilt of the accused beyond reasonable doubt, and suspicion, no matter how strong, must not sway judgment. Courts cannot function

to supply the missing links in the prosecution evidence which otherwise insufficiently proves carnal knowledge.[15]

The Court of Appeals also downgraded Nelson's crime in **Criminal Case No. 781-T** from attempted rape to consummated acts of lasciviousness based on the following portion of BBB's testimony:

Q On April 26, 1999 at around 1:00 P.M., do you still recall where were you?
A Yes, sir.

Q Where were you at that time?
A At the house of Lola [CCC].

Q Who were your companions at that time?
A [AAA].

Q What were you doing at that time?
A At the house of Lola [CCC].

Q Who were your companion at that time?
A [AAA], sir.

Q What were you doing then in the house of your Lola [CCC]?
A We went to sleep there, sir.

x x x x x x x x x

Q When Nelson Balunsat wanted to insert his penis into your vagina, did he succeed?
A No, sir.

COURT:

Q How were you clothed at that time when Nelson Balunsat tried to insert his penis into your private parts?
A Short pants, sir.

Q Were you still using your short pants when you entered the bedroom to sleep?
A I was wearing my shorts and T-shirts, sir.

Q When the accused tried to insert his penis into your private part, were you still wearing short pants?
A Yes, sir.

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[15] *Rollo*, pp. 18-19.

Q Of what material is your short pants?
A Orange in color, sir.

Q Was it a soft material?
A Yes, sir.

COURT:

Proceed.

FISCAL:

Q You said that Nelson Balunsat tried to insert his penis into your vagina, did his penis enter into your vagina?

x x x x x x x x x

A It was about to be inserted but I resisted.

Q How did you resist?
A I struggled, sir.

COURT:

Q What was the accused wearing when he tried to insert his penis into your private parts?
A He covered his body with a blanket.

x x x x x x x x x

FISCAL:

You said a while ago that the accused covered his body with a blanket, so he was naked at that time?

A Yes, sir.

Q And you would see his penis as he removes the blanket that he use to cover his body?
A Yes, sir.

COURT:

Q When he tried to insert his penis, did you see his penis?
A Yes, sir.

Q Did you feel his penis touch your private parts?
A Yes, sir.

Q What part of your private parts were touched by his penis?
A Here, sir. (witness pointing to the upper portion of the labia).[16]

From the foregoing, the appellate court made the following conclusions:

However, it was established that BBB was fully dressed up. All the more, the medical findings of Dr. Cuarteros showed that [BBB]'s hymen was intact, thus negating the charge of penetration. [Nelson] may have perched on top of BBB with her shorts and panty put on. But that is not rape. In reality, [BBB] resisted. Thus, [Nelson] asked her to move away, and vented his lust on [AAA]. Not every form of sexual molestation constitutes carnal knowledge. [Nelson]'s act of pressing his penis without penetration is, to our view, a mere sexual abuse which cannot be equated with rape, even on its attempted stage. Evidently, there was no slightest touching of the lips of [BBB]'s organ or the labia of the pudendum.

x x x x x x x x x

Consequently, the circumstances attendant in Crim. Case No. 781-T constituted acts of lasciviousness since the following elements were proven, namely: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done (a) by using force or intimidation or (b) when the offended party is deprived of reason or otherwise unconscious, or (c) when the offended party is under 12 years of age; and (3) that the offended party is another person of either sex. Doctrinally, acts of lasciviousness is considered an offense included or subsumed in the attempted rape charge.[17]

In the end, the Court of Appeals decreed:

WHEREFORE, the appealed joint Decision is **AFFIRMED** with **MODIFICATION**.

A) In Crim. Case No. 763-T, appellant NELSON BALUNSAT is found guilty of statutory rape and sentenced to suffer the penalty and to pay the civil indemnity, both imposed by the trial court;

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[16] TSN, June 14, 2001, pp. 3-5.

[17] *Rollo,* p. 22.

B) In Crim. Case No. 762-T, he is **ACQUITTED** on reasonable doubt;

C) In Crim. Case No. 781-T, he is found guilty of Acts of Lasciviousness and is hereby sentenced to suffer the indeterminate penalty of Four (4) Months of *arresto mayor*, as minimum, to Two (2) Years, Four (4) Months and One (1) Day of *prision correccional*, as maximum.[18]

Nelson, through the PAO, filed with the Court of Appeals a Notice of Appeal on August 9, 2006.[19]

We accepted Nelson's appeal in a Resolution[20] of April 23, 2007, and required the parties to file their respective supplemental briefs, if they so desire.

In the separate Manifestations submitted on July 13, 2007 and July 16, 2007 by the People and Nelson, respectively, said parties waived the filing of supplemental briefs and, instead, opted to stand by the briefs they filed before the Court of Appeals.

Nelson's appeal is grounded on the following lone assignment of error:

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED WHEN THE LATTER'S GUILT WAS NOT PROVED BEYOND REASONABLE DOUBT.

Given that Nelson was already acquitted of the charge of rape in Criminal Case No. 762-T on the ground of reasonable doubt, his instant appeal relates only to his convictions for rape in Criminal Case No. 763-T and for acts of lasciviousness in Criminal Case No. 781-T. We can no longer pass upon the propriety of Nelson's acquittal in Civil Case No. 762-T because the appeal before us is Nelson's and not the People's. And more importantly, it is the rule that a judgment acquitting the accused is final and immediately executory upon its promulgation,

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[18] *Id.* at 23.

[19] *Id.* at 25.

[20] *Id.* at 28.

and that accordingly, the State may not seek its review without placing the accused in double jeopardy. Such acquittal is final and unappealable on the ground of double jeopardy whether it happens at the trial court or on appeal at the Court of Appeals.[21]

The crimes charged were purportedly committed on April 24, 1999 and April 26, 1999, after the effectivity of Republic Act No. 8353, also known as the Anti-Rape Law of 1997, which took effect on October 22, 1997. The Anti-Rape Law of 1997 further amended Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, by renumbering the said provision as Articles 266-A and 266-B, which now read:

> Art. 266-A. *Rape*; When and how committed. — Rape is committed—
>
> 1.) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
>
> b) When the offended party is deprived of reason or otherwise unconscious;
>
> c) By means of fraudulent machinations or grave abuse of authority; and
>
> **d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.**
>
> 2.) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.
>
> Art. 266-B. *Penalties*.— Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*. (Emphasis ours.)

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[21] *People v. Sandiganbayan*, G.R. Nos. 168188-89, June 16, 2006, 491 SCRA 185, 206.

Nelson is charged in **Criminal Case No. 763-T** with statutory rape considering that AAA was then below 12 years old.

The gravamen of the offense of statutory rape, as provided for in Article 266-A, paragraph 1(d) of the Revised Penal Code, as amended, is the carnal knowledge of a woman below 12 years old. Sexual congress then with a girl under 12 years of age is always rape. Thus, force, intimidation or physical evidence of injury are immaterial.[22]

To convict an accused of the crime of statutory rape, the prosecution must prove: first, the age of the complainant; second, the identity of the accused; and last but not the least, the carnal knowledge between the accused and the complainant.[23]

As shown by AAA's Certificate of Live Birth, she was born on February 3, 1989. Hence, on April 24, 1999, when the rape charge in Criminal Case No. 763-T supposedly took place, she was only 10 years and 2 months old. Inside the court room, AAA identified her first cousin Nelson as her rapist. The remaining element of statutory rape which needed to be established herein is carnal knowledge between Nelson and AAA.

We stress that in the crime of rape, complete or full penetration of the complainant's private part is not at all necessary. Neither is the rupture of the hymen essential. What is fundamental is that the entry or at least the introduction of the male organ into the labia of the pudendum is proved. The mere introduction of the male organ into the labia majora of the victim's genitalia, even without the full penetration of the complainant's vagina, consummates the crime. Hence, the "touching" or "entry" of the penis into the labia majora or the labia minora of the pudendum of the victim's genitalia consummates rape.[24]

We have carefully gone over the records of this case, particularly, the transcript of stenographic notes to ferret out

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[22] *People v. Ligotan*, 331 Phil. 98, 105 (1996).

[23] *People v. Canares*, G.R. No. 174065, February 18, 2009, 579 SCRA 588, 601-602.

[24] *People v. Flores*, 448 Phil. 840, 856 (2003).

the truth and we find AAA's testimony on the incident that took place on April 24, 1999 to be candid, straightforward, truthful, and convincing, consistent with the finding of the RTC, which had the opportunity to closely observe AAA as she was giving her testimony. AAA was able to describe with the simplicity of a child the ordeal that she suffered, even vividly recounting the pain caused by Nelson's penetration of her female organ, to wit:

FISCAL BACULI:

Q Will you please narrate to this Court what happened to you while you were cooking?
A While sitting at the bench Nelson Balunsat arrived, sir.

Q When he arrived, what happened next?
A Nelson Balunsat removed my panty, sir.

Q What were you wearing then aside from your panty?
A I was wearing short pants, sir.

COURT:

Q So Nelson Balunsat also removed your shorts?
A Yes, sir.

FISCAL BACULI:

Q After Nelson Balunsat removed your shorts and panty, what happened next?
A He inserted his penis in my vagina, sir.

Q Did you actually feel the penis entering into your vagina?
A Yes, sir.

Q What did you feel when Nelson Balunsat inserted his penis into your vagina?
A It was painful, sir.

Q After sexually assaulting you, what happened next?
A My vagina bled, sir.

Q The accused Nelson Balunsat ever threatened you?
A Yes, sir.

Q What did he tell you?
A He threatened me, sir.

COURT:

Put on record that the witness is crying in the witness stand.

WITNESS:

A He said that if I will tell what happened to me, he will kill me, sir.

Q If you will see him again will you be able to identify him?
A Yes, sir.

Q Will you please point to him if he is in court?
A There, sir. (The witness pointed to a person when asked his name he answered that he is Nelson Balunsat).

Q After the accused sexually assaulted you, did you ever mention the incident to anybody?
A Yes, sir.

Q To whom did you relate the incident?
A To Auntie [DDD], sir.

Q Do you recall what date and month, did you report the incident to your Auntie [DDD]?
A Yes, sir.

Q What date and month?
A April 28, 1999, sir.

Q After reporting the incident to your Auntie [DDD], what did you do next?
A We went to the district hospital, sir.

Q Did you report the incident to the *Barangay* officials?
A Yes, sir.

Q After coming from the district hospital for medical treatment, did you report the incident to the police?
A Yes, sir.[25]

AAA broke down and cried while narrating on the witness stand how she was sexually abused by Nelson. Such spontaneous emotional outburst strengthens her credibility. The crying of a victim during her testimony bolstered her credibility with the

[25] TSN, June 5, 2000, pp. 4-6.

verity borne out of human nature and experience. As previously held, when a young girl like private complainant cries rape, she is saying in effect all that is necessary to show that rape has indeed been committed.[26]

Moreover, AAA's testimony is supported by the following medical findings of Dr. Roselyn B. Cuarteros of the Tuao District Hospital:

FINDINGS

1. PERINEUM - no evident of recent wound.
2. FOURCHETTE – sharp angle
3. VAGINA - hymen with **recent laceration at 1 o'clock**
   - admits 1 finger with ease
   - (+) positive whitish discharged, no sperm identified
   - (+) positive congestion.[27] (Emphasis ours.)

It is settled that when the victim's testimony is corroborated by the physician's finding of penetration, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge. Laceration, whether healed or fresh, is the best physical evidence of forcible defloration.[28]

Nelson's defense consisted mainly of denial and alibi. Mere denial without any strong evidence to support it cannot prevail over AAA's categorical and positive identification of Nelson. His alibi is likewise unavailing. We give scant consideration to Nelson's claim that he went to Barangay Lallalayug, Tuao, Cagayan, with five companions from Barangay x x x to play basketball in the morning of April 24, 1999, after which, they stayed at the house of a certain Fred Ocab until 4:00 o'clock in

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[26] *People v. Jusayan*, G.R. No. 149785, April 28, 2004, 428 SCRA 228, 236-237.

[27] Records, p. 4.

[28] *People v. Clores, Jr.*, G.R. No. 130488, June 8, 2004, 431 SCRA 210, 216.

the afternoon. Nelson did not present as corroborating witness any one of his supposed five companions to Barangay Lallalayug in the morning of April 24, 1999 or Fred Ocab in whose house he allegedly stayed at in the afternoon of the same date. For alibi to be considered, it must be supported by credible corroboration, preferably from disinterested witnesses who will swear that they saw or were with the accused somewhere else when the crime was being committed.[29] In the absolute absence of corroborating evidence, Nelson's alibi is implausible.

We find little merit in Nelson's assertion that the false rape charges were filed against him because of a land dispute between him and his Auntie DDD, who accompanied AAA to the *barangay* authorities and the Tuao Police Station to report the purported rape. We are unconvinced that an aunt is capable of risking her young niece's reputation and future and her entire family's honor by concocting up a charge as serious as rape against a nephew over a piece of property. Time and again, we have ruled that it is unlikely for a young girl like AAA and her family to impute the crime of rape to their own blood relative and face social humiliation if not to vindicate AAA's honor.[30] No member of a rape victim's family would dare encourage the victim to publicly expose the dishonor to the family unless the crime was in fact committed, more so in this case where the victim and the offender belong to the same family.[31]

Concerning **Criminal Case No. 781-T**, the Court of Appeals modified the guilty verdict of the RTC against Nelson from attempted rape to acts of lasciviousness. We can no longer review the "downgrading" of the crime by the appellate court without violating the right against double jeopardy, which proscribes an appeal from a judgment of acquittal or for the purpose of increasing the penalty imposed upon the accused.[32]

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[29] *People v. Antivola*, 466 Phil. 394, 411 (2004).

[30] *People v. Bali-Balita*, 394 Phil. 790, 810 (2000).

[31] *People v. Flores*, *supra* note 24 at 855.

[32] *People v. Alarcon*, G.R. No. 174199, March 7, 2007, 517 SCRA 778, 783-784, citing *People v. Dela Torre*, 430 Phil. 420, 430 (2002).

In effect, the Court of Appeals already acquitted Nelson of the charge of attempted rape, convicting him only for acts of lasciviousness, a crime with a less severe penalty. Hence, we limit ourselves to determining whether there is enough evidence to support Nelson's conviction for acts of lasciviousness.

The elements of the crime of acts of lasciviousness are: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done (a) by using force and intimidation, or (b) when the offended party is deprived of reason or otherwise unconscious, or (c) when the offended party is under 12 years of age; and (3) that the offended party is another person of either sex.[33] All these elements are present in Criminal Case No. 781-T.

First, there were acts of lasciviousness or lewdness, *i.e.*, Nelson lying naked on top of his cousin BBB while the latter was sleeping at their grandmother's house; and Nelson attempting to insert his penis into BBB even when the latter was fully-clothed. Second, the lascivious or lewd acts were committed on BBB who was only 11 years old at the time of the incident. And third, the offended party BBB is another person of the opposite sex.

BBB positively identified Nelson as the offender. We stress that both the RTC and the Court of Appeals gave great weight to BBB's testimony and were convinced that Nelson committed a crime against BBB on April 26, 1999 at around 1:00 p.m., even though said courts may have varying views as to the precise designation of the crime. In contrast, Nelson merely denied the accusation against him, proffering the alibi that he was at a neighbor's house the whole day of April 26, 1999, going home to his grandmother's place only to eat lunch at around 11:00 a.m.

Denial could not prevail over complainant's direct, positive and categorical assertion. As between a positive and categorical testimony which has the ring of truth, on one hand, and a bare denial, on the other, the former is generally held to prevail.[34]

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[33] *Perez v. Court of Appeals*, 431 Phil. 786, 796 (2002).

[34] *People v. Corral*, 446 Phil. 652, 665 (2003).

Also, for Nelson's alibi to be credible and given due weight, he must show that it was physically impossible for him to have been at the scene of the crime at the approximate time of its commission. His defense of alibi is not only self-serving and easily fabricated, but is also the weakest defense he could interpose. We have uniformly held that denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credibility.[35]

Having found Nelson guilty beyond reasonable doubt of statutory rape in Criminal Case No. 763-T and acts of lasciviousness in Criminal Case No. 781-T, we shall proceed to determine the penalties to be imposed on him.

Under Article 222-B of the Revised Penal Code, statutory rape shall be punished by *reclusion perpetua*. We note, however, that the Court of Appeals merely affirmed the order of the RTC for Nelson to pay AAA civil indemnity in the amount of ₱50,000.00. Neither the Court of Appeals nor the RTC awarded moral damages, which is mandatory upon a finding of rape. Consistent with the current jurisprudence, moral damages in the amount of ₱50,000.00 should also be awarded in AAA's favor.[36] In view of the presence of an aggravating circumstance, we additionally award exemplary damages in accordance with Article 2230 of the Civil Code. The Information in Criminal Case No. 781-T expressly alleged that AAA was below 12 years of age at the time of the commission of the offense and this was sufficiently established by the presentation of her Birth Certificate in court. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of ₱30,000.00 as exemplary damages is justified.[37]

The imposable penalty for the crime of acts of lasciviousness under Article 336 of the Revised Penal Code, as amended, is *prision correccional* in its full range. Applying the Indeterminate

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[35] *People v. Villafuerte*, G.R. No. 154917, May 18, 2004, 428 SCRA 427, 435.

[36] *People v. Pacheco*, G.R. No. 187742, April 20, 2010.

[37] *Id.*; *People v. Macapanas*, G.R. No. 187049, May 4, 2010.

Sentence Law, the minimum of the indeterminate penalty shall be taken from the full range of *arresto mayor* which has a range of one (1) month and one (1) day to six (6) months. Absent any modifying circumstance attendant to the crime, the maximum of the indeterminate penalty shall be taken from the medium period of *prision correccional* or two (2) years, four (4) months and one (1) day to four (4) years and two (2) months. Accordingly, Nelson is hereby meted an indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum. In addition, we award the amounts of ₱20,000.00 civil indemnity, ₱30,000.00 moral damages, and ₱2,000.00 exemplary damages to BBB in accordance with prevailing jurisprudence.[38]

WHEREFORE, the assailed decision of the Court of Appeals is *AFFIRMED with MODIFICATIONS*. Accused-appellant Nelson Balunsat *y* Balunsat is *GUILTY* beyond reasonable doubt of:

1. **STATUTORY RAPE** under Article 266-A of the Revised Penal Code in Criminal Case No. 763-T and sentenced to suffer the penalty of *reclusion perpetua*. He is also ordered to pay the victim AAA the amount of ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; and ₱30,000.00 as exemplary damages.

2. **ACTS OF LASCIVIOUSNESS** under Article 366 of the Revised Penal Code in Criminal Case No. 781-T and sentenced to suffer the indeterminate penalty of imprisonment for six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum. He is likewise ordered to pay the victim BBB the amount of ₱20,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱2,000.00 as exemplary damages.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Del Castillo, and *Perez, JJ.*, concur.

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[38] *People v. Poras*, G.R. No. 177747, February 16, 2010.

FIRST DIVISION

[G.R. No. 180385. July 28, 2010]

PETRON CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; THE PRESENTATION OF EVIDENCE TO PROVE FRAUD IS NOT A MERE PROCEDURAL TECHNICALITY WHICH MAY BE DISREGARDED; CASE AT BAR. — While the CTA is not governed strictly by technical rules of evidence on the principle that rules of procedure are not ends in themselves but are primarily intended as tools in the administration of justice, respondent's presentation of evidence to prove the fraud which attended the issuance of the subject TCCs is not a mere procedural technicality which may be disregarded considering that it is the very basis for the claim that Petron's payment of its excise tax liabilities had been avoided. It cannot be over-emphasized that fraud is a question of fact which cannot be presumed and must be proven by clear and convincing evidence by the party alleging the same. Without even presenting the documents which served as bases for the issuance of the subject TCCs from 1994 to 1997, respondent miserably failed in discharging his evidentiary burden with the presentation of the Center's cancellation memoranda to which were simply annexed some of the grantees' original registration documents and their Financial Statements for an average of two years.

2. ID.; ID.; TESTIMONY OF WITNESSES; AFFIDAVITS; UNLESS AFFIANT IS PLACED ON THE WITNESS STAND TO TESTIFY THEREON, AFFIDAVITS ARE GENERALLY CONSIDERED INADMISSIBLE UNDER THE HEARSAY RULE. — Without said erstwhile general managers/officers being presented on the witness stand to affirm the truth and veracity of their statements, the affidavits they executed are, however, correctly impugned by Petitioner as hearsay for lack of opportunity to cross-examine said affiants. Almost always

incomplete and often inaccurate, sometimes from partial suggestion, or for want of suggestion and inquiries, the infirmity of affidavits as species of evidence is a matter of judicial experience and are thus considered inferior to the testimony given in open court. Unless the affiant is placed on the witness stand to testify thereon, the rule is settled that affidavits are inadmissible as evidence under the hearsay rule.

3. TAXATION; TAX CREDIT CERTIFICATES (TCC); NEGOTIABILITY; GUIDELINES. — The transferability of the TCCs issued in favor of the original grantees is primarily governed by Article 21 of EO 226 which provides that, "the tax credit certificates issued by the Board (of Investments) pursuant to laws repealed by this Code but without in any way diminishing the scope of negotiability under their laws of issue are transferable under such conditions as may be determined by the Board after consultation with the Department of Finance." In turn, the Implementing Rules and Regulations (IRR) of EO 226 incorporated the October 5, 1982 Memorandum of Agreement (MOA) between the Ministry of Finance (MOF) and the BOI, which pertinently provides the following guidelines for the transfer of said TCCs, to wit: 1) All tax credit certificates issued to BOI-registered enterprises under P.D. 1789 may be transferred under conditions provided herein; 2) The transferee should be a BOI-registered firm; 3) The transferee may apply such tax credit certificates for payment of taxes, duties, charges or fees directly due to the national government for as long as it enjoys incentives under P.D. 1789.

4. ID.; ID.; ID.; RESPECTED WITH REGARD TO TRANSFEREE IN GOOD FAITH AND FOR VALUE; IN CASE OF FRAUD, REMEDY AVAILABLE TO THE GOVERNMENT, DISCUSSED. — While the Government cannot, concededly, be estopped from collecting taxes by the mistake, negligence, or omission of its agents, the Court's ruling in the *Pilipinas Shell* case is to the effect that an assignee's status as a transferee in good faith and for value provides ample protection from the adverse findings subsequently made by the Center. x x x Once a case has been decided one way, the rule is settled that any other case involving exactly the same point at issue should be decided in the same manner under the principle *stare decisis et non quieta movere.* Fealty to the same principle impels us to discount merit from respondent's reliance on the Liability

Clause at the dorsal portion of the TCCs which provides that both the transferor and the transferee shall be jointly and severally liable for any fraudulent act or violation of the pertinent laws, rules and regulations relating to the transfer of the TCC. x x x As for the government agency vested with the authority to cancel the subject TCCs, the ruling in the *Pilipinas Shell* is to the effect that, pursuant to Section 3 (a), (g) and (l) of AO 226, the Center has concurrent authority to do so alongside the BIR and the BOC. Given the nature of the TCC's immediate effectiveness and validity, however, said authority may only be exercised before the TCC has been fully utilized by a transferee which had no participation in the perpetration of fraud in the issuance, transfer and utilization thereof. Once accepted by the BIR and applied towards the satisfaction of such a tranferee's tax obligations, a TCC is effectively used up, debited and canceled such that there is nothing left to avoid or to cancel anew. Considering the protection afforded to transferees in good faith and for value, it was held that the remedy of the Government is to go after the grantees alleged to have perpetrated fraud in the procurement of the subject TCCs.

5. ID.; DEFICIENCY OF EXCISE TAX; ASSESSMENT THEREOF INVALIDATED; RATIONALE. — Respondent had no legal basis to once again assess the excise taxes Petron already paid with the use of the TCCs assigned in its favor, much less to impose the 25% late payment surcharge pursuant to Section 248 (A) of the *National Internal Revenue Code of 1997* and the 20% interest provided under Section 249 of the same Code. Admitted to have filed its tax returns in accordance with law, Petron was never questioned nor assessed for deficiency delinquency in the payment of its excise taxes from 1992 to 1997, thru the use of the TCCs assigned by the original grantees. In receipt of the November 15, 1999 Assessment subsequent to the Center's cancellation of the subject TCCs, Petron filed the petition for review docketed before the CTA Second Division as CTA Case No. 6136 as a consequence of respondent's inaction on its protest. Although the August 23, 2006 adverse decision rendered in said case was affirmed in the herein assailed October 30, 2007 decision rendered in CTA EB No. 238, a reversal of said CTA *En Banc* decision would necessarily foreclose the factual and legal bases for respondent's impugned Assessment.

APPEARANCES OF COUNSEL

Belo Gozon Elma Parel Asuncion & Lucila for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PEREZ, *J.*:

Assailed in this petition for review on *certiorari* filed pursuant to Rule 45 of the *1997 Rules of Civil Procedure* and Section 11 of Republic Act No. 9282[1] is the Decision dated October 30, 2007 rendered by the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 238.[2] The assailed decision affirmed the Decision dated August 23, 2006 in turn rendered by the CTA Second Division in CTA Case No. 6136, ordering petitioner Petron Corporation (Petron) to pay deficiency excise taxes for the taxable years 1995 to 1997, together with the surcharge, interests and delinquency interest imposed thereon.[3]

The Facts

A corporation engaged in the production of petroleum products, Petron is a Board of Investment (BOI) registered enterprise in accordance with the provisions of the Omnibus Investment Code, under Certificates of Registration No. 89-1037 and D95-136. Pursuant to Deeds of Assignment executed in its favor, Petron acquired Tax Credit Certificates (TCCs) from, among others, the following BOI-registered entities, namely, Diamond Knitting Corporation, Filstar Textile Industrial Corporation, Alliance Thread Co., Inc., Fiber Tech. Corporation, Jantex Phils., Inc. and Master Colour System Corporation.[4] Granted to the foregoing assignees

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[1] An Act Expanding the Jurisdiction of the Court of Tax Appeals.

[2] CTA EB No. 238, records, pp. 1069-1098.

[3] CTA Case. No. 6136, records, pp. 1448-1468.

[4] Exhibits "V73" -"D74", "E74"-"P74". "Q74"-"X74", "Y74"-"E75"; "F75"-"K75", "L75"-"M75", *Id.* at 648-673; 671-712; 717-739; 744-762; 766-783; 786-791.

pursuant to Administrative Order No. 226, in relation to Executive Order No. 226,[5] the TCCs were subject to the following conditions, to wit:

1. Post-audit and subsequent adjustment in the event of computational discrepancy;
2. A deduction for any outstanding account/obligation of claimant with the BIR and/or BOC; and
3. Revalidation with the Center in case the TCC is not utilized for payment within one (1) year from the date of issuance/ date of last utilization.

The assignments of the TCCs were duly approved by the Department of Finance One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (the Center), a tax credit window created under Administrative Order No. 226,[6] dated February 7, 1992, composed of representatives from the Department of Finance (DOF), the BOI, the Bureau of Customs (BOC) and the Bureau of Internal Revenue (BIR). Issued DOF Tax Debit Memos (DOF-TDMs) by the Center, Petron, as assignee of said TCCs, utilized the same to pay its excise tax liabilities for the years 1993 to 1997. Upon Petron's surrender of the DOF-TDMs, TCCs and Deeds of Assignment, the corresponding Authorities to Accept Payment of Excise Taxes (ATAPETs) were further issued by the BIR Collection Program Division. Together with the aforesaid documents, the ATAPETs were further submitted to the BIR Head Office which issued BIR-TDMs signed by the Assistant Commissioner of Collection Service, signifying acceptance of the TCCs as payment of Petron's excise taxes.[7]

Pursuant to its undertaking under the aforesaid Deeds of Assignment, Petron issued Credit Notes (CNs) in an equivalent amount in favor of its assignors which, by themselves or thru

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[5] Omnibus Investment Code of 1987.

[6] Creating A One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center For the Processing of All Tax Credits and Duty Drawbacks Defining Its Powers, Duties and Functions, and For Other Purposes.

[7] TSN, April 23, 2003, pp. 32-34.

their own assignees, used the same to avail of fuel products from the former.[8] On the ground, however, that its use of TCCs issued to said grantees was invalid for being violative of Rule IX of the Rules and Regulations issued by the BOI to implement Presidential Decree No. 1789[9] and Batas Pambansa Blg. 391,[10] Petron received a collection letter dated April 22, 1998 from the BIR Revenue District Office of South Makati, Metro Manila, demanding payment of the total amount of ₱1,107,542,547.08 in unpaid taxes, surcharges and interests for the years 1993 to 1997.[11] With the denial of its letters of protest to the foregoing collection letter, Petron perfected an appeal which was docketed as C.T.A. Case No. 5657 before the CTA. Upholding Petron's argument to the effect, among other matters, that its status as a BOI-registered enterprise and its transactions with the original grantees qualified it to be a transferee of the subject TCCs, the CTA rendered a decision dated July 23, 1999,[12] the decretal portion of which states:

> WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby GRANTED. The collection of the alleged delinquent excise taxes in the amount of ₱1,107,542,547.08 is hereby CANCELLED AND SET ASIDE for being contrary to law. Accordingly, Respondents are ENJOINED from collecting the said amount of taxes against the petitioner.
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> SO ORDERED.[13]

During the pendency of the respondent's appeal before the Court of Appeals under docket of CA-G.R. No. 55330, the Center conducted a post-audit in the premises. On October 24,

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[8] Exhibit "A".

[9] A Decree to Revise, Amend and Codify the Investment, Agricultural and Export Incentives Acts to be Known as the Omnibus Investment Code.

[10] An Act Declaring the 1983 Investment Incentives Policy by Modifying the System on the Grant of Investments Incentives.

[11] CTA Case No. 6136, records, p. 89.

[12] *Id.* at 56-87.

[13] *Id.* at 87.

1999, the Center cancelled TCCs worth ₱284,390,845.00 of the same TCCs[14] acquired and used by Petron on the ground that they were fraudulently procured and transferred. The cancellation was based on the following findings, *viz*.: (a) the grantees did not manufacture and export at the volumes which served as bases for the grant of the subject TCCs; and, (b) the grantees were not using fuel oil at the levels which served as bases for the approval of the transfer of the same TCCs.[15] As a consequence of the cancellation, respondent issued an Assessment dated November 15, 1999 (the Assessment), directing Petron to pay deficiency excise taxes in the sum of ₱284,390,854.00 for the period 1995 to 1997, surcharges in the sum of ₱142,195,422.50 and interest in the sum of ₱224,747,996.42 or an aggregate amount of ₱651,334,263.92.[16]

In view of respondent's inaction on the protest it filed to question the factual and legal bases of the Assessment, Petron filed the July 7, 2000 petition for review which was docketed before the CTA as C.T.A. Case No. 6136. Coupled with a motion to stay collection of the deficiency excise taxes, surcharges and interest sought to be collected, the petition alleged, among other matters, that Petron's right to due process was violated since it was not informed and/or given any opportunity to participate in the proceedings which resulted in the cancellation of the TCCs, that the Assessment was void for lack of a statement of the facts and the law on which the same was based; that the validity of Petron's use of the TCCs assigned in its favor as payment of its excise taxes had been upheld by the CTA in C.T.A. Case No. 5657; and, that respondent's right to collect the alleged tax delinquencies had already prescribed. Petron prayed for the issuance of an injunctive writ against the Assessment, the invalidation of the cancellation of the TCCs as well as the withdrawal of the Assessment.[17]

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[14] CTA Case No. 6136, records, pp. 183-185.

[15] Exhibits "2" to "8" and submarkings.

[16] CTA Case No. 6136, records, p. 182.

[17] *Id.* at 1-30.

Served with summons, respondent filed its August 28, 2000 answer, specifically denying the material allegations of the foregoing petition. Contending that the cancellation of the subject TCCs rendered the same valueless and resulted in the non-payment of the excise taxes for which they were utilized, respondent averred that, Petron was apprised of the cancellation of the TCCs which served as basis for the Assessment as well as the law and facts on which the same was based; that the TCCs were cancelled on the strength of the Center's findings that they were fraudulently obtained and transferred to Petron upon fictitious supply agreements with the grantees; and, that the government's right to collect the deficiency excise taxes, together with the interests and surcharges, had yet to prescribe in view of Petron's filing of fraudulent returns with intent to evade payment of taxes. Maintaining that all presumptions are in favor of the correctness of the Assessment and that the government is never estopped from collecting legitimate taxes due to the errors committed by its agents, respondent sought the dismissal of the petition, with costs.[18]

At the pre-trial conference conducted in the case, the parties submitted a Joint Stipulation of Facts and Issues dated March 29, 2001[19] upon which Petron rested its case. With the parties' further submission of the Joint Stipulations of Facts and Issues dated June 22, 2001[20] and January 24, 2002[21] as well as respondent's filing of his Formal Offer of Evidence,[22] Petron moved for the presentation of its rebuttal evidence and the appointment of an independent Certified Public Accountant to examine, evaluate and audit the pieces of documentary evidence intended to be adduced.[23] Commissioned for the purpose by

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[18] *Id.* at 120-125.

[19] *Id.* at 182-190.

[20] *Id.* at 209-211.

[21] *Id.* at 246-249.

[22] *Id.* at 254-268.

[23] *Id.* at 291-293; 296-298.

the CTA, Lilian Linsangan of *Punongbayan & Araullo* submitted a written report dated March 10, 2003 and a supplemental report dated March 17, 2003 which Petron submitted in evidence alongside the TCCs, TDMs, CNs, ATAPETs and pertinent documents probative of its claim of valid payment of taxes.[24]

Subsequent to the parties' filing of their respective memoranda[25] and the submission of the case for decision, respondent filed a motion to reopen the case for the purpose of presenting additional evidence.[26] With the grant of said motion in the September 24, 2004 resolution issued by the CTA Second Division,[27] respondent presented Beverly Taneza-Basman, a Tax Specialist II at the Center, who presented and identified[28] the documents which served as bases for the Center's approval of the grantees' transfer of the subject TCCs to Petron.[29] In receipt of the parties' respective supplemental memoranda,[30] the CTA Second Division went on to render the August 23, 2006 decision,[31] denying Petron's petition for lack of merit, *viz.*:

WHEREFORE, premises considered, this instant Petition for Review is hereby DENIED for lack of merit. Accordingly, petitioner is ORDERED TO PAY the respondent the amount of FIVE HUNDRED EIGHTY MILLION TWO HUNDRED THIRTY-SIX THOUSAND FIVE HUNDRED FIFTY TWO AND 67/100 PESOS (₱580,236,552.67), representing deficiency excise taxes for the taxable years 1995 to 1997, computed as follows:

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[24] CTA Case No. 6136, records, pp. 445-643; 992-994.

[25] *Id.* at 1024-1084; 085-1099.

[26] *Id.* at 1103-1108.

[27] *Id.* at 1119-1123.

[28] TSN, July 13, 2005, pp. 4-10.

[29] CTA Case No. 6136, records, pp. 1205-1215; 1240-1244.

[30] *Id.* at 1408-1424; 1431-1444.

[31] *Id.* at 1448-1468.

BasicTax		₱284,390,845.00
Add:		
Late Payment Surcharge (25%)	₱71,097,711.25	
Interest (20%)	224,747,996.42	295,847,707.67
		₱580,236,552.67

In addition, petitioner is ORDERED TO PAY the respondent 20% delinquency interest per annum on the ₱580,236,552.67, computed from December 4, 1999 until the amount is fully paid.

SO ORDERED.[32]

With the denial of its motion for reconsideration of the foregoing decision[33] for lack of merit in the CTA Second Division's resolution dated November 23, 2006,[34] Petron elevated the matter via the petition for review docketed before the CTA *En Banc* as CTA EB Case No. 238.[35] On October 30, 2007, the CTA *En Banc* rendered the herein assailed decision, affirming the August 23, 2006 decision of the CTA Second Division,[36] upon the following findings and conclusions, to wit:

(a) The subsequent cancellation of the TCCs resulted in the non-payment of the excise tax liabilities since the post-audit partook the nature of a suspensive condition to the effectiveness of Petron's use thereof;

(b) The Center's finding of fraud in the procurement of the TCCs by the grantees rendered the same worthless, even in the hands of an assignee like Petron;

(c) The evidence adduced in the case which showed misrepresentation in the levels of fuel oil use by the grantees and the non-delivery of petroleum products by Petron also indicate that fraud also attended the transfer of the TCCs;

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[32] *Id.* at 1466-1467.

[33] *Id.* at 1469-1503.

[34] *Id.* at 1516-1521.

[35] Record, CTA E.B. No. 238, pp. 37-97.

[36] *Id.* at pp. 1069-1098.

(d) The Center acted within its mandate in declaring TCCs fraudulently issued and transferred; and

(e) The resultant delay in the payment of Petron's excise tax liabilities justified the imposition of the 25% surcharge and annual interest of 20% pursuant to Sections 248A(3) and 249 of the Tax Code.

The Issues

Aggrieved, Petron filed the petition for review on *certiorari* at bench, on the following grounds:

I. THE COURT OF TAX APPEALS *EN BANC* COMMITTED GRAVE REVERSIBLE ERROR WHEN IT RULED THAT THE SUBSEQUENT CANCELLATION BY THE DOF CENTER OF THE TAX CREDIT CERTIFICATES PREVIOUSLY USED TO PAY PETRON'S TAX LIABILITIES HAD THE EFFECT OF NON-PAYMENT OF PETRON'S EXCISE TAXES ALLEGEDLY BECAUSE THE SUBSEQUENT CANCELLATION OF THE TCCs RESULTS IN NON-PAYMENT OF PETRON'S EXCISE TAX LIABILITIES CONSIDERING THAT:

A. POST-AUDIT OF THE TAX CREDIT CERTIFICATES IS NOT IN THE NATURE OF A SUSPENSIVE CONDITION TO EFFECT PAYMENT.

B. THERE WAS NO FRAUD IN THE TRANSFER OF THE SUBJECT TAX CREDIT CERTIFICATES.

C. BEING A PURCHASER IN GOOD FAITH, PETRON CANNOT BE PREJUDICED BY A SUBSEQUENT FINDING OF FRAUD IN THE GRANT AND TRANSFER OF THE TAX CREDIT CERTIFICATES.

II. THE COURT OF TAX APPEALS *EN BANC* COMMITTED GRAVE REVERSIBLE ERROR WHEN IT RULED THAT THE TAX CREDIT CERTIFICATES WERE FRAUDULENTLY TRANSFERRED FROM THE GRANTEES TO PETRON CONSIDERING THAT:

A. THE TCCS WERE ASSIGNED TO PETRON IN ACCORDANCE WITH THE LAW AND THE ASSIGNMENTS WERE APPROVED BY THE APPROPRIATE GOVERNMENT AGENCIES.

B. PETRON FULFILLED ITS OBLIGATION TO ISSUE CREDIT NOTES UNDER THE DEEDS OF ASSIGNMENT.

C. THE CREDIT NOTES WERE AVAILED BY THE ASSIGNORS AND FUEL AND OTHER PETROLEUM PRODUCTS WERE DELIVERED UPON THE ORDER OF THE ASSIGNORS.

D. AFFIDAVITS OF GENERAL MANAGERS ATTACHED TO THE CANCELLATION MEMORANDUM ALLEGEDLY DENYING DELIVERIES OF FUEL AND PETROLEUM PRODUCTS ARE HEARSAY.

E. VALIDITY OF PETRON'S PAYMENTS OF EXCISE TAXES THRU THE USE OF ASSIGNED TCCS UPHELD BY THE COURT OF TAX APPEALS IN CTA CASE NO. 5657, '*PETRON CORPORATION VS. COMMISSIONER OF INTERNAL REVENUE, ET AL.*'

III. THE COURT OF TAX APPEALS *EN BANC* COMMITTED GRAVE REVERSIBLE ERROR WHEN IT RULED THAT THE DEPARTMENT OF FINANCE CENTER IS THE COMPETENT AUTHORITY TO DECLARE THE TAX CREDIT CERTIFICATES AS FRAUDULENTLY ISSUED AND TRANSFERRED.

IV. THE COURT OF TAX APPEALS *EN BANC* COMMITTED GRAVE REVERSIBLE ERROR WHEN IT RULED THAT PETRON IS LIABLE TO PAY TWENTY-FIVE PERCENT (25%) LATE PAYMENT SURCHARGE PURSUANT TO SECTION 28(A) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 AND TWENTY PERCENT (20%) INTEREST PURSUANT TO SECTIONS 248 AND 249 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997.[37]

The Court's Ruling

We find the petition impressed with merit.

In urging the reversal of the assailed Decision, Petron argues that, having been issued pursuant to Administrative Order No. 226 in relation to Executive Order No. 226, the subject

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

TCCs were immediately effective and could be readily used by the grantees and/or their transferees. Invoking this Court's ruling in the case of *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*[38] to the effect, among other matters, that the post-audit of the TCCs was not meant as a suspensive condition for their validity but pertained only to computational discrepancies resulting from their transfer and utilization, Petron maintains that respondent failed to prove the fraud which purportedly attended the procurement of the subject TCCs. Against Petron's contention that its rights as a purchaser in good faith cannot be prejudiced even in the face of the Center's subsequent finding of fraud in the grant of the TCCs,[39] the Office of the Solicitor General, in representation of respondent, argues that, the cancellation of the subject TCCs effectively avoided the payment of the excise tax liabilities of Petron which, as assignee, could not acquire rights better than the grantees-assignors.

As correctly pointed out by Petron, however, the issue about the immediate validity of TCCs and the use thereof in payment of tax liabilities and duties are not matters of first impression for this Court. Taking into consideration the definition and nature of tax credits[40] and TCCs,[41] this Court's Second Division definitively ruled in the aforesaid *Pilipinas Shell* case that the post audit is not a suspensive condition for the validity of TCCs, thus:

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[38] *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*, G.R. No. 172598, 541 SCRA 316, December 21, 2007.

[39] *Rollo*, pp. 790-816.

[40] A tax credit is an allowance against the tax itself (citing Smith, West's Tax Law Dictionary 177-178 [1993]) or a deduction from what is owed (citing Oran and Tosti, *Oran's Dictionary of the Law* 124 (3rd ed., 2000).

[41] A certification duly issued to the taxpayer named therein, by the Commissioner or his duly authorized representative, reduced in a BIR Accountable form in accordance with the prescribed formalities, acknowledging that the grantee-taxpayer named therein is legally entitled a tax credit, the money value of which may be used in payment or in satisfaction of any of his internal revenue tax liability (except those excluded), or may be converted as a cash

Art. 1181 tells us that the condition is suspensive when the acquisition of rights or demandability of the obligation must await the occurrence of the condition. However, Art. 1181 does not apply to the present case since the parties did NOT agree to a suspensive condition. Rather, specific laws, rules, and regulations govern the subject TCCs, not the general provisions of the Civil Code. Among the applicable laws that cover the TCCs are EO 226 or the Omnibus Investments Code, Letter of Instructions No. 1355, EO 765, RP-US Military Agreement, Sec. 106 (c) of the Tariff and Customs Code, Sec. 106 of the NIRC, BIR Revenue Regulations (RRs), and others. Nowhere in the aforementioned laws does the post-audit become necessary for the validity or effectivity of the TCCs. Nowhere in the aforementioned laws is it provided that a TCC is issued subject to a suspensive condition.

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xxx (T)he TCCs are immediately valid and effective after their issuance. As aptly pointed out in the dissent of Justice Lovell Bautista in CTA EB No. 64, this is clear from the Guidelines and instructions found at the back of each TCC, which provide:

> 1. This Tax Credit Certificate (TCC) shall entitle the grantee to apply the tax credit against taxes and duties until the amount is fully utilized, in accordance with the pertinent tax and customs laws, rules and regulations.
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> x x x x x x x x x
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> 4. To acknowledge application of payment, the One-Stop-Shop Tax Credit Center shall issue the corresponding Tax Debit Memo (TDM) to the grantee.
>
> The authorized Revenue Officer/Customs Collector to which payment/utilization was made shall accomplish the Application of Tax Credit at the back of the certificate and affix his signature on the column provided."

The foregoing guidelines cannot be clearer on the validity and effectivity of the TCC to pay or settle tax liabilities of the grantee or transferee, as they do not make the effectivity and validity of the

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refund, or may otherwise be disposed of in the manner and in accordance with the limitations, if any, as may be prescribed by the provisions of these Regulations (Sec. 1, B, RR 5-200).

TCC dependent on the outcome of a post-audit. In fact, if we are to sustain the appellate tax court, it would be absurd to make the effectivity of the payment of a TCC dependent on a post-audit since there is no contemplation of the situation wherein there is no post-audit. Does the payment made become effective if no post-audit is conducted? Or does the so-called suspensive condition still apply as no law, rule, or regulation specifies a period when a post-audit should or could be conducted with a prescriptive period? Clearly, a tax payment through a TCC cannot be both effective when made and dependent on a future event for its effectivity. Our system of laws and procedures abhors ambiguity.

Moreover, if the TCCs are considered to be subject to post-audit as a suspensive condition, the very purpose of the TCC would be defeated as there would be no guarantee that the TCC would be honored by the government as payment for taxes. No investor would take the risk of utilizing TCCs if these were subject to a post-audit that may invalidate them, without prescribed grounds or limits as to the exercise of said post-audit.

The inescapable conclusion is that the TCCs are not subject to post-audit as a suspensive condition, and are thus valid and effective from their issuance. As such, in the present case, if the TCCs have already been applied as partial payment for the tax liability of PSPC, a post-audit of the TCCs cannot simply annul them and the tax payment made through said TCCs. Payment has already been made and is as valid and effective as the issued TCCs. The subsequent post-audit cannot void the TCCs and allow the respondent to declare that utilizing canceled TCCs results in nonpayment on the part of PSPC x x x."[42]

Considered in the light of the foregoing pronouncements, Petron correctly argues that the CTA *En Banc* reversibly erred in holding that the result of the post-audit conducted by the Center partook the nature of a suspensive condition for the validity of the subject TCCs and the use thereof as payment of its tax liabilities or duties. Limited only to computational discrepancies arising from the use or transfer of TCCs, the post-audit conducted by the Center would, if at all, only give rise to an adjustment of the monetary value of the TCCs subjected thereto. Issued pursuant to Article 39 (k) of Executive Order

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[42] *Id.* at 338-342.

No. 226[43] and subject to the aforequoted Guidelines and Instructions printed at the back thereof, the subject TCCs were, consequently, valid upon their issuance in favor of the original grantees which had the right to use them in payment of their tax liabilities and/or transfer them in favor of assignees like Petron which could, in turn, utilize them as payment of its own tax liabilities.

Not being privy to the issuance of the subject TCCs and having already used them in paying its own tax liabilities, Petron also correctly points out that it cannot be prejudiced by the fraud which supposedly attended the issuance of the same. More so, when it is borne in mind that, as ground for the cancellation of said TCCs, fraud was not adequately established by respondent with clear and convincing evidence showing that the grantees had not, indeed, manufactured and exported at the volumes which served as bases for the grant of the subject TCCs. Rather than presenting oral and documentary evidence to prove said material fact, the record shows that respondent simply relied on the findings and conclusions the Center cited in support of the cancellation of the TCCs[44] as well as those embodied in the Report of the Senate Committee on Ways and Means and Committee on Accountability of Public Officers and Investigation which jointly delved into the irregularities reported to have attended the Center's issuance of TCCs in favor of corporations in the textile industry, including petitioner's assignors.[45]

While the CTA is not governed strictly by technical rules of evidence on the principle that rules of procedure are not ends in themselves but are primarily intended as tools in the

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[43] (k) Every BOI registered enterprise shall enjoy a tax credit equivalent to the national internal revenue taxes and customs duties paid on the supplies, raw materials and semi-manufactured products used in the manufacture, processing or production of its export products and forming part thereof, exported directly or indirectly by the registered enterprise, Provided, however, That the taxes on the supplies, raw materials and semi-manufactured products domestically purchased are indicated as a separate item in the sales invoice.

[44] *Supra*, see Note 15.

[45] Exhibit "12".

administration of justice,[46] respondent's presentation of evidence to prove the fraud which attended the issuance of the subject TCCs is not a mere procedural technicality which may be disregarded considering that it is the very basis for the claim that Petron's payment of its excise tax liabilities had been avoided. It cannot be over-emphasized that fraud is a question of fact[47] which cannot be presumed and must be proven by clear and convincing evidence[48] by the party alleging the same. Without even presenting the documents which served as bases for the issuance of the subject TCCs from 1994 to 1997, respondent miserably failed in discharging his evidentiary burden with the presentation of the Center's cancellation memoranda to which were simply annexed some of the grantees' original registration documents[49] and their Financial Statements for an average of two years.[50]

On the other hand, the transferability of the TCCs issued in favor of the original grantees is primarily governed by Article 21 of EO 226 which provides that, "the tax credit certificates issued by the Board (of Investments) pursuant to laws repealed by this Code but without in any way diminishing the scope of negotiability under their laws of issue are transferable under such conditions as may be determined by the Board after consultation with the Department of Finance." In turn, the Implementing Rules and Regulations (IRR) of EO 226

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[46] *Dizon v. Court of Tax Appeals,* G.R. No. 140944, 553 SCRA 111, 129, April 30, 2008.

[47] *South Pacific Plastic Manufacturing Corporation vs. Manila Electric Company,* G.R. No.144300, 493 SCRA 114, 123, June 27, 2006.

[48] *Commissioner of Internal Revenue v. Court of Appeals,* 327 Phil. 1, 34 (1996).

[49] Exhibits "2-I", "5-I", "6-I", "7-I", "8-I".

[50] 1994/1995 for Alliance Thread Company, Inc. (Exhibit "2-H" and submarkings); 1995/1996 for Filstar Textile Industrial Corp. (Exhibit "4-B", "6-H" and submarkings); Fiber Technology Corporation (Exhibit "5-H" and submarkings); Jantex Phils., Inc. (Exhibit "7-H" and submarkings); and Master Colours Systems, Inc. (Exhibit "8-H" and submarkings).

incorporated the October 5, 1982 Memorandum of Agreement (MOA) between the Ministry of Finance (MOF) and the BOI, which pertinently provides the following guidelines for the transfer of said TCCs, to wit:

1) All tax credit certificates issued to BOI-registered enterprises under P.D. 1789 may be transferred under conditions provided herein;
2) The transferee should be a BOI-registered firm;
3) The transferee may apply such tax credit certificates for payment of taxes, duties, charges or fees directly due to the national government for as long as it enjoys incentives under P.D. 1789.

As a BOI-registered enterprise under Certificates of Registration No. 89-1037 and D95-136, Petron is undoubtedly a qualified transferee of the TCCs originally issued in favor of its assignors. In finding that the assignments of the TCCs in favor of Petron were likewise fraudulent, however, the CTA *En Banc* ruled that the aforesaid October 5, 1982 MOA between the MOF and the BOI was amended by the said agencies' August 29, 1989 MOA which additionally required that the TCC-assignee should be a "*domestic capital equipment supplier or a raw material and/or component supplier of the transferor*." Underscoring the fact that the assignments were approved upon the representation that the TCCs were to be used as payment for oil products purchased from Petron, the CTA *En Banc* found that the grantees' Financial Statements indicated that they could not have consumed fuels at the levels represented to the Center and that Petron had not, in fact, delivered petroleum products in consideration of the assignment of the TCCs.[51]

As held in the *Pilipinas Shell* case, however, said August 29, 1989 MOA between the MOF and the BOI cannot prejudice transferees of TCCs like petitioner. Aside from not having been elevated to the level of or incorporated as an amendment in the IRR of EO 226, the same MOA was found ineffective for non-compliance with the publication requirement under Chapter 2,

[51] CTA Case No. 6136, records, pp. 1088-1093.

Book VII of EO 292, otherwise known as the Administrative Code of 1987.[52] For the validity of the transfer of the TCCs by the grantees, it is, consequently, enough that Petron is a BOI registered-enterprise, as provided under said agencies' October 5, 1982 MOA. Although not required by law to be a capital equipment provider or a supplier of raw material and/or component supplier to the transferors, the record, even then, shows that Petron issued credit notes to the grantees and, as a result, delivered petroleum products in favor of the latter and/or its assignees in the aggregate amount of ₱284,390,845.00.[53] In the absence of showing of any legal prohibition thereon, we find that Petron cannot be faulted for honoring the grantees' further assignment of said credit notes in favor of third parties.

For a party charged with the burden of proving the same, respondent did not even come close to establishing the fraud which purportedly attended both the issuance of the subject TCCs and the transfer thereof in favor of Petron. That respondent's reliance of the Center's cancellation memoranda was misplaced and misguided is evident from the following admissions in the parties' June 22, 2001 Joint Stipulation of Facts and Issues, to wit:

3. That the available records at the DOF Center upon which the findings and conclusions of the Cancellation Memorandum (Exhibits "2", "3", "4", "5", "6", "7" and "8") were based had not been explained nor confirmed by the issuer, signatory or parties to the said records;

4. That respondent's witness, Beverly M. Taneza has no actual knowledge that Petron actually delivered fuel and other petroleum products in fulfillment of, and in accordance with, its agreement or instructions of the assignors, namely, Diamond Knitting, Alliance Thread, Filstar Textile, Fiber Tech., Jantex Phils. and Master Colour which assigned their TCCs to Petron in consideration or payment of the delivery and supply of fuel and other petroleum products;

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[52] *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*, *Supra* at 345-346.

[53] Exhibits "A-13", "A-15", "A-16 and submarkings.

5. That the statement in the 'Recommendation' on the Cancellation Memorandum (Exhibits "2", "3", "4", "5", "6", "7" and "8") that the TCC grantees Diamond Knitting, Alliance Thread, Filstar Textile, Fiber Tech., Jantex Phils. and Master Colour have concurred in their findings on the issuance and transfer of the TCCs to the oil companies is based on the Affidavits of the General Managers of the said TCC grantees marked as Exhibit '2-G' (Virgilio Pinon of Alliance Thread), '3-F' (Reynato G. Andaya of Diamond Knitting), '5-G' (Carmencita C. Camara of Fiber Tech.), '6-G' (Rodel P. Rodriguez of Filstar Textile), '7-G' (Angel T. Chua of Jantex Phils.) and '8-G' (Margaret A. De Luna of Master Colour).[54]

In finding that the assignments of the TCCs in favor of Petron were fraudulent, we find that the CTA *En Banc* reversibly erred in relying on the abovementioned affidavits executed by the grantees' former general managers/officers who, after disavowing knowledge of the assignment of the subject TCCs and Petron's delivery of bunker fuel oil in consideration thereof, requested the cancellation of the TCCs.[55] Without said erstwhile general managers/officers being presented on the witness stand to affirm the truth and veracity of their statements, the affidavits they executed are, however, correctly impugned by Petitioner as hearsay for lack of opportunity to cross-examine said affiants. Almost always incomplete and often inaccurate, sometimes from partial suggestion, or for want of suggestion and inquiries,[56] the infirmity of affidavits as species of evidence is a matter of judicial experience and are thus considered inferior to the testimony given in open court.[57] Unless the affiant is placed on the witness stand to testify thereon, the rule is settled that affidavits are inadmissible as evidence under the hearsay rule.[58]

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[54] CTA Case No. 6136, records, pp. 209-211.

[55] Exhibits "2-G", "3-F", "5-G", "6-G", "7-G" and "8-G".

[56] *Yu Eng Cho vs. Pan American World Airways, Inc.*,G.R. No. 123560, 385 Phil. 453, 465-466.

[57] *People vs. Diaz,* 331 Phil. 240, 252 (1996).

[58] *D.M. Consunji, Inc. vs. Court of Appeals,* 409 Phil. 275, 293 (2001).

Having proven the valuable consideration for the grantees' transfer of the TCCs in its favor, it also bears pointing out that Petron has more than amply proved its good faith by complying with the procedures laid down for the transfer and use thereof. With its approval of the Deeds of Assignment executed by the grantees, the Center unequivocally affirmed not only the validity of the TCCs but also the transfer thereof in favor of Petron to whom it issued the requisite DOF-TDMs. On the other hand, upon surrender of the Deeds of Assignment, the TCCs and the DOF-TDMs, the BIR Collection Program Division issued the corresponding ATAPETs which, together with said documents, were further submitted to the BIR Head Office. It was only after further authentication and verification of the documents thus submitted that Petron was eventually issued BIR TDMs which bore the signature of the BIR Assistant Commissioner of Collection Service and signified acceptance of the TCCs as payment of the excise taxes due from the former.[59]

Under RR 5-2000, a TDM or a Tax Debit Memo "shall serve as the official receipt from the BIR evidencing a taxpayer's payment or satisfaction of his tax obligation." Until the Center's cancellation of the TCCs assigned in its favor, Petron was, in fact, never questioned nor assessed for deficiency or delinquency in the payment of its excise taxes thru the use of the same TCCs.[60] Even prescinding from the CTA July 23, 1999 decision in C.T.A. Case No. 5657 which remains on appeal before the Court of Appeals, we find that Petron had every right to rely on the validity of the subject TCCs, the Center's approval of the deeds of assignment the grantees executed over the same and the BIR's acceptance of its use thereof in payment of its excise taxes. While the Government cannot, concededly, be estopped from collecting taxes by the mistake, negligence, or omission of its agents,[61] the Court's ruling in the *Pilipinas Shell* case is to the effect that an assignee's status as a transferee

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[59] TSN, April 23, 2003, pp. 32-34.

[60] CTA Case No. 6136, records, pp. 182-190.

[61] *Philippine National Oil Company v. Court of Appeals*, 496 Phil. 506, 577 (2005).

in good faith and for value provides ample protection from the adverse findings subsequently made by the Center.[62]

In urging the affirmance of the assailed decision, respondent calls our attention to the pronouncement in the case of *Proton Pilipinas Corporation vs. Republic of the Philippines*[63] that the resultant non-payment of customs duties and taxes by reason of the cancellation of the TCCs for having been found as fake and spurious is the obligation of the taxpayer. Rather than the legal implications and consequences of the cancellation of TCCs, however, the *Proton Pilipinas* case dealt with procedural matters such as the effect of the Sandiganbayan's jurisdiction over the criminal case involving the issuance of the TCCs to the collection case instituted by the government before the Regional Trial Court (RTC), the existence of *litis pendentia* as a consequence of the pendency of the criminal and civil cases filed under the circumstances and the prejudicial question arising therefrom. Sharing the same factual and legal milieu as the case at bench, more in point is the *Pilipinas Shell* case which ruled that the rights of a transferee in good faith cannot be prejudiced by the Center's turnaround from its previous approval of the assignments of the TCCs.

Once a case has been decided one way, the rule is settled that any other case involving exactly the same point at issue should be decided in the same manner[64] under the principle *stare decisis et non quieta movere.* Fealty to the same principle impels us to discount merit from respondent's reliance on the Liability Clause at the dorsal portion of the TCCs which provides that both the transferor and the transferee shall be jointly and severally liable for any fraudulent act or violation of the pertinent

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[62] *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue, Supra* at 349.

[63] *Proton Pilipinas Corporation v. Republic of the Phils., Represented by the Bureau of Customs*, G.R. No. 165027, 504 SCRA 528, October 16, 2006.

[64] *Commissioner of Internal Revenue v. Trustworthy Pawnshop, Inc.*, G.R. No. 149834, 488 SCRA 538, 545, May 2, 2006.

laws, rules and regulations relating to the transfer of the TCC. Expounding on the practical and legal significance of said Liability Clause in the *Pilipinas Shell* case, this Court ruled as follows:

> The above clause to our mind clearly provides only for the solidary liability relative to the **transfer** of the TCCs from the original grantee to a transferee. There is nothing in the above clause that provides for the liability of the transferee in the event that the validity of the TCC issued to the original grantee by the Center is impugned or where the TCC is declared to have been fraudulently procured by the said original grantee. Thus, the solidary liability, if any, applies only to the sale of the TCC to the transferee by the original grantee. Any fraud or breach of law or rule relating to the issuance of the TCC by the Center to the transferor or the original grantee is the latter's responsibility and liability. The transferee in good faith and for value may not be unjustly prejudiced by the fraud committed by the claimant or transferor in the procurement or issuance of the TCC from the Center. It is not only unjust but well-nigh violative of the constitutional right not to be deprived of one's property without due process of law. Thus, a re-assessment of tax liabilities previously paid through TCCs by a transferee in good faith and for value is utterly confiscatory, more so when surcharges and interests are likewise assessed.
>
> A transferee in good faith and for value of a TCC who has relied on the Center's representation of the genuineness and validity of the TCC transferred to it may not be legally required to pay again the tax covered by the TCC which has been belatedly declared null and void, that is, after the TCCs have been fully utilized through settlement of internal revenue tax liabilities. Conversely, when the transferee is party to the fraud as when it did not obtain the TCC for value or was a party to or has knowledge of its fraudulent issuance, said transferee is liable for the taxes and for the fraud committed as provided for by law.[65]

In addition to its lack of participation in the procurement of the subject TCCs as admitted in the parties' March 29, 2001 Joint Stipulation of Facts and Issues, Petron was not shown to have had a hand in or knowledge of the fraud which purportedly

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[65] *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue, Supra* at 346-347.

attended the issuance of the same TCCs. Qualified to be a transferee as a BOI-registered enterprise under October 5, 1982 MOA between the MOF and the BOI, Petron went through the multi-tiered prescribed procedures for the transfer of said TCCs and use thereof in payment of its tax obligations. Relying on the validity of the TCCs, the Center's approval of the transfer thereof and the BIR's acceptance of the same as payment for its excise tax obligations, Petron issued credit notes by way of consideration for the TCCs and delivered petroleum products in the total sum of ₱284,390,845.00 in favor of the grantees and/or their assignees. As a transferee in good faith and for value, Petron cannot, therefore, be said to have incurred any liability insofar as the transfers of the subject TCCs are concerned.

As for the government agency vested with the authority to cancel the subject TCCs, the ruling in the *Pilipinas Shell* is to the effect that, pursuant to Section 3 (a), (g) and (l) of AO 226,[66] the Center has concurrent authority to do so alongside the BIR and the BOC. Given the nature of the TCC's immediate effectiveness and validity, however, said authority may only be exercised before the TCC has been fully utilized by a transferee which had no participation in the perpetration of fraud in the issuance, transfer and utilization thereof.[67] Once accepted by the BIR and applied towards the satisfaction of such a tranferee's tax obligations, a TCC is effectively used up, debited and canceled

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[66] Section 3. *Powers Duties and Functions.* — The Center shall have the following powers, duties and functions:

a. To promulgate the necessary rules and regulations and/or guidelines for the effective implementation of this administrative order;

x x x x x x x x x

b. To enforce compliance with tax credit/duty drawback policy and procedural guidelines;

x x x x x x x x x

l. To perform such other functions/duties as may be necessary or incidental in the furtherance of the purpose for which it has been established.

[67] *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue, Supra* at 354-356, December 21, 2007.

such that there is nothing left to avoid or to cancel anew.[68] Considering the protection afforded to transferees in good faith and for value, it was held that the remedy of the Government is to go after the grantees alleged to have perpetrated fraud in the procurement of the subject TCCs.[69]

Viewed in the light of the foregoing disquisition, respondent had no legal basis to once again assess the excise taxes Petron already paid with the use of the TCCs assigned in its favor, much less to impose the 25% late payment surcharge pursuant to Section 248 (A)[70] of the *National Internal Revenue Code of 1997* and the 20% interest provided under Section 249[71] of the

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[68] *Id.* at 351.

[69] *Id.* at 356.

[70] Section 248, Civil Penalties —

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due in the following cases:

x x x x x x x x x

(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment.

x x x x x x x x x

[71] Section 249. Interest —

(A) In General — There shall be assessed and collected on any amount of tax, interest at the rate of twenty percent (20%) per annum or such higher rate as may be prescribed by the rules and regulations, from the date prescribed for payment until the amount is fully paid.

(B) Deficiency Interest — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) Delinquency Interest. — In case of failure to pay:

x x x x x x x x x

3) A deficiency tax or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

x x x x x x x x x

same Code. Admitted to have filed its tax returns in accordance with law,[72] Petron was never questioned nor assessed for deficiency delinquency in the payment of its excise taxes from 1992 to 1997, thru the use of the TCCs assigned by the original grantees.[73] In receipt of the November 15, 1999 Assessment subsequent to the Center's cancellation of the subject TCCs, Petron filed the petition for review docketed before the CTA Second Division as CTA Case No. 6136 as a consequence of respondent's inaction on its protest. Although the August 23, 2006 adverse decision rendered in said case was affirmed in the herein assailed October 30, 2007 decision rendered in CTA EB No. 238, a reversal of said CTA *En Banc* decision would necessarily foreclose the factual and legal bases for respondent's impugned Assessment.

WHEREFORE, premises considered, the petition is *GRANTED* and the October 30, 2007 CTA *En Banc* Decision in CTA EB No. 238 is, accordingly, *REVERSED* and *SET ASIDE*. In lieu thereof, another is entered invalidating respondent's Assessment of petitioner's deficiency excise taxes for the years 1995 to 1997 for lack of legal bases. No pronouncement as to costs.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Del Castillo, JJ.,* concur.

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[72] Record, CTA Case No. 6136, p. 188.

[73] *Id.* at 187.

FIRST DIVISION

[G.R. No. 165569. July 29, 2010]

UNIVERSITY OF SANTO TOMAS, GLENDA A. VARGAS, MA. SOCORRO S. GUANHING, in their capacities as Dean and Assistant Dean, respectively, of the College of Nursing of the University of Santo Tomas, and RODOLFO N. CLAVIO, in his capacity as Registrar of the University of Santo Tomas, *petitioners, vs.* **DANES B. SANCHEZ,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; EXHAUSTION OF ADMINISTRATIVE REMEDIES; FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES IS A GROUND FOR DISMISSAL OF ACTION; EXCEPTIONS. — The doctrine of exhaustion of administrative remedies requires that where a remedy before an administrative agency is provided, the administrative agency concerned must be given the opportunity to decide a matter within its jurisdiction before an action is brought before the courts. Failure to exhaust administrative remedies is a ground for dismissal of the action. In this case, the doctrine does not apply because petitioners failed to demonstrate that recourse to the CHED is mandatory – or even possible – in an action such as that brought by the respondent, which is essentially one for *mandamus* and damages. The doctrine of exhaustion of administrative remedies admits of numerous exceptions, one of which is where the issues are purely legal and well within the jurisdiction of the trial court, as in the present case. Petitioners' liability – if any – for damages will have to be decided by the courts, since any judgment inevitably calls for the application and the interpretation of the Civil Code. As such, exhaustion of administrative remedies may be dispensed with. As we held in *Regino v. Pangasinan Colleges of Science and Technology*: x x x exhaustion of administrative remedies is applicable when there is competence on the part of the administrative body to act upon the matter complained of. Administrative agencies are not courts; x x x neither [are they] part of the judicial system, [or]

deemed judicial tribunals. Specifically, **the CHED does not have the power to award damages.** Hence, petitioner could not have commenced her case before the Commission.

2. ID.; ID.; RULE ON PRIMARY JURISDICTION; WHEN APPLICABLE. — The rule on primary jurisdiction applies only where the administrative agency exercises quasi-judicial or adjudicatory functions. Thus, an essential requisite for this doctrine to apply is the actual existence of quasi-judicial power. However, petitioners have not shown that the CHED possesses any such power to "investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions." Indeed, Section 8 of Republic Act No. 7722 otherwise known as the Higher Education Act of 1994, certainly does not contain any express grant to the CHED of judicial or quasi-judicial power.

3. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; FORUM SHOPPING; DEFINED AND CONSTRUED. — Forum shopping exists when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or *certiorari*) in another, or when he institutes two or more actions or proceedings grounded on the same cause, on the gamble that one or the other court would make a favorable disposition. Here, there can be no forum shopping precisely because the CHED is without quasi-judicial power, and cannot make any disposition of the case – whether favorable or otherwise. As we held in *Cabarrus, Jr. v. Bernas:* The courts, tribunal and agencies referred to under Circular No. 28-91, revised Circular No. 28-91 and Administrative Circular No. 04-94 are those vested with judicial powers or quasi-judicial powers and those who not only hear and determine controversies between adverse parties, but to make binding orders or judgments. As succinctly put by R.A. 157, the NBI is not performing judicial or quasi-judicial functions. The NBI cannot therefore be among those forums contemplated by the Circular that can entertain an action or proceeding, or even grant any relief, declaratory or otherwise.

4. ID.; ID.; ACTIONS; MOTION TO DISMISS; NO CAUSE OF ACTION AS A GROUND; EXPLAINED. — Under Rule 16, Section 1(g) of the Rules of Court, a motion to dismiss may be made on the ground that the pleading asserting the claim states no cause of action. To clarify the essential test required to sustain

dismissal on this ground, we have explained that "[t]he test of the sufficiency of the facts found in a petition, to constitute a cause of action, is whether admitting the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer of the petition." Stated otherwise, a complaint is said to assert a sufficient cause of action if, admitting what appears solely on its face to be correct, the plaintiff would be entitled to the relief prayed for.

APPEARANCES OF COUNSEL

Divina & Uy Law Offices for petitioners.
Juvy Mell B. Sanchez Malit for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Where a valid cause of action exists, parties may not simply bypass litigation by the simple expediency of a Motion to Dismiss. Instead of abbreviating the proceedings, it has had the opposite effect: unnecessary litigation for almost seven years. Here, in particular, where any resolution of the case will depend on the appreciation of evidence, a full-blown trial is necessary to unearth all relevant facts and circumstances.

This petition for review on *certiorari* assails the Decision [1] dated July 20, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 79404 which affirmed the denial of petitioners' motion to dismiss and directed the Regional Trial Court (RTC) of Dinalupihan, Bataan, Branch 5, to proceed with trial. Also assailed is the Resolution [2] dated September 22, 2004 denying the motion for reconsideration.

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[1] *Rollo*, pp. 39-54; penned by Associate Justice Salvador J. Valdez, Jr. and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Vicente Q. Roxas.

[2] *Id.* at 56-57.

Factual Antecedents

This case began with a Complaint[3] for Damages filed by respondent Danes B. Sanchez (respondent) against the University of Santo Tomas (UST) and its Board of Directors, the Dean and the Assistant Dean of the UST College of Nursing, and the University Registrar for their alleged unjustified refusal to release the respondent's Transcript of Records (ToR). The case was raffled to Branch 5 of the RTC of Dinalupihan, Bataan, and docketed as Civil Case No. DH-788-02.

In his Complaint, respondent alleged that he graduated from UST on April 2, 2002 with a Bachelor's Degree of Science in Nursing. He was included in the list of candidates for graduation and attended graduation ceremonies. On April 18, 2002, respondent sought to secure a copy of his ToR with the UST Registrar's Office, paid the required fees, but was only given a Certificate of Graduation by the Registrar. Despite repeated attempts by the respondent to secure a copy of his ToR, and submission of his class cards as proof of his enrolment, UST refused to release his records, making it impossible for him to take the nursing board examinations, and depriving him of the opportunity to make a living. The respondent prayed that the RTC order UST to release his ToR and hold UST liable for actual, moral, and exemplary damages, attorney's fees, and the costs of suit.

Instead of filing an Answer, petitioners filed a Motion to Dismiss[4] where they claimed that they refused to release respondent's ToR because he was not a registered student, since he had not been enrolled in the university for the last three semesters. They claimed that the respondent's graduation, attendance in classes, and taking/passing of examinations were immaterial because he ceased to be a student when he failed to enroll during the second semester of school year 2000-2001. They also sought the dismissal of the case on the ground that

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[3] *Id.* at 58-64, with Annexes.

[4] *Id.* at 76-79.

the complaint failed to state a cause of action, as paragraph 10 of the complaint admitted that:

> 10. On several occasions, [respondent] went to see the [petitioners] to get his ToR, but all of these were futile for he was not even entertained at the Office of the Dean. Worst, he was treated like a criminal forcing him to admit the fact that he did not enroll for the last three (3) semesters of his schooling. [Petitioner] Dean tried to persuade the [respondent] to give the original copies of the Class Cards which he has in his possession. These are the only [bits of] evidence on hand to prove that he was in fact officially enrolled. [Respondent] did not give the said class cards and instead gave photo copies to the [Petitioner] Dean. The Office of the Dean of Nursing of [petitioner] UST became very strict in receiving documents from the [respondent]. [They have] to be scrutinized first before the same are received. Receiving, as [respondent] believes, is merely a ministerial function [of] the [petitioners] and the documents presented for receiving need not be scrutinized especially so when . . . they are not illegal. Copies of the class cards are hereto attached as "F" hereof.[5]

After the parties filed their responsive pleadings,[6] petitioners filed a Supplement to their Motion to Dismiss,[7] alleging that respondent sought administrative recourse before the Commission on Higher Education (CHED) through a letter-complaint dated January 21, 2003. Thus, petitioners claimed that the CHED had primary jurisdiction to resolve matters pertaining to school controversies, and the filing of the instant case was premature.

Ruling of the Regional Trial Court

After another exchange of pleadings,[8] the RTC issued an

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[5] *Id.* at 61.

[6] Respondent filed his Opposition/Comment dated March 11, 2003, *id.* at 80-84; petitioners filed their Reply to Opposition/Comment dated March 13, 2003, *id.* at 85-90.

[7] *Id.* at 91-96.

[8] Respondent filed his Opposition/Comment to the Supplement dated March 19, 2003, *id.* at 97-99; petitioners filed their Reply dated March 31, 2003, *id.* at 100-102.

Order[9] dated April 1, 2003 denying the Motion to Dismiss on the ground that the issues involved required an examination of the evidence, which should be threshed out during trial. Petitioners' Motion for Reconsideration[10] was denied in an Order[11] dated August 1, 2003, so petitioners sought recourse before the CA.

Ruling of the Court of Appeals

The CA affirmed the denial of petitioners' Motion to Dismiss, and directed the RTC to proceed with trial.

Issues

Petitioners seek recourse before us raising the following issues:

1) The CHED exercises quasi-judicial power over controversies involving school matters and has primary jurisdiction over respondent's demand for the release of his ToR. Thus, respondent failed to exhaust administrative remedies;

2) Since respondent sought recourse with both the CHED and the RTC, respondent violated the rule against forum-shopping; and

3) The Complaint failed to state a cause of action, since respondent admitted that he was not enrolled in UST in the last three semesters prior to graduation.

Our Ruling

The petition is denied for lack of merit.

The doctrine of exhaustion of administrative remedies does not apply in this case.

The doctrine of exhaustion of administrative remedies requires that where a remedy before an administrative agency is provided,

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[9] *Id.* at 104.

[10] *Id.* at 105-109.

[11] *Id.* at 118.

the administrative agency concerned must be given the opportunity to decide a matter within its jurisdiction before an action is brought before the courts.[12] Failure to exhaust administrative remedies is a ground for dismissal of the action.[13]

In this case, the doctrine does not apply because petitioners failed to demonstrate that recourse to the CHED is mandatory — or even possible — in an action such as that brought by the respondent, which is essentially one for *mandamus* and damages. The doctrine of exhaustion of administrative remedies admits of numerous exceptions,[14] one of which is where the issues are purely legal and well within the jurisdiction of the trial court, as in the present case.[15] Petitioners' liability — if any — for damages

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[12] *Pacana v. Hon. Consunji*, 195 Phil. 454, 457 (1982); *Antonio v. Hon. Tanco, Jr.*, 160 Phil. 467, 473-474 (1975); *Vda. de Caina v. Hon. Reyes*, 108 Phil. 510, 512 (1960).

[13] *Atlas Consolidated Mining and Development Corporation v. Mendoza*, 112 Phil. 960, 963-965 (1961); *Pilar v. Secretary of Public Works and Communication*s, 125 Phil. 766, 769 (1967); *Department of Agrarian Reform Adjudication Board v. Court of Appeals*, 334 Phil. 369, 381-382 (1997).

[14] . . . [T]he principle of exhaustion of administrative remedies as tested by a battery of cases is not an ironclad rule. This doctrine is a relative one and its flexibility is called upon by the peculiarity and uniqueness of the factual and circumstantial settings of a case. Hence, it is disregarded (1) when there is a violation of due process, (2) when the issue involved is purely a legal question, (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction, (4) when there is estoppel on the part of the administrative agency concerned, (5) when there is irreparable injury, (6) when the respondent is a department secretary whose acts as an alter ego of the President bear the implied and assumed approval of the latter, (7) when to require exhaustion of administrative remedies would be unreasonable, (8) when it would amount to a nullification of a claim, (9) when the subject matter is a private land in land case proceedings, (10) when the rule does not provide a plain, speedy and adequate remedy, and (11) when there are circumstances indicating the urgency of judicial intervention. *Paat v. Court of Appeals*, 334 Phil. 146, 153 (1997).

[15] *One Heart Sporting Club, Inc. v. Court of Appeals*, 195 Phil. 253, 262-263 (1981); *Miriam College Foundation, Inc. v. Court of Appeals*, 401 Phil. 431, 454-455 (2002).

will have to be decided by the courts, since any judgment inevitably calls for the application and the interpretation of the Civil Code.[16] As such, exhaustion of administrative remedies may be dispensed with. As we held in *Regino v. Pangasinan Colleges of Science and Technology*:[17]

> x x x exhaustion of administrative remedies is applicable when there is competence on the part of the administrative body to act upon the matter complained of. Administrative agencies are not courts; . . . neither [are they] part of the judicial system, [or] deemed judicial tribunals. Specifically, the **CHED does not have the power to award damages.** Hence, petitioner could not have commenced her case before the Commission. (Emphasis ours)

In addition, the rule on primary jurisdiction applies only where the administrative agency exercises quasi-judicial or adjudicatory functions.[18] Thus, an essential requisite for this doctrine to apply is the actual existence of quasi-judicial power.[19] However, petitioners have not shown that the CHED possesses any such power to "investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions."[20] Indeed,

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[16] *Ateneo de Manila University v. Court of Appeals*, 229 Phil. 128, 138 (1986).

[17] 485 Phil. 446, 455 (2004).

[18] *Smart Communications, Inc. v. National Telecommunications Commission*, 456 Phil. 145, 158 (2003).

[19] Not to be confused with the quasi-legislative or rule-making power of an administrative agency is its quasi-judicial or administrative adjudicatory power. This is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it. In carrying out their quasi-judicial functions, the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature. *Id.* at 156-157.

[20] *Id.* at 158.

Section 8 of Republic Act No. 7722[21] otherwise known as the Higher Education Act of 1994, certainly does not contain any express grant to the CHED of judicial or quasi-judicial power.

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[21] An Act Creating the Commission on Higher Education, Appropriating Funds Therefor and for Other Purposes (1994).

SEC. 8. *Powers and Functions of the Commission*. — The Commission shall have the following powers and functions:

a) formulate and recommend development plans, policies, priorities and programs on higher education and research;

b) formulate and recommend development plans, policies, priorities and programs on research;

c) recommend to the executive and legislative branches, priorities and grants on higher education and research;

d) set minimum standards for programs and institutions of higher learning recommended by panels of experts in the field and subject to public hearing, and enforce the same;

e) monitor and evaluate the performance of programs and institutions of higher learning for appropriate incentives as well as the imposition of sanctions such as, but not limited to, diminution or withdrawal of subsidy, recommendation on the downgrading or withdrawal of accreditation, program termination or school closure;

f) identify, support and develop potential centers of excellence in program areas needed for the development of world-class scholarship, nation building and national development;

g) recommend to the Department of Budget and Management the budgets of public institutions of higher learning as well as general guidelines for the use of their income;

h) rationalize programs and institutions of higher learning and set standards, policies and guidelines for the creation of new ones as well as the conversion or elevation of schools to institutions of higher learning, subject to budgetary limitations and the number of institutions of higher learning in the province or region where creation, conversion or elevation is sought to be made;

i) develop criteria for allocating additional resources such as research and program development grants, scholarships, and other similar programs: *Provided*, That these shall not detract from the fiscal autonomy already enjoyed by colleges and universities;

j) direct or redirect purposive research by institutions of higher learning to meet the needs of agro-industrialization and development;

k) devise and implement resource development schemes;

Petitioners also claim that even without any express grant of quasi-judicial power by the legislature, the CHED is authorized to adjudicate the case filed by respondent on the strength of the following provisions of the Manual of Regulations of Private Schools: [22]

(1) Section 33, which authorizes the CHED to cancel or revoke the graduation of any student whose records are found to be fraudulent:

Section 33. Authority to Graduate Without Department Approval. — One of the benefits which may be made available for accredited schools of the appropriate level is the authority to graduate students from accredited courses or programs of study without prior approval of the Department, the conditions of which are as follows:

a) The school head must furnish the Regional Office of the region where the school is situated a copy of its certificate of accreditation.

b) Within two weeks after the graduation exercise, the school shall submit to the Regional Office concerned an alphabetical list of graduates by course, accompanied by a certification under oath signed by the school registrar certifying that the students listed (1) have complied with all the requirements of the Department, (2) were conferred their respective certificates or degrees on a specific date, (3) have complete scholastic records on file in the school, and (4) have their Form 137 for high school and Form IX for college, as the case may be, in the custody of the school. This list shall be sufficient basis for issuing special orders, if still necessary.

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l) administer the Higher Education Development Fund, as described in section 10 hereunder, which will promote the purposes of higher education;

m) review the charters of institutions of higher learning and state universities and colleges including the chairmanship and membership of their governing bodies and recommend appropriate measures as basis of necessary action;

n) promulgate such rules and regulations and exercise such other powers and functions as may be necessary to carry out effectively the purpose and objective of this Act; and

o) perform such other functions as may be necessary for its effective operations and for the continued enhancement, growth or development of higher education.

[22] DECS Order No. 92, series of 1992.

The school will be held fully liable for the veracity of the records without prejudice to any legal action, including revocation of government recognition, as may be called for under the circumstances.

The Department reserves the right to cancel or revoke the graduation of any student whose records are found to be fraudulent.

(2) Section 72, which permits the school to withhold students' credentials under certain specified circumstances, and authorizes the CHED to issue a student's credentials in case these are unlawfully withheld by the school:

Section 72. Withholding of Credentials. — The release of the transfer credentials of any pupil or student may be withheld for reasons of suspension, expulsion, or non-payment of financial obligations or property responsibility of the pupil or student to the school. The credentials shall be released as soon as his obligation shall have been settled or the penalty of suspension or expulsion lifted.

However, if, after due inquiry, a school is found to have unjustifiably refused to issue transfer credentials or student records, the Department may issue the same without prejudice to the imposition of appropriate administrative sanctions against the school concerned.

The most cursory perusal of these provisions shows that they are inapplicable. Section 33 concerns the conditions and authority of accredited schools to authorize the graduation of students without the prior authority of the CHED. Corollarily, the CHED may cancel or revoke the graduation if it is found to be fraudulent. We are not aware that the CHED has taken any action to revoke the respondent's graduation, though it is free to do so.

As regards Section 72, it refers to a school's right to withhold the release of credentials due to "suspension, expulsion, or non-payment of financial obligations or property responsibility." None of these circumstances is present, and there has been no intimation that respondent's ToR has been withheld on any of these grounds.

In any event, even if we were to assume that these provisions were applicable, the CHED remains without authority to adjudicate an action for damages.

Respondent is not guilty of forum shopping

Forum shopping exists when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or *certiorari*) in another, or when he institutes two or more actions or proceedings grounded on the same cause, on the gamble that one or the other court would make a favorable disposition.[23] Here, there can be no forum shopping precisely because the CHED is without quasi-judicial power, and cannot make any disposition of the case — whether favorable or otherwise. As we held in *Cabarrus, Jr. v. Bernas*:[24]

> The courts, tribunal and agencies referred to under Circular No. 28-91, revised Circular No. 28-91 and Administrative Circular No. 04-94 are those vested with judicial powers or quasi-judicial powers and those who not only hear and determine controversies between adverse parties, but to make binding orders or judgments. As succinctly put by R.A. 157, the NBI is not performing judicial or quasi-judicial functions. The NBI cannot therefore be among those forums contemplated by the Circular that can entertain an action or proceeding, or even grant any relief, declaratory or otherwise.

The Complaint states a cause of action

Under Rule 16, Section 1 (g) of the Rules of Court, a motion to dismiss may be made on the ground that the pleading asserting the claim states no cause of action.[25] To clarify the essential test required to sustain dismissal on this ground, we have explained

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[23] *Public Interest Center, Inc. v. Roxas*, G.R. No. 125509, January 31, 2007, 513 SCRA 457, 471.

[24] 344 Phil. 802, 810 (1997).

[25] In *Cañete v. Genuino Ice Company, Inc.*, G.R. No. 154080, January 22, 2008, 542 SCRA 206, 217, we reiterated the elements of a cause of action:

> x x x "Cause of action" has been defined as an act or omission of one party in violation of the legal right or rights of the other; and its essential elements are: 1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; 2) an obligation on the part of the named defendant to respect or not to violate such right; and 3) an act or omission on the part of the named defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which

that "[t]he test of the sufficiency of the facts found in a petition, to constitute a cause of action, is whether admitting the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer of the petition."[26] Stated otherwise, a complaint is said to assert a sufficient cause of action if, admitting what appears solely on its face to be correct, the plaintiff would be entitled to the relief prayed for.[27]

The Complaint makes the following essential allegations: that petitioners unjustifiably refused to release respondent's ToR despite his having obtained a degree from UST; that petitioners' claim that respondent was not officially enrolled is untrue; that as a result of petitioners' unlawful actions, respondent has not been able to take the nursing board exams since 2002; that petitioners' actions violated Articles 19-21 of the Civil Code; and that petitioners should be ordered to release respondent's ToR and held liable for ₱400,000.00 as moral damages, ₱50,000.00 as exemplary damages, ₱50,000.00 as attorney's fees and costs of suit, and ₱15,000.00 as actual damages. Clearly, assuming that the facts alleged in the Complaint are true, the RTC would be able to render a valid judgment in accordance with the prayer in the Complaint.

Petitioners argue that paragraph 10 of the Complaint contains an admission that respondent was not officially enrolled at UST. Said paragraph reads:

10. On several occasions, [respondent] went to see the [petitioners] to get his ToR, but all of these were futile for he was

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the latter may maintain an action for recovery of damages. If these elements are not extant, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action. x x x

[26] JOSE Y. FERIA & MA. CONCEPCION S. NOCHE, *CIVIL PROCEDURE ANNOTATED* 442 (2001 ed.), citing *Paminsan v. Costales*, 28 Phil. 487, 489 (1914); *De Jesus v. Belarmino*, 95 Phil. 365, 371 (1954).

[27] *Regino v. Pangasinan Colleges of Science and Technology*, *supra* note 17 at 457; *Dabuco v. Court of Appeals*, 379 Phil. 939, 949 (2000); *Sea-Land Services, Inc. v. Court of Appeals*, 383 Phil. 887, 893 (2000); *China Road and Bridge Corporation v. Court of Appeals*, 401 Phil. 590, 602 (2000).

not even entertained at the Office of the Dean. Worst, he was treated like a criminal forcing him to admit the fact that he did not enroll for the last three (3) semesters of his schooling. [Petitioner] Dean tried to persuade the [respondent] to give the original copies of the Class Cards which he has in his possession. These are the only [bits of] evidence on hand to prove that he was in fact officially enrolled. [Respondent] did not give the said class cards and instead gave photo copies to the [Petitioner] Dean. The Office of the Dean of Nursing of [petitioner] UST became very strict in receiving documents from the [respondent]. [They have] to be scrutinized first before the same are received. Receiving, as [respondent] believes, is merely a ministerial function [of] the [petitioners] and the documents presented for receiving need not be scrutinized especially so when x x x they are not illegal. Copies of the class cards are hereto attached as "F" hereof.[28]

This statement certainly does not support petitioners' claim that respondent admitted that he was not enrolled. On the contrary, any allegation concerning the use of force or intimidation by petitioners, if substantiated, can only serve to strengthen respondent's complaint for damages.

We fully agree with the RTC's finding that a resolution of the case requires the presentation of evidence during trial. Based on the parties' allegations, the issues in this case are far from settled. Was respondent enrolled or not? Was his degree obtained fraudulently? If so, why was he permitted by the petitioners to graduate? Was there fault or negligence on the part of any of the parties? Clearly, these are factual matters which can be best ventilated in a full-blown proceeding before the trial court.

WHEREFORE, the petition is *DENIED*. The Decision dated July 20, 2004 and the Resolution dated September 22, 2004 of the Court of Appeals in CA-G.R. SP No. 79404 are *AFFIRMED*. The Regional Trial Court of Dinalupihan, Bataan, Branch 5, is *DIRECTED* to continue the proceedings in Civil Case No. DH-788-02 with all deliberate speed.

Costs against petitioners.

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[28] *Rollo*, p. 61.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Perez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 165976. July 29, 2010]

SONIC STEEL INDUSTRIES, INC., *petitioner, vs.* **COURT OF APPEALS, HON. EDUARDO B. PERALTA, in his capacity as Presiding Judge of Branch 17 of the Regional Trial Court of Manila, SEABOARD-EASTERN INSURANCE COMPANY, INC., PREMIER SHIPPING LINES, INC., and ORIENTAL ASSURANCE CORPORATION,** *respondents.*

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER ONLY WHEN THERE IS NO APPEAL OR ANY PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW; CLARIFIED. – *Certiorari* under Rule 65 is proper only if there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. For a writ of *certiorari* to issue, a petitioner must not only prove that the tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction but must also show that he has no plain, speedy and adequate remedy in the ordinary course of law. On September 29, 2004, petitioner received the assailed September 17, 2004 Resolution denying reconsideration of the dismissal of its petition with the CA. It could have filed an appeal by *certiorari* under Rule 45 of the Rules of Court, but it did not. Instead it allowed almost two months to pass and then filed a petition for *certiorari* under Rule 65. *Certiorari* is not a

substitute for a lost appeal. The Rules preclude recourse to the special civil action of c*ertiorari* if appeal, by way of a petition for review, is available as the remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive.

APPEARANCES OF COUNSEL

Ongkiko Kalaw Manhit & Acorda Law Offices for petitioner.
Marilyn O. Ngo and *MM Lazaro & Associates* for Seaboard-Eastern Insurance Company, Inc.
Melody Ann E. Calo-Villar for Oriental Assurance Corp.
Camacho & Associates for Premier Shipping Lines, Inc.

D E C I S I O N

DEL CASTILLO, *J.*:

In the present petition for *certiorari*, petitioner assails the September 17, 2004 Resolution[1] of the Court of Appeals (CA) in CA-G.R. SP. No. 85023, which denied reconsideration of its August 2, 2004 Resolution[2] that dismissed the petition before it for failure to comply with the requirements of Section 1, Rule 65 in relation with Section 3, Rule 46 and Section 11, Rule 13 of the Rules of Court.

Factual Antecedents

Petitioner Sonic Steel Industries Inc. (Sonic) is engaged in the manufacture and sale of galvanized steel sheets or G.I. sheets. In 2001, petitioner procured from respondent Seaboard-Eastern Insurance Company, Inc. (Seaboard) a marine open policy designated: "Seaboard-Eastern Insurance Co., Marine Open Policy No. 10227." In March 2003 petitioner loaded 371 crates of G.I. sheets valued at ₱19,979,460.00 on board respondent Premier

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[1] CA *rollo*, pp. 248-250; penned by Associate Justice Arturo D. Brion (now a Member of this Court) and concurred in by Associate Justices Delilah Vidallon-Magtolis and Eliezer R. Delos Santos.

[2] *Id.* at 196-197.

Shipping Lines, Inc.'s (Premier's) vessel, the M/V Premship XIV, for shipment to its clients in Davao City. Prior to departure of the vessel, respondent Premier procured an insurance policy from respondent Oriental Assurance Corporation (Oriental) to cover the goods of petitioner shipped on board the vessel.

On or about March 28, 2003, while the vessel was navigating in the vicinity of Calangaman Island, the Master of the vessel ordered an inspection on the ship. In the course of the inspection, it was discovered that the cargo was flooded with seawater.

Despite petitioner Sonic's demand for indemnification for the total loss of its insured cargo, respondents Seaboard and Oriental refused to settle its claim. Hence, Sonic filed a complaint with the Regional Trial Court (RTC) of Manila, Branch 17.

Petitioner's original complaint against respondents was filed within 60 days of the loss of its goods, in compliance with a stipulation in the bill of lading issued by respondent Premier that "(s)uits based on claims arising from shortage, damage, or non delivery of shipment shall be instituted within [60] days of the date of accrual of the right of action."

As respondents did not pay petitioner's claim even long after 90 days from the date of accrual of the right of action, petitioner moved before the RTC to have its Amended Complaint admitted, to incorporate Sections 243 and 244 of the Insurance Code, which provide for the proper interest to be awarded in cases where there is unreasonable refusal to pay valid claims.

After respondent Seaboard's Comment and/or Opposition to Petitioner's Motion for Leave of Court to File Amended Complaint and Motion to Admit Amended Complaint, and petitioner's Reply thereto were filed, the RTC denied the admission of petitioner's Amended Complaint. Petitioner moved for a reconsideration but the same was denied. Petitioner thus filed a petition for *certiorari* with the CA.

Proceedings Before the Court of Appeals

The CA dismissed the petition for *certiorari* filed before it in its August 2, 2004 Resolution, which disposed as follows:

WHEREFORE, we hereby DISMISS the petition for failure to comply with the requirements of Section 1, Rule 65 in relation with Section 3, Rule 46 and Section 11, Rule 13 of the Revised Rules of Court.

SO ORDERED.[3]

The motion for reconsideration was denied in the assailed September 17, 2004 Resolution, the dispositive portion of which states:

CONSIDERING THE FOREGOING, we hereby DENY petitioner's motion for reconsideration for having been filed out of time.

SO ORDERED.[4]

Hence, this petition.

Issues

Petitioner raises the following issues:

A

WHETHER X X X THE HONORABLE PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DID NOT GRANT PETITIONER'S MOTION FOR RECONSIDERATION DATED AUGUST 23, 2004

B

WHETHER X X X THE HONORABLE PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF DISCRETION WHEN IT DID NOT GRANT PETITIONER'S PETITION FOR *CERTIORARI*

C

WHETHER X X X THE HONORABLE PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF

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[3] *Id.* at 197.

[4] *Id.* at 249.

DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DID NOT ADMIT PETITIONER'S AMENDED COMPLAINT[5]

Petitioner's Arguments

Petitioner contends that its motion for reconsideration was validly filed with the CA two days after the date it was due for the reason that it was the next working day for government offices. It further contends that the Rules of Court should not be interpreted to sacrifice substantial rights of a litigant at the altar of technicalities and that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying its petition for *certiorari* based on minor technical lapses.

Petitioner also submits that Sections 243 and 244 of the Insurance Code are applicable in its case and therefore the incorporation of the said sections is a valid cause for amending the Complaint. Petitioner, thus, contends that the CA committed grave abuse of discretion when it gave countenance to the alleged irregular acts of RTC Judge Eduardo B. Peralta by refusing to admit petitioner's Motion for Leave of Court to File Amended Complaint and Motion to Admit Amended Complaint.

Respondents' Arguments

Respondents on the other hand contend that the dismissal by the CA of the petition for *certiorari* before it was anchored on and sanctioned by law and was not despotic, whimsical or arbitrary. They submit that disregard of the Rules cannot justly be rationalized by harking on the policy of liberal construction.

They further contend that *certiorari* lies only to correct errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction and not errors of judgment. They claim that the present petition does not meet or satisfy the yardstick of grave abuse of discretion.

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[5] *Rollo,* pp. 523-524.

Our Ruling

At the outset, it is relevant to mention that on December 11, 2007, petitioner moved to withdraw[6] the petition as the petitioner and respondent Seaboard have amicably settled the instant controversy. In our January 16, 2008 Resolution[7] we granted petitioner's petition to withdraw petition and considered the case CLOSED and TERMINATED as to respondent Seaboard.

As against respondents Premier and Oriental, we also dismiss the petition.

Certiorari under Rule 65 is proper only if there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. For a writ of *certiorari* to issue, a petitioner must not only prove that the tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction but must also show that he has no plain, speedy and adequate remedy in the ordinary course of law.[8] On September 29, 2004, petitioner received the assailed September 17, 2004 Resolution denying reconsideration of the dismissal of its petition with the CA. It could have filed an appeal by *certiorari* under Rule 45 of the Rules of Court, but it did not. Instead it allowed almost two months to pass and then filed a petition for *certiorari* under Rule 65. *Certiorari* is not a substitute for a lost appeal. The Rules preclude recourse to the special civil action of *certiorari* if appeal, by way of a petition for review, is available as the remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive.[9]

At any rate, we find no grave abuse of discretion amounting to lack of or excess of jurisdiction on the part of the CA. Petitioner

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[6] *Id.* at 549-552.

[7] *Id.* at 553.

[8] *Tacloban Far East Marketing Corporation v. Court of Appeals*, G.R. No. 182320, September 11, 2009, 599 SCRA 662, 668-669.

[9] *Id.* at 668 citing *Rigor v. Tenth Division of the Court of Appeals*, G.R. No. 167400, June 30, 2006, 494 SCRA 375, 381-382.

admittedly committed lapses. The CA's ruling on such lapses was within the contemplation of the law. "For *certiorari* to prosper, the abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility."[10] In the present case, petitioner failed to sufficiently show that the CA ruled in a capricious and whimsical manner amounting to an arbitrary exercise of power.

WHEREFORE, the petition is *DISMISSED*. The September 17, 2004 Resolution of the Court of Appeals is *AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Perez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 166236. July 29, 2010]

NOLI ALFONSO and ERLINDA FUNDIALAN, *petitioners, vs.* **SPOUSES HENRY and LIWANAG ANDRES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FAILURE TO FILE APPELLANT'S BRIEFS AS A GROUND; NOT JUSTIFIED BY REASON OF POVERTY. — Rule 50 of the Rules of Court states: Section 1. Grounds for dismissal of appeal.— An appeal

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[10] *Id.* at 760.

may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds: x x x (e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules. x x x In the present civil case which involves the failure to file the appellants' brief on time, there is no showing of any public interest involved. Neither is there a showing that an injustice will result due to the application of technical rules. Poverty cannot be used as an excuse to justify petitioners' complacency in allowing months to pass by before exerting the required effort to find a replacement lawyer. Poverty is not a justification for delaying a case. Both parties have a right to a speedy resolution of their case. Not only petitioners, but also the respondents, have a right to have the case finally settled without delay. x x x Petitioners' low regard for the rules or nonchalance toward procedural requirements, which they camouflage with the cloak of poverty, has in fact contributed much to the delay, and hence frustration of justice, in the present case.

2. CIVIL LAW; PROPERTY; SUCCESSION; EXECUTION OF EXTRAJUDICIAL SETTLEMENT OF ESTATE; PURPOSE, EXPLAINED. — Significantly, the title of the property owned by a person who dies intestate passes at once to his heirs. Such transmission is subject to the claims of administration and the property may be taken from the heirs for the purpose of paying debts and expenses, but this does not prevent an immediate passage of the title, upon the death of the intestate, from himself to his heirs. The deed of extrajudicial settlement executed by Filomena Santos *Vda. De* Alfonso and Jose evidences their intention to partition the inherited property. It delineated what portion of the inherited property would belong to whom. The sale to respondents was made after the execution of the deed of extrajudicial settlement of the estate. The extrajudicial settlement of the estate, even though not published, being deemed a partition of the inherited property, Jose could validly transfer ownership over the specific portion of the property that was assigned to him.

APPEARANCES OF COUNSEL

Edilberto B. Cosca for petitioners.
E.G. Ferry Law Offices for respondents.

D E C I S I O N

DEL CASTILLO, *J.:*

Technical rules may be relaxed only for the furtherance of justice and to benefit the deserving.

In the present petition for review, petitioners assail the August 10, 2004 Resolution[1] of the Court of Appeals (CA) in CA-G.R. CV. No. 78362, which dismissed the appeal before it for failure of petitioners to file their brief within the extended reglementary period.

Factual Antecedents

The present case stemmed from a complaint for *accion publiciana* with damages filed by respondent spouses Henry and Liwanag Andres against Noli Alfonso and spouses Reynaldo and Erlinda Fundialan before the Regional Trial Court (RTC), Branch 77, San Mateo, Rizal.

On July 8, 1997, the RTC rendered a Decision[2] in favor of respondents. The dispositive portion of the Decision states:

> WHEREFORE, premises considered judgment is rendered in favor of the plaintiffs and against the defendants and all persons claiming rights under them who are ordered:
>
> 1. to vacate the premises located at 236 General Luna St., Dulongbayan 11, San Mateo, Rizal;
>
> 2. to jointly and severally pay the sum [of] ₱100.00 as reasonable compensation for the use of said premises commencing from 04 September 1995; [and]
>
> 3. to jointly and severally pay the sum of ₱10,000.00 as and for attorney's fees and to pay the cost of suit.

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[1] CA *rollo*, p. 82; penned by Associate Justice Ruben T. Reyes and concurred in by Associate Justices Perlita J. Tria-Tirona and Jose C. Reyes, Jr.

[2] Records, pp. 93-101; penned by Judge Francisco C. Rodriguez, Jr.

SO ORDERED.[3]

Petitioners,[4] thus, appealed to the CA.

Proceedings Before the Court of Appeals

On November 5, 2003, petitioners' previous counsel was notified by the CA to file appellants' brief within 45 days from receipt of the notice. The original 45-day period expired on December 21, 2003. But before then, on December 8, 2003, petitioners' former counsel filed a Motion to Withdraw Appearance. Petitioners consented to the withdrawal.

On December 19, 2003, petitioners themselves moved for an extension of 30 days or until January 21, 2004 within which to file their appellants' brief. Then on March 3, 2004, petitioners themselves again moved for a fresh period of 45 days from March 3, 2004 or until April 18, 2004 within which to file their appellants' brief.

On March 17, 2004, the CA issued a Resolution:[5] a) noting the withdrawal of appearance of petitioners' former counsel; b) requiring petitioners to cause the Entry of Appearance of their new counsel; and c) granting petitioners' motions for extension of time to file their brief for a period totaling 75 days, commencing from December 21, 2003 or until March 5, 2004.

Petitioners themselves received a copy of this Resolution only on April 6, 2004. By that time, the extension to file appellants' brief had already long expired.

On April 14, 2004, the Public Attorney's Office (PAO), having been approached by petitioners, entered[6] its appearance as new counsel for petitioners. However, on August 10, 2004, the CA issued the assailed Resolution dismissing petitioners' appeal, to wit:

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[3] *Id.* at 101.

[4] Reynaldo Fundialan did not file a Notice of Appeal; *id.* at 102.

[5] CA *rollo*, p. 77.

[6] *Id.* at 78-79.

FOR failure of defendants-appellants to file their brief within the extended reglementary period which expired on March 5, 2004 as per Judicial Records Division report dated July 26, 2004, the appeal is hereby DISMISSED pursuant to Sec. 1 (e), Rule 50 of the 1997 Rules of Civil Procedure.

SO ORDERED.

On September 6, 2004, the PAO filed their Motion for Reconsideration[7] which requested for a fresh period of 45 days from September 7, 2004 or until October 22, 2004 within which to file appellants' brief. On October 21, 2004, the brief[8] was filed by the PAO.

On November 26, 2004, the CA issued a Resolution[9] which denied petitioners' motion for reconsideration. Hence, this petition for review.

Issues

Petitioners raise the following issues:

I

THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING PETITIONERS' APPEAL FOR FAILURE TO FILE THEIR DEFENDANTS-APPELLANTS' BRIEF, DESPITE THE ATTENDANCE OF PECULIAR FACTS AND CIRCUMSTANCES SURROUNDING SUCH FAILURE, LIKE THE GROSS AND RECKLESS NEGLIGENCE OF THEIR FORMER COUNSEL, THE ABSENCE OF MANIFEST INTENT TO CAUSE DELAY, THE SERIOUS QUESTIONS OF LAW POSED FOR RESOLUTION BEFORE THE APPELLATE COURT, AND THE FACT THAT THE APPELLANTS' BRIEF HAD ALREADY BEEN FILED WITH THE COURT OF APPEALS AND ALREADY FORMED PART OF THE RECORDS OF THE CASE.

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[7] *Id.* at 85-89.

[8] *Id.* at 96-110.

[9] *Id.* at 121-123.

II

THE DISMISSAL OF PETITIONERS' APPEAL BY THE HONORABLE COURT OF APPEALS IS HIGHLY UNJUSTIFIED, INIQUITOUS AND UNCONSCIONABLE BECAUSE IT OVERLOOKED AND/OR DISREGARDED THE MERITS OF PETITIONERS' CASE WHICH INVOLVES A DEPRIVATION OF THEIR PROPERTY RIGHTS.[10]

Petitioners' Arguments

Petitioners contend that their failure to file their appellants' brief within the required period was due to their indigency and poverty. They submit that there is no justification for the dismissal of their appeal specially since the PAO had just entered its appearance as new counsel for petitioners as directed by the CA, and had as yet no opportunity to prepare the brief. They contend that appeal should be allowed since the brief had anyway already been prepared and filed by the PAO before it sought reconsideration of the dismissal of the appeal and is already part of the records. They contend that the late filing of the brief should be excused under the circumstances so that the case may be decided on the merits and not merely on technicalities.

Respondents' Arguments

On the other hand, respondents contend that failure to file appellants' brief on time is one instance where the CA may dismiss an appeal. In the present case, they contend that the CA exercised sound discretion when it dismissed the appeal upon petitioners' failure to file their appellants' brief within the extended period of 75 days after the original 45-day period expired.

Our Ruling

The petition has no merit.

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[10] *Rollo*, p. 157.

Failure to file Brief On Time

Rule 50 of the Rules of Court states:

Section 1. Grounds for dismissal of appeal.-An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x x x x x x

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules;

Petitioners plead for the suspension of the rules and cite a number of cases where the Court excused the late filing of a notice of appeal as well as the late filing of the appellant's brief. They further cite *Development Bank of the Philippines v. Court of Appeals*[11] where the late filing of the appellant's brief was excused because the Court found the case impressed with public interest.

The cases cited by petitioners are not in point. In the present civil case which involves the failure to file the appellants' brief on time, there is no showing of any public interest involved. Neither is there a showing that an injustice will result due to the application of technical rules.

Poverty cannot be used as an excuse to justify petitioners' complacency in allowing months to pass by before exerting the required effort to find a replacement lawyer. Poverty is not a justification for delaying a case. Both parties have a right to a speedy resolution of their case. Not only petitioners, but also the respondents, have a right to have the case finally settled without delay.

Furthermore, the failure to file a brief on time was due primarily to petitioners' unwise choices and not really due to poverty. Petitioners were able to get a lawyer to represent them despite their poverty. They were able to get two other lawyers after

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[11] 411 Phil. 121, 135 (2001).

they consented to the withdrawal of their first lawyer. But they hired their subsequent lawyers too late.

It must be pointed out that petitioners had a choice of whether to continue the services of their original lawyer or consent to let him go. They could also have requested their said lawyer to file the required appellants' brief before consenting to his withdrawal from the case. But they did neither of these. Then, not having done so, they delayed in engaging their replacement lawyer. Their poor choices and lack of sufficient diligence, not poverty, are the main culprits for the situation they now find themselves in. It would not be fair to pass on the bad consequences of their choices to respondents. Petitioners' low regard for the rules or nonchalance toward procedural requirements, which they camouflage with the cloak of poverty, has in fact contributed much to the delay, and hence frustration of justice, in the present case.

No compelling reason to disregard technicalities

Petitioners beg us to disregard technicalities because they claim that on the merits their case is strong. A study of the records fails to so convince us.

Petitioners theorize that publication of the deed of extrajudicial settlement of the estate of Marcelino Alfonso is required before their father, Jose Alfonso (Jose) could validly transfer the subject property. We are not convinced. In *Alejandrino v. Court of Appeals*,[12] the Court upheld the effectivity of a deed of extrajudicial settlement that was neither notarized nor published.

Significantly, the title of the property owned by a person who dies intestate passes at once to his heirs. Such transmission is subject to the claims of administration and the property may be taken from the heirs for the purpose of paying debts and expenses, but this does not prevent an immediate passage of the title, upon the death of the intestate, from himself to his

[12] 356 Phil. 851, 862 (1998).

heirs.[13] The deed of extrajudicial settlement executed by Filomena Santos *Vda. de* Alfonso and Jose evidences their intention to partition the inherited property. It delineated what portion of the inherited property would belong to whom.

The sale to respondents was made after the execution of the deed of extrajudicial settlement of the estate. The extrajudicial settlement of estate, even though not published, being deemed a partition[14] of the inherited property, Jose could validly transfer ownership over the specific portion of the property that was assigned to him.[15]

The records show that Jose did in fact sell to respondents the subject property. The deed of sale executed by Jose in favor of the respondents being a public document, is entitled to full faith and credit in the absence of competent evidence that its execution was tainted with defects and irregularities that would warrant a declaration of nullity. As found by the RTC, petitioners failed to prove any defect or irregularities in the execution of the deed of sale. They failed to prove by strong evidence, the alleged lack of consent of Jose to the sale of the subject real property. As found by the RTC, although Jose was suffering from partial paralysis and could no longer sign his name, there is no showing that his mental faculties were affected in such a way as to negate the existence of his valid consent to the sale, as manifested by his thumbmark on the deed of sale. The records sufficiently show that he was capable of boarding a tricycle to go on trips by himself. Sufficient testimonial evidence in fact shows that Jose asked respondents to buy the subject property so that it could be taken out from the bank to which it was mortgaged. This fact evinces that Jose's mental faculties functioned intelligently.

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[13] *Heirs of Ignacio Conti v. Court of Appeals*, 360 Phil. 536, 546 (1998). CIVIL CODE, Art. 774.

[14] Art. 1082 of the Civil Code states: "Every act which is intended to put an end to indivision among co-heirs and legatees or devisees is deemed to be a partition, although it should purport to be a sale, an exchange, a compromise, or any other transaction."

[15] See *Alejandrino v. Court of Appeals*, *supra* note 12.

In view of the foregoing, we find no compelling reason to overturn the assailed CA resolution. We find no injustice in the dismissal of the appeal by the CA. Justice dictates that this case be put to rest already so that the respondents may not be deprived of their rights.

WHEREFORE, the petition is *DENIED*. The August 10, 2004 Resolution of the Court of Appeals in CA-G.R. CV. No. 78362 is *AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Perez, JJ.*, concur.

SECOND DIVISION

[G.R. No. 171705. July 29, 2010]

EDUARDO VARELA, *petitioner, vs.* **MA. DAISY REVALEZ, RAMON BORROMEO, YOLANDA BARCENILLA, ERNA LOCSIN, GRACE BARUC, VICENTE MIJARES, JR., LOIDA TAJONERA, NIRMLA AGNES MARTINEZ, ANALYN MAYPA, LEMUEL MAYPA, BERDITH GANCETA, ROGER RAMOS, SUZETTE DE LOS SANTOS, JUDE JAROPILLO, JOCELYN AZUCENA, VILMA PABALAN, CHANNIBAL BERJA, JERNEY BARZO, BRIGIDA MANGUINO, SOL GRACE GUSTILO, MARILOU AREVALO, LUCILLE ARGONOSO, MARCOS BACOMO, MELVIN BACOMO, JR., MERIAM BULLAG, ZOSIMA DESUYO, MARLENE BACOMO, EUGENE BALASA, ROY DE ASIS, LOLITA RUBEN, JOSE DIEZ, MILA DIEZ, JESUS DIEZ, DONNABEL ALFON, FRANCISCO DERIADA, ALEJANDRIA PORDIOS, LIGAYA MAGBANUA, DAISY GORECHO, ANARIEL**

BACOMO, FRED DELOTINA, STEPHEN DIPLOMA, MARITES BACABAC, ARACELI MAHINAY, JULIO OLVIDO, ANTONIO REBOTON, NENETTE JUMUAD, ROSEMARIE ALICANTE, AGUSTIN JAVIER, JR., LEODY JAVA, NAZARITO PIDO, NENITA BERMEO, DELILAH FERNANDEZ, WILDABETH LACSON, CYNTHIA DAZA, ROMMEL DELGADO, FLORITA GELACIO, ROSALLY LEAL, AILEEN VILLANUEVA, NINFA BENIGAY, ROSIE PALMA, FERNANDO DELGADO, ROMULO BARCENILLA, ROBERTO APIADO, MARIO OLVIDO, BETTY DELA CRUZ, MARTIN APILADAS, SOLEDAD MAGBANUA, NIDA VISTAL, FRANCISCO DE LARA, ANTHONY ROCH ACEVEDO, FELIX RAFOLS, YOLANDA FERNANDEZ, ERNISTINA ALARCON, EMIE ABANID, LOURY TOMPONG, MA. FE RAFOLS SIA, YOLANDA OLVIDO, FIDEL ARROYO, VITALIANO POBLACION, ZALDY TERENCIO, ROVIC ESCOBA, JENNIFER CABAHUG, HELEN PAGAY, ARTURO SALVE, AIDA GOMEZ, and CITY OF CADIZ, *respondents.*

SYLLABUS

CIVIL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; ALLEGATIONS IN THE COMPLAINT DETERMINE THE NATURE OF THE CAUSE OF ACTION; APPLICATION. — Varela was sued in his personal capacity, not in his official capacity. In the complaint, the employees stated that, "due to the **illegal acts** of the Defendant, Plaintiffs suffered mental torture and anguish, sleepless nights, wounded feelings, besmirched reputation and social humiliation." The State can never be the author of illegal acts. The complaint merely identified Varela as the mayor of Cadiz City. It did not categorically state that Varela was being sued in his official capacity. The identification and mention of Varela as the mayor of Cadiz City did not automatically transform the action into one against Varela in his official capacity. The allegations in the complaint determine the nature of the cause of action. In *Pascual v. Beltran*, the Court held that: [I]n the case at bar, **petitioner is actually sued in his personal capacity inasmuch**

> **as his principal, the State, can never be the author of any wrongful act. The Complaint filed by the private respondent with the RTC merely identified petitioner as Director of the Telecommunications Office, but did not categorically state that he was being sued in his official capacity. The mere mention in the Complaint of the petitioner's position as Regional Director of the Telecommunications Office does not transform the action into one against petitioner in his official capacity. What is determinative of the nature of the cause of action are the allegations in the complaint**. It is settled that the nature of a cause of action is determined by the facts alleged in the complaint as constituting the cause of action. The purpose of an action or suit and the law to govern it is to be determined not by the claim of the party filling [sic] the action, made in his argument or brief, but rather by the complaint itself, its allegations and prayer for relief.

APPEARANCES OF COUNSEL

Mirano Mirano & Mirano for petitioner.

Benjamin S. Candari, Jr. and *Solomon Lobrido* for Daisy Revales, *et al.*

Reggie C. Placido for City of Cadiz.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court. The petition challenges the 17 August 2005 Decision[1] and 27 February 2006 Resolution[2] of the Court of Appeals in CA-G.R. CV No. 73212. The Court of Appeals affirmed with modification the 20 June 2001 Decision[3] of the

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[1] *Rollo*, pp. 97-106. Penned by Associate Justice Arsenio J. Magpale, with Associate Justices Sesinando E. Villon and Enrico A. Lanzanas concurring.

[2] *Id.* at 119-120.

[3] *Id.* at 61-77. Penned by Judge Pepito B. Gellada.

Regional Trial Court (RTC), Negros Occidental, Judicial Region 6, Branch 60, Cadiz City in Civil Case No. 547-C.

The Facts

Petitioner Eduardo G. Varela (Varela) was the mayor of Cadiz City. He created a reorganization committee. On 22 September 1998, he submitted to the Sangguniang Panlungsod of Cadiz City the committee's "Proposed Reorganizational Structure and Staffing Pattern of Cadiz City." On the same day, 22 September 1998, the Sangguniang Panlungsod approved without modification and without hearing the proposal. The Sangguniang Panlungsod passed Resolution No. 98-112 authorizing and appropriating funds for the reorganization of the city government. Resolution No. 98-112 declared all positions in the city government vacant, except elective positions and positions in the city and assistant city treasurer. On 15 October 1998, Varela signed Resolution No. 98-112.

On 10 November 1998, Varela gave notices of termination to the city government employees, informing them that their employment would end at the close of business hours on 31 December 1998. The employees opposed and questioned the legality of Resolution No. 98-112. Varela ignored them.

Varela created a placement committee with City Administrator Philip G. Zamora, "Delina, Negosa, Jimmy Navarro, Jerry Batislaon and Napud" as members. The committee allegedly met three times.

On 31 December 1998, Varela again gave notices of termination to the city government employees, informing them that their employment would end at the close of business hours on 31 December 1998. On 4 January 1999, the employees tried to report for work but were barred from entering their offices.

Among those laid off was Community Affairs Officer IV Ramon Borromeo (Borromeo). His department, the special services department, was replaced by the community and *barangay* affairs division. The head of the community and *barangay* affairs division performed the same functions as the

head of the special services department. Three new positions were created in the community and *barangay* affairs division. The three new positions were given to Oscar Magbanua (Magbanua), Moises Señoren (Señoren), and Santos Ortega (Ortega). Magbanua, Señoren and Ortega were political supporters of Varela and defeated *barangay* captain candidates.

Around half of the 101 employees of the city health department were laid off. Those laid off were the same ones who filed a case, involving the *magna carta* for health workers, against Varela. They were also perceived not to have voted for Varela as mayor.

On 12 January 1999, Ma. Daisy G. Revalez and 40 other city government employees filed with the RTC a complaint[4] against Varela for the declaration of nullity of Resolution No. 98-112 and for damages. In a motion[5] dated 29 January 1999, 47 other city government employees intervened. In the complaint, the employees stated that, "due to the illegal acts of the Defendant, Plaintiffs suffered mental torture and anguish, sleepless nights, wounded feelings, besmirched reputation and social humiliation."[6]

The RTC's Ruling

In its 20 June 2001 Decision, the RTC declared Resolution No. 98-112 void and ordered Varela to pay the government employees ₱10,000 each for moral damages, ₱200,000 attorney's fees, ₱20,000 litigation expenses, and court appearance fees at ₱3,000 per hearing. The RTC found that Varela acted in bad faith. The Court held:

> There is no question that the Sangguniang Panlungsod of Cadiz City is the legislative arm of the local government unit and as such it possesses the power to enact the questioned resolution. Plaintiffs however challenge the manner Res. 98-112 was enacted, and the "indecent haste" that accompanied its passage. The proposal emanated from the office of defendant mayor and in a short time after its

[4] *Id.* at 38-44.

[5] *Id.* at 45-49.

[6] *Id.* at 42.

submission the measure was passed. The requisite deliberations, if at all there was one, could hardly be considered adequate and could best be described as perfunctory. The minutes of the SP say it all. The deliberations reflected a lackluster effort and a wimpish attempt by the members of the Sangguniang Panlungsod to justify the grant to the mayor of legislative authority to carry out the reorganization. There absolutely was no public hearing. **The proposal coming as it did from the mayor, was a *fait accompli*, a done deal in a manner of speaking**. x x x

x x x x x x x x x

Careful examination of the evidence submitted by the defendant, however, would reveal a systematic effort to purge the city government of personnel who opposed the mayor politically, or disagreed with him in his policies. Furthermore, perusal of the minutes of the deliberations of the Sangguniang Panlungsod reveals that the City of Cadiz was not in dire financial straits necessitating radical measures like mass lay-off of personnel. x x x

x x x **The City of Cadiz as of 1998, was not in financial extremis. It had the money, the resources to fund the salaries of personnel**. x x x [**Varela**] **even ignored the concern of a city councilor who said that at that time (1998) the City already lacked the required personnel, and so why abolish certain positions? The defendant mayor simply gave the assurance that they can create any position when the need arises and the city has the money. This statement betrayed the real intentions of the defendant insofar as the reorganization is concerned**.

x x x The Mayor did not even explain what basic services would be affected. As a matter of fact, the office hardest hit and greatly affected by the mass layoff was the health services department where 50 or so of the 101 personnel complement were laid off. Does it mean that the delivery of health services is the least of the priorities of Cadiz City? Or does it mean that health service from the point of view of the defendant city mayor is not a basic service? The truth of the matter is that **the health workers of Cadiz filed a case against the mayor for his refusal to implement provisions of the Magna Carta for Health Workers. Talk of vindictiveness. The poor health workers laid off were on the receiving end of the ire of the defendant mayor. There seemed to be no rhyme or reason to the reorganization scheme**.

x x x x x x x x x

Was the reorganization of the Cadiz City government under Res. 98-112, done in good faith? The testimony of Ramon Borromeo, which is uncontradicted, will show the true intent of the reorganization, and whether or not it was done in good faith:

"Q (Atty. Lobrido) – What about your position, Mr. Witness?
A My position as Community Affairs Officer was abolished but instead an Executive Assistant IV was made under the Division Head of the Community and Barangay Affairs Division.

Q What is the function of the Community and Barangay Affairs Unit?
A It performs the same function as that of the Community Affairs Unit of which I am the Division Head as Community Affairs Officer IV.

Q Considering that you were laid off who took over your function?
A The Executive Assistant IV, but considering that the position is coterminous with that of the mayor, the appointment of Executive Assistant IV was disapproved by the Civil Service Commission as head of the Community Affairs Unit and the present situation as of now is that the community Affairs and Barangay Unit is without a division head and that three new positions were created.

Q Who were appointed to the three new positions you mentioned a while ago?
A Those appointed are Oscar Magbanua, Moises Señoren, and Santos Ortega.

Q Why do you know these three persons?
A Because they are supporters of the defendant city mayor and also because they are *barangay* captains who were defeated in the last *barangay* elections. (TSN-Cerbo, pp. 8-10, May 3, 2000).

From the afore-quoted testimony **it is clear that the abolition of the office of Mr. Borromeo in the guise of reorganization was not done in good faith. The abolition was done for "political reasons**," (*Arao vs. Luspo*, L-23982, July 21, 1967, 20 SCRA 722). As stated in Urgello, if the abolition merely resulted in placing another

person or appointee with a different designation or name but substantially the same duties, then it will be considered a device to unseat the incumbent. Clearly the reorganization is not genuine and it is nothing but a ruse to defeat the constitutionally protected right of security of tenure.

x x x x x x x x x

Since all the offices of the personnel of Cadiz City were declared vacant, and notices of initial termination sent on November 10, 1998, the placement Committee barely had twenty (20) days to submit a final report to defendant mayor. With 741 personnel to be reevaluated and screened, plus other new applicants, the committee did not have enough time to do their work as envisioned. The Committee had to screen and evaluate all applications to about 649 positions included in the new plantilla. Notwithstanding time constraints, the Committee did not meet until November 17, barely two (2) weeks from their deadline. Subsequently they met three (3) times. On their first meeting, the report states, the placement Committee merely agreed to ask the defendant mayor to turn over to the Committee all the application letters. Nothing by way of screening or evaluation was done that day. On the second meeting November 18, the applications were "lumped" in bundles or files, and segregated by department. Then they suggested to borrow the qualification standards from the Human Resource Management Office. Due to time constraints, it was suggested that the screening should start immediately, and they agreed to meet November 19, 1998. As of the second meeting the screening and evaluation had barely began. On November 19, 1998 the committee met with Mr. Zamora suggesting that qualification standards be used mainly eligibility performance rating, education and attainment, experience and awards and training received. Mr. Napud suggested that the department heads be interviewed. As of November 19, the committee had not started its deliberations and screening, but lo and behold Mr. Zamora came up with a complete list in time for the last meeting. On November 29, 1998, Mr. Zamora presented to the members of the committee the list of employees selected by the Placement Committee. Then the list was submitted to the mayor. These were reflected in Minutes of the meeting of the Placement Committee.

On the other hand, what did Mr. Zamora say about the deliberations of the Placement Committee in his capacity as chairman. His testimony is very instructive.

Q (Atty. Lobrido) And when was the first meeting?
A I think November 17, 1998.

Q What transpired during the first meeting?
A I cannot remember.

x x x x x x x x x

Q After November 18, 1998 meeting, was there other meeting of the placement committee?
A Yes, sir.

Q When was that?
A On November 19, 1998.

Q And what transpired during that meeting on November 19, 1998?
A I cannot remember.

It seems incredulous that Mr. Philip Zamora, designated to represent defendant mayor, would not be able to recall what transpired during the deliberations of the placement committee. Unless it is shown that Mr. Zamora suffered severe bouts of amnesia, it would be the height of tomfoolery to accept that he would not be able to recall the significant highlights of the meetings. Which can only lead this Court to the inescapable conclusion that the minutes (Exhibits 15 to 15-C) were fabricated and contrived, and done after the fact. x x x

x x x Why would Philip Zamora present a list of employees selected to members of the Placement Committee and tell them this is the result of their evaluation? Were not the members of the committee the ones who evaluated and selected the employees? The logical manner that should have taken place would be that the committee members themselves would submit the list to the chairman telling him that this was the result of their evaluation and screening and they were ready to submit the list to the mayor. As it appears the list was a done deal, a *fait accompli*, and the members were merely told to put their imprimatur to it. The truth of matter however, as can be gleaned from Mr. Zamora's testimony, is that no meetings were ever conducted by the placement committee. Which explains Mr. Zamora's memory lapses. Nothing of the sort happened. What happened was that the minutes were hastily produced as an afterthought and later passed on as the real thing. **The entire proceedings was** [*sic*] **a sham, a rigmarole intended to put a stamp of legitimacy**

to what otherwise was a well calculated, well planned scheme to rid Cadiz City of employees who were the political opponents of the defendant mayor. The ploy was to use the law as a subterfuge to defeat the security of tenure clause of the constitution. On top of this masquerade, **the defendant city mayor did not show any compunction or any hesitation to ram the reorganization down the throats of plaintiffs who resisted the move and they actually complained. He did not give them the benefit of the doubt, nor listened to their plea for justice. He simply ran roughshod over all of them discarding any pretense to uphold due process of law. It was shocking no less to the 166 plaintiffs who become** [sic] **sacrificial lambs in the altar of political convenience and expediency**. This is anathema in a democratic system where the rule of law reigns supreme.[7] (Emphasis supplied)

Cadiz City Chief Executive Salvador G. Escalante, Jr., through the Office of the City Legal Officer, filed with the RTC a motion[8] to clarify who between Varela, in his personal capacity, and Cadiz City was liable for the payment of moral damages, attorney's fees, litigation expenses and court appearance fees. In its 26 July 2001 Order,[9] the RTC held that, "it is the municipal corporation which is liable for the acts of its officers committed while in the performance of official duties."[10]

Cadiz City, through the Office of the City Legal Officer, appealed to the Court of Appeals.

The Court of Appeals' Ruling

In its 17 August 2005 Decision, the Court of Appeals affirmed with modification the RTC's 20 June 2001 Decision. The Court of Appeals held that Varela was personally liable for the payment of moral damages, attorney's fees, litigation expenses and court appearance fees. It reduced the amounts of attorney's fees and litigation expenses from ₱200,000 to ₱100,000 and from ₱20,000

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[7] *Id.* at 67-75.

[8] *Id.* at 78-80.

[9] *Id.* at 95.

[10] *Id*.

to ₱10,000, respectively, and deleted the award of court appearance fees. The Court of Appeals held that:

> OUR jurisprudence is replete with cases involving the issue of whether or not a public officer may be held liable for damages in the performance of their [sic] duties, to quote:
>
> > "A public official is by law not immune from damages in his personal capacity for acts done in bad faith which, being outside the scope of his authority, are no longer protected by the mantle of immunity for official actions."
> >
> > "Settled is the principle that a public official may be liable in his personal capacity for whatever damage he may have caused by his act done with malice and in bad faith or beyond the scope of his authority or jurisdiction."
>
> In addition, Book I, Chapter 9 of the Administrative Code of 1987 provides, to quote:
>
> > "Section 38. Liability of Superior Officers. — (1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of **bad faith**, malice or gross negligence. x x x"
>
> In the case at bar, the court *a quo* found that **bad faith** attended the performance of the official acts of the original defendant, Eduardo G. Varela. x x x
>
> WE find no reason to disturb the finding of **bad faith** by the court *a quo* considering that the same was amply supported by evidence.[11]

Hence, the present petition.

The Issue

Varela raises as issue that, "THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THE PETITIONER PERSONALLY LIABLE FOR THE PAYMENT OF DAMAGES, ATTORNEY'S FEES AND LITIGATION EXPENSES AS THE PETITIONER WAS SUED IN HIS OFFICIAL, AND NOT IN HIS PERSONAL CAPACITY."[12] Varela states that:

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[11] *Id.* at 101-104.

[12] *Id.* at 17.

All the proceedings in the lower court show beyond question that the petitioner was charged in his official capacity as then mayor of the real party-defendant, the respondent City of Capiz.

This is expressly shown by the very title, caption and allegations of private respondents' complaint dated January 12, 1999. The fact that petitioner was sued in his representative and official capacity was not contested, and, in fact, admitted by the parties.[13]

The Court's Ruling

The petition is unmeritorious.

Varela was sued in his personal capacity, not in his official capacity. In the complaint, the employees stated that, "due to the **illegal acts** of the Defendant, Plaintiffs suffered mental torture and anguish, sleepless nights, wounded feelings, besmirched reputation and social humiliation." The State can never be the author of illegal acts.

The complaint merely identified Varela as the mayor of Cadiz City. It did not categorically state that Varela was being sued in his official capacity. The identification and mention of Varela as the mayor of Cadiz City did not automatically transform the action into one against Varela in his official capacity. The allegations in the complaint determine the nature of the cause of action.

In *Pascual v. Beltran*,[14] the Court held that:

[I]n the case at bar, **petitioner is actually sued in his personal capacity inasmuch as his principal, the State, can never be the author of any wrongful act. The Complaint filed by the private respondent with the RTC merely identified petitioner as Director of the Telecommunications Office, but did not categorically state that he was being sued in his official capacity. The mere mention in the Complaint of the petitioner's position as Regional Director of the Telecommunications Office does not transform the action into one against petitioner in his official**

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[13] *Id.* at 18.

[14] G.R. No. 129318, 27 October 2006, 505 SCRA 545.

capacity. What is determinative of the nature of the cause of action are the allegations in the complaint. It is settled that the nature of a cause of action is determined by the facts alleged in the complaint as constituting the cause of action. The purpose of an action or suit and the law to govern it is to be determined not by the claim of the party filling [sic] the action, made in his argument or brief, but rather by the complaint itself, its allegations and prayer for relief.[15] (Emphasis supplied)

WHEREFORE, the Court *DENIES* the petition. The Court *AFFIRMS* the 17 August 2005 Decision and 27 February 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 73212.

SO ORDERED.

Nachura, Peralta, Abad, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 171766. July 29, 2010]

ASIAWORLD PROPERTIES PHILIPPINE CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC 1997); CARRYOVER OF EXCESS INCOME TAX; TREATMENT; CONSTRUED. — Section 76 of the NIRC of 1997 clearly states: "Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the **succeeding taxable years** has been made, such option shall be considered irrevocable for **that taxable period** and no application for cash refund or issuance of a tax credit certificate shall be allowed therefore."

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[15] *Id.* at 559.

Section 76 expressly states that "the option shall be considered irrevocable for **that taxable period"** — referring to the period comprising the "**succeeding taxable years**." Section 76 further states that "no application for cash refund or issuance of a tax credit certificate shall be allowed **therefore**" — referring to "that taxable period" comprising the "succeeding taxable years." Section 76 of the NIRC of 1997 is different from the old provision, Section 69 of the 1977 NIRC. x x x Under this old provision, the option to carry-over the excess or overpaid income tax for a given taxable year is limited to the immediately succeeding taxable year only. In contrast, under Section 76 of the NIRC of 1997, the application of the option to carry-over the excess creditable tax is not limited only to the immediately following taxable year but extends to the next succeeding taxable years. The clear intent in the amendment under Section 76 is to make the option, once exercised, irrevocable for the "succeeding taxable years." Thus, once the taxpayer opts to carry-over the excess income tax against the taxes due for the succeeding taxable years, such option is irrevocable for the whole amount of the excess income tax, thus, prohibiting the taxpayer from applying for a refund for that same excess income tax in the next succeeding taxable years. The unutilized excess tax credits will remain in the taxpayer's account and will be carried over and applied against the taxpayer's income tax liabilities in the succeeding taxable years until fully utilized.

APPEARANCES OF COUNSEL

Zenaida P. Alcantara for petitioner.
Wilmer B. Dekit for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 24 August 2005

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

Decision[2] and the 31 January 2006 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 82027.

The Facts

Petitioner Asiaworld Properties Philippine Corporation (petitioner) is a domestic corporation with principal office at Asiaworld City, Aguinaldo Boulevard, Parañaque, Metro Manila. Petitioner is engaged in the business of real estate development.

For the calendar year ending 31 December 2001, petitioner filed its Annual Income Tax Return (ITR) on 5 April 2002. Petitioner declared a minimum corporate income tax (MCIT) due in the amount of ₱1,222,066.00, but with a refundable income tax payment in the sum of ₱6,473,959.00 computed as follows:

Income:		
Realized Gross Profit		₱49,234,453.00
Add: Other Income		11,868,847.00
Gross Income		₱61,103,300.00
Less: Deductions		58,148,630.00
Taxable Income		₱ 2,954,670.00
Tax Due (MCIT)		₱ 1,222,066.00
Less: Tax Credit/Payments		
a. Prior Year's Excess Credit	₱7,468,061.00	
b. Tax Payments For the First Three Quarters	–	
c. Creditable Tax Withheld For the First Three Quarters	160,000.00	
d. Creditable Tax Withheld For the Fourth Quarter	67,964.00	7,696,025.00
Total Amount of Overpayment		₱ 6,473,959.00

[2] *Rollo,* pp. 8-20. Penned by Associate Justice Mariano C. Del Castillo (now SC Associate Justice), with Associate Justices Salvador J. Valdez, Jr. and Magdangal M. De Leon, concurring.

[3] *Id.* at 22.

In its 2001 ITR,[4] petitioner stated that the amount of ₱7,468,061.00 representing Prior Year's Excess Credits was net of year 1999 excess creditable withholding tax to be refunded in the amount of ₱18,477,144.00. Petitioner also indicated in its 2001 ITR its option to carry-over as tax credit next year/ quarter the overpayment of ₱6,473,959.00.

On 9 April 2002, petitioner filed with the Revenue District Office No. 52, BIR Region VIII, a request for refund in the amount of ₱18,477,144.00, allegedly representing partial excess creditable tax withheld for the year 2001. Petitioner claimed that it is entitled to the refund of its unapplied creditable withholding taxes.

On 12 April 2002, before the BIR Revenue District Office could act on petitioner's claim for refund, petitioner filed a Petition for Review with the Court of Tax Appeals to toll the running of the two-year prescriptive period provided under Section 229[5] of the National Internal Revenue Code (NIRC) of 1997.

In its Decision dated 11 September 2003, the Court of Tax Appeals denied the petition for lack of merit. Petitioner moved for reconsideration, which the Court of Tax Appeals denied in its Resolution dated 17 December 2003. In denying the petition, the Court of Tax Appeals explained:

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[4] Exhibit "A".

[5] SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment; *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

While we agree with the findings of the commissioned independent CPA that petitioner has unapplied creditable withholding taxes at source as of December 31, 2001, still the excess income tax payment cannot be refunded.

Upon scrutiny of the records of the case, this court noted that the amount sought to be refunded of ₱18,477,144.00 actually represents petitioner's excess creditable withholding taxes *for the year 1999* which petitioner opted to apply as tax credit to the succeeding taxable year as evidenced by its 1999 income tax return *(Exhibit K)*. Under Section 76 of the Tax Code, petitioner is precluded to claim the refund or credit of the excess income tax payment once it has chosen the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding years.[6]

Petitioner appealed to the Court of Appeals, which affirmed the Decision and Resolution of the Court of Tax Appeals.

The Ruling of the Court of Appeals

The Court of Appeals held that under Section 76 of the NIRC of 1997, when the income tax payment is in excess of the total tax due for the entire taxable income of the year, a corporate taxpayer may either carry-over the excess credit to the succeeding taxable years or ask for tax credit or refund of the excess income taxes paid. Section 76 explicitly provides that once the option to carry-over is chosen, such option is irrevocable for that taxable period and the taxpayer is no longer allowed to apply for cash refund or tax credit. In this case, petitioner chose to carry-over the excess tax payment it had made in the taxable year 1999 to be applied to the taxes due for the succeeding taxable years. The Court of Appeals ruled that petitioner's choice to carry-over its tax credits for the taxable year 1999 to be applied to its tax liabilities for the succeeding taxable years is irrevocable and petitioner is not allowed to change its choice in the following year. The carry-over of petitioner's tax credits is not limited only to the following year of 2000 but should be carried-over

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[6] *Rollo*, p. 87. (Italics in the original)

to the succeeding years until the whole amount has been fully applied.

On 27 April 2006, petitioner filed a petition for review with this Court.

The Issue

The primary issue in this case is whether the exercise of the option to carry-over the excess income tax credit, which shall be applied against the tax due in the succeeding taxable years, prohibits a claim for refund in the subsequent taxable years for the unused portion of the excess tax credits carried over.

The Ruling of the Court

The petition has no merit.

The resolution of the case involves the interpretation of Section 76 of the NIRC of 1997, which reads:

> SEC. 76. *Final Adjustment Return*. — Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
> (B) Carry-over the excess credit; or
> (C) Be credited or refunded with the excess amount paid, as the case may be.
>
> **In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefore.** (Emphasis supplied)

The confusion lies in the interpretation of the last sentence of the provision which imposes the irrevocability rule.

Petitioner maintains that the option to carry-over and apply the excess quarterly income tax against the income tax due in the succeeding taxable years is irrevocable only for the next taxable period when the excess payment was carried over. Thus, petitioner posits that the option to carry-over its 1999 excess income tax payment is irrevocable only for the succeeding taxable year 2000 and that for the taxable year 2001, petitioner is not barred from seeking a refund of the unused tax credits carried over from year 1999.

The Court cannot subscribe to petitioner's view. Section 76 of the NIRC of 1997 clearly states: "Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the **succeeding taxable years** has been made, such option shall be considered irrevocable for **that taxable period** and no application for cash refund or issuance of a tax credit certificate shall be allowed therefore." Section 76 expressly states that "the option shall be considered irrevocable for **that taxable period**" – referring to the period comprising the "**succeeding taxable years**." Section 76 further states that "no application for cash refund or issuance of a tax credit certificate shall be allowed **therefore**" – referring to "that taxable period" comprising the "succeeding taxable years."

Section 76 of the NIRC of 1997 is different from the old provision, Section 69 of the 1977 NIRC, which reads:

SEC. 69. *Final Adjustment Return.* — Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable net income of that year the corporation shall either:

(a) Pay the excess tax still due; or
(b) Be refunded the excess amount paid, as the case may be.

In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated

quarterly income tax liabilities for the taxable quarters of the **succeeding taxable year**. (Emphasis supplied)

Under this old provision, the option to carry-over the excess or overpaid income tax for a given taxable year is limited to the immediately succeeding taxable year only.[7] In contrast, under Section 76 of the NIRC of 1997, the application of the option to carry-over the excess creditable tax is not limited only to the immediately following taxable year but extends to the next succeeding taxable years. The clear intent in the amendment under Section 76 is to make the option, once exercised, irrevocable for the "succeeding taxable years."

Thus, once the taxpayer opts to carry-over the excess income tax against the taxes due for the succeeding taxable years, such option is irrevocable for the whole amount of the excess income tax, thus, prohibiting the taxpayer from applying for a refund for that same excess income tax in the next succeeding taxable years.[8] The unutilized excess tax credits will remain in the taxpayer's account and will be carried over and applied against the taxpayer's income tax liabilities in the succeeding taxable years until fully utilized.[9]

In this case, petitioner opted to carry-over its 1999 excess income tax as tax credit for the succeeding taxable years. As correctly held by the Court of Appeals, such option to carry-over is not limited to the following taxable year 2000, but should apply to the succeeding taxable years until the whole amount of the 1999 creditable withholding tax would be fully utilized.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision dated 24 August 2005 and the Resolution dated 31 January 2006 of the Court of Appeals in CA-G.R. SP No. 82027.

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[7] *Paseo Realty & Dev't. Corp. v. Court of Appeals*, 483 Phil. 254 (2004).

[8] *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 156637 and 162004, 14 December 2005, 477 SCRA 761.

[9] *Systra Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 176290, 21 September 2007, 533 SCRA 776.

SO ORDERED.

Velasco, Jr.,[*] *Peralta, Abad,* and *Mendoza, JJ.,* concur.

EN BANC

[G.R. No. 172027. July 29, 2010]

GONZALO S. GO, JR., *petitioner, vs.* **COURT OF APPEALS and OFFICE OF THE PRESIDENT,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CIVIL SERVICE COMMISSION; EXCLUSIVE JURISDICTION OVER CASES INVOLVING PERSONNEL ACTIONS; CLARIFIED. — The appellate court is correct in ruling that the remedy availed of by Go is improper but not for the reason it proffered. Both Go and the appellate court overlooked the fact that the instant case involves personnel action in the government, *i.e.*, Go is questioning the reallocation and demotion directed by the DBM which resulted in the diminution of his benefits. Thus, the proper remedy available to Go is to question the DBM denial of his protest before the Civil Service Commission (CSC) which has exclusive jurisdiction over cases involving personnel actions, and not before the OP. This was our ruling involving personnel actions in *Mantala v. Salvador*, cited in *Corsiga v. Defensor* and as reiterated in *Olanda v. Bugayong*. In turn, the resolution of the CSC may be elevated to the CA under Rule 43 and, finally, before this Court. Consequently, Go availed himself of the wrong remedy when he went directly to the CA under Rule 43 without repairing first to the CSC.

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[*] Designated additional member per Raffle dated 26 July 2010.

2. REMEDIAL LAW; DISMISSAL OF ACTION; AS A RULE, WHERE TECHNICAL DISMISSAL OTHERWISE LEADS TO INEQUITABLE RESULTS, THE APPROPRIATE RECOURSE IS TO RESOLVE THE ISSUE CONCERNED ON THE MERITS OR RESORT TO THE PRINCIPLES OF EQUITY; APPLICATION. — Ordinarily, a dismissal on the ground that the action taken or petition filed is not the proper remedy under the circumstances dispenses with the need to address the other issues raised in the case. But this is not a hard and fast rule, more so when the dismissal triggered by the pursuit of a wrong course of action does not go into the merits of the case. Where such technical dismissal otherwise leads to inequitable results, the appropriate recourse is to resolve the issue concerned on the merits or resort to the principles of equity. This is as it should be as rules of procedure ought not operate at all times in a strict, technical sense, adopted as they were to help secure, not override substantial justice. In clearly meritorious cases, the higher demands of substantial justice must transcend rigid observance of procedural rules. Overlooking lapses on procedure on the part of litigants in the interest of strict justice or equity and the full adjudication of the merits of his cause or appeal are, in our jurisdiction, matters of judicial policy. And cases materially similar to the one at bench should invite the Court's attention to the merits if only to obviate the resulting inequity arising from the outright denial of the recourse. Here, the dismissal of the instant petition would be a virtual affirmance, on technicalities, of the DBM's assailed action, however iniquitous it may be. Bearing these postulates in mind, the Court, in the greater interest of justice, hereby disregards the procedural lapses obtaining in this case and shall proceed to resolve Go's petition on its substantial merits without further delay. The fact that Go's protest was rejected more than a decade ago, and considering that only legal questions are presented in this petition, warrants the immediate exercise by the Court of its jurisdiction.

3. POLITICAL LAW; ADMINISTRATIVE AGENCIES; LAND TRANSPORTATION FRANCHISING AND REGULATORY BOARD (LTFRB); RULING THEREOF SHALL BE APPEALABLE TO THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS SECRETARY. — Sec. 6 of EO 202 clearly provides: Sec. 6.

Decision of the Board [LTFRB]; Appeals therefrom and/or Review thereof. The Board, in the exercise of its powers and functions, shall sit and render its decisions *en banc*. x x x The decision, order or resolution of the Board shall be **appealable to the [DOTC] Secretary** within thirty (30) days from receipt of the decision: Provided, That the **Secretary may *motu proprio* review any decision** or action of the Board before the same becomes final. As may be deduced from the above provisos, the DOTC, within the period fixed therein, may, on appeal or *motu proprio*, review the LTFRB's rulings. While not expressly stated in Sec. 6 of EO 202, the DOTC Secretary's decision may, in turn, be further appealed to the OP. The "plain meaning" or *verba legis* rule dictates that if the statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without interpretation. Thus, the LTFRB rulings are not directly appealable to the CA under Rule 43.

4. ID.; STATUTES; SPECIAL LAW MUST PREVAIL OVER GENERAL LAW SINCE IT EVINCES THE LEGISLATIVE INTENT MORE CLEARLY; APPLICATION. — EO 202, creating the LTFRB, is a special law, thus enjoying primacy over a conflicting general, anterior law, such as BP 129. In *Vinzons-Chato v. Fortune Tobacco Corporation*, the Court elucidated on this issue in this wise: A general law and a special law on the same subject are statutes in *pari materia* and should, accordingly, be read together and harmonized, if possible, with a view to giving effect to both. The rule is that where there are two acts, one of which is special and particular and the other general which, if standing alone, would include the same matter and thus conflict with the special act, the **special law must prevail since it evinces the legislative intent more clearly than that of a general statute** and must not be taken as intended to affect the more particular and specific provisions of the earlier act, unless it is absolutely necessary so to construe it in order to give its words any meaning at all. Given the foregoing premises, BP 129 must, on matters of appeals from LTFRB rulings, yield to the provision of EO 202, the subsequent special law being regarded as an exception to, or a qualification of, the prior general act.

5. ID.; EXECUTIVE DEPARTMENT; DEPARTMENT OF BUDGET AND MANAGEMENT (DBM); FUNCTIONS, EXPLAINED. — There is no dispute that the DBM is vested

the authority to enforce and implement PD 985, as amended, which mandates the establishment of a unified compensation and position classification system for the government. Sec. 17 (a) of PD 985, as amended by Sec. 14 (a) of RA 6758, and the original Sec. 17 (b) of PD 985 pertinently provide, thus: Section 17. *Powers and Functions*. — The Budget Commission (now DBM), principally through the OCPC (now CPCB, Compensation and Position Classification Board) shall, in addition to those provided under other Sections of this Decree, have the following powers and functions: a. Administer the compensation and position classification system established herein and revise it as necessary; b. Define each grade in the salary or wage schedule which shall be used as a guide in placing positions to their appropriate classes and grades; Moreover, Secs. 2, 7 and 9 of RA 6758 respectively provide: Sec. 2. Statement of Policy. — It is hereby declared the policy of the State to provide equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions. x x x For this purpose, the x x x **(DBM) is hereby directed to establish and administer a unified Compensation and Position Classification System**, hereinafter referred to as the System, **as provided for in [PD] No. 985, as amended**, that shall be applied for all government entities, as mandated by the Constitution. x x x Sec. 7. Salary Schedule. — The [**DBM] is hereby directed to implement the Salary Schedule** prescribed below: x x x The [**DBM] is hereby authorized to determine the officials who are of equivalent rank to the foregoing Officials, where applicable**, and may be assigned the same Salary Grades based on the following guidelines: x x x Sec. 9. Salary Grade Assignments for Other Positions. — For positions below the Officials mentioned under Section 8 hereof and their equivalent, whether in the National Government, local government units, government-owned or controlled corporations or financial institutions, the [**DBM] is hereby directed to prepare the Index of Occupational Services to be guided by the Benchmark Position Schedule prescribed** hereunder and the following factors: (1) the education and experience required x x x; (2) the nature and complexity of the work to be performed; (3) the kind of supervision received; (4) mental and/or physical strain required x x x; (5) nature and extent of internal and external

relationships; (6) kind of supervision exercised; (7) decision-making responsibility x x x. And while the Office of Compensation and Position Classification, now Compensation and Position Classification Board (CPCB), is vested, under Sec. 8 of PD 985, the sole authority to allocate the classification of positions, its determinations relative to the allocations require the approval of the DBM Secretary to be binding.

6. ID.; ID.; ID.; PRINCIPLE OF NON-DIMINUTION OF COMPENSATION AND EMOLUMENTS; JUSTIFIED. — Lest it be overlooked, the transition provisos of RA 6758 provide additional justification for Go's entitlement to continue receiving the compensation and emoluments previously granted him upon his promotion as Chief, LTFRB Legal Division. Go, as an incumbent of said position before the assailed reallocation was effected ostensibly through the implementation of RA 6758, the statute's transition provisions should apply *mutatis mutandis* to him. The pertinent provisions are Secs. 12 and 17 of RA 6758, to wit: Section 12. *Consolidation of Allowances and Compensation.*—All allowances, except for representation and transportation allowances, clothing and laundry allowances; x x x and such other additional compensation not otherwise specified herein as may determined by the [DBM], shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized. x x x Section 17. *Salaries of Incumbents.*—Incumbents of positions presently receiving salaries and additional compensation/fringe benefits including those absorbed from local government units and other emoluments, the aggregate of which exceeds the standardized salary rate as herein prescribed, shall continue to receive such excess compensation, which shall be referred to as transition allowance. The transition allowance shall be reduced by the amount of salary adjustment that the incumbent shall receive in the future. Pursuant to the principle of non-diminution and consistent with the rule on the prospective application of laws in the spirit of justice and fair play, the above provisions are, indeed, meant to protect incumbents who are receiving salaries and allowances beyond what may be allowable under RA 6758. It may be that Go was not the occupant of his present position

as of July 1, 1989. Still the positions in the plantilla of the LTFRB were properly subjected to the standardization under RA 6758. In fact, the matter of excess of salary and benefits in the application of RA 6758 and PD 985 is a non-issue. What is at issue is the reallocation of the position from Attorney VI, SG-26 to Attorney V, SG-25. Obviously, the question of who was sitting as Chief of the Legal Division as of July 1, 1989 is of no moment. Of particular significance is the issue of whether the reallocation to a lower degree is proper given that Go was already enjoying the salary and emoluments as Attorney VI, SG-26 upon his appointment on February 1, 1990 as Chief, LTFRB Legal Division.

7. ID.; BILL OF RIGHTS; DUE PROCESS; ONE'S EMPLOYMENT IS A PROPERTY RIGHT WITHIN THE PURVIEW OF THE DUE PROCESS CLAUSE; EXPLAINED. — It is recognized that one's employment is a property right within the purview of the due process clause. So it was that in *Crespo v. Provincial Board of Nueva Ecija* the Court categorically held that "one's employment, profession, trade or calling is a 'property right,' and the **wrongful interference therewith is an actionable wrong**. The right is considered to be property within the protection of a constitutional guaranty of due process of law." Per our count, from his promotional appointment as Chief, LTFRB Legal Division to the time (April 8, 1991) the summary reallocation was implemented, Go had occupied the position and enjoyed the corresponding salary and emoluments therefor for one year, two months and eight days. In this length of time, Go's entitlement to the benefits appurtenant to the position has well nigh ripened into a vested right. x x x A vested right is one whose existence, effectivity and extent do not depend upon events foreign to the will of the holder, or to the exercise of which no obstacle exists, and which is immediate and perfect in itself and not dependent upon a contingency. The term "vested right" expresses the concept of present fixed interest which, in right reason and natural justice, should be protected against arbitrary State action, or an innately just and imperative right which enlightened free society, sensitive to inherent and irrefragable individual rights, cannot deny. To be vested, a right must have become a title—legal or equitable—to the present or future enjoyment of property.

APPEARANCES OF COUNSEL

Rogelio E. Subong for petitioner.
The Solicitor General for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

Assailed in this Petition for *Certiorari*[1] under Rule 65 are the Resolutions dated August 17, 2005[2] and January 31, 2006[3] of the Court of Appeals (CA) in CA-G.R. SP No. 90665.

The facts are undisputed.

Petitioner Gonzalo S. Go, Jr. (Go) was appointed in 1980 as Hearing Officer III of the Board of Transportation (BOT), then the government's land transportation franchising and regulating agency, with a salary rate of PhP 16,860 per annum.[4] On June 19, 1987, Executive Order No. (EO) 202[5] was issued creating, within the Department of Transportation and Communications (DOTC), the Land Transportation Franchising and Regulatory Board (LTFRB) to replace the BOT. The issuance placed the LTFRB under the administrative control and supervision of the DOTC Secretary.[6]

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[1] *Rollo*, pp. 3-38, dated March 29, 2006.

[2] *Id.* at 93-95. Penned by Associate Justice Rosalinda Asuncion-Vicente and concurred in by Associate Justices Godardo A. Jacinto (now retired) and Bienvenido L. Reyes.

[3] *Id.* at 114-116.

[4] *Id.* at 39.

[5] *Id.* at 44.

[6] EO 202, Sec. 4 provides:

> Sec. 4. Supervision and Control Over the Board. The Secretary of Transportation and Communications, through his duly designated Undersecretary, shall exercise administrative supervision and control over the Land Transportation Franchising and Regulatory Board.

On February 1, 1990, the DOTC Secretary extended Go a promotional appointment as Chief Hearing Officer (Chief, Legal Division), with a salary rate of PhP 151,800 per annum.[7] The Civil Service Commission (CSC) later approved this permanent appointment.[8] In her Certification[9] dated October 27, 2005, LTFRB Administrative Division Chief Cynthia G. Angulo stated that the promotion was to the position of Attorney VI, Salary Grade (SG)-26, obviously following budgetary circulars allocating SG-26 to division chief positions.

The instant controversy started when the Department of Budget and Management (DBM), by letter[10] of March 13, 1991, informed the then DOTC Secretary of the erroneous classification in the Position Allocation List (PAL) of the DBM of two positions in his department, one in the LTFRB and, the other, in the Civil Aeronautics Board (CAB). The error, according to the DBM, stemmed from the fact that division chief positions in quasi-judicial or regulatory agencies, whose decisions are immediately appealable to the department secretary instead of to the court, are entitled only to Attorney V, SG-25 allocation. Pertinently, the DBM letter reads:

> Under existing allocation criteria division Chief positions in x x x department level agencies performing quasi-judicial/regulatory functions where decisions are appealable to higher courts shall be allocated to Attorney VI, SG-26. Division chief positions in quasi-judicial/regulatory agencies lower than departments such as the **Civil Aeronautics Board** (CAB) and the **Land Transportation Franchising and Regulatory Board** (LTFRB) where decisions are appealable to the Secretary of the DOTC and then the Office of the President shall, however be allocated to Attorney V, SG-25.[11] (Emphasis supplied.)

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[7] *Rollo*, pp. 40-41, Certification dated July 27, 2005.

[8] *Id.*

[9] *Id.* at 41.

[10] *Id.* at 42-43.

[11] *Id.*

After an exchange of communications between the DBM and the DOTC, the corresponding changes in position classification with all its wage implications were implemented, effective as of April 8, 1991.[12]

Unable to accept this new development where his position was allocated the rank of Attorney V, SG-25, Go wrote the DBM to question the "summary demotion or downgrading [of his salary grade]" from SG-26 to SG-25. In his protest-letter,[13] Go excepted from the main reason proferred by the DBM that the decisions or rulings of the LTFRB are only appealable to the DOTC Secretary under Sec. 6 of EO 202 and not to the CA. As Go argued, the aforecited proviso cannot prevail over Sec. 9 (3) of Batas Pambansa Blg. (BP) 129, or the *Judiciary Reorganization Act of 1980*, under which appeals from decisions of quasi-judicial bodies are to be made to the CA.

Ruling of the DBM Secretary & Office of the President

On September 14, 1998, the DBM Secretary denied Go's protest, holding that decisions, orders or resolutions of the LTFRB are appealable to the DOTC Secretary.[14] The DBM reminded Go that based on the department's standards and criteria formulated pursuant to Presidential Decree No. (PD) 985 and Republic Act No. (RA) 6758,[15] the division chief of bureau-level agencies, like the LTFRB, is allocable to Attorney V, SG-25.

In time, Go sought reconsideration, with the following additional argument: LTFRB is similarly situated as another bureau-level agency under DOTC, the CAB, which is listed under Rule 43 of the Rules of Court as among the quasi-judicial agencies whose decisions or resolutions are directly appealable to the CA.

Following the denial of his motion for reconsideration, Go appealed to the Office of the President (OP).

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[12] *Id.* at 48.

[13] *Id.* at 49-50, Letter dated July 22, 1998.

[14] *Id.* at 59-60.

[15] The Compensation and Position Classification Act of 1989.

On January 7, 2005, in OP Case No. 99-8880, the OP, agreeing with the ruling of the DBM and the premises holding it together, rendered a Decision dismissing Go's appeal.

The OP would subsequently deny Gonzalo's motion for reconsideration.

Undaunted, Go interposed before the CA a petition for review under Rule 43, his recourse docketed as CA-G.R. SP No. 90665.

Ruling of the Court of Appeals

By Resolution dated August 17, 2005, the appellate court dismissed the petition on the following procedural grounds: (a) Go resorted to the wrong mode of appeal, Rule 43 being available only to assail the decision of a quasi-judicial agency issued in the exercise of its quasi-judicial functions, as DBM is not a quasi-judicial body; (b) his petition violated Sec. 6 (a) of Rule 43; and (c) his counsel violated Bar Matter Nos. 287 and 1132.

Through the equally assailed January 31, 2006 Resolution, the CA rejected Go's motion for reconsideration.

Hence, the instant petition for *certiorari*.

The Issues

I

DID RESPONDENT [CA] COMMIT GRAVE ABUSE OF DISCRETION x x x WHEN IT DISMISSED OUTRIGHT THE PETITION ON THE GROUND OF ALLEGED WRONG MODE OF APPEAL THROUGH RULE 43 OF THE RULES OF COURT —

— BY CLAIMING THAT WHEN RESPONDENT OP, WHOSE DECISION IN THE EXERCISE OF ITS QUASI-JUDICIAL POWERS IS APPEALABLE TO THE [CA] UNDER RULE 43, AFFIRMED THE DECISION OF THE DBM, IT WAS NOT IN THE EXERCISE OF ITS QUASI-JUDICIAL POWERS BUT IN THE EXERCISE OF ADMINISTRATIVE SUPERVISION AND CONTROL OVER THE DBM AND THEREFORE APPEAL UNDER RULE 43 CANNOT BE AVAILED OF, — FOR UNWARRANTEDLY READING WHAT IS NOT IN THE LAW AND NOT BORNE OUT BY THE FACTS OF THE CASE?

II

DID RESPONDENT [CA] COMMIT GRAVE ABUSE OF DISCRETION x x x WHEN IT DISMISSED OUTRIGHT THE PETITION ON THE GROUND OF FAILURE TO IMPLEAD A PRIVATE RESPONDENT —

— BY CLAIMING THAT "NO PRIVATE RESPONDENT IS IMPLEADED IN THE PETITION WHILE IMPLEADING THE [DBM] AND THE [OP], IN VIOLATION OF SECTION 6 (A) RULE 43 OF THE RULES OF COURT, — WHEN SAID PROVISION COULD NOT BE CONSTRUED AS TO HAVE REQUIRED IMPLEADING A PRIVATE RESPONDENT IN THE PETITION, IF THERE WAS NONE AT ALL?

III

DID THE [CA] COMMIT GRAVE ABUSE OF DISCRETION x x x WHEN IT DISMISSED OUTRIGHT THE PETITION ON THE GROUND OF FAILURE OF PETITIONER'S COUNSEL TO INDICATE CURRENT IBP AND PTR RECEIPT NOS. AND DATES OF ISSUE —

— BY CLAIMING THAT "PETITIONER'S COUNSEL HAS NOT INDICATED HIS CURRENT IBP AND PTR RECEIPT NUMBERS AND DATES OF ISSUE" — EVEN AS IN THE MOTION FOR RECONSIDERATION, PETITIONER GO EXPLAINED THAT IT WAS AN HONEST INADVERTENCE AND HE EVEN ATTACHED THERETO COPIES OF COPIES THEMSELVES OF THE CURRENT IBP AND PTR RECEIPTS?

IV

DID RESPONDENT [CA] COMMIT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED OUTRIGHT THE PETITION ON TECHNICAL AND FLIMSY GROUNDS —

— THUS SHIRKING FROM ITS BOUNDEN TASK TO ADDRESS A VERY PRESSINIG LEGAL ISSUE OF WHETHER EO 202 SEC. 6, A MERE EXECUTIVE ORDER, DIRECTING APPEAL TO THE DOTC SECRETARY SHOULD PREVAIL OVER A LAW, BP BLG. 129, SEC, 9 (C) AND RULE 43, SEC. 1 DIRECTING APPEAL TO THE COURT OF APPEALS?[16]

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[16] *Rollo*, pp. 6-7.

The Court's Ruling

There is merit in the petition.

The core issues may be reduced into two, to wit: *first*, the propriety of the dismissal by the CA of Go's Rule 43 petition for review on the stated procedural grounds; and *second*, the validity of the reallocation of rank resulting in the downgrading of position and diminution of salary.

Procedural Issue: Proper Mode of Appeal

As the CA held, Rule 43 is unavailing to Go, the remedy therein being proper only to seek a review of decisions of quasi-judicial agencies in the exercise of their quasi-judicial powers. It added that the primarily assailed action is that of the DBM, which is not a quasi-judicial body. In turn, thus, the affirmatory OP decision was made in the exercise of its administrative supervision and control over the DBM, not in the exercise of its quasi-judicial powers.

The appellate court is correct in ruling that the remedy availed of by Go is improper but not for the reason it proffered. Both Go and the appellate court overlooked the fact that the instant case involves personnel action in the government, *i.e.*, Go is questioning the reallocation and demotion directed by the DBM which resulted in the diminution of his benefits. Thus, the proper remedy available to Go is to question the DBM denial of his protest before the Civil Service Commission (CSC) which has exclusive jurisdiction over cases involving personnel actions, and not before the OP. This was our ruling involving personnel actions in *Mantala v. Salvador*,[17] cited in *Corsiga v. Defensor*[18]

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[17] G.R. No. 101646, February 13, 1992, 206 SCRA 264, 271. The Court held:

> Disciplinary cases, and cases involving "personnel actions" affecting employees in the civil service—including "appointment through certification, promotion, transfer, reinstatement, reemployment, detail, reassignment, demotion and separation," and, of course, employment status and qualification standards—are within the exclusive jurisdiction of the Civil Service Commission.

[18] G.R. No. 139302, October 28, 2002, 391 SCRA 267.

and as reiterated in *Olanda v. Bugayong*.[19] In turn, the resolution of the CSC may be elevated to the CA under Rule 43 and, finally, before this Court. Consequently, Go availed himself of the wrong remedy when he went directly to the CA under Rule 43 without repairing first to the CSC.

Ordinarily, a dismissal on the ground that the action taken or petition filed is not the proper remedy under the circumstances dispenses with the need to address the other issues raised in the case. But this is not a hard and fast rule, more so when the dismissal triggered by the pursuit of a wrong course of action does not go into the merits of the case. Where such technical dismissal otherwise leads to inequitable results, the appropriate recourse is to resolve the issue concerned on the merits or resort to the principles of equity. This is as it should be as rules of procedure ought not operate at all times in a strict, technical sense, adopted as they were to help secure, not override substantial justice.[20] In clearly meritorious cases, the higher demands of substantial justice must transcend rigid observance of procedural rules.

Overlooking lapses on procedure on the part of litigants in the interest of strict justice or equity and the full adjudication of the merits of his cause or appeal are, in our jurisdiction, matters of judicial policy. And cases materially similar to the one at bench should invite the Court's attention to the merits if only to obviate the resulting inequity arising from the outright denial of the recourse. Here, the dismissal of the instant petition would be a virtual affirmance, on technicalities, of the DBM's assailed action, however iniquitous it may be.

Bearing these postulates in mind, the Court, in the greater interest of justice, hereby disregards the procedural lapses obtaining in this case and shall proceed to resolve Go's petition on its substantial merits without further delay. The fact that Go's protest was rejected more than a decade ago, and considering

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[19] G.R. No. 140917, October 10, 2003, 413 SCRA 255, 259.

[20] *Cusi-Hernandez v. Diaz*, G.R. No. 140436, July 18, 2000, 336 SCRA 113.

that only legal questions are presented in this petition, warrants the immediate exercise by the Court of its jurisdiction.

Core Issue: Summary Reallocation Improper

Contrary to the DBM's posture, Go maintains that the LTFRB decisions are appealable to the CA pursuant to Sec. 9 (3) of BP 129 and Rule 43 of the Rules of Court. He argues that the grievance mechanism set forth in Sec. 6 of EO 202 cannot prevail over the appeal provisos of a statute and remedial law. Go thus asserts that the summary reallocation of his position and the corresponding salary grade reassignment, *i.e.*, from Attorney VI, SG-26 to Attorney V, SG-25, resulting in his demotion and the downgrading of the classification of his position, are without legal basis.

EO 202 governs appeals from LTFRB Rulings

We understand where Go was coming from since the DBM letter to the DOTC Secretary implementing the summary reallocation of the classification of the position of LTFRB Chief of the Legal Division gave the following to justify the reclassification: the forum, *i.e*, the department secretary or the CA, where the appeal of a decision of division chief or head of the quasi-judicial agency may be taken. The DBM, joined by the OP, held that LTFRB decisions are appealable to the DOTC Secretary pursuant to Sec. 6 of EO 202. Therefrom, one may go to the OP before appealing to the CA.

On this count, we agree with the DBM and the OP. Sec. 6 of EO 202 clearly provides:

> Sec. 6. Decision of the Board [LTFRB]; Appeals therefrom and/or Review thereof. The Board, in the exercise of its powers and functions, shall sit and render its decisions *en banc*. x x x
>
> The decision, order or resolution of the Board shall be **appealable to the [DOTC] Secretary** within thirty (30) days from receipt of the decision: Provided, That the **Secretary may *motu proprio* review any decision** or action of the Board before the same becomes final. (Emphasis supplied.)

As may be deduced from the above provisos, the DOTC, within the period fixed therein, may, on appeal or *motu proprio,* review the LTFRB's rulings. While not expressly stated in Sec. 6 of EO 202, the DOTC Secretary's decision may, in turn, be further appealed to the OP. The "plain meaning" or *verba legis* rule dictates that if the statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without interpretation.[21] Thus, the LTFRB rulings are not directly appealable to the CA under Rule 43.

Go further contends that EO 202, a mere executive issuance, cannot be made to prevail over BP 129, Sec. 9 (3), which provides for the appeal of the decisions and rulings of quasi-judicial agencies to the CA. Moreover, he points to the 1997 revision of the Rules of Civil Procedure which now provides under Rule 43 the appeals before the CA of decisions and rulings of quasi-judicial agencies.

Go is mistaken for the ensuing reasons: *First*, EO 202 was issued on June 19, 1987 by then President Corazon C. Aquino pursuant to her legislative powers under the then revolutionary government. The legislative power of President Aquino ended on July 27, 1987 when the first Congress under the 1987 Constitution convened.[22] For all intents and purposes, therefore, EO 202 has the force and effect of any legislation passed by Congress.

Second, EO 202, creating the LTRFB, is a special law, thus enjoying primacy over a conflicting general, anterior law, such as BP 129. In *Vinzons-Chato v. Fortune Tobacco Corporation*,[23] the Court elucidated on this issue in this wise:

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[21] *Republic v. Lacap*, G.R. No. 158253, March 2, 2007, 517 SCRA 255, 268; citing *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*, G.R. No. 159647, April 15, 2005, 456 SCRA 414, 443; and *National Federation of Labor v. National Labor Relations Commission*, G.R. No. 127718, March 2, 2000, 327 SCRA 158, 165.

[22] *Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. v. Tan*, No. L-81311, June 30, 1988, 163 SCRA 371, 380.

[23] G.R. No. 141309, June 19, 2007, 525 SCRA 11, 20-21; citing Agpalo, *STATUTORY CONSTRUCTION* 197-198 (2nd ed.,1990).

A general law and a special law on the same subject are statutes in *pari materia* and should, accordingly, be read together and harmonized, if possible, with a view to giving effect to both. The rule is that where there are two acts, one of which is special and particular and the other general which, if standing alone, would include the same matter and thus conflict with the special act, the **special law must prevail since it evinces the legislative intent more clearly than that of a general statute** and must not be taken as intended to affect the more particular and specific provisions of the earlier act, unless it is absolutely necessary so to construe it in order to give its words any meaning at all. (Emphasis supplied.)

Given the foregoing premises, BP 129 must, on matters of appeals from LTFRB rulings, yield to the provision of EO 202, the subsequent special law being regarded as an exception to, or a qualification of, the prior general act.[24]

DBM has authority to allocate classifications of different positions in the Government service

There is no dispute that the DBM is vested the authority to enforce and implement PD 985, as amended, which mandates the establishment of a unified compensation and position classification system for the government. Sec. 17 (a) of PD 985, as amended by Sec. 14 (a) of RA 6758, and the original Sec. 17 (b) of PD 985 pertinently provide, thus:

Section 17. *Powers and Functions.* — The Budget Commission (now DBM), principally through the OCPC (now CPCB, Compensation and Position Classification Board) shall, in addition to those provided under other Sections of this Decree, have the following powers and functions:

a. Administer the compensation and position classification system established herein and revise it as necessary;

b. Define each grade in the salary or wage schedule which shall be used as a guide in placing positions to their appropriate classes and grades;

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[24] *Id.* at 21.

Moreover, Secs. 2, 7 and 9 of RA 6758 respectively provide:

Sec. 2. Statement of Policy. — It is hereby declared the policy of the State to provide equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions. x x x For this purpose, the x x x **(DBM) is hereby directed to establish and administer a unified Compensation and Position Classification System**, hereinafter referred to as the System, **as provided for in [PD] No. 985, as amended**, that shall be applied for all government entities, as mandated by the Constitution.

x x x x x x x x x

Sec. 7. Salary Schedule. — The [**DBM] is hereby directed to implement the Salary Schedule** prescribed below:

x x x x x x x x x

The [**DBM] is hereby authorized to determine the officials who are of equivalent rank to the foregoing Officials, where applicable**, and may be assigned the same Salary Grades based on the following guidelines:

x x x x x x x x x

Sec. 9. Salary Grade Assignments for Other Positions. — For positions below the Officials mentioned under Section 8 hereof and their equivalent, whether in the National Government, local government units, government-owned or controlled corporations or financial institutions, the [**DBM] is hereby directed to prepare the Index of Occupational Services to be guided by the Benchmark Position Schedule prescribed** hereunder and the following factors: (1) the education and experience required x x x; (2) the nature and complexity of the work to be performed; (3) the kind of supervision received; (4) mental and/or physical strain required x x x; (5) nature and extent of internal and external relationships; (6) kind of supervision exercised; (7) decision-making responsibility x x x. (Emphasis supplied.)

And while the Office of Compensation and Position Classification, now Compensation and Position Classification

Board (CPCB), is vested, under Sec. 8[25] of PD 985, the sole authority to allocate the classification of positions, its determinations relative to the allocations require the approval of the DBM Secretary to be binding.

This brings us to the validity of the reallocation.

Summary reallocation illegal

Go argues that the summary reallocation of the classification of his position as Chief, LTFRB Legal Division to a lower grade substantially reduced his salary and other benefits, veritably depriving him of property, hence, illegal.

We agree with Go on this count. The summary reallocation of his position to a lower degree resulting in the corresponding downgrading of his salary infringed the policy of non-diminution of pay which the Court recognized and applied in *Philippine Ports Authority v. Commission on Audit*,[26] as well as in the subsequent sister cases[27] involving benefits of government employees. Running through the gamut of these cases is the holding that the affected government employees shall continue to receive benefits they were enjoying as incumbents upon the effectivity of RA 6758.

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[25] **Section 8.** *Allocation and Reallocation of Positions.* Subject to approval by the Commissioner of the Budget, the OCPC shall have authority to (a) ascertain the facts as to the current duties, responsibilities, and qualification requirements of any position; (b) place in an appropriate class any position coming under this Decree; (c) change the allocation of a position from one class to another class whenever the facts warrant. The OCPC shall certify to the department or agency concerned action taken under (b) and (c) of this Section. Such certification shall be binding on administrative, certifying, payroll, disbursing, accounting and auditing officers of the national government, including government-owned or controlled corporations and financial institutions.

[26] G.R. No. 100773, October 16, 1992, 214 SCRA 653.

[27] *Social Security System v. Commission on Audit,* G.R. No. 149240, July 11, 2002, 384 SCRA 548; *Government Service Insurance System v. Commission on Audit,* G.R. No. 138381, April 16, 2002, 381 SCRA 101; *Philippine International Trading Corporation v. Commission on Audit,* G.R. No. 132593, June 25, 1999, 309 SCRA 177; *Manila International Airport Authority v. Commission on Audit,* G.R. No. 104217, December 5, 1994, 238 SCRA 714.

Relevant to the critical issue at hand is Sec. 15 (b) of PD 985 which, as amended by Sec. 13 (a) of RA 6758, pertinently reads:

SEC. 13. *Pay Adjustments*.— x x x

(b) *Pay Reduction* — If an **employee is moved from a higher to a lower class, he shall not suffer a reduction in salary**: Provided, That such movement is not the result of a disciplinary action or voluntary demotion. (Emphasis supplied.)

Prior to its amendment, Sec. 15 (b) of PD 985 reads:

(b) Pay Reduction — If an employee is moved from a higher to a lower class, he shall not suffer a reduction in salary **except where his current salary is higher than the maximum step of the new class in which case he shall be paid the maximum**: Provided, That such movement is not the result of a disciplinary action. (Emphasis supplied.)

As may be noted, the legislature dropped from the original proviso on pay reduction the clause: "**except where his current salary is higher than the maximum step of the new class in which case he shall be paid the maximum**." The deletion doubtless indicates the legislative intent of maintaining, in line with the non-diminution principle, the level or grade of salary enjoyed by an incumbent before the reallocation to a lower grade or classification is effected. It must be made absolutely clear at this juncture that Go received his position classification of Attorney VI and assigned SG-26 upon his promotional appointment as Chief, LTFRB Legal Division on February 1, 1990, or after the effectivity of RA 6758. Following the clear mandate of the aforequoted Sec. 15(b) of PD 985, as amended, Go must not suffer a reduction in his salary even if there was a reallocation of his position to a lower grade.

Lest it be overlooked, the transition provisos of RA 6758 provide additional justification for Go's entitlement to continue receiving the compensation and emoluments previously granted him upon his promotion as Chief, LTFRB Legal Division. Go, as an incumbent of said position before the assailed reallocation was effected ostensibly through the implementation of RA 6758,

the statute's transition provisions should apply *mutatis mutandis* to him. The pertinent provisions are Secs. 12 and 17 of RA 6758, to wit:

> Section 12. *Consolidation of Allowances and Compensation.*— All allowances, except for representation and transportation allowances, clothing and laundry allowances; x x x and such other additional compensation not otherwise specified herein as may determined by the [DBM], shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.
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> x x x x x x x x x
>
> Section 17. *Salaries of Incumbents.*—Incumbents of positions presently receiving salaries and additional compensation/fringe benefits including those absorbed from local government units and other emoluments, the aggregate of which exceeds the standardized salary rate as herein prescribed, shall continue to receive such excess compensation, which shall be referred to as transition allowance. The transition allowance shall be reduced by the amount of salary adjustment that the incumbent shall receive in the future.

Pursuant to the principle of non-diminution and consistent with the rule on the prospective application of laws in the spirit of justice and fair play,[28] the above provisions are, indeed, meant to protect incumbents who are receiving salaries and allowances beyond what may be allowable under RA 6758. It may be that Go was not the occupant of his present position as of July 1, 1989. Still the positions in the plantilla of the LTFRB were properly subjected to the standardization under RA 6758. In fact, the matter of excess of salary and benefits in the application of RA 6758 and PD 985 is a non-issue. What is at issue is the reallocation of the position from Attorney VI, SG-26 to Attorney V, SG-25. Obviously, the question of who was sitting as Chief of the Legal Division as of July 1, 1989 is of no moment. Of particular significance is the issue of whether the reallocation

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[28] *Philippine International Trading Corporation v. Commission on Audit, supra* note 27, at 185.

to a lower degree is proper given that Go was already enjoying the salary and emoluments as Attorney VI, SG-26 upon his appointment on February 1, 1990 as Chief, LTFRB Legal Division.

While the DBM is statutorily vested with the authority to reclassify or allocate positions to their appropriate classes, with the concomitant authority to formulate allocating policies and criteria for bureau-level agencies, like the LTFRB, the investiture could not have plausibly included unchecked discretion to implement a reallocation system offensive to the due process guarantee.

It is recognized that one's employment is a property right within the purview of the due process clause. So it was that in *Crespo v. Provincial Board of Nueva Ecija*[29] the Court categorically held that "one's employment, profession, trade or calling is a 'property right,' and the **wrongful interference therewith is an actionable wrong**. The right is considered to be property within the protection of a constitutional guaranty of due process of law."[30]

Per our count, from his promotional appointment as Chief, LTFRB Legal Division to the time (April 8, 1991) the summary reallocation was implemented, Go had occupied the position and enjoyed the corresponding salary and emoluments therefor for one year, two months and eight days. In this length of time, Go's entitlement to the benefits appurtenant to the position has well nigh ripened into a vested right.

As the records show, Go, as Attorney VI, SG-26, was receiving an annual salary of PhP 151,800. Consequent to the enforcement of the summary reallocation of his position to Attorney V, SG-25, this was effectively reduced, reckoned from April 8, 1991, to PhP 136,620,[31] or a salary reduction of PhP 15,180

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[29] No. L-33237, April 15, 1988, 160 SCRA 66.

[30] *Id.* at 68; citing *Callanta v. Carnation Philippines, Inc.*, G.R. No. 70615, October 28, 1986, 145 SCRA 268, 278-279.

[31] *Rollo*, p. 48.

a year. These figures of course have yet to factor in supervening pay adjustments occurring through the years.

A vested right is one whose existence, effectivity and extent do not depend upon events foreign to the will of the holder, or to the exercise of which no obstacle exists, and which is immediate and perfect in itself and not dependent upon a contingency.[32] The term "vested right" expresses the concept of present fixed interest which, in right reason and natural justice, should be protected against arbitrary State action, or an innately just and imperative right which enlightened free society, sensitive to inherent and irrefragable individual rights, cannot deny.[33]

To be vested, a right must have become a title—legal or equitable—to the present or future enjoyment of property.[34]

To us, Go has established a clear, equitable vested right to the emoluments of his position as Attorney VI, SG-26. He continues to occupy—at least up to April 11, 2006 when he filed this petition—the position of Chief, LTFRB Legal Division. His title to Attorney VI, SG-26 is without question, having been legally appointed to the position on February 1, 1990. And being an incumbent to that position, he has, at the very least, an equitable right to receive the corresponding salary and emoluments attached thereto. The summary demotion to a lower salary grade, with the corresponding decrease in salary and emoluments after he has occupied his current rank and position, goes against his right to continue enjoying the benefits accorded the position and which his predecessors must have been receiving. His right thereto has ripened into a vested right, of which he

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[32] *Reyes v. Commission on Audit*, G.R. No. 125129, March 29, 1999, 305 SCRA 512; citing *Philippine Ports Authority v. Commission on Audit*, *supra* note 26, at 661.

[33] *Republic v. Miller*, G.R. No. 125932, April 21, 1999, 306 SCRA 183, 186; citing *Ayog v. Cusi*, No. L-46729, November 19, 1982, 118 SCRA 492, 499.

[34] *United Paracale Mining Company Inc. v. Dela Rosa*, G.R. No. 63786, April 7, 1993, 221 SCRA 108, 115; citing *National Carloading Corporation v. Phoenix Paso Express, Inc.*, cited in 16A Am. Jur. 2d, p. 651.

could be deprived only by due process of law, but which we believe he was denied through the summary reallocation. With the view we take of this case, Go was neither apprised nor given the opportunity to contest the reallocation before its summary implementation.

Lest this Decision is taken out of context, the Court wishes to emphasize that it is not its intention to disturb the reallocation of the position Chief, LTFRB Legal Division to Attorney V, SG-25. Accordingly, it behooves the DBM and the LTFRB to enforce the classification of position of Attorney V, SG-25 to those who will succeed Go in the said position.

It bears to stress nonetheless that this *pro hac vice* case disposition is predicated on the following key considerations: (1) Go was duly appointed to an office previously classified as a division chief position with an Attorney VI, SG 26 assignment; (2) under DBM circulars then obtaining, it would appear that division chief positions carried a SG-26 classification without the qualification set forth in the DBM's letter of March 31, 1991. In a real sense, therefore, the present controversy is attributable to the DBM's failure to incorporate, at the outset, the necessary clarificatory qualifications/ distinctions in its position and salary allocation rules/circulars; (3) Go's receipt for some time of the salary and other emoluments attached to the position was cut short by the reallocation of the position, resulting in his demotion and downgrading of salary; and (4) the reallocation was effected by the DBM in a summary manner.

WHEREFORE, the instant petition is *GRANTED*. The Resolutions dated August 17, 2005 and January 31, 2006 of the Court of Appeals in CA-G.R. SP No. 90665 are hereby *REVERSED* and *SET ASIDE*. The January 7, 2005 Decision and June 28, 2005 Order of the Office of the President in OP Case No. 99-8880 are likewise *REVERSED* and *SET ASIDE*. Accordingly, the summary reallocation enforced and implemented on April 8, 1991 is declared *NULL* and *VOID*. The Department of Transportation and Communications is hereby *ORDERED* to reinstate Gonzalo S. Go, Jr. to the position of Attorney VI, SG-26 as the Chief of the Legal Division of the

Land Transportation Franchising and Regulatory Board, with the corresponding release to him of the differential of all emoluments reckoned from April 8, 1991.

No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 173351. July 29, 2010]

BF CITILAND CORPORATION, *petitioner, vs.* **MARILYN B. OTAKE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEAL TO THE COURT OF APPEALS; APPEAL OF CASES FROM THE REGIONAL TRIAL COURT DECIDED IN ITS ORIGINAL JURISDICTION AND AS APPELLATE COURT, DISTINGUISHED. — In cases decided by the RTC in the exercise of its **original jurisdiction**, appeal to the Court of Appeals is taken by filing a notice of appeal. On the other hand, in cases decided by the RTC in the exercise of its **appellate jurisdiction**, appeal to the Court of Appeals is by a petition for review under Rule 42.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A PETITION FOR *CERTIORARI* UNDER RULE 65 IS AN ORIGINAL ACTION. — A petition for *certiorari* under Rule 65 does not

interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction from further proceeding has been issued against the public respondent. A petition for *certiorari* under Rule 65 is, without a doubt, an original action.

3. ID.; APPEALS; DISMISSAL OF APPEALS PURELY ON TECHNICAL GROUNDS IS FROWNED UPON. — In numerous cases, this Court has allowed liberal construction of the rules when to do so would serve the demands of substantial justice. Dismissal of appeals purely on technical grounds is frowned upon. It is better to excuse a technical lapse rather than dispose of a case on technicality, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice. In the present case, a dismissal on a technicality would only mean a new round of litigation between the same parties for the same cause of action, over the same subject matter. Thus, notwithstanding petitioner's wrong mode of appeal, the Court of Appeals should not have so easily dismissed the petition.

4. ID.; CIVIL PROCEDURE; *ACCION PUBLICIANA*; JURISDICTION OF THE REGIONAL TRIAL COURT, AMENDED. — Under Batas Pambansa Blg. 129, otherwise known as the Judiciary Reorganization Act of 1980, the plenary action of *accion publiciana* must be brought before regional trial courts. With the modifications introduced by Republic Act No. 7691, the jurisdiction of regional trial courts has been limited to real actions where the assessed value exceeds ₱20,000.00 or ₱50,000.00 if the action is filed in Metro Manila. If the assessed value is below the said amounts, the action must be brought before first level courts. As so amended, BP 129 now provides: Sec. 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts in Civil Cases*. — Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise: x x x (3) Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the **assessed value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos**

(₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs: *Provided*, That in cases of land not declared for taxation purposes, the value of such property shall be determined by the assessed value of the adjacent lots. Under BP 129, as amended, jurisdiction even in *accion publiciana* cases is determined by the assessed value of the property. The Court recently explained in *Spouses Alcantara v. Nido* that assessed value is the worth or value of the property as fixed by the taxing authorities for the purpose of determining the applicable tax rate. The assessed value does not necessarily represent the true or market value of the property.

APPEARANCES OF COUNSEL

Edgar A. Pacis for petitioner.
Noel L. Duque for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the Resolutions dated 28 July 2005[2] and 5 July 2006[3] of the Court of Appeals in CA-G.R. SP No. 88995. The 28 July 2005 Resolution dismissed the petition for review filed by petitioner seeking the reversal of the 29 December 2004 Decision[4] of the Regional Trial Court (Branch 257) of Parañaque City. The 5 July 2006 Resolution denied petitioner's motion for reconsideration.

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

[2] *Rollo*, pp. 44-46. Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Rodrigo V. Cosico and Danilo B. Pine, concurring.

[3] *Id.* at 48-49. Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Rodrigo V. Cosico and Andres B. Reyes, Jr., concurring.

[4] *Id.* at 212-218.

The Antecedent Facts

Petitioner BF Citiland Corporation is the registered owner of Lot 2, Block 101 situated in Brisbane Street, Phase III, BF Homes Subdivision, Parañaque City and covered by Transfer Certificate of Title No. 52940.[5] Based on the tax declaration[6] filed in the Office of the Assessor, the lot has an assessed value of ₱48,000.00.

On 24 February 1987, respondent Merlinda B. Bodullo[7] bought the adjoining Lot 1, Block 101 covered by TCT No. 77549.[8] However, records show respondent occupied not just the lot she purchased. She also encroached upon petitioner's lot.

On 13 October 2000, petitioner filed in the Metropolitan Trial Court (Branch 77) of Parañaque City a complaint[9] for *accion publiciana* praying that judgment be rendered ordering respondent to vacate the subject lot. Petitioner also prayed that respondent be ordered to pay ₱15,000.00 per month by way of reasonable compensation for the use of the lot.

The Ruling of the MeTC

In its 25 April 2003 Decision,[10] the MeTC ruled in favor of petitioner, to wit:

> WHEREFORE, premises considered, this Court renders judgment in favor of the plaintiff and against the defendant and the latter, including any and all persons claiming rights under her is ORDERED:
>
> 1. To VACATE Lot 2, Block 101 subject lot in this instant case and SURRENDER peaceful possession to the plaintiff;

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[5] *Id.* at 246-247.

[6] *Id.* at 56.

[7] "Marilyn B. Otake" in the complaint and subsequent case titles.

[8] *Rollo*, pp. 242-244.

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

[10] *Id.* at 89-93.

2. To PAY the plaintiff the sum of ₱10,000.00 per month by way of reasonable compensation for the use and occupancy of the subject lot from the filing of this case until the defendant shall have fully vacated the same;

3. To PAY the plaintiff the sum of ₱20,000.00 as and by way of attorney's fees; and

4. To PAY the costs of this suit.

SO ORDERED.[11]

Respondent filed a motion for reconsideration[12] claiming she was a lawful possessor and buyer in good faith of the disputed lot. In its Order dated 20 June 2003, the MeTC denied[13] the motion for reconsideration for lack of merit and for lack of the requisite notice of hearing. The MeTC then issued a writ of execution.[14] Respondent filed a motion[15] to quash the writ of execution on the ground that the MeTC had no jurisdiction over *accion publiciana* cases. In its 30 January 2004 Order,[16] the MeTC denied the motion to quash the writ of execution. It held that under Section 33 of Batas Pambansa Blg. 129, as amended by Republic Act 7691,[17] the MeTC had exclusive original jurisdiction in all civil actions involving title to or possession of real property with assessed value not exceeding ₱50,000.00.

Petitioner filed a motion for special order of demolition[18] alleging that the lot subject of execution contained improvements

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[11] *Id.* at 93.

[12] *Id.* at 94-99.

[13] *Id.* at 106-107.

[14] *Id.* at 108-109.

[15] *Id.* at 114-128.

[16] *Id.* at 142.

[17] An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, Amending for the Purpose *Batas Pambansa Blg.* 129, Otherwise Known as the "Judiciary Reorganization Act of 1980." Took effect on 15 April 1994.

[18] *Rollo*, pp. 143-144.

introduced by respondent. Respondent opposed the motion for being premature[19] and moved for reconsideration[20] of the 30 January 2004 Order of the MeTC. Respondent argued that even if the MeTC had jurisdiction over *accion publiciana* cases, the total value of the lot together with the residential house she built on it exceeded ₱50,000.00.

In its 23 July 2004 Order,[21] the MeTC ruled that since the subject lot had an assessed value of ₱48,000.00, it had jurisdiction under Section 33 of BP 129, as amended. The MeTC held that since the action was only for the recovery of the lot, the residential house respondent built on it should not be included in computing the assessed value of the property. Thus, the MeTC granted petitioner's motion for demolition and denied respondent's motion for reconsideration of its 30 January 2004 Order.

Respondent filed in the Regional Trial Court (Branch 257) of Parañaque City a petition for *certiorari*[22] under Rule 65 of the Rules of Court seeking dismissal of the *accion publiciana* case for lack of jurisdiction of the MeTC.

The Ruling of the RTC

In its 29 December 2004 Decision,[23] the RTC held that *accion publiciana* was within the exclusive original jurisdiction of regional trial courts. The RTC further explained that BP 129, as amended, did not modify the jurisprudential doctrine that a suit for *accion publiciana* fell under the exclusive original jurisdiction of the RTC. It disposed of the petition for certiorari in this wise:

WHEREFORE, the preliminary injunction previously issued by this Court in the Order dated September 8, 2004 enjoining the court *a quo* and its sheriff from implementing the Writ of Execution is hereby made permanent. Since the court *a quo* has no jurisdiction

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[19] *Id.* at 145-146.

[20] *Id.* at 148-159.

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

[22] *Id.* at 168-196.

[23] *Id.* at 212-218.

over Civil Case No. 11868, a suit for *accion publiciana* filed by BF Citiland Corporation against petitioner, the said case is dismissed. Consequently, all Orders and the Decision rendered on the said case by the court *a quo* are deemed void or without force and effect.

SO ORDERED.[24]

Petitioner filed a motion for reconsideration[25] insisting that *accion publiciana* was the civil action involving title to or possession of real property referred to in Section 33 of BP 129, as amended. Petitioner also claimed respondent was already estopped from assailing the jurisdiction of the MeTC because of respondent's participation in all the proceedings in the MeTC coupled with respondent's failure to timely object to the jurisdiction of the MeTC.

In her comment,[26] respondent reasoned that while Section 33 of BP 129, as amended, explicitly qualified the court's jurisdiction depending on the assessed value of the real property, *accion publiciana* conferred jurisdiction on regional trial courts regardless of the value of the property. Respondent further argued that lack of jurisdiction could be raised anytime.

Upon the RTC's denial[27] of petitioner's motion for reconsideration, petitioner filed in the Court of Appeals a petition for review[28] under Rule 42 of the Rules of Court contending that the RTC erred in ruling that the MeTC had no jurisdiction over *accion publiciana* cases. Petitioner maintained respondent was already estopped from questioning the jurisdiction of the MeTC. In her comment,[29] respondent stressed that the MeTC had no jurisdiction over *accion publiciana* cases. Respondent reiterated the argument that lack of jurisdiction could be raised

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[24] *Id.* at 218.

[25] *Id.* at 219-227.

[26] *Id.* at 228-234.

[27] *Id.* at 251.

[28] *Id.* at 256-278.

[29] *Id.* at 279-293.

anytime. In its reply,[30] petitioner cited *Refugia v. Court of Appeals*[31] in claiming that the MeTC had limited original jurisdiction in civil actions involving title to or possession of real property depending on the property's assessed value.

The Ruling of the Court of Appeals

In its 28 July 2005 Resolution,[32] the Court of Appeals dismissed the petition for review holding that appeal from a decision of the RTC rendered in the exercise of its original jurisdiction should be by way of a notice of appeal.

The Court of Appeals ruled that appeal by way of petition for review under Rule 42 of the Rules of Court could be resorted to only when what was appealed from was a decision of the RTC rendered in the exercise of its appellate jurisdiction. In its 5 July 2006 Resolution,[33] the Court of Appeals denied petitioner's motion for reconsideration.[34]

Hence, the instant petition for review.

The Issues

The issues for resolution are (1) whether a petition for review under Rule 42 is the proper mode of appeal from a decision of the RTC in a petition for *certiorari* under Rule 65; and (2) whether the RTC correctly ruled that the MeTC has no jurisdiction over *accion publiciana* cases.

The Court's Ruling

The petition is meritorious.

Petitioner posits that even if the RTC rendered the judgment in the exercise of its original jurisdiction, the Court of Appeals

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[30] *Id.* at 295-301.

[31] G.R. No. 118284, 5 July 1996, 258 SCRA 347, 361.

[32] *Rollo,* pp. 44-46.

[33] *Id.* at 48-49.

[34] *Id.* at 303-309.

still erred in dismissing the petition for review because a petition for review contains all the requisites of a notice of appeal. Petitioner argues the Court of Appeals erred in dismissing the petition for review on technicality without considering the merits of the case. Petitioner maintains the MeTC has jurisdiction since the assessed value of the lot subject of *accion publiciana* is only ₱48,000.00.

Respondent counters that the decision of the RTC was rendered in a petition for *certiorari* under Rule 65, unmistakably an original action. Respondent maintains that a petition for review cannot be treated as a form of a notice of appeal because of the inextendible nature of the latter. Respondent further argues that the RTC correctly ruled the MeTC has no jurisdiction in *accion publiciana* cases. Respondent claims she is not estopped from questioning the jurisdiction of the MeTC.

Section 2, Rule 41 of the Rules of Court states:

(a) *Ordinary appeal*. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its **original jurisdiction** shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. x x x

(b) *Petition for review*. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its **appellate jurisdiction** shall be by petition for review in accordance with Rule 42. (Emphasis supplied)

x x x x x x x x x

The Rule is clear. In cases decided by the RTC in the exercise of its **original jurisdiction**, appeal to the Court of Appeals is taken by filing a notice of appeal. On the other hand, in cases decided by the RTC in the exercise of its **appellate jurisdiction**, appeal to the Court of Appeals is by a petition for review under Rule 42.

A petition for *certiorari* under Rule 65 does not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction from further proceeding

has been issued against the public respondent.[35] A petition for *certiorari* under Rule 65 is, without a doubt, an original action.[36]

Since the decision of the RTC in the petition for *certiorari* under Rule 65 was rendered in the exercise of its original jurisdiction, appeal from the said RTC decision to the Court of Appeals should have been made by filing a notice of appeal, not a petition for review under Rule 42.

However, in numerous cases, this Court has allowed liberal construction of the rules when to do so would serve the demands of substantial justice. Dismissal of appeals purely on technical grounds is frowned upon. It is better to excuse a technical lapse rather than dispose of a case on technicality, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.[37] In the present case, a dismissal on a technicality would only mean a new round of litigation between the same parties for the same cause of action, over the same subject matter. Thus, notwithstanding petitioner's wrong mode of appeal, the Court of Appeals should not have so easily dismissed the petition.

Under Batas Pambansa Blg. 129, otherwise known as the Judiciary Reorganization Act of 1980, the plenary action of *accion publiciana* must be brought before regional trial courts.[38] With the modifications introduced by Republic Act No. 7691, the jurisdiction of regional trial courts has been limited to real actions where the assessed value exceeds ₱20,000.00 or ₱50,000.00 if the action is filed in Metro Manila. If the assessed value is below the said amounts, the action must be brought before first level courts. As so amended, BP 129 now provides:

Sec. 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts in Civil Cases.*

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[35] Section 7, Rule 65 of the Rules of Court.

[36] *Tomas Claudio Memorial College, Inc. v. Court of Appeals*, 467 Phil. 541 (2004).

[37] *Barangay Sangalang v. Barangay Maguihan*, G.R. No. 159792, 23 December 2009.

[38] *Bernardo v. Heirs of Villegas*, G.R. No. 183357, 15 March 2010.

— Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:

x x x x x x x x x

(3) Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the **assessed value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00)** exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs: *Provided*, That in cases of land not declared for taxation purposes, the value of such property shall be determined by the assessed value of the adjacent lots. (Emphasis supplied)

Under BP 129, as amended, jurisdiction even in *accion publiciana* cases is determined by the assessed value of the property.[39] The Court recently explained in *Spouses Alcantara v. Nido*[40] that assessed value is the worth or value of the property as fixed by the taxing authorities for the purpose of determining the applicable tax rate. The assessed value does not necessarily represent the true or market value of the property.[41]

In the present case, the complaint,[42] which was filed after the enactment of R.A. 7691, contained a statement that, based on the tax declaration[43] filed in the Office of the Assessor, the lot subject of the *accion publiciana* has an assessed value of ₱48,000.00. A copy of the tax declaration was attached as Annex "B" of the complaint. The subject lot, with an assessed value below the jurisdictional limit of ₱50,000.00 for Metro Manila, comes within the exclusive original jurisdiction of the MeTC under BP 129, as amended. Thus, the RTC erred in holding that the MeTC had no jurisdiction in this case.

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[39] *Id*.

[40] G.R. No. 165133, 19 April 2010 citing *Geonzon Vda. de Barrera v. Heirs of Vicente Legaspi*, G.R. No. 174346, 12 September 2008, 565 SCRA 192, 197.

[41] *Id*.

[42] *Rollo*, p. 51.

[43] *Id.* at 56.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the Resolutions dated 28 July 2005 and 5 July 2006 of the Court of Appeals in CA-G.R. SP No. 88995. We *REINSTATE* the 25 April 2003 Decision and the 20 June 2003 Order of the Metropolitan Trial Court (Branch 77) of Parañaque City in Civil Case No. 11868.

Costs against petitioner.

SO ORDERED.

Nachura, *Peralta*, *Abad*, and *Mendoza*, *JJ.*, concur.

THIRD DIVISION

[G.R. No. 180010. July 30, 2010]

CENITA M. CARIAGA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; AS A RULE, AN APPEAL ERRONEOUSLY TAKEN TO THE COURT OF APPEALS SHALL NOT BE TRANSFERRED BUT SHALL BE DISMISSED OUTRIGHT; EXCEPTION; RATIONALE. — Section 2 of Rule 50 of the Rules of Court provides: SEC. 2. Dismissal of improper appeal to the Court of Appeals. x x x **An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright**. That appellate jurisdiction in this case pertains to the Sandiganbayan is clear. Section 4 of Presidential Decree No. 1606, as amended by Republic Act No. 8249, so directs: Sec. 4. Jurisdiction. — The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

x x x **In cases where none of the accused are occupying positions corresponding to Salary Grade '27' or higher, as prescribed in the said Republic Act No. 6758, or military and PNP officers mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court, and municipal circuit trial court, as the case may be, pursuant to their respective jurisdictions as provided in Batas Pambansa Blg. 129, as amended. The Sandiganbayan shall exercise *exclusive appellate jurisdiction* over final judgments, resolutions or orders of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided.** **x x x** Since the appeal involves criminal cases, and the possibility of a person being deprived of liberty due to a procedural lapse militates against the Court's dispensation of justice, the Court grants petitioner's plea for a relaxation of the Rules. For rules of procedure must be viewed as tools to facilitate the attainment of justice, such that any rigid and strict application thereof which results in technicalities tending to frustrate substantial justice must always be avoided.

2. LEGAL ETHICS; ATTORNEYS; NEGLIGENCE OF COUNSEL, GENERALLY BINDS THE CLIENT; WHEN NOT APPLICABLE. — While the negligence of counsel generally binds the client, the Court has made exceptions thereto, especially in criminal cases where reckless or gross negligence of counsel deprives the client of due process of law; when its application will result in outright deprivation of the client's liberty or property; or where the interests of justice so require. It can not be gainsaid that the case of petitioner can fall under any of these exceptions. Moreover, a more thorough review and appreciation of the evidence for the prosecution and defense as well as a proper application of the imposable penalties in the present case by the Sandiganbayan would do well to assuage petitioner that her appeal is decided scrupulously.

APPEARANCES OF COUNSEL

Ramirez Lazaro Patricio & Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

In issue in the present petition for review is one of jurisdiction.

By Resolutions of May 28, 2007 and September 27, 2007, the Court of Appeals, in CA-G.R. CR No. 29514, "*People of the Philippines v. Cenita Cariaga*," dismissed the appeal of Cenita Cariaga (petitioner) for lack of jurisdiction over the subject matter.

Petitioner, as the municipal treasurer of Cabatuan, Isabela with a Salary Grade of 24, was charged before the Regional Trial Court (RTC) of Cauayan City in Isabela with three counts of malversation of public funds, defined under Article 217 of the Revised Penal Code.

The Information in the first case, Criminal Case No. 1293, reads:

> That on or about the year 1993 or sometime prior or subsequent thereto in the Municipality of Cabatuan, Province of Isabela, and within the jurisdiction of this Honorable Court, the above-named accused, [C]ENITA M. CARIAGA, a public officer, being the Municipal Treasurer of Cabatuan, Isabela, and as such is accountable for taxes, fees and monies collected and/or received by her by reason of her position, acting in relation to her office and taking advantage of the same, did then and there, willfully, unlawfully and feloniously take, misappropriate and convert to her personal use the amount of TWO THOUSAND SEVEN HUNDRED EIGHTY-FIVE PESOS (₱2,785.00) representing the remittance of the Municipality of Cabatuan to the Provincial Government of Isabela as the latter's share in the real property taxes collected, which amount was not received by the Provincial Government of Isabela, to the damage and prejudice of the government in the amount aforestated.
>
> CONTRARY TO LAW.[1] (underscoring supplied)

The two other Informations in the second and third criminal cases, Nos. 1294 and 1295, contain the same allegations except

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[1] CA *rollo*, pp. 12-13.

the malversed amounts which are ₱25,627.38 and ₱20,735.13, respectively.[2]

Branch 20 of the Cauayan RTC, by Joint Decision of June 22, 2004,[3] convicted petitioner in the three cases, disposing as follows:

> WHEREFORE, finding the accused CENITA M. CARIAGA, GUILTY beyond reasonable doubt of the crime of MALVERSATION for which she is charged in the three (3) separate informations and in the absence of any mitigating circumstance, hereby sentences her to suffer:
>
> 1. In Crim. Case No. Br. 20-1293, an indeterminate penalty of from FOUR (4) YEARS and ONE (1) DAY of PRISION CORRECCIONAL as minimum to SEVEN (7) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *PRISION MAYOR* as maximum and its accessory penalty of perpetual special disqualification and a fine of Two Thousand Seven Hundred Eighty Five (₱2,785.00) Pesos, without subsidiary imprisonment in case of insolvency. Cost against the accused.
>
> 2. In Crim. Case No. Br. 20-1294, an indeterminate penalty of from TEN (10) YEARS and ONE (1) DAY of *PRISION MAYOR* as minimum to EIGHTEEN (18) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of *RECLUSION TEMPORAL* as maximum and to suffer the accessory penalty of perpetual special disqualification and to pay a fine of Twenty Five Thousand Six Hundred Twenty Seven (₱25,627.00) Pesos. She is ordered to indemnify the Provincial Government of Isabela Twenty Five Thousand Six Hundred Twenty Seven (₱25,627.00) Pesos, without subsidiary imprisonment in case of insolvency. Cost against the accused.
>
> 3. In Crim. Case No. Br. 20-1295, an indeterminate penalty of from TEN (10) YEARS and ONE (1) DAY of *PRISION MAYOR* as minimum to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of *RECLUSION TEMPORAL* as maximum, and to suffer the accessory penalty of perpetual special disqualification and a fine of Twenty Thousand Seven Hundred Thirty (₱20,730.00) Pesos,

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[2] *Id.* at 14-17.

[3] Penned by Judge Henedino P. Eduarte.

without subsidiary imprisonment in case of insolvency. The bailbonds are cancelled. Costs against the accused.

SO ORDERED.

Petitioner, through counsel, in time filed a Notice of Appeal, stating that he intended to appeal the trial court's decision to the Court of Appeals.

By Resolution of May 28, 2007,[4] the Court of Appeals dismissed petitioner's appeal for lack of jurisdiction, holding that it is the Sandiganbayan which has exclusive appellate jurisdiction thereon. Held the appellate court:

> Concomitantly, jurisdiction over the offense is vested with the Regional Trial Court considering that the position of Municipal Treasurer corresponds to a salary grade below 27. Pursuant to Section 4 of [Presidential Decree No. 1606, as amended by Republic Act No. 8249], **it is the Sandiganbayan, to the exclusion of all others, which enjoys appellate jurisdiction over the offense**. Evidently, the appeal to this Court of the conviction for malversation of public funds was improperly and improvidently made. (emphasis and underscoring supplied)

Petitioner's Motion for Reconsideration was denied by Resolution of September 27, 2007.[5] Hence, the present petition for review, petitioner defining the issues as follows:

> I. WHETHER . . ., CONSIDERING THE CLEAR AND GRAVE ERROR COMMITTED BY COUNSEL OF [PETITIONER] AND OTHER EXTRA-ORDINARY CIRCUMSTANCES, THE APPEAL OF… [PETITIONER] WRONGFULLY DIRECTED TO THE COURT OF APPEALS BE DISMISSED OUTRIGHT…OR BE ENDORSED AND TRANSMITTED TO THE SANDIGANBAYAN WHERE THE APPEAL SHALL THEN PROCEED IN DUE COURSE.

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[4] *Rollo*, pp. 46-50. Penned by then CA Presiding Justice (now a retired member of the Court) Ruben T. Reyes with Associate Justices Mario L. Guariña III and Japar B. Dimaampao concurring.

[5] *Id.* at 52-55.

II. WHETHER . . ., IN CONSIDERATION OF SUBSTANTIAL JUSTICE IN A CRIMINAL CASE, NEW TRIAL BE GRANTED TO THE PETITIONER TO BE UNDERTAKEN IN THE SANDIGANBAYAN (ALTERNATIVELY IN THE REGIONAL TRIAL COURT) SO THAT CRUCIAL EVIDENCE OF PETITIONER…BE ADMITTED.[6]

Petitioner, now admitting the procedural error committed by her former counsel, implores the Court to relax the Rules to afford her an opportunity to fully ventilate her appeal on the merits and requests the Court to endorse and transmit the records of the cases to the Sandiganbayan in the interest of substantial justice.

Section 2 of Rule 50 of the Rules of Court provides:

SEC. 2. Dismissal of improper appeal to the Court of Appeals. x x x.

An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright. (emphasis and underscoring supplied)

That appellate jurisdiction in this case pertains to the Sandiganbayan is clear. Section 4 of Presidential Decree No. 1606,[7] as amended by Republic Act No. 8249, so directs:[8]

Sec. 4. Jurisdiction. — The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

x x x x x x x x x

In cases where none of the accused are occupying positions corresponding to Salary Grade '27' or higher, as prescribed in the said Republic Act No. 6758, or military and PNP officers mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court, and municipal circuit trial court,

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[6] *Id.* at 23-24.

[7] Creating a Special Court To Be Known As "Sandiganbayan" and for Other Purposes.

[8] An Act Further Defining the Jurisdiction of the Sandiganbayan.

as the case may be, pursuant to their respective jurisdictions as provided in Batas Pambansa Blg. 129, as amended.

The Sandiganbayan shall exercise *exclusive appellate jurisdiction* over final judgments, resolutions or orders of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided. x x x (emphasis, italics and underscoring supplied).

Since the appeal involves criminal cases, and the possibility of a person being deprived of liberty due to a procedural lapse militates against the Court's dispensation of justice, the Court grants petitioner's plea for a relaxation of the Rules.

For rules of procedure must be viewed as tools to facilitate the attainment of justice, such that any rigid and strict application thereof which results in technicalities tending to frustrate substantial justice must always be avoided.[9]

In *Ulep v. People*,[10] the Court remanded the case to the Sandiganbayan when it found that

> x x x petitioner's failure to designate the proper forum for her appeal was inadvertent. The omission did not appear to be a dilatory tactic on her part. Indeed, **petitioner had more to lose had that been the case as her appeal could be dismissed outright for lack of jurisdiction** — which was exactly what happened in the CA.
>
> **The trial court, on the other hand, was duty bound to forward the records of the case to the proper forum, the Sandiganbayan.** It is unfortunate that the RTC judge concerned ordered the pertinent records to be forwarded to the wrong court, to the great prejudice of petitioner. Cases involving government employees with a salary grade lower than 27 are fairly common, albeit regrettably so. The judge was expected to know and should have known the law and the rules of procedure. **He should have known when appeals are to be taken to the CA and when they should be forwarded to the Sandiganbayan.** He should have conscientiously and carefully

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[9] *De Guzman v. Sandiganbayan*, G.R. No. 103276, 256 SCRA 171, 179 (1996).

[10] G.R. No. 183373, January 30, 2009, 577 SCRA 600.

observed this responsibility specially in cases such as this where a person's liberty was at stake. (emphasis and underscoring supplied)

The slapdash work of petitioner's former counsel and the trial court's apparent ignorance of the law effectively conspired to deny petitioner the remedial measures to question her conviction.[11]

While the negligence of counsel generally binds the client, the Court has made exceptions thereto, especially in criminal cases where reckless or gross negligence of counsel deprives the client of due process of law; when its application will result in outright deprivation of the client's liberty or property; or where the interests of justice so require.[12] It can not be gainsaid that the case of petitioner can fall under any of these exceptions.

Moreover, a more thorough review and appreciation of the evidence for the prosecution and defense as well as a proper application of the imposable penalties in the present case by the Sandiganbayan would do well to assuage petitioner that her appeal is decided scrupulously.

WHEREFORE, the assailed Resolutions of the Court of Appeals in CA-G.R. CR No. 29514 are *SET ASIDE*. Let the records of the cases be *FORWARDED* to the Sandiganbayan for proper disposition.

The Presiding Judge of Branch 20, Henedino P. Eduarte, of the Cauayan City Regional Trial Court is *WARNED* against committing the same procedural error, under pain of administrative sanction.

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[11] By Order of July 5, 2004 the RTC approved the Notice of Appeal and directed the branch clerk of court to

> …**transmit the entire record of the instant case** with all the pages prominently and consecutively numbered, together with an index of the contents thereof, the original and duplicate copies of the transcript of stenographic notes of the testimonies of the witnesses and the exhibits of the parties, **to the Court of Appeals** for further proceedings. (emphasis and underscoring supplied).

[12] *Vide*: *Sarraga, Sr. v. Banco Filipino Savings and Mortgage Bank*, G.R. No. 143783, 442 Phil. 55 (2002).

SO ORDERED.

Brion, Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 184843. July 30, 2010]

VIRGILIO DYCOCO, herein represented by his Attorneys-in-fact CRISTINO C. GRAFILO, JOSE C. GRAFILO and ADOLFO C. GRAFILO, and CRISTINO C. GRAFILO, JOSE C. GRAFILO and ADOLFO C. GRAFILO for and in their own behalf, *petitioners, vs.* **ADELAIDA ORINA joined by her husband GERMAN R. ORINA as represented by her Attorney-in-fact EVELYN M. SAGALONGOS and for in the latter's own behalf,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PRIVATE DOCUMENTS, PROOF REQUIRED. — Documents acknowledged before a notary public, except last wills and testaments, are public documents. Since the subject REM was not properly notarized, its public character does not hold. Since the REM is not a public document, it is subject to the requirement of proof for private documents under Section 20, Rule 132, which provides: Section 20. Proof of private document. — Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either: (a) By anyone who saw the document executed or written; or (b) By evidence of the genuineness of the signature or handwriting of the maker. Any other private document need only be identified as that which it is claimed to be.

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[*] Additional member per Special Order No. 838 dated May 17, 2010.

2. ID.; ID.; GENUINENESS OF SIGNATURES ON THE DOCUMENT, WHEN SOUGHT TO BE PROVED OR DISPROVED THROUGH COMPARISON OF STANDARD SIGNATURES WITH THE QUESTIONED SIGNATURE; PROOF NEEDED, EXPLAINED. — It is axiomatic that when the genuineness of signatures on a document is sought to be proved or disproved through comparison of standard signatures with the questioned signature, the original thereof must be presented. Why respondents did not present the original, they did not explain. Why they did not present Adelaida, who must have been present at the execution of the REM as her purported signature appears thereon, or the notary public, or any of the witnesses, neither did they explain. Sec. 5 of Rule 130 which reads: SEC. 5. *When original document is unavailable.*— When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of the unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

APPEARANCES OF COUNSEL

Gonong Paredes De Leon Mariñas Paredes Arevalo & Gonzales for petitioners.

Oscar I. Mercado for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

On petition for review on *certiorari* is the November 29, 2007 Decision of the Court of Appeals[1] affirming the dismissal of the action for annulment of real estate mortgage and transfer certificate of title with damages.

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[1] Penned by Associate Justice Bienvenido L. Reyes with the concurrence of Associate Justices Fernanda Lampas-Peralta and Apolinario D. Bruselas, Jr., *rollo,* pp. 57-69.

Virgilio Dycoco (Dycoco) is alleged to have executed on October 9, 1995 a "Real Estate Mortgage with Special Power to Sell Mortgaged Property without Judicial Proceedings" (REM) in favor of respondent Adelaida Orina (Adelaida), covering a parcel of land located in Sta. Cruz, Manila and registered under Transfer Certificate of Title (TCT) No. 105730 in Dycoco's name. The REM was notarized on even date by Notary Public Arwin Juco Sinaguinan.

By Adelaida's claim, Dycoco was indebted to her in the amount of ₱250,000.00, payable in six months, to bear monthly interest rate of five percent (5%), to secure which Dycoco executed the REM.

For Dycoco's alleged failure to pay his obligation, Adelaida extrajudicially foreclosed the REM and as no redemption was made within the reglementary period, Dycoco's TCT was cancelled and, in its stead, TCT No. 243525 was issued in her name.

Dycoco's attorneys-in-fact-brothers-in-law Cristino, Jose and Adolfo, all surnamed Grafilo, who occupy the property covered by the REM as caretakers/tenants, did not turn-over its possession to Adelaida, hence, she, joined by her husband represented by her attorney-in-fact Evelyn Sagalongos (Evelyn), filed a complaint for ejectment against them before the Metropolitan Trial Court (MeTC) of Manila.

Upon receiving notice of the complaint, Dycoco, represented by his attorneys-in-fact, filed a complaint for annulment of the REM and transfer certificate of title with damages, docketed as Civil Case No. 01100522, against Adelaida and her husband German Orina represented by Evelyn before the Regional Trial Court (RTC) of Manila.

Dycoco's attorneys-in-fact claimed that Dycoco's signature on the REM was forged, to prove which they presented various documents that Dycoco was working in the United States of America as a licensed physician on the alleged date of execution of the REM. They also presented Dycoco's U.S. Passport, personal checks, Special Power of Attorney and Affidavit; and

a Certification from the Clerk of Court of RTC Manila that the office does not possess a copy of the REM, Notary Public Sinaguinan having not submitted her notarial report for October 1995.

Herein respondents Adelaida *et al.*, maintaining the due execution of the REM, presented Evelyn who testified on a *photocopy* of the REM.

By Decision of May 23, 2005, Branch 15 of the Manila RTC dismissed Dycoco's complaint, holding that:

> Plaintiff, [Dycoco], through the testimony of their (*sic*) lone witness as well as their (*sic*) documentary exhibits tried to show that it was not . . . Dycoco who mortgaged the said property. Cristino Grafilo even testified that their brother Miguel, admitted to having stole (*sic*) the title and have (*sic*) it mortgaged. Plaintiffs (*sic*), however, failed to establish that the mortgagor, (*sic*) defendant Adelaida Orina, knew it was not Virgilio Dycoco who mortgaged the same.[2] (underscoring supplied)

By the assailed Decision, the Court of Appeals affirmed the trial court's dismissal of Dycoco's complaint, it holding that albeit Dycoco's questioned signature appearing on the REM and the documentary evidence presented by his attorneys-in-fact bear "striking differences," since Dycoco was not presented on the witness stand to establish the genuineness, due execution and contents of the documentary evidence, no probative value can be ascribed thereto.

In not crediting evidentiary weight on Dycoco's U.S. passport showing that he was *not* in the Philippines when the REM was executed, the appellate court held:

> . . . [T]he existence, genuineness, due execution and contents of Exhibit "I" have not been properly established. Again, the identification made by plaintiff-appellant Cristino Grafilo (*sic*) will not suffice since he is not privy to its issuance and execution. The plaintiff-appellants (*sic*) should have presented a person competent to testify to establish the genuineness and contents of Exhibit "I" like an officer

[2] *Id.* at 211.

from the Bureau of Immigration. But the plaintiff-appellants (*sic*) failed to do so. Thus, this court finds the stance of plaintiff-appellants (*sic*) that Virgilio Dycoco was out of the country at the time of the execution of the questioned deed unsupported.[3]

The motion for reconsideration of Dycoco's attorneys-in-fact having been denied by Resolution of October 3, 2008, the present petition for review was filed.

A perusal of the REM which is, as stated earlier, a merely *photocopy*, shows the incompleteness of the acknowledgment portion. It reads:

Republic of the Philippines)
City of Manila) S.S.

BEFORE ME, a Notary Public for and in the City of Manila, this 9th day of October 1995, personally came and appeared _____ (*sic*) with Res. Cert. No. : 12262297 C issued on 27 July 95 at Manila and Tax Account No.: 110-783-724 known to me and to me known to be the same person who executed the foregoing instrument which he acknowledged before me as his free and voluntary act and deed.[4]

As the above-quoted acknowledgment shows, the name of the person who personally appeared before the notary public is not stated.

Documents acknowledged before a notary public, except last wills and testaments, are public documents.[5] Since the subject REM was not properly notarized, its public character does not hold.

Since the REM is not a public document, it is subject to the requirement of proof for private documents under Section 20, Rule 132, which provides:

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[3] *Id*. at 67-68.

[4] Records, p. 25.

[5] Section 19, Rule 132, RULES OF COURT.

Section 20. Proof of private document. — Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

(a) By anyone who saw the document executed or written; or
(b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be. (underscoring supplied)

It was thus incumbent upon Adelaida to prove that Dycoco's signature is genuine. As stated earlier, a mere *photocopy* of the REM was presented. It is axiomatic that when the genuineness of signatures on a document is sought to be proved or disproved through comparison of standard signatures with the questioned signature, the original thereof must be presented.[6] Why respondents did not present the original, they did not explain. Why they did not present Adelaida, who must have been present at the execution of the REM as her purported signature appears thereon, or the notary public, or any of the witnesses, neither did they explain. Sec. 5 of Rule 130 which reads:

SEC. 5. *When original document is unavailable.* — When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of the unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

Upon the other hand, Dycoco's attorneys-in-fact presented his U.S. passport documenting when he entered and exited from the Philippines, as well as various documents showing his genuine signature. The appellate court, although upholding the admissibility of Dycoco's documentary evidence, did not ascribe weight to it, however, upon the justification that "[e]ven if . . . Cristino Grafilo was empowered to appear for and on behalf of plaintiff-

[6] *Heirs of Severa P. Gregorio v. Court of Appeals*, G.R. No. 117609, December 29, 1998, 300 SCRA 565.

appellant Virgilio Dycoco in this case by virtue of a Special Power of Attorney, the powers couched in said document do not vest upon the former the power to testify on matters [of] which he has no personal knowledge."[7]

Contrary to the appellate court's stance, there was no necessity to present Dycoco on the witness stand or to present the one who made the entries on his U.S. passport. In respondents' Comment/Opposition to Dycoco's formal offer of evidence, the passport was objected to as being "immaterial, irrelevant and impertinent."[8] Such comment is a virtual admission of the *authenticity* of the entries in the passport.

But more important, one of the documents offered by Dycoco is a Special Power of Attorney executed on June 2, 2000 in Illinois, U.S.A. showing his signature, notarized and certified in accordance with Public Act No. 2103,[9] which effectively dispenses with the requirement of presenting him on the witness stand.

Section 2. An instrument or document acknowledged and authenticated in a foreign country shall be considered authentic if the acknowledgment and authentication are made in accordance with the following requirements:

(a) The acknowledgment shall be made before (1) an ambassador, minister, secretary of legation, ***chargé d'affaires,*** consul, vice-consul, or consular agent of the United States, acting within the country or place to which he is accredited, or (2) a **notary public** or officer duly authorized by law of the country to take acknowledgments of instruments or documents in the place where the act is done.

(b) The person taking the acknowledgment shall certify that the person acknowledging the instrument or document is known to him, and that he is the same person who executed it, and acknowledged that the same is his free act and deed. The certificate shall be under his

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[7] *Rollo*, p. 67.

[8] Records, p. 146.

[9] Otherwise known as AN ACT PROVIDING FOR THE ACKNOWLEDGMENT AND AUTHENTICATION OF INSTRUMENTS AND DOCUMENTS WITHOUT THE PHILIPPINE ISLANDS.

official seal, if he is by law required to keep a seal, and if not, his certificate shall so state. In case the acknowledgment is made before a notary public or an officer mentioned in subdivision (2) of the preceding paragraph, **the certificate of the notary public or the officer taking the acknowledgment shall be authenticated by an ambassador, minister, secretary of legation, *chargé d'affaires,* consul, vice-consul, or consular agent of the United States, acting within the country or place to which he is accredited**. The officer making the authentication shall certify under his official seal that the person who took the acknowledgment was at the time duly authorized to act as notary public or that he was duly exercising the functions of the office by virtue of which he assumed to act, and that as such he had authority under the law to take acknowledgment of instruments or documents in the place where the acknowledgment was taken, and that his signature and seal, if any, are genuine. (emphasis and underscoring supplied)

Evelyn insisted that Dycoco was present during the signing of the REM on October 9, 1995:

ATTY. MERCADO:

Q: Madam Witness, when this document was prepared, were you present?

WITNESS:
A: Yes sir.

Q: Are you a witness in the execution of this document?
A: Yes sir.

Q: On page 2 of this document, the (sic) appears a signature above the type-written name Adelaida Orina, will you please inform the Honorable Court whose signature is this?

Q: Why do you know that it is the signature of Adelaida Orina?
A: Because she is included there.

Q: What do you mean by "*kasama po siya*"?
A: There were four of us at the office of the Notary Public.

Q: When you said four of you, whao (sic) are they?
A: Adelaida, Virgilio, two other witness (sic) and me.

Q: You are not four, you are five?
A: Yes sir.[10] (underscoring supplied)

Evelyn's testimony not only contradicts the entries in Dycoco's U.S. Passport, however, it appearing therein that Dycoco visited the Philippines on April 2, 1990 and arrived in the United States on April 9 of the same year. Contrary to her claim, the REM does not reflect here as one of the witnesses to its execution.

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals dated November 29, 2007 is *REVERSED* and *SET ASIDE*.

Let a **NEW** judgment be entered declaring null and void the document entitled "Real Estate Mortgage with Special Power to Sell Mortgaged Property without Judicial Proceedings" purportedly signed by Virgilio Dycoco in favor of Adelaida Orina.

Let a copy of this Decision be furnished the Register of Deeds of Manila for proper disposition.

SO ORDERED.

Brion, Bersamin, Abad,[*] and *Villarama, Jr., JJ.*, concur.

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[10] TSN, June 25, 2002, pp. 7-8.

[*] Designated as Additional Member, per Special Order No. 843 (May 17, 2010), in view of the vacancy occasioned by the retirement of Chief Justice Reynato S. Puno.

SO ORDERED.

Brion, Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 179743. August 2, 2010]

HADJA FATIMA GAGUIL MAGOYAG, joined by her husband, HADJI HASAN MADLAWI MAGOYAG, *petitioners, vs.* **HADJI ABUBACAR MARUHOM,** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; INTERPRETATION OF CONTRACTS; FUNDAMENTAL RULE THAT WHEN THE TERMS ARE CLEAR AND LEAVE NO DOUBT AS TO THE INTENTION OF THE CONTRACTING PARTIES, THE LITERAL MEANING OF THE CONTRACT PROVISIONS SHALL CONTROL; APPLICABLE IN CASE AT BAR.— By no stretch of imagination can we construe the provisions of the *Deed of Assignment* as a contract of loan with mortgage. Crystal clear in the *Deed of Assignment* are unambiguous provisions that respondent assigned, sold, transferred, and conveyed the subject market stall to petitioners. Nowhere in the Deed does it say that respondent obtained a loan of ₱20,000.00, and mortgaged the subject stall as security. The most fundamental rule in the interpretation of contracts is that, if the terms are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of the contract provisions shall control. Its meaning should be determined without reference to extrinsic facts or aids. The intention of the parties must be gathered from that language, and from that

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[*] Additional member per Special Order No. 838 dated May 17, 2010.

language alone. Stated differently, where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean, unless some good reason can be assigned to show that the words should be understood in a different sense. Courts cannot make for the parties better or more equitable agreements than they themselves have been satisfied to make, or rewrite contracts because they operate harshly or inequitably as to one of the parties, or alter them for the benefit of one party and to the detriment of the other, or by construction, relieve one of the parties from the terms which he voluntarily consented to, or impose on him those which he did not.

2. ID.; ID.; ID.; THE TRANSACTION BETWEEN PETITIONERS AND RESPONDENT IS ONE OF SALE.— That respondent sold the subject stall for ₱20,000.00 to petitioners was admitted by respondent in his Answer, although he averred that the sale was with a right to repurchase. Even the testimony of respondent points to no other transaction than a sale in favor of petitioners. The CA, therefore, committed a serious blunder in making a new contract for the parties, and declaring the *Deed of Assignment* as a contract of loan with mortgage. Indubitably, the transaction between petitioners and respondent was a sale. As such, under ordinary circumstances, petitioners could recover possession of the property from respondent. Unfortunately in this case, the Court cannot grant petitioners the relief that they are praying for — recovery of possession of the subject stall.

3. ID.; ID.; VOID CONTRACTS; EFFECTS; PARTY NOT AT FAULT MAY DEMAND THE RETURN OF WHAT HE HAS GIVEN WITHOUT ANY OBLIGATION TO COMPLY WITH HIS PROMISE; CASE AT BAR.— The records show that Market Stall No. CTD 1583 is owned by the City Government of Marawi. Indeed, the RTC and the CA correctly held that it was the City Government of Marawi, not respondent, that owned Market Stall No. CTD 1583. Respondent, as a mere grantee of the subject stall, was prohibited from selling, donating, or otherwise alienating the same without the consent of the City Government; violation of the condition shall automatically render the sale, donation, or alienation null and void. Thus, we sustain the CA in declaring the *Deed of Assignment* null and void, but we cannot abide by the CA's final disposition. A

void contract is equivalent to nothing; it produces no civil effect. It does not create, modify, or extinguish a juridical relation. Parties to a void agreement cannot expect the aid of the law; the courts leave them as they are, because they are deemed in *pari delicto* or *in equal fault*. To this rule, however, there are exceptions that permit the return of that which may have been given under a void contract. One of the exceptions is found in Article 1412 of the Civil Code, which states: Art. 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed: (1) When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking; (2) When only one of the contracting parties is at fault, he cannot recover what he has given by reason of the contract, or ask for the fulfillment of what has been promised him. The other, who is not at fault, may demand the return of what he has given without any obligation to comply with his promise. Respondent was well aware that as mere grantee of the subject stall, he cannot sell it without the consent of the City Government of Marawi. Yet, he sold the same to petitioners. The records, however, are bereft of any allegation and proof that petitioners had actual knowledge of the status of respondent's ownership of the subject stall. Petitioners can, therefore, recover the amount they had given under the contract.

APPEARANCES OF COUNSEL

Dimnatang T. Saro for petitioners.
Pama L. Muti for respondent.

D E C I S I O N

NACHURA, *J.*:

Hadja Fatima Gaguil Magoyag and her husband Hadji Hasan Madlawi Magoyag (petitioners), appeal by *certiorari* under Rule 45 of the Rules of Court the April 28, 2006 Decision[1] of

[1] Penned by Associate Justice Edgardo A. Camello, with Associate Justices Normandie B. Pizarro and Ricardo R. Rosario, concurring; *rollo*, pp. 33-44.

the Court of Appeals (CA) in CA-G.R. CV No. 75765, and the August 28, 2007 Resolution[2] denying its reconsideration.

The antecedents:

On December 20, 1982, respondent Hadji Abubacar Maruhom (respondent) was awarded a market stall at the Reclamation Area by the Islamic City of Marawi.[3]

On December 1, 1985, respondent orally sold his stall to petitioner for ₱20,000.00. Later, on December 10, 1985, respondent executed a *Deed of Assignment*,[4] confirming the oral sale; assigning, selling, transferring, and conveying his market stall to petitioners for a consideration of ₱20,000.00. In the same *Deed of Assignment*, petitioners leased the subject stall to respondent for a monthly rental of ₱250.00, beginning December 1, 1985, renewable every year at the option of petitioners. Respondent undertook to pay in advance the rentals for six months amounting to ₱1,500.00 on or before December 1, 1985.

Respondent religiously paid the monthly rentals of ₱250.00, which was increased to ₱300.00 on December 1, 1988; and to ₱400.00 beginning December 1, 1991. However, on June 1, 1993, respondent simply stopped paying the rentals. Respondent promised to settle his unpaid account, but he failed to make good his promise. Petitioner then demanded that respondent vacate the property, but the demand just fell on deaf ears.

Accordingly, on August 22, 1994, petitioners filed a complaint[5] for recovery of possession and damages, with prayer for issuance of a temporary restraining order (TRO), with the Regional Trial Court (RTC) of Marawi City.

In his Answer,[6] respondent admitted selling the subject stall for ₱20,000.00 to petitioners, but averred that the sale was

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[2] *Id.* at 45-46.

[3] See Exhibit "1", record, p. 207.

[4] Exhibit "A", *id.* at 131-132.

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

[6] *Id.* at 14-17.

with right to repurchase; and on condition that he would remain in possession of the subject stall as long as he wants. He signed the *Deed of Assignment* on petitioners' assurance that the conditions they earlier agreed upon were contained in the deed. Being illiterate, he just relied on petitioners' assurances. Respondent denied that he refused to pay the agreed monthly rentals; alleging that petitioners were the ones who refused to receive the rental payments and instead demanded payment of ₱150,000.00. The *Deed of Assignment*, he added, failed to express the true intent and agreement of the parties; and his signature thereon was procured by fraud, deceit, and misrepresentation; hence, void *ab initio*. Respondent further averred that the complaint failed to state a cause of action, as petitioners failed to comply with the provisions of Presidential Decree (P.D.) No. 1508, or the *Katarungang Pambarangay Law,* and the Local Government Code of 1991. He also assailed the jurisdiction of the RTC over the complaint, claiming the jurisdiction falls with the Municipal Trial Court (MTC). Finally, he averred that the complaint lacked the required verification and certification against forum shopping. Respondent, therefore, prayed for the dismissal of the complaint.

On June 10, 2002, the RTC rendered a Decision,[7] *viz.*:

> After a careful examination of the foregoing facts and pieces of evidence as presented by the parties, this court is convinced that [petitioners] spouses has (sic) proved and duly established that indeed [respondent] have (sic) agreed to sell to [petitioners] spouses whatever rights that he has over the disputed stall. Their transaction was even admitted by the [respondent] when he signed the acknowledgment receipt (Exhs. "B" & "B-1") for ₱20,000.00 which is the agreed purchase price and the notarized Deed of Assignment (Exh. "A" to "A-6"). [Respondent], however, claimed that the contents of the Deed of Assignment was (*sic*) not even read & translated to him, he being illiterate (*sic*).
>
> The transaction was further supported by [respondent's] counter-offer to buy the stall for ₱80,000.00 (Exh. "D") and the acknowledgment receipts of [respondent] on the payment of rentals

[7] *Id.* at 245-252.

to the [petitioners] (Exhs. "H" to "H-6", Exh(s). "I-1" to "I-6" and Exh(s). "J" to "J-3".

The only evidence presented by the [respondent] is his lone testimony and Exh. "1" awarding [the] subject stall by the City Government to him.

The [respondent] did not present any evidence on his alleged ownership over [the] subject stall except a certification (Exh. "1") dated December 20, 1982 from the City Government awarding [the] same to him and subject even to the condition that he cannot sell, donate or otherwise alienate the same without the consent of the City Government.

It appears therefore that [the] subject stall is owned by the City Government of Marawi and that [respondent] cannot even sell or dispose of the same.

Not being the owner, the principle *NEMO DAT QUOD NON HABET* which means ONE CANNOT GIVE WHAT ONE DOES NOT HAVE squarely applies in this case.

At most, what [respondent] can sell is whatever rights that he has over the disputed stalls like his continued possession over the same for his business purposes. This is what [petitioner-spouses] acquired in the interest of justice.[8]

The RTC disposed, thus:

WHEREFORE, judgment is hereby rendered in favor of [petitioner-spouses] and against the [respondent] as follows:

1. Whatever rights that [respondent] Hadji Abubacar Maruhom has over stall No. CTD 1583 as described in the complaint as lessee or grantee or even as the alleged owner are hereby transferred to [petitioner-spouses] Hadji Fatima Gaguil Magoyag and Hadji Hasan Madlawi Mangoyag. Said [respondent] is ordered to vacate the stall in favor of [petitioners];

2. Ordering [respondent] to pay unto petitioner the following:

(a) The unpaid rentals from June 1, 1993 up to May 31, 2002 at Three Hundred Pesos (₱300.00) a month or a total of ₱24,900.00;

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[8] *Id.* at 251.

(b) Ten Thousand (₱10,000.00) pesos – moral and [e]xemplary [d]amages;

(c) Twenty Thousand (₱20,000.00) pesos – Attorney's fees.

SO ORDERED.[9]

Respondent appealed to the CA faulting the RTC for not dismissing the complaint. He argued that the complaint was filed in brazen violation of Supreme Court Circular No. 04-94 and the Rules of Court requiring a certification of non-forum shopping. He added that the subject stall is owned by the City Government of Marawi that cannot be leased or alienated. The *Deed of Assignment* that he executed in favor of the petitioners is, therefore, null and void. He urged the CA to apply the civil law rule on *pari delicto*.

On April 28, 2006, the CA rendered the assailed Decision reversing the RTC. The decretal portion of the CA Decision reads:

WHEREFORE, the assailed decision of the Regional Trial Court is hereby **REVERSED AND SET ASIDE** and another one entered declaring the Deed of Assignment dated December 10, 1985 void and [of] no effect and ordering [respondent] to pay the loan amount of ₱20,000.00 plus ₱250.00 as monthly interest thereon from the date of demand or August 1, 1994 until the same shall have been fully paid. No pronouncement as to costs.

SO ORDERED.[10]

Petitioners filed a motion for reconsideration, but the CA denied it on August 28, 2007.[11]

Hence, this appeal by petitioners, ascribing reversible error on the part of the CA for reversing the RTC. Specifically, they argue that the CA erred in declaring that the transaction they had with respondent was a loan with mortgage; and invalidating

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[9] *Id.* at 251-252.

[10] *Rollo*, at 43.

[11] *Id.* at 45.

the *Deed of Assignment*. They insist that respondent already transferred his entire interest over the subject stall in their favor. Thus, they are entitled to the possession of the property.

In declaring the transaction as loan with mortgage, the CA explains in this wise:

> x x x [t]he evidence overwhelmingly showed that the real intention of the [respondent] was to have the subject market stall mortgaged, in order to secure the payment of the loan of ₱20,000.00 from [petitioners]. There was no genuine intention on his part to sell the property. In fact, even after the execution of the Deed of Assignment, [respondent] remained in possession of the said property and paid religiously the so-called "monthly rentals" in the amount of two hundred fifty (₱250.00) which, in reality, was the amount they had agreed upon as interest on the loan. For these reasons, We find and so hold that the purported assignment was really meant to be a contract of loan in the amount of ₱20,000.00 with interest thereon at the rate of ₱250.00 per month. The property was intended to serve as a collateral for the loan. It is firmly ensconced in jurisprudence that neither clarity of contract terms nor explicitness of the name given to it can bar Us from determining the true intent of the parties.
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> x x x x x x x x x[12]

We find the finding of the CA contrary to the evidence on record, if not outright preposterous.

The *Deed of Assignment*[13] reads in full:

DEED OF ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS:

This DEED OF ASSIGNMENT made and executed by and between:

The FIRST PARTY: Hadji Abubacar Maruhom, of legal age, married, businessman by occupation and a resident of Marawi City

-and-

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[12] *Id.* at 40.

[13] *Supra* note 3, at 131-132.

The SECOND PARTY: Hadji Fatima Gaguil-Magoyag, also of legal age, married and a government employee with postal address at Moriatao Balindong, Taraka, Lanao del Sur

W I T N E S S E T H

That for and in consideration of the sum of TWENTY THOUSAND PESOS: (₱20,000.00), Philippine Currency which amount has been paid by the Second Party and receipt hereof has been acknowledge[d] by the First Party, the said First [P]arty does hereby assign, [sell] transfer and convey unto the Second Party that certain two-storey Market Stall No. CTD 1583 situated in the Reclamation Area, Marawi City which is made of cement, and lumber and more particularly described as follows:

Stall No. - - - - - - - - - - - - - - - - - - - CTD 1583
Length - 3 meters
Width - 2 meters
Adjacent Stall Owner - - - - - - - - - - - - - Rakim Bayabao
Fronting - - - - - - - - - - - - - - - - - - - Hadji Cosain Saripada
Back - Hadji Alawi Pacati

of which market stall the First Party is the registered holder/owner under the following terms and conditions:

1. The FIRST PARTY is authorize[d] and empower[ed] to continue engaging in business in his own sole account on the said stall N[o]. CTD 1583 on a monthly rental of TWO HUNDRED FIFTY PESOS: (₱250.00) to be paid by said FIRST PARTY to SECOND PARTY six months in advance the monthly rental to start on December 1, 1985 renewable every year at the option of the SECOND PARTY.

2. The FIRST PARTY agrees to pay the SECOND PARTY the first six-month advance rental in the amount of One Thousand Five Hundred Pesos: (₱1,500.00) on or before December 1, 1985, [a]nd the succeeding monthly rental shall always be payable six-month[s] in advance on a progressive rate reckoned from the future rental of adjoining stall holder/owner.

3. The FIRST PARTY shall not directly or indirectly lease, assign or mortgage or [in] any way encumber said Market Stall N[o]. 1583 or any portion thereof without the written permission of the Second Party; any contract or agreement made in violation thereof shall be null and void.

4. The FIRST PARTY shall turnover the Market Stall No. CTD 1583 to the SECOND PARTY should the FIRST PARTY decide to abandon the said Market Stall No. CTD 1583;

5. All repairs within the premises shall be at the sole account and expense of the FIRST PARTY without right to reimbursement.

6. The FIRST PARTY shall use the said Market Stall No. 1583 exclusively for business and shall not bring into the said stall any inflammable or explosive goods or materials nor any article which may expose the said stall from fire or increase the fire hazard.

7. That all charges for water, light, gas, telephone within the stall shall be at the sole account of the FIRST without right to reimbursement;

8. The FIRST PARTY shall be responsible for the payment of all taxes on the said [S]tall No. CTD 1583 and the compliance of all laws, ordinances and regulations or order of the National or City Government authorities arising from or requiring the use, occupation and utilization of the said Market Stall No. CTD 1583. Failure to comply with said laws, ordinances, regulations or order shall be at the exclusive risk and expense of the FIRST PARTY.

By no stretch of imagination can we construe the provisions of the *Deed of Assignment* as a contract of loan with mortgage. Crystal clear in the *Deed of Assignment* are unambiguous provisions that respondent assigned, sold, transferred, and conveyed the subject market stall to petitioners. Nowhere in the Deed does it say that respondent obtained a loan of ₱20,000.00, and mortgaged the subject stall as security.

The most fundamental rule in the interpretation of contracts is that, if the terms are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of the contract provisions shall control.[14] Its meaning should be determined without reference to extrinsic facts or aids. The intention of the parties must be gathered from that language, and from that language alone. Stated differently, where the language of a written contract is clear and unambiguous, the

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[14] *Continental Cement Corp. v. Filipinas (PREFAB) Systems, Inc.*, G.R. No. 176917, August 4, 2009, 595 SCRA 215, 225.

contract must be taken to mean that which, on its face, it purports to mean, unless some good reason can be assigned to show that the words should be understood in a different sense. Courts cannot make for the parties better or more equitable agreements than they themselves have been satisfied to make, or rewrite contracts because they operate harshly or inequitably as to one of the parties, or alter them for the benefit of one party and to the detriment of the other, or by construction, relieve one of the parties from the terms which he voluntarily consented to, or impose on him those which he did not.[15]

That respondent sold the subject stall for ₱20,000.00 to petitioners was admitted by respondent in his Answer,[16] although he averred that the sale was with a right to repurchase. Even the testimony[17] of respondent points to no other transaction than a sale in favor of petitioners. The CA, therefore, committed a serious blunder in making a new contract for the parties, and declaring the *Deed of Assignment* as a contract of loan with mortgage.

Indubitably, the transaction between petitioners and respondent was a sale. As such, under ordinary circumstances, petitioners could recover possession of the property from respondent. Unfortunately in this case, the Court cannot grant petitioners the relief that they are praying for – recovery of possession of the subject stall.

The records show that Market Stall No. CTD 1583 is owned by the City Government of Marawi. Indeed, the RTC and the CA correctly held that it was the City Government of Marawi, not respondent, that owned Market Stall No. CTD 1583. Respondent, as a mere grantee of the subject stall, was prohibited from selling, donating, or otherwise alienating the same without the consent of the City Government; violation of the condition shall automatically render the sale, donation, or alienation null

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[15] *Benguet Corporation v. Cabildo*, G.R. No. 151402. August 22, 2008, 563 SCRA 25, 38.

[16] See Answer, record, p. 14.

[17] TSN, August 16, 2000 and March 6, 2001.

and void.[18] Thus, we sustain the CA in declaring the *Deed of Assignment* null and void, but we cannot abide by the CA's final disposition.

A void contract is equivalent to nothing; it produces no civil effect. It does not create, modify, or extinguish a juridical relation. Parties to a void agreement cannot expect the aid of the law; the courts leave them as they are, because they are deemed in *pari delicto* or *in equal fault*.[19] To this rule, however, there are exceptions that permit the return of that which may have been given under a void contract. One of the exceptions is found in Article 1412 of the Civil Code, which states:

> Art. 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:
>
> (1) When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking;
>
> (2) When only one of the contracting parties is at fault, he cannot recover what he has given by reason of the contract, or ask for the fulfillment of what has been promised him. The other, who is not at fault, may demand the return of what he has given without any obligation to comply with his promise.

Respondent was well aware that as mere grantee of the subject stall, he cannot sell it without the consent of the City Government of Marawi. Yet, he sold the same to petitioners. The records, however, are bereft of any allegation and proof that petitioners had actual knowledge of the status of respondent's ownership of the subject stall. Petitioners can, therefore, recover the amount they had given under the contract.

In *Cavite Development Bank v. Spouses Lim*,[20] and *Castillo, et al. v. Abalayan*,[21] we held that in case of a void sale, the

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[18] *Supra* note 3.

[19] *Menchavez v. Teves, Jr.*, 490 Phil. 268, 280 (2005).

[20] 381 Phil. 355, 371 (2000).

[21] 141 Phil. 57, 63 (1969)

seller has no right whatsoever to keep the money paid by virtue thereof, and should refund it, with interest at the legal rate, computed from the date of filing of the complaint until fully paid. Petitioners can, therefore, recover the amount of ₱20,000.00 from respondent with interest at 6% per annum from the time of the filing of the complaint until the finality of this Decision, and 12% per annum thereafter until full payment.

WHEREFORE, the petition is *PARTLY GRANTED*. The April 28, 2006 Decision and August 28, 2007 Resolution of the Court of Appeals in CA G.R. CV No. 75765 are *AFFIRMED with MODIFICATION*. The *Deed of Assignment* dated December 10, 1985 is declared *VOID AB INITIO*. Respondent Hadji Abubacar Maruhom is ordered to return to petitioners Hadja Fatima Gaguil Magoyag and Hadji Hasan Madlawi Magoyag the amount of ₱20,000.00 with interest at 6% per annum from the time of the filing of the complaint until the finality of this Decision and 12% per annum thereafter until full payment.

No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 183140. August 2, 2010]

NORTH BULACAN CORPORATION, *petitioner, vs.* **PHILIPPINE BANK OF COMMUNICATIONS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION; SHOULD BE CONSTRUED LIBERALLY TO OBTAIN FOR THE PARTIES JUST, EXPEDITIOUS AND INEXPENSIVE DISPOSITION OF THE CASE; LIBERALITY, HOWEVER, MAY NOT BE INVOKED IF IT WILL RESULT IN THE UTTER DISREGARD OF THE RULES OR CAUSE NEEDLESS DELAYS IN THE ADMINISTRATION OF JUSTICE.— The Court enacted the Interim Rules of Procedure on Corporate Rehabilitation to provide a remedy for summary and non-adversarial rehabilitation proceedings of distressed but viable corporations. The intent is consistent with the commercial nature of rehabilitation, which seeks to expedite its resolution for the benefit, not only of the petitioner-corporation, but of all the parties involved and the economy in general. These rules are to be construed liberally to obtain for the parties a just, expeditious, and inexpensive disposition of the case. The parties may not, however, invoke such liberality if it will result in the utter disregard of the rules or cause needless delay in the administration of justice. Here, as PBCom pointed out, NBC violated several rules on corporate rehabilitation. In contravention of Rule 3, Section 1 on prohibited pleadings, NBC filed motions for extension and a memorandum in the case, which the RTC blindly allowed. NBC likewise filed various pleadings, ignoring the requirement under the Rules that these be verified by the affiants. Also, NBC filed a couple of motions for indirect contempt against PBCom without complying with the requirement that these, too, had to be verified. Further, the documents that accompanied NBC's petition fell short of what the rules required. For instance, the Schedule of Debts and Liabilities did not show the creditors' addresses and, although it reflected the principal amount of each debt, nowhere did it state the amount of accrued interests, the penalties, the nature of the obligation, and any pledge, lien, mortgage judgment, or other security given for the debt. Additionally, the NBC's Inventory of Assets failed to state the nature of its assets, their location and condition. NBC did not likewise disclose the encumbrances, liens, or claims on its properties and the identities as well as the addresses of the lien holders or claimants. Largely because of NBC's numerous

prohibited pleadings, nearly a year had passed since the petition's initial hearing on February 15, 2007 and still the RTC had not approved a rehabilitation plan for the company. Under the Rehabilitation Rules, if upon the lapse of 180 days from the date of the initial hearing there is still no approved rehabilitation plan, the RTC must dismiss the petition.

2. ID.; ID.; ID.; THE TRIAL COURT UTTERLY DISREGARDED THE RULES IN THE GUISE OF LIBERAL CONSTRUCTION AND GRANTED THE PETITION FOR REHABILITATION BASED ON INSUFFICIENT EVIDENCE.— NBC argues that the RTC could not have committed grave abuse of discretion in extending the 180-day period since the rules allowed such an extension provided it was not to exceed 18 months from the filing of the petition. True, such an extension is allowed but only if there appeared to be convincing and compelling evidence that the debtor-corporation can be successfully rehabilitated. Here, however, the RTC proceeded beyond the 180-day period even in the absence of a motion to extend the same and despite the lack of strong and compelling evidence which showed that NBC's continued operation was still economically feasible. Quite the contrary, aside from the substantial inadequacy of NBC's listed assets, the creditors' opposition to rehabilitation critically placed in serious doubt the likelihood of its success. PBCom claimed that, out of 1,202 real properties listed as NBC's assets, at least 1,075 actually belonged to FSPHI and were mortgaged to PBCOM. FSPHI, for its part, said that NBC's obligation to it amounted to ₱48,333,914.00 and not ₱43,845,000.00 as listed. Pag-IBIG pointed out that NBC owed it more than ₱188 Million. The RTC did not properly address these oppositions to the rehabilitation. Moreover, even assuming that the extension was just, the petition had to be dismissed just the same because the RTC had not approved any rehabilitation plan as of June 28, 2008 or within 18 months from the date of filing of the petition on December 28, 2006. In fact, there is nothing in the records of the case that would show that the RTC ever approved any rehabilitation plan. Ordinarily, the evaluation of petitioner-company's business viability in a corporate rehabilitation case involves factual issues that this Court will not take cognizance of since it is not a trier of facts. But when it is shown that the RTC gravely abused its discretion

in finding what the facts are, it may grant an exception. Here, the RTC did just that when it utterly disregarded the Rules on Corporate Rehabilitation in the guise of liberal construction and granted the petition for rehabilitation based on insufficient evidence.

3. ID.; ID.; ID.; THE REHABILITATION COURT GROSSLY ABUSED ITS AUTHORITY IN GRANTING THE PETITION WHILE IGNORING THE REQUIREMENTS FOR IT.— The RTC admitted NBC's pleadings and their attachments despite blatant non-compliance with the rules. It gave due course to the petition allegedly because the "NBC was able to convince the court of the feasibility of its rehabilitation by showing the condition and value of its assets, the viability of its business, and the cause for its present financial problems." On closer examination, however, the NBC inventory actually did not mention the condition of its listed assets. It merely enumerated certain real properties and their respective sizes and market values. Further, the RTC refused to dismiss the petition notwithstanding that it had not approved any rehabilitation plan within the period specified by law. Clearly, the rehabilitation court grossly abused its authority in granting NBC's petition while ignoring the requirements for it.

4. ID.; ID.; ID.; EVEN BRUSHING TECHNICALITIES ASIDE, THE PETITION FOR CORPORATE REHABILITATION MUST STILL FAIL DUE TO PETITIONER'S MISREPRESENTATION AS TO ITS ACCOUNTABILITIES AND THE INADEQUATE DOCUMENTATION OF ITS ASSETS.— Even brushing technicalities aside, NBC's petition for corporate rehabilitation must still fail. As the CA aptly noted, the RTC failed to address NBC's misrepresentation as to its true accountabilities with Pag-IBIG and FSPHI. For instance, NBC claims that as of November 30, 2006 its total assets amounted to ₱412,193,537.50 while its obligations reached ₱367,926,823.05. But FSPHI asserts that NBC owed it ₱48,333,914.00, not just ₱43,845,000.00, indicating a need to examine the claims. For its part, Pag-IBIG asserts that NBC owed it ₱188,425,476.49 as a result of the latter's unjustified refusal to register its covered employees and to remit their compulsory monthly contributions as mandated by law. If these claims were taken into consideration, it would readily be apparent that NBC's liabilities were far greater than its claimed properties.

Under the circumstances, NBC's total debts would balloon to ₱560,841,213.54, exclusive of interests, penalties, and other charges. Obviously, its continued operation would no longer be viable. The Court holds that the RTC should have ruled on the creditors' objections instead of merely treating them as premature. The RTC of course claims that the rehabilitation plan would still have to be referred to the receiver for study and evaluation. But there would be no need to go that far when the petitioning corporation declined to comply with the simple rules of rehabilitation, when the documentation of its assets were inadequate, and when the creditors' opposition offered insurmountable basis for shelving the entire effort.

APPEARANCES OF COUNSEL

Jacqueline A. Guzman for petitioner.
Angara Abello Concepcion Regala & Cruz for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about the need for petitioners in corporate rehabilitation cases to consistently abide by the rules governing the same and to meet the creditors' substantial opposition to their petitions.

The Facts and the Case

Petitioner North Bulacan Corporation (NBC) is engaged in the business of developing low and medium-cost housing projects. On December 11, 2000 its parent company, Centro Ville, Inc. (CVI), entered into a joint venture agreement (JVA) with First Sarmiento Property Holdings, Inc. (FSPHI) to develop the latter's 15.5-hectare property into low and medium-cost housing projects. FSPHI will supply the land and CVI will develop it. The parties amended the JVA on April 26, 2001 to enable NBC to substitute for CVI. On August 1, 2001 NBC bought a 21-hectare property from FSPHI for ₱84,499,800.00.

At the onset, the Land Bank of the Philippines (Land Bank) offered ₱100 million to finance the construction of the houses. Later, however, respondent Philippine Bank of Communications (PBCom) offered to finance the whole project and immediately provide NBC a ₱100 million loan facility on the condition that the Pag-IBIG/Home Development Mutual Fund (Pag-IBIG) directly paid PBCom for the houses upon completion of construction, whether or not these had been sold.

Relying on PBCom's commitment, NBC accepted the bank's offer. On July 11, 2003 NBC executed a deed of assignment, assigning to PBCom its rights and interests over all payments that may be due it from the Pag-IBIG.

After a time, however, PBCom discontinued its financial support to NBC reportedly because Bangko Sentral ng Pilipinas (BSP) had issued a cease-and-desist order against the bank. When it became apparent that PBCom had no intention of complying with its commitment, NBC sought help from Cocolife and Land Bank which expressed their intention to finance the project by taking out NBC's loan from PBCom. But the latter refused the offer, insisting on the supposed BSP cease-and-desist order. NBC's construction eventually stopped for lack of funds.

On December 28, 2006 NBC filed a petition for corporate rehabilitation with the Mandaluyong Regional Trial Court (RTC). On June 15, 2007 NBC filed with the court a manifestation and urgent motions a) to order PBCom to release 12 Transfer Certificates of Title of finished housing units, b) to order Pag-IBIG to issue Letters of Guaranty to PBCom representing the take-out value of the finished units, and c) to allow NBC to use the proceeds to make emergency repairs and restoration works. On July 17, 2007 Judge Paulita Acosta-Villarante granted NBC's motions. PBCom refused, however, to comply with it. Meantime, Judge Villarante retired and Judge Edwin Sorongon took over. On January 24, 2008 the RTC, presided over by the latter judge, issued an order giving due course to NBC's petition for rehabilitation.

PBCom filed a petition for *certiorari* before the Court of Appeals (CA) to challenge the RTC order. On May 20, 2008 the CA granted PBCom's petition, stating that since the RTC was unable to approve a rehabilitation plan for NBC after 180 days from the date of the initial hearing in the case, it should have dismissed the petition for rehabilitation. This prompted NBC to take recourse to this Court.

The Issue Presented

The only issue presented in this case is whether or not the CA erred in dismissing NBC's action for corporate rehabilitation.

The Ruling of the Court

The Court enacted the Interim Rules of Procedure on Corporate Rehabilitation to provide a remedy for summary and non-adversarial rehabilitation proceedings of distressed but viable corporations.[1] The intent is consistent with the commercial nature of rehabilitation, which seeks to expedite its resolution for the benefit, not only of the petitioner-corporation, but of all the parties involved and the economy in general.[2] These rules are to be construed liberally to obtain for the parties a just, expeditious, and inexpensive disposition of the case.[3] The parties may not, however, invoke such liberality if it will result in the utter disregard of the rules or cause needless delay in the administration of justice.[4]

Here, as PBCom pointed out, NBC violated several rules on corporate rehabilitation. In contravention of Rule 3, Section 1 on prohibited pleadings, NBC filed motions for extension and a memorandum in the case,[5] which the RTC blindly allowed.

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[1] Interim Rules of Procedure on Corporate Rehabilitation (2000), Rule 3, Section 1.

[2] *New Frontier Sugar Corporation v. Regional Trial Court, Branch 39, Iloilo City*, G.R. No. 165001, January 31, 2007, 513 SCRA 601, 608.

[3] *Supra* note 1, Rule 2, Section 2.

[4] *El Reyno Homes, Inc. v. Ong*, 445 Phil. 610, 618 (2003).

[5] *Rollo*, p. 491.

NBC likewise filed various pleadings,[6] ignoring the requirement under the Rules that these be verified by the affiants.[7] Also, NBC filed a couple of motions for indirect contempt[8] against PBCom without complying with the requirement that these, too, had to be verified.[9]

Further, the documents that accompanied NBC's petition fell short of what the rules required.[10] For instance, the Schedule of Debts and Liabilities[11] did not show the creditors' addresses and, although it reflected the principal amount of each debt, nowhere did it state the amount of accrued interests, the penalties, the nature of the obligation, and any pledge, lien, mortgage judgment, or other security given for the debt. Additionally, the NBC's Inventory of Assets[12] failed to state the nature of its assets, their location and condition. NBC did not likewise disclose the encumbrances, liens, or claims on its properties and the identities as well as the addresses of the lien holders or claimants.

Largely because of NBC's numerous prohibited pleadings, nearly a year had passed since the petition's initial hearing on February 15, 2007 and still the RTC had not approved a rehabilitation plan for the company. Under the Rehabilitation Rules, if upon the lapse of 180 days from the date of the initial hearing there is still no approved rehabilitation plan, the RTC must dismiss the petition.[13]

NBC argues that the RTC could not have committed grave abuse of discretion in extending the 180-day period since the rules allowed such an extension provided it was not to exceed

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[6] *Id.* at 491-492.

[7] *Supra* note 1.

[8] *Rollo*, p. 492.

[9] Rules of Court, Rule 71, Section 4.

[10] *Supra* note 1, Rule 4, Section 2.

[11] *Rollo*, p. 175.

[12] *Id.* at 29.

[13] *Supra* note 1, Rule 4, Section 11.

18 months from the filing of the petition. True, such an extension is allowed but only if there appeared to be convincing and compelling evidence that the debtor-corporation can be successfully rehabilitated.[14]

Here, however, the RTC proceeded beyond the 180-day period even in the absence of a motion to extend the same and despite the lack of strong and compelling evidence which showed that NBC's continued operation was still economically feasible. Quite the contrary, aside from the substantial inadequacy of NBC's listed assets, the creditors' opposition to rehabilitation critically placed in serious doubt the likelihood of its success. PBCom claimed that, out of 1,202 real properties listed as NBC's assets, at least 1,075 actually belonged to FSPHI and were mortgaged to PBCOM.

FSPHI, for its part, said that NBC's obligation to it amounted to ₱48,333,914.00 and not ₱43,845,000.00 as listed. Pag-IBIG pointed out that NBC owed it more than ₱188 Million. The RTC did not properly address these oppositions to the rehabilitation. Moreover, even assuming that the extension was just, the petition had to be dismissed just the same because the RTC had not approved any rehabilitation plan as of June 28, 2008 or within 18 months from the date of filing of the petition on December 28, 2006.[15] In fact, there is nothing in the records of the case that would show that the RTC ever approved any rehabilitation plan.

Ordinarily, the evaluation of petitioner-company's business viability in a corporate rehabilitation case involves factual issues that this Court will not take cognizance of since it is not a trier of facts.[16] But when it is shown that the RTC gravely abused its discretion in finding what the facts are,[17] it may grant an

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[14] *Id.*

[15] *Id.*

[16] *Ignacio v. Magsimpan*, G.R. No. 165710, April 6, 2005.

[17] *Rosario v. PCI Leasing and Finance, Inc.*, G.R. No. 139233, November 11, 2005, 474 SCRA 500, 506.

exception. Here, the RTC did just that when it utterly disregarded the Rules on Corporate Rehabilitation in the guise of liberal construction and granted the petition for rehabilitation based on insufficient evidence.

The RTC admitted NBC's pleadings and their attachments despite blatant non-compliance with the rules. It gave due course to the petition allegedly because the "NBC was able to convince the court of the feasibility of its rehabilitation by showing the condition and value of its assets, the viability of its business, and the cause for its present financial problems."[18] On closer examination, however, the NBC inventory actually did not mention the condition of its listed assets. It merely enumerated certain real properties and their respective sizes and market values. Further, the RTC refused to dismiss the petition notwithstanding that it had not approved any rehabilitation plan within the period specified by law. Clearly, the rehabilitation court grossly abused its authority in granting NBC's petition while ignoring the requirements for it.

Even brushing technicalities aside, NBC's petition for corporate rehabilitation must still fail. As the CA aptly noted, the RTC failed to address NBC's misrepresentation as to its true accountabilities with Pag-IBIG and FSPHI. For instance, NBC claims that as of November 30, 2006 its total assets amounted to ₱412,193,537.50 while its obligations reached ₱367,926,823.05. But FSPHI asserts that NBC owed it ₱48,333,914.00, not just ₱43,845,000.00, indicating a need to examine the claims. For its part, Pag-IBIG asserts that NBC owed it ₱188,425,476.49 as a result of the latter's unjustified refusal to register its covered employees and to remit their compulsory monthly contributions as mandated by law.[19] If these claims were taken into consideration, it would readily be apparent that NBC's liabilities were far greater than its claimed properties.

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[18] *Rollo*, p. 277.

[19] Implementing Rules and Regulations of R.A. 7742, Rule V, Section 1 and Rule VI, Section 5.

Under the circumstances, NBC's total debts would balloon to ₱560,841,213.54, exclusive of interests, penalties, and other charges. Obviously, its continued operation would no longer be viable. The Court holds that the RTC should have ruled on the creditors' objections instead of merely treating them as premature. The RTC of course claims that the rehabilitation plan would still have to be referred to the receiver for study and evaluation. But there would be no need to go that far when the petitioning corporation declined to comply with the simple rules of rehabilitation, when the documentation of its assets were inadequate, and when the creditors' opposition offered insurmountable basis for shelving the entire effort.

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the decision of the Court of Appeals in CA-G.R. SP 102555 dated May 20, 2008 which dismissed petitioner North Bulacan Corporation's petition for corporate rehabilitation.

SO ORDERED.

Carpio (Chairperson), Peralta, Perez,[*] and *Mendoza, JJ.*, concur.

FIRST DIVISION

[G.R. No. 184603. August 2, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROMEO LABAGALA *y* ABIGONIA, ALVIN LABAGALA *y* JUAT, and RICHARD ALLAN ALEJO *y* SIGASIG,** *accused,* **ROMEO LABAGALA *y* ABIGONIA, ALVIN LABAGALA *y* JUAT,** *accused-appellants.*

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[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per raffle dated June 7, 2010.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; CIRCUMSTANTIAL EVIDENCE; MAY BE THE BASIS OF CONVICTION IF THE ESTABLISHED CIRCUMSTANCES CONSTITUTE AN UNBROKEN CHAIN LEADING TO ONE FAIR AND REASONABLE CONCLUSION PROVING THAT THE ACCUSED IS THE AUTHOR OF THE CRIME TO THE EXCLUSION OF ALL OTHERS.— We have consistently ruled that proof beyond reasonable doubt is indispensable to overcome the constitutional presumption of innocence and that in every criminal prosecution, what is needed is that degree of proof which produces conviction in an unprejudiced mind. It must be noted, however, that direct evidence of the commission of the crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. Conviction can be had on the basis of circumstantial evidence if the established circumstances constitute an unbroken chain leading to one fair and reasonable conclusion proving that the appellant is the author of the crime to the exclusion of all others.

2. ID.; ID.; ID.; ID.; REQUISITES THAT MUST BE ATTENDANT TO JUSTIFY CONVICTION BASED ON CIRCUMSTANTIAL EVIDENCE.— In this case, the accused-appellants were found guilty based on circumstantial evidence leading to the conclusion that they in fact committed the crime. To justify conviction based on circumstantial evidence, the following requisites must be attendant: (a) there must be more than one circumstance to convict; (b) the facts on which the inference of guilt is based must be proved; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

3. ID.; ID.; ID.; ID.; THE TAPESTRY OF CIRCUMSTANCES PRESENTED BY THE PROSECUTION CREATED AN UNDENIABLE IMPRESSION OF THEIR GUILT SUFFICIENT TO REMOVE THE MANTLE OF PRESUMPTIVE INNOCENCE.— The following circumstances as established by the prosecution were, in combination, point towards the conviction of the accused, to wit: (1) they were present at the vicinity of the crime; (2) they were running away

from the scene of the crime; (3) they were caught and apprehended shortly after the commission of the crime; and (4) the wound on the head of one of the accused coincides with the dying declaration of the victim that she was able to hit one of the malefactors on the head with a bottle. Contrary to accused-appellant's contention, the tapestry of circumstances presented by the prosecution created an undeniable impression of their guilt sufficient to remove the mantle of presumptive innocence. Like direct evidence, these can, as correctly ruled below, convict the accused of the crime of which they are charged. As we have often said, insistence on direct testimony would, as in this case, result in setting felons free and denying proper protection to the community.

4. ID.; ID.; HEARSAY RULE; EXCEPTIONS; DYING DECLARATION; REQUISITES; PRESENT IN CASE AT BAR.— Credence should be given to the dying declaration of the victim, Estrelita Fonte. As a rule, a dying declaration is hearsay and is inadmissible as evidence. In order that a dying declaration may be admissible as evidence, four requisites must concur, namely: that the declaration must concern the cause and surrounding circumstances of the declarant's death; that at the time the declaration was made, the declarant was under a consciousness of an impending death; that the declarant is competent as a witness; and that the declaration is offered in a criminal case for homicide, murder or parricide, in which the declarant is a victim. All the above requisites are present in this case. At the time she narrated how the malefactors robbed and stabbed her, Estrelita was conscious and lying on the lap of her son, with gaping wounds on her chest.

5. ID.; ID.; ID.; ID.; *RES GESTAE*; VICTIM'S STATEMENT ALSO FORM PART OF THE *RES GESTAE*.— The victim's statements also form part of the *res gestae*. For the admission of evidence as part of the *res gestae*, it is required that (a) the principal act, the *res gestae*, be a startling occurrence, (b) the statements forming part thereof were made before the declarant had the opportunity to contrive, and (c) the statements refer to the occurrence in question and its attending circumstances. Where the elements of both a dying declaration and a statement as part of the *res gestae* are present, as in the case at bar, the statement may be admitted as a dying declaration and at the

same time as part of the *res gestae*. Having given credence to the dying declaration of the victim and the testimonies of the witnesses for the prosecution, we find there is no doubt that accused-appellants are guilty of the special complex crime of robbery with homicide.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

Before this Court on appeal is the Decision[1] dated 2 February 2007 of the Court of Appeals in CA-G.R. CR. No. 00215 affirming with modification the Decision[2] dated 4 November 2003 of the Regional Trial Court (RTC) of Tarlac City, Branch 64 in Criminal Case No. 12536. The RTC found the accused Romeo Labagala, Alvin Labagala and Richard Allan Alejo guilty beyond reasonable doubt of the special complex crime of robbery with homicide. The Court of Appeals modified the RTC's decision by acquitting the accused Richard Allan Alejo.

The facts are:

In an Information[3] dated 26 December 2002, Romeo Labagala, Alvin Labagala and Richard Allan Alejo were charged of the crime of robbery with homicide before the RTC of Tarlac City, as follows:

That on or about October 10, 2002 at around 11:45 o'clock in the morning at Brgy. Balanoy, Municipality of La Paz, Province of

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[1] Penned by Associate Justice Enrico A. Lanzanas with Associate Justices Elvi John S. Asuncion and Rosalinda Asuncion Vicente, concurring. CA *rollo*, pp. 186-204.

[2] Penned by Judge Martonino R. Marcos. Records, pp. 58-68.

[3] *Id.* at 1.

Tarlac and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and helping one another and with intent to gain did then and there willfully, unlawfully and feloniously by means of violence against person take, rob and carry away with them ₱300,000.00 in cash belonging to Estrelita Fonte;

That on the occasion or by reason of the said robbery and for the purpose of enabling them to take, rob and carry away the money, the herein accused pursuant to their conspiracy, did then and there willfully, unlawfully and feloniously attack, assault[,] wound and stab Estrelita Fonte thereby inflicting injuries which caused her death.[4]

After apprehension on 10 October 2002, the accused have been under detention.[5] During arraignment on 4 March 2003, they pleaded not guilty.[6] Thereafter, trial proceeded.

The prosecution presented as witnesses Raul Torres Arceo, the son of the victim Estrelita Torres Fonte; Dr. Orlando Baguinon, Municipal Health Officer of La Paz, Tarlac; and SPO4 Ernesto Javier, a member of the PNP Zaragoza Police Station of Zaragoza, Nueva Ecija, who apprehended the three accused on 10 October 2002 right after receiving a request for police assistance from the La Paz Police Station.

Raul Torres Arceo testified that on 10 October 2002, while he was on the way home with his brother after paying their electric bill, they met a tricycle. Inside the tricycle was his mother, Estrelita Fonte, who was bleeding. Immediately, they took her, boarded her inside their van and brought her to the Medicare Hospital of La Paz, Tarlac. His brother drove the van while he carried his mother on his lap. At the Medicare Hospital, they were advised to bring their mother to the Talon General Hospital. On the way to the Talon General Hospital, he could see the wound of his mother on her chest. He asked her who stabbed her. His mother told him that two malefactors entered their store and she was able to hit one of them with a

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[4] *Id.*

[5] *Id.* at 31.

[6] *Id.* at 14.

bottle on the head. She also mentioned they took the money meant for payment of the lot beside their store. Upon arrival at Talon Hospital, Estrelita was declared dead on arrival.[7]

Dr. Orlando Baguinon, who conducted an autopsy on the body of the victim, prepared a Medico-Legal Report[8] showing the wounds of the victim as follows:

1. Stab wound about 2 cm. in size at the level of right 2nd intercostal space, parasternal line. On exposure of the right thoracic cavity, there were cut wounds at the lower portion of anterior segment of the superior lobe and the lower portion of the medial segment of the middle lobe, right lung. Pooling of blood was noted also at the thoracic cavity.
2. Stab wound about 2 cm. in size at the level of left 3rd intercostal space, midclavicular line. Upon exposure of the left thoracic cavity, there was fracture of the 4th rib, mid-clavicular line, but not perforating the pleural cavity.
3. Stab wound about 2 cm. left lower arm, upper 3rd, anterior aspect.
4. Stab wound about 2 cm. left lower arm, middle 3rd, lateral aspect.
5. Hematoma, anterior aspect of left thigh, lower 3rd.
6. Incised wound, distal and middle phalanges of right index finger, palmar aspect, about 4-5 cm. in size.

Dr. Baguinon listed the victim's cause of death as hemothorax with massive blood loss, secondary to cut wounds of superior and middle lobes of the right lung and to stab wounds at the chest.[9] Dr. Baguinon testified that the wounds sustained by the victim were caused by a sharp-pointed object which may be a knife or an ice pick.[10]

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[7] TSN, 15 May 2003, pp. 3-5.

[8] Records, p. 10.

[9] *Id.*

[10] TSN, 3 April 2003, p. 11.

SPO4 Ernesto Javier testified that on 10 October 2002, he reported for duty at the PNP Zaragoza Police Station in Nueva Ecija.[11] At around 12:10 p.m., he received a request for assistance from the La Paz Police Station in Tarlac in connection with a robbery committed in the latter's area of responsibility. Immediately, he formed a checkpoint at *Brgy*. Sto. Rozario, Zaragoza. A radio operator of the La Paz Station described the suspects as riding on a black motorcycle. Ten minutes after setting up the checkpoint at about 12:20 p.m., they spotted the three accused riding a black motorcycle in front of their cops *Kababayan* Center. They flagged down the motorcycle and requested them to alight.[12] When Alvin Labagala alighted, they saw a .38 caliber revolver tucked at his waist which they confiscated. After they requested the suspects to lie down, a Rambo-type knife was taken from Richard Allan Alejo and a hand grenade from Romeo Labagala.[13] The three were thereafter charged with illegal possession of firearms and explosives. The black motorcycle was turned over to the possession of the City Prosecutor of Cabanatuan City. The .38 caliber revolver and knife were turned over to the MTC of Zaragoza while they kept the hand grenade in their custody as requested by the City Prosecutor.[14] During direct examination, SPO4 Javier pointed to the three accused as the three suspects they apprehended.[15] During cross-examination, SPO4 Javier narrated that after apprehending the three accused, they were turned-over to police officers of the La Paz Police Station after the latter came over and identified the three as the suspects in the robbery committed in their jurisdiction. SPO4 Javier heard the police investigator from the La Paz Police Station ask a witness if the three accused were the persons who committed the robbery to which the witness answered in the affirmative.[16]

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[11] TSN, 26 June 2003, p. 7.

[12] *Id.* at 9.

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

[14] *Id.* at 11-12.

[15] *Id.* at 10.

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

Despite ample time provided, the prosecution failed to present eyewitness Efren Cayanga, a gardener working for the victim. Cayanga allegedly suffered a nervous breakdown and thus was not able to testify in court.[17] Cayanga, however, executed a *Sinumpaang Salaysay*[18] dated 11 October 2002 where he narrated that on 11 October 2002, while he was watering the grass near the fishpond of his employer, Estrelita Fonte, he heard a bottle break and saw one of the men stab Estrelita Fonte. He then heard Estrelita scream after which the two men came out of the store and rode in a motorcycle driven by another man. Cayanga positively identified the three accused as the men involved in stabbing and killing Estrelita.

The defense presented as witnesses Alvin Labagala, Romeo Labagala, and Richard Allan Alejo.

Alvin Labagala testified that on 10 October 2002, while riding on a motorcycle coming from Malacampa, Camiling, Tarlac, he, together with his co-accused Romeo Labagala and Richard Allan Alejo, were bound for Talavera, Nueva Ecija when they were flagged down by police in *Barangay* Sto. Rosario, Zaragoza, Nueva Ecija. They were brought to the Zaragoza Police Station for interrogation. The investigator asked if they committed a crime in *Barangay* Balanoy, La Paz, Tarlac. They denied it. They were transferred to the Police Station in La Paz, Tarlac where a complaint against them was already prepared. Alvin Labagala stated that he never went to *Barangay* Balanoy. On cross-examination, Alvin Labagala admitted that he and his brother were renting a house at Malacampa, Camiling with their live-in partners. He claimed that he does not know who owns the motorcycle they rode on 10 October 2002 when they were intercepted at a checkpoint in Sto. Rosario, Zaragoza, Nueva Ecija. He denied that the police confiscated from them a *Rambo*-type knife, a .38 caliber pistol and a hand grenade, claiming that these were planted evidence. He admitted that one of his companions referring to Romeo Labagala sustained injuries on

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[17] Records, p. 47.

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

his head because he was beaten by the police. When he was asked why they did not take the shorter route going to Talavera coming from Camiling which is Tarlac *via* Paniqui-Gerona, Pura, Guimba, Sto. Domingo then to Talavera, he said he was not aware of such route. Alvin testified that the police took his money from his wallet amounting to ₱1,940.00 and the money of his brother Romeo amounting to ₱1,000.00. They also took his mobile phone. When asked what his job was or source of income, he replied he has none.[19]

Romeo Labagala corroborated the testimony of Alvin. He denied the charge of robbery with homicide leveled against him and claimed he has never been to *Brgy*. Balanoy, La Paz, Tarlac. On cross-examination, he denied having in his possession the hand grenade, .38 caliber pistol and *Rambo*-type knife which were confiscated from them.[20]

Richard Allan Alejo's testimony was cut short upon stipulation of the counsels of both parties that his testimony will be the same as his co-accused.[21]

In a Decision dated 4 November 2003, the RTC found all three accused guilty of the crime of robbery with homicide and sentenced them as follows:

> WHEREFORE, this court finds the accused, Romeo Labagala *y* Abigonia, Alvin Labagala *y* Juat and Richard Allan Alejo *y* Sigasig guilty beyond the penumbra of doubt as principal[s] of the crime of Robbery with Homicide as defined and penalized by Articles 293 and 294, No. 1 of the Revised Penal Code and hereby sentences them to suffer the penalty of *Reclusion Perpetua*, indemnify the heir of Estrelita Fonte in the amount of ₱50,000.00 and to pay the cost of suit.
>
> Considering that the accused are under detention, the Provincial Jail Warden of Tarlac Penal Colony, Dolores, Tarlac City is ordered

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[19] TSN, 25 September 2003, pp. 2-9.

[20] TSN, 2 October 2003, pp. 2-4.

[21] *Id.* at 2-3.

to transmit the persons of the accused to the National Penitentiary at Muntinlupa, Rizal.[22]

The Court of Appeals, in a Decision dated 2 February 2007, affirmed with modification the RTC's verdict by acquitting Richard Allan Alejo. The dispositive portion of the decision states:

> WHEREFORE, the assailed Decision dated November 4, 2003 of the Regional Trial Court, Branch 64, Tarlac City, in Criminal Case No. 12536, is hereby **AFFIRMED** with **MODIFICATION** in that We find appellants **ROMEO LABAGALA** and **ALVIN LABAGALA** guilty of the special complex crime of robbery with homicide and hereby sentence them to suffer the penalty of ***RECLUSION PERPETUA*** and are ordered to pay the victim's heirs (a) ₱50,000.00 as civil indemnity; (b) ₱25,000.00 as temperate damages and (c) ₱50,000.00 as moral damages.
>
> As to appellant **RICHARD ALLAN ALEJO**, the judgment of conviction is **REVERSED** and **SET ASIDE** and is hereby **ACQUITTED** on grounds *(sic)* of reasonable doubt.
>
> Accordingly, the Director of the Bureau of Corrections is ordered to immediately release appellant **RICHARD ALLAN ALEJO** from confinement in the National Penitentiary unless he is lawfully held on some other *(sic)* charged.[23]

The Court of Appeals acquitted Richard Allan Alejo on the ground that the only act attributable to him was that he was with the appellants when they were apprehended. The Court of Appeals reasoned:

> We cannot go along with findings of the trial court that appellant Richard Allan Alejo is guilty of the complex crime of robbery with homicide.
>
> It is worth to note here that according to the dying declaration of the victim, two men entered her store and stole the money that would be used as payment for the lot they bought. When appellants were apprehended by the Zaragoza police it was confirmed that

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[22] Records, p. 68.

[23] CA *rollo*, pp. 202-203.

appellant Romeo Labagala sustained a wound on his head. Notably, the only act attributable to appellant Richard Allan Alejo was he was with the other appellants when they were apprehended.

To our mind, however, his act of being with the brothers Labagala taken as a whole, does not suffice to prove conspiracy in the case at bar. Neither does it render him liable for the special complex crime of robbery with homicide. Jurisprudence dictates that mere presence at the scene of the crime at the time of its commission is not, by itself, sufficient to establish conspiracy at the time of its commission. Without evidence — clear and convincing at that — as to how an accused participated in the perpetration of the crime, conspiracy cannot be appreciated against him. More so in this case where the evidence particularly the dying declaration of the victim specified that only two men entered the store.[24]

In the instant appeal, accused-appellants Romeo Labagala and Alvin Labagala seek a reversal of the Court of Appeals and RTC rulings. They manifested that they will no longer file supplemental briefs. Instead, they opted to adopt the arguments in the briefs they filed before the Court of Appeals.

Accused-appellants Romeo Labagala and Alvin Labagala argue that the trial court erred in:

I.

x x x FINDING THE ACCUSED-APPELLANTS GUILTY OF THE CRIME CHARGED DESPITE THE LACK OF POSITIVE IDENTIFICATION BY THE PROSECUTION WITNESSES.

II.

x x x FINDING THE ACCUSED-APPELLANTS GUILTY OF THE CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.[25]

Simply, the issue boils down to whether or not the guilt of accused-appellants has been proven beyond reasonable doubt.

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[24] *Id.* at 192-193.

[25] *Id.* at 84.

In their Brief,[26] accused-appellants allege that the evidence presented was merely circumstantial since no eyewitnesses testified in court. They argue that the circumstantial evidence presented was too weak to warrant the conviction of the accused.

On the other hand, the prosecution, thru the Office of the Solicitor General, in its Brief,[27] argues that the circumstantial evidence undoubtedly point to appellants as the persons who robbed and killed Estrelita Fonte. It is also argued that temperate and moral damages should also be awarded in favor of the victim's heirs.

After review, we resolve to deny the petition.

We have consistently ruled that proof beyond reasonable doubt is indispensable to overcome the constitutional presumption of innocence and that in every criminal prosecution, what is needed is that degree of proof which produces conviction in an unprejudiced mind.[28]

It must be noted, however, that direct evidence of the commission of the crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. Conviction can be had on the basis of circumstantial evidence if the established circumstances constitute an unbroken chain leading to one fair and reasonable conclusion proving that the appellant is the author of the crime to the exclusion of all others.[29]

In this case, the accused-appellants were found guilty based on circumstantial evidence leading to the conclusion that they in fact committed the crime. To justify conviction based on circumstantial evidence, the following requisites must be attendant: (a) there must be more than one circumstance to convict; (b) the facts on which the inference of guilt is based must be proved;

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[26] *Id.* at 82-95.

[27] *Id.* at 141-163.

[28] *People v. Guarin*, 375 Phil. 655, 662 (1999); *People v. Pascual*, G.R. No. 172326, 19 January 2009, 576 SCRA 242, 252.

[29] *People v. Guarin, id.* at 662-663.

and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[30]

The following circumstances as established by the prosecution were, in combination, point towards the conviction of the accused, to wit: (1) they were present at the vicinity of the crime; (2) they were running away from the scene of the crime; (3) they were caught and apprehended shortly after the commission of the crime; and (4) the wound on the head of one of the accused coincides with the dying declaration of the victim that she was able to hit one of the malefactors on the head with a bottle.

Contrary to accused-appellant's contention, the tapestry of circumstances presented by the prosecution created an undeniable impression of their guilt sufficient to remove the mantle of presumptive innocence. Like direct evidence, these can, as correctly ruled below, convict the accused of the crime of which they are charged. As we have often said, insistence on direct testimony would, as in this case, result in setting felons free and denying proper protection to the community.[31]

Credence should be given to the dying declaration of the victim, Estrelita Fonte.

As a rule, a dying declaration is hearsay and is inadmissible as evidence. In order that a dying declaration may be admissible as evidence, four requisites must concur, namely: that the declaration must concern the cause and surrounding circumstances of the declarant's death; that at the time the declaration was made, the declarant was under a consciousness of an impending death; that the declarant is competent as a witness; and that the declaration is offered in a criminal case for homicide, murder or parricide, in which the declarant is a victim.[32]

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[30] *Id.* at 663; *People v. Pascual Jr.*, 432 Phil. 224, 231 (2002).

[31] *People v. Pascual Jr., id.* at 232.

[32] *People v. Gado*, 358 Phil. 956, 966 (1998) citing *People v. Israel*, G.R. No. 97027, 11 March 1994, 231 SCRA 155, 161-162 and *People v. Lazarte*, G.R. No. 89762, 7 August 1991, 200 SCRA 361, 367-368.

All the above requisites are present in this case. At the time she narrated how the malefactors robbed and stabbed her, Estrelita was conscious and lying on the lap of her son, with gaping wounds on her chest.

The victim's statements also form part of the *res gestae*. For the admission of evidence as part of the *res gestae*, it is required that (a) the principal act, the *res gestae*, be a startling occurrence, (b) the statements forming part thereof were made before the declarant had the opportunity to contrive, and (c) the statements refer to the occurrence in question and its attending circumstances.[33]

Where the elements of both a dying declaration and a statement as part of the *res gestae* are present, as in the case at bar, the statement may be admitted as a dying declaration and at the same time as part of the *res gestae*.[34]

Having given credence to the dying declaration of the victim and the testimonies of the witnesses for the prosecution, we find there is no doubt that accused-appellants are guilty of the special complex crime of robbery with homicide.

As for damages, in the absence of any aggravating circumstances, and as found by the Court of Appeals, the heirs of the victim are entitled to a civil indemnity of ₱50,000.00, without need of proof other than that death which occurred as a result of the crime. They are also entitled to moral damages in the sum of ₱50,000.00.[35] Temperate damages, as likewise determined by the Court of Appeals in the amount of ₱25,000.00 is also granted.

WHEREFORE, the Decision dated 2 February 2007 of the Court of Appeals in CA-G.R. CR. No. 00215 affirming with

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[33] *People v. Gado*, *id.* at 966-967 citing *People v. Siscar*, 224 Phil. 453, 460 (1985).

[34] *People v. Gado*, *supra* note 32 at 967 citing *People v. Balbas*, 207 Phil. 734, 742-743 (1983).

[35] *People v. Esoy*, G.R. No. 185849, 7 April 2010.

modification the Decision dated 4 November 2003 of the Regional Trial Court of Tarlac City, Branch 64 in Criminal Case No. 12536 is *AFFIRMED*. Appellants Romeo Labagala and Alvin Labagala are found guilty beyond reasonable doubt of robbery with homicide under Article 294 of the Revised Penal Code and sentences them to *reclusion perpetua*. They are further *ORDERED* to jointly and severally pay the heirs of Estrelita Fonte the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as temperate damages.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Del Castillo, JJ.,* concur.

EN BANC

[A.C. No. 8481. August 3, 2010]
(Formerly B.M. No. 1524)

ATTYS. JOSABETH V. ALONSO and SHALIMAR P. LAZATIN, *complainants, vs.* **ATTY. IBARO B. RELAMIDA, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; SHALL NOT WITTINGLY OR WILLINGLY PROMOTE OR SUE ANY GROUNDLESS, FALSE OR UNLAWFUL SUIT, NOR GIVE AID OR CONSENT TO THE SAME.— All lawyers must bear in mind that their oaths are neither mere words nor an empty formality. When they take their oath as lawyers, they dedicate their lives to the pursuit of justice. They accept the sacred trust to uphold the laws of the land. As the first Canon of the Code of Professional Responsibility states, "[a] lawyer shall uphold the Constitution, obey the laws of the land and promote respect

for law and legal processes." Moreover, according to the lawyer's oath they took, lawyers should "not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid or consent to the same."

2. ID.; ID.; A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT, BUT NOT AT THE EXPENSE OF TRUTH AND ADMINISTRATION OF JUSTICE.— A lawyer owes fidelity to the cause of his client, but not at the expense of truth and the administration of justice. The filing of multiple petitions constitutes abuse of the court's processes and improper conduct that tends to impede, obstruct and degrade the administration of justice and will be punished as contempt of court. Needless to state, the lawyer who files such multiple or repetitious petitions (which obviously delays the execution of a final and executory judgment) subjects himself to disciplinary action for incompetence (for not knowing any better) or for willful violation of his duties as an attorney to act with all good fidelity to the courts, and to maintain only such actions as appear to him to be just and are consistent with truth and honor.

3. ID.; ID.; THE FILING OF ANOTHER ACTION CONCERNING THE SAME SUBJECT MATTER IN VIOLATION OF THE DOCTRINE OF *RES JUDICATA* RUNS CONTRARY TO THE CANONS OF PROFESSIONAL RESPONSIBILITY.— The filing of another action concerning the same subject matter, in violation of the doctrine of *res judicata*, runs contrary to Canon 12 of the Code of Professional Responsibility, which requires a lawyer to exert every effort and consider it his duty to assist in the speedy and efficient administration of justice. By his actuations, respondent also violated Rule 12.02 and Rule 12.04 of the Code, as well as a lawyer's mandate "to delay no man for money or malice." The Court has, time and again, warned lawyers not to resort to forum shopping for this practice clogs the court dockets. Their primary duty is to assist the courts in the administration of justice. Any conduct which tends to delay, impede or obstruct the administration of justice contravenes such lawyer's duty. This we will not tolerate. In cases of similar nature, the penalty imposed by this Court was six (6) months suspension from the practice of law. Thus, consistent with the existing jurisprudence, we find that, in this case, the suspension of six (6) months from practice of law is proper.

4. REMEDIAL LAW; ACTIONS; FORUM SHOPPING; A LAWYER SHOULD KNOW THAT ONCE A CASE IS DECIDED WITH FINALITY, THE CONTROVERSY IS SETTLED AND THE MATTER IS LAID TO REST; THE PREVAILING PARTY IS ENTITLED TO ENJOY THE FRUITS OF HIS VICTORY, WHILE THE OTHER PARTY IS OBLIGED TO RESPECT THE COURT'S VERDICT AND TO COMPLY WITH IT.— It is clear that Atty. Relamida is guilty of forum shopping and violation of the rule on *res judicata*. Atty. Relamida should have refrained from filing the second complaint against Servier. He ought to have known that the previous dismissal was with prejudice, since it had the effect of an adjudication on the merits. He was aware of all the proceedings which the first complaint went through as by his own admission, he participated in the preparation of the pleadings and even signed as counsel of Ebanen occasionally. He knew that the decision in the subject case had already attained finality. Atty. Relamida was well aware that when he filed the second complaint, it involved the same parties and same cause of action, albeit, he justified the same on the ground of nullity of the previous dismissal. His allegation that he was not the original counsel of Ebanen and that his intention was only to protect the rights of his clients whom he believed were not properly addressed in the prior complaint deserves scant consideration. He should know that once a case is decided with finality, the controversy is settled and the matter is laid to rest. The prevailing party is entitled to enjoy the fruits of his victory, while the other party is obliged to respect the court's verdict and to comply with it.

5. ID.; ID.; ID.; ESSENCE OF FORUM SHOPPING.— The essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. It exists when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion in another, or when he institutes two or more actions or proceedings grounded on the same cause to increase the chances of obtaining a favorable decision. An important factor in determining its existence is the vexation caused to the courts and the parties-litigants by the filing of similar cases to claim substantially the same reliefs. Forum shopping exists where the elements of *litis pendentia* are present or **where a final judgment in**

> **one case will amount to *res judicata* in another.** Thus, the following requisites should concur: xxx (a) identity of parties, or at least such parties as represent the same interests in both actions, (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts, and (c) the identity of the two preceding particulars is such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under reconsideration.

D E C I S I O N

PERALTA, *J.*:

Before us is a Complaint[1] dated October 13, 2005 for disciplinary action against respondent Atty. Ibaro B. Relamida, Jr. filed by Attys. Josabeth V. Alonso and Shalimar P. Lazatin, counsel of Servier Philippines, Incorporated for violating the rules on forum shopping and *res judicata.*

The antecedent facts of the case are as follows:

In March 2001, Jennifer Ebanen filed a Complaint for illegal dismissal against Servier Philippines, Incorporated (Servier) docketed as NLRC-NCR-Case No. 30-03-01583-01, alleging constructive dismissal with prayer for reinstatement or payment of separation pay, backwages, moral and exemplary damages.

On July 5, 2002, the Labor Arbiter ruled in favor of Servier.[2] It held that Ebanen voluntarily resigned from Servier and was, therefore, not illegally dismissed.

Ebanen appealed at the National Labor Relations Commission (NLRC). On March 31, 2003, the NLRC-Third Division affirmed the Decision of the Labor Arbiter.[3]

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[1] *Rollo,* pp. 2-7.

[2] *Id.* at 11-25.

[3] *Id.* at 27-36.

Thus, Ebanen moved for reconsideration. However, the NLRC denied the same in a Resolution[4] dated May 5, 2003.

Unsatisfied, Ebanen filed a Petition for *Certiorari* before the Court of Appeals which was docketed as CA-G.R. SP No. 77968. In a Decision[5] dated January 16, 2004, the Court of Appeals (CA) affirmed the findings of the NLRC that Ebanen voluntarily resigned and that there was no constructive dismissal. Ebanen moved anew for reconsideration, but was denied in a Resolution[6] dated April 30, 2004.

Unrelenting, Ebanen filed a Petition for Review before the Supreme Court. However, in a Resolution[7] dated August 4, 2004, the Court found no reversible error on the part of the CA, thus, denied said petition. Ebanen filed a motion for reconsideration, but was denied with finality in a Resolution[8] dated October 11, 2004.

Ebanen filed a Motion for Leave to Admit Second Motion for Reconsideration of the Resolutions dated August 4, 2004 and October 11, 2004, respectively. On January 19, 2005, the Court denied her motion.[9]

Persistent, Ebanen filed a Motion to Admit a Third Motion for Reconsideration of the Resolution dated January 19, 2005. On April 20, 2005, the Court denied her motion for being a prohibited pleading and noted without action Ebanen's third motion for reconsideration.[10]

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[4] *Id.* at 37-38.

[5] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Mariano C. del Castillo and Rosalinda Asuncion-Vicente, concurring; *id.* at 40-48.

[6] *Rollo*, p. 50.

[7] *Id.* at 51.

[8] *Id.* at 52.

[9] *Id.* at 53.

[10] *Id.* at 54-56.

On July 27, 2005, the Second Division of the Supreme Court noted without action Ebanen's Motion for Leave to Admit Supplemental Third Motion for Reconsideration dated June 1, 2005, in view of the entry of judgment on February 17, 2005.[11]

On February 17, 2005, the Court's Resolution dated August 4, 2004 has already become final and executory; thus, a corresponding Entry of Judgment[12] has been issued.

However, despite said entry of judgment, Ebanen, thru her counsel, Atty. Relamida, filed a second complaint on August 5, 2005 for illegal dismissal based on the same cause of action of constructive dismissal against Servier, now docketed as NLRC-NCR Case No. 00-08-07222-05.

Thus, on October 13, 2005, Servier, thru counsel, filed a letter-complaint addressed to the then Chief Justice Hilario Davide, Jr., praying that respondents be disciplinary sanctioned for violation of the rules on forum shopping and *res judicata.*

Subsequently, in a Resolution[13] dated November 15, 2005, the Court required both Ebanen and Atty. Relamida to comment on the letter-complaint against them.

On January 16, 2006, respondents filed their Comments.[14] Both respondents admitted the filing of the second complaint against Servier. They claimed that the judgment rendered by the Labor Arbiter was null and void for want of due process, since the motion for the issuance of *subpoena duces tecum* for the production of vital documents filed by the complainant was ignored by the Labor Arbiter. They opined that the dismissal did not amount to *res judicata,* since the decision was null and void for lack of due process. As a result, they claimed that there was also no violation of the rule on forum shopping.[15]

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[11] *Id.* at 56.

[12] *Id.* at 58.

[13] *Id.* at 61.

[14] *Id.* at 69-73.

[15] *Id*.

On February 7, 2006, the Court referred the instant bar matter to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[16]

On January 22, 2007, the Labor Arbiter dismissed the second complaint on the grounds of *res judicata* and forum shopping. It further reiterated that Ebanen voluntarily resigned from employment and was not constructively dismissed.

On March 14, 2008, during the mandatory conference before the IBP, complainants failed to appear. Ebanen manifested that she is not a lawyer.

Both parties were required to submit their respective position papers.

Atty. Relamida reiterated that Ebanen is not a lawyer and that she is the daughter of Atty. Leonardo Aurelio (Atty. Aurelio), the senior partner of A.M. Sison Jr. and Partners Law Offices where he is employed as associate lawyer.

He narrated that on March 28, 2001, Ebanen filed a Complaint for illegal dismissal against Servier. He claimed that in the beginning, Atty. Aurelio was the one who prepared and reviewed all the pleadings and it was Atty. Lapulapu Osoteo who stood as counsel for Ebanen in the said labor case. Atty. Relamida admitted, however, that during the filing of the second complaint he took over as counsel of Ebanen, as requested by Atty. Aurelio.[17] He also admitted that during the pendency of the first complaint, he occasionally examined pleadings and signed as counsel for Ebanen.[18]

Atty. Relamida reasoned out that as a courtesy to Atty. Aurelio and Ebanen, he had no choice but to represent the latter. Moreover, he stressed that his client was denied of her right to due process due to the denial of her motion for the issuance of a *subpoena duces tecum*. He then argued that the decision of the Labor

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[16] *Id.* at 74.

[17] *Id.* at 23.

[18] *Id.* at 22-23.

Arbiter was null and void; thus, there was no *res judicata*.[19] He maintained that he did not violate the lawyer's oath by serving the interest of his client.

Servier, on the other hand, argued that the filing of the second complaint is a violation of the rights of Servier, since the issue has already attained finality. It contended that Atty. Relamida violated the rules on forum shopping for the same act of filing a second complaint. As a consequence, they are being made to defend themselves in a case that has been settled before the labor tribunals and courts. Likewise, Servier insisted that the filing of the second complaint was also a blatant violation of the rule on *res judicata.* Hence, Servier prayed that Atty. Relamida be disciplinary dealt with due to his abuse of the processes of the courts.

On April 19, 2008, the IBP-Commission on Bar Discipline (IBP-CBD) recommended that respondent Atty. Relamida be suspended from the practice of law for six (6) months. It imposed no sanction on Ebanen for being a non-lawyer.

In its Report, the IBP found that by filing the second complaint, Atty. Relamida was guilty of violating the rules on *res judicata* and forum shopping. It concluded that Atty. Relamida abused his right of recourse to the courts by filing a complaint for a cause that had been previously rejected by the courts.

On June 5, 2008, the IBP Board of Governors resolved to adopt and approve with modification as to penalty the report of the IBP-CBD. Instead, it recommended that Atty. Relamida be suspended from the practice of law for one (1) month for his violation of the rules on *res judicata* and *forum shopping.*

On December 7, 2009, the Office of the Bar Confidant recommended that the instant complaint be re-docketed as a regular administrative case against Atty. Relamida.

We sustain the findings of the IBP-CBD.

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[19] *Id.* at 29.

All lawyers must bear in mind that their oaths are neither mere words nor an empty formality. When they take their oath as lawyers, they dedicate their lives to the pursuit of justice. They accept the sacred trust to uphold the laws of the land. As the first Canon of the Code of Professional Responsibility states, "[a] lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes." Moreover, according to the lawyer's oath they took, lawyers should "not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid or consent to the same."[20]

In the instant case, it is clear that Atty. Relamida is guilty of forum shopping and violation of the rule on *res judicata*. Atty. Relamida should have refrained from filing the second complaint against Servier. He ought to have known that the previous dismissal was with prejudice, since it had the effect of an adjudication on the merits. He was aware of all the proceedings which the first complaint went through as by his own admission, he participated in the preparation of the pleadings and even signed as counsel of Ebanen occasionally.[21] He knew that the decision in the subject case had already attained finality. Atty. Relamida was well aware that when he filed the second complaint, it involved the same parties and same cause of action, albeit, he justified the same on the ground of nullity of the previous dismissal.

His allegation that he was not the original counsel of Ebanen and that his intention was only to protect the rights of his clients whom he believed were not properly addressed in the prior complaint deserves scant consideration. He should know that once a case is decided with finality, the controversy is settled and the matter is laid to rest. The prevailing party is entitled to enjoy the fruits of his victory, while the other party is obliged to respect the court's verdict and to comply with it.[22]

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[20] *Olivares v. Villalon, Jr.*, A.C. No. 6323, April 13, 2007, 521 SCRA 12, 15-16.

[21] *Rollo*, pp. 22-23.

[22] *Siy v. NLRC*, G.R. No. 158971, August 25, 2005, 468 SCRA 154, 161.

The essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. It exists when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion in another, or when he institutes two or more actions or proceedings grounded on the same cause to increase the chances of obtaining a favorable decision. An important factor in determining its existence is the vexation caused to the courts and the parties-litigants by the filing of similar cases to claim substantially the same reliefs. Forum shopping exists where the elements of *litis pendentia* are present or **where a final judgment in one case will amount to *res judicata* in another.** Thus, the following requisites should concur:[23]

> x x x (a) identity of parties, or at least such parties as represent the same interests in both actions, (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts, and (c) the identity of the two preceding particulars is 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.

A lawyer owes fidelity to the cause of his client, but not at the expense of truth and the administration of justice. The filing of multiple petitions constitutes abuse of the court's processes and improper conduct that tends to impede, obstruct and degrade the administration of justice and will be punished as contempt of court. Needless to state, the lawyer who files such multiple or repetitious petitions (which obviously delays the execution of a final and executory judgment) subjects himself to disciplinary action for incompetence (for not knowing any better) or for willful violation of his duties as an attorney to act with all good fidelity to the courts, and to maintain only such actions as appear to him to be just and are consistent with truth and honor.[24]

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[23] *Lim v. Montano*, A.C. No. 5653, February 27, 2006, 483 SCRA 192, 201-202.

[24] *Id*.

The filing of another action concerning the same subject matter, in violation of the doctrine of *res judicata*, runs contrary to Canon 12 of the Code of Professional Responsibility, which requires a lawyer to exert every effort and consider it his duty to assist in the speedy and efficient administration of justice. By his actuations, respondent also violated Rule 12.02 and Rule 12.04 of the Code, as well as a lawyer's mandate "to delay no man for money or malice."[25]

The Court has, time and again, warned lawyers not to resort to forum shopping for this practice clogs the court dockets. Their primary duty is to assist the courts in the administration of justice. Any conduct which tends to delay, impede or obstruct the administration of justice contravenes such lawyer's duty.[26] This we will not tolerate.

In cases of similar nature,[27] the penalty imposed by this Court was six (6) months suspension from the practice of law. Thus, consistent with the existing jurisprudence, we find that, in this case, the suspension of six (6) months from practice of law is proper.

WHEREFORE, Resolution No. XVIII-2008-286, dated June 5, 2008, of the IBP, which found respondent Atty. Ibaro B. Relamida, Jr. guilty of violating the Rules on *Res Judicata* and *Forum Shopping*, is *AFFIRMED*. Atty. Relaminda is hereby *SUSPENDED* for six (6) months from the practice of law, effective upon the receipt of this Decision. He is warned that a repetition of the same or a similar act will be dealt with more severely.

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

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[25] *Id*.

[26] *Id*.

[27] *Lim vs. Montano*, *supra* note 23, at 203; *Gatmaytan vs. Court of Appeals*, 335 Phil. 155, 169 (1997).

This Decision shall be immediately executory.

SO ORDERED.

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

Del Castillo, J., no part.

THIRD DIVISION

[A.M. No. MTJ-09-1743. August 3, 2010]
(Formerly A.M. OCA IPI No. 08-1954-MTJ)

JOSEPHINE SARMIENTO and MARY JANE MANSANILLA, *complainants, vs.* **HON. AZNAR D. LINDAYAG, ASSISTING JUDGE, MUNICIPAL TRIAL COURT IN CITIES, CITY OF SAN JOSE DEL MONTE, BULACAN,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; JUDGES; FAILURE TO DECIDE EVEN A SINGLE CASE WITHIN THE REQUIRED PERIOD CONSTITUTES GROSS INEFFICIENCY.— The OCA thus recommends that respondent be fined in the amount of ₱15,000. The Court finds the evaluation and recommendation of the OCA well-taken. It bears stressing that ejectment cases must be resolved with great dispatch. Their nature calls for it. x x x That explains why Section 10 of the Revised Rules on Summary Procedure which applies to an ejectment complaint, among others, directs that within 30 days after the receipt of the last affidavits and position papers, or the expiration of the period for filing the same, the trial court should render judgment on the case. Without any order of extension granted by this Court,

the failure to decide even a single case within the required period constitutes gross inefficiency.

2. LEGAL ETHICS; JUDGES; SHOULD MAINTAIN PROFESSIONAL COMPETENCE IN COURT MANAGEMENT AND IT IS INCUMBENT UPON THEM TO DEVISE AN EFFICIENT RECORDING AND FILING SYSTEM SO THAT NO DISORDERLINESS CAN AFFECT THE FLOW OF CASES AND THEIR SPEEDY DISPOSITION.— That it took respondent almost four years to decide the *second* complaint unmistakably shows his inefficiency. His above-quoted explanation-justification therefor does not indeed convince. Just as his statement about records getting misplaced or misfiled does not. The *New Code of Judicial Conduct for the Philippine Judiciary* requires judges to "devote their professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations." Rule 3.08 of the *Code of Judicial Conduct* requires that a judge should be diligent in discharging administrative responsibilities and should maintain professional competence in court management, hence, it is incumbent upon him to devise an efficient recording and filing system so that no disorderliness can affect the flow of cases and their speedy disposition.

R E S O L U T I O N

CARPIO MORALES, *J.*:

In a December 22, 2007 Verified Complaint,[1] Josephine Sarmiento and Mary Jane Mansanilla (complainants) charged Judge Aznar D. Lindayag (respondent), in his capacity as Assisting Judge of the Municipal Trial Court in Cities (MTCC), San Francisco del Monte, Bulacan, with Grave Abuse of Authority and Ignorance of the Law.

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[1] *Rollo*, pp. 1-10. It was verified only on December 28, 2007 and received by the Docket and Clearance Division of the Office of the Court Administrator on January 8, 2008.

Gathered from the *rollo* are the following facts which spawned the filing of the present administrative case.

The Spouses Eliseto Panchito Burlas and Carmelita Burlas filed on April 20, 1990 a complaint for ejectment against herein complainants before the then Municipal Trial Court, now the MTCC, San Jose del Monte presided by respondent.

Respondent dismissed the ejectment complaint by Decision of March 14, 2000[2] in this wise:

> Whereas here, the only definite ultimate fact averred is "that on or about October 20, 1998, due to the urgent need of the plaintiffs for the said property the defendants were notified and given by the plaintiffs a period of thirty (30) days from said date within which to vacate the said property to enable the plaintiffs to occupy the same.
>
> *A complaint for "ejectment" which does not show [how] defendants' possession started or continued is defective* (*Devesa vs. Montecillo*, 27 SCRA 822). (underscoring in the original; italics supplied)

The decision became final and executory on June 13, 2000.

A year and eight months later or on February 2, 2002, the Burlas spouses filed another complaint (*second* complaint) for ejectment against the same defendants-herein complainants involving the same property and the same cause of action before the same MTCC presided by respondent.

The defendants-herein complainants raised *res judicata* as defense in the *second* complaint.

The *second* complaint was submitted for decision on June 16, 2002. Close to four years later or on May 31, 2006, respondent decided the case, this time against herein complainants.

In their present administrative complaint, complainants charge that by respondent's delay in deciding the *second* complaint, he is liable for malicious delay in the administration of justice.

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[2] *Id.* at 23-24.

Complainants add that respondent's decision in the *second* complaint was tainted with bad faith and grave abuse of authority and rendered in gross ignorance of the law as he favored the Burlas spouses, their non-submission of substantial evidence of possession notwithstanding.

In his February 20, 2008 Comment,[3] respondent maintains that the *second* complaint was not barred by *res judicata* as his decision in the first case was not on the merits.

While respondent assumes responsibility for the delay in rendering the decision, he posits that the "administrative lapse was not malicious considering the peculiar situation" he was in which he details as follows:

> The undersigned is the Presiding Judge of MTC-Pandi, Bulacan since 1992 and the Assisting Judge of MTCC-San Jose del Monte City since 1995 up to the present. In this station, I conduct trials every Tuesdays and Thursdays of the week. In this additional station, I do not have the luxury of having a chamber. I only share a room and a table with another office staff because of the very acute space problem. Here, party litigants wait for the call of their cases in the adjacent public market or in a nearby plaza.
>
> In our very crowded office, records do get misplaced or misfiled with no conscious design, dishonest purpose or some moral obliquity to cause injury to a party litigant.
>
> Your honor, please look with favor at the fact that the dual positions of being the Presiding Judge of MTC-Pandi and Assisting Judge of MTCC-San Jose del Monte with their concomitant workload, necessarily spreads my mental and physical resources too thinly which accounts for those occasional administrative infractions attributable to human frailties for which I am truly sorry.[4] (underscoring supplied)

In its July 20, 2009 Report,[5] the OCA gives the following Evaluation:

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[3] *Id.* at 49-52.

[4] *Id.* at 51-52.

[5] *Id.* at 69-75.

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. . . The mere fact that the respondent judge was serving as acting presiding judge in another sala does not constitute sufficient reason to exonerate him from liability for delay in rendering decisions and resolving motions. This is not to prescind from his situation as a judge handling two courts. It has been stressed in several decisions that if it becomes unavoidable for a judge to render a decision or resolve a matter beyond the mandatory period, he may seek additional time by simply filing a request for such time extension seasonably and supported by valid reasons. The respondent did not avail himself of this action.

Section 5, Canon 6 (Competence and Diligence) of the New Code of Judicial Conduct for the Philippine Judiciary directs judges to "perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness." The heavy load in the respondent's sala, though unfortunate, cannot exempt him from due observance of the provisions of the Code.[6] (underscoring supplied)

The OCA Report reflects that respondent had previously been charged in OCA IPI No. 07-1885-MTJ which was dismissed by the Court in August 8, 2007, although he was

admonished to be more circumspect in observing the reglementary period for disposing of motions and deciding cases; and was sternly warned that a repetition of the same or similar act shall be dealt with more severely, [relieved] of his assignment as Assisting Judge of the MTCC at San Jose del Monte City. (emphasis and underscoring supplied)

The Report further reflects that respondent was also administratively charged in OCA IPI No. 08-2009-MTJ, for Inefficiency and/or Undue Delay in the Resolution of a Motion for Issuance of Writ of Execution filed against him in his capacity as the Assisting Judge of the MTCC at San Jose del Monte City, which is presently being evaluated.[7]

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[6] *Id.* at 74.

[7] *Id.* at 73.

The OCA thus recommends that respondent be fined in the amount of ₱15,000.

The Court finds the evaluation and recommendation of the OCA well-taken. It bears stressing that ejectment cases must be resolved with great dispatch.[8] Their nature calls for it. As *Five Star Marketing Co., Inc. v. Booc*[9] holds:

> Forcible entry and unlawful detainer cases are summary proceedings designed to provide an expeditious means of protecting actual possession or the right to the possession of the property involved. **It does not admit of a delay in the determination thereof.** It is a "time procedure" designed to remedy the situation. Stated in another way, the avowed objective of actions for forcible entry and unlawful detainer, which have purposely been made summary in nature, is **to provide a peaceful, speedy and expeditious means** of preventing an alleged illegal possessor of property from unjustly continuing his possession for a long time, thereby ensuring the maintenance of peace and order in the community; otherwise, the party illegally deprived of possession might feel the despair of long waiting and decide as a measure of self-protection to take the law into his hands and seize the same by force and violence. And since the law discourages continued wrangling over possession of property for it involves perturbation of social order which must be restored as promptly as possible, technicalities or details of procedure which may cause unnecessary delays should accordingly and carefully be avoided.
>
> In accordance with the above objective, the Revised Rules on Summary Procedure set forth the steps to expeditiously dispose of the cases covered by the rules, as in ejectment…[10] (emphasis supplied)

That explains why Section 10 of the Revised Rules on Summary Procedure[11] which applies to an ejectment complaint, among

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[8] *Vide Salandanan v. Mendez*, G.R. No. 160280, March 13, 2009, 581 SCRA 182, 195.

[9] G.R. No. 143331, October 5, 2007, 535 SCRA 28.

[10] *Id.* at 43-44.

[11] RESOLUTION OF THE COURT *EN BANC* DATED OCTOBER 15, 1991 PROVIDING FOR THE REVISED RULE ON SUMMARY PROCEDURE FOR METROPOLITAN TRIAL COURTS, MUNICIPAL

others, directs that within 30 days after the receipt of the last affidavits and position papers, or the expiration of the period for filing the same, the trial court should render judgment on the case. Without any order of extension granted by this Court, the failure to decide even a single case within the required period constitutes gross inefficiency.[12]

That it took respondent almost four years to decide the *second* complaint unmistakably shows his inefficiency. His above-quoted explanation-justification therefor does not indeed convince. Just as his statement about records getting misplaced or misfiled does not. The *New Code of Judicial Conduct for the Philippine Judiciary* requires judges to "devote their professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations."

Rule 3.08 of the *Code of Judicial Conduct*[13] requires that a judge should be diligent in discharging administrative responsibilities and should maintain professional competence in court management, hence, it is incumbent upon him to devise an efficient recording and filing system so that no disorderliness can affect the flow of cases and their speedy disposition.[14]

Under Rule 140 of the Rules of Court, undue delay in rendering a decision is *a less serious charge* in which any of the following sanctions may be imposed: (a) suspension from the service without salary and other benefits for not less than one month nor more than three months; or (b) a fine of more than ₱10,000 but not more than ₱20,000.

TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS AND MUNICIPAL CIRCUIT TRIAL COURTS.

[12] *Vide Saceda v. Judge Gestopa, Jr.*, 423 Phil. 420, 424 (2001).

[13] The New Code of Judicial Conduct provides that in case of deficiency or absence of specific provisions in the Code, the Canons of Judicial Ethics and the Code of Judicial Conduct shall be applicable in a suppletory character.

[14] *Re: Report on the Judicial Audit Conducted in the Municipal Trial Court in Cities, Branch 2, Cagayan de Oro City*, A.M. No. 02-8-207-MTCC, July 27, 2009, 594 SCRA 20, 33-34.

Respondent having been previously admonished in A.M. OCA IPI No. 07-1885-MTJ to be more circumspect in observing the reglementary periods for resolving motions and rendering decisions, not to mention that he was again charged for undue delay in resolving a motion in OCA IPI No. 08-2009-MTJ which is pending evaluation, the recommended fine of ₱15,000 is in order.

WHEREFORE, Judge Aznar D. Lindayag, Presiding Judge, Municipal Trial Court in Cities, San Jose Del Monte City, Bulacan, is, for undue delay in resolving Civil case No. 11-2002-SJ, *FINED* in the amount of Fifteen Thousand (₱15,000) Pesos.

SO ORDERED.

Brion, Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 150666. August 3, 2010]

LUCIANO BRIONES and NELLY BRIONES, *petitioners, vs.* **JOSE MACABAGDAL, FE D. MACABAGDAL and VERGON REALTY INVESTMENTS CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; LIMITED TO REVIEW OF ERRORS OF LAW.— We note that petitioners raise factual issues, which are beyond the scope of a petition for review on *certiorari* under Rule 45 of the Rules. Well

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[*] Additional member per Special Order No. 838 dated May 17, 2010.

settled is the rule that the jurisdiction of this Court in cases brought to it from the CA *via* a petition for review on *certiorari* under Rule 45 is limited to the review of errors of law. 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. We note that the CA and RTC did not overlook or fail to appreciate any material circumstance which, when properly considered, would have altered the result of the case. Indeed, it is beyond cavil that petitioners mistakenly constructed their house on Lot No. 2-R which they thought was Lot No. 2-S.

2. CIVIL LAW; PROPERTY; POSSESSION; ARTICLE 527 OF THE CIVIL CODE PRESUMES GOOD FAITH, AND SINCE NO PROOF EXISTS TO SHOW THAT MISTAKE WAS DONE BY PETITIONERS IN BAD FAITH IN MISTAKENLY CONSTRUCTING THEIR HOUSE ON LOT NO. 2-R WHICH THEY THOUGHT WAS LOT 2-S.— The conclusiveness of the factual findings notwithstanding, we find that the trial court nonetheless erred in outrightly ordering petitioners to vacate the subject property or to pay respondent spouses the prevailing price of the land as compensation. Article 527 of the Civil Code presumes good faith, and since no proof exists to show that the mistake was done by petitioners in bad faith, the latter should be presumed to have built the house in good faith.

3. ID.; ID.; RIGHTS OF A BUILDER IN GOOD FAITH; ELUCIDATED.— When a person builds in good faith on the land of another, Article 448 of the Civil Code governs. x x x The above-cited article covers cases in which the builders, sowers or planters believe themselves to be owners of the land or, at least, to have a claim of title thereto. The builder in good faith can compel the landowner to make a choice between appropriating the building by paying the proper indemnity or obliging the builder to pay the price of the land. The choice belongs to the owner of the land, a rule that accords with the principle of accession, *i.e.*, that the accessory follows the principal and not the other way around. However, even as the option lies with the landowner, the grant to him, nevertheless,

is preclusive. He must choose one. He cannot, for instance, compel the owner of the building to remove the building from the land without first exercising either option. It is only if the owner chooses to sell his land, and the builder or planter fails to purchase it where its value is not more than the value of the improvements, that the owner may remove the improvements from the land. The owner is entitled to such remotion only when, after having chosen to sell his land, the other party fails to pay for the same. Moreover, petitioners have the right to be indemnified for the necessary and useful expenses they may have made on the subject property. x x x Consequently, the respondent-spouses have the option to appropriate the house on the subject land after payment to petitioners of the appropriate indemnity or to oblige petitioners to pay the price of the land, unless its value is considerably more than the value of the structures, in which case petitioners shall pay reasonable rent. In accordance with *Depra v. Dumlao*, this case must be remanded to the RTC which shall conduct the appropriate proceedings to assess the respective values of the improvement and of the land, as well as the amounts of reasonable rentals and indemnity, fix the terms of the lease if the parties so agree, and to determine other matters necessary for the proper application of Article 448, in relation to Articles 546 and 548, of the Civil Code.

4. ID.; QUASI-DELICTS; PETITIONERS FAILED TO PRESENT SUFFICIENT EVIDENCE TO SHOW NEGLIGENCE THAT RESULTED IN THE DAMAGES SUFFERED.— As to the liability of Vergon, petitioners failed to present sufficient evidence to show negligence on Vergon's part. Petitioners' claim is obviously one (1) for tort, governed by Article 2176 of the Civil Code, which provides: Under this provision, it is the plaintiff who has to prove by a preponderance of evidence: (1) the damages suffered by the plaintiff; (2) the fault or negligence of the defendant or some other person for whose act he must respond; and (3) the connection of cause and effect between the fault or negligence and the damages incurred. This the petitioners failed to do. The President of Vergon signed the building permit as a precondition for its approval by the local government, but it did not guarantee that petitioners were constructing the structure within the metes and bounds of petitioners' lot. The signature of the President of Vergon on the building permit merely proved that petitioners were

authorized to make constructions within the subdivision project of Vergon. And while petitioners acted in good faith in building their house on Lot No. 2-R, petitioners did not show by what authority the agents or employees of Vergon were acting when they pointed to the lot where the construction was made nor was petitioners' claim on this matter corroborated by sufficient evidence.

5. ID.; DAMAGES; MORAL DAMAGES, COMPENSATORY DAMAGES AND ATTORNEY'S FEES; NO BASIS FOR AWARD THEREOF; EXPLAINED.— Considering that petitioners acted in good faith in building their house on the subject property of the respondent-spouses, there is no basis for the award of moral damages to respondent-spouses. Likewise, the Court deletes the award to Vergon of compensatory damages and attorney's fees for the litigation expenses Vergon had incurred as such amounts were not specifically prayed for in its Answer to petitioners' third-party complaint. Under Article 2208 of the Civil Code, attorney's fees and expenses of litigation are recoverable only in the concept of actual damages, not as moral damages nor judicial costs. Hence, such must be specifically prayed for—as was not done in this case—and may not be deemed incorporated within a general prayer for "such other relief and remedy as this court may deem just and equitable." It must also be noted that aside from the following, the body of the trial court's decision was devoid of any statement regarding attorney's fees. In *Scott Consultants & Resource Development Corporation, Inc. v. Court of Appeals*, we reiterated that attorney's fees are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification; its basis cannot be left to speculation or conjecture. Where granted, the court must explicitly state in the body of the decision, and not only in the dispositive portion thereof, the legal reason for the award of attorney's fees.

APPEARANCES OF COUNSEL

Jaso Salgado Neri Law Office for petitioners.

Feranculo Evora Recto Law Firm for Sps. Jose & Fe Macabagdal.

Reynaldo F. Ramos for Vergon Realty Investment Corp.

D E C I S I O N

VILLARAMA, JR., *J.*:

On appeal under Rule 45 of the 1997 Rules of Civil Procedure, as amended, is the Decision[1] dated December 11, 2000 of the Court of Appeals (CA) in CA-G.R. CV No. 48109 which affirmed the September 29, 1993 Decision[2] of the Regional Trial Court (RTC) of Makati City, Branch 135, ordering petitioners Luciano and Nelly Briones to remove the improvements they have made on the disputed property or to pay respondent-spouses Jose and Fe Macabagdal the prevailing price of the land as compensation.

The undisputed factual antecedents of the case are as follows:

Respondent-spouses purchased from Vergon Realty Investments Corporation (Vergon) Lot No. 2-R, a 325-square-meter land located in Vergonville Subdivision No. 10 at Las Piñas City, Metro Manila and covered by Transfer Certificate of Title No. 62181 of the Registry of Deeds of Pasay City. On the other hand, petitioners are the owners of Lot No. 2-S, which is adjacent to Lot No. 2-R.

Sometime in 1984, after obtaining the necessary building permit and the approval of Vergon, petitioners constructed a house on Lot No. 2-R which they thought was Lot No. 2-S. After being informed of the mix up by Vergon's manager, respondent-spouses immediately demanded petitioners to demolish the house and vacate the property. Petitioners, however, refused to heed their demand. Thus, respondent-spouses filed an action to recover

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[1] *Rollo*, pp. 43-51. Penned by Associate Justice Presbitero J. Velasco, Jr. (now a member of this Court) and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Juan Q. Enriquez, Jr. The dispositive portion reads as follows:

> WHEREFORE, premises considered, the appealed Decision is hereby AFFIRMED *in toto*.
>
> SO ORDERED.

[2] *Id.* at 81-84. Penned by Judge Omar U. Amin.

ownership and possession of the said parcel of land with the RTC of Makati City.[3]

Petitioners insisted that the lot on which they constructed their house was the lot which was consistently pointed to them as theirs by Vergon's agents over the seven (7)-year period they were paying for the lot. They interposed the defense of being buyers in good faith and impleaded Vergon as third-party defendant claiming that because of the warranty against eviction, they were entitled to indemnity from Vergon in case the suit is decided against them.[4]

The RTC ruled in favor of respondent-spouses and found that petitioners' house was undoubtedly built on Lot No. 2-R. The dispositive portion of the trial court's decision reads as follows:

> PREMISES CONSIDERED, let judgment be rendered declaring, to wit:
>
> 1. That plaintiffs are the owners of Lot No. 2-R of subdivision plan (LRC) Psd-147392 at Vergonville Subdivision, No. 10, Las Piñas, Metro Manila covered by TCT No. 62181 of the Registry of Deeds of Pasay City on which defendants have constructed their house;
>
> 2. Defendants, jointly and severally, are ordered to demolish their house and vacate the premises and return the possession of the portion of Lot No. 2-R as above-described to plaintiffs within thirty (30) days from receipt of this decision, or in the alternative, plaintiffs should be compensated by defendants, jointly and severally, by the payment of the prevailing price of the lot involved as Lot No. 2-R with an area of 325 square meters which should not be less than ₱1,500.00 per square meter, in consideration of the fact that prices of real estate properties in the area concerned have increased rapidly;
>
> 3. Defendants, jointly and severally, pay to plaintiffs for moral damages with plaintiffs' plans and dreams of building their own house on their own lot being severely shattered and frustrated due to

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[3] *Id.* at 6-8.

[4] *Id.* at 71, 75-76.

defendants' incursion as interlopers of Lot No. 2-R in the sum of ₱50,000.00;

4. Defendants, jointly and severally, to pay plaintiffs in the amount of ₱30,000.00 as attorney's fees; and,

5. to pay the costs of the proceedings.

Defendants' counterclaim against plaintiffs is dismissed for lack of merit and with no cause of action.

Defendants' third-party complaint against third-party defendant Vergonville Realty and Investments Corporation is likewise ordered dismissed for lack of cause of action and evidently without merit.

On the other hand, defendants, jointly and severally, are liable for the litigation expenses incurred by Vergonville Realty by way of counterclaim, which is also proven by the latter with a mere preponderance of evidence, and are hereby ordered to pay the sum of ₱20,000.00 as compensatory damage; and attorney's fees in the sum of ₱10,000.00

SO ORDERED.[5]

On appeal, the CA affirmed the RTC's finding that the lot upon which petitioners built their house was not the one (1) which Vergon sold to them. Based on the documentary evidence, such as the titles of the two (2) lots, the contracts to sell, and the survey report made by the geodetic engineer, petitioners' house was built on the lot of the respondent-spouses.[6] There was no basis to presume that the error was Vergon's fault. Also the warranty against eviction under Article 1548 of the Civil Code was not applicable as there was no deprivation of property: the lot on which petitioners built their house was not the lot sold to them by Vergon, which remained vacant and ready for occupation.[7] The CA further ruled that petitioners cannot use the defense of allegedly being a purchaser in good faith for wrongful occupation of land.[8]

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[5] *Id.* at 83-84.

[6] *Id.* at 46-47.

[7] *Id.* at 48.

[8] *Id.* at 48-49.

Aggrieved, petitioners filed a motion for reconsideration, but it was denied by the appellate court.[9] Hence, this petition for review on *certiorari*.

Petitioners raise the following assignment of errors:

I.

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE CONTRARY TO LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT IN AFFIRMING THE DECISION OF THE TRIAL COURT ORDERING PETITIONERS TO DEMOLISH THEIR ONLY HOUSE AND VACATE THE LOT AND TO PAY MORAL AND COMPENSATORY DAMAGES AS WELL AS ATTORNEY'S FEE IN THE TOTAL AMOUNT OF PS[₱] 110,000; AND

II.

THE COURT OF APPEALS SANCTIONED THE DEPARTURE OF THE LOWER COURT FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THE POWER OF SUPERVISION.[10]

In the main, it is petitioners' position that they must not bear the damage alone. Petitioners insist that they relied with full faith and confidence in the reputation of Vergon's agents when they pointed the wrong property to them. Even the President of Vergon, Felix Gonzales, consented to the construction of the house when he signed the building permit.[11] Also, petitioners are builders in good faith.[12]

The petition is partly meritorious.

At the outset, we note that petitioners raise factual issues, which are beyond the scope of a petition for review on *certiorari*

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[9] *Id.* at 54. The Resolution was penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Mercedes Gozo-Dadole and Juan Q. Enriquez, Jr. concurring.

[10] *Id.* at 14-15.

[11] *Id.* at 16-27.

[12] *Id.* at 27-28.

under Rule 45 of the Rules. Well settled is the rule that the jurisdiction of this Court in cases brought to it from the CA *via* a petition for review on *certiorari* under Rule 45 is limited to the review of errors of law. 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] We note that the CA and RTC did not overlook or fail to appreciate any material circumstance which, when properly considered, would have altered the result of the case. Indeed, it is beyond cavil that petitioners mistakenly constructed their house on Lot No. 2-R which they thought was Lot No. 2-S.

However, the conclusiveness of the factual findings notwithstanding, we find that the trial court nonetheless erred in outrightly ordering petitioners to vacate the subject property or to pay respondent spouses the prevailing price of the land as compensation. Article 527[14] of the Civil Code presumes good faith, and since no proof exists to show that the mistake was done by petitioners in bad faith, the latter should be presumed to have built the house in good faith.

When a person builds in good faith on the land of another, Article 448 of the Civil Code governs. Said article provides,

> ART. 448. The **owner of the land** on which anything has been built, sown or planted in good faith, **shall have the right to appropriate** as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, **or to oblige the one who built or planted to pay the price of the land**, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more

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[13] *Bernarda Ch. Osmeña v. Nicasio Ch. Osmeña, et al.*, G.R. No. 171911, January 26, 2010, p. 4.

[14] ART. 527. Good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof.

than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof. (Emphasis ours.)

The above-cited article covers cases in which the builders, sowers or planters believe themselves to be owners of the land or, at least, to have a claim of title thereto.[15] The builder in good faith can compel the landowner to make a choice between appropriating the building by paying the proper indemnity or obliging the builder to pay the price of the land. The choice belongs to the owner of the land, a rule that accords with the principle of accession, *i.e.*, that the accessory follows the principal and not the other way around. However, even as the option lies with the landowner, the grant to him, nevertheless, is preclusive. He must choose one.[16] He cannot, for instance, compel the owner of the building to remove the building from the land without first exercising either option. It is only if the owner chooses to sell his land, and the builder or planter fails to purchase it where its value is not more than the value of the improvements, that the owner may remove the improvements from the land. The owner is entitled to such remotion only when, after having chosen to sell his land, the other party fails to pay for the same.[17]

Moreover, petitioners have the right to be indemnified for the necessary and useful expenses they may have made on the subject property. Articles 546 and 548 of the Civil Code provide,

ART. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

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[15] *Vide Philippine National Bank v. De Jesus*, 458 Phil. 454, 458 (2003) and *Pada-Kilario v. Court of Appeals*, 379 Phil. 515, 529-530 (2000).

[16] *Arangote v. Maglunob*, G.R. No. 178906, February 18, 2009, 579 SCRA 620, 644.

[17] *Sarmiento v. Agana*, No. L-57288, April 30, 1984, 129 SCRA 122, 126 and *Ignacio v. Hilario*, 76 Phil. 605, 608 (1946).

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

ART. 548. Expenses for pure luxury or mere pleasure shall not be refunded to the possessor in good faith; but he may remove the ornaments with which he has embellished the principal thing if it suffers no injury thereby, and if his successor in the possession does not prefer to refund the amount expended.

Consequently, the respondent-spouses have the option to appropriate the house on the subject land after payment to petitioners of the appropriate indemnity or to oblige petitioners to pay the price of the land, unless its value is considerably more than the value of the structures, in which case petitioners shall pay reasonable rent.

In accordance with *Depra v. Dumlao*,[18] this case must be remanded to the RTC which shall conduct the appropriate proceedings to assess the respective values of the improvement and of the land, as well as the amounts of reasonable rentals and indemnity, fix the terms of the lease if the parties so agree, and to determine other matters necessary for the proper application of Article 448, in relation to Articles 546 and 548, of the Civil Code.

As to the liability of Vergon, petitioners failed to present sufficient evidence to show negligence on Vergon's part. Petitioners' claim is obviously one (1) for tort, governed by Article 2176 of the Civil Code, which provides:

ART. 2176. Whoever by act or omission causes damage to another, there being **fault or negligence**, is obliged to pay for the damage done. Such fault or negligence, if there is no preexisting contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter. (Emphasis ours.)

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[18] No. L-57348, May 16, 1985, 136 SCRA 475, 483, cited in *National Housing Authority v. Grace Baptist Church*, G.R. No. 156437, March 1, 2004, 424 SCRA 147, 154.

Under this provision, it is the plaintiff who has to prove by a preponderance of evidence: (1) the damages suffered by the plaintiff; (2) the fault or negligence of the defendant or some other person for whose act he must respond; and (3) the connection of cause and effect between the fault or negligence and the damages incurred.[19] This the petitioners failed to do. The President of Vergon signed the building permit as a precondition for its approval by the local government, but it did not guarantee that petitioners were constructing the structure within the metes and bounds of petitioners' lot. The signature of the President of Vergon on the building permit merely proved that petitioners were authorized to make constructions within the subdivision project of Vergon. And while petitioners acted in good faith in building their house on Lot No. 2-R, petitioners did not show by what authority the agents or employees of Vergon were acting when they pointed to the lot where the construction was made nor was petitioners' claim on this matter corroborated by sufficient evidence.

One (1) last note on the award of damages. Considering that petitioners acted in good faith in building their house on the subject property of the respondent-spouses, there is no basis for the award of moral damages to respondent-spouses. Likewise, the Court deletes the award to Vergon of compensatory damages and attorney's fees for the litigation expenses Vergon had incurred as such amounts were not specifically prayed for in its Answer to petitioners' third-party complaint. Under Article 2208[20] of

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[19] *Child Learning Center, Inc. v. Tagorio*, G.R. No. 150920, November 25, 2005, 476 SCRA 236, 242.

[20] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

the Civil Code, attorney's fees and expenses of litigation are recoverable only in the concept of actual damages, not as moral damages nor judicial costs. Hence, such must be specifically prayed for—as was not done in this case—and may not be deemed incorporated within a general prayer for "such other relief and remedy as this court may deem just and equitable."[21] It must also be noted that aside from the following, the body of the trial court's decision was devoid of any statement regarding attorney's fees. In *Scott Consultants & Resource Development Corporation, Inc. v. Court of Appeals*,[22] we reiterated that attorney's fees are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification; its basis cannot be left to speculation or conjecture. Where granted, the court must explicitly state in the body of the decision, and not only in the dispositive portion thereof, the legal reason for the award of attorney's fees.

WHEREFORE, the Decision dated December 11, 2000 of the Court of Appeals in CA-G.R. CV No. 48109 is *AFFIRMED WITH MODIFICATION*. The award of moral damages in favor of respondent-spouses Jose and Fe Macabagdal and the award

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(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[21] *Mirasol v. de la Cruz*, No. L-32552, 84 SCRA 337, 342-343.

[22] G.R. No. 112916, March 16, 1995, 242 SCRA 393, 406.

of compensatory damages and attorney's fees to respondent Vergon Realty Investments Corporation are *DELETED*. The case is *REMANDED* to the Regional Trial Court of Makati City, Branch 135, for further proceedings consistent with the proper application of Articles 448, 546 and 548 of the Civil Code, as follows:

1. The trial court shall determine:

a. the present fair price of the respondent-spouses' lot;

b. the amount of the expenses spent by petitioners for the building of their house;

c. the increase in value ("plus value") which the said lot may have acquired by reason thereof; and

d. whether the value of said land is considerably more than that of the house built thereon.

2. After said amounts shall have been determined by competent evidence, the Regional Trial Court shall render judgment, as follows:

a. The trial court shall grant the respondent-spouses a period of fifteen (15) days within which to exercise their option under Article 448 of the Civil Code, whether to appropriate the house as their own by paying to petitioners either the amount of the expenses spent by petitioners for the building of the house, or the increase in value ("plus value") which the said lot may have acquired by reason thereof, or to oblige petitioners to pay the price of said land. The amounts to be respectively paid by the respondent-spouses and petitioners, in accordance with the option thus exercised by written notice of the other party and to the Court, shall be paid by the obligor within fifteen (15) days from such notice of the option by tendering the amount to the Court in favor of the party entitled to receive it;

b. The trial court shall further order that if the respondent-spouses exercises the option to oblige petitioners to pay

the price of the land but the latter rejects such purchase because, as found by the trial court, the value of the land is considerably more than that of the house, petitioners shall give written notice of such rejection to the respondent-spouses and to the Court within fifteen (15) days from notice of the respondent-spouses' option to sell the land. In that event, the parties shall be given a period of fifteen (15) days from such notice of rejection within which to agree upon the terms of the lease, and give the Court formal written notice of such agreement and its provisos. If no agreement is reached by the parties, the trial court, within fifteen (15) days from and after the termination of the said period fixed for negotiation, shall then fix the terms of the lease, payable within the first five (5) days of each calendar month. The period for the forced lease shall not be more than two (2) years, counted from the finality of the judgment, considering the long period of time since petitioners have occupied the subject area. The rental thus fixed shall be increased by ten percent (10%) for the second year of the forced lease. Petitioners shall not make any further constructions or improvements on the house. Upon expiration of the two (2)-year period, or upon default by petitioners in the payment of rentals for two (2) consecutive months, the respondent-spouses shall be entitled to terminate the forced lease, to recover their land, and to have the house removed by petitioners or at the latter's expense. The rentals herein provided shall be tendered by petitioners to the Court for payment to the respondent-spouses, and such tender shall constitute evidence of whether or not compliance was made within the period fixed by the Court.

c. In any event, petitioners shall pay the respondent-spouses reasonable compensation for the occupancy of the respondent-spouses' land for the period counted from the year petitioners occupied the subject area, up to the commencement date of the forced lease referred to in the preceding paragraph;

d. The periods to be fixed by the trial court in its Decision shall be inextendible, and upon failure of the party obliged to tender to the trial court the amount due to the obligee, the party entitled to such payment shall be entitled to an order of execution for the enforcement of payment of the amount due and for compliance with such other acts as may be required by the prestation due the obligee.

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 154622. August 3, 2010]

LAND BANK OF THE PHILIPPINES, *petitioner*, *vs.* **RAMON P. JACINTO,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PREJUDICIAL QUESTION; EXPLAINED; ELEMENTS.— A prejudicial question generally exists in a situation where a civil action and a criminal action are both pending, and there exists in the former an issue that must be preemptively resolved before the latter may proceed, because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case. The elements of a prejudicial question are provided under Section 7, Rule 111 of the Revised Rules of Criminal Procedure, as amended, as follows: (i) the previously instituted civil action involves an issue similar or intimately related to

the issue raised in the subsequent criminal action, and (ii) the resolution of such issue determines whether or not the criminal action may proceed. A prejudicial question is understood in law as that which must precede the criminal action and which requires a decision before a final judgment can be rendered in the criminal action with which said question is closely connected. Not every defense raised in a civil action will raise a prejudicial question to justify suspension of the criminal action. The defense must involve an issue similar or intimately related to the same issue raised in the criminal case and its resolution should determine whether or not the latter action may proceed. If the resolution of the issue in the civil action will not determine the criminal responsibility of the accused in the criminal action based on the same facts, or if there is no necessity that the civil case be determined first before taking up the criminal case, the civil case does not involve a prejudicial question. Neither is there a prejudicial question if the civil and the criminal action can, according to law, proceed independently of each other.

2. ID.; ID.; ID.; THE QUESTION WHETHER THERE WAS NOVATION OF THE CREDIT LINE AGREEMENT OR NOT IS NOT DETERMINATIVE OF WHETHER RESPONDENT SHOULD BE PROSECUTED FOR VIOLATION OF THE BOUNCING CHECKS LAW.— In the instant case, we find that the question whether there was novation of the Credit Line Agreement or not is not determinative of whether respondent should be prosecuted for violation of the Bouncing Checks Law. Respondent's contention that if it be proven that the loan of FWCC had been novated and restructured then his liability under the dishonored checks would be extinguished, fails to persuade us. There was no express stipulation in the Restructuring Agreement that respondent is released from his liability on the issued checks and in fact the letter-agreements between FWCC and Land Bank expressly provide that respondent's JSS (Joint and Several Signatures) continue to secure the loan obligation and the postdated checks issued continue to guaranty the obligation. In fact, as aptly pointed out by petitioner, out of the nine (9) checks in question, eight (8) checks were dated June 8 to October 30, 1998 or after the execution of the June 3, 1998 Restructuring Agreement. If indeed respondent's liability on the checks had been extinguished

upon the execution of the Restructuring Agreement, then respondent should have demanded the return of the checks. However, there was no proof that he had been released from his obligation. On the contrary, the Restructuring Agreement contains a proviso which states that "*This Agreement shall not novate or extinguish all previous security, mortgage, and other collateral agreements, promissory notes, solidary undertaking previously executed by and between the parties and shall continue in full force and effect modified only by the provisions of this Agreement.*"

3. CRIMINAL LAW; BATAS PAMBANSA BLG. 22 (BOUNCING CHECKS LAW); MERE ACT OF ISSUING WORTHLESS CHECK, EVEN IF MERELY AS AN ACCOMODATION, IS PUNISHABLE.— It is well settled that the mere act of issuing a worthless check, even if merely as an accommodation, is covered by B.P. 22. Thus, this Court has held that the agreement surrounding the issuance of dishonored checks is irrelevant to the prosecution for violation of B.P. 22. The gravamen of the offense punished by B.P. 22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentment for payment. Section 1 of B.P. 22 enumerates the following elements: (1) the making, drawing, and issuance of any check to apply on account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment. Thus, even if it be subsequently declared that novation took place between the FWCC and petitioner, respondent is not exempt from prosecution for violation of B.P. 22 for the dishonored checks.

4. ID.; ID.; ORDER IN THE INVOLUNTARY INSOLVENCY PROCEEDINGS FORBIDDING RESPONDENT'S CORPORATION FROM PAYING ITS DEBTS AS WELL AS DELIVERING ANY PROPERTY BELONGING TO IT TO ANY PERSON FOR ITS BENEFIT CANNOT BE CONSIDERED AS A JUSTIFYING CIRCUMSTANCE THAT PREVENTS CRIMINAL LIABILITY FROM ATTACHING.— As to the issue of whether the Order dated

May 28, 1998 of the RTC of Makati City in Special Proceedings No. M-4686 for Involuntary Insolvency constitutes as a justifying circumstance that prevents criminal liability from attaching, we rule in the negative. As stated at the outset, the said order forbids FWCC from paying its debts as well as from delivering any property belonging to it to any person for its benefit. Respondent, however, cannot invoke this Order which was directed only upon FWCC and is not applicable to him. Therefore, respondent, as surety of the loan is not exempt from complying with his obligation for the issuance of the checks.

APPEARANCES OF COUNSEL

LBP Legal Department for petitioner.
Singson Valdez & Associates for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Petitioner Land Bank of the Philippines (Land Bank) seeks the reversal of the Decision[1] dated November 28, 2001 and the Resolution[2] dated August 6, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 62773. The CA had set aside the Resolutions dated October 25, 2000[3] and December 18, 2000[4] of the Department of Justice (DOJ) and reinstated the Resolution[5] dated March 3, 1999 of the City Prosecution Office of Makati which dismissed the petitioner's complaint against respondent Ramon P. Jacinto in I.S. Nos. 99-A-1536-44 for violation of Batas Pambansa Blg. (B.P.) 22 or "The Bouncing Checks Law."

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[1] *Rollo*, pp. 16-30. Penned by Associate Justice Teodoro P. Regino, with Associate Justices Eugenio S. Labitoria and Rebecca De Guia-Salvador concurring.

[2] *Id.* at 31-32.

[3] CA *rollo*, pp. 23-26.

[4] *Id.* at 27.

[5] *Id.* at 148-150.

The undisputed facts, as gleaned from the records, are as follows:

The First Women's Credit Corporation (FWCC) obtained a loan from the petitioner Land Bank in the aggregate amount of ₱400 million, evidenced by a Credit Line Agreement[6] dated August 22, 1997. As security for the loan, respondent Ramon P. Jacinto, President of FWCC, issued in favor of Land Bank nine (9) postdated checks amounting to ₱465 million and drawn against FWCC's account at the Philippine National Bank. Later, before the checks matured, petitioner and respondent executed several letter agreements which culminated in the execution of a Restructuring Agreement on June 3, 1998. Under the new agreement, the loan obligation contracted under the Credit Line Agreement of August 22, 1997 was restructured, its terms of payment, among others, having been changed or modified. When FWCC defaulted in the payment of the loan obligation under the terms of their restructured agreement, petitioner presented for payment to the drawee bank the postdated checks as they matured. However, all the checks were dishonored or refused payment for the reason "*Payment Stopped*" or "*Drawn Against Insufficient Funds.*" Respondent also failed to make good the checks despite demands.

Hence, on January 13, 1999, Land Bank, through its Assistant Vice President, Udela C. Salvo, Financial Institutions Department, filed before the Makati City Prosecutor's Office a Complaint-Affidavit[7] against respondent for violation of B.P. 22. Respondent filed his Counter-Affidavit[8] denying the charges and averring that the complaint is baseless and utterly devoid of merit as the said loan obligation has been extinguished by payment and novation by virtue of the execution of the Restructuring Agreement. Respondent also invoked the proscription in the May 28, 1998 Order of the Regional Trial Court (RTC) of Makati City, Branch 133 in Special Proceedings No. M-4686 for Involuntary Insolvency which forbade FWCC from paying any of its debts.

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[6] Records, pp. 70-82.

[7] CA *rollo*, pp. 30-31.

[8] *Id.* at 64-73.

In a Resolution[9] dated March 3, 1999, Prosecutor George V. De Joya dismissed the complaint against respondent, finding that the letter-agreements between Land Bank and FWCC restructured and novated the original loan agreement. It was held that there being novation, the checks issued pursuant to the original loan obligation had lost their efficacy and validity and cannot be a valid basis to sustain the charge of violation of B.P. 22.

On June 21, 1999, petitioner's motion for reconsideration was likewise denied.[10]

Aggrieved, petitioner elevated the matter to the DOJ for review. On April 10, 2000, the DOJ issued a Resolution[11] dismissing the appeal. However, upon motion for reconsideration filed by petitioner, the DOJ reversed its ruling and issued a Resolution dated October 25, 2000 holding that novation is not a mode of extinguishing criminal liability. Thus, the DOJ held that:

> WHEREFORE, there being probable cause to hold respondent triable for the offense of violation of BP 22 (nine (9) counts), the Department Resolution dated April 10, 2000 is hereby reconsidered and set aside and the resolution of the Office of the City Prosecutor, Makati City, dismissing the complaint should be, as it is, hereby REVERSED. Said office is directed to file the appropriate informations for violation of BP 22 (nine (9) counts) against respondent. Report the action taken within ten (10) days from receipt hereof.
>
> SO ORDERED.[12]

Respondent moved for a reconsideration of the above Order but it was denied in a Resolution dated December 18, 2000. Undaunted, respondent filed a petition for *certiorari* before the CA.

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[9] *Id.* at 148-150.

[10] Records, p. 139.

[11] *Id.* at 83.

[12] CA *rollo*, p. 25.

On November 28, 2001, the CA, in the assailed Decision, reversed the Resolution of the DOJ and reinstated the Resolution of Prosecutor De Joya dismissing the complaint. While the CA ruled that novation is not a mode of extinguishing criminal liability, it nevertheless held that novation may prevent criminal liability from arising in certain cases if novation occurs before the criminal information is filed in court because the novation causes doubt as to the true nature of the obligation. Also, the CA found merit in respondent's assertion that a prejudicial question exists in the instant case because the issue of whether the original obligation of FWCC subject of the dishonored checks has been novated by the subsequent agreements entered into by FWCC with Land Bank, is already the subject of the appeal in Civil Case No. 98-2337 (entitled, "*First Women's Credit Corporation v. Land Bank of the Philippines*" for Declaration of Novation) pending before the CA. The CA also gave consideration to respondent's assertion that the Order dated May 28, 1998 of the RTC proscribing FWCC from paying its debts constitutes as a justifying circumstance which prevents criminal liability from attaching.

Petitioner's motion for reconsideration from the said decision having been denied, petitioner filed the instant petition for review on *certiorari*, raising the following assignment of errors:

I

THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THE ELEMENT OF A PREJUDICIAL QUESTION EXISTS IN THE INSTANT CASE AND THAT THE RECOMMENDATION FOR THE FILING OF INFORMATIONS IN COURT AGAINST THE RESPONDENT WAS MADE WITH GRAVE ABUSE OF DISCRETION.

II

THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THE ORDER DATED MAY 28, 1998 OF THE REGIONAL TRIAL COURT OF MAKATI, BRANCH 133, CONSTITUTES AS A JUSTIFYING CIRCUMSTANCE THAT PREVENTS CRIMINAL LIABILITY FROM ATTACHING.

III

THE COURT OF APPEALS GRAVELY ERRED WHEN IT FAILED TO TAKE JUDICIAL NOTICE OF THE PROVISIONS OF THE LANDBANK CHARTER RELATIVE TO THE COLLECTION OF ITS FINANCIAL EXPOSURES.[13]

Essentially, the issue to be resolved in this case is whether the CA erred in reversing the Resolution of the DOJ finding probable cause to hold respondent iable for violation of B.P. 22.

Petitioner asserts that the June 3, 1998 Restructuring Agreement did not release FWCC from its obligation with Land Bank.[14] It merely accommodated FWCC's sister company, RJ Ventures and Development Corporation.[15] Whether there was novation or not is also not determinative of respondent's responsibility for violation of B.P. 22, as the said special law punishes the act of issuing a worthless check and not the purpose for which the check was issued or the terms and conditions relating to its issuance. In ruling that the Order dated May 28, 1998 of the RTC in Special Proceedings No. M-4686 constituted a justifying circumstance, the CA failed to take judicial notice of Section 86-B (4)[16] of Republic Act No. 7907 which excludes the proceeds of the checks from the property of the insolvent FWCC.

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[13] *Rollo*, pp. 7-8.

[14] *Id.* at 72.

[15] *Id*.

[16] Section 86-B (4) of Republic Act No. 7907 which amended Republic Act No. 3844 on the Charter of the Land Bank of the Philippines, provides,

> "Section 86-b foreclosure of collaterals and disposal of bank acquired properties—
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> x x x x x x x x x
>
> "4. *Exemption from Attachment*—The provisions of any law to the contrary notwithstanding, securities on loans and/or other credit accommodations granted by the bank shall not be subject to attachment, execution to any other court process, nor shall they be included in the property of insolvent persons or institutions, unless all debts and obligations of the debtors to the bank have been paid, including accrued interest, penalties, collection expenses, and other charges.
>
> x x x x x x x x x"

Respondent counters that there was novation which occurred prior to the institution of the criminal complaint against him and that if proven, it would affect his criminal liability.[17] Respondent averred that if the CA would judicially confirm the existence of novation in the appeal of Civil Case No. 98-2337 before it, then it would follow that the value represented by the subject checks has been extinguished. Respondent argues that the consideration or value of the subject checks have been modified or novated with the execution of the Restructuring Agreement. The payment of the obligation supposedly already depended on the terms and conditions of the Restructuring Agreement and no longer on the respective maturity dates of the subject checks as the value or consideration of the subject checks had been rendered inexistent by the subsequent execution of the Restructuring Agreement. He maintains that the subject checks can no longer be the basis of criminal liability since the obligation for which they were issued had already been novated or abrogated.

We grant the petition.

A prejudicial question generally exists in a situation where a civil action and a criminal action are both pending, and there exists in the former an issue that must be preemptively resolved before the latter may proceed, because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case.[18] The elements of a prejudicial question are provided under Section 7, Rule 111 of the Revised Rules of Criminal Procedure, as amended, as follows: (i) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (ii) the resolution of such issue determines whether or not the criminal action may proceed.[19]

A prejudicial question is understood in law as that which must precede the criminal action and which requires a decision

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[17] *Rollo*, p. 95.

[18] *Yap v. Cabales*, G.R. No. 159186, June 5, 2009, 588 SCRA 426, 432.

[19] *Jose v. Suarez*, G.R. No. 176795, June 30, 2008, 556 SCRA 773, 782.

before a final judgment can be rendered in the criminal action with which said question is closely connected.[20] Not every defense raised in a civil action will raise a prejudicial question to justify suspension of the criminal action. The defense must involve an issue similar or intimately related to the same issue raised in the criminal case and its resolution should determine whether or not the latter action may proceed. If the resolution of the issue in the civil action will not determine the criminal responsibility of the accused in the criminal action based on the same facts, or if there is no necessity that the civil case be determined first before taking up the criminal case, the civil case does not involve a prejudicial question.[21] Neither is there a prejudicial question if the civil and the criminal action can, according to law, proceed independently of each other.[22]

In the instant case, we find that the question whether there was novation of the Credit Line Agreement or not is not determinative of whether respondent should be prosecuted for violation of the Bouncing Checks Law.

Respondent's contention that if it be proven that the loan of FWCC had been novated and restructured then his liability under the dishonored checks would be extinguished, fails to persuade us. There was no express stipulation in the Restructuring Agreement that respondent is released from his liability on the issued checks and in fact the letter-agreements between FWCC and Land Bank expressly provide that respondent's JSS (Joint and Several Signatures) continue to secure the loan obligation and the postdated checks issued continue to guaranty the obligation. In fact, as aptly pointed out by petitioner, out of the nine (9) checks in question, eight (8) checks were dated June 8 to October 30, 1998 or after the execution of the June 3, 1998 Restructuring Agreement. If indeed respondent's

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[20] *Berbari v. Concepcion and Prosecuting Attorney of Manila*, 40 Phil. 837, 839 (1920).

[21] *Ty-De Zuzuarregui v. Hon. Villarosa*, G.R. No. 183788, April 5, 2010, p. 8.

[22] *Id*.

liability on the checks had been extinguished upon the execution of the Restructuring Agreement, then respondent should have demanded the return of the checks.[23] However, there was no proof that he had been released from his obligation. On the contrary, the Restructuring Agreement contains a proviso which states that "*This Agreement shall not novate or extinguish all previous security, mortgage, and other collateral agreements, promissory notes, solidary undertaking previously executed by and between the parties and shall continue in full force and effect modified only by the provisions of this Agreement.*"[24]

Moreover, it is well settled that the mere act of issuing a worthless check, even if merely as an accommodation, is covered by B.P. 22.[25] Thus, this Court has held that the agreement surrounding the issuance of dishonored checks is irrelevant to the prosecution for violation of B.P. 22.[26] The gravamen of the offense punished by B.P. 22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentment for payment.[27] Section 1 of B.P. 22 enumerates the following elements: (1) the making, drawing, and issuance of any check to apply on account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment. Thus, even if it be subsequently declared that novation took place between the FWCC and petitioner, respondent

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[23] *Rollo*, p. 73.

[24] Records, p. 196.

[25] *Saguiguit v. People*, G.R. No. 144054, June 30, 2006, 494 SCRA 128, 135.

[26] *Dreamwork Construction, Inc. v. Janiola*, G.R. No. 184861, June 30, 2009, 591 SCRA 466, 478.

[27] *Nuguid v. Nicdao*, G.R. No. 150785, September 15, 2006, 502 SCRA 93, 99.

is not exempt from prosecution for violation of B.P. 22 for the dishonored checks.

As to the issue of whether the Order dated May 28, 1998 of the RTC of Makati City in Special Proceedings No. M-4686 for Involuntary Insolvency constitutes as a justifying circumstance that prevents criminal liability from attaching, we rule in the negative. As stated at the outset, the said order forbids FWCC from paying its debts as well as from delivering any property belonging to it to any person for its benefit. Respondent, however, cannot invoke this Order which was directed only upon FWCC and is not applicable to him. Therefore, respondent, as surety of the loan is not exempt from complying with his obligation for the issuance of the checks.

WHEREFORE, the petition for review on *certiorari* is *GRANTED*. The November 28, 2001 Decision and August 6, 2002 Resolution of the Court of Appeals in CA-G.R. SP No. 62773 are hereby *REVERSED and SET ASIDE*. The Resolution dated October 25, 2000 of the Department of Justice directing the filing of appropriate Informations for violation of B.P. 22 against respondent Ramon P. Jacinto is hereby *REINSTATED and UPHELD*.

No costs.

SO ORDERED.

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

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[*] Designated additional member per Special Order No. 843 dated May 17, 2010.

[**] Designated additional member per Raffle dated July 19, 2010 in place of Associate Justice Arturo D. Brion who inhibited due to prior action in a related case.

THIRD DIVISION

[G.R. No. 158929. August 3, 2010]

ROSARIO P. TAN, *petitioner, vs.* **ARTEMIO G. RAMIREZ, MOISES G. RAMIREZ, RODRIGO G. RAMIREZ, DOMINGO G. RAMIREZ, and MODESTA RAMIREZ ANDRADE,** *respondents*.

SYLLABUS

1. CIVIL LAW; PROPERTY; MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION; ELUCIDATED.— Prescription, as a mode of acquiring ownership and other real rights over immovable property, is concerned with lapse of time in the manner and under conditions laid down by law, namely, that the possession should be in the concept of an owner, public, peaceful, uninterrupted, and adverse. The party who asserts ownership by adverse possession must prove the presence of the essential elements of acquisitive prescription. Acquisitive prescription of real rights may be ordinary or extraordinary. Ordinary acquisitive prescription requires possession in good faith and with just title for ten years. In extraordinary prescription, ownership and other real rights over immovable property are acquired through uninterrupted adverse possession for thirty years without need of title or of good faith. Possession "in good faith" consists in the reasonable belief that the person from whom the thing is received has been the owner thereof, and could transmit his ownership. There is "just title" when the adverse claimant came into possession of the property through one of the modes recognized by law for the acquisition of ownership or other real rights, but the grantor was not the owner or could not transmit any right.

2. ID.; ID.; ID.; COMPROMISE AGREEMENT NOT A VALID BASIS OF POSSESSION IN GOOD FAITH AND JUST TITLE.— We find that the CA mistakenly relied upon the compromise agreement, executed by Belacho to conclude that the respondents were possessors in good faith and with just title who acquired the property through ordinary acquisitive prescription. In *Ramnani v. Court of Appeals*, we held that

the main purpose of a compromise agreement is to put an end to litigation because of the uncertainty that may arise from it. Reciprocal concessions are the very heart and life of every compromise agreement. By the nature of a compromise agreement, it brings the parties to agree to something that neither of them may actually want, but for the peace it will bring them without a protracted litigation. In the present case, to avoid any conflict with Belacho, Roberto and Nicomedesa paid ₱1,800.00 in consideration of Belacho's desistance from further pursuing her claim over two (2) parcels of land, including the subject property. Thus, no right can arise from the compromise agreement because the parties executed the same only to buy peace and to write *finis* to the controversy; it did not create or transmit ownership rights over the subject property. In executing the compromise agreement, the parties, in effect, merely reverted to their situation before Civil Case No. B-565 was filed.

3. ID.; ID.; ID.; CONTRACT OF SALE CANNOT SUPPORT CLAIM OF GOOD FAITH AND JUST TITLE.— Neither can the respondents benefit from the contract of sale of the subject property, executed by Belacho in favor of Roberto, to support their claim of possession in good faith and with just title. In the vintage case of *Leung Yee v. F.L. Strong Machinery Co. and Williamson*, we explained good faith in this manner: One who purchases real estate with knowledge of a defect or lack of title in his vendor cannot claim that he has acquired title thereto in good faith as against the true owner of the land or of an interest therein; and the same rule must be applied to one who has knowledge of facts which should have put him upon such inquiry and investigation as might be necessary to acquaint him with the defects in the title of his vendor. Good faith, or the want of it, can be ascertained only from the acts of the one claiming it, as it is a condition of mind that can only be judged by actual or fancied token or signs.

4. ID.; ID.; ID.; NOT BEING A POSSESSOR IN GOOD FAITH, THE TEN-YEAR PERIOD REQUIRED FOR ORDINARY ACQUISITIVE PRESCRIPTION CANNOT APPLY IN FAVOR OF RESPONDENTS' PREDECESSOR-IN-INTEREST.— In the present case, no dispute exists that Roberto, without Nicomedesa's knowledge or participation, bought the subject property on September 16, 1977 or during the pendency

of Civil Case No. B-565. Roberto, therefore, had actual knowledge that Belacho's claim to ownership of the subject property, as Gavino's purported heir, was disputed because he (Roberto) and Nicomedesa were the defendants in Civil Case No. B-565. Roberto even admitted that he bought the subject property from Belacho to "avoid any trouble." He, thus, cannot claim that he acted in good faith under the belief that there was no defect or dispute in the title of the vendor, Belacho. Not being a possessor in good faith and with just title, the ten-year period required for ordinary acquisitive prescription cannot apply in Roberto's favor. Even the thirty-year period under extraordinary acquisitive prescription has not been met because of the respondents' claim to have been in possession, in the concept of owner, of the subject property for only twenty-four years, from the time the subject property was tax declared in 1974 to the time of the filing of the complaint in 1998. Based on the foregoing, the CA erred in finding that the respondents acquired the petitioner's one-fourth portion of the subject property through acquisitive prescription. As aptly found by the MCTC, the respondents are only entitled to three-fourths of the subject property because this was Gavino's rightful share of the conjugal estate that Roberto bought from Ronito and Wilfredo Oyao.

5. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; A DECISION, JUDGMENT OR FINAL ORDER DETERMINING THE MERITS OF THE CASE SHALL STATE, CLEARLY AND DISTINCTLY THE FACTS AND THE LAW ON WHICH IT IS BASED.— We cannot close our eyes to the failure of the RTC decision to measure up to the standard set by Section 14 of Article VIII of the Constitution, as well as Section 1 of Rule 36 and Section 1, Rule 120 of the Rules on Civil Procedure, that a decision, judgment or final order determining the merits of the case shall state, clearly and distinctly, the facts and the law on which it is based. Our Administrative Circular No. 1 of January 28, 1988 reiterates this requirement and stresses that judges should make complete findings of facts in their decisions, scrutinize closely the legal aspects of the case in the light of the evidence presented, and avoid the tendency to generalize and to form conclusions without detailing the facts from which such conclusions are deduced.

6. ID.; ID.; ID.; THE TRIAL COURT DECISION DID NOT CONFORM TO THE REQUIREMENTS OF THE CONSTITUTION AND OF THE RULES OF COURT.— The RTC decision did not distinctly and clearly set forth, nor substantiate, the factual and legal bases for its affirmance of the MCTC decision. It contained no analysis of the evidence of the parties nor reference to any legal basis in reaching its conclusions. Judges must inform the parties to a case of the legal basis for their decision so that if a party appeals, it can point out to the appellate court the points of law to which it disagrees. Judge Apostol should have known the exacting standard imposed on courts by the Constitution and should not have sacrificed the constitutional standard for brevity's sake. Had he thoroughly read the body of the MCTC decision, he would have clearly noted that the "proportion of 1:3," stated in the penultimate paragraph of the decision, meant that the petitioner was entitled to one-fourth, while the respondents were entitled to three-fourths, of the subject property.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Hugo Kudera for respondents.

D E C I S I O N

BRION, *J.*:

We resolve in this Decision the petition for review on *certiorari*[1] filed by petitioner Rosario P. Tan (*petitioner*) who seeks to reverse and set aside the decision[2] dated January 28, 2003 and the resolution[3] dated June 19, 2003 of the former Seventh Division of the Court of Appeals (*CA*) in CA-G.R. SP No. 66120. The assailed CA decision declared Roberto Ramirez,

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[1] Filed under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Ruben T. Reyes (former member of this Court) and Edgardo F. Sundiam concurring. *Rollo*, pp. 117-130.

[3] *Id.* at 139.

father and predecessor-in-interest of respondents Artemio G. Ramirez, Moises G. Ramirez, Rodrigo G. Ramirez, Domingo G. Ramirez, and Modesta Ramirez Andrade (*respondents*), as the lawful owner of a 86,433-square meter parcel of land in Mahaba, Apid, Inopacan, Leyte, known as Cadastral Lot No. 3483, Case 12, CAD 637-D, Inopacan Cadastre (*subject property*). The assailed CA resolution denied the petitioner's motion for reconsideration.

FACTUAL BACKGROUND

The facts of the case, gathered from the records, are briefly summarized below.

On August 11, 1998, the petitioner, representing her parents (spouses Crispo and Nicomedesa P. Alumbro), filed with the Municipal Circuit Trial Court (*MCTC*) of Hindang-Inopacan, Leyte a complaint for the recovery of ownership and possession and/or quieting of title of a one-half portion of the subject property against the respondents.[4]

The petitioner alleged that her great-grandfather Catalino Jaca Valenzona was the owner of the subject property under a 1915 Tax Declaration (*TD*) No. 2724. Catalino had four children: Gliceria,[5] Valentina, Tomasa, and Julian; Gliceria inherited the subject property when Catalino died; Gliceria married Gavino Oyao, but their union bore no children; when Gliceria died on April 25, 1952, Gavino inherited a one-half portion of the subject property, while Nicomedesa acquired the other half through inheritance, in representation of her mother, Valentina, who had predeceased Gliceria, and through her purchase of the shares of her brothers and sisters. In 1961, Nicomedesa constituted Roberto as tenant of her half of the subject property; on June 30,

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[4] Republic Act No. 7691, which took effect on April 15, 1994, expanded the MCTC's jurisdiction to include other actions involving title to or possession of real property where the assessed value of the property does not exceed ₱20,000.00 (or ₱50,000.00, for actions filed in Metro Manila). The assessed value of the subject property is ₱2,770.00. *Id.* at 34-39.

[5] Spelled as "Gleceria" in other parts of the records.

1965, Nicomedesa bought Gavino's one-half portion of the subject property from the latter's heirs, Ronito and Wilfredo Oyao,[6] evidenced by a Deed of Absolute Sale of Agricultural Land;[7] on August 3, 1965, Nicomedesa sold to Roberto this one-half portion in a Deed of Absolute Sale of Agricultural Land;[8] and in 1997, Nicomedesa discovered that since 1974, Roberto had been reflecting the subject property solely in his name under TD No. 4193.

The respondents, on the other hand, traced ownership of the subject property to Gavino who cultivated it since 1956; Roberto bought half of the subject property from Nicomedesa on August 3, 1965,[9] and the remaining half from Gavino's heirs, Ronito and Wilfredo Oyao, on October 16, 1972.[10] On January 9, 1975, a certain Santa Belacho, claiming to be Gavino's natural child, filed a complaint with the Court of First Instance of Baybay, Leyte against Roberto, Nicomedesa, Ronito and Wilfredo Oyao, docketed as Civil Case No. B-565, for recovery of possession and ownership of two (2) parcels of land, including the subject property;[11] on September 16, 1977, Roberto bought the subject property from Belacho through a Deed of Absolute Sale of Land; and on October 5, 1977, Roberto and Nicomedesa entered into a Compromise Agreement with Belacho to settle Civil Case No. B-565. Belacho agreed in this settlement to dismiss the case and to waive her interest over the subject property in favor of Roberto, and the other parcel of land in favor of Nicomedesa in consideration of ₱1,800.00.[12]

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[6] Inherited by right of representation of Emiliano Oyao, Gavino's nephew. *Rollo,* p. 42.

[7] *Ibid.*

[8] *Id.* at 43.

[9] *Id.* at 54.

[10] *Id.* at 56.

[11] Entitled "*Santa Belacho v. Roberto Ramirez, Nicomedeza P. Alumbro, Crispo D. Alumbro, Wilfredo Oyao and Ronito Oyao*"; CA *rollo,* pp. 38-41.

[12] *Id.* at 42.

THE MCTC RULING

In a Decision dated April 2, 2001, the MCTC found that Catalino's 1915 TD No. 2724 was not the source of Gavino's 1945 TD No. 3257 because it involved the other parcel of land subject of Civil Case No. B-565. It noted that the subject property was the conjugal property of Gavino and Gliceria; Gliceria's death in 1952 dissolved the conjugal partnership and entitled Gavino to a one-half portion as his conjugal share, while Gliceria's one-half share should be equally divided among Gavino and Gliceria's brothers and sisters or their children. It held that Roberto was entitled to only three-fourths, as this was Gavino's entire share, while the petitioner was entitled to one-fourth of the subject property, and gave the parties sixty days to effect the partition.[13]

The MCTC brushed aside the respondents' argument that they acquired the subject property by ordinary acquisitive prescription, noting that bad faith attended their possession because they were well aware of Nicomedesa's claim of ownership over a one-half portion of the subject property, long before the property was tax declared solely in Roberto's name in 1974. It observed that the required thirty-year period for extraordinary acquisitive prescription was not met because the respondents had only twenty-four years of adverse possession, counted from 1974 until the filing of the complaint in 1998.[14]

THE RTC RULING

On appeal, Judge Abraham B. Apostol[15] of the Regional Trial Court (*RTC*), Branch 18, Hilongos, Leyte, rendered a two-page Decision dated June 29, 2001, which we quote in full:

I. The Case

THIS IS A COMPLAINT FOR Recovery of Ownership And Possession And/Or Quieting of Title With Damages filed by Plaintiffs

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[13] *Rollo,* pp. 58-70.

[14] *Ibid.*

[15] Optionally retired on July 15, 2001.

against defendants on a parcel of land located at Mahaba, Apid, Inopacan, Leyte presently described as follows:

> A parcel of land situated at Mahaba, Inopacan, Leyte, bounded on the NORTH by Camotes Sea; EAST by Camotes Sea; SOUTH by Lot 3478, 3476, 3473, WEST by Lot 3480 covered by Tax Declaration No. 4193 in the name of Roberto Ramirez.

After a full blown hearing, a DECISION was rendered, the decretal portion being:

> WHEREFORE, all the foregoing considered the court hereby decrees:
>
> 1. That plaintiff and defendants are lawful co-owners of Lot 3483 as afore-described;
>
> 2. That the shares of the parties shall be divided and apportioned in the following manner: plaintiff shall own one-fourth (1/4) of Lot 3483 and defendants shall collectively own three-fourth (3/4) of Lot 3483;
>
> 3. That the parties are hereby given sixty days from receipt hereof within which to effect the actual partition among themselves observing the foregoing proportion, proportionately sharing the expenses therefor and to submit to the court for final approval the project of partition including the proposed subdivision plan prepared by a geodetic engineer;
>
> 4. That should the parties be unable to voluntarily agree to make the partition, they shall so inform the court within thirty days from receipt hereof.
>
> 5. That the parties equally share the costs of this suit.
>
> SO ORDERED.

II. Facts of the Case:

a. Version of the Plaintiffs is extant on the *rollo* of the case summarized on Appeal by a MEMORANDUM but negligently forgetting to enumerate their PRAYERS.

b. Version of the Defendants is also extant on the records of the case and clearly expanded via a MEMORANDUM.

III. Court Findings/Ruling:

THIS COURT adopts *in toto* the DECISION of the Court *a quo*, slightly correcting no. 2 of the same to conform to the fallo of the DECISION which stated a "proportion of 1:3[.]"

No. 2 shall therefore read as follows:

> 2. That the shares of the parties shall be divided and apportioned in the following manner: plaintiff shall own ONE-THIRD (1/3) of Lot 3483 and defendants shall collectively own TWO-THIRDS (2/3) of Lot 3483.

SO ORDERED.[16]

The respondents elevated the case to the CA *via* a petition for review under Rule 42 of the Rules of Court, insisting that the lower courts erred in finding that the petitioner is a co-owner since they have already acquired the entire area of the subject property by ordinary acquisitive prescription.

THE CA RULING

The CA decided the appeal on January 28, 2003. It set aside the Decisions dated April 2, 2001 and June 29, 2001 of the MCTC and the RTC, respectively, and declared Roberto as the lawful owner of the entire area of the subject property. The appellate court found that the October 5, 1977 Compromise Agreement executed by Belacho gave Roberto's possession of the subject property the characters of possession in good faith and with just title; the respondents' twenty-one years of possession, from execution of the compromise agreement in 1977 until the filing of the case in 1998, is more than the required ten-year possession for ordinary acquisitive prescription. The CA also noted that Roberto also enjoyed just title because Belacho executed a contract of sale in his favor on September 16, 1977.[17]

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[16] *Rollo,* pp. 90-91.

[17] *Id.* at 117-130.

After the CA's denial[18] of her motion for reconsideration,[19] the petitioner filed the present petition for review on *certiorari* under Rule 45 of the Rules of Court.

THE PETITION

The petitioner contends that the CA misappreciated the legal significance of the compromise agreement and the contract of sale, both executed by Belacho, and thus concluded that the respondents were possessors in good faith and with just title and could acquire the subject property through ordinary acquisitive prescription. She argues that the parties merely entered into the compromise agreement to settle the case. She further argues that Roberto entered the contract of sale in bad faith because the sale took place during the pendency of Civil Case No. B-565.

The respondents submit that they are possessors in good faith and with just title because Roberto bought the subject property from Belacho in a contract of sale dated September 16, 1977, and the compromise agreement, executed on October 5, 1977, recognized Roberto's ownership of the subject property.

THE ISSUE

The core issue is whether the CA erred in relying upon the compromise agreement and the contract of sale to conclude that the respondents had been possessors in good faith and with just title and could acquire the subject property through ordinary acquisitive prescription.

OUR RULING

We find the petition meritorious.

This Court is not a trier of facts. However, if the inference drawn by the appellate court from the facts is manifestly mistaken, as in the present case, we can review the evidence

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[18] Resolution of June 19, 2003; *id.* at 139.

[19] *Id.* at 131-137.

to allow us to arrive at the correct factual conclusions based on the record.[20]

Prescription as a mode of acquiring ownership

Prescription, as a mode of acquiring ownership and other real rights over immovable property,[21] is concerned with lapse of time in the manner and under conditions laid down by law, namely, that the possession should be in the concept of an owner, public, peaceful, uninterrupted, and adverse.[22] The party who asserts ownership by adverse possession must prove the presence of the essential elements of acquisitive prescription.[23]

Acquisitive prescription of real rights may be ordinary or extraordinary.[24] Ordinary acquisitive prescription requires possession in good faith and with just title for ten years.[25] In extraordinary prescription, ownership and other real rights over immovable property are acquired through uninterrupted adverse possession for thirty years without need of title or of good faith.[26]

Possession "in good faith" consists in the reasonable belief that the person from whom the thing is received has been the owner thereof, and could transmit his ownership.[27] There is "just title" when the adverse claimant came into possession of

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[20] *Heirs of Flores Restar v. Heirs of Dolores R. Cichon*, G.R. No. 161720, November 22, 2005, 475 SCRA 731, 739; *Casol v. Purefoods Corporation*, G.R. No. 166550, September 22, 2005, 470 SCRA 585, 589; *Carpio v. Valmonte*, 481 Phil. 352, 358 (2004).

[21] *Heirs of Marcelina Arzadon-Crisologo v. Rañon*, G.R. No. 171068, September 5, 2007, 532 SCRA 391, 404; *Calicdan v. Cendaña*, 466 Phil. 894, 902 (2004).

[22] *Heirs of Marcelina Arzadon-Crisologo v. Rañon, supra.*

[23] *Ibid.*

[24] Article 1117 of the Civil Code.

[25] Article 1134 of the Civil Code.

[26] Article 1137 of the Civil Code.

[27] Article 1127 of the Civil Code.

the property through one of the modes recognized by law for the acquisition of ownership or other real rights, but the grantor was not the owner or could not transmit any right.[28]

Compromise agreement not a valid basis of possession in good faith and just title

We find that the CA mistakenly relied upon the compromise agreement, executed by Belacho to conclude that the respondents were possessors in good faith and with just title who acquired the property through ordinary acquisitive prescription.

In *Ramnani v. Court of Appeals*,[29] we held that the main purpose of a compromise agreement is to put an end to litigation because of the uncertainty that may arise from it. Reciprocal concessions are the very heart and life of every compromise agreement.[30] By the nature of a compromise agreement, it brings the parties to agree to something that neither of them may actually want, but for the peace it will bring them without a protracted litigation.[31]

In the present case, to avoid any conflict with Belacho, Roberto and Nicomedesa paid ₱1,800.00 in consideration of Belacho's desistance from further pursuing her claim over two (2) parcels of land, including the subject property. Thus, no right can arise from the compromise agreement because the parties executed the same only to buy peace and to write *finis* to the controversy; it did not create or transmit ownership rights over the subject property. In executing the compromise agreement, the parties, in effect, merely reverted to their situation before Civil Case No. B-565 was filed.

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[28] Article 1129 of the Civil Code.

[29] 413 Phil. 194, 207 (2001).

[30] *Spouses Miniano v. Court of Appeals*, 485 Phil. 168, 179 (2004).

[31] *Alonso v. San Juan*, 491 Phil. 232, 247 (2005); *Litton v. Hon. Court of Appeals*, 331 Phil. 324, 332 (1996).

Contract of sale cannot support claim of good faith and just title

Neither can the respondents benefit from the contract of sale of the subject property, executed by Belacho in favor of Roberto, to support their claim of possession in good faith and with just title. In the vintage case of *Leung Yee v. F.L. Strong Machinery Co. and Williamson*,[32] we explained good faith in this manner:

> One who purchases real estate with knowledge of a defect or lack of title in his vendor cannot claim that he has acquired title thereto in good faith as against the true owner of the land or of an interest therein; and the same rule must be applied to one who has knowledge of facts which should have put him upon such inquiry and investigation as might be necessary to acquaint him with the defects in the title of his vendor.[33]

Good faith, or the want of it, can be ascertained only from the acts of the one claiming it, as it is a condition of mind that can only be judged by actual or fancied token or signs.[34]

In the present case, no dispute exists that Roberto, without Nicomedesa's knowledge or participation, bought the subject property on September 16, 1977 or during the pendency of Civil Case No. B-565. Roberto, therefore, had actual knowledge that Belacho's claim to ownership of the subject property, as Gavino's purported heir, was disputed because he (Roberto) and Nicomedesa were the defendants in Civil Case No. B-565. Roberto even admitted that he bought the subject property from Belacho to "avoid any trouble."[35] He, thus, cannot claim that he acted in good faith under the belief that there was no defect or dispute in the title of the vendor, Belacho.

Not being a possessor in good faith and with just title, the ten-year period required for ordinary acquisitive prescription

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[32] 37 Phil. 644, 651 (1918).

[33] *Id.* at 651.

[34] *Id.* at 652.

[35] MCTC Decision dated April 2, 2001, p. 6; *rollo*, p. 63.

cannot apply in Roberto's favor. Even the thirty-year period under extraordinary acquisitive prescription has not been met because of the respondents' claim to have been in possession, in the concept of owner, of the subject property for only twenty-four years, from the time the subject property was tax declared in 1974 to the time of the filing of the complaint in 1998.

Based on the foregoing, the CA erred in finding that the respondents acquired the petitioner's one-fourth portion of the subject property through acquisitive prescription. As aptly found by the MCTC, the respondents are only entitled to three-fourths of the subject property because this was Gavino's rightful share of the conjugal estate that Roberto bought from Ronito and Wilfredo Oyao.

RTC Decision did not conform to the requirements of the Constitution and of the Rules of Court

Before closing, we cannot close our eyes to the failure of the RTC decision to measure up to the standard set by Section 14 of Article VIII of the Constitution, as well as Section 1 of Rule 36 and Section 1, Rule 120 of the Rules on Civil Procedure, that a decision, judgment or final order determining the merits of the case shall state, clearly and distinctly, the facts and the law on which it is based. Our Administrative Circular No. 1 of January 28, 1988 reiterates this requirement and stresses that judges should make complete findings of facts in their decisions, scrutinize closely the legal aspects of the case in the light of the evidence presented, and avoid the tendency to generalize and to form conclusions without detailing the facts from which such conclusions are deduced.

In *Yao v. Court of Appeals*,[36] we emphasized:

> Faithful adherence to the requirements of Section 14, Article VIII of the Constitution is indisputably a paramount component of due process and fair play. It is likewise demanded by the due process

[36] 398 Phil. 86 (2000).

clause of the Constitution. The parties to a litigation should be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court. The court cannot simply say that judgment is rendered in favor of X and against Y and just leave it at that without any justification whatsoever for its action. The losing party is entitled to know why he lost, so he may appeal to the higher court, if permitted, should he believe that the decision should be reversed. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is precisely prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal. More than that, the requirement is an assurance to the parties that, in reaching judgment, the judge did so through the processes of legal reasoning. It is, thus, a safeguard against the impetuosity of the judge, preventing him from deciding *ipse dixit*. Vouchsafed neither the sword nor the purse by the Constitution but nonetheless vested with the sovereign prerogative of passing judgment on the life, liberty or property of his fellowmen, the judge must ultimately depend on the power of reason for sustained public confidence in the justness of his decision.[37]

The RTC decision did not distinctly and clearly set forth, nor substantiate, the factual and legal bases for its affirmance of the MCTC decision. It contained no analysis of the evidence of the parties nor reference to any legal basis in reaching its conclusions. Judges must inform the parties to a case of the legal basis for their decision so that if a party appeals, it can point out to the appellate court the points of law to which it disagrees. Judge Apostol should have known the exacting standard imposed on courts by the Constitution and should not have sacrificed the constitutional standard for brevity's sake. Had he thoroughly read the body of the MCTC decision, he would have clearly noted that the "proportion of 1:3," stated in the penultimate paragraph of the decision, meant that the petitioner was entitled to one-fourth, while the respondents were entitled to three-fourths, of the subject property.

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[37] *Id.* at 105-106.

WHEREFORE, in light of all the foregoing, we hereby *REVERSE* and *SET ASIDE* the decision dated January 28, 2003 and the resolution dated June 19, 2003 of the former Seventh Division of the Court of Appeals in CA-G.R. SP No. 66120. The decision dated April 2, 2001 of the Municipal Circuit Trial Court of Hindang-Inopacan, Leyte in Civil Case No. 196 is *REINSTATED*. No pronouncement as to costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 159665. August 3, 2010]

ANSELMO TAGHOY and the late VICENTA T. APA, substituted by her heirs, namely, MANUEL T. APA, NICASIO T. APA, DELFIN T. APA, ALMA A. JACALAN, ARLENE A. SUMALINOG, AIDA A. ARONG, ELENA A. COSEP, ALFREDO T. APA, ISABELO T. APA, JR., ISABELO T. APA III, SHERWIN T. APA, and FLORITO T. APA, *petitioners, vs.* **SPS. FELIXBERTO TIGOL, JR. and ROSITA TIGOL,** *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; VOID CONTRACTS; AN ABSOLUTELY SIMULATED CONTRACT IS VOID AND THE PARTIES MAY RECOVER FROM EACH OTHER

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

WHAT THEY HAVE GIVEN UNDER THE SIMULATED CONTRACT, WHILE A RELATIVELY SIMULATED CONTRACT IS VALID AND ENFORCEABLE AS THE PARTIES' REAL AGREEMENT BINDS THEM.— In the interpretation of contracts, the intention of the parties is accorded primordial consideration; such intention is determined from the express terms of their agreement, as well as their contemporaneous and subsequent acts. When the parties do not intend to be bound at all, the contract is absolutely simulated; if the parties conceal their true agreement, then the contract is relatively simulated. An absolutely simulated contract is void, and the parties may recover from each other what they may have given under the simulated contract, while a relatively simulated contract is valid and enforceable as the parties' real agreement binds them. Characteristic of simulation is that the apparent contract is not really desired or intended to produce legal effects, or in any way, alter the juridical situation of the parties.

2. ID.; ID.; PARTIES IN CASE AT BAR NEVER INTENDED TO BE BOUND BY THEIR AGREEMENT AS REVEALED BY THE TWO JOINT AFFIDAVITS EXECUTED BY RESPONDENTS SIMULTANEOUS WITH THE EXECUTION OF THE DEEDS OF CONFIRMATION OF SALE.— In the present case, the parties never intended to be bound by their agreement as revealed by the two (2) joint affidavits executed by the respondents simultaneous with the execution of the deeds of confirmation of sale. x x x The joint affidavits are very solid pieces of evidence in the petitioners' favor. They constitute admissions against interest made by the respondents under oath. An admission against interest is the best evidence that affords the greatest certainty of the facts in dispute, based on the presumption that no man would declare anything against himself unless such declaration is true. It is fair to presume that the declaration corresponds with the truth, and it is his fault if it does not. Thus, by the respondents' own admissions, they never intended to be bound by the sale; they merely executed the documents for convenience in securing a bank loan, and they agreed to reconvey the subject property upon payment of the loan. The sale was absolutely simulated and, therefore, void.

3. ID.; ID.; CO-OWNERSHIP; RESPONDENTS' ADVANCE PAYMENTS ARE IN THE NATURE OF NECESSARY EXPENSES FOR THE PRESERVATION OF THE CO-OWNERSHIP.— We find that the CA misappreciated Margarita's testimony that the respondents are entitled to the entire property because they redeemed or paid the bank loan. The failure of the other heirs to reimburse the amounts advanced by the respondents in payment of the loan did not entitle the latter to claim full ownership of the co-owned property. It only gave them the right to claim reimbursement for the amounts they advanced in behalf of the co-ownership. The respondents' advance payments are in the nature of necessary expenses for the preservation of the co-ownership. Article 488 of the Civil Code provides that necessary expenses may be incurred by one co-owner, subject to his right to collect reimbursement from the remaining co-owners. Until reimbursed, the respondents hold a lien upon the subject property for the amount they advanced. Based on the foregoing, we find that the CA erred in setting aside the decision of the RTC and in dismissing the petitioners' complaint against the respondents.

APPEARANCES OF COUNSEL

Elmergilio N. Ybalez for petitioners.
Eriberto M. Suson for respondents.

D E C I S I O N

BRION, *J.*:

We resolve the present petition for review on *certiorari*[1] filed by petitioners Anselmo Taghoy and the heirs of Vicenta T. Apa (*petitioners*) to challenge the decision[2] and the resolution[3]

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[1] Filed under Rule 45 of the Rules of Court; *rollo*, pp. 10-22.

[2] Dated August 26, 2002. Penned by Associate Justice Rebecca de Guia-Salvador, with Associate Justices Godardo A. Jacinto and Eloy R. Bello, Jr. concurring; *id.* at 23-32.

[3] Dated July 22, 2003; *id.* at 33.

of the Court of Appeals (*CA*) in CA-G.R. CV No. 54385.[4] The CA decision set aside the decision[5] of the Regional Trial Court (*RTC*), Branch 27, Lapu-Lapu City in Civil Case No. 2247. The CA resolution denied the petitioners' subsequent motion for reconsideration.

FACTUAL BACKGROUND

The facts of the case, gathered from the records, are briefly summarized below.

Spouses Filomeno Taghoy and Margarita Amit[6] owned an 11,067 square meter parcel of land, known as Lot 3635-B of subdivision plan (LRC) Psd-212881 (*subject property*), located in *Barrio* Agus, Lapu-Lapu City, Cebu under Transfer Certificate of Title (*TCT)* No. 6466 of the Lapu-Lapu City Registry of Deeds.[7]

On August 6, 1975, Filomeno and Margarita[8] executed a special power of attorney, appointing Felixberto Tigol, Jr. as their attorney-in-fact.[9] On August 21, 1975, Felixberto, as attorney-in-fact, executed a real estate mortgage over the subject property to secure a loan of ₱22,000.00 with the Philippine National Bank (*PNB*).[10] Filomeno and Margarita obtained the loan to finance the shellcraft business of their children.[11]

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[4] Entitled "*Anselmo Taghoy and Vicenta T. Apa v. Sps. Felixberto Tigol, Jr. and Rosita T. Tigol, Anastacia T. Pangatungan, Margarita A. Taghoy, Felisa Taghoy, Gaudencio Taghoy and Annabel Taghoy, represented by Margarita A. Taghoy*."

[5] Dated February 23, 1994; Original Records, pp. 109-115.

[6] Also known as "Rita A. Taghoy" in other parts of the records.

[7] Original Records, pp. 20-22.

[8] Also referred to in Transfer Certificate of Title No. 6466 as "Rita Amit Taghoy."

[9] The Special Power of Attorney was duly annotated in the Memorandum of Encumbrances of Transfer Certificate of Title No. 666; Original Records, p. 21.

[10] *Ibid.*

[11] TSN of June 29, 1991, Testimony of Margarita Taghoy, p. 7; *id.* at 69.

Filomeno died intestate on February 12, 1976. On July 27, 1979, his widow, Margarita, and their seven children, namely, Vicenta, Felisa, Pantaleon, Gaudencio, Anselmo, Anastacia and Rosita, as heirs of the deceased, executed a Deed of Extrajudicial Settlement and Sale, adjudicating to themselves the subject property and selling the same to Rosita and her husband Felixberto (*respondents*) for ₱1,000.00.[12]

Subsequently, on September 7, 1981 and August 10, 1982, Filomeno's heirs executed two (2) Deeds of Confirmation of Sale, confirming the supposed sale of the subject property by Filomeno and Margarita in favor of the respondents for ₱1,000.00.[13] Simultaneous with the execution of the deeds, however, the respondents executed explanatory Joint Affidavits attesting that the sale was without any consideration, and was only executed to secure a loan.[14]

On March 9, 1983, TCT No. 13250 was issued in the respondents' names.[15] On July 1, 1983, the respondents obtained a ₱70,000.00 loan with the Philippine Banking Corporation, secured by a real estate mortgage on the subject property.[16]

Seven (7) years later, on April 17, 1990, Anselmo and Vicenta, together with Margarita, Felisa, Gaudencio, and Pantaleon's surviving heir, Annabel, filed a complaint against the respondents and Anastacia for declaration of nullity of the respondents' TCT and for judicial partition.[17] They alleged that the deeds of confirmation of sale became the bases for the transfer of the title in the respondents' names, but the sale was fictitious or simulated, as evidenced by the respondents' own explanatory

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[12] *Id.* at 26-27.

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

[14] *Id.* at 11 and 48; with the mortgage to and loan from PNB duly annotated in the Memorandum of Encumbrances of Transfer Certificate of Title No. 6466.

[15] *Id.* at 8.

[16] *Ibid.* (backpage).

[17] *Id.* at 1-7.

joint affidavits attesting that the transfer was for the purpose only of convenience in securing a loan, not for absolute conveyance or sale.

The respondents admitted that they executed the joint affidavits but countered that they acquired a valid title to the subject property through the Extrajudicial Settlement of Heirs and Sale. They claimed that when Filomeno died without the PNB loan being paid, the heirs agreed that the respondents will advance payment of the loan, subject to reimbursement, to save the foreclosure of the subject property; the heirs then executed the Extrajudicial Settlement and Sale in the respondents' favor as their way of reimbursing the amount the latter paid; the respondents executed the joint affidavits out of generosity, expressing their willingness to be reimbursed, but when the heirs failed to reimburse the amounts advanced by them, then they caused the registration of the title in their names.[18]

Margarita, Felisa, Gaudencio and Annabel failed to appear at the initial hearing, prompting the petitioners' counsel to manifest that, except for Anselmo and Vicenta, they were abandoning the complaint.[19] The petitioners subsequently amended the complaint to implead Margarita, Felisa, Gaudencio and Annabel as party defendants or unwilling plaintiffs.[20]

THE RTC RULING

In its decision, the RTC found that the sale of the subject property was absolutely simulated since the deeds of confirmation of sale were executed only to accommodate the respondents' loan application using the subject property as collateral. The lower court thus ordered the nullification of the respondents' title. It likewise ordered the partition of the subject property after reimbursement of the amount the respondents paid for the loan.[21]

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[18] *Id.* at 16-19.

[19] *Id.* at 40.

[20] *Id.* at 41-47.

[21] *Supra* note 5.

Subsequently, the respondents filed a motion for new trial, anchored on newly discovered evidence allegedly proving that the subject property is Margarita's paraphernal property.[22] When the RTC denied[23] the motion for new trial, the respondents filed an appeal with the CA, under Rule 41 of the Rules of Court.

THE CA RULING

The CA decided the appeal on August 26, 2002, reversing the RTC decision. Relying upon Margarita's testimony that the respondents paid the loan, the CA found that the contract between the parties was relatively simulated; the respondents' payment of the PNB loan was the real consideration for the transfer of title.

After the CA denied[24] the motion for reconsideration[25] that followed, the petitioners filed the present petition.

THE PETITION

The petitioners argue that the heirs, in executing the extrajudicial settlement, did not intend to divest themselves of their respective rightful shares, interests and participation in the subject property because it lacked a consideration, as affirmed by the respondents' own joint affidavits; the payment of the PNB loan could not be a valid consideration for the transfer since the loan was still unpaid and outstanding at the time of the execution of the extrajudicial settlement.[26]

THE CASE FOR THE RESPONDENTS

The respondents, on the other hand, maintain that the Extrajudicial Settlement and Sale was the basis of their registration

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[22] *Id.* at 117-121.

[23] *Id.* at 185-186.

[24] *Supra* note 3.

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

[26] *Rollo*, pp. 106-119.

of title, and their payment of the PNB loan was the real consideration for the transfer; the joint affidavits were executed only out of generosity and kindness, subject to the heirs' reimbursement of the amounts they paid for the loan, such that when the heirs did not reimburse the amounts paid, they then caused the registration of title in their names.[27]

THE ISSUE

The core issue boils down to whether the sale of the subject property between the parties was absolutely or relatively simulated.

OUR RULING

We find the petition meritorious.

This Court is not a trier of facts. However, if the inference drawn by the appellate court from the facts is manifestly mistaken, as in the present case, we can review the evidence to allow us to arrive at the correct factual conclusions based on the record.[28]

In the interpretation of contracts, the intention of the parties is accorded primordial consideration;[29] such intention is determined from the express terms of their agreement,[30] as well as their contemporaneous and subsequent acts.[31] When the parties do

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[27] *Id.* at 81-94.

[28] *Heirs of Flores Restar v. Heirs of Dolores R. Cichon*, G.R. No. 161720, November 22, 2005, 475 SCRA 731, 739; *Casol v. Purefoods Corporation*, G.R. No. 166550, September 22, 2005, 470 SCRA 585, 589; *Carpio v. Valmonte*, 481 Phil. 352, 358 (2004).

[29] *Valerio v. Refresca*, G.R. No. 163687, March 28, 2006, 485 SCRA 494, 501; *Ramos v. Heirs of Honorio Ramos, Sr.*, 431 Phil. 337, 345 (2002).

[30] CIVIL CODE, Art. 1370. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.

If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.

[31] CIVIL CODE, Art. 1371. In order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered.

not intend to be bound at all, the contract is absolutely simulated; if the parties conceal their true agreement, then the contract is relatively simulated.[32] An absolutely simulated contract is void, and the parties may recover from each other what they may have given under the simulated contract, while a relatively simulated contract is valid and enforceable as the parties' real agreement binds them.[33] Characteristic of simulation is that the apparent contract is not really desired or intended to produce legal effects, or in any way, alter the juridical situation of the parties.[34]

In the present case, the parties never intended to be bound by their agreement as revealed by the two (2) joint affidavits executed by the respondents simultaneous with the execution of the deeds of confirmation of sale. The September 7, 1981 Joint Affidavit stated:

> 2. That the truth of the matter is that the deed of sale and the confirmation of said sale by the legal heirs are executed **for the purpose of securing a loan** in our name but which amount of said loan shall be divided equally among the legal heirs, and that every heir shall pay his corresponding share in the amortization payment of said loan;
>
> 3. That said **sale was without any consideration**, and that we executed this affidavit to establish the aforestated facts **for purposes of loan only** but not for conveyance and transfer in our name absolutely and forever but **during the duration of the terms of the loan**;
>
> 4. That we executed this affidavit voluntarily and freely in order to establish this facts (sic) above-mentioned and **to undertake to return the said land to the legal heirs** of the late spouse, Filomeno

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[32] CIVIL CODE, Art. 1345. Simulation of a contract may be absolute or relative. The former takes place when the parties do not intend to be bound at all; the latter, when the parties conceal their true agreement.

[33] *Heirs of the late Spouses Balite v. Lim,* 487 Phil. 281, 293; *Sps. Velasquez v. Court of Appeals,* 399 Phil. 193, 200 (2000).

[34] *Valerio v. Refresca*, *supra* note 29, at 500; *Loyola v. Court of Appeals*, 383 Phil. 171, 182 (2000).

Taghoy, survived by his widow, Rita Amit-Taghoy, **upon full payment of our intended loan**.[35]

The August 10, 1982 Joint Affidavit, on the other hand, averred:

3. That the truth of the matter is that said Lot No. 3635-B was **sold without any purchase price or consideration** paid to said Filomeno Taghoy, **but for the purpose of securing a loan** in our name but which amount of said loan shall be divided equally among us, the legal heirs of Filomeno Taghoy;

4. That in case the loan will be fully paid, we shall obligate ourselves to resell, **reconvey** the said Lot No. 3635-B in favor of the Heirs of Filomeno Taghoy and Rita Amit, and in case, the said loan will not be post (sic) through.

5. That we executed this affidavit voluntarily and freely in order to establish the aforestated facts and to attest the fact that said deed of confirmation of sale is only **for purposes of convenience in securing the loan and not for absolute conveyance or sale**.[36]

The joint affidavits are very solid pieces of evidence in the petitioners' favor. They constitute admissions against interest made by the respondents under oath. An admission against interest is the best evidence that affords the greatest certainty of the facts in dispute,[37] based on the presumption that no man would declare anything against himself unless such declaration is true.[38] It is fair to presume that the declaration corresponds with the truth, and it is his fault if it does not.[39]

Thus, by the respondents' own admissions, they never intended to be bound by the sale; they merely executed the documents for convenience in securing a bank loan, and they agreed to

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[35] Original Records, p. 48.

[36] *Id.* at 11.

[37] *Heirs of Miguel Franco v. Court of Appeals*, 463 Phil. 417, 428 (2003); *Yuliongsiu v. PNB*, 130 Phil. 575, 580 (1968).

[38] *Republic v. Bautista*, G.R. No. 169801, September 11, 2007, 532 SCRA 598, 609; *Bon v. People*, 464 Phil. 125, 138 (2004).

[39] *Rufina Patis Factory v. Alusitain*, 478 Phil. 544, 558 (2004).

reconvey the subject property upon payment of the loan. The sale was absolutely simulated and, therefore, void.

We find that the CA misappreciated Margarita's testimony that the respondents are entitled to the entire property because they redeemed or paid the bank loan.[40] The failure of the other heirs to reimburse the amounts advanced by the respondents in payment of the loan did not entitle the latter to claim full ownership of the co-owned property.[41] It only gave them the right to claim reimbursement for the amounts they advanced in behalf of the co-ownership. The respondents' advance payments are in the nature of necessary expenses for the preservation of the co-ownership. Article 488 of the Civil Code provides that necessary expenses may be incurred by one co-owner, subject to his right to collect reimbursement from the remaining co-owners.[42] Until reimbursed, the respondents hold a lien upon the subject property for the amount they advanced.

Based on the foregoing, we find that the CA erred in setting aside the decision of the RTC and in dismissing the petitioners' complaint against the respondents.

WHEREFORE, we hereby *REVERSE* and *SET ASIDE* the decision dated August 26, 2002 and the resolution dated July 22, 2003 of the Court of Appeals in CA-G.R. CV No. 54385. The decision dated February 23, 1994 of the Regional Trial Court, Branch 27, Lapu-Lapu City in Civil Case No. 2247 is *REINSTATED*. No pronouncement as to costs.

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[40] TSN of June 29, 1991, Testimony of Margarita Taghoy, p. 8; Original Records, p. 70.

[41] See *Paulmitan v. Court of Appeals*, G.R. No. 61584, November 25, 1992, 215 SCRA 866, 873-874; *Adille v. Court of Appeals*, 241 Phil. 487, 493 (1988).

[42] CIVIL CODE, Art. 488. Each co-owner shall have a right to compel the other co-owners to contribute to the expenses of preservation of the thing or right owned in common and to the taxes. Any one of the latter may exempt himself from this obligation by renouncing so much of his undivided interest as may be equivalent to his share of the expenses and taxes. No such waiver shall be made if it is prejudicial to the co-ownership.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 161083. August 3, 2010]

PEOPLE OF THE PHILIPPINES, represented by Chief State Prosecutor JOVENCITO ZUÑO, State Prosecutor GERONIMO SY and Prosecution Attorney IRWIN MARAYA, *petitioners, vs.* **COURT OF APPEALS, WILSON CUA TING, EDWARD NGO YAO, WILLY SO TAN and CAROL FERNAN ORTEGA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT A SUBSTITUTE FOR A LOST APPEAL.— It is well settled that a special civil action for *certiorari* under Rule 65 of the Rules of Court lies only when, "there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law," and *certiorari* cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, *certiorari* not being a substitute for a lost appeal. A perusal of the records will show that petitioner received the assailed CA Resolution on October 10, 2003. From that time on, petitioner had 15 days, or until October 25, 2003, to file an appeal by way of a petition for review under Rule 45 of the

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

Rules of Court. However, instead of filing the appeal on the last day of reglementary period, petitioner simply allowed it to lapse. Clearly, petitioner had an appeal, which under the circumstances was the adequate remedy in the ordinary course of law. On this point alone, petitioner's petition must be dismissed, as herein petition is without a doubt a substitute for a lost appeal. In any case, even if this Court were to set aside the procedural infirmity of the petition, the same still fails on the merits. In a petition for *certiorari*, the court must confine itself to the issue of whether or not respondent court lacked or exceeded its jurisdiction or committed grave abuse of discretion.

2. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; EXPLAINED.— The RTC acted within its jurisdiction when it dismissed the case on lack of probable cause as the same is sanctioned under Section 6, Rule 112 of the Rules of Court. The penultimate question to be resolved then is was such exercise of jurisdiction attended by grave abuse of discretion? Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or in other words where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

3. ID.; ID.; ID.; ID.; WHILE THE USE OF THE EQUIPOISE RULE IS NOT PROPER UNDER THE CIRCUMSTANCES OF THE PRESENT CASE, THE SAME, HOWEVER, DOES NOT EQUATE TO AN ABUSE OF DISCRETION, BUT AT MOST, MERELY AN ERROR OF JUDGMENT.— Under the equipoise rule, where the evidence on an issue of fact is in equipoise, or there is doubt on which side the evidence preponderates, the party having the burden of proof loses. The equipoise rule finds application if the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, for then the evidence does not suffice to produce a conviction. To this Court's mind, the reliance of the RTC in the equipoise rule is misplaced as a review of previous Court decisions would show that the position of petitioner is in fact correct. The equipoise rule has been

generally applied when the parties have already concluded the presentation of their respective evidence as shown in a plethora of cases such as *Abarquez v. People, Tin v. People* and *People v. Leano.* While the use of the equipoise rule was not proper under the circumstances of the case at bar, the same, however, does not equate to an abuse of discretion on the part of the RTC, but at most, merely an error of judgment. More importantly, this Court finds that the RTC had in fact complied with the requirement under the rules of personally evaluating the resolution of the prosecutor and its supporting evidence and that the assailed Order was arrived at after due consideration of the merits thereto.

4. ID.; ID.; ID.; ID.; THE TRIAL COURT COMPLIED WITH ITS DUTY OF PERSONALLY EVALUATING THE SUPPORTING EVIDENCE OF THE PROSECUTION BEFORE ARRIVING AT ITS DECISION OF DISMISSING THE CASE.— The conclusions of the RTC which led to the dismissal of the information against respondents cannot, in any sense, be characterized as outrageously wrong or manifestly mistaken, or whimsically or capriciously arrived at. The worst that may perhaps be said of it is that it is fairly debatable, and may even be possibly erroneous. But they cannot be declared to have been made with grave abuse of discretion. Based on Section 6, Rule 112 of the Rules of Court, the RTC judge, upon the filing of an Information, has the following options: (1) dismiss the case if the evidence on record clearly failed to establish probable cause; (2) if he or she finds probable cause, issue a warrant of arrest; and (3) in case of doubt as to the existence of probable cause, order the prosecutor to present additional evidence within five days from notice, the issue to be resolved by the court within thirty days from the filing of the information. The judge is required to personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. To this Court's mind, the RTC had complied with its duty of personally evaluating the supporting evidence of the prosecution before arriving at its decision of dismissing the case against respondents.

5. ID.; ID.; ID.; ID.; AN ERROR OF JUDGMENT THAT THE COURT MAY COMMIT IN THE EXERCISE OF ITS JURISDICTION IS NOT CORRECTIBLE THROUGH THE

ORIGINAL SPECIAL CIVIL ACTION OF *CERTIORARI*.— While petitioner mainly argues against the use of the equipoise rule, it cannot escape this Court's attention that ultimately petitioner is asking this Court to resolve the propriety of the dismissal of the case by the RTC, on the basis of the Information and the attached documents it had filed. This Court however, will defer to the findings of fact of the RTC, which are accorded great weight and respect, more so because the same were affirmed by the CA. In addition, it bears to stress that the instant case is a petition for *certiorari* where questions of fact are not entertained. The sole office of writ of *certiorari* is the correction of errors of jurisdiction, including the commission of grave abuse of discretion amounting to lack of jurisdiction and does not include correction of public respondent's evaluation of the evidence and factual findings based thereon. An error of judgment that the court may commit in the exercise of its jurisdiction is not correctible through the original special civil action of *certiorari*. In any case, the dismissal of herein petition does not preclude petitioner from availing of any other action it deems appropriate under the premises. Double jeopardy cannot be invoked where the accused has not been arraigned and it was upon his express motion that the case was dismissed. Moreover, while the absence of probable cause for the issuance of a warrant of arrest is a ground for the dismissal of the case, the same does not result in the acquittal of the said accused.

6. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; DISTINGUISHED FROM PRELIMINARY INQUIRY WHICH DETERMINES PROBABLE CAUSE FOR ISSUANCE OF A WARRANT OF ARREST.— It is well to remember that there is a distinction between the preliminary inquiry, which determines probable cause for the issuance of a warrant of arrest, and the preliminary investigation proper, which ascertains whether the offender should be held for trial or be released. The determination of probable cause for purposes of issuing a warrant of arrest is made by the judge. The preliminary investigation proper – whether or not there is reasonable ground to believe that the accused is guilty of the offense charged – is the function of the investigating prosecutor.

7. ID.; ID.; ID.; IMPORTANCE OF FINDING OF PROBABLE CAUSE.— As enunciated in *Baltazar v. People*, the task of

the presiding judge when the Information is filed with the court is first and foremost to determine the existence or non-existence of probable cause for the arrest of the accused. Probable cause is such set of facts and circumstances as would lead a reasonably discreet and prudent man to believe that the offense charged in the Information, or any offense included therein, has been committed by the person sought to be arrested. In determining probable cause, the average man weighs the facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than suspicion; it requires less than evidence that would justify conviction. The purpose of the mandate of the judge to first determine probable cause for the arrest of the accused is to insulate from the very start those falsely charged with crimes from the tribulations, expenses and anxiety of a public trial.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.

Veza Nadal and Associates Law Offices for private respondents.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for *certiorari*[1] under Rule 65 of the Rules of Court, seeking to set aside the July 24, 2003 Decision[2] and October 3, 2003 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 71985.

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[1] *Rollo*, pp. 8-37.

[2] Penned by Associate Justice B.A. Adefuin-de la Cruz, with Associate Justices Jose L. Sabio, Jr. and Hakim S. Abdulwahid, concurring; *id.* at 40-50.

[3] *Id.* at 51.

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

On May 14, 2001, around 12:15 a.m., a fire broke out inside the plant of Sanyoware Plastic Products Manufacturing Corporation (Sanyoware) located at Km. 8, McArthur Highway, Lolomboy, Bocaue, Bulacan. The Sanyoware plant had four single-storey buildings, enclosed in concrete walls with steel tresses and galvanized iron sheet roofing.

Sanyoware 2, Warehouse 2, the building that was razed by fire, was located at the right innermost portion of the plant facing north. Sanyoware occupied the right, western portion of the said building, while New Unitedware Marketing Corporation (Unitedware) rented the other half, located at the left, eastern portion. The building was divided at the center by a tall concrete firewall with a steel gate.

Investigations were conducted by the Philippine 3rd Regional Criminal Investigation and Detention Group (CIDG) and the Inter Agency Anti-Arson Task Force (IATF) of the Department of the Interior and Local Government. Pursuant to the August 1, 2001 letter[4] of CIDG Regional Officer P/Supt. Christopher A. Laxa to the Secretary of the Justice; the IATF's October 25, 2001 Indorsement;[5] and the October 8, 2001 letter[6] of Bureau of Fire Protection (BFP) Chief Sr. Supt. Victoriano C. Remedio to the Prosecutor of the DOJ, the following were accused of destructive arson before the Office of the Chief State Prosecutor, namely: Samson Cua Ting, *alias* Ding Jian Zhi, External Vice-President; Wilson Cua Ting, Plant Manager; Edward Ngo Yao (Yao), President of New Marketing Corporation; Willy So Tan, *alias* Chen Yi Ming, Vice-President for Operations; Carol Fernan Ortega, Assistant to the External Vice-President; and John Doe and Peter Doe.

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[4] *Rollo*, pp. 117- 119.

[5] *Id.* at 120.

[6] *Id.* at 121-123.

In support of the accusation, petitioner submitted the Sworn Statements of Richard Madrideo, Jaime Kalaw, Raymund Dy, Chit Chua, Jennifer Chua Reyes, Shanda Amistad, SPO1 Valeriano Dizon and Inspector Allan N. Barredo.

In his sworn statement,[7] Richard Madrideo, a supervisor at Sanyoware said that there were two separate sets of fire in the Sanyoware Warehouse and that it was different from, but occurred simultaneously, with the fire at the Unitedware Warehouse. Madrideo claimed that respondents Wilson Ting and Yao instructed him that if anyone should ask about the fire, he should say that the fires did not break out simultaneously and the cause thereof was defective wiring. In his additional sworn statement, Madrideo claimed that, days after the fire, he was threatened by respondents and was being forced to write a sworn statement against his will.

Jaime Kalaw, a former head of the Maintenance Department of Sanyoware, alleged in his sworn statement[8] that the cause of the fire could not have been faulty electrical wiring, because the warehouse was relatively new and that, on the day of the fire, the plant was not in operation so there was no heavy load of electricity and all the circuit breakers were shut down. Kalaw noted that a week before the fire occurred, almost 300 unserviceable molds were transferred to the burned Sanyoware warehouse. A day before the fire, expensive finish products were loaded in delivery trucks. In addition, Kalaw alleged that he saw respondent Yao a day before the fire driving to the Unitedware warehouse. Once inside, respondent Yao took a rectangular shaped object from his vehicle.

Raymond Dy, a warehouse supervisor at Sanyoware stated in his sworn statement[9] that a week before the fire occurred, he observed that saleable products from the burned warehouse were transferred to the Sanyo City Warehouse, while unusable

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[7] *Id.* at 124-125.

[8] *Id.* at 128.

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

components from the Sanyo City warehouse were transferred to the burned warehouse. Dy alleged that the transfer of the products was upon the orders of Charles Lee, the plant manager of Sanyoware, who allegedly told the employees to finish the transfers on May 12, 2001.

Chit Chua, an employee at the Accounting Department of Sanyoware, claimed in her sworn statement[10] that Sanyoware was indebted to a number of banks and corporations and that Sanyoware's outstanding obligations amounted to ₱95,000,000.00 to ₱96,000,000.00. Jennifer Chua Reyes, a secretary at Sanyoware, alleged in her sworn statement[11] that Sanyoware has an outstanding loan of ₱180,000,000.00 to various individuals.

Shanda Amistad, a former stay-in worker at Sanyoware, alleged in her affidavit[12] that, around 8:00 a.m. of May 13, 2001, she saw respondent Yao driving a Canter truck of Unitedware loaded with goods. Yao went to Sanyoware three times that day. Amistad found it unusual, since Yao did not normally go to Sanyoware on Sundays and there were available drivers at that time. Around 2:00 p.m. of the same day, respondent Wilson Ting arrived.

SPO1 Valeriano Dizon (SPO1 Dizon), a fireman assigned at the Meycauayan Fire Station, Bulacan, stated in his sworn statement[13] that he conducted the examination of the fire that occurred on May 14, 2001. He alleged that he took the statement of the witnesses, but Sr. Supt. Enrique Linsangan of the BFP Regional Office, Region III, took the witnesses' statements from him before he could prepare the Final Investigation Report (FIR). Thereafter, Sr. Supt. Linsangan summoned him, Inspector Allan Barredo and BFP C/Ins. Absalon Zipagan, Municipal Fire Marshall of Bocaue, Bulacan, and showed them the copy of the FIR and made them sign it. Inspector Barredo, in his affidavit,[14]

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[10] *Id.* at 133-134.

[11] *Id.* at 135-137.

[12] *Id.* at 138.

[13] *Id.* at 139-142.

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

corroborated SPO1 Dizon's allegation as to how Sr. Supt. Lansangan summoned and ordered them to sign the FIR.

In their defense, respondents submitted a Counter-Affidavit[15] to refute the allegations made against them, the significant portions of which read:

7. Principally on the basis of the "*Salaysay*" of Richard Madrideo attached Annex "A" to the Affidavit of Carol Ortega Fernan dated September 22, 2001, and on the basis of the "*Sinumpaang Salaysay*" of Ricky A. Hista and of the "*Karagdagang Salaysay*" of Bobby Bacang and on the basis of our inquiry from others, we have good reason to believe that one claiming to be a representative of CRM Adjustment Corporation had indeed offered money and jobs to persons to give perjured statements to make it appear that there was arson and that we committed it. (The Affidavit of Carol Ortega Fernan, together with the "*Salaysay*" of Richard Madrideo as Annex "A" thereto, the "*Sinumpaang Salaysay*" of Ricky A. Hista and the "*Karagdagang Salaysay*" of Bobby Bacang were all submitted last September 22, 2001 to the Inter Agency Anti-Arson Task Force, Office of the Secretary, Department of the Interior and Local Government.

8. We would like to stress the fact that during the supposed investigation of this arson case by complainant 3rd Regional Criminal Investigation and Detection Group, not one of us was invited by complainant to answer the allegations of witnesses against us. As far as we know, complainant did not even make an ocular inspection of the place where fire occurred.

9. Although the CIDG investigators were allegedly informed by Mrs. June Go, a clerk of Sanyoware, that nobody could assist the team in the ocular inspection, said investigators did not proceed to conduct an ocular inspection when they actually did not need any assistance and when nobody was preventing them from conducting the inspection.

10. Although Senior Police Officer Regino Raquipiso claims that when he and SPO1 John Tabago returned to the factory, the ocular inspection was not pushed through for alleged lack of clearance from the company owners, there is no showing that said police officers insisted or demanded to conduct then and there an ocular inspection.

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[15] *Id.* at 145-154.

11. Apparently, complainant solely relied on the statements of Jaime Kalaw, Raymond Dy and Richard Madrideo in deciding to file the case at bar against us.

12. Richard Madrideo executed a "*Sinumpaang Salaysay*" before SPO4 Regino D. Raquipiso, Jr. last June 29, 2001 wherein he claims, among others, that there was a simultaneous fire that occurred in two places in Sanyoware warehouse and in a place in Unitedware. However, said claim is a blatant lie and perjured statement.

13. In his "*Salaysay*" (Annex "A" to the Affidavit of Carol Ortega Fernan submitted last September 22, 2001 to the Inter Agency Anti-Arson Task Force), Richard Madrideo admitted to the fact that he received the sum of ₱1,000.00 from Atty. Lugtu and that he subsequently received another sum of ₱15,000.00 from Atty. Lugtu. Richard Madrideo was also given a cellphone and was promised a job. According to said "*Salaysay*," Atty. Lugtu instructed Madrideo to state, among others, in his "*Salaysay*" that Madrideo saw a simultaneous fire that occurred in two sides of the plant of Sanyoware.

14. In the "*Karagdagang Salaysay*" of Richard Madrideo, he repudiated his "*Salaysay*" by claiming that he was threatened and coerced by Respondents into executing said "*Salaysay*." Said claim is a blatant lie. In essence, the story contained in the "*Karagdagang Salaysay*" regarding alleged threats and coercion is nothing but a fabricated lie for the truth of the matter being that his "*Salaysay*" was executed by him freely and voluntarily last July 30, 2001 at the conference room of Sanyoware. He was not threatened by anyone. He was neither paid nor promised any consideration for executing said "*Salaysay*."

15. At any rate, I, Wilson Ting, and the security guards on duty can attest to the fact that fire started at the warehouse of Unitedware and that it did not occur simultaneously in different places.

16. In the Sworn Statement of Raymond Dy, he claims that Richard Madrideo had told him that while the fire was on going at the Unitedware warehouse, Madrideo saw the fire on top of the stock piles inside the Sanyoware warehouse aside from that fire at the Unitedware. However, Jaime Kalaw, who was allegedly informed about the fire by Raymond Dy, did not mention in his Sworn Statement about any simultaneous occurrence of the fire in different places. Jaime Kalaw even further stated in his Sworn Statement that upon his inquiry from the employees, he was allegedly told that the fire

originated from Unitedware warehouse that spread to Sanyoware warehouse.

17. The allegation of Jaime Kalaw in his Sworn Statement that all circuit breakers were "off" position so that there was no flow of electric current that may cause fire on the warehouses and the allegation of Raymond Dy that during his roving before the fire, all the lights were "off" are not true for the truth being that management had required that some lights be put on every night in all the warehouses so that they can be well guarded. Besides, I, Wilson Ting, and the guards on duty can attest to the fact that there were lights in all the warehouses during the subject incident.

18. Raymond Dy claims that the keys were usually kept by the guard on duty, but that on this occasion, he learned from Shandra Amistad, a stay-in helper, that the keys were then kept by Wilson Ting. Obviously, said claim is based on hearsay and thus, should not be given any credence and besides, I, Wilson Ting, deny said claim for the truth of the matter being that the keys of Sanyoware are kept inside its main office and are not kept by the guard on duty.

19. Raymond Dy also claims that the lights were 3 to 4 meters away from the stocks, so that it could be impossible that stocks will be caught by fire if and when the lights or electrical system leak down. However, said claim is not true for the fact of the matter is that in the Unitedware warehouse and in Sanyoware warehouse, there were so much pile[s] of stocks that some pile[s] almost reached the lights.

20. There is also no truth to the allegation of Raymond Dy that a week before the fire, saleable finished products from Sanyoware and Unitedware were removed and transferred to Sanyo City warehouse. There is also no truth to the allegation that non-useable components were removed from Sanyo City and transferred a week before the fire to the warehouses that got burned. Likewise, there is no truth that Charles Lee gave a deadline until Saturday (May 12) to transfer non-useable components to the burned warehouses. Said allegations are all fabricated lies designed to make it appear that there was arson.

21. Long before the subject incident, I, Wilson Ting, had ordered to have the stock piles that were in between the steel gate dividing Unitedware and Sanyoware warehouses moved, not to have a pathway, but for the purpose of closing the said steel gate. After said stock piles were moved, the steel gate was padlocked.

22. There was nothing extraordinary or irregular for several delivery trucks filled with stocks to stay at the parking area for the night and to leave very early in the morning to avoid traffic. Considering the huge volume of deliveries being made regularly by Sanyoware and Unitedware, delivery trucks with finished products were often times parked in the evening and during Sundays and holidays at the compound of Sanyoware and they usually moved out very early in the morning from Monday to Saturday. Thus, there was nothing extraordinary or irregular for some delivery trucks with stocks at the parking area on the night of May 13, 2001, considering especially that it was a Sunday.

23. Being the operations manager of Sanyoware, I have no fixed time and schedule of work. Even on a Sunday or holiday, I, Wilson Ting[,] sometimes visit the plant. Thus, there was nothing unusual that I, Wilson Ting, went to Sanyoware last May 13, 2001. Due to several incidents of thefts that took place inside the compound of Sanyoware and because of reports that the delivery trucks at the parking lot might contain some items that were not included in the inventory for delivery, I, Wilson Ting, as operations manager, decided to be at Sanyoware on that Sunday (May 13, 2001) principally to check the goods inside the delivery trucks. With the help of security guards Bobby Bacang and Ricky Hista, I, Wilson Ting, checked the goods in all the delivery trucks.

24. Being the President and practically the owner of Unitedware, a marketing area of Sanyoware and the lessee of Sanyoware's warehouse, I, (Edward Yao), visit Sanyoware and Unitedware from time to time.

25. As my (Edward Yao's) mother-in-law asked from me (Edward Yao) some chairs and drawers, I (Edward Yao) drove my Pajero and went to Sanyoware. I (Edward Yao) called up Wilson Ting and informed him that I'll be getting some chairs and drawers from Sanyoware for my mother-in-law. From the plant of Sanyoware, I (Edward Yao) got some chairs and drawers. When said chairs and drawers could not fit in my (Edward Yao) [P]ajero, I (Edward Yao) left to get a van. I (Edward Yao) came back later driving a van where the said chairs and drawers were placed. I (Edward Yao) brought said chairs and drawers to my mother-in-law who selected and got only some items and so, I (Edward Yao) returned to Sanyoware the remaining items. Before I (Edward Yao) left again, Wilson Ting asked me to come back for some chat and so, I (Edward Yao) returned in my

[P]ajero. However, after chatting with Wilson Ting, I (Edward Yao) left at around 9:00 o'clock in the evening of May 13, 2001. Thus, just before the incident when the fire occurred, I (Edward Yao) was not in the compound of Sanyoware.

26. There is no truth, however, to the claim that I (Edward Yao) had entered the warehouse of Unitedware and that I (Edward Yao) got a rectangular shape black object from my vehicle while inside the warehouse for the truth of the matter being that I (Edward Yao) did not enter said warehouse and I (Edward Yao) did not get any object from my vehicle. I (Edward Yao) got the said chairs and drawers from the plant of Sanyoware.

27. There is no truth that the company is suffering losses even before the fire occurred. The loan of Sanyoware with Metrobank is fully secured by a real estate mortgage wherein the value of the real estate, together with the improvements thereon that was mortgaged is more or less double the amount of the said loan and, thus, said real estate value is more than sufficient to cover said loan of Sanyoware. On the other hand, the loan with Equitable Bank is also fully secured by a real estate mortgage.

28. Before the subject incident, Sanyoware was making profits. There was no year that Sanyoware incurred losses. Its business was going every year. Prior to the subject incident, the record of Sanyoware with the banks was quite good.

29. Likewise, prior to the fire, Unitedware was steadily growing. Every year, its profit continued to go up. Last year, Unitedware made a huge profit from its operation and it is expected that, despite the fire that burned the warehouses, Unitedware will still make a good profit this year.

30. Complainant did not conduct any investigation, except to get the statements of its witnesses: Madrideo, Kalaw and Dy. Likewise, the Inter Agency Anti-Arson Task Force did not also conduct any investigation, except in essence to ask the witnesses of complainant to identify under oath their sworn statements executed before the complainant and to ask respondents to submit their sworn statements and later to identify the same under oath.

31. On the other hand, the elements of Bocaue Fire Station and OPFM Bulacan BFP Region 3 Intel and Inves Section conducted a thorough investigation of the origin of the fire. Statements of security guards Bobby A. Bacang and Mark Anthony Gabay were taken.

Statement of the operations manager Wilson Ting was also taken. The subject place was inspected. Pictures were taken. Specimens were obtained from the place where fire occurred and submitted to the laboratory for examination. Said elements undertook other activities in line with proper investigation.[16]

After preliminary investigation, then State Prosecutor Carlos C. Pormento issued a Resolution,[17] the dispositive portion of which reads:

WHEREFORE, premises considered, it is respectfully recommended that an information for Destructive Arson be filed against Wilson Ting, Edward Yao, Willy So Tan and Carol Ortega. That the case against Samson Ting be dismissed for lack of sufficient evidence to indict him under the charge.

As to the charge of Accessories against herein three (3) Fire Officers, let that case be remanded to TF-IATF for further investigation.[18]

Pursuant to the foregoing Resolution, an Information[19] for Arson was filed against Wilson Cua Ting, Edward Ngo Yao, Willy So Tan, Carol F. Ortega, John Doe and Peter Doe, of the crime of arson, to wit:

That on or about May 14, 2001, in the Municipality of Bocaue, Province of Bulacan, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating and mutually helping one another, acting in common accord, did then and there, willfully, unlawfully, and feloniously, destroy the warehouses known as Sanyoware Plastic Products Manufacturing Plant and New Unitedware Marketing Corporation, including the stocks of raw materials and finish products, machineries and various equipments by maliciously burning the same for the purpose of concealing or destroying evidence of another violation of law, and to conceal bankruptcy to defraud creditors and to collect from insurance.

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[16] *Id.* at 147-152.

[17] *Id.* at 155-161.

[18] *Id.* at 160.

[19] *Id.* at 162-163.

CONTRARY TO LAW.[20]

The Information was raffled to Branch XI, Regional Trial Court (RTC) of Malolos Bulacan, 3rd Judicial Region. The case was docketed as Criminal Case No. 300-47M 2002.

Prior to the arraignment of respondents and before warrants of arrest could be issued, respondents filed a Motion to Conduct Hearing to Determine Probable Cause and to Hold in Abeyance the Issuance of Warrant of Arrest Pending Determination of Probable Cause.[21]

On February 27, 2002, the RTC issued an Order[22] dismissing the case, the dispositive portion of which reads:

> Accordingly, for lack of probable cause, the instant case is DISMISSED as ordained under Sec. 6, Rule 112 of the Revised Rules of Criminal Procedure.
>
> SO ORDERED.[23]

The RTC applied the equipoise rule in dismissing the case, because of its observation that the sworn statements submitted by petitioner and respondents contained contradictory positions.

Aggrieved, petitioner filed a Motion for Reconsideration,[24] which was, however, denied by the RTC in an Order[25] dated March 25, 2002.

On August 8, 2002, petitioner filed a petition for *certiorari* before the CA docketed as CA-G.R. SP No. 71985. On July 24, 2003, the CA issued a Decision denying the petition, the dispositive portion of which reads:

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[20] *Id*.

[21] *Id.* at 164-171.

[22] CA *rollo*, pp. 43-47.

[23] *Id.* at 47.

[24] *Id.* at 177-191.

[25] *Id.* at 58.

WHEREFORE, premises considered, there being no grave abuse of discretion committed by the public respondent, the assailed Orders dated February 27, 2002 and March 25, 2002 are hereby AFFIRMED *in toto* and the present petition is hereby DENIED DUE COURSE and is, accordingly, DISMISSED for lack of merit.

SO ORDERED.[26]

Petitioner then filed a Motion for Reconsideration, which was, however, denied by the CA in a Resolution[27] dated October 3, 2003.

Hence, this instant petition, with petitioner raising the following ground for this Court's consideration, to wit:

THE COURT OF APPEALS PATENTLY AND GROSSLY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ADOPTING THE EQUIPOISE RULE IN THE CASE AT BAR.[28]

Before anything else, this Court shall address a procedural issue raised by respondents that *certiorari* does not lie considering that such special civil action is not and cannot be a substitute for an appeal, or more importantly, a lapsed appeal.[29]

Respondents' position is well taken.

It is well settled that a special civil action for *certiorari* under Rule 65 of the Rules of Court lies only when, "there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law," and *certiorari* cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, *certiorari* not being a substitute for a lost appeal.[30]

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[26] *Id.* at 49-50.

[27] *Id.* at 51.

[28] *Id.* at 29.

[29] *Id.* at 472.

[30] *Bernardo v. Court of Appeals*, G.R. No. 106153, July 14, 1997, 275 SCRA 413, 426. (Underscoring supplied.)

A perusal of the records will show that petitioner received the assailed CA Resolution on October 10, 2003. From that time on, petitioner had 15 days, or until October 25, 2003, to file an appeal by way of a petition for review under Rule 45 of the Rules of Court. However, instead of filing the appeal on the last day of reglementary period, petitioner simply allowed it to lapse. Clearly, petitioner had an appeal, which under the circumstances was the adequate remedy in the ordinary course of law. On this point alone, petitioner's petition must be dismissed, as herein petition is without a doubt a substitute for a lost appeal. In any case, even if this Court were to set aside the procedural infirmity of the petition, the same still fails on the merits.

In a petition for *certiorari*, the court must confine itself to the issue of whether or not respondent court lacked or exceeded its jurisdiction or committed grave abuse of discretion.[31]

It is well to remember that there is a distinction between the preliminary inquiry, which determines probable cause for the issuance of a warrant of arrest, and the preliminary investigation proper, which ascertains whether the offender should be held for trial or be released. The determination of probable cause for purposes of issuing a warrant of arrest is made by the judge. The preliminary investigation proper – whether or not there is reasonable ground to believe that the accused is guilty of the offense charged – is the function of the investigating prosecutor.[32]

Section 6, Rule 112 of the Revised Rules of Court provides:

SEC 6. *When warrant of arrest may issue.* —

x x x x x x x x x

(a) *By the Regional Trial Court.* — Within (10) days from the filing of the complaint or information**, the judge shall personally evaluate the resolution of the prosecutor and its supporting**

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[31] *San Pedro v. Court of Appeals*, G.R. No. 114300, August 4, 1994, 235 SCRA 145, 150.

[32] *AAA v. Carbonell*, G.R. No. 171465, June 8, 2007, 524 SCRA 496, 509, citing *People v. Inting*, 187 SCRA 788, 792-793 (1990).

evidence. **He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause**. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused had already been arrested, pursuant to a warrant issued by the judge who conducted preliminary investigation or when the complaint or information was filed pursuant to Section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.[33]

As enunciated in *Baltazar v. People*,[34] the task of the presiding judge when the Information is filed with the court is first and foremost to determine the existence or non-existence of probable cause for the arrest of the accused. Probable cause is such set of facts and circumstances as would lead a reasonably discreet and prudent man to believe that the offense charged in the Information, or any offense included therein, has been committed by the person sought to be arrested. In determining probable cause, the average man weighs the facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than suspicion; it requires less than evidence that would justify conviction.[35] The purpose of the mandate of the judge to first determine probable cause for the arrest of the accused is to insulate from the very start those falsely charged with crimes from the tribulations, expenses and anxiety of a public trial.[36]

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[33] (Emphasis and underscoring supplied).

[34] G.R. No. 174016, July 28, 2008, 560 SCRA 278, 293-294.

[35] *Id.*, citing *People v. Aruta*, 351 Phil. 868, 880 (1998).

[36] *Id.* at 294, citing *Okabe v. Gutierrez*, 429 SCRA 685, 706 (2004).

Based on the foregoing, the RTC acted within its jurisdiction when it dismissed the case on lack of probable cause as the same is sanctioned under Section 6, Rule 112 of the Rules of Court. The penultimate question to be resolved then is was such exercise of jurisdiction attended by grave abuse of discretion?

Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or in other words where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[37]

Petitioner's main argument hinges on the propriety of the RTC's use of the equipoise rule in dismissing the case which was affirmed by the CA. Specifically, petitioner contends that the equipoise rule cannot be used by the RTC merely after the filing of the information, thus:

> Since there must be a proper determination of the presence or absence of evidence sufficient to support a conviction, *i.e.*, proof beyond reasonable doubt, *the equipoise rule shall properly come into play when the parties have already concluded the presentation of their respective evidence.* It is only at this stage, not at any prior time and certainly not merely after the filing of the information, can the trial court assess and weigh the evidence of the parties and thereafter determine which party has the preponderance of evidence. If both parties fail to adduce evidence in support of their respective cases, an adverse decision would be rendered against the party which has the burden of proof.[38]

Under the equipoise rule, where the evidence on an issue of fact is in equipoise, or there is doubt on which side the evidence preponderates, the party having the burden of proof loses. The equipoise rule finds application if the inculpatory facts and

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[37] Revised Rules of Civil Procedure, Rule 65, Sec. 1. See also *Angara v. Fedman Development Corporation*, 483 Phil. 495, 505 (2004).

[38] *Rollo*, pp. 30-31. (Italics in the Original).

circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, for then the evidence does not suffice to produce a conviction.[39]

To this Court's mind, the reliance of the RTC in the equipoise rule is misplaced as a review of previous Court decisions would show that the position of petitioner is in fact correct. The equipoise rule has been generally applied when the parties have already concluded the presentation of their respective evidence as shown in a plethora of cases such as *Abarquez v. People*,[40] *Tin v. People*[41] and *People v. Leano*.[42]

While the use of the equipoise rule was not proper under the circumstances of the case at bar, the same, however, does not equate to an abuse of discretion on the part of the RTC, but at most, merely an error of judgment. More importantly, this Court finds that the RTC had in fact complied with the requirement under the rules of personally evaluating the resolution of the prosecutor and its supporting evidence and that the assailed Order was arrived at after due consideration of the merits thereto, thus:

> By this statement of Madrideo, it would appear fire broke out in two (2) places, which, presupposes or implies that some sort of incendiary or flammable substances were ignited to start the fire. The investigation conducted by the Bocaue Fire Station, however, appears to have ruled out the use of incendiary or inflammable substances. Annex "E" of the Complaint, Chemistry Report No. C-054-2001 of the Bulacan Provincial Crime Laboratory Office indicated that the specimen submitted by the Bocaue Fire Station in connection with the fire in question was found negative of any flammable substance. This finding was never debunked or repudiated, which makes the misgivings of the police investigators about its veracity unfounded. Thus, pitted against the allegation of Madrideo,

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[39] *Tin v. People*, 415 Phil. 1, 11 (2001).

[40] G.R. No. 150762, January 20, 2006, 479 SCRA 225.

[41] *Supra* note 39.

[42] 419 Phil. 241 (2001).

this physical evidence puts the truth of the latter in grave doubt. Physical evidence is evidence of the highest order. It speaks more eloquently than a hundred witnesses (*People vs. Sacabin*, 57 SCRA 707). Physical evidence are mute but eloquent manifestations of truth and they rate high in our hierarchy of trustworthy evidence (*People vs. Uycoque*, 124 SCRA 769).

At this stage, it must be stressed that the Fire Investigation Report prepared by the Bocaue Fire Station (Annex "D") and the Certification made by the Provincial Fire Marshall, Absalon Zipagan, point to the faulty wiring as the cause or origin (sic) of the conflagration at bar. The Office the Regional Fire Marshall also came out with the same findings. (Annexes "B" and "C") All the above reports and investigation stand as the official report of the fire in question. Contrary to the Resolution, we find nothing in the respective sworn statements of Supt. Absalon Zipagan, Sr. Supt. Enrique Linsangan and Insp. Allan Barredo that deviated much less repudiated the aforesaid reports and findings. Far from impugning their own investigation, the three (3) fire officials simply narrated the steps that were taken at the provincial and regional levels in the investigation of the Sanyo fire. Needless to state, the investigation reports and findings carry the presumption that official duty has been regularly performed. A mere affidavit cannot overcome this presumption. (*Transport Corporation vs. CA*, 241 SCRA 77) Government officials are presumed to perform their functions with regularity and strong evidence is necessary to rebut this presumption. (*Tata vs. Garcia, Jr.*, 243 SCRA 235)

The significance of the above reports and findings cannot be overlooked. Note that F/CINSP. Absalon Zipagan, F/Insp. Allan Barredo and SPO1 Valeriano Dizon, Jr. were included as accessories in the complaint by the DILG, Inter Agency Anti-Arson Task Force but the State Prosecutor did not rule on their liability, which thus enhances all the more the probative value of the said reports and findings.

This Court, likewise, noted that although the Inter Agency Anti Arson Task Force was quick to rule out faulty electrical wiring, it did note (sic) arrive at a definite theory how the fire started, leaving everything hanging in mid-air.

This Court is also hard put to make out a case from the actuations of some of the accused before, during and after the fire. For one, the presence of Wilson Ting and Edward Yao in the Sanyo premises before the fire is not criminal per se. Both apparently have their

own explanations, and following the equipoise rule as elucidated above, no adverse implications can be inferred therefrom. So are with the alleged utterances made by the accused during and after the fire, having been said in the midst of tenseful happening these can be attributed to their desperation over the loss of some of their properties. And, consistent with the equipoise rule, if ever said statements were uttered at all, they cannot serve as evidence against the accused for the offense charged.[43]

The conclusions of the RTC which led to the dismissal of the information against respondents cannot, in any sense, be characterized as outrageously wrong or manifestly mistaken, or whimsically or capriciously arrived at. The worst that may perhaps be said of it is that it is fairly debatable, and may even be possibly erroneous. But they cannot be declared to have been made with grave abuse of discretion.[44]

Based on Section 6, Rule 112 of the Rules of Court, the RTC judge, upon the filing of an Information, has the following options: (1) dismiss the case if the evidence on record clearly failed to establish probable cause; (2) if he or she finds probable cause, issue a warrant of arrest; and (3) in case of doubt as to the existence of probable cause, order the prosecutor to present additional evidence within five days from notice, the issue to be resolved by the court within thirty days from the filing of the information.[45]

The judge is required to personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause.[46] To this Court's mind, the RTC had complied with its duty of personally evaluating the

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[43] *Rollo*, pp. 55-56.

[44] *Busmente v. NLRC*, G.R. No. 73647, April 8, 1991, 195 SCRA 710, 714.

[45] *In Re: Mino v. Navarro*, A.M. No. MTJ-06-1645, August 28, 2007, 531 SCRA 271, 279.

[46] *Concerned Citizen of Maddela v. Dela Torre-Yadao*, 441 Phil. 480, 489 (2002).

supporting evidence of the prosecution before arriving at its decision of dismissing the case against respondents.

While petitioner mainly argues against the use of the equipoise rule, it cannot escape this Court's attention that ultimately petitioner is asking this Court to resolve the propriety of the dismissal of the case by the RTC, on the basis of the Information and the attached documents it had filed. This Court however, will defer to the findings of fact of the RTC, which are accorded great weight and respect, more so because the same were affirmed by the CA. In addition, it bears to stress that the instant case is a petition for *certiorari* where questions of fact are not entertained.[47]

The sole office of writ of *certiorari* is the correction of errors of jurisdiction, including the commission of grave abuse of discretion amounting to lack of jurisdiction and does not include correction of public respondent's evaluation of the evidence and factual findings based thereon.[48] An error of judgment that the court may commit in the exercise of its jurisdiction is not correctible through the original special civil action of *certiorari*.[49]

In any case, the dismissal of herein petition does not preclude petitioner from availing of any other action it deems appropriate under the premises. Double jeopardy cannot be invoked where the accused has not been arraigned and it was upon his express motion that the case was dismissed.[50] Moreover, while the absence of probable cause for the issuance of a warrant of arrest is a ground for the dismissal of the case, the same does not result in the acquittal of the said accused.[51]

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[47] *Premiere Development Bank v. National Labor Relations Commission*, G.R. No. 114695, July 23, 1998, 293 SCRA 49, 60.

[48] *Building Care Corporation v. National Labor Relations Commission*, 335 Phil. 1131, 1139 (1997).

[49] *Jamer v. National Labor Relations Commission*, 344 Phil. 181, 197 (1997).

[50] *People v. Monteiro*, G.R. No. 49454, December 21, 1990, 192 SCRA 548, 553.

[51] See *People v. Sandiganbayan*, 482 Phil. 613, 632 (2004).

WHEREFORE, premises considered, the petition is *DISMISSED*. The July 24, 2003 Decision and October 3, 2003 Resolution of the Court of Appeals, in CA-G.R. SP No. 71985, are *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 162025. August 3, 2010]

TUNAY NA PAGKAKAISA NG MANGGAGAWA SA ASIA BREWERY, *petitioner, vs.* **ASIA BREWERY, INC.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR ORGANIZATIONS; INELIGIBILITY OF MANAGERIAL EMPLOYEES TO JOIN ANY LABOR ORGANIZATION; RATIONALE.— Although Article 245 of the Labor Code limits the ineligibility to join, form and assist any labor organization to managerial employees, jurisprudence has extended this prohibition to confidential employees or those who by reason of their positions or nature of work are required to assist or act in a fiduciary manner to managerial employees and hence, are likewise privy to sensitive and highly confidential records. Confidential employees are thus excluded from the rank-and-file bargaining unit. The rationale for their separate category and disqualification to join any labor organization is similar to the inhibition for managerial employees because if allowed to be affiliated with a Union, the latter might not be assured of their loyalty in view of evident conflict of interests and the Union can also become company-denominated with

the presence of managerial employees in the Union membership. Having access to confidential information, confidential employees may also become the source of undue advantage. Said employees may act as a spy or spies of either party to a collective bargaining agreement.

2. ID.; ID.; ID.; ID.; CONFIDENTIAL EMPLOYEES; DEFINED; APPLICATION IN CASE AT BAR.— With respect to the Sampling Inspectors/Inspectresses and the Gauge Machine Technician, there seems no dispute that they form part of the Quality Control Staff who, under the express terms of the CBA, fall under a distinct category. But we disagree with respondent's contention that the twenty (20) checkers are similarly confidential employees being "quality control staff" entrusted with the handling and custody of company properties and sensitive information. Again, the job descriptions of these checkers assigned in the storeroom section of the Materials Department, finishing section of the Packaging Department, and the decorating and glass sections of the Production Department plainly showed that they perform routine and mechanical tasks preparatory to the delivery of the finished products. While it may be argued that quality control extends to post-production phase — proper packaging of the finished products — no evidence was presented by the respondent to prove that these daily-paid checkers actually form part of the company's Quality Control Staff who as such "were exposed to sensitive, vital and confidential information about [company's] products" or "have knowledge of mixtures of the products, their defects, and even their formulas" which are considered 'trade secrets'. Such allegations of respondent must be supported by evidence. Consequently, we hold that the twenty (20) checkers may not be considered confidential employees under the category of Quality Control Staff who were expressly excluded from the CBA of the rank-and-file bargaining unit.

3. ID.; ID.; ID.; ID.; TO BE CONSIDERED CONFIDENTIAL EMPLOYEES, THE SECRETARIES/CLERKS MUST HAVE ACCESS TO CONFIDENTIAL DATA RELATING TO MANAGEMENT POLICIES THAT COULD GIVE RISE TO POTENTIAL CONFLICT OF INTEREST WITH THEIR UNION MEMBERSHIP, OTHERWISE, THEY ARE RANK-AND-FILE EMPLOYEES.— In the present case, the CBA expressly excluded "Confidential and Executive Secretaries"

from the rank-and-file bargaining unit, for which reason ABI seeks their disaffiliation from petitioner. Petitioner, however, maintains that except for Daisy Laloon, Evelyn Mabilangan and Lennie Saguan who had been promoted to monthly paid positions, the following secretaries/clerks are deemed included among the rank-and-file employees of ABI. x x x As can be gleaned from the listing, it is rather curious that there would be several secretaries/clerks for just one (1) department/division performing tasks which are mostly routine and clerical. Respondent insisted they fall under the "Confidential and Executive Secretaries" expressly excluded by the CBA from the rank-and-file bargaining unit. However, perusal of the job descriptions of these secretaries/clerks reveals that their assigned duties and responsibilities involve routine activities of recording and monitoring, and other paper works for their respective departments while secretarial tasks such as receiving telephone calls and filing of office correspondence appear to have been commonly imposed as additional duties. Respondent failed to indicate who among these numerous secretaries/clerks have access to confidential data relating to management policies that could give rise to potential conflict of interest with their Union membership. Clearly, the rationale under our previous rulings for the exclusion of *executive secretaries* or *division secretaries* would have little or no significance considering the lack of or very limited access to confidential information of these secretaries/clerks. It is not even farfetched that the job category may exist only on paper since they are all daily-paid workers. Quite understandably, petitioner had earlier expressed the view that the positions were just being "reclassified" as these employees actually discharged routine functions. We thus hold that the secretaries/clerks, numbering about forty (40), are rank-and-file employees and not confidential employees.

4. ID.; ID.; ID.; ID.; THE DAILY-PAID CHECKERS WHO DO NOT FORM PART OF THE COMPANY'S QUALITY CONTROL STAFF AND WERE NOT EXPOSED TO SENSITIVE, VITAL AND CONFIDENTIAL INFORMATION ABOUT THE COMPANY'S PRODUCTS ARE LIKEWISE CONSIDERED RANK-AND-FILE EMPLOYEES.— Confidential employees are defined as those who (1) assist or act in a confidential capacity, (2) to persons who formulate,

determine, and effectuate management policies in the field of labor relations. The two (2) criteria are cumulative, and both must be met if an employee is to be considered a confidential employee – that is, the confidential relationship must exist between the employee and his supervisor, and the supervisor must handle the prescribed responsibilities relating to *labor relations.* The exclusion from bargaining units of employees who, in the normal course of their duties, become aware of management policies relating to labor relations is a principal objective sought to be accomplished by the "confidential employee rule." There is no showing in this case that the secretaries/clerks and checkers assisted or acted in a confidential capacity to managerial employees and obtained confidential information relating to labor relations policies. And even assuming that they had exposure to internal business operations of the company, respondent claimed, this is not *per se* ground for their exclusion in the bargaining unit of the daily-paid rank-and-file employees. Not being confidential employees, the secretaries/clerks and checkers are not disqualified from membership in the Union of respondent's rank-and-file employees. Petitioner argues that respondent's act of unilaterally stopping the deduction of union dues from these employees constitutes unfair labor practice as it "restrained" the workers' exercise of their right to self-organization, as provided in Article 248 (a) of the Labor Code.

5. ID.; ID.; UNFAIR LABOR PRACTICE; A SIMPLE DISAGREEMENT IN THE INTERPRETATION OF A COLLECTIVE BARGAINING AGREEMENT PROVISION ON EXCLUDED EMPLOYEES FROM THE BARGAINING UNIT COULD NOT BE CONSIDERED AS AN UNFAIR LABOR PRACTICE THAT RESTRAINED THE EMPLOYEES IN THE EXERCISE OF THEIR RIGHT TO SELF-ORGANIZATION.— Unfair labor practice refers to "acts that violate the workers' right to organize." The prohibited acts are related to the workers' right to self organization and to the observance of a CBA. For a charge of unfair labor practice to prosper, it must be shown that ABI was motivated by ill will, "bad faith, or fraud, or was oppressive to labor, or done in a manner contrary to morals, good customs, or public policy, and, of course, that social humiliation, wounded feelings or grave anxiety resulted x x x" from ABI's act in discontinuing the union dues deduction from those employees it believed were excluded by the CBA. Considering that the herein dispute

arose from a simple disagreement in the interpretation of the CBA provision on excluded employees from the bargaining unit, respondent cannot be said to have committed unfair labor practice that restrained its employees in the exercise of their right to self-organization, nor have thereby demonstrated an anti-union stance.

APPEARANCES OF COUNSEL

Napoleon Banzuela, Jr. for petitioner.
*Montenegro Arcilla Cua Kagaoan and Tiangson Law Off*ices for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

For resolution is an appeal by *certiorari* filed by petitioner under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[1] dated November 22, 2002 and Resolution[2] dated January 28, 2004 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 55578, granting the petition of respondent company and reversing the Voluntary Arbitrator's Decision[3] dated October 14, 1999.

The facts are:

Respondent Asia Brewery, Inc. (ABI) is engaged in the manufacture, sale and distribution of beer, shandy, bottled water and glass products. ABI entered into a Collective Bargaining Agreement (CBA),[4] effective for five (5) years from August 1, 1997 to July 31, 2002, with *Bisig at Lakas ng mga Manggagawa*

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[1] CA *rollo*, pp. 190-201. Penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Portia Aliño-Hormachuelos and Amelita G. Tolentino.

[2] *Id.* at 245-246.

[3] *Id.* at 27-40.

[4] *Id.* at 80-101.

sa Asia-Independent (BLMA-INDEPENDENT), the exclusive bargaining representative of ABI's rank-and-file employees. On October 3, 2000, ABI and BLMA-INDEPENDENT signed a renegotiated CBA effective from August 1, 2000 to 31 July 2003.[5]

Article I of the CBA defined the scope of the bargaining unit, as follows:

> Section 1. **Recognition.** The COMPANY recognizes the UNION as the sole and exclusive bargaining representative of all the regular rank-and-file daily paid employees within the scope of the appropriate bargaining unit with respect to rates of pay, hours of work and other terms and conditions of employment. ***The UNION shall not represent or accept for membership employees outside the scope of the bargaining unit herein defined.***
>
> Section 2. **Bargaining Unit**. The bargaining unit shall be comprised of all regular rank-and-file daily-paid employees of the COMPANY. However, the following jobs/positions as herein defined shall be ***excluded*** from the bargaining unit, to wit:
>
> 1. Managers
> 2. Assistant Managers
> 3. Section Heads
> 4. Supervisors
> 5. Superintendents
> 6. ***Confidential and Executive Secretaries***
> 7. Personnel, Accounting and Marketing Staff
> 8. Communications Personnel
> 9. Probationary Employees
> 10. Security and Fire Brigade Personnel
> 11. Monthly Employees
> 12. ***Purchasing and Quality Control Staff***[6] [EMPHASIS SUPPLIED.]

Subsequently, a dispute arose when ABI's management stopped deducting union dues from eighty-one (81) employees, believing that their membership in BLMA-INDEPENDENT violated the

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[5] *Rollo*, pp. 103-124.

[6] *Id.* at 105.

CBA. Eighteen (18) of these affected employees are QA Sampling Inspectors/Inspectresses and Machine Gauge Technician who formed part of the Quality Control Staff. Twenty (20) checkers are assigned at the Materials Department of the Administration Division, Full Goods Department of the Brewery Division and Packaging Division. The rest are secretaries/clerks directly under their respective division managers.[7]

BLMA-INDEPENDENT claimed that ABI's actions restrained the employees' right to self-organization and brought the matter to the grievance machinery. As the parties failed to amicably settle the controversy, BLMA-INDEPENDENT lodged a complaint before the National Conciliation and Mediation Board (NCMB). The parties eventually agreed to submit the case for arbitration to resolve the issue of "*[w]hether or not there is restraint to employees in the exercise of their right to self-organization*."[8]

In his Decision, Voluntary Arbitrator Bienvenido Devera sustained the BLMA-INDEPENDENT after finding that the records submitted by ABI showed that the positions of the subject employees qualify under the rank-and-file category because their functions are merely routinary and clerical. He noted that the positions occupied by the checkers and secretaries/clerks in the different divisions are not managerial or supervisory, as evident from the duties and responsibilities assigned to them. With respect to QA Sampling Inspectors/Inspectresses and Machine Gauge Technician, he ruled that ABI failed to establish with sufficient clarity their basic functions as to consider them Quality Control Staff who were excluded from the coverage of the CBA. Accordingly, the subject employees were declared eligible for inclusion within the bargaining unit represented by BLMA-INDEPENDENT.[9]

On appeal, the CA reversed the Voluntary Arbitrator, ruling that:

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[7] CA *rollo,* pp. 47-49, 61-63.

[8] Records, pp. 220-221.

[9] CA *rollo,* pp. 37-40.

WHEREFORE, foregoing premises considered, the questioned decision of the Honorable Voluntary Arbitrator Bienvenido De Vera is hereby REVERSED and SET ASIDE, and A NEW ONE ENTERED DECLARING THAT:

a) the 81 employees are excluded from and are not eligible for inclusion in the bargaining unit as defined in Section 2, Article I of the CBA;

b) the 81 employees cannot validly become members of respondent and/or if already members, that their membership is violative of the CBA and that they should disaffiliate from respondent; and

c) petitioner has not committed any act that restrained or tended to restrain its employees in the exercise of their right to self-organization.

NO COSTS.

SO ORDERED.[10]

BLMA-INDEPENDENT filed a motion for reconsideration. In the meantime, a certification election was held on August 10, 2002 wherein petitioner *Tunay na Pagkakaisa ng Manggagawa sa Asia* (TPMA) won. As the incumbent bargaining representative of ABI's rank-and-file employees claiming interest in the outcome of the case, petitioner filed with the CA an omnibus motion for reconsideration of the decision and intervention, with attached petition signed by the union officers.[11] Both motions were denied by the CA.[12]

The petition is anchored on the following grounds:

(1)

THE COURT OF APPEALS ERRED IN RULING THAT THE 81 EMPLOYEES ARE EXCLUDED FROM AND ARE NOT ELIGIBLE FOR INCLUSION IN THE BARGAINING UNIT AS DEFINED IN SECTION 2, ARTICLE 1 OF THE CBA[;]

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[10] *Id.* at 200.

[11] *Id.* at 204-219.

[12] *Id.* at 245-246.

(2)

THE COURT OF APPEALS ERRED IN HOLDING THAT THE 81 EMPLOYEES CANNOT VALIDLY BECOME UNION MEMBERS, THAT THEIR MEMBERSHIP IS VIOLATIVE OF THE CBA AND THAT THEY SHOULD DISAFFILIATE FROM RESPONDENT;

(3)

THE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT PETITIONER (NOW PRIVATE RESPONDENT) HAS NOT COMMITTED ANY ACT THAT RESTRAINED OR TENDED TO RESTRAIN ITS EMPLOYEES IN THE EXERCISE OF THEIR RIGHT TO SELF-ORGANIZATION.[13]

Although Article 245 of the Labor Code limits the ineligibility to join, form and assist any labor organization to managerial employees, jurisprudence has extended this prohibition to confidential employees or those who by reason of their positions or nature of work are required to assist or act in a fiduciary manner to managerial employees and hence, are likewise privy to sensitive and highly confidential records.[14] Confidential employees are thus excluded from the rank-and-file bargaining unit. The rationale for their separate category and disqualification to join any labor organization is similar to the inhibition for managerial employees because if allowed to be affiliated with a Union, the latter might not be assured of their loyalty in view of evident conflict of interests and the Union can also become company-denominated with the presence of managerial employees in the Union membership.[15] Having access to confidential information, confidential employees may also become the source of undue advantage. Said employees may act as a spy or spies of either party to a collective bargaining agreement.[16]

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[13] *Rollo,* pp. 53, 59, 61.

[14] *Metrolab Industries, Inc. v. Roldan-Confesor,* G.R. No. 108855, February 28, 1996, 254 SCRA 182, 197.

[15] *Bulletin Publishing Corporation v. Sanchez,* No. L-74425, October 7, 1986, 144 SCRA 628, 635.

[16] *Golden Farms, Inc. v. Ferrer-Calleja*, G.R. No. 78755, July 19, 1989, 175 SCRA 471, 477.

In *Philips Industrial Development, Inc. v. NLRC*,[17] this Court held that petitioner's "division secretaries, all Staff of General Management, Personnel and Industrial Relations Department, Secretaries of Audit, EDP and Financial Systems" are confidential employees not included within the rank-and-file bargaining unit.[18] Earlier, in *Pier 8 Arrastre & Stevedoring Services, Inc. v. Roldan-Confesor*,[19] we declared that legal secretaries who are tasked with, among others, the typing of legal documents, memoranda and correspondence, the keeping of records and files, the giving of and receiving notices, and such other duties as required by the legal personnel of the corporation, fall under the category of confidential employees and hence excluded from the bargaining unit composed of rank-and-file employees.[20]

Also considered having access to "vital labor information" are the executive secretaries of the General Manager and the executive secretaries of the Quality Assurance Manager, Product Development Manager, Finance Director, Management System Manager, Human Resources Manager, Marketing Director, Engineering Manager, Materials Manager and Production Manager.[21]

In the present case, the CBA expressly excluded "Confidential and Executive Secretaries" from the rank-and-file bargaining unit, for which reason ABI seeks their disaffiliation from petitioner. Petitioner, however, maintains that except for Daisy Laloon, Evelyn Mabilangan and Lennie Saguan who had been promoted to monthly paid positions, the following secretaries/clerks are deemed included among the rank-and-file employees of ABI:[22]

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[17] G.R. No. 88957, June 25, 1992, 210 SCRA 339.

[18] *Id.* at 347.

[19] G.R. No. 110854, February 13, 1995, 241 SCRA 294.

[20] *Id.* at 305.

[21] *Metrolab Industries, Inc. v. Roldan-Confesor, supra* note 14, at 196-197.

[22] CA *rollo*, pp. 62-63.

NAME	DEPARTMENT	IMMEDIATE SUPERIOR
C1 ADMIN DIVISION		
1. Angeles, Cristina C.	Transportation	Mr. Melito K. Tan
2. Barraquio, Carina P.	Transportation	Mr. Melito K. Tan
3. Cabalo, Marivic B.	Transportation	Mr. Melito K. Tan
4. Fameronag, Leodigario C.	Transportation	Mr. Melito K. Tan
1. Abalos, Andrea A.	Materials	Mr. Andres G. Co
2. Algire, Juvy L.	Materials	Mr. Andres G. Co
3. Anoñuevo, Shirley P.	Materials	Mr. Andres G. Co
4. Aviso, Rosita S.	Materials	Mr. Andres G. Co
5. Barachina, Pauline C.	Materials	Mr. Andres G. Co
6. Briones, Catalina P.	Materials	Mr. Andres G. Co
7. Caralipio, Juanita P.	Materials	Mr. Andres G. Co
8. Elmido, Ma. Rebecca S.	Materials	Mr. Andres G. Co
9. Giron, Laura P.	Materials	Mr. Andres G. Co
10. Mane, Edna A.	Materials	Mr. Andres G. Co
x x x	x x x	x x x
C2 BREWERY DIVISION		
1. Laloon, Daisy S.	Brewhouse	Mr. William Tan
1. Arabit, Myrna F.	Bottling Production	Mr. Julius Palmares
2. Burgos, Adelaida D.	Bottling Production	Mr. Julius Palmares
3. Menil, Emmanuel S.	Bottling Production	Mr. Julius Palmares
4. Nevalga, Marcelo G.	Bottling Production	Mr. Julius Palmares
1. Mapola, Ma. Esraliza T.	Bottling Maintenance	Mr. Ernesto Ang
2. Velez, Carmelito A.	Bottling Maintenance	Mr. Ernesto Ang
1. Bordamonte, Rhumela D.	Bottled Water	Mr. Faustino Tetonche
2. Deauna, Edna R.	Bottled Water	Mr. Faustino Tetonche
3. Punongbayan, Marylou F.	Bottled Water	Mr. Faustino Tetonche
4. Saguan, Lennie Y.	Bottled Water	Mr. Faustino Tetonche
1. Alcoran, Simeon A.	Full Goods	Mr. Tsoi Wah Tung
2. Cervantes, Ma. Sherley Y.	Full Goods	Mr. Tsoi Wah Tung
3. Diongco, Ma. Teresa M.	Full Goods	Mr. Tsoi Wah Tung
4. Mabilangan, Evelyn M.	Full Goods	Mr. Tsoi Wah Tung
5. Rivera, Aurora M.	Full Goods	Mr. Tsoi Wah Tung
6. Salandanan, Nancy G.	Full Goods	Mr. Tsoi Wah Tung
1. Magbag, Ma. Corazon C.	Tank Farm/ Cella Services	Mr. Manuel Yu Liat
1. Capiroso, Francisca A.	Quality Assurance	Ms. Regina Mirasol

1. Alconaba, Elvira C.	Engineering	Mr. Clemente Wong
2. Bustillo, Bernardita E.	Electrical	Mr. Jorge Villarosa
3. Catindig, Ruel A.	Civil Works	Mr. Roger Giron
4. Sison, Claudia B.	Utilities	Mr. Venancio Alconaba
x x x	x x x	x x x

C3 PACKAGING DIVISION

1. Alvarez, Ma. Luningning L.	GP Administration	Ms. Susan Bella
2. Cañiza, Alma A.	GP Technical	Mr. Chen Tsai Tyan
3. Cantalejo, Aida S.	GP Engineering	Mr. Noel Fernandez
4. Castillo, Ma. Riza R.	GP Production	Mr. Tsai Chen Chih
5. Lamadrid, Susana C.	GP Production	Mr. Robert Bautista
6. Mendoza, Jennifer L.	GP Technical	Mr. Mel Oña

As can be gleaned from the above listing, it is rather curious that there would be several secretaries/clerks for just one (1) department/division performing tasks which are mostly routine and clerical. Respondent insisted they fall under the "Confidential and Executive Secretaries" expressly excluded by the CBA from the rank-and-file bargaining unit. However, perusal of the job descriptions of these secretaries/clerks reveals that their assigned duties and responsibilities involve routine activities of recording and monitoring, and other paper works for their respective departments while secretarial tasks such as receiving telephone calls and filing of office correspondence appear to have been commonly imposed as additional duties.[23] Respondent failed to indicate who among these numerous secretaries/clerks have access to confidential data relating to management policies that could give rise to potential conflict of interest with their Union membership. Clearly, the rationale under our previous rulings for the exclusion of *executive secretaries* or *division secretaries* would have little or no significance considering the lack of or very limited access to confidential information of these secretaries/clerks. It is not even farfetched that the job category may exist only on paper since they are all daily-paid workers. Quite understandably, petitioner had earlier expressed the view that the positions were just being "reclassified" as these employees actually discharged routine functions.

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[23] *Id.* at 68-79.

We thus hold that the secretaries/clerks, numbering about forty (40), are rank-and-file employees and not confidential employees.

With respect to the Sampling Inspectors/Inspectresses and the Gauge Machine Technician, there seems no dispute that they form part of the Quality Control Staff who, under the express terms of the CBA, fall under a distinct category. But we disagree with respondent's contention that the twenty (20) checkers are similarly confidential employees being "quality control staff" entrusted with the handling and custody of company properties and sensitive information.

Again, the job descriptions of these checkers assigned in the storeroom section of the Materials Department, finishing section of the Packaging Department, and the decorating and glass sections of the Production Department plainly showed that they perform routine and mechanical tasks preparatory to the delivery of the finished products.[24] While it may be argued that quality control extends to post-production phase — proper packaging of the finished products — no evidence was presented by the respondent to prove that these daily-paid checkers actually form part of the company's Quality Control Staff who as such "were exposed to sensitive, vital and confidential information about [company's] products" or "have knowledge of mixtures of the products, their defects, and even their formulas" which are considered 'trade secrets'. Such allegations of respondent must be supported by evidence.[25]

Consequently, we hold that the twenty (20) checkers may not be considered confidential employees under the category of Quality Control Staff who were expressly excluded from the CBA of the rank-and-file bargaining unit.

Confidential employees are defined as those who (1) assist or act in a confidential capacity, (2) to persons who formulate,

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[24] *Id.* at 64-67.

[25] See *Standard Chartered Bank Employees Union (SCBEU-NUBE) v. Standard Chartered Bank,* G.R. No. 161933, April 22, 2008, 552 SCRA 284, 293.

determine, and effectuate management policies in the field of labor relations. The two (2) criteria are cumulative, and both must be met if an employee is to be considered a confidential employee — that is, the confidential relationship must exist between the employee and his supervisor, and the supervisor must handle the prescribed responsibilities relating to *labor relations.* The exclusion from bargaining units of employees who, in the normal course of their duties, become aware of management policies relating to labor relations is a principal objective sought to be accomplished by the "confidential employee rule."[26] There is no showing in this case that the secretaries/clerks and checkers assisted or acted in a confidential capacity to managerial employees and obtained confidential information relating to labor relations policies. And even assuming that they had exposure to internal business operations of the company, respondent claimed, this is not *per se* ground for their exclusion in the bargaining unit of the daily-paid rank-and-file employees.[27]

Not being confidential employees, the secretaries/clerks and checkers are not disqualified from membership in the Union of respondent's rank-and-file employees. Petitioner argues that respondent's act of unilaterally stopping the deduction of union dues from these employees constitutes unfair labor practice as it "restrained" the workers' exercise of their right to self-organization, as provided in Article 248 (a) of the Labor Code.

Unfair labor practice refers to "acts that violate the workers' right to organize." The prohibited acts are related to the workers' right to self organization and to the observance of a CBA. For a charge of unfair labor practice to prosper, it must be shown that ABI was motivated by ill will, "bad faith, or fraud, or was oppressive to labor, or done in a manner contrary to morals, good customs, or public policy, and, of course, that social

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[26] *San Miguel Corp. Supervisors and Exempt Employees Union v. Laguesma*, G.R. No. 110399, August 15, 1997, 277 SCRA 370, 374-375, citing *Westinghouse Electric Corp. v. NLRB* (CA6) 398 F2d 669 (1968), *Ladish Co.*, 178 NLRB 90 (1969) and *B.F. Goodrich Co.*, 115 NLRB 722 (1956).

[27] *Id.* at 378.

humiliation, wounded feelings or grave anxiety resulted x x x"[28] from ABI's act in discontinuing the union dues deduction from those employees it believed were excluded by the CBA. Considering that the herein dispute arose from a simple disagreement in the interpretation of the CBA provision on excluded employees from the bargaining unit, respondent cannot be said to have committed unfair labor practice that restrained its employees in the exercise of their right to self-organization, nor have thereby demonstrated an anti-union stance.

WHEREFORE, the petition is *GRANTED*. The Decision dated November 22, 2002 and Resolution dated January 28, 2004 of the Court of Appeals in CA-G.R. SP No. 55578 are hereby *REVERSED and SET ASIDE*. The checkers and secretaries/clerks of respondent company are hereby declared rank-and-file employees who are eligible to join the Union of the rank-and-file employees.

No costs.

SO ORDERED.

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

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[28] *Union of Filipro Employees-Drug, Food and Allied Industries Unions-Kilusang Mayo Uno v. Nestlé Philippines, Incorporated,* G.R. Nos. 158930-31 & 158944-45, March 3, 2008, 547 SCRA 323, 335, citing *San Miguel Corporation v. Del Rosario,* G.R. Nos. 168194 & 168603, December 13, 2005, 477 SCRA 604, 619.

[*] Designated additional member per Special Order No. 843 dated May 17, 2010.

THIRD DIVISION

[G.R. No. 165321. August 3, 2010]

RICARDO P. TORING, *petitioner, vs.* **TERESITA M. TORING and REPUBLIC OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; VOID MARRIAGES; PSYCHOLOGICAL INCAPACITY; CHARACTERISTICS.— We find the petition unmeritorious, as the CA committed no reversible error when it set aside the RTC's decision for lack of legal and factual basis. In the leading case of *Santos v. Court of Appeals, et al.*, we held that psychological incapacity under Article 36 of the Family Code must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability, to be sufficient basis to annul a marriage. The psychological incapacity should refer to "no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage."

2. ID.; ID.; ID.; ID.; THE INTENT OF THE LAW IS TO CONFINE THE APPLICATION OF ARTICLE 36 OF THE FAMILY CODE TO THE MOST SERIOUS CASES OF PERSONALITY DISORDERS THAT RESULT IN THE UTTER INSENSITIVITY OR INABILITY OF THE AFFLICTED PARTY TO GIVE MEANING AND SIGNIFICANCE TO THE MARRIAGE HE OR SHE CONTRACTED.— We further expounded on Article 36 of the Family Code in *Molina* and laid down definitive guidelines in the interpretation and application of this article. These guidelines incorporate the basic requirements of gravity, juridical antecedence and incurability established in the *Santos case*. x x x Subsequent jurisprudence on psychological incapacity applied these basic guidelines to varying factual situations, thus confirming the continuing doctrinal validity of *Santos*. In so far as the present factual situation is concerned, what should not be lost in reading and applying our established rulings is the intent of the law to confine the application of Article 36

of the Family Code to the most serious cases of personality disorders; these are the disorders that result in the utter insensitivity or inability of the afflicted party to give meaning and significance to the marriage he or she contracted. Furthermore, the psychological illness and its root cause must have been there from the inception of the marriage. From these requirements arise the concept that Article 36 of the Family Code does not really dissolve a marriage; it simply recognizes that *there never was any marriage in the first place* because the affliction – already then existing – was so grave and permanent as to deprive the afflicted party of awareness of the duties and responsibilities of the matrimonial bond he or she was to assume or had assumed. In the present case and guided by these standards, we find the totality of the petitioner's evidence to be insufficient to prove that Teresita was psychologically incapacitated to perform her duties as a wife. As already mentioned, the evidence presented consisted of the testimonies of Ricardo and Dr. Albaran, and the latter's psychological evaluation of Ricardo and Richardson from where she derived a psychological evaluation of Teresita.

3. ID.; ID.; ID.; ID.; THE PSYCHOLOGICAL EVALUATION AND TESTIMONY WHICH CONSISTS MERELY OF NARRATION OF STATEMENTS OF THE HUSBAND AND SON IS INSUFFICIENT TO PROVE THAT THE WIFE IS SUFFERING FROM NARCISSISTIC PERSONALITY DISORDER.— Dr. Albaran concluded in her psychological evaluation that Teresita suffers from Narcissistic Personality Disorder that rendered her psychologically incapacitated to assume essential marital obligations. To support her findings and conclusion, she banked on the statements told to her by Ricardo and Richardson, which she narrated in her evaluation. Apparently relying on the same basis, Dr. Albaran added that Teresita's disorder manifested during her early adulthood and is grave and incurable. To say the least, we are greatly disturbed by the kind of testimony and evaluation that, in this case, became the basis for the conclusion that no marriage really took place because of the psychological incapacity of one of the parties at the time of marriage. We are in no way convinced that a mere *narration of the statements of Ricardo and Richardson*, coupled with the results of the psychological tests *administered only on Ricardo, without more*, already constitutes sufficient

basis for the conclusion that Teresita suffered from Narcissistic Personality Disorder. This Court has long been negatively critical in considering psychological evaluations, presented in evidence, derived solely from one-sided sources, particularly from the spouse seeking the nullity of the marriage.

4. ID.; ID.; ID.; ID.; THE CONCLUSIONS AND GENERALIZATIONS ABOUT THE WIFE'S PSYCHOLOGICAL CONDITION, BASED SOLELY ON INFORMATION FED BY THE HUSBAND ARE NOT ANY DIFFERENT IN KIND FROM ADMITTING HEARSAY EVIDENCE AS PROOF OF THE TRUTHFULNESS OF THE CONTENT OF SUCH EVIDENCE.— In *So v. Valera*, the Court considered the psychologist's testimony and conclusions to be insufficiently in-depth and comprehensive to warrant the finding of respondent's psychological incapacity because the facts, on which the conclusions were based, were all derived from the petitioner's statements whose bias in favor of his cause cannot be discounted. In another case, *Padilla-Rumbaua v. Rumbaua*, the Court declared that while the various tests administered on the petitioner-wife could have been used as a fair gauge to assess her own psychological condition, this same statement could not be made with respect to the respondent-husband's psychological condition. To our mind, conclusions and generalizations about Teresita's psychological condition, based *solely* on information fed by Ricardo, are not any different in kind from admitting hearsay evidence as proof of the truthfulness of the content of such evidence.

5. ID.; ID.; ID.; ID.; THE REQUIREMENTS FOR NULLITY OUTLINED IN *SANTOS* AND *MOLINA* NEED NOT NECESSARILY COME FROM THE ALLEGED INCAPACITATED SPOUSE; SUCH EVIDENCE CAN COME FROM PERSONS INTIMATELY RELATED TO THE SPOUSES WHO COULD TESTIFY ON THE ALLEGEDLY INCAPACITATED SPOUSE'S CONDITION AT OR ABOUT THE TIME OF MARRIAGE, OR TO SUBSEQUENT OCCURING EVENTS THAT TRACE THEIR ROOTS TO THE INCAPACITY ALREADY PRESENT AT THE TIME OF MARRIAGE.— We have recognized that the law does not require that the allegedly incapacitated spouse be personally examined by a physician or by a psychologist as a condition *sine qua non* for the declaration of nullity of marriage under

Article 36 of the Family Code. This recognition, however, does not signify that the evidence, we shall favorably appreciate, should be any less than the evidence that an Article 36 case, by its nature, requires. Our recognition simply means that the requirements for nullity outlined in *Santos* and *Molina* need not necessarily come from the allegedly incapacitated spouse. In other words, it is still essential – although from sources other than the respondent spouse – to show his or her personality profile, or its approximation, at the time of marriage; the root cause of the inability to appreciate the essential obligations of marriage; and the gravity, permanence and incurability of the condition. Other than from the spouses, such evidence can come from persons intimately related to them, such as relatives, close friends or even family doctors or lawyers who could testify on the allegedly incapacitated spouse's condition at or about the time of marriage, or to subsequent occurring events that trace their roots to the incapacity already present at the time of marriage.

6. ID.; ID.; ID.; ID.; THE PSYCHOLOGIST'S EVALUATION NEVER EXPLAINED HOW THE RECITED INCIDENTS, MADE BY THE SON WHO WAS NOT EVEN BORN AT THE TIME OF THE SPOUSES' MARRIAGE SHOWED A DEBILITATING PSYCHOLOGICAL INCAPACITY ALREADY EXISTING AT THAT TIME.— The only other party outside of the spouses who was ever asked to give statements for purposes of Teresita's psychological evaluation was Richardson, the spouses' eldest son who would not have been very reliable as a witness in an Article 36 case because he could not have been there when the spouses were married and could not have been expected to know what was happening between his parents until long after his birth. We confirm the validity of this observation from a reading of the summary of Richardson's interview with the pyschologist: Richardson's statement occupied a mere one paragraph (comprising eleven sentences) in the psychological evaluation and merely recited isolated instances of his parents fighting over the foreclosure of their house, his father's alleged womanizing, and their differences in religion (Ricardo is a Catholic, while Teresita is a Mormon). We find nothing unusual in these recited marital incidents to indicate that Teresita suffered from some psychological disorder as far back as the time of her marriage to Ricardo, nor do we find these fights to be indicative of

problems traceable to any basic psychological disorder existing at the time of marriage. For one, these points of dispute are not uncommon in a marriage and relate essentially to the usual roots of marital problems — finances, fidelity and religion. The psychologist, too, never delved into the relationship between mother and son except to observe their estranged relationship due to a previous argument — a money problem involving Ricardo's financial remittances to the family. To state the obvious, the psychologist's evaluation never explained how the recited incidents, made by one who was not even born at the time of the spouses' marriage, showed a debilitating psychological incapacity already existing at that time.

7. ID.; ID.; ID.; ID.; THE PSYCHOLOGICAL EVALUATION FAILED TO FULLY EXPLAIN THE DETAILS OF THE WIFE'S ALLEGED NARCISSISTIC PERSONALITY DISORDER.— Of more serious consequence, fatal to Ricardo's cause, is the failure of Dr. Albaran's psychological evaluation to fully explain the details — *i.e.*, the what, how, when, where and since when — of Teresita's alleged Narcissistic Personality Disorder. It seems to us that, with hardly any supporting evidence to fall back on, Dr. Albaran simply stated out of the blue that Teresita's personality disorder manifested itself in early adulthood, presuming thereby that the incapacity should have been there when the marriage was celebrated. Dr. Albaran never explained, too, the incapacitating nature of Teresita's alleged personality disorder, and how it related to the essential marital obligations that she failed to assume. Neither did the good doctor adequately explain in her psychological evaluation how grave and incurable was Teresita's psychological disorder. Dr. Albaran's testimony at the trial did not improve the evidentiary situation for Ricardo, as it still failed to provide the required insights that would have remedied the evidentiary gaps in her written psychological evaluation. In fact, Dr. Albaran's cross-examination only made the evidentiary situation worse when she admitted that she had difficulty pinpointing the root cause of Teresita's personality disorder, due to the limited information she gathered from Ricardo and Richardson regarding Teresita's personal and family history. To directly quote from the records, Dr. Albaran confessed this limitation when she said that "*[t]he only data that I have is that, the respondent seem [sic] to have grown*

from a tumultuous family and ***this could be perhaps*** *the [sic] contributory to the development of the personality disorder."* Dr. Albaran's obvious uncertainty in her assessment only proves our point that a complete personality profile of the spouse, alleged to be psychologically incapacitated, could not be determined from meager information coming only from a biased source.

8. ID.; ID.; ID.; ID.; THE WIFE'S ALLEGED INFIDELITY AND IRRESPONSIBILITY IN MANAGING THE FAMILY'S FINANCES DOES NOT RISE TO THE LEVEL OF PSYCHOLOGICAL INCAPACITY REQUIRED UNDER ARTICLE 36 OF THE FAMILY CODE.— Ricardo testified in court that Teresita was a squanderer and an adulteress. We do not, however, find Ricardo's characterizations of his wife sufficient to constitute psychological incapacity under Article 36 of the Family Code. Article 36 contemplates downright incapacity or inability to take cognizance of and to assume basic marital obligations. Mere "difficulty," "refusal," or "neglect" in the performance of marital obligations or "ill will" on the part of the spouse is different from "incapacity" rooted on some debilitating psychological condition or illness. Ricardo's testimony merely established that Teresita was irresponsible in managing the family's finances by not paying their rent, utility bills and other financial obligations. Teresita's spendthrift attitude, according to Ricardo, even resulted in the loss of the house and lot intended to be their family residence. This kind of irresponsibility, however, does not rise to the level of a psychological incapacity required under Article 36 of the Family Code. At most, Teresita's mismanagement of the family's finances merely constituted difficulty, refusal or neglect, *during the marriage*, in the handling of funds intended for the family's financial support. Teresita's alleged infidelity, even if true, likewise does not constitute psychological incapacity under Article 36 of the Family Code. In order for sexual infidelity to constitute as psychological incapacity, the respondent's unfaithfulness must be established as a manifestation of a disordered personality, completely preventing the respondent from discharging the essential obligations of the marital state; there must be proof of a natal or supervening disabling factor that effectively incapacitated her from complying with the obligation to be faithful to her spouse.

9. ID.; ID.; ID.; ID.; THE HUSBAND FAILED TO PROVE THAT HIS WIFE'S ALLEGED CHARACTER TRAITS ALREADY EXISTED AT THE INCEPTION OF THEIR MARRIAGE.— Ricardo utterly failed in his testimony to prove that Teresita suffered from a disordered personality of this kind. Even Ricardo's added testimony, relating to rumors of Teresita's dates with other men and her pregnancy by another man, would not fill in the deficiencies we have observed, given the absence of an adverse integral element and link to Teresita's allegedly disordered personality. Moreover, Ricardo failed to prove that Teresita's alleged character traits already existed at the inception of their marriage. Article 36 of the Family Code requires that the psychological incapacity must exist at the time of the celebration of the marriage, even if such incapacity becomes manifest only after its solemnization. In the absence of this element, a marriage cannot be annulled under Article 36.

10. ID.; ID.; ID.; ID.; ROOT CAUSE OF THE PSYCHOLOGICAL INCAPACITY NEEDS TO BE ALLEGED IN A PETITION FOR ANNULMENT UNDER ARTICLE 36 OF THE FAMILY CODE.— Citing *Barcelona*, Ricardo defended the RTC decision, alleging that the root cause in a petition for annulment under Article 36 of the Family Code is no longer necessary. We find this argument completely at variance with Ricardo's main argument against the assailed CA decision — *i.e.*, that the RTC, in its decision, discussed thoroughly the root cause of Teresita's psychological incapacity as Narcissistic Personality Disorder. These conflicting positions, notwithstanding, we see the need to address this issue to further clarify our statement in *Barcelona*, which Ricardo misquoted and misinterpreted to support his present petition that "*since the new Rules do not require the petition to allege expert opinion on the psychological incapacity, it follows that there is also no need to allege in the petition the root cause of the psychological incapacity*." In *Barcelona*, the petitioner assailed the bid for annulment for its failure to state the "root cause" of the respondent's alleged psychological incapacity. The Court resolved this issue, ruling that the petition sufficiently stated a cause of action because the petitioner — instead of stating a specific root cause — clearly described the **physical manifestations indicative of the psychological incapacity**.

This, the Court found to be sufficiently compliant with the first requirement in the *Molina case* — that the "root cause" of the psychological incapacity be alleged in an Article 36 petition. Thus, contrary to Ricardo's position, *Barcelona* does not do away with the "root cause" requirement. The ruling simply means that the statement of the root cause does not need to be in medical terms or be technical in nature, as the root causes of many psychological disorders are still unknown to science. It is enough to merely allege the physical manifestations constituting the root cause of the psychological incapacity. x x x As we explained in *Barcelona*, the requirement alleging the root cause in a petition for annulment under Article 36 of the Family Code was not dispensed with by the adoption of the Rules. What the Rules really eliminated was the need for an *expert opinion* to prove the root cause of the psychological incapacity. The Court further held that the Rules, being procedural in nature, apply only to actions pending and unresolved at the time of their adoption.

11. ID.; ID.; ID.; ID.; THE FAULT OR DEFICIENCY ESTABLISHED IS NOT ROOTED ON PSYCHOLOGICAL ILLNESS THAT ARTICLE 36 OF THE FAMILY CODE ADDRESSES.— Ricardo failed to discharge the burden of proof to show that Teresita suffered from psychological incapacity; thus, his petition for annulment of marriage must fail. Ricardo merely established that Teresita had been remiss in her duties as a wife for being irresponsible in taking care of their family's finances – a fault or deficiency that does not amount to the psychological incapacity that Article 36 of the Family Code requires. We reiterate that irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility, and the like, do not *by themselves* warrant a finding of psychological incapacity, as the same may only be due to a person's difficulty, refusal or neglect to undertake the obligations of marriage that is not rooted in some psychological illness that Article 36 of the Family Code addresses.

APPEARANCES OF COUNSEL

Dominador I. Ferrer, Jr. and Associates for petitioner.
The Solicitor General for pubic respondent.

D E C I S I O N

BRION, *J.*:

We resolve the appeal filed by petitioner Ricardo P. Toring from the May 31, 2004 decision[1] of the Court of Appeals (*CA*) in CA-G.R. CV No. 71882. The CA reversed the August 10, 2001 judgment of the Regional Trial Court (*RTC*), Branch 106 of Quezon City in Civil Case No. Q-99-36662,[2] nullifying Ricardo's marriage with respondent Teresita M. Toring on the ground of psychological incapacity.

THE FACTS

Ricardo was introduced to Teresita in 1978 at his aunt's house in Cebu. Teresita was then his cousin's teacher in Hawaiian dance and was conducting lessons at his aunt's house. Despite their slight difference in age (of five years), the younger Ricardo found the dance teacher attractive and fell in love with her. He pursued Teresita and they became sweethearts after three months of courtship. They eloped soon after, hastened by the bid of another girlfriend, already pregnant, to get Ricardo to marry her.

Ricardo and Teresita were married on September 4, 1978 before Hon. Remigio Zari of the City Court of Quezon City. They begot three children: Richardson, Rachel Anne, and Ric Jayson.

On February 1, 1999, more than twenty years after their wedding, Ricardo filed a petition for annulment before the RTC. He claimed that Teresita was psychologically incapacitated to comply with the essential obligations of marriage prior to, at the time of, and subsequent to the celebration of their marriage. He asked the court to declare his marriage to Teresita null and void.

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[1] *Rollo*, pp. 18-29.

[2] RTC *rollo*, pp. 1-6.

At the trial, Ricardo offered in evidence their marriage contract; the psychological evaluation and signature of his expert witness, psychiatrist Dr. Cecilia R. Albaran, and his and Dr. Albaran's respective testimonies. Teresita did not file any answer or opposition to the petition, nor did she testify to refute the allegations against her.[3]

Ricardo alleged in his petition and in his testimony at the trial that Teresita was an adulteress and a squanderer. He was an overseas seaman, and he regularly sent money to his wife to cover the family's living expenses and their children's tuition. Teresita, however, was not adept in managing the funds he sent and their finances. Many times, Ricardo would come home and be welcomed by debts incurred by his wife; he had to settle these to avoid embarrassment.

Aside from neglect in paying debts she incurred from other people, Teresita likewise failed to remit amounts she collected as sales agent of a plasticware and cosmetics company. She left the family's utility bills and their children's tuition fees unpaid. She also missed paying the rent and the amortization for the house that Ricardo acquired for the family, so their children had to live in a small rented room and eventually had to be taken in by Ricardo's parents. When confronted by Ricardo, Teresita would simply offer the excuse that she spent the funds Ricardo sent to buy things for the house and for their children.

Ricardo likewise accused Teresita of infidelity and suspected that she was pregnant with another man's child. During one of his visits to the country, he noticed that Teresita's stomach was slightly bigger. He tried to convince her to have a medical examination but she refused. Her miscarriage five months into her pregnancy confirmed his worst suspicions. Ricardo alleged that the child could not have been his, as his three instances of sexual contact with Teresita were characterized by "withdrawals"; other than these, no other sexual contacts with his wife transpired, as he transferred and lived with his relatives after a month of living with Teresita in Cebu. Ricardo reported, too, of rumors

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[3] *Rollo*, p. 19.

that his wife represented herself to others as single, and went out on dates with other men when he was not around.

Ricardo opined that his wife was a very extravagant, materialistic, controlling and demanding person, who mostly had her way in everything; had a taste for the nightlife and was very averse to the duties of a housewife; was stubborn and independent, also most unsupportive, critical and uncooperative; was unresponsive to his hard work and sacrifices for their family; and was most painfully unmindful of him.[4] He believed that their marriage had broken down beyond repair and that they both have lost their mutual trust and love for one another.[5]

Dr. Cecilia R. Albaran testified that a major factor that contributed to the demise of the marriage was Teresita's Narcissistic Personality Disorder that rendered her psychologically incapacitated to fulfill her essential marital obligations. To quote Dr. Albaran:

> Teresita, the respondent[,] has [*sic*] shown to manifest the following pervasive pattern of behaviors: a sense of entitlement as she expected favorable treatment and automatic compliance to her wishes, being interpersonally exploitative as on several occasions she took advantage of him to achieve her own ends, lack of empathy as she was unwilling to recognize her partners [*sic*] feelings and needs[,] taking into consideration her own feelings and needs only, her haughty and arrogant behavior and attitude and her proneness to blame others for her failures and shortcomings. These patterns of behavior speaks [*sic*] of a Narcissistic Personality Disorder, which started to manifest in early adulthood. The disorder is considered to be grave and incurable based on the fact that individuals do not recognize the symptoms as it is ego syntonic and they feel there is nothing wrong in them. Because of that[,] they remain unmotivated for treatment and impervious to recovery.[6]

She based her diagnosis on the information she gathered from her psychological evaluation on Ricardo and Richardson (Ricardo

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[4] RTC *rollo*, p. 4.

[5] *Id.* at 5.

[6] *Id.* at 51.

and Teresita's eldest son). She admitted, though, that she did not personally observe and examine Teresita; she sent Teresita a personally-delivered notice for the conduct of a psychiatric evaluation, but the notice remained unanswered.

In opposing the petition for annulment, the Office of the Solicitor General (*OSG*) contended that there was no basis to declare Teresita psychologically incapacitated. It asserted that the psychological evaluation conducted on Ricardo (and his son Richardson) only revealed a vague and general conclusion on these parties' personality traits but not on Teresita's psychological makeup. The OSG also argued that the evidence adduced did not clinically identify and sufficiently prove the medical cause of the alleged psychological incapacity. Neither did the evidence indicate that the alleged psychological incapacity existed prior to or at the time of marriage, nor that the incapacity was grave and incurable.

The RTC agreed with Ricardo, and annulled his marriage to Teresita. In short, the RTC believed Dr. Albaran's psychological evaluation and testimony and, on the totality of Ricardo's evidence, found Teresita to be psychologically incapacitated to assume the essential obligations of marriage. The OSG appealed the decision to the CA.

The CA reversed the RTC decision and held that the trial court's findings did not satisfy the rules and guidelines set by this Court in *Republic v. Court of Appeals and Molina*.[7] The RTC failed to specifically point out the root illness or defect that caused Teresita's psychological incapacity, and likewise failed to show that the incapacity already existed at the time of celebration of marriage.

The CA found that the conclusions from Dr. Albaran's psychological evaluation do not appear to have been drawn from well-rounded and fair sources, and dwelt mostly on hearsay statements and rumors. Likewise, the CA found that Ricardo's allegations on Teresita's overspending and infidelity do not

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[7] 335 Phil. 664 (1997).

constitute adequate grounds for declaring the marriage null and void under Article 36 of the Family Code. These allegations, even if true, could only effectively serve as grounds for legal separation or a criminal charge for adultery.

THE PETITION AND THE PARTIES' ARGUMENTS

Ricardo faults the CA for disregarding the factual findings of the trial court, particularly the expert testimony of Dr. Albaran, and submits that the trial court — in declaring the nullity of the marriage — fully complied with *Molina*.

In its Comment,[8] the OSG argued that the CA correctly reversed the RTC's decision, particularly in its conclusion that Ricardo failed to comply with this Court's guidelines for the proper interpretation and application of Article 36 of the Family Code. Reiterating its earlier arguments below, the OSG asserts that the evidence adduced before the trial court failed to show the gravity, juridical antecedence, or incurability of the psychological incapacity of Teresita, and failed as well to identify and discuss its root cause. The psychiatrist, likewise, failed to show that Teresita was completely unable to discharge her marital obligations due to her alleged Narcissistic Personality Disorder.

Ricardo's Reply[9] reiterated that the RTC decision thoroughly discussed the root cause of Teresita's psychological incapacity and identified it as Narcissistic Personality Disorder. He claimed that sufficient proof had been adduced by the psychiatrist whose expertise on the subject cannot be doubted. Interestingly, Ricardo further argued that alleging the root cause in a petition for annulment under Article 36 of the Family Code is no longer necessary, citing *Barcelona v. Court of Appeals*.[10]

These positions were collated and reiterated in the memoranda the parties filed.

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[8] *Rollo,* pp. 43-52.

[9] *Id.* at 58-62.

[10] G.R. No. 130087, September 24, 2003, 412 SCRA 41, 49-50.

THE COURT'S RULING

We find the petition unmeritorious, as the CA committed no reversible error when it set aside the RTC's decision for lack of legal and factual basis.

In the leading case of *Santos v. Court of Appeals, et al.*,[11] we held that psychological incapacity under Article 36 of the Family Code must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability, to be sufficient basis to annul a marriage. The psychological incapacity should refer to "no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage."[12]

We further expounded on Article 36 of the Family Code in *Molina* and laid down definitive guidelines in the interpretation and application of this article. These guidelines incorporate the basic requirements of gravity, juridical antecedence and incurability established in the *Santos case*, as follows:

(1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it "as the foundation of the nation." It decrees marriage as legally "inviolable," thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state.

The Family Code echoes this constitutional edict on marriage and the family and emphasizes their permanence, inviolability and solidarity.

(2) The root cause of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint,

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[11] 310 Phil. 21 (1995).

[12] *Id.* at 40.

(c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological — not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis* (*Salita v. Magtolis*, 233 SCRA 100, 108), nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.

(3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. The evidence must show that the illness was existing when the parties exchanged their "I do's." The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

(4) Such incapacity must also be shown to be medically or clinically permanent or incurable. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. Hence, a pediatrician may be effective in diagnosing illnesses of children and prescribing medicine to cure them but may not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage.

(5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characteriological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts.[13]

Subsequent jurisprudence on psychological incapacity applied these basic guidelines to varying factual situations, thus confirming the continuing doctrinal validity of *Santos*. In so far as the present factual situation is concerned, what should not be lost in reading and applying our established rulings is the intent of the law to confine the application of Article 36 of the Family Code to the most serious cases of personality disorders; these are the disorders that result in the utter insensitivity or inability of the afflicted party to give meaning and significance to the marriage he or she contracted. Furthermore, the psychological illness and its root cause must have been there from the inception of the marriage. From these requirements arise the concept that Article 36 of the Family Code does not really dissolve a marriage; it simply recognizes that *there never was any marriage in the first place* because the affliction — already then existing — was so grave and permanent as to deprive the afflicted party of awareness of the duties and responsibilities of the matrimonial bond he or she was to assume or had assumed.[14]

In the present case and guided by these standards, we find the totality of the petitioner's evidence to be insufficient to prove that Teresita was psychologically incapacitated to perform her duties as a wife. As already mentioned, the evidence presented consisted of the testimonies of Ricardo and Dr. Albaran, and

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[13] *Republic v. Court of Appeals and Molina*, *supra* note 7, at 676-678.

[14] See *So v. Valera*, G.R. No. 150677, June 5, 2009, 588 SCRA 319; *Padilla-Rumbaua v. Rumbaua*, G.R. No. 166738, August 14, 2009, 596 SCRA 157.

the latter's psychological evaluation of Ricardo and Richardson from where she derived a psychological evaluation of Teresita.

a. Dr. Albaran's psychological evaluation and testimony

Dr. Albaran concluded in her psychological evaluation that Teresita suffers from Narcissistic Personality Disorder that rendered her psychologically incapacitated to assume essential marital obligations. To support her findings and conclusion, she banked on the statements told to her by Ricardo and Richardson, which she narrated in her evaluation. Apparently relying on the same basis, Dr. Albaran added that Teresita's disorder manifested during her early adulthood and is grave and incurable.

To say the least, we are greatly disturbed by the kind of testimony and evaluation that, in this case, became the basis for the conclusion that no marriage really took place because of the psychological incapacity of one of the parties at the time of marriage.

We are in no way convinced that a mere *narration of the statements of Ricardo and Richardson*, coupled with the results of the psychological tests *administered only on Ricardo, without more*, already constitutes sufficient basis for the conclusion that Teresita suffered from Narcissistic Personality Disorder. This Court has long been negatively critical in considering psychological evaluations, presented in evidence, derived solely from one-sided sources, particularly from the spouse seeking the nullity of the marriage.

In *So v. Valera*,[15] the Court considered the psychologist's testimony and conclusions to be insufficiently in-depth and comprehensive to warrant the finding of respondent's psychological incapacity because the facts, on which the conclusions were based, were all derived from the petitioner's statements whose bias in favor of his cause cannot be discounted. In another case, *Padilla-Rumbaua v. Rumbaua*,[16] the Court

[15] *Supra* note 14.

[16] *Supra* note 14.

declared that while the various tests administered on the petitioner-wife could have been used as a fair gauge to assess her own psychological condition, this same statement could not be made with respect to the respondent-husband's psychological condition. To our mind, conclusions and generalizations about Teresita's psychological condition, based *solely* on information fed by Ricardo, are not any different in kind from admitting hearsay evidence as proof of the truthfulness of the content of such evidence.[17]

To be sure, we have recognized that the law does not require that the allegedly incapacitated spouse be personally examined by a physician or by a psychologist as a condition *sine qua non* for the declaration of nullity of marriage under Article 36 of the Family Code.[18] This recognition, however, does not signify that the evidence, we shall favorably appreciate, should be any less than the evidence that an Article 36 case, by its nature, requires.

Our recognition simply means that the requirements for nullity outlined in *Santos* and *Molina* need not necessarily come from the allegedly incapacitated spouse. In other words, it is still essential — although from sources other than the respondent spouse — to show his or her personality profile, or its approximation, at the time of marriage; the root cause of the inability to appreciate the essential obligations of marriage; and the gravity, permanence and incurability of the condition.

Other than from the spouses, such evidence can come from persons intimately related to them, such as relatives, close friends or even family doctors or lawyers who could testify on the allegedly incapacitated spouse's condition at or about the time of marriage, or to subsequent occurring events that trace their roots to the incapacity already present at the time of marriage.

In the present case, the only other party outside of the spouses who was ever asked to give statements for purposes of Teresita's

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[17] *Ibid.*

[18] *Marcos v. Marcos,* G.R. No. 136490, October 19, 2000, 343 SCRA 755.

psychological evaluation was Richardson, the spouses' eldest son who would not have been very reliable as a witness in an Article 36 case because he could not have been there when the spouses were married and could not have been expected to know what was happening between his parents until long after his birth.

We confirm the validity of this observation from a reading of the summary of Richardson's interview with the pyschologist: Richardson's statement occupied a mere one paragraph (comprising eleven sentences) in the psychological evaluation and merely recited isolated instances of his parents fighting over the foreclosure of their house, his father's alleged womanizing, and their differences in religion (Ricardo is a Catholic, while Teresita is a Mormon).[19]

We find nothing unusual in these recited marital incidents to indicate that Teresita suffered from some psychological disorder as far back as the time of her marriage to Ricardo, nor do we find these fights to be indicative of problems traceable to any basic psychological disorder existing at the time of marriage. For one, these points of dispute are not uncommon in a marriage and relate essentially to the usual roots of marital problems — finances, fidelity and religion. The psychologist, too, never delved into the relationship between mother and son except to observe their estranged relationship due to a previous argument — a money problem involving Ricardo's financial remittances to the family. To state the obvious, the psychologist's evaluation never explained how the recited incidents, made by one who was not even born at the time of the spouses' marriage, showed a debilitating psychological incapacity already existing at that time.

Of more serious consequence, fatal to Ricardo's cause, is the failure of Dr. Albaran's psychological evaluation to fully explain the details — *i.e.,* the what, how, when, where and since when — of Teresita's alleged Narcissistic Personality Disorder. It seems to us that, with hardly any supporting evidence to fall back on, Dr. Albaran simply stated out of the blue that

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[19] RTC *rollo,* p. 50.

Teresita's personality disorder manifested itself in early adulthood, presuming thereby that the incapacity should have been there when the marriage was celebrated. Dr. Albaran never explained, too, the incapacitating nature of Teresita's alleged personality disorder, and how it related to the essential marital obligations that she failed to assume. Neither did the good doctor adequately explain in her psychological evaluation how grave and incurable was Teresita's psychological disorder.

Dr. Albaran's testimony at the trial did not improve the evidentiary situation for Ricardo, as it still failed to provide the required insights that would have remedied the evidentiary gaps in her written psychological evaluation. In fact, Dr. Albaran's cross-examination only made the evidentiary situation worse when she admitted that she had difficulty pinpointing the root cause of Teresita's personality disorder, due to the limited information she gathered from Ricardo and Richardson regarding Teresita's personal and family history. To directly quote from the records, Dr. Albaran confessed this limitation when she said that *"[t]he only data that I have is that, the respondent seem [sic] to have grown from a tumultuous family and* ***this could be perhaps*** *the [sic] contributory to the development of the personality disorder."*[20] Dr. Albaran's obvious uncertainty in her assessment only proves our point that a complete personality profile of the spouse, alleged to be psychologically incapacitated, could not be determined from meager information coming only from a biased source.

b. **Ricardo's testimony**

Ricardo testified in court that Teresita was a squanderer and an adulteress. We do not, however, find Ricardo's characterizations of his wife sufficient to constitute psychological incapacity under Article 36 of the Family Code. Article 36 contemplates downright incapacity or inability to take cognizance of and to assume basic marital obligations. Mere "difficulty," "refusal," or "neglect" in the performance of marital obligations

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[20] *Id.* at 157.

or "ill will" on the part of the spouse is different from "incapacity" rooted on some debilitating psychological condition or illness.[21]

Ricardo's testimony merely established that Teresita was irresponsible in managing the family's finances by not paying their rent, utility bills and other financial obligations. Teresita's spendthrift attitude, according to Ricardo, even resulted in the loss of the house and lot intended to be their family residence. This kind of irresponsibility, however, does not rise to the level of a psychological incapacity required under Article 36 of the Family Code. At most, Teresita's mismanagement of the family's finances merely constituted difficulty, refusal or neglect, *during the marriage*, in the handling of funds intended for the family's financial support.

Teresita's alleged infidelity, even if true, likewise does not constitute psychological incapacity under Article 36 of the Family Code. In order for sexual infidelity to constitute as psychological incapacity, the respondent's unfaithfulness must be established as a manifestation of a disordered personality, completely preventing the respondent from discharging the essential obligations of the marital state;[22] there must be proof of a natal or supervening disabling factor that effectively incapacitated her from complying with the obligation to be faithful to her spouse.[23]

In our view, Ricardo utterly failed in his testimony to prove that Teresita suffered from a disordered personality of this kind. Even Ricardo's added testimony, relating to rumors of Teresita's dates with other men and her pregnancy by another man, would not fill in the deficiencies we have observed, given the absence of an adverse integral element and link to Teresita's allegedly disordered personality.

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[21] *Navales v. Navales*, G.R. No. 167523, June 27, 2008, 556 SCRA 272.

[22] *Santos v. Santos, supra* note 11; *Hernandez v. Court of Appeals*, 377 Phil. 919, 931-932 (1999); *Dedel v. Court of Appeals*, 466 Phil. 226, 233-232 (2004).

[23] *Bier v. Bier*, G.R. No. 166562, March 31, 2009.

Moreover, Ricardo failed to prove that Teresita's alleged character traits already existed at the inception of their marriage. Article 36 of the Family Code requires that the psychological incapacity must exist at the time of the celebration of the marriage, even if such incapacity becomes manifest only after its solemnization.[24] In the absence of this element, a marriage cannot be annulled under Article 36.

Root cause of the psychological incapacity needs to be alleged in a petition for annulment under Article 36 of the Family Code

Citing *Barcelona*,[25] Ricardo defended the RTC decision, alleging that the root cause in a petition for annulment under Article 36 of the Family Code is no longer necessary. We find this argument completely at variance with Ricardo's main argument against the assailed CA decision — *i.e.*, that the RTC, in its decision, discussed thoroughly the root cause of Teresita's psychological incapacity as Narcissistic Personality Disorder. These conflicting positions, notwithstanding, we see the need to address this issue to further clarify our statement in *Barcelona*, which Ricardo misquoted and misinterpreted to support his present petition that "*since the new Rules do not require the petition to allege expert opinion on the psychological incapacity, it follows that there is also no need to allege in the petition the root cause of the psychological incapacity*."[26]

In *Barcelona*, the petitioner assailed the bid for annulment for its failure to state the "root cause" of the respondent's alleged psychological incapacity. The Court resolved this issue, ruling that the petition sufficiently stated a cause of action because the petitioner — instead of stating a specific root cause — clearly described the **physical manifestations indicative of the psychological incapacity**. This, the Court found to be sufficiently compliant with the first requirement in the *Molina*

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[24] *Santos v. Court of Appeals, et al.*, *supra* note 11.

[25] *Supra* note 10.

[26] *Id.* at 50.

case — that the "root cause" of the psychological incapacity be alleged in an Article 36 petition.

Thus, contrary to Ricardo's position, *Barcelona* does not do away with the "root cause" requirement. The ruling simply means that the statement of the root cause does not need to be in medical terms or be technical in nature, as the root causes of many psychological disorders are still unknown to science. It is enough to merely allege the physical manifestations constituting the root cause of the psychological incapacity. Section 2, paragraph (d) of the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages (*Rules*)[27] in fact provides:

> SEC. 2. *Petition for declaration of absolute nullity of void marriages.*
>
> x x x x x x x x x
>
> (d) *What to allege.*— A petition under Article 36 of the Family Code shall specially allege the complete facts showing that either or both parties were psychologically incapacitated from complying with the essential marital obligations of marriages at the time of the celebration of marriage even if such incapacity becomes manifest only after its celebration.

The complete facts should allege the *physical manifestations*, if any, as are indicative of psychological incapacity at the time of the celebration of the marriage but expert opinion need not be alleged.

As we explained in *Barcelona*, the requirement alleging the root cause in a petition for annulment under Article 36 of the Family Code was not dispensed with by the adoption of the Rules. What the Rules really eliminated was the need for an *expert opinion* to prove the root cause of the psychological incapacity. The Court further held that the Rules, being procedural in nature, apply only to actions pending and unresolved at the time of their adoption.

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[27] Effective March 15, 2003.

To sum up, Ricardo failed to discharge the burden of proof to show that Teresita suffered from psychological incapacity; thus, his petition for annulment of marriage must fail. Ricardo merely established that Teresita had been remiss in her duties as a wife for being irresponsible in taking care of their family's finances — a fault or deficiency that does not amount to the psychological incapacity that Article 36 of the Family Code requires. We reiterate that irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility, and the like, do not *by themselves* warrant a finding of psychological incapacity, as the same may only be due to a person's difficulty, refusal or neglect to undertake the obligations of marriage that is not rooted in some psychological illness that Article 36 of the Family Code addresses.[28]

WHEREFORE, premises considered, we *DENY* the petition and *AFFIRM* the decision of the Court of Appeals in CA-G.R. CV No. 71882. Costs against the petitioner.

SO ORDERED.

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

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[28] *Supra* note 21, at 288.

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

SECOND DIVISION

[G.R. No. 166411. August 3, 2010]

ELPIDIO CALIPAY, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, TRIANGLE ACE CORPORATION and JOSE LEE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE TIMELY PERFECTION OF AN APPEAL IS A MANDATORY REQUIREMENT, WHICH CANNOT BE TRIFLED WITH AS A "MERE TECHNICALITY" TO SUIT THE INTEREST OF A PARTY.— It bears to reiterate the settled rule that the timely perfection of an appeal is a mandatory requirement, which cannot be trifled with as a "mere technicality" to suit the interest of a party. The rules on periods for filing appeals are to be observed religiously, and parties who seek to avail themselves of the privilege must comply with the rules. Procedural rules setting the period for perfecting an appeal or filing a petition for review are generally inviolable. It is doctrinally entrenched that appeal is not a constitutional right, but a mere statutory privilege. Hence, parties who seek to avail themselves of it must comply with the statutes or rules allowing it. The requirements for perfecting an appeal within the reglementary period specified in law must, as a rule, be strictly followed. Such requirements are considered indispensable interdictions against needless delays and are necessary for the orderly discharge of the judicial business. Furthermore, the perfection of an appeal in the manner and within the period permitted by law is not only mandatory, but also jurisdictional. Failure to perfect the appeal renders the judgment of the court final and executory. Just as a losing party has the privilege to file an appeal within the prescribed period, so does the winner also have the correlative right to enjoy the finality of the decision.

2. ID.; ID.; ID.; NO REASON TO RELAX THE PROCEDURAL RULES IN CASE AT BAR.— It is true that procedural rules may be waived or dispensed with in the interest of substantial justice. This Court may deign to veer away from the general

rule if, on its face, the appeal appears to be absolutely meritorious. Indeed, in a number of instances, procedural rules are relaxed in order to serve substantial justice. However, the Court sees no reason to do so in this case as there is no reason to reverse the findings of the CA. x x x Moreover, the Court notes private respondents' contention that petitioner again did not comply with procedural requirements when he failed to attach to the instant petition a verification and certificate against forum shopping as required under Section, Rule 45 of the Rules of Court. On this basis alone, the petition should be dismissed. Even if the Court were to disregard petitioner's violation of the above-cited procedural rules, a careful review of his contentions, as well as the records of the case, would show that on its merits, the present petition should still fail.

3. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; FILING OF COMPLAINT FOR ILLEGAL DISMISSAL APPEARS ONLY AS A CONVENIENT AFTERTHOUGHT ON THE PART OF PETITIONER AND OTHER COMPLAINANTS AFTER THEY WERE DISMISSED IN ACCORDANCE WITH LAW.— Calipay and the other complainants failed to sufficiently refute the findings of the Labor Arbiter in their appeal filed with the NLRC. They simply insisted that they did not report for work, because they were already terminated. However, they did not present any evidence to prove their allegation. On the other hand, as held by the Labor Arbiter, private respondents were able to present the DTRs and Salary Vouchers of Calipay and the other complainants showing that they indeed reported for work even after their alleged termination from employment. Calipay and the other complainants also failed to present evidence to prove their allegation that they were forced to sign blank forms of their DTRs and Salary Vouchers. Indeed, if petitioner was dismissed, as he claims, on May 27, 1998, why did the DTRs and Salary Vouchers presented by private respondents show that he continued to receive wages until October 31, 1998? Moreover, why did petitioner file his complaint for illegal dismissal only on July 16, 1999, or more than one year after he claims to have been illegally dismissed? On the basis of the foregoing, the Court arrives at the conclusion that the filing of the complaint for illegal dismissal appears only as a convenient afterthought on the part of petitioner and

the other complainants after they were dismissed in accordance with law.

4. ID.; ID.; ABANDONMENT; BELATED FILLING OF THEIR COMPLAINT FOR ILLEGAL DISMISSAL IS AN INDICATION THAT PETITIONER AND OTHER COMPLAINANTS NEVER HAD THE INTENTION OR DESIRE TO RETURN TO THEIR JOBS.— Jurisprudence has held time and again that abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal, more so if the same is accompanied by a prayer for reinstatement. In the present case, however, petitioner filed his complaint more than one year after his alleged termination from employment. Moreover, petitioner and the other complainants' inconsistency in their stand is also shown by the fact that in the complaint form which they personally filled up and filed with the NLRC, they only asked for payment of separation pay and other monetary claims. They did not ask for reinstatement. It is only in their Position Paper later prepared by their counsel that they asked for reinstatement. This is an indication that petitioner and the other complainants never had the intention or desire to return to their jobs. In fact, there is no evidence to prove that petitioner and his former co-employees ever attempted to return to work after they were dismissed from employment.

5. ID.; ID.; ID.; PETITIONER AND THE OTHER COMPLAINANTS WERE PROPERLY NOTIFIED AND WARNED OF THE CONSEQUENCES OF THEIR FAILURE TO EXPLAIN THEIR ABSENCES.— Private respondents were able to present memoranda or show-cause letters served on petitioner and the other complainants at their last known address requiring them to explain their absence, with a warning that their failure would be construed as abandonment of work. Also, private respondents served on petitioner and the other complainants a notice of termination as required by law. Private respondents' compliance with said requirements, taken together with the other circumstances above-discussed, only proves petitioner and the other complainants' abandonment of their work. Finally, it bears to point out that the Decision of the Labor Arbiter was affirmed by the NLRC and the CA. The settled rule is that the factual findings of the Labor Arbiter and the NLRC, especially when

affirmed by the CA, are accorded not only great respect but also finality, and are deemed binding upon this Court so long as they are supported by substantial evidence. In the present case, the Court finds no cogent reason to depart from this rule.

APPEARANCES OF COUNSEL

Rhoderick D.M. De La Paz for petitioner.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* seeking to annul and set aside the Decision[1] and Resolution[2] of the Court of Appeals (CA), dated August 24, 2004 and December 10, 2004, respectively, in CA-G.R. SP No. 79277. The CA Decision dismissed the special civil action for *certiorari* filed by petitioner, while the CA Resolution denied petitioner's motion for reconsideration.

The pertinent facts of the case are as follows:

On July 16, 1999, a Complaint[3] for illegal dismissal, unfair labor practice, underpayment of wages and 13th month pay, non-payment of service incentive leave pay, overtime pay, premium pay for holiday, rest day, night shift allowances and separation pay was filed by herein petitioner Elpidio Calipay, together with Alfredo Mission and Ernesto Dimalanta against herein private respondents Triangle Ace Corporation (Triangle) and Jose Lee.

Calipay and the other complainants alleged in their Position Paper that in the course of their employment, they were not

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[1] Penned by Associate Justice Bienvenido L. Reyes, with Associate Justices Eugenio S. Labitoria and Rosalinda Asuncion-Vicente, concurring; *rollo*, pp. 32-42.

[2] *Id.* at 30-31.

[3] Records, p. 1.

given any specific work assignment; they performed various kinds of work imposed upon them by Lee; in discharging their functions, they were required by Lee to work for nine (9) hours a day, beginning from 7:00 a.m. and ending at 6:00 p.m. with a break of one hour at 12:00 noon; they were also required to report from Monday to Sunday; for work rendered from Mondays to Saturdays beyond the normal eight (8) working hours in a day, they were paid a uniform daily wage in the amount of ₱140.00 even during holidays; for work performed on Sundays, they were not paid any wage due to the policy of Lee that his workers must provide work without pay at least a day in the week under his so-called "*bayanihan system*"; in receiving their wages, they were not given any duly accomplished payslips; instead, they were forced to sign a blank form of their daily time records and salary vouchers.

It was further alleged that in May 1998, Lee confronted Calipay and Mission regarding their alleged participation and assistance in Dimalanta's claim for disability benefits with the Social Security System; despite their denials, Lee scolded Calipay and Mission; this incident later led to their dismissal in the same month.

In their Position Paper, private respondents countered that the termination of Calipay and the other complainants was for a valid or just cause and that due process was observed. They claimed, among others, that Calipay was on absence without leave (AWOL) status from November 2, 1998 up to November 17, 1998; a memorandum dated November 17, 1998, requiring him to explain why his services should not be terminated, was sent by mail but he refused to receive the same; for failure to explain his side, another memorandum dated December 11, 1998 was issued terminating Calipay's employment on the ground of abandonment of work; there is no unfair labor practice because there is no union; there is full compliance with the law regarding payment of wages and other benefits due to their employees; non-payment of nightshift premium is true, because the company does not operate at night.

On July 10, 2000, the Labor Arbiter handling the case rendered a Decision[4] dismissing the Complaint for lack of merit.

Calipay and the other complainants filed an appeal with the National Labor Relations Commission (NLRC).[5]

On February 1, 2002, the NLRC rendered judgment via a Resolution[6] based on the findings that: (a) in dismissing the complainants from their employment, respondents failed to faithfully observe the requirements of notice and hearing rendering the said dismissals invalid and illegal; (b) the dismissals were not based on any of the just causes provided in Article 282 of the Labor Code; (3) the complainants' failure to report for work were justified by their sudden termination from employment which nullified respondents' contention that complainants were guilty of abandonment of work. The dispositive portion of the NLRC Decision reads as follows:

> WHEREFORE, the Decision appealed from is hereby MODIFIED, ordering respondents Triangle Ace Corporation Inc./Jose Lee to reinstate the complainants to their former position without loss of seniority rights and benefits and to pay them full backwages reckoned from the date of dismissals up to actual reinstatement which as of even date amount to ₱149,017.57 for Alfredo Mission, P148,705.44 for Elpidio Calipay, and ₱165,961.77 for Ernesto Dimalanta, plus ten (10%) percent of the total award as and for attorney's fees totaling ₱46,368.47 computed as follows:
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> Should reinstatement be not feasible, the payment of separation pay in lieu thereof is awarded.
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> The Decision is AFFIRMED in all other respects.
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> SO ORDERED.[7]

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[4] *Id.* at 199-208.

[5] *Id.* at 210-220.

[6] *Id.* at 304-310.

[7] *Id.* at 309.

Aggrieved, private respondents filed a Motion for Reconsideration.

On September 24, 2002, the NLRC issued a Resolution[8] granting private respondents' Motion for Reconsideration, the dispositive portion of which reads:

> WHEREFORE, the instant motion being meritorious is GIVEN DUE COURSE. Accordingly, Our Resolution promulgated on February 1, 2002 is hereby RECONSIDERED and the decision of the Arbiter *a quo* dated 10 July 2002 is REINSTATED and AFFIRMED *en* (sic) *toto*.
>
> SO ORDERED.[9]

As a consequence, Calipay and the other complainants moved for the reconsideration of the above-quoted Resolution, but the same was denied by the NLRC in a Resolution dated June 30, 2003.

Calipay and the other complainants then filed a special civil action for *certiorari*, with the CA assailing the September 24, 2002 and June 30, 2003 Resolutions of the NLRC.

On August 24, 2004, the CA rendered its presently disputed Decision dismissing the abovementioned petition for *certiorari*.

Calipay filed a Motion for Reconsideration, but the CA denied it in its Resolution dated December 10, 2004.

Hence, the instant petition of Calipay raising the following issues:

I.

WHETHER OR NOT PUBLIC RESPONDENT COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT ISSUED ITS DECISION DATED 24 AUGUST 2004 AND RESOLUTION DATED 10 DECEMBER 2004 DISMISSING THE PETITION FOR *CERTIORARI* AND AFFIRMING THE RESOLUTIONS OF PUBLIC

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[8] *Id.* at 355-363.

[9] *Id.* at 362.

RESPONDENT NLRC DATED 30 JUNE 2003 AND 24 SEPTEMBER 2002, WHICH RESOLUTIONS DISMISSED PETITIONER'S COMPLAINT FOR ILLEGAL DISMISSAL BY REVERSING RESPONDENT NLRC'S PREVIOUS RESOLUTION DATED 01 FEBRUARY 2002.

II.

WHETHER OR NOT PUBLIC RESPONDENT COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT AFFIRMED THE SUBJECT RESOLUTIONS OF PUBLIC RESPONDENT NLRC DISMISSING THE APPEAL FILED BY PETITIONER AND REINSTATED THE DECISION OF LABOR ARBITER PANGANIBAN ORDERING THE DISMISSAL OF THE COMPLAINT FOR ILLEGAL TERMINATION NOTWITHSTANDING THE PREVIOUS RESOLUTION OF PUBLIC RESPONDENT NLRC DATED 01 FEBRUARY 2002 DECLARING THE ILLEGALITY OF PETITIONER'S DISMISSAL FROM EMPLOYMENT.

III.

WHETHER OR NOT SUBSTANTIAL JUSTICE WAS UNDULY COMPROMISED WHEN PUBLIC RESPONDENT COURT OF APPEALS AFFIRMED NLRC'S DISMISSAL OF PETITIONER'S APPEAL DATED 06 SEPTEMBER 2000 AND RULED AGAINST PETITIONER'S COMPLAINT FOR ILLEGAL DISMISSAL BASED SOLELY ON TECHNICAL RULES OF PROCEDURE WHEN THE SAME SHOULD HAVE BEEN RELAXED TO GIVE WAY TO MERITORIOUS AND JUDICIOUS CASES SUCH AS THIS INVOLVING DISMISSAL FROM WORK OF AN EMPLOYEE.[10]

Petitioner's basic contention is that the CA erred in dismissing the petition filed with it on the basis of strictly adhering to purely technical grounds. Petitioner argues that he cannot be solely faulted for his failure to timely file his appeal with the NLRC, considering that his former counsel suddenly and unexpectedly withdrew his services at the time that said counsel should have been preparing his appeal, leaving petitioner without anyone to help him prepare his appeal on time. Petitioner avers that in a number of cases, this Court allowed the late filing of an appeal where such appeal by a dismissed worker is, like in

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[10] *Rollo*, p. 13.

the present case, impressed with merit in order that the ends of substantial justice would be served.

The petition lacks merit.

It bears to reiterate the settled rule that the timely perfection of an appeal is a mandatory requirement, which cannot be trifled with as a "mere technicality" to suit the interest of a party.[11] The rules on periods for filing appeals are to be observed religiously, and parties who seek to avail themselves of the privilege must comply with the rules.[12]

Procedural rules setting the period for perfecting an appeal or filing a petition for review are generally inviolable.[13] It is doctrinally entrenched that appeal is not a constitutional right, but a mere statutory privilege.[14] Hence, parties who seek to avail themselves of it must comply with the statutes or rules allowing it.[15] The requirements for perfecting an appeal within the reglementary period specified in law must, as a rule, be strictly followed.[16] Such requirements are considered indispensable interdictions against needless delays and are necessary for the orderly discharge of the judicial business.[17] Furthermore, the perfection of an appeal in the manner and within the period permitted by law is not only mandatory, but also jurisdictional.[18] Failure to perfect the appeal renders the judgment of the court

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[11] *Moneytrend Lending Corporation v. Court of Appeals*, G.R. No. 165580, February 20, 2006, 482 SCRA 705, 714-715; *Cuevas v. Bais Steel Corporation*, 439 Phil. 793, 806 (2002).

[12] *Id.*

[13] *McBurnie v. Ganzon*, G.R. Nos. 178034, 178117, 186984-85, September 18, 2009, 600 SCRA 658, 672; *Land Bank of the Philippines v. Ascot Holdings and Equities, Inc.*, G.R. No. 175163, October 19, 2007, 537 SCRA 396, 406.

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

final and executory.[19] Just as a losing party has the privilege to file an appeal within the prescribed period, so does the winner also have the correlative right to enjoy the finality of the decision.[20]

It is true that procedural rules may be waived or dispensed with in the interest of substantial justice.[21] This Court may deign to veer away from the general rule if, on its face, the appeal appears to be absolutely meritorious.[22] Indeed, in a number of instances, procedural rules are relaxed in order to serve substantial justice. However, the Court sees no reason to do so in this case as there is no reason to reverse the findings of the CA, to wit:

> It must be considered that his [Calipay's] former counsel had manifested in his "Withdrawal of Appearance" (p. 80, *Rollo*) that he was withdrawing as counsel by reason of his (Calipay) desire to engage the services of another counsel for purposes of perfecting his appeal from the Labor Arbiter's Decision and said "Withdrawal of Appearance" was duly signed by his former counsel with the petitioner's conformity thereto and which therefore showed that the latter had assented to such withdrawal by reason stated therein. Hence, petitioner Calipay could not blame their former counsel for the non-perfection of their appeal. And even if it were true, that there was untimely withdrawal of his counsel, the latter should not be totally blamed as the herein petitioner is duty bound to protect his interests and he should have been more vigilant and circumspect of his right in pursuing his case by observing the rule on perfection of appeal.[23]

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[19] *Id*.

[20] *Philippine Long Distance Telephone Company v. Raut*, G.R. No. 174209, August 25, 2009, 597 SCRA 66, 72, citing *Accessories Specialist, Inc. v. Alabanza*, 559 SCRA 550, 562-563 (2008).

[21] *Tiger Construction and Development Corporation v. Abay*, G.R. No. 164141, February 26, 2010; *Iligan Cement Corporation v. ILIASCOR Employees and Workers Union – Southern Philippines Federation of Labor (IEWU-SPFL)*, G.R. No. 158956, April 24, 2009, 586 SCRA 449, 461.

[22] *Ruiz v. Delos Santos*, G.R. No. 166386, January 27, 2009, 577 SCRA 29, 48.

[23] *Rollo*, pp. 39-40.

Moreover, the Court notes private respondents' contention that petitioner again did not comply with procedural requirements when he failed to attach to the instant petition a verification and certificate against forum shopping as required under Section, Rule 45 of the Rules of Court. On this basis alone, the petition should be dismissed.

Even if the Court were to disregard petitioner's violation of the above-cited procedural rules, a careful review of his contentions, as well as the records of the case, would show that on its merits, the present petition should still fail.

A perusal of the assailed Decision of the CA would readily confirm that the appellate court's dismissal of the petition filed by herein petitioner was not based solely on procedural or technical grounds. Thus, the CA held:

> Be that as it may, even if We would set aside the technicalities in the interest of substantial justice as proffered by petitioner Calipay that the belated filing of his appeal should nevertheless be considered in order to completely resolve the case on its merits, We opine that the instant case would likewise fail.
>
> We agree with the Labor Arbiter's finding that petitioner Calipay had abandoned his work. x x x
>
> In the instant case, petitioner Calipay had failed to report for work for unknown reasons x x x His continued absences without the private respondents' approval constituted gross and habitual neglect which is a just cause for termination under Article 282 of the Labor Code of the Philippines.[24]

Petitioner harps on the fact that on February 1, 2002, the NLRC issued a Resolution which was in his favor. While petitioner relies heavily on the said Resolution, he, however, always fails to mention that in a subsequent Resolution dated September 24, 2002, the NLRC reversed itself and reinstated the Decision of the Labor Arbiter dismissing the complaint filed by petitioner and his former co-employees.

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[24] *Id.* at 40.

Furthermore, petitioner insists that he is not guilty of abandoning his job and that his failure to report for work was justified by his unceremonious dismissal from employment. However, the Labor Arbiter made the following categorical findings:

> Complainant Ernesto Dimalanta claimed that he was dismissed on January 30, 1998. x x x Complainants Alfredo Mission and Elpidio Calipay, for their part, alleged that they were dismissed by the respondent[s] on May 25, 1998 and May 27, 1998, respectively x x x. The record, however, shows that complainants actually reported for work and were paid wages by the respondent company even after their alleged termination as evidenced by their Daily Time Records and Salary Vouchers submitted by respondents. Complainant Mission worked with the respondent until July 15, 1998, complainant Calipay up to November 2, 1998 while complainant Dimalanta until May 17, 1998. After those dates, they absented themselves from their work without any permission from the management or without filing any leave of absence. Thus, two (2) written notices were sent to each complainant and the Department of Labor and Employment by the respondent through its General Manager.[25]

Calipay and the other complainants failed to sufficiently refute these findings of the Labor Arbiter in their appeal filed with the NLRC. They simply insisted that they did not report for work, because they were already terminated. However, they did not present any evidence to prove their allegation. On the other hand, as held by the Labor Arbiter, private respondents were able to present the DTRs and Salary Vouchers of Calipay and the other complainants showing that they indeed reported for work even after their alleged termination from employment.[26] Calipay and the other complainants also failed to present evidence to prove their allegation that they were forced to sign blank forms of their DTRs and Salary Vouchers.

Indeed, if petitioner was dismissed, as he claims, on May 27, 1998, why did the DTRs and Salary Vouchers presented by private respondents show that he continued to receive wages

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[25] Records, pp. 171-172.

[26] *Id.* at 125-135.

until October 31, 1998? Moreover, why did petitioner file his complaint for illegal dismissal only on July 16, 1999, or more than one year after he claims to have been illegally dismissed?

On the basis of the foregoing, the Court arrives at the conclusion that the filing of the complaint for illegal dismissal appears only as a convenient afterthought on the part of petitioner and the other complainants after they were dismissed in accordance with law.

Jurisprudence has held time and again that abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal, more so if the same is accompanied by a prayer for reinstatement.[27] In the present case, however, petitioner filed his complaint more than one year after his alleged termination from employment. Moreover, petitioner and the other complainants' inconsistency in their stand is also shown by the fact that in the complaint form which they personally filled up and filed with the NLRC, they only asked for payment of separation pay and other monetary claims. They did not ask for reinstatement. It is only in their Position Paper later prepared by their counsel that they asked for reinstatement. This is an indication that petitioner and the other complainants never had the intention or desire to return to their jobs. In fact, there is no evidence to prove that petitioner and his former co-employees ever attempted to return to work after they were dismissed from employment.

On the other hand, private respondents were able to present memoranda or show-cause letters served on petitioner and the other complainants at their last known address requiring them to explain their absence, with a warning that their failure would be construed as abandonment of work. Also, private respondents served on petitioner and the other complainants a notice of termination as required by law. Private respondents' compliance with said requirements, taken together with the other circumstances

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[27] *South Davao Development Company, Inc. v. Gamo*, G.R. No. 171814, May 8, 2009, 587 SCRA 524, 535; *RBC Cable Master System v. Baluyot*, G.R. No. 172670, January 20, 2009, 576 SCRA 668, 679.

above-discussed, only proves petitioner and the other complainants' abandonment of their work.

Finally, it bears to point out that the Decision of the Labor Arbiter was affirmed by the NLRC and the CA. The settled rule is that the factual findings of the Labor Arbiter and the NLRC, especially when affirmed by the CA, are accorded not only great respect but also finality, and are deemed binding upon this Court so long as they are supported by substantial evidence.[28] In the present case, the Court finds no cogent reason to depart from this rule.

WHEREFORE, the petition is *DENIED.* The assailed Decision and Resolution of the Court of Appeals, dated August 24, 2004 and December 10, 2004, respectively, in CA-G.R. SP No. 79277, are *AFFIRMED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 168103. August 3, 2010]
(Formerly G.R. Nos. 155930-32)

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ALEJANDRO RELLOTA** *y* **TADEO,** *appellant.*

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[28] *Diversifed Security, Inc. v. Alicia V. Bautista*, G.R. No 152234, April 15, 2010; *Solidbank Corporation v. NLRC, et al*., G.R. No. 165951, March 30, 2010; *Skippers United Pacific, Inc. v. NLRC*, G.R. No. 148893, July 12, 2006, 494 SCRA 661, 667.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; GUIDING PRINCIPLES IN THE REVIEW OF RAPE CASES.— A rape charge is a serious matter with pernicious consequences both for the appellant and the complainant; hence, utmost care must be taken in the review of a decision involving conviction of rape. Thus, in the disposition and review of rape cases, the Court is guided by these principles: *first*, the prosecution has to show the guilt of the accused by proof beyond reasonable doubt or that degree of proof that, to an unprejudiced mind, produces conviction; *second*, the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence of the defense; *third*, unless there are special reasons, the findings of trial courts, especially regarding the credibility of witnesses, are entitled to great respect and will not be disturbed on appeal; *fourth*, an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; and, *fifth*, 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.

2. ID.; ID.; CREDIBILITY OF WITNESSES; NOT AFFECTED BY MINOR AND TRIVIAL INCONSISTENCIES.— This Court is also not swayed by the claim of appellant that the testimony of AAA is full of inconsistencies and falsehoods. x x x Nevertheless, the said inconsistencies pointed out by appellant are minor ones which do not affect the credibility of AAA nor erase the fact that the latter was raped. The inconsistencies are trivial and forgivable, since a victim of rape cannot possibly give an exacting detail for each of the previous incidents, since these may just be but mere fragments of a prolonged and continuing nightmare, a calvary she might even be struggling to forget.

3. ID.; ID.; ID.; EVALUATION OF THE CREDIBILITY OF WITNESSES AND THEIR TESTIMONIES ARE BEST UNDERTAKEN BY TRIAL COURTS.— The trial court did not err in appreciating the testimony of AAA. The unbroken line of jurisprudence is that this Court will not disturb the findings of the trial court as to the credibility of witnesses, considering that it is in a better position to observe their candor

and behavior on the witness stand. Evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, because of its unique opportunity to observe the witnesses and their demeanor, conduct, and attitude, especially under cross-examination. Its assessment is respected unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case. Furthermore, the above testimonies of AAA positively identifying appellant as the one who defiled her were all the more strengthened by the Medico-Legal Report conducted by Dr. Rosaline Onggao. x x x It is settled that when the victim's claim of rape is corroborated by the physical findings of penetration, there exists sufficient basis for concluding that sexual intercourse did take place.

4. ID.; ID.; DEFENSE OF DENIAL; WHEN UNSUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE, CONSTITUTES NEGATIVE SELF-SERVING EVIDENCE WHICH DESERVES NO GREATER EVIDENTIARY VALUE THAN THE TESTIMONY OF A CREDIBLE WITNESS WHO TESTIFIED ON AFFIRMATIVE MATTERS.— Appellant merely denied having raped AAA. However, denial, when unsubstantiated by clear and convincing evidence, constitutes negative self-serving evidence which deserves no greater evidentiary value than the testimony of a credible witness who testified on affirmative matters. In the present case, the records are devoid of any clear and convincing evidence that would substantiate appellant's denial. In the same manner, appellant's claim that the filing of the criminal charges against him was instigated by AAA's aunt because he failed to lend the latter money is uncorroborated by any evidence. Thus, when there is no evidence to show any improper motive on the part of the rape victim to testify falsely against the accused or to falsely implicate him in the commission of a crime, the logical conclusion is that the testimony is worthy of full faith and credence.

5. ID.; CRIMINAL PROCEDURE; RULE IN CASE OF VARIANCE BETWEEN ALLEGATION AND PROOF; APPLIED IN CASE AT BAR.— Incidentally, under Section 4, Rule 120 of the Revised Rules of Criminal Procedure, when there is a variance between the offense charged in the complaint or information, and the offense as charged is included in or

necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

6. CRIMINAL LAW; RAPE; LUST IS NO RESPECTER OF TIME AND PLACE AND THERE IS NO RULE THAT A WOMAN CAN ONLY BE RAPED IN SECLUSION.— The claim of appellant that he could not have raped AAA because his wife was still in the country during the alleged period when the rape was committed is so flimsy that it does not deserve even the slightest consideration from this Court. It has been oft said that lust is no respecter of time or place. Neither the crampness of the room, nor the presence of other people therein, nor the high risk of being caught, has been held sufficient and effective obstacle to deter the commission of rape. There have been too many instances when rape was committed under circumstances as indiscreet and audacious as a room full of family members sleeping side by side. There is no rule that a woman can only be raped in seclusion.

7. ID.; ACTS OF LASCIVIOUSNESS; ESTABLISHED IN CASE AT BAR.— All the elements of the offense are present. The actions of appellant on January 31, 1994, *i.e.*, laying AAA on the sofa and kissing and touching her private parts are, by definition, lascivious or lewd, and based on AAA's testimony, the intimidation from appellant was in existence and apparent. Section 5 of R.A. No. 7610 does not merely cover a situation of a child being abused for profit, but also one in which a child engages in any lascivious conduct through coercion or intimidation. As case law has it, intimidation need not necessarily be irresistible. It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party. This is especially true in the case of young, innocent and immature girls who could not be expected to act with equanimity of disposition and with nerves of steel. Young girls cannot be expected to act like adults under the same circumstances or to have the courage and intelligence to disregard the threat.

8. ID.; FELONIES; ATTEMPTED FELONY; ELEMENTS; WANTING IN CASE AT BAR.— Attempted rape requires that the offender commence the commission of rape directly by overt acts, but does not perform all the acts of execution

by reason of some cause or accident other than his own spontaneous desistance. The prosecution must, therefore, establish the following elements of an attempted felony: 1. The offender commences the commission of the felony directly by overt acts; 2. He does not perform all the acts of execution which should produce the felony; 3. The offender's act be not stopped by his own spontaneous desistance; 4. The non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance. The above elements are wanting in the present case. Appellant's act of removing the towel wrapped in the body of AAA, laying her on the sofa and kissing and touching her private parts does not exactly demonstrate the intent of appellant to have carnal knowledge of AAA on that particular date; thus, dismissing the mere opinion and speculation of AAA, based on her testimony, that appellant wanted to rape her. Even so, the said acts should not be left unpunished as the elements of the crime of acts of lasciviousness, as defined in the Revised Penal Code, in relation to Section 5, Article III of Republic Act (R.A.) No. 7610, AAA, being a minor when the incident happened, are present.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellants.

D E C I S I O N

PERALTA, *J.*:

Youth and immaturity are generally badges of truth.[1]

For this Court's consideration is an appeal from the Decision[2] dated April 14, 2005 of the Court of Appeals (CA) in CA-G.R.

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[1] *People of the Philippines v. Perez*, G.R. No. 182924, December 24, 2008, 575 SCRA 653, 671, citing *People v. Espinosa*, 432 SCRA 86, 99 (2004).

[2] Penned by Associate Justice Edgardo F. Sundiam, with Associate Justices Renato C. Dacudao and Japar B. Dimaampao, concurring; *rollo*, pp. 3-19.

C.R.-H.C. No. 00117, affirming, with modification, the Decision[3] dated August 8, 2002 of the Regional Trial Court (RTC) of Antipolo City, Branch 73, in Criminal Case Nos. 94-10812, 94-10813 and 94-10814, and finding appellant Alejandro T. Rellota, guilty beyond reasonable doubt of two (2) counts of consummated rape and one (1) count of attempted rape.

The antecedent facts are the following:

AAA,[4] the offended party, was born on July 16, 1981 in XXX, Eastern Samar and was a little over twelve (12) years old when the incidents allegedly happened.

Together with her siblings, BBB and CCC, AAA lived with her aunt, DDD, and the latter's second husband, appellant, in Antipolo City, Rizal from September 1992 to January 1994. Also living with them were two (2) of AAA's cousins. During that period, DDD and appellant were sending AAA, BBB and CCC to school. At the time the incidents took place, DDD was working overseas.

Based on the testimony of AAA, appellant had been kissing her and touching her private parts since September 1993. She

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[3] Penned by Executive Judge Mauricio M. Rivera; CA *rollo*, pp. 46-50.

[4] This is pursuant to the ruling of this Court in *People of the Philippines v. Cabalquinto* (G.R. No. 167693, September 19, 2006, 502 SCRA 419), wherein this Court resolved to withhold the real name of the victims-survivors and to use fictitious initials instead to represent them in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA," "BBB," "CCC," and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX."

The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of Republic Act No. 7610, otherwise known as Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act; Sec. 44 of Republic Act No. 9262, otherwise known as Anti-Violence Against Women and Their Children Act of 2004; and Sec. 40 of A.M. No. 04-10-11-SC, known as Rule on Violence Against Women and Their Children effective November 15, 2004.

claimed that appellant raped her several times between September 1993 and January 1994. She narrated that appellant would usually rape her at night when the other members of the family were either out of the house or asleep. AAA stated that she resisted the advances of appellant, but was not successful. Appellant, according to her, would usually place a bolo beside him whenever he would rape her. She added that appellant would threaten AAA by telling her that he would kill her brother and sister and that he would stop sending her to school.

Around noon of December 20, 1993, AAA took a bath at an artesian well near their house and after bathing, she wrapped her body with a towel before going inside their house. Appellant followed her to the bedroom, pulled down her towel and laid her on the bed. He tied her hands with a rope before forcibly inserting his penis inside her vagina. AAA fought back by kicking and scratching appellant, but the latter was not deterred. Thereafter, appellant untied the hands of AAA and left the room. A few moments later, appellant returned in the bedroom and raped her again.

On January 31, 1994, the same incident happened. AAA went inside their room after taking a bath, not knowing that appellant was inside. Upon seeing her, appellant snatched the towel around her body and laid her down on the sofa. He kissed her and touched her private part, while AAA kicked him and scratched his arms. She was able to push him. After which, appellant ran out the door.

AAA, after that incident, told her older sister about the repeated deeds of the appellant. Afterwards, her sister accompanied AAA to the police station. On February 3, 1994, three (3) separate complaints for rape were filed against appellant with the trial court and was raffled in different branches.[5]

The Complaints read as follows:

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[5] Branches 71, 73 and 74.

Criminal Case No. 94-10812

That on or about and sometime during the month of December, 1993 in the Municipality of Antipolo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there willfully, unlawfully and feloniously by means of force and intimidation, have sexual intercourse with the undersigned complainant AAA, a minor 12 years of age, against the latter's will and consent.

CONTRARY TO LAW.[6]

Criminal Case No. 94-10813

That on or about the month of September, 1993 in the Municipality of Antipolo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there willfully, unlawfully and feloniously by means of force and intimidation, have sexual intercourse with the undersigned complainant AAA, a minor twelve years of age, against the latter's will and consent.

CONTRARY TO LAW.[7]

Criminal Case No. 94-10814

That on or about the 31st day of January, 1994 in the Municipality of Antipolo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there willfully, unlawfully and feloniously by means of force and intimidation, have sexual intercourse with the undersigned complainant AAA, a minor 12 years of age, against the latter's will and consent.

CONTRARY TO LAW.[8]

Appellant, with the assistance of counsel *de oficio*, pleaded not guilty during arraignment.

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[6] Records, pp. 1-10.

[7] *Id.* at 20.

[8] *Id.* at 53.

Complainant AAA filed a Motion for the Consolidation[9] of the three complaints, which was eventually granted.[10]

Thereafter, trial ensued.

The prosecutor presented the testimonies of AAA and Dr. Rosaline Onggao, a medico-legal officer.

On the other hand, the defense presented the testimony of appellant who denied the charges against him. According to him, he could not think of any reason why the complainant filed the complaints. He also claimed that his sister-in-law, who helped the complainant file the charges was mad at him for not giving her a loan.

The trial court, in a Decision[11] dated August 8, 2002, found appellant guilty beyond reasonable doubt of three (3) counts of rape as alleged in the complaints, the dispositive portion of which reads:

> WHEREFORE, premises considered, accused ALEJANDRO RELLOTA *y* TADEO is hereby found guilty beyond reasonable doubt and is hereby sentenced to suffer the penalty of *Reclusion Perpetua* for each count in Criminal Case Nos. 94-10812, 10813 and 10814.
>
> The accused is further ordered to indemnify [AAA] in the amount of ₱50,000.00 for each of the three (3) Criminal Cases, or a total of ₱150,000.00.
>
> SO ORDERED.[12]

In not imposing the penalty of death, the trial court reasoned out that AAA was already over 12 years old at the time the incidents happened and that although she was below 18 years old, the relationship of AAA and the appellant had not been sufficiently established as the marriage between AAA's aunt and the appellant was not supported by any documentary evidence.

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[9] *Id.* at 49-50.

[10] *Id.* at 70.

[11] *Id.* at 262-266.

[12] *Id.* at 268.

A Notice of Appeal was filed and this Court accepted[13] the appeal on July 16, 2003. However, in a Resolution[14] dated September 6, 2004, this Court transferred the case to the CA in conformity with *People of the Philippines v. Efren Mateo y Garcia*,[15] modifying the pertinent provisions of the Revised Rules on Criminal Procedure, more particularly Sections 3 and 10 of Rule 122, Section 13 of Rule 124, Section 3 of Rule 125 and any other rule insofar as they provide for direct appeals from the Regional Trial Courts to this Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment, as well as the Resolution of this Court *en banc*, dated September 19, 1995, in Internal Rules of the Supreme Court in cases similarly involving the death penalty, pursuant to the Court's power to promulgate rules of procedure in all courts under Article VIII, Section 5 of the Constitution, and allowing an intermediate review by the Court of Appeals before such cases are elevated to this Court.

In a Decision[16] dated April 14, 2005, the CA affirmed, with modification, the Decision of the trial court, disposing it as follows:

> WHEREFORE, the Decision appealed from is hereby AFFIRMED in so far as appellant is found GUILTY of two (2) counts of consummated rape and sentenced to *reclusion perpetua* for each count in Criminal Case Nos. 94-10812 and 94-10813. The Decision is however MODIFIED as follows:
>
> 1. In Criminal Case No. 94-10814, appellant is found GUILTY beyond reasonable doubt of the crime of attempted rape and is sentenced to an indeterminate penalty of SIX (6) years of *prision correccional*, as minimum, to TEN (10) YEARS of *prision mayor*, as maximum. He is also ordered to pay AAA the amounts of ₱30,000.00 as civil indemnity and ₱15,000.00 as moral damages.

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[13] CA *rollo*, pp. 27-28.

[14] *Id.* at 85.

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

[16] *Rollo*, pp. 3-19.

2. In Criminal Case Nos. 94-10812 and 94-10813, appellant is ordered to pay AAA the amount of ₱50,000.00 as moral damages for each count in addition to the amount of ₱50,000.00 already imposed as civil indemnity for each count.

SO ORDERED.

Hence, the present appeal.

In his Brief[17] dated October 24, 2003, appellant assigned this lone error:

THE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING HEREIN [APPELLANT] DESPITE THE FACT THAT AAA'S TESTIMONY WAS INCONSISTENT AND FULL OF FALSEHOODS.

Appellant claims that it was impossible for him to have raped AAA in September 1993 because his wife only left for Jeddah on October 21, 1993. He points out that AAA herself testified that he only kissed her, touched her breast and private parts, but failed to mention that he inserted his penis to her vagina. He also denied raping AAA on January 31, 1994 and December 20, 1993. He further claims that the filing of the criminal charges were instigated by AAA's aunt for his refusal to lend her money. In short, appellant assails the credibility of AAA's testimony as shown by its inconsistencies and falsehoods.

On the other hand, the Office of the Solicitor General (OSG), in its Brief[18] dated November 27, 2003, averred that the prosecution was able to satisfactorily prove that appellant raped the offended party in September and December 1993. It further stated that appellant used his moral ascendancy over the victim in having carnal knowledge of her against her will. The OSG also argued that the medical report bolsters the victim's claim that she was repeatedly raped by appellant and that the latter's defense of denial is weak and deserves scant consideration.

In agreement with the CA Decision, the OSG posited that there is inadequate proof that the offended party was actually

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[17] CA *rollo*, pp. 34-45.

[18] *Id.* at 55-75.

raped on January 31, 1994 and that the penalties imposed by the trial court should be adjusted in accordance with the crimes proved.

After a careful study of the arguments presented by both parties, this Court finds the appeal bereft of any merit.

A rape charge is a serious matter with pernicious consequences both for the appellant and the complainant; hence, utmost care must be taken in the review of a decision involving conviction of rape.[19] Thus, in the disposition and review of rape cases, the Court is guided by these principles: *first*, the prosecution has to show the guilt of the accused by proof beyond reasonable doubt or that degree of proof that, to an unprejudiced mind, produces conviction; *second*, the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence of the defense; *third*, unless there are special reasons, the findings of trial courts, especially regarding the credibility of witnesses, are entitled to great respect and will not be disturbed on appeal; *fourth*, an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; and, *fifth*, 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.[20]

Appellant insists that the trial court erred in giving credence to the testimony of AAA. He claims that he could not have possibly raped AAA in September 1993 because, first, his wife was still in the Philippines and left for Jeddah, Saudi Arabia only on October 21, 1993; and second, based on the testimony of AAA, appellant merely kissed and touched her breasts and private parts, but never did she mention that he inserted his penis into her vagina.

The contentions are devoid of merit.

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[19] *People v. Espino, Jr.*, G.R. No. 176742, June 17, 2008, 554 SCRA 682, 695-696, citing *People v. Malones*, 469 Phil. 301, 318 (2004).

[20] *Id.*, citing *People v. Lou*, 464 Phil. 413, 421 (2004).

The claim of appellant that he could not have raped AAA because his wife was still in the country during the alleged period when the rape was committed is so flimsy that it does not deserve even the slightest consideration from this Court. It has been oft said that lust is no respecter of time or place. Neither the crampness of the room, nor the presence of other people therein, nor the high risk of being caught, has been held sufficient and effective obstacle to deter the commission of rape.[21] There have been too many instances when rape was committed under circumstances as indiscreet and audacious as a room full of family members sleeping side by side.[22] There is no rule that a woman can only be raped in seclusion.[23]

As to the contention of appellant that the testimony of AAA was barren of any statement that the former's penis was inserted in the latter's vagina is not quite accurate. AAA categorically stated during her testimony that she was raped, thus:

Q: On December 20, 1993, at around 12:00 o'clock noon, do you remember where were you?
A: I was at the artisan well.

Q: Where is that artisan well located?
A: Near the house of Alejandro Rellota.

Q: What were you doing in the vicinity of the arisan (sic) well?
A: I was taking a bath.

Q: What time did you start taking a bath?
A: I started taking a bath about 12:00 o'clock and I finished at around 1:00 o'clock.

Q: After taking a bath, what did you do next?
A: I went inside the house.

Q: When you went inside the house, what happened next?
A: I covered my body with a towel and Alejandro Rellota pulled it.

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[21] *People v. Pangilinan*, G.R. No. 171020, May 14, 2007, citing *People v. Layugan*, 428 SCRA 98, 114 (2004).

[22] *Id.*, citing *People v. Manahan*, 455 Phil. 658, 672-673 (2003).

[23] *Id.*, citing *People v. Tonyacao*, 433 SCRA 513, 530 (2004).

Q: Where was Alejandro Rellota at that time?
A: He went inside the room.

Q: Before he went inside the house, where was Alejandro Rellota, if you know?
A: He came from the other room.

Q: You said once inside the house, Alejandro Rellota pulled your towel, what happened after that?
A: He raped me.

Q: When you said that Alejandro Rellota raped you, what did Alejandro Rellota do exactly to you?
A: He laid me on the bed and he tied my hands.

Q: After he tied your hands, what did he do next?
A: He forced me and inserted his penis inside my vagina.

Q: After he placed his penis inside your vagina, what did he do next?
A: He left.

Q: You said he placed his penis inside your vagina, will you tell how long was his penis inside your vagina?
A: One minute.

Q: When he placed his penis inside your vagina for around one minute, what, if any, did you feel when he inserted his penis?
A: I felt painful. (*sic*)

Q: You said Alejandro Rellota pulled your towel, when he did that, what did you do?
A: I resisted.

Q: What exactly did you do when you resisted?
A: I tried to avoid him.

Q: When you said your hands were tied while the accused Alejandro Rellota was doing this, what were you doing?
A: I pinched his hands and tried to take the rope off my hands.

Q: Were you successful in taking the rope?
A: No.

Q: At the time Alejandro Rellota was doing this while he was tying your hands, what was he wearing at that time?
A: Short pants and t-shirt.

Q: You said Alejandro Rellota placed his penis inside your vagina while you were lying down and tied your hands. When Alejandro Rellota placed his penis inside your vagina, what did he do to his clothes?
A: He took it off.[24]

x x x x x x x x x

Q: You said when being asked by the Honorable Court that you were wearing t-shirt and short, you also mentioned that at the time you entered the house after having taken a bath that you were only wearing a towel. Can you explain when for the first time did you wear that t-shirt and shorts in December?
A: Because when he pulled the towel, he pulled me to the bed, he embraced me and he left and then I immediately wear (sic) my panty and t-shirt then he returned for the second time.

Q: When he returned, what did he do?
A: He repeated his acts.

COURT: You mean to say you were raped twice in December 1993?
A: Yes, Your Honor.

PUBLIC PROSECUTOR: After he did that again, what happened afterwards?
A: The incident happened inside his room and after the incident, he ordered me to go out of his room and I went to my bed and sleep. (sic)[25]

x x x x x x x x x

Q: Can you please tell the Honorable Court on December 20, how many times did he rape you?
A: Twice.

Q: First time when after he pulled your towel?
A: Yes.

Q: When he pulled off your towel, you were not wearing anything?
A: Yes, my body was wrapped with towel only.

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[24] TSN, September 22, 1994, pp. 5-7.

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

Q: The second time he raped you, you were wearing some clothes?
A: Yes.[26]

This Court is also not swayed by the claim of appellant that the testimony of AAA is full of inconsistencies and falsehoods. As accurately propounded by the CA:

Appellant further contends that the testimony of AAA regarding the rape that took place on December 20, 1993 is full of lies and falsehood. He points out as lie and inconsistent AAA's statement that he removed her shorts and panty when she was raped on December 20, 1993. He argues that this could not have been possible because, as earlier testified to by AAA, she merely wrapped her body with a towel having just taken a bath. He also points out as lie and inconsistent AAA's statement that after he pulled her to the bed, raped her and then left, she immediately put on her panty and t-shirt. He argues that such putting on her panty and t-shirt could not have been also possible because, as testified to by her, her hands were tied with a rope.

Again, the contentions are without merit.

In her testimony, AAA narrated that she was raped twice on December 20, 1993: the first time was when she came from her bath, wrapped only with a towel and appellant pulled her to the bed, tied her hands and ravished her, and the second time was when she had already dressed up and appellant returned to the room to rape her again. When AAA testified that appellant removed her shorts and panty before raping her, she was referring to the second time she was raped on that day. Hence, her statements were not inconsistent. There was a lapse of time between the first and the second rape. Likewise, when AAA testified that she put on her t-shirt and panty, she was referring to the first time of the rape where, after ravishing her, appellant untied her hands and left only to return to rape her once more. There was enough time for AAA to dress up.[27]

Nevertheless, the said inconsistencies pointed out by appellant are minor ones which do not affect the credibility of AAA nor

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[26] *Id.* at 12-13.

[27] CA *rollo*, pp. 9-10.

erase the fact that the latter was raped. The inconsistencies are trivial and forgivable, since a victim of rape cannot possibly give an exacting detail for each of the previous incidents, since these may just be but mere fragments of a prolonged and continuing nightmare, a calvary she might even be struggling to forget.[28] As this Court pronounced in *People v. Delos Reyes*:[29]

> It is established jurisprudence that testimony must be considered and calibrated in its entirety inclusive and not by truncated or isolated passages thereof. Due consideration must be accorded to all the questions propounded to the witness and her answers thereto. The whole impression or effect of what had been said or done must be considered and not individual words or phrases alone. Moreover, rape is a painful experience which is oftentimes not remembered in detail. It causes deep psychological wounds, often forcing the victim's conscience or subconscious to forget the traumatic experience, and casts a stigma upon the victim, scarring her psyche for life. A rape victim cannot thus be expected to keep an accurate account and remember every ugly detail of the appalling and horrifying outrage perpetrated on her especially since she might in fact have been trying not to remember them. Rape victims do not cherish in their memories an accurate account of when and how, and the number of times they were violated. Error-free testimony cannot be expected most especially when a young victim of rape is recounting details of a harrowing experience, one which even an adult would like to bury in oblivion deep in the recesses of her mind, never to be resurrected. Moreover, a rape victim testifying in the presence of strangers, face to face with her tormentor and being cross-examined by his hostile and intimidating lawyer would be benumbed with tension and nervousness and this can affect the accuracy of her testimony. Often, the answers to long-winded and at times misleading questions propounded to her are not responsive. However, considering her youth and her traumatic experience, ample margin of error and understanding should be accorded to a young victim of a vicious crime like rape.[30]

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[28] *People v. Buban*, G.R. No. 166895, January 24, 2007 citing *People v. Nava, Jr.*, 333 SCRA 749, 760 (2000).

[29] 443 Phil. 782 (2003).

[30] *Id.* at 800-801, citing *People v. Abalde*, 329 SCRA 418 (2000); Francisco, *The Revised Rules of Court of the Philippines*, 1991 ed., Volume VII, Part II, p. 542; *People v. Rosario*, 246 SCRA 658 (1995); *People v. Cula*, 329

Anent the other instances that appellant was able to force himself and had carnal knowledge of AAA, the latter testified as follows:

> FISCAL CLUTARIO: Miss witness, you stated during your last testimony on September 22, 1994 that you were raped in December 1993 by the accused. Before December 1993, what if anything did the accused do to you?
> A: Yes.
>
> Q: What did the accused do to you?
> A: Since September 1993, the accused has been kissing me and touching my private parts.
>
> Q: How many times did the accused do that?
> A: Several times.
>
> Q: Aside from kissing you and touching your private parts in September 1993, what else did he do to you?
> A: Yes.
>
> Q: What is that?
> **A: He raped me**.[31]
>
> x x x x x x x x x
>
> Q: In September 1993, did the accused placed (sic) his penis inside your vagina?
> A: Yes, September 1993.
>
> COURT: How many times?
> A: Several times in September.
>
> COURT: In how may occasions did it happen?
> A: Once almost everyday.[32]

AAA's further testimony during cross-examination and re-direct examination shows the consistency of her allegation that she was forced against her will and was intimidated by the appellant when the latter satisfied his lust. Thus, as testified:

SCRA 101 (2000); *People v. Tamala,* 284 SCRA 436 (1998); *People v. Perez*, 270 SCRA 181 (1997); *People v. Arafiles*, 325 SCRA 181 (2000).

[31] TSN, December 26, 1994, pp. 2-3.

[32] *Id.* at 6.

Cross-examination:

Q: When you were allegedly raped, did you not fight back or shout when these abuses were being committed?
A: I fought back but I did not shout.

Q: And your cousin, brother and sister were not awakened at the time you were allegedly raped?
A: No, sir.

Q: But you could arose (sic) them or call them for help.
A: I was afraid during that time.

Q: Were you being threatened by the accused when these rapes were being committed?
A: He told me that I will not be sent to school if I will shout and fight back, and I wanted to go to school during that time.

Q: But you were not threatened with any weapon or physical harm during the time that you were threatened?
A: He showed me a *bolo*.

Q: But he was not holding this bolo at the time the alleged rape was committed?
A: It was beside him, sir.

Q: He did not even touch that bolo while the rape was being committed?
A: No, sir.

Q: And you could even grab that *bolo* if you wanted to during the alleged time of rape?
A: I was afraid.

Q: As far as you can remember, how many times were you raped by the accused?
A: Many times, I can no longer remember because he treated me as his wife.

Q: But despite the opportunity open to you for you to escape, you did not use them?
A: I tried to escape but I did not know where to go.[33]

x x x x x x x x x

[33] TSN December 18, 1997, pp. 7-9.

Re-direct:

PUBLIC PROSECUTOR: When you said a while ago that you did not shout or asked for help from your brother and cousin and you said you were threatened, did you believe your uncle when he threatened you?
A: Yes, sir.

Q: Why did you believe him?
A: Because I was afraid.

Q: And the threat that he made, that frightened you?
A: His voice, "*masyadong mataas*." When I was still a child he used to spank me.

Q: What was (sic) the exact words that he said that made you frightened?
A: That I cannot go to school.

Q: That is all?
A: He also told me that he will kill my brother and sister.

Q: Did you believe him when he said he will kill your brother and sister?
A: Yes, sir, because he has a frightful face.

Q: Did you see your uncle physically harm your brother and sister even before or after the incident?
A: Yes, sir, he had made physical harm on my brother and sister.[34]

Hence, the trial court did not err in appreciating the testimony of AAA. The unbroken line of jurisprudence is that this Court will not disturb the findings of the trial court as to the credibility of witnesses, considering that it is in a better position to observe their candor and behavior on the witness stand. Evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, because of its unique opportunity to observe the witnesses and their demeanor, conduct, and attitude, especially under cross-examination. Its assessment is respected unless certain facts of substance and value were overlooked which, if considered, might affect the result of the

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[34] *Id.* at 12-13.

case.[35] Furthermore, the above testimonies of AAA positively identifying appellant as the one who defiled her were all the more strengthened by the Medico-Legal Report[36] conducted by Dr. Rosaline Onggao, who also testified that:

> PUBLIC PROSECUTOR: Can you tell us what is in the findings which would verify or confirm the information given to you by AAA that she was sexually abused for several times?
> A: The hymen.
>
> Q: Where particularly in the hymen would confirm that she was sexually abused?
> A: The healed laceration in the hymen.
>
> Q: Based on the healed laceration, would you be able to tell this Honorable Court the time when the sexual abuse occurred?
> A: Since the lacerations were healed more than 7 days or more prior to my examination, it could be more than a month.
>
> Q: What could be the cause of laceration in the hymen?
> A: The laceration could have been caused by forcible entry of a hard object.

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[35] *People v. Tormis*, G.R. No. 183456, December 18, 2008, citing *People v. Dizon*, 453 Phil. 858, 881 (2003).

[36] Which shows the following findings:

FINDINGS:
GENERAL AND EXTRAGENITAL:
x x x x x x x x x
GENITAL:
There is a scanty growth of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minora presenting in between. On separating, the same is disclosed a plastic, fleshy-type hymen with deep healed laceration at 9 o'clock and shallow healed lacerations at 3 and 7 o'clock. External vaginal orifice offers moderate resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency.
CONCLUSION:
Subject is in non-virgin state physically.
There are no external signs of recent application of any form of violence. (Records, p. 272.)

Q: Would you consider the penis as a hard blunt object?
A: Yes, sir.[37]

It is settled that when the victim's claim of rape is corroborated by the physical findings of penetration, there exists sufficient basis for concluding that sexual intercourse did take place.[38]

For his defense, appellant merely denied having raped AAA. However, denial, when unsubstantiated by clear and convincing evidence, constitutes negative self-serving evidence which deserves no greater evidentiary value than the testimony of a credible witness who testified on affirmative matters.[39] In the present case, the records are devoid of any clear and convincing evidence that would substantiate appellant's denial. In the same manner, appellant's claim that the filing of the criminal charges against him was instigated by AAA's aunt because he failed to lend the latter money is uncorroborated by any evidence. Thus, when there is no evidence to show any improper motive on the part of the rape victim to testify falsely against the accused or to falsely implicate him in the commission of a crime, the logical conclusion is that the testimony is worthy of full faith and credence.[40]

With regard to the modification of the trial court's decision by the CA as to the latter's findings that only an attempted rape was committed on January 31, 1994, this Court disagrees. AAA's testimony belies the consummation, as well as the attempt to rape her on the said date. She said that:

Q: My question is, after December 1993, what else did the accused do to you?

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[37] TSN, July 10, 1996, pp. 8-9.

[38] *People v. Rabago*, 448 Phil. 539, 550 (2003), citing *People v. Mendoza*, 440 Phil. 755 (2002).

[39] *People v. Rivera*, 414 Phil. 430, 457 (2001), citing *People v. Quilatan*, 395 Phil. 444 (2000).

[40] *People v. Pangilinan*, G.R. No. 171020, March 14, 2007, 518 SCRA 358, 389, citing *People v. Malabago*, 271 SCRA 464 (1997) and *People v. Gagto*, 253 SCRA 455 (1996).

A: On January 31, 1994, the accused kissed me and touched my private parts again.

Q: Where did this happen?
A: Inside our room in our house at St. Anthony, Inarawan, Antipolo, Rizal.

Q: Aside from kissing you and touching your private parts in your house where you were living, what else did the accused do to you?
A: On January 31, after I took a bath when I went inside our room wrapped in towel, I did not know that the accused was inside the room, he removed the towel and laid me down at the sofa, tried to kiss me but I kicked him and scratched his arms.

Q: Then what happened next?
A: Afterwards, he went out of the room, I dressed up and I was trying to get out of the house and he was preventing me from going out. He was blocking my way. He again wanted to rape me.

Q: What happened next?
A: I pushed him and I was able to open the door and I ran out of the house.

Q: You are telling that in January 1994, all these things the accused did to you except inserting his penis to your vagina?
A: Yes.[41]

x x x x x x x x x

PUBLIC PROSECUTOR: In January 1994, did the accused raped (sic) you by placing his penis inside your vagina?
A: Not exactly January 31, 1994, but I remember between January 1 to 5.

Q: Nothing happens on January 31, 1994?
A: I was not raped anymore on January 31, 1994, because I told my sister about it already.[42]

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[41] TSN, December 26, 1994, pp. 4-5.

[42] *Id.* at 11.

Attempted rape requires that the offender commence the commission of rape directly by overt acts, but does not perform all the acts of execution by reason of some cause or accident other than his own spontaneous desistance.[43] The prosecution must, therefore, establish the following elements of an attempted felony:

1. The offender commences the commission of the felony directly by overt acts;
2. He does not perform all the acts of execution which should produce the felony;
3. The offender's act be not stopped by his own spontaneous desistance;
4. The non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance.[44]

The above elements are wanting in the present case. Appellant's act of removing the towel wrapped in the body of AAA, laying her on the sofa and kissing and touching her private parts does not exactly demonstrate the intent of appellant to have carnal knowledge of AAA on that particular date; thus, dismissing the mere opinion and speculation of AAA, based on her testimony, that appellant wanted to rape her. Even so, the said acts should not be left unpunished as the elements of the crime of acts of lasciviousness, as defined in the Revised Penal Code, in relation to Section 5,[45] Article III of Republic Act (R.A.)

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[43] *People v. Mingming*, G.R. No. 174195, December 10, 2008, 573 SCRA 509, 534, citing, *People v. Abanilla,* 413 SCRA 654, 666 (2003).

[44] *Id.*, citing *People v. Contreras,* 338 SCRA 622, 644 (2000).

[45] Section 5. *Child Prostitution and Other Sexual Abuse*. — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:

(1) Acting as a procurer of a child prostitute;

No. 7610,[46] AAA, being a minor when the incident happened, are present. In *People v. Bon*:[47]

The elements of the crime of acts lasciviousness are: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done: (a) by using force and intimidation or (b) when the offended party is deprived of reason or otherwise unconscious, or (c) when the offended party is under 12 years of age; and (3) that the offended party is another person of either sex.

Section 32, Article XIII, of the Implementing Rules and Regulations of RA 7610 or the Child Abuse Law defines lascivious conduct, as follows:

> [T]he intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex,

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> (2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;
>
> (3) Taking advantage of influence or relationship to procure a child as prostitute;
>
> (4) Threatening or using violence towards a child to engage him as a prostitute; or
>
> (5) Giving monetary consideration goods or other pecuniary benefit to a child with the intent to engage such child in prostitution.
>
> (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; and
>
> (c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.

[46] Approved on June 17, 1992.

[47] 444 Phil. 571 (2003).

> with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.[48]

Clearly, all the elements of the offense are present. The actions of appellant on January 31, 1994, *i.e.*, laying AAA on the sofa and kissing and touching her private parts are, by definition, lascivious or lewd, and based on AAA's testimony, the intimidation from appellant was in existence and apparent. Section 5 of R.A. No. 7610 does not merely cover a situation of a child being abused for profit, but also one in which a child engages in any lascivious conduct through coercion or intimidation.[49] As case law has it, intimidation need not necessarily be irresistible.[50] It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party.[51] This is especially true in the case of young, innocent and immature girls who could not be expected to act with equanimity of disposition and with nerves of steel.[52] Young girls cannot be expected to act like adults under the same circumstances or to have the courage and intelligence to disregard the threat.[53]

Incidentally, under Section 4, Rule 120 of the Revised Rules of Criminal Procedure, when there is a variance between the offense charged in the complaint or information, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense

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

[49] *Amployo v. People*, G.R. No. 157718, April 26, 2005, 457 SCRA 282, 295, citing *People v. Larin*, 297 SCRA 309, 325-326 (1998).

[50] *Id.* at 292, citing *People v. Victor*, 393 SCRA 472, 485 (2002).

[51] *Id.* at 296, citing *People v. Victor*, citing Padilla, *Criminal Law, Revised Penal Code*, Vol. 4, p. 610 (1990 ed.).

[52] *Id.*, citing *People v. Adora*, 275 SCRA 441, 468 (1997).

[53] *Id*.

charged which is included in the offense proved.[54] As explained by this Court in *People v. Abulon*:[55]

> However, following the variance doctrine embodied in Section 4, in relation to Section 5, Rule 120, Rules of Criminal Procedure, appellant can be found guilty of the lesser crime of acts of lasciviousness. Said provisions read:
>
> > Sec. 4. *Judgment in case of variance between allegation and proof.* — When there is a variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.
> >
> > Sec. 5. *When an offense includes or is included in another.* — An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitutes the latter. And an offense charged is necessarily included in the offense proved when the essential ingredients of the former constitute or form part of those constituting the latter.
>
> Indeed, **acts of lasciviousness or *abusos dishonestos* are necessarily included in rape**.[56]

In *People v. Candaza*,[57] this Court ruled that the penalty for acts of lasciviousness performed on a child under Section 5(b) of R.A. No. 7610 is *reclusion temporal* in its medium period to *reclusion perpetua;* thus, applying the Indeterminate Sentence Law, the penalty to be imposed on appellant should thus fall within the range of *prision mayor* medium to *reclusion temporal* minimum, as minimum, to *reclusion temporal* maximum, as maximum.

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[54] *Dado v. People*, 440 Phil. 520, 539 (2002).

[55] G.R. No. 174473, August 17, 2007, 530 SCRA 675.

[56] *Id.* at 703-704, citing *People v. Laguerta*, 398 Phil. 370, 380 (2000), citing *Dulla v. Court of Appeals*, 326 SCRA 32 (2000). (Emphasis supplied.) See also *Amployo v. People*, *supra* note 49.

[57] G.R. No. 170474, June 16, 2006, 491 SCRA 280.

WHEREFORE, the appealed Decision dated April 14, 2005 of the Court of Appeals finding appellant Alejandro Rellota *y* Tadeo guilty beyond reasonable doubt of the crime of two (2) counts rape is hereby *AFFIRMED* with the *MODIFICATION* that the same appellant is also *GUILTY* beyond reasonable doubt of the crime of acts of lasciviousness as defined in the Revised Penal Code, in relation to Section 5, Article III of Republic Act No. 7610, and is hereby sentenced to suffer an indeterminate penalty of imprisonment from eight (8) years and one (1) day of *prision mayor*, as minimum to seventeen (17) years, four (4) months and (1) day of *reclusion temporal*, as maximum; and per previous ruling[58] of this Court, must also indemnify the victim in the amount of ₱15,000.00 as moral damages and pay a fine in the same amount.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 169569. August 3, 2010]

RAMON TORRES and JESSIE BELARMINO, *petitioners, vs.* **SPOUSES VIHINZKY ALAMAG and AIDA A. NGOJU,** *respondents.*

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[58] *People v. Candaza, supra,* at 299, citing *Olivarez v. Court of Appeals,* 465 SCRA 465, 473-476. (2005).

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; A PARTY LITIGANT SHOULD BE ALLOWED A FRESH PERIOD OF 15 DAYS WITHIN WHICH TO FILE A NOTICE OF APPEAL IN THE REGIONAL TRIAL COURT COUNTED FROM THE RECEIPT OF THE ORDER DISMISSING OR DENYING A MOTION FOR NEW TRIAL OR MOTION FOR RECONSIDERATION, SO AS TO STANDARDIZE THE APPEAL PERIODS PROVIDED IN THE RULES OF COURT AND TO DO AWAY WITH THE CONFUSION AS TO WHEN THE 15-DAY APPEAL PERIOD SHOULD BE COUNTED.— In *Neypes v. Court of Appeals*, the Court declared that a party-litigant should be allowed a fresh period of 15 days within which to file a notice of appeal in the RTC, counted from receipt of the order dismissing or denying a motion for new trial or motion for reconsideration, so as to standardize the appeal periods provided in the Rules of Court and do away with the confusion as to when the 15-day appeal period should be counted. Furthermore, in *Sumiran v. Damaso*, the Court again emphasized that the ruling in *Neypes*, being a matter of procedure, must be given retroactive effect and applied even to actions pending in this Court. Thus, in this case, since respondents received a copy of the Order denying their motion for reconsideration on August 29, 2001, then the last day for filing their notice of appeal was on September 13, 2001. The respondents having filed their notice of appeal on September 11, 2001 is well within the prescribed period.

2. ID.; ID.; EXECUTION OF JUDGMENTS; REDEMPTION OF REAL PROPERTY SOLD; WHAT A VALID REDEMPTION MUST INCLUDE.— The Court is unconvinced by the CA's reasoning that petitioner Torres failed to pay the full redemption price on December 29, 1998. The amount of ₱402,993.60 paid by petitioner Torres already included the bid price paid by the Spouses Chua, capital gains and documentary stamp taxes, fees due to the Register of Deeds, and interest on the total amount for 18 months from June 30, 1997 to December 30, 1998. The only amounts not included were the expenses for payment of realty taxes and interest thereon. Indeed, it has been held that for a valid redemption, the amount tendered must include the following: (1) the full amount paid by the

purchaser; (2) with an additional one percent per month interest on the purchase price up to the time of redemption; (3) together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase; (4) interest on the taxes paid by the purchaser at the rate of one percent per month up to the time of redemption; and (5) if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien, with interest.

3. ID.; ID.; ID.; ID.; ID.; THE PAYMENT OF THE FULL PURCHASE PRICE AND INTEREST THEREON BY A REDEMPTIONER, WHO HAD NOT BEEN APPRISED OF THE AMOUNT OF TAXES PAID BY THE PURCHASER, SHOULD ALREADY BE CONSIDERED SUFFICIENT FOR PURPOSES OF REDEMPTION IF REDEMPTIONER IMMEDIATELY PAYS THE ADDITIONAL AMOUNT FOR TAXES ONCE NOTIFIED OF THE DEFICIENCY.— In *Baluyut v. Poblete*, the Court held that the purchaser is required to furnish copies of the amounts of assessments or taxes which he may have paid to inform the mortgagor or redemptioner of the actual amount which he should pay in case he chooses to exercise his right of redemption and if no such notice is given, the property may be redeemed without paying such assessments or taxes. Then, in *Cayton v. Zeonnix Trading Corporation*, the Court reiterated the ruling in *Estanislao, Jr. v. Court of Appeals* that the payment of the full purchase price and interest thereon by a redemptioner, who had not been apprised of the amount of taxes paid by the purchaser, should already be considered sufficient for purposes of redemption if the redemptioner immediately pays the additional amount for taxes once notified of the deficiency. The Court deemed this to be in consonance with the policy of the law to aid rather than defeat the right of redemption. Therefore, the amount paid by petitioner Torres on December 29, 1998 shall also be deemed sufficient for purposes of redemption. Petitioner Sheriff Jessie Belarmino acted properly in issuing a Certificate of Redemption to petitioner Torres.

APPEARANCES OF COUNSEL

Ramon R. Palmares for petitioners.
Paulino Del Socorro for respondents.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Decision[1] of the Court of Appeals (CA), dated June 29, 2005, reversing the judgment of the Regional Trial Court (RTC), Cebu City, Branch 8, and the CA Resolution[2] dated September 8, 2005 denying herein petitioners' motion for reconsideration, be reversed and set aside.

The undisputed facts are as follows.

Respondents are the registered owners of a parcel of land which are covered by two (2) titles, namely: TCT No. 106114 and TCT No. 106115. Said property was extrajudicially foreclosed on June 30, 1997 by the Bank of the Philippine Islands to satisfy a loan obligation. At the public auction sale of the mortgaged property, the same was awarded to the spouses Rudy and Dominica Chua, being the highest bidder for the amount of ₱310,000.00. They were, subsequently, issued a Certificate of Sale dated July 18, 1997, which was registered in the Office of the Register of Deeds of Cebu City on January 8, 1998.

Meanwhile, in a separate case for ejectment (Civil Case No. R-39051) filed by petitioner Ramon Torres against respondent Alamag, the Municipal Trial Court in Cities (MTCC), Branch 1, Cebu City, rendered a Decision dated March 27, 1998 in favor of herein petitioner Ramon Torres. The MTCC ordered herein respondent Vihinzky Alamag (1) to vacate the premises subject of the ejectment case, and (2) to pay herein petitioner Torres the sum of ₱75,250.00 as rental arrearages, ₱20,000.00 as attorney's fees, ₱5,000.00 as litigation expenses, and costs of suit. Said MTCC Decision became final and executory and

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[1] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Arsenio J. Magpale and Enrico A. Lanzanas, concurring; *rollo*, pp. 108-117.

[2] *Id.* at 134-135.

pursuant to a writ of execution, a Notice of Levy was annotated on the titles of respondents Alamag's and Ngoju's properties on June 26, 1998. These are the properties subject of the present case.

Thereafter, in a letter request dated December 4, 1998, respondent Alamag asked petitioner Sheriff Jessie Belarmino for confirmation of the initial computation of the estimated redemption price of ₱389,570.00. On December 28, 1998, petitioner Torres likewise requested for an estimate of the redemption price.

On December 29, 1998, petitioner Torres redeemed the two lots from the Spouses Chua by paying, through the Office of the Clerk of Court of the Regional Trial Court of Cebu City, the amount of ₱402,993.60. An additional ₱22,000.00 for interest and taxes was paid by petitioner Torres on January 8, 1999.

However, respondent Alamag also deposited ₱404,000.00 as redemption money with the Office of the Clerk of Court on January 7, 1999, as evidenced by an Official Receipt and a Notice of Tender, both bearing the same date. The Office of the Clerk of Court did not issue a certificate of redemption to respondent Alamag for the reason that a prior redemption had purportedly been made by petitioner Torres on December 29, 1998.

On January 12, 1999, Sheriff Jessie Belarmino issued a Certificate of Redemption to petitioner Torres.

Respondents Alamag and Ngoju then filed a case for Redemption and Injunction with Prayer for the issuance of a Temporary Restraining Order with the RTC, praying that they be declared to be the rightful persons to redeem the disputed foreclosed properties from the Spouses Chua, and that a certificate of redemption be issued in their favor by petitioner Sheriff Belarmino. Petitioner Torres countered that he is a valid redemptioner under Section 27(b), Rule 39 of the Rules of Court; hence, the issuance to him of a certificate of redemption was only proper.

The RTC then issued its Decision dated April 2, 2001, ruling that petitioner Torres, who is a creditor having a lien by judgment on the subject property, which is subsequent to the lien under which the property was sold, is a valid redemptioner under Section 27(b), Rule 39 of the Rules of Court, and disposed as follows:

> IN VIEW OF THE FOREGOING, judgment is hereby rendered ordering:
>
> 1. That the complaint be dismissed; and
>
> 2. That plaintiffs [herein respondents Alamag and Ngoju] pay the defendants [herein petitoners Torres and Belarmino] ₱50,000.00 as attorney's fees, litigation expenses, considering that he was forced to hire the services of counsel to protect his interest.[3]

Respondents' motion for reconsideration of the foregoing Decision was denied. On September 11, 2001, herein respondents filed a Notice of Appeal. Petitioners moved for dismissal of the appeal on the ground that it was belatedly filed. On December 14, 2001, the RTC issued an Order denying the motion to dismiss the appeal. The appeal was then given due course.

On June 29, 2005, the CA rendered the assailed Decision holding that **both** petitioner Torres, on the one hand, and respondents Alamag and Ngoju, on the other, had the right to redeem the disputed lots, but it was respondents who were the first to tender the full redemption price, so they should have been issued the certificate of redemption. The dispositive portion of the CA Decision stated, thus:

> WHEREFORE, in view of the foregoing, the assailed decision of the court *a quo* is hereby REVERSED AND SET ASIDE. The certificate of redemption dated January 12, 1999 issued to defendant-appellee Ramon Torres is hereby cancelled and plaintiffs-appellants are declared to have validly redeemed subject property.

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[3] *Rollo*, p. 67.

SO ORDERED.[4]

Petitioners' motion for reconsideration of the above Decision was denied *per* CA Resolution dated September 8, 2005. Hence, this petition where it is alleged that:

I.

THE COURT OF APPEALS ERRED IN ALLOWING THE APPEAL OF RESPONDENTS DESPITE FAILURE TO APPEAL ON TIME

II.

THE COURT OF APPEALS ERRED IN DEVIATING FROM THE AGREED SOLE AND LEGAL ISSUE POSED FOR RESOLUTION AS AGREED BY THE PARTIES BEFORE THE TRIAL COURT AND RESOLVING INSTEAD A FOREIGN ISSUE

III.

THE COURT OF APPEALS ALSO ERRED EVEN IN RESOLVING THE FOREIGN ISSUE IN IGNORING THE CLEAR PROVISION OF LAW AND APPLICABLE SUPPORTING JURISPRUDENCE THAT IF NO NOTICE OF PAYMENT OF TAXES IS FILED WITH THE SHERIFF AND REGISTER OF DEEDS, THERE IS NO NEED TO INCLUDE THE PAYMENT OF TAXES IN REDEMPTION PRICE.[5]

The petition merits some consideration.

The first argument must, however, be struck down. In *Neypes v. Court of Appeals*,[6] the Court declared that a party-litigant should be allowed a fresh period of 15 days within which to file a notice of appeal in the RTC, counted from receipt of the order dismissing or denying a motion for new trial or motion for reconsideration, so as to standardize the appeal periods provided in the Rules of Court and do away with the confusion as to when the 15-day appeal period should be counted.[7]

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[4] *Id.* at 117.

[5] *Id.* at 11-12.

[6] G.R. No. 141524, September 14, 2005, 469 SCRA 633, 644.

[7] *Sumiran v. Damaso*, G.R. No. 162518, August 19, 2009, 596 SCRA 450, 455.

Furthermore, in *Sumiran v. Damaso*,[8] the Court again emphasized that the ruling in *Neypes*, being a matter of procedure, must be given retroactive effect and applied even to actions pending in this Court. Thus, in this case, since respondents received a copy of the Order denying their motion for reconsideration on August 29, 2001, then the last day for filing their notice of appeal was on September 13, 2001. The respondents having filed their notice of appeal on September 11, 2001 is well within the prescribed period.

Petitioners' second argument must, likewise, fail. Their contention, that the CA should have limited its ruling to the issue of whether petitioner Torres had a right to redeem the disputed lots, is incorrect. The main prayer in respondents' complaint before the RTC is for the court to order petitioner Belarmino to issue a certificate of redemption in favor of respondents. In the Pre-Trial Order, one of the issues enumerated for resolution is "[w]hether or not plaintiffs [herein respondents] have the right to redeem from the Spouses Chua, who were the highest bidder of the auction sale, or from defendant Ramon Torres who redeemed the properties from the former as a junior redemptioner."[9] Even in herein respondents' Appellants' Brief filed with the CA, it was averred that the trial court erred in disregarding the tender of redemption made by respondents. Clearly, the main issue brought before the court was who made the proper redemption. Verily, the CA was behooved to determine who, as between petitioner Torres and respondent Alamag, is entitled to a certificate of redemption.

The final question then is, did the CA correctly rule that respondents are the ones entitled to a certificate of redemption? Note that both the RTC and the CA ruled that petitioner Torres had a right to redeem the lots as he is a redemptioner contemplated under Section 27 (b), Rule 39 of the Rules of Court, which provides that:

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[8] *Supra*, at 458.

[9] Records, p. 82.

SEC. 27. *Who may redeem real property so sold.* — Real property sold as provided in the last preceding section, or any part thereof separately, may be redeemed in the manner hereinafter provided, by the following persons:

x x x x x x x x x

(b) A creditor having a lien by virtue of an attachment, judgment or mortgage on the property sold, or on some part thereof, subsequent to the lien under which the property was sold. Such redeeming creditor is termed a redemptioner.

Indeed, under the foregoing rule, petitioner Torres had a right to redeem the properties sold at public auction. He is a creditor who had lien on the disputed lots by virtue of the Notice of Levy annotated on the respective titles of the properties as a result of a final and executory judgment for rental arrearages and attorney's fees against respondent Alamag. Petitioner Torres' lien is subsequent to the lien under which the property was sold, *i.e.*, the extrajudicial foreclosure sale, because the Notice of Levy on the properties was annotated on the titles only after the Certificate of Sale for the public auction had been registered in the Office of the Register of Deeds. Hence, the RTC and the CA are correct in ruling that petitioner Torres is indeed a redemptioner under Section 27 (b), Rule 39 of the Rules of Court.

However, the CA further held that despite the fact that petitioner Torres is entitled to redeem the subject lots, respondents should nevertheless be given priority in redeeming the properties in question. In the CA's ruling, petitioner Torres' payment of ₱402,993.60 made on December 29, 1998, was not the full redemption price as it did not include interests and taxes. Petitioner Torres only paid the additional amount of ₱22,000.00 for realty taxes on January 8, 1999, but according to the CA, by that time, respondent Alamag had already tendered the full amount of the redemption price, as he deposited ₱404,000.00 with the Office of the Clerk of Court on January 7, 1999, one day ahead of Torres' payment for taxes with interest thereon. The CA then ruled that, given this circumstance, it was respondent

Alamag who is entitled to a certificate of redemption as he made a proper redemption one day ahead of petitioner Torres.

The foregoing analysis is flawed. There is no cavil as to petitioner Torres' right to redeem the subject properties, he being a redemptioner under Section 27 (b), Rule 39 of the Rules of Court. The records show that as early as December 29, 1998, petitioner Torres already paid the sheriff the redemption price of ₱402,993.60, based on the sheriff's computation.[10] This was the very same computation on which respondent Alamag based his tender of the redemption price of ₱404,000.00 on January 7, 1999. The computation already included the bid price paid by the Spouses Chua, capital gains and documentary stamp taxes, fees due to the Register of Deeds, and interest on the total amount for 18 months from June 30, 1997 to December 30, 1998. Note, however, that as of December 29, 1998, neither the sheriff nor petitioner Torres had been informed by the Spouses Chua of the amount they had paid for taxes on the properties. Petitioner Torres testified[11] that he was only informed by the Spouses Chua of the amount they spent for taxes, by showing him the official receipts therefor, on January 8, 1999, thus, he immediately paid the amount of ₱22,000.00 on the same day.

The Court is unconvinced by the CA's reasoning that petitioner Torres failed to pay the full redemption price on December 29, 1998. The amount of ₱402,993.60 paid by petitioner Torres already included the bid price paid by the Spouses Chua, capital gains and documentary stamp taxes, fees due to the Register of Deeds, and interest on the total amount for 18 months from June 30, 1997 to December 30, 1998. The only amounts not included were the expenses for payment of realty taxes and interest thereon. Indeed, it has been held that for a valid redemption, the amount tendered must include the following: (1) the full amount paid by the purchaser; (2) with an additional one percent per month interest on the purchase price up to the time of redemption; (3) together with the amount of any

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[10] Exhibit "3", records, p. 142.

[11] See TSN, March 6, 2000, pp. 17-19.

assessments or taxes which the purchaser may have paid thereon after purchase; (4) interest on the taxes paid by the purchaser at the rate of one percent per month up to the time of redemption; and (5) if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien, with interest.[12] However, in *Baluyut v. Poblete*,[13] the Court held that the purchaser is required to furnish copies of the amounts of assessments or taxes which he may have paid to inform the mortgagor or redemptioner of the actual amount which he should pay in case he chooses to exercise his right of redemption and if no such notice is given, the property may be redeemed without paying such assessments or taxes.[14] Then, in *Cayton v. Zeonnix Trading Corporation*,[15] the Court reiterated the ruling in *Estanislao, Jr. v. Court of Appeals* [16] that the payment of the full purchase price and interest thereon by a redemptioner, who had not been apprised of the amount of taxes paid by the purchaser, should already be considered sufficient for purposes of redemption if the redemptioner immediately pays the additional amount for taxes once notified of the deficiency. The Court deemed this to be in consonance with the policy of the law to aid rather than defeat the right of redemption. [17] Therefore, the amount paid by petitioner Torres on December 29, 1998 shall also be deemed sufficient for purposes of redemption. Petitioner Sheriff Jessie Belarmino acted properly in issuing a Certificate of Redemption to petitioner Torres.

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[12] *Cayton vs. Zeonnix Trading Corporation*, G.R. No. 169541, October 9, 2009, 603 SCRA 141, 156.

[13] G.R. No. 144435, February 6, 2007, 514 SCRA 370, 387.

[14] *Id.* at 387.

[15] *Supra* note 12.

[16] 414 Phil. 509 (2001).

[17] *Cayton vs. Zeonnix Trading Corporation, supra* note 12, at 156-158.

IN VIEW OF THE FOREGOING, the Petition is *GRANTED*. The Decision of the Court of Appeals in CA-G.R. CV No. 73997, dated June 29, 2005, is *REVERSED and SET ASIDE*, and the Decision of the Regional Trial Court of Cebu City, Branch 8 in Civil Case No. CEB-23175 is *REINSTATED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 170847. August 3, 2010]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **FELICITAS ZARATE, as substituted by her heirs, namely, Melanie, Jocelyn, Analie and Henry Joseph, Jr., all surnamed Zarate,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; EMPLOYEES COMPENSATION COMMISSION; DEATH BENEFITS; DECEASED MEMBER'S DEATH IS CONSIDERED COMPENSABLE PERFORMANCE OF DUTY UNDER SECTION 1, RULE III OF THE EMPLOYEES COMPENSATION COMMISSION RULES; THE DECEASED MEMBER IS DEEMED *EN ROUTE* TO THE PERFORMANCE OF HIS DUTY WHEN HIS ACCIDENTAL DEATH OCCURRED.— We fully agree with the CA's finding: Henry should already be deemed *en route* to the performance of his duty when his accidental death occurred. He was on his way back to Manila in order to be on time and be ready for work the next day as Senior Fire Officer of the Pinagkaisahan

Fire Substation in Cubao. He was traveling with his superior's permission and was complying with the condition that he return the next day. Under these facts, Henry was in the course of complying with his superior's order when he met his fatal accident. To be sure, he was not in an actual firefighting or accident situation when he died, but returning to work as instructed by his superior is no less equivalent to compensable performance of duty under Section 1, Rule III of the ECC Rules.

2. ID.; ID.; LAW ON EMPLOYEE COMPENSATION MUST BE GIVEN A LIBERAL READING.— We are mindful that Presidential Decree No. 626 on employees' compensation is a legislation aimed at furthering the Labor Code's benevolent policy of affording protection to labor. Consistent with the law's intent, we must give the law on employee compensation a liberal reading, to the point of ruling in favor of labor and of the grant of employee compensation even in marginal situations for as long as a reasonable work connection may be found. This stance is justified no less by Article 4 of the Labor Code which decrees that all doubts in the implementation and interpretation of the provisions of the Labor Code *shall be* resolved in favor of the employee.

APPEARANCES OF COUNSEL

GSIS Law Office for petitioner.
Pedro A. Magpayo, Jr. for respondents.

D E C I S I O N

BRION, *J.*:

We review, through the petition for review on *certiorari*[1] filed by the Government Service Insurance System (*GSIS*), the October 12, 2005 decision and the December 19, 2005 resolution of the Court of Appeals[2] (*CA*) in CA-G.R. SP No. 73993 (entitled

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

[2] Penned by Associate Justice Mario L. Guariña III (retired), and concurred in by Associate Justice Roberto A. Barrios (deceased) and Associate Justice Arturo G. Tayag.

Felicitas Zarate v. Government Service Insurance System). The CA decision and resolution reversed the Employees' Compensation Commission's (*ECC's*) affirmation of the GSIS' denial of death benefits to Felicitas Zarate for the death of her husband Henry.

The Background Facts

The CA related the facts as follows:

The deceased Henry Zarate was a native of Pangasinan who joined the Bureau of Fire Protection as a fireman on June 1, 1978. He was promoted to the rank of Fireman First Class, Fire Corporal and, finally, Senior Fire Officer on July 1, 1992. Five years later, on June 15, 1997, while he was assigned at the Pinagkaisahan Fire Sub-Station in Cubao, Quezon City, he met a traffic accident that cost him his life. As found by the ECC, Zarate went to Rosario, La Union on June 15, which was a Sunday, to visit his ailing mother. In order to report to his station the next day, Monday, he headed back to Metro Manila on the same day, June 15, aboard a Philippine Rabbit bus with plate number CVE-786. At around 2:45 P.M., at Kilometer 80, North Expressway, Cacutud, Angeles City, Pampanga, the bus he was riding on collided with a Swagman Travel Shuttle bus. He sustained severe injuries and was rushed to the Angeles University Foundation. He was pronounced *dead on arrival.*

Zarate's demise was recorded in the sub-station's log book in the following morning of June 16. The entry stated that *SFO2 H. Zarate met a vehicular accident while on off-duty status.* A subsequent investigation conducted by the Inspectorate Section of the Bureau confirmed that although off-duty, he was on his way back to Metro Manila from his mother's residence at La Union when the accident occurred. It was acknowledged that Zarate had the permission of his superior to take the trip to La Union on condition that he returned the next day. He was fated to meet his end on the same day. While his mother pleaded to him to stay a little longer, he insisted on returning to be on time for duty on Monday. Had he heeded the advice of his mother, he would still be alive today.[3]

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[3] *Rollo,* pp. 30-31.

Henry's wife, Felicitas, filed a claim for death benefits with the GSIS, under Presidential Decree No. 626. The GSIS denied the claim by ruling as follows:

> The death of the late Henry Zarate did not arise out of nor was it in the course of his employment. Records also disclosed, that the accident occurred while the subject employee was on off-duty status[.][4]

Felicitas appealed the GSIS ruling to the ECC. In its decision dated October 22, 2002,[5] the ECC dismissed Felicitas' appeal on the ground that Henry's death was indeed not work-related. Said the ECC:

> To be compensable, an injury must have resulted from an accident arising out of and in the course of employment. It must be shown that it must be sustained within the scope of employment while an employee was performing an act reasonably necessary or incidental thereto or while following the order of his superior. Indeed, the standard of work-connection must be satisfied even by one who invokes the 24-hour duty doctrine.[6]

It reasoned out that Henry had gone to La Union to visit his ailing mother and was on his way back to Manila when he figured in the accident that killed him. To the ECC, "*It is clear that the accident transpired while he was not in the actual performance of his occupation as Fireman x x x the circumstances in the present case do not call for the application of the 24-hour duty doctrine because the deceased was neither at his assigned workplace nor in pursuit of orders of his superior.*"[7]

Felicitas next brought her case on appeal to the CA pursuant to Rule 43 of the Rules of Court. The CA, in its assailed decision[8]

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[4] *Id.* at 37.

[5] *Id.* at 36-38.

[6] *Id.* at 29-34.

[7] *Id.* at 37.

[8] *Id.* at 37-38.

of October 12, 2005, reversed the ECC ruling. It maintained that there was a reasonable work connection in Henry's death and that it is the policy of the law to extend state insurance benefits to as many qualified employees as possible.

The ECC challenges the CA decision in this petition, and submits the following:

Issue

The Honorable Court of Appeals committed a reversible error in granting the respondent's claim for death benefits under P.D. No. 626, as amended, disregarding the fact that the cause of the death of the respondent's late husband, SFO2 Henry Zarate, did not arise out of and in the course of employment.[9]

The Court's Ruling

We dismiss the petition for lack of merit and, accordingly, affirm the CA's decision.

We note that at the time of his death, Henry was a Senior Fire Officer in Quezon City and had occupied this position for five years. A fireman's work is essentially to prevent and suppress all destructive fires on buildings, houses and other structures, land transportation vehicles and equipment.[10] Henry's position as Senior Fire Officer necessarily included duties more difficult than those of an ordinary fireman.

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[9] *Id.* at 18.

[10] R.A. No. 6975 — Department of the Interior and Local Government Act of 1990.

SECTION 54. Powers and Functions. — The Fire Bureau shall be responsible for the prevention and suppression of all destructive fires on buildings, houses and other structures, forest, land transportation vehicles and equipment, ships or vessels docked at piers or wharves or anchored in major seaports, petroleum industry installations, plane crashes and other similar incidents, as well as the enforcement of the Fire Code and other related laws.

The Fire Bureau shall have the power to investigate all causes of fires and, if necessary, file the proper complaints with the city or provincial prosecutor who has jurisdiction over the case.

Henry's place of work was the Pinagkaisahan Fire Substation in Cubao, Quezon City, located just five minutes away from the bustling heart of Quezon City — the Araneta Center, the Gateway Mall, the Ali Mall, and the intersection of the Light Rail Transit System (*LRT*) and the Metro Rail Transit System (*MRT*). There are several high-rise commercial buildings, a public school, a market, and bus stations in the immediate vicinity. Thousands of commuters get off at the MRT/LRT intersection during the morning and afternoon rush hours. In case of a fire or an accident, the responses required would be more complicated and more challenging than what one might expect in a smaller city or rural municipality. A Senior Fire Officer knows the extent of the responsibilities of this position, *i.e.*, that he should be at peak condition when he reports for duty and be ready to efficiently respond as dictated by his duties. We expect no less from Henry who bothered to secure the permission of his superior officer to visit his mother, and who rushed back on the very same day to return to his base.

Henry's mother lived in Rosario, La Union whose approximate road distance from Quezon City is 220 kilometers. Given this distance, the travel time from Quezon City to Rosario, La Union, by public land transport, is at least five hours.

It is not disputed that Henry visited his mother because she was then ill. Likewise, it is not also disputed that he did not simply leave Quezon City for his visit; he asked for his superior's permission, which was given ***on condition that he returned the next day.***[11] Hence, on that fateful Sunday, June 15, 1997, Henry had his superior's authority to travel and knew that he had to report fresh the following day. Instead of opting to travel to Quezon City on the very same day he was to report for work, Henry returned on the very day of his visit so he could properly report on Monday. In doing this, he did not heed his mother's plea to stay a little longer. These were the facts that the CA considered and positively appreciated.

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[11] *Rollo*, p. 31.

In the assailed decision, the CA appropriately took note of our rulings on the payment of compensation on returning to and from work situations. Notably, the CA took note of *Valeriano v. ECC*,[12] where we stated that if it can be proven that at the time of injury, the employee was acting within the scope of his employment and performing an act reasonably necessary in his work, his injury is compensable. Valeriano was a fire truck driver who was on his way home, after having dinner with a friend in a restaurant, when the vehicle they were riding figured in a head-on collision, resulting in his death. His widow was denied death benefits because Valeriano was coming from a private dinner on his way home and no immediate relationship to work was established.

The CA also considered *GSIS v. CA*,[13] a case where a policeman's widow was denied death benefits because at the time of his death, the policeman was ferrying passengers for a fee. We did not apply the 24-hour duty doctrine that the ECC cited in its consideration of Henry's case, as this is applicable to policemen only when death is caused by circumstances that are basically police service in character. In this cited case, ferrying passengers for a fee was foreign to the duties that a policeman regularly performs.

The CA cited and relied on our ruling in *Vano v. GSIS*[14] because of the similarity of the obtaining factual situations. Vano was a letter carrier who died as a result of a motorcycle accident while he was on his way from his hometown in Bohol to Tagbilaran City where he worked. The Court found that Vano's death was compensable as an employment accident because Vano was then on his way to work. In Henry's case, the CA granted death benefits on the reasoning that Henry *lost his life while traveling from the home of his mother which he had been allowed to visit (and which was no less a home to him) and*

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[12] 388 Phil. 1115 (2000).

[13] 365 Phil. 482 (1999).

[14] 259 Phil. 396 (1989).

was on his way back to Quezon City, in compliance with the timeline his superior gave him.

We fully agree with the CA's finding: Henry should already be deemed *en route* to the performance of his duty when his accidental death occurred. He was on his way back to Manila in order to be on time and be ready for work the next day as Senior Fire Officer of the Pinagkaisahan Fire Substation in Cubao. He was traveling with his superior's permission and was complying with the condition that he return the next day. Under these facts, Henry was in the course of complying with his superior's order when he met his fatal accident. To be sure, he was not in an actual firefighting or accident situation when he died, but returning to work as instructed by his superior is no less equivalent to compensable performance of duty under Section 1, Rule III of the ECC Rules.

In so ruling, we are mindful that Presidential Decree No. 626 on employees' compensation is a legislation aimed at furthering the Labor Code's benevolent policy of affording protection to labor.[15] Consistent with the law's intent, we must give the law on employee compensation a liberal reading, to the point of ruling in favor of labor and of the grant of employee compensation even in marginal situations for as long as a reasonable work connection may be found.[16] This stance is justified no less by Article 4 of the Labor Code which decrees that all doubts in the implementation and interpretation of the provisions of the Labor Code *shall be* resolved in favor of the employee.

WHEREFORE, premises considered, we hereby *DENY* the petition for review on *certiorari*, and, accordingly, *AFFIRM* the decision of the Court of Appeals dated October 12, 2005 in CA-G.R. SP No. 73993. No costs.

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[15] Article 3, Labor Code.

[16] *Lazo v. Employees' Compensation Commission*, G.R. No. 78617, June 18, 1990, 183 SCRA 569; *Rodrin v. GSIS*, G.R. No. 162837, July 28, 2008, 560 SCRA 166.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 171033. August 3, 2010]

CITY MAYOR, CITY TREASURER, CITY ASSESSOR, ALL OF QUEZON CITY, and ALVIN EMERSON S. YU, *petitioners, vs.* **RIZAL COMMERCIAL BANKING CORPORATION,** *respondent.*

SYLLABUS

1. STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; A SPECIAL LAW PREVAILS OVER A GENERAL LAW SINCE THE FORMER EVINCES THE LEGISLATIVE INTENT MORE CLEARLY THAN THAT OF THE GENERAL STATUTE AND MUST BE TAKEN AS INTENDED TO CONSTITUTE AN EXCEPTION TO THE RULE.— A general statute is one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class. A special statute, as the term is generally understood, is one which relates to particular persons or things of a class or to a particular portion or section of the state only. In the present case, R.A. No. 7160 is to be construed as a general law, while City Ordinance No. SP-91, S-93 is a special law, having emanated only from R.A. No. 7160 and with limited territorial application in Quezon City only. A general law and a special law on the same subject should be

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

accordingly read together and harmonized, if possible, with a view to giving effect to both. Where there are two acts, one of which is special and particular and the other general which, if standing alone, would include the same matter and thus conflict with the special act, the special must prevail, since it evinces the legislative intent more clearly than that of the general statute and must be taken as intended to constitute an exception to the rule. More so, when the validity of the law is not in question.

2. ID.; ID.; ID.; REDEMPTION SHOULD BE LOOKED UPON WITH FAVOR AND WHEN NO INJURY WILL FOLLOW, A LIBERAL CONSTRUCTION SHOULD BE GIVEN TO OUR REDEMPTION LAWS, SPECIFICALLY ON THE EXERCISE OF THE RIGHT TO REDEEM.— In giving effect to these laws, it is also worthy to note that in cases involving redemption, the law protects the original owner. It is the policy of the law to aid rather than to defeat the owner's right. Therefore, redemption should be looked upon with favor and where no injury will follow, a liberal construction will be given to our redemption laws, specifically on the exercise of the right to redeem. To harmonize the provisions of the two laws and to maintain the policy of the law to aid rather than to defeat the owner's right to redeem his property, Section 14 (a), Paragraph 7 of City Ordinance No. SP-91, S-93 should be construed as to define the phrase *"one (1) year from the date of sale"* as appearing in Section 261 of R.A. No. 7160, to mean *"one (1) year from the date of the annotation of the sale of the property at the proper registry."* Consequently, the counting of the one (1) year redemption period of property sold at public auction for its tax delinquency should be counted from the *date of annotation* of the certificate of sale in the proper Register of Deeds. Applying the foregoing to the case at bar, from the date of registration of the Certificate of Sale of Delinquent Property on February 10, 2004, respondent had until February 10, 2005 to redeem the subject properties. Hence, its tender of payment of the subject properties' tax delinquencies and other fees on June 10, 2004, was well within the redemption period, and it was manifest error on the part of petitioners to have refused such tender of payment.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; RESPONDENT'S FAILURE TO CITE SECTION 14 (a), PARAGRAPH 7, CITY ORDINANCE NO. SP-91, S-93 IN

ITS PETITION FOR *MANDAMUS* DOES NOT PRECLUDE IT FROM INVOKING THE SAID PROVISION IN THE LATER PART OF THE PROCEEDING.— Respondent's failure to cite Section 14 (a), Paragraph 7, City Ordinance No. SP-91, S-93 in its petition for *mandamus* does not preclude it from invoking the said provision in the later part of the judicial proceeding. The issues in every case are limited to those presented in the pleadings. The object of the pleadings is to draw the lines of battle between the litigants and to indicate fairly the nature of the claims or defenses of both parties. Points of law, theories, issues and arguments should be brought to the attention of the trial court to give the opposing party an opportunity to present further evidence material to these matters during judicial proceedings before the lower court. Otherwise, it would be too late to raise these issues during appeal. A party cannot, on appeal, change fundamentally the nature of the issue in the case. When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party.

4. ID.; ID.; ID.; PETITIONERS CANNOT FEIGN IGNORANCE OF A LAW THAT IT HAS PROMULGATED IN THE EXERCISE OF ITS LOCAL AUTONOMY, NOR CAN IT BE ALLOWED TO DENY THE APPLICABILITY THEREOF WHILE AT THE SAME TIME INVOKING THAT IT HAS STRICTLY ADHERED TO THE QUEZON CITY REVENUE CODE WHEN IT CONDUCTED THE PUBLIC AUCTION OF THE TAX DELINQUENT PROPERTIES.— As early as in its Memorandum to Serve as Draft Resolution, respondent had brought Section 14 (a), Paragraph 7 of City Ordinance No. SP-91, S-93, or the Quezon City Revenue Code of 1993, to the attention of petitioners. Respondent also reiterated the applicability of the provision to his claim of redemption in its motion for reconsideration of the Order initially denying the petition for *mandamus*. Petitioners were given every opportunity to counter respondent's allegations, which it in fact did by filing an Opposition to the motion for reconsideration. Since the inception of the petition in the lower court, respondent has not changed its preposition that the one (1) year redemption period shall be counted from the date of registration of the certificate of sale and not from the

date of sale of the subject properties. Citing the appropriate provision of the Quezon City Revenue Code of 1993 did not alter this, but on the contrary, even buttressed its claim. Furthermore, petitioners cannot feign ignorance of a law that it has promulgated in the exercise of its local autonomy. Nor can it be allowed to deny the applicability of Section 14 (a), Paragraph 7 of the Quezon City Revenue Code of 1993, while at the same time invoking that it has strictly adhered to the Quezon City Revenue Code when it conducted the public auction of the tax delinquent properties.

APPEARANCES OF COUNSEL

Christian B. Valencia for public petitioner.
Benjamin A. Moraleda, Jr. for Alvin Emerson S. Yu.
Balmeo & Go for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* assailing the Decision[1] dated December 6, 2005, of the Regional Trial Court (RTC), National Capital Judicial Region, Branch 101, Quezon City, in SP. Civil Action Q-04-53522 for *Mandamus* with Prayer for Issuance of a Temporary Restraining Order and a Writ of Preliminary Injunction.

The procedural and factual antecedents are as follows:

The facts are undisputed. The spouses Roberto and Monette Naval obtained a loan from respondent Rizal Commercial Banking Corporation, secured by a real estate mortgage of properties covered by Transfer Certificate of Title (TCT) Nos. N-167986, N-167987, and N-167988. In 1998, the real estate mortgage was later foreclosed and the properties were sold at public auction with respondent as the highest bidder. The corresponding

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[1] Penned by Judge Marie Christine A. Jacob, Pairing Judge, Regional Trial Court, Br. 101, Quezon City; *rollo*, pp. 65-71.

Certificates of Sale were issued in favor of respondent on August 4, 1998. However, the certificates of sale were allegedly registered only on February 10, 2004.

Meanwhile, on May 30, 2003, an auction sale of tax delinquent properties was conducted by the City Treasurer of Quezon City. Included in the properties that were auctioned were two (2) townhouse units covered by TCT Nos. N-167986 and N-167987 and the parcel of land covered by TCT No. N-167988. For these delinquent properties, Alvin Emerson S. Yu was adjudged as the highest bidder. Upon payment of the tax delinquencies, he was issued the corresponding Certificate of Sale of Delinquent Property.

On February 10, 2004, the Certificate of Sale of Delinquent Property was registered with the Office of the Register of Deeds of Quezon City.

On June 10, 2004, respondent tendered payment for all of the assessed tax delinquencies, interest, and other costs of the subject properties with the Office of the City Treasurer, Quezon City. However, the Office of the City Treasurer refused to accept said tender of payment.

Undeterred, on June 15, 2004, respondent filed before the Office of the City Treasurer a Petition[2] for the acceptance of its tender of payment and for the subsequent issuance of the certificate of redemption in its favor. Nevertheless, respondent's subsequent tender of payment was also denied.

Consequently, respondent filed a Petition for *Mandamus* with Prayer for Issuance of a Temporary Restraining Order and a Writ of Preliminary Injunction[3] before the RTC. Petitioners contended, among other things, that it had until February 10, 2005, or one (1) year from the date of registration of the certificate of sale on February 10, 2004, within which to redeem the subject properties, pursuant to Section 78 of Presidential Decree (P.D.) No. 464 or the Real Property Tax Code.

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[2] *Rollo*, pp. 102-107.

[3] *Id*. at 72-88.

After the parties filed their respective pleadings, the RTC initially denied the petition in the Order[4] dated December 6, 2004. In denying the petition, the RTC opined that respondent's reliance on Section 78 of P.D. No. 464 as basis of the reckoning period in counting the one (1) year period within which to redeem the subject properties was misplaced, since P.D. No. 464 has been expressly repealed by Republic Act (R.A.) No. 7160, or the Local Government Code.

Aggrieved, respondent filed a Motion for Reconsideration[5] questioning the Order, arguing that:

A.

The Honorable Court committed grave error when it summarily denied the petition for *Mandamus* filed by herein petitioner during the hearing on the Motion for Issuance of Temporary Restraining Order and/or Issuance of a Writ of Preliminary Injunction without conducting a hearing or trial on petition for *mandamus*. The order of the court effectively denied petitioner its right to due process.

B.

The principal action subject of the petition for *mandamus* is the annulment of the auction sale. Alternatively, petitioner sought the right to consign the redemption price, inclusive of interests on the basis that it was exercising the right of redemption within the period provided by law. The Honorable Court ruled only on the repeal of Presidential Decree No. 464 and not the issues/grounds raised in the temporary restraining order/writ of preliminary injunction nor on the issues raised in the petition for *mandamus*, contrary to law.

C.

The Honorable Court committed grave error when it sustained the validity of the actions of the City Treasurer with respect to the auction sale of the properties subject of the petition and its unlawful refusal to accept the redemption price of the properties subject of the auction sale contrary to the provisions of Quezon City Ordinance No. 91-93, in relation to Presidential Decree No. 464 and the Local Government Code and DOF Assessment Regulations No. 7-85.

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[4] *Id*. at 184-186.

[5] *Id*. at 187-205.

D.

The Honorable Court committed grave error when it denied petitioner its right to consign the payment of the redemption price of the properties sold in auction sale without a determination of the factual issues of the case, contrary to due process.

E.

The legal and factual question of the validity of the notice of the auction sale cannot be summarily dismissed without hearing and ruling on the allegation of lack of notice and fraud raised by petitioner in its petition for *mandamus*.[6]

On December 6, 2005, the RTC rendered a Decision[7] granting the petition, the decretal portion of which reads:

WHEREFORE, premises considered, the above-captioned petition for *mandamus* is hereby granted.

Accordingly, the public respondents are ordered to accept the petitioner's tender of redemption payment, to issue the corresponding certificate of redemption in the name of the petitioner and to cancel the certificate of tax sale issued to the private respondent.

SO ORDERED.[8]

In granting the petition, the RTC ratiocinated that the counting of the one (1) year redemption period of tax delinquent properties sold at public auction should start from the date of registration of the certificate of sale or the final deed of sale in favor of the purchaser, so that the delinquent registered owner or third parties interested in the redemption may be notified that the delinquent property had been sold, and that they have one (1) year from said constructive notice of the sale within which to redeem the property. The RTC was also of the opinion that Section 261, R.A. No. 7160 did not amend Section 78 of P.D. No. 464.

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[6] *Id*. at 190-191.

[7] *Id*. at 65-71.

[8] *Id*. at 71.

Hence, the petition raising the following arguments:

I

THE REGIONAL TRIAL COURT, BRANCH 101, QUEZON CITY, DECIDED A QUESTION [OF] LAW CONTRARY TO LAW AND JURISPRUDENCE WHEN IT DECIDED THAT SECTION 78 OF P.D. 464 WAS NOT REPEALED BY REPUBLIC ACT NO. 7160 KNOWN AS THE LOCAL GOVERNMENT CODE OF 1991.

II

THE REGIONAL TRIAL COURT, BRANCH 101, QUEZON CITY, DECIDED A QUESTION [OF] LAW CONTRARY TO LAW AND JURISPRUDENCE WHEN IT RAISED THE FOLLOWING ISSUES WHICH DO NOT CONFORM TO THE PETITION AND ANSWER FILED BY THE PARTIES:

A. WHETHER OR NOT THE RESPONDENT IS ENTITLED TO THE PROTECTION OF ALL THE PROVISIONS OF QUEZON CITY TAX ORDINANCE NUMBER SP-91-93, OTHERWISE KNOWN AS QUEZON CITY REVENUE CODE OF 1993, INCLUDING SECTION 14 THEREOF, PROMULGATED PURSUANT TO R.A. 7160;

B. WHETHER THE PERIOD OF REDEMPTION IN A REALTY TAX SALE IN QUEZON CITY [H]AS TO BE RECKONED FROM THE DATE OF ANNOTATION OF THE CERTIFICATE OF SALE PURSUANT TO PARAGRAPH 7, SECTION 14 OF QUEZON CITY TAX ORDINANCE NO. SP-91-93 OR FROM THE DATE OF SALE PURSUANT TO SECTION 261 OF R.A. 7160.[9]

Petitioners argue that the RTC erred when it ruled that P.D. No. 464 was not repealed by R.A. No. 7160 and when it concluded that the phrase "from the date of sale" as appearing in Section 261 of R.A. No. 7160 means that the counting of the one (1) year redemption period of tax delinquent properties sold at public auction shall commence from the date of registration of the certificate of sale.

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[9] *Id*. at 34-35.

Petitioners insist that, since Section 14 (a), Paragraph 7 of the Quezon City Revenue Code of 1993 was not initially alleged in respondent's petition and was not used as basis for its filing, the RTC erred when it took cognizance of it when it rendered the assailed decision.

Conversely, respondent argues, among other things, that the RTC did not rule that P.D. No. 464 was not repealed by R.A. No. 7160, it merely made reference to Section 78 of P.D. No. 464. Respondent maintains that it has not altered its cause of action when it cited Section 14 (a), paragraph 7 of the Quezon City Revenue Code of 1993 for the first time in its memorandum and that its failure to invoke the said provision in the petition for *mandamus* does not preclude respondent from invoking it in the later part of the proceedings. Ultimately, respondent contends that the RTC correctly ruled that it had timely exercised its right to redeem the subject properties.

Section 78 of P.D. No. 464 provides for a one-year redemption period for properties foreclosed due to tax delinquency, thus:

> Sec. 78. *Redemption of real property after sale*. — Within the term of *one year from the date of the registration of the sale of the property*, the delinquent taxpayer or his representative, or in his absence, any person holding a lien or claim over the property, shall have the right to redeem the same by paying the provincial or city treasurer or his deputy the total amount of taxes and penalties due up to the date of redemption, the costs of sale and the interest at the rate of twenty *per centum* on the purchase price, and such payment shall invalidate the sale certificate issued to the purchaser and shall entitle the person making the same to a certificate from the provincial or city treasurer or his deputy, stating that he had redeemed the property.[10]

From the foregoing, the owner or any person holding a lien or claim over a tax delinquent property sold at public auction has one (1) year from the date of registration of sale to redeem the property. However, since the passing of R.A. No. 7160, such is no longer controlling. The issue of whether or not R.A

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[10] Italics supplied.

.No. 7160 or the Local Government Code, repealed P.D. No. 464 or the Real Property Tax Code has long been laid to rest by this Court. Jurisdiction thrives to the effect that R.A. No. 7160 repealed P.D. No. 464.[11] From January 1, 1992 onwards, the proper basis for the computation of the real property tax payable, including penalties or interests, if applicable, must be R. A. No. 7160. Its repealing clause, Section 534, reads:

SECTION 534. *Repealing Clause*. —

x x x x x x x x x

(c) The provisions of Sections 2, 3, and 4 of Republic Act No. 1939 regarding hospital fund; Section 3, a (3) and b (2) of Republic Act No. 5447 regarding the Special Education Fund; Presidential Decree No. 144 as amended by Presidential Decree Nos. 559 and 1741; Presidential Decree No. 231 as amended; Presidential Decree No. 436 as amended by Presidential Decree No. 558; and *Presidential Decrees Nos.* 381, 436, *464*, 477, 526, 632, 752, and 1136 are hereby repealed and rendered of no force and effect.

Inasmuch as the crafter of the Local Government Code clearly worded the above-cited Section to repeal P.D. No. 464, it is a clear showing of their legislative intent that R.A. No. 7160 was to supersede P.D. No. 464. As such, it is apparent that in case of sale of tax delinquent properties, R.A. No. 7160 is the general law applicable. Consequently, as regards redemption of tax delinquent properties sold at public auction, the pertinent provision is Section 261 of R.A. No. 7160, which provides:

Section 261. *Redemption of Property Sold*. — Within *one (1) year from the date of sale*, the owner of the delinquent real property or person having legal interest therein, or his representative, shall have the right to redeem the property upon payment to the local treasurer of the amount of delinquent tax, including the interest due thereon, and the expenses of sale from the date of delinquency to the date of sale, plus interest of not more than two percent (2%) per month on the purchase price from the date of sale to the date

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[11] *National Power Corp. v. Province of Lanao del Sur*, G.R. No. 96700, November 19, 1996, 264 SCRA 271; *Ty v. Hon. Trampe*, 321 Phil. 81 (1995).

of redemption. Such payment shall invalidate the certificate of sale issued to the purchaser and the owner of the delinquent real property or person having legal interest therein shall be entitled to a certificate of redemption which shall be issued by the local treasurer or his deputy.

From the date of sale until the expiration of the period of redemption, the delinquent real property shall remain in the possession of the owner or person having legal interest therein who shall remain in the possession of the owner or person having legal interest therein who shall be entitled to the income and other fruits thereof.

The local treasurer or his deputy, upon receipt from the purchaser of the certificate of sale, shall forthwith return to the latter the entire amount paid by him plus interest of not more than two percent (2%) per month. Thereafter, the property shall be free from all lien of such delinquent tax, interest due thereon and expenses of sale.[12]

From the foregoing, the owner of the delinquent real property or person having legal interest therein, or his representative, has the right to redeem the property within *one (1) year from the date of sale* upon payment of the delinquent tax and other fees. Verily, the period of redemption of tax delinquent properties should be counted *not* from the date of registration of the certificate of sale, as previously provided by Section 78 of P.D. No. 464, but rather on the date of sale of the tax delinquent property, as explicitly provided by Section 261 of R.A. No. 7160.

Nonetheless, the government of Quezon City, pursuant to the taxing power vested on local government units by Section 5, Article X of the 1987 Constitution[13] and R.A. No. 7160, enacted City Ordinance No. SP-91, S-93, otherwise known as the Quezon City Revenue Code of 1993, providing, among other things, the procedure in the collection of delinquent taxes on

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[12] Italics supplied.

[13] Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

real properties within the territorial jurisdiction of Quezon City. Section 14 (a), Paragraph 7, the Code provides:

> 7) Within *one (1) year from the date of the annotation of the sale of the property at the proper registry*, the owner of the delinquent real property or person having legal interest therein, or his representative, shall have the right to redeem the property by paying to the City Treasurer the amount of the delinquent tax, including interest due thereon, and the expenses of sale plus interest of two percent (2) per month on the purchase price from the date of sale to the date of redemption. Such payment shall invalidate the certificate of sale issued to the purchaser and the owner of the delinquent real property or person having legal interest therein shall be entitled to a certificate of redemption which shall be issued by the City Treasurer.
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> x x x x x x x x x

Verily, the ordinance is explicit that the one-year redemption period should be counted from the *date of the annotation* of the sale of the property at the proper registry. At first glance, this provision runs counter to that of Section 261 of R.A. No. 7160 which provides that the one year redemption period shall be counted from the date of sale of the tax delinquent property. There is, therefore, a need to reconcile these seemingly conflicting provisions of a general law and a special law.

A general statute is one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class. A special statute, as the term is generally understood, is one which relates to particular persons or things of a class or to a particular portion or section of the state only.[14] In the present case, R.A. No. 7160 is to be construed as a general law, while City Ordinance No. SP-91, S-93 is a special law, having emanated only from R.A. No. 7160 and with limited territorial application in Quezon City only.

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[14] *Vinzons-Chato v. Fortune Tobacco Corporation*, G.R. No. 141309, June 19, 2007, 525 SCRA 11, 20, *citing* Agpalo, *Statutory Construction* (1990), second edition, p. 197.

A general law and a special law on the same subject should be accordingly read together and harmonized, if possible, with a view to giving effect to both. Where there are two acts, one of which is special and particular and the other general which, if standing alone, would include the same matter and thus conflict with the special act, the special must prevail, since it evinces the legislative intent more clearly than that of the general statute and must be taken as intended to constitute an exception to the rule.[15] More so, when the validity of the law is not in question.

In giving effect to these laws, it is also worthy to note that in cases involving redemption, the law protects the original owner. It is the policy of the law to aid rather than to defeat the owner's right. Therefore, redemption should be looked upon with favor and where no injury will follow, a liberal construction will be given to our redemption laws, specifically on the exercise of the right to redeem.[16]

To harmonize the provisions of the two laws and to maintain the policy of the law to aid rather than to defeat the owner's right to redeem his property, Section 14 (a), Paragraph 7 of City Ordinance No. SP-91, S-93 should be construed as to define the phrase *"one (1) year from the date of sale"* as appearing in Section 261 of R.A. No. 7160, to mean *"one (1) year from the date of the annotation of the sale of the property at the proper registry."*

Consequently, the counting of the one (1) year redemption period of property sold at public auction for its tax delinquency should be counted from the *date of annotation* of the certificate of sale in the proper Register of Deeds. Applying the foregoing to the case at bar, from the date of registration of the Certificate of Sale of Delinquent Property on February 10, 2004, respondent had until February 10, 2005 to redeem the subject properties.

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[15] *Vitalista v. Perez*, G.R. No. 164147, June 16, 2006, 491 SCRA 127, 145.

[16] *Iligan Bay Manufacturing Corp. v. Dy*, G.R. Nos. 140836 & 140907, June 8, 2007, 524 SCRA 55, 70, citing *Sulit v. Court of Appeals*, 268 SCRA 441, 454 (1997).

Hence, its tender of payment of the subject properties' tax delinquencies and other fees on June 10, 2004, was well within the redemption period, and it was manifest error on the part of petitioners to have refused such tender of payment.

Finally, respondent's failure to cite Section 14 (a), Paragraph 7, City Ordinance No. SP-91, S-93 in its petition for *mandamus* does not preclude it from invoking the said provision in the later part of the judicial proceeding.

The issues in every case are limited to those presented in the pleadings. The object of the pleadings is to draw the lines of battle between the litigants and to indicate fairly the nature of the claims or defenses of both parties.[17] Points of law, theories, issues and arguments should be brought to the attention of the trial court to give the opposing party an opportunity to present further evidence material to these matters during judicial proceedings before the lower court. Otherwise, it would be too late to raise these issues during appeal. A party cannot, on appeal, change fundamentally the nature of the issue in the case. When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party.[18]

As early as in its Memorandum to Serve as Draft Resolution,[19] respondent had brought Section 14 (a), Paragraph 7 of City Ordinance No. SP-91, S-93, or the Quezon City Revenue Code of 1993, to the attention of petitioners. Respondent also reiterated the applicability of the provision to his claim of redemption in its motion for reconsideration of the Order initially denying the petition for *mandamus*. Petitioners were given every opportunity to counter respondent's allegations, which it in fact did by filing

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[17] *Ortega v. Social Security Commission*, G.R. No. 176150, June 25, 2008, 555 SCRA 353, 370.

[18] *Carantes v. Court of Appeals*, 167 Phil. 232, 240 (1977).

[19] *Rollo*, pp. 169-183.

an Opposition[20] to the motion for reconsideration. Since the inception of the petition in the lower court, respondent has not changed its preposition that the one (1) year redemption period shall be counted from the date of registration of the certificate of sale and not from the date of sale of the subject properties. Citing the appropriate provision of the Quezon City Revenue Code of 1993 did not alter this, but on the contrary, even buttressed its claim.

Furthermore, petitioners cannot feign ignorance of a law that it has promulgated in the exercise of its local autonomy. Nor can it be allowed to deny the applicability of Section 14 (a), Paragraph 7 of the Quezon City Revenue Code of 1993, while at the same time invoking that it has strictly adhered to the Quezon City Revenue Code when it conducted the public auction of the tax delinquent properties.

WHEREFORE, premises considered, the petition is *DENIED*. Subject to the above disquisitions, the Decision of the RTC in SP. Civil Action Q-04-53522, dated December 6, 2005, is *AFFIRMED*.

SO ORDERED.

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

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[20] *Id.* at 206-216.

THIRD DIVISION

[G.R. No. 176354. August 3, 2010]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WILSON LOPEZ, VICTORINO CRUZ @ BONG MADAYAG and FELIPE MAGLAYA, JR.,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT FOR CONVICTION.— Although no one (1) witnessed the actual killing of Col. Tabora, this Court should emphasize that direct evidence is not the sole means of establishing guilt beyond reasonable doubt. Established facts that form a chain of circumstances can lead the mind intuitively or impel a conscious process of reasoning towards a conviction. Indeed, rules on evidence and principles in jurisprudence have long recognized that the accused may be convicted through circumstantial evidence. Section 4 of Rule 133 of the Rules of Court provides: SEC. 4. *Circumstantial evidence, when sufficient.*— Circumstantial evidence is sufficient for conviction if: (a) There is more than one circumstance; (b) The facts from which the inferences are derived are proven; and (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. To uphold a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. The test to determine whether or not the circumstantial evidence on record is sufficient to convict the accused is that the series of circumstances duly proved must be consistent with each other and that each and every circumstance must be consistent with the accused's guilt and inconsistent with the accused's innocence. The circumstantial evidence must exclude the possibility that some other person has committed the offense.

2. ID.; ID.; ID.; THE CIRCUMSTANCES IN CASE AT BAR CONSTITUTED AN UNBROKEN CHAIN OF EVENTS

POINTING TO THE LOGICAL CONCLUSION THAT APPELLANTS KILLED THE VICTIM.— The appellate court considered the following circumstances to establish an unbroken chain of events pointing to the logical conclusion that appellants killed the victim: 1. Security guard Jesus Cornejo testified that the four-armed men who entered the compound were wearing dark clothings and bonnets over their faces. One of the men was carrying an Armalite rifle while another had a .45 caliber pistol. 2. The housemaid Salvacion Cercidillo saw two armed men wearing black bonnets approach and point their guns at the victim who called the guards and kicked the armed men. 3. The prosecution witnesses inside the compound (Cornejo, Cercidillo and Mrs. Tabora) and outside the compound (Reyno, Barbosa, Fernandez and Cabangisan) heard the victim shout the words, "*Guardia, guardia*" followed by a lone gunshot. 4. Cornejo testified that after the gunshot, the four armed men left through the compound's gate. 5. A few minutes after the commotion inside the compound and after the gunshot, prosecution witnesses Reyno, Barbosa, Fernandez and Cabangisan saw four men leave the Tabora compound. 6. Reyno identified accused-appellants Wilson Lopez, Victorino Cruz and Felipe Maglaya, Jr. as three of the men who went out of the compound. Victorino Cruz was carrying a long firearm. 7. Barbosa identified accused-appellants Wilson Lopez and Felipe Maglaya, [Jr.] as two of the men who exited the compound. 8. Fernandez identified accused-appellant Felipe Maglaya, Jr. as one of the men who went out of the compound. 9. Cabangisan identified accused-appellants Wilson Lopez, Victorino Cruz and Felipe Maglaya, Jr. as three of the men who went out of the compound. Victorino Cruz was carrying a long firearm. 10. Police investigation revealed that the cal. 5.67 mm empty cartridge found at the scene of the crime was fired from an M-16 armalite rifle. 11. Dr. Sulit testified that the victim sustained two wounds, with the first wound located on the right side of the chest (entry point of the bullet) and the second wound located at the back (the exit wound). He said that a gunshot caused the wounds and the hematoma surrounding the wounds. Thus, while no one (1) directly saw appellants shoot the victim, the Court is satisfied that the circumstantial evidence in this case constituted an unbroken chain that leads to the logical conclusion that appellants were guilty of the murder of Col. Tabora. The combination of the

circumstances is such as to leave no reasonable doubt as to their guilt; hence, appellants' conviction based on circumstantial evidence is justified.

3. ID.; ID.; DEFENSE OF ALIBI; MUST BE SUPPORTED BY CREDIBLE CORROBORATION FROM DISINTERESTED WITNESSES; IT MUST ALSO BE SHOWN THAT IT WAS PHYSICALLY IMPOSSIBLE FOR THE APPELLANTS TO HAVE BEEN AT THE SCENE OF THE CRIME AT THE TIME OF ITS COMMISSION.— To bolster their claim of alibi, appellant Wilson Lopez denied having gone to the place of the late Col. Tabora in the evening of June 28, 1997. He claimed that on said date, he was at the house of his employer Unison Madayag, with a boy named Nonoy and a cousin of Madayag named Neneng. According to Lopez, he only learned of the death of Col. Tabora the following morning when he noticed several vehicles parked infront of the victim's house. Meanwhile, appellant Felipe Maglaya, Jr. asserted that he was working in Darasa, Tanauan, Batangas and only came back to San Jose on August 9, 1997. For his part, appellant Victorino Cruz maintained that on June 28, 1997, he was in Manila with his mother to secure their passports. They also went to the U.S. Embassy to get some papers and returned to Mindoro only on July 31, 1997. However, this Court has time and again, held that to be believed, an alibi must be supported by the most convincing evidence, as it is an inherently weak argument that can be easily fabricated to suit the ends of those who seek its recourse. Alibi must be supported by credible corroboration from disinterested witnesses, otherwise it is fatal to the accused. Further, for alibi to prosper, appellants must prove not only that they were somewhere else when the crime was committed, but also that it was physically impossible for them to have been at the scene of the crime or within its immediate vicinity. In the present case, appellants' alibi was corroborated by their relatives and friends who may not have been impartial witnesses. They likewise failed to show that it was physically impossible for them to have been at the scene of the crime at the time of its commission.

4. ID.; ID.; ID.; ALIBI IS WORTHLESS IN THE FACE OF CATEGORICAL TESTIMONY AND POSITIVE IDENTIFICATION OF WITNESSES WHO DID NOT HAVE ANY REASON TO FALSELY TESTIFY AGAINST

APPELLANTS.— The alibi resorted to by appellants is worthless in the face of the categorical testimony and positive identification by the prosecution witnesses, who did not have any reason to falsely testify against appellants. Admittedly, the witnesses for the prosecution had no grudge against appellants. Appellants failed to show that the witnesses were actuated by ill motive to testify falsely against them. Where there is no showing of any improper motive on the part of the prosecution witness to testify falsely against an accused, the logical conclusion is that no such improper motive exists and that the testimony is worthy of full faith and credence.

5. ID.; ID.; ID.; ALIBI AND DENIAL; IF NOT SUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE, ARE NEGATIVE AND SELF-SERVING EVIDENCE UNDESERVING OF WEIGHT IN LAW.— Jurisprudence teems with pronouncements that between the categorical statements of the prosecution witnesses, on the one hand, and the bare denial of appellants, on the other, the former must perforce prevail. An affirmative testimony is far stronger than a negative one, especially when it comes from the mouth of a credible witness. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable, but also because they are easily fabricated and concocted.

6. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; CONDITIONS THAT MUST CONCUR FOR TREACHERY TO EXIST.— As regards the qualifying circumstance of treachery, appellants contend that the prosecution failed to present any evidence to show that the gunmen consciously and deliberately adopted the execution of the crime committed. We however agree with the trial court in appreciating treachery as a qualifying circumstance. As we have consistently ruled, there is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to ensure its execution without risk to himself arising from the defense that the offended party might make. Two conditions must concur for treachery to exist, namely, (a) the employment of means of execution gave

the person attacked no opportunity to defend himself or to retaliate and (b) the means or method of execution was deliberately and consciously adopted.

7. ID.; ID.; ID.; ID.; TREACHERY WAS CORRECTLY APPRECIATED BY TRIAL COURT; THE ATTACK ON THE VICTIM WAS DELIBERATE, SUDDEN AND UNEXPECTED.— In the case at bar, the attack on the victim was deliberate, sudden and unexpected. Appellants, who were armed, surreptitiously and without warning, entered the Tabora compound and hogtied the security guards. Two (2) of them guarded the security guards to ensure that they could not aid the victim while one (1) switched off the light at the post to prevent discovery. Thereafter, two (2) of the armed men went after the victim. The victim who was unarmed, alone and confident in the security of his guarded home, was definitely not in the position to defend himself against his assailants. Contrary to appellants' contention, treachery may still be appreciated even when the victim was immediately forewarned of the danger to his person. What is decisive is that the execution of the attack made it possible for the victim to defend himself or to retaliate. The number of the accused, their use of weapons (an M-16 armalite rifle and a .45 caliber gun) against the unarmed victim, the previous attack and neutralization of the guards, and the timing of the attack preclude the possibility of any defense by the victim. These circumstances indicate that appellants employed means and methods which tended directly and specially to ensure the execution of the offense without risk to themselves arising from the defense that the victims might make. Hence, treachery was correctly appreciated by the trial court.

8. ID.; CIVIL LIABILITY; DAMAGES THAT MAY BE RECOVERED WHEN DEATH OCCURS DUE TO A CRIME.— When death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases. In murder, the grant of civil indemnity, which has been fixed by jurisprudence at ₱50,000.00, requires no proof other than the fact of death as a result of the crime and proof of an accused's responsibility therefor. Thus, the civil indemnity of ₱50,000.00

awarded to the heirs of the victim is in order. We also sustain the award of ₱50,000.00 as moral damages to the heirs of the victim in view of the latter's violent death. These do not require allegation and proof of the emotional sufferings of the heirs. Finally, the award in the amount of ₱25,000.00, as temperate damages and the amount of exemplary damages are also in order considering that the crime was attended by the qualifying circumstance of treachery. The amount of exemplary damages, however, must be increased to ₱30,000.00 pursuant to prevailing jurisprudence.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Job B. Madayag for accused-appellants.

D E C I S I O N

VILLARAMA, JR., *J.*:

On appeal is the February 16, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. C.R.-H.C. No. 00527 which affirmed with modification the Decision[2] rendered by Branch 46 of the Regional Trial Court (RTC) of San Jose, Occidental Mindoro, finding appellants Wilson Lopez, Victorino Cruz *alias* "Bong Madayag" and Felipe Maglaya, Jr. guilty beyond reasonable doubt of the crime of murder.

On August 4, 1997, an Information[3] for the crime of murder was filed against appellants. The accusatory portion of the Information reads:

That on or about the 28th day of June, 1997 at around 7:40 in the evening, in Barangay Bagong Sikat, Municipality of San Jose, Province

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[1] Penned by Associate Justice Arturo D. Brion (now a member of this Court), with Associate Justices Bienvenido L. Reyes and Mariflor P. Punzalan Castillo concurring; *rollo*, pp. 3-32.

[2] CA *rollo,* pp. 47-110. Penned by Judge Ernesto P. Pagayatan.

[3] Records, p. 1.

of Occidental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the accused being then armed with guns, with intent to kill and with treachery and abuse of superior strength, conspiring and confederating together with four others whose true names and identities are still unknown, did then and there willfully, unlawfully and feloniously, attack, assault and shoot with the said weapons one Melchor Tabora, Sr. thereby inflicting upon the latter serious wound which caused his untimely death.

CONTRARY TO LAW.

When arraigned, appellants, with the assistance of counsel, entered their respective pleas of not guilty.[4] Trial on the merits then ensued.

Based on the narration of witnesses, the facts are summed up as follows:

In the evening of June 28, 1997, between 7:30 to 8:00 p.m., four (4) armed men entered the Tabora compound in Barangay Bagong Sikat, San Jose, Occidental Mindoro. The security guards on duty, Jesus Cornejo and Johnny Baylosis, were having dinner at the buying station of the rice mill located within the compound when the armed men passed through the small door of the main gate. The intruders were wearing dark pants and jackets with dark bonnets covering their faces with opening holes for their eyes and mouth. The security guards noticed that one (1) of them was carrying an armalite rifle and another, a .45 caliber pistol.[5]

Upon entering the Tabora compound, two (2) men pointed their guns at the security guards and ordered them to lie face down. Their hands and feet were tied with a nylon cord, their mouths covered with masking tape, and their service firearms were confiscated. Then, the other two (2) men arrived and watched over the security guards. Before proceeding to the main house, one (1) of the intruders switched off the fluorescent

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[4] *Id.* at 42.

[5] TSN, September 3, 1997 (Afternoon session), pp. 4-5; TSN, September 4, 1997, pp. 11-12.

light at the buying station. Shortly afterwards, the security guards heard a commotion coming from the kitchen. Col. Melchor Tabora shouted "*Guard! Guard!*" and a few seconds later, a gun was fired. Witnesses Gregorio Reyno, Irene Barbosa, Mirasol Fernandez, Ronnie Cabangisan, Dina Dela Torre, Salvacion Cercidillo and Corazon Tabora, the widow of the late Col. Tabora, also heard the shouts of Col. Tabora, as well as the gunshot.[6]

Salvacion Cercidillo, a house helper of the Taboras, testified that she was at the compound's kitchen at around 8:00 p.m. of that fateful evening. Col. Tabora had just finished picking his teeth and was about to enter the main house when two (2) armed men wearing bonnets came and followed him. As Col. Tabora was retreating to the house, he closed the door leading to the main house where the housemaid was hiding, then exited through the opposite kitchen door. Col. Tabora proceeded outside toward the main gate. He called out "*Guard! Guard!*" as he kicked the two (2) men. Then, the witnesses heard a single gunshot.[7]

Soon after the gunshot was heard, witnesses Gregorio Reyno, Irene Barbosa and Ronnie Cabangisan saw four (4) men in dark pants and dark jackets, one (1) in camouflage, with their bonnets rolled up to their foreheads, coming out of the gate of the Tabora compound. They identified three (3) of the men as appellants Wilson Lopez, Victorino Cruz *alias* Bong Madayag, and Felipe Maglaya, Jr. The witnesses, together with Mirasol Fernandez, saw appellants and their unidentified companion walking fast along the concrete fence of the Tabora compound, with their bonnets rolled up to their foreheads. The four (4) men proceeded to the direction of Masagana A Street, passing by the Medalla School, the Camus residence, the Reyno Rice

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[6] TSN, August 8, 1997, pp. 9-10; TSN, August 11, 1997, pp. 14-15 and pp. 52-53; TSN, September 3, 1997 (Afternoon session), pp. 5-7; TSN, September 4, 1997, pp. 4-12; TSN, September 3, 1997 (Morning session), pp. 4-5; TSN, March 18, 1998, pp. 7, 12; TSN, October 10, 1997, pp. 18, 23, 35-38.

[7] TSN, September 4, 1997, pp. 4-12.

Mill, and the Parilla residence. The witnesses recognized Victorino Cruz *alias* Bong Madayag as the one (1) carrying a long firearm held parallel to his body. Witnesses Barbosa and Cabangisan identified Wilson Lopez as the one (1) in camouflage, while Mirasol Fernandez was able to recognize Felipe Maglaya, Jr.[8]

Responding to a call from security guard Jesus Cornejo, police operatives from the San Jose Municipal Police Station, led by Major Winston Ebersole, hurried to the Tabora residence. In the course of their investigation conducted at the crime scene, the police officers were able to recover the following: three (3) pieces yellow-orange nylon cord, measuring about one (1) yard each; one (1) blue colored bull cap marked "*American Birkerreiner XII Volunteer*"; one (1) piece soft leather black holster for a .45 caliber firearm; one (1) gray colored packing tape measuring approximately seven (7) inches long by two (2) inches wide; and one (1) piece caliber 5.56 mm empty cartridge found near the spot where Col. Tabora's dead body was found.[9]

Firearms Examiner Gerardo Umayao of the Philippine National Police Crime Laboratory, Region IV, Camp Vicente Lim, examined the caliber 5.56 mm empty cartridge, which was subjected to ballistic examination. His findings revealed that it was a cartridge from a caliber M-16 armalite rifle.[10]

Dr. Edwin P. Sulit, Medical Officer III of the San Jose District Hospital, conducted the post-mortem examination on the victim. He declared in the death certificate of the late Col. Tabora that the latter died of gunshot wounds. He also certified that there were two (2) wounds found on the body of the victim, to wit:

(a) the entry wound which he described as "0.5 x 0.25cms. oval deformity (wound) with collar contusion, located 3.0 cms. above the nipple, 1.0 cm. medial to the nipple right chest xxx"; and

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[8] TSN, August 8, 1997, pp. 11-13, 23-24 and 32-37; TSN, August 11, 1997, pp. 16-19; TSN, September 2, 1997, pp. 25-27; TSN, September 3, 1997 (Morning session), pp. 7-12.

[9] TSN, October 6, 1997, pp. 17-20; records, p. 194.

[10] TSN, November 20, 1997, pp. 9-10.

(b) the exit wound which the doctor described as "0.75 cm x 0.5 cm. irregular deformity (wound) located at the back, left, posterior axillary line at the level of 10th ICS."[11]

On November 17, 2000, a decision was promulgated by the RTC, finding appellants guilty beyond reasonable doubt of murder, to wit:

WHEREFORE, in the light of all the foregoing, the Court finds the accused WILSON LOPEZ, VICTORINO CRUZ @ BONG MADAYAG and FELIPE MAGLAYA, JR., GUILTY BEYOND REASONABLE DOUBT, of the crime of MURDER, defined and penalized under Article 248 of the Revised Penal Code, and Section 6 of Republic Act No. 7659, otherwise known as the Death Penalty Law, and are hereby sentenced to suffer the supreme penalty of DEATH.

The three (3) accused are hereby ordered to indemnify, jointly and severally, the heirs of MELCHOR TABORA SR. in the amount of SEVENTY-FIVE THOUSAND PESOS (₱75,000.00) and to furthermore pay said heirs the amount of ONE MILLION PESOS (₱1,000,000.00) as moral damages.

The Provincial Warden is hereby directed to cause the immediate transfer of the three (3) accused from the Provincial Jail at Magbay, San Jose, Occidental Mindoro to the New Bilibid Prisons, Muntinlupa City, Metro Manila.

SO ORDERED.[12]

Initially, this case was brought to this Court for review and docketed as G.R. No. 146571. However, in a Resolution[13] dated October 12, 2004, the case was transferred to the CA for intermediate review, consistent with its ruling in *People v. Mateo*.[14]

On February 16, 2006, the appellate court rendered the assailed Decision affirming appellants' conviction but reduced the penalty from death to *reclusion perpetua*.

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[11] TSN, October 6, 1997, pp. 4-7, 12-14; records, p. 193.

[12] CA *rollo*, pp. 109-110.

[13] *Id.* at 301.

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

The dispositive portion of the Decision of the CA reads:

WHEREFORE, in view of the foregoing, we hereby AFFIRM the Regional Trial Court's decision convicting accused-appellants Wilson Lopez, Victorino Cruz *alias Bong Madayag* and Felipe Maglaya, Jr. of the crime of murder in Criminal Case No. R-4221 with the following MODIFICATIONS:

1. In lieu of the death penalty which the RTC imposed, the accused-appellants are sentenced to suffer the penalty of *reclusion perpetua.*
2. The appellants shall solidarily pay the heirs of Melchor Tabora, Sr. the sum of ₱50,000.00 as civil indemnity, ₱25,000.00 as temperate damages and ₱25,000.00 as exemplary damages.
3. The trial court's award of [₱1,000,000] as moral damages is reduced to ₱50,000.00

SO ORDERED.[15]

Hence, the present appeal.

On March 14, 2007, this Court accepted the appeal and directed the parties to file their respective supplemental briefs. On June 18, 2007, the Office of the Solicitor General, for the appellee, manifested that it is adopting its Brief before the appellate court as its supplemental brief. Appellants, for their part, failed to file their supplemental brief despite the extension given to them. Thus, they are deemed to have adopted their brief before the appellate court.

In their brief,[16] appellants assigned the following errors allegedly committed by the trial court:

I

THE TRIAL COURT COMMITTED A SERIOUS AND GRAVE REVERSIBLE ERROR IN HOLDING THE HEREIN ACCUSED-APPELLANTS GUILTY OF THE CRIME CHARGED DESPITE ABSENCE OF EVIDENCE BEYOND REASONABLE DOUBT.

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[15] *Rollo,* p. 31.

[16] CA *rollo,* pp. 131-183.

II

THE TRIAL COURT COMMITTED A SERIOUS AND GRAVE REVERSIBLE ERROR IN NOT ACQUITTING THE HEREIN ACCUSED-APPELLANTS OF THE CRIME CHARGED.

III

THE TRIAL COURT COMMITTED A SERIOUS AND GRAVE REVERSIBLE ERROR IN HOLDING THAT TREACHERY ATTENDED THE KILLING OF THE LATE COL. TABORA.

IV

THE TRIAL COURT COMMITTED A SERIOUS AND GRAVE REVERSIBLE ERROR IN HOLDING THAT ABUSE OF SUPERIOR STRENGTH ATTENDED THE KILLING OF THE LATE COL. TABORA.

V

THE TRIAL COURT COMMITTED A SERIOUS AND GRAVE REVERSIBLE ERROR IN ORDERING THE HEREIN ACCUSED-APPELLANTS TO INDEMNIFY JOINTLY AND SEVERALLY THE HEIRS OF THE LATE MELCHOR TABORA, SR. IN THE AMOUNT OF SEVENTY-FIVE THOUSAND PESOS (₱75,000.00).

VI

THE TRIAL COURT COMMITTED A SERIOUS AND GRAVE REVERSIBLE ERROR IN ORDERING THE HEREIN ACCUSED-APPELLANTS TO PAY THE HEIRS OF THE LATE MELCHOR TABORA, SR. THE AMOUNT OF ONE MILLION PESOS (₱1,000,000.00) AS MORAL DAMAGES.[17]

Essentially, appellants submit that the prosecution failed to prove their guilt beyond reasonable doubt. They argue that the prosecution witnesses failed to positively identify them as the culprits of the crime. They also contend that there was total absence of evidence to show that they attacked and killed the victim. They insist that the prosecution failed to show that they were inside the Tabora compound on the date and time in question. Thus, they implore us to acquit them.

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[17] *Id.* at 135-136.

The appeal has no merit.

After a thorough evaluation and scrutiny of the evidence on record, we arrive at the conclusion that the guilt of appellants of the crime charged was established beyond reasonable doubt.

Well settled is the doctrine that findings of trial courts on the credibility of witnesses deserve a high degree of respect and will not be disturbed on appeal absent a clear showing that the trial court had overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could reverse a judgment of conviction. In fact, in some instances, such findings are even accorded finality. This is so because the assignment of value to a witness' testimony is essentially the domain of the trial court, not to mention that it is the trial judge who has the direct opportunity to observe the demeanor of a witness on the stand, thus providing him unique facility in determining whether or not to accord credence to the testimony or whether the witness is telling the truth or not.[18]

In the present case, both the RTC and the CA found the testimonies of the prosecution witnesses to be convincing. Witnesses Cornejo and Baylosis, the security guards on duty, narrated that the armed men who entered the Tabora compound were wearing dark pants and jackets with dark bonnets. They were armed with an armalite rifle and a .45 caliber pistol. Two (2) men went to the kitchen of the Tabora residence and the guards heard a commotion. Col. Tabora shouted "*Guard! Guard!"* and a single gunshot was heard. Meanwhile, in her testimony, Cercidillo stated that Col. Tabora was about to enter the main house when two (2) armed men wearing bonnets arrived, pointing their guns at him. Col. Tabora called out "*Guard! Guard!*" as he kicked the two (2) men. She also heard the gunshot. Likewise, witnesses Gregorio Reyno, Irene Barbosa and Ronnie Cabangisan affirmed that they saw four (4) men wearing dark pants and dark jackets with their bonnets rolled up to their foreheads, coming out of the Tabora compound.

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[18] *Lascano v. People*, G.R. No. 166241, September 7, 2007, 532 SCRA 515, 523-524.

Three (3) of the men were positively identified by the witnesses as appellants Wilson Lopez, Victorino Cruz and Felipe Maglaya, Jr. Taken in their entirety, we find the testimonies of the prosecution witnesses to be credible and consistent with each other, and therefore, must be given full faith and credence.

Although no one (1) witnessed the actual killing of Col. Tabora, this Court should emphasize that direct evidence is not the sole means of establishing guilt beyond reasonable doubt. Established facts that form a chain of circumstances can lead the mind intuitively or impel a conscious process of reasoning towards a conviction. Indeed, rules on evidence and principles in jurisprudence have long recognized that the accused may be convicted through circumstantial evidence.[19]

Section 4 of Rule 133 of the Rules of Court provides:

> SEC. 4. *Circumstantial evidence, when sufficient*.— Circumstantial evidence is sufficient for conviction if:
>
> (a) There is more than one circumstance;
>
> (b) The facts from which the inferences are derived are proven; and
>
> (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

To uphold a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. The test to determine whether or not the circumstantial evidence on record is sufficient to convict the accused is that the series of circumstances duly proved must be consistent with each other and that each and every circumstance must be consistent with the accused's guilt and inconsistent with the accused's innocence.[20] The circumstantial

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[19] *People v. Murcia*, G.R. No. 182460, March 9, 2010, p. 8.

[20] *Aoas v. People*, G.R. No. 155339, March 3, 2008, 547 SCRA 311, 318.

evidence must exclude the possibility that some other person has committed the offense.

Here, the appellate court considered the following circumstances to establish an unbroken chain of events pointing to the logical conclusion that appellants killed the victim:

1. Security guard Jesus Cornejo testified that the four-armed men who entered the compound were wearing dark clothings and bonnets over their faces. One of the men was carrying an Armalite rifle while another had a .45 caliber pistol.
2. The housemaid Salvacion Cercidillo saw two armed men wearing black bonnets approach and point their guns at the victim who called the guards and kicked the armed men.
3. The prosecution witnesses inside the compound (Cornejo, Cercidillo and Mrs. Tabora) and outside the compound (Reyno, Barbosa, Fernandez and Cabangisan) heard the victim shout the words, "*Guardia, guardia*" followed by a lone gunshot.
4. Cornejo testified that after the gunshot, the four armed men left through the compound's gate.
5. A few minutes after the commotion inside the compound and after the gunshot, prosecution witnesses Reyno, Barbosa, Fernandez and Cabangisan saw four men leave the Tabora compound.
6. Reyno identified accused-appellants Wilson Lopez, Victorino Cruz and Felipe Maglaya, Jr. as three of the men who went out of the compound. Victorino Cruz was carrying a long firearm.
7. Barbosa identified accused-appellants Wilson Lopez and Felipe Maglaya, [Jr.] as two of the men who exited the compound.
8. Fernandez identified accused-appellant Felipe Maglaya, Jr. as one of the men who went out of the compound.
9. Cabangisan identified accused-appellants Wilson Lopez, Victorino Cruz and Felipe Maglaya, Jr. as three of the men who went out of the compound. Victorino Cruz was carrying a long firearm.

10. Police investigation revealed that the cal. 5.67 mm empty cartridge found at the scene of the crime was fired from an M-16 armalite rifle.

11. Dr. Sulit testified that the victim sustained two wounds, with the first wound located on the right side of the chest (entry point of the bullet) and the second wound located at the back (the exit wound). He said that a gunshot caused the wounds and the hematoma surrounding the wounds.[21]

Thus, while no one (1) directly saw appellants shoot the victim, the Court is satisfied that the circumstantial evidence in this case constituted an unbroken chain that leads to the logical conclusion that appellants were guilty of the murder of Col. Tabora. The combination of the circumstances is such as to leave no reasonable doubt as to their guilt; hence, appellants' conviction based on circumstantial evidence is justified.

Appellants advance the defense of alibi. To bolster their claim of alibi, appellant Wilson Lopez denied having gone to the place of the late Col. Tabora in the evening of June 28, 1997. He claimed that on said date, he was at the house of his employer Unison Madayag, with a boy named Nonoy and a cousin of Madayag named Neneng. According to Lopez, he only learned of the death of Col. Tabora the following morning when he noticed several vehicles parked infront of the victim's house. Meanwhile, appellant Felipe Maglaya, Jr. asserted that he was working in Darasa, Tanauan, Batangas and only came back to San Jose on August 9, 1997. For his part, appellant Victorino Cruz maintained that on June 28, 1997, he was in Manila with his mother to secure their passports. They also went to the U.S. Embassy to get some papers and returned to Mindoro only on July 31, 1997.

However, this Court has time and again, held that to be believed, an alibi must be supported by the most convincing evidence, as it is an inherently weak argument that can be easily fabricated to suit the ends of those who seek its recourse.[22] Alibi must be

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[21] *Rollo*, pp. 22-23.

[22] *People v. Cantere*, 363 Phil. 468, 479 (1999).

supported by credible corroboration from disinterested witnesses, otherwise it is fatal to the accused. Further, for alibi to prosper, appellants must prove not only that they were somewhere else when the crime was committed, but also that it was physically impossible for them to have been at the scene of the crime or within its immediate vicinity.[23] In the present case, appellants' alibi was corroborated by their relatives and friends who may not have been impartial witnesses. They likewise failed to show that it was physically impossible for them to have been at the scene of the crime at the time of its commission.

Moreover, the alibi resorted to by appellants is worthless in the face of the categorical testimony and positive identification by the prosecution witnesses, who did not have any reason to falsely testify against appellants. Admittedly, the witnesses for the prosecution had no grudge against appellants. Appellants failed to show that the witnesses were actuated by ill motive to testify falsely against them. Where there is no showing of any improper motive on the part of the prosecution witness to testify falsely against an accused, the logical conclusion is that no such improper motive exists and that the testimony is worthy of full faith and credence.[24]

Jurisprudence teems with pronouncements that between the categorical statements of the prosecution witnesses, on the one hand, and the bare denial of appellants, on the other, the former must perforce prevail. An affirmative testimony is far stronger than a negative one, especially when it comes from the mouth of a credible witness. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because

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[23] *People v. Delim*, G.R. No. 175942, September 13, 2007, 533 SCRA 366, 379.

[24] See *Velasco v. People*, G.R. No. 166479, February 28, 2006, 483 SCRA 649, 668; *People v. Nicolas*, G.R. No. 137782, April 1, 2003, 400 SCRA 217, 224.

they are inherently weak and unreliable, but also because they are easily fabricated and concocted.[25]

As regards the qualifying circumstance of treachery, appellants contend that the prosecution failed to present any evidence to show that the gunmen consciously and deliberately adopted the execution of the crime committed. We however agree with the trial court in appreciating treachery as a qualifying circumstance. As we have consistently ruled, there is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to ensure its execution without risk to himself arising from the defense that the offended party might make. Two conditions must concur for treachery to exist, namely, (a) the employment of means of execution gave the person attacked no opportunity to defend himself or to retaliate and (b) the means or method of execution was deliberately and consciously adopted.[26]

In the case at bar, the attack on the victim was deliberate, sudden and unexpected. Appellants, who were armed, surreptitiously and without warning, entered the Tabora compound and hogtied the security guards. Two (2) of them guarded the security guards to ensure that they could not aid the victim while one (1) switched off the light at the post to prevent discovery. Thereafter, two (2) of the armed men went after the victim. The victim who was unarmed, alone and confident in the security of his guarded home, was definitely not in the position to defend himself against his assailants. Contrary to appellants' contention, treachery may still be appreciated even when the victim was immediately forewarned of the danger to his person. What is decisive is that the execution of the attack made it possible for the victim to defend himself or to retaliate. The number of the accused, their use of weapons (an M-16 armalite rifle and a .45

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[25] *People v. Baniega*, 427 Phil. 405, 418 (2002); see *People v. Ramos*, G.R. No. 125898, April 14, 2004, 427 SCRA 207.

[26] *People v. Ducabo*, G.R. No. 175594, September 28, 2007, 534 SCRA 458, 474.

caliber gun) against the unarmed victim, the previous attack and neutralization of the guards, and the timing of the attack preclude the possibility of any defense by the victim. These circumstances indicate that appellants employed means and methods which tended directly and specially to ensure the execution of the offense without risk to themselves arising from the defense that the victims might make. Hence, treachery was correctly appreciated by the trial court.

Under Article 248[27] of the Revised Penal Code, as amended, the penalty imposed for the crime of murder is *reclusion perpetua* to death. There being no aggravating or mitigating circumstance, the penalty imposed on appellants is *reclusion perpetua*, pursuant to Article 63, paragraph 2, of the said Code.

A word on the award of damages.

When death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[28] In murder, the grant of civil indemnity, which has been fixed by jurisprudence at ₱50,000.00, requires no proof other than the fact of death as a result of the crime and proof of an accused's responsibility therefor.[29] Thus, the civil indemnity of ₱50,000.00 awarded to the heirs of the victim is in order.

We also sustain the award of ₱50,000.00 as moral damages to the heirs of the victim in view of the latter's violent death.

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[27] ART. 248. *Murder*. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:

1. With treachery, x x x.

[28] *People v. Tolentino*, G.R. No. 176385, February 26, 2008, 546 SCRA 671, 699.

[29] *People v. Manchu*, G.R. No. 181901, November 28, 2008, 572 SCRA 753, 765.

These do not require allegation and proof of the emotional sufferings of the heirs.[30] Finally, the award in the amount of ₱25,000.00, as temperate damages and the amount of exemplary damages are also in order considering that the crime was attended by the qualifying circumstance of treachery.[31] The amount of exemplary damages, however, must be increased to ₱30,000.00 pursuant to prevailing jurisprudence.[32]

WHEREFORE, the appeal is *DISMISSED*. The assailed Decision of the Court of Appeals in CA-G.R. C.R.-H.C. No. 00527 is *AFFIRMED* with *MODIFICATION*. The amount of exemplary damages is increased to ₱30,000.00.

SO ORDERED.

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

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[30] *People v. Tolentino, supra* at 700; see *People v. Balais,* G.R. No. 173242, September 17, 2008, 565 SCRA 555, 571.

[31] *People v. Tolentino, supra* at 701.

[32] *People v. Gutierrez,* G.R. No. 188602, February 4, 2010, p. 11.

[*] Designated additional member per Raffle of July 1, 2010 in view of the recusal of Associate Justice Arturo D. Brion who penned the assailed Decision.

[**] Designated additional member per Special Order No. 843 dated May 17, 2010.

THIRD DIVISION

[G.R. No. 178778. August 3, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **T/SGT. PORFERIO R. ANGUS, JR.,** *accused-appellant.*

SYLLABUS

1. POLITICAL LAW; BILL OF RIGHTS; PRESUMPTION OF INNOCENCE; PREVAILS WHEN THE PROSECUTION FAILS TO MEET ITS BURDEN OF PROOF.— The Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. The burden lies on the prosecution to overcome such presumption of innocence by presenting the quantum of evidence required. In so doing, the prosecution must rest on the strength of its own evidence and must not rely on the weakness of the defense. And if the prosecution fails to meet its burden of proof, the defense may logically not even present evidence on its own behalf. In such cases the presumption prevails and the accused should necessarily be acquitted.

2. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; CIRCUMSTANTIAL EVIDENCE; WHEN CONSIDERED SUFFICIENT TO JUSTIFY CONVICTION BEYOND REASONABLE DOUBT; REQUISITES.— We may well emphasize that direct evidence of the commission of a crime is not the only basis on which a court draws its finding of guilt. Established facts that form a chain of circumstances can lead the mind intuitively or impel a conscious process of reasoning towards a conviction. Verily, resort to circumstantial evidence is sanctioned by Section 4, Rule 133 of the Revised Rules on Evidence. 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 (1) fair and reasonable conclusion that the accused, to the exclusion of all others, is

the guilty person. Proof beyond reasonable doubt does not mean the degree of proof excluding the possibility of error and producing absolute certainty. Only moral certainty or "that degree of proof which produces conviction in an unprejudiced mind" is required. The following are the requisites for circumstantial evidence to be sufficient to support conviction: (a) there is more than one (1) circumstance, (b) the facts from which the inferences are derived have been proven, and (c) the combination of all the circumstances results in a moral certainty that the accused, to the exclusion of all others, is the one (1) who has committed the crime. Thus, to justify a conviction based on circumstantial evidence, the combination of circumstances must be interwoven in such a way as to leave no reasonable doubt as to the guilt of the accused.

3. ID.; ID.; ID.; ID.; EVIDENCE IN CASE AT BAR DOES NOT CONSTITUTE AN UNBROKEN CHAIN WHICH LEADS TO THE CONCLUSION THAT APPELLANT TO THE EXCLUSION OF ALL OTHERS, IS GUILTY OF KILLING HIS WIFE; SUSPICION NO MATTER HOW STRONG CAN NOT SWAY JUDGMENT.— The Court is not satisfied that the circumstantial evidence in this case constitutes an unbroken chain which leads to the conclusion that appellant, to the exclusion of all others, is guilty of killing his wife. The trial court relied on the testimonies of Malaran and Carpio who heard the appellant and his wife arguing about the latter's illicit relationship with another woman, which supposedly proves motive for him to commit the crime. However, granting that appellant and Betty had an argument on the night before her death, it would be too much to presume that such an argument would drive appellant to kill his wife. Clearly, the motive is not convincing. If at all, the testimonies of Malaran and Carpio merely show a suspicion of appellant's responsibility for the crime. Needless to state, however, suspicion no matter how strong can not sway judgment. In the absence of any other evidence reasonably linking appellant to the crime, evidence of motive is not sufficient to convict him.

4. ID.; ID.; ID.; ID.; ESTABLISHED EVIDENCE POINTS TO THE CONCLUSION THAT THE VICTIM COMMITTED SUICIDE.— Dr. Uy explained that if a person hangs herself, most of the time there will be a fracture on the bone of the neck because of the pressure caused by gravity that pulls the rope. However, he also testified that if the person hangs herself slowly, there will be no fracture on her neck or hyoid bone.

Thus, the fact that Betty did not sustain a fractured bone on her neck or hyoid bone, as the doctor observed, does not automatically lead to the conclusion that appellant strangled the victim. Given the evidence that the victim had intimated her wish to commit suicide a day before the incident, it is not farfetched to conclude that she indeed chose to take her life.

5. ID.; ID.; ID.; PROOF BEYOND REASONABLE DOUBT; NOT ESTABLISHED.— An acquittal based on reasonable doubt will prosper even though the accused's innocence may be doubted, for a criminal conviction rests on the strength of the evidence of the prosecution and not on the weakness of the defense. And, if the inculpatory facts and circumstances are capable of two (2) or more explanations, one (1) of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction. That which is favorable to the accused should be considered. After all, *mas vale que queden sin castigar diez reos presuntos, que se castigue uno inocente*. Courts should be guided by the principle that it would be better to set free ten (10) men who might be probably guilty of the crime charged than to convict one (1) innocent man for a crime he did not commit.

6. CRIMINAL LAW; PARRICIDE; ELEMENTS OF THE CRIME.— After a thorough review of the records of the case, we find sufficient basis to warrant the reversal of the assailed judgment of conviction. The crime of parricide is defined and punished under Article 246 of the Revised Penal Code, as amended, to wit: Art. 246. *Parricide*. — Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death. 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.

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.*:

On appeal is the Decision[1] dated December 5, 2006 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00114, which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Misamis Oriental, Cagayan de Oro City, Branch 18, convicting appellant T/Sgt. Porferio R. Angus, Jr. of the crime of parricide in Criminal Case No. 2002-587.

Appellant T/Sgt. Porferio R. Angus, Jr. was charged in an Information[3] dated June 7, 2002, as follows:

> That on or about the 10th day of January, 2002, at about 10:00 o'clock in the morning, more or less, at Lanis[i] Patrol Base, Lanis[i], Municipality of Claveria, Province of Misamis Oriental, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, did then and there, willfully, unlawfully, and feloniously attack, assault, choked and strangled the neck of his legitimate wife Betty Angus, thereby causing her instantaneous death.
>
> CONTRARY TO and in violation of Article 246 of the Revised Penal Code.

Upon arraignment, appellant, with the assistance of counsel, pleaded not guilty[4] to the offense charged.

The prosecution and the defense stipulated on the following facts at the pre-trial, to wit:

1. That the accused and the victim were legally married.
2. That the incident happened on January 10, 2002, at the Lanisi Patrol Base, Lanisi, Claveria, Misamis Oriental.

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[1] *Rollo*, pp. 5-18. Penned by Associate Justice Edgardo A. Camello, with Associate Justices Sixto C. Marella, Jr. and Mario V. Lopez concurring.

[2] CA *rollo*, pp. 31-54. Penned by Judge Edgardo T. Lloren. Dated May 20, 2003.

[3] Records, p. 2.

[4] *Id.* at 60.

3. That T/SGT Porferio R. Angus, Jr. is a member of the Armed Forces of the Philippines, particularly the Philippine Army, assigned at the Lanisi Patrol Base, Lanisi, Claveria, Misamis Oriental.[5]

Thereafter, trial on the merits ensued.

The prosecution presented as witnesses Police Senior Inspector Reynaldo A. Padulla, Staff Sergeant Romeo Rhea, Dr. Alex R. Uy, Dr. Luchie S. Serognas-At-at, and Civilian Armed Forces Geographical Unit (CAFGU) members Romeo I. Malaran, Leoncio P. Jintapa and Alejo O. Carpio. Their testimonies may be synthesized into the following narration of events:

The victim, Betty D. Angus, arrived at the Lanisi Patrol Base at around 7:00 p.m. on January 9, 2002. Appellant fetched her at the gate and they proceeded to his bunker. Later, CAFGU members Malaran and Carpio heard the two (2) arguing about appellant's relationship with another woman. Appellant was also seen go out of his bunker around midnight to get some rice, beef and vegetables for dinner.[6]

The following day, January 10, 2002, at around 7:00 a.m., appellant had breakfast at the mess hall with Jintapa, Malaran and Carpio. As appellant was not with his wife, Jintapa reminded appellant to call her. When appellant returned, he told them that he would just leave some food for his wife because she was still sleeping.

After eating, Malaran and Jintapa asked for permission to fetch water near the *barangay* elementary school about a kilometer away. While they were gone, Carpio went to the outpost and started cleaning his firearm. Appellant went to the comfort room then decided to join Carpio at the outpost. On his way to the outpost, appellant passed by his bunker and peeped through the door which was open by about 1 ½ inches.[7] Carpio was

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[5] *Id.* at 70.

[6] TSN, September 17, 2002, pp. 42-47; TSN, September 18, 2002, pp. 75-78.

[7] TSN, September 18, 2002, pp. 85-86.

able to see the door because it was facing the outpost.[8] A few minutes later, Malaran and Jintapa returned and joined appellant and Carpio at the outpost. The four (4) shared funny stories and joked for a while, after which Carpio went to the mess hall while Jintapa went to his bunker. Malaran and appellant decided to continue their conversation at the mess hall.[9]

On their way to the mess hall, appellant passed by his bunker but was not able to open the door at once because something was blocking it from the inside. When appellant pushed the door, Malaran saw the back of the victim in a slanting position and leaning at the door. Appellant went inside and almost immediately shouted for help. Malaran and Carpio saw appellant embracing his wife. They helped appellant carry Betty's body to the bed. Malaran observed that her skin below the jaw was reddish and her knees were covered with mud.[10] There was food on the table and a multi-colored *tubao*[11] was hanging on the purlins of the roof about a meter away from the victim. The lower tip of the *tubao* was in a circular form and was hanging about four (4) feet from the ground. They heard appellant repeatedly say, "Why did you do this? How can I explain this to our children?"[12]

Carpio called Jintapa and told him that something had happened to Betty. This was around 10:00 a.m. When Jintapa entered appellant's bunker, he noticed that the *tubao* was still hanging from the roof. He also saw appellant embracing his wife and crying hard. Appellant exerted effort to revive his wife by pumping her chest. Malaran tried to help by massaging Betty's hands, feet, and legs. When Carpio and Malaran left to look for a

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[8] *Id.* at 81.

[9] TSN, September 17, 2002, pp. 17-28; TSN, September 18, 2002, pp. 79-82.

[10] TSN, September 9, 2002, pp 16-20.

[11] A scarf-like clothing used to cover the head and neck. See TSN, September 18, 2002, pp. 67-68.

[12] TSN, September 16, 2002, pp. 3-11; TSN, September 17, 2002, pp. 28-32.

vehicle, Jintapa took Malaran's place and also massaged Betty's hands and feet which were already cold. Appellant, who continued to cry very hard, covered Betty's neck with his *tubao* and draped a blanket over her body. The *tubao* that was hanging on the roof was not removed until Corporal Teodoro Guibone ordered a meat collector to remove it.[13]

At the Claveria Municipal Hospital, Dr. Luchie S. Serognas-At-at concluded that Betty was already dead upon arrival for she no longer had a pulse. She asked appellant as to the cause of her death, and after two (2) minutes, he replied that maybe she suffered a heart attack as she had a history of heart ailment. Dr. At-at wanted to thoroughly examine Betty's body but she was not able to do so because appellant was crying very hard. A commotion also took place at the hospital when a soldier, later identified as Sgt. Romeo Rhea, tried to box appellant, saying that appellant's crying was only an act.[14] Rhea and appellant were companions at Bravo Company, while Betty was Rhea's neighbor in Basilan. Appellant is also the godfather of Rhea's child. According to Rhea, he knew about appellant's illicit relationship with a certain Jennifer Abao, with whom appellant had been sweethearts for about three (3) years prior to the incident on January 10, 2002.[15]

Dr. Alex R. Uy, Medico-Legal Officer of the Philippine National Police (PNP) Crime Laboratory of Patag, Cagayan de Oro City, conducted the autopsy. His examination revealed the following findings:

HEAD AND NECK

1. Abrasion: Right Mandibular Region: measuring 4 x 2 cm., 4 cm. from the anterior midline.

2. Ligature mark: extending bilaterally around the neck at the level below the hyoid bone, measuring 42 x 1 cm., bisected

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[13] TSN, September 17, 2002, pp. 33-41; TSN, September 18, 2002, pp. 59-69.

[14] TSN, September 5, 2002, pp. 28-37, 43-44.

[15] TSN, September 30, 2002, pp. 68-76.

> by the anterior midline, directed horizontally and posteriorward. Larynx and Trachea are markedly congested and hemorrhagic.[16]

Dr. Uy stated that Betty may have died two (2) hours after taking her last meal due to the presence of partially digested food inside the stomach.[17] He believed that the cause of her death was asphyxia by strangulation and not by hanging, as the victim did not sustain a fractured bone on her neck or hyoid bone and there was no hemorrhage above the trachea and larynx. He explained that the sudden gravitational force would usually cause a fractured bone. Dr. Uy clarified that the absence of a fractured bone would only happen if the person hangs herself very slowly without a sudden force or if she was in a kneeling position.[18]

For its part, the defense presented as witnesses Angeles S. Ociones, Senior Police Officer 1 Victorino Busalla, Cheryl Ann A. Siarez, Master Sergeant Benedicto Palma, Emeliano Bolonias, Bobby Padilla Lopez and appellant. Taken together, their testimonies present the following narrative:

Cheryl Ann A. Siarez is the only daughter of Betty and appellant. In the afternoon of January 9, 2002, at around 1:30 p.m., Betty went inside Cheryl Ann's bedroom and told her to be serious in her studies. Betty also intimated to Cheryl Ann that she wanted to go to a far place where there would be no more rumors, no backbiting, and nobody would recognize her. At 4:00 p.m., they boarded a bus bound for Cagayan de Oro City. Betty disembarked at Villanueva, Misamis Oriental to transfer to a passenger jeepney going to Claveria.[19]

From Villanueva to Claveria, Betty sat beside Angeles Ociones, an old friend, in the front seat of the jeepney. She confided to Ociones about her jealousy towards her husband. She also

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[16] Records, p. 222.

[17] TSN, September 2, 2002, p. 10.

[18] *Id.* at 3-22.

[19] TSN, January 14, 2003, pp. 104-106.

mentioned that she was angry that she was not able to catch him and his mistress. Ociones advised Betty to confront her husband regarding the rumors she had heard, as it was common to hear such rumors every time a soldier is assigned to a place away from home. Betty revealed that she planned to commit suicide because of the many stories she had heard about her husband. This was the third time she shared thoughts of suicide. Betty further said she wanted to go to a far place where nobody would recognize her. At around 7:00 p.m., Betty arrived at Lanisi Patrol Base.[20]

Appellant met his wife at the gate and went with her to his bunker. Appellant testified that they talked about only three (3) things: his whereabouts on January 7, 2002, the conference in Mat-i, Claveria, and whether he was able to borrow money for the renovation of their house. He later admitted, however, that Betty also confronted him about his relationship with another woman. At around 11:00 p.m. they went to bed. He asked Betty if she has eaten dinner but she said she did not want to eat. Nonetheless, he brought her some food then went back to sleep. He woke up the following day at around 6:00 a.m. and heard Emiliano Bolonias knocking at his door. Bolonias confirmed that when the door was opened, he saw Betty sleeping on the bed. Since Betty was still asleep, appellant suggested that they proceed to the mess hall to talk about their financial dealings. He did not lock the door to his bunker when they left. At around 8:00 a.m. appellant went back to his bunker to invite his wife to have breakfast with them.[21]

After having breakfast, appellant, Malaran, Carpio and Jintapa went to the outpost while Bolonias left the patrol base. Malaran and Jintapa asked permission to fetch water but later arrived and stayed at the outpost. Appellant went to his bunker and found the same locked from inside. He knocked and called his wife, but there was no response. He forcibly opened the door and saw his wife hanging with the use of a *tubao* which was

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[20] TSN, December 18, 2002, pp. 17-41.

[21] TSN, January 21, 2003, pp. 26-28; TSN, January 22, 2003, pp. 89-95.

tied at the purlins of the roof. Her body was hanging and almost in a kneeling position. He shouted for help as he untied the knot around Betty's neck but was not able to carry her since she was heavy. The other CAFGU members helped appellant put Betty on the bed. Malaran massaged Betty's feet while appellant massaged her chest and even did a mouth-to-mouth resuscitation. When the vehicle appellant had requested arrived, Betty was brought to the hospital. The *tubao* that was used by the victim was left hanging at the purlins.[22]

That same day, Cheryl Ann was informed that her mother was in serious condition. She was fetched and brought to Claveria, Misamis Oriental, where she saw her father crying. Appellant told Cheryl Ann that her mother had committed suicide. The burial was originally scheduled on January 16, 2002 so her grandmother could attend. Betty's relatives who attended the wake did not attend the burial because they got angry when appellant did not allow them to bring Betty's body to Basilan. Her grandfather, SPO4 Cesar Ocay, told Cheryl Ann to bury her mother's body in Basilan so that they will not file a case against appellant. Cheryl Ann believes her mother committed suicide.[23]

M/Sgt. Benedicto Palma testified that on January 15, 2002, at around 2:00 p.m., he was at the funeral parlor of Poblacion, Balingasag, Misamis Oriental, assisting Dr. Alex Uy, who was conducting the autopsy on Betty's body. When he asked Dr. Uy regarding his findings, the doctor replied that appellant had nothing to do with the death of his wife, and that she indeed committed suicide.[24] Aside from appellant, his brothers-in-law, Edgardo De Vera and Mariano De Vera, Sgt. Rhea, and appellant's sister-in-law, Jerry, were also present at the funeral parlor when Dr. Uy announced his findings that Betty committed suicide.[25]

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[22] TSN, January 22, 2003, pp. 96-103.

[23] TSN, January 14, 2003, pp. 107-119.

[24] TSN, January 15, 2003, pp. 143-146.

[25] TSN, March 3, 2003, p. 74.

On May 20, 2003, the RTC rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, finding accused T/SGT. PORFERIO R. ANGUS, JR., **GUILTY beyond reasonable doubt [of] the crime of Parricide**, punishable under Article 246 of the Revised Penal Code, and taking into account the mitigating circumstance of voluntary surrender, he is hereby sentenced to suffer the penalty of ***Reclusion Perpetua***, including its accessory penalties. He is also directed to pay FIFTY THOUSAND PESOS (₱50,000.00), as indemnity, to the heirs of the victim.
>
> SO ORDERED. Cagayan de Oro City, May 20, 2003.[26]

Appellant interposed an appeal to this Court. Pursuant to *People v. Mateo*,[27] which modified Rules 122, 124 and 125 of the Revised Rules of Criminal Procedure, as amended, insofar as they provide for direct appeals from the RTC to this Court in cases where the penalty imposed by the trial court is death, *reclusion perpetua* or life imprisonment, this case was referred to the CA for intermediate review.

On December 5, 2006, the CA rendered judgment affirming with modification the decision of the RTC. The *fallo* of the CA decision reads:

> FOR THE REASONS STATED, the appealed Decision convicting T/SGT. PORFERIO R. ANGUS, JR. of Parricide is hereby **AFFIRMED** with the **MODIFICATION** that he is additionally ORDERED to pay the heirs of the victim ₱25,000 as exemplary damages and ₱50,000 as moral damages on top of the decreed indemnity. *Costs de oficio.*
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> SO ORDERED.[28]

Hence, this appeal. In his brief,[29] appellant raises a lone assignment of error:

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[26] CA *rollo*, pp. 53-54.

[27] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 657-658.

[28] *Rollo*, p. 18.

[29] CA *rollo*, pp. 91-107.

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

Appellant argues that nobody really saw who killed the victim or when and how she was killed. He asserts that the prosecution witnesses merely testified to have last seen Betty alive on the night of January 9, 2002. Thereafter, they heard the couple arguing about a woman. The following morning Betty was found dead. Although there was more than one (1) circumstance, appellant contends that the prosecution failed to prove that the combination thereof leads to the inevitable conclusion that he killed his wife.

We find merit in appellant's contentions.

The Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. The burden lies on the prosecution to overcome such presumption of innocence by presenting the quantum of evidence required. In so doing, the prosecution must rest on the strength of its own evidence and must not rely on the weakness of the defense.[30] And if the prosecution fails to meet its burden of proof, the defense may logically not even present evidence on its own behalf. In such cases the presumption prevails and the accused should necessarily be acquitted.[31]

We may well emphasize that direct evidence of the commission of a crime is not the only basis on which a court draws its finding of guilt. Established facts that form a chain of circumstances can lead the mind intuitively or impel a conscious process of reasoning towards a conviction.[32] Verily, resort to circumstantial evidence is sanctioned by Section 4, Rule 133 of the Revised Rules on Evidence.

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[30] *People v. Suan*, G.R. No. 184546, February 22, 2010, p. 14.

[31] See *People v. Dela Cruz*, G.R. No. 177222, October 29, 2008, 570 SCRA 273, 286-287.

[32] *People v. Casitas, Jr.*, G.R. No. 137404, February 14, 2003, 397 SCRA 382, 390.

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 (1) fair and reasonable conclusion that the accused, to the exclusion of all others, is the guilty person. Proof beyond reasonable doubt does not mean the degree of proof excluding the possibility of error and producing absolute certainty. Only moral certainty or "that degree of proof which produces conviction in an unprejudiced mind" is required.[33]

The following are the requisites for circumstantial evidence to be sufficient to support conviction: (a) there is more than one (1) circumstance, (b) the facts from which the inferences are derived have been proven, and (c) the combination of all the circumstances results in a moral certainty that the accused, to the exclusion of all others, is the one (1) who has committed the crime. Thus, to justify a conviction based on circumstantial evidence, the combination of circumstances must be interwoven in such a way as to leave no reasonable doubt as to the guilt of the accused.[34]

After a thorough review of the records of the case, we find sufficient basis to warrant the reversal of the assailed judgment of conviction. The crime of parricide is defined and punished under Article 246 of the Revised Penal Code, as amended, to wit:

> Art. 246. *Parricide*. — Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.

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[33] *People v. Dela Cruz*, G.R. No. 187683, February 11, 2010, p. 8.

[34] *Bastian v. Court of Appeals*, G.R. No. 160811, April 18, 2008, 552 SCRA 43, 55.

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.[35]

The evidence in this case shows that Betty arrived at the camp at around 7:00 o'clock in the evening of January 9, 2002. Witnesses heard Betty and the appellant arguing over the latter's illicit relationship with another woman. The following day, appellant went out of his bunker at around 6:00 o'clock in the morning. He had breakfast at the mess area with his companions, but went back to his bunker at around 8:00 o'clock to ask his wife to join them for breakfast. When he returned, he told his men that his wife could not join them for breakfast because she was still asleep. At around 10:00 a.m., appellant returned to his bunker followed by Malaran who saw the dead body of the victim.

The Court is not satisfied that the circumstantial evidence in this case constitutes an unbroken chain which leads to the conclusion that appellant, to the exclusion of all others, is guilty of killing his wife. The trial court relied on the testimonies of Malaran and Carpio who heard the appellant and his wife arguing about the latter's illicit relationship with another woman, which supposedly proves motive for him to commit the crime. However, granting that appellant and Betty had an argument on the night before her death, it would be too much to presume that such an argument would drive appellant to kill his wife. Clearly, the motive is not convincing. If at all, the testimonies of Malaran and Carpio merely show a suspicion of appellant's responsibility for the crime. Needless to state, however, suspicion no matter how strong can not sway judgment.[36] In the absence of any

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[35] *People v. Ayuman*, G.R. No. 133436, April 14, 2004, 427 SCRA 248, 256.

[36] *People v. Balderas*, G.R. No. 106582, July 31, 1997, 276 SCRA 470, 484.

other evidence reasonably linking appellant to the crime, evidence of motive is not sufficient to convict him.[37]

Likewise, Dr. Uy explained that if a person hangs herself, most of the time there will be a fracture on the bone of the neck because of the pressure caused by gravity that pulls the rope. However, he also testified that if the person hangs herself slowly, there will be no fracture on her neck or hyoid bone. Thus, the fact that Betty did not sustain a fractured bone on her neck or hyoid bone, as the doctor observed, does not automatically lead to the conclusion that appellant strangled the victim. Given the evidence that the victim had intimated her wish to commit suicide a day before the incident, it is not farfetched to conclude that she indeed chose to take her life.

An acquittal based on reasonable doubt will prosper even though the accused's innocence may be doubted, for a criminal conviction rests on the strength of the evidence of the prosecution and not on the weakness of the defense. And, if the inculpatory facts and circumstances are capable of two (2) or more explanations, one (1) of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction. That which is favorable to the accused should be considered.[38] After all, *mas vale que queden sin castigar diez reos presuntos, que se castigue uno inocente*.[39] Courts should be guided by the principle that it would be better to set free ten (10) men who might be probably guilty of the crime charged than to convict one (1) innocent man for a crime he did not commit.[40]

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[37] *People v. Manambit*, G.R. Nos. 72744-45, April 18, 1997, 271 SCRA 344, 368.

[38] *Dela Cruz v. People*, G.R. No. 150439, July 29, 2005, 465 SCRA 190, 216.

[39] *People v. Suarez*, G.R. Nos. 153573-76, April 15, 2005, 456 SCRA 333, 365.

[40] *People v. Capili*, G.R. No. 130588, June 8, 2000, 333 SCRA 354, 366.

WHEREFORE, the appeal is *GRANTED*. The assailed Decision dated December 5, 2006 of the Court of Appeals in CA-G.R. CR-HC No. 00114 is *REVERSED* and *SET ASIDE*. Appellant T/Sgt. Porferio R. Angus, Jr. is ACQUITTED of the crime of parricide on the ground of reasonable doubt. Unless detained for some other lawful reasons, appellant is hereby ordered released immediately.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 179333. August 3, 2010]

JOEPHIL C. BIEN, *petitioner, vs.* **PEDRO B. BO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICER; ABUSE OF AUTHORITY, SUFFICIENTLY ESTABLISHED.— [R]espondent has sufficiently established that petitioner Bien was one of the *barangay* officials, albeit from a different *barangay,* who participated in the destruction of respondent's cottage and coconut trees built and planted on the subject property.

2. ID.; ID.; ID.; ABUSE OF AUTHORITY CAN BE COMMITTED BY A *BARANGAY* OFFICIAL OUTSIDE OF HIS *BARANGAY*.— Petitioner further makes capital of the fact that he is not a *barangay* official of San Isidro Ilawod; necessarily, for him to be liable for abuse of authority, the

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[*] Designated additional member per Special Order No. 843 dated May 17, 2010.

exercise of power should have been done in the discharge of his office. As the CA did, we likewise do not agree. Suffice it to say that petitioner's status as ABC President is not disputed. We concur with the CA's following disquisition: His line of reasoning may be convincing had this been the only circumstance. But it must be taken into consideration that he is the ABC President to whom the *barangay* officials show deference to. Also, as correctly held by the Ombudsman, he is the *ex-officio* member of the Sangguniang Bayan which is significantly mentioned to be the legislative body with the power to review *barangay* ordinances and with the authority to discipline *barangay* officials. The presence of his cottage as well as that of the other *barangay* officials in San Isidro Ilawod in Palale Beach showed an apparent connivance among them. It then follows that his participation as a higher authority had put a semblance of legality over the removal of complainant's improvements in order that they may protect their personal interests over the foreshore lot. In this sense, there shows his misdemeanor as a public officer, an abuse of authority.

APPEARANCES OF COUNSEL

Lagman Lagman & Mones Law Firm for petitioner.

D E C I S I O N

NACHURA, *J.*:

Before us is a petition for review on *certiorari* challenging the Court of Appeals (CA) decision in CA-G.R SP No. 92874[1] which affirmed *in toto* the decision of the Deputy Ombudsman for Luzon in OMB-L-A-04-0488-H finding petitioner administratively liable for Abuse of Authority.[2]

The factual antecedents, summarized by the CA, follow:

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[1] Penned by Associate Justice Mariano C. Del Castillo (now a member of this Court), with Justices Arcangelita Romilla Lontok and Ricardo R. Francisco, concurring; *rollo*, pp. 38-54.

[2] *Id.* at 119-123.

[Respondent Pedro B. Bo], since 1993, has applied with the Department of Environment and Natural Resources Community Environment and Natural Resources Office (DENR-CENRO) Legazpi City for the lease of a 10,000 square meter foreshore lot in Palale Beach, Bgy. San Isidro, Ilawod. Pending his application, he introduced improvements in the area necessary in putting up and in running a beach resort, secured DENR approval of his survey plan, obtained a barangay permit to operate his business, and paid the corresponding yearly occupation fees over the public land. The DENR in the meantime conducted an appraisal report on the status of the foreshore lot.

But a month before the DENR released its approval in April 2003 for the bidding of the lease covering the public land Col. Bo was applying for, his cottage and his coconut trees were destroyed. He had this occurrence entered in the police blotter in the Malilipot Municipal Police Station, and named Bgy. Captain Bello and Kgd. Bisona as those who led in the removal of his improvements to give way for the construction of twenty-two cottages, and that this was done in defiance of the directive of the DENR representative not to push through with this plan because they had no right to do so.

The bidding that was scheduled for June 2003 for the lease of the foreshore land never took place because the Sangguniang Barangay of San Isidro, Ilawod opposed Col. Bo's lease application before the DENR, reasoning that the land should be used instead for *barangay* projects and not to benefit private individuals.

The protest was then referred to the DENR-Provincial Environment and Natural Resources Office (PENRO) for resolution. Land Management Officer (LMO) Santiago Olfindo took hold of the dispute and on October 21, 2003 conducted an ocular inspection on the public land. He noted in his findings the list of improvements as of that time and the owners of the cottages located therein:

> "At the time of the ocular inspection, the actual improvements found on the area are reflected on a matrix hereto attached. Some of the owners of the cottages constructed on the area covered by the application of Applicant-Respondent [Bo] were not present during the inspection but were identified by the Barangay Officials who were present on the premises. From the attached matrix it must be noted that almost all of the Barangay Officials had their own cottages and that the total

> cost of all improvements on the area subject of this case amounts to Four Hundred Seventy Nine (*sic*) (₱479,000.00) Pesos.
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> During the field inspection, the improvements made by the Applicant-Respondent [Bo] as reflected in the Appraisal Report was not anymore around. The area occupied by his improvement, (Cottage) is already occupied by a certain Carmelo Tuyo and Jimeno Balana.
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> x x x x x x x x x

The matrix referred to by LMO Olfindo included [petitioner] Joephil Bien as one of the owners of the cottages built on Palale Beach on March 2003, and said report of LMO Olfindo became the DENR Regional Director's basis for denying the Sangguniang Barangay's protest, finding that the cottages found therein were privately owned and illegally constructed, *i.e.*, without securing the DENR's permit. Thus, the bidding for the public lease of a portion of Palale Beach was upheld.

As regards Col. Bo's complaint before the Ombudsman, he pinpointed not only the *barangay* officials of San Isidro, Ilawod as the culprits responsible for the destruction of his cottage and plantation but also [petitioner] Joephil Bien. Col. Bo stressed that all of them connived in doing this injustice to him in order that respondents [including herein petitioner] may be able to construct their own private cottages for their own benefit.

Defending himself separately from his co-respondents, [petitioner] Joephil Bien maintained his innocence and vehemently denied ownership of the cottage. To prove the latter, he averred that it is not he who owns the cottage but a certain Renaldo Belir. He affixed as evidence in his position paper the affidavit of Renaldo Belir affirming that it is he and not Bgy. Captain Bien who constructed the cottage. As his additional proof, he included an official receipt issued to Belir as payment for the *barangay* permit.[3]

As previously adverted to, the Deputy Ombudsman for Luzon found all respondents therein, including herein petitioner Bien, administratively liable for Abuse of Authority, to wit:

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[3] *Id.* at 40-44.

WHEREFORE, **premises considered**, it is hereby respectfully recommended that respondents **JULIO BELLO, JOEL BISONA, ROLANDO VOLANTE, MARTINEZ BEA, RICARDO BILAN, RENATO BARIAS, HERBES BOTIS, MILAGROS BALANA, and JOEPHIL BIEN**, be meted out the penalty of **three (3) months suspension without pay** for Abuse of Authority.

SO RESOLVED.[4]

Objecting to the penalty meted out by the Deputy Obmudsman, petitioner appealed to the CA which ruled, thus:

WHEREFORE, the instant petition is ***DENIED*** for lack of merit. The September 5, 2005 Decision and November 23, 2005 Order of the Deputy Ombudsman for Luzon anent OMB-L-A-04-0488-H are ***AFFIRMED*** *in toto*.

SO ORDERED.[5]

Hence, this appeal by petitioner hinging on the singular issue of whether he is liable for abuse of authority.

Petitioner seeks to evade liability on the following grounds:

1. Respondent failed to prove petitioner's participation in the destruction of the improvements introduced by the former on the subject property;

2. Corollary thereto, respondent failed to establish petitioner's ownership of one of the twenty-two (22) cottages on the subject property found by the DENR to have been illegally erected; and

3. Petitioner is not a *barangay* official of San Isidro Ilawod; thus, he has no authority and jurisdiction over the subject property.

We are in complete accord with the Deputy Ombudsman for Luzon's and the appellate court's uniform rulings.

Petitioner's participation in the destruction of the improvements on the subject property introduced by the respondent, as well

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[4] *Id.* at 122-123.

[5] *Id.* at 54.

as petitioner's ownership of one of the cottages subsequently erected therein, were supported by substantial evidence.

In administrative cases, the requisite proof is substantial evidence, *i.e.*, that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[6] In the case at bar, substantial evidence consisted in the findings of the DENR-PENRO identifying petitioner as one of the owners of the twenty-two (22) cottages illegally erected on the subject property covered by a lease application of respondent. The Final Report of the DENR-PENRO narrates the circumstances surrounding the conflict between respondent and the *barangay* officials of San Isidro Ilawod, concerning respondent's application for lease of the subject property:

> On May 11, 1993, Applicant-Respondent filed with the DENR-CENRO, Legazpi a foreshore lease application and designated as F.L.A. No. 050509-01. After six (6) years of follow-up by Applicant-Respondent on the actions taken on his application, it was on April 28, 2003 that the Notice to Lease Public Land was ultimately released for posting in the *barangay* where the applied area is located. Instead of having it posted by the Barangay Officials of San Isidro Ilawod, Malilipot, Albay, they refused its posting and consequently filed their opposition on June 4, 2003, just five (5) days before the scheduled bidding of the applied area.[7]

Moreover, the DENR Regional Executive Director categorically found that the *barangay* officials, respondents in the proceedings before the Deputy Ombudsman for Luzon, including herein petitioner Bien, illegally erected cottages on the subject property:

> The Sangguniang Barangay of San Isidro Ilawod, cannot, in the guise of resolutions assume the authority and task that pertain solely to the DENR as regards the administration and management of the subject foreshore land. The introduction of improvements on the premises without the necessary permit from the DENR is illegal which we cannot countenance.[8]

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[6] RULES OF COURT, Rule 133, Section 5.

[7] *Rollo*, p. 78.

[8] *Id.* at 106.

More importantly, the CA found that the evidence presented by respondent buttressed his positive and consistent claim that petitioner connived with the *barangay* officials of San Isidro Ilawod to destroy the improvements he introduced on the subject property so that these officials could construct their own cottages thereon. Specifically, the appellate court proclaimed, thus:

> The result of the DENR's field inspection that revealed petitioner as one who owned one of the 22 cottages that dislodged Col. Bo's cottage and coconut trees is what Bgy. Capt. Bien is pouncing on, for a confirmation in this administrative case of his alleged ownership of the cottage in Palale Beach will buttress Col. Bo's positive and consistent claim, as inferred from all his pleadings before the Ombudsman, that there was connivance among the[rein] respondents in removing his improvements so that they may put up their own cottages.
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> xxx. Renaldo Belir declared in his affidavit that he constructed his cottage in Palale Beach in May 2003, but the subject here concerns the 22 cottages that were built immediately after the destruction of Col. Bo's cottage and coconut plantations. As against that of LMO Olfindo's report which listed those 22 cottages built in March 2003 [showing] that one of these cottages is ostensibly owned by petitioner, the information which was gathered from the barangay officers themselves of San Isidro Ilawod who accompanied LMO Olfindo during the ocular inspection, the proof that petitioner submitted to substantiate his defense that another person owns the cottage is weak.[9]

From the foregoing separate factual findings, respondent has sufficiently established that petitioner Bien was one of the *barangay* officials, albeit from a different *barangay*, who participated in the destruction of respondent's cottage and coconut trees built and planted on the subject property.

Petitioner further makes capital of the fact that he is not a *barangay* official of San Isidro Ilawod; necessarily, for him to be liable for abuse of authority, the exercise of power should have been done in the discharge of his office.

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[9] *Id.* at 50-51.

As the CA did, we likewise do not agree. Suffice it to say that petitioner's status as ABC President is not disputed. We concur with the CA's following disquisition:

> His line of reasoning may be convincing had this been the only circumstance. But it must be taken into consideration that he is the ABC President to whom the *barangay* officials show deference to. Also, as correctly held by the Ombudsman, he is the *ex-officio* member of the Sangguniang Bayan which is significantly mentioned to be the legislative body with the power to review *barangay* ordinances and with the authority to discipline *barangay* officials. The presence of his cottage as well as that of the other *barangay* officials in San Isidro Ilawod in Palale Beach showed an apparent connivance among them. It then follows that his participation as a higher authority had put a semblance of legality over the removal of complainant's improvements in order that they may protect their personal interests over the foreshore lot. In this sense, there shows his misdemeanor as a public officer, an abuse of his authority.[10]

With the foregoing discussion, we see no need to dispose of the peripheral issues raised by petitioner.

WHEREFORE, premises considered, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R SP No. 92874 and the Decision and Order of the Deputy Ombudsman for Luzon in OMB-L-A-04-0488-H are *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

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[10] *Id.* at. 52-53.

THIRD DIVISION

[G.R. No. 179498. August 3, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RUSTICO BARTOLINI** *y* **AMPIS,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; USE OF FORCE AND INTIMIDATION, PROVEN.— We are adequately convinced that the Prosecution proved that appellant employed force and intimidation upon his victim. This being so, we find no cogent reason to disturb the ruling of both the RTC and the appellate court on this matter.

2. ID.; ID.; VICTIM'S AGE MUST BE SPECIFICALLY ALLEGED TO BE APPRECIATED AS A QUALIFYING CIRCUMSTANCE; EFFECT OF ABSENCE OF SUCH ALLEGATION IN THE INFORMATION.— [W]e disagree with the trial court's ruling convicting appellant Bartolini for qualified rape under Criminal Case No. 99-1-2084-H. The appellate court was correct in sustaining appellant's argument that the special qualifying circumstance cannot be appreciated in Criminal Case No. 99-1-2084-H since the age of the victim was not specifically alleged in the information. x x x [T]he qualifying circumstance of relationship of BBB to appellant was specifically alleged and proven during the trial. Notably absent in the information, however, is a specific averment of the victim's age at the time the offense against her was committed. Such an omission committed by the prosecutor is fatal in the imposition of the supreme penalty of death against the offender. It must be borne in mind that the requirement for complete allegations on the particulars of the indictment is based on the right of the accused to be fully informed of the nature of the charges against him so that he may adequately prepare for his defense pursuant to the constitutional requirement on due process, specially so if the case involves the imposition of the death penalty in case the accused is convicted. Thus, even if the victim is below eighteen (18) years of age and the offender is her parent, but these facts are not alleged in the information, or if only one (1) is so alleged

such as what happened in the instant case, their proof as such by evidence offered during trial cannot sanction the imposition of the death penalty.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT.— Settled is the rule that when the issue is one (1) of credibility of witnesses, appellate courts will generally not disturb the findings of the trial courts considering that the latter are in a better position to decide the question as they have heard the witnesses and observed their deportment and manner of testifying during the trial. It is for this reason that the findings of the trial court are given the highest degree of respect. These findings will not ordinarily be disturbed by an appellate court absent any clear showing that the trial court has overlooked, misunderstood, or misapplied some facts or circumstances of weight or substance which could very well affect the outcome of the case.

4. ID.; ID.; ID.; DELAY IN REPORTING THE COMMISSION OF RAPE DOES NOT AFFECT CREDIBILITY; REASONS.— How the victims managed to endure the bestial treatment of their father to them for four (4) long years, with one (1) even having to live with the shame of siring an offspring from her very own father, should not be taken against them. Children of tender age have natural respect and reverence for their loved ones. More often than not, they would try to keep to themselves if anything unnatural was committed against them, especially if the offender is one (1) of their relatives. A father is known to have a strong natural, cultural and psychological hold upon his child. Hence, it would be too assuming for us to ask the victims why they have kept these facts of abuse to themselves, when their very own mother decided to be mum on the matter as well.

5. CRIMINAL LAW; RAPE; CIVIL LIABILITIES; EFFECT OF FAILURE TO ALLEGE THE SPECIAL QUALIFYING CIRCUMSTANCE OF VICTIM'S AGE ON THE ACCUSED'S CIVIL LIABILITIES, EXPLAINED.— Anent the award of damages, we find modifications to be in order. We increase the award of civil indemnity and moral damages in Criminal Case No. 99-1-2084-H from ₱50,000.00 to ₱75,000.00 each.

In *People v. Catubig*, we explained that the commission of an offense has a two(2)-pronged effect, one (1)on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings. Each effect is respectively addressed by the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. But unlike the criminal liability which is basically the State's concern, the award of damages is in general intended for the offended party who suffers thereby. Hence, although it is essential to observe the requirements imposed by Sections 8 and 9 of Rule 110 of the Revised Rules of Criminal Procedure, as amended, the requirements should affect only the criminal liability of the accused, which is the State's concern, and should not affect the civil liability of the accused, which is for the benefit of the injured party. Where the special qualifying circumstances of age and relationship, although not alleged in the information, are nonetheless established during the trial, the award of civil indemnity and moral damages in a conviction for simple rape should equal the award of civil indemnity and moral damages in convictions for qualified rape. Truly, BBB's moral suffering is just as great as when her father who raped her is convicted for qualified rape as when he is convicted only for simple rape due to a technicality.

6. ID.; ID.; ID.; AWARD OF EXEMPLARY DAMAGES, INCREASED.— [W]e modify the award for exemplary damages. Pursuant to prevailing jurisprudence, the award of exemplary damages for the two (2) counts of qualified rape under Criminal Case Nos. 99-1-2083-H and 99-1-2085-H and for the crime of simple rape in Criminal Case No. 99-1-2084-H is increased to ₱30,000.00 for each count of rape.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VILLARAMA, JR., *J.*:

We review the May 31, 2007 Decision[1] of the Court of Appeals (CA) which affirmed the guilty verdict rendered by Branch 29 of the Regional Trial Court (RTC) of Bislig City[2] in Criminal Case Nos. 99-1-2083-H, 99-1-2084-H and 99-1-2085-H, finding appellant Rustico Bartolini *y* Ampis guilty of three (3) counts of incestuous rape against his two (2) daughters, AAA and BBB.[3]

The facts are culled from the findings of both the trial and appellate courts.

Appellant Bartolini was charged with three (3) counts of rape before the RTC, Branch 29, of Bislig City, Surigao del Sur. The informations filed against him read:

Criminal Case No. 99-1-2083-H:

That on or about 7:00 o'clock in the morning sometime in the month of March 1995, at Sitio [ABC], Barangay [123], Municipality of Hinatuan, Province of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd and unchaste designs, did then and there wilfully, unlawfully and feloniously rape [his] daughter, [AAA], by means of force and intimidation, and against his daughter's will, to the damage and prejudice of the said [AAA], who was then 14 years old.

CONTRARY TO LAW: In violation of Article 335 of the Revised Penal Code as amended by Section 11 of Republic Act No. 7659.

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[1] Docketed as CA-G.R. HC-CR. No. 00175, penned by Associate Justice Mario V. Lopez, with Associate Justices Romulo V. Borja and Michael P. Elbinias concurring; *rollo*, pp. 5-24.

[2] CA *rollo*, pp. 17-25. Penned by Acting Judge Romeo C. Buenaflor.

[3] Pursuant to the Court's ruling in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, and Section 44 of Republic Act No. 9262 otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" the real names and personal circumstances of the victims as well as any other information tending to establish or compromise their identities or those of their immediate family or household members are withheld. Fictitious initials and appellations are used instead to represent them.

Bislig, Surigao del Sur, November 23, 1998.[4]

Criminal Case No. 99-1-2084-H:

That on or about March 2, 1998, at 8:00 o'clock in the morning, more or less, at Sitio [ABC], Barangay [123], Municipality of Hinatuan, Province of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste designs and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously [have] carnal knowledge or rape his own daughter, [BBB], against the latter's will, to the damage and prejudice of said [BBB].

CONTRARY TO LAW: In violation of Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659.

Bislig, Surigao del Sur, November 27, 1998.[5]

Criminal Case No. 99-1-2085-H:

That on or about 3:00 o'clock in the afternoon sometime in the month of March 1994, at Sitio [ABC], Barangay [123], Municipality of Hinatuan, Province of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd and unchaste designs and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously rape [his] daughter [BBB], 16 years old, against the latter's will, to the damage and prejudice of the said [BBB].

CONTRARY TO LAW: In violation of Article 335 of the Revised Penal Code as amended by Section 11 of Republic Act No. 7659.

Bislig, Surigao del Sur, November 27, 1998.[6]

Upon arraignment on May 4, 1999, Bartolini pleaded not guilty to all the three (3) charges filed against him.[7] The three (3) criminal cases were thereafter tried jointly.

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[4] CA *rollo*, p. 6.

[5] *Id.* at 8.

[6] *Id.* at 10.

[7] *Id.* at 18; records, Vol. I, p. 43.

In the course of the trial, the prosecution presented four (4) witnesses: AAA; BBB; CCC, appellant's wife and mother of both victims; and Dr. Emelie S. Viola, the Municipal Health Officer of Hinatuan District Hospital who conducted the physical examination of both victims.

Below are the facts established by their testimonies.

Bartolini is married to CCC.[8] They begot six (6) children, the eldest being BBB who was born on January 14, 1978,[9] followed by AAA who was born on June 16, 1980.[10]

Sometime in March 1994, at around 3:00 in the afternoon, while BBB was weeding the grass on their vegetable garden with her father, the latter suddenly pulled her to the ground and forced her to lie down. Bartolini then lifted BBB's skirt, removed her panty and proceeded to have sexual intercourse with her. As BBB struggled, appellant punched her and hit her at her back. Afterwards, appellant put back his clothes and left. When BBB went inside their house, appellant, who was waiting for her, warned her not to tell CCC about the incident. Despite the warning, BBB reported the incident to her mother, but the latter told her to just keep quiet.[11]

After the said incident, appellant repeatedly had sexual intercourse with BBB, the last of which happened on March 2, 1998 at about 8:00 in the morning inside their house while her mother was away selling fish and while all her siblings were attending school. That morning, appellant ordered BBB to get his clothes for him. Appellant then followed BBB to the room, took off her clothes and raped her.[12]

It also appears that sometime in March 1995, at about 6:30 in the morning, while having breakfast, appellant instructed his

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[8] Exh. "H", records, Vol. II, p. 58.

[9] Exh. "D", *id.* at 59.

[10] Exh. "E", records, Vol. I, p. 76.

[11] CA *rollo*, p. 61; TSN, September 6, 1999, pp. 4-7.

[12] *Id.*; *id.* at 7-9.

second eldest daughter, AAA, to burn the dried leaves in their garden. Dutifully, AAA went to the garden at around 7:00 that morning and met her father there. To her surprise, appellant immediately pulled her and brought her near a big fallen tree while threatening to kill her and all the members of their family if she would not acquiesce to his demands. Appellant told her to remove her panties, but since AAA was crying and pushing her father away, appellant himself took off AAA's panties, laid her on the ground and placed one (1) of her feet on top of the fallen tree. Afterwards, appellant removed his pants and raped her. After having sexual intercourse with AAA, appellant put back his pants and went to the *barangay* hall to report for duty as appellant was a *barangay kagawad* at that time. Like her sister, AAA also told the incident to their mother, but the latter told her to keep silent for fear that appellant would fulfill his threats. Consequently, AAA was repeatedly raped by appellant until sometime in October 1998, a month before she gave birth to appellant's child.[13]

When CCC discovered that AAA was pregnant, she confided the matter to her sister-in-law, DDD, who, in turn, reported the incident to the *barangay* captain and to a representative of the Department of Social Welfare and Development (DSWD) in Butuan City. On November 19, 1998, while under the custody of the DSWD, AAA gave birth to her child.[14]

During the trial, CCC testified that sometime in March 1994, her daughter BBB confided to her that she was raped by appellant. She just kept silent about the incident for fear that her husband will maul her when confronted. AAA also reported to her that she was raped by her father sometime in 1995. In one (1) instance, CCC even saw appellant touching AAA's vagina while the two (2) were inside their kitchen. She got angry and told her parents-in-law about the incident, but the latter replied that she has no other evidence to prove her accusation. CCC also testified that appellant, despite being an elected *barangay kagawad*, was a

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[13] *Id.* at 60-61; TSN, August 3, 1999, pp. 7-14.

[14] *Id.* at 61; TSN, September 6, 1999, p. 23.

drunkard, violent and an irresponsible individual. She added that she had received a letter from appellant threatening to kill them.

Dr. Emelie S. Viola, Municipal Health Officer of Hinatuan District Hospital, testified that sometime in October 1998, BBB and AAA were brought to her clinic for physical examination. Although there were no visible signs of physical trauma, Dr. Viola found that BBB had deep healed hymenal lacerations at the 6 and 7 o'clock positions, as well as superficial healed hymenal laceration at the 10 o'clock position, which indicate that there was a penetration of an object or a male reproductive organ at BBB's female genitalia.[15]

Dr. Viola also examined AAA and found that the latter had deep healed lacerations at the 12 o'clock position and superficial healed hymenal lacerations at the 3, 9 and 10 o'clock positions, also indicating penetration of an object or a male reproductive organ at AAA's vagina. AAA was also pregnant.[16]

The defense, on the other hand, presented its lone witness, appellant Bartolini, who interposed the defense of denial and alibi. According to him, he could not have raped BBB in the morning of March 2, 1998 because he has been out of their house from 4:00 a.m. that day to deliver shrimps, prawns, and crabs to a certain Benjamin Castañas who resides in Hinatuan, Surigao del Sur. Appellant claims that he arrived at Castañas's house at around 4:20 a.m. and stayed there for breakfast upon the latter's invitation. After getting paid, he left for home at around 10:00 a.m. and reached his house fifteen (15) minutes later.[17]

On September 4, 2000, a subpoena was issued for Benjamin Castañas to appear as witness for the defense.[18] Castañas, however, failed to appear before the trial court. A warrant of

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[15] Exh. "H", records, Vol. III, p. 5; TSN, September 15, 1999, pp. 3-8.

[16] Exh. "G", records, Vol. I, p. 7; *id.* at 8-11.

[17] TSN, September 4, 2000, pp. 4-6.

[18] Records, Vol. III, p. 77.

arrest was thereafter issued against him,[19] but to no avail. Thus, on July 24, 2002, the trial court issued another subpoena to Castañas.[20] When Castañas still failed to appear, the trial court issued an order declaring the case submitted for decision.[21]

On September 18, 2002, the RTC promulgated its decision finding appellant guilty beyond reasonable doubt of three (3) counts of rape committed against AAA and BBB. The *fallo* reads:

> WHEREFORE, finding the accused RUSTICO BARTOLINI *Y* AMPIS, forty-four (44) years of age, a fisherman and a resident of [ABC, 123,] Hinatuan, Surigao del Sur, guilty beyond reasonable doubt of the crime of RAPE pursuant to Article 335 of the Revised Penal Code, as amended by Section 11, Republic Act No. 7659, paragraph (1), this Court hereby sentences him:
>
> 1. In Criminal Case No. [99-1-]2083-H, to suffer the penalty of Death by Lethal Injection. To pay Seventy-Five Thousand (₱75,000.00) pesos as civil indemnity and Fifty Thousand (₱50,000.00) pesos as moral damages and to pay the costs;
> 2. In Criminal Case No. [99-1-]2084-H, to suffer the penalty of Death by Lethal Injection. To pay Seventy-Five Thousand (₱75,000.00) pesos as civil indemnity and Fifty Thousand (₱50,000.00) pesos as moral damages and to pay the costs; [and]
> 3. In Criminal Case No. [99-1-]2085-H, to suffer the penalty of Death by Lethal Injection. To pay Seventy-Five Thousand (₱75,000.00) pesos as civil indemnity and Fifty Thousand (₱50,000.00) pesos as moral damages and to pay the costs.
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> Let the entire records of this case be forwarded to the Supreme Court for automatic review pursuant to Section 22 of Republic Act No. 7659.
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> SO ORDERED.[22]

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[19] *Id.* at 83.

[20] *Id.* at 93.

[21] *Id.* at 97.

[22] CA *rollo*, pp. 24-25.

At the CA, Bartolini argued that he should not have been convicted of the crime of qualified rape since the information in Criminal Case No. 99-1-2085-H was defective because it failed to allege that the act was committed by force or intimidation as required by law, while there was no allegation of minority of the victim in the information for Criminal Case No. 99-1-2084-H. Bartolini also argued that the prosecution failed to prove his guilt beyond reasonable doubt.[23]

After an extensive discussion on the issues raised by Bartolini, the appellate court found no compelling reason to deviate from the findings of the trial court. Nevertheless, the CA modified the penalties by reducing the penalty of death to *reclusion perpetua* following the abolition of the death penalty and by modifying the monetary award in favor of the victims. The dispositive portion of the appellate court's decision reads,

> WHEREFORE, the Decision dated September 18, 2002 of the Regional Trial Court, 11th Judicial Region, Branch 29, Bislig City, in Criminal Case Nos. [99-1-]2083-H, [99-1-]2084-H and [99-1-]2085-H finding appellant Rustico Bartolini *y* Ampis guilty beyond reasonable doubt for three counts of rape is AFFIRMED with the following MODIFICATIONS:
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> (a) in Criminal Case Nos. [99-1-]2083-H and [99-1-]2085-H, the penalty of death is reduced to *reclusion perpetua*; and to pay the amount of seventy-five thousand pesos (₱75,000.00) as civil indemnity, seventy-five thousand pesos (₱75,000.00) as moral damages and twenty-five thousand pesos (₱25,000.00) as exemplary damages for each count; and
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> (b) in Criminal Case No. [99-1-]2084-H, the accused is sentenced to suffer the penalty of *reclusion perpetua*; and to pay the amount of fifty thousand pesos (₱50,000.00) as civil indemnity, the amount of fifty thousand pesos (₱50,000.00) as moral damages, and twenty-five thousand pesos (₱25,000.00) as exemplary damages;
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> (c) with costs.
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> SO ORDERED.[24]

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[23] *Id.* at 47.

[24] *Rollo*, p. 23.

On August 30, 2007, the records of the case were forwarded to this Court for automatic review.[25] The Court accepted the appeal and directed the parties to file their respective supplemental briefs if they so desire. However, both the Office of the Solicitor General, for the appellee, and the appellant submitted manifestations[26] stating that they replead and adopt the arguments raised in their respective briefs[27] before the CA.

Appellant raises the following issues:

I. Whether the trial court erred in convicting the appellant;

II. Whether the trial court erred in convicting the appellant in Criminal Case No. 99-1-2085-H despite the fact that the information therein was allegedly defective; and

III. Whether the trial court erred in imposing the death penalty upon the appellant after finding him guilty in Criminal Case No. 99-1-2084-H considering the failure of the information to allege minority.[28]

We shall first discuss the second and third issues raised by the appellant, *i.e.*, whether the element of force and intimidation was correctly alleged in the information in Criminal Case No. 99-1-2085-H and whether the penalty of death was properly imposed upon the appellant in Criminal Case No. 99-1-2084-H.

The appellant's arguments are partially meritorious.

Rape is committed by having carnal knowledge of a woman under any of the following circumstances: (1) when force or intimidation is used; (2) when the woman is deprived of reason or is otherwise unconscious; and (3) when she is under 12 years of age.[29]

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[25] *Id.* at 1.

[26] *Id.* at 31-36.

[27] CA *rollo*, pp. 38-57, 72-115.

[28] *Id.* at 40-41.

[29] *People v. Erese*, 346 Phil. 307, 314 (1997).

A perusal of the information used as basis for Criminal Case No. 99-1-2085-H readily reveals the allegation that appellant employed force and intimidation in raping BBB. We reproduce the contents of the information below:

Criminal Case No. 99-1-2085-H:

That on or about 3:00 o'clock in the afternoon sometime in the month of March 1994, at Sitio [ABC], Barangay [123], Municipality of Hinatuan, Province of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd and unchaste designs and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously rape [his] daughter [BBB], 16 years old, against the latter's will, to the damage and prejudice of the said [BBB].

CONTRARY TO LAW: In violation of Article 335 of the Revised Penal Code as amended by Section 11 of Republic Act No. 7659.

Bislig, Surigao del Sur, November 27, 1998.[30]

The same allegation was proven during the trial. We quote BBB's testimony during her direct examination:

Q: Do you recall of any unusual incident that happened on March 1994, while you were still residing at [Sitio ABC], [123], Lingig, Surigao del Sur, together with your parents?

A: Yes, sir.

Q: What was that unusual incident all about?

A: We were weeding grasses, sir.

Q: Where were you [weeding] grasses?

A: We were weeding grasses near to our house, sir.

Q: Were you alone while you were weeding grasses at [Sitio ABC], [123], Lingig, Surigao del Sur?

A: We were two, me and my father, sir.

Q: What time was that?

A: Afternoon, sir.

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

Q: Now, while you were weeding grasses near your house in the afternoon of March 1994, with your father, what happened if any?

A: He pulled me, sir.

Q: Where did he bring you?

A: At the place where we were weeding grasses, sir.

Q: What happened next after you[r] father brought you near the place where you were weeding grasses?

A: He made me lie down, sir.

Q: What did you do when your father made you lie down?

A: He lift[ed] my skirt and took up my panty, sir.

Q: What did you do when your father pulled you[r] panty?

A: I pushed aside his hands, sir.

Q: What did your father do next?

A: He made me lie down, sir.

Q: Afterward[s], what happened next?

A: He also took [off] his brief and his pant[s], sir.

Q: You want to tell this Honorable Court that you were already [lying] down when your father removed his brief and his pant[s]?

A: Yes, sir.

Q: In relation to you[,] where was your father situated when he removed his brief and pant[s]?

A: [Just by] my side[,] just near me, sir.

Q: What happened after your father removed his pant[s] and brief?

A: He inserted his penis in my vagina, sir.

x x x x x x x x x

Q: While his penis was inside your vagina, what happened?

A: He boxed me, sir.

Q: Were you hit by the blow?

A: Yes, sir.

Q: Where?

A: [O]n my back, sir.

x x x x x x x x x

Q: When you reached to your house, what did [he] do?

A: He scolded me, sir.

Q: Who scolded you?

A: My father, sir.

Q: Why did he scold you?

A: He was afraid I might tell my mother, sir.

Q: Did you tell your mother about the incident?

A: Yes, sir.[31]

We are adequately convinced that the prosecution proved that appellant employed force and intimidation upon his victim. This being so, we find no cogent reason to disturb the ruling of both the RTC and the appellate court on this matter.

However, we disagree with the trial court's ruling convicting appellant Bartolini for qualified rape under Criminal Case No. 99-1-2084-H. The appellate court was correct in sustaining appellant's argument that the special qualifying circumstance cannot be appreciated in Criminal Case No. 99-1-2084-H since the age of the victim was not specifically alleged in the information.[32]

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[31] TSN, September 6, 1999, pp. 4-7.

[32] The said Information reads:

Criminal Case No. 99-1-2084-H:

That on or about March 2, 1998, at 8:00 o'clock in the morning, more or less, at Sitio [ABC], Barangay [123], Municipality of Hinatuan, Province of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste

Our disquisition in *People v. Tagud, Sr.*[33] succinctly explains the matter. There, we said:

> To justify the imposition of the death penalty in this case, the single special qualifying circumstance of the minority of the victim and her relationship to the offender must be specifically alleged in the Information and proven during the trial. x x x
>
> x x x x x x x x x
>
> Even under the old Rules of Criminal Procedure, jurisprudence already required that qualifying circumstances must be specifically alleged in the Information to be appreciated as such.
>
> x x x x x x x x x
>
> Notably, the amended Information merely stated that appellant had carnal knowledge of his *minor* daughter without stating Arwin's actual age. In a rape case where the very life of the accused is at stake, such an inexact allegation of the age of the victim is insufficient to qualify the rape and raise the penalty to death. **The sufficiency of the Information is held to a higher standard when the only imposable penalty is death. The constitutional right of the accused to be properly informed of the nature and cause of the accusation against him assumes the greatest importance when the only imposable penalty in case of conviction is death.**[34]

Similar to *Tagud*, the qualifying circumstance of relationship of BBB to appellant was specifically alleged and proven during the trial. Notably absent in the information, however, is a specific averment of the victim's age at the time the offense against her was committed. Such an omission committed by the prosecutor is fatal in the imposition of the supreme penalty of death against

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designs and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously [have] carnal knowledge or rape[d] his own daughter, [BBB], against the latter's will, to the damage and prejudice of said [BBB].

CONTRARY TO LAW: In violation of Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659.

Bislig, Surigao del Sur, November 27, 1998. (See CA *rollo*, p. 8.)

[33] G.R. No. 140733, January 30, 2002, 375 SCRA 291.

[34] *Id.* at 307-308. Emphasis supplied.

the offender. It must be borne in mind that the requirement for complete allegations on the particulars of the indictment is based on the right of the accused to be fully informed of the nature of the charges against him so that he may adequately prepare for his defense pursuant to the constitutional requirement on due process,[35] specially so if the case involves the imposition of the death penalty in case the accused is convicted. Thus, even if the victim is below eighteen (18) years of age and the offender is her parent, but these facts are not alleged in the information, or if only one (1) is so alleged such as what happened in the instant case, their proof as such by evidence offered during trial cannot sanction the imposition of the death penalty.[36]

Appellant also argues that both the trial court and the CA committed reversible errors when he was found guilty for the three (3) counts of rape even if his guilt was not proven beyond reasonable doubt. In particular, appellant attacks AAA's credibility by arguing that it would have been physically impossible for him to rape said victim on top of a log as claimed by AAA in her testimony. Appellant also questions the motive of both victims saying that it is unnatural for both to report the abuses made on them only after the lapse of several years.

We cannot subscribe to appellant's desperate attempt to save himself from the consequences of his dastardly acts.

Settled is the rule that when the issue is one (1) of credibility of witnesses, appellate courts will generally not disturb the findings of the trial courts considering that the latter are in a better position to decide the question as they have heard the witnesses and observed their deportment and manner of testifying during the trial. It is for this reason that the findings of the trial court are given the highest degree of respect. These findings will not ordinarily be disturbed by an appellate court absent any clear showing that the trial court has overlooked, misunderstood, or

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[35] *People v. Elpedes*, G.R. Nos. 137106-07, January 31, 2001, 350 SCRA 716, 729-730.

[36] *People v. Salalima*, G.R. Nos. 137969-71, August 15, 2001, 363 SCRA 192, 205.

misapplied some facts or circumstances of weight or substance which could very well affect the outcome of the case.[37]

Moreover, AAA's testimony was vivid and precise. She said:

> Q: What was your position at that time when you said your father spread your legs apart?
>
> A: When I spread my legs, I was laying (sic), and he put my one leg on top of the fallen tree.[38]

We note with approval the CA's observation that such revelation is plausible and consistent with human experience. Indeed, if there is any incongruity in the manner of intercourse as portrayed by the appellant, the same would be trivial and will not smother AAA's revelation of sexual abuse.[39]

How the victims managed to endure the bestial treatment of their father to them for four (4) long years, with one (1) even having to live with the shame of siring an offspring from her very own father, should not be taken against them. Children of tender age have natural respect and reverence for their loved ones. More often than not, they would try to keep to themselves if anything unnatural was committed against them, especially if the offender is one (1) of their relatives. A father is known to have a strong natural, cultural and psychological hold upon his child. Hence, it would be too assuming for us to ask the victims why they have kept these facts of abuse to themselves, when their very own mother decided to be mum on the matter as well.

Anent the award of damages, we find modifications to be in order. We increase the award of civil indemnity and moral damages in Criminal Case No. 99-1-2084-H from ₱50,000.00 to ₱75,000.00 each. In *People v. Catubig*,[40] we explained that

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[37] *People v. Gopio*, G.R. No. 133925, November 29, 2000, 346 SCRA 408, 428.

[38] TSN, August 3, 1999, pp. 9-10.

[39] *Rollo*, p. 14.

[40] G.R. No. 137842, August 23, 2001, 363 SCRA 621.

the commission of an offense has a two (2)-pronged effect, one (1) on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings. Each effect is respectively addressed by the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. But unlike the criminal liability which is basically the State's concern, the award of damages is in general intended for the offended party who suffers thereby. Hence, although it is essential to observe the requirements imposed by Sections 8[41] and 9[42] of Rule 110 of the Revised Rules of Criminal Procedure, as amended, the requirements should affect only the criminal liability of the accused, which is the State's concern, and should not affect the civil liability of the accused, which is for the benefit of the injured party. Where the special qualifying circumstances of age and relationship, although not alleged in the information, are nonetheless established during the trial, the award of civil indemnity and moral damages in a conviction for simple rape should equal the award of civil indemnity and moral damages in convictions for qualified rape. Truly, BBB's moral suffering is just as great as when her father who raped her is convicted for qualified rape as when he is convicted only for simple rape due to a technicality.

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[41] SEC. 8. *Designation of the offense*.—The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

[42] SEC. 9. *Cause of the accusation.*—The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

Likewise, we modify the award for exemplary damages. Pursuant to prevailing jurisprudence, the award of exemplary damages for the two (2) counts of qualified rape under Criminal Case Nos. 99-1-2083-H and 99-1-2085-H and for the crime of simple rape in Criminal Case No. 99-1-2084-H is increased to ₱30,000.00 for each count of rape.[43]

WHEREFORE, the judgment on review is *AFFIRMED with MODIFICATIONS.*

In Criminal Case Nos. 99-1-2083-H and 99-1-2085-H, appellant Rustico Bartolini *y* Ampis is found *GUILTY* beyond reasonable doubt of two (2) counts of *QUALIFIED RAPE* and is hereby sentenced to suffer the penalty of *reclusion perpetua*, in lieu of death, without the possibility of parole. He is *ORDERED* to pay each of his two (2) victims, AAA and BBB, ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

In Criminal Case No. 99-1-2084-H, appellant is found *GUILTY* beyond reasonable doubt of the crime of *RAPE* and is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is *ORDERED* to pay the victim, BBB, ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

Costs against the appellant.

SO ORDERED.

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

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[43] See *People v. Layco, Sr.*, G.R. No. 182191, May 8, 2009, 587 SCRA 803, 808 and *People v. Anguac*, G.R. No. 176744, June 5, 2009, 588 SCRA 716, 726.

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

SECOND DIVISION

[G.R. No. 181970. August 3, 2010]

BERNARDO DE LEON, *petitioner, vs.* **PUBLIC ESTATES AUTHORITY substituted by the CITY OF PARAÑAQUE, RAMON ARELLANO, JR., RICARDO PENA and REYMUNDO ORPILLA,** *respondents.*

[G.R. No. 182678. August 3, 2010]

PUBLIC ESTATES AUTHORITY (now PHILIPPINE RECLAMATION AUTHORITY), substituted by the CITY OF PARAÑAQUE, *petitioner, vs.* **HON. SELMA PALACIO ALARAS, in her capacity as the Acting Presiding Judge of Branch 135, Regional Trial Court of Makati City, and BERNARDO DE LEON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; EXECUTION; WHERE OWNERSHIP OF A PARCEL OF LAND WAS DECREED IN A JUDGMENT, THE DELIVERY OF POSSESSION OF LAND IS DEEMED INCLUDED IN THE DECISION.— [I]t is equally settled that possession is an essential attribute of ownership. Where the ownership of a parcel of land was decreed in the judgment, the delivery of the possession of the land should be considered included in the decision, it appearing that the defeated party's claim to the possession thereof is based on his claim of ownership. Furthermore, adjudication of ownership would include the delivery of possession if the defeated party has not shown any right to possess the land independently of his claim of ownership which was rejected. This is precisely what happened in the present case. This Court had already declared the disputed property as owned by the State and that De Leon does not have any right to possess the land independent of his claim of ownership. In addition, a judgment for the delivery or restitution of property is essentially an order to place the prevailing party in possession of the property. If the defendant refuses to surrender possession of the property to the prevailing party, the sheriff or other proper

officer should oust him. No express order to this effect needs to be stated in the decision; nor is a categorical statement needed in the decision that in such event the sheriff or other proper officer shall have the authority to remove the improvements on the property if the defendant fails to do so within a reasonable period of time. The removal of the improvements on the land under these circumstances is deemed read into the decision, subject only to the issuance of a special order by the court for the removal of the improvements. It bears stressing that a judgment is not confined to what appears upon the face of the decision, but also those necessarily included therein or necessary thereto. In the present case, it would be redundant for PEA to go back to court and file an ejectment case simply to establish its right to possess the subject property. Contrary to De Leon's claims, the issuance of the writ of execution by the trial court did not constitute an unwarranted modification of this Court's decision in *PEA v. CA*, but rather, was a necessary complement thereto. Such writ was but an essential consequence of this Court's ruling affirming the nature of the subject parcel of land as public and at the same time dismissing De Leon's claims of ownership and possession. To further require PEA to file an ejectment suit to oust de Leon and his siblings from the disputed property would, in effect, amount to encouraging multiplicity of suits.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; HOLDING IN ABEYANCE THE RESOLUTION OF A MOTION FOR ISSUANCE OF A WRIT OF DEMOLITION CONSTITUTES GRAVE ABUSE OF DISCRETION; PRINCIPLE OF JUDICIAL COURTESY, NOT APPLICABLE.— As to whether or not the RTC committed grave abuse of discretion in holding in abeyance the resolution of PEA's Motion for the Issuance of a Writ of Demolition, Section 7, Rule 65 of the Rules of Court provides the general rule that the mere pendency of a special civil action for *certiorari* commenced in relation to a case pending before a lower court or court of origin does not stay the proceedings therein in the absence of a writ of preliminary injunction or temporary restraining order. It is true that there are instances where, even if there is no writ of preliminary injunction or temporary restraining order issued by a higher court, it would be proper for a lower court or court of origin to suspend its

proceedings on the precept of judicial courtesy. The principle of judicial courtesy, however, remains to be the exception rather than the rule. As held by this Court in *Go v. Abrogar*, the precept of judicial courtesy should not be applied indiscriminately and haphazardly if we are to maintain the relevance of Section 7, Rule 65 of the Rules of Court. Indeed, in the amendments introduced by A.M. No. 07-7-12-SC, a new paragraph is now added to Section 7, Rule 65. x x x While the above quoted amendment may not be applied in the instant case, as A.M. No. 07-7-12-SC was made effective only on December 27, 2007, the provisions of the amendatory rule clearly underscores the urgency of proceeding with the principal case in the absence of a temporary restraining order or a preliminary injunction. This urgency is even more pronounced in the present case, considering that this Court's judgment in *PEA v. CA*, finding that De Leon does not own the subject property and is not entitled to its possession, had long become final and executory. As a consequence, the writ of execution, as well as the writ of demolition, should be issued as a matter of course, in the absence of any order restraining their issuance. In fact, the writ of demolition is merely an ancillary process to carry out the Order previously made by the RTC for the execution of this Court's decision in *PEA v. CA*. It is a logical consequence of the writ of execution earlier issued. x x x Furthermore, the Order of the RTC holding in abeyance the resolution of PEA's Motion for the Issuance of a Writ of Demolition also appears to be a circumvention of the provisions of Section 5, Rule 58 of the Rules of Court, which limit the period of effectivity of restraining orders issued by the courts. In fact, the assailed Orders of the RTC have even become more potent than a TRO issued by the CA because, under the Rules of Court, a TRO issued by the CA is effective only for sixty days. In the present case, even in the absence of a TRO issued by a higher court, the RTC, in effect, directed the maintenance of the *status quo* by issuing its assailed Orders. Worse, the effectivity of the said Orders was made to last for an indefinite period because the resolution of PEA's Motion for the Issuance of a Writ of Demolition was made to depend upon the finality of the judgment in G.R. No. 181970. Based on the foregoing, the Court finds that the RTC committed grave abuse of discretion in issuing the assailed Orders dated December 28, 2007 and March 4, 2008.

3. ID.; JUDGMENTS; PIECEMEAL INTERPRETATION OF A DECISION IS NOT ALLOWED; APPLICATION.— The Court reminds De Leon that it does not allow the piecemeal interpretation of its Decisions as a means to advance his case. To get the true intent and meaning of a decision, no specific portion thereof should be isolated and read in this context, but the same must be considered in its entirety. Read in this manner, PEA's right to possession of the subject property, as well as the removal of the improvements or structures existing thereon, fully follows after considering the entirety of the Court's decision in *PEA v. CA*. This is consistent with the provisions of Section 10, paragraphs (c) and (d), Rule 39 of the Rules of Court, which provide for the procedure for execution of judgments for specific acts.

4. ID.; ID.; EXECUTION; DILATORY SCHEMES SHOULD NOT FRUSTRATE THE EXECUTION AND SATISFACTION OF A JUDGMENT.— [I]t bears to point out that this case has been dragging for more than 15 years and the execution of this Court's judgment in *PEA v. CA* has been delayed for almost ten years now simply because De Leon filed a frivolous appeal against the RTC's order of execution based on arguments that cannot hold water. As a consequence, PEA is prevented from enjoying the fruits of the final judgment in its favor. The Court agrees with the Office of the Solicitor General in its contention that every litigation must come to an end once a judgment becomes final, executory and unappealable. Just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case by the execution and satisfaction of the judgment, which is the "life of the law." To frustrate it by dilatory schemes on the part of the losing party is to frustrate all the efforts, time and expenditure of the courts. It is in the interest of justice that this Court should write *finis* to this litigation.

APPEARANCES OF COUNSEL

Felix B. Serina for Bernardo De Leon.
The Solicitor General for Public Estate Athority.

D E C I S I O N

PERALTA, *J.*:

Before the Court are two consolidated petitions.

G.R. No. 181970 is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by Bernardo de Leon seeking the reversal and setting aside of the Decision[1] of the Court of Appeals (CA), dated November 21, 2007, in CA-G.R. SP No. 90328 which dismissed his petition for *certiorari*. De Leon also assails the CA Resolution[2] dated March 4, 2008 denying his Motion for Reconsideration.

On the other hand, G.R. No. 182678 is a petition for *certiorari* under Rule 65 of the Rules of Court filed by the Public Estates Authority (PEA)[3] seeking the nullification of the Orders dated December 28, 2007 and March 4, 2008 of the Regional Trial Court (RTC) of Makati City, Branch 135 in Civil Case No. 93-143.

The pertinent factual and procedural antecedents of the case, as summarized by the CA, are as follows:

> On [January 15, 1993], petitioner Bernardo De Leon ("De Leon") filed a *Complaint for Damages with Prayer for Preliminary Injunction* before the Regional Trial Court [RTC] of Makati City, raffled to Branch 135, against respondent Public Estates Authority ("PEA"), a government-owned corporation, as well as its officers, herein private respondents Ramon Arellano, Jr., Ricardo Pena and Reymundo Orpilla. The suit for damages hinged on the alleged unlawful destruction of De Leon's fence and houses constructed on Lot 5155 containing an area of 11,997 square meters, situated in San Dionisio, Parañaque, which De Leon claimed has been in the

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[1] Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Mario L. Guariña III and Sixto C. Marella, Jr. concurring; *rollo* (G.R. No. 181970), pp. 35-42.

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

[3] Now Philippine Reclamation Authority by virtue of Executive Order No. 380 effective on October 26, 2004.

possession of his family for more than 50 years. Essentially, De Leon prayed that — *one*, lawful possession of the land in question be awarded to him; *two*, PEA be ordered to pay damages for demolishing the improvements constructed on Lot 5155; and, *three*, an injunctive relief be issued to enjoin PEA from committing acts which would violate his lawful and peaceful possession of the subject premises.

The court *a quo* found merit in De Leon's application for writ of preliminary injunction and thus issued the *Order* dated 8 February 1993, pertinent portions of which read:

> After a careful consideration of the evidence presented and **without going into the actual merits of the case**, this Court finds that plaintiff (De Leon) has duly established by preponderance of evidence that he has a legal right over the subject matter of the instant case and is entitled to the injunctive relief demanded for and may suffer irreparable damage or injury if such right is not protected by Law [Rules (sic) 58, Section 3 of the Revised (Rules of Court)].
>
> Premises considered upon plaintiff's (De Leon's) filing of a bond in the amount of ₱500,000.00, let a writ of preliminary injunction be issued against the defendants, their agents, representatives and other persons (PEA and its officers) acting for and in their behalf are hereby enjoined from disturbing the peaceful possession of **plaintiff** (De Leon) **and his co-owners** over Lot 5155 and further, from destroying and/or removing whatever other improvements thereon constructed, until further orders of this Court.
>
> SO ORDERED. (Emphasis supplied)

PEA sought recourse before the Supreme Court through a *Petition for Certiorari with Prayer for a Restraining Order*, ascribing grave abuse of discretion against the court *a quo* for issuing injunctive relief. The *Petition* was later referred to this Court for proper determination and disposition, and was docketed as CA-G.R. SP No. 30630.

On 30 September 1993, the Ninth Division of this Court rendered a *Decision* discerning that the court *a quo* did not act in a capricious, arbitrary and whimsical exercise of power in issuing the writ of preliminary injunction against PEA. The Ninth Division ruled that

the court *a quo* was precisely careful to state in its *Order* that it was "*without going into the actual merits of the case*" and that the words "plaintiff (De Leon) and his co-owners" were used by the court *a quo* rather "*loosely and did not intend it to be an adjudication of ownership*."

Unfazed, PEA appealed to the Supreme Court via a *Petition for Certiorari* insisting that Lot 5155 was a salvage zone until it was reclaimed through government efforts in 1982. The land was previously under water on the coastline which reached nine to twenty meters deep. In 1989, PEA started constructing R-1 Toll Expressway Road for the Manila-Cavite Coastal Road, which project directly traversed Lot 5155. PEA argued that the documentary evidence presented by De Leon to bolster his fallacious claim of possession and ownership were procured only in 1992, thus negating his very own allegation that he and his predecessors-in-interest have been in occupation since time immemorial.

Ruling squarely on the issue adduced before it, the Supreme Court declared that Lot 5155 was a public land so that De Leon's occupation thereof, no matter how long ago, could not confer ownership or possessory rights. Prescinding therefrom, no writ of injunction may lie to protect De Leon's nebulous right of possession. Accordingly, in its Decision dated 20 November 2000, the Supreme Court disposed of the controversy in this wise:

> WHEREFORE, the Court **REVERSES** the decision of the Court of Appeals in CA-G.R. SP No. 30630, and **DISMISSES** the complaint in Civil Case No. 93-143 of the Regional Trial Court, Makati.
>
> No costs.
>
> SO ORDERED.

The aforesaid *Decision* became final and executory as no motion for reconsideration was filed. In due course, PEA moved for the issuance of a writ of execution praying that De Leon and persons claiming rights under him be ordered to vacate and peaceably surrender possession of Lot 5155.

Acting on PEA's motion, the court *a quo* issued the first assailed *Order* dated 15 September 2004, *viz*:

> Acting on the "Motion For Issuance Of Writ of Execution" filed by defendant Public Estate[s] Authority, and finding the same to be impressed with merit, the same is GRANTED.
>
> Let a Writ of Execution issue directing plaintiff, his agents, principals, successors-in-interest and all persons claiming rights under him to vacate and peaceably turn over possession of Lot 5155 to defendant Public Estate[s] Authority.
>
> SO ORDERED.

As could well be expected, De Leon moved for reconsideration thereof and quashal of the writ of execution. He adamantly insisted that the court *a quo's* Order for the issuance of the writ of execution completely deviated from the dispositive portion of the Supreme Court's *Decision* dated 20 November 2000 as it did not categorically direct him to surrender possession of Lot 5155 in favor of PEA.

However, both motions met the same fate as these were denied by the court *a quo* in the second disputed *Order* dated 29 April 2005.[4]

Dissatisfied, De Leon filed another Motion for Reconsideration dated July 1, 2005, but the same was denied by the RTC in an Order dated July 27, 2005.

De Leon then filed a special civil action for *certiorari* with the CA assailing the September 15, 2004 and April 29, 2005 Orders of the RTC of Makati City. This was docketed as CA-G.R. SP No. 90328. In the same proceeding, De Leon filed an Urgent-Emergency Motion for Temporary Restraining Order (TRO) and Issuance of Writ of Preliminary Injunction but the same was denied by the CA in a Resolution dated April 24, 2006.

Subsequently, De Leon filed a second special civil action for *certiorari* with the CA seeking to annul and set aside the same RTC Orders dated September 15, 2004 and April 29, 2005, as well as the RTC Order of July 27, 2005. The case was docketed as CA-G.R. SP No. 90984.

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[4] *Rollo* (G.R. No. 181970), pp. 36-39.

On July 26, 2006, PEA filed a Very Urgent Motion for Issuance of Writ of Demolition[5] praying that the RTC issue a Special Order directing De Leon and persons claiming under him to remove all improvements erected inside the premises of the subject property and, in case of failure to remove the said structures, that a Special Order and Writ of Demolition be issued directing the sheriff to remove and demolish the said improvements.

On October 11, 2006, the RTC issued an Order[6] holding in abeyance the Resolution of PEA's Motion. PEA filed a Motion for Reconsideration,[7] but it was denied by the RTC in an Order[8] dated January 12, 2007.

On February 27, 2007, PEA filed an Omnibus Motion[9] to dismiss or, in the alternative, resolve the petitions in CA-G.R. SP No. 90328 and CA-G.R. SP No. 90984.

In its Decision[10] dated March 21, 2007, the CA dismissed De Leon's petition in CA-G.R. SP No. 90984 on the ground of forum shopping.

Subsequently, on November 21, 2007, the CA also dismissed De Leon's petition in CA-G.R. SP No. 90328 holding that an earlier decision promulgated by the Supreme Court, finding the subject property to be public and that De Leon has no title and no clear legal right over the disputed lot, has already attained finality.[11] De Leon filed a Motion for Reconsideration, but the CA denied it via its Resolution[12] dated March 4, 2008.

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[5] *Rollo* (G.R. No. 182678), pp. 59-63.

[6] *Id.* at 71-73.

[7] *Id.* at 74-81.

[8] *Id.* at 82.

[9] *Id.* at 83-92; 93-102.

[10] *Id.* at 103-121.

[11] *Id.* at 113-121.

[12] *Rollo* (G.R. No. 181970), pp. 44-45.

Thereafter, PEA filed an Urgent Motion to Resolve (Re: Very Urgent Motion for Issuance of Writ of Demolition).[13]

On December 28, 2007, the RTC issued an Order[14] holding in abeyance the resolution of PEA's Motion pending receipt by the trial court of the entry of judgment pertaining to CA-G.R. SP No. 90328. PEA filed a Motion for Reconsideration.[15]

In its Order dated March 4, 2008, the RTC issued an Order denying PEA's Motion for Reconsideration.

On April 23, 2008, De Leon filed the present petition for review on *certiorari*, docketed as G.R. No. 181970, assailing the November 21, 2007 Decision of the CA.

Subsequently, on May 15, 2008, PEA, on the other hand, filed the instant special civil action for *certiorari*, docketed as G.R. No. 182678, questioning the Orders of the RTC of Makati City, dated December 28, 2007 and March 4, 2008.

In G.R. No. 181970, De Leon questions the Decision of the CA on the following grounds: (a) he can only be removed from the subject land through ejectment proceedings; (b) the Decision of this Court in G.R. No. 112172 merely ordered the dismissal of De Leon's complaint for damages in Civil Case No. 93-143; and (c) even though petitioner is not the owner and has no title to the subject land, mere prior possession is only required for the establishment of his right.

In G.R. No. 182678, the sole issue raised is whether respondent judge committed grave abuse of discretion in issuing the assailed Orders which held in abeyance the resolution of PEA's Motion for the Issuance of a Writ of Demolition.

On February 25, 2009, PEA and the City of Parañaque filed a Joint Motion for Substitution stating that PEA had transferred its ownership and ceded its interests over the subject property

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[13] *Rollo* (G.R. No. 182678), pp. 122-128.

[14] *Id.* at 32.

[15] *Id.* at 137-147.

to the City of Parañaque as full payment for all of the former's real property tax liabilities. As a consequence, the movants prayed that PEA be substituted by the City of Parañaque as petitioner in G.R. No. 182678 and respondent in G.R. No. 181970.[16]

In a Resolution[17] dated on October 14, 2009, this Court granted the Motion for Substitution filed by PEA and the City of Parañaque.

The issues raised in the present petitions boil down to the question of whether PEA is really entitled to possess the subject property and, if answered in the affirmative, whether the RTC should proceed to hear PEA's Motion for the Issuance of a Writ of Demolition.

The Court rules for PEA.

The question of ownership and rightful possession of the subject property had already been settled and laid to rest in this Court's Decision dated November 20, 2000 in G.R. No. 112172 entitled, *Public Estates Authority v. Court of Appeals* (*PEA v. CA*).[18] In the said case, the Court ruled thus:

> The issue raised is whether respondent and his brothers and sisters were lawful owners and possessors of Lot 5155 by mere claim of ownership by possession for a period of at least fifty (50) years.
>
> The Court of Appeals ruled that respondent Bernardo de Leon and his brothers and sisters were lawful owners and possessors of Lot 5155 entitled to protection by injunction against anyone disturbing their peaceful possession of said Lot.
>
> The ruling is erroneous. An applicant seeking to establish ownership of land must conclusively show that he is the owner in fee simple, for the standing presumption is that all lands belong to the public domain of the State, unless acquired from the Government either by purchase or by grant, except lands possessed by an occupant and

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[16] *Rollo* (G.R. No. 181970), pp. 107-115; *rollo* (G.R. No. 182678), pp. 172-180.

[17] *Id.* at 181-182; *id.* at 214-215.

[18] 398 Phil. 901 (2000).

his predecessors since time immemorial, for such possession would justify the presumption that the land had never been part of the public domain, or that it had been private property even before the Spanish conquest.

In this case, the land in question is admittedly public. The respondent Bernardo de Leon has no title thereto at all. His claim of ownership is based on mere possession by himself and his predecessors-in-interests, who claim to have been in open, continuous, exclusive and notorious possession of the land in question, under a *bona fide* claim of ownership for a period of at least fifty (50) years. However, the survey plan for the land was approved only in 1992, and respondent paid the realty taxes thereon on October 30, 1992, shortly before the filing of the suit below for damages with injunction. Hence, respondent must be deemed to begin asserting his adverse claim to Lot 5155 only in 1992. More, Lot 5155 was certified as alienable and disposable on March 27, 1972, per certificate of the Department of Environment and Natural Resources. **It is obvious that respondent's possession has not ripened into ownership.**

x x x x x x x x x

Consequently, respondent De Leon has no clear legal right to the lot in question, and a writ of injunction will not lie to protect such nebulous right of possession. x x x[19]

The Court does not subscribe to De Leon's argument that the issues of ownership and possession of the subject lot should not have been taken up by the court on the ground that his complaint is only for damages. De Leon must be aware that his action for damages is anchored on his claim that he owns and possesses the subject property.[20] On this basis, it would be inevitable for the court to discuss the issues of whether he, in fact, owns the disputed property and, as such, has the right to possess the same. Moreover, it is clear from this Court's Decision in *PEA v. CA* that the main issue resolved therein was "whether respondent [De Leon] and his brothers and sisters were the lawful owners and possessors of Lot 5155 by mere claim of

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[19] *Id.* at 908-910. (Emphases supplied.)

[20] See Complaint, pp. 3-5; CA *rollo*, pp. 20-22.

ownership by possession for a period of at least fifty (50) years."

De Leon insists that what this Court did in *PEA v. CA* was to simply dismiss his complaint for damages and nothing more, and that the RTC erred and committed grave abuse of discretion in issuing a writ of execution placing PEA in possession of the disputed property. He insists that he can only be removed from the disputed property through an ejectment proceeding.

The Court is not persuaded.

As a general rule, a writ of execution should conform to the dispositive portion of the decision to be executed; an execution is void if it is in excess of and beyond the original judgment or award.[21] The settled general principle is that a writ of execution must conform strictly to every essential particular of the judgment promulgated, and may not vary the terms of the judgment it seeks to enforce, nor may it go beyond the terms of the judgment sought to be executed.[22]

However, it is equally settled that possession is an essential attribute of ownership.[23] Where the ownership of a parcel of land was decreed in the judgment, the delivery of the possession of the land should be considered included in the decision, it appearing that the defeated party's claim to the possession thereof is based on his claim of ownership.[24] Furthermore, adjudication of ownership would include the delivery of possession if the defeated party has not shown any right to possess the land independently of his claim of ownership which was rejected.[25] This is precisely what happened in the present case. This Court had already declared the disputed property as owned by the State and that De Leon does not have any right to possess the land independent of his claim of ownership.

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[21] *Narciso Tumibay, et al. v. Spouses Yolanda and Honorio Soro, et al.*, G.R. No. 152016, April 13, 2010.

[22] *Id.*

[23] *Isaguirre v. De Lara*, 388 Phil. 607, 622 (2000).

[24] *Baluyut v. Guiao*, 373 Phil. 1013, 1022 (1999).

[25] *Id.*

In addition, a judgment for the delivery or restitution of property is essentially an order to place the prevailing party in possession of the property.[26] If the defendant refuses to surrender possession of the property to the prevailing party, the sheriff or other proper officer should oust him.[27] No express order to this effect needs to be stated in the decision; nor is a categorical statement needed in the decision that in such event the sheriff or other proper officer shall have the authority to remove the improvements on the property if the defendant fails to do so within a reasonable period of time.[28] The removal of the improvements on the land under these circumstances is deemed read into the decision, subject only to the issuance of a special order by the court for the removal of the improvements.[29]

It bears stressing that a judgment is not confined to what appears upon the face of the decision, but also those necessarily included therein or necessary thereto.[30] In the present case, it would be redundant for PEA to go back to court and file an ejectment case simply to establish its right to possess the subject property. Contrary to De Leon's claims, the issuance of the writ of execution by the trial court did not constitute an unwarranted modification of this Court's decision in *PEA v. CA*, but rather, was a necessary complement thereto. Such writ was but an essential consequence of this Court's ruling affirming the nature of the subject parcel of land as public and at the same time dismissing De Leon's claims of ownership and possession. To further require PEA to file an ejectment suit to oust de Leon and his siblings from the disputed property would, in effect, amount to encouraging multiplicity of suits.

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[26] *Narciso Tumibay, et al. v. Spouses Yolanda and Honorio Soro, et al., supra* note 20, citing *Buñag v. Court of Appeals*, 363 Phil. 216 (1999).

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *DHL Philippines Corporation United Rank and File Association-Federation of Free Workers v. Buklod ng Manggagawa ng DHL Philippines Corporation*, 478 Phil. 842, 853 (2004); *Jaban v. Court of Appeals*, 421 Phil. 896, 904 (2001); *Isaguirre v. de Lara, supra* note 22.

De Leon also contends that there "was never any government infrastructure project in the subject land, much less a Manila-Cavite Coastal Road traversing it, at any time ever since, until now" and that "allegations of a government project in the subject land and of such Road traversing the subject land have been downright falsities and lies and mere concoctions of respondent PEA."[31] However, this Court has already ruled in *PEA v. CA* that "it is not disputed that there is a government infrastructure project in progress traversing Lot 5155, which has been enjoined by the writ of injunction issued by the trial court."

In any case, De Leon's argument that there was no government infrastructure project in the subject property begs the issue of ownership and rightful possession. The subject lot was properly identified. There is no dispute as to its exact location. Hence, whether or not there is a government project existing within the premises or that which traverses it is not relevant to the issue of whether petitioner is the owner of the disputed lot and, therefore, has legal possession thereof.

As to whether or not the RTC committed grave abuse of discretion in holding in abeyance the resolution of PEA's Motion for the Issuance of a Writ of Demolition, Section 7,[32] Rule 65 of the Rules of Court provides the general rule that the mere pendency of a special civil action for *certiorari* commenced in relation to a case pending before a lower court or court of origin does not stay the proceedings therein in the absence of a writ of preliminary injunction or temporary restraining order. It is true that there are instances where, even if there is no writ of preliminary injunction or temporary restraining order issued by a higher court, it would be proper for a lower court or court

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[31] See *rollo* (G.R. No. 181970), p. 29.

[32] Sec. 7. *Expediting proceedings; injunctive relief.* — The court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. The petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case.

of origin to suspend its proceedings on the precept of judicial courtesy.[33] The principle of judicial courtesy, however, remains to be the exception rather than the rule. As held by this Court in *Go v. Abrogar*,[34] the precept of judicial courtesy should not be applied indiscriminately and haphazardly if we are to maintain the relevance of Section 7, Rule 65 of the Rules of Court.

Indeed, in the amendments introduced by A.M. No. 07-7-12-SC, a new paragraph is now added to Section 7, Rule 65, which provides as follows:

> The public respondent shall proceed with the principal case within ten (10) days from the filing of a petition for *certiorari* with a higher court or tribunal, absent a temporary restraining order or a preliminary injunction, or upon its expiration. Failure of the public respondent to proceed with the principal case may be a ground for an administrative charge.

While the above quoted amendment may not be applied in the instant case, as A.M. No. 07-7-12-SC was made effective only on December 27, 2007, the provisions of the amendatory rule clearly underscores the urgency of proceeding with the principal case in the absence of a temporary restraining order or a preliminary injunction.

This urgency is even more pronounced in the present case, considering that this Court's judgment in *PEA v. CA*, finding that De Leon does not own the subject property and is not entitled to its possession, had long become final and executory. As a consequence, the writ of execution, as well as the writ of demolition, should be issued as a matter of course, in the absence of any order restraining their issuance. In fact, the writ of demolition is merely an ancillary process to carry out the Order previously made by the RTC for the execution of this Court's decision in *PEA v. CA*. It is a logical consequence of the writ of execution earlier issued.

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[33] *Republic v. Sandiganbayan*, G.R. No. 166859, June 26, 2006, 492 SCRA 747, 752.

[34] 446 Phil. 227, 238 (2003).

Neither can De Leon argue that he stands to sustain irreparable damage. The Court had already determined with finality that he is not the owner of the disputed property and that he has no right to possess the same independent of his claim of ownership.

Furthermore, the Order of the RTC holding in abeyance the resolution of PEA's Motion for the Issuance of a Writ of Demolition also appears to be a circumvention of the provisions of Section 5, Rule 58 of the Rules of Court, which limit the period of effectivity of restraining orders issued by the courts. In fact, the assailed Orders of the RTC have even become more potent than a TRO issued by the CA because, under the Rules of Court, a TRO issued by the CA is effective only for sixty days. In the present case, even in the absence of a TRO issued by a higher court, the RTC, in effect, directed the maintenance of the *status quo* by issuing its assailed Orders. Worse, the effectivity of the said Orders was made to last for an indefinite period because the resolution of PEA's Motion for the Issuance of a Writ of Demolition was made to depend upon the finality of the judgment in G.R. No. 181970. Based on the foregoing, the Court finds that the RTC committed grave abuse of discretion in issuing the assailed Orders dated December 28, 2007 and March 4, 2008.

Finally, the Court reminds De Leon that it does not allow the piecemeal interpretation of its Decisions as a means to advance his case. To get the true intent and meaning of a decision, no specific portion thereof should be isolated and read in this context, but the same must be considered in its entirety.[35] Read in this manner, PEA's right to possession of the subject property, as well as the removal of the improvements or structures existing thereon, fully follows after considering the entirety of the Court's decision in *PEA v. CA*. This is consistent with the provisions of Section 10, paragraphs (c) and (d), Rule 39 of the Rules of

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[35] *La Campana Development Corporation v. Development Bank of the Philippines*, G.R. No. 146157, February 13, 2009, 579 SCRA 137, 156; *Heirs of Moreno v. Mactan-Cebu International Airport Authority*, 459 Phil. 948, 964. (2003).

Court, which provide for the procedure for execution of judgments for specific acts, to wit:

> SECTION 10. *Execution of judgments for specific act.* —
>
> x x x x x x x x x
>
> *(c) Delivery or restitution of real property*. — The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within the three (3) working days, and restore possession thereof to the judgment obligee; otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money.
>
> *(d) Removal of improvements on property subject of execution*. — When the property subject of execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements, except upon special order of the court, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.

As a final note, it bears to point out that this case has been dragging for more than 15 years and the execution of this Court's judgment in *PEA v. CA* has been delayed for almost ten years now simply because De Leon filed a frivolous appeal against the RTC's order of execution based on arguments that cannot hold water. As a consequence, PEA is prevented from enjoying the fruits of the final judgment in its favor. The Court agrees with the Office of the Solicitor General in its contention that every litigation must come to an end once a judgment becomes final, executory and unappealable. Just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case by the execution and satisfaction of the

judgment, which is the "life of the law."[36] To frustrate it by dilatory schemes on the part of the losing party is to frustrate all the efforts, time and expenditure of the courts.[37] It is in the interest of justice that this Court should write *finis* to this litigation.

WHEREFORE, the Court disposes and orders the following:

The petition for review on *certiorari* in G.R. No. 181970 is *DENIED*. The challenged Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 90328 dated November 21, 2007 and March 4, 2008, respectively, are *AFFIRMED*.

The petition for *certiorari* in G.R. No. 182678 is *GRANTED*. The assailed Orders of the Regional Trial Court of Makati City, Branch 135, dated December 28, 2007 and March 4, 2008, are *ANNULLED* and *SET ASIDE*.

The Regional Trial Court of Makati is hereby *DIRECTED* to hear and resolve PEA's Motion for the Issuance of a Writ of Demolition with utmost dispatch. This Decision is *IMMEDIATELY EXECUTORY*. The Clerk of Court is *DIRECTED* to remand the records of the case to the court of origin.

SO ORDERED.

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

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[36] *Bongcac v. Sandiganbayan*, G.R. Nos. 156687-88, May 21, 2009, 588 SCRA 64, 71.

[37] *Id*.

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per raffle dated July 26, 2010.

THIRD DIVISION

[G.R. No. 182364. August 3, 2010]

AT&T COMMUNICATIONS SERVICES PHILIPPINES, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; VALUE-ADDED TAX (VAT); REQUIREMENTS FOR TAX REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE FOR UNUTILIZED INPUT VAT.— A taxpayer engaged in zero-rated transactions may apply for tax refund or issuance of tax credit certificate for unutilized input VAT, subject to the following requirements: (1) the taxpayer is engaged in sales which are zero-rated (*i.e.*, export sales) or effectively zero-rated; (2) the taxpayer is VAT-registered; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax; and (5) in case of zero-rated sales under Section 106 (A) (2) (a) (1) and (2), Section 106 (B) and Section 108 (B) (1) and (2), the acceptable foreign currency exchange proceeds thereof have been duly accounted for in accordance with BSP rules and regulations.

2. ID.; ID.; CLAIM FOR UNUTILIZED INPUT VAT MAY BE PROVED BY SALES INVOICES.— [T]o determine the validity of petitioner's claim as to unutilized input VAT, an invoice would suffice provided the requirements under Sections 113 and 237 of the Tax Code are met. Sales invoices are recognized commercial documents to facilitate trade or credit transactions. They are proofs that a business transaction has been concluded, hence, should not be considered bereft of probative value. Only the preponderance of evidence threshold as applied in ordinary civil cases is needed to substantiate a claim for tax refund proper.

APPEARANCES OF COUNSEL

Salvador & Associates for petitioner.
Alberto R. Bomediano, Jr. for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

AT&T Communications Services Philippines, Inc. (petitioner) is a domestic corporation primarily engaged in the business of providing information, promotional, supportive and liaison services to foreign corporations such as AT&T Communications Services International Inc., AT&T Solutions, Inc., AT&T Singapore, Pte. Ltd.,, AT&T Global Communications Services, Inc. and Acer, Inc., an enterprise registered with the Philippine Economic Zone Authority (PEZA).

Under Service Agreements forged by petitioner with the above-named corporations, remuneration is paid in U.S. Dollars and inwardly remitted in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP).

For the calendar year 2002, petitioner incurred input VAT when it generated and recorded zero-rated *sales* in connection with its Service Agreements in the peso equivalent of ₱56,898,744.05. Petitioner also incurred input VAT from *purchases* of capital goods and other taxable goods and services, and importation of capital goods.

Despite the application of petitioner's input VAT against its output VAT, an excess of unutilized input VAT in the amount of ₱2,050,736.69 remained. As petitioner's unutilized input VAT could not be directly and exclusively attributed to either of its zero-rated sales or its domestic sales, an allocation of the input VAT was made which resulted in the amount of ₱1,801,826.82 as petitioner's claim attributable to its zero-rated sales.

On March 26, 2004, petitioner filed with the Commissioner of Internal Revenue (respondent) an application for tax refund

and/or tax credit of its excess/unutilized input VAT from zero-rated sales in the said amount of ₱1,801,826.82.[1]

To prevent the running of the prescriptive period, petitioner subsequently filed a petition for review with the Court of Tax Appeals (CTA) which was docketed as CTA Case No. 6907 and lodged before its First Division.

In support of its claim, petitioner presented documents including its Summary of Zero-Rated Sales (Exhibit "DD") with corresponding supporting documents; VAT invoices on which were stamped "zero-rated" and bank credit advices (Exhibits "EE-1" to "EE-56"); copies of Service Agreements (Exhibits "N" to "Q"); and report of the commissioned certified public accountant (Exhibit "AA" to "AA-22").

After petitioner presented its evidence, respondent did not, despite notice, proffer any opposition to it. He was eventually declared to have waived his right to present evidence.

By Decision of February 23, 2007,[2] the CTA First Division, conceding that petitioner's transactions fall under the classification of zero-rated sales, nevertheless denied petitioner's claim "for lack of substantiation," disposing as follows:

> In reiteration, considering that the subject revenues pertain to gross receipts from services rendered by petitioner, **valid VAT official receipts** and not mere sales invoices **should have been submitted** in support thereof. Without proper VAT official receipts, the foreign currency payments received by petitioner from services rendered for the four (4) quarters of taxable year 2002 in the sum of US$1,102,315.48 with the peso equivalent of ₱56,898,744.05 cannot qualify for zero-rating for VAT purposes. Consequently, the claimed input VAT payments allegedly attributable thereto in the amount of ₱1,801,826.82 cannot be granted. It is clear from the provisions of Section 112 (A) of the NIRC of 1997 that there must be zero-rated

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[1] *Rollo*, p. 19.

[2] Penned by Associate Justice Caesar A. Casanova with the dissent of Presiding Justice Ernesto D. Acosta and the concurrence of Associate Justice Lovell R. Bautista, *id.* at 172-186.

or effectively zero-rated sales in order that a refund of input VAT could prosper.

x x x x x x x x x[3] (emphasis and underscoring supplied)

The CTA First Division, relying on Sections 106[4] and 108[5] of the Tax Code, held that since petitioner is engaged in sale of *services*, VAT Official Receipts should have been presented in order to substantiate its claim of zero-rated sales, not VAT invoices which pertain to sale of *goods* or properties.

On petition for review, the CTA *En Banc*, by Decision of February 18, 2008,[6] *affirmed* that of the CTA First Division. Petitioner's motion for reconsideration having been denied by Resolution of April 2, 2008, the present petition for review was filed.

The petition is impressed with merit.

A taxpayer engaged in zero-rated transactions may apply for tax refund or issuance of tax credit certificate for unutilized input VAT, subject to the following requirements: (1) the taxpayer is engaged in sales which are zero-rated (*i.e.*, export sales) or effectively zero-rated; (2) the taxpayer is VAT-registered; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax; and (5) in case of zero-

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[3] *Id.* at 184-185.

[4] Sec. 106. *Value-added Tax on Sale of Goods or Properties* — x x x

(D) Determination of the Tax —

(1) The tax shall be computed by multiplying the total amount in the invoice by one-eleventh (1/11).

[5] Sec. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties*. —

(C) Determination of the Tax — The tax shall be computed by multiplying the total amount indicated in the official receipt by one-eleventh (1/11).

[6] *Rollo*, pp. 63-82.

rated sales under Section 106 (A) (2) (a) (1) and (2), Section 106 (B) and Section 108 (B) (1) and (2), the acceptable foreign currency exchange proceeds thereof have been duly accounted for in accordance with BSP rules and regulations.[7]

Commissioner of Internal Revenue v. Seagate Technology (Philippines)[8] teaches that petitioner, as zero-rated seller, hence, directly and legally liable for VAT, can claim a refund or tax credit certificate.

> Zero-rated transactions generally refer to the export sale of goods and supply of services. The tax rate is set at zero. When applied to the tax base, such rate obviously results in no tax chargeable against the purchaser. The **seller** of such transactions charges no output tax but can claim a refund or a tax credit certificate for the VAT previously charged by suppliers. x x x
>
> Applying the destination principle to the exportation of goods, automatic zero rating is primarily intended to be enjoyed by the **seller** who is directly and legally liable for the VAT, making such seller internationally competitive by allowing the refund or credit of input taxes that are attributable to export sales. (emphasis and underscoring supplied)

Revenue Regulation No. 3-88 amending Revenue Regulation No. 5-87 provides the requirements in claiming tax credits/refunds:

> Sec. 2. Section 16 of Revenue Regulations 5-87 is hereby amended to read as follows: x x x
>
> (c) Claims for tax credits/refunds — Application for Tax Credit/ Refund of Value-Added Tax Paid (BIR Form No. 2552) shall be filed with the Revenue District Office of the city or municipality where the principal place of business of the applicant is located or directly with the Commissioner, Attention: VAT Division.
>
> A photocopy of the **purchase invoice or receipt evidencing the value added tax paid** shall be submitted together with the application. The original copy of the said invoice/receipt, however

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[7] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007. 522 SCRA 657.

[8] G.R. No. 153866, February 11, 2005, 451 SCRA 132, 143-144.

shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or refund. x x x (emphasis and underscoring supplied)

Section 113 of the Tax Code does not create a distinction between a sales invoice and an official receipt.

Sec. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons*. —

(A) Invoicing Requirements. — **A VAT-registered person shall, for every sale, issue an invoice *or* receipt**. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax. (emphasis, italics and underscoring supplied)

Section 110 of the 1997 Tax Code in fact provides:

Section 110. Tax Credits —

A. Creditable Input Tax. —

(1) Any input tax evidenced by a VAT invoice *or* official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(b) Purchase of services on which a value-added tax has actually been paid. (emphasis, italics and underscoring supplied)

Parenthetically, to determine the validity of petitioner's claim as to unutilized input VAT, an invoice would suffice provided the requirements under Sections 113 and 237 of the Tax Code are met.

Sales invoices are recognized commercial documents to facilitate trade or credit transactions. They are proofs that a business transaction has been concluded, hence, should not be

considered bereft of probative value.[9] Only the preponderance of evidence threshold as applied in ordinary civil cases is needed to substantiate a claim for tax refund proper.[10]

IN FINE, the Court finds that petitioner has complied with the substantiation requirements to prove entitlement to refund/tax credit. The Court is not a trier of facts, however, hence the need to remand the case to the CTA for determination and computation of petitioner's refund/tax credit.

WHEREFORE, the petition is *GRANTED*. The Decision of February 18, 2008 of the Court of Tax Appeals *En Banc* is *REVERSED* and *SET ASIDE*. Let the case be *REMANDED* to the Court of Tax Appeals First Division for the determination of petitioner's tax credit/refund.

SO ORDERED.

Brion, Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

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[9] *Seaoil Petroleum Corporation v. Autocorp Group*, G.R. No. 164326, October 17, 2008, 569 SCRA 387, 396.

[10] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, G.R. No. 172129, September 12, 2008, 565 SCRA 154, 166.

[*] Designated as Additional Member, per Special Order No. 843 (May 17, 2010), in view of the vacancy occasioned by the retirement of Chief Justice Reynato S. Puno.

THIRD DIVISION

[G.R. No. 182677. August 3, 2010]

JOSE ANTONIO C. LEVISTE, *petitioner, vs.* **HON. ELMO M. ALAMEDA, HON. RAUL M. GONZALEZ, HON. EMMANUEL Y. VELASCO, HEIRS OF THE LATE RAFAEL DE LAS ALAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; WHERE APPLICATION FOR BAIL DID NOT AMOUNT TO WAIVER OF RIGHT ON THE PART OF THE ACCUSED.— By applying for bail, petitioner did not waive his right to challenge the regularity of the reinvestigation of the charge against him, the validity of the admission of the Amended Information, and the legality of his arrest under the Amended Information, as he vigorously raised them *prior* to his arraignment. During the arraignment on March 21, 2007, petitioner refused to enter his plea since the issues he raised were still pending resolution by the appellate court, thus prompting the trial court to enter a plea of "not guilty" for him. The principle that the accused is precluded after arraignment from questioning the illegal arrest or the lack of or irregular preliminary investigation applies "only if he *voluntarily* enters his plea and participates during trial, without previously invoking his objections thereto." There must be clear and convincing proof that petitioner had an actual intention to relinquish his right to question the existence of probable cause. When the only proof of intention rests on what a party does, his act should be so manifestly consistent with, and indicative of, an intent to voluntarily and unequivocally relinquish the particular right that no other explanation of his conduct is possible. From the given circumstances, the Court cannot reasonably infer a valid waiver on the part of petitioner to preclude him from obtaining a definite resolution of the objections he so timely invoked. Other than its allegation of active participation, the OSG offered no clear and convincing proof that petitioner's participation in the trial was unconditional with the intent to voluntarily and unequivocally abandon his

petition. In fact, on January 26, 2010, petitioner still moved for the early resolution of the present petition.

2. ID.; APPEALS; PETITION FOR REVIEW; SUPERVENING EVENT THAT MOOTED THE PETITION, PRESENT.— The petition is now moot, however, in view of the trial court's rendition of judgment. A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. The judgment convicting petitioner of homicide under the Amended Information for murder operates as a supervening event that mooted the present petition. Assuming that there is ground to annul the finding of probable cause for murder, there is no practical use or value in abrogating the concluded proceedings and retrying the case under the original Information for homicide just to arrive, more likely or even definitely, at the same conviction of homicide. Mootness would have also set in had petitioner been convicted of murder, for proof beyond reasonable doubt, which is much higher than probable cause, would have been established in that instance.

3. ID.; ID.; ID.; COMPELLING REASON TO RESOLVE THE PETITION INSTEAD OF DENYING THE SAME ON THE GROUND OF MOOTNESS, EXISTS.— Instead, however, of denying the petition outright on the ground of mootness, the Court proceeds to resolve the legal issues in order to formulate controlling principles to guide the bench, bar and public. In the present case, there is compelling reason to clarify the remedies available *before* and *after* the filing of an information in cases subject of inquest.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; WHEN REQUIRED; EXCEPTION.— A preliminary investigation is required before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four years, two months and one day without regard to fine. As an exception, the rules provide that there is no need for a preliminary investigation in cases of a lawful arrest without a warrant involving such type of offense, so long as an inquest, where available, has been conducted.

5. ID.; ID.; ID.; INQUEST, DEFINED.— Inquest is defined as an informal and summary investigation conducted by a public

prosecutor in criminal cases involving persons arrested and detained without the benefit of a warrant of arrest issued by the court for the purpose of determining whether said persons should remain under custody and correspondingly be charged in court.

6. ID.; ID.; ID.; REMEDIES OF THE PRIVATE PARTY AND THE ARRESTED PERSON BEFORE THE FILING OF THE COMPLAINT OR INFORMATION IN COURT.— BEFORE THE FILING OF COMPLAINT OR INFORMATION IN COURT, the private complainant may proceed in coordinating with the arresting officer and the inquest officer during the latter's conduct of inquest. Meanwhile, the arrested person has the option to avail of a 15-day preliminary investigation, provided he duly signs a waiver of any objection against delay in his delivery to the proper judicial authorities under Article 125 of the Revised Penal Code. For obvious reasons, this remedy is not available to the private complainant since he cannot waive what he does not have. The benefit of the provisions of Article 125, which requires the filing of a complaint or information with the proper judicial authorities within the applicable period, belongs to the arrested person. The accelerated process of inquest, owing to its summary nature and the attendant risk of running against Article 125, ends with either the prompt filing of an information in court or the immediate release of the arrested person. Notably, the rules on inquest do not provide for a motion for reconsideration.

7. ID.; ID.; ID.; CASES SUBJECT OF INQUEST ARE NOT APPEALABLE TO DOJ SECRETARY; PROPER REMEDY.— Contrary to petitioner's position that private complainant should have appealed to the DOJ Secretary, such remedy is not immediately available in cases subject of inquest. Noteworthy is the proviso that the appeal to the DOJ Secretary is by "petition by a proper party under such rules as the Department of Justice may prescribe." The rule referred to is the 2000 National Prosecution Service Rule on Appeal, Section 1 of which provides that the Rule shall "apply to appeals from resolutions x x x in cases subject of preliminary investigation/ reinvestigation." In cases subject of inquest, therefore, the private party should first avail of a preliminary investigation or reinvestigation, if any, before elevating the matter to the DOJ Secretary. In case the inquest proceedings

yield no probable cause, the private complainant may pursue the case through the regular course of a preliminary investigation.

8. ID.; ID.; ID.; REMEDIES OF THE ACCUSED AND THE PRIVATE COMPLAINANT ONCE THE COMPLAINT OR INFORMATION IS FILED IN COURT.— ONCE A COMPLAINT OR INFORMATION IS FILED IN COURT, the rules yet provide the accused with another opportunity to ask for a preliminary investigation within five days from the time he learns of its filing. The Rules of Court and the New Rules on Inquest are silent, however, on whether the private complainant could invoke, as respondent heirs of the victim did in the present case, a similar right to ask for a reinvestigation. The Court holds that the private complainant can move for reinvestigation, subject to and in light of the ensuing disquisition. All criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the public prosecutor. The private complainant in a criminal case is merely a witness and not a party to the case and cannot, by himself, ask for the reinvestigation of the case *after* the information had been filed in court, the proper party for that being the public prosecutor who has the control of the prosecution of the case. Thus, in cases where the private complainant is allowed to intervene by counsel in the criminal action, and is granted the authority to prosecute, the private complainant, by counsel and with the conformity of the public prosecutor, can file a motion for reinvestigation.

9. ID.; ID.; ID.; EFFECT OF GRANTING MOTION FOR REINVESTIGATION.— Once the trial court grants the prosecution's motion for reinvestigation, the former is deemed to have deferred to the authority of the prosecutorial arm of the Government. Having brought the case back to the drawing board, the prosecution is thus equipped with discretion – wide and far reaching — regarding the disposition thereof, subject to the trial court's approval of the resulting proposed course of action.

10. ID.; ID.; INFORMATION; FORMAL OR SUBSTANTIAL AMENDMENT, WHEN PROPER.— [B]efore the accused enters a plea, a formal or substantial amendment of the complaint or information may be made without leave of court.

After the entry of a plea, only a formal amendment may be made but with leave of court and only if it does not prejudice the rights of the accused. After arraignment, a substantial amendment is proscribed except if the same is beneficial to the accused. It must be clarified though that not all defects in an information are curable by amendment prior to entry of plea. An information which is void *ab initio* cannot be amended to obviate a ground for quashal. An amendment which operates to vest jurisdiction upon the trial court is likewise impermissible.

11. ID.; ID.; REINVESTIGATION, EXPLAINED.— Any remedial measure springing from the reinvestigation – be it a complete disposition or an intermediate modification of the charge – is eventually addressed to the sound discretion of the trial court, which must make an independent evaluation or assessment of the merits of the case. Since the trial court would ultimately make the determination on the proposed course of action, it is for the prosecution to consider whether a reinvestigation is necessary to adduce and review the evidence for purposes of buttressing the appropriate motion to be filed in court. More importantly, reinvestigation is required in cases involving a substantial amendment of the information. Due process of law demands that no substantial amendment of an information may be admitted without conducting another or a new preliminary investigation.

12. ID.; ID.; INASMUCH AS AN AMENDMENT OF THE INFORMATION FROM HOMICIDE TO MURDER IS CONSIDERED SUBSTANTIAL, ANOTHER PRELIMINARY INVESTIGATION IS REQUIRED; CASE AT BAR.— The question to be resolved is whether the amendment of the Information from homicide to murder is considered a substantial amendment, which would make it not just a right but a duty of the prosecution to ask for a preliminary investigation. The Court answers in the affirmative. x x x In one case, it was squarely held that the amendment of the Information from homicide to murder is "one of substance with very serious consequences." The amendment involved in the present case consists of additional averments of the circumstances of treachery, evident premeditation, and cruelty, which qualify the offense charged from homicide to murder. It being a new and material element of the offense, petitioner should be given the chance to adduce evidence on the matter.

Not being merely clarificatory, the amendment essentially varies the prosecution's original theory of the case and certainly affects not just the form but the weight of defense to be mustered by petitioner. x x x Considering that another or a new preliminary investigation is required, the fact that what was conducted in the present case was a reinvestigation does not invalidate the substantial amendment of the Information.

13. ID.; ID.; PRELIMINARY INVESTIGATION; NO SUBSTANTIAL DISTINCTION FROM REINVESTIGATION.— There is *no substantial distinction between a preliminary investigation and a reinvestigation* since both are conducted in the same manner and for the same objective of determining whether there exists sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof and should be held for trial. What is essential is that petitioner was placed on guard to defend himself from the charge of murder after the claimed circumstances were made known to him as early as the first motion.

14. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE PETITION SHALL NOT INTERRUPT THE COURSE OF THE PRINCIPAL CASE; APPLICATION.— The Rules categorically state that the petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued. The appellate court, by Resolution of February 15, 2007, denied petitioner's application for a temporary restraining order and writ of preliminary injunction. Supplementary efforts to seek injunctive reliefs proved futile. The appellate court thus did not err in finding no grave abuse of discretion on the part of the trial court when it proceeded with the case and eventually arraigned the accused on March 21, 2007, there being no injunction order from the appellate court. Moreover, petitioner opted to forego appealing to the DOJ Secretary, a post-inquest remedy that was available after the reinvestigation and which could have suspended the arraignment.

15. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; TWO KINDS OF DETERMINATION OF PROBABLE CAUSE, EXPLAINED.— There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made

during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether that function has been correctly discharged by the public prosecutor, *i.e.*, whether he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon. The judicial determination of probable cause is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant. Paragraph (a), Section 5, Rule 112 of the Rules of Court outlines the procedure to be followed by the RTC.

16. ID.; ID.; ID.; ID.; A HEARING FOR JUDICIAL DETERMINATION OF PROBABLE CAUSE IS NOT REQUIRED. — To move the court to conduct a judicial determination of probable cause is a mere superfluity, for with or without such motion, the judge is duty-bound to personally evaluate the resolution of the public prosecutor and the supporting evidence. In fact, the task of the presiding judge when the Information is filed with the court is *first* and *foremost* to determine the existence or non-existence of probable cause for the arrest of the accused. x x x The rules do not require cases to be set for hearing to determine probable cause for the issuance of a warrant of arrest of the accused before any warrant may be issued. Petitioner thus cannot, as a matter of right, insist on a hearing for judicial determination of probable cause. Certainly, petitioner "cannot determine beforehand how cursory or exhaustive the [judge's] examination of the records should be [since t]he extent of the judge's examination depends on the exercise of his sound discretion as the circumstances of the case require."

17. ID.; ID.; ID.; NEW MATTERS OR EVIDENCE ARE NOT PREREQUISITES FOR A REINVESTIGATION.— The

> allegation of lack of substantial or material new evidence deserves no credence, because new pieces of evidence are not prerequisites for a valid conduct of reinvestigation. It is not material that no new matter or evidence was presented during the reinvestigation of the case. It should be stressed that reinvestigation, as the word itself implies, is merely a repeat investigation of the case. New matters or evidence are not prerequisites for a reinvestigation, which is simply a chance for the prosecutor to review and re-evaluate its findings and the evidence already submitted.

APPEARANCES OF COUNSEL

Esguerra & Blanco and *Henry S. Capela* for petitioner.

D E C I S I O N

CARPIO MORALES, *J.*:

Jose Antonio C. Leviste (petitioner) assails via the present petition for review filed on May 30, 2008 the August 30, 2007 Decision[1] and the April 18, 2008 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 97761 that affirmed the trial court's Orders of January 24, 31, February 7, 8, all in 2007, and denied the motion for reconsideration, respectively.

Petitioner was, by Information[3] of January 16, 2007, charged with *homicide* for the death of Rafael de las Alas on January 12, 2007 before the Regional Trial Court (RTC) of Makati City. Branch 150 to which the case was raffled, presided by Judge Elmo Alameda, forthwith issued a commitment order[4] against

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[1] *Rollo*, pp. 56-82, penned by Justice Hakim S. Abdulwahid, with Justices Rodrigo V. Cosico and Arturo G. Tayag concurring.

[2] *Id.* at 84-87, penned by Justice Hakim S. Abdulwahid, with Justices Rodrigo V. Cosico and Arturo G. Tayag concurring.

[3] *Id.* at 90, signed by 2nd Assistant City Prosecutor Henry M. Salazar. The concomitant Resolution was approved by Prosecutor IV Romulo Nanola for Senior State Prosecutor Leo Dacera III, Officer-in-Charge.

[4] *Id.* at 97.

petitioner who was placed under police custody while confined at the Makati Medical Center.[5]

After petitioner posted a ₱40,000 cash bond which the trial court approved,[6] he was released from detention, and his arraignment was set on January 24, 2007.

The private complainants-heirs of De las Alas filed, with the conformity of the public prosecutor, an Urgent Omnibus Motion[7] praying, *inter alia*, for the deferment of the proceedings to allow the public prosecutor to re-examine the evidence on record or to conduct a reinvestigation to determine the proper offense.

The RTC thereafter issued the (1) Order of January 24, 2007[8] deferring petitioner's arraignment and allowing the prosecution to conduct a reinvestigation to determine the proper offense and submit a recommendation within 30 days from its inception, *inter alia*; and (2) Order of January 31, 2007[9] denying reconsideration of the first order. Petitioner assailed these orders via *certiorari* and prohibition before the Court of Appeals.

Meantime, petitioner filed an Urgent *Ex-Parte* Manifestation and Motion before the trial court to defer acting on the public prosecutor's recommendation on the proper offense until after the appellate court resolves his application for injunctive reliefs, or alternatively, to grant him time to comment on the prosecutor's recommendation and thereafter set a hearing for the judicial determination of probable cause.[10] Petitioner also separately moved for the inhibition of Judge Alameda with prayer to defer action on the admission of the Amended Information.[11]

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[5] *Id.*at 88.

[6] CA *rollo*, p. 58.

[7] *Rollo*, pp. 101-107.

[8] *Id.* at 109-111.

[9] *Id.* at 122-129.

[10] *Id.* at 145-147.

[11] *Id.* at 162-168.

The trial court nonetheless issued the other assailed orders, *viz*: (1) Order of February 7, 2007[12] that admitted the Amended Information[13] for *murder* and directed the issuance of a warrant of arrest; and (2) Order of February 8, 2007[14] which set the arraignment on February 13, 2007. Petitioner questioned these two orders via supplemental petition before the appellate court.

The appellate court dismissed petitioner's petition, hence, his present petition, arguing that:

PRIVATE RESPONDENT DID NOT HAVE THE RIGHT TO CAUSE THE REINVESTIGATION OF THE CRIMINAL CASE BELOW WHEN THE CRIMINAL INFORMATION HAD ALREADY BEEN FILED WITH THE LOWER COURT. HENCE, THE COURT OF APPEALS COMMITTED A GRAVE ERROR IN FINDING THAT RESPONDENT JUDGE DID NOT ACT WITH GRAVE ABUSE OF DISCRETION IN GRANTING SUCH REINVESTIGATION DESPITE HAVING NO BASIS IN THE RULES OF COURT[;]

RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION IN ADMITTING STATE PROSECUTOR VELASCO'S AMENDED INFORMATION, ISSUING A WARRANT OF ARREST, AND SETTING THE CASE BELOW FOR ARRAIGNMENT, CONSIDERING THAT THE VALIDITY AND LEGALITY OF HIS ORDERS DATED 24 AND 31 JANUARY 2007, WHICH LED TO THE QUESTIONABLE REINVESTIGATION AND ILLEGAL AMENDED INFORMATION[,] ARE YET TO BE RESOLVED BY THIS HONORABLE COURT (sic); [AND]

CONSIDERING THAT PROSECUTOR VELASCO'S FINDINGS IN HIS RESOLUTION DATED 2 FEBRUARY 2007 ARE BLATANTLY BASED ON MERE SPECULATIONS AND CONJECTURES, WITHOUT ANY SUBSTANTIAL OR MATERIAL NEW EVIDENCE BEING ADDUCED DURING THE REINVESTIGATION, RESPONDENT JUDGE SHOULD HAVE AT LEAST ALLOWED

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[12] *Id.* at 171-177.

[13] *Id.* at 134-135, signed by Senior State Prosecutor Emmanuel Y. Velasco in his capacity as the designated Acting City Prosecutor of Makati City *pro hac vice* per Department Order No. 57 of January 22, 2007 (*vide rollo*, p. 100).

[14] *Id.* at 180.

PETITIONER'S MOTION FOR A HEARING FOR JUDICIAL DETERMINATION OF PROBABLE CAUSE.[15] (emphasis in the original omitted)

Records show that the arraignment scheduled on March 21, 2007 pushed through during which petitioner refused to plead, drawing the trial court to enter a plea of "not guilty" for him.

Prior thereto or on February 23, 2007, petitioner filed an Urgent Application for Admission to Bail *Ex Abundanti Cautela*[16] which the trial court, after hearings thereon, granted by Order of May 21, 2007,[17] it finding that the evidence of guilt for the crime of *murder* is not strong. It accordingly allowed petitioner to post bail in the amount of ₱300,000 for his provisional liberty.

The trial court, absent any writ of preliminary injunction from the appellate court, went on to try petitioner under the Amended Information. By Decision of January 14, 2009, the trial court found petitioner guilty of homicide, sentencing him to suffer an indeterminate penalty of six years and one day of *prision mayor* as minimum to 12 years and one day of *reclusion temporal* as maximum. From the Decision, petitioner filed an appeal to the appellate court, docketed as CA-G.R. CR No. 32159, during the pendency of which he filed an urgent application for admission to bail pending appeal. The appellate court denied petitioner's application which this Court, in G.R. No. 189122, affirmed by Decision of March 17, 2010.

The Office of the Solicitor General (OSG) later argued that the present petition had been rendered moot since the presentation of evidence, wherein petitioner actively participated, had been concluded.[18]

Waiver on the part of the accused must be distinguished from mootness of the petition, for in the present case, petitioner

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

[16] *Id.* at 255-260.

[17] *Id.* at 317-350.

[18] *Id.* at 391-392.

did not, by his active participation in the trial, waive his stated objections.

Section 26, Rule 114 of the Rules of Court provides:

> SEC. 26. *Bail not a bar to objections on illegal arrest, lack of or irregular preliminary investigation.* — An application for or admission to bail shall not bar the accused from challenging the validity of his arrest or the legality of the warrant issued therefor, or from assailing the regularity or questioning the absence of a preliminary investigation of the charge against him, provided that he raises them before entering his plea. The court shall resolve the matter as early as practicable but not later than the start of the trial of the case.

By applying for bail, petitioner did not waive his right to challenge the regularity of the reinvestigation of the charge against him, the validity of the admission of the Amended Information, and the legality of his arrest under the Amended Information, as he vigorously raised them *prior* to his arraignment. During the arraignment on March 21, 2007, petitioner refused to enter his plea since the issues he raised were still pending resolution by the appellate court, thus prompting the trial court to enter a plea of "not guilty" for him.

The principle that the accused is precluded after arraignment from questioning the illegal arrest or the lack of or irregular preliminary investigation applies "only if he *voluntarily* enters his plea and participates during trial, without previously invoking his objections thereto."[19] There must be clear and convincing proof that petitioner had an actual intention to relinquish his right to question the existence of probable cause. When the only proof of intention rests on what a party does, his act should be so manifestly consistent with, and indicative of, an intent to voluntarily and unequivocally relinquish the particular right that no other explanation of his conduct is possible.[20]

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[19] *Borlongan, Jr. v. Peña*, G.R. No. 143591, November 23, 2007, 538 SCRA 221, 229.

[20] *Okabe v. Hon. Gutierrez*, 473 Phil. 758, 777 (2004).

From the given circumstances, the Court cannot reasonably infer a valid waiver on the part of petitioner to preclude him from obtaining a definite resolution of the objections he so timely invoked. Other than its allegation of active participation, the OSG offered no clear and convincing proof that petitioner's participation in the trial was unconditional with the intent to voluntarily and unequivocally abandon his petition. In fact, on January 26, 2010, petitioner still moved for the early resolution of the present petition.[21]

Whatever delay arising from petitioner's availment of remedies against the trial court's Orders cannot be imputed to petitioner to operate as a valid waiver on his part. Neither can the non-issuance of a writ of preliminary injunction be deemed as a voluntary relinquishment of petitioner's principal prayer. The non-issuance of such injunctive relief only means that the appellate court did not preliminarily find any exception[22] to the long-standing doctrine that injunction will not lie to enjoin a criminal prosecution.[23] Consequently, the trial of the case took its course.

The petition is now moot, however, in view of the trial court's rendition of judgment.

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[21] *Rollo*, pp. 424-427.

[22] In extreme cases, the following exceptions to the rule have been recognized: (1) when the injunction is necessary to afford adequate protection to the constitutional rights of the accused; (2) when it is necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions; (3) when there is a prejudicial question which is *sub judice*; (4) when the acts of the officer are without or in excess of authority; (5) where the prosecution is under an invalid law, ordinance or regulation; (6) when double jeopardy is clearly apparent; (7) where the court has no jurisdiction over the offense; (8) where it is a case of persecution rather than prosecution; (9) where the charges are manifestly false and motivated by the lust for vengeance; and (10) when there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied. [*Andres v. Justice Secretary Cuevas*, 499 Phil. 36, 48-49 (2005)].

[23] *Asutilla v. PNB*, 225 Phil. 40, 43 (1986), which explains that public interest requires that criminal acts be immediately investigated and prosecuted for the protection of society.

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value.[24]

The judgment convicting petitioner of homicide under the Amended Information for murder operates as a supervening event that mooted the present petition. Assuming that there is ground[25] to annul the finding of probable cause for murder, there is no practical use or value in abrogating the concluded proceedings and retrying the case under the original Information for homicide just to arrive, more likely or even definitely, at the same conviction of homicide. Mootness would have also set in had petitioner been convicted of murder, for proof beyond reasonable doubt, which is much higher than probable cause, would have been established in that instance.

Instead, however, of denying the petition outright on the ground of mootness, the Court proceeds to resolve the legal issues in order to formulate controlling principles to guide the bench, bar and public.[26] In the present case, there is compelling reason to clarify the remedies available *before* and *after* the filing of an information in cases subject of inquest.

After going over into the substance of the petition and the assailed issuances, the Court finds no reversible error on the part of the appellate court in finding no grave abuse of discretion in the issuance of the four trial court Orders.

In his first assignment of error, petitioner posits that the prosecution has no right under the Rules to seek from the trial court an investigation or reevaluation of the case except through a petition for review before the Department of Justice (DOJ). In cases when an accused is arrested without a warrant, petitioner

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[24] *Integrated Bar of the Philippines v. Atienza*, G.R. No. 175241, February 24, 2010.

[25] In exceptional cases, the Court took the extraordinary step of annulling findings of probable cause (*vide Brocka v. Enrile*, G.R. Nos. 69863-65, December 10, 1990, 192 SCRA 183, 188-189).

[26] *Atienza v. Villarosa*, 497 Phil. 689, 699 (2005).

contends that the remedy of preliminary investigation belongs only to the accused.

The contention lacks merit.

Section 6,[27] Rule 112 of the Rules of Court reads:

> When a person is lawfully arrested without a warrant involving an offense which requires a preliminary investigation, the complaint or information may be filed by a prosecutor without need of such investigation provided an inquest has been conducted in accordance with existing rules. In the absence or unavailability of an inquest prosecutor, the complaint may be filed by the offended party or a peace officer directly with the proper court on the basis of the affidavit of the offended party or arresting officer or person.
>
> Before the complaint or information is filed, the person arrested may ask for a preliminary investigation in accordance with this Rule, but he must sign a waiver of the provisions of Article 125 of the Revised Penal Code, as amended, in the presence of his counsel. Notwithstanding the waiver, he may apply for bail and the investigation must be terminated within fifteen (15) days from its inception.
>
> After the filing of the complaint or information in court without a preliminary investigation, the accused may, within five (5) days from the time he learns of its filing, ask for a preliminary investigation with the same right to adduce evidence in his defense as provided in this Rule. (underscoring supplied)

A preliminary investigation is required before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four years, two months and one day without regard to fine.[28] As an exception, the rules provide that there is no need for a preliminary investigation in cases of a lawful arrest without a warrant[29] involving such type of offense, so long as an inquest, where available, has been conducted.[30]

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[27] Formerly Sec. 7, as amended by A.M. No. 05-8-26-SC (August 30, 2005) effective October 3, 2005.

[28] RULES OF COURT, Rule 112, Sec. 1.

[29] *Id.*, Rule 113, Sec. 5, pars. (a) & (b).

[30] *Id.*, Rule 112, Secs. 1 & 6, which also provides that in the absence or unavailability of an inquest prosecutor, the complaint may be filed by the

Inquest is defined as an informal and summary investigation conducted by a public prosecutor in criminal cases involving persons arrested and detained without the benefit of a warrant of arrest issued by the court for the purpose of determining whether said persons should remain under custody and correspondingly be charged in court.[31]

It is imperative to first take a closer look at the predicament of both the arrested person and the private complainant during the brief period of inquest, to grasp the respective remedies available to them before and after the filing of a complaint or information in court.

BEFORE THE FILING OF COMPLAINT OR INFORMATION IN COURT, the private complainant may proceed in coordinating with the arresting officer and the inquest officer during the latter's conduct of inquest. Meanwhile, the arrested person has the option to avail of a 15-day preliminary investigation, provided he duly signs a waiver of any objection against delay in his delivery to the proper judicial authorities under Article 125 of the Revised Penal Code. For obvious reasons, this remedy is not available to the private complainant since he cannot waive what he does not have. The benefit of the provisions of Article 125, which requires the filing of a complaint or information with the proper judicial authorities within the applicable period,[32] belongs to the arrested person.

The accelerated process of inquest, owing to its summary nature and the attendant risk of running against Article 125, ends with either the prompt filing of an information in court or the immediate release of the arrested person.[33]

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offended party or a peace officer directly with the proper court on the basis of the affidavit of the offended party or arresting officer or person.

[31] New Rules on Inquest, DOJ DEPARTMENT CIRCULAR No. 61 (September 21, 1993), Sec. 1.

[32] *Vide* *Soria v. Hon. Desierto*, 490 Phil. 749 (2005).

[33] New Rules on Inquest, DOJ DEPARTMENT CIRCULAR No. 61 (September 21, 1993), Secs. 13 & 15.

Notably, the rules on inquest do not provide for a motion for reconsideration.[34]

Contrary to petitioner's position that private complainant should have appealed to the DOJ Secretary, such remedy is not immediately available in cases subject of inquest.

Noteworthy is the proviso that the appeal to the DOJ Secretary is by "petition by a proper party under such rules as the Department of Justice may prescribe."[35] The rule referred to is the 2000 National Prosecution Service Rule on Appeal,[36] Section 1 of which provides that the Rule shall "apply to appeals from resolutions x x x in cases subject of preliminary investigation/ reinvestigation." In cases subject of inquest, therefore, the private party should first avail of a preliminary investigation or reinvestigation, if any, before elevating the matter to the DOJ Secretary.

In case the inquest proceedings yield no probable cause, the private complainant may pursue the case through the regular course of a preliminary investigation.

ONCE A COMPLAINT OR INFORMATION IS FILED IN COURT, the rules yet provide the accused with another opportunity to ask for a preliminary investigation within five days from the time he learns of its filing. The Rules of Court and the New Rules on Inquest are silent, however, on whether the private complainant could invoke, as respondent heirs of the victim did in the present case, a similar right to ask for a reinvestigation.

The Court holds that the private complainant can move for reinvestigation, subject to and in light of the ensuing disquisition.

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[34] Unlike in a preliminary investigation, *vide* 2000 NPS Rule on Appeal, DOJ DEPARTMENT CIRCULAR No. 70 (July 3, 2000), Sec. 3.

[35] If upon petition by a proper party under such Rules as the Department of Justice may prescribe x x x. (RULES OF COURT, Rule 112, Sec. 4, last par.).

[36] 2000 NPS Rule on Appeal, DOJ DEPARTMENT CIRCULAR No. 70 (July 3, 2000).

All criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the public prosecutor.[37] The private complainant in a criminal case is merely a witness and not a party to the case and cannot, by himself, ask for the reinvestigation of the case *after* the information had been filed in court, the proper party for that being the public prosecutor who has the control of the prosecution of the case.[38] Thus, in cases where the private complainant is allowed to intervene by counsel in the criminal action,[39] and is granted the authority to prosecute,[40] the private complainant, by counsel and with the conformity of the public prosecutor, can file a motion for reinvestigation.

In fact, the DOJ instructs that before the arraignment of the accused, trial prosecutors must "examine the Information *vis-à-vis* the resolution of the investigating prosecutor in order to make the necessary corrections or revisions and to ensure that the information is sufficient in form and substance."[41]

> x x x Since no evidence has been presented at that stage, the error would appear or be discoverable from a review of the records of the preliminary investigation. Of course, that fact may be perceived by the trial judge himself but, again, **realistically it will be the prosecutor who can initially determine the same**. That is why such error need not be manifest or evident, nor is it required that such nuances as offenses includible in the offense charged be taken into account. It necessarily follows, therefore, that **the prosecutor can and should institute remedial measures**[.][42] (emphasis and underscoring supplied)

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[37] RULES OF COURT, Rule 110, Sec. 5.

[38] *Vide People v. Marcelo*, G.R. No. 105005, June 2, 1993, 223 SCRA 24, 39-40.

[39] RULES OF COURT, Rule 110, Sec. 16.

[40] *Id.* at Sec. 5, as amended by A.M. No. 02-2-07-SC (April 10, 2002).

[41] REVISED MANUAL FOR PROSECUTORS (2008), Part V, II(A)(1).

[42] *Galvez v. Court of Appeals*, G.R. No. 114046, October 24, 1994, 237 SCRA 685, 701-702, *et seq*.

The prosecution of crimes appertains to the executive department of the government whose principal power and responsibility is to see that our laws are faithfully executed. A necessary component of this power to execute our laws is the right to prosecute their violators. The right to prosecute vests the prosecutor with a wide range of discretion — the discretion of what and whom to charge, the exercise of which depends on a smorgasbord of factors which are best appreciated by prosecutors.[43]

The prosecution's discretion is not boundless or infinite, however.[44] The standing principle is that once an information is filed in court, any remedial measure such as a reinvestigation must be addressed to the sound discretion of the court. Interestingly, petitioner supports this view.[45] Indeed, the Court ruled in one case that:

> The rule is now well settled that once a complaint or information is filed in court, any disposition of the case, whether as to its dismissal or the conviction or the acquittal of the accused, rests in the sound discretion of the court. Although the prosecutor retains the direction and control of the prosecution of criminal cases even when the case is already in court, he cannot impose his opinion upon the tribunal. For while it is true that the prosecutor has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court, once the case had already been brought therein any disposition the prosecutor may deem proper thereafter should be addressed to the court for its consideration and approval. The only qualification is that the action of the court must not impair the substantial rights of the accused or the right of the People to due process of law.
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> x x x x x x x x x
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> In such an instance, <u>before a re-investigation of the case may be conducted by the public prosecutor, the permission or consent of the court must be secured</u>. If after such re-investigation the

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[43] *Soberano v. People*, G.R. No. 154629, October 5, 2005, 472 SCRA 125, 139-140.

[44] *Id.* at 140.

[45] <u>*Vide*</u> *rollo*, p. 164.

prosecution finds a cogent basis to withdraw the information or otherwise cause the dismissal of the case, such proposed course of action may be taken but shall likewise be addressed to the sound discretion of the court.[46] (underscoring supplied)

While *Abugotal v. Judge Tiro*[47] held that to ferret out the truth, a trial is to be preferred to a reinvestigation, the Court therein recognized that a trial court may, where the interest of justice so requires, grant a motion for reinvestigation of a criminal case pending before it.

Once the trial court grants the prosecution's motion for reinvestigation, the former is deemed to have deferred to the authority of the prosecutorial arm of the Government. Having brought the case back to the drawing board, the prosecution is thus equipped with discretion — wide and far reaching —regarding the disposition thereof,[48] subject to the trial court's approval of the resulting proposed course of action.

Since a reinvestigation may entail a modification of the criminal information as what happened in the present case, the Court's holding is bolstered by the rule on amendment of an information under Section 14, Rule 110 of the Rules of Court:

A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party.

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[46] *Galvez v. Court of Appeals*, *supra* at 698-699.

[47] 160 Phil. 884, 890 (1975).

[48] *Soberano v. People*, *supra* at 140.

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with section 11, Rule 119, provided the accused would not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial. (emphasis supplied)

In fine, before the accused enters a plea, a formal or substantial amendment of the complaint or information may be made without leave of court.[49] After the entry of a plea, only a formal amendment may be made but with leave of court and only if it does not prejudice the rights of the accused. After arraignment, a substantial amendment is proscribed except if the same is beneficial to the accused.[50]

It must be clarified though that not all defects in an information are curable by amendment prior to entry of plea. An information which is void *ab initio* cannot be amended to obviate a ground for quashal.[51] An amendment which operates to vest jurisdiction upon the trial court is likewise impermissible.[52]

Considering the general rule that an information may be amended even in substance and even without leave of court at any time before entry of plea, does it mean that the conduct of a reinvestigation at that stage is a mere superfluity?

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[49] Except those amendments that downgrade the nature of the offense or exclude an accused from the charge as provided by second paragraph of Section 14 of Rule 110, *vide Soberano v. People, supra*.

[50] *Fronda-Baggao v. People*, G.R. No. 151785, December 10, 2007, 539 SCRA 531, 535.

[51] *People v. Romualdez*, G.R. No. 166510, April 29, 2009, 587 SCRA 123, 134, stated in response to the argument that the amendment of an Information filed under an invalid or unauthorized preliminary investigation could retroact to the time of its filing to thus defeat the claim of prescription.

[52] *Agustin v. Pamintuan*, G.R. No. 164938, August 2, 2005, 467 SCRA 601, 612, involving the substantial defect of failure to allege in the Information for Libel the place either where the offended party actual resided at the time the offense was committed or where the libelous article was printed or first published.

It is not.

Any remedial measure springing from the reinvestigation — be it a complete disposition or an intermediate modification[53] of the charge — is eventually addressed to the sound discretion of the trial court, which must make an independent evaluation or assessment of the merits of the case. Since the trial court would ultimately make the determination on the proposed course of action, it is for the prosecution to consider whether a reinvestigation is necessary to adduce and review the evidence for purposes of buttressing the appropriate motion to be filed in court.

More importantly, reinvestigation is required in cases involving a substantial amendment of the information. Due process of law demands that no substantial amendment of an information may be admitted without conducting another or a new preliminary investigation. In *Matalam v. The 2nd Division of the Sandiganbayan*,[54] the Court ruled that a substantial amendment in an information entitles an accused to another preliminary investigation, unless the amended information contains a charge related to or is included in the original Information.

The question to be resolved is whether the amendment of the Information from homicide to murder is considered a substantial amendment, which would make it not just a right but a duty of the prosecution to ask for a preliminary investigation.

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[53] *Baltazar v. Chua*, G.R. No. 177583, February 27, 2009, 580 SCRA 369, 377, where the Court stated:

> Considering that the trial court has the power and duty to look into the propriety of the prosecution's motion to dismiss, with much more reason is it for the trial court to evaluate and to make its own appreciation and conclusion, whether the modification of the charges and the dropping of one of the accused in the information, as recommended by the Justice Secretary, is substantiated by evidence. This should be the state of affairs, since the disposition of the case — such as its continuation or dismissal or exclusion of an accused — is reposed in the sound discretion of the trial court. (underscoring supplied).

[54] 495 Phil. 664, 675-676 (2005).

The Court answers in the affirmative.

A substantial amendment consists of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court. All other matters are merely of form. The following have been held to be mere **formal amendments**: (1) new allegations which relate only to the range of the penalty that the court might impose in the event of conviction; (2) an amendment which does not charge another offense different or distinct from that charged in the original one; (3) additional allegations which do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense he has or will assume; (4) an amendment which does not adversely affect any substantial right of the accused; and (5) an amendment that merely adds specifications to eliminate vagueness in the information and not to introduce new and material facts, and merely states with additional precision something which is already contained in the original information and which adds nothing essential for conviction for the crime charged.

The test as to whether a defendant is prejudiced by the amendment is whether a defense under the information as it originally stood would be available after the amendment is made, and whether any evidence defendant might have would be equally applicable to the information in the one form as in the other. An amendment to an information which does not change the nature of the crime alleged therein does not affect the essence of the offense or cause surprise or deprive the accused of an opportunity to meet the new averment had each been held to be one of form and not of substance.[55] (emphasis and underscoring supplied)

Matalam adds that the mere fact that the two charges are related does not necessarily or automatically deprive the accused of his right to another preliminary investigation. *Notatu dignum* is the fact that both the original Information and the amended Information in *Matalam* were similarly charging the accused with violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act.

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[55] *Ricarze v. Court of Appeals*, G.R. No. 160451, February 9, 2007, 515 SCRA 302, 315-316, citing *Matalam v. The 2nd Division of the Sandiganbayan, supra* at 674-675.

In one case,[56] it was squarely held that the amendment of the Information from homicide to murder is "one of substance with very serious consequences."[57] The amendment involved in the present case consists of additional averments of the circumstances of treachery, evident premeditation, and cruelty, which qualify the offense charged from homicide to murder. It being a new and material element of the offense, petitioner should be given the chance to adduce evidence on the matter. Not being merely clarificatory, the amendment essentially varies the prosecution's original theory of the case and certainly affects not just the form but the weight of defense to be mustered by petitioner.

The Court distinguishes the factual milieus in *Buhat v. CA*[58] and *Pacoy v. Cajigal*,[59] wherein the amendment of the caption of the Information from homicide to murder was not considered substantial because there was no real change in the recital of facts constituting the offense charged as alleged in the body of the Information, as the allegations of qualifying circumstances were already clearly embedded in the original Information. *Buhat* pointed out that the original Information for homicide already alleged the use of superior strength, while *Pacoy* states that the averments in the amended Information for murder are exactly the same as those already alleged in the original Information for homicide. None of these peculiar circumstances obtains in the present case.

Considering that another or a new preliminary investigation is required, the fact that what was conducted in the present case was a reinvestigation does not invalidate the substantial amendment of the Information. There is *no substantial distinction between a preliminary investigation and a reinvestigation* since both are conducted in the same manner and for the same objective

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[56] *Dionaldo v. Hon. Dacuycuy, etc.*, 195 Phil. 544 (1981).

[57] *Id.* at 545.

[58] 333 Phil. 562 (1996).

[59] G.R. No. 157472, September 28, 2007, 534 SCRA 338.

of determining whether there exists sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof and should be held for trial.[60] What is essential is that petitioner was placed on guard to defend himself from the charge of murder[61] after the claimed circumstances were made known to him as early as the first motion.

Petitioner did not, however, make much of the opportunity to present countervailing evidence on the proposed amended charge. Despite notice of hearing, petitioner opted to merely observe the proceedings and declined to actively participate, even with extreme caution, in the reinvestigation. *Mercado v. Court of Appeals* states that the rules do not even require, as a condition *sine qua non* to the validity of a preliminary investigation, the presence of the respondent as long as efforts to reach him were made and an opportunity to controvert the complainant's evidence was accorded him.[62]

In his second assignment of error, petitioner basically assails the hurried issuance of the last two assailed RTC Orders despite the pendency before the appellate court of the petition for *certiorari* challenging the first two trial court Orders allowing a reinvestigation.

The Rules categorically state that the petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued.[63] The

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[60] *People v. Hon. Navarro*, 337 Phil. 122, 133 (1997).

[61] *Matalam v. The 2nd Division of the Sandiganbayan, supra* at 678, citing *People v. Magpale*, 70 Phil. 176, 180 (1940).

[62] *Mercado v. CA*, 315 Phil. 657, 662 (1995), which aims to forestall attempts at thwarting criminal investigations by failing to appear or employing dilatory tactics.

[63] RULES OF COURT, Rule 65, Sec. 7. The present provision, as amended by A.M. No. 07-7-12-SC (December 4, 2007), even adds that "[t]he public respondent shall proceed with the principal case within ten (10) days from the filing of a petition for *certiorari* with a higher court or tribunal, absent a temporary restraining order or a preliminary injunction, or upon its expiration[, and that f]ailure of the public respondent to proceed with the principal case may be a ground for an administrative charge."

appellate court, by Resolution of February 15, 2007,[64] denied petitioner's application for a temporary restraining order and writ of preliminary injunction. Supplementary efforts to seek injunctive reliefs proved futile.[65] The appellate court thus did not err in finding no grave abuse of discretion on the part of the trial court when it proceeded with the case and eventually arraigned the accused on March 21, 2007, there being no injunction order from the appellate court. Moreover, petitioner opted to forego appealing to the DOJ Secretary, a post-inquest remedy that was available after the reinvestigation and which could have suspended the arraignment.[66]

Regarding petitioner's protestations of haste, suffice to state that the pace in resolving incidents of the case is not *per se* an indication of bias. In *Santos-Concio v. Department of Justice*,[67] the Court held:

> Speed in the conduct of proceedings by a judicial or quasi-judicial officer cannot *per se* be instantly attributed to an injudicious performance of functions. For one's prompt dispatch may be another's undue haste. The orderly administration of justice remains as the paramount and constant consideration, with particular regard of the circumstances peculiar to each case.
>
> The presumption of regularity includes the public officer's official actuations in all phases of work. Consistent with such presumption, it was incumbent upon petitioners to present contradictory evidence other than a mere tallying of days or numerical calculation. This, petitioners failed to discharge. The swift completion of the Investigating Panel's initial task cannot be relegated as shoddy or

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[64] CA *rollo*, pp. 126-127.

[65] The appellate court deferred the resolution of the prayer for injunctive reliefs contained in his Supplemental Petition until the responsive pleadings had been filed (*vide* Resolution of February 27, 2007, *id.* at 216-217) and found that the resolution of such prayer was closely related to and inextricably interwoven with the resolution of the main case (*vide* Resolution of April 12, 2007, CA *rollo*, pp. 307-308).

[66] RULES OF COURT, Rule 116, Sec. 11.

[67] G.R. No. 175057, January 29, 2008, 543 SCRA 70.

shady without discounting the presumably regular performance of not just one but five state prosecutors.[68]

There is no ground for petitioner's protestations against the DOJ Secretary's sudden designation of Senior State Prosecutor Emmanuel Velasco as Acting City Prosecutor of Makati City for the present case[69] and the latter's conformity to the motion for reinvestigation.

In granting the reinvestigation, Judge Alameda cannot choose the public prosecutor who will conduct the reinvestigation or preliminary investigation.[70] There is a hierarchy of officials in the prosecutory arm of the executive branch headed by the Secretary of Justice[71] who is vested with the prerogative to appoint a special prosecutor or designate an acting prosecutor to handle a particular case, which broad power of control has been recognized by jurisprudence.[72]

As for the trial court's ignoring the DOJ Secretary's uncontested statements to the media which aired his opinion that if the assailant merely intended to maim and not to kill the victim, one bullet would have sufficed — the DOJ Secretary reportedly uttered that "the filing of the case of homicide against *ano* against Leviste *lintek naman eh* I told you to watch over that case… there should be a report about the ballistics, about the paraffin, *etc*., then that's not a complete investigation, that's why you should use that as a ground" — no abuse of discretion, much less a grave one, can be imputed to it.

The statements of the DOJ Secretary do not evince a "determination to file the Information *even in the absence of*

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[68] *Id.* at 89.

[69] *Rollo*, p. 100.

[70] Vide *People v. Hon. Navarro, supra* at 133, citing *Abugotal v. Judge Tiro, supra.*

[71] *Id.* at 131.

[72] *Galvez v. Court of Appeals, supra* at 710-711; *Jalandoni v. Secretary Drilon*, 383 Phil. 855, 866-868 (2000).

probable cause."[73] On the contrary, the remarks merely underscored the importance of securing basic investigative reports to support a finding of probable cause. The original Resolution even recognized that probable cause for the crime of murder cannot be determined based on the evidence obtained "[u]nless and until a more thorough investigation is conducted and eyewitness/es [is/]are presented in evidence[.]"[74]

The trial court concluded that "the wound sustained by the victim at the back of his head, the absence of paraffin test and ballistic examination, and the handling of physical evidence,"[75] as rationalized by the prosecution in its motion, are sufficient circumstances that require further inquiry.

That the evidence of guilt was not strong as subsequently assessed in the bail hearings does not affect the prior determination of probable cause because, as the appellate court correctly stated, the standard of strong evidence of guilt which is sufficient to deny bail to an accused is markedly higher than the standard of judicial probable cause which is sufficient to initiate a criminal case.[76]

In his third assignment of error, petitioner faults the trial court for not conducting, at the very least, a hearing for judicial determination of probable cause, considering the lack of substantial or material new evidence adduced during the reinvestigation.

Petitioner's argument is specious.

There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists

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[73] Cf. *Ladlad v. Velasco*, G.R. Nos. 172070-72, June 1, 2007, 523 SCRA 318, 345.

[74] *Rollo*, p. 95.

[75] *Id.* at 126.

[76] *Id.* at 87.

and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether that function has been correctly discharged by the public prosecutor, *i.e.*, whether he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.[77]

The judicial determination of probable cause is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.[78] Paragraph (a), Section 5,[79] Rule 112 of the Rules of Court outlines the procedure to be followed by the RTC.

To move the court to conduct a judicial determination of probable cause is a mere superfluity, for with or without such motion, the judge is duty-bound to personally evaluate the resolution of the public prosecutor and the supporting evidence.

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[77] *People v. Castillo,* G.R. No. 171188, June 19, 2009, 590 SCRA 95, 105-106.

[78] *Id.* at 106.

[79] Formerly Sec. 6, as amended by A.M. No. 05-8-26-SC (August 30, 2005) effective October 3, 2005, which reads:

> (a) By the Regional Trial Court. — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order when the complaint or information was filed pursuant to section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

In fact, the task of the presiding judge when the Information is filed with the court is *first* and *foremost* to determine the existence or non-existence of probable cause for the arrest of the accused.[80]

What the Constitution underscores is the exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause. But **the judge is not required to personally examine the complainant and his witnesses**. Following established doctrine and procedure, he shall (1) personally evaluate the report and the supporting documents submitted by the prosecutor regarding the existence of probable cause, and on the basis thereof, he may already make a personal determination of the existence of probable cause; and (2) if he is not satisfied that probable cause exists, he may disregard the prosecutor's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause.[81] (emphasis and underscoring supplied)

The rules do not require cases to be set for hearing to determine probable cause for the issuance of a warrant of arrest of the accused before any warrant may be issued.[82] Petitioner thus cannot, as a matter of right, insist on a hearing for judicial determination of probable cause. Certainly, petitioner "cannot determine beforehand how cursory or exhaustive the [judge's] examination of the records should be [since t]he extent of the judge's examination depends on the exercise of his sound discretion as the circumstances of the case require."[83] In one case, the Court emphatically stated:

The periods provided in the Revised Rules of Criminal Procedure are mandatory, and as such, the judge must determine the presence or absence of probable cause within such periods. The Sandiganbayan's

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[80] *Baltazar v. People*, G.R. No. 174016, July 28, 2008, 560 SCRA 278, 293.

[81] *Borlongan Jr. v. Peña*, *supra* at 235.

[82] *Ramiscal, Jr. v. Sandiganbayan*, G.R. Nos. 169727-28, August 18, 2006, 499 SCRA 375, 398.

[83] *Vide Mayor Abdula v. Hon. Guiani*, 382 Phil. 757, 776 (2000).

determination of probable cause is made *ex parte* and is summary in nature, not adversarial. **The Judge should not be stymied and distracted from his determination of probable cause by needless motions for determination of probable cause filed by the accused**.[84] (emphasis and underscoring supplied)

Petitioner proceeds to discuss at length evidentiary matters, arguing that no circumstances exist that would qualify the crime from homicide to murder.

The allegation of lack of substantial or material new evidence deserves no credence, because new pieces of evidence are not prerequisites for a valid conduct of reinvestigation. It is not material that no new matter or evidence was presented during the reinvestigation of the case. It should be stressed that reinvestigation, as the word itself implies, is merely a repeat investigation of the case. New matters or evidence are not prerequisites for a reinvestigation, which is simply a chance for the prosecutor to review and re-evaluate its findings and the evidence already submitted.[85]

Moreover, under Rule 45 of the Rules of Court, only questions of law may be raised in, and be subject of, a petition for review on *certiorari* since this Court is not a trier of facts. The Court cannot thus review the evidence adduced by the parties on the issue of the absence or presence of probable cause, as there exists no exceptional circumstances to warrant a factual review.[86]

In a petition for *certiorari*, like that filed by petitioner before the appellate court, the jurisdiction of the court is narrow in scope. It is limited to resolving only errors of jurisdiction. It is not to stray at will and resolve questions and issues beyond its competence, such as an error of judgment.[87] The court's duty

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[84] *Id.* at 399.

[85] *Roxas v. Hon. Vasquez*, 411 Phil. 276, 286-287 (2001); unless otherwise required by law, *vide Mayor Balindong v. Court of Appeals*, 488 Phil. 203, 212-213 (2004), citing Memorandum Circular No. 1266, in relation to Memorandum Circular No. 1294 of November 4, 1993.

[86] *Chan v. Court of Appeals*, 497 Phil. 41, 50 (2005).

[87] *Id.* at 53.

in the pertinent case is confined to determining whether the executive and judicial determination of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion. Although it is possible that error may be committed in the discharge of lawful functions, this does not render the act amenable to correction and annulment by the extraordinary remedy of *certiorari*, absent any showing of grave abuse of discretion amounting to excess of jurisdiction.[88]

WHEREFORE, the petition is *DENIED*. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 97761 are *AFFIRMED*.

SO ORDERED.

Nachura,[*] *Bersamin, Abad,*[**] and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 182789. August 3, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **NORLITO SAMBAHON *Y* NUEVA,** *appellant.*

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[88] *D.M. Consunji, Inc. v. Esguerra*, 328 Phil. 1168, 1185 (1996).

[*] Additional Member per Raffle dated July 1, 2010 in lieu of Associate Justice Arturo D. Brion who inhibited.

[**] Designated as Additional Member, per Special Order No. 843 (May 17, 2010), in view of the vacancy occasioned by the retirement of Chief Justice Reynato S. Puno.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES, UPHELD.— From a review of the transcript of stenographic notes, the Court finds AAA's testimony to bear the hallmarks of a credible witness. As appellant himself conceded, he could not advance any reason why AAA would impute such a serious charge against him. Even BBB claimed that AAA and appellant had a good relation.

2. ID.; ID.; ID.; WHERE INCONSISTENCY ON THE TESTIMONIES DOES NOT AFFECT CREDIBILTY.— [T]he questioned inconsistency does not impinge on the *essential elements* of the offense charged. What is important is that AAA's narration (both in the preliminary examination and during the trial) of how she was forced and intimidated by appellant into submission to his bestial cravings was indisputably consistent, direct, positive and unwavering.

3. ID.; ID.; ALIBI, NOT GIVEN WEIGHT.— As for appellant's alibi, it fails for it was not physically impossible for him to be at the *locus criminis* at the time of its commission, he having been merely in his brother-in-law's house fronting the scene of the crime.

4. CRIMINAL LAW; RAPE; VICTIM'S FAILURE TO CALL FOR HELP AND DELAY IN REPORTING THE INCIDENT, UNDERSTANDABLE.— That AAA, when sexually assaulted by appellant, did not call her young siblings for help and that she kept mum on the incident for about five months are quite understandable. The moral and physical ascendancy of appellant, her stepfather, who was living with them, sufficed to cow her into yielding to his bestial desires.

5. ID.; ID.; CIVIL LIABILITIES.— [C]onsistent with prevailing jurisprudence, the award by the trial court of civil indemnity in the amount of ₱75,000.00, which was reduced by the appellate court to ₱50,000.00, should be reinstated; and his liability for moral and exemplary damages should be increased to ₱75,000.00 and ₱30,000.00, respectively.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO MORALES, *J.*:

Norlito Sambahon *y* Nueva (appellant) was charged and convicted of rape of his 13 year-old stepdaughter, AAA,[1] by the Regional Trial Court (Branch 63), Calabanga, Camarines Sur by Decision of February 15, 2006 which was affirmed with modification by the Court of Appeals.

The Information against appellant reads:

That on or about the 12th day of August 2003, at around eight o'clock in the evening in Barangay San Ramon, Tinambac, Camarines Sur, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused willfully, unlawfully and feloniously, through force or intimidation, had carnal knowledge with complainant, [AAA], fifteen (15)[2] years old and the stepdaughter of the accused, against her will, to her damage and prejudice.

The crime is committed with the following attendant aggravating/qualifying circumstances:

The victim is under eighteen years of age and the offender is her stepfather.

ACTS CONTRARY TO LAW.

Naga City, Philippines, April 12, 2004.[3] (Underscoring supplied)

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[1] The real name of the private complainant-victim is withheld per Republic Act (R.A.) No. 7610 (*Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*), R.A. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*), and A.M. No. 04-10-11-SC effective November 15, 2004 (*Rule on Violence Against Women and Their Children*). *Vide*: *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 421-423.

[2] AAA was 13 years old when the crime was committed on August 12, 2003, she having been born on December 15, 1989 as shown in her Birth Certificate.

[3] Records, p. 1.

During the pre-trial of the case, appellant admitted that on August 12, 2003, AAA was 13 years old as she was born on December 15, 1989 to her mother BBB[4] and the latter's late common-law husband CCC,[5] as evidenced by a certified true copy of her birth certificate[6] (Exhibit "A"); that AAA is his stepdaughter, having married BBB on June 5, 1996 as evidenced by a certified true copy of their Certificate of Marriage[7] (Exhibit "C"); and that on the day of the incident, he, AAA and BBB were residing in their house at San Ramon, Tinambac, Camarines Sur.[8]

Culled from the testimonies of AAA, BBB and Dr. Augusto M. Quilon, Jr. is the following version of the prosecution:

In the afternoon of August 12, 2003, BBB and appellant left their house in San Ramon, Tinambac and proceeded to their store at Sitio Bayang, also in Tinambac, to sell merchandise, leaving behind AAA and her three young siblings.[9]

Appellant returned to their house in the early evening of the same day purportedly to get some merchandise.[10] At past 8:00 that night, appellant approached AAA who was then sleeping in the room of BBB and appellant, telling her not to make any noise. He immediately removed AAA's skirt and panties and tied her hands, after which he parted her legs and inserted his penis into her vagina, drawing her to cry as he made a push and pull movement. Before he returned to the store, he warned her not to tell her siblings and her mother about what he did to her, otherwise, he would kill all of them.[11]

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[4] Her real name is withheld for the same reason stated in note 1.

[5] His real name is withheld for the same reason stated in note 1.

[6] Records, pp. 26-27, 40; TSN (testimony of BBB), November 24, 2004, p. 3.

[7] *Id.* at 33-34; TSN, *id.* at 4.

[8] Pre-Trial Order dated August 18, 2004, *id.* at 24-25.

[9] TSN, *supra* note 5 at 4-5, 10.

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

[11] TSN (testimony of AAA), February 6, 2005, pp. 5-9.

About five months later or sometime in the first week of January, 2004, appellant brought AAA to the Bicol Medical Center, Naga City for medical check-up where she was found to be pregnant.[12] She left home the following day and stayed at the house of her maternal grandmother at Sitio Bayang to whom she revealed the sexual abuse committed by appellant. AAA later also revealed the matter to her mother. The rape was thereafter reported to the police.[13]

When Dr. Augusto M. Quilon, Jr., a physician at the Bicol Medical Center, examined AAA on January 20, 2004, she complained that she was raped by appellant on August 12, 2003, around 8:00 p.m., at San Ramon, Tinambac. The doctor issued the following findings:

x x x x x x x x x

Abdomen: Slightly globular, FH – 26 cm.
Fetal heart tune - 146/min.

External Genitalia: Normal looking external genitalia; **(+)** Old hymenal laceration at 4, 6 and 9 o'clock position;

Admits 2 fingers with ease.

A) Pregnancy uterine, 27-28 wks. gestation, G1PPO.

UTS (ultrasound): Pregnancy uterine, 30 wks. gestation.[14]
(underscoring supplied),

and opined that AAA was about 6 to 7 months pregnant.[15]

Appellant, interposing *alibi*, denied being at their house around 8:00 p.m. when the alleged rape of AAA took place on August 12,

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[12] *Id.* at 19-21.

[13] *Id.* at 10.

[14] Exhibit "B", records, p. 5; TSN (testimony of Dr. Augusto Quilon, Jr.), April 26, 2005, pp. 2-6.

[15] *Id.* at 6.

2003. He claimed that at 5:30 p.m. until 10:00 that evening, he had a drinking spree with one Rolando Ponis and his (appellant's) brother-in-law at the latter's house, which is just in front of their house. On returning home drunk that night, AAA was still studying. He then slept in their living room at past 10:00 p.m., while his wife BBB was already asleep in their room as they had a new-born baby whose name he could not, however, furnish. Why AAA — whom he "considered as [his] own child" and who, in turn, treated him as if he were her natural father — would charge him with rape,[16] he could not fathom.

By Decision of February 15, 2006, the trial court convicted appellant of qualified rape as charged, disposing as follows:

> WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of accused Norlito Sambahon *y* Nueva beyond reasonable doubt, he is found guilty of the crime of Qualified Rape as charged in the information. He is hereby sentenced to suffer the penalty of DEATH. He is also ordered to pay the private complainant [AAA] the amount of ₱75,000.00 as civil indemnity; ₱50,000.00 as moral damages; ₱25,000.00 as exemplary damages. He is likewise meted the accessory penalties under Article 40 of the Revised Penal Code.
>
> No pronouncement as to cost[s].[17]

Before the Court of Appeals to which appellant appealed, he faulted the trial court

I

… IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMOMY OF THE PRIVATE COMPLAINANT; AND

II

… IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

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[16] TSN (testimony of appellant), July 19, 2005, pp. 4-12.

[17] Records, p. 64.

The appellate court, by Decision[18] of November 5, 2007, affirmed the factual findings of the trial court but modified the penalty to *reclusion perpetua*, following the enactment of Republic Act No. 9346,[19] and reduced the award of civil indemnity from ₱75,000.00 to ₱50,000.00:

> WHEREFORE, premises considered, the instant appeal is hereby **DENIED** and the assailed Decision dated February 15, 2006 rendered by the Regional Trial Court (RTC) of Calabanga, Camarines Sur, Branch 63, in Criminal Case No. RTC'04-921 is **AFFIRMED with modification** imposing the penalty of *reclusion perpetua* on accused-appellant and reducing the award of civil indemnity from ₱75,000.00 to ₱50,000.00. The rest of the decision stands.
>
> SO ORDERED.[20] (emphasis in the original)

Hence, appellant's present appeal. In separate Manifestations, appellant and the OSG found it no longer necessary to file their respective supplemental briefs.

In his Appellant's Brief filed before the appellate court, appellant contended that AAA's testimony cannot be relied upon because: **a)** she made inconsistent statements by declaring during the preliminary examination that she was raped by appellant *in the room where she and her siblings were sleeping*,[21] but in her testimony in court she stated that the rape occurred *in the room of her mother and appellant*; **b)** she did not call for help when sexually assaulted; and **c)** it took her about five months from the time of rape before she revealed the incident to her grandmother and the police.

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[18] Penned by Associate Justice Estela M. Perlas-Bernabe and concurred in by Associate Justices Portia Alino-Hormachuelos and Lucas P. Bersamin (now a member of the Supreme Court); CA *rollo*, pp. 90-98.

[19] Otherwise known as AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES, signed into law on June 24, 2006; *People v. Bidoc*, G.R. No. 169430, October 31, 2006, 506 SCRA 481, 502.

[20] CA *rollo*, pp. 97-98.

[21] Her statement was taken before Judge Eddie P. Monserate, Municipal Trial Court of Tinambac, Camarines Sur, RTC records, pp. 6-8.

From a review of the transcript of stenographic notes, the Court finds AAA's testimony to bear the hallmarks of a credible witness. As appellant himself conceded, he could not advance any reason why AAA would impute such a serious charge against him.[22] Even BBB claimed that AAA and appellant had a good relation.

ATTY. NACIONAL [to BBB]:

x x x x x x x x x

Q [Do] these children of your first common-law-husband agree to a relationship that you have with Norlito Sambahon (appellant)?
A Yes, sir, they were amenable.

Q So, nobody, not even [AAA] ever opposed . . . your relationship with Norlito Sambahon?
A None, sir.

Q How did you observe the relation of [AAA] and your husband when they were living at the same house?
A It was good.

Q And [AAA] treated your husband fairly also?
A Yes, sir.

Q She never complained to you regarding the treatment given by her stepfather?
A None, sir.[23] (underscoring supplied)

The Court thus credits AAA's testimony.

. . . [A] rape victim's testimony against her parent is entitled to great weight since, customarily, Filipino children revere and respect their elders. These values are so deeply ingrained in Filipino families that it is unthinkable for a daughter to concoct brazenly a story of rape against her father if such were not true. Indeed, courts usually give greater weight to the testimony of a girl who fell victim to sexual assault, especially a minor, particularly in incestuous rape

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[22] *People v. Manallo*, G.R. No. 143704, March 28, 2003, 400 SCRA 129, 141, cited in *Llagas*, G.R. No. 178873, April 24, 2009, 586 SCRA 707, 717.

[23] TSN, November, 24, 2004, pp. 9, 12.

as in this case, because no woman would be willing to undergo a public trial and bear the concomitant shame, humiliation, and dishonor of exposing her own degradation were it not for the purpose of condemning injustice and ensuring that the offender is punished.[24]

Respecting AAA's inconsistent statements, harped upon by appellant, during the preliminary examination and at the witness stand relative to the *location of the room* where she was ravished, the defense oddly did not call attention thereto to afford her the opportunity to explain or clarify it as called for under Rule 132, Section 13 of the Rules of Court[25] which provides:

SEC. 13. *How witness impeached by evidence of inconsistent statements*. — Before a witness can be impeached by evidence that he has made at other times statements inconsistent with his present testimony, the statements must be related to him, with the circumstances of the times and places and the persons present, and he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing they must be shown to the witness before any question is put to him concerning them. (underscoring supplied)

Apropos is this Court's ruling in *People v. Relucio*:[26]

. . . every witness is presumed to be truthful and perjury is not to be readily inferred just because apparent inconsistencies are evinced in parts of his testimony. Every effort to reconcile the conflicting points should first be exerted before any adverse conclusion can be made therefrom. These considerations lie at the base of the familiar rule requiring the laying of a predicate, which in essence means simply that it is the duty of a party trying to impugn the testimony of a witness by means of prior or, for that matter, subsequent inconsistent statements, whether oral or in writing, to give the witness a chance to reconcile his conflicting declarations, such that it is

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[24] *Campos v. People*, G.R. No. 175275, February 19, 2008, 546 SCRA 334, 345-346.

[25] *People v. Garte*, G.R. No. 176152, November 25, 2008, 571 SCRA 570, 582.

[26] No. L-38790, November 9, 1978, 175 Phil. 398, 413; 86 SCRA 227, 242, cited in *People v. Garte*, *id.*

only when no reasonable explanation is given by him that he should be deemed impeached. (underscoring supplied)

In any event, the questioned inconsistency does not impinge on the *essential elements* of the offense charged. What is important is that AAA's narration (both in the preliminary examination and during the trial) of how she was forced and intimidated by appellant into submission to his bestial cravings was indisputably consistent, direct, positive and unwavering.

That AAA, when sexually assaulted by appellant, did not call her young siblings for help and that she kept mum on the incident for about five months are quite understandable. The moral and physical ascendancy of appellant, her stepfather, who was living with them, sufficed to cow her into yielding to his bestial desires.[27]

As for appellant's alibi, it fails for it was not physically impossible for him to be at the *locus criminis* at the time of its commission,[28] he having been merely in his brother-in-law's house fronting the scene of the crime.

The Court modifies the challenged decision, however, in that **a)** appellant is not eligible for parole;[29] and, **b)** consistent with prevailing jurisprudence, the award by the trial court of civil indemnity in the amount of ₱75,000.00, which was reduced by the appellate court to ₱50,000.00, should be reinstated; and his liability for moral and exemplary damages should be increased to ₱75,000.00 and ₱30,000.00, respectively.[30]

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[27] *People v. Rodavia*, G.R. Nos. 133008-24, February 6, 2002; 426 Phil. 707, 719; 376 SCRA 320, 329.

[28] *People v. Garte*, *supra* note 24 at 583.

[29] Section 3 of Republic Act No. 9346 provides: "Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended" (underscoring supplied); *People v. Garte*, *supra* note 24 at 583-584.

[30] *People v. Sobusa*, G.R. No. 181083, January 21, 2010.

WHEREFORE, the assailed Court of Appeals Decision of November 5, 2007 in CA-G.R. CR-HC No. 02083 is *AFFIRMED* with *MODIFICATION* in that appellant Norlito Sambahon *y* Nueva is not eligible for parole; and he is ordered to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages. Costs against appellant.

SO ORDERED.

Brion, Peralta,[*] *Abad,*[**] and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 183891. August 3, 2010]

ROMARICO J. MENDOZA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATIONS; SOCIAL SECURITY ACT OF 1997 (RA 8282); REMITTANCE OF CONTRIBUTION IS MANDATORY; INTENT TO COMMIT IT OR GOOD FAITH IS IMMATERIAL.— Remittance of contribution to the SSS under Section 22(a) of the *Social Security Act* is mandatory. *United Christian Missionary Society v. Social Security Commission* explicitly explains: No discretion or alternative is granted respondent Commission in the enforcement of the law's mandate that the **employer**

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[*] Additional Member per Raffle dated July 26, 2010 in lieu of Associate Justice Lucas P. Bersamin.

[**] Designated as Additional Member, per Special Order No. 843 (May 17, 2010), in view of the vacancy occasioned by the retirement of Chief Justice Reynato S. Puno.

who fails to comply with his legal obligation to remit the premiums to the System within the prescribed period shall pay a penalty of three 3% per month. The prescribed penalty is evidently of a punitive character, provided by the legislature to assure that employers do not take lightly the State's exercise of the police power in the implementation of the Republic's declared policy 'to develop, establish gradually and perfect a social security system which shall be suitable to the needs of the people throughout the Philippines and (to) provide protection to employers against the hazards of disability, sickness, old age and death. x x x Failure to comply with the law being *malum prohibitum*, intent to commit it or good faith is immaterial.

2. ID.; ID.; PERSON DESIGNATED AS "PROPRIETOR" IS LIABLE; REASON.— The provision of the law being clear and unambiguous, petitioner's interpretation that a "proprietor," as he was designated in the Information, is not among those specifically mentioned under Sec. 28(f) as liable, does not lie. For the word connotes management, control and power over a business entity. There is thus, as *Garcia v. Social Security Commission Legal and Collection* enjoins, **. . . no need to resort to statutory construction** [for] Section 28(f) of the Social Security Law imposes penalty on: (1) the managing head; (2) directors; or (3) partners, for offenses committed by a juridical person. (emphasis supplied). The term "managing head" in Section 28(f) is used, in its broadest connotation, not to any specific organizational or managerial nomenclature.

3. ID.; ID.; PENALTY FOR VIOLATION; CASE AT BAR.— Since x x x Sec. 28 (h) of the *Social Security Act* (a special law) adopted the penalty from the Revised Penal Code, the Indeterminate Sentence Law also finds application. Taking into account the misappropriated ₱421,151.09 and the Court's discourse in *People v. Gabres* on the proper imposition of the indeterminate penalty in Article 315, the appropriate penalty in this case should range from four (4) years and two (2) months of *prision correccional*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum.

APPEARANCES OF COUNSEL

Celso P. Mariano for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

For failure to remit the Social Security System (SSS) premium contributions of employees of the Summa Alta Tierra Industries, Inc. (SATII) of which he was president, Romarico J. Mendoza (petitioner) was convicted of violation of Section 22(a) and (d) *vis-à-vis* Section 28 of R.A. No. 8282 or the *Social Security Act* of 1997 by the Regional Trial Court of Iligan City, Branch 4. His conviction was affirmed by the Court of Appeals.[1]

The Information against petitioner[2] reads:

x x x x x x x x x

That sometime during the month of August 1998 to July 1999, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, **the said accused, being then the proprietor** of Summa Alta Tierra Industries, Inc., duly registered employer with the Social Security System (SSS), did then and there willfully, unlawfully and feloniously fail and/or refuse to remit the SSS premium contributions in favor of its employees amounting to ₱421,151.09 to the prejudice of his employees.

Contrary to and in violation of Sec. 22(a) and (d) in relation to Sec. 28 of Republic Act No. 8282, as amended. (emphasis and underscoring supplied)

The monthly premium contributions of SATII employees to SSS which petitioner admittedly failed to remit covered the period August 1998 to July 1999[3] amounting to ₱421,151.09 inclusive of penalties.[4]

After petitioner was advised by the SSS to pay the above-said amount, he proposed to settle it over a period of 18 months[5]

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[1] *Rollo*, pp. 87-93.

[2] *Id.* at 3.

[3] *Id.* at 11.

[4] *Id.* at 3.

[5] *Ibid.*

which proposal the SSS approved by Memorandum of September 12, 2000.[6]

Despite the grant of petitioner's request for several extensions of time to settle the delinquency in installments,[7] petitioner failed, hence, his indictment.

Petitioner sought to exculpate himself by explaining that during the questioned period, SATII shut down due to the general decline in the economy.[8]

Finding for the prosecution, the trial court, as reflected above, convicted petitioner, disposing as follows:

> WHEREFORE, premises considered, the Court finds **Romarico J. Mendoza, guilty as charged beyond reasonable doubt**. Accordingly, he is **hereby meted the penalty of 6 years and 1 day to 8 years**.
>
> The accused is further ordered to pay the Social Security System the unpaid premium contributions of his employees including the penalties in the sum of ₱421,151.09.
>
> SO ORDERED.[9] (emphasis supplied)

And as also reflected above, the Court of Appeals affirmed the trial court's decision, by Decision of July March 5, 2007,[10] it noting that the Social Security Act is a special law, hence, lack of criminal intent or good faith is not a defense in the commission of the proscribed act.

The appellate court brushed aside petitioner's claim that he is merely a conduit of SATII and, therefore, should not be held personally liable for its liabilities. It held that petitioner, as President, Chairman and Chief Executive Officer of SATII, is

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[6] TSN, September 26, 2002, p. 13.

[7] *Id.* at 24-26.

[8] TSN, January 7, 2003, p. 3.

[9] *Rollo,* p. 93.

[10] Penned by Associate Justice Sixto C. Marella, Jr. with Associate Justices Romulo V. Borja and Michael P. Elbinias concurring; *id.* at 49-64.

the managing head who is liable for the act or omission penalized under Section 28(f) of the *Social Security Act*.

Petitioner contended in his motion for reconsideration that Section 28(f) of the *Act* which reads:

> (f) If the act or omission penalized by this Act be committed by an association, partnership, corporation or any other institution, its managing head, directors or partners shall be liable for the penalties provided in this Act for the offense.

should be interpreted as follows:

> If an association, the one liable is the managing head; if a partnership, the ones liable are the partners; and if a corporation, the ones liable are the directors. (underscoring supplied)

The appellate court denied petitioner's motion, hence, the present petition for review on *certiorari*.

Petitioner maintains, *inter alia*, that the managing head or president or general manager of a corporation is not among those specifically mentioned as liable in the above-quoted Section 28(f). And he calls attention to an alleged congenital infirmity in the Information[11] in that he was charged as "proprietor" and not as director of SATII.

Further, petitioner claims that the lower courts erred in penalizing him with six years and one day to eight years of imprisonment considering the mitigating and alternative circumstances present, namely: his being merely vicariously liable; his good faith in failing to remit the contributions; his payment of the premium contributions of SATII out of his personal funds; and his being economically useful, given his academic credentials, he having graduated from a prime university in Manila and being a reputable businessman.

The petition lacks merit.

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[11] *Id.* at 69.

Remittance of contribution to the SSS under Section 22(a) of the *Social Security Act* is mandatory. *United Christian Missionary Society v. Social Security Commission*[12] explicitly explains:

> No discretion or alternative is granted respondent Commission in the enforcement of the law's mandate that the **employer who fails to comply with his legal obligation to remit the premiums to the System within the prescribed period shall pay a penalty of three 3% per month. The prescribed penalty is evidently of a punitive character, provided by the legislature to assure that employers do not take lightly the State's exercise of the police power** in the implementation of the Republic's declared policy 'to develop, establish gradually and perfect a social security system which shall be suitable to the needs of the people throughout the Philippines and (to) provide protection to employers against the hazards of disability, sickness, old age and death.'[Section 2, Social Security Act; *Roman Catholic Archbishop v. Social Security Commission*, 1 SCRA 10, January 20, 1961] **In this concept, good faith or bad faith is rendered irrelevant**, since the law makes no distinction between an employer who professes good reasons for delaying the remittance of premiums and another who deliberately disregards the legal duty imposed upon him to make such remittance. **From the moment the remittance of premiums due is delayed, the penalty immediately attaches to the delayed premium payments by force of law.** (emphasis and underscoring supplied)

Failure to comply with the law being *malum prohibitum,* intent to commit it or good faith is immaterial.[13]

The provision of the law being clear and unambiguous, petitioner's interpretation that a "proprietor," as he was designated in the Information, is not among those specifically mentioned under Sec. 28(f) as liable, does not lie. For the word connotes management, control and power over a business entity.[14] There

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[12] G.R. Nos. L-26712-16, December 27, 1969, 30 SCRA 982, 987-988.

[13] *Tan v. Ballena*, G.R. No. 168111, July 4, 2008, 557 SCRA 229, 255.

[14] BLACK'S LAW DICTIONARY defines a proprietor as "[o]ne who has the legal right or exclusive title to anything. In many instances, it is synonymous with owner."

is thus, as *Garcia v. Social Security Commission Legal and Collection* enjoins,[15]

. . . no need to resort to statutory construction [for] Section 28(f) of the Social Security Law imposes penalty on:

(1) the managing head;

(2) directors; or

(3) partners, for offenses committed by a juridical person. (emphasis supplied)

The term "managing head" in Section 28(f) is used, in its broadest connotation, not to any specific organizational or managerial nomenclature. To heed petitioner's reasoning would allow unscrupulous businessmen to conveniently escape liability by the creative adoption of managerial titles.

While the Court affirms the appellate court's decision, there is a need to *modify* the penalty imposed on petitioner. The appellate court affirmed the trial court's imposition of penalty on the basis of Sec. 28(e) of the Social Security Act which reads:

Sec. 28. Penal Clause. — (e) Whoever fails or refuses to comply with the provisions of this Act or with the rules and regulations promulgated by the Commission, shall be punished by a fine of not less than Five thousand pesos (₱5,0000.00) (sic) nor more than Twenty thousand pesos (₱20,000.00), or imprisonment for not less than six (6) years and one (1) day nor more than twelve (12) years or both, at the discretion of the court. x x x

The proper penalty for this specific offense committed by petitioner is, however, provided in Section 28 (h) of the same Act which reads:

Sec. 28. *Penal Clause* — (h) Any employer who after deducting the monthly contributions or loan amortizations from his employee's compensation, fails to remit the said deductions to the SSS within

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[15] G.R. No. 170735, December 17, 2007, 540 SCRA 456, 458.

thirty (30) days from the date they became due shall be presumed to have misappropriated such contributions or loan amortizations and **shall suffer the penalties provided in Article Three hundred fifteen [Art. 315] of the Revised Penal Code**. (emphasis and underscoring supplied)

Article 315 of the Revised Penal Code provides that the penalty in this case should be

x x x *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be;

x x x x x x x x x.

Since the above-quoted Sec. 28 (h) of the *Social Security Act* (a special law) adopted the penalty from the Revised Penal Code, the Indeterminate Sentence Law also finds application.[16]

Taking into account the misappropriated ₱421,151.09 and the Court's discourse in *People v. Gabres*[17] on the proper

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[16] *Vide*: *People v. Simon*, G.R. No. 93028, July 29, 1994, 234 SCRA 555.

[17] G.R. Nos. 118950-54, 335 Phil. 242 (1997). In this case, the Court, thru Associate Justice Jose Vitug, ruled that "The fact the amounts involved in the instant case exceed ₱22,000.00 should not be considered in the initial determination of the indeterminate penalty; instead, the matter should be so taken as analogous to modifying circumstances in the imposition of the maximum term of the full indeterminate sentence. This interpretation of the law accords with the rule that penal laws should be construed in favor of the accused. Since the penalty prescribed by law for the estafa charge against accused-appellant is *prision correccional* maximum to *prision mayor* minimum, the penalty next lower would then be *prision correccional* minimum to medium. Thus, the minimum term of the indeterminate sentence should be anywhere within six (6) months and one (1) day to four (4) years and two (2) months whole the maximum term of the indeterminate sentence should at least be six

imposition of the indeterminate penalty in Article 315, the appropriate penalty in this case should range from four (4) years and two (2) months of *prision correccional*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum.

WHEREFORE, the Decision and Resolution of the Court of Appeals in CA-G.R. CR No. 27630 are *AFFIRMED* with *MODIFICATION*. Petitioner is sentenced to an indeterminate prison term of four (4) years and two (2) months of *prision correccional*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum.

Costs against petitioner.

SO ORDERED.

Brion, Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 186529. August 3, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JACK RACHO *y* RAQUERO,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; WARRANTLESS ARREST; WAIVER OF RIGHT TO QUESTION THE

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(6) years and one (1) day because the amounts involved exceeded ₱22,000.00, plus an additional one (1) year for each additional ₱10,000.00.

[*] Designated as Additional Member, per Special Order No. 843 (May 17, 2010), in view of the vacancy occasioned by the retirement of Chief Justice Reynato S. Puno.

VALIDITY OF ARREST, A CASE OF.— The records show that appellant never objected to the irregularity of his arrest before his arraignment. In fact, this is the first time that he raises the issue. Considering this lapse, coupled with his active participation in the trial of the case, we must abide with jurisprudence which dictates that appellant, having voluntarily submitted to the jurisdiction of the trial court, is deemed to have waived his right to question the validity of his arrest, thus curing whatever defect may have attended his arrest. The legality of the arrest affects only the jurisdiction of the court over his person. Appellant's warrantless arrest therefore cannot, in itself, be the basis of his acquittal.

2. ID.; ID.; ID.; "RELIABLE INFORMATION" ALONE IS NOT SUFFICIENT TO JUSTIFY A WARRANTLESS ARREST; APPLICATION.— The long standing rule in this jurisdiction is that "reliable information" alone is not sufficient to justify a warrantless arrest. The rule requires, in addition, that the accused perform some overt act that would indicate that he has committed, is actually committing, or is attempting to commit an offense. We find no cogent reason to depart from this well-established doctrine. x x x [A]ppellant herein was not committing a crime in the presence of the police officers. Neither did the arresting officers have personal knowledge of facts indicating that the person to be arrested had committed, was committing, or about to commit an offense. At the time of the arrest, appellant had just alighted from the Gemini bus and was waiting for a tricycle. Appellant was not acting in any suspicious manner that would engender a reasonable ground for the police officers to suspect and conclude that he was committing or intending to commit a crime. Were it not for the information given by the informant, appellant would not have been apprehended and no search would have been made, and consequently, the sachet of *shabu* would not have been confiscated.

3. ID.; EVIDENCE; PRINCIPLE OF "FRUIT OF THE POISONOUS TREE," APPLIED; WAIVER OF AN ILLEGAL WARRANTLESS ARREST DOES NOT CARRY WITH IT A WAIVER OF THE INADMISSIBILITY OF EVIDENCE SEIZED DURING THAT ARREST.— Obviously, this is an instance of seizure of the "fruit of the poisonous tree," hence, the confiscated item is inadmissible in evidence

consonant with Article III, Section 3(2) of the 1987 Constitution, "any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding." Without the confiscated *shabu*, appellant's conviction cannot be sustained based on the remaining evidence. Thus, an acquittal is warranted, despite the waiver of appellant of his right to question the illegality of his arrest by entering a plea and his active participation in the trial of the case. As earlier mentioned, the legality of an arrest affects only the jurisdiction of the court over the person of the accused. A waiver of an illegal, warrantless arrest does not carry with it a waiver of the inadmissibility of evidence seized during an illegal warrantless arrest.

APPEARANCES OF COUNSEL

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

D E C I S I O N

NACHURA, *J.*:

On appeal is the Court of Appeals (CA) Decision[1] dated May 22, 2008 in CA-G.R. CR-H.C. No. 00425 affirming the Regional Trial Court[2] (RTC) Joint Decision[3] dated July 8, 2004 finding appellant Jack Racho *y* Raquero guilty beyond reasonable doubt of Violation of Section 5, Article II of Republic Act (R.A.) No. 9165.

The case stemmed from the following facts:

On May 19, 2003, a confidential agent of the police transacted through cellular phone with appellant for the purchase of *shabu*.

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[1] Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Rodrigo V. Cosico and Hakim S. Abdulwahid, concurring; *rollo*, pp. 2-17.

[2] Branch 96, Baler, Aurora.

[3] Penned by Judge Corazon D. Soluren; records, pp. 152-157.

The agent later reported the transaction to the police authorities who immediately formed a team composed of member of the Philippine Drug Enforcement Agency (PDEA), the Intelligence group of the Philippine Army and the local police force to apprehend the appellant.[4] The agent gave the police appellant's name, together with his physical description. He also assured them that appellant would arrive in Baler, Aurora the following day.

On May 20, 2003, at 11:00 a.m., appellant called up the agent and informed him that he was on board a Genesis bus and would arrive in Baler, Aurora, anytime of the day wearing a red and white striped T-shirt. The team members then posted themselves along the national highway in Baler, Aurora. At around 3:00 p.m. of the same day, a Genesis bus arrived in Baler. When appellant alighted from the bus, the confidential agent pointed to him as the person he transacted with earlier. Having alighted from the bus, appellant stood near the highway and waited for a tricycle that would bring him to his final destination. As appellant was about to board a tricycle, the team approached him and invited him to the police station on suspicion of carrying *shabu*. Appellant immediately denied the accusation, but as he pulled out his hands from his pants' pocket, a white envelope slipped therefrom which, when opened, yielded a small sachet containing the suspected drug.[5]

The team then brought appellant to the police station for investigation. The confiscated specimen was turned over to Police Inspector Rogelio Sarenas De Vera who marked it with his initials and with appellant's name. The field test and laboratory examinations on the contents of the confiscated sachet yielded positive results for methamphetamine hydrochloride.[6]

Appellant was charged in two separate Informations, one for violation of Section 5 of R.A. 9165, for transporting or delivering;

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[4] Transcript of Stenographic Notes, July 31, 2003, pp. 4-6.

[5] *Rollo,* pp. 4-5.

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

and the second, of Section 11 of the same law for possessing, dangerous drugs, the accusatory portions of which read:

"That at about 3:00 o'clock (sic) in the afternoon on May 20, 2003 in Baler, Aurora and within the jurisdiction of this Honorable Court, the said accused, did then and there, unlawfully, feloniously and willfully have in his possession five point zero one (5.01) [or 4.54] grams of Methamphetamine Hydrochloride commonly known as "*Shabu*", a regulated drug without any permit or license from the proper authorities to possess the same.

CONTRARY TO LAW."[7]

"That at about 3:00 o'clock (sic) in the afternoon on May 20, 2003 in Baler, Aurora, the said accused did then and there, unlawfully, feloniously and willfully transporting or delivering dangerous drug of 5.01 [or 4.54] grams of *shabu* without any permit or license from the proper authorities to transport the same.

CONTRARY TO LAW."[8]

During the arraignment, appellant pleaded "Not Guilty" to both charges.

At the trial, appellant denied liability and claimed that he went to Baler, Aurora to visit his brother to inform him about their ailing father. He maintained that the charges against him were false and that no *shabu* was taken from him. As to the circumstances of his arrest, he explained that the police officers, through their van, blocked the tricycle he was riding in; forced him to alight; brought him to Sea Breeze Lodge; stripped his clothes and underwear; then brought him to the police station for investigation.[9]

On July 8, 2004, the RTC rendered a Joint Judgment[10] convicting appellant of Violation of Section 5, Article II, R.A. 9165

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[7] Records (Criminal Case No. 3054), p. 1.

[8] Records (Criminal Case No. 3038), p. 1.

[9] *Rollo*, p. 6.

[10] *Supra* note 3.

and sentencing him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00; but acquitted him of the charge of Violation of Section 11, Article II, R.A. 9165. On appeal, the CA affirmed the RTC decision.[11]

Hence, the present appeal.

In his brief,[12] appellant attacks the credibility of the witnesses for the prosecution. He likewise avers that the prosecution failed to establish the identity of the confiscated drug because of the team's failure to mark the specimen immediately after seizure. In his supplemental brief, appellant assails, for the first time, the legality of his arrest and the validity of the subsequent warrantless search. He questions the admissibility of the confiscated sachet on the ground that it was the fruit of the poisonous tree.

The appeal is meritorious.

We have repeatedly held that the trial court's evaluation of the credibility of witnesses and their testimonies is entitled to great respect and will not be disturbed on appeal. However, this is not a hard and fast rule. We have reviewed such factual findings when there is a showing that the trial judge overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that would have affected the case.[13]

Appellant focuses his appeal on the validity of his arrest and the search and seizure of the sachet of *shabu* and, consequently, the admissibility of the sachet. It is noteworthy that although the circumstances of his arrest were briefly discussed by the RTC, the validity of the arrest and search and the admissibility of the evidence against appellant were not squarely raised by the latter and thus, were not ruled upon by the trial and appellate courts.

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[11] *Supra* note 1.

[12] CA *rollo*, pp. 56-69.

[13] *Valdez v. People*, G.R. No. 170180, November 23, 2007, 538 SCRA 611; *People v. Chua*, G.R. Nos. 136066-67, February 4, 2003, 396 SCRA 657, 664.

It is well-settled that an appeal in a criminal case opens the whole case for review. This Court is clothed with ample authority to review matters, even those not raised on appeal, if we find them necessary in arriving at a just disposition of the case. Every circumstance in favor of the accused shall be considered. This is in keeping with the constitutional mandate that every accused shall be presumed innocent unless his guilt is proven beyond reasonable doubt.[14]

After a thorough review of the records of the case and for reasons that will be discussed below, we find that appellant can no longer question the validity of his arrest, but the sachet of *shabu* seized from him during the warrantless search is inadmissible in evidence against him.

The records show that appellant never objected to the irregularity of his arrest before his arraignment. In fact, this is the first time that he raises the issue. Considering this lapse, coupled with his active participation in the trial of the case, we must abide with jurisprudence which dictates that appellant, having voluntarily submitted to the jurisdiction of the trial court, is deemed to have waived his right to question the validity of his arrest, thus curing whatever defect may have attended his arrest. The legality of the arrest affects only the jurisdiction of the court over his person. Appellant's warrantless arrest therefore cannot, in itself, be the basis of his acquittal. [15]

As to the admissibility of the seized drug in evidence, it is necessary for us to ascertain whether or not the search which yielded the alleged contraband was lawful.[16]

The 1987 Constitution states that a search and consequent seizure must be carried out with a judicial warrant; otherwise, it becomes unreasonable and any evidence obtained therefrom shall be inadmissible for any purpose in any proceeding.[17] Said proscription, however, admits of exceptions, namely:

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[14] *People v. Chua*, *supra*.

[15] *Valdez v. People*, *supra* at 622.

[16] *Id*.

[17] Sections 2 and 3 (2), Article III of the 1987 Constitution.

1. Warrantless search incidental to a lawful arrest;
2. Search of evidence in "plain view";
3. Search of a moving vehicle;
4. Consented warrantless search;
5. Customs search;
6. Stop and Frisk; and
7. Exigent and emergency circumstances.[18]

What constitutes a reasonable or unreasonable warrantless search or seizure is purely a judicial question, determinable from the uniqueness of the circumstances involved, including the purpose of the search or seizure, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured.[19]

The RTC concluded that appellant was caught *in flagrante delicto*, declaring that he was caught in the act of actually committing a crime or attempting to commit a crime in the presence of the apprehending officers as he arrived in Baler, Aurora bringing with him a sachet of *shabu*.[20] Consequently, the warrantless search was considered valid as it was deemed an incident to the lawful arrest.

Recent jurisprudence holds that in searches incident to a lawful arrest, the arrest must precede the search; generally, the process cannot be reversed. Nevertheless, a search substantially contemporaneous with an arrest can precede the arrest if the police have probable cause to make the arrest at the outset of the search.[21] Thus, given the factual milieu of the case, we have to determine whether the police officers had probable cause to arrest appellant. Although probable cause eludes exact and

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[18] *People v. Nuevas*, G.R. No. 170233, February 22, 2007, 516 SCRA 463, 475-476 citing *People v. Tudtud*, 458 Phil. 752, 771 (2003).

[19] *People v. Nuevas*, *id.* at 476.

[20] Records, p. 156.

[21] *People v. Nuevas*, *supra* at 477; *People v. Tudtud*, 458 Phil. 752 (2003).

concrete definition, it ordinarily signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man to believe that the person accused is guilty of the offense with which he is charged.[22]

The determination of the existence or absence of probable cause necessitates a reexamination of the established facts. On May 19, 2003, a confidential agent of the police transacted through cellular phone with appellant for the purchase of *shabu.* The agent reported the transaction to the police authorities who immediately formed a team to apprehend the appellant. On May 20, 2003, at 11:00 a.m., appellant called up the agent with the information that he was on board a Genesis bus and would arrive in Baler, Aurora anytime of the day wearing a red and white striped T-shirt. The team members posted themselves along the national highway in Baler, Aurora, and at around 3:00 p.m. of the same day, a Genesis bus arrived in Baler. When appellant alighted from the bus, the confidential agent pointed to him as the person he transacted with, and when the latter was about to board a tricycle, the team approached him and invited him to the police station as he was suspected of carrying *shabu*. When he pulled out his hands from his pants' pocket, a white envelope slipped therefrom which, when opened, yielded a small sachet containing the suspected drug.[23] The team then brought appellant to the police station for investigation and the confiscated specimen was marked in the presence of appellant. The field test and laboratory examinations on the contents of the confiscated sachet yielded positive results for methamphetamine hydrochloride.

Clearly, what prompted the police to apprehend appellant, even without a warrant, was the tip given by the informant that appellant would arrive in Baler, Aurora carrying *shabu*. This circumstance gives rise to another question: whether that information, by itself, is sufficient probable cause to effect a valid warrantless arrest.

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[22] *People v. Aruta*, 351 Phil. 868, 880 (1998).

[23] *Rollo*, pp. 4-5.

The long standing rule in this jurisdiction is that "reliable information" alone is not sufficient to justify a warrantless arrest. The rule requires, in addition, that the accused perform some overt act that would indicate that he has committed, is actually committing, or is attempting to commit an offense.[24] We find no cogent reason to depart from this well-established doctrine.

The instant case is similar to *People v. Aruta*,[25] *People v. Tudtud*,[26] and *People v. Nuevas*.[27]

In *People v. Aruta*, a police officer was tipped off by his informant that a certain "Aling Rosa" would be arriving from Baguio City the following day with a large volume of marijuana. Acting on said tip, the police assembled a team and deployed themselves near the Philippine National Bank (PNB) in Olongapo City. While thus positioned, a Victory Liner Bus stopped in front of the PNB building where two females and a man got off. The informant then pointed to the team members the woman, "Aling Rosa," who was then carrying a traveling bag. Thereafter, the team approached her and introduced themselves. When asked about the contents of her bag, she handed it to the apprehending officers. Upon inspection, the bag was found to contain dried marijuana leaves.[28]

The facts in *People v. Tudtud* show that in July and August, 1999, the Toril Police Station, Davao City, received a report from a civilian asset that the neighbors of a certain Noel Tudtud (Tudtud) were complaining that the latter was responsible for the proliferation of marijuana in the area. Reacting to the report, the Intelligence Section conducted surveillance. For five days, they gathered information and learned that Tudtud was involved in illegal drugs. On August 1, 1999, the civilian asset informed the police that Tudtud had headed to Cotabato and would be

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[24] *People v. Nuevas*, *supra*; *People v. Tudtud*, *supra*.

[25] *Supra* note 22.

[26] *Supra*.

[27] *Supra*.

[28] *People v. Aruta*, *supra* at 875.

back later that day with a new stock of marijuana. At around 4:00 p.m. that same day, a team of police officers posted themselves to await Tudtud's arrival. At 8:00 p.m., two men disembarked from a bus and helped each other carry a carton. The police officers approached the suspects and asked if they could see the contents of the box which yielded marijuana leaves.[29]

In *People v. Nuevas*, the police officers received information that a certain male person, more or less 5'4" in height, 25 to 30 years old, with a tattoo mark on the upper right hand, and usually wearing a sando and maong pants, would make a delivery of marijuana leaves. While conducting stationary surveillance and monitoring of illegal drug trafficking, they saw the accused who fit the description, carrying a plastic bag. The police accosted the accused and informed him that they were police officers. Upon inspection of the plastic bag carried by the accused, the bag contained marijuana dried leaves and bricks wrapped in a blue cloth. In his bid to escape charges, the accused disclosed where two other male persons would make a delivery of marijuana leaves. Upon seeing the two male persons, later identified as Reynaldo Din and Fernando Inocencio, the police approached them, introduced themselves as police officers, then inspected the bag they were carrying. Upon inspection, the contents of the bag turned out to be marijuana leaves.[30]

In all of these cases, we refused to validate the warrantless search precisely because there was no adequate probable cause. We required the showing of some overt act indicative of the criminal design.

As in the above cases, appellant herein was not committing a crime in the presence of the police officers. Neither did the arresting officers have personal knowledge of facts indicating that the person to be arrested had committed, was committing, or about to commit an offense. At the time of the arrest, appellant had just alighted from the Gemini bus and was waiting for a

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[29] *People v. Tudtud, supra* at 765-766.

[30] *People v. Nuevas, supra* at 468-469.

tricycle. Appellant was not acting in any suspicious manner that would engender a reasonable ground for the police officers to suspect and conclude that he was committing or intending to commit a crime. Were it not for the information given by the informant, appellant would not have been apprehended and no search would have been made, and consequently, the sachet of *shabu* would not have been confiscated.

We are not unaware of another set of jurisprudence that deems "reliable information" sufficient to justify a search incident to a lawful warrantless arrest. As cited in *People v. Tudtud*, these include *People v. Maspil, Jr.*,[31] *People v. Bagista*,[32] *People v. Balingan*,[33] *People v. Lising*,[34] *People v. Montilla*,[35] *People v. Valdez*,[36] and *People v. Gonzales*.[37] In these cases, the Court sustained the validity of the warrantless searches notwithstanding the absence of overt acts or suspicious circumstances that would indicate that the accused had committed, was actually committing, or attempting to commit a crime. But as aptly observed by the Court, except in *Valdez* and *Gonzales*, they were covered by the other exceptions to the rule against warrantless searches.[38]

Neither were the arresting officers impelled by any urgency that would allow them to do away with the requisite warrant. As testified to by Police Officer 1 Aurelio Iniwan, a member of the arresting team, their office received the "tipped information" on May 19, 2003. They likewise learned from the informant not only the appellant's physical description but also his name.

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[31] G.R. No. 85177, August 20, 1990, 188 SCRA 751.

[32] G.R. No. 86218, September 12, 1992, 214 SCRA 63.

[33] 311 Phil. 290 (1995).

[34] 341 Phil. 801 (1997).

[35] 349 Phil. 640 (1998).

[36] 363 Phil. 481 (1999).

[37] 417 Phil. 342 (2001).

[38] *People v. Tudtud, supra* at 776.

Although it was not certain that appellant would arrive on the same day (May 19), there was an assurance that he would be there the following day (May 20). Clearly, the police had ample opportunity to apply for a warrant.[39]

Obviously, this is an instance of seizure of the "fruit of the poisonous tree," hence, the confiscated item is inadmissible in evidence consonant with Article III, Section 3(2) of the 1987 Constitution, "any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding."

Without the confiscated *shabu*, appellant's conviction cannot be sustained based on the remaining evidence. Thus, an acquittal is warranted, despite the waiver of appellant of his right to question the illegality of his arrest by entering a plea and his active participation in the trial of the case. As earlier mentioned, the legality of an arrest affects only the jurisdiction of the court over the person of the accused. A waiver of an illegal, warrantless arrest does not carry with it a waiver of the inadmissibility of evidence seized during an illegal warrantless arrest.[40]

One final note. As clearly stated in *People v. Nuevas*,[41]

> x x x In the final analysis, we in the administration of justice would have no right to expect ordinary people to be law-abiding if we do not insist on the full protection of their rights. Some lawmen, prosecutors and judges may still tend to gloss over an illegal search and seizure as long as the law enforcers show the alleged evidence of the crime regardless of the methods by which they were obtained. This kind of attitude condones law-breaking in the name of law enforcement. Ironically, it only fosters the more rapid breakdown of our system of justice, and the eventual denigration of society. While this Court appreciates and encourages the efforts of law enforcers to uphold the law and to preserve the peace and security

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[39] *People v. Tudtud, supra* at 782; *People v. Aruta, supra* at 894.

[40] *People v. Nuevas, supra* at 483-484; *People v. Lapitaje*, 445 Phil. 729, 748 (2003).

[41] *Supra*.

of society, we nevertheless admonish them to act with deliberate care and within the parameters set by the Constitution and the law. Truly, the end never justifies the means.[42]

WHEREFORE, premises considered, the Court of Appeals Decision dated May 22, 2008 in CA-G.R. CR-H.C. No. 00425 is *REVERSED* and *SET ASIDE*. Appellant Jack Raquero Racho is *ACQUITTED* for insufficiency of evidence.

The Director of the Bureau of Corrections is directed to cause the immediate release of appellant, unless the latter is being lawfully held for another cause; and to inform the Court of the date of his release, or the reasons for his confinement, within ten (10) days from notice.

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 187104. August 3, 2010]

SAINT LOUIS UNIVERSITY, INC., *petitioner, vs.* **EVANGELINE C. COBARRUBIAS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PAYMENT OF APPELLATE COURT DOCKET FEES WITHIN THE REGLEMENTARY PERIOD IS JURISDICTIONAL; APPLICATION.— Appeal is not a natural right but a mere statutory privilege, thus, appeal

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[42] *People v. Nuevas, supra* at 484-485.

must be made strictly in accordance with the provision set by law. Rule 43 of the Rules of Court provides that appeals from the judgment of the VA shall be taken to the CA, by filing a petition for review within fifteen (15) days from the receipt of the notice of judgment. Furthermore, upon the filing of the petition, the petitioner shall pay to the CA clerk of court the docketing and other lawful fees; non-compliance with the procedural requirements shall be a sufficient ground for the petition's dismissal. Thus, payment in full of docket fees within the prescribed period is not only mandatory, but also jurisdictional. It is an essential requirement, without which, the decision appealed from would become final and executory as if no appeal has been filed. In the present case, Cobarrubias filed her petition for review on December 5, 2007, fifteen (15) days from receipt of the VA decision on November 20, 2007, but paid her docket fees in full only after seventy-two (72) days, when she filed her motion for reconsideration on February 15, 2008 and attached the postal money orders for ₱4,230.00. Undeniably, the docket fees were paid late, and without payment of the full docket fees, Cobarrubias' appeal was not perfected within the reglementary period.

2. ID.; ID.; ID.; EXCEPTIONS TO THE RULE ON PAYMENT OF APPELATE COURT DOCKET FEES, ENUMERATED.— [P]rocedural rules are not to be belittled or dismissed simply because their non-observance may have prejudiced a party's substantive rights; like all rules, they are required to be followed. However, there are recognized exceptions to their strict observance, such as: (1) most persuasive and weighty reasons; (2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (4) the existence of special or compelling circumstances; (5) the merits of the case; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake or excusable negligence without the appellant's fault; (10) peculiar, legal and equitable circumstances attendant to each case; (11) in the name of substantial justice and fair play; (12) importance of the issues involved; and (13) exercise of

sound discretion by the judge, guided by all the attendant circumstances. Thus, there should be an effort, on the part of the party invoking liberality, to advance a reasonable or meritorious explanation for his/her failure to comply with the rules.

3. ID.; ID.; ID.; ID.; EXCEPTIONS, NOT APPLICABLE; EFFECT OF FAILURE TO PAY DOCKET FEES ON TIME.— In Cobarrubias' case, no such explanation has been advanced. Other than insisting that the ends of justice and fair play are better served if the case is decided on its merits, Cobarrubias offered no excuse for her failure to pay the docket fees in full when she filed her petition for review. To us, Cobarrubias' omission is fatal to her cause. We, thus, find that the CA erred in reinstating Cobarrubias' petition for review despite the nonpayment of the requisite docket fees within the reglementary period. The VA decision had lapsed to finality when the docket fees were paid; hence, the CA had no jurisdiction to entertain the appeal except to order its dismissal.

APPEARANCES OF COUNSEL

Oracion Barlis & Associates for petitioner.
Emmanuel T. Costales for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the present petition for review on *certiorari*[1] filed by petitioner Saint Louis University, Inc. (*SLU*), to challenge the decision[2] and the resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 101708.[4]

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[1] Filed under Rule 45 of the Revised Rules of Court; *rollo*, pp. 13-42.

[2] Dated November 5, 2008, penned by Associate Justice Celia C. Librea-Leagogo, and concurred in by Associate Justices Mario L. Guariña III and Arturo G. Tayag; *id.* at 144-158.

[3] Dated February 24, 2009; *id.* at 167-168.

[4] Entitled *"Evangeline C. Cobarrubias v. Saint Louis University, represented by Fr. Jessie M. Hechanova."*

The Factual Background

The facts of the case, gathered from the records, are briefly summarized below.

Respondent Evangeline C. Cobarrubias is an associate professor of the petitioner's College of Human Sciences. She is an active member of the Union of Faculty and Employees of Saint Louis University (*UFESLU*).

The 2001-2006[5] and 2006-2011[6] Collective Bargaining Agreements (*CBAs*) between SLU and UFESLU contain the following common provision on forced leave:

> Section 7.7. For teaching employees in college who fail the yearly evaluation, the following provisions shall apply:
>
> (a) Teaching employees who are retained for three (3) cumulative years in five (5) years shall be on forced leave for one (1) regular semester during which period all benefits due them shall be suspended.[7]

SLU placed Cobarrubias on forced leave for the first semester of School Year (*SY*) 2007-2008 when she failed the evaluation for SY 2002-2003, SY 2005-2006, and SY 2006-2007, with the rating of 85, 77, and 72.9 points, respectively, below the required rating of 87 points.

To reverse the imposed forced leave, Cobarrubias sought recourse from the CBA's grievance machinery. Despite the conferences held, the parties still failed to settle their dispute, prompting Cobarrubias to file a case for illegal forced leave or illegal suspension with the National Conciliation and Mediation Board of the Department of Labor and Employment, Cordillera Administrative Region, Baguio City. When circulation and mediation again failed, the parties submitted the issues between them for voluntary arbitration before Voluntary Arbitrator (*VA*) Daniel T. Fariñas.

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[5] *Rollo*, pp. 62-64.

[6] *Id.* at 65-67.

[7] *Id.* at 63 and 66.

Cobarrubias argued that the CA already resolved the forced leave issue in a prior case between the parties, CA-G.R. SP No. 90596,[8] ruling that the forced leave for teachers who fail their evaluation for three (3) times within a five-year period should be coterminous with the CBA in force during the same five-year period.[9]

SLU, for its part, countered that the CA decision in CA-G.R. SP No. 90596 cannot be considered in deciding the present case since it is presently on appeal with this Court (G.R. No. 176717)[10] and, thus, is not yet final. It argued that the forced leave provision applies irrespective of which CBA is applicable, provided the employee fails her evaluation three (3) times in five (5) years.[11]

The Voluntary Arbitrator Decision

On October 26, 2007, VA Daniel T. Fariñas dismissed the case.[12] He found that the CA decision in CA-G.R. SP No. 90596 is not yet final because of the pending appeal with this Court. He noted that the CBA clearly authorized SLU to place its teaching employees on forced leave when they fail in the evaluation for three (3) years within a five-year period, without a distinction on whether the three years fall within one or two CBA periods. Cobarrubias received the VA's decision on November 20, 2007.[13]

On December 5, 2007, Cobarrubias filed with the CA a petition for review under Rule 43 of the Rules of Court, but failed to

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[8] Decision of May 23, 2006, entitled "*Saint Louis University, Inc. v. Evangeline C. Cobarrubias*."

[9] Entitled "*Evangeline C. Cobarrubias v. Saint Louis University, Inc.*"

[10] *Id.* at 68-77.

[11] *Id.* at 45-61.

[12] *Id.* at 78-85.

[13] *Id.* at 86.

pay the required filing fees and to attach to the petition copies of the material portions of the record.[14]

Thus, on January 14, 2008, the CA dismissed the petition outright for Cobarrubias' procedural lapses.[15] Cobarrubias received the CA resolution, dismissing her petition, on January 31, 2008.[16]

On February 15, 2008, Cobarrubias filed her motion for reconsideration, arguing that the ground cited is technical. She, nonetheless, attached to her motion copies of the material portions of the record and the postal money orders for ₱4,230.00. She maintained that the ends of justice and fair play are better served if the case is decided on its merits.[17]

On July 30, 2008, the CA reinstated the petition. It found that Cobarrubias substantially complied with the rules by paying the appeal fee in full and attaching the proper documents in her motion for reconsideration.[18]

SLU insisted that the VA decision had already attained finality for Cobarrubias' failure to pay the docket fees on time.

The CA Decision

The CA brushed aside SLU's insistence on the finality of the VA decision and annulled it, declaring that the "three (3) cumulative years in five (5) years" phrase in Section 7.7(a) of the 2006-2011 CBA means within the five-year effectivity of the CBA. Thus, the CA ordered SLU to pay all the benefits due Cobarrubias for the first semester of SY 2007-2008, when she was placed on forced leave.[19]

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[14] *Id.* at 86-95.

[15] *Id.* at 97-98.

[16] *Id.* at 99.

[17] *Id.* at 99-105.

[18] *Id.* at 112-115.

[19] Decision of November 5, 2008; *supra* note 2.

When the CA denied[20] the motion for reconsideration that followed,[21] SLU filed the present petition for review on *certiorari*.[22]

The Petition

SLU argues that the CA should not have reinstated the appeal since Cobarrubias failed to pay the docket fees within the prescribed period, and rendered the VA decision final and executory. Even if Cobarrubias' procedural lapse is disregarded, SLU submits that Section 7.7(a) of the 2006-2011 CBA should apply irrespective of the five-year effectivity of each CBA.[23]

The Case for Cobarrubias

Cobarrubias insists that the CA settled the appeal fee issue, in its July 30, 2008 resolution, when it found that she had substantially complied with the rules by subsequently paying the docket fees in full. She submits that the CA's interpretation of Section 7.7(a) of the 2006-2011 CBA is more in accord with law and jurisprudence.[24]

The Issues

The core issues boil down to whether the CA erred in reinstating Cobarrubias' petition despite her failure to pay the appeal fee within the reglementary period, and in reversing the VA decision. To state the obvious, the appeal fee is a threshold issue that renders all other issues unnecessary if SLU's position on this issue is correct.

The Court's Ruling

We find the petition meritorious.

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[20] Resolution of February 24, 2009; *supra* note 3.

[21] *Id.* at 160-165.

[22] *Id.* at 13-44.

[23] *Ibid*.

[24] *Id.* at 219-228.

Payment of Appellate Court Docket Fees

Appeal is not a natural right but a mere statutory privilege, thus, appeal must be made strictly in accordance with the provision set by law.[25] Rule 43 of the Rules of Court provides that appeals from the judgment of the VA shall be taken to the CA, by filing a petition for review within fifteen (15) days from the receipt of the notice of judgment.[26] Furthermore, upon the filing of the petition, the petitioner shall pay to the CA clerk of court the docketing and other lawful fees;[27] non-compliance with the procedural requirements shall be a sufficient ground for the petition's dismissal.[28] Thus, payment in full of docket fees within

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[25] *Espejo v. Ito,* G.R. No. 176511, August 4, 2009, 595 SCRA 192, 204.

[26] SEC. 4. *Period of appeal*. — The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (Rule 43, Revised Rules of Court.)

[27] SEC. 5. *How appeal taken*. — Appeal shall be taken by filing a verified petition for review in seven (7) legible copies with the Court of Appeals, with proof of service of a copy thereof on the adverse party and on the court or agency *a quo*. The original copy of the petition intended for the Court of Appeals shall be indicated as such by the petitioner.

Upon the filing of the petition, the petitioner shall pay to the clerk of court of the Court of Appeals the docketing and other lawful fees and deposit the sum of ₱500.00 for costs. Exemption from payment of docketing and other lawful fees and the deposit for costs may be granted by the Court of Appeals upon a verified motion setting forth valid grounds therefor. If the Court of Appeals denies the motion, the petitioner shall pay the docketing and other lawful fees and deposit for costs within fifteen (15) days from notice of the denial. (Rule 43, Revised Rules of Court.)

[28] SEC. 7. *Effect of failure to comply with requirements*. — The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof

the prescribed period is not only mandatory, but also jurisdictional.[29] It is an essential requirement, without which, the decision appealed from would become final and executory as if no appeal has been filed.[30]

As early as the 1932 case of *Lazaro v. Endencia and Andres*,[31] we stressed that the payment of the full amount of the docket fee is an indispensable step for the perfection of an appeal. In *Lee v. Republic*,[32] we decided that even though half of the appellate court docket fee was deposited, no appeal was deemed perfected where the other half was tendered after the period within which payment should have been made. In *Aranas v. Endona*,[33] we reiterated that the appeal is not perfected if only a part of the docket fee is deposited within the reglementary period and the remainder is tendered after the expiration of the period.

The rulings in these cases have been consistently reiterated in subsequent cases: *Guevarra v. Court of Appeals*,[34] *Pedrosa v. Spouses Hill*,[35] *Gegare v. Court of Appeals*,[36] *Lazaro v. Court of Appeals*,[37] *Sps. Manalili v. Sps. de Leon*,[38] *La Salette*

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of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof. (Rule 43, Revised Rules of Court.)

[29] *Ruby Shelter Builders and Realty Development Corporation v. Formaran III*, G.R. No. 175914, February 10, 2009, 578 SCRA 283, 297.

[30] *Ruiz v. Delos Santos*, G.R. No. 166386, January 27, 2009, 577 SCRA 29, 43.

[31] 57 Phil. 552, 553 (1932).

[32] No. L-15027, January 31, 1964, 10 SCRA 65, 67.

[33] 203 Phil. 120, 127 (1982).

[34] 241 Phil. 40, 44-45 (1988); docket fees paid forty-one (41) days late.

[35] 327 Phil. 153, 158 (1996); docket fees paid four (4) months late.

[36] 358 Phil. 228, 232 (1998); nonpayment of docket fees despite CA notice to pay.

[37] 386 Phil. 412, 417 (2000); docket fees paid six (6) months late.

[38] 422 Phil. 214, 221 (2001); docket fees paid almost ten (10) months late.

College v. Pilotin,[39] *Saint Louis University v. Spouses Cordero*,[40] *M.A. Santander Construction, Inc. v. Villanueva*,[41] *Far Corporation v. Magdaluyo*,[42] *Meatmasters Int'l. Corp. v. Lelis Integrated Dev't. Corp.*,[43] *Tamayo v. Tamayo, Jr.*,[44] *Enriquez v. Enriquez*,[45] *KLT Fruits, Inc. v. WSR Fruits, Inc.*,[46] *Tan v. Link*,[47] *Ilusorio v. Ilusorio-Yap*,[48] and most recently in *Tabigue v. International Copra Export Corporation (INTERCO)*,[49] and continues to be the controlling doctrine.

In the present case, Cobarrubias filed her petition for review on December 5, 2007, fifteen (15) days from receipt of the VA decision on November 20, 2007, but paid her docket fees in full only after seventy-two (72) days, when she filed her motion for reconsideration on February 15, 2008 and attached the postal money orders for ₱4,230.00. Undeniably, the docket fees were paid late, and without payment of the full docket fees,

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[39] 463 Phil. 785, 793 (2003); docket fees paid one (1) year and eleven (11) months late.

[40] 478 Phil. 739, 750 (2004); docket fees paid almost a month late.

[41] 484 Phil. 500, 504 (2004); docket fees paid seven (7) months and twenty-five (25) days late.

[42] 485 Phil. 599, 610 (2004); docket fees paid 132 days late.

[43] 492 Phil. 698, 701 (2005); docket fees paid one (1) month late.

[44] G.R. No. 148482, August 12, 2005, 466 SCRA 618, 622-623; docket fees paid only upon the filing of the motion for reconsideration.

[45] G.R. No. 139303, August 25, 2005, 468 SCRA 77, 86; docket fees paid four (4) months late.

[46] G.R. No. 174219, November 23, 2007, 538 SCRA 713, 730; docket fees paid more than thirty (30) days late.

[47] G.R. No. 172849, December 10, 2008, 573 SCRA 479, 492; docket fees paid two (2) days late.

[48] G.R. No. 171659, March 17, 2009, 581 SCRA 643, 646; docket fees paid more than three (3) months late.

[49] G.R. No. 183335, December 23, 2009; deficiency in docket fees paid only upon the filing of the motion for reconsideration.

Cobarrubias' appeal was not perfected within the reglementary period.

Exceptions to the Rule on Payment of Appellate Court Docket Fees not applicable

Procedural rules do not exist for the convenience of the litigants; the rules were established primarily to provide order to and enhance the efficiency of our judicial system.[50] While procedural rules are liberally construed, the provisions on reglementary periods are strictly applied, indispensable as they are to the prevention of needless delays, and are necessary to the orderly and speedy discharge of judicial business.[51]

Viewed in this light, procedural rules are not to be belittled or dismissed simply because their non-observance may have prejudiced a party's substantive rights; like all rules, they are required to be followed. However, there are recognized exceptions to their strict observance, such as: (1) most persuasive and weighty reasons; (2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (4) the existence of special or compelling circumstances; (5) the merits of the case; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake or excusable negligence without the appellant's fault; (10) peculiar, legal and equitable circumstances attendant to each case; (11) in the name of substantial justice and fair play; (12) importance of the issues involved; and (13) exercise of sound discretion by

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[50] *Mejillano v. Lucillo*, G.R. No. 154717, June 19, 2009, 590 SCRA 1, 9; *Ko v. Philippine National Bank*, G.R. Nos. 169131-32, January 20, 2006, 479 SCRA 298, 303.

[51] *Villa v. Heirs of Enrique Altavas*, G.R. No. 162028, July 14, 2008, 558 SCRA 157, 166; *Moneytrend Lending Corporation v. Court of Appeals*, G.R. No 165580, February 20, 2006, 482 SCRA 705, 714.

the judge, guided by all the attendant circumstances.[52] Thus, there should be an effort, on the part of the party invoking liberality, to advance a reasonable or meritorious explanation for his/her failure to comply with the rules.

In Cobarrubias' case, no such explanation has been advanced. Other than insisting that the ends of justice and fair play are better served if the case is decided on its merits, Cobarrubias offered no excuse for her failure to pay the docket fees in full when she filed her petition for review. To us, Cobarrubias' omission is fatal to her cause.

We, thus, find that the CA erred in reinstating Cobarrubias' petition for review despite the nonpayment of the requisite docket fees within the reglementary period. The VA decision had lapsed to finality when the docket fees were paid; hence, the CA had no jurisdiction to entertain the appeal except to order its dismissal.

WHEREFORE, the present petition is *GRANTED*. The assailed decision and resolution of the Court of Appeals in CA-G.R. SP No. 101708 are hereby *DECLARED VOID* and are consequently *SET ASIDE*. The decision of the voluntary arbitrator, that the voided Court of Appeals decision and resolution nullified, stands. No pronouncement as to costs.

SO ORDERED.

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

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[52] *Lim v. Delos Santos*, G.R. No. 172574, July 31, 2009, 594 SCRA 607, 616-617; *Villena v. Rupisan*, G.R. No. 167620, April 3, 2007, 520 SCRA 346, 358-359.

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

SECOND DIVISION

[G.R. No. 188197. August 3, 2010]

LEONARDO U. FLORES, *petitioner, vs.* **HON. RAUL S. GONZALEZ, in his capacity as Secretary of Justice, and EUGENE LIM,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; AUTHORITY OF THE SECRETARY OF JUSTICE TO REVIEW RESOLUTIONS OF HIS SUBORDINATES, EXPLAINED; BASIS.— There was nothing procedurally infirm in this course of action inasmuch as there is nothing in *Crespo* that bars the Secretary of Justice from reviewing resolutions of his subordinates in an appeal or petition for review in criminal cases. The Secretary of Justice was merely advised in *Crespo* that, as far as practicable, he should not take cognizance of an appeal when the complaint or information is already filed in court. This is also true with respect to a motion for reconsideration before the Secretary of Justice. Review, whether on appeal or on motion for reconsideration, as an act of supervision and control by the Secretary of Justice over the prosecutors, finds basis in the doctrine of exhaustion of administrative remedies which holds that mistakes, abuses or negligence committed in the initial steps of an administrative activity or by an administrative agency may be corrected by higher administrative authorities, and not directly by courts. As a rule, only after administrative remedies are exhausted may judicial recourse be allowed. In any case, the grant of a motion to dismiss or a motion to withdraw the information, which the prosecution may file after the Secretary of Justice reverses the finding of probable cause, is subject to the discretion of the court.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; AVAILABLE REMEDY OF AN AGGRIEVED PARTY BY THE SECRETARY OF JUSTICE'S RESOLUTION AFFIRMING OR REVERSING THE FINDING OF PROBABLE CAUSE.— We wish to point out that, notwithstanding the

pendency of the Information before the MTCC, especially considering the reversal by the Secretary of Justice of his May 31, 2006 Resolution, a petition for *certiorari* under Rule 65 of the Rules of Court, anchored on the alleged grave abuse of discretion amounting to excess or lack of jurisdiction on the part of Secretary of Justice, was an available remedy to Flores as an aggrieved party. In the petition for *certiorari*, the Court of Appeals is not being asked to cause the dismissal of the case in the trial court, but only to resolve the issue of whether the Secretary of Justice acted with grave abuse of discretion in either affirming or reversing the finding of probable cause against the accused.

3. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; TRIAL COURT IS NOT BOUND TO ADOPT THE RESOLUTION OF THE JUSTICE SECRETARY ON THE FINDING OF PROBABLE CAUSE; JURISDICTION OF THE TRIAL COURT OVER A CRIMINAL CASE REMAINS DESPITE SECRETARY OF JUSTICE'S RESOLUTION TO WITHDRAW THE INFORMATION.— But still the rule stands—the decision whether to dismiss the case or not rests on the sound discretion of the trial court where the Information was filed. As jurisdiction was already acquired by the MTCC, this jurisdiction is not lost despite a resolution by the Secretary of Justice to withdraw the information or to dismiss the case, notwithstanding the deferment or suspension of the arraignment of the accused and further proceedings, and not even if the Secretary of Justice is affirmed by the higher courts. Verily, it bears stressing that the trial court is not bound to adopt the resolution of the Secretary of Justice, in spite of being affirmed by the appellate courts, since it is mandated to independently evaluate or assess the merits of the case and it may either agree or disagree with the recommendation of the Secretary of Justice. Reliance on the resolution of the Secretary of Justice alone would be an abdication of the trial court's duty and jurisdiction to determine a *prima facie* case. Thus, the trial court may make an independent assessment of the merits of the case based on the affidavits and counter-affidavits, documents, or evidence appended to the Information; the records of the public prosecutor which the court may order the latter to produce before it; or any evidence already adduced before the court by the accused at

> the time the motion is filed by the public prosecutor. The trial court should make its assessment separately and independently of the evaluation of the prosecution or of the Secretary of Justice. This assessment should be embodied in the written order disposing of the motion to dismiss or the motion to withdraw the information. This was precisely what the MTCC did when it denied the Motion to Withdraw Information in its June 20, 2007 Resolution, and it correctly did so. In view of the above disquisitions, and while the disposition of the issue of whether or not the Secretary of Justice acted with grave abuse of discretion in not finding probable cause against Lim may be persuasive, the MTCC is not bound to dismiss the case or to withdraw the Information.

APPEARANCES OF COUNSEL

Yee Law Office for petitioner.

Romulo Mabanta Buenaventura Sayoc & Delos Angeles Law Offices for private respondent.

D E C I S I O N

NACHURA, *J.*:

This is a petition[1] for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[2] dated March 6, 2008 and the Resolution[3] dated May 28, 2009 of the Court of Appeals (CA) in CA G.R. CEB SP No. 02726.

The antecedent facts and proceedings follow:

On June 24, 2004, petitioner Leonardo U. Flores (Flores) filed a complaint-affidavit[4] against private respondent Eugene

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[1] *Rollo*, pp. 3-33.

[2] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Priscilla Baltazar-Padilla and Franchito N. Diamante, concurring; *id.* at 35-45.

[3] Penned by Associate Justice Franchito N. Diamante, with Associate Justices Edgardo L. delos Santos and Rodil V. Zalameda, concurring; *id.* at 47-48.

[4] *Id.* at 83-84.

Lim (Lim) for estafa before the City Prosecutor of Cebu City, docketed as I.S. No. 04-5228-F.

Briefly, the complaint alleged that, during the pre-incorporation stage of Enviroboard Manufacturing, Inc. (EMI) in October 1996, Lim tricked Flores and the other EMI's incorporators (Flores, *et al*.) to purchase two compact processing equipments, CP15 and CP14, from Compak System Limited, Inc. (Compak) in Great Britain for the manufacture of "Fiber Boards." Unknown to Flores, Lim was connected with Bendez International Corporation (Bendez), the exclusive distributor of Compak. Flores executed an agreement to purchase only a CP15. After the execution of the sales contract and due to some delay in the delivery of the CP15, Lim, through insidious words and deliberate bad faith, was able to convince Flores, *et al*. to purchase instead an unused but later model of the compact processing equipment, CP14, for £1,466,000.00 or ₱60,106,000.00, with the assurance that Lim could effect the cancellation of the purchase for the CP15. Flores, *et al*. agreed and purchased the CP14, using their funds allotted for the CP15. Later, however, Lim told them that the purchase of the CP15 could not be cancelled. Out of fear of lawsuits and acting upon the advice of Lim, Flores, *et al*. raised the necessary funds through bank loans to pay for the CP15. Then in 2001, Flores, *et al*. discovered the distributorship agreement between Bendez and Compak. Upon further investigation, they learned that the purchase price of the CP14 was only £908,140.00 or ₱38,174,618.16 (at the conversion of ₱41.80) per the Letter of Credit (LC) No. 263-C-6-00073[5], Proforma Invoice No. CP627A dated June 18, 1996[6] and the Ocean Bill of Lading[7] relative to these documents.

Lim filed his counter-affidavit[8] denying all the accusations against him. Among others, he insisted that the CP14 was actually priced at ₱60,106,000.00, and LC No. 263-C-6-00073

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[5] See Peso Debit Memo; *id.* at 92.

[6] See Compak Invoice No. 4520 dated June 30, 1996; *id.* at 94.

[7] *Id.* at 96.

[8] *Id.* at 97-104.

represented only part of the payment for the purchase price. To support his refutations, he submitted a Contract Payment Receipt[9] dated August 20, 1996 showing that the full price of a CP14, in reference to Proforma Invoice No. CP627B dated March 4, 1996, was actually £1,466,000.00 or ₱60,106,000.00. He also submitted documents showing that a CP10, an older model of the CP14 was already priced at £1,031,585.00.[10]

After further exchange of pleadings and the case was submitted for resolution, the City Prosecutor of Cebu City issued a Resolution[11] dated January 16, 2005 dismissing the complaint for lack of probable cause. The motion for reconsideration[12] filed by Flores was denied in a Resolution[13] dated June 2, 2005.

On July 12, 2005, Flores filed a petition for review[14] with the Secretary of Justice questioning the January 16, 2005 and the June 2, 2005 Resolutions. Lim opposed this petition.[15]

In a Resolution[16] dated March 2, 2006, the Secretary of Justice dismissed the petition on the ground that there was no showing of any reversible error on the part of the handling prosecutors, and for Flores' failure to append several documents to his petition.

Flores moved for a reconsideration of this Resolution.[17] Lim opposed,[18] to which Flores replied.[19]

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[9] *Id.* at 112.

[10] *Id.* at 115-117.

[11] *Id.* at 163-165.

[12] *Id.* at 166-172.

[13] *Id.* at 174.

[14] *Id.* at 175-187.

[15] *Id.* at 276-286.

[16] *Id.* at 297-298.

[17] Motion for Reconsideration; *id.* at 299-306.

[18] Comments/Opposition to Motion for Reconsideration; *id.* at 361-366.

[19] Reply; *id.* at 372-375.

In his Resolution[20] dated May 31, 2006, the Secretary of Justice reconsidered, disposing thus—

> WHEREFORE, premises considered, the assailed resolution is hereby REVERSED and SET ASIDE. The City Prosecutor of Cebu City is hereby directed to file an information for other deceits defined and penalized under Article 318 of the Revised Penal Code before the Municipal Trial Court in Cities, Cebu City, and to report the action taken thereon within ten (10) days from receipt hereof.
>
> SO ORDERED.[21]

Pursuant to the said directive, the Cebu City Prosecutor filed with the Municipal Trial Court in Cities (MTCC), Cebu City an Information[22] against Lim for the crime of Other Deceits under Article 318 of the Revised Penal Code. The case was docketed as Criminal Case No. 135467-R and was raffled to Branch 4.

Lim thus filed a motion for reconsideration[23] of the May 31, 2006 Resolution. Flores opposed.[24] Lim replied.[25] Flores filed a rejoinder.[26]

On March 22, 2007, the Secretary of Justice reconsidered anew and issued another Resolution,[27] disposing as follows—

> WHEREFORE, finding respondent's motion for reconsideration to be meritorious, the Resolution dated May 31, 2006 is REVERSED. The instant petition for review is hereby DISMISSED WITH FINALITY.
>
> Consequently, the Office of the City Prosecutor is hereby directed to withdraw the information, if any had been filed in Court, and report

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[20] *Id.* at 376-380.

[21] *Id.* at 380.

[22] *Id.* at 382.

[23] *Id.* at 383-389.

[24] *Id.* at 395-398.

[25] *Id.* at 399-402.

[26] *Id.* at 413-416.

[27] *Id.* at 78-81.

the action taken thereon within ten (10) days from receipt hereof.

SO ORDERED.[28]

Accordingly, on May 3, 2007, the Cebu City Prosecutor filed with the MTCC a Motion to Withdraw Information.[29]

Seeking to nullify the March 22, 2007 Resolution, Flores filed a petition for *certiorari*[30] with the Court of Appeals on May 22, 2007.

Meanwhile, on June 20, 2007, the MTCC issued its Resolution[31] denying the Motion to Withdraw Information. Ratiocinating on the denial of the motion, it declared—

> The Court notes the flip-flopping of the Public Prosecutors, notably the Secretary of Justice in the instant case. On January 16, 2005, the Investigating Prosecutor dismissed the case for lack of probable cause. After his Motion for Reconsideration was denied, the private complainant appealed to the Secretary of Justice who, however, dismissed the same on a technicality. Private complainant filed a Motion for Reconsideration which the Secretary of Justice granted on Mary 31, 2006. In that Resolution, the City Prosecutor of Cebu was directed to file within ten (10) days from receipt, an Information charging Accused with the crime of "Other Deceits" under Article 318 of the Revised Penal Code. Now the same Secretary of Justice has reversed himself again and, through his subordinates, is asking the Court to withdraw the Information.
>
> **The Court has conformably to the doctrine laid down in Crespo and other cases made its own independent assessment of the evidence thus far submitted and is convinced that there exists probable cause to hold accused to trial where the parties can better ventilate their respective claims and defense[s].**[32] (Emphasis supplied.)

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[28] *Id.* at 81.

[29] *Id.* at 417.

[30] *Id.* at 49-77.

[31] *Id.* at 423-424.

[32] *Id.* at 423.

On June 29, 2007, Flores filed a Manifestation[33] with the Court of Appeals, attaching the June 20, 2007 Resolution of the MTCC.

Meanwhile, Lim, on July 20, 2007, moved to reconsider the June 20, 2007 MTCC Resolution.[34]

On August 20, 2007, the Office of the Solicitor General (OSG) filed with the Court of Appeals its Manifestation and Motion in lieu of Comment.[35] The OSG's position was that the Secretary of Justice acted with grave abuse of discretion in dismissing the complaint and directing the withdrawal of the Information. Lim filed his Comment[36] on September 28, 2007. Flores filed his Reply[37] to Lim's Comment on November 8, 2007.

In the meantime, on November 26, 2007, the MTCC issued an Order[38] holding in abeyance the proceedings pending before it, including the resolution of Lim's motion for reconsideration of the denial of the Motion to Withdraw Information. It held—

> In a manner of speaking, the subject incident is straddling on two horses. The ardent desire of the private complainant to prosecute the accused is evident when he filed the petition before the Hon. Court of Appeals to question the Resolution of the Hon. Secretary of Justice. There is nothing wrong to be zealous in prosecuting an accused except that his chosen approach coupled with the fact that this court chose to disregard the subject Resolution and insists on its jurisdiction over the case result in a procedural disorder or confusion. This is taking into account the unquestionable primacy of the Hon. Court of Appeals over this court by virtue of which any action or resolution by this court on the issue can be negated or voided by the former. By reason of such primacy, this court ought

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[33] *Id.* at 421-422.

[34] *Id.* at 521-532.

[35] *Id.* at 426-443.

[36] *Id.* at 444-493.

[37] *Id.* at 494-516.

[38] *Id.* at 863-865.

to defer to the Hon. Court of Appeals and observe judicial courtesy to a superior court.

The outcome of the pending case before the Hon. Court of Appeals questioning the resolution and order of the Hon. Secretary of Justice will eventually determine the merit of the resolution of this court in denying the motion to withdraw filed by the prosecution acting on the order of the Hon. Secretary of Justice.

Hypothetically, if the Hon. Court of Appeals will sustain the Hon. Secretary of Justice, how can this court take a posture different from that of a superior court and insist[s] on hearing this case. Conversely, if the Hon. Court of Appeals will sustain the private complainant, it will, in effect, sustain the resolution of this court denying the motion to withdraw Information, and render the motion for reconsideration of the public prosecution moot and academic. In such a case, the prosecution of the accused will have to proceed.

If the court will proceed with this case but the Hon. Secretary of Justice will be eventually upheld by the Hon. Court of Appeals, all the proceeding[s] already had in this court would become useless and wasted, including the time and efforts of all parties concerned.

Furthermore, to continue with the proceedings in this case while a case that matters is pending in the Hon. Court of Appeals will constitute discourtesy and disrespect to a superior court. That there is no injunction or restraint on this court to proceed with this case is not an issue since in the first place it was the private complainant and not the public prosecutor or the accused who initiated the petition for *certiorari* in the Hon. Court of Appeals. In fact, judicial courtesy and respect dictate that the private complainant ought to initiate the suspension of the proceedings of the case in this court while the petition is pending, or if he wants the proceedings herein to continue, then he should have initiated the withdrawal or termination of the case he filed in the Hon. Court of Appeals.[39]

On March 8, 2008, the Court of Appeals promulgated the questioned Decision finding no grave abuse of discretion on the part of the Secretary of Justice in issuing his March 22, 2007 Resolution.

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[39] *Id.* at 864-865.

Flores filed a motion for reconsideration of the March 8, 2008 Decision. The Court of Appeals denied it in its Resolution dated May 28, 2009. Hence, this petition anchored on the following issues:

I. WHETHER OR NOT THE JUNE 20, 2007 RESOLUTION OF THE MUNICIPAL TRIAL COURT, DENYING RESPONDENT LIM'S MOTION TO WITHDRAW INFORMATION AND FINDING PROBABLE CAUSE, RENDERED THE DISPOSITION OF THE PETITION BEFORE [THE] COURT OF APPEALS ACADEMIC?

II. WHETHER OR NOT THE HON. SECRETARY OF JUSTICE COULD RULE IN A PRELIMINARY INVESTIGATION ON THE VALIDITY, WEIGHT, ADMISSIBILITY, AND MERITS OF PARTIES' DEFENSES, EVIDENCE, AND ACCUSATION?

In gist, Flores asserts in his petition that the June 20, 2007 Resolution of the MTCC denying the Motion to Withdraw filed by the prosecution and finding probable cause to hold Lim for trial for the crime of Other Deceits under Article 318 of the Revised Penal Code rendered his petition for *certiorari* before the Court of Appeals moot and academic. He says that this is pursuant to the ruling in the landmark case of *Crespo v. Mogul*[40] that once a complaint or information is filed in court, any disposition of the case resulting either in the conviction or acquittal of the accused rests in the sound discretion of the court, who is the best and sole judge on what action to take in the case before it.

Flores further argues that the Secretary of Justice overstepped his jurisdiction in the determination of probable cause when he ruled during the preliminary investigation on the validity, weight, admissibility and merits of the parties' evidence. According to him, these matters are better ventilated before the court during the trial proper.

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[40] L-53373, June 30, 1987, 235 Phil. 465, 476 (1987).

Our Ruling

With respect to the first issue, we rule in the affirmative. Indeed, as *Crespo* declared—

> [O]nce a complaint or information is filed in Court, any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court, he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.
>
> In order therefor to avoid such a situation whereby the opinion of the Secretary of Justice who reviewed the action of the fiscal may be disregarded by the trial court, the Secretary of Justice should, as far as practicable, refrain from entertaining a petition for review or appeal from the action of the fiscal, when the complaint or information has already been filed in Court. The matter should be left entirely for the determination of the Court.[41]

In this case, on a petition for review, the Secretary of Justice found probable cause for Other Deceits against Lim; thus, the proper Information was filed in Court pursuant to the directive of the Secretary of Justice. Upon filing of the Information, the MTCC acquired jurisdiction over the case.

Lim filed a motion for reconsideration of the May 31, 2006 Resolution of the Secretary of Justice. There was nothing procedurally infirm in this course of action inasmuch as there is nothing in *Crespo* that bars the Secretary of Justice from reviewing resolutions of his subordinates in an appeal or petition for review in criminal cases. The Secretary of Justice was

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[41] *Id.* at 471-472.

merely advised in *Crespo* that, as far as practicable, he should not take cognizance of an appeal when the complaint or information is already filed in court.[42]

This is also true with respect to a motion for reconsideration before the Secretary of Justice. Review, whether on appeal or on motion for reconsideration, as an act of supervision and control by the Secretary of Justice over the prosecutors, finds basis in the doctrine of exhaustion of administrative remedies which holds that mistakes, abuses or negligence committed in the initial steps of an administrative activity or by an administrative agency may be corrected by higher administrative authorities, and not directly by courts. As a rule, only after administrative remedies are exhausted may judicial recourse be allowed.[43] In any case, the grant of a motion to dismiss or a motion to withdraw the information, which the prosecution may file after the Secretary of Justice reverses the finding of probable cause, is subject to the discretion of the court.[44]

In this case, the Secretary of Justice, reversed himself in his March 22, 2007 Resolution, and directed the withdrawal of the Information against Lim. In compliance with this directive, the prosecutor filed a Motion to Withdraw Information on May 3, 2007. Flores, on the other hand, filed on May 22, 2007 a petition for *certiorari* before the Court of Appeals to assail the March 22, 2007 Resolution of the Secretary of Justice. Then, on June 20, 2007, the MTCC denied the Motion to Withdraw Information on the ground that, based on its own assessment, there exists probable cause to hold Lim for trial for the crime of Other Deceits. In view of the June 20, 2007 MTCC Resolution, Flores manifested before the Court of Appeals this disposition, attaching a copy of the said Resolution to his pleading. Meanwhile, Lim filed a motion for reconsideration with the MTCC. Cognizant

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[42] *Roberts, Jr. v. Court of Appeals*, 324 Phil. 568, 598 (1996), citing *Marcelo v. Court of Appeals*, G.R. No. 106695, August 4, 1994, 235 SCRA 39, 48-49.

[43] *Ledesma v. Court of Appeals*, 344 Phil. 207, 230 (1997).

[44] *Caoili v. Court of Appeals*, 347 Phil. 791, 796 (1997).

of the pending petition for *certiorari* in the Court of Appeals and Lim's motion for reconsideration of the June 20, 2007 Resolution, the MTCC suspended the proceedings before it, and deferred the arraignment of Lim until the resolution of Flores' *certiorari* petition of the Court of Appeals.

We wish to point out that, notwithstanding the pendency of the Information before the MTCC, especially considering the reversal by the Secretary of Justice of his May 31, 2006 Resolution, a petition for *certiorari* under Rule 65 of the Rules of Court, anchored on the alleged grave abuse of discretion amounting to excess or lack of jurisdiction on the part of Secretary of Justice, was an available remedy to Flores as an aggrieved party.[45]

In the petition for *certiorari*, the Court of Appeals is not being asked to cause the dismissal of the case in the trial court, but only to resolve the issue of whether the Secretary of Justice acted with grave abuse of discretion in either affirming or reversing the finding of probable cause against the accused. But still the rule stands—the decision whether to dismiss the case or not rests on the sound discretion of the trial court where the Information was filed.[46] As jurisdiction was already acquired by the MTCC, this jurisdiction is not lost despite a resolution by the Secretary of Justice to withdraw the information or to dismiss the case, notwithstanding the deferment or suspension of the arraignment of the accused and further proceedings, and not even if the Secretary of Justice is affirmed by the higher courts.[47]

Verily, it bears stressing that the trial court is not bound to adopt the resolution of the Secretary of Justice, in spite of being affirmed by the appellate courts, since it is mandated to independently evaluate or assess the merits of the case and it

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[45] *Chan v. Secretary of Justice*, G.R. No. 147065, March 14, 2008, 548 SCRA 337, 350.

[46] *Id.* at 351.

[47] *Ledesma v. Court of Appeals, supra* note 43, at 232; *Caoili v. Court of Appeals, supra* note 44, at 796.

may either agree or disagree with the recommendation of the Secretary of Justice. Reliance on the resolution of the Secretary of Justice alone would be an abdication of the trial court's duty and jurisdiction to determine a *prima facie* case.[48] Thus, the trial court may make an independent assessment of the merits of the case based on the affidavits and counter-affidavits, documents, or evidence appended to the Information; the records of the public prosecutor which the court may order the latter to produce before it; or any evidence already adduced before the court by the accused at the time the motion is filed by the public prosecutor.[49] The trial court should make its assessment separately and independently of the evaluation of the prosecution or of the Secretary of Justice. This assessment should be embodied in the written order disposing of the motion to dismiss or the motion to withdraw the information.[50]

This was precisely what the MTCC did when it denied the Motion to Withdraw Information in its June 20, 2007 Resolution, and it correctly did so. In view of the above disquisitions, and while the disposition of the issue of whether or not the Secretary of Justice acted with grave abuse of discretion in not finding probable cause against Lim may be persuasive, the MTCC is not bound to dismiss the case or to withdraw the Information. For these reasons, the petition for *certiorari* before the Court of Appeals has effectively become moot and academic upon the issuance by the MTCC of its June 20, 2007 Resolution. The March 6, 2008 Decision and the May 28, 2009 Resolution of the Court of Appeals affirming the Secretary of Justice will really make no difference anymore.

As held in *Auto Prominence Corporation v. Winterkorn*,[51] pursuant to our ruling in *Crespo* and in the subsequent related cases, this Court held—

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[48] *People of the Philippines v. Odilao, Jr.*, 471 Phil. 623, 635 (2004).

[49] *Santos v. Orda, Jr.*, 481 Phil. 93, 108 (2004).

[50] *Ledesma v. Court of Appeals*, *supra* note 43, at 235.

[51] G.R. No. 178104, January 27, 2009, 577 SCRA 51.

In ascertaining whether the Secretary of Justice committed grave abuse of discretion amounting to lack or excess or jurisdiction in his determination of the existence of probable cause, the party seeking the writ of *certiorari* must be able to establish that the Secretary of Justice exercised his executive power in an arbitrary and despotic manner, by reason of passion or personal hostility, and the abuse of discretion must be so patent and gross as would amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law. Grave abuse of discretion is not enough, it must amount to lack or excess of jurisdiction. Excess of jurisdiction signifies that he had jurisdiction over the case, but (he) transcended the same or acted without authority.

There is no escaping the fact that resolving the issue of whether the Secretary of Justice committed grave abuse of discretion amounting to lack or excess of jurisdiction would necessarily entail a review of his finding of lack of probable cause against the respondents AUDI AG officers.

If we should sustain the DOJ Secretary in maintaining that no probable cause exists to hold respondents AUDI AG officers liable to stand trial for the crime they were charged with, our ruling would actually serve no practical or useful purpose, since the RTC had already made such a judicial determination, on the basis of which it dismissed Criminal Case No. 4824-A. Lest it be forgotten, the fact that the Information against respondents AUDI AG officers had already been filed in court, its disposition, *i.e.*, its dismissal or the conviction of the accused, rests on the sound discretion of the Court. And although the fiscal retains direction and control of the prosecution of criminal cases even while the case is already in court, he cannot impose his opinion on the trial court. The Court is the best and sole judge of what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. Thus, the court may deny or grant the motion to withdraw an Information, not out of subservience to the (Special) Prosecutor, but in faithful exercise of judicial discretion and prerogative. For these very same reasons, we must now refrain from resolving the issues raised by petitioners PPC and APC, considering that the information against respondents AUDI AG officers had already been filed before the RTC; the RTC acquired exclusive jurisdiction over Criminal Case No. 4824-A; and it has already rendered judgment dismissing the charges against respondents AUDI AG officers.

This is not to say that we are already affirming the 2 July 2008 Order of the RTC dismissing Criminal Case No. 4824-A. To the contrary, we are much aware that petitioners PPC and APC's Motion for Reconsideration of the said order of dismissal is still pending resolution by the trial court. By refusing to go into the merits of the instant Petition, we are only respecting the exclusive jurisdiction of the RTC over Criminal Case No. 4824-A and avoiding any pronouncement on our part which would preempt its independent assessment of the case. Irrefragably, a determination by us that probable cause against respondents AUDI AG officers does or does not exist would strongly influence, if not directly affect, the resolution by the RTC of the matter still pending before it. In any case, the party that would feel aggrieved by the final judgment or order of the lower court in Criminal Case No. 4824-A has the option of elevating the same to the higher courts. And if only for the orderly administration of justice, the proceeding in Criminal Case No. 4824-A, that is, the resolution of the pending motion for reconsideration filed by petitioners PPC and APC, should be allowed to continue and take its course.

Under the circumstances, the denial of the present Petition is clearly warranted for being moot. Where a declaration on an issue would have no practical use or value, this Court will refrain from expressing its opinion in a case where no practical relief may be granted in view of a supervening event. Thus, it is unnecessary to indulge in academic discussion of a case presenting a moot question, as a judgment thereon cannot have any practical legal effect or, in the nature of things, cannot be enforced.[52]

Anent the second issue, suffice it to state that these matters are best addressed to the MTCC, where they will be thoroughly ventilated and threshed out in the resolution of Lim's motion for reconsideration of the MTCC June 20, 2007 Resolution, and eventually, if the trial court denies the motion, during the trial on the merits before it.

WHEREFORE, the petition is *GRANTED*. The petition for *certiorari* before the Court of Appeals in CA-G.R. SP No. 02726 is declared *MOOT AND ACADEMIC*. Consequently, the

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[52] *Id.* at 61-63.

assailed Decision dated March 6, 2008 and the Resolution dated May 28, 2009 of the Court of Appeals in the said case are *SET ASIDE*. No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 190696. August 3, 2010]

ROLITO CALANG and PHILTRANCO SERVICE ENTERPRISES, INC., *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; ARTICLE 102 THEREOF ON SUBSIDIARY CIVIL LIABILITIES APPLIES TO EMPLOYER OR OWNER OF A BUS COMPANY.— If at all, Philtranco's liability may only be subsidiary. Article 102 of the Revised Penal Code states the subsidiary civil liabilities of innkeepers, tavernkeepers and proprietors of establishments x x x The foregoing subsidiary liability **applies to employers**, according to Article 103 of the Revised Penal Code.

2. ID.; ID.; ID.; CONDITIONS FOR ENFORCEMENT OF EMPLOYER'S SUBSIDIARY CIVIL LIABILITY.— The provisions of the Revised Penal Code on subsidiary liability – Articles 102 and 103 – are deemed written into the judgments in cases to which they are applicable. Thus, in the dispositive portion of its decision, the trial court need not expressly pronounce the subsidiary liability of the employer. Nonetheless,

before the employers' subsidiary liability is enforced, adequate evidence must exist establishing that (1) they are indeed the employers of the convicted employees; (2) they are engaged in some kind of industry; (3) the crime was committed by the employees in the discharge of their duties; and (4) the execution against the latter has not been satisfied due to insolvency. The determination of these conditions may be done in the same criminal action in which the employee's liability, criminal and civil, has been pronounced, in a hearing set for that precise purpose, with due notice to the employer, as part of the proceedings for the execution of the judgment.

3. CIVIL LAW; NEW CIVIL CODE; ARTICLES 2176 AND 2180 THEREOF ON VICARIOUS LIABILITY OF AN EMPLOYER DOES NOT APPLY TO CIVIL LIABILITY ARISING FROM DELICT.— We, however, hold that the RTC and the CA both erred in holding Philtranco *jointly and severally* liable with Calang. We emphasize that Calang was charged criminally before the RTC. Undisputedly, Philtranco was not a direct party in this case. Since the cause of action against Calang was based on delict, both the RTC and the CA erred in holding Philtranco jointly and severally liable with Calang, based on quasi-delict under Articles 2176 and 2180 of the Civil Code. Articles 2176 and 2180 of the Civil Code pertain to the vicarious liability of an employer for quasi-delicts that an employee has committed. Such provision of law does not apply to civil liability arising from delict.

APPEARANCES OF COUNSEL

Eduardo P. Tibo for petitioners.
The Solicitor General for respondent.

R E S O L U T I O N

BRION, *J.*:

We resolve the motion for reconsideration filed by the petitioners, Philtranco Service Enterprises, Inc. (*Philtranco*) and Rolito Calang, to challenge our Resolution of February 17, 2010. Our assailed Resolution denied the petition for review

on *certiorari* for failure to show any reversible error sufficient to warrant the exercise of this Court's discretionary appellate jurisdiction.

Antecedent Facts

At around 2:00 p.m. of April 22, 1989, Rolito Calang was driving Philtranco Bus No. 7001, owned by Philtranco along Daang Maharlika Highway in *Barangay* Lambao, Sta. Margarita, Samar when its rear left side hit the front left portion of a Sarao jeep coming from the opposite direction. As a result of the collision, Cresencio Pinohermoso, the jeep's driver, lost control of the vehicle, and bumped and killed Jose Mabansag, a bystander who was standing along the highway's shoulder. The jeep turned turtle three (3) times before finally stopping at about 25 meters from the point of impact. Two of the jeep's passengers, Armando Nablo and an unidentified woman, were instantly killed, while the other passengers sustained serious physical injuries.

The prosecution charged Calang with multiple homicide, multiple serious physical injuries and damage to property thru reckless imprudence before the Regional Trial Court (*RTC*), Branch 31, Calbayog City. The RTC, in its decision dated May 21, 2001, found Calang guilty beyond reasonable doubt of reckless imprudence resulting to multiple homicide, multiple physical injuries and damage to property, and sentenced him to suffer an indeterminate penalty of thirty days of *arresto menor*, as minimum, to four years and two months of *prision correccional*, as maximum. The RTC ordered Calang and Philtranco, **jointly and severally**, to pay ₱50,000.00 as death indemnity to the heirs of Armando; ₱50,000.00 as death indemnity to the heirs of Mabansag; and ₱90,083.93 as actual damages to the private complainants.

The petitioners appealed the RTC decision to the Court of Appeals (*CA*), docketed as CA-G.R. CR No. 25522. The CA, in its decision dated November 20, 2009, affirmed the RTC decision *in toto*. The CA ruled that petitioner Calang failed to exercise due care and precaution in driving the Philtranco bus.

According to the CA, various eyewitnesses testified that the bus was traveling fast and encroached into the opposite lane when it evaded a pushcart that was on the side of the road. In addition, he failed to slacken his speed, despite admitting that he had already seen the jeep coming from the opposite direction when it was still half a kilometer away. The CA further ruled that Calang demonstrated a reckless attitude when he drove the bus, despite knowing that it was suffering from loose compression, hence, not roadworthy.

The CA added that the RTC correctly held Philtranco jointly and severally liable with petitioner Calang, for failing to prove that it had exercised the diligence of a good father of the family to prevent the accident.

The petitioners filed with this Court a petition for review on *certiorari*. In our Resolution dated February 17, 2010, we denied the petition for failure to sufficiently show any reversible error in the assailed decision to warrant the exercise of this Court's discretionary appellate jurisdiction.

The Motion for Reconsideration

In the present motion for reconsideration, the petitioners claim that there was no basis to hold Philtranco jointly and severally liable with Calang because the former was not a party in the *criminal* case (for multiple homicide with multiple serious physical injuries and damage to property thru reckless imprudence) before the RTC.

The petitioners likewise maintain that the courts below overlooked several relevant facts, supported by documentary exhibits, which, if considered, would have shown that Calang was not negligent, such as the affidavit and testimony of witness Celestina Cabriga; the testimony of witness Rodrigo Bocaycay; the traffic accident sketch and report; and the jeepney's registration receipt. The petitioners also insist that the jeep's driver had the last clear chance to avoid the collision.

We **partly grant** the motion.

Liability of Calang

We see no reason to overturn the lower courts' finding on Calang's culpability. The finding of negligence on his part by the trial court, affirmed by the CA, is a question of fact that we cannot pass upon without going into factual matters touching on the finding of negligence. In petitions for review on *certiorari* under Rule 45 of the Revised Rules of Court, this Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are devoid of support by the evidence on record, or the assailed judgment is based on a misapprehension of facts.

Liability of Philtranco

We, however, hold that the RTC and the CA both erred in holding Philtranco *jointly and severally* liable with Calang. We emphasize that Calang was charged criminally before the RTC. Undisputedly, Philtranco was not a direct party in this case. Since the cause of action against Calang was based on delict, both the RTC and the CA erred in holding Philtranco jointly and severally liable with Calang, based on quasi-delict under Articles 2176[1] and 2180[2] of the Civil Code. Articles 2176 and 2180 of the Civil Code pertain to the vicarious liability of an employer for quasi-delicts that an employee has committed. Such provision of law does not apply to civil liability arising from delict.

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

[2] Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

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Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

If at all, Philtranco's liability may only be subsidiary. Article 102 of the Revised Penal Code states the subsidiary civil liabilities of innkeepers, tavernkeepers and proprietors of establishments, as follows:

> In default of the persons criminally liable, innkeepers, tavernkeepers, and any other persons or corporations shall be civilly liable for crimes committed in their establishments, in all cases where a violation of municipal ordinances or some general or special police regulations shall have been committed by them or their employees.
>
> Innkeepers are also subsidiary liable for the restitution of goods taken by robbery or theft within their houses from guests lodging therein, or for the payment of the value thereof, provided that such guests shall have notified in advance the innkeeper himself, or the person representing him, of the deposit of such goods within the inn; and shall furthermore have followed the directions which such innkeeper or his representative may have given them with respect to the care of and vigilance over such goods. No liability shall attach in case of robbery with violence against or intimidation of persons unless committed by the innkeeper's employees.

The foregoing subsidiary liability **applies to employers**, according to Article 103 of the Revised Penal Code, which reads:

> The subsidiary liability established in the next preceding article shall also apply to employers, teachers, persons, and corporations engaged in any kind of industry for felonies committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties.

The provisions of the Revised Penal Code on subsidiary liability — Articles 102 and 103 – are deemed written into the judgments in cases to which they are applicable. Thus, in the dispositive portion of its decision, the trial court need not expressly pronounce the subsidiary liability of the employer.[3] Nonetheless, before the employers' subsidiary liability is enforced, adequate evidence

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[3] *Pangonorom v. People*, 495 Phil. 195 (2005).

must exist establishing that (1) they are indeed the employers of the convicted employees; (2) they are engaged in some kind of industry; (3) the crime was committed by the employees in the discharge of their duties; and (4) the execution against the latter has not been satisfied due to insolvency. The determination of these conditions may be done in the same criminal action in which the employee's liability, criminal and civil, has been pronounced, in a hearing set for that precise purpose, with due notice to the employer, as part of the proceedings for the execution of the judgment.[4]

WHEREFORE, we *PARTLY GRANT* the present motion. The Court of Appeals decision that affirmed *in toto* the RTC decision, finding Rolito Calang guilty beyond reasonable doubt of reckless imprudence resulting in multiple homicide, multiple serious physical injuries and damage to property, is *AFFIRMED*, with the *MODIFICATION* that Philtranco's liability should only be subsidiary. No costs.

SO ORDERED.

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

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[4] *Philippine Rabbit Bus Lines, Inc. v. People*, G.R. No. 147703, April 14, 2004, 427 SCRA 456.

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

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Due process — One's employment is a property right within the purview of the due process clause. (Go, Jr. *vs*. CA, G.R. No. 172027, July 29, 2010) p. 238

Presumption of innocence — Upheld in the absence of proof beyond reasonable doubt. (People *vs*. T/Sgt. Angus, Jr., G.R. No. 178778, Aug. 03, 2010) p. 552

Right against double jeopardy — Deemed waived when an accused appealed from the judgment of conviction. (Gelig *vs*. People, G.R. No. 173150, July 28, 2010) p. 109

BOUNCING CHECKS LAW (B.P. BLG. 22)

Violation of — Mere act of issuing a worthless check, even if merely as an accommodation, is punishable. (Land Bank of the Phils. *vs*. Jacinto, G.R. No. 154622, Aug. 03, 2010) p. 358

BUILDER IN GOOD FAITH

Rights of — The builder can compel the landowner to make a choice between appropriating the building by paying the proper indemnity or obliging the builder to pay the price of the land. (Briones *vs*. Macabagdal, G.R. No. 150666, Aug. 03, 2010) p. 343

CERTIORARI

Grave abuse of discretion — Defined as a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. (People *vs*. CA, G.R. No. 161083, Aug. 03, 2010) p. 396

— Present when the trial judge held in abeyance the resolution of a motion for issuance of a writ of demolition. (De Leon *vs*. Public Estates Authority, G.R. No. 181970, Aug. 03, 2010) p. 594

Petition for — Available remedy of a party aggrieved by the Secretary of Justice's resolution affirming or reversing the finding of probable cause. (Flores *vs*. Hon. Gonzalez, G.R. No. 188197, Aug. 03, 2010) p. 694

— Considered as an original action. (BF Citiland Corp. *vs*. Otake, G.R. No. 173351, July 29, 2010) p. 261

— Error of judgment cannot be raised in a petition for certiorari. (People *vs*. CA, G.R. No. 161083, Aug. 03, 2010) p. 396

— Proper only when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. *(Id.)*

(Sonic Steel Industries, Inc. *vs*. CA, G.R. No. 165976, July 29, 2010) p. 203

Shall not interrupt the course of the principal case. (Leviste *vs*. Hon. Alameda, G.R. No. 182677, Aug. 03, 2010) p. 620

CIRCUMSTANTIAL EVIDENCE

When sufficient for conviction — The requisites are: (1) there must be more than one circumstance to convict; (2) the facts on which the inference of guilt is based must be proved; and (3) the combination of all the circumstances such as to produce a conviction beyond reasonable doubt. (People *vs*. T/Sgt. Angus, Jr., G.R. No. 178778, Aug. 03, 2010) p. 552

(People *vs*. Lopez, G.R. No. 176354, Aug. 03, 2010) p. 532

(People *vs*. Labagala, G.R. No. 184603, Aug. 02, 2010) p. 311

CIVIL LIABILITY

Subsidiary liabilities of employer — Apply to an employer or an owner of a bus company. (Calang *vs*. People, G.R. No. 190696, Aug. 03, 2010) p. 710

— Conditions for enforcement thereof. *(Id.)*

Vicarious liability of employer — Does not apply to civil liability arising from delict. (Calang *vs*. People, G.R. No. 190696, Aug. 03, 2010) p. 710

CIVIL SERVICE

Non-diminution of compensation and emoluments — Effect of the passage of P.D. No. 985. (Go, Jr. *vs*. CA, G.R. No. 172027, July 29, 2010) p. 238

Prohibited concerted activity or mass action — Wearing of red shirts to witness a public hearing does not amount to a concerted or mass action proscribed by the Rules. (GSIS *vs*. Villaviza, G.R. No. 180291, July 27, 2010) p. 18

CIVIL SERVICE DECREE OF THE PHILIPPINES (P.D. NO. 807)

Civil Service Commission — Has exclusive jurisdiction over cases involving personnel in the government. (Go, Jr. *vs*. CA, G.R. No. 172027, July 29, 2010) p. 238

COMPROMISES

Compromise agreement — Not a valid basis of possession in good faith and just title. (Tan *vs*. Ramirez, G.R. No. 158929, Aug. 03, 2010) p. 370

CONTRACTS

Badges of fraud — The Court, in numerous cases concerning various subjects has used the phrase, "badges of fraud" in its rulings referring to the said phrase's general and ordinary meaning. (Golden Apple Realty and Dev't. Corp. *vs*. Sierra Grande Realty Corp., G.R. No. 119857, July 28, 2010) p. 62

Interpretation of — When the terms are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of the contract provisions shall control. (Hadja Magoyag *vs*. Hadji Maruhom, G.R. No. 179743, Aug. 02, 2010) p. 289

*Void contra*cts — An absolutely simulated contract is void and the parties may recover from each other what they have given under the simulated contract, while a relatively simulated contract is valid and enforceable as the parties' real agreement binds them. (Taghoy *vs*. Sps. Felixberto Tigol, Jr. and Rosita Tigol, G.R. No. 159665, Aug. 03, 2010) p. 385

— The party not at fault may demand the return of what he has given without any obligation to comply with his promise; exceptions. (Hadja Magoyag *vs*. Hadji Maruhom, G.R. No. 179743, Aug. 02, 2010) p. 289

CO-OWNERSHIP

Right of co-owner in case of advance payment for necessary expenses — Necessary expenses may be incurred by one co-owner, subject to his right to collect reimbursement from the remaining co-owners; until reimbursement, he holds a lien upon the subject property for the amount he advanced. (Taghoy *vs.* Sps. Felixberto Tigol, Jr. and Rosita Tigol, G.R. No. 159665, Aug. 03, 2010) p. 385

CORPORATE REHABILITATION

Interim rules of procedure — Should be construed liberally to obtain for the parties just, expeditious, and inexpensive disposition of the case. (North Bulacan Corp. *vs*. Phil. Bank of Communications, G.R. No. 183140, Aug. 02, 2010) p. 301

Petition for — Must fail due to the petitioner's misrepresentation as to its accountabilities and the inadequate documentation of its assets. (North Bulacan Corp. *vs*. Phil. Bank of Communications, G.R. No. 183140, Aug. 02, 2010) p. 301

CORRECTION OF ENTRIES IN THE CIVIL REGISTRY

Correction of nationality or citizenship — Proceedings is adversarial in nature. (Kilosbayan Foundation *vs*. Janolo, Jr., G.R. No. 180543, July 27, 2010) p. 33

COURT PERSONNEL

Dishonesty, grave misconduct, and gross neglect of duty — Employees should not use abusive, offensive, scandalous, menacing and improper language. (*Re*: Complaints of Mrs. Milagros Lee and Samantha Lee Against Atty. Gil Luisito R. Capito, A.M. No. 2008-19-SC, July 27, 2010) p. 11

COURTS

Hierarchy of courts — Serves as a general determinant of the appropriate forum for appeals and petitions for extraordinary writs. (Kilosbayan Foundation *vs*. Janolo, Jr., G.R. No. 180543, July 27, 2010) p. 33

— The rule is not absolute, and the Court has full discretionary power to take cognizance of a petition filed directly with it. *(Id.)*

DAMAGES

Civil indemnity — Mandatory upon the finding of the fact of rape. (People *vs.* Sambahon, G.R. No. 182789, Aug. 03, 2010) p. 651

Exemplary damages — Awarded in cases of qualified rape. (People *vs.* Bartolini, G.R. No. 179498, Aug. 03, 2010) p. 575

DEFAULT

Default order — Remedies available to a party declared in default. (Kilosbayan Foundation *vs*. Janolo, Jr., G.R. No. 180543, July 27, 2010) p. 33

Motion to lift an order of default — Requisites to prosper; effect of non-compliance. (Kilosbayan Foundation *vs*. Janolo, Jr., G.R. No. 180543, July 27, 2010) p. 33

— The trial court has no authority to consider a motion where such motion was not made under oath. *(Id.)*

DEPARTMENT OF BUDGET AND MANAGEMENT (DBM)

Powers and functions — Cited. (Go, Jr. *vs*. CA, G.R. No. 172027, July 29, 2010) p. 238

DIRECT ASSAULT

Commission of — Elements. (Gelig *vs*. People, G.R. No. 173150, July 28, 2010) p. 109

— Imposable penalty. *(Id.)*

— Two forms of commission. *(Id.)*

Persons in authority and agents of person in authority — Include teachers, professors, and persons charged with the supervision of public or duly recognized private schools, colleges and universities, and lawyers in the actual performance of their professional duties or on occasion of such performance. (Gelig *vs*. People, G.R. No. 173150, July 28, 2010) p. 109

DOCUMENTARY EVIDENCE

Affidavit — Considered inadmissible under the hearsay rule unless affiant is placed on the witness stand to testify and affirm the truth and veracity of his statements. (Petron Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 180385, July 28, 2010) p. 163

Genuineness of signature on a document — When it is sought to be proved or disproved through comparison of standard signatures with the questioned signature, the original thereof must be presented. (Dycoco *vs*. Orina, G.R. No. 184843, July 30, 2010) p. 280

Private documents — How to prove their due execution and authenticity. (Dycoco *vs*. Orina, G.R. No. 184843, July 30, 2010) p. 280

DOCUMENTARY STAMP TAX

Nature — It is levied independently of the legal status of the transactions giving rise thereto, it must be paid upon the issuance of the instruments, without regard to whether the contracts which gave rise to them are rescissible, void, voidable, or unenforceable. (Jaka Investments Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 147629, July 28, 2010) p. 77

DOUBLE JEOPARDY

Right against — Deemed waived when an accused appealed from the judgment of conviction. (Gelig *vs*. People, G.R. No. 173150, July 28, 2010) p. 109

EMPLOYEES' COMPENSATION

Death benefits — Awarded to heirs of employee who died en route to the performance of his duty. (GSIS *vs*. Zarate, G.R. No. 170847, Aug. 03, 2010) p. 509

Interpretation of employees' compensation law — Must be given a liberal reading, to the point of ruling in favor of labor and of the grant of employee compensation even in marginal situations for as long as a reasonable work connection may be found. (GSIS *vs.* Zarate, G.R. No. 170847, Aug. 03, 2010) p. 509

EMPLOYEES, KINDS OF

Confidential employees — To be considered confidential, the employees must have access to confidential data relating to management policies that could give rise to a potential conflict of interest with their union membership. (Tunay na Pagkakaisa ng Manggagawa sa Asia Brewery *vs*. Asia Brewery, Inc., G.R. No. 162025, Aug. 03, 2010) p. 419

EVIDENCE

Affidavit — Considered inadmissible under the hearsay rule unless affiant is placed on the witness stand to testify and affirm the truth and veracity of his statements. (Petron Corp. *vs.* Commissioner of Internal Revenue, G.R. No. 180385, July 28, 2010) p. 163

Presentation of evidence to prove fraud — Not a mere procedural technicality which may be disregarded. (Petron Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 180385, July 28, 2010) p. 163

Principle of "fruit of the poisonous tree" — Application. (People *vs*. Racho, G.R. No. 186529, Aug. 03, 2010) p. 669

EXCISE TAX

Deficiency excise tax — When its assessment may be invalidated. (Petron Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 180385, July 28, 2010) p. 163

EXEMPLARY DAMAGES

Award of — Increased to ₱30,000.00 in case of qualified rape. (People *vs.* Bartolini, G.R. No. 179498, Aug. 03, 2010) p. 575

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Doctrine of — Failure to exhaust administrative remedies is a ground for dismissal of the action; exceptions. (UST *vs.* Sanchez, G.R. No. 165569, July 29, 2010) p. 189

FELONIES

Attempted felony — Present when the offender commences its commission directly by overt acts but 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. (People *vs.* Rellota, G.R. No. 168103, Aug. 03, 2010) p. 471

FORECLOSURE OF REAL ESTATE MORTGAGE

Petition for extrajudicial foreclosure before a notary public — Notice of sale issued by a notary public is not within the scope of judicial notice. (RPRP Ventures Management & Dev't. Corp. *vs*. Judge Guadiz, Jr., G.R. No. 152236, July 28, 2010) p. 98

— Requirement for payment of docket fees is not applicable when petition was filed before a notary public. *(Id.)*

FORUM SHOPPING

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. (Atty. Alonso *vs.* Atty. Relamida, Jr., A.C. No. 8481, Aug. 03, 2010) p. 325

(UST *vs*. Sanchez, G.R. No. 165569, July 29, 2010) p. 189

GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS)

Amended Policy and Procedural Guidelines — Provide that the failure to file an answer merely translates the act to a

waiver of the right to file an answer. (GSIS *vs*. Villaviza, G.R. No. 180291, July 27, 2010) p. 18

HEARSAY RULE, EXCEPTIONS TO

Part of res gestae — It is required that: (1) the principal act, the res gestae, be a starling occurrence, (2) the statement forming part thereof were made before the declarant had the opportunity to contrive, and (3) the statements refer to the occurrence in question and its attending circumstances. (People *vs*. Labagala, G.R. No. 184603, Aug. 02, 2010) p. 311

INFORMATION

Amendment of — Inasmuch as an amendment of the information from homicide to murder is considered substantial, another preliminary investigation is required. (Leviste *vs*. Hon. Alameda, G.R. No. 182677, Aug. 03, 2010) p. 620

Formal or substantial amendment — When proper. (Leviste *vs*. Hon. Alameda, G.R. No. 182677, Aug. 03, 2010) p. 620

JUDGES

Bias and partiality — Absent clear and convincing evidence, bare allegations of bias and prejudice are not enough to overcome the presumption that a judge will undertake his noble role to dispense justice according to law and evidence and without fear or favor. (Kilosbayan Foundation *vs*. Janolo, Jr., G.R. No. 180543, July 27, 2010) p. 33

— Bias, bad faith, malice or corrupt purpose must be established by extrinsic evidence. *(Id.)*

— Disallowance of a motion for postponement is not sufficient to show arbitrariness and partiality of the trial court. *(Id.)*

— Must be shown to have resulted in an opinion on the merits on the basis of an extrajudicial source, not on what the judge learned from participating in the case. *(Id.)*

Compulsory disqualification and voluntary inhibition — Automatic grant of a motion for voluntary inhibition will open the floodgates to a form of forum shopping, in which

litigants would be allowed to shop for a judge more sympathetic to their causes. (Kilosbayan Foundation *vs*. Janolo, Jr., G.R. No. 180543, July 27, 2010) p. 33

— Elucidated. *(Id.)*

— Filing of a comment or an opposition to the motion for voluntary inhibition is not required before the court may rule on the motion. *(Id.)*

— Motion for reconsideration of an order denying inhibition must be resolved within the mandatory ninety (90)-day period. *(Id.)*

— Organizational affiliation per se is not a ground for inhibition. *(Id.)*

— Trial judge's resolution of the motion for voluntary inhibition one day after it was filed is not considered arbitrary. *(Id.)*

Conduct of — Judges shall avoid impropriety and the appearance of impropriety in all their activities. (Marcos *vs*. Judge Pinto, A.M. No. RTJ-09-2180, July 27, 2010) p. 1

Disqualification of judges — Divergence of opinion as to applicable laws and jurisprudence between counsel and the judge is not a proper ground for disqualification. (Kilosbayan Foundation *vs*. Janolo, Jr., G.R. No. 180543, July 27, 2010) p. 33

Duties — Judges should maintain professional competence in court management and it is incumbent upon them to devise an efficient recording and filing system so that no disorderliness can affect the flow of cases and their speedy disposition. (Sarmiento *vs*. Judge Lindayag, A.M. No. MTJ-09-1743, Aug. 03, 2010) p. 336

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. (Marcos *vs*. Judge Pinto, A.M. No. RTJ-09-2180, July 27, 2010) p. 1

Gross inefficiency — Committed in case of failure of a judge to decide cases within the reglementary period, without strong and justifiable reason. (Sarmiento *vs*. Judge Lindayag, A.M. No. MTJ-09-1743, Aug. 03, 2010) p. 336

JUDGMENTS

Acquittal of accused — Will prosper even though the accused's innocence may be doubted for a criminal conviction rests on the strength of the evidence of the prosecution and not on the weakness of the defense. (People *vs*. T/Sgt. Angus, Jr., G.R. No. 178778, Aug. 03, 2010) p. 552

Execution of — Dilatory schemes should not frustrate the execution and satisfaction of a judgment. (De Leon *vs*. Public Estates Authority, G.R. No. 181970, Aug. 03, 2010) p. 594

— Where the ownership of a parcel of land was decreed in a judgment, the delivery of possession of land is deemed included in the decision. *(Id.)*

Interpretation of — Piecemeal interpretation is not allowed. (De Leon *vs*. Public Estates Authority, G.R. No. 181970, Aug. 03, 2010) p. 594

Redemption —For validity thereof, the amount tendered must include: (1) the full amount paid by the purchaser; (2) with an additional one percent per month interest on the purchase price up to the time of redemption; (3) together with the amount of any assessment or taxes which the purchaser may have thereon after purchase; (4) interest on the taxes paid by the purchaser at the rate of one percent per month up to the time of redemption; and (5) if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien, with interest. (Torres *vs.* Sps. Vihinzky Alamag and Aida A. Ngoju, G.R. No. 169569, Aug. 03, 2010) p. 498

— Should be looked upon with favor and when no injury will follow, a liberal construction should be given to our redemption laws, specifically on the exercise of the right

to redeem. (City Mayor *vs*. RCBC, G.R. No. 171033, Aug. 03, 2010) p. 517

— The payment of the full purchase price and interest thereon by redemptioner who had not been apprised of the amount of taxes paid by the purchaser, should already be considered sufficient for purposes of redemption, if redemptioner immediately pays the additional amount for taxes once notified of the deficiency. (Torres *vs.* Sps. Vihinzky Alamag and Aida A. Ngoju, G.R. No. 169569, Aug. 03, 2010) p. 498

Validity of —Judgment shall state, clearly and distinctly the facts and the law on which it is based. (Tan *vs*. Ramirez, G.R. No. 158929, Aug. 03, 2010) p. 370

JUDICIAL DEPARTMENT

Principle of judicial courtesy — When not applicable. (De Leon *vs*. Public Estates Authority, G.R. No. 181970, Aug. 03, 2010) p. 594

LABOR UNIONS

Ineligibility of managerial employees to join — The rationale for their separate category and disqualification to join any labor organization is similar to the inhibition for managerial employees because if allowed to be affiliated with a union, the latter might not be assured of their loyalty in view of conflict of interests and the union can also become company-denominated with the presence of managerial employees in the union membership. (Tunay na Pagkakaisa ng Manggagawa sa Asia Brewery *vs*. Asia Brewery, Inc., G.R. No. 162025, Aug. 03, 2010) p. 419

LAND TRANSPORTATION FRANCHISING AND REGULATORY BOARD (LTFRB)

Decision of — Appealable to the Department of Transportation and Communications (DOTC) Secretary. (Go, Jr. *vs*. CA, G.R. No. 172027, July 29, 2010) p. 238

LEGAL FORMS

Acknowledgement — Every contract, deed, or other document acknowledged before a notary public shall have certified thereon that the parties thereto have presented their proper cedula certificate or are exempt from cedula tax, and these shall be entered by the notary public as a part of such certification, the number, the place of issues, and date of each cedula certificate as aforesaid. (Golden Apple Realty and Dev't. Corp. *vs*. Sierra Grande Realty Corp., G.R. No. 119857, July 28, 2010) p. 62

MOTION TO DISMISS

Failure to state a cause of action as a ground — Elucidated. (UST *vs*. Sanchez, G.R. No. 165569, July 29, 2010) p. 189

MOTIONS

Motion for reinvestigation — Effect of grant thereof. (Leviste *vs*. Hon. Alameda, G.R. No. 182677, Aug. 03, 2010) p. 620

MURDER

Commission of — Civil liabilities of accused, cited. (People *vs*. Lopez, G.R. No. 176354, Aug. 03, 2010) p. 532

NOTARY PUBLIC

2004 Rules on Notarial Practice — Affiant must present competent evidence of his identity before the notary public. (Kilosbayan Foundation *vs*. Janolo, Jr., G.R. No. 180543, July 27, 2010) p. 33

NUNC PRO TUNC ORDER

Issuance of — Recognized where an order actually rendered by a court at a former time had not been entered of record as rendered. (Kilosbayan Foundation *vs*. Janolo, Jr., G.R. No. 180543, July 27, 2010) p. 33

OWNERSHIP, MODES OF ACQUIRING

Ordinary acquisitive prescription —The ten (10) year period required cannot apply in favor of possessor's predecessor-

in-interest, if he is not a possessor in good faith. (Tan *vs*. Ramirez, G.R. No. 158929, Aug. 03, 2010) p. 370

Prescription — Concerned with the lapse of time in the manner and under conditions laid down by law, namely, that the possession should be in the concept of an owner, public, peaceful, uninterrupted, and adverse. (Tan *vs*. Ramirez, G.R. No. 158929, Aug. 03, 2010) p. 370

PARRICIDE

Commission of — 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. (People *vs*. T/Sgt. Angus, Jr., G.R. No. 178778, Aug. 03, 2010) p. 552

PLEADINGS

Verification — Not an empty ritual or meaningless formality and must never be sacrificed in the name of mere expedience or sheer caprice. (Kilosbayan Foundation *vs*. Janolo, Jr., G.R. No. 180543, July 27, 2010) p. 33

POSSESSION

Presumption of good faith — Applies when a person mistakenly constructed his house on a lot which he thought he owns. (Briones *vs*. Macabagdal, G.R. No. 150666, Aug. 03, 2010) p. 343

PREJUDICIAL QUESTION

Concept — The elements of a prejudicial question are: (1) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (2) the resolution of such issue determines whether or not the criminal action may proceed. (Land Bank of the Phils. *vs*. Jacinto, G.R. No. 154622, Aug. 03, 2010) p. 358

PRELIMINARY INVESTIGATION

Concept — Distinguished from preliminary inquiry to determine probable cause for issuance of a warrant of arrest. (People *vs*. CA, G.R. No. 161083, Aug. 03, 2010) p. 396

— No substantial distinction from a reinvestigation. (Leviste *vs*. Hon. Alameda, G.R. No. 182677, Aug. 03, 2010) p. 620

Conduct of — Authority of the Secretary of Justice to review resolutions of his subordinates in their conduct of preliminary investigations; basis. (Flores *vs*. Hon. Gonzalez, G.R. No. 188197, Aug. 03, 2010) p. 694

— Inasmuch as an amendment of the information from homicide to murder is considered substantial, another preliminary investigation is required. (Leviste *vs*. Hon. Alameda, G.R. No. 182677, Aug. 03, 2010) p. 620

— When required; exception. *(Id.)*

Inquest — Cases subject of inquest are not appealable to the Department of Justice Secretary; proper remedy of private party. (Leviste *vs*. Hon. Alameda, G.R. No. 182677, Aug. 03, 2010) p. 620

— Defined. *(Id.)*

Probable cause — A hearing for judicial determination is not required. (Leviste *vs*. Hon. Alameda, G.R. No. 182677, Aug. 03, 2010) p. 620

— Defined as such facts and circumstances that will engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial. (People *vs*. CA, G.R. No. 161083, Aug. 03, 2010) p. 396

— Determination of probable cause; kinds. (Leviste *vs*. Hon. Alameda, G.R. No. 182677, Aug. 03, 2010) p. 620

— The purpose thereof is to insulate from the very start those falsely charged with crimes from the tribulations, expenses, and anxiety of a public trial. (People *vs*. CA, G.R. No. 161083, Aug. 03, 2010) p. 396

— The trial court is not bound to adopt the resolution of the Justice Secretary on the finding of probable cause. (Flores *vs*. Hon. Gonzalez, G.R. No. 188197, Aug. 03, 2010) p. 694

Reinvestigation — New matter or evidence are not pre-requisites therefor. (Leviste *vs*. Hon. Alameda, G.R. No. 182677, Aug. 03, 2010) p. 620

PROSECUTION OF OFFENSES

Complaint or information — Remedies of the private party and the arrested person before the filing of the complaint or information in court. (Leviste *vs*. Hon. Alameda, G.R. No. 182677, Aug. 03, 2010) p. 620

PUBLIC OFFICERS AND EMPLOYEES

Abuse of authority — Can be committed by a barangay official outside his jurisdiction. (Bien *vs*. Bo, G.R. No. 179333, Aug. 03, 2010) p. 567

— Committed in case a barangay official participated in the destruction of a party's cottage and coconut trees built and planted by the latter. *(Id.)*

QUALIFYING CIRCUMSTANCES

Treachery — 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*. Lopez, G.R. No. 176354, Aug. 03, 2010) p. 532

QUASI-DELICT

Liability for damages based on negligence — Plaintiff has to prove by a preponderance of evidence: (1) the damages suffered by the plaintiff; (2) the fault or negligence of the defendant or some other person for whose act he must respond; and (3) the connection of cause and effect between the fault or negligence and the damages incurred. (Briones *vs*. Macabagdal, G.R. No. 150666, Aug. 03, 2010) p. 343

Vicarious liability of employer — Does not apply to civil liability arising from delict. (Calang *vs*. People, G.R. No. 190696, Aug. 03, 2010) p. 710

RAPE

Civil liabilities of accused — Cited. (People *vs*. Sambahon, G.R. No. 182789, Aug. 03, 2010) p. 651

(People *vs*. Bartolini, G.R. No. 179498, Aug. 03, 2010) p. 575

— Effect of failure to allege the special qualifying circumstance of the victim's age. *(Id.)*

Commission of — Lust is no respecter of time and place and there is no rule that a woman can only be raped in seclusion. (People *vs*. Rellota, G.R. No. 168103, Aug. 03, 2010) p. 471

Element of force and intimidation — When established. (People *vs*. Bartolini, G.R. No. 179498, Aug. 03, 2010) p. 575

Prosecution of rape cases — Guiding principles in the determination of the innocence or guilt of the accused. (People *vs*. Rellota, G.R. No. 168103, Aug. 03, 2010) p. 471

(People *vs*. Magayon, G.R. No. 175595, July 28, 2010) p. 121

— The court is not convinced that a member of the family is capable of risking her young niece's reputation and future and her entire family's honor by concocting up a charge as serious as rape against a nephew over a piece of property. (People *vs*. Balunsat, G.R. No. 176743, July 28, 2010) p. 139

Qualified rape — Victim's age must be specifically alleged in the information to be appreciated; effect of absence of such allegation. (People *vs*. Bartolini, G.R. No. 179498, Aug. 03, 2010) p. 575

Statutory rape — Committed by a man who shall have carnal knowledge of a woman who is under twelve (12) years of age. (People *vs*. Balunsat, G.R. No. 176743, July 28, 2010) p. 139

(People *vs.* Magayon, G.R. No. 175595, July 28, 2010) p. 121

REGIONAL TRIAL COURT

Jurisdiction — The jurisdiction of the trial court over a criminal case remains despite the Secretary of Justice's resolution to withdraw the information. (Flores *vs.* Hon. Gonzalez, G.R. No. 188197, Aug. 03, 2010) p. 694

Jurisdiction over accion publiciana — Determined by the assessed value of the property. (BF Citiland Corp. *vs.* Otake, G.R. No. 173351, July 29, 2010) p. 261

SETTLEMENT OF ESTATE OF A DECEASED PERSON

Extrajudicial settlement of estate — Even though not published, being deemed a partition of the inherited property, a heir could validly transfer ownership over the specific portion of the property that was assigned to him. (Alfonso *vs.* Sps. Andres, G.R. No. 166236, July 29, 2010) p. 209

SOCIAL SECURITY ACT (R.A. NO. 8282)

Mandatory remittance of contribution by employer — Failure to comply with the law, being malum prohibitum, intent to commit it or good faith is immaterial. (Mendoza *vs.* People, G.R. No. 183891, Aug. 03, 2010) p. 661

— Imposable penalty for violation thereof. *(Id.)*

— The term "managing head" in Section 28 (f) of the Social Security Act is used, in its broadest connotation, not to any specific organizational or managerial nomenclature. *(Id.)*

STATUTES

Special laws — Prevail over a general law since it evinces the legislative intent more clearly than that of the general statute and must be taken as intended to constitute an exception to the rule. (City Mayor *vs.* RCBC, G.R. No. 171033, Aug. 03, 2010) p. 517

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TAX CREDITS

Tax Credit Certificates — Guidelines for negotiability. (Petron Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 180385, July 28, 2010) p. 163

— Respected with regard to transferee in good faith and for value; remedy of the government in case of fraud. *(Id.)*

TAX REFUNDS

Claim for — Burden of proof is on the taxpayer-claimant to prove entitlement to such refund. (Jaka Investments Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 147629, July 28, 2010) p. 77

TAXES

Carryover of excess income tax — How treated. (Asia World Properties Phil. Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 171766, July 29, 2010) p. 230

Value-added tax — Claim for unutilized input VAT may be proved by sales invoices. (AT & T Communications Services Phils., Inc. *vs*. Commissioner of Internal Revenue, G.R. No. 182364, Aug. 03, 2010) p. 613

— Requirements for tax refund and issuance of tax credit certificate for unutilized input VAT. *(Id.)*

UNFAIR LABOR PRACTICES

Commission, not a case of — A simple disagreement in the interpretation of a Collective Bargaining Agreement provision on excluded employees from the bargaining unit could not be considered as an unfair labor practice that restrained the employees in the exercise of their right to self-organization. (Tunay na Pagkakaisa ng Manggagawa sa Asia Brewery *vs*. Asia Brewery, Inc., G.R. No. 162025, Aug. 03, 2010) p. 419

VALUE-ADDED TAX

Revenue Regulation 7-95, Sec. 4.108-1 — Requirements. (AT & T Communications Services Phils., Inc. *vs*. Commissioner of Internal Revenue, G.R. No. 182364, Aug. 03, 2010) p. 613

Unutilized input VAT — Claim therefor may be proved by sales invoices. (AT & T Communications Services Phils., Inc. *vs*. Commissioner of Internal Revenue, G.R. No. 182364, Aug. 03, 2010) p. 613

VOID MARRIAGES, DECLARATION OF ABSOLUTE NULLITY

Psychological incapacity as a ground — Evidence thereof can come from persons intimately related to the spouses who could testify on the allegedly incapacitated spouse's condition at or about the time of marriage, or to subsequent occurring events that trace their roots to the incapacity already present at the time of marriage. (Toring *vs*. Toring, G.R. No. 165321, Aug. 03, 2010) p. 434

— Must be characterized by: (1) gravity; (b) juridical antecedence, and (3) incurability, to be sufficient basis to annul a marriage. *(Id.)*

— Root cause thereof needs to be alleged in a petition for annulment. *(Id.)*

— Should refer to "no less than a mental incapacity that causes a party to be truly incognitive of the basic marital covenant that concomitantly must be assumed and discharged by the parties to the marriage. *(Id.)*

— The intent of the law is to confine the application of Article 36 of the Family Code to the most serious cases of personality disorders that results in the utter insensitivity or inability of the afflicted party to give meaning and significance to the marriage he or she contracted. *(Id.)*

— The psychological evaluation and testimony which consists merely of narration of statements of the husband and son is insufficient to prove that the wife is suffering from narcissistic personality disorder. *(Id.)*

— The wife's alleged infidelity and irresponsibility in managing the family's finances does not rise to the level of psychological incapacity required under Article 36 of the Family Code. *(Id.)*

WITNESSES

Credibility of — A rape victim who testifies in a categorical, straightforward, spontaneous, and frank manner and remains consistent, is a credible witness. (People *vs*. Magayon, G.R. No. 175595, July 28, 2010) p. 121

— Determination of the trial court, especially when affirmed by the appellate court is accorded great respect; exceptions. (People *vs*. Bartolini, G.R. No. 179498, Aug. 03, 2010) p. 575

(People *vs*. Rellota, G.R. No. 168103, Aug. 03, 2010) p. 471

(People *vs*. Magayon, G.R. No. 175595, July 28, 2010) p. 121

— Not affected by discrepancies in their testimonies referring to minor details and collateral matters. (People *vs*. Rellota, G.R. No. 168103, Aug. 03, 2010) p. 471

— Not impaired by the delay on the part of the victim in reporting the rape incidents. (People *vs*. Sambahon, G.R. No. 182789, Aug. 03, 2010) p. 651

(People *vs*. Bartolini, G.R. No. 179498, Aug. 03, 2010) p. 575

— Positive and categorical declarations of prosecution witnesses deserve full faith and credence in the absence of ill motive. (People *vs*. Sambahon, G.R. No. 182789, Aug. 03, 2010) p. 651

— Stands in the absence of ill-motive to falsely testify against the accused. (People *vs*. Magayon, G.R. No. 175595, July 28, 2010) p. 121

— There is no standard form of human behavioral response when one is confronted with a strange, startling, or frightful experience. *(Id.)*

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